

ANNEXES

A **CONSULTEES**

Ticket agents

Lashmars Theatre Tickets

Last Minute Network Ltd

Really Useful Theatres Ltd

Seatem Group (UK) Ltd

The Way Ahead Group Ltd

Ticketmaster UK Ltd

Venues

The Brighton Centre

Mean Fiddler Music Group plc

The Royal National Theatre (London)

Wembley Arena (Wembley (London) Ltd)

Promoters and Producers

Cameron Mackintosh Ltd

Clear Channel Entertainment UK Holdings Ltd

Kennedy Street Enterprises Ltd

SJM Concerts Ltd

International Competition Authorities

Irish Competition Authority

Nederlandse Mededingingsautoriteit (NMa) (Netherlands Competition Authority)

US Department of Justice

Local and national government organisations

Department of Culture, Media and Sport

Department of Trade and Industry

Office of the Deputy Prime Minister

Home Office

National Assembly for Northern Ireland

National Assembly for Wales

Scottish Executive

Trading Standards Departments

London Borough of Camden

London Borough of Westminster

Consumer Groups

Consumers' Association

National Association of Citizens Advice Bureaux

National Consumer Council

Scottish Consumer Council

Welsh Consumer Council

Others

Advertising Standards Authority

Committee of Advertising Practice

Football Association

Football Supporters' Federation

National Arenas Association

Nick De Long (NDL) Group Ltd

The Society of London Theatre

Society of Ticket Agents and Retailers (STAR)

B LEGISLATIVE FRAMEWORK

Introduction

- B.1 This annexe sets out the legislation and regulation relating to the advertising, sale and supply of advance tickets to entertainment events.
- B.2 The legislation and regulations providing consumer protection are first summarised and then set out in more detail with the relevant competition law.

Summary of consumer protection regulation

- B.3 Consumer protection regulation is enforced by the OFT and Trading Standards Departments. This table summarises the main aspects:

Consumer law

Supply of Goods and Services Act 1982	This Act makes it an implied term of any contract to which the Act applies that services must be carried out with reasonable care and skill and that if no time for the performance is agreed under contract it will be performed within a reasonable time.
Consumer Protection Act 1987	Section 20 makes it an offence for any person, in the course of business, to give consumers any indication which is misleading as to the price at which any goods or services are available.
Enterprise Act 2002	Under Part 8 of the Enterprise Act 2002 enforcers such as the OFT and TSDs have strengthened powers to obtain court orders against businesses that do not comply with their legal obligations to consumers. ¹ Businesses that breach certain UK consumer protection laws are affected by Part 8. ²

¹ General enforcers also include the Department of Enterprise, Trade and Investment in Northern Ireland.

² More information on Part 8 can be found in *Enforcement of Consumer Protection Legislation: Guidance on Part 8 of the Enterprise Act*, OFT.

Legislation relating to illegal trading

Civic Government (Scotland) Act 1982	Under this Act it is an offence for anyone to tout for the purpose of selling or advertising anything so as to give another person reasonable cause for annoyance and to fail to stop when required to by a police officer. ³
London Local Authorities Act 1990	This Act makes it an offence to engage in street trading when not in possession of a street trading licence or to trade from a place or at a time not covered by a licence held. ⁴ The offence is also committed whether or not the trading is done from a stationery position or not.
Criminal Justice and Public Order Act 1994	This act makes it illegal for any unauthorised person to sell or offer to sell a ticket for any designated or regulated football match in any public place.
City of Westminster Act 1999	This Act makes it is an offence to engage in street trading without a licence or in a place on or on a day not authorized by the licence. ⁵

Secondary legislation

Price Indications (Method of Payment) Regulations 1991	These regulations are 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 (Northern Ireland) 1995	These regulations mirror those above that apply to the rest of the UK.

³ This Act has a narrower scope than the provisions in the London local authority legislation.

⁴ Street trading is defined as specifically covering the purchasing of or offering to purchase any ticket and the selling or exposure for sale of any article.

⁵ Street trading covers the selling, offering for sale, display or exposing for sale of any article and the purchasing of or offering to purchase any ticket for gain or reward.

Control of Misleading Advertising Regulations 1988	These regulations aim to protect the interests of consumers and traders from misleading or unacceptable comparative advertising. This includes the advertising of ticket prices, including any additional fees. ⁶
Unfair Terms in Consumer Contracts Regulations 1999	Under these regulations a consumer is not bound by a standard term in a contract with a seller or supplier if that term is unfair. A standard term is unfair if it creates a significant imbalance in the parties rights and obligations under the contract, to the detriment of the consumer, contrary to the requirement of good faith. Ticket agents and sellers often include consumer contracts on their websites and partial contracts can be found on the back of tickets. ⁷
Consumer Protection (Distance Selling) Regulations 2000	As a leisure service that relates to specific date or time period, the sale and supply of tickets are excluded from much of these regulations. However the regulations do apply if the supplier is not able to supply the service within the time agreed. If this happens the supplier should inform the consumer and refund any monies paid in relation to the contracted service. These regulations also protect consumers from payment card fraud.
The Electronic Commerce (E-Commerce) Regulations 2002	These are not primarily a consumer protection measure but suppliers making on-line sales must provide certain information to consumers on their website. It must be clear who is providing the goods or services, what their address is and if subject to VAT, their VAT number. Where prices are referred to the supplier must ensure these are clear and unambiguous, and state whether they include tax and delivery costs.

⁶ These regulations are for the most part regulated by industry through the Advertising Standards Authority. TSDs do not have the power to directly enforce these regulations. They are only able to do so through enforcement action under Part 8 of the Enterprise Act 2002.

⁷ These regulations exclude 'core terms' which set the price or describe the main subject matter of the contract. For more details see *Unfair Contract Terms Guidance*, OFT 311 and *Guidance on unfair terms in consumer entertainment contracts*, OFT (667)

Consumer law

Prices Act 1974

- B.4 Section 4 of the Act provides that the Secretary of State, or the Department of Commerce for Northern Ireland, may by order make provision for securing, amongst other things, 'that charges are indicated for services which a person indicates are or may be provided' and 'that prices for ... such services are not indicated in a manner which the Secretary of State [or the Department] considers inappropriate'. Any such order 'may make provision as to the manner in which any price or charge is to be indicated'. No order relevant to ticket agencies has to date been made under these powers.

Consumer Protection Act 1987

- B.5 Part III of the Act makes provision in respect of 'Misleading Price Indications'.
- B.6 Section 20 of this Act makes it an offence for any person, in the course of business, to give to consumers any indication which is misleading as to the price at which any goods or services are available. It is also an offence where any such indication becomes misleading after it was given if some or all of those consumers might reasonably be expected to rely on the indication at any time after it has become misleading, and the person who gave the indication fails to all reasonable steps to prevent those consumers from relying on that indication. It is immaterial whether or not the person who gave the indication is the person, or one of the persons, from whom the goods or services are available. These offences apply however the price indication is given, whether, for example, on a television or press advertisement or on price tickets or shelf-edge marking.

- B.7 Section 21 defines 'misleading' and provides that an indication as to price will be 'misleading' if what is conveyed by the indication, or what consumers might reasonably be expected to infer from the indication or any omission from it, includes, for example, 'that the price is less than in fact it is' or 'that the price covers matters in respect of which an additional charge is in fact made'.

Supply of Goods and Services Act 1982

- B.8 This is designed to give additional protection to consumers who make contracts with business for the supply of services. The Act makes it an implied term of any contract to which the Act applies that services must be carried out with reasonable care and skill and that if no time for performance is agreed under the contract, it will be performed within a reasonable time. Breach of these terms gives a consumer the right to take action against the trader for breach of contract. Such a breach could also be a domestic infringement for the purposes of the Enterprise Act 2002 and therefore form a basis for enforcement action by the OFT under the 2002 Act (see below).

Enterprise Act 2002

- B.9 Part 8 of the Enterprise Act 2002 confers on enforcer's strengthened powers to obtain court orders against businesses that do not comply with their legal obligations towards consumers. By virtue of section 213 of the Enterprise Act 2002, the OFT and every local weights and measures authority in Great Britain, are general enforcers. A general enforcer may make an application for an enforcement order in respect of any infringement by a trader. There are two categories of infringements, domestic infringements and community infringements. The provisions relating to Community infringements implement the E.C. Directive on injunctions for the protection of consumers' interests⁸. A domestic infringement is defined as an act or omission which is done or made by a person in the course of a business, which falls within subsection (2)

⁸ Directive 98/27/EC

and harms the collective interests of consumers in the United Kingdom⁹. The Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003¹⁰ specifies the enactments and rules of law in respect of which acts or omissions may constitute domestic infringements. These include the Consumer Credit Act 1974, the Sale of Goods Act 1979 and the Unfair Contract Terms Act 1977.

- B.10 A community infringement is expressed to be an act or omission which harms the collective interests of consumers and which contravenes a listed Directive as given effect by the laws, regulations, or administrative provisions of an EEA state or contravenes such laws, regulations or administrative provisions which provide additional permitted protections¹¹. The Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003¹² specifies the law in the United Kingdom which gives effect to the EC directives, and provides additional permitted protections, and this includes the Unfair Terms in Consumer Contracts Regulations 1999.

Legislation relating to illegal trading

Civic Government (Scotland) Act 1982

- B.11 It is an offence for anyone to tout for the purpose of selling or advertising anything so as to give another person reasonable cause for annoyance and to fail to stop when required to by a police officer. This is of narrower scope than the provisions in the local authority legislation for London.

London Local Authorities Act 1990

- B.12 It is an offence under s.38 of this Act to engage in street trading when not in possession of a street trading licence or to trade from a place or at a time not covered by a licence held. Street trading is defined as

⁹ Section 211 of the Enterprise Act 2002

¹⁰ SI 2003/1593

¹¹ Section 212 of the Enterprise Act 2002

¹² SI 2003/1374

specifically covering the purchasing of or offering to purchase any ticket and the selling or exposure for sale of any article. The offence is also committed whether or not the trading is done from a stationery position or not. This covers all the London Local Authorities set out in Schedule 1 to the Act.

Criminal Justice and Public Order Act 1994

- B.13 Section 166 makes it an offence for any unauthorised person to sell or offer to sell a ticket for any designated or regulated football match in any public place, or place to which the public has access, or in the course of trade or business in any other place. A person is deemed to be unauthorised unless they are authorised in writing to sell tickets for the match by the home club or by the organisers of the match.

Designated and regulated football matches are football matches:

- (a) played at Wembley Stadium, the Millennium Stadium in Cardiff, or at the home ground of a Football League or FA Premier League registered football club;
- (b) in England and Wales involving either one or both teams which represent a club belonging to the Football League, the FA Premier League or the Football Conference, or which represent a foreign club or territory, and which is played at either the home ground of a Football League or FA Premier League club, or in the FA Cup (other than a preliminary or qualifying round);
- (c) outside England and Wales involving either the English or Welsh national team, or a team representing a club which at that time is a member of the Football League or the FA Premier League.

City of Westminster Act 1999

- B.14 This contains similar provisions to the Local London Authorities Act but with specific reference to the City of Westminster. Again, it is an offence to engage in street trading without a licence or in a place on or on a day not authorized by the licence. Street trading covers the selling,

offering for sale, display or exposing for sale of any article and the purchasing of or offering to purchase any ticket for gain or reward.

Relevant secondary legislation

Consumer Protection (Northern Ireland) Order 1987
(SI 1987/2049, N.I. 20)

- B.15 Part III of the Order mirrors Part III of the Consumer Protection Act 1987 (making provision in respect of 'Misleading Price Indications').

Control of Misleading Advertisements Regulations 1988
(SI 1988/915)

- B.16 The Control of Misleading Advertisements Regulations 1988 (CMARs) are aimed at protecting the interests of consumers and traders from misleading or unacceptable comparative advertising.
- B.17 An advert is misleading if it deceives or is likely to deceive its audience and affect their economic decision-making. This also applies if it harms or is likely to harm a competitor of the organisation placing the advertisement. An advert will be likely to affect the economic decision-making of readers if, for example, it persuades them to part with money.
- B.18 The definition of an advertisement is very broad covering 'any form of representation made in connection with a trade, business, craft or profession to promote the supply or transfer of goods and services, immovable property rights or obligations'.
- B.19 Enforcement action in relation to a misleading advertisement can be taken against anyone appearing to be concerned with the publication of the advertisement. Again, the definition of publication is very wide covering 'the dissemination of that advertisement whether to an individual person or a number of persons and whether orally or in writing or in any other way whatsoever.'

B.20 An advert can be deceptive in various ways, for example, if it:

- contains a false statement of fact - this may be possible to prove or disprove by evidence
- conceals or leaves out important facts
- promises to do something but there is no intention of carrying it out
- creates a false impression, even if everything stated in it may be literally true.

Consumer Protection (Code of Practice for Traders on Price Indications) Approval Order 1988 (SI 1998/2078)

B.21 This Order provides for the approval by the Secretary of State of the Code of Practice for Traders on Price Indications, which gives practical guidance with respect to the requirements of section 20 of the Consumer Protection Act 1987 (see above) and promoting desirable practices in relation to the giving of price indications. A contravention of this Code does not of itself give rise to civil or criminal liability, but section 25 of the Act provides that in proceedings for an offence under section 20(1) or (2) a contravention of a provision in an approved code may be relied on in relation to any matter for the purpose of showing that the person committed the offence, or of negating any defence. Compliance with a provision in the Code may be relied on in relation to any matter for the purpose of showing that the commission of the offence has not been established or that the person concerned has a defence.

B.22 In particular, paragraph 2.2.16 of the Code recommends that:

'If you sell tickets, whether for sporting events, cinema, theatre, etc and your prices are higher than the regular price that would be charged to the public at the box office, ie higher than the 'face

value', you should make clear in any price indication what the 'face value' of the ticket is.'

Price Indications (Method of Payment) Regulations 1991 (SI 1991/199)

- B.23 These Regulations apply to any person who, in the course of business, gives to consumers indications of prices for goods, services, accommodation or facilities and who charges different prices for payment by different methods (for example, by cash or by credit card).
- B.24 The Regulations require that, except when responding to a specific request for the price applicable to a particular method of payment, where a trader gives an indication of a price which does not apply to all methods of payment which he accepts, the indication must be accompanied by a statement of any method of payment to which the indicated price does not apply and which the trader will accept. Unless he indicates the price payable by such another method, the trader must also state the difference between the indicated price and the price for payment by such other method; this may be expressed either as an amount of money or in percentage terms.
- B.25 Any such statement which is given in writing must generally be displayed at each public entrance to premises where the transaction is made or arranged and at each point in them where consumers make payment. In respect of premises not wholly in the same occupation, kiosks and similar places, such statements must be visibly displayed at each point where consumers make payment or become bound to make payment.
- B.26 Oral indications or statements are required to be given audibly and written indications or statements must be given clearly, prominently and legibly.
- B.27 These Regulations also apply to indications of price given in advertisements.

Price Indications (Resale of Tickets) Regulations 1994 (SI 1994/3248)

- B.28 These Regulations regulate the manner in which a person who resells tickets by way of business gives consumers an indication as to the price at which the ticket is, or would be, available.
- B.29 The Regulations apply to a ticket which gives its holder the right of admission to a place of entertainment, including any gathering, amusement, exhibition, performance, game, sport or trial of skill and other similar events.
- B.30 The Regulations require the following information to be given to consumers:
- (a) the price and any detail which appears on the ticket which relates to or affects the rights conferred or to be conferred on the holder of the ticket (including the location of any seat or space)
 - (b) the location of the seat or space (if any) and any features of such which would adversely affect the holder's use or enjoyment and which are known, or could reasonably be expected to be known, to the reseller.
- B.31 The information must be given before a contract is concluded and, except in the case of contracts concluded by telephone, any details appearing on a ticket must be given in writing (this latter requirement may be satisfied by showing the ticket).
- B.32 Information must be accurate and, if given orally, must be given audibly and in a manner that is comprehensible to the consumer or, if given in writing, must be given clearly, prominently and legibly.
- B.33 The Regulations do not apply to tickets sold by the holders and promoters of the entertainment event, or to persons acting on their behalf.

Price Indications (Resale of Tickets) Regulations (Northern Ireland) 1995 (S.R. 1995/No.258)

- B.34 These Northern Irish Regulations parallel the Price Indications (Resale of Tickets) Regulations 1994.

Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083)

- B.35 The Unfair Terms in Consumer Contracts Regulations (UTCCRs) apply to standard terms in contracts between businesses and consumer.

Unfair terms

- B.36 An unfair term in a contract covered by the UTCCRs is not binding on the consumer. There is an exemption for terms which set the price or describe the main subject matter of the contract (usually known as 'core terms') provided they are in plain intelligible language (see below). 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 the consumer ('good faith' embodies a general principle of fair and open dealing)¹³.
- B.37 Standard terms may be drafted to protect commercial needs but must respect the interests and rights of consumers.

Plain language

- B.38 Under the UTCCRs, a standard term must also be expressed in plain and intelligible language. Not all terms that are not expressed in plain and intelligible language will be potentially unfair, but a term may be considered unfair if it could put the consumer at a disadvantage because

¹³ Words from the Court of Appeal in deciding the first case brought by the OFT under the UTCCRs, against First National Bank on 24 May 2000, paragraph 27 (reported at [2000] 2 All ER 759, 768h – 769a).

he or she is not clear about its meaning - even if its meaning could be ascertained by a lawyer. If there is doubt as to what a term means, the meaning most favourable to the consumer will apply.

Coverage

B.39 Most standard terms are covered by the UTCCRs. The exceptions are those:

- that reflect provisions which by law have to be included in contracts
- that have been individually negotiated
- contracts between businesses
- contracts between private individuals
- certain contracts that people do not make as consumers – for example, relating to employment or setting up a business or
- contracts entered into before 1995.

B.40 The assessment of unfairness will take into account all the circumstances attending the conclusion of the contract. However, the assessment is not to relate to the definition of the main subject matter of the contract or the adequacy of the price or remuneration as against the goods or services supplied in exchange as long as the terms concerned are in plain, intelligible language.

B.41 Schedule 2 to the UTCCRs contains an indicative list of terms which may be regarded as unfair. These include:

- inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations

- permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract
- authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract
- enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract
- enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided.

Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334)

- B.42 These Regulations apply to contracts for goods or services to be supplied to a consumer where the contract is made exclusively by means of distance communication, that is any means used without the simultaneous physical presence of the consumer and the supplier (regulations 3 and 4).
- B.43 The Regulations have limited application to contracts for the provision of leisure services (regulation 6). As a result, a number of requirements do not apply to leisure services including: the requirement for the supplier to provide the consumer with specified information (including information on the right to cancel the distance contract, the main characteristics of the goods or services, and delivery costs where appropriate) prior to the conclusion of the contract; the requirement to supply in writing information already given and to give some additional information, including on the conditions and procedures relating to the

exercise of the right to cancel the contract; the provision of a 'cooling off' period to enable the consumer to cancel the contract by giving notice to the supplier; and, the requirement that, if the consumer cancels, they must be reimbursed within a maximum period of 30 days.

- B.44 Those provisions of the Regulations which do apply to leisure services include the provision that where the supplier is not able to provide the goods or service ordered, substitutes may be offered if certain conditions are met. Those conditions are that the substitute service should be of equivalent quality and price (regulation 19). The Regulations also provide that where the consumer's payment card is used fraudulently in connection with a distance contract the consumer will be entitled to cancel the payment. If the payment has already been made the consumer will be entitled to a re-credit or to have all sums returned by the card issuer.
- B.45 Enforcement action can be taken by the OFT or Trading Standards Departments against traders who breach the DSRs.

Electronic Commerce (EC Directive) Regulations 2002

- B.46 These have some provisions that provide protection for consumers. There is some overlap with the DSRs but both apply in parallel.
- B.47 There are four categories of activity identified in the Regulations which bring with them certain obligations:
- B.48 Commercial communications - a service provider must ensure that any commercial communication provided by him makes clear certain facts such as the fact that it is a commercial communication and on whose behalf it is being sent. Commercial communications are defined in Regulation 2.
- B.49 Information society services - this is a slightly narrower category dealing with services provided electronically for remuneration and the Regulations impose certain informational requirements on any person providing an information society service. Again, there is a definition of information society services in Regulation 2.

- B.50 Concluding a contract by electronic means - prior to concluding a contract by electronic means, certain information has to be provided to a consumer by a service provider
- B.51 Placing of an order - once a consumer has placed an order a service provider has to acknowledge receipt as set down in the Regulations and ensure that a consumer can correct input errors before the order is placed.

Proposal for a directive of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the Internal Market and amending directives 84/450/EEC, 97/7/EC and 98/27/EC

- B.52 On 18 June 2003 the European Commission published a Proposal for a Directive concerning unfair business-to-consumer commercial practices in the Internal Market (COM (2003) 0356). Article 5 of the draft Directive prohibits unfair commercial practices.
- B.53 According to Article 5 (2), a commercial practice will be regarded as unfair if it is contrary to the requirements of professional diligence and it materially distorts the economic behaviour of the average consumer whom it reaches or to whom it is addressed, or is likely to do so. An average consumer is defined as a consumer who is reasonably well informed and reasonably observant and circumspect. Commercial practices that are misleading or aggressive within the meaning of the Directive will be deemed to be unfair.
- B.54 By virtue of Article 7 of the draft Directive, a commercial practice can be misleading if it 'omits material information that the average consumer needs, according to the context, to take an informed transactional decision'. It will also be a misleading omission for a trader to hide or provide 'in an unclear, unintelligible, ambiguous or untimely manner such material information'.
- B.55 Information that will be regarded as material includes, in the case of an invitation to purchase, where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which

the price is calculated, as well as, where appropriate, delivery or postal charges.

- B.56 In its present form, the Directive is a maximum harmonisation measure. The Directive is currently the subject of discussion between Government departments and at an EC level.

Competition law

Treaty of Rome (The EC Treaty) and the Competition Act 1998

Article 81 and the Chapter I prohibition

- B.57 Both Article 81(1) of the EC Treaty and Chapter I of the Competition Act 1998 prohibit agreements between undertakings, decisions by associations of undertakings or concerted practices which have the object or effect of preventing, restricting or distorting competition:
- within the common market and which may affect trade between Member States in the case of Article 81(1)
 - within the United Kingdom and which may affect trade within the United Kingdom in the case of the Chapter I prohibition.
- B.58 Article 81(1) and the Chapter I prohibition provide an identical, illustrative list of agreements to which the provisions apply, namely agreements which:
- (a) directly or indirectly fix purchase or selling prices or any other trading conditions
 - (b) limit or control production, markets, technical development or investment
 - (c) share markets or sources of supply
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage

- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 82 and the Chapter II prohibition

- B.59 Any conduct in a market by one or more undertakings which amounts to the abuse of a dominant position, and which may affect trade in the United Kingdom, is prohibited by section 18(1) of the Act (the Chapter II prohibition).
- B.60 The Chapter II prohibition is based on Article 82 of the EC Treaty which provides that 'any abuse by one or more undertakings of a dominant position within the common market or a substantial part of it shall be prohibited as incompatible with the common market in so far as it affects trade between Member States.'
- B.61 The conduct of a dominant undertaking may, in particular, constitute an abuse, in terms of both the Chapter II prohibition and Article 82, if it consists in:
 - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions
 - (b) limiting production, markets or technical development to the prejudice of consumers
 - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage
 - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subjects of the contracts ['such' contracts in Article 82].

B.62 The test applied under the Chapter II prohibition and Article 82 has two common elements: whether an undertaking is dominant in a relevant market; and, if so, whether it is abusing a dominant position. The prohibition is of the *abuse* of the dominant position, not the *holding* of the position.

Vertical agreements block exemption

B.63 The Block Exemption creates a 'safe harbour' for large numbers of vertical agreements under Article 81(3), so that agreements falling within the terms of the Block Exemption are automatically exempt from the application of Article 81(1).¹⁴ The Block Exemption also has the parallel effect of creating a 'safe harbour' exempting agreements from the application of the Chapter I prohibition, by virtue of section 10 of the Act. Thus agreements falling within the terms of the Block Exemption will be exempt from the application of both Article 81 and the Chapter I prohibition. Each undertaking must operate at a different level of the production or distribution chain for the purposes of the agreement for it to benefit from the Block Exemption.

B.64 There are two key limits to the scope of the Block Exemption. The Block Exemption will not apply to a vertical agreement where:

- the market share of the supplier (or buyer, in the case of an agreement with an exclusive supply obligation) exceeds 30 per cent of the relevant market (Article 3), or
- the agreement contains one or more of the 'hardcore' restrictions listed in the Block Exemption, including price-fixing (Article 4).

¹⁴ Commission Regulation (EC) No 2790/1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ L336, 29.12.99, p21)

Enterprise Act 2002

- B.65 Part 4 of the Enterprise Act provides for a system of market investigations by the Competition Commission, upon reference by the OFT and sectoral regulators. These market investigation references replace the monopoly investigation powers in the Fair Trading Act 1973. The purpose of these market investigations is to inquire into markets where it appears that the structure of the market, or the conduct of suppliers or customers, is harming competition.
- B.66 The OFT has a discretionary power to make market investigation references to the Competition Commission if it has reasonable grounds for suspecting that one or more features of a market prevents, restricts or distorts competition in relation to the supply or acquisition of goods or services in the United Kingdom.
- B.67 The Competition Commission carries out a detailed investigation of competition in the market or markets concerned to determine whether any feature of the market prevents, restricts or distorts competition in relation to the supply or acquisition of goods or services in the United Kingdom. If an adverse effect on competition is identified, the Commission must identify and take appropriate action to remedy it, and/or any detrimental effect on customers resulting from it, taking into account customer benefits, by means of undertakings or orders.

C PRIMARY TICKET AGENTS

Abbey Box Office Ltd

Albemarle of London Ltd

Lashmars Theatre Tickets

Last Minute Network Ltd

Piccadilly Ticketline Ltd

Really Useful Theatres Ltd

Seatem Group (UK) Ltd

Stargreen Box Office Ltd

Ticket Web (UK) Ltd

Ticketmaster UK Ltd

Tickets.Com

The Way Ahead Group Ltd

West End Theatre Bookings Ltd

D VENUES

The Ambassador Theatre

The Brighton Centre

The Criterion Theatre

Harewood House

Harrogate International Centre

Manchester Evening News Arena

Mean Fiddler Music Group plc

The Royal National Theatre (London)

The NEC Group (Birmingham)

Newcastle City Hall

The Royal Court Theatre (Liverpool)

The Savoy Theatre

The South Bank Centre

St Martins Theatre

The Strand Theatre

The Galpharn Stadium

Victoria Palace House

Wembley Arena (Wembley (London) Ltd)

The White Rock Theatre

E ANALYSIS OF OVERSEAS REGULATORS' EXPERIENCES OF TICKET SALES FOR ENTERTAINMENT EVENTS

Introduction

- E.1 This annexe describes overseas regulators' experiences with ticket agents. It is based on information provided in response to our information request and discussions with EU and other countries' regulators.
- E.2 The information we have received is set out under two headings: Consumer protection and Competition issues.
- E.3 Some countries have separate competition and consumer enforcement authorities, which deal with complaints using the powers available to them. Although these bodies work together to resolve complaints, the route chosen is determined by whom the complaint is addressed to.

Summary

- E.4 Over the last 5 years overseas authorities have received a low number of complaints and have taken few actions against ticket agents. The low volumes of complaints may partly be explained by the fact that there are fewer ticket agents and relatively low usage of ticket agent's services by consumers and venues in countries surveyed such as Spain, Italy and Denmark.
- E.5 Despite this, the evidence obtained indicates complaint themes and regulators' concerns are similar across countries. The main concern is that ticket agents' do not make the level of booking fees clear in event advertising materials.
- E.6 General consumer protection regulations in many countries are structured similarly to the UK's regulations governing misleading advertising and the provision of sufficient information to consumers which allows them to make informed decisions about ticket purchases. In the EU, countries' regulations are similar because the European Commission requires domestic legislation to provide the same or greater

protection as the European Communities (Misleading Advertising) Regulations, 1988.

- E.7 Consumer protection regulations are enforced centrally in many countries¹⁵ and, like the UK, enforcement duties are often devolved to municipal bodies similar to UK local Trading Standards Departments.

Consumer Protection

- E.8 Consumer protection issues arising from complaints to overseas regulators are discussed in this section on a country by country basis, illustrating the commonality of complaint themes between countries.

Complaints

- E.9 European consumer and competition authorities have received few complaints from the public about ticket agents over the last five years. Typically, the countries surveyed¹⁶ received, on average, fewer than 5 per year, although complaint levels in the Netherlands and Denmark are slightly higher, at about 20 per year.

Complaints experience by country

- E.10 Complaint themes drawn from survey responses mirror UK experiences and cover concerns about:
- Price transparency
 - Consumer redress

 - Service charges levied by ticket agents

¹⁵ Ireland, Germany, Sweden, Finland, Australian, New Zealand and the Netherlands

¹⁶ A list of respondents is provided at the end of this annexe.

Ireland

History

- E.11 One of the main areas of concern to consumers and the Office of the Director of Consumer Affairs (ODCA) in Ireland is about the disclosure of additional charges such as booking fees and charges for credit card bookings in advertising for public concert or theatre performances.

Actions and Outcomes

- E.12 Because of these complaints, a Regulatory Order¹⁷ was introduced to improve consumer information in advertisements for entertainment events.
- E.13 This Order which came into effect in May 1997 requires that all written advertisements for all public concert or theatre performances must indicate the admission price and where applicable, the amount, in monetary or percentage terms, of any additional costs. A typical advert in Ireland will state something similar to the following:

'Tickets €25. Telephone and internet bookings subject to 12.5% per ticket service charge, to a maximum of €5.95.
Agents €2 per ticket handling charge.'

- E.14 During 2003, the ODCA received nine complaints about alleged breaches of the Order. Moreover, during this time they proactively investigated a further 24 cases. The OCDA alleged promoters breached local advertising regulations, however formal actions were not taken because the industry players concerned responded voluntarily to the OCDA's concerns.

¹⁷ Advertisements for Concert or Theatre Performances Order 1997

New Zealand

History

- E.15 In 2003, the Commerce Commission (CC) of New Zealand took action in response to concerns about non-disclosure of booking fees, consumers' rights to refunds and publication of misleading information about consumers' rights on the web-sites of New Zealand's major ticket agent, Ticketek NZ Ltd (Ticketek). Specifically, the CC was concerned about Ticketek's policy of not refunding both booking fees and the face value of tickets when events were cancelled.

Actions and outcomes

- E.16 The CC successfully prosecuted Ticketek NZ Ltd. Despite this outcome it is alleged that Ticketek NZ Ltd still retains booking fees, regardless of the reasons for event cancellations.
- E.17 Moreover, the CC retains general concerns about the level of information about service fees, provided to consumers, in event advertising materials. The CC's current view is that ticket agents should fully disclose the service fees consumers may incur when purchasing tickets for entertainment events. However, details are unavailable about possible further actions on this matter.

Australia

History

- E.18 The main issues raised by consumers in Australia have concerned misrepresentation of ticket prices and ticket agents' refund policies. But, because the volume of complaints has been relatively low, the Australian Competition and Consumer Commission have not taken formal actions in response to complaints.

- E.19 Instead, complaints are resolved at a local level, where individuals obtain redress through their local Small Claims Tribunals.

Actions and codes of practice

- E.20 Australian consumer protection agencies have worked with the entertainment industry to develop the '*Entertainment Industry Code of Fair Practice*'. This code is widely endorsed by representatives of ticket agents, promoters, venue operators and other industry players.
- E.21 The code applies to the promotion, ticket sales and staging of events where entry charges are made. The objectives of the code are to:
- promote industry awareness about consumers' rights to price information about booking charges
 - provide consumers with an adequate redress system and refund policy.¹⁸

Summary of consumer protection issues

- E.22 Consumer and competition authorities' complaints experiences, consumer protection concerns and follow-up actions are summarised in Table 1.

¹⁸ A copy of the code can be obtained from:
www.fairtrading.nsw.gov.au/buyingproductsandservices/entertainmentindustry

Table 1: Summary of consumer complaints and outcomes

Country	Issue	Outcomes
Ireland	Price transparency Excessive booking charges	Introduction of a Regulatory Order requiring full disclosure of additional booking charges by ticket sellers, in event advertising materials.
New Zealand	Price transparency Unfair contract terms and conditions about refunds	Prosecution of the dominant ticket agent (Ticketek NZ Ltd) under consumer protection regulations.
Australia	Price transparency Unfair contract terms and conditions about refunds	Resolution of complaints at the local level without enforcement actions.

Competition Issues

E.23 Competition concerns elicited from our survey are discussed below on a country by country basis, with an account of the history of regulators' concerns, actions undertaken and outcomes.

Summary

E.24 European competition authorities and the Department of Justice (DoJ) in the US have looked at competition concerns in the ticket agents market in terms of:

- proposed mergers
- potential abuses of a dominant position in the market and
- potential market foreclosure by long term exclusive agreements between promoters and ticket agents

- E.25 Investigations of competition concerns have, to date, produced limited formal enforcement action, because they are either still in progress, have been dismissed after review or addressed without formal actions. However, these investigations provide other useful information about the sizes of other countries' ticket agents markets and the different ways competition concerns can be addressed.
- E.26 The competition cases and their outcomes are detailed in the next section and summarised in Table 2 below.

Mergers

Italy

History and Outcomes

- E.27 The Italian competition authority, Autorità Garante della Concorrenza e del Mercato, (AGCM), has reviewed the potential for two proposed acquisitions of ticket agents, in 2000¹⁹ and 2001²⁰, to stifle competition. The proposed acquisitions were put forward by companies not directly involved in the ticket agents market.
- E.28 The AGCM was concerned that the ticket agents being acquired, who were already large players, could potentially increase their market power and stifle competition by drawing on the resources of their parent companies to expand their market shares.
- E.29 At the conclusion of their investigations, the AGCM cleared both proposed mergers, satisfied that no detriment would arise from them.
- E.30 Since 2001, there have been no further reviews or actions in Italy.

¹⁹ The acquisition of Leoni Daniele by Banca Intesa (one of the main operators in the Italian banking sector)

²⁰ The acquisition of TicketOne by Seat (company controlled by Telecom Italia)

Industry data

- E.31 These reviews established the size of the Italian ticket agents market. The data supplied supports anecdotal evidence that the UK market is much larger than in other EU countries: in 2001/2, Italian ticket agents sold €9.5m (approximately £6.3m) tickets to consumers compared with £328 m in the UK.

Potential abuses of a dominant position and market foreclosure

- E.32 A number of countries' regulators, both in Europe and the US, have looked at the potential for ticket agents to abuse a dominant position in their respective domestic markets under EU and domestic competition laws.
- E.33 A number reviews are currently underway in Europe. However, there is little data to draw on and few lessons to learn presently because they are yet to conclude.
- E.34 In the past, Finland and Germany have examined competition concerns about ticket selling practices. However, these investigations were short-lived because the industry players agreed to respond to the regulators' concerns without formal proceedings.
- E.35 In the US, the Department of Justice (DoJ) investigated allegations against Ticketmaster Corporation (US) about abuse of its dominant position in the US ticket agents market. However, after reviewing the evidence the DoJ dismissed the allegations.

Ireland

History

- E.36 The Irish Competition Authority (ICA) began looking into the ticket agents market in 2003, because of public complaints about excessive booking fees charged for booking tickets for entertainment events. Formal information requests and analysis has followed.

Outcomes

- E.37 The investigation is still in progress and the outcomes are yet to be established.

Netherlands

History

- E.38 In December 2003 the Nederlandse Mededingingsautoriteit (NMa) started an investigation of a possible breach of the Dutch Competition Act by Mojo Works, a daughter company of Clear Channel Entertainment (on the markets for promotion of music events and booking of live music acts). An investigation of premises was carried out in February 2004 to gather information for the NMa's ongoing analysis.

Outcomes

- E.39 The investigation is not yet completed, but the outcomes are expected to be announced in 2005.

Finland

History

- E.40 The Finnish Competition Authority (FCA) investigated ticket sales for the 2003 Ice Hockey World Championship. They suspected the Finnish Ice Hockey Association's bundling of tickets in packages of 2-6 games was causing consumer detriment.
- E.41 The FCA pursued this issue and a potential breach of advertising regulations by the Finnish Ice Hockey Association, under provisions in domestic *competition* legislation.

Outcomes

- E.42 FCA found the Finnish Ice Hockey Association, in its dominant position for this event, was not adhering to its obligations towards consumers under Finnish law and was misleading consumers with inaccurate advertising materials.
- E.43 Once the FCA raised this with them, the Finnish Ice Hockey Association voluntarily entered into business undertakings, put forward by the FCA, which improved price transparency in advertising and access to single tickets for consumers.

Germany

History

- E.44 The German competition authority, the Bundeskartellamt, has dealt with six complaints about ticket agents between 1992 and 2002.
- E.45 The main competition concerns considered by the Bundeskartellamt were raised by competitors to Germany's dominant ticket agent. The Bundeskartellamt believed the market was potentially foreclosed because competing companies were being denied access to tickets because of exclusive arrangements between the dominant agent and ticket providers.

Outcomes

- E.46 A majority of these complaints were resolved by informal negotiations between the Bundeskartellamt and ticket agents.
- E.47 However, because in two cases the Bundeskartellamt did not uphold the allegations against the dominant ticket agent, the complainants instigated civil court actions. These cases were subsequently dismissed because the complainants were unable to provide sufficient evidence for the courts to act.

United States

History

- E.48 The US Department of Justice (DoJ) investigated allegations of *excessive pricing* of booking charges and *abuse of a dominant position* against Ticketmaster Corporation (US) (Ticketmaster) in response to a complaint by the rock band Pearl Jam, in 1994.
- E.49 Ticketmaster's exclusive arrangements with promoters and venues were alleged to be unreasonable restraints of trade and its use of those arrangements prevented promoters and venues from dealing with Pearl Jam and amounted to a group boycott, in violation of Section 1 of the Sherman Act (1890)²¹.
- E.50 It was also alleged that Ticketmaster was engaging in *predatory behaviour* against competitors, having acquired Ticketron and various other regional ticket services and by the use of long term exclusive contracts, preventing Pearl Jam and other bands from distributing tickets to their own concerts other than through Ticketmaster, unlawfully exercising monopoly power in violation of Section 2 of the Sherman Act (1890)²².

Outcomes

- E.51 In 1995, the US Department of Justice (DoJ) dismissed allegations of monopolistic practices against Ticketmaster Corporation, which were alleged to arise from its exclusive agreements with large rock venues. Since then, the DoJ has not taken any further actions against Ticketmaster Corporation or other major ticket agents.

²¹ Section 1: the restraint of trade or commerce

²² Section 2: attempts to monopolise any part of a trade or commerce

How have competition concerns been managed?

E.52 Table 2 summarises the competition concerns discussed above, and the actions taken to resolve these concerns.

Table 2: Overseas competition concerns and outcomes

Country	Cases and Parties	Actions
Italy	Mergers in 2000 and 2002 between ticket agents. Effects/symptoms: nil	Both mergers were cleared.
Ireland	Alleged abuse of monopoly power dominance by Ticketmaster and certain event promoters. Effects/symptoms: potentially excessive booking charges passed onto consumers	Formal investigation in progress
Netherlands	Alleged foreclosure of the market by Mojo Works (subsidiary of Clear Channel Entertainment). Effects/symptoms: excessive barriers to entry for new competitors	Formal investigation in progress
Finland	Alleged abuse of dominant position by the Finnish Ice Hockey Association for the distribution of tickets to the Ice Hockey World Championships. Effects/symptoms: bundling of tickets for games, raising prices consumers paid to attend games	Business undertakings to unbundle tickets for World Championship matches and amend advertising
Germany	Alleged foreclosure of the market by the dominant ticket agent. Effects/symptoms: competitors denied access to tickets.	Informal resolution of complaints and unsuccessful Civil court proceedings
United States (DoJ)	Alleged abuse of dominant position by Ticketmaster Corporation. Effects/symptoms: Alleged overcharging of consumers for ticket distribution services (by service fees) Alleged competition dampening caused by Ticketmaster's acquisition of competitors and exclusive arrangements with venues.	Formal investigation closed without further action.

F INVESTIGATION INTO POSSIBLE CONSUMER DETRIMENT IN THE MARKET FOR ADVANCED TICKETS FOR LEISURE EVENTS REPORT

Prepared for the OFT by:

FDS International
Hill House, Highgate Hill
London N19 5NA
Telephone: 020 7272 7766

Management summary

- F.1 The Office of Fair Trading has been receiving complaints from consumers about ticket agents relating to:
- excessive booking fees
 - lack of choice due to alleged exclusivity agreements between ticket agents and event organisers
 - problems with redress in the event of cancellation.
- F.2 In order to help OFT to objectively assess the level of consumer detriment in the market for advanced tickets, FDS carried out two quantitative surveys:
- a nationally representative telephone survey with recent purchasers of tickets in advance (last 6 months)
 - structured mystery shops at ticket agents and box offices.
- F.3 Both studies ran concurrently during the month of August 2004.

- F.4 Plays/musicals/comedies and rock/pop concerts are the most heavily attended events. Twice as many tickets are bought through box offices as through ticket agents.
- F.5 Ticketmaster dominates the sector with 50% market share. Telephone accounts for just over half of ticket sales by channel, followed by internet.
- F.6 The majority of agents charge a booking/processing fee while under half of box offices do so. Internet sales and sales made over a month before the event are more likely to incur extra fees.
- F.7 A third of consumers buying their last ticket from an agent felt that the extra fees charged (not including postage), which averaged 14.4% of face value, were more than expected and three in ten spontaneously mentioned cost/expense/fees as a dislike about ticket agents.
- F.8 Nevertheless satisfaction with both ticket agents and box offices is high. Only 9% are dissatisfied. Although agents charge a greater mark up, price is not the key factor determining choice of source, rather ease of purchase, ticket availability and ease of collecting. Consumers do not shop around for tickets; they are primarily driven by convenience, advertising and availability.
- F.9 There is not much evidence to suggest agents are cornering the ticket market for certain events and only one in ten found that they were unable to buy their last ticket anywhere else other than the ticket agent selling it.
- F.10 Information on ticket price range, availability and how much different seats cost is generally available and the vast majority of mystery shop transactors were able to obtain the face value, service/processing fee and total ticket price from the agent quite quickly.
- F.11 Spontaneous disclosure of the booking/processing fee by ticket agents (which averaged £3.92) happened in two in three mystery shops. In almost nine out of ten cases, the transactor managed to obtain details about this charge after prompting the sales assistant, but there were

instances where the enquirer was quoted ticket values which included an unspecified booking fee.

F.12 Seven in ten found ticket agents terms and conditions clear and hardly anyone felt pressured to buy a ticket.

F.13 In the event of cancellation, agents' policy is split between refunding the full value of the ticket and just the face value. If the ticket is lost or stolen, only a quarter can expect any refund.

Stephen Link/Brian Westra
Director/Senior Research Manager
December 2004

INVESTIGATION INTO POSSIBLE CONSUMER DETRIMENT IN THE MARKET FOR ADVANCED TICKETS FOR LEISURE EVENTS REPORT

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CONTENTS

		Page
1	Background and objectives	126
2	Method	127
	The consumer survey	127
	The mystery shopping study	127
3	Detailed findings	128
4	Ticket Pricing and Mark Up	135
5	Satisfaction with ticket agents/box offices	143
6	Drivers in source of choice	145
7	Price transparency/ information	147

1 BACKGROUND AND OBJECTIVES

1.1 The OFT has received complaints from consumers about ticket agents relating to:-

- excessive booking fees
- lack of choice due to alleged exclusivity agreements between ticket agents and event organisers
- problems with redress in the event of cancellation.

1.2 As part of a wider investigation into the workings of the market for advanced tickets for leisure events, the OFT commissioned research with the primary aims of:-

- examining levels of service/processing/booking fees and postage fees and ticket price transparency
- evaluating the choice available to consumers in this market – are consumers able to buy tickets from more than one source?
- looking at how easy it is to obtain refunds for cancelled events.

2 METHOD

2.1 FDS International conducted two parallel running studies to meet the OFT's objectives:-

- nationally representative telephone survey amongst recent ticket purchasers
- a mystery shopping study of ticket agents and box offices.

2.2 Details of the method employed and dates of interviews/fieldwork are given for each.

The consumer survey

2.3 982 CATI telephone interviews were conducted from our Newcastle Telecentre in August 2004 with a representative sample of the public who had purchased tickets for entertainment or sporting events (in areas such as rock or pop concerts, theatrical and musical performances, ballet or opera, or festivals/comedy) through ticket agents or box offices in the past six months to ensure good recall of the process.

2.4 Details were taken about the behaviour of all adults in households contacted (8735) including events bought tickets for in the last six months, sex, age and social class. The contact sample profile was compared to that of the UK and was found to be sufficiently in line, thus mitigating the need for weighting.

The mystery shopping study

2.5 567 mystery shops were also conducted in August 2004 via telephone, face-to-face and on-line. The proportions per channel were set based on the results of a pilot telephone survey and approximately represent the behaviour of the market:-

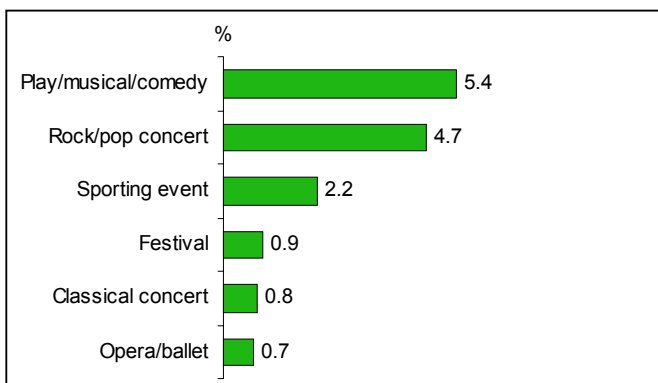
- telephone – 336
- face-to-face – 75
- on-line – 156.

2.6 Ticket agents and box offices were mystery shopped in the ratio of 2:1.

3 DETAILED FINDINGS

- 3.1 Based on answers given for each adult household member in all the households we contacted (effective sample : 8735), 5.4% of adults had bought an advance ticket for a play, musical or comedy in the last six months and 4.7% had bought one for a rock or pop concert.
- 3.2 These two events account for the largest proportion of recent ticket sales. 2.2% of adults had bought an advance ticket for a sporting event in the last six months. Lower proportions (less than 1%) are buying tickets for festivals, classical concerts and operas/ballets in a six month period.
- 3.3 13% had bought a ticket for any event and this is highest amongst the middle age group 45-54 (17%), ABC1s (18%) and Londoners (15%).

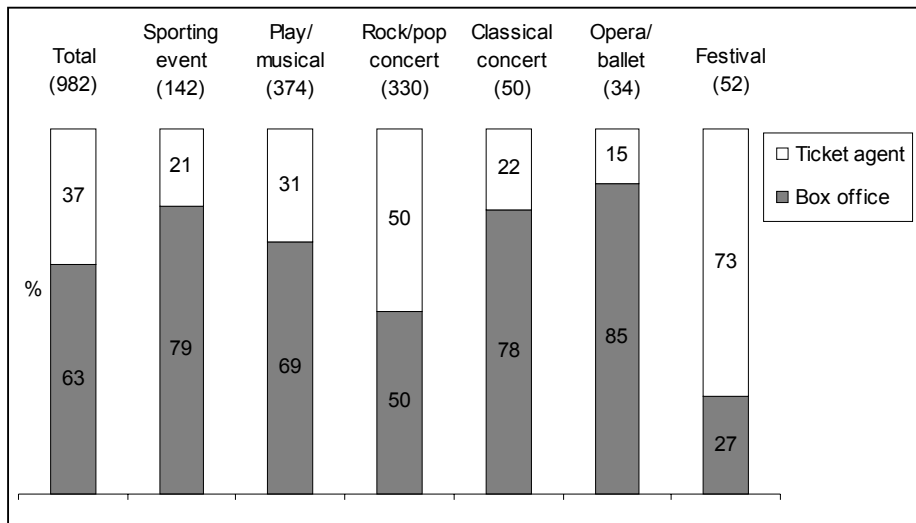
Chart 3.1: Events tickets bought for in the last six months
(Base: All respondents and other household members (8735) – Consumer study)



- 3.4 Focusing on the one adult in the household (if there was one) who had last bought an advance ticket for a leisure event, we established which source was used for that ticket ie ticket agent or event's own box office.
- 3.5 Approaching four in ten bought their last advance ticket through a ticket agent (37%), the remainder through the box office.

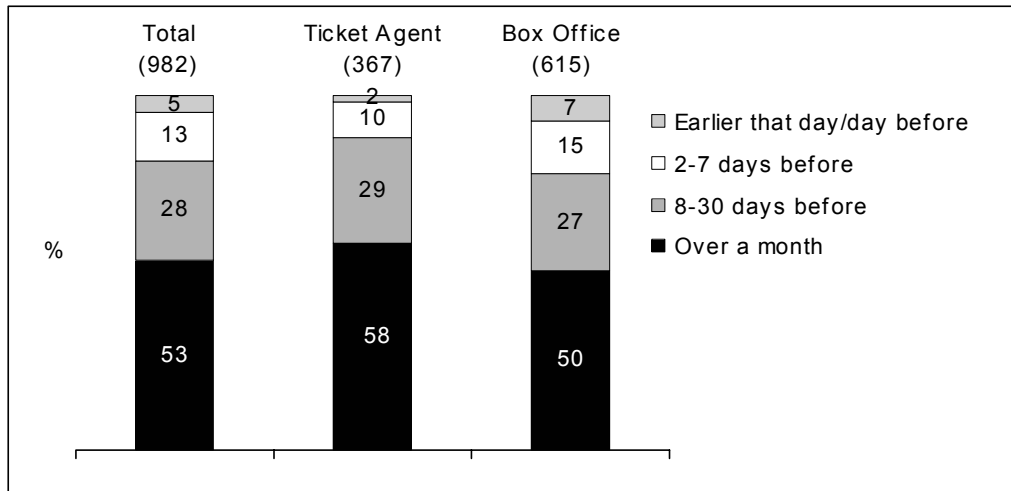
- 3.6 This varies depending on the type of event. The music events (festivals and rock/pop concerts) have the highest proportion of tickets bought through a ticket agent.
- 3.7 This is not surprising as these events move around the country and it is easier for the event organisers to sell tickets via ticket agents rather than the venues themselves. Moreover some festivals may not even have box offices at the venue.

Chart 3.2: Ticket agent/box office share
(Base: All – Consumer study)



- 3.8 A small proportion of event goes buy their tickets at the last moment (5% on the same day or the day before). Over half plan well in advance buying their ticket over a month before the event. Buyers from ticket agents are more likely to have bought their ticket over a month before the event (58%). There are no marked differences by sex, age and social class.

Chart 3.3: How far in advance was ticket bought
(Base: All – Consumer study)



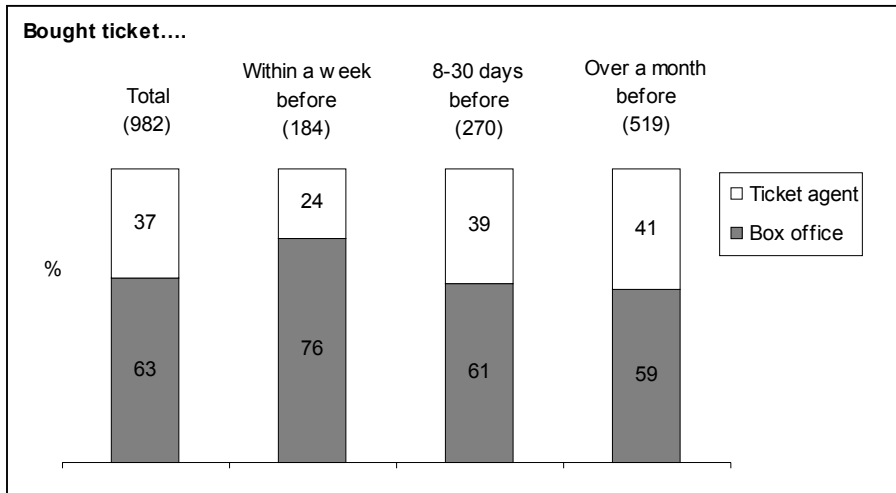
3.9 Certain groups are more likely to buy from a ticket agent (irrespective of the event):-

- men (42%)
- Northerners (46%)
- Scots (43%).

3.10 Those living furthest from London may find it more convenient to buy from an agent if they are planning a night at the theatre during a trip to London.

3.11 Advance planners who purchase tickets a long time in advance of the event are more likely to buy from ticket agents. Four in ten of those who bought their last ticket over a month beforehand bought from a ticket agent compared to a quarter of those buying at the last minute (within a week before the event).

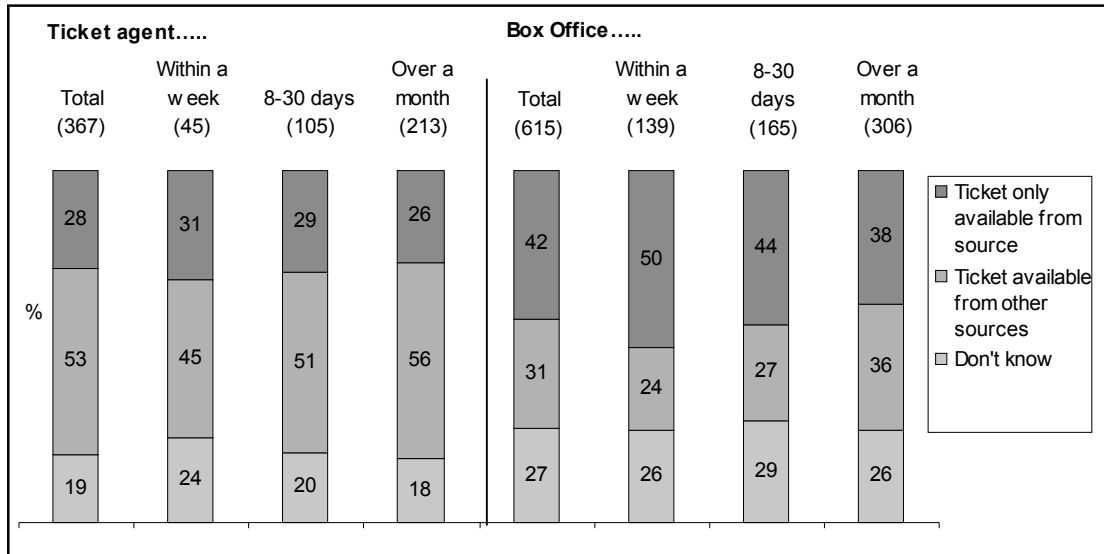
Chart 3.4: Ticket agent share by when bought ticket
 (Base: All – Consumer study)



- 3.12 There is a greater perception that tickets are available only from the source of purchase amongst box office buyers than ticket agent buyers. This is especially true for last minute purchasers. Half of those buying from the box office one week before the event thought that was the only place they could buy their ticket.
- 3.13 Overall, just over a quarter of ticket agent customers believed their ticket was only available from that source (10% of all recent advance ticket purchasers).

Chart 3.5: Availability of tickets from source

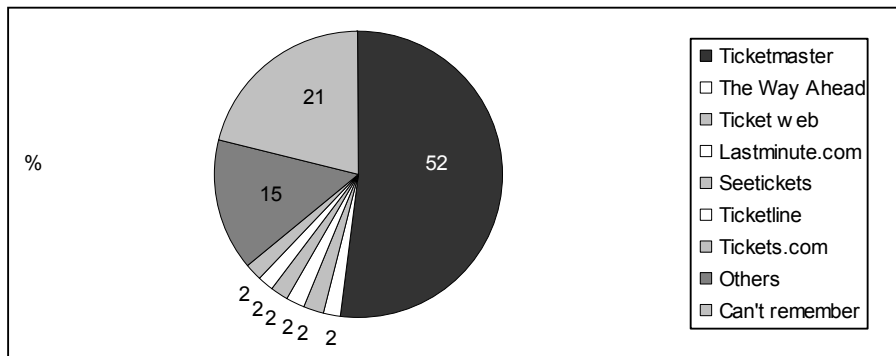
(Base: All – Consumer study)



3.14 Ticketmaster dominates the market with a share of half the market of advance tickets sold through ticket agents. The rest of the market is very fragmented with no other competitor taking more than a 2% share. One in five could not recall the name of the agent they used to buy their last ticket.

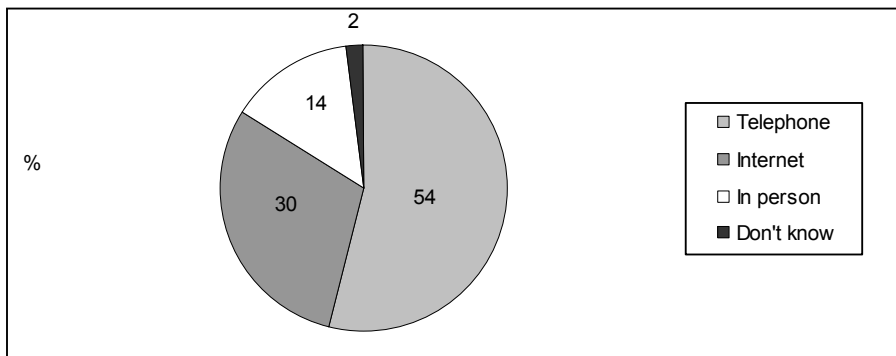
Chart 3.6: Ticket agents market shares

(Base: All buying from a ticket agent – Consumer study)



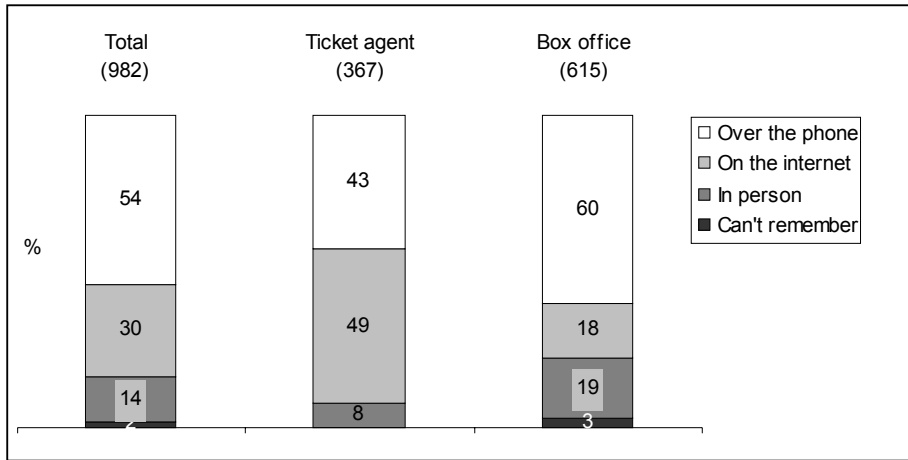
- 3.15 Over half bought tickets over the phone, but a sizeable minority (three in ten) bought via the Internet for their last ticket. 14% bought in person 18-44 year olds (40%) are more likely to buy over the Internet.
- 3.16 Tickets for plays/musicals/comedies are more likely to be purchased over the phone (59%) whilst those for festivals (46%) are more likely to be purchased via the Internet.

Chart 3.7: Share of ticket sales by channel
(Base: All – Consumer study)



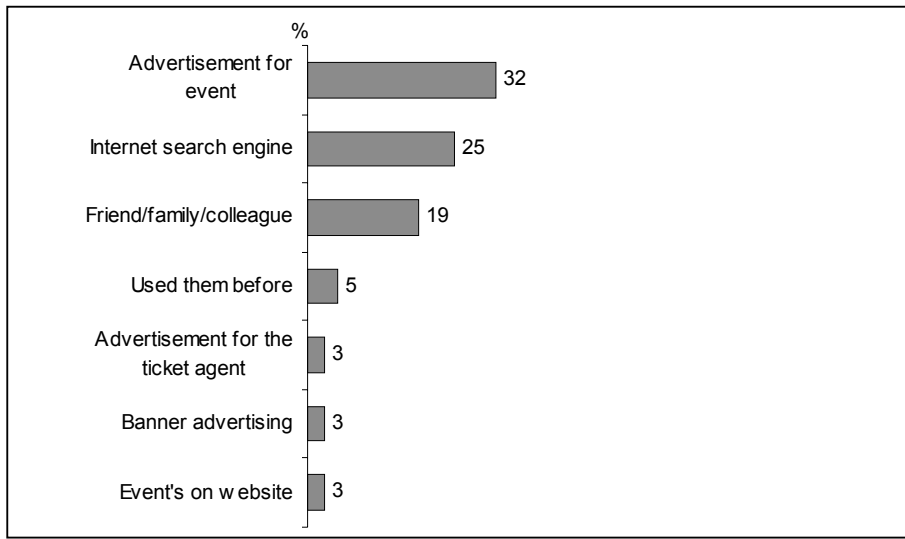
- 3.17 Half of those buying their last ticket from a ticket agent did so over the Internet and only one in five buying from a box office used this channel. Conversely a greater proportion of box office sales are made via telephone than ticket agent sales.
- 3.18 Ticket agents are more geared up to the Internet channel having the resources to build sophisticated websites compared to independent venues with less of a budget for this facility.

Chart 3.8: Channel share of ticket sales by source
 (Base: All – Consumer study)



3.19 A third of those buying from ticket agents found out about the ticket agent they bought from in an advertisement for the event. A quarter, reflecting the high share of Internet as a sales channel, found out by using a search engine. One in five were told by a friend, family member or colleague.

Chart 3.9: How found about ticket agent bought last ticket from
 (Base: All buyers from ticket agents – Consumer study)



4 TICKET PRICING AND MARK-UP

- 4.1 The majority of consumers from ticket agents (70%) stated that they incurred a booking or processing fee and a quarter incur a postage fee. This is significantly lower for box offices: 40% and 11% respectively.

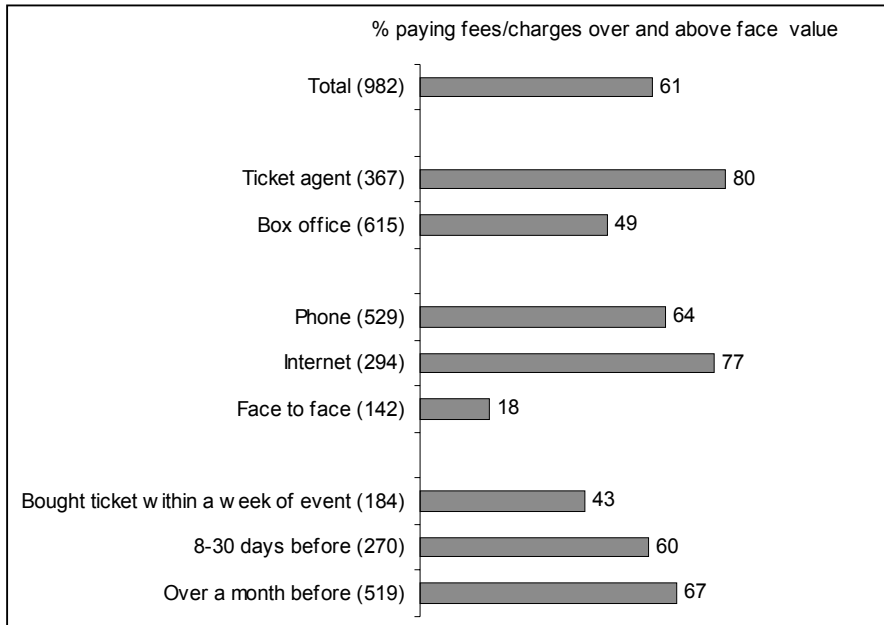
Table 4.1: Extra fees

(Base: All – Consumer study)

	Ticket agent (367) %	Box office (615) %
Additional fees/charges payable	80	49
Booking fee/processing fee	70	40
Postage fee	26	11
Don't know what the fee was	4	2
No extras	16	47
Don't know whether there were any extras	4	3

- 4.2 Overall, eight in ten buying from agents and half buying from box offices perceived that they had paid some charge - be it booking/ processing or postage - over and above the face value of the ticket.
- 4.3 It should be noted though, that the mystery shop recorded that no fees are paid in only a very small number of transactions with ticket agents (eg lastminute.com did not charge fees on rugby matches). Furthermore, some mystery shoppers were quoted ticket prices which only further probing revealed were inclusive of a booking fee. The results from the consumer survey may indicate the confusion amongst purchasers over the face value of the ticket and the level of extra charges.
- 4.4 There are differences by channel, with higher proportions of Internet (77%) and telephone (64%) purchasers incurring extra fees than face-to-face (18%). The further in advance the ticket is bought, the more likely it is to incur extra charges.

Chart 4.2: Extra fees by source/channel/time bought ticket
 (Base: All – Consumer study)



- 4.5 The mean face value of tickets enquired about on the mystery shopping study was £30.27 for ticket agents and £25.63 for box offices. The difference is a function of spread of different events and seats that we managed to shop for.
- 4.6 The average service charge/processing fee was £3.92 for ticket agents and £2.67 for box offices. The processing fee mark up is thus greater for ticket agents than for box offices (as shown on page 13).
- 4.7 Postage fees were charged in the case of just under half the transactions from box offices and ticket agents. Where there was no separate postage fee, in about half the instances this was because the postage fee was wrapped up with the service charge/processing fee, and in about half because the customer was picking up tickets at the event/box office, rather than having them posted out.

- 4.8 Where postage was charged the average fee was £2.06 from ticket agents and £1.99 from ticket agent. Across all transactions where face value and service/processing fee were supplied (including those where there was no postage charge) postage fees averaged 97 pence from ticket agents and 87 pence from box office.
- 4.9 Postage fees were usually in the range of £1-3 but where tickets had to be sent by special delivery the price rose usually to £4-5.

Table 4.3: Absolute face values and fees: Means
(Base: Those stating amounts for face value, service charge/processing fee: (492) – Mystery shopping study)

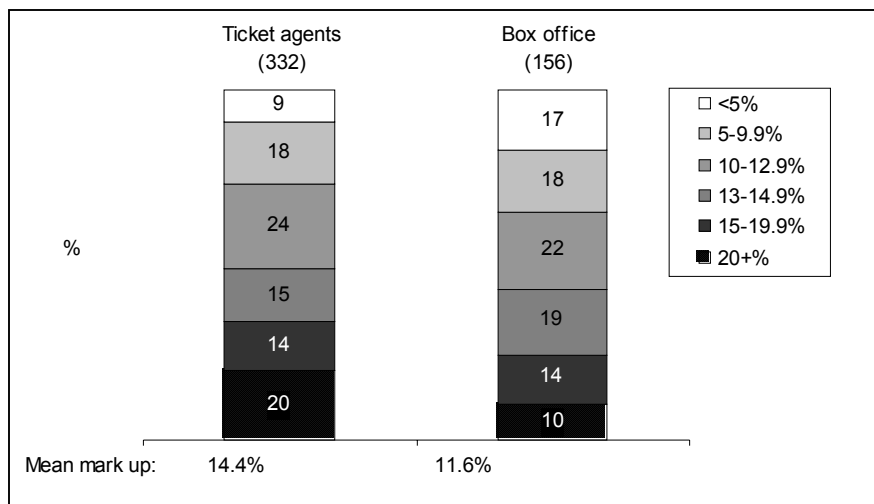
	Ticket Agent (332)	Box Office (156)
Face value	£29.97	£25.66
Service charge/processing fee	£3.92	£2.72
Postage fee (where charged)	£2.06	£1.99
Postage fee (including those where no charge made)	£1.02	0.92p

- 4.10 The chart overleaf uses the base (492) of those mystery shop transactions for which both face value and service/processing fee were obtained and shows the distribution of mark-ups (service/processing fee ÷ face value) for ticket agents and box offices.
- 4.11 A higher proportion of ticket agents mark up by 20% or more on the face value (20%) than box offices (10%). Also this table excludes incidences where it was know that a mark up of 'around 25%' was imposed but the total value of tickets was such that it was unclear what the face value and service charge were.

4.12 The averages shown beneath each bar are means of the mark ups charged by these two sources. The mean mark up for ticket agents (14.4%) is significantly greater than the mean mark up for box offices (11.6%). Ticket agents mark up tickets for plays and musicals by an average of 15.6%.

Chart 4.4: Mark up

(Base: Those stating amounts for face value and service charge/processing fee (481) – Mystery shopping study)

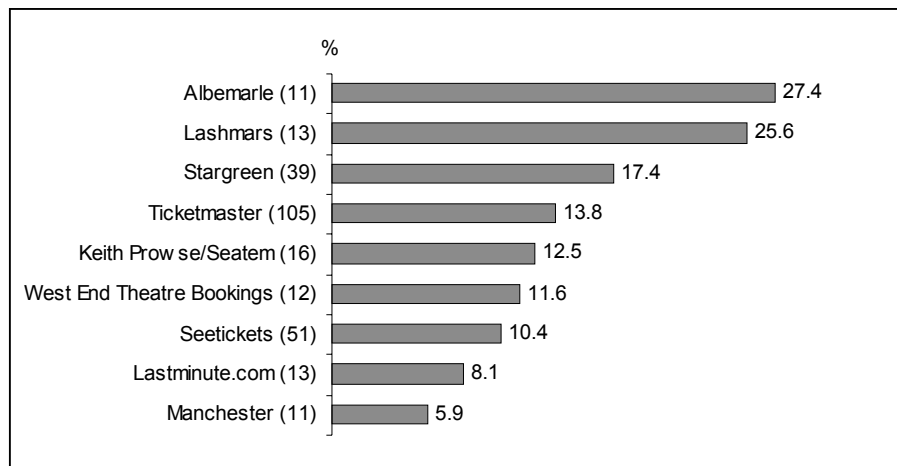


4.13 We looked at the mean mark ups charged by different agents. In spite of the low base sizes, it is clear that Lashmars and Albemarle levy the greatest fees as a mark up (both over 20% on average). Indeed Lashmars website makes clear that their service charge is typically around 25% of the face value of the ticket. It should be noted though that both agents tend to have one service charge which includes postage – many ticket agents separate the service (or processing) charge from the postage fee.

4.14 Ticketmaster’s mean mark up is close to the average for all agents (14.4%) as it drives the ‘all agent’ value. Lastminute.com did not charge any service charge/processing fee when mystery shoppers enquired about rugby matches and this brought down their average.

Chart 4.5: Mark up by ticket agents

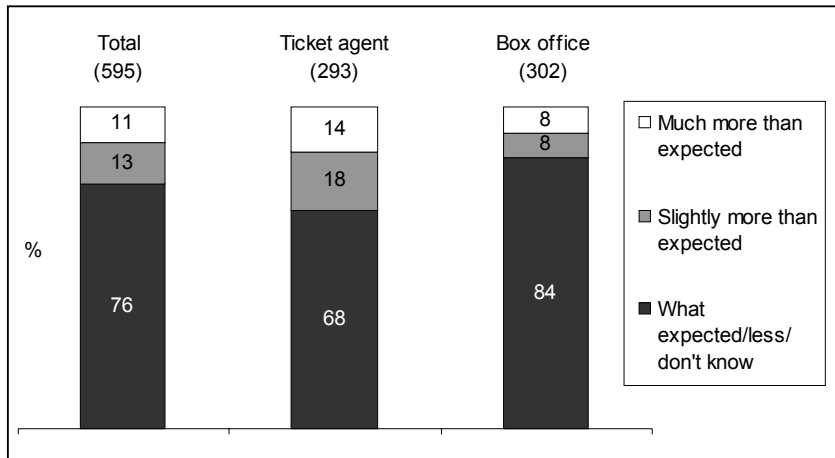
(Base: Those stating amounts for face value and service charge/processing fee (492) – Mystery shopping study)



4.15 Those who were charged extra fees or charges were asked whether they felt the extra fees or charges were more than expected in line with expectations or less than expected.

4.16 14% of those buying from ticket agents felt that service/processing/booking fees were much more than expected with a further 18% saying they were slightly more than expected. A lower proportion of buyers from box offices felt that mark ups were more than expected (16% saying much more or slightly more). Those living in the North of England (30%), Scotland and Northern Ireland (31%) were more likely to say charges were more than expected.

Chart 4.6: Consumers' views on mark up
 (Base: All paying extra fees/charges – Consumer study)



4.17 Everybody on the consumer study was asked what they disliked about ticket agents. Those most frequently mentioned dislikes were to do with expense/extra charges/fees:-

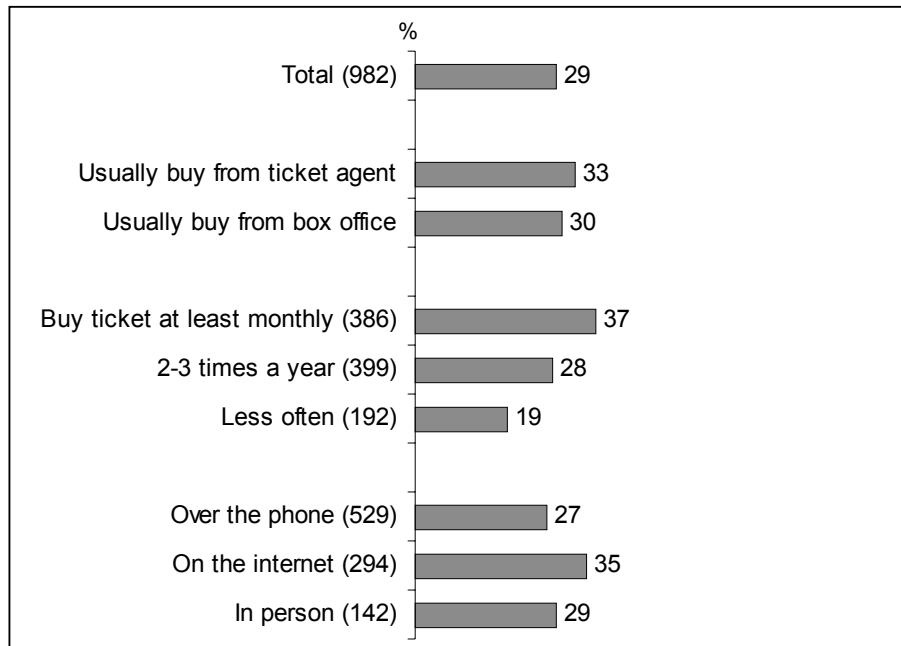
- *'Always too expensive.'*
- *'I don't like the extra fees.'*
- *'Always charging extra.'*

4.18 The chart below merges these answers into a single code 'anyone mentioning cost/too expensive/extra fees'. Three in ten gave this response overall.

4.19 Frequent ticket buyers are more likely to complain about extra fees (37%) as are Internet purchasers (35%). Men (34%) and ABC1s (32%) are more likely to mention this as a dislike than women (27%) and C2DEs (24%). But in their favour, half had no dislikes about ticket agents, and apart from fees there were no other major dislikes.

Chart 4.7: Level of mentioning extra fees/charges as a dislike about ticket agents

(Base: All – Consumer study)

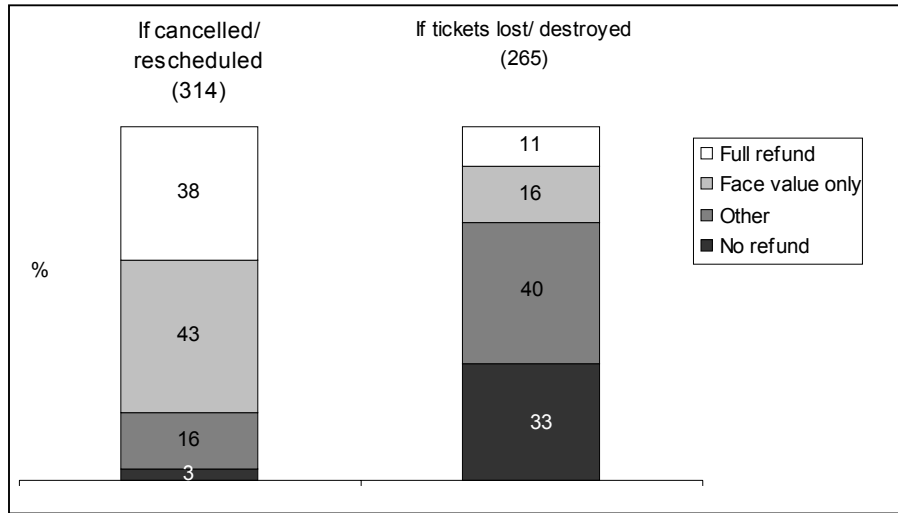


- 4.20 On the mystery shopping study, transactors attempted to find out what an agent's refund policy was in the event of cancellation/ rescheduling and loss/destruction of ticket.

- 4.21 If an event were cancelled, four in ten were told they would receive a full refund and a further four in ten, face value only. If the ticket had been lost or destroyed there is much less chance of them getting a refund. That is the refund policy according to the agents themselves.

Chart 4/8: Ticket agent's refund policy

(Base: Those given information by ticket agents – Mystery Shopping study)



4.22 But according to the consumer we have a slightly different picture. One in ten have ever claimed for a refund due to a cancellation.

4.23 Three quarters claiming from an agent and eight in ten claiming from a box office say they were refunded in full but one in seven claiming from an agent and one in ten from a box office say they received no refund. Care should be taken with these results as they are based on small numbers and subject to people's correct recall of what might have happened a long time ago.

Table 4.9: Refunds given after event cancellation

(Base: All ever claiming refund due to cancellation – Consumer study)

	Ticket agent (35) %	Box office (52) %
Last time....		
Refunded in full	75	80
Refunded face value only	11	10
Not refunded at all	14	10

5 SATISFACTION WITH TICKET AGENTS/BOX OFFICES

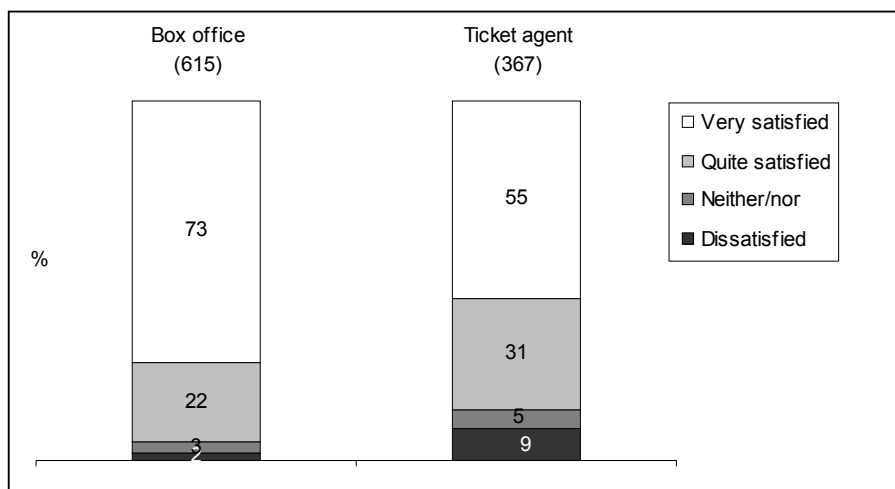
5.1 General satisfaction with ticket agents and box offices is high. Consumers are more likely to be very satisfied with box offices than ticket agents. One in ten are dissatisfied with agents and a further 5% are neither satisfied nor dissatisfied with them.

5.2 Levels of satisfaction do not vary markedly by socio-demographic groups. The main reasons for not being satisfied with ticket agents are:-

- slow service – 19%
- overcharged/too many extras – 17%
- dislike extra fees – 11%
- lack of information – 9%
- poor seats given – 4%
- dislike automated service/prefer to speak to someone – 4%
- difficult to contact – 4%

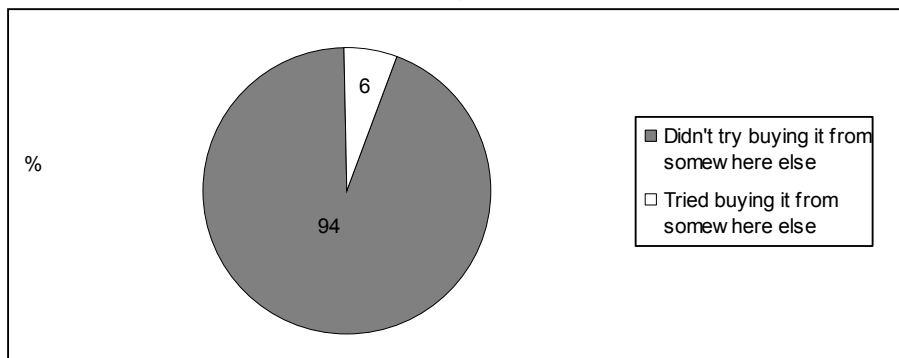
Chart 5.1: Satisfaction with ticket buying generally high for both sources

(Base: All – Consumer study)



- 5.3 Consumers do not shop around for tickets for events. In the following section we will see that price is not a major determinant of choice of source but ease/convenience and availability are.
- 5.4 A few people on the consumer study had tried the other type of source (box office/ticket agent) before finally buying their ticket. Non availability and difficulty getting through on the telephone are the main reasons for not buying from a box office while expense and non-availability are the main reasons stopping purchases from a ticket agent.

Chart 5.2: Shopping around for tickets
(Base: All – Consumer study)



6 DRIVERS IN SOURCE OF CHOICE

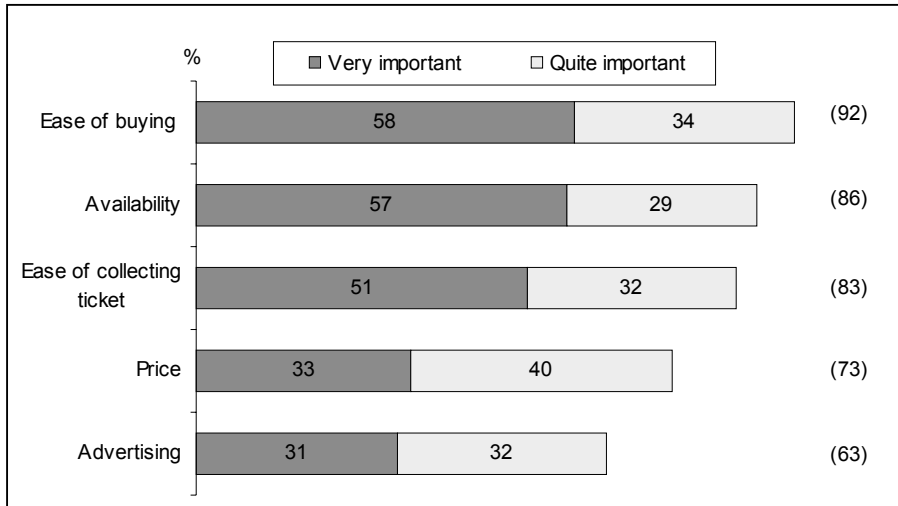
6.1 All those who had a choice between buying their last ticket from a ticket agent or box office were asked to rate five factors according to how important they would be in persuading them to buy a ticket from one source or another. The factors were:-

- price
- availability
- ease of buying
- ease of collecting
- advertising.

6.2 Ease of buying emerged as the most important factor driving choice of source (92% saying important), followed by availability (86%), ease of collecting (83%), price (73%) and advertising (63%). Women are more price conscious than men (76% claiming price was important compared to 67% of men).

6.3 Interestingly, price is no more or less important between those who bought their last ticket from a box office and a ticket agent.

Chart 6.1: Importance of factors in choice of source
(Base: All who had choice (620) – Consumer study)



6.4 Price is not the most important factor in choice of source.

6.5 The main spontaneous reason for choice of source is convenience (mentioned by 41%), followed by advertising (17%) and availability (15%). Price, mentioned by 9%, is clearly not the most important reason. Older adults (55+) are more likely to be driven by price though it remains the fourth most important reason.

6.6 Reasons for choosing a ticket agent are very similar to those for choosing the box office, though availability is a more important consideration in the choice of ticket agent while price features more strongly as a reason for opting for the box office.

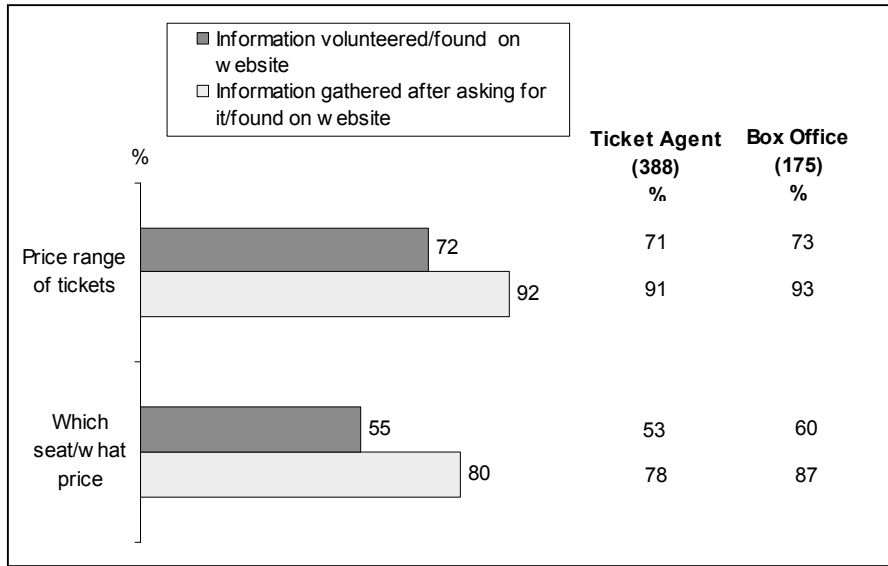
Table 6.2: Reasons for choice of source

(Base: All - Consumer study)	Total (982) %	Ticket agent (367) %	Box office (615) %
Convenience	41	44	39
Advertising	17	17	17
No choice/only place left	15	18	13
Price	9	6	11
Habit	6	5	7
Recommendation	3	5	1

7 PRICE TRANSPARENCY/ INFORMATION

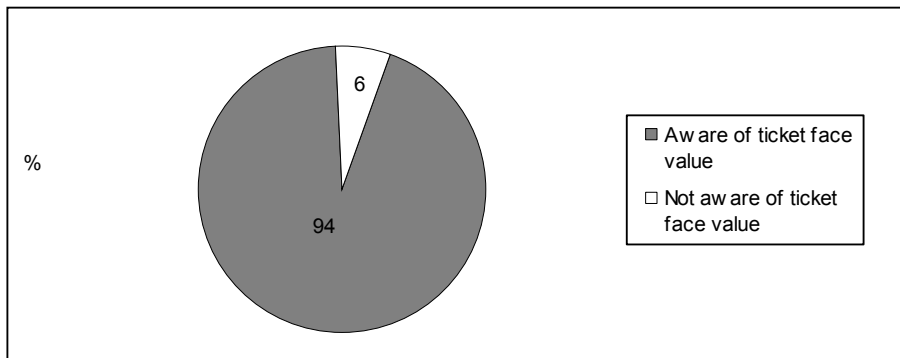
- 7.1 An important aspect of this study was to look at the availability of information and transparency of pricing in relation to ticket agents.
- 7.2 Mystery shop transactors logged which information was given out by sales assistants freely or could be found on the ticket agent's/box office's website with regards to range of ticket prices and which seats cost what.
- 7.3 Approaching three quarters (72%) found information on the website or were given information by the sales assistant on price range without having to ask for it and just over half (55%) about which seats were available at which prices – all these statistics are shown as green bars in the chart below.
- 7.4 Ticket agents and box offices perform equally well for volunteering information on price range of tickets but box offices were better at giving out information on which seats are available for which prices.
- 7.5 After asking for the information, almost all mystery shop transactors obtained information for price range and eight in ten obtained information on which seats are available for what prices. Again, after prompting, box offices do better than ticket agents on this aspect of information.

Chart 7.1: Availability of information on ticket range
 (Base: All – Mystery Shopping study)



7.6 From the consumer survey, 94% claimed to be aware of the face value of the last ticket they bought before they received it. This was lower for those who bought from ticket agents (92%), though still high.

Chart 7/2: Awareness of ticket face values
 (Base: All – Consumer study)

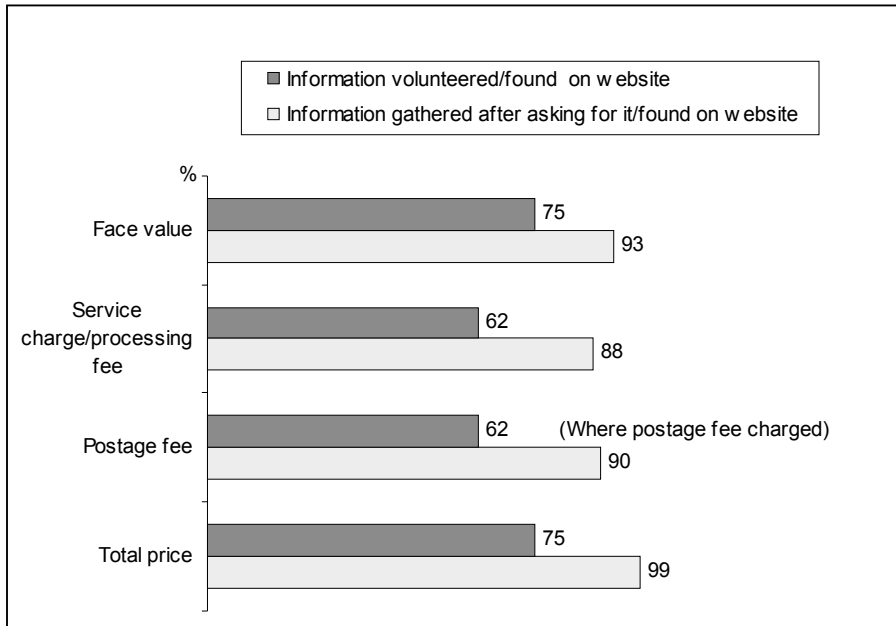


7.7 Mystery shop transactors noted down which of four key elements of ticket price were given to them spontaneously (without them having to ask).

- 7.8 Three quarters were given the face value of the ticket without asking. A lower 62% received information spontaneously about service charges/processing fees. In only 37% of cases was information about postage fees given. However this was partly because in only around half the transactions was a separate postage fee payable. Where postage fees were charged these were mentioned spontaneously by service assistants or available from the website in 62% of instances. In only 75% of transactions was the total price of the ticket given voluntarily.
- 7.9 Ticket agents (80%) were better at volunteering total price than box offices (63%).
- 7.10 Mystery shoppers asked salespeople for face values, processing fees, postage fees and total ticket prices - whatever information was not given to them without asking. After prompting, the levels of revelation of key aspects of ticket price are raised to 93% for face value, 88% for processing fees and 99% for total price.
- 7.11 In 90% of cases they were informed of postage fees (or they were able to deduce that no postage fees were charged).
- 7.12 Where the face value and/or processing fee were not explicit was often because mystery shoppers were quoted a ticket price which they were told included a booking fee but it was not made clear what that fee was.
- 7.13 Sometimes they were told the booking fee was a certain percentage of the face value of the tickets and they were able to work out the ticket price accordingly. But on other occasions, it was clear that the booking fee could not be, say, 25% of the face value of the tickets as this gave a ticket price which was not rounded to the nearest 5 or 10 pence – an extremely unlikely occurrence. There were instances for example regarding, Lashmars therefore where the mystery shopper had only a rough idea of face value and booking fee and these are coded as fees not being given.

- 7.14 Rake's Ticket Agency was particularly poor at making its processing fees explicit and some mystery shoppers were left unclear as to whether there was any booking charge at all.
- 7.15 In a few occasions it was unclear how the service/postage fee were separated.

Chart 7.3: Price transparency
(Base: All – Mystery Shopping study)

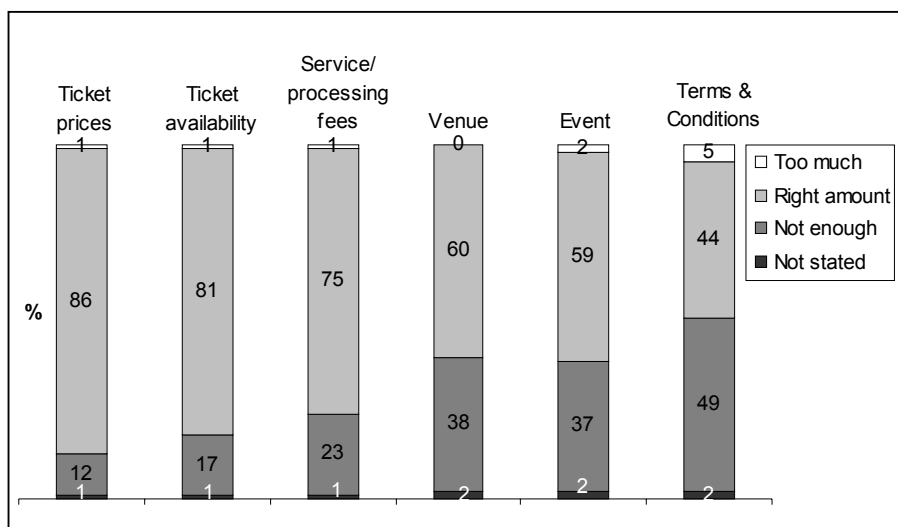


- 7.16 Mystery shoppers assessed whether they felt they had obtained the right amount of information for various aspects of the transaction
- 7.17 The vast majority felt they were given the right amount of information about ticket prices and ticket availability. Three quarters were happy that they received the right amount of information about the service charge/processing fee.

7.18 On the other hand four in ten claimed they didn't get enough information on the venue or the event. Half said they did not receive enough details about terms and conditions.

7.19 Box offices did better according to mystery shop transactors in giving out information about the event while ticket agents did better on terms and conditions. Otherwise, both sources performed equally well.

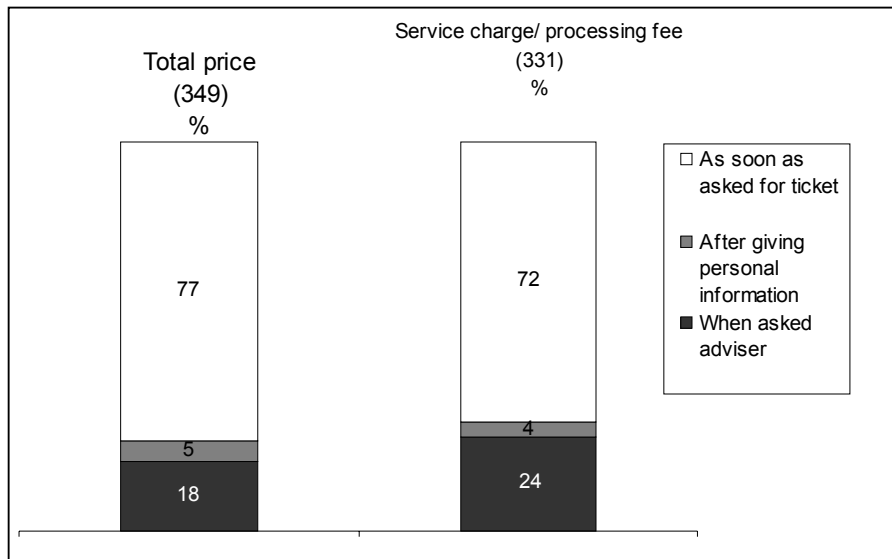
Chart 7.4: Views on levels of information given on important aspects
(Base: All – Mystery Shopping study)



7.20 As well as being price transparent, ticket suppliers are expected not to string customers along through a lengthy call or visit, only to reveal extra fees at the end of the transaction in the hope that having gone so far the customer would be less likely to back out.

7.21 There is little evidence that this is happening as the vast majority volunteered information or gave out information on fees as soon as the mystery shop transactor asked for them.

Chart 7.5: When given price information (ticket agents)
 (Base: Those told total price and service charge/processing fee respectively at ticket agents – Mystery Shopping study)

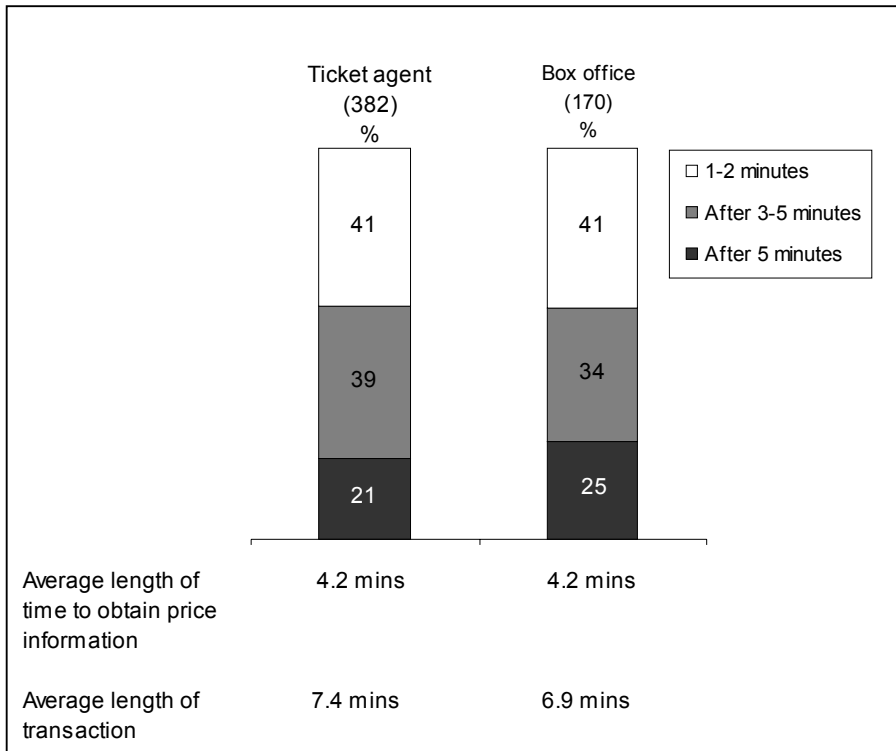


Base = Given information and remember when

- 7.22 Four in ten ticket agents gave out price information within the first two minutes of a transaction lasting on average 7.4 minutes. At least three in four received price information within 5 minutes of starting the investigation/transactions.
- 7.23 Ticket agents and box offices tend to give out price information as quickly as each other.

Chart 7.6: When given price information

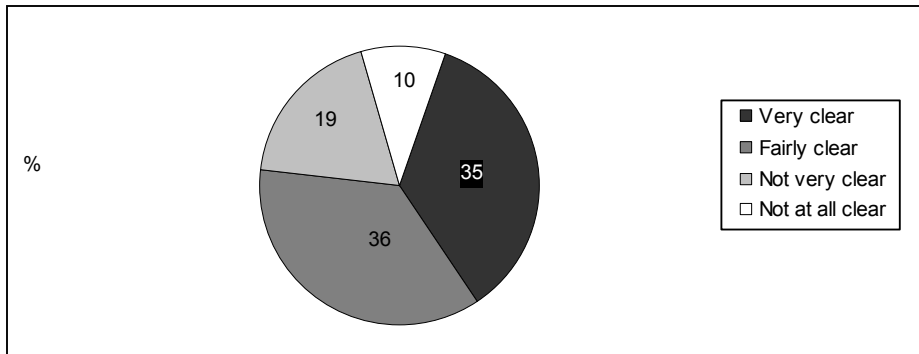
(Base: Those who stated minutes elapsed (552) – Mystery shopping study)



7.24 When asked to rate the clarity of information about terms and conditions the vast majority of face-to-face and online mystery shoppers, but just under half the telephone mystery shoppers felt able to give a rating. Where they gave ratings, seven in ten found ticket agents terms and conditions clear. Results were better amongst those making face-to-face visits than making online investigations.

7.25 Seven in ten mystery shop transactors found ticket agents terms and conditions clear.

Chart 7.7: Clarity of ticket agents' terms and conditions
(Base: All – answering (244) – Mystery shopping study)



G QUESTIONS TO CONSIDER WHEN BUYING TICKETS

Making an informed choice

G.1 When buying a ticket it is important to be clear what you are being sold and that you have enough information to make an informed choice. Do you know:

- what type of seat/ticket you are buying?
- if the price you are being asked to pay is a fair one or the best available?
- what your rights are if things do not go according to plan and who to complain to?

G.2 The following are questions you should ask yourself when buying a ticket:

Price

- is this the cheapest price I can pay?
- can I buy the ticket elsewhere?
- can I buy the ticket without paying additional fees (for instance from a box office)?

Quality

- is there an indication of what type of ticket am I buying (stalls/balcony/restricted view)?
- is the face value of the ticket shown?

Delivery

- do I know when I will get my tickets?
- will my tickets be sent to me or will I have to collect them?

Problems

- what happens if my tickets don't arrive?
- what happens if the event is cancelled? Do I get my money back?
- what happens if the location or date of the event changes? Do I get my money back?
- what happens if I can't make the event? Will they refund me or offer to re-sell my ticket?

Your rights

G.3 Ticket sellers are legally required to:

- provide price information in advertising that does not, or is not likely to, mislead
- provide clear, honest and unambiguous price information at the point of purchase
- confirm seat location
- despatch tickets in time to attend an event
- refund all monies paid or provide a substitute for indoor events cancelled by an events promoter or producer where tickets have been bought by phone or via the internet

Remember, when buying tickets over the internet cancellation rights that you have when purchasing other goods are not available. However, you are still entitled to a refund if the supplier fails to perform the contract.