

14 February 2020

Consumerlaw@treasury.gov.au

Competition and Consumer Act 2010

Competition and Consumer (Australian Consumer Law—Electronic Ticket Resale Service) Information Standard 2019

The Coalition of Major Professional and Participation Sports (**COMPPS**) and its members appreciate the opportunity to make a submission to the Commonwealth Department of Treasury in relation to the draft *Competition and Consumer (Australian Consumer Law—Electronic Ticket Resale Service) Information Standard 2019 (the Exposure Draft)*.

INTRODUCTION

COMPPS consists of the following member organisations:

- (a) Australian Football League;
- (b) Cricket Australia;
- (c) Football Federation Australia;
- (d) National Rugby League;
- (e) Netball Australia;
- (f) Rugby Australia; and
- (g) Tennis Australia.

Each member of COMPPS is the governing body and custodian of a major professional sport in Australia. COMPPS members play a large role in developing, promoting and presenting their sport from the grass roots through to the international level. They are not-for-profit bodies and are responsible for the long-term development and sustainability of their sports.

COMPPS members provide a wide range of public benefits through a self-funding business model. A large portion of the revenue of COMPPS members is devoted to enhancing, promoting and developing sport for all Australians.

One of COMPPS' roles is to facilitate a response to public inquiries on behalf of its member sports.



PREVIOUS SUBMISSION

In December 2017 COMPPS made a submission to the Department in response to its regulatory impact assessment of Ticket Reselling in Australia.

A copy of that submission (dated 15 December 2017) is attached for reference.

The COMPPS members confirm that their position remains as set out in that submission and that they are available to provide further information, including about relevant experience and developments in this area in the period since lodgement of the 2017 submission.

CURRENT LANDSCAPE – GENERAL POSITION

The COMPPS members share Treasury's objective of reducing consumer detriment and support a national effort in this regard to ensure that the consumer experience and ability to access Australian sporting events is consistent and fair regardless of the state and territory in which the event is held. Whilst COMPPS members recognise and welcome various efforts by government(s) to address the issue of ticket scalping and reselling, unfortunately recent experience illustrates that the regulatory landscape across Australia remains inadequate.

In general terms, recent experience points to the following as key issues in this area:

1. Scalpers are more sophisticated than ever. They are devoting more and more resources (human, financial, technological) to ensure they get premium tickets and can sell without detection.
2. The regulatory position across Australia remains inconsistent, leading to consumers of events in different states and territories suffering greater risk of the damage that unauthorised scalping and re-sale present – inflated prices, multiple sale of the same ticket, cancellation of tickets leading to being excluded from the event or (if there is capacity) the need to purchase another ticket, the attendant financial loss including for ticket purchases as well as related travel and accommodation costs. COMPPS members find that the combination of:
 - a. the varying regulatory landscape
 - b. the varying stances taken by key players in the industry (i.e. venues and ticketing companies) to unauthorised reselling; and
 - c. the lack of any real enforcement activity against breaches
 is a cocktail for inconsistency, confusion, and consumer detriment.
3. A national regulatory response needs to contemplate offences for *offering* tickets for sale (as well as actual sales) as the majority of the activity is occurring online.
4. The cooperation of major resale platforms like eBay, Gumtree, Queen of Tickets, Ticketmaster Resale, marketplace.ticketek, Stubhub is the key to ensuring listings in breach of legislation are taken down. In addition, COMPPS believes there needs to be greater clarity given to consumers regarding who the authorised primary seller is for any given event, including details of the authorised re-seller. It is important consumers understand the distinction between the authorised re-seller versus the abundance of unauthorised re-sellers.

5. There is a growing trend amongst scalpers to develop their own selling platforms to control the sale process (see for example, tennistickets.com.au and ticketmerchant.com.au). COMPPS believes there is a strong likelihood that these sites are being run by scalpers. They are devoting significant budgets for marketing, advertising and google ad words to ensure customers see their listings for tickets ahead of the event organiser.
6. A key issue is the bundling of the primary event ticket (e.g. the actual sporting match) with secondary benefits or “events” such as corporate hospitality function. The regulatory response needs to ensure there is a prohibition on unauthorised reselling tickets at a premium as part of a package. For example, Tennis Australia reports that during the recent AO 2020, there were a number of unauthorised online platforms that offered hospitality events with tickets being sold from their website to justify price mark-ups (i.e. tennistickets.com.au offered all patrons the opportunity to attend a pre-event function at a venue called Ellora in St Kilda. At the function, patrons were offered nibbles and some complimentary drinks). Scalpers are trying to use these “value-add” hospitality offerings to justify substantial mark-ups on the face value of the ticket. Whilst the value of such a function is probably worth about \$50, the prices of tickets being offered for sale are often being marked up by 200%/300%. This practice also applies for unauthorised travel agent-type offerings involving bundling of transport (e.g. airfare), accommodation and event ticket etc.
7. Other problems with enforcement include:
 - a. Scalpers are often obtaining buyers’ contact details prior to obtaining tickets and then using those customer details to purchase tickets from the event organiser (so that the scalper is untraceable).
 - b. Scalpers are also setting up multiple accounts, many fake, where customer account details do not match credit card details to avoid detection. One regulatory measure for consideration could be the application of “know your customer” requirements (akin to those applying to betting operators) to ticketing agents (i.e. Ticketek, Ticketmaster, etc).
 - c. Buyers from unauthorised sources often do not have any visibility on who is selling them tickets. Nor do they have any contact details if things go wrong. For example, at the recent Australian Open, Tennis Australia spoke with purchasers of suspected scalped tickets, many of whom had no knowledge of who they had bought the ticket from.

THE EXPOSURE DRAFT

COMPPS notes that Treasury previously articulated five policy options to which COMPPS provided specific responses in its December 2017 submission. We take the release of the Draft Exposure to be a response to Policy Option 4 and for convenience reproduce below COMPPS’ position on this option from its earlier submission:

Option 4 – we support improved information disclosure requirements for ticket resellers that would require ticket resellers and by extension, ticket reselling platforms, to disclose certain information when reselling tickets in the

secondary ticket market, including that they are an authorised reseller, and information about the ticket itself, such as the face value, location within the venue and any restrictions associated with the ticket. Further, we would support a prohibition on advertisements that do not comply with these disclosure requirements.

COMPPS notes that the Exposure Draft is confined to disclosure information on ticket resale platforms and does not address many of the other challenges and issues that arise in the scalping and reselling environment such as those set out above. COMPPS looks forward to advice as to what other national measures and initiatives are under consideration to address these issues and ensure there is a comprehensive and effective national strategy to achieve the objective of reducing consumer detriment in this area.

In relation to the Draft Exposure itself and to the extent it seeks to be a response to Policy Option 4, COMPPS offers some initial observations which it would seek to explore further in discussion with Treasury at the proposed roundtable.

- A. The Draft Exposure does not meet the requirements set out in COMPPS' previous submission of requiring ticket reselling platforms to *disclose information about the ticket itself, such as the face value, location within the venue and any restrictions associated with the ticket*. This includes the exact location – bay, row, seat number to enable cancellation of tickets as required and also identification of the reseller.
- B. The Draft Exposure is limited to electronic platforms “*whose sole or dominant purpose is to facilitate a secondary market in tickets for admission to events*”. COMPPS takes this, supported by the examples in the Explanatory Statement, to mean that the Information Standard would not apply to such online platforms as E-Bay, Gumtree that are not dedicated “event ticket” platforms. If COMPPS's understanding is correct, this is a major concern. COMPPS does not understand the basis for any such distinction given that the effect of unauthorised and uncontrolled online re-selling of tickets to sporting events is the same for the consumer regardless of whether the sales platform also deals in other unrelated goods and services. If this distinction remained, it would represent a serious gap in the framework for tackling consumer detriment in this area. COMPPS would welcome advice that COMPPS is mistaken in its understanding or failing that, amendment to ensure that the Information Standard is comprehensive and effective in capturing the range of online reselling activity that occurs, regardless of the platform.
- C. The Draft Exposure may prove ineffective in addressing the practice of bundling. As noted above, a scalper may offer a package including the primary sporting “event” and other “events” – e.g. a pre-match cocktail party or airline ticket. The practice of bundling with additional benefits of minimal or indeterminate value can then disguise inherent hyperinflation of the ticket for the primary event. Given the definition of “event” in the Exposure Draft it could be open to scalpers to exploit the use of the word “event” for example to comprise the whole, combined event and argue that there is no comparable, face value price for such “event” that must or can be disclosed. COMPPS

seeks refinement of the drafting to deal with the challenges presented by the practice of bundling.

- D. The explanatory statement notes that “*On 26 October 2018, Consumer Affairs Ministers agreed to require ticket resale services to disclose the face value of tickets ...*”. The Draft Exposure does not in fact do this but instead uses the concept of a price “*that the consumer would reasonably be expected to pay to purchase the ticket from a person who is authorised to provide the first supply of tickets for the event*”. COMPPS submits that the requirement should be to disclose the actual ticket price paid and to accompany this with the details of the seat’s location.
- E. Finally, COMPPS is interested in discussing with Treasury the merits of including substantive offence provisions for ticket reselling platforms that “facilitate” the unlawful reselling of tickets in the secondary market.

CONCLUSION

As noted in its earlier submission, COMPPS is not opposed to the authorised reselling of tickets, for example where a consumer’s circumstances change.

COMPPS supports restricted reselling where ticket reselling would be restricted to selling the ticket at the face value plus a ten per cent premium to enable the primary purchaser to recoup any transaction costs. The restricted selling should be limited to secondary markets that are authorised by the event organiser. The event organiser should also retain the right to authorise commercial partners to resell tickets and/or packages.

COMPPS members have direct experience of restricted reselling arrangements operating successfully where the sport has worked collaboratively and constructively with the relevant venue and primary ticketing agent. By operating a system involving cancellation of the original ticket and re-issue of a new ticket (and bar code), not only does the consumer not face the risk of inflated sale prices, but also the risk of fraud and consumer harm through the multiple re-sale of the same ticket is reduced. COMPPS members would be pleased to provide more information on reselling arrangements agreed with some parties that have enabled the practical, fair and effective resale of tickets.

In conclusion COMPPS continues to seek and support a legislative response to the scourge of ticket scalping that is consistent, effective, simple and national. COMPPS appreciates the continued opportunity to work with government to achieve an efficient and equitable outcome.

Yours sincerely



Jo Setright
Executive Director, Policy