



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Name of package	Release of ticket reselling discussion paper	Date of issue	4 March 2019

List of documents that have been proactively released

Date	Title	Author
13 February 2019	<i>Cabinet paper: Release of discussion document: Ticket reselling in New Zealand</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>

Information withheld

Some parts of this information release are not appropriate to be released and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified and are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Section of the Act	Reason for withholding
N/A	N/A

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

RELEASE OF DISCUSSION DOCUMENT: TICKET RESELLING IN NEW ZEALAND

Proposal

1. This paper seeks agreement to release a discussion document about issues in the ticket resale market, and potential options to address these issues.

Executive summary

2. I propose to release a discussion document to gather evidence and seek feedback on the key issues and potential options related to ticket reselling.
3. Ticket reselling can cause a number of issues that can reduce the wellbeing of New Zealand consumers. Both industry participants and consumers have been raising serious concerns with me about practices in the ticket resale market.
4. Compared to the primary ticket market, the ticket resale market ('secondary market') is more likely to be a source of misleading and deceptive conduct, inflated ticket prices and fraudulent behaviour. I am aware there are many New Zealanders being subject to ticketing scams, as well as being misled into buying higher-priced tickets. In addition, there are also potential competition issues in the ticketing and event industry which I would like to seek feedback on.
5. The potential policy options to address the issues above are:
 - 5.1. maintain the status quo
 - 5.2. price cap on resale tickets
 - 5.3. information disclosure requirements
 - 5.4. ban on ticket-buying bots
 - 5.5. joint industry-government initiatives.
6. The feedback received on the discussion document from the public and industry will help to inform the appropriate solutions to address ticket reselling issues.

Background

7. Ticket reselling occurs when tickets bought in the primary ticket market are sold, sometimes for profit, in the secondary (or resale) market.
8. Ticket resellers can be categorised into two segments:

- 8.1. those who purchased tickets with the original intention of attending the event, but can no longer attend ('ticket onsellors'); and
- 8.2. those who purchased tickets with the explicit purpose of reselling them for a profit, with no intention to attend the event ('ticket scalpers').
9. The secondary market enables ticket onsellors to recover the money they spent on the ticket when there is no access to a refund in the primary market. For example, a person may buy a ticket, then closer to the date they may realise they are unable to attend due to a family situation. They can then resell their ticket, which also provides the opportunity for another consumer to attend.
10. The secondary market also enables ticket scalpers to buy and sell tickets for a profit and provides an avenue for unscrupulous individuals to mislead and deceive unsuspecting consumers. For example, professional traders based offshore can use automated software ('bots') and multiple credit cards to purchase large quantities of tickets in New Zealand.
11. Ticket scalping can reduce consumer wellbeing by capturing profits that could instead either be kept in the pockets of consumers or be captured by the people creating the value behind the product, such as artists, promoters, venues or primary ticketing agencies. These practices also undermine the objectives of event organisers to set prices at affordable levels so that all fans have the opportunity to attend.
12. I consider that ticket scalping is causing the majority of problems in the secondary market by reducing wellbeing and being the primary source of misleading and deceptive behaviour. I want to make sure that consumers get a fair go when purchasing tickets and are protected when buying and reselling tickets. Thus, the discussion document explores options that would continue to enable ticket onselling, whilst addressing the issues created by ticket scalping.
13. Whilst misleading and deceptive behaviour is already prohibited under the Fair Trading Act 1986, there is some evidence to suggest that this is not sufficient in preventing consumer detriment from ticket reselling. Some of the options in the discussion document examine ways of reducing this behaviour proactively, before enforcement is required.

Key issues related to ticket reselling

14. One of the main purposes of the discussion document is to improve our understanding of the extent of the issues related to ticket reselling. We already have some indication of the scale of the problem but our understanding could benefit from a public consultation process. The Commerce Commission has received over 600 complaints about the ticket resale website Viagogo since mid-2016, making it the most complained about trader over this period.
15. From some preliminary research and discussions with industry participants, officials have identified a number of key issues related to ticket reselling problems, as set out below.

Consumers are being misled and deceived when purchasing resale tickets.

16. Consumers are more likely to be subject to inaccurate information, fraud or counterfeit tickets in the secondary market than in the primary market.
17. It can be difficult for consumers, particularly those who do not frequently purchase tickets, to identify the official ticket seller as resale websites often look like official ticket websites. This can result in consumers purchasing tickets from resale websites thinking they are paying face value, when in fact they are paying higher prices.
18. Ticket resale websites often lack important basic information about the tickets that are being sold, such as the face value of the ticket, the location of the ticket within the venue, and any restrictions on the ticket (such as concessional or entry restrictions). This lack of information prevents consumers from making fully informed decisions.

Consumer wellbeing is reduced by ticket reselling practices

19. Tickets to popular events are sometimes resold at prices which are much higher than the original face value. I am concerned that these inflated ticket prices mean that ticket scalpers are capturing profits that could instead either be kept in the pockets of consumers or be captured by the people creating the value behind the product, such as artists, promoters, venues or primary ticketing agencies. I believe that many New Zealanders would think this is unfair.
20. While event tickets are generally considered to be non-essential products, for some New Zealand consumers, certain events are perceived as 'once-in-a-lifetime' events. Such purchases may amount to a relatively significant portion of some consumers' income and can leave some consumers feeling 'ripped off' if they find out that the face value price of the tickets they had purchased is less than the price they paid via a resale site.
21. In addition, ticket-buying bots (automated software) can cause consumer harm because they prevent consumers from having fair access to the primary ticket market. They take away opportunities for the public to purchase tickets at face value and increase the pressure for consumers to log on to ticketing websites at the time tickets first go on sale. There is evidence that this is a significant issue globally.

There are potential competition issues in the primary ticket market

22. Some industry participants have expressed concerns about one company owning both a primary ticketing agency and secondary ticket platform, as it allows them to profit from the same tickets twice and may create perverse incentives, such as withholding tickets from the primary market for the purpose of selling those tickets directly on the secondary market. Whilst we currently have no evidence that withholding tickets is happening in New Zealand, there have been confirmed cases of this occurring in the UK and Italy.
23. Many of the major venues in New Zealand and overseas have exclusive contracts with a ticketing agency. In order to put on a show at one of these major venues, the promoter must contract with the ticketing agency the venue is contracted to. This

restricts a promoter's ability to choose between ticketing agents, particularly given that there may only be one suitable venue in particular locations for many events. This can lead to contractual terms and conditions that may negate the ability of promoters to combat ticket reselling practices.

Potential options to address ticket reselling problems

24. The key objective of consumer policy is to promote the long-term interests of consumers. In order to achieve this overall objective, it is important that:
 - 24.1. Consumers have the information they need to transact with confidence and appropriate access to redress;
 - 24.2. Markets are well-functioning and competitive;
 - 24.3. Consumer harm is reduced from inflated resale prices and lack of fair access to tickets.
25. Officials have considered a number of options that could address the issues outlined above. I have also asked officials to look at what other jurisdictions have done in response to ticket reselling problems.
26. The discussion document does not identify preferred options, but it notes that if certain regulatory options such as price caps are chosen, they will need to be implemented alongside information disclosure requirements. These policy options are not mutually exclusive and a final policy package to address all issues created by ticket reselling problems may require multiple solutions.
27. The potential policy options that the discussion document presents are as follows.

Option 1: Status quo

28. The status quo would mean ticket reselling could continue unrestricted. General consumer protection legislation (the Fair Trading Act 1986 and the Consumer Guarantees Act 1993) would continue to apply. The Major Events Management Act 2007 would apply where major events are declared under the Act.
29. Consumers would not have any greater protections against high ticket prices on the resale market, and resellers and resale platforms would not be required to provide any additional information to consumers.

Option 2: Price cap on resale tickets

30. A price cap could prohibit people reselling for profit or above a certain amount. For example, New South Wales has recently introduced a price cap of face value plus 10 per cent, or the original acquisition cost (also referred to as 'original sale price', which is the face value plus fees), whichever is the lower amount. Officials have identified several ways a price cap could be designed, if this option is implemented:
 - 30.1. the New South Wales approach (which could keep resale prices lower but allows less recovery of the original purchase price and no recovery of the resale costs, i.e. the ticket resale site commission fee);

- 30.2. original sale price plus 10 per cent (a simpler option which would allow recovery of most of the original purchase price and no recovery of the resale costs); or
 - 30.3. original sale price plus resale costs (which would allow recovery of original purchase price plus costs associated with reselling and promote competition between resale sites commission fees).
31. Officials consider that price caps can be hard to design and enforce and would also require information disclosure in order to be effective (see below).

Option 3: Information disclosure requirements

32. This option would ensure important information about tickets is displayed prominently, e.g. prices and seating location. This could help consumers to make better informed decisions and provide for better understanding of how ticketing and ticket markets work. These requirements could apply to both primary and secondary ticket sellers.
33. For example, ticket resale sites could be required to disclose that they are not official sites, as well as the original ticket price, fees and the seating location. This would hopefully help consumers understand that they are on a resale site and therefore prices may be higher than an official site.

Option 4: Ban on ticket-buying bots

34. Research from overseas indicates that ticket-buying bots are common. Bots can prevent consumers from having fair access to tickets. This option would involve a statutory ban on the use of ticket-buying bots to acquire tickets.
35. However, ticket scalpers have shown skill at getting around measures designed to deter bots in the past, so monitoring and enforcement of any ban could be an issue.

Option 5: Joint industry-government initiatives

36. A non-regulatory option is for industry to take actions, potentially with government involvement, to better inform consumers and commit to stronger practices to tackle ticket scalping.
37. Actions could include awareness campaigns or guides, a code of practice, or the use of new technologies to make scalping harder.

Implementation and enforcement considerations

38. If any regulatory options are introduced, further analysis will also be needed around:
- 38.1. The regulatory body responsible for monitoring and enforcement, and the level of resourcing that would be required.
 - 38.2. The practicalities of enforcement in an increasingly globalised and digital market place.

- 38.3. The penalties and remedies that would be available in respect of breaches of any new prohibitions.

The discussion document

39. I propose to release the attached discussion document (Annex 1) to seek feedback on issues and options related to ticket reselling problems.
40. I am seeking feedback from both industry stakeholders and everyday consumers. The discussion document is written in non-technical language where possible. A two-page summary (Annex 2) has also been prepared and will be released alongside the discussion document. This is aimed at consumers to support their engagement in the consultation.

Proposed process

41. I propose to release the discussion document for a period of 6 weeks.
42. Following consideration of submissions and advice from officials, I will report back to Cabinet with any proposals for legislative change by 31 October 2019.

Consultation

43. The Treasury, Commerce Commission, Ministry for Culture and Heritage, and Sport New Zealand have been consulted on the discussion document. The Department of Prime Minister and Cabinet has been informed.
44. MBIE undertook initial consultation with some industry stakeholders to gather evidence on the issues, and also carried out a consumer survey to gather data on experiences and attitudes towards ticket reselling.

Financial implications

45. There are no financial implications arising from the recommendations in this paper.

Legislative implications

46. There are no immediate legislative implications arising from this paper. However, the consultation may result in policy recommendations being made to Cabinet which would require amendments to legislation.

Impact analysis

47. The Treasury's Regulatory Quality Team has determined that no separate Regulatory Impact Assessment is required in support of the proposal to issue the discussion document, since the analysis necessary at this stage is covered in the discussion document.

Human rights

48. The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Gender implications

49. There are no gender implications arising from the recommendations in this paper.

Disability perspective

50. Ticket resale can pose additional risks for consumers with disabilities, because of a lack of accurate ticket information about seat location and accessibility for wheelchair users. There have been several cases where people with disabilities have been misled by inaccurate or false resale ticket information, resulting in them unable to use their tickets.

51. Some options considered in this discussion document may help address these issues, such as requiring ticket resellers to provide accurate and verifiable information about the tickets, including seat location and accessibility.

Publicity

52. I intend to issue a media statement accompanying the release of the discussion document. The consultation documents will be made publicly available on the MBIE website and key stakeholders will be informed.

Proactive release

53. MBIE will publish a copy of this paper along with the discussion document on its website, subject to any necessary redactions under the Official Information Act 1982.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **note** that the discussion document outlines and seeks feedback on the key issues, objectives and potential options related to ticket reselling, which are
 - 1.1. maintain the status quo;
 - 1.2. price cap on resale tickets;
 - 1.3. information disclosure requirements;
 - 1.4. ban on ticket-buying bots;
 - 1.5. joint industry-government initiatives;
2. **agree** to release the attached discussion document entitled '*Ticket Reselling in New Zealand*' and consumer summary for public consultation, subject to any minor or technical amendments that may be required;
3. **note** that the consultation documents will be released for public consultation for a period of 6 weeks;
4. **note** that a media statement will accompany the release of the discussion document;

5. **invite** the Minister of Commerce and Consumer Affairs to report back to Cabinet by 31 October 2019 with the outcomes of this consultation and any proposed policy changes.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs