

# Chapter 3

## Reducing the detrimental effects of ticket scalping

3.1 The committee received submissions from event holders and promoters, ticketing agencies, online ticket marketing places and consumers. Their views differed on the merits or otherwise of ticket scalping and how, or if, the re-sale of tickets should be regulated. A number of submitters were of the view that there were practices in the primary market that undermined consumer confidence in the efficiency and fairness of the market and fostered conditions that encouraged ticket scalping. In contrast, others maintained that the activities of unscrupulous people in the secondary market posed risks to the interests of event holders, promoters and consumers. In this chapter, the committee examines the strengths and weaknesses in both the primary and secondary markets.

### Problems and remedies in the primary markets

3.2 According to some submitters, promoters themselves are in part to blame for consumer discontent because of how they allocate and distribute tickets. For example, the online ticket platforms looked at the deficiencies in the primary market as a significant factor in creating a demand for a secondary market that could give rise to unscrupulous conduct. In their view, an inefficient primary market presents opportunities for the resale of tickets that encourages rent seeking behaviour as reported by the media and cited earlier.

3.3 The Ticket Brokers Association (TBA) catalogued behaviours in the primary market that it believed resulted in consumer dissatisfaction and could be remedied. They included:

- 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 tended to mislead consumers about their rights under the consumer guarantees under the Australian Consumer Law;
- an increasing tendency by ticketing agents not to refund booking and credit card fees when a promoter must provide a refund;
- 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 has imposed a \$40 per ticket fee for lost or damaged tickets;
- the imposition of liquidity requirements for new and emerging event promoters for large scale events, given a demonstrated increased risk of failure;

- at the general public onsale, a tendency 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';
- a tendency by promoters to announce only one or two shows when they have a contract in place for four or more concerts—results in some of the keenest and most desperate fans buying among the worst seats minutes before the next concert is announced;
- 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; and
- ticket prices printed on tickets from Ticketek and Ticketmaster not reflecting 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 per cent. This is problematic in instances of resale, where the ticketing terms prohibit the resale above face value at risk of the tickets being cancelled.<sup>1</sup>

3.4 Mr de Vos referred to a lack of transparency in the way event holders and ticketing agencies operate. He noted that legitimate ticket sellers and concert promoters 'reserve batches of the best seats and sell them off on other trading websites themselves at greatly inflated prices'.<sup>2</sup> In his view, they conspire to 'inflate ticket prices' and their conduct is 'anti-competitive and an abuse of market power'.<sup>3</sup> Similarly, viagogo argued that the problems associated with limited access to tickets do not arise from ticket resale but stem from the original allocation of tickets.<sup>4</sup>

3.5 Five practices in the primary market were singled out for particular criticism—corporate and hospitality packages, sponsorship deals, allowing bulk purchases, poor timing when placing tickets on sale and restrictions on ticket refunds or transfers.

### *Corporate and hospitality packages*

3.6 Viagogo observed that often only a small number of tickets are made available to ordinary fans through the box office with the majority allocated to large corporate interests.<sup>5</sup> EBay also referred to corporate and hospitality allocations whereby promoters regularly hold back significant volumes of tickets for corporate interests, sponsors and hospitality packages, which reduced the number of tickets

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1 *Submission 11*, pp. [5–6].

2 *Submission 5*.

3 *Submission 5*.

4 *Submission 14*, p. 2.

5 *Submission 14*, p. 2.

available to the general public in the first place.<sup>6</sup> Ticket Brokers Association (TBA) gave the example of the AFL which, it argued, maintained a virtual monopoly on the sale of grand final tickets thereby effectively stifling any secondary market. It explained:

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.<sup>7</sup>

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.<sup>8</sup>

3.7 The TBA rejected any notion that the difference in sale price between the limited number of individual Grand Final tickets resold privately and the AFL's ticket packages was the result of the high value attributed to the hospitality benefits put together by the AFL. It noted:

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.<sup>9</sup>

3.8 One submitter, Mr George Peterson, referred to his experience buying a ticket from the AFL Event Office for \$1,500. In his words, they had 'a pretty crappy breakfast function' and his seat was right up the back—'back row of the top deck of the stand'. The following year he was happy to pay \$750 to 'a mate who buys tickets sometime from this guy' without the 'rip-off breakfast'.<sup>10</sup>

3.9 COMPSS provided a different view on such corporate packages. It explained that Sports have contractual arrangements under which tickets are provided to authorised third-parties who are entitled to onsell them as part of an agreed package. This agreement is 'in accordance with the terms and conditions outlined on the ticket for the purposes of corporate, travel, accommodation and supporter hospitality'.

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6 *Submission 9*, p. 4.

7 *Submission 11*, p. [2].

8 *Submission 11*, p. [3].

9 *Submission 11*, p. [3].

10 *Submission 4*. Also refer to discussion at paragraphs 2.25–2.29 of this report.

According to COMPSS, this arrangement provides 'a significant revenue stream to the sports in addition to the value of the ticket'.<sup>11</sup> It stressed that:

These authorised agencies are entitled by the terms of their contract to purchase tickets and provide additional benefits to create a package deal. It provides a service for supporters who seek an enhanced level of service at events.<sup>12</sup>

3.10 The committee has noted comments by event holders including sports organisations about the care they take to devise their ticket strategy. In particular, their aim to provide 'great value for money for purchasers, many of whom attend several of the events that are provided by the sports'.<sup>13</sup> It would help patrons and fans to have a better understanding of the number of tickets tied to hospitality packages and those available as tickets only to individuals. They would then be in a much better position to appreciate how tickets are allocated and, if unhappy, to complain to the event holders or sporting organisations.

3.11 Also, as part of their ticketing strategy, event holders and promoters should ensure that their hospitality bundles do indeed offer value for money and are not used to disadvantage consumers who have no desire to buy a package but have no option but to purchase it.

### ***Pre-sale and sponsorship deals***

3.12 Allocating tickets for various sponsorship deals also reduces the number of tickets available for fans or patrons who have no connection to the sponsors. EBay drew attention to the practice of making tickets available for priority purchase through presales, which, in its view, were 'often based on arrangements with third party partners that fail to give real priority access to genuine fans'.<sup>14</sup> For example, eBay cited an overseas example where it was alleged that, with a Justin Bieber concert in February 2013, 93 per cent of tickets had been set aside for other partners leaving only 7 per cent of tickets available for purchase by the public.<sup>15</sup>

3.13 With regard to sponsorship arrangements, Ticketmaster explained that without sponsorship deals, such as 'Telstra says "Thanks" for Bon Jovi', the shows would not happen. It explained that such sponsorship deals are no different from the Commonwealth Bank sponsoring a sporting event. Ticketmaster stated:

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11 *Submission 17*, p. 10.

12 *Submission 17*, pp. 10–11.

13 LPA, *Submission 7*, p. 2; COMPSS, *Submission 17*, p. 4.

14 *Submission 9*, p. 4.

15 EBay, *Submission 9*, p. 5 and *Computerworld*, 'Online ticket scalping regulation won't work', 17 September 2013.

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If you are a customer of a bank, a credit card or a telco, you get access to tickets before everybody else. That has been established practice for the last 15 years, but they are limited to a number.<sup>16</sup>

3.14 Ticketmaster explained that such arrangements were usually capped at 30 per cent of the house and there had 'to be an equal spread across all the states not just 'the good states'. According to Ticketmaster, the arrangement also had 'to be evenly spread over A reserve, B reserve and C reserve. It stated further:

They are available for only a short time, so that you do not inhibit the sales to the general public or whoever has been designated as the consumer. It is very well documented. It is very well advertised, so that people know what their rights are when things go on sale.<sup>17</sup>

3.15 Despite Ticketmaster's assurances that sponsorships arrangements were well documented and advertised, the Ticket Brokers Association of Australia suggested that 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.<sup>18</sup>

3.16 The committee agrees with the view that, as with corporate and hospitality packages, greater transparency in the allocation of tickets for sponsors would provide consumers with a clearer understanding of the availability of tickets. Not only may it help to dispel misconceptions about the way in which tickets are prioritised and set aside for special deals but provide an incentive for event holders to think more carefully about their ticketing strategy.

### ***Bulk purchases***

3.17 A number of witnesses identified the ability of a buyer to purchase tickets in bulk as another weakness in the primary market that enabled ticket scalpers to prosper. EBay suggested that 'failing to pre-qualify/identify purchasers and/or impose limits on the number of tickets that any individual can purchase in the primary tickets market causes concern'. It stated further that some promoters also impose caps but fail to set-up systems to enforce the measures effectively.<sup>19</sup>

3.18 Ticketmaster informed the committee that for most events, particularly for those where at least a moderate to high demand was expected, a cap was already imposed so a person 'would have to go to substantial effort to get more than two or

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16 Ms Maria O'Connor, *Committee Hansard*, 20 February 2014, p. 4.

17 Ms Maria O'Connor, *Committee Hansard*, 20 February 2014, p. 4.

18 *Submission 11*, p. [2].

19 *Submission 9*, p. 4.

four tickets'.<sup>20</sup> Ms Maria O'Connor, Ticketmaster, explained that if there were limits and 'we saw activity of more than four tickets at a time we would investigate where those tickets came from'.<sup>21</sup> She stated further:

In the business, promoters predict demand and cap ticket sales to so many tickets per transaction. We enforce that absolutely. We will even track one credit card to see how many transactions were done. People ring up with different names. We have a fraud officer and it is their job to track who is buying tickets. It is absolutely enforced if that is the condition of sale.<sup>22</sup>

3.19 Stadium Queensland informed the committee that:

Promoters have also taken the initiative to help genuine fans get access to tickets for high demand events and reduce the possibility of unscrupulous companies buying large quantities of tickets through online sale processes for the express purpose of profiteering from ticket re-sale. Examples of the initiatives taken by promoters include pre-registration for tickets and placing a cap on the number of tickets that can be purchased online in one transaction.<sup>23</sup>

3.20 The LPA also noted that limiting the number of tickets per transaction was part of the concerted efforts by industry stakeholders to implement measures to deter illegitimate ticket scalping in the live performance industry.<sup>24</sup>

3.21 The committee notes the promoters and event holders' endeavours to limit the number of tickets that an individual can purchase. Clearly, the reports of batches of tickets going on sale in the secondary market indicate that the promoters and event holders could do more to tighten up the systems designed to prevent bulk purchases.

### ***Poor timing of ticket sales***

3.22 EBay referred to a common practice whereby all publicly available tickets are dumped onto the market simultaneously, usually at 9 a.m. Australian Eastern Standard Time on a Monday morning, causing phone lines and Internet sites to collapse under the pressure. It cited the following recent examples that occurred in 2013—Rugby's Lions Tour of Australia, which reportedly sold out in 15 minutes and Manchester United vs A Leagues stars (football).<sup>25</sup> It suggested that ticket releases should be staggered by, for example, releasing tranches to fans with fan clubs first.<sup>26</sup>

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20 Mr Christoph Homann, *Committee Hansard*, 20 February 2014, p. 9.

21 *Committee Hansard*, 20 February 2014, p. 9.

22 *Committee Hansard*, 20 February 2014, p. 5.

23 *Submission 6*, p. 3.

24 *Submission 7*, p. 4.

25 *Submission 9*, p. 5.

26 *Submission 9*, p. 20.

3.23 A number of submitters similarly expressed their annoyance at tickets selling out within minutes of going on sale but then surfacing on eBay for 'triple the price'.<sup>27</sup>

3.24 Ticketmaster explained that the promoter decides 'when the tickets go on sale, what time they go on sale, how much they cost, what the ticket limit is, how many shows there will be and what the price barriers are'. The ticketing agency then executes the plan as given.<sup>28</sup> Ticketmaster informed the committee further that the purpose behind releasing tickets on the market all at once was to get as many sales as possible in the shortest time. It explained:

...so that you can get on the phone to the US, probably the night before, to get the second show or the third show, and get the momentum. Quite often, what happens is you put a show on sale and it sells out and you then have a week off before you put a second show up and you lose momentum and you do not actually sell the tickets. I know it sounds strange to encourage 300,000 people to come and transact with you at the same time, but that is how the industry operates.<sup>29</sup>

3.25 Furthermore, Ticketmaster informed the committee that staggering ticket release would not be helpful, and was 'more likely to increase the chances of ticket scalping'. It stated that even if staggering sales could be done 'fairly and equitably', it would:

...only create perceptions that supply is limited and could therefore create more demand (and drive the price up even further). If there is excess demand there is excess demand, and supply is finite.<sup>30</sup>

3.26 This statement, however, offers no explanation for tickets appearing almost immediately on the internet at highly inflated prices.

3.27 Mr de Vos suggested that withholding the sale of tickets until closer to the event thereby denying scalpers the opportunity to purchase and resell the tickets has been a recent positive initiative to combat scalpers.<sup>31</sup> The LPA also drew attention to the combined efforts by industry stakeholders to implement measures to deter illegitimate ticket scalping in the live performance industry. They included delaying the dispatch of tickets and staggering their release and increasing protection through advancing technology; such as barcoded ticketing systems and website security features.<sup>32</sup>

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27 *Submissions 1, 2, 3, 5 and 10.*

28 Ms Maria O'Connor, *Committee Hansard*, 20 February 2014, p. 6.

29 Ms Maria O'Connor, *Committee Hansard*, 20 February 2014, p. 5.

30 Answer to question taken on notice, 20 February 2014.

31 *Submission 5*, p. 1.

32 *Submission 7*, p. 4.

## **Refunds**

3.28 One submitter suggested that legally the promoter should be the only person able to sell tickets and anyone unable to use their ticket should be able to sell the tickets back to the promoter for resale.<sup>33</sup> EBay also suggested that promoters should provide more extensive rights to refunds, noting further that most other sellers of goods and services provide refunds for unused goods.<sup>34</sup> In this regard, LPA, the peak body for the live performance industry, has produced a consumer code of practice for ticketing. The code was developed in conjunction with the ACCC to educate people on their rights and who they can go to if they want a refund or want to complain.<sup>35</sup>

3.29 The code explains that there are a few limited circumstances in which consumers have an automatic right to a refund including if the event to which they purchased an authorised ticket is:

- cancelled;
- re-scheduled; or
- significantly re-located.<sup>36</sup>

3.30 According to the code, in many cases, the option to provide a refund lies at the discretion of the LPA member. It advises, however, that 'in the interests of maintaining good faith with the Consumer, refunds are sometimes provided when there is no strict legal requirement to do so'. The code also notes that discretionary refunds may be offered in circumstances where an incident out of the consumer's control has fundamentally affected his or her enjoyment of the event, and, despite being notified by the consumer, the LPA member has failed to address the incident. Such happenings may include offensive behaviour by another customer, a technical failure, or any other factor that significantly affects the consumer's enjoyment of the event.<sup>37</sup>

3.31 The committee found it difficult, however, to reconcile Ticketmaster's response to eBay's suggestion about consumers having more extensive rights to

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33 Mr Keith Sawers, *Submission 2*.

34 *Submission 9*, p. 20.

35 Ms Maria O'Connor, *Committee Hansard*, 20 February 2014, p. 6.

36 Live Performance Australia, *Live Performance Australia Ticketing Code of Practice, Consumer Code*, pp. 8–9, [https://liveperformance.com.au/sites/liveperformance.com.au/files/resources/live\\_performance\\_australia\\_ticketing\\_code\\_of\\_practice\\_-\\_consumer\\_version\\_-\\_1\\_february\\_2012.pdf](https://liveperformance.com.au/sites/liveperformance.com.au/files/resources/live_performance_australia_ticketing_code_of_practice_-_consumer_version_-_1_february_2012.pdf), (accessed 11 February 2014).

37 Live Performance Australia, *Live Performance Australia Ticketing Code of Practice, Consumer Code*, pp. 8 and 10, [https://liveperformance.com.au/sites/liveperformance.com.au/files/resources/live\\_performance\\_australia\\_ticketing\\_code\\_of\\_practice\\_-\\_consumer\\_version\\_-\\_1\\_february\\_2012.pdf](https://liveperformance.com.au/sites/liveperformance.com.au/files/resources/live_performance_australia_ticketing_code_of_practice_-_consumer_version_-_1_february_2012.pdf), (accessed 11 February 2014).



refunds, and the guidance offered in the LPA code of conduct. Ticketmaster informed the committee that 'the nature of the industry does not allow refunds because promoters are required to pay artists "up front"'. It explained:

The live entertainment industry is unlike any other retail in so far that every seat purchased is not of the same quality as others in the venue. Therefore, allowing refunds has the potential of enticing patrons to keep returning and buying tickets for new performances of the same event. This would cause untold problems for promoters and producers who guarantee artists fees and venue rental many months ahead of the event.<sup>38</sup>

3.32 The committee understands that a system that creates difficulty for a person to obtain a refund, especially for tickets to a popular event, creates an incentive for a secondary market. Thus, the existence of a secondary market often reflects a failure in the primary market: the secondary market is able to meet a consumer need that the primary market is not satisfying.

### *Other remedies*

3.33 Aside from placing limits on the number of tickets available and cancelling onsold tickets, promoters have introduced other measures to reduce the incidence of unauthorised onselling of tickets. They include requiring tickets to have names of purchaser (or other means of identification) on it, and using more sophisticated methods of marketing and issuing tickets to consumers.<sup>39</sup>

3.34 Also as a means of promoting consumer interests, the LPA has two codes of conduct— industry code and, as mentioned earlier, a consumer code. It should be noted that the industry code makes clear that with advance booking arrangements LPA members should seek to maximise fair access to tickets for a prospective consumer by:

- providing adequate booking facilities;
- making as much information available as possible at the time about the number and type of events that will occur; and
- disclosing appropriate information about the particular seats or seating area for a given event that the prospective consumer may purchase.<sup>40</sup>

3.35 While the code addresses some of the concerns raised in evidence to the committee, it is silent on matters such as transparency and providing information to the consumer on the allocation of tickets.

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38 Answer to question taken on notice, 20 March 2014.

39 See for example, COMPSS, *Submission 17*, p. 9.

40 Live Performance Australia, *Live Performance Australia Ticketing Code of Practice, Industry Code*, Fifth edition—effective, 1 February 2012.

## Summary

3.36 Promoters and event holders were of the view that the problems identified in the primary market could or were being addressed especially by imposing caps on the number of tickets allocated for sponsors and on individual purchasers. Rather than focus on difficulties in the primary marketplace, they considered that the conduct of those operating in the secondary market caused significant problems for consumers. Their criticism was directed at the resellers and their agents.

### Problems and remedies in the secondary market

3.37 Some submitters favoured action that would prohibit online market places such as eBay from allowing scalping as the most obvious and effective measure to tackle the problem of ticket scalping.<sup>41</sup> For example, one submitter argued that ticket scalping was rife on eBay and that eBay could not police it. He was of the view that the current laws 'need to be looked at and changed'.<sup>42</sup> Another wanted 'far greater controls in place to restrict the operation of scalpers' and suggested that operators such as eBay cease to allow tickets to be scalped.<sup>43</sup> Such action included withdrawing tickets with unreasonable write-ups; cancelling scalpers' eBay account and/or their ticketek or ticketmaster account.<sup>44</sup>

3.38 Such measures would include requiring the scalper to disclose to eBay specific information such as receipt or seat numbers to enable the relevant enforcement agency to take any appropriate action to prevent scalping from occurring.<sup>45</sup> Other measures would require online market places to disclose the original, listed ticket price so that 'a potential purchaser is informed of the profit being sought by the scalper'.<sup>46</sup> Another suggestion involved banning auction style listings and requiring sellers to list their desired price so that potential buyers could make their best offer instead.<sup>47</sup>

3.39 Viagogo was of the view, however, that regulating the secondary market would lead to unintended consequences. It maintained that:

- Introducing restrictions on resale violates the basic principle of property ownership. Once someone has bought something—whether that's a house, a car, stocks, or a ticket—it is their right to resell it if they wish. Viagogo

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41 See for example, Mr Carl de Vos, *Submission, 5*, p. 2 and *Submission 13* (confidential).

42 Mr Matthew Kirk, *Submission 1*.

43 Mr Carl de Vos, *Submission 5*.

44 *Submission 5*, p. 2.

45 *Submission 5*, p. 2.

46 *Submission 5*, p. 2.

47 *Submission 5*, p. 2.

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maintained that independent research supported this view, which has shown that eight out of 10 Australians agree with viagogo.

- Introducing restrictions on resale just makes it more complicated for people to use the new safe and secure ticket marketplace platforms. These restrictions would dissuade them from doing so, and they would therefore return to using the old black market sales channels of auction sites, classified ads, and scalpers outside pubs, clubs and venue car parks, where little or no consumer protection exists.
- Similarly, the concept of imposing price caps, while well intentioned, just results in sellers reverting to selling their tickets in places where price caps cannot easily be enforced, and where the chances of consumers having a bad experience are high.<sup>48</sup>

3.40 Finally, viagogo argued that the appropriate solution to ease concerns about ticket resale would be 'to encourage, not discourage, the use of safe, secure and guaranteed ticket marketplace platforms' that would have all the safeguards needed to protect buyers and sellers.<sup>49</sup>

### *Safe and secure online platform*

3.41 The committee has highlighted the risks to consumers in the secondary market such as exorbitantly priced tickets or, more worryingly, bogus tickets. As noted in the previous chapter, however, there was general agreement that counterfeiting was not as yet a significant problem in Australia. Even so, the LPA stated that:

While instances of fraud are infrequent, it is a concern for the industry as it becomes **easier for fraud to occur online** via risky and insecure unauthorised websites. Several Members reported that they have come across instances of duplicated and cancelled tickets being advertised online recently.<sup>50</sup>

3.42 Drawing on its members' perspective, the Ticket Brokers Association, criticised the 'unfair media treatment' of the secondary resale market that likened ticket broking to criminal activity. It suggested that such sensationalist reporting did not provide any critical analysis of satisfactory and safer secondary market alternatives such as eBay.<sup>51</sup>

3.43 The online platforms that facilitate the resale of tickets, such as eBay and viagogo, maintained that they have in place measures to reduce the potential for consumer detriment. They are conscious of the importance of providing a safe and secure environment in which people can transact the resale of tickets. The Ticket

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48 *Submission 14*, pp. 2–3.

49 *Submission 14*, p. 3.

50 *Submission 7*, p. 5 (emphasis in original).

51 *Submission 11*, p. [4–5].

Brokers Association noted that all sellers on eBay are required to offer PayPal as a payment option. It explained:

Under PayPal's Buyer Protection Policy, 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'.<sup>52</sup>

3.44 Viagogo stated that people purchasing tickets from its marketplace can do so without worry about being defrauded because it offers a guarantee. It claimed that its secure ticket marketplace has 'virtually eliminated ticket fraud'. According to viagogo, it enforces strict security controls, such as delivering tickets by a secure method (either electronically, by courier or at one of its pick-up points). Another safeguard under its arrangements means that the seller receives payment only after the buyer has confirmed receipt of the tickets and attended the event.<sup>53</sup>

3.45 Recognising that there is a legitimate need for the reselling of tickets, a number of submitters suggested that rather than try to shut down the secondary market, ticket selling agencies could become involved in an after-market for tickets.<sup>54</sup> In this market, ticket purchasers would be allowed to sell their unwanted ticket within 'a certain price ceiling to willing buyers'.<sup>55</sup>

3.46 As noted earlier, promoters and event holders appreciated that there is a place for a secondary market. For example, Australia's major sporting bodies, which do not object to the onselling of tickets for legitimate reasons, believed that such tickets should be sold at face value and through an authorised ticket-seller or alternatively, via a system that is established to allow this form of onselling.<sup>56</sup>

3.47 The LPA drew attention to the concerted efforts by industry stakeholders to implement measures to deter illegitimate ticket scalping. They included setting up authorised re-sale marketplaces which were 'secure and hence more appealing to consumers than high risk unauthorised websites'.<sup>57</sup> The LPA informed that committee that its members, which include producers, music promoters, venues, performing arts companies and ticketing companies, 'authorise resellers and establish fan-to-fan marketplaces to provide a secure avenue for consumers to onsell in the secondary market'. According to the LPA, such mechanisms are also 'an effective free market

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52 *Submission 11*, p. [5].

53 *Submission 14*, p. 1.

54 Mr Carl de Vos, *Submission 5*, p. 2 and Ticketmaster, *Submission 8*, p. 1.

55 *Submission 5*.

56 COMPSS, *Submission 17*, p. 11.

57 *Submission 7*, p. 4.

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solution for deterring consumers from using unauthorised reselling sites by providing a safe and secure alternative to find tickets to sold out events'.<sup>58</sup>

3.48 COMPSS gave the example of Tennis Australia that, in conjunction with its authorised ticket agent, Ticketek, had recently introduced the 'Australian Open Fan Marketplace', described by COMPSS as 'a safe and secure online platform for fans to resell tickets to the 2014 Australian Open'. It explained further:

This was the first official secondary ticketing market operated by an Australian sport, and provided a platform for consumers to purchase valid tickets to the event. By linking to the original ticket transaction, Ticketek was able to facilitate a direct refund back to [the] seller, as well as issue new tickets and barcodes to the new buyer. There was no cost to list tickets for sale on Australian Open Fan Marketplace and ticket prices were set at face value to ensure they are affordable for everyone who wants to see the tennis. This was a service provided to fans and no additional profit was made by Tennis Australia or Ticketek. It allowed genuine customers who are unable to attend a session to resell their ticket/s and ensured that they were not out of pocket. In excess of 1,300 tickets were sold through the Australian Open Fan Marketplace across all 25 sessions of the event.<sup>59</sup>

3.49 Ticketmaster recognised that consumers wanted existing ticketing companies to engage in the secondary market to create a safe and reliable marketplace in which to sell unwanted tickets.<sup>60</sup> In its view, the ticketing industry must establish such a marketplace and that it could meet customers' needs without creating friction with the primary ticketing market.<sup>61</sup> In its view, resale was the solution and furthermore:

The best way to protect consumers, stop fraudsters and curb the growth of unscrupulous secondary sites is to provide consumers with a legitimate alternative that meets their needs, accompanied by industry-wide self-regulation measures.<sup>62</sup>

3.50 Ticketmaster indicated that it intended to take a leadership position on creating a safe and reliable re-sale market by launching an Australian resale marketplace this year.<sup>63</sup> It has begun testing its new TM+ systems that would allow tickets to be resold on the Ticketmaster website. Ticketmaster would then become a participant in the secondary market as well.<sup>64</sup> It explained further that its secondary ticketing offer would mean that every ticket holder would have 'a convenient way to resell tickets'. The scheme would 'meet the highest antifraud methods, including

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58 *Submission 7*, p. 2.

59 *Submission 17*, p. 11.

60 *Submission 8*, p. 3.

61 *Submission 8*, p. 1.

62 *Submission 8*, p. 1.

63 *Submission 8*, p. 1.

64 *Submission 8*, pp. 3–4, *Submission 9*, p. 5.

authentication of bar code [and] protect every transaction with a 100 per cent money back guarantee'. It would also provide buyers and sellers with full transparency on matters such as the face value of the ticket.<sup>65</sup>

### ***Competition in the secondary market***

3.51 The online resale platforms and ticket brokers took the view that a secondary market made a valuable contribution to the industry. In this regard, eBay noted that Ticketek and Ticketmaster were the two dominant companies selling sport, concert and theatre tickets in Australia. In contrast, it referred to the more competitive secondary market with operators such as Showbiz, viagogo, Facebook, Localbroker, Gumtree, My Tickets and Seatwave among others.<sup>66</sup> eBay argued that a secondary market helped to create competitive pressure on the primary market. It stated:

The competition and transparency posed by new market entrants, actually prompt the primary market to design new and more efficient means of ensuring fans can get hold of tickets in the first place. If such competitive pressures were removed or reduced through regulation, the already-limited options available to consumers would be further reduced, and the incentive to innovate and improve services in the primary market would greatly diminish.<sup>67</sup>

3.52 As noted previously, eBay supported the existence of a strong secondary market with many sellers, arguing that this competitive environment would generate 'lower prices than would be achieved without the possibility of resale or with restrictions on licenses limiting the number of sellers'.<sup>68</sup>

3.53 The committee has drawn attention to some practices in the primary market that have given rise to consumer dissatisfaction and posed risks to the interests of consumers—corporate and hospitality packages, sponsorship deals, bulk ticket purchases, and the conditions governing the transfer or refund of unwanted tickets. The existence of a fair, reliable and effective secondary market certainly provides the impetus for the primary market to perform better. The committee would be concerned if a lack of competition in the secondary market gave rise to poor practices in that market or diminished the secondary market's role in exerting pressure on the primary market to maintain high standards in consumer protection.

### **Ticket scalping and regulation**

3.54 Evidence presented to the committee varied on the need to, and the mechanisms for, regulating the resale of tickets. Some submitters, such as online ticket-marketing platforms eBay and viagogo, suggested that the solutions to curbing

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65 Mr Christoph Homann, *Committee Hansard*, 20 February 2014, p. 2.

66 *Submission 9*, pp. 4–5.

67 *Submission 9*, p. 3–4.

68 *Submission 9*, p. 15.

ticket scalping, as distinct from the legitimate resale of unwanted tickets, should be directed at improving practices in the primary market. They argued that measures, which would involve much greater transparency in the primary market and prevent bulk purchases of tickets, would reduce the opportunities for ticket scalping. Promoters and event holders informed the committee that great care is taken in devising ticketing strategies to ensure consumers receive value for money. They informed the committee that, in a concerted effort to thwart ticket scalpers, industry stakeholders were implementing measures such as imposing caps on the number of tickets a single person could purchase.

3.55 Event holders and the ticketing agencies suggested that the secondary market, which enables ticket resellers to profit at the expense of the consumer, was the source of the problems associated with ticket scalping. They would prefer measures to be taken against the operators of ticket reselling platforms to prevent ticket scalpers using this forum. The online platforms and the ticket brokers rejected the notion that the secondary market needed to be regulated. In their view, they were working to make sure that the secondary market was a safe and secure environment for consumers.

3.56 Event holders and promoters recognise the value of having a secondary market. Indeed they saw a legitimate role for a re-sale market—but by authorised resellers. Thus, some have or are intending to enter this market with the emphasis on providing a safe and secure but also lawful market.

3.57 Despite the efforts of those engaged in the primary and secondary markets to deny ticket scalpers the opportunity to exploit consumers, a number of State governments have responded to concerns about activities in the ticket selling market by introducing legislation. For example the New South Wales (NSW) Government is of the view that:

...despite strategies employed by promoters and event managers, there continues to be consumer detriment from ticket scalping, which limits the availability of tickets for music and sports 'fans', and the sale of counterfeit or invalid tickets through the secondary ticketing market.<sup>69</sup>

3.58 The following chapter looks at the legislative measures in place, and being contemplated, to regulate ticket scalping.

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69 *Submission 12*, p. 1.

