

**Submission
No 2**

INQUIRY INTO FAIR TRADING AMENDMENT (TICKET RESELLING) BILL 2014

Organisation: Ticketek
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The Director
General Purpose Standing Committee No. 4
Legislative Council
Parliament House
Macquarie Street, Sydney NSW 2000.

Dear Sirs

INQUIRY INTO FAIR TRADING AMENDMENT (TICKET RESELLING) BILL 2014

Thank you for the opportunity to provide a submission to this important inquiry. As the leading supplier of ticketing services in the sports and live entertainment industry in Australia, Ticketek has prepared this submission to express its support of the introduction of the proposed Division 6 into the *Fair Trading Act 1987*.

Background

Ticketek has over recent years expressed its concerns in relation to the growing incidence of unauthorised online ticket reselling. Ticketek's position is that if allowed to continue, the unauthorised resale of tickets online will have significant detrimental effects on the availability and enforceability of tickets to consumers and result in reduced concert revenue for artists, performers, sports clubs and the wider industry. Without intervention such as that proposed by the NSW government, the practice of the unauthorised reselling of tickets will increase and ultimately have profound consequences on the live performance industry in Australia, similar to the effects internet downloads have had on the music recording industry. Ticketek strongly supports the introduction of the proposed legislation in NSW.

Summary of Ticketek's position

Ticketek considers that the existing consumer regulatory framework in Australia is inadequate to protect consumers from unfair trading practices. Ticketek supports the introduction of legislation such as the proposed NSW amendments to the *Fair Trading Act 1987* to respond to these unfair practices.

Ticketek believes that the proposed legislation will successfully impact on the activities of unauthorised online operators in the secondary market. It correctly targets the sellers of tickets, not the buyers. Ticketek does not consider that the proposed legislation will impose any significant burden on any participants in the industry.

Ticketek considers that free market industry solutions do not work in addressing the many issues confronted by the industry as a result of the increase in the unauthorised reselling of tickets. We believe the key issues are that:

- The growing secondary market diverts monies away from legitimate operators in the industry such as the artists and sporting bodies; and

- there is significant consumer detriment arising from the operation of unauthorised secondary ticket sellers as genuine fans are required to pay inflated ticket prices and exorbitant fees to the operators of such sites, and may end up with invalidated tickets.

Current difficulties in enforcing resale conditions

- Ticketek sells over 18 million tickets to more than 20,000 events each year, including concerts, sports, theatre, musicals, festivals and exhibitions. It is a condition of sale of **each** Ticketek ticket that the ticket must not be resold for profit. Whilst Ticketek has notified many of the unauthorised ticket resellers, in writing, that each Ticketek ticket is subject to a resale condition, the operators of these sites have not cooperated with Ticketek's requests to remove the listing of its tickets; despite being on notice that the sale amounts to a breach of contract between the event organiser and the consumer. Whilst Ticketek tickets continue to be listed on such sites, Ticketek and the event organiser have little effective recourse against the operators of the sites other than by cancelling the tickets in question. However, because the unauthorised resellers take measures to avoid detection by failing to disclose ticket specifications (such as seat and row details) when listing tickets for sale, and because in most cases the operators of these sites maintain the anonymity of the scalper of the ticket, it is increasingly difficult for Ticketek to in fact cancel these tickets.
- Even where tickets are able to be cancelled, Ticketek considers that this practice punishes the consumer who has purchased the ticket from the unauthorised reseller, while the reseller suffers no detriment and typically retains the profit. Cancelling tickets causes a negative impact on the relationship between consumers and event organisers, the authorised ticketing agencies and venue operators.
- The proposed NSW legislation will provide a far more effective means to combat the practice of unauthorised online ticket selling than is currently available to ticketing agencies and event organisers. It is appropriate that the legislation will impose penalties on the operators of such sites rather than focussing on measures which impact consumers (such as invalidating tickets).

The proposed legislation correctly distributes the onus of compliance

Ticketek considers that:

- it will be very straightforward for ticketing agencies to modify their current resale conditions to ensure that they comply with the 'resale condition' contained in the proposed legislation;
- there is no detriment to consumers who wish to list their tickets on online reselling sites in having to comply with the proposed legislative requirements in regards to displaying seat and other details, nor to include a photograph of the tickets. In Ticketek's experience, many ticket resellers currently display photographs of the tickets they wish to sell (albeit with seat details deliberately obscured);
- it is appropriate for the legislation to impose the onus on an operator of a resale site to take reasonable steps to ensure it is not displaying an unauthorised advertisement. These sites are earning considerable commissions and fees from the sale of such tickets and like any business, should be required to establish systems to comply with consumer protection measures such as those which would be imposed by the proposed NSW legislation;
- the legislation will not impose any unfair onus on event organisers to monitor compliance. Event organisers are able to 'nominate' a person to liaise with the forum/online reseller.

Ticketek believes that consistent with current practice, it would continue to be engaged by event organisers to deal with the problem of unauthorised ticket sales. Ticketek would be pleased to assist event organisers in taking the steps required by the proposed legislation; and

- the legislation correctly targets ticket sellers not buyers, and correctly targets organised resellers rather than smaller scale opportunistic scalpers.

Why legislation is necessary

Ticketek continually looks at ways in which it can reduce the unauthorised resale of tickets. Even though Ticketek:

- invests heavily in anti-bot technology;
- has established, in conjunction with event organisers, fan-to-fan based marketplaces;
- delays the dispatch of tickets to certain popular events;
- limits the number of tickets available for purchase in a single transaction or on a per-customer basis;
- tries to educate consumers as to the risks of buying tickets through unauthorised sellers through channels such as social media;
- has installed real-time fraud prevention software to detect suspicious transactions;

it considers that regardless of all such efforts its ability to counter the consumer detriment and the industry detriment resulting from the unauthorised resale of tickets is significantly thwarted without strong and practical legislation behind it. Ticketek believes that once introduced, the NSW legislation would provide Ticketek with a powerful basis on which it could educate consumers as to the regulation of the industry and on which it could enforce its anti-resale condition.

Ticketek currently commits significant time and resources to the activities listed above in an effort to prevent, deter and police unauthorised resale activities. Whilst Ticketek continues to register a number of successes, the increasing number and sophistication of online resellers combined with the lack of an effective legal framework renders these activities largely tokenistic. We would therefore welcome the legislation.

Lack of legislation creates an unsafe environment

Without legislation, in an environment where the only viable option available to event organisers is to cancel tickets, it is also submitted that refusing entry to those using 'scalped' tickets also impacts adversely on the safety and welfare of venue staff. Increasingly when tickets have been cancelled, hostility escalates into heated and volatile situations as disgruntled consumers take frustrations out on staff and other patrons. This creates an unsafe environment for those having to enforce the legitimate rights of the promoters and artists and places staff and patrons at risk of violence.

Ticketek has had experiences with frustrated and hostile Viagogo customers who have attempted to enter events such as the recent Ashes series and the Australian Open, with cancelled tickets, invalid tickets, tickets which had already been used/scanned in to the venue, tickets which were incorrectly described (in terms of location/restricted viewing), and tickets which were issued for seats which did not exist. In a number of cases Viagogo customers have approached venue box offices because their Viagogo tickets had not arrived. Ticketek has also observed consumer complaints arising from poor Viagogo experiences appearing on sites such as trustpilot.com.

A recent example of the unauthorised reselling of tickets online was reported in the media on October 10 2014¹. An individual printed 60 copies of his ezyTicket to an event at the Enmore Theatre and sold the invalid tickets to a range of consumers using the online site Gumtree, who were then unable to enter the event. Reports indicated that some defrauded consumers had travelled 2 hours to attend the event, highlighting common frustrations experienced as a result of the unauthorised online ticket sales.

Ticketek believes the legislation will assist in minimising these poor consumer experiences.

Social policy support for the legislation

At present, promoters and artists willingly forgo potential profits where there are important social objectives in underpricing tickets. Unauthorised reselling reduces the social benefits underpinning underpricing and merely results in this lost profit dividend being recouped by individuals and organisations who are not responsible for creating an artistic event or sporting fixture, and bear no risk in promoting or financing an event. These organisations have not paid for the right to provide ticketing services to venues and promoters.

As many tickets are deliberately underpriced by event organisers to facilitate greater access for the general public, scalpers can easily sell tickets above their face value via unauthorised online sites. This practice undermines the important social considerations in pricing tickets and result in higher end prices for consumers and limited access to events for genuine fans.

Unauthorised ticket reselling also undermines public confidence in the ticketing system generally as large volumes of tickets to “sold out” events appear for sale on the websites of unauthorised ticket sellers, immediately after tickets are released for sale. Scalpers have developed sophisticated software to manipulate online ticketing systems and purchase tickets in large quantities, contrary to public policy interests of fair access to affordable tickets.

As the incidence of online scalping increases, the proportion of total tickets resold through unauthorised resellers will continue to increase, resulting in practice in a higher proportion of scalped (and dynamically priced) tickets being offered to consumers and less retail priced tickets available to the general public.

Ticketek believes that the proposed legislation will assist in enabling the practice of underpricing to be maintained.

Action Sought

As Australia’s largest ticketing agency, Ticketek strongly supports the proposed legislation.

By introducing these reforms to prohibit the sale of tickets for profit through unauthorised ticket resellers, the practice of scalping will be significantly reduced and the important social considerations underpinning underpricing can be maintained.

If no government action is taken, online ticket reselling will continue to grow until it has a material effect on the pricing and culture of all live entertainment. The industry may be forced to move to a dynamic pricing model in response, which will lead to higher priced live events, less live events and disadvantage to the wider community.

Ticketek appreciates the opportunity to participate in this process and would welcome the opportunity to discuss this submission further.

Chris Forbes
Managing Director

Kate Cooper
General Counsel

Dated 29 October 2014

¹ <http://www.news.com.au/entertainment/music/alex-ferrero-the-ticket-scammer-who-is-defrauding-music-and-sports-lovers-of-thousands-of-dollars/story-e6frfn09-1227086558688>