

# Dynamic pricing

## A Consumer Scotland insight report

Dynamic pricing has hit the headlines recently. But what exactly is it, and to what extent is it either illegal or unfair to consumers? What was it about the Oasis issue in particular that provoked such ire? What are the government and regulators doing about it, and could they do more? This Consumer Scotland Insight Report considers these issues.

### What is dynamic pricing?

- 1.1 Dynamic pricing occurs when a business flexes the price of a product frequently and over short periods of time in response to changing market conditions.
- 1.2 It's important to distinguish dynamic pricing from other forms of price variation.
- 1.3 Firms often set different prices for a product depending on the time of day, or season. Rail companies for example often set peak and off-peak rail fares; hotels may offer different prices in low compared to high season; and many energy companies offer time-of-use tariffs that charge lower prices for energy overnight than during the day.
- 1.4 These *time-of-use* tariffs are a response to different market conditions at different times. But they respond to market conditions in a general sense, and are predictable in advance. They are not *dynamic* because they do not respond to specific market conditions on a particular day.
- 1.5 Peak rail fares for example do not change in price when there is a big sporting or cultural event on that increases demand on a particular day. And the vast majority of 'time-of-use' tariffs available to domestic energy consumers provide cheaper electricity at a contractually *predefined price at the same time each day*, regardless of what is happening in the wholesale market where prices are determined every half hour.
- 1.6 In this sense, dynamic pricing as we interpret it in this briefing occurs where prices adjust *responsively and frequently to specific, observed market conditions*. But it does not include pricing strategies that set different prices in advance based on known patterns of general demand.<sup>i</sup>
- 1.7 Dynamic pricing is not a new phenomenon and has grown to become a common practice – to different degrees – in various markets, notably including flights, concert tickets, holiday lets. Some online retailers also use dynamic pricing in the sale of physical goods.

- 1.8 It is difficult however to quantify the prevalence of dynamic pricing and how it is used in different markets. This is partly because it's a commercial practice, and partly because there is a degree of ambiguity about when a pricing strategy is 'dynamic' as opposed to a more 'traditional' price variation.

## **To what extent is dynamic pricing – or the way it is implemented – unlawful?**

- 1.9 Dynamic pricing, where it is transparent and gives consumers clear and correct information in good time to make informed decisions, is not unlawful in itself. However, the marketing and sale of products to consumers – whether by dynamic pricing or any other pricing practice – is a 'commercial practice' and as such must abide by the rules set out in the Consumer Protection from Unfair Trading Regulations 2008<sup>ii</sup>
- 1.10 These rules broadly set out that in any commercial practice a trader must not mislead consumers by act or omission about the material information of the practice, such as the price, thereby causing or being likely to cause the average consumer to take a transactional decision they would not have taken otherwise. The 'average consumer' is one deemed to be reasonably well informed, reasonably observant and circumspect.<sup>iii</sup>
- 1.11 Commercial practices extend to whether they occur before, during, or after a commercial transaction, including advertising and marketing, and transactional decisions are those taken by a consumer to either act, or refrain from acting, in relation to a product purchase.
- 1.12 So, whilst dynamic pricing is not in itself unlawful, the final price of a product, or the potential final price and the manner by which it is calculated, is material information that must be communicated in a transparent and timely manner to allow consumers to make informed decisions. Traders that use dynamic pricing, yet give false information about the final price, or give material price information in a manner which is unclear, ambiguous or untimely – risk misleading consumers' decision making and may breach consumer protection legislation.<sup>iv</sup>

## **Is dynamic pricing harmful for consumers?**

- 1.13 Businesses tend to use dynamic pricing because it allows them to capture a greater proportion of people's willingness to pay for a product (it allows them to capture a greater share of '*consumer surplus*' in economic jargon). As a result, it helps them to increase their total revenue.
- 1.14 In this sense, dynamic pricing might be perceived as being unambiguously bad for consumers, a tool to squeeze as much profit out of a market as possible at consumers' expense.
- 1.15 But it is more complicated than this. In some circumstances it's possible that, where dynamic pricing allows a firm to provide a product at a broader range of prices, it may enable some consumers to access that product at a lower price than they would pay under a uniform price. Indeed, research from the US indicates that, relative to uniform pricing, dynamic pricing has had net positive effects for early-arriving leisure travellers.<sup>v</sup>

- 1.16 In some circumstances, dynamic pricing may enable access to a product by consumers who wouldn't have been able to access that product under a uniform price. And in some cases, dynamic pricing may make particular services viable for businesses to operate that wouldn't have been the case under uniform pricing.
- 1.17 So, it's unlikely to be the case that dynamic pricing is unambiguously 'bad' for consumers. In practice however, it is difficult to assess the extent to which any benefits of dynamic pricing outweigh negatives. The answer is likely to be context specific, varying across markets and circumstances depending on the nature of demand and supply at a particular moment of time.
- 1.18 Dynamic pricing may have other downsides besides its effect on the distribution of prices. The variation in quoted prices under dynamic pricing may make it difficult for consumers to assess whether or not they are paying a fair price. This might undermine consumers' trust in a market, ultimately dissuading some consumers from engaging in the market at all.
- 1.19 One claimed benefit of dynamic pricing in the context of concert tickets is that it thwarts ticket resellers, and ensures that the benefits of high demand go to artists and organisers rather than resellers. The argument is that, where demand for tickets is high, tickets can be sold on resale sites for many multiples of their face value – with the artists and event management firms seeing none of the benefit. Dynamic pricing purportedly allows the benefits of high demand to be reaped by artists, event promoters and primary ticket sellers, and therefore reduces the incentives for secondary ticketers to get involved. There is some evidence that dynamic pricing can reduce the supply of tickets by secondary sellers.<sup>vi</sup>
- 1.20 However, this is probably a weak argument in support of dynamic pricing. Other solutions to secondary ticketing are likely to be available (including, for example, putting buyers' names on tickets). Furthermore, dynamic pricing by primary ticketing retailers appears to have only a limited impact on the availability of tickets on secondary sites – for example, some two weeks after the launch of the Oasis tickets, Consumer Scotland found over 400 tickets available on one secondary site for the Oasis Murrayfield concert on 9<sup>th</sup> August 2025, with those tickets retailing for between £500 and £1,800.

## What do consumers think about dynamic pricing?

- 1.21 Dynamic pricing is an emotive subject and has been the subject of negative publicity in recent years. In that context, the finding that the majority (71%) of people said that they were opposed to the use of dynamic pricing in the sale of concert tickets is perhaps not surprising.<sup>vii</sup>
- 1.22 More nuanced research has indicated the extent to which consumers perceive dynamic pricing is fair varies according to the context – including the rationale for price changes, the transparency around them, and their consistency.<sup>viii</sup>
- 1.23 The way in which dynamic pricing works in practice is also likely to influence attitudes to it. In principle, dynamic pricing allows prices to adjust upwards and downwards in response to

market conditions. In practice, businesses often use the practice as a way to justify the marketing of their lowest priced products. When consumers end up paying more than the low price, they can feel aggrieved at the sense of having been misled. If on the other hand the marketed prices were more often near the top-end of their potential range, consumers who paid less than the marketed price are more likely to feel content at having got a 'good deal'. Thus, even if the distribution of final prices paid is similar, the way in which dynamic pricing is used to convey a 'reference price' may affect how consumers perceive the principle of the practice.

## Why did the Oasis issue attract such ire?

- 1.24 Dynamic pricing hit the headlines on the weekend of 31<sup>st</sup> August 2024, when ticket seller Ticketmaster reportedly used the practice in the sale of tickets to the much-anticipated reunion tour of Oasis. Around 200,000 tickets were available for Oasis concerts in Scotland on 8<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> August 2025.
- 1.25 It appears the process left many fans frustrated, with over 1,000 complaints being made UK-wide to the Advertising Standards Authority, <sup>ix</sup>, ultimately prompting the Competition and Markets Authority (CMA) to launch an investigation into the case<sup>x</sup>.
- 1.26 But with dynamic pricing having become increasingly common in events ticketing, what was it about the Oasis issue that appeared to rile consumers?
- 1.27 The big issues in the Oasis issue allegedly stem from a lack of transparency – and crucially the timing – surrounding the information provided to consumers about the price of the tickets.
- 1.28 Oasis tickets were marketed at ostensibly fixed prices without qualification, and consumers were invited to join a virtual 'queue' on the basis of those prices.
- 1.29 Having taken the decision to join the queue on the basis of the advertised price, reports suggest many consumers were unaware even of the potential for the price of tickets to increase whilst they were in the queue – let alone the extent to which they were increasing in practice (with reports of some tickets selling for well over double their advertised price).
- 1.30 Many consumers spent many hours in a virtual queue. It is alleged that, once at the front of that queue, they were presented with a ticket price which was in some circumstances two or more times the advertised price. Of course, at that point the consumer is 'free' to exercise further choice, and walk away.
- 1.31 But, was walking away a simple choice? The fact of having spent so long in the virtual queue means that consumers may have been exposed to the behavioural bias of 'sunk-cost fallacy' (the tendency for our decisions to be swayed by our previous investment for a desired outcome). Having spent so long in a virtual queue, with rising anticipation and then a brief window to act, some consumers may have felt pressure to back up this investment of time with a purchase – and ended up spending more than they would have done had they been presented with the final price from the outset.

- 1.32 That businesses exploit consumers' behavioural biases is nothing new. But, if it transpires that consumers were illegally misled as alleged, this may prove a particularly cynical and unfair example of it.
- 1.33 Arguably, fan's frustrations in the Oasis case were not so much with the principle of a price that adjusts in response to demand, but the way in which those price changes were (or more specifically were not) communicated at the outset. Indeed, it is in this transparency perspective that the process may represent a breach of consumer protection law.<sup>xi</sup>

## What are the potential outcomes of the Ticketmaster case?

- 1.34 Shortly after the Oasis issue, the CMA launched an investigation to '*establish the precise factual background to the sale of Oasis tickets*', with a view to determining whether consumers were misled.<sup>xii</sup> The investigation will consider whether Ticketmaster engaged in commercial practices which are prohibited under the Consumer Protection from Unfair Trading Regulations 2008; whether people were given clear and timely information to explain that the tickets could be subject to 'dynamic pricing' and how this would operate; and whether people were put under pressure to buy tickets within a short period of time, potentially impacting their purchasing decisions.<sup>xiii</sup>
- 1.35 As part of this investigation the CMA will engage with Ticketmaster, and it will be interesting to see what comes to light in terms of the actual range of prices paid by consumers and how those compare to advertised prices.
- 1.36 While Which? have called for Ticketmaster to 'do the right thing' and refund the difference between dynamic and advertised prices<sup>xiv</sup>, it remains unclear what the conclusion of the CMA's investigation will be.
- 1.37 If the CMA case finds that consumer law has been breached, there remain a number of potential outcomes and implications.
- 1.38 It is worth highlighting that the outcomes of this case could have been quite different had it occurred after spring 2025 when the CMA's enforcement powers will be significantly strengthened by the Digital Markets, Competition and Consumers Act 2024 (DMCCA). In recent years, the CMA has proven itself to be a responsive and effective consumer regulator, despite some limitations on its enforcement powers.<sup>xv</sup> Under its new DMCCA powers of 'direct enforcement', the CMA will be able to publicly decide and declare consumer law has been broken without first taking a case to court. The enhanced DMCCA powers will also allow the CMA to enforce strong penalties and solutions for breaches, including redress for those harmed<sup>xvi</sup>. This could mark a significant and welcome shift for consumers, and alongside other new rules it should compel UK businesses to have a greater focus on consumer law compliance.
- 1.39 However, with these new powers not yet in force, the CMA may yet have to take Ticketmaster to court as the ultimate arbiter that consumer law was breached. The CMA might alternatively decide that there is no case to answer. But between these two extremes,

it may also decide to agree to undertakings (a form of legal promise) from Ticketmaster not to repeat any infringing conduct. These undertakings *might* include a commitment from Ticketmaster not to operate a similar dynamic pricing model in future, and crucially, an agreement by them to provide redress for the affected consumers.

- 1.40 Given the media interest in this issue and the debate about the fairness of dynamic pricing practices it created, the outcome of the CMA investigation is also likely to be high profile. Speculatively, if Ticketmaster offers redress only for those who bought tickets at the (allegedly unfair) higher prices, what then for those who joined the queue but left as they could no longer ‘afford’ the tickets; and any previous ‘victims’ of ‘illegal’ dynamic pricing if it was applied this way in the past?

### **What else is the UK government planning?**

- 1.41 Prior to the Oasis fiasco, the UK government had already been planning a consultation on consumer protections for ‘ticket resales’, i.e. the reselling of tickets on secondary markets. Following the Oasis issue, the UK government Secretary of State for Culture, Media and Sport, Lisa Nandy, was widely quoted as saying that the government would extend this consultation to include *“issues around the transparency and use of dynamic pricing, including the technology around queueing systems which incentivise it.”*<sup>xvii</sup>
- 1.42 This announcement is welcome. To maximise its potential value, the consultation will need to consider how dynamic pricing works practically across a broad range of markets and contexts, building a more robust understanding about the circumstances under which dynamic pricing can be beneficial and harmful for consumers, and to consider whether further action could usefully protect consumers from the harmful elements of dynamic pricing. It would also be useful to consider the relationship between dynamic and secondary pricing.

### **What are other governments doing about dynamic pricing?**

- 1.43 In the US, frustration at the use of dynamic pricing in relation to venue ticketing specifically has led to interest in strengthening consumer protections in legislation.
- 1.44 In May this year, the state of Minnesota introduced a new law, known as ‘Taylor Swift law’ to provide more transparency and protection for consumers when purchasing tickets online for live events. Amongst other things it will require ticket sellers to disclose all fees up front and prohibit resellers from selling more than one copy of the same ticket.<sup>xviii</sup> The law includes the requirement that the *‘price of a ticket must not increase with respect to a particular person after the ticket is first displayed to the person’*. The new law does not seek to ban dynamic pricing but to ban pricing changes once a consumer has engaged in a transactional process – which is already effectively banned in existing UK regulations.
- 1.45 Meanwhile at a federal level, a so-called ‘Boss and Swift Act’ has been proposed, to include requirements that *‘prevent sellers from changing the total cost of a ticket during the purchase process without alerting the buyer’*; and *‘ensure primary sellers are transparent about*

*marketing and distribution by disclosing the total number and cost of tickets that will be offered at least seven days before they go on sale.<sup>xix</sup>*

## Conclusions

- 1.46 The recent Oasis ticketing issue simultaneously brought dynamic pricing to the forefront of public debate, but it also polarised that debate. Some saw the issue as a transaction between private stakeholders responding to supply and demand, over which government and regulators need not intervene. Others viewed the outcome as scalping consumers and spoiling industry.
- 1.47 Regardless of your position on these points, there is a legitimate question around whether consumers were in some circumstances misled or had undue pressure placed on them to purchase tickets. In this context, the CMA's decision to investigate the issue is welcome.
- 1.48 The risk of having a debate about dynamic pricing in the context of the Ticketmaster case is that it conflates a range of issues and risks. These include the degree of competition in the primary ticketing market, and the way in which information was presented to consumers (rather than the fact of the dynamic pricing itself).
- 1.49 Looking forward, it seems likely that dynamic pricing will become increasingly commonplace, particularly in markets where it is enabled by advances in the technologies on which it relies.
- 1.50 In this context, the UK government's commitment to a wider review of dynamic pricing more generally is very welcome. We hope the review can help distinguish the role of these different elements in creating harm for consumers, and consider more broadly whether further protections for consumers will be beneficial.
- 1.51 Consumer Scotland looks forward to engaging in the UK government's consultation, and in seeing the outcomes of CMA's investigation.

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<sup>i</sup> Surge pricing is a particular form of dynamic pricing, where prices increase rapidly in response to a surge in demand

<sup>ii</sup> [The Consumer Protection from Unfair Trading Regulations 2008 \(legislation.gov.uk\)](#) -(largely reiterated by the Digital Markets Competition and Consumers Act 2024, some provisions of which come into force in 2025).<sup>ii</sup>

<sup>iii</sup> Where a commercial practice is directed at a particular group of consumers, a reference to the average consumer means the average member of that group.

<sup>iv</sup> The rules on pricing as material information are clarified under the [DMCCA, sec 230](#)

<sup>v</sup> Williams (2022) [The Welfare Effects of Dynamic Pricing: Evidence from Airline Markets | The Econometric Society](#)

<sup>vi</sup> ['Hamilton' raises Broadway ticket prices to foil scalpers \(ft.com\)](#)

<sup>vii</sup> YouGov (2023) [Half of Britons have been priced out of attending live music events in recent years | YouGov](#)

<sup>viii</sup> Neubert (2022) [A Systematic Literature Review of Dynamic Pricing Strategies by Michael Neubert :: SSRN](#)

<sup>ix</sup> [Complaints about advertising of Oasis concert tickets – ASA update - ASA | CAP](#)

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<sup>x</sup> [CMA launches investigation into Ticketmaster over Oasis concert sales - GOV.UK \(www.gov.uk\)](#)

<sup>xi</sup> The fact that there was very limited competition in the market for primary tickets in this case may have accentuated the extent to which the primary ticket seller was able to create the sense of ticket scarcity via complex queuing systems. The vast majority of Oasis tickets were sold through Ticketmaster. Accentuating this monopolistic position, Ticketmaster is owned by Live Nation which also partly owns DF Concerts and Events, Oasis' concert promoter in Scotland. Ticketmaster's dominant position in the market has attracted attention in the US. In May 2024, the US Department of Justice, along with 30 state and district attorneys-general, filed a civil antitrust lawsuit against Live Nation and Ticketmaster for "monopolisation and other unlawful conduct that thwarts competition in markets across the live entertainment industry". The lawsuit seeks to restore competition, and provide better choices at lower prices for fans.

<sup>xii</sup> [Letter to government from CMA Chair and CEO \(publishing.service.gov.uk\)](#)

<sup>xiii</sup> [CMA launches investigation into Ticketmaster over Oasis concert sales - GOV.UK \(www.gov.uk\)](#)

<sup>xiv</sup> [Oasis tickets: Ticketmaster's 'in demand' pricing could be in breach of consumer law - Which? News](#)

<sup>xv</sup> See for example the CMA's work on consumer protection during the pandemic [Protecting consumers during the coronavirus \(COVID-19\) pandemic: update on the work of the CMA's Taskforce - GOV.UK \(www.gov.uk\)](#) and [Protecting consumers during the coronavirus \(COVID-19\) pandemic: update on the work of the CMA's Taskforce - GOV.UK \(www.gov.uk\)](#)

<sup>xvi</sup> [Getting ready for the consumer protection changes in the Digital Markets, Competition and Consumers Act 2024 – Competition and Markets Authority \(blog.gov.uk\)](#)

<sup>xvii</sup> [Oasis tickets: Hundreds lodge complaints over dynamic pricing - BBC News](#)

<sup>xviii</sup> Minnesota Legislature (2024) [HF 1989 4th Engrossment - 93rd Legislature \(2023 - 2024\) \(mn.gov\)](#)

<sup>xix</sup> [\[2023-09-27\] Blumenthal, Hirono, & Markey Introduce BOSS & SWIFT Act... \(senate.gov\)](#)