

Ticket reselling in New Zealand discussion document

Submitted to

Ministry of Business, Innovation and Employment (MBIE)

18 April 2019



Commerce Commission submission on the ticket reselling in New Zealand discussion document

Introduction

1. The Commerce Commission (the Commission) appreciates the opportunity to make a submission on the ticket reselling in New Zealand discussion document. We look forward to our ongoing engagement with MBIE on this topic.
2. Our comments focus on the relation to the Commission's functions under the Fair Trading Act 1986 (FTA).
3. As MBIE has noted in its discussion document, many consumers have contacted the Commission in respect of issues arising in the ticket reselling sector. The majority of the contacts that the Commission has received related specifically to Viagogo. We have not seen many complaints relating to other companies in the ticket reselling sector.

Summary

4. The Commission's capacity to address ticket reselling issues is limited to enforcement and education in relation to the misleading and deceptive provisions of the FTA, which it will continue to do.
5. The paper does not discuss whether the Commission would be tasked to enforce any of the options laid out. Of the options traversed in the discussion document, the information disclosure option (option 3) aligns most closely to other consumer work currently carried out by the Commission.
6. If the Commission is required to enforce any new provision(s) in this area, it would need to be funded to do this or reduce its other functions.

Options

7. The Commission does not have experience of these options or detailed comments on the policy options set out. However, it shares some comments on the options laid out in the paper which may be of use to the consultation.

Price cap on resale tickets

8. Resale price caps have been introduced in some jurisdictions in recent years.
9. In Australia, whilst some states have introduced various forms of price caps on resale tickets, there is no federal policy currently. This option was considered as part of a regulatory impact assessment but not recommended.¹ The official position of the Legislative and Governance Forum on Consumer Affairs (CAF) in October 2018 was

¹ Ticket Reselling in Australia – July 2018 – The Australian Government the Treasury - <https://ris.pmc.gov.au/2018/11/30/ticket-reselling>

that it noted some states have moved to limit resale prices and CAF will continue to monitor this.² Whilst certain states have adopted price caps³, some covering major events only and some covering all events, we have not seen any analysis of the effectiveness or the enforceability of the resale cap.

10. An independent review of secondary ticketing facilities by Professor Michael Waterson in the United Kingdom in 2016 did not recommend a resale price cap. Reasons expressed included:
 - 10.1 difficulties defining what is meant by a particular price cap; and
 - 10.2 a price cap could have limited effect due to rapidly changing routes to market via digital platforms based in overseas jurisdictions. This makes policing and future-proofing difficult.
11. Professor Waterson further noted that where price caps are in existence in the UK, they are "...enforced by dedicated, substantially staffed regulators dealing with a clear set of established companies subject to their regulation."⁴
12. In relation to the price cap options traversed in the discussion paper, the Commission's view is that the option relating to original sale price plus resale costs (option C) would be difficult to enforce because it will be difficult to define the level of resale costs, particularly if the reseller is based overseas.

Bot buying ban

13. We are aware that UK legislation banning ticket buying bots came into force in July 2018. Similar legislation came into force in New South Wales in June 2018 and in South Australia in December 2018.
14. In terms of Australia as a whole, CAF's October 2018 statement noted, "Ministers were updated on the work being undertaken by the Commonwealth to explore options to ban ticket buying bots and Ministers requested a further report at the earliest opportunity on how to best enforce a ban."⁵
15. The United States introduced such a ban in 2016. By mid-2018 there had been one prosecution⁶ which was taken under hacking legislation rather than legislation

² <http://consumerlaw.gov.au/communiques/meeting-10-2/>

³ New South Wales for all events from June 2018, Victoria for major events from 2009, Queensland for major events from 2014 and South Australia for all events from December 2018.

⁴ Independent Review of Consumer Protection Measures concerning Online Secondary Ticketing Facilities, May 2016, at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/525885/ind-16-7-independent-review-online-secondary-ticketing-facilities.pdf at page 22

⁵ <http://consumerlaw.gov.au/communiques/meeting-10-2/>

⁶ James Purtill (2017) <http://www.abc.net.au/triplej/programs/hack/ticketbot-inventor-ken-lowson-explains-scalping/9055238>

banning ticket bots. The evidence in that case suggested scalpers had developed software to avoid detection.

16. There is currently little evidence available with respect to the effectiveness and enforceability of such a ban.
17. This is not an area where the Commission has relevant expertise. Further, it is again likely that enforcement may prove difficult in circumstances where the reseller is not based in New Zealand.

Information disclosure requirements

18. The Commission is of the view that consumers should be provided with sufficient information to make an informed choice about purchasing all goods and services.
19. In respect of ticket reselling, undertakings were given by four ticket resellers to the Competition and Markets Authority (CMA) in the United Kingdom to provide information relating to:
 - 19.1 all additional charges
 - 19.2 seller contact details for a buyer to use in the event a problem arose; and
 - 19.3 a mechanism for the seller to list restrictions, the original face value of the ticket, to indicate if they are a trader and if multiple tickets being sold are located together.⁷
20. This was not without problem, however, as in 2016 the CMA became aware of “information which may indicate potential non-compliance...”⁸ with the undertakings along with relevant legal obligations. The CMA undertook a review of compliance resulting in new, formal commitments in April 2018 from three of the four industry participants.⁹ The independent Waterson Report from May 2016 had also recommended that resellers should comply with existing legislation and provide clearer details of guarantees to provide transparency for buyers.¹⁰
21. Further information disclosure for consumers in the ticket market would best fit the Commission’s enforcement capability. The information would need to be expressed

⁷ Announced on 5 March 2015 - <https://www.gov.uk/government/news/ticket-buyers-benefit-from-cma-action>

⁸ CMA, ‘Secondary ticket platforms compliance review’, June 2016 at:

<https://assets.publishing.service.gov.uk/media/57601c4540f0b66bda000041/cma-compliance-review-of-secondary-ticket-platforms.pdf>

⁹ <https://www.gov.uk/government/news/secondary-ticketing-sites-pledge-overhaul>

¹⁰ Independent Review of Consumer Protection Measures concerning Online Secondary Ticketing Facilities - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/525885/ind-16-7-independent-review-online-secondary-ticketing-facilities.pdf

in plain language, be legible, presented clearly and readily available to any party affected.¹¹

22. Such a requirement could be legislated by way of a Consumer Information Standard which is more readily enforceable than non-infringement notice offences.
23. If a Consumer Information Standard is adopted a question remains as to whether the standard applies to a platform and/or an individual. This may have an impact upon the ability to enforce the standard.
24. The approach of section 28B of the FTA, however, has worked well with respect to trader status disclosure as it has placed a legal onus on intermediaries to ensure compliance. Such an onus could be important in the ticket reselling market with respect to information disclosure or price caps to ensure all sellers are aware of their legal obligations and that intermediaries take other appropriate steps to ensure compliance.

¹¹ As per the definition of transparent under section 2(1) of the Fair Trading Act 1986