

Secretary  
Senate Standing Committee on Economics  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

TBA Inc.  
PO Box 302  
ORMOND VIC 3204

10 February 2014

Dear Secretary

Thank you for the opportunity to provide a submission for the Committee's inquiry into ticket broking in Australia.

The Ticket Brokers Association of Australia Inc ("TBA") was incorporated in Victoria in February 2013, whose members comprise 6 of the largest professional ticket brokers in Australia. Each TBA member has an Australian Business Number, and is fully compliant with his and her GST and income tax obligations.

TBA's main purposes are:

- 1) to establish an industry-wide standard of conduct and broker accreditation scheme, and to create and enforce ethical rules and procedures to protect the public and educate the public on the industry;
- 2) to work with law enforcement agencies, state and federal legislators, concert promoters, professional sports leagues and teams in the fight against counterfeit and stolen tickets; and
- 3) to promote a safe, efficient and legitimate secondary ticket market.

In addition to each TBA member being a Top Rated Seller on eBay Australia, each member has an established client base, with many satisfied repeat customers.

Please find attached submission.

Yours faithfully

Warren Jason Cooper  
President

## **The prevalence of ticket broking and its impact on ticket prices and sales**

To a large extent, TBA agrees with the findings of the Commonwealth Consumer Affairs Advisory Council's (CCAAC) 2010 report: *Consumers and the Ticket Market*<sup>1</sup> which found:

- few sold out events in Australia each year, where sell out events and sell out ticket category or seating type are a precondition for a strong secondary market;
- the number of on-sold tickets for popular events being low compared to the total number of tickets sold; and
- ticket on-selling being less common in Australia than in some other markets, such as the United States and the United Kingdom.

With increased reliance on internet technology, and with the existence of reputable ticket brokers who are among the highest rated sellers on eBay Australia, combined with the emergence of Viagogo's ticket exchange in 2012, the secondary market for the purchase of tickets is gaining greater legitimacy as a safe and secure method of transacting.

The secondary ticket market is further expected to widen with the proposed launch by Ticketmaster Australia (hitherto a duopoly participant for the primary market for tickets) of its "Ticketmaster Resale" website. It is understood that some TBA members, concert promoters and venues have recently been approached by Ticketmaster Australia's newly appointed "Head of Resale", with a view to discussing the benefits of listing tickets with Ticketmaster Resale.

Ticket resale on the secondary market has an obvious impact on prices and sales for an event, the economic advantages and disadvantages of which are outlined in pages 18-20 of the CCAAC report referred to above, with which TBA agrees. TBA contends that disproportionate attention is drawn to the resale of event tickets at a profit, with minimal attention paid to events where some tickets are sold at or significantly below cost price.<sup>2</sup>

TBA notes the recent announcements by the Collingwood<sup>3</sup> and Richmond<sup>4</sup> AFL football clubs and Sydney Roosters NRL club<sup>5</sup> of commercial sponsorship arrangements with Viagogo, with the company now the "official ticket marketplace" of the respective clubs. Precise details of these sponsorship arrangements will not be made public. It is understood that in return for its sponsorship, Viagogo will obtain an allocation of match day tickets which will be subsequently listed for sale via the secondary market. Limited to no transparency makes it difficult to ascertain the precise nature of this relationship, whether similar relationships are being sought, and the ultimate impact these kinds of arrangements may have on future ticket prices and sales.

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<sup>1</sup> [http://archive.treasury.gov.au/documents/1914/PDF/Ticket\\_scalping\\_report.pdf](http://archive.treasury.gov.au/documents/1914/PDF/Ticket_scalping_report.pdf)

<sup>2</sup> <http://www.news.com.au/entertainment/music/justin-bieber-the-concert-no-one-wants-to-go-to-anymore/story-e6frfn09-1226762423759>

<sup>3</sup> <http://www.collingwoodfc.com.au/news/2013-09-20/viagogo-is-just-the-ticket-for-collingwood>

<sup>4</sup> <http://www.richmondfc.com.au/news/2013-09-19/viagogo-just-the-ticket-for-richmond>

<sup>5</sup> <http://www.roosters.com.au/news-display/Sydney-Roosters-become-first-NRL-club-to-partner-with-viagogo/86507>

TBA believes that rather than by imposing legislative prohibitions on the resale of event tickets or a cap on the price at which tickets may be resold, the government should seek to foster a culture of transparency and encourage event promoters to fully disclose the allocations that are being made available to corporate clients and/or directly to secondary market exchanges, ideally by way of self regulation.

**The effectiveness of current state-based consumer protection legislation, and how these measures can be improved, including through a federal approach**

As uniform legislation for consumer protection, the Australian Consumer Law enacted by each of the states and territories provides effective remedies to aggrieved customers in the event of disputes arising, should they not be resolved in the customer's favour.

In Victoria, consumers also have recourse to low-cost civil jurisdictions such as the Victorian Civil & Administrative Tribunal. It is understood similar low cost jurisdictions exist among most states and territories.

TBA believes that most state-based legislation aimed at curtailing the unauthorised resale of event tickets adopts an overly protectionist flavour which significantly favours sporting codes, event promoters and a limited number of corporate licensees, under the guise of consumer protection.

As demonstrated below, attempts by the states to limit the resale of event tickets have failed to protect consumers from paying more than they used to. This is because if one removes the secondary market, the primary market moves to take its place. From a pricing perspective, this is arguably not in the best interests of consumers.

*Major Sporting Events Act 2009 (Vic) ("Victorian Act")*

Part 9 of the Victorian Act prohibits the resale of tickets at a premium to a "declared event". Current and proposed declared events are the AFL Grand Final the ICC Cricket World Cup and the Australian Masters.

TBA does not expect the AFL to make a submission to the Committee. Under the Victorian Act, the AFL maintains a virtual monopoly on the sale of grand final tickets, thereby effectively stifling any secondary market. Those from the general public who wish to purchase tickets have no option other than paying between \$1,495 and \$2,395 for a food and beverage package including a grand final ticket. Ticket only sales are not available to the general public for the AFL Grand Final.

By contrast, AFL and eligible Club members are not required to purchase tickets as part of a package. The cost of an AFL or club member's ticket ranges from between \$150 and \$399. TBA is aware that some brokers have privately sold club and AFL membership tickets for the AFL Grand Final to members of the general public for an average price per ticket of between \$500 and \$800.

We reject any suggestion that the difference in sale price between the limited number of individual Grand Final tickets resold privately, and the AFL's ticket packages, are as a result of the high value attributed to the hospitality benefits packaged by the AFL. Each year at the time of the grand final, TBA's members are inundated by desperate fans who are content to pay a premium per ticket, but who are reluctant to purchase the AFL packages, which are widely perceived as exorbitant, and which are seen to include a meal and basic entertainment at a significant surcharge.

Curiously, the Victorian Act no longer incorporates the purposes of its predecessor, the *Sports Event Ticketing (Fair Access) Act 2002*, the primary purpose of which initially was to "maximise access by members of the public to tickets to certain sporting events..." TBA believes that true consumer-based legislation should not afford monopoly rights at the expense of potentially cheaper pricing on the secondary market, and should seek to remedy this price differential. At the very least, such legislation should provide a mechanism for members of the general public to obtain potentially cheaper tickets, by way of exchange or re-sale.

*Fair Trading Amendment (Ticket Reselling) Bill 2013 ("NSW Bill")*

The NSW Bill proposes not to outlaw the resale of tickets at a profit, but rather advertisements on public sale forums such as eBay, Gumtree and Viagogo of tickets sold at a profit. As a consequence, in the case of eBay or Viagogo, this severs a safe avenue by which consumers can search for, buy and sell tickets from legitimate sellers, thus driving the resale of tickets underground, where the risk of fraud occurring will be far greater.

Under the NSW Bill, the only tickets that can advertised are those which are not sold in contravention of the ticketing agent's terms of sale. In all such cases, the seller must display a picture of the tickets, which is impossible in instances where a ticket holder has yet to collect the tickets or where collection is required on the day at the venue. The ticket holder will be thus unable to list their tickets for sale on a public sale forum, even if it is sold in compliance with the terms of sale.

No public consultation was sought on the NSW Bill. The protectionist nature of the bill emerges upon review of proposed section 59, which allows for event organisers to authorise (or license) third parties or "agents" to resell tickets at a profit, thereby eradicating a safe and secure (albeit unauthorised) secondary market for the resale of tickets to sporting and entertainment events in NSW.

We agree with Ticketmaster Australia, who has warned of "unintended consequences" if amendments are not made to the Government's proposal. They say:

*"the NSW legislation would prompt consumers to use unregulated foreign companies to resell their tickets and that the creation of a secondary market, fully unrestrained by government regulations and reforms, would only cause the scalping problem to metastasise further."*<sup>6</sup>

*Major Sports Facilities Act 2001 (Old) (“Queensland Act”)*

The Queensland Act prohibits the resale of tickets above 10% of face value to certain “major sports facilities events” in Queensland. However, no reciprocal pricing constraints are imposed on event organisers and sporting codes, which has resulted in significant ticket prices increases way above the consumer price index.

For example, in 2014, the price of a Category 1 ticket to the State of Origin at Brisbane’s Suncorp Stadium, (a major sports facility event), is jumping from \$170 each to \$370, which is a rise of over 117%. This has been criticised by some as pricing true fans out of the equation.<sup>7</sup>

**Issues of illegality, including the prevalence of counterfeit tickets**

Our experience suggests that the majority of fraudulent instances involving the sale of any goods (including tickets) take place on Gumtree and other classifieds sites, where transactions are not widely monitored and where buyers undertake sole risk. In such circumstances, buyers risk not knowing with whom they are transacting nor can they determine the legitimacy of the tickets (especially in the case of electronic tickets) and the propensity for fraudulent transactions is much greater.

Fraud is also encountered on the seller’s side of the transaction. TBA’s members can recount a number of instances where buyers have falsely claimed chargebacks from their credit card companies, either asserting that the goods were not received or that the relevant transaction was not authorised. Little to no assistance is provided by law enforcement and monies lost are ultimately written off.

Up until recently in Australia, unfair media treatment has been afforded to the secondary resale market, with ticket broking akin to criminal activity. Sensationalist reporting by news and current affairs programmes such as Channel Nine only reinforce this attitude, with little to no critical evaluation of safer secondary market alternatives, let alone the disclosure of conflicts of interest by such media entities.

For example, a story by Channel Nine’s “A Current Affair” programme which aired in September 2013<sup>8</sup> documented the plight of a family, who claimed to have purchased tickets to see the One Direction concert from an obscure seller, only to receive an empty envelope in the mail. Most viewers would no doubt have been pleased when the team at A Current Affair paid for new tickets for the family to use. However, the segment failed to disclose that:

- A Current Affair is aired by Channel Nine, which is owned by Nine Entertainment Co Holdings Limited (“Nine”);

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<sup>6</sup> <http://musicfeeds.com.au/news/ticketmaster-australia-to-launch-anti-scalper-ticket-resales-early-2014/>

<sup>7</sup> <http://www.dailytelegraph.com.au/sport/nrl/state-of-origin-ticket-prices-set-to-soar/story-fni3fqyo-1226729687712>

<sup>8</sup> <http://aca.ninemsn.com.au/article/8728505/one-direction-disaster>

- Nine also owns Ticketek (the ticketing agent for One Direction’s tour) and Allphones Arena, where the One Direction shows were being staged; and
- The promoter for the One Direction tour was Nine Live Pty Ltd, which is another subsidiary of Nine.

Such cynical and manipulative reporting by an entity with both free-to-air television, event ticketing and event management capabilities only aims to disseminate mistruths about safe and secure secondary market alternatives.

One such alternative is eBay Australia, where all sellers are required to offer PayPal as a payment option. Under PayPal’s Buyer Protection Policy<sup>9</sup>, up to \$20,000 protection is afforded for eligible purchases including tickets, in the event they are not received or are deemed “significantly not as described”. Each of our members is an eBay Top Rated Seller, with eBay customers providing the highest possible rating in categories such as “item as described”, “communication”, “speed of postage” and “postage costs”.

Viagogo is also a secure secondary exchange for the purchase of tickets, as will no doubt be canvassed in its submission.

### **Any related matters**

#### Possible expansion of Committee’s terms of reference

TBA respectfully submits that the Committee’s terms of reference ought to be expanded to include broader consumer protection issues across the ticketing industry as a whole (i.e. not merely confined to ticket resale on the secondary market).

Potential avenues for further enquiry include:

- (a) a tendency by music festival promoters to substitute artists (including headlining artists), with no right of refund, purportedly in reliance on the ticketing agent’s terms and conditions of sale which permit such substitution. These terms tend to mislead consumers about their rights under the consumer guarantees under the Australian Consumer Law;
- (b) an increasing tendency by ticketing agents not to refund booking and credit card fees when a promoter must provide a refund;
- (c) a tendency by some ticketing agents to impose significant fees for the replacement of tickets. For example, in the case of the 2014 Soundwave music festival, Oztix have imposed a \$40 per ticket fee for lost or damaged tickets;
- (d) the imposition of liquidity requirements for new and emerging event promoters for large scale events, given a demonstrated increased risk of failure;

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<sup>9</sup> <https://www.paypal.com/au/webapps/mpp/buyer-protection>

- (e) a tendency at the general public onsale by event promoters such as Frontier Touring to hold back the best tickets as part of its “packages”, only to release the unbundled tickets months later, purportedly “due to the finalisation of production information”;
- (f) a tendency by promoters to announce only one or two shows when they have a contract in place for 4 or more concerts. This results in some of the keenest and most desperate fans buying among the worst seats minutes before the next concert is announced;
- (g) ticket prices printed on tickets from Ticketek and Ticketmaster do not reflect the total average cost per ticket after transaction and credit card fees, but rather the ticket’s face value. Transaction fees can be as high as \$11.30 in the case of Ticketek, with credit card surcharges incurring from an additional 1.95%. This is problematic in instances of resale, where the ticketing terms prohibit the resale above face value at risk of the tickets being cancelled; and
- (h) possible misleading and deceptive conduct pertaining to supposed “VIP” benefits offered by event organisers, which do not meet customers’ expectations, as occurred with this year’s Big Day Out.<sup>10</sup>

#### Benefits of secondary market to domestic and international tourism

There are wider economic benefits attributed to the secondary ticket market as a result of international and domestic tourists buying tickets. We have transacted with many such tourists, who would not otherwise have come if we were unable to secure them tickets. This results in a boost for hotels, restaurants and the wider tourism market in Australia.

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<sup>10</sup> <http://www.smh.com.au/entertainment/music/big-day-off-for-boss-of-struggling-big-day-out-20140208-328hf.html>