

Press release

Bundesverband der Konzert- und Veranstaltungswirtschaft e.V. (Federal Association of the Concert and Event Industry)

BDKV obtains a landmark decision against secondary ticket market retailers

The Federal Association of the Concert and Event Industry (BDKV) has achieved an important landmark decision in the fight against the secondary ticket market. In its judgment of 28 February 2020, the Civil Senate of the Celle Higher Regional Court confirmed the first instance ruling by the Hanover Regional Court against the secondary ticket market retailer Ticketbande B.V. and rejected the defendant's appeal. The court of first instance had ruled that Ticketbande must refrain from selling tickets on their website for a price higher than the stated ticket price plus a maximum of 25% ancillary costs (e.g. postage, agency fees) if the tickets only gave a right of access to the organizer's contractual partner and if this right of access is only transferable if the third party does not have to pay a price higher than the stated ticket price plus a maximum of 25% ancillary costs. This sales condition is known as the resale clause developed by the BDKV.

The decision of the Celle Higher Regional Court is of particular importance since it is the first judgment in which an appeals court reviewed the BDKV's resale prohibition clause in ordinary proceedings instead of summary proceedings. By accepting the clause contained in the general terms and conditions of the ticket portals, ticket buyers confirm that they are aware that any resale is invalid if they resell the tickets for more than a surcharge of 25% on the original price. This is the first time that a boundary has been defined between the permitted private and commercial resale of tickets. The resale prohibition clause is used by organizers and artists when selling tickets on various ticket portals, including, in particular, Eventim.de. This creates the crucial basis for event organizers to successfully issue cease-and-desist orders in future to admission ticket suppliers with inflated prices and thus also to ticket portals directly.

The Higher Regional Court has now also confirmed the clause's validity in the second instance. It therefore decided against Ticketbande's argument that the clause, as a general term and condition, was surprising and unclear and was therefore invalid. Ticketbande was also not successful in arguing that it was only an "apparent personalisation". The Higher Regional Court also rejected Ticketbande's argument that the clause was invalid under antitrust law because its sole purpose was to exclude secondary market retailers from the market. The Higher Regional Court found that the goal of a socially acceptable limitation of ticket prices is a legitimate interest of the organizer.

Dr Johannes Ulbricht, who led the proceedings for the BDKV, commented: "The resale ban clause we developed is new legal territory. The ruling now gives the organizers clarity for the first time that, contrary to secondary market retailers' claims, the clause is valid and provides the organizers with a basis to successfully counteract the usury business of secondary market retailers". The executive president of the BDKV, Prof. Jens Michow, adds: "It is a long road to achieving legal regulation of the secondary ticket market, but through today's judgment, we have made a decisive step in this direction."

The Federal Association of the Concert and Event Industry (BDKV) was founded on 1 January 2019 through the merger of the two associations bdv Bundesverband der Veranstaltungswirtschaft e.V. and Verband der Deutschen Konzertdirektionen e.V. (VDKD). The professional association of the German live entertainment industry comprises over 500 agencies, tour and concert organizers. With 113.5 million tickets sold each year, the event industry generates a total turnover of around five billion euros.

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