To: European Commission

9 September 2026

Notification Response

Anteproyecto de Ley de Consumo Sostenible (Preliminary Draft Law on Sustainable Consumption)

TRIS Notification Number: 2026/0294/ES (Spain)

Directive (EU) 2015/1535

1 Executive summary

1.1 On 12 June 2026, pursuant to Directive (EU) 2015/1535,[1] the Kingdom of Spain notified the European Commission of the Preliminary Draft Law on Sustainable Consumption (the "Draft Law").[2] viagogo requests that the Commission examine the compatibility of the notified text with Union law and with the principles of the internal market, in accordance with the purpose of the notification procedure.

1.2 This submission predominantly concerns Article 20 of the Draft Law and, in particular, the proposed prohibition on the resale of contracts for the provision of goods or services to end consumers or users at any price above the price at which the ticket was acquired (the "resale price cap"). It also addresses, in so far as they bear on the resale price cap, the treatment in the explanatory memorandum of "pricing systems based on demand peaks", the advance price information obligations introduced by Article 20, and the price limitation regime for emergency situations in Article 20 ter.

1.3 It is viagogo's submission that the resale price cap: (a) restricts the freedom to provide information society services within the internal market, contrary to Article 56 TFEU and Articles 15 and 16 of Directive 2006/123/EC; (b) has not been shown to be adequate to achieve its stated consumer protection objective, and is contradicted by the advice of Spain's own competition authority; (c) is incoherent, because dynamic pricing on the primary market remains lawful while consumers are prohibited from realising any margin, however small, on resale; (d) is disproportionate, because an ordinary consumer cannot ascertain the lawful maximum price with any confidence due to the lack of clarity on fees and ancillary costs of the original purchase and, because, depending on how the obligation

[1] Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

[2] Anteproyecto de Ley de Consumo Sostenible, notified by the Kingdom of Spain under Directive (EU) 2015/1535, TRIS Notification 2026/0294/ES, 12 June 2026. An earlier version of the same draft was notified on 20 February 2026.

is interpreted and implemented, compliance would in practice require online marketplaces to undertake general monitoring of the kind prohibited by Article 8 of Regulation (EU) 2022/2065 (the Digital Services Act, "DSA"), and because less restrictive alternatives already exist in Union law; and (e) would entrench the market position of vertically integrated primary ticketing operators, to the detriment of competition and of consumers.

1.4 viagogo supports action taken against the use of illegal bots and software to acquire tickets. In particular, viagogo supports the prohibition on the resale to consumers or users of tickets where the business owner acquired them using automated means for the purpose of circumventing any limit imposed on the number of tickets that a person may purchase, or any other rules applicable to the purchase of tickets. That prohibition already forms part of Union law[3] and targeted enforcement of it, together with the trader traceability obligations of the DSA, is a manifestly less restrictive means of achieving the objectives invoked in support of the Draft Law.

1.5 viagogo therefore respectfully requests the Commission to examine Article 20 of the Draft Law, to issue comments or, as appropriate, a detailed opinion under Directive (EU) 2015/1535, and to invite Spain to remove the resale price cap or to reformulate Article 20 as proportionate transparency obligations, coupled with enforcement of the existing Union prohibition on the resale of bot-acquired tickets.

2 About viagogo

2.1 viagogo operates a leading global online marketplace for the secondary sale and exchange of live sport, music, cultural and entertainment tickets, serving consumers across the world. viagogo does not buy or sell tickets and does not set prices. Prices are set by sellers, at, above or below the original sale price, in response to the market.

2.2 Every purchase on the viagogo platform is protected by the viagogo guarantee. Where a problem arises with the validity or delivery of a ticket, viagogo provides comparable replacement tickets or a full refund. Sellers are subject to fraud screening, sellers are paid only after the buyer has successfully gained entry to the event, and buyers benefit from secure payment and dedicated customer service. These protections stand in contrast to the unprotected resale of tickets through social media, informal channels or in the street which this law will be unable to police due to their opaque and hidden nature, creating a material risk of consumer harm and leaving buyers exposed to fraud.

[3] Point 23a of Annex I to Directive 2005/29/EC (Unfair Commercial Practices Directive), inserted by Article 3(7) of Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019, OJ L 328, 18.12.2019, p. 7.

2.3 The service and underlying ticket transactions are inherently cross-border. viagogo enables consumers in one Member State to buy and to resell tickets for events taking place in another, supporting cross-border tourism, cultural exchange and the free movement of services that the internal market exists to protect. A national measure that prohibits resale above acquisition price in Spain directly affects the ability of an information society service established in another Member State or outside to serve Spanish consumers and sellers, and the ability of consumers across the Union to access tickets for events in Spain.

3 The notified measure

3.1 Article 20 of the Draft Law provides, in the notified text (unofficial translation):[4]

> *"In the case of the resale of contracts for the provision of goods or services to end consumers or users, the final price shall be, at most, the same price at which the contract was acquired, without the price being increased by any other type of charge."*

3.2 The notified text replaces an earlier draft under which the resale price could be increased in line with the Consumer Price Index ("CPI") for the period elapsed since the original purchase. The current text removes the CPI adjustment altogether, fixes the maximum at the acquisition price, and prohibits any increase through any other type of charge. Both formulations are addressed in this submission, since the earlier CPI-linked mechanism illustrates the practical unworkability of price caps of this kind and may be reintroduced in a later draft.

3.3 The explanatory memorandum reformulates an earlier reference to "dynamic pricing systems, automated mechanisms or pricing algorithms based on demand peaks" as a broader reference to "pricing systems based on demand peaks". The effect is to widen the category of pricing conduct treated as suspect, while leaving structural dynamic pricing on the primary market lawful, subject only to transparency obligations. This law in effect would prohibit the decentralised and independent price striking mechanism a resale marketplace offers while allowing for dynamic demand driven pricing tiers on the primary ticketing market, removing competition on pricing and the pricing discipline these marketplaces provide. Article 20 also introduces extensive advance price information duties, including the obligation to state reasonably estimated prices or price ranges for each subsequent contracting date and the average price at which the same good or service was offered during

[4] Unofficial English translation of the notified text of Article 20. All quotations from the Draft Law in this submission are unofficial translations; the Spanish text prevails.

the previous thirty days. Article 20 ter establishes a price limitation regime for situations of urgency, risk or need.

3.4 Although horizontal in form, a cap on the resale of "contracts for the provision of goods or services" applies squarely to event tickets and to the online marketplaces through which consumers resell them. Those marketplaces are information society services within the meaning of Directive (EU) 2015/1535 and the measure therefore falls to be assessed, before adoption, against the Treaty freedoms, Directive 2006/123/EC and the DSA.

3.5 The breadth of the operative provision is also notable. Whereas the explanatory memorandum frames the measure by reference to equal access to public entertainment and speculative practices in the ticket market, Article 20 applies to the resale of contracts for any goods or services. The restriction therefore extends materially beyond the specific problem identified in the Draft Law's stated justification.

4 The applicable standard of review

4.1 The purpose of the notification procedure is preventive: to allow barriers to the internal market to be detected and addressed before they produce effects. It is settled case law that Article 56 TFEU requires not only the elimination of discrimination on grounds of nationality but the abolition of any restriction, even one applicable without distinction, which is liable to prohibit or otherwise impede the activities of a provider of services established in another Member State where it lawfully provides similar services.[5]

4.2 A prohibition on resale above acquisition price directly affects access to the Spanish market for secondary marketplaces established in other Member States, and directly affects offers made to recipients in other Member States by operators established in Spain. Measures of this kind are capable of hindering intra-Union trade in services and fall within Article 56 TFEU.[6] There is no de minimis threshold: allegedly minor restrictions are not exempt from that assessment.[7]

4.3 The measure must also be assessed under Directive 2006/123/EC. Article 15(2)(g) of that Directive expressly identifies fixed maximum tariffs with which a provider must comply as a suspect category of requirement which Member States may maintain or introduce only where it is non-discriminatory, necessary and proportionate, and Article 16 subjects

[5]Case C-76/90 *Säger v Dennemeyer*, EU:C:1991:331, paragraph 12.

[6]Case C-384/93 *Alpine Investments*, EU:C:1995:126, paragraph 38.

[7]Case C-311/19 *BONVER WIN*, EU:C:2020:981, paragraph 29.

requirements imposed on incoming service providers to the same discipline.[8] A statutory maximum resale price is at least capable of constituting such a tariff requirement and should be assessed accordingly. If Article 16 applies to services supplied from another Member State, the permitted grounds of justification are limited to public policy, public security, public health and environmental protection; consumer protection is not among the grounds listed in that provision.

4.4 Any restriction must therefore be justified by an overriding reason in the public interest and must satisfy the requirements of adequacy, coherence and proportionality: it must be suitable for securing the objective relied upon, must pursue that objective in a consistent and systematic manner, and must not go beyond what is necessary, with less restrictive alternatives adopted where they exist.[9] It is for the Member State to establish that these conditions are met. The Draft Law is not, to viagogo's knowledge, accompanied by any impact assessment or empirical study demonstrating that a resale price cap is necessary or effective, and the sections below explain why each requirement is unmet.

5 Adequacy: the cap has not been shown to protect consumers

5.1 A restriction is adequate only if it effectively contributes to the objective invoked, here the protection of consumers against excessive ticket prices. No evidence has been presented that a resale price cap achieves that objective. The economic literature on ticket resale does not establish that a general resale cap produces net consumer benefits, but rather the opposite: caps do not remove excess demand for capacity-constrained events, they reallocate it. Where lawful, protected resale is suppressed, transactions migrate to informal and unregulated channels, prices in those channels are not in fact constrained, and consumers lose the guarantees, fraud protection and recourse that regulated marketplaces provide.[10] Empirical work on ticket markets finds that resale improves allocative efficiency by moving tickets to the consumers who value attendance most, and that restrictions on resale reduce welfare.[11] These conclusions are confirmed by an expert economic report prepared by Frontier Economics, which finds that measures restricting resale, such as price caps, do not increase the supply of tickets or reduce demand for popular events; instead they weaken allocation, reduce flexibility for consumers and increase the likelihood that

[8] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36, Articles 15(2)(g), 15(3) and 16.

[9] See, to that effect, Case C-72/83 *Campus Oil*, EU:C:1984:256, and settled case law on the justification of restrictions on fundamental freedoms.

[10] Courty, P. (2003), "Some Economics of Ticket Resale", Journal of Economic Perspectives, 17(2), pp. 85-97.

[11] Leslie, P. and Sorensen, A. (2014), "Resale and Rent-Seeking: An Application to Ticket Markets", Review of Economic Studies, 81(1), pp. 266-300.

transactions shift to less transparent and less secure channels, and that consumer welfare in ticketing markets depends on more than price levels alone, so that focusing solely on prices provides an incomplete and potentially misleading assessment of outcomes.[12] The empirical evidence assembled in that report also shows that resale is a small fraction of primary sales and does not systematically occur at a premium: in the Netherlands, around 8.2% of tickets for cultural and sporting events were resold and 87.6% of those transactions took place at or below face value, while studies of United States data find that 21% of broker resales and 31% of consumer resales occur below the purchase price.[13] The underlying driver of high secondary prices is underpricing and constrained supply on the primary market, a phenomenon documented in the economics of live events for decades.[14]

5.2 Spain's own competition authority reached the same conclusion on this very draft. In its report on the Draft Law, the CNMC recommended preserving the flexibility of dynamic pricing systems as a competitive tool, and recommended that measures to improve the transparency and reliability of ticket resale services be prioritised before direct price limitations are imposed, adding that, if a cap were nevertheless maintained, the reference to the CPI required proper specification.[15] The CNMC further characterised a resale price cap as a "high-intensity regulatory intervention" that directly affects the freedom of enterprise and the ability of operators to set their commercial terms, and concluded that price caps should be considered only where less restrictive transparency and reliability measures have been shown to be ineffective.[16] The notified text does the reverse of what the CNMC advised: it imposes a stricter cap than the version the CNMC examined and removes the CPI reference without resolving the underlying indeterminacy.

5.3 A measure that displaces consumer activity from protected to unprotected channels, while leaving the primary causes of price escalation untouched, cannot be regarded as suitable

[12]Frontier Economics (2026), *The Functioning of Primary and Secondary Ticketing Markets in Belgium*, report prepared for viagogo, 29 April 2026 (the "Frontier Report"). The Frontier Report was commissioned by viagogo in the context of the reference for a preliminary ruling in Case C-860/25. Available upon request.

[13]Frontier Report, section 4.3, citing SEO Economisch Onderzoek (2023), *Koop en Doorverkoop: Onderzoek naar Toegangskaarten voor Sport- en Culturele Evenementen*, commissioned by the Dutch Ministry of Education, Culture and Science, and Leslie and Sorensen (2014), cited above at footnote 11.

[14]Connolly, M. and Krueger, A. B. (2006), "Rockonomics: The Economics of Popular Music", in Ginsburgh, V. and Throsby, D. (eds), Handbook of the Economics of Art and Culture, Vol. 1, Elsevier.

[15]CNMC (Comisión Nacional de los Mercados y la Competencia), IPN/CNMC/053/25, Informe sobre el Anteproyecto de Ley de Consumo Sostenible, published 6 February 2026, available at https://www.cnmc.es/ley-consumo-sostenible-20260311.

[16]CNMC, IPN/CNMC/053/25, cited above at footnote 15; unofficial English translation as reproduced in the Frontier Report, section 5.2.

for attaining a consumer protection objective. On any view, the burden of demonstrating adequacy has not been discharged.

6 Coherence: the Draft Law does not pursue its objective consistently

6.1 A restrictive measure must form part of a coherent and systematic regulatory approach. The Draft Law fails that test. Dynamic pricing by primary sellers, that is, the practice of increasing primary ticket prices in response to demand peaks, remains lawful under the Draft Law, subject only to information obligations. At the same time, a consumer who purchases a ticket, including at a dynamically inflated primary price, is prohibited from reselling it above the price paid in any circumstances. The practical effect is that primary sellers may capture the full value of demand surges while consumers may not recover even documented costs. If the objective is to protect consumers against price escalation for the same ticket, the Draft Law regulates the party that does not set primary prices and leaves the party that does substantially free. The expert economic assessment of the equivalent Belgian prohibition reaches the same conclusion: where prices may adjust freely in the primary market but not in the secondary market, supply and demand operate asymmetrically, and a measure that is formally neutral in its application tends in practice to place primary market operators in a stronger position while disproportionately impacting independent secondary platforms.[17]

6.2 The incoherence extends to the treatment of charges. The notified text prohibits any increase "by any other type of charge", so a consumer reselling at the acquisition price cannot clearly lawfully recover delivery costs, payment costs or marketplace fees as this is not explicitly stated in the text. Lawful resale is thereby rendered economically irrational for ordinary consumers even where they seek no profit at all. A measure whose design makes compliant conduct loss-making for the very consumers it purports to protect does not pursue consumer protection in a consistent and systematic manner. Furthermore, the prohibition on resale in this draft law, with explicit restrictions on additional fees, will render independent marketplaces unable to operate except by forcing loses upon the seller, rendering the entire system dysfunctional. This will have profound competition implications.

6.3 The broadened reference in the explanatory memorandum to "pricing systems based on demand peaks" compounds the asymmetry: demand-responsive pricing is treated as suspect where it appears on the secondary market, while structurally identical conduct on the primary market is accepted as legitimate. The Commission is invited to examine this asymmetry closely when assessing the justification offered by Spain.

[17] Frontier Report, sections 6.1 and 6.3.1.

7 Proportionality

(a) The lawful maximum price remains uncertain in complex transactions and difficult for independent marketplaces to verify

7.1 Spanish consumer law requires commercial offers to identify the complete final price paid by the consumer, including taxes, applicable increases or discounts and additional charges, expressly including potential management fees. In a straightforward transaction involving a single ticket, a consumer should therefore ordinarily be able to identify the total amount actually paid. The legal-certainty concern created by Article 20 lies instead in the absence of any methodology for determining the relevant "price at which the contract was acquired" where the original transaction does not correspond directly to the individual ticket subsequently resold. That is the case, for example, for season tickets, bundles covering several events or seats, hospitality packages combining admission with other services, complimentary or discounted tickets, loyalty schemes, or order-level charges attributable to several tickets. The Draft Law does not specify how the acquisition price is to be apportioned in those circumstances, or which elements of a composite transaction may lawfully be reflected in the resale price..[18]

7.2 That uncertainty is particularly acute for independent marketplaces. Even where the individual consumer can establish the total amount paid in the primary transaction, an independent intermediary will ordinarily have no access to the primary seller's transaction data and no independent means of determining how the amount presented by the seller was composed or allocated between individual tickets and ancillary services. The Draft Law neither establishes a standard of evidence by which the acquisition price may be demonstrated nor provides a mechanism through which an independent marketplace can verify that information. Where breach of the resale cap may give rise to significant administrative penalties, the absence of clear rules governing these recurring situations creates material uncertainty as to the scope of lawful conduct and must be assessed against the Union-law requirement that rules entailing adverse consequences be clear, precise and predictable in their application.[19]

(b) Compliance would impose de facto general monitoring on marketplaces, contrary to Article 8 DSA

7.3 For an online marketplace, the only conceivable route to compliance would be to verify, for every listing, the original acquisition price of the ticket, every ancillary charge included in it.

[18] Frontier Report, section 6.4.

[19] See, to that effect, Case C-201/08 *Plantanol*, EU:C:2009:539, paragraph 46, on the requirement that rules entailing adverse consequences for individuals be clear and precise, and that their application be predictable.

That is a permanent, at-own-expense system of active verification of all user content: a general obligation to monitor the information that the service stores and actively to seek facts or circumstances indicating illegal activity. Article 8 of the DSA prohibits Member States from imposing obligations of precisely that character on providers of intermediary services.[20] The compliance burden is also structurally asymmetric. Primary market operators control the initial transaction and the associated data and are therefore well placed to verify original prices; independent marketplaces cannot verify the precise composition of the original price, particularly where it includes multiple elements. This combination of high compliance requirements and limited access to information places independent platforms at a structural disadvantage and increases their legal risk even where the underlying activity is not prohibited as such.[21]

7.4 The Court of Justice has consistently held, under the predecessor provision in Article 15(1) of Directive 2000/31/EC, that measures requiring an intermediary actively to monitor all the data of each of its customers are precluded,[22] that filtering systems installed at the intermediary's own expense for an unlimited period seriously infringe the provider's freedom to conduct a business under Article 16 of the Charter and fail the required fair balance,[23] and that this applies equally to hosting platforms.[24] That case law is carried forward into Article 8 of the DSA, a directly applicable Regulation with which the Draft Law must be consistent.

7.5 The freedom to conduct a business protected by Article 16 of the Charter includes the freedom to determine the price of a service.[25] A measure that eliminates any resale margin whatsoever, prohibits recovery of the marketplace's own service fee, and simultaneously requires the deployment of a costly and permanent verification apparatus reduces contractual freedom to the point of affecting the very essence of the right,[26] and does so without the fair balance against Article 38 of the Charter that the case law requires.[27]

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[20] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), OJ L 277, 27.10.2022, p. 1, Article 8.

[21] Frontier Report, section 6.3.2.

[22] Case C-324/09 *L'Oréal and Others v eBay*, EU:C:2011:474, paragraph 139.

[23] Case C-70/10 *Scarlet Extended*, EU:C:2011:771, paragraphs 35, 36 and 46.

[24] Case C-360/10 *SABAM v Netlog*, EU:C:2012:85.

[25] Case C-283/11 *Sky Österreich*, EU:C:2013:28, paragraphs 42 and 43.

[26] Case C-426/11 *Alemo-Herron and Others*, EU:C:2013:521, paragraph 35.

[27] Charter of Fundamental Rights of the European Union, Articles 16 and 38.

(c) Less restrictive alternatives exist and are already provided for in Union law

7.6 Union law already prohibits the resale to consumers of event tickets acquired using automated means to circumvent purchase limits or other rules applicable to ticket purchases.[28] viagogo supports that prohibition and its rigorous enforcement. Article 30 of the DSA further requires marketplaces to trace and verify professional traders, giving enforcement authorities the means to identify and pursue commercial operators who abuse the primary sale process.[29].

7.7 Other economic operators responding to this notification have reached the same conclusion. Adigital observes in their submission on this draft law that the resale price cap has no equivalent in Union law, conflates resale with intermediation, operates in practice as a prohibition of the whole intermediation activity, and has not been supported by any prior technical analysis of necessity and proportionality.[30] ANGED likewise submits that the limitation on resale prices is a direct intervention in the ability of operators to determine final market prices, requests that transparency obligations not be converted into direct or indirect price control, and asks the institutions to require Spain to provide reinforced justification of necessity and proportionality.[31]

(d) The severity of the sanctions regime compounds the proportionality concerns

7.8 The Draft Law provides that very serious infringements may attract fines of up to 6% of the infringing company's total global annual turnover. To the extent that non-compliance with Article 20 may be classified as a very serious infringement, the Commission should examine whether a turnover-based sanction of that magnitude is proportionate, particularly given the uncertainties surrounding the scope and practical application of the resale price cap described above. The combination of an insufficiently clear substantive obligation and potentially severe sanctions calculated by reference to worldwide turnover is liable to create a significant chilling effect on lawful cross-border activity.

(e) The intensity of the price restriction requires particularly strong justification

7.9 Recital 50 of Directive (EU) 2019/2161 acknowledges that Member States may adopt national measures to protect legitimate consumer interests concerning the resale of event

[28] Point 23a of Annex I to Directive 2005/29/EC, cited above at footnote 3.

[29] Regulation (EU) 2022/2065, Article 30 (traceability of traders).

[30] Adigital (Asociación Española de la Economía Digital), contribution to TRIS Notification 2026/0294/ES, available at https://technical-regulation-information-system.ec.europa.eu/en/notification/28025/stakeholder-contribution/file/6789.

[31] ANGED (Asociación Nacional de Grandes Empresas de Distribución), Observaciones al procedimiento TRIS 2026/0294/ES, available at https://technical-regulation-information-system.ec.europa.eu/en/notification/28025/stakeholder-contribution/file/6677.

tickets, including measures regulating resale prices. That recital is not, however, a safe harbour and does not determine whether any particular national measure is compatible with Union law. Such measures remain subject to the Treaty freedoms, Directive 2006/123/EC and the DSA. In particular, to the extent that the resale price cap constitutes a maximum-tariff requirement within the meaning of Article 15(2)(g) of Directive 2006/123/EC, Article 15(3) requires it to be non-discriminatory, justified by an overriding reason relating to the public interest and proportionate: it must be suitable for attaining the objective pursued, must not go beyond what is necessary and must not be capable of being replaced by a less restrictive measure that would achieve the same result. Recital 50 therefore does not dispense with the need for Spain to demonstrate the necessity and proportionality of the particular restriction proposed.

7.10 The breadth and undifferentiated nature of the restriction are material to the proportionality assessment. Article 20 would impose a permanent prohibition on any resale uplift, irrespective of the amount of the uplift, prevailing market conditions, or any evidence of automated bulk purchasing or other abusive conduct. This intervention is particularly notable when compared with price restrictions in Spanish consumer law that address exceptional circumstances, including the separate regime established by Article 20 ter for situations of urgency, risk or need. Article 20, by contrast, would impose a permanent zero-uplift rule across the full range of resale contracts falling within its scope, without any equivalent requirement that exceptional market circumstances or particular consumer vulnerability be established. Spain must therefore demonstrate why such a blanket restriction is necessary and why the stated objective could not be achieved through more targeted and less restrictive measures.

7.11 By analogy, the Court of Justice's reasoning in *Commission v Germany* is instructive[32]. In that case, the Court accepted that maximum tariffs may, in principle, contribute to consumer protection by preventing excessive prices, but held the measure disproportionate because Germany had not demonstrated why price guidance, as a less restrictive alternative, would not adequately achieve the same objective. The same proportionality discipline is relevant here. Spain's own competition authority has recommended prioritising measures improving the transparency and reliability of ticket resale services before imposing direct price limitations. Union law already prohibits the resale of tickets acquired through automated means designed to circumvent purchase restrictions, while the DSA imposes traceability obligations on professional traders. Together with robust price-transparency requirements, those measures directly address the consumer harms identified by the Draft Law without eliminating price formation in the secondary market altogether. In the absence of evidence

[32] Case C-377/17, *European Commission v Federal Republic of Germany*, EU:C:2019:562, paragraphs 92–95.

demonstrating why those less restrictive measures are insufficient, the imposition of a permanent zero-uplift cap goes beyond what has been shown to be necessary to attain the stated objective.

8 Competition effects: entrenchment of the primary market

8.1 The secondary market is the principal competitive constraint on the conduct of primary ticketing operators, including staggered releases, holdbacks for sponsors and packages, and dynamic pricing. An open resale market disciplines those practices by revealing market-clearing prices and by giving consumers an alternative source of supply. A statutory prohibition on resale above acquisition price removes that constraint entirely: it eliminates independent resale as an economic activity while leaving primary operators free to price dynamically and to operate their own authorised exchange platforms.

8.2 The European primary ticketing market is highly concentrated, with a small number of vertically integrated groups active simultaneously in festivals, artist management, event promotion, venue ownership and operation[33], primary ticketing and, increasingly, captive and restrictive resale channels with terms and conditions that punish users who wish to operate outside of that ecosystem. A cap that renders independent marketplaces unviable while organisers retain control of authorised resale confers a structural advantage on those incumbents and raises the barriers to entry that the internal market rules exist to prevent. The expert economic evidence supports this conclusion: vertically integrated operators are better placed to comply with resale rules because they already control the initial sale, the relevant data and the ticketing infrastructure, and may reinforce that position through contractual and technical restrictions on transferability that steer resale into their own channels. By way of illustration of the scale of such integration, the United States Department of Justice has alleged that the largest such group controls around 60% of concert promotions at major venues and, through its ticketing arm, around 80% of primary ticketing at major concert venues.[34] The foreseeable effect of Article 20 is therefore not lower prices for consumers but the transfer of the entire resale function into the hands of the dominant primary operators. These companies may choose to not offer resale at all, or restrict it to certain windows or when sales thresholds are reached. They may insert price floors so that resellers cannot undercut them on remaining inventory. None of these nefarious and documented practices are prohibited under this draft law.

[33] Live DMA & Reset! Network Publish New Maps of Ownership in European Live Music February 2026 https://live-dma.eu/live-dma-reset-network-publish-new-maps-of-ownership-in-european-live-music/

[34] Frontier Report, sections 1.4, 4.2 and 6.3, citing the civil antitrust complaint brought by the United States Department of Justice, together with a group of plaintiff States, against Live Nation and Ticketmaster.

8.3 The Commission has itself recognised the consumer harm that arises where control of ticket distribution is concentrated and exclusionary. In its 1998 Football World Cup decision, the Commission found that ticket distribution arrangements which limited the market to the prejudice of consumers constituted an abuse of a dominant position.[35] A statutory measure that achieves an equivalent foreclosure of independent resale, by reserving resale activity in practice to organisers' own channels, raises analogous concerns under Articles 102 and 106 TFEU.

8.5 These very questions are now pending before the Court of Justice of the European Union. In Case C-860/25 Ticombo, the French-speaking Court of First Instance of Brussels has referred questions asking, in substance, whether Article 56 TFEU and Articles 15 and 16 of Directive 2006/123/EC preclude national legislation prohibiting resale above the initial price and the provision of means for such resale, and whether Articles 106 and 102 TFEU are engaged where such rules reinforce event organisers' control of the resale market.[36] The existence of the reference confirms that serious and unresolved doubt attaches to the compatibility with Union law of measures of precisely the kind Spain now proposes to adopt. The Commission is invited to take full account of the questions referred when assessing the notified text. Given the direct relevance of the pending reference, viagogo respectfully submits that Spain should suspend adoption of Article 20's resale price cap until the Court of Justice has delivered its judgment in Case C-860/25.

9 Consumer impact

9.1 Consumers derive concrete benefits from regulated resale: guaranteed tickets, fraud screening, refunds on cancellation, customer service, and access to sold-out events, including access from other Member States. Sellers on regulated marketplaces frequently list below the original sale price where demand is weak, so that resale also functions as a source of discounted access.[37] The Draft Law removes the lawful basis for this activity without removing the demand for it.

9.2 Because the cap prohibits recovery of any charge above the acquisition price, an ordinary consumer who resells at the lawful maximum will bear the marketplace fee, payment costs and delivery costs out of pocket. Compliant resale is therefore loss-making by design.

[35] Commission Decision 2000/12/EC of 20 July 1999 relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement (1998 Football World Cup), OJ L 5, 8.1.2000, p. 55.

[36] Case C-860/25 *Ticombo* (pending), reference for a preliminary ruling from the French-speaking Court of First Instance of Brussels, interim judgment of 19 December 2025, OJ C, C/2026/2005, available at https://eur-lex.europa.eu/eli/C/2026/2005/oj/eng. Viagogo entities have intervened in the national proceedings.

[37] Frontier Report, section 4.3.

Consumers who cannot attend an event will either absorb that loss, let the ticket go unused, or turn to informal channels where neither price nor authenticity is protected. Each outcome leaves consumers worse off than the status quo, and the last of them recreates precisely the fraud risk that regulated marketplaces were developed to eliminate.

10 Conclusion and requests

10.1 For the reasons set out above, viagogo respectfully requests that the European Commission:

(a) examine Article 20 of the Draft Law, and in particular the resale price cap, as a rule on information society services liable to create obstacles to the free movement of services and to the proper functioning of the internal market;

(b) issue comments or, as appropriate, a detailed opinion under Directive (EU) 2015/1535 in respect of the notified text;

(c) invite Spain to remove the resale price cap, or to reformulate Article 20 as proportionate transparency obligations coupled with the enforcement of the existing Union prohibition on the resale of tickets acquired by automated means and of the trader traceability obligations of the DSA; and

(d) invite Spain to notify any materially revised text under Directive (EU) 2015/1535 before adoption.

(e) in light of the directly relevant questions pending in Case C-860/25 *Ticombo*, invite Spain to suspend adoption of Article 20's resale price cap until the Court of Justice has delivered its judgment.

10.2 viagogo remains at the disposal of the Commission to provide any further information, data or analysis that may assist its assessment of the notified measure.

Yours sincerely,

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