

Chapter 2

Ticket scalping in Australia

Commonwealth Consumers Affairs Advisory Council Report

2.1 In November 2010, the Commonwealth Consumers Affairs Advisory Council (CCAAC) produced a report on ticket onselling in the Australian market. It found that ticket onselling could be advantageous for both consumers and suppliers:

For consumers, the benefits include providing an alternative avenue to access tickets, particularly for popular events, offering convenience and allowing tickets to be transferred. For suppliers, ticket onselling can assist increases in ticket sales, improve crowd attendance and promote publicity for events.¹

2.2 CCAAC considered that the existing consumer protection regulatory framework in Australia was adequate to protect consumers from unfair trading practices in the resale market for event tickets. Furthermore, it found that the level of unauthorised onselling in Australia was low, due to:

- only a few events in Australia selling out each year—a precondition for a strong secondary market;
- the low number of unsold tickets for popular events compared to the total number of tickets sold; and
- ticket onselling being less common in Australia than in some other markets, such as the United States (US) and the United Kingdom (UK).²

2.3 The CCAAC report suggested that problems related to ticket onselling were centred on 'consumer dissatisfaction demonstrated by consumer's perception of unfairness rather than on significant levels of consumer detriment'.³ While it believed that the broad issue of ticket onselling had positive and negative effects for consumers and suppliers, it concluded that currently onselling did not cause a significant level of consumer harm. Even so, it was of the view that, if the broad issue of onselling did in the future lead to consumer detriment, industry could use mechanisms to prevent onselling.⁴

1 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, p. iv.

2 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, pp. v and 13.

3 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, p. 3.

4 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, p. 37.

2.4 In this regard, CCAAC recognised that industry had the ability to respond to specific concerns raised by some consumers about unauthorised onselling in a number of ways.⁵ It explained further that industry can and does use a variety of mechanisms to address these concerns, such as 'the transferability of tickets, transparency of ticket allocations and fair access to tickets'. The report stated that 'promoters and sporting clubs, if they chose to, could use technology to prevent unauthorised onselling'.⁶ According to the report, technology would 'continue to assist in reducing ticket onselling' and that future technological advances would 'eventually enable solutions to eliminate the practice completely'.⁷

Recent trends

2.5 Ticket scalping is not new but the advent and growing importance of the internet, which facilitates the convenient online sale of tickets, has opened up access to a much wider secondary market. Online secondary ticket platforms such as eBay, Gumtree and more recently viagogo dominate this marketplace and provide a framework in which ticket resellers operate. For example, viagogo explained to the committee that with the development of marketplaces such as viagogo, people now had 'greater access to a wide selection of tickets for events all over the world and they can buy and sell tickets in a secure environment'.⁸

2.6 Those with a genuine reason for reselling their ticket as well as rent seekers chasing a profit tend to use the internet to resell their tickets. The increasing online sale of tickets has made it difficult to contain the activities of scalpers which are now more visible. The major sporting organisations were particularly concerned with, what they described as 'the burgeoning prevalence of online ticket scalping sales', which was making it increasingly hard for them to minimise the practice.⁹

Significance of secondary markets

2.7 EBay informed the committee that a survey it had commissioned with Newspoll showed that 'the vast majority of consumers bought their ticket via an official ticketing agency (i.e. Ticketek or Ticketmaster): 68 per cent for sporting events and 75 per cent for concerts. Other places where consumers could purchase tickets included fan clubs, stadium memberships and other avenues'.¹⁰

5 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, p. 37.

6 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, p. 41.

7 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, pp. 41–42.

8 *Submission 14*, p. 1.

9 COMPSS, *Submission 17*, p. 9.

10 *Submission 9*, p. 4.

2.8 Even so, submissions recognised the legitimate role that a secondary market has in providing a service for ticket purchasers who have a genuine need to onsell their tickets.¹¹ For example, Australia's major sporting bodies do not oppose the onselling of tickets at face value where there is a valid reason for doing so—a bona fide purchaser who intended to use a ticket but is no longer able to do so and seeks to resell that ticket.¹²

2.9 Indeed, the reasons for persons wishing to resell their tickets could be varied but include circumstances where their favourite team is no longer playing in the event, where unexpected work or family commitments have arisen or the person has become ill or indisposed and cannot attend the event.¹³ A secondary ticket marketing place provides the opportunity for such a person to recover in full or in part their outlay while allowing another person to benefit from an otherwise unused ticket. Live Performance Australia (LPA), the peak body for Australia's live performance industry that represents over 390 members, stated:

...it is important to allow consumers the opportunity to onsell tickets in a **legitimate secondary marketplace** if they genuinely can no longer attend an event. Without legitimate avenues for genuine onselling, consumer confidence would be severely eroded and there would be a great deterrence to purchasing tickets in advance, which would have a detrimental impact on the live performance industry.¹⁴

2.10 According to Ticketmaster, the overwhelming majority of event attendees in Australia recognise the value of resale. The secondary market can also work in favour of artists and venues in that 'no one wants empty seats'.¹⁵ Ticketmaster informed the committee that, at the moment, fans unable to attend an event cannot easily return tickets. As an example, it cited sports events where a resale market would allow fans to maximise the use of their season tickets. It stated:

People feel more comfortable committing to a season ticket when they know that they can give it up or resell the right to use it for certain events.¹⁶

2.11 The same reasoning applies to the entertainment industry where the ability to resell tickets may even boost ticket sales by offering encouragement to people to buy a subscription season ticket knowing that they could resell a ticket for a performance they cannot attend. The Ticket Brokers Association, which comprises six

11 See for example, LPA, *Submission 7*, p. 2; Ticketmaster, *Submission 8*, p. [1 and 3]; AIMIA Digital Policy Group, *Submission 15*, p. [2]; The Treasury, *Submission 16*, p. 2.

12 COMPSS, *Submission 17*, p. 10 and The Coalition of Major Professional & Participation Sports, submission to the Review into ticket scalping—onselling and consumers, 5 August 2010.

13 See for example, AIMIA Digital Policy Group, *Submission 15*, p. [2].

14 *Submission 7*, p. 2 (emphasis in original).

15 *Submission 8*, p. [3].

16 *Submission 8*, p. [3].

of the largest professional ticket brokers in Australia, also drew attention to wider economic benefits of an effective and reliable secondary market which results in international and domestic tourists buying tickets.¹⁷

Distinction between ticket scalping and ticket resale

2.12 Clearly, there are cases where ticket purchasers have legitimate reasons for seeking to resell their tickets and hence want access to a secondary market.¹⁸ In this regard, it should be noted that Ticketmaster sought to make the distinction between ticket scalping and the resale of tickets.¹⁹ Ticketmaster attributed scalping to a distinct group of people who, 'through unlawful or shady means, try to siphon tickets off the primary market with the sole purpose of reselling those at a profit'.²⁰

2.13 Indeed, in some cases, it would appear that professional scalpers use state-of-the-art technology to purchase tickets. NSW Fair Trading noted that modern ticketing technology allows up to 20,000 consumers to simultaneously purchase tickets on line.²¹ One article referred to 'the bots'—computer programs that conduct automated tasks and were able to purchase tickets en masse.²²

2.14 Evidence before the committee overwhelmingly supported a market where, to recover the costs associated with purchasing tickets, individuals could resell tickets they no longer needed for a variety of reasons. The committee regards such people as genuine resellers and not as ticket scalpers. Thus, while there was general agreement on the need to have an effective means whereby ticket purchasers with a legitimate reason could offer their tickets for resale, witnesses rejected the notion of having a secondary market open to abuse by ticket scalpers. For example, the sports organisations objected strongly to racketeering in the resale of tickets. When the committee refers to ticket scalpers, it means people who deliberately set out to purchase tickets and then resell them with profiteering as their sole intention.

17 *Submission 11*, p. [6].

18 *Committee Hansard*, 20 February 2014, p. 3.

19 *Committee Hansard*, 20 February 2014, p. 1.

20 *Committee Hansard*, 20 February 2014, p. 3.

21 NSW Government Fair Trading, 'Entertainment', http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying_services/Entertainment.page, (accessed 9 February 2014).

22 For more detail on the use of sophisticated software in purchasing tickets see chapter 4, paragraphs 4.88–4.92.

Effects of scalping

2.15 Over recent years, media reports and event holders have raised concerns periodically about ticket touting, suggesting that genuine fans were losing out to scalpers.²³

Consumer dissatisfaction—inflated ticket prices

2.16 The Coalition of Major Professional & Participation Sports (COMPPS), which represents Australia's premier sporting organisations, maintained that scalped tickets do not necessarily reflect the fair market value of the ticket.²⁴ It argued that ticket scalping distorts the market—scalpers buy tickets in bulk and on-sell them, which often creates a false demand. COMPPS stated:

If scalpers had not purchased the tickets in the first place, there would be no need for such inflated prices as the sports would still have the tickets to sell at face value price to fans.²⁵

2.17 Indeed, a common consumer complaint is that tickets sell out within minutes of going on sale and are then offered at highly inflated prices on auction web sites.²⁶ Events such as Radiohead's 2012 concert epitomised the concerns raised by patrons and fans. According to the promoter, Chugg Entertainment, it was frustrated at non-fans profiting at the expense of genuine fans and issued the following statement:

We are doing what we can to police this, but unfortunately for all of the deterrents that we are able to put in place (like additional terms and conditions of sale) it is difficult for promoters, ticketing agencies and venues to enforce.²⁷

2.18 A similar situation arose with the Pink, Bruce Springsteen and One Direction concerts.²⁸ In May 2013, CHOICE, the public face of the not-for-profit Australian

23 See footnotes 3, 4 and 5 in chapter 1 and 27, 28 and 29 below.

24 The members of COMPPS include: the Australian Football League, Australian Rugby Union, Cricket Australia, Football Federation Australia, National Rugby League, Netball Australia, and Tennis Australia.

25 *Submission 17*, p. 6.

26 *Submissions 1; 2; 3; 5; 6*, p. 2; *7*, p. 2; and *13* (confidential).

27 *Herald Sun*, 'Radiohead sells out Australian shows in seconds, scalping blitz begins', 1 March 2012, <http://www.heraldsun.com.au/entertainment/radiohead-sells-out-australian-shows-in-seconds-scalping-blitz-begins/story-e6frf9hf-1226286120962>, (accessed 12 December 2013).

28 *The Advocate* and *Sydney Morning Herald*, 'Fans losing to online scalpers buying tickets in bulk', 1 September 2013, <http://www.smh.com.au/digital-life/digital-life-news/fans-losing-to-online-scalpers-buying-tickets-in-bulk-20130830-2swcs.html>; *The Advertiser*, 'Senator Nick Xenophon declares war on scalpers as One Direction fans ripped off', 11 September 2013, <http://www.adelaidenow.com.au/news/south-australia/senator-nick-xenophon-declares-war-on-scalpers-as-one-direction-fans-ripped-off/story-fni6uo1m-1226716963142>, (accessed 12 December 2013).

Consumers Association, reported on instances of ticket scalping where for example, tickets to One Direction, priced at \$79, sold out within hours but were available on eBay, an online marketplace, for \$4,000.²⁹ One entertainment publication also noted that:

Premium tickets to next year's sold-out Rolling Stones stadium concert in Adelaide have appeared online for nearly six times their original cost. ABC reports fans who missed out on tickets and still want to catch the Stones' first Adelaide appearance in two decades, will have to fork out a hefty \$3,000 to online scalpers.³⁰

2.19 While the committee received only a few submissions from retail consumers, their views were consistent with accounts of scalpers profiteering from the resale of tickets reported in the media and by consumer protection agencies, such as CHOICE.³¹

2.20 The submitters recounted their individual experiences of attempting to purchase tickets at the very start of a ticket sale only to discover that the tickets had already been 'snapped up' and available on eBay at inflated prices.³² For example, Mr Keith Sawers submitted his request on line for four tickets to the Rolling Stones concert three minutes after they went on sale. The site, however, responded with the message that there were middle tier tickets available. When he tried to purchase third tier seats only five minutes after the tickets went on sale, he was advised that none was available. He explained:

Later that day, I searched Ebay and gumtree for tickets and there were lots for sale at 3 and 4 times the original price. I even found one site located in Canada advertising tickets for the Sydney concert. They had single tickets onsale for \$1000 each, and advertised they had 8 for sale. Ticketek site said there was a limit of 4 tickets per transaction. How can someone in Canada buy 8 tickets to a Sydney show when a resident of NSW cannot get them?³³

2.21 Mr Carl de Vos experienced the same exasperation when trying to purchase tickets to Bruce Spingsteen and the Rolling Stones and was struck by the fact that:

29 CHOICE, 'How we are run', <http://www.choice.com.au/about-us/how-we-are-run.aspx> and see also <http://www.choice.com.au/reviews-and-tests/money/shopping-and-legal/shopping/ticket-pricing/page/scalping-and-cancellations.aspx>, (accessed 13 December 2013).

30 MusicFeeds, 'Rolling Stones Australian Tour Tickets Being Scalped For \$3,000', 9 December 2013, <http://musicfeeds.com.au/news/rolling-stones-australian-tour-tickets-being-scalped-for-3000/>. See also <http://www.choice.com.au/reviews-and-tests/money/shopping-and-legal/shopping/ticket-pricing/page/scalping-and-cancellations.aspx>, (accessed 12 December 2013).

31 See *Submissions*, 1, 2, 3 and 10.

32 Mr Matthew Kirk, *Submission 1*, and Mr Keith Sawers, *Submission 2*.

33 *Submission 2*.

...it was not possible to buy tickets within 10 seconds of them going on sale due to ticket allocations being exhausted. However a number of tickets were available on on-line trading sites such as eBay within less than half an hour at far higher prices. I appreciate that high demand concerts will sell out quickly, however the sheer number of tickets that are available through resellers on the same day is beyond reasonable. It is clear that there is a cottage industry of individuals seeking to rip-off genuine music lovers.³⁴

2.22 Another submitter informed the committee that in April 2013, he contacted the Football Federation of Australia (FFA), Melbourne Victory Football Club, Ticketek, eBay, and the State Government regarding the distribution of tickets to the Melbourne Victory v. Liverpool football match. He informed the committee that ticket allocations for both Melbourne Victory members and the general public sold out in minutes, with many tickets appearing almost immediately on eBay at inflated prices. According to Mr Doug West:

None of the involved parties to this event—FFA, Ticketek nor Ebay—showed any interest in taking action on this computerised scalping process, leaving many football fans without tickets, as they either could not afford the higher prices or refused to pay the inflated prices which would have had them supporting the scalping process.³⁵

2.23 Most of Australia's major sporting codes have encountered ticket scalping.³⁶ COMPPS cited a number of cases that occurred in 2013 from the Australian Football League (AFL), Cricket Australia (CA), Tennis Australia, Australian Rugby Union, National Rugby League (NRL) and Football Federation Australia. They included:

- three tickets for the AFL Grand Final with a face value of \$260 each and a total value of \$780 offered for \$3,500—a breach of the *Major Sporting Events Act 2009*;
- a ticket for the first day of the Ashes Test in Sydney on 3 January 2014 offered for sale at \$350—tickets on sale on ticketek.com for \$130;
- a ticket for the Australian Open Tennis Men's Final offered for sale at a cost of \$1,388.89 which was more than three times the public sale price—tickets for the Australian Open are often advertised by unauthorised online on-sellers even before they actually go on sale to the public;
- platinum tickets for the 2013 British and Irish Lions Test Matches against the Wallabies in each of Brisbane, Melbourne and Sydney had a face value of

34 *Submission 5*. See also *Herald Sun*, 'Bruce Springsteen fan sues Ticketek and Frontier Touring over "inferior" seats', 9 November 2013, <http://www.heraldsun.com.au/news/law-order/bruce-springsteen-fan-sues-ticketek-and-frontier-touring-over-inferior-seats/story-fni0fee2-1226756513146>, (accessed 12 December 2013).

35 *Submission 3*.

36 *Submission 17*, p. 4.

\$295 yet were being scalped on secondary markets such as eBay and viagogo for up to \$999;

- bronze category tickets to the British and Irish Lions Test Matches with a face value of \$99 offered for sale by scalpers at prices in excess of \$700; and
- 2 Category A tickets for A-League All Stars v Manchester United in July 2013 with a face value of \$379 (\$189.50 each) on sale on eBay within 90 minutes of going on sale for \$2,200.³⁷

2.24 Clearly, there are sectors of the Australian community that believe that the current operating environment for onselling tickets to major sporting and entertainment events is unfair and disadvantages consumers.

Negates sound social policy

2.25 The scalping of tickets not only means that consumers may pay a higher price for tickets to sporting or entertainment events, but that the promoters' intentions may be thwarted. The LPA noted that when ticket scalping occurs for popular shows and is highly publicised, it can have a potentially negative effect on the relationship between event organisers and genuine consumers. It explained:

Event organisers expend a great deal of energy on setting a fair price for tickets that allow fair access to genuine consumers. This customer service objective is undermined when scalpers sell tickets for sold out shows at exorbitant prices on unauthorised onselling websites, leaving consumers with the perception that they have been denied fair access to events.³⁸

2.26 A flourishing secondary market may also undermine important social considerations of artists and promoters in setting discount ticket prices. For example, one reason for under-pricing tickets is to open up access to events to members of the public who normally could not afford to pay the market value of a ticket. The unauthorised sale of tickets at higher prices can thus frustrate the efforts of event holders to target certain audience demographics, such as young fans or families, through ticket pricing.³⁹

2.27 COMPPS told the committee that sports organisations take care to devise their ticket strategy. They seek to ensure that tickets are 'affordable, accessible, competitive in price with other similar sports and entertainment events'. The sporting bodies aim to provide 'great value for money for purchasers, many of whom attend several of the events that are provided by the sports'.⁴⁰ In some cases, maximising revenue is not the key driver. COMPPS explained:

37 *Submission 17*, pp. 4–5.

38 *Submission 7*, p. 2.

39 *Submission 13* (confidential), pp. [5–6].

40 *Submission 17*, p. 4.

The collateral benefits of having a large and enthusiastic crowd flows through to areas such as sponsor satisfaction, merchandise sales, providing a great television spectacle and growing sustainable long-term supporters of the game. Affordable, highly discounted family tickets issued by several of the sports are the best example of this. Each of the sports sets its ticket prices so that it attracts a broad spectrum of supporters.

The emphasis on **optimising attendance** means that in many cases, the sports charge less than they would if they sought to **maximise revenue**.⁴¹

2.28 Indeed, many sporting organisations pride themselves on their family friendly events and price their tickets accordingly. Such an approach not only encourages families to attend but helps to secure the future of the respective sport by fostering in younger generations an interest in the sport.

2.29 Similarly, artists and the promoters of concerts and theatrical events may under-price tickets for a range of strategic reasons which may benefit them and their patrons in the long term. One submitter informed the committee confidentially that:

The choice to underprice may be based on the recognition by the particular artist or sporting body of the constraints of their 'fan base', or could be an attempt to maintain important egalitarian principles associated with the artist or the event (such as the desire to facilitate access to all consumers regardless of socio-economic divides).⁴²

2.30 In this way, unauthorised onselling may defeat good social policy and result in scalpers reaping dividends while denying people, who could not afford the scalpers' price, access to the event.

2.31 Under-priced tickets for concerts, which may prompt quick sales and lead to additional performances, may also assist the promotion of an album or song or generate interest in a show and draw future audiences. Thus, under-pricing should not be assumed to indicate an inefficient market.⁴³

Consumer detriment from cancelled tickets

2.32 Scalping may be a breach of the contract between the original purchaser and the event holder. For example, one of the conditions of sale spelt out clearly on NRL tickets is that the tickets may not be 'resold at a premium nor used for advertising, promotion or other commercial purposes or to enhance the demand for other goods or services'.⁴⁴ COMPPS informed the committee that if a ticket is sold or used in breach of these conditions, the bearer of the ticket may be denied admission.⁴⁵

41 *Submission 17*, p. 4 (emphasis in original).

42 *Submission 13* (confidential), p. [5].

43 LPA, *Submission 7*, p. 2 and *Submission 13* (confidential), p. [6].

44 *Submission 17*, p. 9.

45 *Submission 17*, p. 9.

2.33 On its website, Ticketek states quite clearly that one of the conditions of sale of tickets (including any resale or subsequent assignment) is that:

Tickets may not, without the prior written consent of Ticketek and the seller, be resold or offered for resale at a premium (including via on-line auction sites) or used for advertising, promotion or other commercial purposes (including competitions and trade promotions) or to enhance the demand for other goods or services, either by the original purchaser or any subsequent bearer. If a ticket is sold or used in breach of this condition, the ticket may be cancelled without a refund and the bearer of the ticket may be refused admission.⁴⁶

2.34 While performers and event holders have the option to commence legal proceedings against ticket scalpers for breach of the sale conditions of their tickets, such a process is both timely and costly.⁴⁷ At present, a practical measure to prevent scalping is to enforce the ticket's terms and conditions by cancelling the ticket thereby refusing the ticket holder access. Indeed, as a deterrent to ticket scalping, promoters have cancelled tickets that were being offered or had been re-sold in contravention of the terms and conditions under which the tickets were originally purchased. In effect, such action renders the tickets worthless and places the ticket holder at risk of being denied access.

2.35 In February 2011, Mr Peter Kell, then deputy chair ACCC, released a public statement noting that tickets sold by authorised sellers often carried conditions that restricted their resale or transfer above face value. According to Mr Kell, if the tickets were resold in breach of those conditions, they may be cancelled or the ticketholder refused entry to the event. He explained that consumers not only risk being turned away but they may not get the seats they ordered or even get their tickets.⁴⁸

2.36 Since then, there have been a number of instances where consumers have had their tickets invalidated. COMPSS referred to situations where consumers had not been able to take possession of the tickets they had bought for the 2014 Australian Open and 2013/14 Ashes series. In the lead up to these events, both Tennis Australia and Cricket Australia (CA) experienced a significantly increased number of people

46 Ticketek website, 'Ticketek Online Terms and Conditions of Sale' http://premier.ticketek.com.au/content/buyers/terms_of_sale.aspx, (accessed 12 December 2013).

47 For example, COMPSS informed the committee that 'It has proven simply too expensive and time consuming for the sports to pursue their contractual rights against these unauthorised online ticket on-sellers, especially when these on-sellers base their operations outside of Australia and often ignore correspondence sent by the sports. Moreover, traditional ticket scalping has now transitioned from simply offering tickets to sporting and entertainment events where demand exceeds supply, to a situation where unauthorised secondary on-sellers (such as Viagogo) are effectively setting up as "ticket sellers/box offices" (including under the guise of sponsorship of participating clubs)'. *Submission 17*, p. 9

48 'ACCC warns sports fans to be vigilant when buying tickets online', 10 February 2011, <http://www.accc.gov.au/media-release/accc-warns-sports-fans-to-be-vigilant-when-buying-tickets-online>, (accessed 13 December 2013).

arriving at the on-site box office or contacting the relevant organisations wanting to obtain the ticket they had purchased. In these circumstances, Tennis Australia or Cricket Australia, as the case may be, were then placed in the difficult situation of having to advise the consumer that no ticket existed or that it had been cancelled. COMPSS cited the First Ashes Test in Brisbane in November 2013 where:

Cricket Australia identified a scalper when six people tried to access the same one seat. Cricket Australia cancelled all the original purchaser's tickets (more than 500 tickets bought through at least six different accounts). At every Test we refused entry to this scalper's 'customers', including one man in Perth who bought his tickets through a sports travel company in the UK. This company had been previously warned by CA about unauthorised reselling.⁴⁹

2.37 It also gave a second example that occurred during the Second Ashes Test in Adelaide in December, where:

...a customer fraudulently purchased 150 tickets per day in Adelaide by falsely claiming that they were for a large medical conference. The tickets were used to run a corporate function that took place across the road from the Adelaide Oval. During discussions with Cricket Australia after they were refused entry, clients confessed that they had paid \$500 per head and had travelled from interstate for a \$50 ticket.⁵⁰

2.38 COMPSS provided a further example that involved 45 persons holding tickets to an NRL match that they had purchased from a range of online auction sites and sales outlets. The NRL had, however, detected the tickets as part of a scam and cancelled them. All the fans had paid above face value for the cancelled tickets and on match day many were forced to leave the venue or purchase a legitimate ticket from the box office. According to COMPSS, the fans 'suffered great financial loss, emotional stress and disappointment. The entire situation reflected badly on the sport, the ticket agent, on-line auction and the venue'.⁵¹ Stadium Queensland also commented on the practice of cancelling tickets purchased from unauthorised sellers:

In recent years, a number of promoters responsible for sellout events have included a prohibition on ticket re-sale in the conditions of sale and that any re-sold tickets may be cancelled. In these circumstances, promoters have monitored the advertising of tickets for re-sale in order to cancel such tickets, where there is sufficient information available about the specific seat number of the ticket to enable this to occur. In this situation, it is important for consumers to be aware of the possibility that their funds may

49 *Submission 17*, p. 10.

50 *Submission 17*, p. 10.

51 *Submission 17*, p. 5. In its submission, COMPSS provided a full account of how the person who sold the tickets was able to purchase a large number of tickets.

be lost and tickets cancelled if tickets are purchased from anyone other than the authorised ticket seller for an event.⁵²

2.39 Because of the anonymity afforded to buyers and sellers on online sites, there may be no way of alerting purchasers to the fact that their tickets have been cancelled. The disappointed ticket holder is ineligible for a refund from the ticketing agency and generally has none of the protections normally afforded consumers.

2.40 While the scalpers escape any detriment and indeed retain their profits, the purchasers of the tickets are punished and the event holders have the unenviable task of informing disappointed fans that their tickets were unusable. Moreover, in such cases, the end purchasers may not be aware of the cancellation until refused entry at the venue, increasing the risk of disgruntled consumers venting their anger at venue staff, jeopardising their safety and welfare.⁵³

2.41 EBay also noted that, because a ticket reseller could deliberately number the advertised seats incorrectly to avoid detection, the promoter may cancel the wrong tickets.⁵⁴ Thus persons holding tickets purchased legitimately through the authorised ticket seller may find themselves barred from entry.⁵⁵

Consumer detriment from counterfeit tickets

2.42 Purchasing tickets from the secondary market also creates the potential for fraud where a buyer may not receive the tickets as advertised or any tickets at all.

2.43 COMPSS informed the committee that for sessions or events that are sold out, the incidents of counterfeit or non-existent tickets was becoming more frequent and creating difficulties for the individual customer, venue owner, promoter and authorised ticketing agent. It cited the 2014 Australian Open where a customer paid \$900 for a \$69 ticket at a sold out session, only to find he or she was unable to obtain the ticket purchased from the unauthorised seller.⁵⁶ The Treasury has also referred to the risk of counterfeit tickets being sold on the secondary market as a matter of concern, though in its view the problem was being addressed.⁵⁷

2.44 Based on its experience, the Ticket Brokers Association found that in Australia:

...the majority of fraudulent instances involving the sale of any goods (including tickets) take place on Gumtree and other classifieds sites, where

52 *Submission 6*, p. 3.

53 *Submission 13* (confidential), p. [8] and eBay, *Submission 9*, p. 8.

54 *Submission 9*, p. 8.

55 *Submission 9*, p. 8.

56 *Submission 17*, p. 10.

57 *Submission 16*, p. 2. The Treasury referred to the findings of the 2010 CCAAC report.

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.⁵⁸

2.45 Interestingly, the Ticket Brokers Association noted that buyers may also engage in fraudulent activity. It stated that its members could cite:

...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.⁵⁹

2.46 Racketeering in the resale of tickets also reaches beyond Australia's borders and can sometimes cause quite substantial losses and significant disruption. For example, in February 2011, the ACCC's immediate concern was the 2011 Rugby World Cup in New Zealand. It urged sports fans to be vigilant when buying tickets on line noting that they may not receive the tickets at all.⁶⁰ In April 2012, New South Wales Fair Trading issued a warning to 'unsuspecting consumers' who faced losing costs associated with travelling to exotic venues or events as well as the value of any tickets purchased. It cited the case of a consumer who had travelled from Sydney to Hong Kong for the 2011 Hong Kong Rugby Sevens but was denied entry to the game. She had purchased tickets from a seller that bought and sold tickets online but at that time did not hold agreements with promoters and venues to sell tickets to their events.⁶¹

2.47 A recent report by the UK Metropolitan Police on ticket fraud found that such criminal activity was committed by organised criminal networks that create legitimate-looking websites, take payments for event tickets and then fail to supply them. Although accounts varied, the report found that some estimates indicate that as many as one in seven UK ticket buyers were defrauded by sham websites, and in 2010 it was estimated that half a million Britons fell victim to bogus ticket sellers. The Police reported that the true scale of ticket fraud was 'unknown because the majority of those defrauded did not file a report with the police or Action Fraud'.⁶² It

58 *Submission 11*, p. [4].

59 *Submission 11*, p. [4].

60 'ACCC warns sports fans to be vigilant when buying tickets online', 10 February 2011, <http://www.accc.gov.au/media-release/accc-warns-sports-fans-to-be-vigilant-when-buying-tickets-online>. (accessed 13 December 2013).

61 NSW Fair Trading, 'Landmark legal action a game changer for ticket resellers', 3 April 2012, http://www.fairtrading.nsw.gov.au/ftw/About_us/News_and_events/Media_releases/2012_media_releases/20120403_landmark_legal_action_a_game_changer_for_ticket_resellers.page. (accessed 13 December 2013).

62 Metropolitan Police, *Ticket Crime, Problem Profile*, February 2013, p. 5.

made clear that it was difficult to prove that a website was fraudulent until victims came forward.⁶³

2.48 The Police report also found that one of the difficulties confronting law enforcement was that the UK did not have legislation outlawing or regulating the resale of tickets (except for football and the London 2012 Olympic and Paralympic Games). Thus websites could not be suspended unless authorities were confident that fraud was going to be committed. It also noted that suspended websites could easily re-emerge and that websites hosts and registrars based overseas were often not compliant with UK law enforcement requests, and some would not act without a court order.⁶⁴

2.49 As noted earlier, the 2010 CCAAC report noted that ticket onselling was more prevalent in the US and UK. Even so, according to a survey by Galaxy Research undertaken in September 2013, an estimated 500,000 Australians aged between 18 and 64 were, during the previous 12 months, scammed when purchasing tickets online.⁶⁵ They reported that tickets either did not turn up or were for the wrong seat with 81 per cent of those scammed buying their tickets from eBay or Gumtree.⁶⁶

2.50 The experiences of eBay, LPA and Ticketmaster do not support the findings of this research. EBay stated that the incidence of counterfeit tickets being available on its website, was 'practically non-existent' and 'certainly insufficiently high to warrant regulatory intervention'.⁶⁷ The LPA suggested that its members have also indicated that counterfeit tickets were practically non-existent as ticketing agents had 'invested in technology that easily identifies counterfeit tickets'.⁶⁸

2.51 Ticketmaster shared the view that the sale of counterfeit tickets was not an issue of 'any significance in Australia'. It indicated that the risk would be further reduced through technological advances. It also noted that 'the ability of companies like Ticketmaster to authenticate and reissue barcodes, even for sales in the secondary market, would further minimise the opportunity for illegal practices in the ticketing market. Ticketmaster warned, however, that if 'unnecessary regulation restricts and limits the resale market in Australia, and pushes consumers to offshore sites, we would expect the risk to consumers to increase substantially'.⁶⁹

63 Metropolitan Police, *Ticket Crime, Problem Profile*, February 2013, p. 6.

64 Metropolitan Police, *Ticket Crime, Problem Profile*, February 2013, p. 5.

65 *Computerworld*, '500k Australian's scammed by dodgy ticket sellers: survey', 17 September 2013, http://www.computerworld.com.au/article/526675/500k_australians_scammed_by_dodgy_ticket_sellers_survey/, (accessed 12 December 2013).

66 Ticket marketplace viagogo commissioned the research.

67 *Submission 9*, p. 8.

68 *Submission 7*, p. 5.

69 *Submission 8*, p. [5].

2.52 The ACCC was unable to comment on the reliability of the Galaxy Research. Even so, while it acknowledged that many consumers contact their local fair trading or consumer affairs agency to report a complaint, the ACCC provided the following statistics on bogus tickets.

2.53 Between 1 January 2013 and 31 December 2013, the ACCC received 196 reports of scams involving counterfeit or non-existent tickets. Of these contacts, 160 (81.6 per cent) complained of losing money to these scams, totalling a reported \$70,933 for the year. Activities involving counterfeit or non-existent tickets were a small component of the total number of scams reported in 2013 to the ACCC (including via the Scamwatch website). In 2013 over 91,000 scam contacts were received with an estimated loss of \$90 million.⁷⁰

Security at venues

2.54 An increased risk to security at the venue was another reason put forward for the need to regulate the secondary market. Regulation would give the event organisers and venues increased control over who could gain access to the event.⁷¹ Viagogo rejected this proposition. It argued that secondary ticket marketplaces were 'equally capable of instituting measures deemed necessary to reduce security risks'. It noted that a managed marketplace such as viagogo's 'registers customers and has fully trackable data'. In this way, it would know who its customers were, and could work in partnership with football clubs and other event organisers to segregate rival fans by ensuring that only home supporters were able to buy resold tickets in the home section of the stadium if there were legitimate security concerns for a particular event'.⁷²

2.55 Clearly, the secondary marketplace is not without its drawbacks, especially when unscrupulous ticket sellers engage in profiteering to the detriment of consumers and event holders or ticketing agencies cancel resold tickets in an effort to curb the unauthorised resale of tickets.

Conclusion

2.56 Without doubt the activities of ticket scalpers pose problems for event holders and their promoters, but more importantly for consumers who may pay inflated prices for their tickets; have their tickets cancelled and are subsequently denied entry to the event; or fall prey to a fraudster and not receive the tickets at all.

2.57 In the following chapter, the committee considers the efforts being taken in both the primary and secondary markets to curtail the activity of unscrupulous ticket resellers.

70 ACCC, answer to question on notice No. 2, received 18 March 2014. For more information see Appendix 2.

71 *Submission 14*, p. 2.

72 *Submission 14*, p. 2.

