

Submission on discussion document: Ticket Reselling in New Zealand

Your name, organisation and submitter category

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Submitter category	Please circle/highlight one category:		
	Individual consumer	Consumer Group/Advocate	Business
	Industry Group	Researcher/Academic	
	Other (please describe):		

Responses to discussion document questions

Overview of primary ticket market

1	<p>How is the ticket price for an event determined? Who has input into setting these prices?</p> <p><i>Ticket price is first established between Artist and Promoter. The ticket price is based on an agreed budget between the artist and promoter to produce and market the performance.</i></p> <p><i>The ticket price takes into account the risk projected by the promoter based on a fee to the artist and the costs associated with the event. It also in many cases is influenced by the artist requirement of an affordable price to the their fan. The promoter has to balance all these factors to manage risk and deliver the right ticket price to the consumer.</i></p> <p><i>The end ticket price to the consumer however is affected by uncontrolled additional fees set between service suppliers, the primary ticket agent and the venue. Their ability to control additional fees without regard to the ticket price established by the promoter/artist is one of the key reasons behind excessive pricing to the consumer.</i></p>
2	<p>What is the average proportion of event tickets that is released for general public sale (not reserved for industry insiders or pre-sale events for non-public groups)?</p> <p><i>The promoter will in many instances be obligated through a sponsor agreement, a media partnership or a requirement from the artist to allocate presale tickets before a general public on sale. There is no legal limit however an industry norm is to never allocate more than 30% of</i></p>

available capacity.

However because of the inability of the promoter to control the process directly due to the inventory being controlled by the ticket agent and the venue more inventory can be held and distributed without consultation.

Once access is granted to the inventory by the ticket agent the venue has the ability to hold venue seats. The primary ticket inventory can also be accessed via bot to purchase.

Although primary ticket agents profess an ability to curtail bot purchase and with a sale limit set by agreement with the promoter there is evidence that in fact some primary agents have professional programmes which enable direct purchase for resale. One example is TRADE DESK a programme available through Ticketmaster.

See

<https://www.cbc.ca/news/business/a-public-relations-nightmare-ticketmaster-recruits-pros-for-secret-scalper-program-1.4828535>

Overview of secondary ticket market

3

Is there any available data on the size of the secondary ticket market in New Zealand that you could provide? For example, the average

- proportion of event tickets that end up on the secondary market
- proportion of professional sellers operating on secondary markets and where they are operating from
- proportion of resale tickets that are sold above the face value
- fees charged per ticket by secondary markets for facilitating the resale transaction.

It is impossible to gauge the extent of the resale market because any reporting is confidential to the ticket agent/venue agreement. Reports on the number of resold tickets and the actual onsellers is not made available to the artist or promoter. In most cases even the name on the original ticket purchase is false or untraceable thereby confusing reporting.

Standard fees as disclosed by Ticketmaster resale are 15% fee to the buyer for purchase of the resale ticket and 10% to the seller for the selling of the ticket. The original purchaser is undisclosed. However data must be available through the original purchase reports and the resale tickets allocated through local reseller Ticketmaster Resale as they have data following primary agent sell to the resale site.

4

Do you think 'ticket onsellors' should be treated differently to 'ticket scalpers' in any options to address ticket reselling practices?

The onseller in the resale market is more often than not an scalper.

Again because of the refusal to provide authentication of the original purchaser by the primary agent the genuine onseller cannot be determined.

Prior to the advent of the exclusive and non competitive agreement between the venue and the ticket agent some 15 years ago the promoter through the direct contract with the ticketer dealt with all refund and cancellation requests from the consumer. These applications due to family or personal circumstance back then where at far less than 1% of inventory. Since the advent of the ticketer/venue exclusive contract promoters have received no requests for refunds.

The ability for the consumer to seek a refund directly from the promoter is a practice that needs to be addressed in any solution sought to curb the resale market.

The only method to separate the scalper from the onseller in any option is to provide the ability of the consumer to seek refund for genuine reasons direct from the promoter.

Key issues and policy objectives

5

Do you agree with the issues and objectives we have identified for assessing potential options to address ticket reselling concerns? How significant are these issues? Please provide evidence where possible.

The issues as outlined are covered admirably. Basically consumers are being misled and deceived when purchasing resale tickets. Primarily I believe that consumer welfare is affected by the lack of competition at the majority of NZ venues which enables sales in the secondary market.

The issues are significant in terms of the dollar value penalty being imposed on the NZ Consumer. Just one person having to pay \$3000.00 for a \$600.00 ticket is significant but when this is multiplied over thousands of people being duped into paying for overpriced concert tickets New Zealanders are being seriously disadvantaged.

It is impossible to ascertain the magnitude of the issues because communication channels between the consumer and the promoter are evaded by the necessity of the consumer to deal with the primary ticket seller. Many feel embarrassed at being duped or simply just thankful they got a ticket no matter how much it cost them so do not come forward or even bother to find an outlet away from the ticket agent to complain to.

The objective could be defined quite simply to institute mechanisms to protect the consumer from overpriced and fraudulently marketed event tickets.

6

Do you have any concerns with the business practices or structures in the primary ticket market, or have these ticketing arrangements negatively impacted on you? Please provide evidence where possible.

The non competitive exclusive agreement between the venue and the ticketer provides a platform that excludes a competitive market structure. The arrangement initially impacts the promoter/artist intent of supplying a ticket at a set price that is guaranteed to the consumer. The promoter has no choice but to use the ticketer and therefore the consumer has no choice but to purchase through that ticketer.

The practice enables uncontrolled fee and levy additions to the intended ticket price to the consumer sometimes being undisclosed in information provided to the consumer.

The practice enables uncontrolled movement of the ticket inventory to the secondary ticket market and avoids the obligation of the primary ticket seller to protect the rights of the consumer.

We asked a client who happened to be a Security Consultant to track the original purchaser of a ticket to Robbie Williams Spark Arena Feb 14 2018. After exhaustive investigations throughout Australia and NZ he was unable to trace the original purchaser. I attach the correspondence from Thomas James. This was a Ticketmaster ticket sold through Viagogo.

Please also find the news item on TV1 that saw resale tickets available almost immediately after the release of Celine Dion tickets.....

<https://www.tvnz.co.nz/one-news/new-zealand/want-know-ticketmaster-can-allow-happen-fans-angry-celine-dion-tickets-hit-re-sale-site-moments-after-going-live>

A recent Fair Go programme where the Minister appeared traced the originator of a resale ticket to the person who set up Viagogo in Australia. The ticket they were tracing was bought from Ticketmaster by an Alexander Levenson – the primary ticket seller would not answer questions raised by Fair Go.

Current practice avoids the authentication of proof of original sale by the primary ticket seller.

Tracking the money as in the Fair Go investigation is the key. If tickets are being fraudulently sold it is a perfect opportunity for the Commerce Commission or the SFO to institute real protection for the public and even look to establishing a platform whereby compensation can be claimed by a ticket purchaser who has been conned in to buying an overpriced ticket.

If tickets are not in fact being sold as legitimate already purchased tickets (they are fraudulent) then there is merit in trying to recoup the difference being added on to the original ticket price from either the reseller or the primary ticket seller who is facilitating the purchase. The primary ticket seller must have an obligation to not allocate tickets for resale or allow bot intrusion for purchase to protect consumers rights.

7

Could greater competition in the primary ticket market (e.g. between ticketing agents) reduce problems in the secondary ticket market? What could be done to encourage more competition in the primary ticket market?

Competition full stop in the primary ticket market will reduce the secondary ticket market.

The institution of just one option for the consumer will undermine the secondary ticket market. For example if there were two agents tickets available to the same event the consumer will find a best price option with that ticketer having no interest in the resale market thereby offering a secure purchase at a competitive price. One agent who is fully transparent with all transaction data and provides the consumer and the promoter/artist with comprehensive upfront and reporting information will in the end be the successful seller of the

inventory.

It is what market competition inevitably leads to. Best outcome for the consumer.

Option 1: Status quo

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How effective are the existing consumer protection laws in regards to ticket reselling practices?

Consumer protection laws especially around non competition and full disclosure of product authenticity are adequate however these have not been applied to the ticket agency practices as they currently stand therefore in the instance of event tickets not effective.

9

Does the status quo achieve the policy objectives of reducing consumer harm? Are there any other benefits and costs associated with the status quo?

The status quo does not support the objectives and provides no benefit to the consumer.

Option 2: Price cap on resale tickets

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If a price cap for resale tickets was introduced, which price cap option should be implemented?

No option can realistically be enforced.

11

How should the original sale price of resale tickets be verified? Who should be responsible for this?

The original price should be displayed on all tickets as was the practice. The omission of a ticket price on the ticket is simply a purposeful method to enable reselling. Any ticket agent who refuses to include the ticket price and does not disclose fully the fees should have their motives questioned.

12

What are the compliance costs that might be generated as a result of imposing a price cap?

A price cap is not a workable solution.

13

Who is best placed to enforce a price cap? What is the level of resource required to enforce a price cap?

The price of a ticket is the price of a ticket and consumers should not have to deal with options.

Option 3: Greater information disclosure requirements

14

What types of ticketing information should be disclosed, and by whom? How should these disclosures be made?

Ticket information to the consumer should include the net ticket price as agreed by the artist/promoter.

Additional fees being imposed such as levies, transaction costs, inside and outside charges or bank charges should be disclosed to the consumer by the ticket agent before a decision to purchase is made by the consumer. This information needs to be prominently displayed on the ticket purchase page for internet transactions, verbally transmitted for telephone transactions and displayed prominently at any hard ticket outlet.

If the Government is to allow any form of reselling then the original purchaser and purchase information should be available to the ticket buyer to authenticate.

15

How would any information disclosure requirements be enforced? Who should be responsible?

Under the present structure the ticket agent is responsible for the information to the consumer. If the information were not supplied the ticket purchaser should have ability to seek an immediate refund from the agent. If on presentation of the ticket the information supplied was not sufficient to enable the consumer to gain access to the event the cost of the ticket without redress to the promoter should be refunded by the agent.

Information campaigns through the industry and/or government would educate the consumer to the information they need to assess before purchase. Simple monitoring by the promoter on the ticketers sale page would observe compliance. MBIE checks could be instituted to roam internet sites for non compliance or visual checking at hard ticket outlets.

Non compliance would be enforced by MBIE by way of fines, support of refund applications from the consumer and or deregistration of the ticket agency.

16

What type of compliance costs will be involved in order to comply with such information disclosure requirements? Please provide evidence where possible.

The cost of providing information to the ticket buyer does not require additional cost on an event by event basis through all channels the promoter is responsible for. Equally the additional lines of information through all the ticketers channels would have no cost.

Some time and resource would be required by MBIE to monitor which would be offset by the institution of registration fees for ticket agents.

If the information proved fraudulent or false then the cost of refund to the consumer should be the ticket sellers responsibility and any fines collected by MBIE.

Option 4: Ban on ticket-buying bots

17 How should a bot be defined? How can ticket-buying bot use be detected? What technologies are required to do this?

A bot is a programme that accesses ticket inventory automatically through the internet and enables multiple ticket purchases.

Ticket agencies have various security platforms that can detect a bot in operation. These revolve around purchaser address, credit card transaction information and IP addresses.

Scalpers use methods like multiple credit cards (often later reported stolen) and multiple IP addresses to avoid detection or simply work with the primary agent with programmes such as TRADE DESK to access inventory.

18 Who is best placed to enforce a ban on ticket-buying bots? What sort of penalties should apply for the use of ticket-buying bots?

The primary ticket agent has no legal obligation to enforce conditions as required by the promoter such as purchase limits of 4 per person.

They are best placed to enforce and can establish security protocols but the enforcement of these protocols is difficult to oversee without full commitment by contract with consequences for non compliance.

International web addresses where bots can be traced back to can be restricted from accessing New Zealand. China restricts access in their market to many western IP addresses. Similarly for example if a trace revealed Viagogo was planting bots into NZ ticket agencies we should as a country have the option to restrict access.

Again terms and conditions by contract direct with the promoter and the ticket agent in the past were standard practice and there were direct financial consequences to the ticket agent for non compliance of terms and conditions.

The terms and conditions between the venue and the ticket agent are now confidential with no avenue for oversight by the ticket owner (read artist/promoter) on how affected the inventory has been by bot purchase.

Option 5: Joint industry-government initiatives

19 How effective are existing industry-led initiatives in combatting ticket scalping practices?

Contrary to Option 5: Item 97 there is an industry body that has been informing and arguing against scalping practices for many years. The New Zealand Promoters Association has 20 registered members who comply with a code of ethics which requires a process of review for

any potential member of the Association. Any member associated with the practice of ticket scalping would be banned for life and any potential new member who is found to have involvement in ticket scaping of any sort would be refused admission.

NZPA members have instituted terms such as limits on tickets sold. Have requested for many years reports from resellers to authenticate resale tickets. Informed the public repeatedly to purchase only from the approved ticket seller. Most recently refused entry to any Viagogo ticket holders.

NZPA has met with Ticketmaster resale and demanded they comply with promoters and event producers terms and conditions in relation to non transfer of sold tickets which they have ignored.

NZPA has met with Ticketmaster resale and demanded they provide authentication of original purchase which they continue to ignore.

The industry continues to work doggedly at protecting the public however the inability to control add on fees or access full reports from ticket agencies curtails our efforts.

In short our initiatives have not proven sufficient enough to protect the consumer to date.

20

Are there any other existing or future industry-led initiatives that address these concerns? Do you have any suggestions for improvements?

The industry is committed to ensure that consumers are not disadvantaged through the sale of event tickets.

With security issues becoming more and more of a concern at any public gathering the ability to identify each person attending is becoming essential.

All R18 events require ID and receipt of purchase to validate age and purchase of the ticket by the person presenting. This process will become more of a requirement across all events and identifying the purchaser as the person attending will curtail secondary market selling of an event ticket. More importantly it will confirm the identification of the every attendee. This information would prove invaluable in the case of a security breach.

This may be the only way left by promoters to put a halt to the serious disadvantage being experienced by consumers. Unfortunately it will require longer waiting times for consumers before entry.

There is no difference in the contract between the ticket purchaser who is entering into an agreement to supply a service between a concert or passage on an airline.

Yet transferring a ticket privately for an inflated price is legal for a concert. Terms and conditions as applied by both an airline or a promoter indicate you will be refused the service if you are not the original ticket purchaser. You must buy from the authorised ticket seller. The tickets are not transferrable.

The Consumer Guarantees Act requires us both by law to supply the service as advertised.

It seems the core issue is that for the concert/event industry delivery of the service is covered by law however the contract between the purchaser and the promoter can be ignored with the ability to on sell without legal protection for the Terms and Conditions as agreed by the purchaser ie This Ticket Is Not Transferrable.

Why can't concert tickets afford the same legal protection as an airline ticket?

SEE COMMENTS BELOW FOR SUGGESTED IMPROVEMENTS.

Any other comments

We welcome any other comments that you may have.

New Zealand is a small market and therefore has the ability to make changes based on the current frameworks in place.

Immigration New Zealand

INZ carries a register of Approved Promoters. It has the ability to vet status. Promoters should be of sound financial standing with no history of malpractice in relation to consumer issues. Promoter should be a NZ registered company with full ability for the law to pursue and ensure compliance to NZ law.

NZPA

The Association has vetting in place for all registered NZ promoters. Financial ability, experience and history of sound trading practices required.

Between the two bodies the public can be educated to purchase confidently through an approved Promoter through advertised material including the Promoter name and authorised ticket agency.

Authorised Ticket Agent

MBIE can establish a register of approved agents with a code that requires transparency and consumer protection practices.

Authorised ticket agents should be a NZ registered company with full ability for the law to pursue and ensure compliance to NZ law.

No primary ticket seller should be allowed the ability to be a ticket reseller.

The legitimising of reselling tickets will continue to provide a black market in event tickets.

Any ticket seller that does not provide robust and proven security protocols to prevent bot purchases can be deregistered.

Any ticket from the primary ticket seller that has made its way without authentication to the secondary market will enact an investigation which could lead to the deregistration of the primary ticket seller.

Promoters should be able to appoint the authorised ticket seller to sell tickets to their events. This may be a ticket seller that has an exclusive contract with the venue or the promoter should have the ability to appoint a second ticket seller where they believe that a competitive option should be available to the consumer for that particular venue. This is a key factor that will establish NZ as a leader worldwide with a mechanism to curb secondary market sales.

The authorised ticket seller must display all relevant information to the consumer before purchase including the net ticket price and any additional fees being imposed such as levies, transaction costs, inside and outside charges or bank charges. Non compliance would attract

finer and possible deregistration.

The authorised ticket seller must display all Terms and Conditions prominently.