



24 April 2019

Trade Me submission on MBIE discussion document “Ticket reselling in New Zealand”

Trade Me appreciates this opportunity to comment on MBIE’s “Ticket Reselling in New Zealand” discussion document.

Trade Me is New Zealand’s largest online auction and classified listing platform. We facilitate millions of transactions each year, including some ticket reselling transactions. We are not actively involved in either the primary ticket market or secondary ticket market, but through our Marketplace we see some sales in the secondary ticket market.

We have previously provided information to MBIE to illustrate the ticket sales that occur on Trade Me’s Marketplace. We hope our view as a company, which regularly interacts with Kiwis engaging in the secondary ticket market, will assist the Ministry’s policy development process.

In our 20 years of operating online, we’ve found that laws work best when they are:

- straightforward and easy for consumers to understand and apply;
- practical for businesses and traders to operationalise and enforce with clear definitions;
- implemented in a pragmatic way; and
- consistent online and offline.

We’ve considered these principles in making a submission on your discussion paper.

We’ve structured our submission to align with the questions in your discussion paper. Given our limited operations, we have only commented on some of your questions.

Please let us know if there is additional information that Trade Me can provide to MBIE or the Minister to assist with your policy process.

Yours sincerely

James Ryan
Policy and Compliance Manager
Trust and Safety | Trade Me

Question 4. Do you think 'ticket onsellors' should be treated differently to 'ticket scalpers' in any options to address ticket reselling practices?

Yes. It is common for New Zealand consumer protection laws to differentiate between "in trade" sellers and casual sellers. For example, in other markets where goods are traded over Trade Me there are additional obligations placed on professional sellers (such as registered motor vehicle traders). Consistent with this, we think that there are sound policy reasons for treating "in trade" sellers of tickets (including ticket scalpers) differently from casual ticket onsellors.

Questions 5-7 re MBIE's summary of the key issues and objectives

Trade Me sees low levels of consumer detriment in respect of ticket reselling on our site. As illustrated by data previously shared with MBIE, we do not see a high level of consumer complaints or disputes in relation to ticket sales that occur on Trade Me. The discussion paper suggests that consumers are being misled or deceived when purchasing resale tickets. But, as described below, we do not think this is the case on Trade Me's site. We think that Trade Me is an ideal place to sell and buy tickets.

Trade Me's online marketplace ensures that the sales between buyers and sellers are traceable. Our listing policies and terms and conditions require listings to be clearly described. We offer buyer protection where one of our payment options is used (see our policy for more information - <https://help.trademe.co.nz/hc/en-us/sections/360001586872-Buyer-Protection>). Our Fraud Prevention team monitors the sale of tickets, particularly during popular events to ensure our site rules about listing of tickets are maintained to protect our members and our business.

Most ticket sales on our site occur where the seller can no longer attend an event, and the seller is just seeking to recover the purchase price. There's usually a double motive - avoiding an economic loss and ensuring that someone gets to enjoy the event. That said, we do see some sellers making a profit from the sale of tickets to sold out events on the site. But we also see very grateful purchasers who are happy to pay those inflated prices to attend the event.

We think the consumer detriment from the secondary ticket market is over-stated in the discussion paper. There may be a desire from participants in the primary market to see more profits go to those that contribute to the production of the event, and a concern that inflated prices in the secondary market don't achieve this - but this isn't a consumer welfare concern.

We feel that the ticket reselling sites are often the scapegoat when tickets for high profile, sold out events sell for inflated prices. The media tends to focus on sales on sites like Trade Me as being where tickets are sold. Such media often does not focus on the purchaser who was happy to secure a ticket, or on whether the primary ticket supplier was sensible in how they managed the primary ticket sales to ensure fair access to tickets. For these events, typically it's well publicised that ticket resale prices are inflated and we do not believe the purchasers of those inflated tickets are misled about the additional cost they have paid.

We also note that it's often opaque as to how many tickets are actually made available to the public - particularly to events like the rugby where clubs and associated entities often get first runs at tickets. This is a well intentioned practice however the wider public is not generally aware of it so may not appreciate why there is limited general admission tickets available.

To the extent there is consumer detriment arising from ticket scalping, this primarily appears to result from:

- overseas parties adopting inappropriate practices. The detriment arises largely where the tickets are misdescribed or cannot be used to gain entry. Often there is fraud or other misleading and deceptive practices. Consumers theoretically should have some legal protection under the Consumer Guarantees Act, but there typically are jurisdictional difficulties in enforcing these protections. The Commerce Commission's current proceedings against Viagogo are evidence of this.
- the use of ticket purchasing 'bots'. The use of these bots (i.e. to purchase large quantities of tickets when the tickets are first released for sale) limits the availability of tickets for legitimate individual purchases, which leads to event fans needing to go to secondary ticket markets (with potentially inflated prices) to gain access to tickets to events.
- characteristics of the primary market that contribute to demand in the secondary market e.g. a promoter wanting a "sell out" event and allowing bulk buys of tickets to drive a fast sell out. Or the promoter staging the release of concert nights (e.g. releasing a Thursday night first, and then a Saturday once the Thursday sells out and only releasing the Friday if both the Thursday and Saturday sell out - which can result in consumers purchasing tickets to two concerts and looking to sell one ticket in the secondary market).
- related costs. Where a ticket is invalid, typically the purchaser has also incurred other costs (such as travel and accommodation) and the disappointment in missing out on the event.

MBIE is exploring whether greater competition in the primary ticket market would reduce problems in the secondary ticket market.

Trade Me doesn't have a firm view on this, but believes that additional obligations in the primary market may help to resolve some of the issues (e.g. perhaps an obligation on the primary ticket seller to offer a refund in particular scenarios, or to

register the ticket holder details and have an obligation to update those details if a subsequent transfer occurs or some other form of a ticket validation service).

A validation service would be helpful, as currently the primary ticket seller often includes a contractual term that restricts resale, which means that purchasers of tickets in the secondary market are reluctant to contact the primary ticket seller to confirm if a ticket is valid out of fear the ticket may be voided.

We consider that even if there were a more competitive primary market, most events would only be sold through a single primary supplier.

Questions 8 and 9 re effectiveness of the status quo

Trade Me believes that existing consumer protection laws do offer some protection where they apply (e.g. where tickets are sold in trade). In particular, we consider that existing consumer protection laws are adequate in respect of secondary ticket sales on our platform.

Given the issues that have occurred (e.g. in respect of Viagogo) we consider there will be growing consumer awareness of potentially “dodgy” ticket sites, such as Viagogo. We think this will naturally lead to primary ticket sellers looking to improve their purchasing processes. Trade Me supports industry led solutions for a more optimum purchasing experience from the original ticket seller.

We also support greater enforcement for Fair Trading Act breaches by secondary ticket suppliers.

We do not think there is a sufficient need for additional regulation at this time. For example, under the current regime Trade Me operates our regime which allows:

- An effective channel for the resale of tickets. Ticket holders who cannot attend the event are able (usually) to find a buyer through a safe and transparent process on Trade Me's trusted and safe platform.
- Our fees are transparent and borne by the seller. The buyer pays only what they bid or 'buy now' there are no hidden fees and no way for us to charge them.
- Trade Me has a Trust and Safety team of just under 40 full time staff which focuses on keeping our site safe. Part of this work involves administering our Buyer Protection scheme which kicks in if a dispute with the trade is unable to be resolved between the buyer and seller and of no fault of the buyer. In the case of a ticket purchase, most buyers who used one of our payment tools

would be covered by the Buyer Protection scheme - but 'we won't refund if someone changes their mind.' Although, this coverage extends only to the tickets, not travel or accommodation costs.

- Trade Me does not permit ticket barcodes and seating numbers to be shown on listings to prevent opportunist scammers using ticket information to generate fake ticket listings on other sites.
- Trade Me requests 'proof of goods' where we have reason to believe a member is not in possession of the tickets, and will remove listings if they are not in possession. Where proof of the ticket's existence has been requested, the listing is quarantined and the sale cannot go through until Trade Me is satisfied with the ticket seller's response.

It is our belief that Trade Me is likely New Zealand's safest place for the resale of tickets as ultimately members who buy tickets under our buyer protection scheme are covered from any loss.

Questions 10 - 13 re price caps on resale tickets

Trade Me is concerned by the proposal to introduce price caps. In particular, Trade Me is concerned that the proposed price caps would be too costly to implement.

The logistics of requiring Trade Me to implement a system to account for a 'face value and / or fees' only sales mechanism, may mean Trade Me will be unable to participate in the secondary ticket market.

It would be uneconomic for us to manually check the ticket details and price of every ticket sold on Trade Me. For example, Trade Me does not allow the sale of tickets to events that are subject to the Major Events Management Act, due to the resources needed to monitor such events.

Trade Me is a market venue where hundreds of thousands of listings are made a week, the vast majority of which no Trade Me employee casts an eye over as the marketplace operates without friction, buyers and sellers agree on a price and conclude their transaction.

Ticket prices for events vary widely. Pricing structures often feature different tiers (e.g. A reserve, B reserve seating) and multiple pricing options (e.g. adult, child, family, student, senior citizen). Ticket promoters may also reduce (or increase) ticket prices for the same seat for events over time. Plus, not all ticket buyers use the same services when purchasing tickets e.g. some use an app or, printed e-tickets, some pick up physical tickets.

These services have different delivery fees. Processing fees for credit card or debit card may apply which are not applied to cash payment. As a result, there would usually be multiple different pricing caps to monitor for each event.

Trade Me believes it would be very difficult to code for each scenario, so we believe that our compliance with a price cap regime would be extremely manual and cumbersome. This would be almost certainly be unfeasible for Trade Me.

For example, we struggle to see how we could build an automated process to determine the face value price for each ticket sold for, as well as the associated ticketing service fees for each event, to ensure any sellers of tickets on our site are meeting price cap obligations. Price caps could therefore make the activity of facilitating secondary ticket sales uneconomic, without a material listing fee increase for the specific category.

We expect that secondary ticket platforms related to primary ticket platforms would have a competitive advantage if price caps were introduced. These platforms would be able to build an automated process to check the original price of a ticket.

It's worth noting that it would be difficult for Trade Me to build particular fields to record particular ticket details. Our category structure is designed to work with multiple marketplace categories. As the ticket sales section of Trade Me is a small category, it's unlikely to be economic to build specific functionality for this category - and it would be difficult to get this work prioritised ahead of other Trade Me Marketplace improvements.

Given the variables above, if a price cap mechanism was introduced, Trade Me would have to reconsider its position in the ticket reselling market. It would be quite ironic if the introduction of price caps (designed to produce a safer buying experience for consumers) would result in Trade Me (arguably New Zealand's safest marketplace) being unable to participate in the market for ticket reselling.

Arguably, the unintended consequence of this proposed legislative change would be to move buyers and sellers to other unregulated marketplaces and social media where New Zealand regulation is overlooked and unenforced.

If a price cap was to be introduced we would support:

- price cap option C or an alternative option of a higher price cap. We think the consumer should be able to recover at least their full cost. We would actually support a higher cost which enables a consumer to make a profit. Price caps, if implemented, should only prevent excessive profits being made.

- a mandatory requirement for the primary ticket seller to print/record the full original ticket price (inclusive of any services fees) on the ticket to assist with compliance enforcement - see comments on information disclosure below.
- additional requirements of primary ticket sellers being introduced (e.g. the primary ticket seller offering a ticket verification service, and restricting the ability for primary ticket sellers to void resold tickets).

Trade Me speculates a price cap would not have any effect on overseas-based ticket resellers, as they appear to have little regard for the consumer protection legislation in the markets in which they operate.

Accordingly, applying a price cap will arguably disadvantage local and reputable resellers and not materially change the practices of overseas ticket resellers. It would only serve to impact and place compliance costs on the New Zealand market.

Trade Me also considers that price caps should not be introduced as international experience of price caps suggests regulatory intervention has not managed to solve the problem.

Questions 14 - 16 re information disclosure

Trade Me supports information disclosure requirements in the event price caps are introduced. We consider that there should be an obligation on the original ticket seller to print/record the full original ticket price (inclusive of any service fees) on the ticket and to be publicly transparent about these fees.

To avoid ticket scams, we think it's important that the information disclosed is able to be uploaded to a site like Trade Me (e.g. as an image) without the entry information being disclosed (e.g. holder name and seat and barcode being disclosed). In our experience, the disclosure of the entry information can lead to ticket scams.

If the information disclosure was in a pdf or image, then we envisage a lister could transfer this to Trade Me as one of their listing images.

Questions 17-18 re ban on ticket-buying bots

We agree that ticket buying bots are increasing the size of the problem. But it will be a difficult area to regulate. For example, would use of a crowdsourced marketplace of human labour like Mechanical Turk count as use of a bot?

A ban on bot use to purchase tickets from New Zealand based primary ticket resellers (or even secondary markets) works in principle, but enforcing it may be more troublesome. We expect that most of the ticket-buying bots are based offshore. As a result, the question of penalties is likely moot as jurisdiction issues will make enforcement very problematic.

The reality is that no ticketing system can be wholly isolated from such attempts and we believe most ticketing entities in New Zealand are likely experts already in preventing such bot activity.

Bot activity is also increasingly sophisticated, primary ticket sellers face the constant challenge of staying ahead of the technology in order to prevent or minimise effects of bot use.

Rather than seeking to regulate against the use of bots, we would encourage you to regulate for primary ticket platforms to use reasonable technical, security and other measures to limit the number of ticket sales to any individual person (e.g. perhaps no more than 10) and introduce a requirement for purchasers to capture some basic identity information for each individual purchaser (for example, an NZBN for a purchase by a New Zealand company).

Unfortunately identity and verification services are expensive (including systems like RealMe developed by the New Zealand Government). So, requiring full verification of purchasers is unlikely to be realistic.

Questions 19-20 re joint-industry government initiatives

We support further exploration of joint-industry government initiatives. It will be important for the primary ticket sellers to be involved in these initiatives. Many primary ticket sellers currently contractually prevent a ticket purchaser from reselling their tickets. This means that purchasers in the secondary ticket market cannot contact the primary ticket sellers for fear of their tickets becoming invalid. Ideally primary ticket sellers, secondary ticket sellers and consumer groups will be involved in considering improvements to prevent consumer harm.

It is useful for the government to also be involved in these conversations. As arrangements to prevent consumer harm may impact on retail prices (e.g. the industry choosing to collect additional identity information would involve additional cost) competitors will be unwilling to have discussions about potential arrangements for fear of inadvertently breaching the Commerce Act's price fixing restrictive provisions.

Conclusion

Poor consumer experience in the ticket reselling market is often an emotive issue, especially for consumers who miss out on tickets due to a high price point in the secondary market.

International experience suggests regulatory intervention has not managed to solve the problems associated with secondary market purchasing.

Accordingly:

- Trade Me does not support the introduction of a price cap as it is our view that a cap will not prevent ticketing scams from occurring and also because there is also evidence from overseas markets that demonstrate that ticket price caps do not work to address pricing concerns (as referred to in the discussion document).
- Trade Me is concerned that there would be a potential for significant reduction in consumer protection if Trade Me no longer operated in the ticket reselling market due to compliance costs associated with ensuring compliance with a price cap.
- Trade Me supports initiatives to prevent or curb bot activity on primary ticket selling sites.
- We also support primary ticket sellers taking responsibility for minimising illegitimate bulk buying practices, which Trade Me believes lead to tickets being 'scalped' or on-sold for excessive prices by unscrupulous dealers, via unregulated overseas secondary markets and ticket resellers.