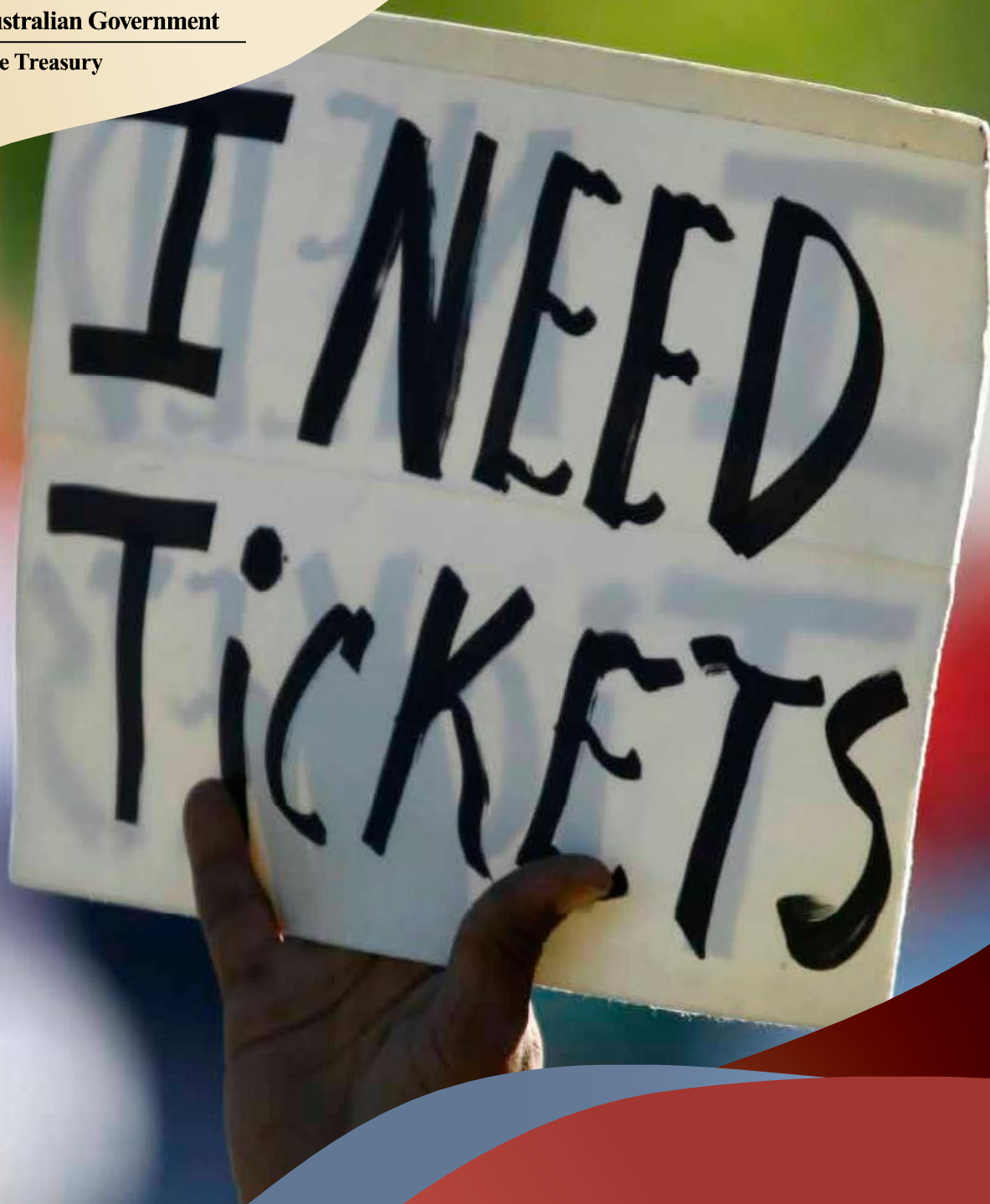




Australian Government

The Treasury



Ticket scalping

Ticket onselling and consumers

Issues Paper

May 2010

Ticket scalping: Ticket onselling and consumers

Issues Paper

May 2010

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FOREWORD

The Commonwealth Consumer Affairs Advisory Council (CCAAC), assisted by NSW Fair Trading, is conducting a review into ticket onselling and its impact on consumers. As part of the review, CCAAC will examine current practices related to ticket onselling and consider possible marketplace responses, including both regulatory and non-regulatory options, and their cost and effectiveness.

Concerns about ticket onselling are raised by consumers from time to time, especially when they are unable to access tickets to their favourite sporting event or concert. Consumer dissatisfaction can be created when large numbers of tickets are obtained for onselling, either legitimately or through other means, resulting in consumers being unable to obtain tickets. Consumer detriment can arise when consumers buy on-sold tickets which are counterfeit, or are worthless when organisers cancel tickets which have been sold in breach of their terms and conditions. These unauthorised onselling practices are often called ‘ticket scalping’.

When there is strong demand for tickets, the existence of ticket onselling can be seen as a sign of a well functioning market. It can provide benefits to consumers by allowing tickets to be available to those who were unable to acquire them from the original distributor, or to let consumers access tickets later than they might have otherwise been able to. Onselling can also provide a means to sell tickets for those who cannot receive a refund.

In Australia, generic consumer protection laws which include the *Trade Practices Act 1974*, together with State and Territory fair trading legislation, provide the overarching framework for protecting consumers when they purchase goods and services. Additionally, some States and Territories have activity-specific laws to regulate ticket onselling in some circumstances. Further protection is afforded to consumers by industry-led responses undertaken to address onselling issues, such as the modification of ticket distribution strategies.

The aim of this paper is to establish whether ticket onselling practices create significant problems for consumers, and if so, to identify the best ways to help address those problems. In exploring these issues, the paper seeks to gather views relating to ticket onselling from a range of stakeholders.

I offer my thanks to CCAAC for the preparation of this paper. I welcome the views of all those interested in, and concerned with, consumer policy in Australia.



Colin Neave
Chairman, Commonwealth Consumer Affairs Advisory Council

THE COMMONWEALTH CONSUMER AFFAIRS ADVISORY COUNCIL (CCAAC)

CCAAC terms of reference

CCAAC is an expert advisory panel, which provides advice to the Minister for Competition Policy and Consumer Affairs on consumer policy issues.

CCAAC's terms of reference are to:

- consider issues, reports and papers referred to it by the Minister and report to the Minister on their consumer policy implications, and in doing so take account of the need for well-functioning markets with confident consumers;
- identify emerging issues affecting Australian markets and consumers and draw these to the attention of the Minister; and
- when considering consumer policy issues, take account of their competition and other relevant economic implications.

Membership

The membership of CCAAC consists of:

- Mr Colin Neave (Chair);
- Ms Carolyn Bond;
- Professor Stephen Corones;
- Ms Deborah Healey;
- Mr Michael Malone;
- Mr Gordon Renouf;
- Mr Ray Steinwall; and
- Mr Peter Kell (*ex officio*).

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REQUEST FOR COMMENTS

The Commonwealth Consumer Affairs Advisory Council has developed this issues paper, ***Ticket scalping: Ticket onselling and consumers*** to:

- raise issues about the practice of ticket onselling in Australia; and
- seek public and stakeholder comments in relation to this practice.

Responses are requested by 5:00pm on Friday 23 July 2010 and can be submitted to:

CCAAC@treasury.gov.au

or

CCAAC Review of Ticket Onselling
Competition and Consumer Policy Division
Treasury
Langton Crescent
PARKES ACT 2600

Phone: 02 6263 2111

Fax: 02 6263 3964

Confidentiality

It will be assumed that submissions are not confidential and may be made publicly available on the Treasury website (<http://www.treasury.gov.au>). If you would like your submission, or any part of it, to be treated as 'confidential', please indicate this clearly. A request made under the ***Freedom of Information Act 1982*** for a submission marked confidential to be made available will be determined in accordance with that Act.

GLOSSARY

ACL	Australian Consumer Law
CCAAC	Commonwealth Consumer Affairs Advisory Council
FTA	Fair Trading Act of a State or Territory
MCCA	Ministerial Council of Consumer Affairs, made up of Ministers responsible for consumer affairs from the Australian, New Zealand and state and territory governments.
TPA	<i>Trade Practices Act 1974</i>

CHAPTER 1: INTRODUCTION

ABOUT THE REVIEW

On 4 December 2009 following consumer concerns raised by the NSW Minister for Fair Trading, the Hon Virginia Judge MP, the Ministerial Council on Consumer Affairs (MCCA) requested that the Minister for Competition Policy and Consumer Affairs, the Hon Dr Craig Emerson MP, invite the Commonwealth Consumer Affairs Advisory Council (CCAAC) to examine issues related to the practice of ticket onselling. CCAAC agreed to conduct the review with the assistance of NSW Fair Trading. CCAAC, under its terms of reference and having regard to MCCA's interest in this issue, will examine the practice of ticket scalping and possible responses including, if any, legislative options and their cost and effectiveness.

CCAAC will consider:

- whether there is consumer detriment and, if so, the level of detriment posed by ticket onselling practices;
- the views of stakeholders affected by ticket onselling practices, including consumer groups, ticketing organisations, auction/reselling websites, and peak sporting and live entertainment bodies;
- actions currently undertaken by industry that seek to limit ticket purchasing by scalpers for re-sale;
- the identification of any non-regulatory options that could address any harmful practices arising from ticket onselling practices;
- the effectiveness of consumer information to address any consumer detriment associated with ticket onselling practices;
- the effectiveness of current legislation related to ticket onselling practices;
- the impact of technology on ticket onselling practices; and
- the effectiveness of international approaches that address any consumer detriment related to ticket onselling and the appropriateness of these approaches for the Australian marketplace.

CONTEXT OF THE REVIEW

This paper seeks to explore issues relating to ticket onselling practices in the context of consumer protection. Ticket onselling can take the form of both authorised and unauthorised methods. Consumer detriment and dissatisfaction is often focused around incidences of ticket scalping, which is a form of unauthorised ticket onselling.

The entertainment and sporting events industries form a substantial part of the economy. For example, in 2006-07 the box office sales in the performing arts industry alone amounted to \$356 million.¹ Throughout the last ten years significant work has been undertaken in relation to ticket onselling by state and territory governments and industry bodies.² The development of the internet and new technologies has revolutionized ticket onselling, often replacing secondary agents (called ‘scalpers’³ or ‘touts’) outside event venues.

While it is difficult to establish a clear picture of the true level of consumer complaint or detriment caused by ticket onselling, it appears the incidence of complaints from consumers to fair trading agencies is relatively low. There is a tendency for complaints to spike when consumers are unable to access tickets to a highly sought-after event. The limited capacity of event venues means that for popular events there will often be people who would like to attend the event that miss out on tickets.

In 2005, a UK Office of Fair Trading report explored the practice of ticket onselling and found that consumer concerns about ticket purchases were focused on the following:

- the payment of additional fees, such as administrative costs, charged by primary ticket agents (that is, agents who have agreements with event promoters to sell tickets);
- key information is often not displayed in advertisements and only available late in the buying process;
- concern about a range of service issues, such as their rights following the cancellation of an event or the non-delivery of tickets; and
- a high level of concern about the activities of secondary agents (that is, agents who obtain tickets from a range of sources for resale to the public at a price the market will bear).⁴

1 Australian Bureau of Statistics 2009, *Arts & Culture in Australia: A Statistical overview*, see <http://www.abs.gov.au/AUSSTATS/abs@.nsf/0/9B40CE66B0322300CA2576550013FA7D?opendocument>.

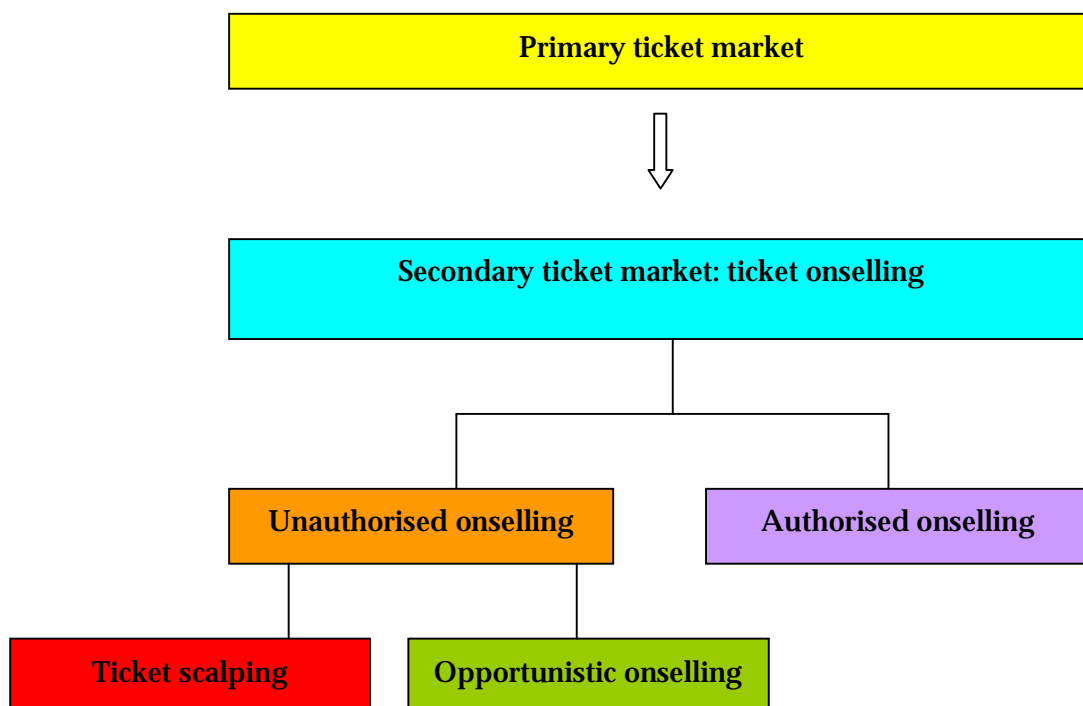
2 See, for example, Sport and Recreation, Victoria 2001, *Controlling Ticket Scalping and Improving Major Event Ticketing Practices, A Discussion Paper*, Victoria.

3 A scalper is a seller who buys something (esp. a ticket) at a face value (or less) and then tries to resell it for a higher price: Garner, B 2004, *Black's Law Dictionary Eighth Edition*, United States of America.

4 Office of Fair Trading 2005, *Ticket agents in the UK*, UK.

Terms used to describe and explain what is occurring in the market in relation to ticket selling and onselling vary and so, for the purpose of consistency and clarity, this paper will use the following definitions:

- 'Ticket onselling' is the practice of selling a previously purchased ticket. Tickets can be on-sold with or without the authorisation of the performer or event promoter;
- 'Authorised onselling' is the practice of onselling tickets with the authorisation of the performer or promoter. This includes authorised secondary agents, individuals and vendors who on-sell tickets in accordance with the terms and conditions outlined on the ticket;
- 'Unauthorised onselling' is the practice of onselling tickets without the authorisation of the performer or promoter;
- 'Opportunistic onselling' is the unauthorised onselling of a ticket that was originally obtained for personal use; and
- 'Ticket scalping' is the unauthorised onselling of tickets usually at a price higher than the ticket's original face value, and purchased with the intention of making a profit.



CONSULTATION PROCESS

CCAAC is seeking the views of interested stakeholders on the practice of ticket onselling and possible responses to any consumer detriment, including both regulatory and non-regulatory options, and their cost and effectiveness.

This issues paper is intended to highlight some of the key issues to assist organisations and individuals preparing submissions. However, submissions are welcome on any issues relevant to ticket onselling, including those not explicitly covered in this paper.

The issues paper is structured to draw upon a range of views — Chapter 2 explores the primary market and the creation of the secondary market. Chapter 3 questions the impact of ticket onselling on consumers and suppliers, while Chapter 4 outlines both regulatory and non-regulatory responses from an Australian and international perspective.

CHAPTER 2: CURRENT MARKET FOR TICKET SELLING AND ONSELLING

The market for the sale and purchase of event tickets can be divided into two main categories — the primary ticket market and the secondary ticket market. Broadly, in the primary market tickets are originally released and sold at their face value, whilst in the secondary market tickets are on-sold at a higher price, lower price or at their original face value. The methods for distributing tickets in both the primary and secondary market, as well as the existing reasons for a secondary market, are outlined below.

PRIMARY MARKET

In the primary market tickets are first released at their original face value. Tickets in this market can be sold in a variety of ways, for instance, by the performer or event promoter or through an authorised ticket agent (in person, over the phone, at the box office or online), with the method of sale used generally depending on the motives of the performer or promoter.

A decision to buy tickets in the primary market varies amongst individuals, for instance, some exert great effort to attend an event such as fans who queue all night to obtain tickets for personal use or to on-sell them at a higher price. Others bypass the primary market to buy in the secondary market where onselling occurs.⁵

Distribution methods

Tickets in the primary market are distributed through a variety of methods, including by the promoter or performer themselves, through authorised ticket agents (like Ticketek or Ticketmaster), at the box office or online through an authorised agent.

Technology is increasingly used by promoters to distribute tickets and to address concerns about unauthorised onselling. For example, with ‘virtual tickets’ no physical tickets are actually issued and ticket holders simply swipe their credit card or driver’s licence upon entering the event venue. If they want to resell their ticket, they must go to a dedicated website where their ticket can be sold for whatever mark-up is allowed by the event organiser. The organiser then cancels the virtual ticket and issues a new one to the purchaser.

A 2009 Miley Cyrus concert tour was the first major concert tour to rely exclusively on virtual tickets. Tickets were difficult to sell or transfer because they could be redeemed only at the concert using the credit card with which they were bought. Ticketmaster also offered

5 Leslie, P and Sorensen, A 2009 *The welfare effects of ticket resale*, Stanford University.

prime seats as part of premium packages that included other benefits, allowing the Ms Cyrus and Ticketmaster to capture revenue that normally flows to scalpers.⁶

What is a 'ticket'?

A ticket confers on the purchaser a right of entry to a venue for a specific duration. The ticket is usually printed on paper or cardboard. The right of entry may be subject to certain conditions, such as the event promoter or venue operator being able to refuse entry to the ticket holder if the ticket holder is not the original purchaser or if the ticket has been resold at a premium. While some may argue that a ticket should be able to be bought, passed on, transferred or resold like any other consumer good, the alternative view is that a ticket is not a tradeable commodity but evidence of a contract between the promoter and the original ticket purchaser.

SECONDARY MARKET

In the secondary market tickets that were previously purchased in the primary market are on-sold for a profit, at a loss or at their original face value. This market includes both the authorised and unauthorised onselling of tickets.

Onsellers

Individuals or businesses who engage in the sale of tickets in the secondary market are ticket onsellers. Ticket onsellers can be authorised or unauthorised. Onsellers assume a degree of risk which would otherwise be borne by the original seller in the primary market. This may occur as a ticket onseller may be unable to on-sell the ticket for a profit or may be unable to on-sell the ticket at all.

Authorised onsellers

Authorised onsellers are individuals, businesses or their agents, who are authorised by performers or event promoters to buy tickets in the primary market and on-sell them. Authorised onsellers often include ticket brokers and ticket agencies, like Ticketmaster and Ticketek, but can also include individuals who on-sell tickets according to the promoter's terms and conditions for resale.

Unauthorised onsellers

Unauthorised onsellers engage in the practice of onselling tickets without the authority of the promoter. The use of online sites and auction websites has provided easy access for individuals to engage in the practice of unauthorised ticket onselling. Different forms of unauthorised onselling exist and they vary depending on the motive of the onseller.

6 Smith, E 2009, 'Going 'paperless' to thwart scalpers' *The Wall Street Journal* viewed at <http://online.wsj.com/article/SB124441789931592507.html>.

There are two types of unauthorised ticket onsellors; ticket scalpers who buy tickets and on-sell them, often at inflated prices with the intention of making a profit, and opportunistic onsellors who on-sell tickets originally purchased for personal use.

Causes for the secondary market

The existence of the secondary market and the practice of ticket onselling can arise for a number of reasons, which include underpricing, advanced ticket sales and methods of distribution by promoters.

Underpricing

Some economists argue that onselling arises due to the practice of underpricing. Tickets are underpriced when performers or event promoters set the ticket price below what market demand will support. Uncertainty over initial sales can lead to a preference for underpricing rather than promoters or vendors bearing the risk associated with overpricing. When underpricing occurs this creates possibilities for a secondary market for tickets where prices are often set higher than their face value.⁷ In addition, where an event has been sold-out, the secondary market attracts and serves people who missed out on tickets initially and are willing to pay more than the original price to attend the event. In this respect, the concept of profit maximization can be very attractive to promoters and can create profit opportunities for onselling to occur.⁸

Promoters may choose to underprice tickets for a variety of reasons, such as:

- to maximise long-term revenue by retaining the loyalty of existing fans, increasing the fan base and maintaining goodwill;
- to lower risk by ensuring that tickets are priced to attract greater demand and to attract onsellors (who assume a degree of risk);
- to sell-out events to generate reliable revenue, positive publicity⁹ and added ambience at the event; or
- to secure other associated benefits often related to sell-out events, such as television rights, merchandise sales¹⁰, sponsorship and food and beverage sales.

In the past, record sales were the main source of revenue for the music industry. However, as a result of music piracy and downloaded music, the business of selling tickets to attend live music events has now become the main source of revenue for the industry.¹¹ This usually means that for stakeholders involved in music events, such as artists, promoters, venue

7 Depken, CA 2006 'Another look at anti-scalping laws: Theory and evidence', *Public Choice* Vol 130, pp 55-77.

8 Courty, P 2003, 'Some Economics of Ticket Resale', *Journal of Economic Perspectives* Vol 17 No 2, pp 85-97.

9 Live Performance Australia 2006, *Ticket Scalping Discussion Paper*, Victoria p 5.

10 Seabrook, J 2009, 'The price of a ticket' *The New Yorker*, pp 34-42.

11 Seabrook, J 2009, 'The price of a ticket', *The New Yorker*, p 34.

operators and ticket agencies, the common goal of achieving a sell-out event is an important concern, even if this may lead to ticket onselling.

Advanced ticket sales

A secondary market for tickets can also arise when tickets are sold in advance of the event performance. It has been suggested that onselling is inevitable as long as there are advance ticket sales for big-time events and there is pressure from fans to keep prices affordable to the general public.¹²

Advanced ticket sales occur when promoters make tickets available early in the primary market to satisfy consumers who value planning and would not attend if they are unable to know that they can secure a seat.¹³ Advanced sales also allow consumers who are able to access advanced offers to plan ahead and purchase tickets before their general release in a less competitive environment. When high demand is expected, the early release of tickets by authorised sellers to members and subscribers creates opportunities for onsellors to buy up tickets during the advanced sale stage for future onselling.

Distribution methods

The secondary market for onselling is also stimulated by the ticket distribution methods adopted by event promoters in the primary market. For example, sporting bodies routinely allocate a significant number of tickets to those associated with the game, such as sponsors, licensees, umpires, club members, members of the event venue and media, which can lead to these tickets being onsold if the holder does not wish to attend the event.

Promoters and sporting bodies are also increasingly reliant on the revenue from selling large numbers of tickets to hospitality and travel companies, for incorporation into 'premium' ticket packages that include accommodation, travel, meals, 'meet and greet' and/or other experiences. Many of these tickets, however, find their way into the hands of onsellors, with the scarcity of tickets available to the general public in the primary market creating a ready market for onselling (the secondary market). Onsellors may then package tickets with other goods or services, such as meals or accommodation, which disguise the mark-up on the ticket price.

It is also worth noting that performers may hold back certain quantities of tickets for sponsors, management, family and friends. This contributes to the shortage of tickets in the primary market and increases opportunities for profit-seeking activities in the secondary market.

12 Happel, SK, and Jennings, MM 1995, 'The folly of anti-scalping laws', the *Cato Journal* Vol 15 No 1.

13 Courty, P 2003, 'Some Economics of Ticket Resale', *Journal of Economic Perspectives* Vol 17 No 2, pp 85-97.

Methods for obtaining tickets

Onsellers who obtain large quantities of tickets in the primary market create an artificial scarcity of tickets and push up prices. They use a range of methods to secure large quantities of tickets, including premium tickets, in the primary market. These include:

- using the onseller's network of ticket contacts, including season ticket holders and individual ticket onsellors;
- using contacts inside authorised ticketing agencies, which may allow them to gain tickets via 'back-door' methods;
- using automated software in an attempt to obtain large numbers of tickets in the first moments of internet sales; and
- obtaining pre-sale computer codes from members of fan clubs, and using these to book pre-sale tickets.

Issues

1. Should tickets be able to be returned for a refund, transferred or resold? If so, under what conditions?
2. Some ticket sellers in the primary market place conditions on the transfer and resale of tickets. How should these conditions be set out? Which ticket formats make these conditions clear?
3. Should the onselling of tickets be more closely monitored? If so, should all kinds of onselling be monitored or only some? How could onselling be monitored, and who would monitor it?

CHAPTER 3: THE IMPACT OF TICKET ONSELLING

Ticket onselling can have positive and negative impact on the market, consumers and suppliers. The challenge is to balance fair access to tickets for consumers, with the desire of organisers to control pricing while capturing potential revenue. Accordingly, measures to control the practice of ticket onselling may have consequences for the market, consumers and suppliers.

IS THERE A MARKET FAILURE?

A free-market economy emphasises the benefits of markets behaving in a way in which resources are allocated efficiently. The efficient allocation of resources is critical in maximising consumer welfare. When this does not occur, a market failure exists. In relation to ticket sales, a market failure may arise from information asymmetry between sellers and buyers, or when tickets are allocated to consumers without regard to the value they place on attending the event. For instance, an information asymmetry may arise when consumers lack adequate information about the quality of the product on offer, such as viewing location for the seats on offer.

Market clearing

From an economic perspective, the secondary market operates according to basic economic principles where market forces generate price movements to bring quantities demanded for tickets in balance with quantities supplied. This is called 'market clearing'. Economic analysis¹⁴ assumes that the excess demand for a scarce good, such as the number of tickets to a one-off or limited capacity event, creates an opportunity for suppliers, that is, ticket sellers, to raise prices. This profit-seeking adjustment allows the market to be cleared naturally.

Allocative efficiency

According to welfare economics¹⁵, voluntary trade in the secondary ticket market results in a more efficient allocation of resources, and increases social welfare in the form of attendance at an event. Ticket onselling results in a redistribution of scarce resources when on-sold tickets are purchased by consumers who are willing to pay a premium to secure a seat.¹⁶ This economic argument suggests that onselling usually increases efficiency because it channels tickets to consumers who value them the most.¹⁷ Efficiency gains are obtained through this

14 Griggs, L 2006, 'Ticket scalping – its legal and economic effects on the illusion of perfect innocence', *Griffith Law Review*, Vol 15 No 2, Courty, P 2003, 'Some Economics of Ticket Resale', *Journal of Economic Perspectives* Vol 17 No 2, Leslie, P and Sorensen, A 2009, *The welfare effects of ticket resale*, Stanford University.

15 Leslie, P and Sorensen, A 2009, *The welfare effects of ticket resale*, Stanford University.

16 Griggs, L 2006, 'Ticket scalping – its legal and economic effects on the illusion of perfect innocence', *Griffith Law Review*, Vol 15 No 2, p 299.

17 Courty, P 2003, 'Some Economics of Ticket Resale', *Journal of Economic Perspectives* Vol 17 No 2, pp 85-97.

reallocation as higher quality seats go to consumers with higher willingness to pay.¹⁸ To this end, the onseller is operating as an intermediary to locate willing buyers whilst gaining some of the surplus for providing this service.

Onselling can also reduce some of the associated transaction costs (such as time, effort and planning) for those consumers who wish to secure tickets and are willing to pay the price demanded by the onseller. On the other hand, some attendees may prefer less efficiently allocated tickets at lower prices.¹⁹

Information asymmetry

Information asymmetry often exists in markets for consumer goods. Information asymmetry arises where there is an imbalance of knowledge between buyers and sellers of a good. The seller is often in a position to ascertain whether a good is value for money at the price being asked because they know all of the input costs. The consumer may not be aware of the input costs, only the selling price. In relation to the secondary ticket market, sellers usually have better information than consumers about the quality and authenticity of the tickets on offer, such as information on seat location, how the tickets were originally obtained by the seller, whether the seller is an authorised distributor or if the ticket is a counterfeit. Accordingly, consumers can only speculate about the likelihood of the quality and authenticity of the tickets.

Information asymmetry can lead to problems with consumer incentives to enter the market. Consumers who cannot be certain about quality and authenticity may not be willing to engage with the market and buy tickets. Alternatively, consumers may purchase on-sold tickets because they want to attend the event, and consequently may not be able to gain entry because there has been a breach of the resale condition or they have a counterfeit ticket.

For those associated with presenting or organising the event, such as the artist, sportspeople, promoter and ticket agents, there is an interest in maintaining reputation and in keeping their customers satisfied. These concerns can be addressed by minimising the information asymmetry on ticket quality and authenticity.

Market distortions

Unauthorised onsellors who manage to obtain large quantities of tickets in the primary market can distort the market by exploiting the one-off nature of many sporting and entertainment events, thereby creating artificial scarcity for highly sought-after tickets and pushing up prices. To this end, ticket onselling increases the transaction costs for consumers, such as time, effort and price, by increasing competition for premium tickets.

18 Leslie, P and Sorensen, A 2009, *The welfare effects of ticket resale*, Stanford University.

19 Leslie, P and Sorensen, A 2009, *The welfare effects of ticket resale*, Stanford University.

Issue

4. Could additional information about methods of sale in the primary market assist consumers when purchasing tickets? If so, what additional information should be made available, and in what form?
5. Are there any other indicators which suggest a market failure exists in the ticket market?

IMPACT ON CONSUMERS

The secondary market for tickets can have adverse impacts on consumers. Consumers may experience detriment associated with counterfeit tickets and may feel dissatisfaction caused by perceived unfair access to tickets. There may also be benefits for consumers, such as the ability to secure tickets and convenience benefits.

Consumer dissatisfaction and consumer detriment

Ticket onselling can have an adverse impact on consumers. This may include dissatisfaction amongst some consumers or financial and non-financial detriment. Ticket onselling may erode consumer satisfaction and confidence for a variety of reasons that include fair access to tickets, transparency of ticket distribution and other concerns like being pestered by unauthorised onsellors outside event venues. Consumers may incur a detriment by purchasing on-sold tickets that are worthless, non-authentic or non-transferable.

Authenticity

Consumer detriment can arise when tickets purchased from an onseller prove to be fraudulent. Consumers may find it difficult to identify whether they are purchasing tickets from an authorised secondary agent, such as a licensed ticket broker. This may lead to detriment if an unauthorised ticket onseller sells a counterfeit ticket. Additionally, it may be hard to track and identify those onsellors associated with distributing fraudulent tickets.

Purchasing tickets in the secondary market can expose the purchaser to considerable risk of becoming a victim of fraudulent activity, as was the case when counterfeit tickets were sold to the 2000 AFL Grand Final.²⁰ This can result in an erosion of consumer confidence in the overall ticketing process and detrimentally affect future demand.

Some promoters may cancel tickets where tickets have been on-sold without consent or in contravention of the conditions of sale. Consumers may feel unfairly treated and discontent, as they may be unaware of the existence of such conditions of sale, and their consequences. For example, music artists Tom Petty and U2 have cancelled tickets that were known to have been offered for on-sale.²¹

20 Sport and Recreation, Victoria 2001, *Controlling Ticket Scalping and Improving Major Event Ticketing Practices, A Discussion Paper*, Victoria, p 16.

21 Live Performance Australia 2006, *Ticket Scalping Discussion Paper*, Victoria p 5.

Transparency

Consumer confidence in the ticket market is based on ready access to clear and accurate information about the characteristics of products offered for sale. Consumers may not be aware of the mark-up they are paying for on-sold tickets. If onselling is transparent and consumers are fully aware of the mark-up they are paying, they can use this information to make a fully informed decision about whether or not to purchase an on-sold ticket. With this transparency, consumer detriment and dissatisfaction can be reduced since consumers are better informed before making a choice.

‘Back door’ activities in the ticket market can result in consumer dissatisfaction. This may involve ticket agency staff, sporting clubs, hospitality or travel organisations, corporate clients, or even fans, officials and performers (if the selling price is high enough), selling tickets in the secondary market. These activities may be reduced if there was greater transparency in the market.

Some consumers may lack confidence in the ticket distribution process. For instance, consumers may want to know how onsellors originally secure their tickets (either through authorised or unauthorised ways), or how they manage to obtain large quantities of tickets when consumers cannot purchase any or can only purchase tickets at unaffordable prices. Consumers may assume that there must be some form of collusion or corruption amongst sellers, reducing confidence.

A lack of transparency in ticketing distribution methods can also contribute to consumer concerns, such as concerns about the methods by which tickets have been obtained, whether they are buying a genuine ticket, the non-delivery of tickets, refund rights in the event of a show cancellation and seat location.

Consumers may also not be informed about the fact that often the best tickets are allocated to corporate sponsors, officials and clubs. To this end, consumer confidence may be improved if ticketing distribution methods in the primary and secondary markets are more transparent. For instance, if consumers are aware of the total number of tickets available for the general public and the number released to corporate and hospitality bodies they may feel more satisfied with the outcome.

Fair access

Community expectation of fair access to an event is based on the notion of maintaining accessibility, and that fans, irrespective of their wealth, should be able equally to have the opportunity to attend an event. Accordingly, some consumers may perceive that the inflated prices demanded by onsellors, or the shortage of tickets caused by onsellors buying up large quantities of tickets, cause fans to miss out. This practice means some fans are unable to attend the event simply because there are no tickets left or because they have been ‘priced out’ of the market. This in turn can create frustration for consumers, leading to dissatisfaction.

Some fans may also argue that tickets should be allocated to those who are prepared to line up (physically, over the phone or online), rather than to those who can afford to pay the

most or are well-connected. This would ensure that all spectators, irrespective of wealth, have the opportunity to attend. Fans willing to wait in line to see their favourite artist or team perform may become disenchanted, believing that to allocate tickets on a basis other than waiting in line is inherently biased and unfair.

In addition, the shortage of tickets in the primary market caused by onsellors buying up large quantities of tickets may reduce not only the amount of tickets available, but also the quality of tickets available at their original face value. This occurs because onsellors typically purchase better quality tickets, as it is these tickets which can attract greater mark-ups.

While some promoters and authorised ticket sellers have measures in place to help prevent unauthorised onsellors from buying up large quantities of tickets and/or onselling tickets at higher prices, such as computer software,²² unauthorised onsellors have managed to circumvent these. For example, onsellors may use various computer programs to evade security controls, pay people to wait in line to receive tickets or have contacts within the box office who provide them with tickets. Consequently, dissatisfaction remains with ticketing distribution methods that contribute to fans missing out on tickets.

The limited capacity of event venues means that for popular events there will often be people who would like to attend the event that miss out on tickets. The limited nature of such events makes this an inevitable consequence for consumers. The combination of a limited number of tickets on offer and ticketing distribution methods raises issues of unfair access to events and can result in consumer dissatisfaction.

For example, some Australian fans were outraged when tickets to the Australian leg of Metallica's World Magnetic 2010 tour were purchased in a presale through Ticketek and being onsold. Where the original Ticketek price for a ticket was \$150, bids on eBay for two Gold reserved seats were as high as \$699. Three days after the presale, tickets to the Adelaide Entertainment Centre's concert had sold out, with remaining tickets to be released later in the week. Some fans were angry at how onsellors could buy up tickets, causing fans to be unable to secure good seats or to miss out on tickets altogether.²³

Other concerns

Unauthorised ticket onsellors can also have a localised nuisance impact outside event venues on the day of the event by holding up spectators. Consumers may also be affected if aggressive or annoying sales tactics are used.

6. What methods could be used to minimise consumer concerns about authenticity?

7. Could detriment and dissatisfaction be reduced if consumers were aware of the proportion of tickets available to the general public?

²² For examples of other industry measures see Chapter 4.

²³ Willes, T., 'Metallica fans fuming over scalpers', *The Advertiser*, 10 May 2010. Available at: <http://www.adelaidenow.com.au/entertainment/confidential/metallica-fans-fuming-over-scalpers/story-e6fredqc-1225864252883>.

Benefits for consumers

There are benefits for consumers in having a secondary market for tickets, such as the enhanced ability to secure tickets, the convenience the market offers and the ability to transfer tickets.

Securing tickets

The purchase of an on-sold ticket is a form of consumer transaction with the consumer purchasing a good from a seller at a mutually agreed price. The price is often greater than the face value of a ticket to reflect the fact that demand exceeds supply. However, sometimes onsellers sell tickets at below their face value, allowing consumers to secure tickets at a cheaper price.

Onsellers can provide unobtainable and highly sought after tickets for sold-out events to a portion of the public that cannot secure a seat and are willing to pay a premium in order to attend. To this end, onsellers are providing a service in terms of seat availability to consumers. They also help promoters connect with consumers who are hard to reach or attract.²⁴

For example, in the lead-up to the 2003 AFL Grand Final, ticketless fans were actively seeking ticket onsellers by placing advertisements for tickets.²⁵ In this case, onsellers (including unauthorised onsellers) can be seen as not posing a detriment to consumers but rather as providing a service of matching fans with tickets.

Convenience

On-sold tickets allow consumers, who are willing to pay a premium, to attend events without having to plan ahead or to wait in line for tickets. Some consumers choose either between queuing for a ticket (physically, online or over the phone) which requires advanced planning and may not allow them to secure the most desirable seats, or alternatively, leaving their purchase till later and paying a higher price to an onseller possibly obtaining preferred seating.

In this way, ticket onsellers can provide a service as time and convenience brokers for those consumers who have a high opportunity cost of time and would prefer to pay more rather than spend time to secure a seat. Advanced technologies, such as the internet, online auction sites, high-speed dialling equipment, computer programs and mobile phones, have also made it easier for consumers to secure seats, including by purchasing on-sold tickets.

Transferability

The inability to obtain a refund or exchange tickets may encourage some consumers to enter into the secondary market to offload unwanted tickets. The secondary market offers consumers who are unable to attend an event (for instance, due to illness or unavoidable circumstances) or no longer want to attend an event, the opportunity to offload their tickets

24 Courty, P 2003, 'Some Economics of Ticket Resale', *Journal of Economic Perspectives* Vol 17 No 2, pp 85-97.

25 Griggs, L 2006, 'Ticket scalping – its legal and economic effects on the illusion of perfect innocence', *Griffith Law Review*, Vol 15 No 2, p 299.

by onselling. These individuals may be opportunistic onsellors (a form of unauthorised onselling), or they may be permitted to on-sell under the ticket's terms and conditions (authorised onselling). In this respect, the presence of online sales and auction sites on the internet has blurred the distinction between experienced and amateur ticket onsellors by making it possible for individuals to enter the secondary market on a one-off to sell tickets they are unable to use.

Issues

8. Does ticket onselling offer consumers any other benefits or cause additional concerns to those outlined above?

9. Is there a need for consumers to be given more information about tickets they have purchased, for instance, the seller's contact details, ticket location and refund/exchange policies? If so, what information should be supplied, who should supply the information and in what form?

IMPACT ON SUPPLIERS

The impact of onselling on ticket suppliers in the primary market can be both negative and positive. Suppliers of tickets in the primary market include performers, event promoters, authorised ticket vendors, ticket agencies and brokers.

Supplier detriment

Loss of revenue

While ticket onselling can be attributed to economic forces operating, it does result in revenue being diverted away from performers, promoters and vendors, and towards onsellors. The windfall returns from the onselling of tickets are flowing beyond those who bear the risk with organising and participating in the event.

To this end, some event promoters have sought to prevent the onselling and/or transfer of tickets to others by including conditions of sale on tickets. Such conditions may include prohibiting ticket holders from onselling the ticket at a price higher than its original face value and refusing admission to bearers where this has occurred. The enforceability of such conditions, however, may be an issue in terms of the costs and practicality of tracing sold tickets and enforcing conditions.²⁶

Reputation

Inflated prices which are due to onselling can price some fans out of the market. This can result in poor publicity as fans feel discontent with the promoters because they have to pay

26 For instance, in *Australian Rugby Union v Hospitality Group* [2001] FCA 1040, the Federal Court upheld the validity of the conditions of sale sought to be imposed by the Australian Rugby Union on its tickets, whereas in *eBay v Creative Festival Entertainment* [2006] FCA 1768, the Court found the conditions sought to be imposed by Creative Festival were not enforceable.

inflated prices for tickets. Performers and clubs are mindful of the need to protect their long-term image and the profitability of the event, and as such can be negatively impacted on by onselling. In addition, adverse publicity due to allegations of ticket gouging from fans can impact negatively on a promoter's reputation.

Goodwill

Performers have an interest in maximising the attendance of their fans and generating the kind of ambience and experience that is an important part of an event. Fans prevented from attending events as a result of being priced-out of the market by onsellors may have their confidence eroded which can adversely affect goodwill amongst the performer's fan base.

Gains for suppliers

Sales, publicity and ambience

The activities of performers and promoters can themselves contribute to the practice of ticket onselling. For promoters, charging lower ticket prices to ensure a certain level of revenue is traded off against potentially higher revenue but with the associated increased risk of not being able to sell out events.

Two major incentives for charging below market clearing prices include encouraging a sell-out to generate publicity and media coverage, and to fill stadiums as a validation of the worth of attendance and to add to the ambience.

Ticket onselling, caused by underpricing, can often result in a sell-out event. In turn, sell-outs create positive publicity and heighten the sense of demand and excitement leading up to the performance. This also secures revenue to finance the event production and maximises long-term revenues for performers and promoters. Another benefit to suppliers is increased merchandise sales associated with a sell-out event.

Risk transfer

Onsellors can also benefit event organisers and ticket vendors by providing an avenue to offload tickets. The risk is then transferred with onsellors taking on the associated risk of not being able to sell all their tickets or not being able to offload tickets in the event of a show cancellation.

In addition, unauthorised ticket onsellors assume the risk associated with uncertainty of sales and the price they can obtain for tickets in the secondary market. On-sold tickets may be sold at a price higher or lower than its original face value or at the original face value, and the onseller may or may not have made a profit in the sale. The risk is particularly high for onsellors who have bought large numbers of tickets and are unable to sell all of them before the event, possibly making a loss. Further, the secondary market for ticket sales appears to

penalise sellers who set prices well above predicted prices by reducing the probability that they will find buyers for their tickets.²⁷

Resale revenue

Performers and promoters can also benefit from onselling by capitalising on the secondary market. They can benefit by entering and competing in the secondary market and recouping revenue from resales. For instance, many US states have repealed their unauthorised selling of tickets laws as promoters and teams lobby to capture for themselves the highly lucrative ticket resale market. This is outlined in further detail in Chapter 4.

One way which promoters can deter ticket onsellors from competing for revenue is to compete against them in the secondary market for tickets. This includes encouraging the practice of authorised onselling by allowing nominated secondary agents to enter the secondary market to on-sell tickets.²⁸

For example, in the US, according to the *Wall Street Journal*, Neil Diamond himself sold large batches of tickets to his August 2009 concert at premium prices through Ticketmaster's 'resale' site. Ticketmaster's senior vice president for legal affairs said that selling premium priced tickets on TicketExchange, priced and presented as resales by fans, is a practice used by many other top performers.²⁹

Issues

10. Does ticket onselling offer supplies any other benefits or cause additional concerns to those outlined above?

11. Should industry permit the onselling of tickets in the secondary market? What advantages would this create for consumers/event organisers?

²⁷ Harrington, DE 2009, 'Lessons from a Scalper', *Regulation* Spring 2009, pp 16-29.

²⁸ Associated Press, 'Internet sales prompt move to ease scalping restrictions', 31 May 2007, sports.espn.go.com/espn/news/story?id=2887957.

²⁹ Smith, E 2009, 'Concert Tickets Get Set Aside, Marked Up by Artists, Managers' *The Wall Street Journal* p 1.

CHAPTER 4: CONTROLLING TICKET ONSELLING

REGULATORY RESPONSES

Current Australian Law

Generic consumer protection legislation

In Australia, the *Trade Practices Act 1974* (TPA), along with State and Territory Fair Trading Acts (FTAs) provide generic consumer protection.

The *Trade Practices Act 1974* prevents unfair practices in Australian trade and commerce. For example, it specifically prohibits corporations from engaging in misleading or deceptive conduct³⁰ or making false or misleading representations³¹. A business that has engaged in conduct that is misleading or has made false or misleading representations will be in breach of the TPA. Similar protections exist in State and Territory FTA's.

The Australian Consumer Law

The Australian Consumer Law (ACL) is a single, national law covering consumer protection and fair trading nationally and in every state and territory. The ACL is based on the consumer protection provisions of the TPA and draws on best practice in State and Territory consumer laws. It is anticipated that it will be fully implemented by 1 January 2011. It will apply nationally and in all states and territories, and to all Australian businesses.

Under the ACL all consumers will have the same protections against unfair business conduct wherever they are in Australia. Similarly, businesses will have the same obligations and responsibilities irrespective of where they operate in Australia.

The ACL will include a new unfair contract terms law covering standard form contracts. The ACL provides that unfair terms in consumer contracts are void.

A 'consumer contract' is an agreement for the supply of goods or services which are wholly or predominantly for personal, domestic or household use or consumption. Many, if not all, tickets are standard form contracts between the original distributor, such as promoters and authorised sellers (like the venue operator or the box office), and the original purchaser and would be subject to this unfair contract terms law. However, this may not be the case where tickets are later onsold; that is, the ticket may not be a standard form contract between the original distributor or the venue operator, and the ticket holder who purchased their ticket from an unauthorised onseller.

30 TPA, section 52.

31 TPA, section 53.

Under the unfair contract terms law, a term is unfair when it:

- causes a significant imbalance in the parties' rights and obligations arising under the contract; and
- is not reasonably necessary to protect the legitimate interests of the supplier; and
- causes financial or non-financial detriment to a party.

A court must have regard to the transparency of the term and the contract as a whole in determining whether a term is unfair.

In Victoria, unfair contract terms provisions are contained within Part 4 Division 2 of the Victorian *Fair Trading Act 1999*. Consumer Affairs Victoria works closely with industry to ensure fair contract terms in ticket conditions.

State and Territory legislation

In addition to generic consumer laws, some State and Territories have activity specific laws in relation to ticket onselling. In Australia, only two jurisdictions — Victoria and Queensland — have specific unauthorised ticket selling legislation. Other jurisdictions have some location specific regulations which prohibit unauthorised ticket selling and other unauthorised vending in the vicinity of an event venue. A comparison of State and Territory legislation and its enforcement is at Appendix A.

Victoria

Major Sporting Events Act 2009

For events declared by the responsible Minister, the event organiser must submit a ticketing scheme to the Minister for approval. Once a scheme has been declared by the Minister, it is an offence to sell tickets otherwise than in compliance with the scheme or in breach of a ticket condition prohibiting sale by unauthorised persons. The AFL Grand Final is declared annually under the Major Sporting Events Act (previously declared under the Sports Event Ticketing (Fair Access) Act 2002). The 2007 World Swimming Championships was declared under the Sports Event Ticketing (Fair Access) Act 2002 and the 2009 Australian Masters Golf was declared under the Major Sporting Events Act 2009.

Queensland

Major Sports Facilities Act 2001

It is an offence to sell or buy tickets to events held at eight specified Stadiums Queensland venues for a price which is more than 10 per cent above the original ticket price.

Motor Racing Events Regulation 2003

A person must not sell anything in an area declared for the staging of a motor racing event during the declared period.

Mount Gravatt Showgrounds By-law 2001

A person must not sell anything or offer anything for sale on the showgrounds, without authority.

New South Wales

Sydney Olympic Park Regulation 2001, Sydney Cricket Ground and Sydney Football Stadium By-law 2009

Unauthorised ticket selling is prohibited in the surrounds of the Sydney Cricket Ground, Sydney Football Stadium and Sydney Olympic Park.

South Australia

South Australia Motor Sports Regulations 1999

A person must not sell or offer anything for sale within a declared area, except with the permission of the South Australian Motor Sport Board.

Issues

12. Are there particular elements of State and Territory legislation which work well?
13. Is it appropriate to regulate the distribution of tickets, including the onselling of tickets? If so, in what ways?
14. What are the difficulties associated with regulating the distribution of tickets, including the onselling of tickets?

Current international approaches

Internationally there are a variety of regulatory responses to ticket onselling. Some of these are outlined below.

New Zealand

New Zealand's *Major Events Management Act 2007* prohibits tickets being resold for more than the original price plus costs. This applies to 'approved' events of international significance. For example, the 2011 World Rowing Championship and the Rugby World Cup 2011 are both 'approved' events.

Canada

In Canada, the Competition Act³² allows the Competition Tribunal to make an order prohibiting a person from directly or indirectly:

- influencing upwards, or discouraging the reduction of, the price for resale, supply, offers to supply or advertises a product within Canada; or
- refusing to supply or otherwise discriminating against any person engaged in business in Canada because of the low pricing policy of that other person;

where the conduct has had, is having or is likely to have an adverse effect on competition.

³² Competition Act, R.S.C. 1985, c. C-34.

United States of America

There are a variety of state-based regulations in existence in the United States. Applicable legislation ranges from prohibiting ticket onselling, to regulating it, to directly allowing participation in the secondary market. There is a general trend within United States jurisdictions to reduce and/or remove legislation relating to ticket onselling.

Case Study: The changing environment in the US³³

In the United States, a huge secondary market for tickets now operates, mainly through websites such as eBay, StubHub, Tickets.com, Craigslist, and TicketsNow, and many individuals who would not have stood on a street corner to scalp tickets, now make money out of reselling small blocs of tickets. For example, it is reportedly common for individual season ticket holders to offset the cost of their tickets, or even make money, by selling off tickets to the more popular events at a higher price.

Many US states have had laws prohibiting scalping for decades. Public nuisance laws, which prohibited scalping within a certain distance of a venue, also existed. However, over the last 5 years many states have abolished or relaxed their anti-scalping regulations, and scalping is now legal in 45 states. For example, until recently, New York imposed a cap on the resale price of tickets of 4 percent above face value for venues with more than 6000 seats, and 25 percent above face value for smaller venues. In 2007, the price cap was abolished and ticket conditions which restrict the resale price and method of resale of tickets were also prohibited.

The following reasons were behind the change:

- in the internet era the price cap law was rarely obeyed, with internet sites setting up 'shops' in other jurisdictions to evade the New York laws;
- enforcing the price cap was not a high priority for police, whose focus was on more serious crime;
- an argument was made that, if all ticket reselling was legal, an increase in the number of legal resellers would increase competition and prices for the consumer would fall; and
- realising that a multi-billion dollar market was being left untapped, a growing number of sporting teams, theatres and promoters had begun entering the secondary ticket market themselves.

The law abolishing the price cap was originally supposed to expire in June 2009, by which time a report evaluating its effect was to have been completed. However, the evaluation has not yet been carried out, and the deregulation was extended for a further 12 months.

33 Simonson, R 2007, 'Tickets Gone Wild: Broadway Braces Itself as NY Contemplates Deregulating Scalping'. Available at www.playbill.com/features/article/107425-Tickets-Gone-Wild-Broadway-Braces-Itself-as-NY-Contemplates-Deregulating-Scalping.

United Kingdom

The Society of Ticket Agents and Retailers (STAR) was formed in 1997 by a number of companies and organisations within the ticketing industry to promote high standards of service to consumers, and to enhance and promote the public perception of the ticket agents' industry. The Code was developed with the co-operation of the UK Office of Fair Trading with the intention of establishing an industry standard. The membership of STAR is drawn from the ticketing industry.

The STAR Code of Practice applies to signatories who are ticket agents, box offices and travel package sellers. The Code aims to:

- promote confidence in the public who purchase from signatories;
- distinguish agents from touters who charge extortionate elevated prices;
- promote public perception of ticket agents; and
- self-regulate to promote high standards of service.

It also sets out standards and procedures for dealing with the public, complaints and breaches. The Code is not legally binding but signatories are bound by existing laws and regulations, like the *Consumer Protection Act 1987* (UK).

Issues

15. How effective are the approaches within these countries?

16. Are there any other approaches that work effectively with these countries or other countries?

17. Is it appropriate to have a code of conduct for selling tickets in the primary ticket market? If so, should such a code be voluntary or mandated by law? What should such a code cover?

18. Is it appropriate to have a code of conduct for selling tickets in the secondary ticket market? If so, should such a code be voluntary or mandated by law? What should such a code cover?

19. Could licensing or registering the practice of onselling provide greater transparency and competition in the secondary ticket market? If so, what should such a scheme cover?

NON-REGULATORY RESPONSES

In response to consumer concern about the impact of onselling, and the desire of promoters, artists, players and sporting clubs to capture revenue currently flowing to onsellors, some event organisers have been adopting a range of ticketing practices aimed at preventing opportunities for onselling. For instance, promoters are increasingly imposing terms and conditions on resale and using technology to thwart scalpers.

Restricted resale

The simplest of these strategies is enforcing ticket conditions which prohibit resale of tickets at a price above face value. In *Australian Rugby Union v Hospitality Group* [2001] FCA 1040, the Federal Court upheld the validity of the ticket conditions imposed by the Australian Rugby Union (ARU) which prevented tickets from being resold at a higher price or from being used for commercial purposes without the permission of ARU.

Controlled distribution

One effective way to reduce onselling is to prevent tickets from getting into the hands of scalpers by managing the way tickets are distributed. Examples of such management practices are:

- staggering the release of tickets to encourage consumers to wait and buy tickets from authorised sellers at face value;
- delaying the release of tickets to reduce opportunities for onselling to occur before the event;
- placing limits on the number of tickets that can be bought by any one person;
- allowing tickets to be returned to the organiser for a refund;
- tightening online purchasing to ensure individuals and not computer programs are purchasing tickets (although some claim that anti-scalping security measures can be easily circumvented);
- requiring the original purchaser's name to be printed on tickets and checked against photo identification upon entry; and
- improving the supervision of official ticket outlets.

For example, the promoters of the Big Day Out music festival operate a weekly ballot in the weeks before a sell-out show for extra tickets. This allows people who have not been able to purchase tickets prior to the shows being sold out to buy them at face value. The ballot is designed to encourage people to purchase tickets from the producer at face value rather than from onsellors at an inflated price.³⁴

34 Live Performance Australia 2006, *Ticket Scalping Discussion Paper*, Victoria p 11.

In another example, the NRL now imposes a limit of 8 tickets per person, holds back around 14,000 tickets for release after the Grand Final teams have been confirmed, and, in 2007, introduced a ticket refund service for fans who can no longer attend a game.³⁵ Media reports in advance of the 2009 NRL Grand Final suggested that sales of scalped tickets on eBay were down on previous years.

Since 2006, the annual ‘Splendour in the Grass’ music festival in Byron Bay has been using a ticketing system whereby the name and date of birth of each ticket holder are printed on the ticket, which is then checked against photo identification at the point of entry to the venue. The festival also delays mailing tickets to purchasers until a date close to the event, minimising the amount of time available for reselling, and provides a facility where tickets can be resold at face value.³⁶

Dynamic pricing and price discrimination

The onselling process allows ticket prices to fluctuate to meet demand. Some performers and event organisers have attempted to use this process and recoup for themselves the revenue which may otherwise flow to scalpers, by entering into the secondary ticket market.

A dynamic pricing system — in which ticket prices would fluctuate with market demand, as they do on the secondary market — may help combat onselling in concert ticketing.³⁷ This price discrimination helps to reduce the differences between primary and secondary ticket prices and captures more revenue for artists by charging higher prices for high quality seats.³⁸

For example, in 2007 Ticketmaster conducted Australia’s first authorised online auctions for concert tickets. Ticketmaster’s general manager commented that the auctions were expected to stop onselling to a degree because they were allowing the market to set the price. He also commented that the auction process, which had been occurring for some time in the US, had not led to huge mark ups and only a small number of tickets were being auctioned. However, consumer groups criticised the auctions as bringing scalping in-house and requiring consumers to pay ever increasing prices.³⁹

35 See Media release, 22 September 2009, reported on www.bestbets.com.au/web/sport.nrl.news

36 Live Performance Australia 2006, *Ticket Scalping Discussion Paper*, Victoria p 11.

37 Seabrook, J 2009, ‘The price of a ticket’ *The New Yorker*, pp 34-42.

38 Volpano, LJ, and Bilotkach, V, *A case study: How to rationalise concert entertainment ticket pricing*, (2007).

39 ABC News 2007, *Concert tickets go to Auction*. Available at <http://abc.gov.au/news/stories/2007/07/19/1982500.htm?site=news>.

Virtual ticketing

Another recent development in ticketing is the advent of virtual tickets. These are increasingly being used in the United States, and appear to make onselling impractical.

With virtual tickets, no physical tickets are issued. Ticket holders simply swipe their credit card or driver's licence when they enter the venue. If they want to resell their tickets, they must go to a dedicated website, where they can sell them for whatever mark-up is allowed by the event organiser. The event organiser then cancels the virtual ticket and issues a new one to the purchaser. Also known as 'paperless ticketing', this practice is proving to be an effective tool for combating the secondary market as concert goers must bring to the venue the credit card they purchased tickets with and matching identification.⁴⁰

Virtual tickets can also be sold via mobile phones. A consumer can phone or SMS to make a booking for an event, paying electronically. Electronic tickets are then sent to the consumer's mobile phone via SMS. The SMS contains a 2D Data Matrix barcode. The barcode contains all the necessary information to grant the consumer access to the event via automated ticket access gates equipped with a barcode scanner.

Moshtix, a ticketing agent that operates in all states throughout Australia, stores ticket information on a credit card or 'moshcard', which can then be swiped at the event venue.

Not all of these strategies would be relevant to all types of events. It is ultimately a commercial decision for the event organiser to employ a ticketing strategy that is appropriate for its long term goals, its target market, and the nature of the event in question.

Issues

20. Are there other non-regulatory approaches to control the unauthorised onselling of tickets? If so, please outline.
21. Can ticket distribution practices be used to reduce or control the incidence of unauthorised ticket onselling? If so, which methods are the most effective? What are the costs and benefits of these methods?
22. How effective is current technology in reducing the incidence of ticket onselling in the secondary market? What are the costs and benefits associated with the increased use of technology?

40 Seabrook, J 2009, 'The price of a ticket' *The New Yorker*, pp 34-42.

APPENDIX A: STATE AND TERRITORY LEGISLATION*

Jurisdiction	Legislation	Enforcement
New South Wales	<i>Sydney Olympic Park Regulation 2001</i>	Police officer or person authorised by the Olympic Park Authority may issue a penalty notice.
	<i>Sydney Cricket Ground and Sydney Football Stadium By-law 2009</i>	A member of the Sydney Cricket and Sports Ground Trust, a persons authorised by the Trust, or a police officer may issue a penalty notice.
Victoria	<i>Major Sporting Events Act 2009</i>	Police and Consumer Affairs Victoria (CAV) monitor compliance. Police monitor newspaper and internet advertisements and CAV liaises with the AFL and ticket sellers to ensure compliance.
Queensland	<i>Major Sports Facilities Act 2001</i>	Police are present at affected venues and issue on the spot fines. Police also monitor newspaper and internet advertisements for resale of tickets.
	<i>Motor Racing Events Regulation 2003</i>	Police officers and authorised persons appointed by the event promoter.
	<i>Mount Gravatt Showgrounds By-law 2000</i>	Police officers
South Australia	<i>South Australian Motor Sport Regulations 1999</i>	Police officers or authorised persons appointed by the Board or the Minister.

* Western Australia, Tasmania, ACT and the Northern Territory currently have no legislative restrictions on ticket onselling

