

29 April 2019

Competition and Consumer Policy
Ministry of Business, Innovation and Employment
PO Box 1473
WELLINGTON 6140

Email to: competition.policy@mbie.govt.nz

Dear Sir/Madam

Re: Ticket Reselling in New Zealand Discussion Document

I am writing to you regarding the Ministry of Business, Innovation & Employment (MBIE) Discussion Document *Ticket Reselling in New Zealand* (referred to as 'the Discussion Document').

While BusinessNZ believes any fraudulent behaviour and misleading information should be banned, buyers should have the right to decide how much they value a ticket and what price they should pay without any Government intervention whatsoever.

Background

BusinessNZ has previously submitted on the issue of ticket reselling in New Zealand, namely through the Major Events Management Bill in 2007. Although there have been some technological changes since that time around the issue of ticket reselling, the fundamental views we outlined to the Government then still hold true today.

Therefore, our submission is broken up into two main parts:

- A. BusinessNZ's general view regarding ticket reselling, and
- B. BusinessNZ's view on the potential options put forward

PART A: BUSINESSNZ'S OVERALL VIEWS

BusinessNZ has consistently taken the view that legislation and regulation should only be introduced when there is a clear problem definition and the proposed actions taken by the Government will clearly remedy the problem. We believe some of the proposed options, such as to make illegal the on-selling of tickets greater than a designated price cap will not lead to the solutions the Government expects, if indeed there is a significant problem to begin with.

BusinessNZ's view on fraudulent activity

BusinessNZ has always taken the view that any fraudulent activity regarding ticket reselling is not supported in any way, shape or form. As we outline below, tickets to an event are no different from any other good or service, and therefore any fraudulent activity such as tickets sold that are fake, duplicates or otherwise invalid clearly breach current New Zealand consumer laws.

Also, we disapprove of any activity where the true cost of a ticket is not made clear and transparent to the buyer. All costs (within reason), including any handling or administration fees, need to be made clear to the potential buyer before any ticket is purchased.

If people are selling bogus or used tickets to unsuspecting fans, BusinessNZ believes there should be firm action taken against the practice, as this obviously involves fraud and can lead to adverse outcomes for both attendees and event organisers. That is why the law currently has the Fair Trading Act and Consumer Guarantees Act.

However, as outlined in the MBIE-commissioned survey on ticket reselling, in the vast majority of situations we are not dealing with fraud. We are instead dealing with a situation where a willing buyer and seller have agreed to a price and have transferred the right for that ticket. We are also dealing with an activity that can easily modify its behaviour to circumvent the intended legislation.

Extent of the problem - MBIE-commissioned survey on ticket reselling

To assist with gathering data on the extent of ticket resales in New Zealand and attitudes towards ticket resale issues, MBIE commissioned a survey of a representative sample of 1,000 New Zealanders aged 18 years and above.

BusinessNZ supports the use of surveys to try and ascertain what issues might be affecting the business community. Therefore, we support MBIE's intention to obtain data about the extent of any problem and would certainly encourage such information-gathering in the future.

We note that of the 1,000 people sampled, around 210 people (or 21%) had purchased resale tickets. As graph 1 on page 29 of the Discussion Document shows, the vast majority of the 210 people used Ticketmaster Resale (79%). In contrast, only 2% used viagogo, which equates to around 4-5 people in the sample. Given the report goes on to say that *'negative experience (rating 1 or 2) were much more common for those using viagogo (60 percent)'*, in reality we assume this would mean 2-3 people. Furthermore, support for regulation at 86% for those who had used viagogo seems strong, but again based on a handful of people at most. The obvious problem here is that despite the sampling of 1000 people, the numbers involving viagogo, a problem company mentioned throughout the Discussion Document, borders on being too small to take seriously. Obviously, this does not mean that aspects of the ticket reselling businesses should remain unchanged. However, MBIE needs to be cognisant of the extent of the problem across all tickets available for an event, especially when some estimate the re-selling market for tickets being in the order of 3-5% of all tickets sold.

Paragraphs 29 and 30 of the Discussion Document outline the number and type of complaints the Commerce Commission has received about viagogo, while no other company is mentioned. While we acknowledge the difficulties outlined in paragraph 30 around enforcing consumer laws against overseas companies like viagogo, we also must ensure that an identified problem with one aspect of ticket reselling does not become a way in which a number of unwarranted changes are also made.

Whereas we believe the MBIE research was genuinely trying to find the extent of the problem, we would be very careful when interpreting the results of the survey undertaken by Consumer NZ in 2017. First, there is no information provided about the proportion of consumers who purchased resale tickets with no ensuing problem. Second, 54% of consumers who paid more than the face value of a ticket is not actually a problem in itself. There was no compulsion to purchase the ticket at a higher price in the first place.

Where the survey can provide at least some steer towards solutions is around the 42% who were charged hidden fees and the 40% who thought the website they were buying from was an official ticket seller, not a resale website. These issues can be solved through better disclosure requirements which are discussed below.

In terms of overseas measures, paragraphs 34 and 35 of the Discussion Document summarise recent developments, including price caps on resale tickets which have been less than effective. Like any good or service, restrictions around their use and the removal of the ability to transfer ownership will typically drive activity underground. Therefore, any option to reduce concerns buyers have within the secondary market will need to be well thought through and should not overreach any actual problem.

As we have mentioned above, we support MBIE's moves to ascertain further the extent of the problem by undertaking research and outlining previous studies. However, the key point, once any Discussion Document submissions have been received, is the extent of the problem. If there is insufficient evidence to make a compelling case, we would expect MBIE, as part of good policy practice, not to proceed with any of the options for reform that are out of step with the problem identified.

Economic rationale and consumer welfare

For most events, particularly those relating to a sporting event, it is impossible to provide tickets for all who are willing and able to attend, simply because of capacity constraints. There is some leeway with concerts in that another concert can be added to meet demand, whereas another final of a rugby or cricket world cup tournament invariably cannot. Here, no matter how tickets are allocated, there will always be excess demand, meaning in layman's terms there will be 'winners and losers'.

From an economic perspective, ticket scalping is the market working correctly at its most pure level. In essence, the purchaser has bought a right to sit in that seat for an allocated time period to witness a certain event. BusinessNZ does not see why there cannot be a transfer of rights for this at an agreed price if the market can provide a willing seller and buyer. A ticket seller and ticket buyer mutually agree to a price where both can maximise their utility and benefit from efficiency in the market. Invariably, the on-selling of tickets means that the event has sold out, and because tickets are typically in limited supply, there will always be excess demand.

It also represents the fact that the original price of the ticket was obviously lower than the market-clearing price of the ticket. Therefore, one must question whether event organisers have set the correct level of ticket prices if there is a substantial difference between the original sale price and the price in the secondary market. Such behaviour can often be due to promoters wanting to sell as many tickets as possible so that they can profit from the sales of food, drinks and tied-in merchandise within the venue.

Essentially, the reselling of tickets for events is no different from any other market where there is a transfer of ownership from one person to another. A legislative move to make on-selling of tickets above their original purchase price illegal implies there is something that is inherently illegal about the process to begin with, which is simply not the case. Take for instance the purchase of a painting by someone who is an art enthusiast. Once other art enthusiasts find out about the painting it may attract offers to the owner above the original purchase price. One would certainly not place restrictions of trade that say the painting should only be resold for the original price specified because it denies the ability for others to enjoy the painting. The same case would apply to almost everything else in society where a transaction

for ownership takes place, whether it is cars, microwaves, or even tickets for other events such as those to a movie.

Therefore, BusinessNZ takes issue with the points raised on page 15 of the Discussion Document that consumer welfare is reduced by ticket reselling practices. Paragraph 46 asserts that because tickets are bought well above face value, it can erode the relative value that consumers receive from those tickets. However, this does not consider that ticket scalping increases the allocative efficiency of the market. Those who are willing to pay more are able (to a certain degree) to choose how much they want to pay for an event because of the utility it will provide them. This is quite different from a ticket simply sold on a 'first come first serve' basis, which can exclude those who really want to attend. Therefore, ticket reselling actually enhances the total welfare of those attending the event.

As alluded to above, the argument often used for making the on-selling of tickets illegal is that it might mean those with less financial means will be unable to purchase tickets. However, not being able to afford a ticket to a major event is no different from the ability to afford anything else. One would not expect restrictions on the reselling of say one of a group of newly erected houses in a development block, simply because there are some people in society that cannot afford it.

We also disagree with an assertion often made that those who cannot obtain a ticket through authorised channels may be forced to pay. There is no requirement to attend such events at all. Only those who want to attend may decide to pay in excess of the standard ticket price after making a personal judgement about what the real worth of attending the event is for them. Often, emotive arguments about a 'true fan' or 'genuine fan' missing out are used as justification for making ticket on-selling illegal. One would argue that the pleasure derived from attending the event by such fans would mean they would place a higher value on attending the event to begin with.

Like all things in society, there is an optimal level of ticket on-selling that needs to take place so that those who significantly value the ticket above some others who have already purchased a ticket are provided the opportunity to purchase them. For the current ticket holder, the price would have to be above the original sale price, so that the ticket seller is appropriately compensated, to ensure both parties are satisfied.

We disagree with the view by some that the sale of tickets for a value greater than the original sale price is associated with a negative feeling about the event. This is only looking at the issue from one side. If we look at the counterfactual of no publicity whatsoever, one would have to question the anticipation and popularity of an event if tickets were not being on-sold for a value greater than the original purchase price (if indeed the event sells out at all). Again, the increase in the after-sale price indicates the popularity of the event. Also, the publicity surrounding

certain events increases the demand for them, as people often take a reef-fish mentality in that they too want a ticket because of demand from others. The worst outcome for any event (particularly concerts where the only publicity is the event on the night) is that it is not talked about by anybody.

Lastly, there is the presumption that all major event organisers want the on-selling of tickets above a certain price cap to be made illegal. There may be some organisers who are indifferent about the on-selling of tickets, or simply view it as inevitable with such events.

Apart from the economic implications, the practical implications as outlined below are equally important, and highlight the fact that certain restrictions in this area will not have the intended consequences that the Government seeks.

Internet platforms

The advent of online auction sites like Trade Me shows that the landscape for on-selling tickets has changed dramatically over the last ten or so years. The shift towards online selling means that the typical portrayal of ticket scalpers as individuals standing outside a venue on the day of the event with a wad of tickets in their pocket is now more myth than reality. The practices of New Zealand websites such as Trade Me and international websites such as eBay mean that the on-selling of tickets has become a very transparent process. Many people who are on-selling their tickets are ordinary New Zealanders who are selling their own or additional tickets that are not required for reasons including that they could not attend the event.

Since BusinessNZ submitted on the Events Management Bill in 2007, the market has developed further beyond generic reselling goods and services websites to others like Ticketmaster Resale being established in New Zealand. This creates one of the most legitimate and safe platforms to resell tickets, and follows offshore practices of the official ticket sellers creating a product where buyers and sellers can have a degree of comfort that a transparent and legitimate transaction is taking place. Its popularity is evidenced by the fact that 79% of the 210 people who had bought resale tickets purchased them from Ticketmaster Resale. Such websites signal the mantra *'if you can't beat them join them'*. It also shows how the market can respond of its own accord.

At the same time, other companies have entered the market, including viagogo mentioned above. However, their presence appears to have created much of the concerns raised, which for all intents and purposes has led to the Discussion Document being released.

One could argue that online reselling of tickets provides a more transparent market for ticket scalpers but still does not make it right, given the provisions placed on the ticket that need to be complied with. There are two rejoinders to that argument.

First, organisers must trade off the cost and time of policing ticket ownership, compared with not doing so. From a financial perspective, if the event has sold out (which is almost always the case if tickets are being scalped), then the event organiser has already maximised their return, hence there is a lack of incentive for enforcement, as any further processes to check ownership of tickets will reduce profits.

Second, given the size of most major events, it would be realistically impossible for organisers to check off the identity of every person entering the ground against the person who has bought the ticket. The additional waiting and time taken in the queue because of ticket and identification checking would be equally frustrating for ticket holders. This would be worse if the event had already started and people were still waiting outside. Also, there would be situations where the checking process could not take into account those that did not sell their ticket but simply passed their ticket on to a friend or family member to attend the event, which can often occur near the time of the event.

Another practical implication of making the on-selling of tickets beyond a certain price cap illegal is that it is unlikely to stop many from listing tickets on the Internet beyond the price allowed. Given Trade Me is undoubtedly the most prolific website for listing items for auction, the sheer numbers of auctions every day would make the process of continued checking for major event tickets very difficult, even with dedicated staff monitoring procedures (not to mention the additional cost to Trade Me of monitoring such auctions).

In addition, there are many other similar websites in New Zealand that have copied the Trade Me style process, but have no way to monitor such auctions because they are a much smaller business operation. Looking beyond New Zealand, ticket sellers may simply move their mode of selling to eBay, the world's largest auction website, where cross-border rules may make any withdrawal of auctions difficult.

Rather than online auction websites, there can now be direct purchasing of tickets via general goods/services suppliers such as Facebook Marketplace, Etsy, and even more domestic online websites like Neighbourly. Monitoring all of these would take a considerable amount of time and resources.

By banning the ability to on-sell tickets above their face value up to a certain price cap, a range of perverse implications arise.

First, as mentioned above, it would drive the practice underground and bring a return to the previous practice of scalping tickets at pubs and outside venues close to

the event. Given the choice of publicly selling the ticket at face value or selling the ticket privately above face value, it would be logical to assume that most would take up the latter option.

Second, there would be imperfect information on the true value of the ticket, as potential buyers would be unable to ascertain what tickets are selling for on the secondary market, which is an option that current websites such as Trade Me provide.

Last, there are also wider implications that need to be considered. BusinessNZ is very concerned about the precedent that would be created by putting a price cap on what is a private good/service. If the Government sought to place a ceiling on what the price of a ticket could be resold for, this rationale could equally be applied to other secondary markets, such as those involving real estate or antiques/collectables. We believe that Government should have no role in placing any restrictions around the price of private goods/services.

Overall, the economic and practical implications as outlined above lead BusinessNZ to ask whether another an onerous and largely ineffective layer of regulation is required, when alternatives other than price capping are available. Instead of a ban on the ability to on-sell a ticket above a certain price cap, BusinessNZ believes it is preferable for other alternatives to be considered by the organisers of the event.

Alternatives to a ban on the on-selling of tickets above a price cap

In principle, BusinessNZ supports moves by the event organiser to ensure tickets are able to be purchased by buyers in as many forms as possible, as it is simply good business practice to do so with the aim of selling out the event. This would minimise the potential for excludability from being able to purchase a ticket. However, even with counter sales, online purchases and phone calling as options, there will be some who for whatever reason are unable to purchase a ticket during the time they are publicly available.

We recognise the fact that there is no one magic bullet that will change behaviour. There will always be certain events - such as the All Blacks in the final of a rugby world cup hosted in New Zealand - where ticket prices on the secondary market will provide supernormal profits for those wanting to on-sell tickets due to extreme demand, which at a practical level would simply go underground if anti-ticket scalping legislation were introduced. BusinessNZ believes there are alternatives that organisers can consider if they are concerned about the behaviour of ticket owners in the secondary market. We do not have any strong views on which additional provisions should take place as the nature of the event may dictate which should be given priority. However, we believe they represent a better and more effective range of options than simply making the practice illegal.

For example, organisers of popular events could place limits on the number of tickets any one person could purchase at any given time, preventing on-sellers from gaining access to a large quantity of tickets in the first instance.

Another option is for organisers to provide a larger number of tickets to the general public instead of to corporate event holders. Increased ticket sales to the public means a greater chance of tickets being distributed amongst all people and increases the chances of those amongst the general populace most wanting tickets to get them, which seems to be a key concern for the Government.

Another option that would mean a significant mind-shift for event organisers would be to review the process for selling tickets. Some promoters have ceased selling tickets in the traditional first-come-first-served manner. There are now many events offshore where all tickets become available on the internet for auction by the organiser, so everyone is given the same opportunity (usually over a period of a week) to purchase one or more tickets. This provides an almost perfect case of supply equalling demand, as well as deterring most scalpers from buying tickets, as the true market value of the ticket is usually found.

Another option would be to require ticket holders to enter a ballot, with the prize being the opportunity to purchase a small number of tickets. The success of this would obviously depend on the number of tickets one could obtain if successful in the ballot. However, it would still give everyone the same opportunity to purchase tickets. Such a scheme was introduced for the 2005 Lions tour, and it is interesting to note that even then, some tickets still went on the secondary market. This shows that no matter what provisions are introduced, the market will typically find a way of redistributing a certain number of tickets.

There are undoubtedly other options to help minimise the on-selling of tickets if event organisers perceive this as an issue. The possibilities outlined above show there are significant options available to event organisers, before consideration is given to making the on-selling of tickets beyond a price cap illegal, which as explained above, would prove to be a poor policy decision.

Overall recommendation: That the Government takes no role in setting prices in the secondary market for tickets.

PART B: BUSINESSNZ VIEWS ON POTENTIAL OPTIONS

Give the points raised above, Table 1 below outlines BusinessNZ's views on the potential options put forward in the Discussion Document.

Table 1: Discussion Document outlining BusinessNZ Views on Potential Options

Potential Option	BusinessNZ Support	Comments
Maintain the Status Quo (no change)	Support in principle.	Overall, the most favourable option going forward given both the number of tickets sold for events and the number of problems associated with reselling is very small in comparison with total tickets sold. However, we would not be averse to some modifications as outlined below.
Impose a price cap on resale tickets	Do not support.	BusinessNZ <u>strongly disagrees</u> with the proposal for imposing a price cap on resale tickets, from both an economic and practical perspective. We believe there are better initiatives that could be introduced by the event organisers that would have a significantly higher chance of success in terms of minimising problems around on-selling of ticket for an event.
Information disclosure requirements	Support in principle.	BusinessNZ is not averse to the idea of some mandatory information disclosure options proceeding, particularly involving resellers. We would expect ticket resellers to be transparent about the total cost of any ticket purchased, availability of tickets, original face value, seating location etc.
Ban on ticket-buying bots	Do not support.	BusinessNZ does not support this option, primarily because the main difficulty would be enforcing the ban as mentioned in paragraph 95. The complex nature of trying to enforce the ban, along with ensuring the definition in legislation about what a bot is would essentially mean any regulation would end up chasing its tail. Instead, agreements or joint industry-government initiatives (as mentioned below) may be a better way to address how official

		ticket sellers can deal with ticket-buying bots.
Joint industry-government initiatives	Support in principle.	This option could be investigated further to ascertain industry willingness to be involved. However, it would be important to identify potential extra costs to promoters and ticket sales companies that would most likely be passed on to consumers.

Thank you for the opportunity to comment, and we look forward to further discussions.

Kind regards,



Kirk Hope
Chief Executive
 BusinessNZ