

COMPPS RESPONSE TO THE INQUIRY INTO TICKET SCALPING IN AUSTRALIA

SUBMITTED TO THE SENATE ECONOMICS REFERENCES COMMITTEE

17 FEBRUARY 2014



Background

COMPPS

COMPPS consists of the following organisations:

- Australian Football League (**AFL**);
- Australian Rugby Union (**ARU**);
- Cricket Australia (**CA**);
- Football Federation Australia (**FFA**);
- National Rugby League (**NRL**);
- Netball Australia (**NA**); and
- Tennis Australia (**TA**).

Each of these organisations is the governing body and custodian of a major professional sport in Australia. They are not-for-profit bodies and are responsible for the long-term development and sustainability of their sport in Australia.

One of COMPPS' roles is to provide a collective response on behalf of its member sports where their interests are aligned.

COMPPS provides the following response to the request for submissions to the Senate Economic References Committee Inquiry into Ticket Scalping in Australia.

Introduction

The COMPPS Members are the most significant stakeholders in the sports community in relation to ticket scalping and onselling.

Each of the sports conducts high-profile, well-presented, world-class events to which tickets are sold. These events feature professional athletes, many of whom are in the top echelon of world-rankings. The events run by the COMPPS' sports populate most of the Australian sports/event landscape.

COMPPS members are committed to providing genuine sports fans and supporters with access to affordable tickets, and there is a great amount of time and research applied to our pricing policies to help achieve this goal.

Each of the sports runs events where, from time to time, demand for tickets exceeds supply, giving rise to the opportunity for scalpers to enter the market.

Events are a major part of the business of each of these sports. They generate large amounts of revenue for the sports through the sale of media rights, sponsorship and gate receipts.

Each of these sports is a not-for-profit organisation that distributes its surplus revenue to other parts of the sports "food chain". Professional sport in Australia is largely a top-down enterprise in which most of the revenue is generated by the professional teams and events and distributed at all levels through to the grass-roots of the sport.

Events run by COMPPS' members also contribute significant economic impact benefits to Australia and its states.

We respectfully submit the following response for consideration of the Committee.

a) the prevalence of ticket scalping and its impact on ticket prices and sales;

Each of the sports has encountered ticket scalping. It occurs in circumstances where demand exceeds supply and is particularly prevalent in high-profile and high-value events conducted by the sports.

The COMPPS members are opposed to the practice of ticket scalping or profiteering in which unauthorised third parties lawfully purchase tickets that are in short supply with the intention of onselling them to the public at prices that are highly inflated, thus denying access to those fans who cannot afford or are unwilling to pay those prices.

The care and attention that is taken by the sports in devising their ticketing strategies should not be underestimated. It is a key part of the strategic framework of each sport. We seek to ensure that tickets are affordable, accessible, competitive in price with other similar sports and entertainment events, and provide great value for money for purchasers, many of whom attend several of the events that are provided by the sports.

In some cases, the major strategic driver is not to maximise revenue. 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**.

We are aware of the argument that scalpers are responding to market forces - scalpers buy tickets at below market value and onsell them at their true market value, thereby providing a service to those members of the public who are prepared to pay inflated prices.

We disagree with this argument.

If a purchaser is faced with the option of buying a ticket at face value or paying three or four times that price, the choice is obvious.

We provide the following examples of ticket scalping that have occurred in the last year from AFL, CA, TA, ARU, NRL and FFA where tickets are being offered to the public at prices that far exceed the face value of the tickets.

AFL - Three tickets for the AFL Grand Final with a face value of \$260 each and a total value of \$780, were offered for \$3,500. This is a breach of the Major Sporting Events Act 2009 (Vic) under which the AFL Grand Final is a declared event.

CA - A ticket for the first day of the Ashes Test in Sydney on 3 January 2014 was offered for sale at \$350.00. These tickets were on sale on ticketek.com for \$130.00.

TA - A ticket for the Australian Open Tennis Men's Final was offered for sale at a cost of \$1,388.89 which is 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.

ARU - 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 \$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 were being offered for sale by scalpers at prices in excess of \$700.

NRL - For the 2013 NRL Grand Final, the first release of tickets occurred in early August.

A patron joined a number of different clubs as a member in the week prior to the first member release. This gave him a number of unique codes he could use to purchase a bulk number of tickets. When tickets were released he purchased 110 tickets across most categories, with the majority in the top category at \$345 per ticket. The patron used fake names / postal addresses for his ticketing accounts, but used the same credit card for each transaction, which is how NRL flagged the issue initially. The only real details that were used were the credit card and email addresses, so ticket delivery could occur. No details matched his memberships.

The same day he purchased the tickets, they all appeared on eBay at heavily inflated prices – some 250% higher than face value for the starting bid. He attempted to hide the ticket details from the auction site, however enough information was available to allow NRL to marry up his tickets to the ticketing system. When contacted the patron said the tickets were for family (which made no sense as the tickets were instantly put out publicly to sell). Based on this information, NRL cancelled the tickets and informed the patron. NRL also informed eBay who promptly removed the pages down and cancelled his accounts.

However, come match day, approximately 45 person holding these tickets attempted to gain entry. All these tickets were purchased from a range of online auction sites and sales outlets, and in some cases the same ticket was sold multiple times. All these patrons had paid above face value, and many were forced to leave or purchase a legitimate ticket from the box office. It is here the sports witness first-hand the impact these practices have. The patrons suffer great financial loss, emotional stress and disappointment, and the entire process reflects badly on the sport, ticket agent, on-line auction sites and the venue.

FFA - 2 Category A tickets for A-League All Stars v Manchester United in July 2013 with a face value of \$379 (\$189.50 each) were being sold on ebay within 90 minutes of going on sale for \$2200. <http://www.smh.com.au/sport/football/fans-disunited-as-supporters-accuse-ticketek-of-own-goal-20121212-2b8w3.html>

The prevalence of ticket scalping subsequently distorts the market. With ticket scalpers buying in bulk and on-selling, they often create false demand. As such, the argument that a scalped ticket reflects the fair market value of the ticket doesn't necessarily hold true. 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.

Sports could adopt the same philosophy and issue tickets at the highest prices that the market can bear, thereby seeking to maximise revenue. This would deter scalpers because it would reduce their profit margins. Sports could also withhold tickets and enter the secondary market at a time that allowed them to charge a multiple of the face value because tickets were in short supply.

The COMPPS members will continue to oppose scalping and profiteering.

b) the effectiveness of current state-based consumer protection legislation, and how these measures can be improved, including through a federal approach;

We note the legislative provisions of the Competition and Consumer Act and the respective Acts of Victoria, New South Wales and Queensland.

Each of the States that has adopted legislation to deal with scalping has taken a different approach. The fragmented legislative framework dealing with this issue exacerbates the scalping problem as each COMPPS member organisation regularly conducts events in more than one state or territory. The lack of nationally consistent regulations, makes the enforcement of the sporting organisations' rights more complex as they have to deal with different regulatory bodies and varying legal and legislative requirements.

There are some features of the legislation that are effective.

The NSW Fair Trade (Ticket Reselling) Bill 2013 is welcomed by the professional sports as the new laws will require that anyone reselling tickets to a sporting event held in NSW must include in any advertisement:

- The exact details of the ticket (showing ticket number and row and seat number);
- Details of the terms and conditions of sale of the ticket;

- Notice of any condition which allows the ticket to be cancelled if it is resold in breach of the terms and conditions; and
- A clear and legible image of the ticket showing the details of the ticket, but obscuring the barcode to prevent the barcode being printed by a third person and used to gain entry to an event.

We suggest that the legislation could be improved by requiring the seller to divulge the amount that has been paid for the ticket.

The Queensland Major Sports Facilities Act 2001 applies to ticketed events at all major venues in Queensland. The Act mandates that tickets cannot be on-sold at greater than 10 per cent above the face value price, and exposes both the seller and the purchaser to monetary penalties for this conduct.

However, sellers and/or buyers can circumvent the legislation by advertising on websites such as eBay and Viagogo outside of Queensland. Since the introduction of the Act in 2001, these online sites have become the predominant means for on-selling tickets.

In addition, the expense and effort associated with extraditing sellers to Queensland to face prosecution is prohibitive, and the whole element of enforceability of the law is problematic.

The Victorian Major Sporting Events Act 2009 has proven to be a useful tool in reducing the prevalence of scalping of AFL Grand Final tickets. However, the Act has a number of flaws that make its application challenging and sometimes ineffective.

The Victorian Act only applies to Declared Events, meaning either the Minister or the sport must seek to have a specific event covered by the Act. It is a detailed process that requires a great deal of planning to have an event declared, therefore making it impossible to cover all events save for any event that the sport knows well in advance will be a sellout. There are also onerous reporting and compliance requirements making it not feasible to apply to all sporting events.

Although there have been recent amendments to the Victorian Act making it easier to penalise those that advertise five or fewer tickets at greater than face value, it is a difficult Act to enforce against the systematic scalper. A person who sells (as opposed to advertises) greater than five tickets must be charged by the Minister if any action is to be taken, a long drawn out process, even once the threshold point of the scalper actually selling the ticket is achieved. Further, the limited number of people charged by the Minister have received very minor penalties by the courts, in most instances a monetary sanction less than they made

from scalping the tickets. The deterrents under the Victoria Act to penalise the systematic scalper are insufficient.

Our experience is that enforcement of our rights against scalpers who are gouging the market is cumbersome, expensive and difficult. It is often not cost effective to take action. The sports have a high level of frustration from not being able to enforce the terms and conditions on their tickets without supporting legislation that creates a specific offence of ticket scalping and profiteering.

COMPPS seeks a nationally enforceable approach that provides specific provisions that make it an offence to offer for sale tickets for sporting events at a price above face value without the authority of the event owner/operator.

The Australian Consumer Law, as set out in the Competition and Consumer Act, provided an opportunity for a unified approach to fair trading and sale of goods.

The Australian Consumer Law, as it relates to ticket scalping, contains the following protections for consumers:

- It prohibits sellers from engaging in false, misleading or deceptive conduct;
- It provides statutory guarantees for purchases of goods and services; and
- It prevents the inclusion of unfair terms into standard form consumer contracts that cause a significant imbalance in the parties' rights and obligations.

For example, the Australian Consumer Laws make it unlawful for a seller to make a false, misleading or deceptive statement about the price, value or quality of a ticket they are selling. They would also require a seller to guarantee they have a right to sell the ticket and that the ticket will be fit for purpose, free from defects and match its description.

The Australian Consumer Law has provided a framework of general principles for consumers to uphold but it fails to provide an effective mechanism to prevent or punish ticket scalping. Without clearly defined regulations within the Competition and Consumer Act it is difficult to pursue ticket scalping as an offence under the Australian Consumer Law.

c) issues of illegality, including the prevalence of counterfeit tickets; and

From the sports' perspective, scalping has several negative impacts.

- I. It is a breach of the contract between the original purchaser and the sport;
- II. It takes advantage of and negates the impact of the strategic imperative of seeking to provide affordable tickets for major events for a broad range of Australians;

- III. Where large blocks of tickets are acquired by scalpers, tickets become unaffordable for many potential supporters;
- IV. Where tickets are unsold in breach of the terms of the ticket and cancelled by the sport in order to enforce its rights, the purchaser is unhappy and the sport suffers reputational damage. Meanwhile, the scalper still achieves his or her objective of making a significant profit on the transaction;
- V. It increases the risk of counterfeiting;
- VI. It impinges on event safety and security by reducing the ability of the sports to monitor and deter the attendance of undesirable individuals or groups.

COMPPS members have sought to reduce the incidence of scalping and profiteering. This has involved cancellation of tickets, litigation, enhanced ticket terms and conditions, and increased sophistication in the way in which tickets are marketed to the public.

For example, the NRL includes clear conditions on its tickets to the effect that 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. If a ticket is sold or used in breach of these conditions, the bearer of the ticket will be denied admission.

However, the burgeoning prevalence of online ticket scalping sales have increased the difficulty for the sports in attempting to minimise scalping. The use of online sites and auction websites has become increasingly more sophisticated and pervasive, and has provided a simpler mechanism and wider markets for scalpers to engage in their unauthorised activities. 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).

This exacerbates existing issues because patrons are purchasing tickets above the price set by the promoter only to find out on the day that their ticket has been cancelled or that no ticket actually exists. This is an extremely disturbing outcome for the sports where they are forced to take action against purchasers who have generally acted in good faith.

This was brought into even sharper focus during this year's 2014 Australian Open and 2013/14 Ashes series where Tennis Australia and Cricket Australia respectively handled a

significantly increased number of cases of people arriving at the on-site box office, or contacting Tennis Australia/Cricket Australia, and enquiring as to the whereabouts of the ticket they had purchased. In such circumstances, it falls to Tennis Australia/Cricket Australia (and not the unauthorised on-seller) to advise the consumer that no ticket actually exists or that it has been cancelled. For example, at the 2014 Australian Open a customer paid \$900 for a \$69 ticket at a sold out session, only to find they were unable to obtain the ticket they purchased from an unauthorised seller. For sessions or events that are “sold-out”, these occurrences are becoming more frequent and difficult for the individual customer, venue, promoter and ticketing agent.

At the Second Ashes Test in Adelaide in December, 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.

While at the First Ashes Test in Brisbane in November, 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.

Technological advances that provide different ways of issuing tickets and regulating admission to events are welcomed and will be implemented as and when they are available and their use is appropriate.

The COMPPS members will continue to oppose scalping and profiteering.

d) any related matters.

We are not opposed to authorised onselling of tickets to the public through an authorised ticketing agency. 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 in accordance with the terms and conditions outlined on the ticket for the purposes of corporate, travel, accommodation and supporter hospitality. This provides a significant revenue stream to the sports in addition to the value of the ticket. 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. However, the prevalence and ingenuity of online advertising by unauthorised on-sellers can confuse the public as to who the authorized ticket agent actually is. Unauthorised on-sellers can purchase premium advertising on Google and other search engines so that their websites/advertisement appears in search results before the websites/advertisements of the official ticket agent. This misleads consumers, and can lead to them purchasing tickets that are later cancelled by the sport or which do not actually exist.

The sports are not opposed to onselling of tickets at face value where there is a valid reason for onselling. We recognise that circumstances will change so that a bona fide purchaser who intended to use a ticket, is no longer able to do so and seeks to sell that ticket. This might arise because of illness, work commitments or the failure of a favoured team or player to qualify. COMPPS members do not oppose onselling in these circumstances. We believe, however, that such tickets should be sold at face value and through an authorised ticket-seller or alternatively, via a system that is created to facilitate this form of onselling. By way of example, Tennis Australia (in conjunction with its authorized ticket agent, Ticketek) recently introduced the "Australian Open Fan Marketplace" – a safe and secure online platform for fans to resell tickets to the 2014 Australian Open. 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 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.

We welcome the opportunity to lodge a submission with the Committee and would be happy to expand on any points or provide other information if required.

Signed for and on behalf of the COMPPS' Members.

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