



Australian Government

The Treasury

Senate Economics References Committee

Inquiry into ticket scalping in Australia

Submission by the Australian Treasury

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EXECUTIVE SUMMARY

The key points in the Treasury's submission are summarised below:

- the Treasury notes that an inquiry in November 2010 by the Commonwealth Consumer Affairs Advisory Council (CCAAC) into ticket on-selling in Australia identified that there is only a limited incidence of such conduct in Australia;
 - the inquiry also identified that ticket on-selling provides a number of both costs and benefits to consumers and suppliers;
- CCAAC also concluded that the current regulatory framework (which includes Commonwealth, state and territory consumer protection laws and state and territory event-specific laws) is balanced and effectively addresses the key concerns surrounding ticket on-selling; and
- the Treasury does not consider that there is a case for further regulation in respect of this matter at this time. However, the Treasury will keep abreast of any concerns in this sector going forward, and whether further regulatory action is warranted at a later time.

INTRODUCTION

This submission provides background to a previous inquiry into ticket scalping in Australia, which was conducted by the CCAAC, an expert advisory body on consumer policy to Treasury Portfolio Ministers. It also provides background to current laws applying to unauthorised ticket resale.

The Treasury is not convinced that there is a case for further regulation with respect to ticket scalping at this time. We note that the CCAAC found in its report that the incidence of ticket on-selling in Australia is very low. The CCAAC identified that existing consumer laws and state and territory laws relating to the staging of major events are balanced and effectively address the key concerns associated with the on-selling of tickets. Such concerns include the risk that on-sold tickets are counterfeit tickets or have been cancelled by the event promoter, and the impact on event promoter's reputation or good will where ticket prices are inflated.

The CCAAC noted that there are benefits to consumers and event promoters from permitting on-selling of tickets also. In particular, there could be detriment to consumers if they are unable to transfer tickets to others, where they are unable to attend an event through unavoidable circumstances, such as illness. Often, consumers cannot obtain a refund or exchange in such circumstances. Similarly, the CCAAC identified that ticket on-sellers benefit event promoters by marketing events and ensuring greater take-up of tickets.

The key consumer protection law in Australia is the *Competition and Consumer Act 2010*. Schedule 2 of that Act sets out the Australian Consumer Law, a single, national, generic consumer law, which applies in the same way to all sectors and in all Australian jurisdictions. The Australian Consumer Law provides a set of important protections to enable consumers to engage confidently in the marketplace. A number of requirements of this law apply with respect to unauthorised on-selling of tickets.

In particular, the Australian Consumer Law prohibits misleading and deceptive conduct with respect to the marketing of such tickets, or the supply of tickets that are not fit for purpose (e.g. which are not appropriate to enable a consumer to attend a particular event). A range of remedies are available for breaches of this law, including damages and injunctions.

THE CCAAC'S 2010 INQUIRY INTO TICKET SCALPING IN AUSTRALIA

On 4 December 2009, the then Minister for Competition Policy and Consumer Affairs provided terms of reference to the CCAAC to examine issues related to the practice of ticket on-selling in Australia. The CCAAC finalised its final report in November 2010. The final report, *Consumers and the ticket market: ticket on-selling in the Australian market*, is available on CCAAC's website at ccaac.gov.au.

In its report, the CCAAC found that the incidence of unauthorised on-selling of tickets in Australia is very low, in large part because very few events sell out in Australia, which is a precondition for a strong secondary market. In addition, on-sellers generally compete with consumers to obtain tickets. The limits on the time buyers have to make purchases and on the number of tickets available also mean that only a few multiple purchases can be made by a ticket on-seller before the most in-demand shows sell out.

The CCAAC also noted that on-selling of tickets can have both benefits and costs for consumers and suppliers. For example, it facilitates efficient allocation of tickets to consumers who value the tickets more highly. It could also allow consumers who are no longer able to attend an event due, for example, to illness or other unavoidable circumstances, to transfer tickets, in circumstances where they may not be able to otherwise obtain a refund.

On the other hand, the CCAAC noted that consumers could be exposed to fraud where they purchase tickets from an unauthorised on-seller, as well as the risk that the on-sold ticket could be cancelled by the event promoter. There was also a perception among consumers that on-selling is “unfair” — for example, that on-sellers unfairly profit from such practices.

With respect to event promoters, the CCAAC noted that on-selling provides a number of important benefits, such as promoting events and facilitating higher levels of attendance and ticket sales, which can have a number of flow-on benefits (e.g. higher sale of merchandise and sponsor satisfaction). On the other hand, ticket on-selling could impact adversely on an artist or event promoter’s reputation and goodwill where it leads to inflated ticket prices, or undermine efforts to make tickets affordable for consumers.

The CCAAC concluded in its report that existing laws, in particular the Australian Consumer Law, which was due to commence shortly after the CCAAC’s report was finalised, was expected to be adequate to protect consumers from the key concerns associated with ticket on-selling.

In addition, non-regulatory options were available to industry in the event that ticket on-selling raised consumer concerns in future. For example, permitting consumers to refund or exchange unwanted tickets under the terms and conditions for tickets could reduce the incidence of unauthorised on-selling of tickets and promote consumer wellbeing. CCAAC noted that consumers could be disadvantaged if they are unable to obtain a refund or exchange such tickets, and also prevented from transferring them to others to recoup some of the costs of the ticket purchase.

Event promoters could also use distribution methods and technologies to prevent unauthorised on-selling of tickets, or use more efficient pricing strategies that remove profit opportunities for ticket on-selling. Ticket on-selling is more likely where tickets are initially sold at a price that is below the market price for the tickets.

CURRENT PROTECTIONS FOR CONSUMERS

This section discusses the regulatory and non-regulatory protections available to consumers against the harms associated with ticket on-selling.

The Australian Consumer Law, which commenced on 1 January 2011, harmonised national, state and territory consumer laws with one law. The prohibition of misleading and deceptive conduct and the consumer guarantees provisions of the Australian Consumer Law are relevant to unauthorised ticket on-selling in Australia. In terms of other laws, a range of state and territory laws apply with respect to this issue.

The prohibition of misleading and deceptive conduct under the Australian Consumer Law

Under section 18 of the Australian Consumer Law, it is unlawful to make statements in trade or commerce that are misleading or deceptive, or would be likely to mislead or deceive. Whether a representation is false or misleading will depend on the circumstances. Failing to disclose relevant information, promises, opinions and predictions can also be misleading or deceptive.

In addition, under section 29 of the Australian Consumer Law, it is unlawful for a business to make false or misleading representations about goods or services when supplying, offering to supply, or promoting those goods or services. A range of penalties, including injunctions, damages and, in some circumstances, fines are available for breaches of these requirements.

This means that it is unlawful for an unauthorised on-seller of tickets to, among other things, misrepresent whether tickets they on-sell are authorised or will provide entry to a particular event.

The consumer guarantees provisions in the Australian Consumer Law

Consumer guarantees exist to ensure that consumers get what they pay for. Under the Australian Consumer Law all goods purchased by consumers are covered by statutory consumer guarantees. Under these provisions, a supplier must ensure, among other things, that goods and services they supply in trade or commerce, are fit for purpose. Ordinarily, tickets for events are acquired for the purpose of facilitating access to certain events.

Complaints raised by consumers with the Australian Competition and Consumer Commission

Since 1 January 2011, the Australian Competition and Consumer Commission has received 52 contacts from consumers regarding the sale of tickets (by comparison, it received over 185,000 contacts in FY 2012-13 alone on all matters).

The contacts related to a number of matters, including general concerns with unauthorised on-selling of tickets, as well as concerns by consumers regarding their inability to legitimately sell unwanted tickets.

State and territory laws

Some states and territories have adopted laws regarding specific major events or venues that host such events. For example, the *Major Sporting Events Act 2009* (Vic) relates to the staging and managing of major sporting events in Victoria. An order can be made under this Act to regulate aspects of such events, including terms and conditions of tickets, to prevent unauthorised resale or distribution of tickets.

CONCLUSION

The Treasury considers that the Australian Consumer Law provides a balanced level of protection with respect to the on-selling of tickets in Australia. We are not convinced that there is a case for further regulation in relation to this matter at this time.

However, the Treasury will continue to consider the concerns raised with respect to ticket on-selling, and whether further regulatory action under Australia's consumer policy framework is warranted at a later time.