

**viagogo response to the Ministry of Business, Innovation
and Employment (MBIE) ticket reselling in New Zealand
discussion document**

April 2019

About viagogo

viagogo is a global online platform for live sport, music and entertainment tickets. viagogo aims to provide ticket buyers with the widest possible choice of tickets to events across the world.

viagogo is a secure, safe and transparent option for reselling tickets that the original owner no longer wants or can use. They give New Zealand customers a second chance to buy the tickets they may have missed out on first time round. **viagogo does not buy or sell tickets and it does not set prices.**

viagogo has partnered with many of the world's leading brands in sport and entertainment and has helped customers from almost every country in the world access tickets to their favourite events in the language, currency and on the device of their choice.

Over the last year, we have helped thousands of New Zealanders safely buy or sell tickets to a wide range of events across the country and around the world.

Secondary ticket market

Prior to secure online ticket market places like viagogo; ticket fraud was unfortunately very common. Consumers were forced to take their chances outside venues, putting themselves at risk of purchasing fraudulent or invalid tickets with little or no recourse should things go wrong.

Secondary ticketing is a logical behaviour rooted in fundamental factors such as **supply and demand; season ticketing; long lead-in times for events; and terms & conditions of primary ticket sellers around refunds or returns.** In addition, there are significant structural problems with the primary market, including the unwillingness to invest in technology that deter bots and the practice of organisers and others withholding premium tickets from the public sale process.

Secondary ticketing sites operate in a safe, secure and transparent fashion and serve a necessary function that is in the interest of the consumer. They provide access to events because of the limited number of tickets available released by primary ticket providers.

viagogo: a safe and secure platform

viagogo provides a safe and secure platform, offering the consumer protection measures that consumers expect from an online retailer. Buyers are guaranteed to receive valid tickets, and in the very rare instance that there is a problem with the delivery of tickets, viagogo steps in to find comparable replacement tickets, or offer a full refund. Fraudulent sellers or buyers are kept off viagogo's platform by a range of security measures including not paying the seller until the fan is inside the venue for the event.

Why use viagogo?

Our research shows that people use the secondary ticket market (sites like viagogo) for a number of reasons. Buyers have typically missed out on the small number of tickets available in pre-sale or general release. They might be attending an event out of town, looking for premium seats or locations, or have only heard about a concert or sporting event at the last minute. These people are typically happy to pay a premium to secure events that they consider 'must see'. Sellers are typically unable to attend an event due to unforeseen circumstances like a change of plans or diary clash. This is not surprising when you

consider many events are sold several months in advance, and organisers and primary ticket sellers never offer refunds.

Our policy positions

viagogo supports many of the proposed policy initiatives suggested by MBIE to further protect customer interests. We support measures to ensure that customers have the information that they need to make an informed decision about their purchase, either on the primary market or on the secondary market.

However, we believe that organisers must disclose their ticketing practices and the impact on the public sale. If consumers require further educational measures, this must start by knowing the percentage of tickets that are available to the public at the start.

viagogo provides sellers with fields in which they may provide as much information as they can regarding the details of the seat location and ticket category. We make every effort to ensure transparency for customers using our website, including related to the total ticket price prior to confirming purchase. We support a ban on bots. Primary market ticket sellers are best-placed to enforce a ban on ticket-buying bots, because bots primarily target these sites. Primary market sellers also need to provide consumers with transparency regarding ticket allocation and pricing on the primary market.

Name, organisation and submitter category

Name	Cris Miller									
Organisation	viagogo									
Submitter category	Please circle/highlight one category:									
	<table> <tr> <td>Individual consumer</td> <td>Consumer Group/Advocate</td> <td>Business</td> </tr> <tr> <td>Industry Group</td> <td>Researcher/Academic</td> <td></td> </tr> <tr> <td colspan="3">Other (please describe):</td> </tr> </table>	Individual consumer	Consumer Group/Advocate	Business	Industry Group	Researcher/Academic		Other (please describe):		
Individual consumer	Consumer Group/Advocate	Business								
Industry Group	Researcher/Academic									
Other (please describe):										

Introduction

viagogo appreciates the opportunity to participate in the public policy discussion on ticket selling.

Our answers to the questions set in the Ministry of Business, Innovation and Employment (MBIE) discussion paper are noted below. This submission follows the questions as laid out in the Discussion Paper quite closely but also provides additional information when the actions discussed have an impact on the secondary market. We also use New Zealand based arguments and evidence as required but given that New Zealanders often purchase overseas event tickets, we use international examples where appropriate.

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?

The price of tickets sold in the primary market is determined by organisers, promoters and performers.

At the most basic level, ticket prices factor in expected demand, production costs, guarantees to the performer, the size of the venue, number of performances, the instructions from performers and so on. More and more often, however, there is no longer just one ticket price for an event but a range, over time. Concerts and other entertainment events typically involve a contract between a promoter and a performer for the latter to appear at a specified date and venue in return for an agreed fee.

For major acts, this fee is understood to be between 90 and 100 per cent of ticket revenues, part of which is guaranteed and payable in advance; the share of revenues and the size of the advance fee will vary with the box office appeal and bargaining power of the performer. Promoters tend accordingly to bear much of the risk for the success or failure of events.

The promoter is responsible for organising the concert, including the hire of the venue.

Where, as is sometimes the case, the promoter owns or operates the venue, this need will not arise. The premier indoor facility in New Zealand, Spark Arena, does not face any competitive pressure, as it is owned by organiser Live Nation. Recently, The Dominion Post¹ reported that Live Nation is also in talks with the Wellington Mayor over plans to build and run a new events centre for the city.

Exclusive contracts are a major threat to a competitive market which the Commerce Commission must review.

Sporting events differ from entertainment events in that the bodies which govern the sport organise matches involving affiliated clubs, counties, provinces or national teams and commonly also own the venues in which they take place.

Public ticket prices for entertainment events are often dictated by the performer and his or her representatives in consultation with the promoter. Event promoters then commonly contract with a ticketing service provider (like Ticketmaster or Ticketek) or the venue (if the venue has an exclusive relationship with a ticket provider) for the sale and distribution of tickets.

In return, the ticketing service providers receive a booking fee or service charge per ticket, a charge that is generally added to the price of the ticket. Promoters may receive a share of the booking fees in return for agreeing to sell tickets through a chosen primary seller. Further, sporting bodies commonly allocate a substantial proportion of tickets to affiliated clubs and fan groups and also operate season and multi-year ticket schemes. **At any time, they can remove publicly allocated tickets for their own benefit.**

On the primary market, organisers bear the risk of loss, as they may be forced to lower their prices relative to the consumer's willingness to pay. As a result, organisers often place a modest premium on tickets issued at the public sale. **More importantly, event organisers and promoters have a strong incentive to make sure premium tickets (that represent their best opportunity of profit) are not subject to the uncertainty of public sale at all. This is why so many tickets are sold to other parties in advance of (and outside of) the public sale process.**

However, the reputational desire for a 'sell-out' – both to encourage fans to attend and get future promotional business from other acts – places a premium on keeping costs lower at the public sale. Organisers minimise risk of unsold seats and lower prices by 'drip feeding' tickets, which is a practice in which concerts are announced as 'sold out', only for extra tickets to be released on sale in fixed capacity venues at a later date (often months later). **Drip feeding creates deliberate, artificial shortages, which allows promoters to keep costs artificially high. This is somewhat perplexing to the average consumer and reasonable explanations have never been forthcoming from primary ticketing providers as to why the substantial change in ticket availability occurs.**

However, if a show still does not sell out, the organiser is at tremendous economic risk. This leads to a sharing of the burden of uncertainty fully to the advantage of the organiser at the expense of the consumer at the public sale. In fact, if the uncertainty should force them to reduce their price, the sale allows promoters a way not to suffer the loss.

The acquisition of a ticket forces the consumer to bear this uncertainty, without offering them the means to exit if the secondary market is prohibited. For this reason, **we believe that primary market participants should be required to disclose publicly the percentage of**

¹ The Dominion Post, 9 April 2019.

tickets that are allocated to the general public for sale as well as those for VIP and premium offerings.

While secondary market participants have no direct 'input' as such, their existence does.

Consumers take a risk when buying tickets up to a year in advance of the event, as was the case just 2 months ago with Elton John tickets in New Zealand. Consumers have the insurance of knowing they can sell their tickets on a secondary market if their circumstances change. This allows them to pay higher ticket prices with that confidence. If not, they would be more cautious. Primary ticket sellers appreciate this market dynamic when setting prices, and some even set up their own secondary markets to obtain higher prices in the primary sale.

The price of tickets sold in the secondary markets is typically determined by the seller, and this is the case with viagogo. We do provide price guide ranges for **buyers** for similarly situated tickets sold on our platform, to better inform them of the price that others are paying for similar seats. We would note that many of the tickets sold on viagogo sell for around, or often below, face value. Typically, tickets that are listed for far in excess of their face value do not sell. **On the secondary market, sellers bear the risk that their tickets will not sell.**

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)?

viagogo does not have access to the breakdown of primary ticket sales in the New Zealand market, nor to our knowledge does any customer – we would welcome greater disclosure from the primary market.

Tickets for entertainment events are commonly made available prior to public sale to a range of parties, including:

- performers and their managements;
- members of performers' fan clubs;
- venues and members of their clubs;
- corporate sponsors;
- holders of certain credit cards; and
- customers of some telecom's services, record labels and media organisations.

As a matter of background, we can provide some global case studies.

USA

An analysis by the Office of the New York Attorney General of the allocation and distribution of tickets for the top-grossing seventy-four shows organised by the city's two largest promoters between 2012 and 2015 found that, on average, only around forty-six per cent of tickets were reserved for the general public.²

The remaining fifty-four per cent of tickets was divided among two groups:

² Office of the New York State Attorney General, *Obstructed View: What's Blocking New Yorkers from Getting Tickets*, p.11.

- Sixteen per cent of tickets were ‘holds’ (that is tickets reserved for industry insiders such as artists, agents, venues, marketing departments, record labels, and sponsors) and;
- Thirty-eight per cent of tickets were made available on pre-sale to non-public groups (most commonly credit card holders and members of artists’ fan clubs, though also through pre-sale events run by venues, promoters and others).

Tickets reserved or allocated in these ways were also more likely to be for premium seats. These premium seats are often sold at a significantly lower price than less desirable seats later sold at the public sale.

Even stronger evidence comes from data gathered under the US Freedom of Information Act.

The table below³ (based on information from the Fan Freedom Project in the US) shows that for some high-demand events, only 7 per cent of tickets were made available to regular fans. And, indeed some artists make it a condition of their contracts with concert promoters that an allotment of tickets is held back from general public sales so that it can be sold on the secondary market.

State	Venue	Artist	Concert	Tickets Available	Held Back
CA	Save Mart Center	Justin Bieber	10/5/12	12,020	90%
FL	Amway Center	Taylor Swift	4/12/13	12,118	86%
NJ	IZOD Center	Maroon 5	2/23/13	16,574	68%
NJ	IZOD Center	Pink	3/23/13	16,823	84%
NJ	IZOD Center	One Direction	7/2/13	13,687	67%
TN	Bridgestone Arena	Justin Bieber	1/18/13	13,783	93%
TN	Bridgestone Arena	Keith Urban	11/11/09	14,904	70%
TN	Bridgestone Arena	Taylor Swift	9/12/09	13,330	88%
WA	Tacoma Dome	Justin Bieber	10/9/12	20,410	71%

UK/Ireland

A similar situation occurs in the United Kingdom. **Respondents to the Waterson Review of online secondary ticketing facilities in the UK suggested that sixty per cent or more of tickets for events by major acts may have been allocated or sold prior to the commencement of the general public sale.**⁴

Finally, we would also note that the Irish Government’s Consultation on the Resale of Tickets for Entertainment and Sporting Events (January 2017) covers this issue in detail.⁵

³ DJEI Consultation on Ticket Resale, 16 March 2017

⁴ The Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities, OIC Department for Business and Innovation and Skills and the Department for Culture and Media and Sport 2016 (Waterson)

⁵ “Consultation on the Resale of Tickets for Entertainment and Sporting Events”, Department of Jobs, Enterprise and Innovation, Ireland, January 2017

Obviously, these are foreign examples. However, they are indicative of a broader trend within the industry globally and they illustrate the need for a legal transparency requirement to apply to the primary market in respect of ticket allocations. For example, the information in the table above was obtained only by submitting requests under the US Freedom of Information Act on venues that are publicly owned or subsidized. It is currently not possible to obtain such information in other jurisdictions in this way.

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.

Proportion of tickets sold on the secondary market

As far as we are aware no analysis has been done on the size of the secondary market in New Zealand. While platforms like viagogo are aware of the volume of their own marketplaces and generally on other traditional secondary ticketing marketplaces, there is no way to accurately assess ticket sales on informal, non-traditional secondary sales channels like Facebook or TradeMe.

We can, however, provide some data from other countries, but it is important to note some distinct differences here in New Zealand.

First of all, New Zealand is geographically distant from the European and American music bases. Historically, this has meant fewer “top tier” acts travelling to New Zealand. However, in recent years, this appears to have changed.

Despite this, New Zealand remains a small market. Less competition for the music concert market and limited sizable indoor venues means sell-out crowds are a reasonable certainty for top acts.

Overseas data indicates that the secondary market is not as large as some would think. For example:

- The UK Government’s independent review estimated that the secondary market is between three and seven per cent in volume terms and 12.5% in revenue.⁶ The resell going through viagogo’s website in the United Kingdom, where we are

⁶ Waterson op cit

a major player in the secondary market, represents only 2.9% of total volume.

- Leslie & Sorenson⁷ noted that, of the one million tickets for fifty-six concerts sold by Ticketmaster to buyers on the primary market in the US, only five per cent were subsequently resold on StubHub or eBay (then the dominant players in the secondary market).
- In Australia the Federal Government has noted that the offering of tickets for resale is generally a very small percentage.⁸
- This finding is reinforced by the poll results presented by MBIE, which showed that only 2 per cent of respondents had used viagogo.

Primary market players themselves have a responsibility for the proper functioning of their own market, in ways that would impact the secondary market.

Primary ticketing companies can take other steps to ensure a more equitable distribution of tickets. As Happel and Jennings note: *“With limits on purchase, controls on use of the web page materials, rights of termination, and non-commercial use, primary sellers have established some level of contractual restrictions that present brokers with challenges in obtaining more than the predetermined per-person allocation of tickets”*.⁹

The primary market has the technical capacity to prohibit and prevent the massive purchases made by bots and other automated technology that is used to circumvent security measures, but they have largely failed to do so. We believe this is because primary ticketing companies have no economic incentive to control or minimize bots—they are paid by bots just like any other purchaser. For this reason, legislation may be necessary to better police what these providers have failed to address voluntarily.

Also, we believe the prioritisation of the ‘face value’ of a ticket misconstrues the nature of the primary market and how prices are set. **No event has any set ‘real value’. It is an artificial construct of factors relating to supply and demand. Performers and promoters regularly offer identical tickets under ‘VIP’ schemes like Ticketmaster Platinum at ‘face values’ twice what was offered in the public on-sale.**

When the venue is divided up for pricing, you can be sitting in a seat in a different zone just metres away being charged twenty per cent more to see the same show. Here, face value doesn’t make much sense in understanding the value of the ticket.

Event ticketing is hardly the only market that sees similar fluctuations in face value over time. Air New Zealand, like every other airline, charge sometimes up to one hundred and fifty per cent more for tickets between Auckland and Wellington at peak times.

These and other examples remind us that every sale has an agreed price. What the previous price was is often irrelevant. This is true for items such as the housing market, and the market for ticketing is no different. Throughout the life cycle of a ticket, its pricing and desirability will change to reflect demand.

Proportion of professional sellers operating on secondary markets and where they are operating from

⁷ Leslie, P. & Sorenson, A. (2014) *Resale and Rent – Seeking ‘An application to Ticket Markets*. The review of Economic Studies

⁸ Commonwealth Consumer Affairs Advisory Council 2010. Consumers and the Ticket Market, p 21.

⁹ Happel, S. & Jennings, M. (2009) *The eight principles of the microeconomic and regulatory future of ticket scalping, ticket brokers, and secondary ticket markets*. Journal of Law and Commerce.

Again, unfortunately there is no information available on this matter. If New Zealand is targeted by international groups using bots, then the size of this and their whereabouts are unknown to all but the primary market ticket seller.

In New Zealand, more than 96% of sellers on the secondary market are ordinary people who have sold less than 10 tickets in the past year.

viagogo also offers tickets sold by professional sellers in many markets, but we provide in our terms and conditions that any professional seller who lists tickets on our marketplace must comply with local law, when selling tickets on our marketplace.

Proportion of resale tickets that are sold above the face value

We are not aware of New Zealand data that incorporates all secondary market outlets (e.g. including sales made via Facebook, TradeMe etc.).

There have been many popular events in New Zealand where the majority of tickets listed on viagogo sold for less than face value. However, some fans do want to pay a premium for access to premium seats often not available at the public sale.

Research into secondary ticket sales in the United Kingdom¹⁰ revealed the following:

- Thirty-two per cent paid face value
- Twenty-two per cent paid less than face value
- Twenty-one per cent paid slightly more than face value
- Eleven per cent paid substantially more than face value

Fees charged per ticket by secondary markets for facilitating the resale transaction.

Fees charged by secondary ticket platforms vary by platform and the services that are offered.

viagogo charges a fee for transactions conducted on our platform. In exchange, **buyers and sellers can be confident that their transaction will proceed as planned, safely and legally. Service fees allow us to offer customers our viagogo guarantee and the highest level of customer service.**

The viagogo guarantee ensures all buyers receive valid tickets in time for the event. If a problem arises, viagogo will step in to provide comparable replacement tickets or a refund at our own cost.

For sellers, the guarantee ensures they get paid for the tickets they sell and fulfil on time.

Unlike other platforms, all viagogo users have access to our 24-hour customer care team.

4

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

We are a secondary ticket marketplace where buyers and sellers can meet to arrange sales. **We do not buy or sell any tickets ourselves, and we do not set the prices that**

¹⁰ Waterson op cit

sellers offer or that buyers accept.

We note your definitions of ‘ticket on-sellers’ and ‘ticket scalpers’ on p.11 of the discussion document. We agree that ‘ticket scalpers’ are distinct from people whose circumstances cause them to resell their tickets (‘on-sellers’).

viagogo supports legislation that would prohibit the use of unfair tactics, including bots, by ‘ticket scalpers’ to purchase tickets in excess of limits set by primary ticketing distributors. As you note on p.23 of the discussion document, stopping the use of bots is difficult. The only market participants who have that power are the primary ticket sellers. If they wished they could invest in technology to restrict the use of bots, but they haven’t solved this major problem yet.

viagogo supports legislation that would prohibit the use of unfair tactics to purchase tickets in excess of limits set by primary ticketing distributors to ensure that everyone gets a fair chance to purchase tickets. Further, viagogo is willing to engage with the primary market participants in order to ensure correct bot measures are put in place across all participants in order to protect consumers.

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 discussion document outlines the following issues:

- a. Consumers being misled or deceived when purchasing resale tickets
- b. Consumer welfare being reduced by ticket reselling practices
- c. Potential competition problems in the primary ticket market.

We have responded to each of these below and in response to the questions that follow.

Consumers are not misled or deceived when purchasing resale tickets on viagogo.

We credit MBIE for your efforts to address fraud and transparency of information to the consumer. As a company, we want our customers to have the best experience possible when they purchase tickets from our platform. **Eliminating fraudulent or fake tickets from our site is of the utmost importance to us.**

viagogo supports greater transparency in secondary ticket resale, provided that similar transparency is sought from the primary market and across the entire sector (in terms of the number of tickets made available for public sale), and from informal ticket exchanges (as conducted on Facebook or TradeMe for e.g.). We have invested to provide buyers and sellers with better and more complete information to allow them to make an informed decision.

Prior to secure online ticket marketplaces like viagogo, ticket fraud was unfortunately very common. Consumers were forced to take their chances outside venues or informal

channels, putting themselves at risk of purchasing fraudulent or invalid tickets with little or no recourse should things go wrong.

viagogo provides a safe and secure platform, offering all the consumer protection measures that consumers expect from an online retailer – buyers are guaranteed to receive valid tickets, and in the very rare instance that there is a problem with the delivery of tickets, viagogo steps in to find comparable replacement tickets, or offers a full refund.

In the secondary market, three types of fraud seem to exist.

- counterfeit tickets, or non-delivery of tickets;
- fraudsters with stolen credit cards purchasing legitimate tickets on the secondary market, which they would then attempt to resell elsewhere; and
- fraudsters with stolen credit cards purchasing tickets on the primary market, which they then attempt to resell on the secondary market.

viagogo’s platform includes a range of security measures designed to disincentivise the sale of fraudulent tickets.

These include:

- Sellers are paid for tickets only once buyers have successfully gained entry to the event;
- The platform registers all seller information and performs security checks against that information with world-class third-party fraud protection providers;
- All buy-side transactions are automatically reviewed for suspicious activity by viagogo’s in-house fraud system and by machine learning intelligence provided by multiple third-party vendors; and
- E-tickets uploaded through viagogo’s platform are scanned for validity and to ensure they have not been tampered with or duplicated.

viagogo has continued to invest in security infrastructure to provide buyers and sellers with better and more complete information so they can make an informed decision.

Our anti-fraud screening procedures of each transaction means that only 0.01% of any orders viagogo accepts are fraudulently placed orders by buyers using stolen credit cards, which is an extremely low number. While fraud remains a very real risk on informal channels, we will continue to take efforts to offer users a safe experience. As the market continues to move from hard copy tickets, to self-print or e-tickets, it is crucial that consumers who wish to on-sell tickets, and those wishing to purchase them, have access to platforms that have taken steps to address fraudulent activity through controls so they are comfortable in the knowledge that they are purchasing legitimate tickets. We also are willing to partner with primary ticket sellers to validate and authenticate tickets.

Every ticket purchased on viagogo comes with a guarantee that they will receive valid tickets in time for the event. If a problem arises, viagogo will step in to provide comparable replacements tickets or a full refund in the rare instances where this is not possible. This gives consumers peace of mind, knowing that they will be compensated in the event something goes wrong. Similarly, consumers receive a full refund, including all

fees, in the event of an event being cancelled.

However, we are concerned both with the conclusory nature of the claim that customers are misled and some of the data provided to support it.

Our data shows that only 1 per cent of tickets sold on viagogo result in problems at the gate – be that ticket invalidity or event organiser harassment.

The MBIE survey (which we discuss in the “notes” section at the end of this submission) showed that only 20 per cent of respondents rated their experience poorly compared to 41 per cent who had a positive experience and 38 per cent with a neutral experience.

Consumer welfare is not reduced by ticket reselling on viagogo

We do not believe consumer welfare is reduced by ticket reselling.

Our research shows that people use the secondary ticket market for a number of reasons – many out of necessity.

Buyers have typically missed out on tickets in pre-sale or general release. They might be attending an event out of town, only want tickets to a specific location in the venue, or have only heard about a concert or sporting event at the last minute. These people are typically happy to pay a premium to secure events that they consider ‘must see’.

Sellers are typically unable to attend an event due to unforeseen circumstances like a change of plans or diary clashes. This is not surprising when you consider many events are sold out many months in advance and no refunds are offered.

A free, open and transparent ticket resale market is in the interests of consumers. It provides a valuable mechanism to recoup the cost of unwanted tickets, while also providing protection against ticket fraud and the kind of scams that previously plagued the street corners outside venues.

The ticket resale market delivers a number of important benefits to consumers:

- The resale market provides a **safe and secure** place for people to sell tickets they no longer need.
- Ticket marketplaces provide consumers with **access and choice**. Tickets are almost always available on the secondary market, even if those tickets are sold out on the primary market. Resale markets provide a place for people to buy tickets to attend events that they consider to be ‘must see’ if they have missed the initial sale period. Secondary marketplaces also generally provide consumers with a large range of pricing and seating options.
- Secondary markets provide a system to recoup the cost of unwanted tickets. They offer consumers much needed **flexibility** in a primary market sector where they often have little recourse if something unexpected prevents them from attending an event. Adequate refund mechanisms for tickets are rare in the primary market. In many cases, the secondary market offers the only opportunity for consumers to recoup the expense of tickets they are unable to use.
- Formal resale market places provide much greater **consumer guarantees**. For example, viagogo extends the viagogo guarantee to all of our customers. This ensures that, if any problem arises, viagogo will step in to provide comparable replacement tickets or a refund. In addition to this, our customers can contact our customer

service support at any time.

When viagogo first started up in New Zealand it was new and different, and many consumers didn't understand it well. Time and experience have led to more people understanding our platform and using it with ease. **Our continued improvements to the website, investment in targeting bots, fraud and the ongoing improvement in the customer experience have all diminished the risk concerns noted in the past.**

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.

viagogo has significant concerns with the practices currently conducted by organisers and venues in the primary market.

Foremost, we believe that many of the terms and conditions that organisers purport to place on tickets, including limitations on resale, are inherently anti-competitive and are and should be unenforceable. Particularly because refunds are not provided, and tickets are sold so far in advance, any terms that restrict transfer of the buyer's rights are onerous, and lead to unfair results, like the inability to give tickets to others as a gift.

These anti-competitive practices are exacerbated by organisers who target and harass ticketholders at the gate out of a concern that ticketholders purchased tickets on the secondary market. This practice is unfair to buyers (either in the primary market or in the secondary market) without any economic benefit.

In addition, many sellers list tickets on our marketplace that they have received outside of, and before, the public sale.

Event organisers often pre-allocate tickets to a range of groups – season ticket holders, member clubs, travel/hospitality companies, sponsors, VIP's etc. – long before tickets officially go on sale to the public. That means a lot of people hold or have a valid right to a ticket they own well in advance of the general public. While we accept the right of these parties to reserve tickets in advance of public sale, this process leads many customers to overestimate the number of tickets available at public sale, and to have greater frustration about the public sale process.

We encourage and support any initiative or legislation that provides greater transparency of the primary market to reveal how many tickets are actually available to the general public.

Performers and promoters set the prices for public sale. If they desire a larger share of the profits, they have the ability to charge more for tickets. In the case of musical events or other entertainment events, promoters and artists control the supply, i.e. how many shows or performances are put on. They also decide how many tickets go on sale to the general public and how many to 'friends' and insiders. Sporting events can't do repeats, but they can and often do ensure up to 30 per cent or more of tickets are put aside that the public can't access.

The trend in the music industry around the world has been for artists to perform more and to charge more for tickets to balance falling revenue from album sales as Spotify and other

media cut into sales. Promoters, even in New Zealand regularly offer very expensive 'VIP' packages on the primary market. For a few extra hundred dollars you get early entry, front row seats, and a glass of wine and a programme/t-shirt etc. The cost of such 'VIP packages' are vastly inflated, of course, which goes into the pockets of the promoter.

Another argument against the MBIE suggestion that performers and promoters are being hurt in some way is the development of platforms such as Ticketmaster Platinum. This is a new development, in use in New Zealand, whereby the artists and promoters themselves sell the best tickets at top prices in the primary market. See platinum.ticketmaster.co.nz.

Note: *"These are not resale tickets. The prices are adjusted according to supply and demand, similar to how airlines and hotel rooms are sold. The goal is to give the most passionate fans fair and safe access to in demand tickets while allowing the artists and everyone involved in staging the events to price tickets closer to their true value."*

This adoption of secondary market-style dynamic pricing is a blatant admission that often prices are set too low. It's important to note that these are not VIP or corporate box tickets, just good seats being sold at higher prices.

What is the cost of Ticketmaster Platinum seats?

- For the Elton John gig at Forsyth Barr, 4th Feb 2020 in Dunedin, the Platinum tickets range from; \$640.50 - \$695.50 each. This price is even higher – and almost double – that of the VIP package offered by organizers at \$349.00, which is unusual given the VIP tickets are highly-coveted and generally in a better location than the Platinum tickets.
- For Fleetwood Mac at Spark Arena, 12th Sept 2019. Normal tickets \$139.90, VIP package from \$499.90, Platinum from \$249.20-\$660.10.¹¹

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?

Exclusive contracts in the primary market are bad for consumers. The vertically-integrated relationship between organisers, ticket providers, and arenas found at Spark Arena, where the organiser Live Nation also owns the ticket provider (Ticketmaster) and the Arena itself, limit the ability of consumers to get any price competition. One solution to this problem is to allow an open marketplace where different sellers could access the organiser's inventory of tickets and help fill demand while working with the organiser to authenticate tickets. This is how the travel industry currently works.

viagogo would be happy to work with primary market participants to make this market a reality.

Option 1: Status quo

8

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

¹¹ Ticketmaster Platinum website, April 2019

practices?

We believe existing consumer protection laws are effective.

As noted earlier, we also support greater transparency in the primary market, and in the secondary market if any new regulation or laws were applied equally across all participants, including informal market participants.

We also support stronger action taken in the primary market to prohibit the use of bots or computer software to acquire tickets above ticket purchase limits.

We believe these changes would improve outcomes and the user experience for consumers.

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 provides a competitive outlet for consumers to purchase tickets of their choice. This would be absent in a market without ticket resale. However, more needs to be done to drive collaboration and integration between the primary and secondary marketplaces. As we describe in our answer to question 7, moving to a market structure similar to the travel industry would promote competitive pricing and improve consumer protections.

Option 2: Price cap on resale tickets

10

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

viagogo's online ticket marketplace operates all over the world. This experience means that we have a unique view on the effectiveness of prices caps. Put simply, **price caps do not work. They foster an inefficient, informal market (like the one currently found on Facebook or TradeMe), which cannot be policed and results in higher prices with fewer protections for consumers.**

In addition, it is our experience that price caps are impossible to enforce and drain resources unnecessarily. Central to this is the acceptance that when legitimate, safe platforms like viagogo are shut down or put at a competitive disadvantage, the reselling of tickets does not stop but only moves to informal channels like TradeMe, fan websites, and the streets outside of venues where consumers have no rights or protections.

Further, moving the resale of tickets to the informal market will not result in cheaper prices. In fact, our experience shows it drives prices higher. A lack of transparency and limited options means consumers are unable to find the best possible deal.

It is true that some purchasers of tickets on the secondary market complain about the price when they reflect high demand. However, it should be borne in mind each of these purchasers had, on every occasion in question, a clear choice: whether to buy the tickets

for the stated price or to have no tickets for the event. To deny the secondary market leaves that person with no choice except with the latter option, that is having no tickets. It is very hard to see why that is in any way beneficial to these people or to anyone else.

Notably, despite the concerns about prices in numerous other categories of consumer goods (food staples, petrol, affordable housing, prescription drugs), price caps have not been introduced in these, more critical markets out of a concern for unintended consequences that such price caps would create.

Affordability and accessibility issues would be better addressed by requiring event organisers to put a higher proportion of tickets on-sale to the general public at a wider variety of price points.

11

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

As noted earlier, in many cases there is no 'original sale price', because tickets are allocated before public sale or priced dynamically on sites like Ticketmaster Platinum. We don't believe that the face value of a ticket is the primary driver of fan experience. Regulations seem keen to control profits in one part of the market but allow the other to make exorbitant returns at will.

We don't regulate profits for people who sell houses, cars or artworks, often for exorbitant mark ups of the original cost of production or purchase. Why are tickets worthy of market intervention? If the artists are really concerned about real fans suffering, they can release more tickets at the public sale, lower prices, or put on more concerts. They have all the power.

Further, as the example of Ticketmaster Platinum shows, the primary market also allocates extremely high prices to premium seats. We believe there may be a problem with competitiveness to regulate resale while not regulating 'VIP' or premium primary market prices and access to tickets. The secondary market provides a further limit on prices in the premium seat market, as well.

12

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

As noted throughout this document, price caps do not work. Our experience leads us to believe a price cap on tickets will not allow the Government to meet its stated objectives.

If ticketholders are not permitted to resell on established sites, they will move their resale activity to informal marketplaces that lack the transparency and means of customer redress of established resale platforms.

The government resources required to police informal markets (e.g. street corners, or Facebook groups) to maintain competitive fairness or enforce price caps is far higher than the benefit that consumers will receive.

13

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

Price caps do not work as we explain in greater detail earlier in this report.

Please see answers to q.11 and q.12.

Option 3: Greater information disclosure requirements

14

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

We support the suggestions outlined in paragraphs 88 and 89 of the discussion document. **In terms of secondary markets, we believe the information that must be provided is the same as that provided by the primary market sellers.**

Already, viagogo provides sellers with fields in which they can provide as much information as they have available regarding the details of the seat location and ticket category. We would note providing a face value for some types of tickets is not possible – it may be inapplicable or unavailable to the seller.

In addition, we provide some additional recommendations below.

1. Stamp out bot technology

First and foremost, we recommend prohibiting unfair tactics used to purchase tickets in excess of limits set by primary ticketing distributors to ensure all customers get a fair chance to purchase tickets. Specifically, **we recommend prohibiting the use of bots or computer software to acquire tickets above ticket purchase limits.**

We would also welcome moves to **prohibit the circumvention of ticket purchase limits in other ways**, for example, by the use of multiple credit cards, false names etc. to ensure any one individual is only able to purchase tickets up to the designated per person limit for the event.

2. Improve transparency

We also need to do more to improve transparency. Over and above what has been outlined below, we believe the following changes would help to achieve this:

- All resale transactions should be covered by a 'money-back' guarantee, and a commitment to find comparable tickets in case of an issue with the original seller.
- Event organisers should not be allowed to cancel tickets purely on the basis that they have been resold. Terms and Conditions on initial tickets that prevent resale should be deemed unfair.
- Platforms should not facilitate the sale of tickets for free events.
- Platforms should provide customer service support by phone and email, with minimum service level and response times.

15

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

We believe disclosure requirements should remain the responsibility of ticket sellers.

Ticket sellers often are the only individuals who have knowledge of the information required to meet disclosure obligations.

To help achieve greater disclosure, sellers who repeatedly refuse to comply with disclosure requirements should be prohibited from offering tickets for resale on resale platforms.

MBIE can produce a list of prohibited sellers that platforms can ban.

16

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

If placed on sellers, these costs should be low.

Resale platform development costs associated with publicising required disclosures will be modest, and is something viagogo is already doing.

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?

Bots are described under United States law as any software or device that circumvents “a security measure, access control system, or other technological control or measure on an internet website or online service that is used by the ticket issuer to enforce posted event ticket purchasing limits or to maintain the integrity of posted online ticket purchasing order

rules.”¹²

We believe that this definition has value because it acknowledges that bots include many types of algorithms, software devices, and even software assisted schemes to evade controls put in place in the primary market.

However, this definition is insufficient because in many instances the primary market has not invested sufficiently to reduce abuse by algorithms or bulk purchasers.

Bot activity can often, but not always, be detected. Some signs of bot activity include the mass purchase of tickets from the same server or using the same credit card/cards.

viagogo has invested significant resources in preventing bot activity and will continue to do so as this technology continually evolves. We would welcome cooperation with the primary market to stamp out bot technology.

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?

We support a ban on bots and already use technology to keep them from purchasing on our site.

We believe primary market ticket sellers are best-placed to enforce a ban on ticket-buying bots. Primary market sellers are best able to detect anomalous behaviour (e.g. numerous rapid sales to the same server/credit card) that are representative of bot behaviour. viagogo is committed to working with the primary market and with regulators to stamp out bot technology.

Option 5: Joint industry-government initiatives

19

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

We would welcome a greater level of industry-wide cooperation to deliver the best solutions for consumers. It is our strong view that targeting only one aspect of the ticketing sector will not deliver any meaningful change. We need reform across the board – across the whole ticketing sector.

We need a level playing field between the primary and secondary market. We would naturally expect that the transparency issues in the primary market, as well as primary market failures to invest in technology that would defend against fraudulent purchases would be addressed in any joint industry-government initiatives. If consumers require educational measures, or consumer guides as hinted, this must start by knowing how many tickets are available to the public.

We note with some concern that paragraphs 98 and 99 of the discussion document only reference the risks of the secondary markets with no mention of the primary market. We

¹² 15 USC 45c(2)(a)(1)(A).

would naturally expect that the transparency issues in the primary market and primary market failures to invest in the technology that can defend against fraudulent purchases would be addressed in any joint industry-government initiatives.

We are willing to work together with Government and the primary ticket market to develop an industry code of practice.

In regards to your summary of the advantages and disadvantages to such a code in paragraph 102 of the discussion document we agree that such a Code would not be a panacea (we accept that there may not be an obligation to take a common approach), but we do believe agreeing to joint initiatives or a code would lead to meaningful outcomes for consumers.

A code would effectively ensure that everyone is playing by the same rules, delivering clear competition benefits. It would also provide a low cost and effective way for the Government to meet its objectives without creating onerous regulatory hurdles.

20

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

We would welcome the opportunity to participate in any industry panels or forums with the sector or government.

Any other comments

We welcome any other comments that you may have.

MBIE Survey Data. Unfortunately, we must raise question of both the scientific value and the presentation of the MBIE commissioned survey noted in Appendix 2.

The survey population of 1,000 people that Colmar Brunton used would normally offer a valid outcome. Unfortunately, the fact that only 21 per cent of the sample had ever participated in the secondary market drastically reduced the value of the survey. A survey of 210 people should probably not be used in public policy evaluation, or if used, should be made clearer.

Further, the data was then diluted even further and, again, this fact not made clear. The survey noted that only 2 per cent of the 210 participants had used viagogo. **2 per cent of 210 people would result in 4 or 5 in total.** 4-5 respondents is hardly a representative sample size from which to draw responsible assumptions. We are very disappointed that, using this basis, MBIE could make the following comments.

“When comparing the purchase experiences against the resale avenue, negative experiences (rating of 1 or 2) were much more common for those using viagogo (sixty per cent), followed by Facebook (thirty-three per cent), Trade Me (eighteen per cent) and Ticketmaster Resale (thirteen per cent).”

And;

“When compared against the ticketing reselling avenue used to purchase resale tickets, Graph 4 shows that more people than the average (sixty-seven per cent) were supportive of further regulation if they had purchased tickets using viagogo (eighty-six per cent), whereas less people were supportive of further regulation if they had purchased tickets using Facebook (fifty-three per cent).”

We also question the significance of the claim that 67 per cent of the people surveyed would support “further regulations around ticket reselling.”

As a foreign secondary market platform, we are aware that our business is misunderstood. We have been working to build education and awareness about ticket resale and how we do business. This lack of awareness is apparent in that only 21 per cent have participated in the secondary market yet a full 67 per cent of respondents believe they want more regulation. We believe that this discrepancy draws more from a lack of understanding of the market than from a desire for more regulation.

Further, the phrase “more regulation” is open-ended. This could mean anything from requiring additional disclosures to the heavy-handed market caps that have been imposed in Australia. There was little exploration of what this phrase meant.

To provide an alternative perspective, an Opinium Research LLP¹ survey of 1,000 Irish consumers found:

- Two thirds of those surveyed (67 percent) had purchased tickets for live entertainment or sporting events in the last twelve months. Almost half (48 per cent) had bought these tickets online, a quarter (24 per cent) from a ticket broker and a fifth (18 per cent) bought tickets in person.
- Over a third (37 per cent) bought tickets for an event but discovered that they were later unable to attend. Out of these non-attenders a third (33 per cent) offered them to a friend or relative for free, and eighteen per cent offered free tickets to somebody else. Over a quarter (28 per cent) of these adults resold the unused tickets.
- Although over three quarters (78 per cent) had never resold any tickets, 12 per cent had sold tickets in person to another individual, a tenth (10 per cent) had sold through an online market place and 2 percent to a broker.
- Two fifths (40 per cent) had looked for alternative ways to buy tickets. The top alternative tactics these adults employ to find tickets are to ask friends and family (fifty-five per cent) over half (52 per cent) have browsed online marketplaces or classified websites have searched on social media; and 51 per cent via social networks.

Consumer New Zealand ‘Survey’. Further on P17, MBIE makes a statement which is quite misleading. It notes *‘However, Consumer New Zealand undertook a survey into the ticket resale industry in 2017’*. However, this ‘survey’ was both biased and unscientific. It was worded as follows:

‘Ms. Chetwin says it’s particularly interested to hear examples of:

- *Exorbitant or inflated ticket prices*
- *Fake tickets*

- *Seats not being as described*
- *Fans being denied access to venues*
- *Tickets not being delivered*
- *High fees*
- *Incorrect credit card charges*
- *Poor customer service*¹³

Still, even when the bias is so explicit, consumers' results were not that shocking. Only 54 per cent of them paid more than face value of the ticket.

¹³ Consumer New Zealand, 20 April 2017; *'Consumer investigating ticket resellers'*