

# Submission template

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## Ticket reselling in New Zealand

### Instructions

This is the detailed submission template for the discussion document, *Ticket reselling in New Zealand*.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by 5pm on **18 April 2019**. Please make your submission as follows:

1. Fill out your name, organisation and submitter category in the table, “Your name, organisation and submitter category”.
2. Fill out your responses to the consultation document questions in the table, “Responses to discussion document questions”. Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. We also encourage your input on any other relevant issues in the “Other comments” section below the table.
4. MBIE intends to upload PDF copies of submissions received to MBIE’s website at [www.mbie.govt.nz](http://www.mbie.govt.nz). MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.
5. When sending your submission:
  - a. Delete these first two pages of instructions.
  - b. Include your e-mail address and telephone number in the e-mail or cover letter accompanying your submission – we may contact submitters directly if we require clarification of any matters in submissions.
  - c. If your submission contains any confidential information:
    - i. Please state this in the cover letter or e-mail accompanying your submission, and set out clearly which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to any requests under the Official Information Act 1982.
    - ii. Indicate this on the front of your submission (e.g. the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
    - iii. Please provide a separate version of your submission excluding the relevant information for publication on our website (unless you wish your submission to

remain unpublished). If you do not wish your submission to be published, please clearly indicate this in the cover letter or e-mail accompanying your submission.

Please note that submissions are subject to the Official Information Act 1982.

6. Send your submission:

- as a Microsoft Word document to [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz) (preferred), or
- by mailing your submission to:

Competition & Consumer Policy  
Building, Resources and Markets  
Ministry of Business, Innovation & Employment  
PO Box 1473, Wellington 6140, New Zealand

Please direct any questions that you have in relation to the submissions process to [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz)

# Submission on discussion document: Consumer Credit Regulation Review

## Your name, organisation and submitter category

<b>Name</b>	Phil Sprey		
<b>Organisation</b>	Capital C: Concerts		
<b>Submitter category</b>	<i>Please circle/highlight one category:</i>		
	Individual consumer	Consumer Group/Advocate	<b>Business</b>
	Industry Group	Researcher/Academic	
	Other (please describe): <b>Concert/Event Promoter/ Consultant</b>		

## Responses to discussion document questions

### Overview of primary ticket market

1 How is the ticket price for an event determined? Who has input into setting these prices?

*How the ticket price (the face value) is established should remain entirely the domain of the event promoter/artist/participant which is contained within their negotiated agreement and should remain confidential to this agreement as is normally the case. The actual face value however must be clearly displayed on the ticket format (Hard copy / digital / online printout). However there is an issue related to the booking fee portion of the end price of a ticket which needs addressing: Currently the uncompetitive regime of 'scalable' inside and outside charges (those levied to the promoter and those the public pay) is unfair on the consumer. Explained: The Ticketing agencies charge both the afore mentioned booking fees based on the promoter's face value of the ticket which escalates considerable between say a \$20 ticket to a \$300 ticket. Considering that the system and mechanism is identical in the selling process this is pure Ticket seller profiteering which elsewhere stated is often forced on the promoter because of restrictive venue ticketing conditions to third party providers. The remedy to this is to make this element competitive as to promoters choice of provider and that the service cost (booking fee) is negotiated and set at one value for the benefit of the consumer. Other cost elements that are additional to the face value are credit card costs which should remain as they are customers choice prerogative but must be without 'mark-up' and the delivery cost (ie courier etc) Currently there are examples of emailed ticket delivery charges being exuberantly added when the system is automated and the consumer is the one printing the ticket copy at home at their cost. This latter example should be absorbed within the overall booking fee.*

2 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)?

*This is a very broad are and will vary greatly for type of event, venue size and configuration and artist/performer/sports production. As to 'splits' in pricing variation; this too is part of the overall agreement between performer/promoter and budgeted accordingly. The pre-sales reserved or hold activity are also either contractual of part of a sales and marketing strategy and should remain as is. The consume market alone will dictate the planning of this on an event by event basis.*

*As to Distribution of tickets (17):*

*The reference to '30-50% of tickets are never released to the public' In the NZ context this is not the normal condition. Afterall the core objective of any promoter is to sell the maximum available capacity of an event. While most/all of the mention holds for sponsors etc is certainly the case there are logistically systematic release of the balance of tickets largely calculated to help staff management and to avoid 'gaps' between price zones where blatant empty spaces can be avoided. (some artist actually have this detailed within agreements)*

## Overview of secondary ticket market

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

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- 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.

*Specific data will be very difficult to attain as the Facebook, Trademe and 3<sup>rd</sup> party platforms have had no reason to retain this information historically. However the overall anecdotal and observational view would indicate it is considerable and growing dependant on specific concert or sports event and their popularity.*

*There are distinctly 4 main categories of resellers: 1/ where the reseller is a platform is controlled by the primary ticket selling agent (Ticketmaster etc). 2/ Third party resellers – domestic like Trademe. 3/ Third party resellers – International located (Viagogo) 4/ Private consumer sales via Facebook, face to face or other direct transaction.*

*Re the proportion sold above face value, this is clearly in two camps; one driven by legitimate cost recovery close to the purchase price and those clearly wanting to make a profit dependant on the rarity of the events demand.*

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

Yes: Firstly, Scalpers are only in the market to profiteer solely at the disadvantage of the consumer. They have no intent themselves to visit the event just gain from the demand of the ticket buyers need. These are the bulk buyers, auto-bot users and those (like Viagogo) who sell items they do not actually yet possess or don't have at all.

On-sellers too can be scalpers in their own right and act exactly in the same manner when

they are the primary ticket-seller and directly create artificial demand by holding tickets and issuing them on their own secondary platform at greatly increase prices. Or allow over-priced tickets to be resold by the original ticket buyer through their own secondary platform and participate in excessive fees or with a percentage of the final sale price.

## 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 document does clearly address the scope of the issues. The details clearly describe the current matters including the specifics raised in the Viagogo case and must be addressed as soon as possible to protect the ticket buying public.

Suggestion (Opinion): That the primary ticket seller clearly states in all advertising materials and in T&C details that there is only one primary seller and that there is only one designated reseller, whether this is their own reselling platform or a third party reseller. Ideally this should be a non-related third-party provider to stop the primary ticket-seller from artificially manipulating the availability and cost differentials.

Example: (ad tag) ' Buy today from Ticketek' then a by-line which could be 'Official NZ reseller only – Trademe Ticket Shop'

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.

With a cost cap which is essential there will be a great disincentive to manipulate the reselling market and to profiteer illegally by doing so. As mentioned above in an ideal world the reseller should NOT be the same party or related to the primary seller. They should be domestically located or legally represented and subject to NZ Company and Commercial Law. And if possible and ideally be registered as a certified reseller and linked to the event on sale. In a NZ context this could be easily introduced and then clearly promoted and included in all public information, industry information and in marketing/advertising media.

As the resell price cap constrains eliminate profiteering there is no need to have unlimited opportunity's to sell unwanted tickets (legitimate reasons) other than in a known, controlled/regulated provider.

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?

This is a major issue where the NZ venues, largely owned or controlled by City Councils, Community Trusts and similar ownership have no inhouse ticket selling and have farmed this out to third party commercial providers under contract and where the promoter/event organiser has no flexibility to negotiate or attain a competitive provider. This is literally a restrain of trade and anti-competitive situation which has plagued the industry.

Promoters/organisers have been forced in most cases to accept T&C without debate and at the disadvantage of the ticket buying consumer. As often inflated or unnecessary charges (both inside and outside charges) are substantial the reality is that they are all passed on to

the end user. Behind the scene as well the existence of these venue -primary ticket seller agreements/contracts have in themselves a value and are compensated for, that this to is passed on to the end user by venue hire costs, separate venue fees etc.  
 Solution: Promoters / organisers must have the freedom, without penalty, to make their own arrangements with third party ticket selling providers which the venues must accommodate accordingly.

## Option 1: Status quo

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

Other than the protections offered as shown under existing Major events legislation, Fair Trading, and Consumer protection Act there is no specific addressing of the areas raised in this discussion document. The status quo is not acceptable in a world where leisure, sport, recreation and entertainment demands are growing exponentially and occupy a large part of the whole population and across all demographics. With technological advancements and international legislation now is the time to comprehensively address all the related issues on ticket selling and reselling.

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?

*Status quo is not an option.*

## Option 2: Price cap on resale tickets

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

After much thought and review of international laws and discussion and to give the parties involved a fair expectation the 10% cap would not be unreasonable. Although with some higher priced offerings eg, Ticket (face value) of \$400+ could be further restrained to a 5% upper limit. It is basically and inconvenience charge.  
 The reselling consumer should be allowed to include the face value of the ticket and the stated booking fee. It should not include the Credit Card charges of delivery cost (courier etc) as these reimbursements can be within the cap margin. It would also be reasonable for the reseller to add a delivery charge of the resold ticket above the capped price which is buyers choice/agreed.

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

If the entirety of the whole new legislation encompasses, a capped reselling figure, a clearly stated and publicised primary seller, a designated 'official' reseller(s) then the main direction must be that the promoter/organiser and primary ticket seller MUST clearly state the face

	<p>value of each ticket and this must be clearly visible on all tickets whether they are downloaded tickets, hard tickets or digital deliver (cell phone ticketing). This would then be the basis of all other calculations. (refunds, reselling etc)</p> <p>Note: because of cost and practicality the range of tickets/prices available on each individual event/performance it would be confusing and prohibitive to include every category etc in advertising materials. (TV, radio, press). However the information must be clear at POS and on primary ticket sellers websites etc.</p>
12	<p>What are the compliance costs that might be generated as a result of imposing a price cap?</p> <p>Other than the points raised in above sections there are no great impositions in introducing price capping. The only people/entities who will be hurt by this legislation are those who have used uncontrolled reselling and scalping for profiteering.</p>
13	<p>Who is best placed to enforce a price cap? What is the level of resource required to enforce a price cap?</p> <p>While the discussion document largely refers to the 'concert going' section of the ticketing conversation the legislation must clearly cover ALL ticketing event across all disciplines including music concerts, festivals, sport, exhibitions, trade shows, community events etc. etc. In essence any and all events where a ticket is sold which has a face value. Logically and practically in the scope of the legislation it should be primarily for the commercial ticket selling agencies. (Ticketmaster etc)</p> <p>Consumer will always be a good independent watch group and to get participation and representation across a very broad set of event providers would be very impractical. Supervision by a unit from within the MBIE supported by a small industry representation with Commerce Commission support in the case of serious investigations should be considered. I can guarantee that once the public is informed, educated and the inclusions in T&amp;C and other marketing tools are introduced as suggested, the ticket buying public should police the industry very well.</p>

### Option 3: Greater information disclosure requirements

14	<p>What types of ticketing information should be disclosed, and by whom? How should these disclosures be made?</p> <p>As previously stated: Clearly shown ticket price / face value on each ticket regardless of format of delivery. Inclusions on T&amp;C of primary ticket seller and at all ticketing retail outlets. Official resellers clearly stated in all materials including on the face or reverse side of all physical tickets and with all digital delivery.</p> <p>As similar to the Authorisation tags on political advertising (ala; 'This ad is authorised by blah blah') A similar minimal direction as to official primary and secondary seller could be mandated in all adverting. As media placements (radio TV etc) are already controlled by the media when placed, an education and guide compliance could be introduced to make sure the promoter/organiser has included the key references.</p>
15	<p>How would any information disclosure requirements be enforced? Who should be responsible?</p>

	Already separately mentioned above.
16	What type of compliance costs will be involved in order to comply with such information disclosure requirements? Please provide evidence where possible.
	Not any great deviation from what already exists.

#### 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?
	<i>Defer to IT industry</i>
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 seller is the main target and must introduce IT compliance to control this type of activity. As it probably can only be enforced domestically serious use of this technology domestically should be severely discouraged through substantial penalties. As there are no a great amount of major primary selling companies in NZ they could be supervised by the appropriate Govt authority on a regular basis to ensure compliance and to gauge the level of activity plus to ensure they have the software/systems to captivate this activity.

#### Option 5: Joint industry-government initiatives

19	How effective are existing industry-led initiatives in combatting ticket scalping practices?
	Existing communications and communication of the relevant Terms and Conditions of sale are not industry wide as to consistence. And reliance on the broad legislation of protecting the consumer is not widely known. As many promoters and artist are based offshore there is inadequate applications of what we have or should put in place in the ticketing area and hence my earlier reference to any mechanism being domestically controlled by legal domestic representation and ticket seller location.
20	Are there any other existing or future industry-led initiatives that address these concerns? Do you have any suggestions for improvements?
	Legislation must clearly state a minimum discloser format across selling methods, advertising inclusions, 'official' status of sellers and resellers, consumer rights and legal consequences etc. There should NOT be at the discretion or control of the industry (Sport/entertainment) itself as many ticketed events are not organised or promoted by people who do not belong to any organised group or commercial entity. However it could be better legislated to be a none negotiated inclusion in all ticket selling and reselling agreements therefore policed externally via the commercial ticket selling companies. Artist contracts are more difficult but promoters/organisers must make these artists/performer's agents and representatives aware that these conditions on the ticketing



are NZ law and they cannot be circumvented. Specific examples of this can be prepared and made available to promoters to convey this requirement.

A well-publicised code of practice with easily accessed online guidelines is paramount as is mandatory T&C, in plain English in Ticket sellers location, websites, on-ticket and in advertising materials where applicable.

Clear and transparent Terms & Conditions on all domestic reseller sites (like Trademe) should explain the rights of the consumer as well as the resale mechanism and protections.

It must also be clear that in any reselling process the consumer-seller is not guaranteed that their ticket(s) will be sold but they are protected if the conditions warrant a legitimate refund.

Enforcement: As ticketed leisure time activity is substantial and growing across all demographics, locations and genres a separate unit within the Ministry could be considered, much like an Ombudsman's Office and could cover all aspects including Major Event (Americas Cup RWC etc) so they have specific knowledge retention, Communication control and public confidence. To make policing the responsibility of the industry/organisation would be impractical, problematic as to management and too reliant on people not equipped to deliver the desired results.

## Any other comments

We welcome any other comments that you may have.

The Minister and his department must firstly be commended on the very comprehensive study of the issues of ticket selling, reselling and scalping and the delivery of this discussion document. It is hoped that with solid participation that most points raised will be actioned to the greater good of all concerned especially the NZ consuming public.

I will be happy to be available should the Ministry feel I can further contribute to the development of this legislation, at any hearings if this will assist at the Ministers discretion. I am sure that the opposition will act in a non-partisan way to support the move to tidy up this vital and concerning subject.