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WA LEGISLATIVE COUNCIL STANDING COMMITTEE ON LEGISLATION —SUBMISSION OF THE AUSTRALIAN TAXPAYERS' ALLIANCE (ATA) ON THE TICKET SCALPING BILL 2018

25 July 2019

- The Australian Taxpayers' Alliance (ATA) thanks the committee for the opportunity to provide comments to the abovementioned inquiry.
- The ATA is a 75,000+ member national grassroots taxpayers' advocacy group which stands for the principles of individual freedom, minimising government waste and rolling back inefficient or ineffective regulatory barriers which impede the progress and prosperity of Australia's economy and the welfare of taxpaying individuals, businesses and their customers.
- The ATA is deeply concerned by WA's ticket scalping legislation as evidence from NSW and other jurisdictions (including NSW) indicates that it is unlikely to be effective in protecting consumers, will be practically impossible to enforce, and will undermine the interests of event-goers by reducing competition in the ticketing sector through the imposition of substantial costs and barriers to business due to the new regulations. In undermining taxpaying Australian businesses who must comply with the law, it will help entrench and grow the market share of foreign and/or dubious websites and ticket resellers, thereby exposing consumers to greater risk of fraud or deception.
- By pushing fans and prospective patrons onto the black market, foreign websites or unsecure channels, the ATA also notes that the bill is likely to result in a loss of tax revenue for the Australian government through the GST. The ATA is concerned by this as it will mean that a greater proportion of the tax burden is borne by existing taxpayers as foreign sellers skirting the law are able to escape tax liability and will only see their market share increase beyond its current levels should the proposed legislation pass.
- The ATA will provide in this submission, alternative measures to address the issue of ticket scalping in order to protect consumers from exploitation or fraud while avoiding the imposition of competition-destroying and expensive regulatory barriers on legal, taxpaying Australian businesses.

Importance of the secondary ticket market

It is submitted that the interests of consumer welfare in the ticketing and events industry are supported by the presence of an active legal secondary market for tickets as this enhances consumer choice, increases competition which can lower prices, and can lead to market-based prices which reflect the value that

consumers are genuinely willing to place upon tickets to events. It is conversely submitted that the present legislation will greatly undermine the secondary ticket market and will therefore leave consumers worse off due to reduced choice and increased reliance on dubious or fraudulent foreign websites or sellers who are unlikely to be prosecuted or convicted. It is further submitted that the reduced competition caused by the undermining of the secondary ticket market will only entrench the market share of primary ticket sellers, connoting reduced price competition and a greater propensity for primary sellers to distort the demand for tickets artificially in order to boost profits at consumer expense.

- Previous inquiries, such as the 2014 Report on NSW's then-proposed ticket scalping legislation, have found that the Australian secondary market is a relatively small albeit growing sector. It includes individual resellers, general online marketplaces like eBay or Gumtree, resellers using social media platforms such as Facebook, and websites established specifically to create secondary ticket markets such as Viagogo or Ticketmaster Resale.¹ It is submitted that the growth of the secondary ticket market is evidence of increasing consumer demand for alternative options to primary ticket sellers due to factors including the propensity of events to sell out, artificial distortion of the primary ticket market by the primary ticket sellers or venues who have a monopoly on ticket allocation and sales, and the likelihood of primary purchasers to be unable to attend scheduled events due to circumstances unforeseen at the time of primary purchase.
- It is noted that sellers in the secondary ticket market include individuals who are selling as they are no longer able to attend an event which they previously purchased a ticket to attend, as well as sellers who on-sell at a profit.² It is submitted that in the context of 'anti-scalping' legislation intended to benefit the welfare of consumers, the definition of scalping should be limited to those who "lawfully purchase tickets that are in short supply with the intention of selling them to the public at highly inflated prices, thereby denying access to fans who cannot afford to pay those prices." In this context, the existence of a strong and transparent secondary ticket market that satisfies consumer demand is contingent on a sufficient monetary incentive for the ticket reseller. Hence the price cap imposed by the current bill is insufficient and will likely result in harm being caused to consumers as they will be denied opportunities to purchase tickets to events they wish to attend which are not available on the primary market and may be forced to use dubious foreign websites or resellers against

¹ New South Wales. Parliament. Legislative Council. General Purpose Standing Committee No. 4, Inquiry into the *Fair Trading Amendment (Ticket Reselling Bill) 2014*, Sydney NSW, 15 February 2015. P.7

² New South Wales. Parliament. Legislative Council. General Purpose Standing Committee No. 4, Inquiry into the *Fair Trading Amendment (Ticket Reselling Bill) 2014*, Sydney NSW, 15 February 2015. P.3

whom Australian laws are difficult to enforce. This will result in the increased likelihood of Australians becoming victims of fraud.

- 9 The following points will outline why a secondary market backed by commercial incentives is necessary and in the interests of consumers.
- In 2014, the NSW government consulted stakeholders in the events industry and noted that primary ticket sellers who usually have monopoly on the allocation and first-hand distribution of tickets often engaged in practices which create the need for a secondary market.
- 11 For example, primary sellers or organsiers sometimes underprice tickets deliberately in order to prompt a rapid sell-out which attracts publicity for the event and/or enables subsequently staggered allocations of tickets to be sold at a much higher price. Underpricing may also be motivated by a bonafide desire to ensure that genuine fans who cannot afford exorbitant prices are able to attend.
- Primary sellers sometimes also restrict ticket allocation to the general public, such as through providing exclusive allocations to employees or shareholders of corporate sponsors, the performer or their friends and family. Often, these individuals who have better access to the event than the public forced to compete for a restricted non-exclusive supply, would not attribute the same value to the tickets as a dedicated fan. While the ATA supports the freedom (commercial or otherwise) of private parties to issue tickets in this manner, it is submitted that a thriving secondary market is essential for ensuring that this freedom is maintained while allowing the public to have the best chance of obtaining access to events they wish to attend at the most competitive price possible. This is facilitated where those with exclusive access to tickets, such as through sponsorship arrangements of their employers, are incentivised to resell their tickets to fans with a greater desire to attend wherever possible.
- 13 Furthermore, primary tickets may often be sold up to 12-18 months in advance for high-demand events. This often results in early sell-outs with ticketholders subsequently becoming unable or uninterested in attending the event. In order to ensure that these tickets can be made available to those who are interested in attending but could not or did not purchase their ticket in time, it is therefore submitted that a market price-based secondary ticket market backed by monetary incentive to resell is necessary. An example of such situations includes where tickets are purchased for a sporting grand final months in advance, only for the team supported by the purchaser to be eliminated from the competition before then. Other examples include major music concerts such as One Direction who performed in Sydney in 2013 whereby the early, rapid sell-out of tickets resulted in a secondary ticket market where prospective patrons were willing to pay up to \$1000 for tickets. Often, early sales by event organisers or venues are motivated by commercial certainty considerations given the substantial monetary downpayment required to bring major performers to Australia, or to secure contracts for major sporting events. Major international performers also often require a guarantee of ticket sales well ahead of time to provide sufficient incentive to

schedule a touring commitment to Australia. The same commercial considerations mean that primary ticket sellers or event organisers also often impose restrictions on the refundability of tickets in order to avoid incurring significant losses or going bankrupt if a number of people who purchased tickets seek refunds closer to the event date. It is therefore submitted that given these valid considerations, a thriving secondary ticket market is necessary for ensuring that first-hand ticket purchasers who are no longer able to attend obtain compensation while providing interested consumers who are willing to attend events with the opportunity to do so at a price which they are prepared to pay.

- The secondary ticket market is also important as primary ticket sellers often provide a variety of pre-set ticket packages in their ticket allocation, whereby these do not necessarily reflect the demand from the market at the time of sale. For example, they may sell 500 'general allocation' tickets to a concert along with 50 highly priced 'VIP drinks package' tickets. Fans unable to purchase a general allocation ticket due to their selling out will then be forced to purchase a significantly more expensive VIP drinks package ticket despite having no strong desire to engage in the 'frills'. The secondary ticket market, even if it results in second-hand tickets being sold with a significant mark-up, can therefore contribute to the ultimate welfare of these consumers by allowing them to purchase cheaper tickets than they would find on the primary market at the time of purchase.
- 15 Sufficient commercial incentives to support the secondary ticket market must take into account costs not included in the upfront primary or secondary price of a ticket such as administrative fees, booking fees, posting and handling fees etc. They must also provide sufficient incentive for resellers to undertake the trouble of making their tickets available. For example, a primary purchaser of a ticket bought at an underpriced rate might rather incur the loss of the ticket value due to being unable to attend the event than invest time and resources in writing and publishing an advertisement for their ticket and ensuring that the relevant restrictions on reselling the ticket are researched and adhered to in a situation where their mark-up is limited by a price cap. Assuming, for example, that someone is no longer able to attend a concert for which they had purchased a \$50 ticket, then they may not spend 30 minutes on placing an advertisement if their return on the ticket is just \$5 under a 10% price cap. In fact, the costs imposed by the secondary ticket reselling service or platform alone may still result in a loss in such a case. This could well be a case where, despite the \$50 primary ticket price, fans and prospective patrons in the market are prepared to pay multiple times that amount for the chance to attend.
- The Commonwealth Treasury noted the following in 2018: "As with a prohibition on ticket reselling, restricted reselling options will not stop the practice of ticket scalping. If a price cap were applied to the secondary ticket market, it will result in the creation of a black market due to the existence of excess and unfulfilled demand for particular classes of tickets. If this were to occur, consumers would lose access

to the consumer guarantees in the [Australian Consumer Law]. Restricted reselling laws are unlikely to reduce the risks that consumers face from potential fraud and scams. It is expected that the benefits associated with restricted reselling will ultimately not significantly outweigh the costs associated with such a restriction. While consumers will experience savings in the short term by not paying an uplift on the price of tickets, the effectiveness of restricted reselling laws are questionable and can be easily avoided by ticket resellers moving their operations into black markets or offshore where consumers would have no access to consumer protections. The costs of consumers not having access to consumer protections are thought to be sizeable."³

17 It is submitted that imposing price caps or onerous resale restrictions will worsen these problems and further deny consumers access to events which they wish to attend. It is submitted that consumers who are willing to pay even exorbitant sums to see certain artists or performers are not necessarily being "ripped off" by the significantly increased ticket prices in these cases, but may rather be paying for the value which they personally ascribe to the products. It is submitted that while promoting consumer welfare through providing adequate protections for informed and transparent decision-making may be the role of a government, intervention in the marketplace through (what effectively amounts to) pricesetting for events and tickets that are valued differently by different consumers is not. It is therefore submitted that promoting transparency in the secondary ticket market, such as requiring the display of the original price of the ticket and a link to information on legal protections available and the terms and conditions imposed by the primary seller, will provide sufficient consumer protection while ensuring that the freedom of choice of the consumer is upheld.

'Ticket Scalping' incidence is relatively low

- It is submitted that the relatively low incidence of ticket scalping combined with the dire unintended consequences of anti-ticket scalping legislation and the ability to promote consumer protections and welfare through alternative means underscore the unnecessity of the present legislation.
- Prior to the passage of a similar anti-ticket scalping bill in NSW, NSW Fair Trading reported in July 2013 that of the 128 ticket-related complaints they had received, none were related to scalping. 70% related to cancelled or postponed events, or electronic glitches in the ticket purchase process.⁴
- The Australian Senate's Economics References Committee noted in its report on ticket scalping in Australia of March 2014, that the Australian Competition and

³ Decision Regulatory Impact Statement: Ticket Reselling in Australia, The Commonwealth Treasury, 2018 p. 61-62.

⁴ New South Wales. Parliament. Legislative Council. General Purpose Standing Committee No. 4, Inquiry into the *Fair Trading Amendment (Ticket Reselling Bill) 2014*, Sydney NSW, 15 February 2015. P.10.

Consumer Commission had received a total of 52 inquiries from consumers that related to ticket sales since 2011. This was considered proportionally insignificant when compared to the total number of inquiries to the Australian Competition and Consumer Commission, which amounted to 185,000 in the 2012-13 period.⁵ Of the 52 inquiries on ticket sales received by the Commission, only some related to the unauthorised resale of tickets (a broader category than scalping-related incidents). Many, in fact, were consumers complaining that they were unable to legitimately resell their tickets due to restrictions imposed by the primary ticket seller.⁶ It is therefore submitted that passing the present legislation will compound this problem.

21 It is submitted that given the unenforceability of the present bill against foreign parties and the impracticality of ensuring enforcement against even domestic parties, the net result may be a worsening of the relatively minor scalping problem as consumers may be driven to more dubious sellers and platforms as legal, commercial entities will no longer be able to provide a robust secondary ticket market.

Consumers are already protected from scalping by existing laws and policy

- The Australian Consumer Law, which was introduced in 2010, provides for consumer protection and fair trading across Australia. The Australian Consumer Law also incorporates the national unfair contracts law. Sections 18 and 29 relate to misleading and deceptive conduct. Sections 20 to 22 pertain to unconscionable conduct. Sections 23 to 28 relate to unfair consumer contracts. Sections 51 to 59 relate to consumer guarantees.
- The Commonwealth Treasury, in a submission to the 2010 Senate Economics References Committee Inquiry into ticket scalping in Australia, noted that the prohibition of misleading and deceptive conduct and the consumer guarantee provisions of the Australian Consumer Law are relevant to unauthorised ticket selling in Australia. They further noted that it's already illegal under these rules for an on-seller of tickets to misrepresent that they have a right to on-sell or that the tickets constitute a valid entry to the event in question for the secondary purchaser. Consumers must receive what they paid for and the goods (Tickets in this case) must be 'fit for purpose'. The Treasury therefore concluded that further protections were not necessary. It is therefore submitted that instead of passing

⁵ Senate Economics References Committee, Australian Senate, *Ticket scalping in Australia*, (2014), p 50.

⁶ Ibid.

⁷ Commonwealth of Australia, Australian Consumer Law, Compliance and enforcement, how regulators enforce the Australian Consumer Law, 2010, p 6.

⁸ The Treasury, Submission by the Commonwealth Treasury to the Senate Economics References Committee Inquiry into ticket scalping in Australia, 14 February 2014, p 3.

⁹ Ibid.

the present legislation, the WA government should instead consider ways to enhance awareness of the presently available consumer protections.

It is submitted that awareness of the available protections can be enhanced by requiring second-hand resellers to display a disclaimer on their listings which specifies the legal provisions or contains a link to a WA government website that lists legal remedies available in the event that fraudulent or defective tickets are sold. This online advisory can also include general advice about the appropriate precautionary steps to take when purchasing tickets on the secondary market, such as viewing the terms and conditions attached to the ticket and contacting the primary ticket seller to verify that purchasing tickets from the secondary market does not violate the terms and conditions set by the primary ticket seller. It is submitted that in providing this information and requiring secondary market platforms or sellers to display a link to the information on their listings, the WA government is discharging its responsibility to enable purchasers to make informed decisions and that further intervention in the marketplace would hence amount to a contravention of the private freedom to contract.

Similar legislation in other jurisdictions has been ineffective or had a detrimental impact

25 Queensland: The Queensland Major Sports Facilities Act 2001 (Qld) was introduced to restrict ticket scalping for events being held at Stadiums Queensland venues. The Act applies to ticketed events at several major stadiums and entertainment complexes in Queensland, including Brisbane Cricket Ground, Brisbane Entertainment Centre, Brisbane Stadium, Carrara Stadium, Queensland Sport and Athletics Centre, Queensland Tennis Centre, Robina Stadium, Sleeman Sports Complex and Townsville Stadium. 10 The Major Events Act was similarly introduced in 2014, extending similar protections to events outside Stadiums Queensland venues. 11 Like the present legislation, both bills made on-selling of tickets illegal when unauthorised and imposed a 10% cap on the resale price relative to the original ticket price. Both the Queensland laws and the present bill impose the threat of fines on offenders. Live Music Australia reported to an NSW government inquiry on proposed anti-scalping legislation in 2014 that there had been no significant impact on scalping. "The Brisbane Entertainment Centre, a major venue covered by the Act, has similar quantities of tickets advertised on unauthorised reselling websites for numerous live performance events as do other venues in other states that do not have anti-scalping legislation. For example, the Viagogo website had over 100 tickets advertised for the recent Bruce Springsteen concert at the Brisbane Entertainment Centre, ranging from \$284 - \$888, the

 $^{^{}m 10}$ Queensland Major Sports Facilities Regulation 2014, Schedule 1 Major Sports Facilities.

¹¹ Major Events Act 2014 (Qld), Division 3 Limits on commercial activity for a major event, Clause 31.

original price set by the promoter being between \$100 - \$228."12 The Senate Economics References Committee Inquiry on scalping in Australia (2014) reported that the laws are easy for scalpers to evade and difficult to enforce.13

- 26 NSW: In 2014, prior to the passage of a similar anti-scalping bill to the present legislation in NSW which also imposed a 10% cap on the price of resold tickets, the NSW Legislative Council's inquiry came to the following conclusions: "The committee does not believe the bill provides meaningful benefits for consumers, but favours event promoters and their commercial interests (see paragraphs 4.18, 4.30-4.31, and 4.35 of this report). While not denying there is some issue with ticket scalping, its incidence is relatively small, a view borne out by the Senate Economics References Committee Ticket Scalping in Australia inquiry and the experience of NSW Fair Trading. Even if the policy embedded in this bill is desirable, the committee is unconvinced of its practicality, and the evidence before us indicates it is not practicable and enforceable (see paragraphs 4.26, 4.37- 4.40). The committee is also mindful of evidence before us that suggests regulation of the kind proposed in this bill will in fact result in a reduction in the availability of event tickets, a resulting increase in ticket price, and an impact on the privacy of consumers (4.27-4.28). The first two impacts would favour event promoters at the expense of consumers. The claims made by bill proponents, such as the Coalition of Major Professional and Participation Sports, that it would protect fans from price gouging, are not sustained by evidence before the committee and the bill could well increase ticket prices for consumers by restricting availability (4.53-4.55). The balance of evidence to the committee was that implementation of this legislation would be costly and burdensome to the industry, with little or no advantage to consumers (4.58-4.61)."14
- Nonetheless, the legislation was passed by both houses of the NSW government and took effect in 2018. At the end of November 2018, the ABC reported that "It looks like scalpers are blatantly disregarding [the law] ... with seemingly few consequences. Listings for RHCP tickets in NSW on Viagogo are being listed for well above 10 per cent the original ticket price. It's something we saw happen earlier this year with Childish Gambino's Australian tour where tickets to his Sydney show appeared on Viagogo for over \$800. At the time, it was the first major event to test the new laws and it appeared scalpers got away with it, ... nobody has been

¹² New South Wales. Parliament. Legislative Council. General Purpose Standing Committee No. 4, Inquiry into the *Fair Trading Amendment (Ticket Reselling Bill) 2014*, Sydney NSW, 15 February 2015. P.19-20.

¹³ The Senate Economics References Committee *Ticket scalping in Australia*, March 2014, p 41.

¹⁴ New South Wales. Parliament. Legislative Council. General Purpose Standing Committee No. 4, Inquiry into the *Fair Trading Amendment (Ticket Reselling Bill) 2014*, Sydney NSW, 15 February 2015. Paras. 4.72-4.80.

- charged for selling tickets above the 10 per cent cap, nor were they handed fines (which can be up to \$22,000 for individuals)."15
- United States: The NSW legislative council inquiry on that jurisdiction's antiscalping bill in 2014 noted that a number of US jurisdictions (including Michigan) had introduced then subsequently repealed similar scalping prohibitions or price caps as they were not found to be enforceable and had even forced many consumers to evade or break state law to obtain tickets as the secondary market had become significantly undermined.¹⁶
- Ontario State (Canada): The Canadian state government of Ontario have announced the repeal of their 50% profit cap on resold tickets this year after it was deemed to be unenforceable and likely to result in ticket purchasers being forced onto unsecure channels or the black market.¹⁷

Recommendations

- The ATA notes that the primary stopgap to ensure that scalping does not occur is through the terms and conditions as well as the ticketing and entry process imposed by the event organiser or primary ticket seller. The ATA supports the rights and powers of event organisers and primary ticket sellers to set their own conditions on tickets pertaining to the transferability of attendance rights and the process by which this can be arranged, as well as the ability of primary purchasers to purchase tickets in bulk. The ATA notes that previous inquiries into ticket scalping, such as the 2014 NSW state government inquiry, have taken note of the internal codes of conduct and industry practices modifications put in place or forwarded in response to the threat of scalpers.
- The ATA recommends that instead of imposing strict conditions or price caps on ticket resellers or secondary ticket market platforms, the WA government should require resellers and reselling platforms to display:
 - > A link to a government advisory on available anti-scalping or consumer fraud protections under federal and state laws.
 - > A link to the Australian Competition and Consumer Commission website that

¹⁵ Ange McCormack "Once again, ticket scalpers have left genuine fans fuming. Why can't we get ticketing right?" *JJJ Hack* 27 November 2018. https://www.abc.net.au/triplej/programs/hack/ticket-scalping-rhcp/10559376

¹⁶ New South Wales. Parliament. Legislative Council. General Purpose Standing Committee No. 4, Inquiry into the *Fair Trading Amendment (Ticket Reselling Bill) 2014*, Sydney NSW, 15 February 2015. P.34-35.

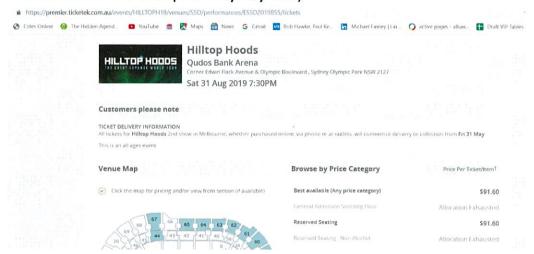
¹⁷ The Canadian Press, "Ontario just scrapped a ticket resale cap meant to keep scalpers' profits down" *CBC News* 15 April 2019. https://www.cbc.ca/news/canada/toronto/ontario-scalpers-ticket-resale-cap-ford-1.5098924

includes guidelines about what constitutes misleading conduct, and the appropriate processes for reporting such conduct by the secondary seller or platform.

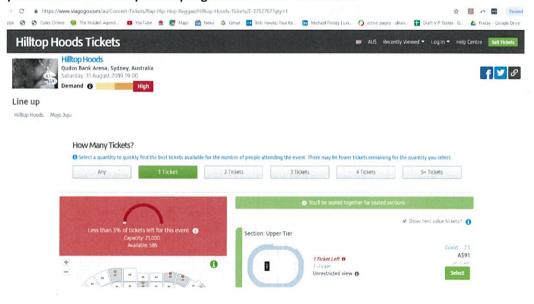
- > A link to best practice guidelines so prospective purchasers can verify the validity of resold tickets and protect themselves from fraud, such as by verifying validity through contacting the primary ticket seller/event organiser, going to their website, or reading the terms and conditions that came with the original ticket.
- > Prominent display of the original price paid for the ticket, including any associated booking fees or administrative costs in order to enable consumers to make price comparisons that inform their decision-making.
- Case Study: Viagogo The ATA notes that Europe-based Viagogo, a secondary 32 ticket sales platform, has been the subject of numerous complaints in relation to misleading or deceptive advertising practices, the sale of invalid or fraudulent tickets, and the sale of secondary market tickets at exorbitant prices. It is noted that Viagogo was recently banned from using Google's advertising services due to allegedly misleading advertising. 18 This represents an example of private regulation effectively acting upon the unethical practices of another private party. However, Viagogo has also become the subject of complaints and negative rulings by the Australian Competition and Consumer Commission. It is submitted that requiring websites like Viagogo to prominently display the available anti-fraud protections, advisories on verifying the validity of tickets, the original purchase price, and (importantly) a link to the complaints portal for the Australian Competition and Consumer Commission, will empower consumers to more effectively keep the platform and individual resellers accountable while protecting them from exploitation or fraud. By contrast, the NSW government's anti-ticket scalping law has not prevented the advertisement of tickets at prices above the price cap on Viagogo, accessible by ticket purchasers in NSW. Similarly, the presently debated WA legislation is also unlikely to be effective in this regard.

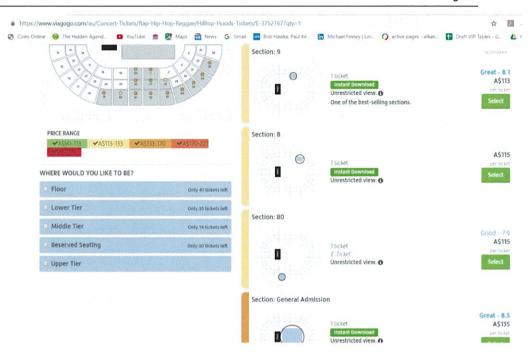
¹⁸ Paul Donoghue, "Google bans controversial ticket reseller Viagogo from top search results" *ABC News* 18 July 2019 https://www.abc.net.au/news/2019-07-18/viagogo-google-blocks-advertising-from-ticket-reseller/11321792

Screenshot 1: Hilltop Hoods @ Qudos Bank Arena (NSW) Sat 31 Aug 2019 7:30 PM show: primary ticket website showing listed price at \$91.60. (taken 22 July 2019 at 4:28 PM from a computer in Sydney NSW)



Screenshots 2&3: Hilltop Hoods @ Qudos Bank Arena (NSW) Sat 31 Aug 2019 7:30 PM show: secondary ticket website (Viagogo) ticket listings showing listed prices above the 10% price cap legislated in NSW since 2018





The ATA thanks the committee again for the opportunity to provide these comments and hope that they will be of assistance.

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