

LPA Fact sheet

Ticketing FAQs

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Ticketing FAQs

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The information provided in this document is correct as at March 2017

Ticketing FAQs

A. Pricing and Advertising

1. What is considered in ‘reasonable quantities’ or for a ‘reasonable amount of time’?

In section 20 of the *Ticketing Code of Practice – Industry Code*, it states that:

If tickets are advertised at a particular price, they must be available at that price for a reasonable period of time and in reasonable quantities.

The Australian Consumer Law (ACL) prohibits ‘bait advertising’. Bait advertising is where goods or services are advertised at a particular price but they are not available at that price or only in very limited quantities (unless the same advertisement makes highly visible, clear and specific references to those limitations).

If tickets at a particular price are unavailable in reasonable quantities and for a reasonable period of time, you risk being in breach of the bait advertising provisions. ‘Reasonable quantities’ and ‘reasonable amount of time’ are undefined in the ACL, and therefore it is not possible to put a definitive value on the amount of tickets and length of time that would be considered reasonable.

Instead, the meaning of those phrases is based on what the average person viewing the advertisement would consider to be ‘reasonable’ in the circumstances. Such circumstances might include the total number of tickets available, the total sale period and the offered price compared to any other prices offered at earlier or later dates.

2. We currently have a set number of seats allotted that we release for sale incrementally. On any given day that tickets are on sale, is there a minimum number of tickets that have to be available for purchase?

Subject to the ‘bait advertising’ restrictions above, there is no prescriptive minimum number or proportion of tickets that need to be available for sale on any given day. It is up to venues, ticketing companies and promoters/producers to decide how best to manage ticket inventory and there will be many factors which influence these decisions – e.g. demand for tickets, past sales activity for similar event, etc.

3. In print ads do we need to advertise all available prices for each different ticket category (i.e. concession, under 30, seniors, A-reserve, B-reserve etc.)? Is it okay to use the generic term ‘select performances’?

Where an advertisement refers to ticket prices, and there are different prices for different categories of tickets, then consumers must be informed about the parameters for each price point. Being able to specify these parameters in print and radio advertising is challenging, and as such, LPA’s recommendation is to exclude pricing information from print and radio advertising.

If you choose to include generic terms, such as ‘select performances’, ‘on selected days’ or ‘conditions apply’ in print and radio advertising, it is important to ensure that the same

advertisement directs consumers to where they can find complete pricing information (such as on the event website).

If you choose to advertise a specific ticket price that does not apply to all consumers (such as a concession price for children or seniors), you should ensure that the advertisement includes this fact. This should be at least as prominent as the ticket price.

4. How can we use 'From \$...' or 'up to \$...' or '\$... to \$...' in an advertisement?

It is OK to advertise ticket prices as 'from \$...' or 'up to \$...' or '\$... to \$...' as long as any parameters related to the advertised ticket price are clearly stated. See the responses in Question 3 above for further information as to these parameters and Question 6 below for further information as to disclosure of additional fees.

For example, the following statements would most likely be acceptable:

- From \$40 for B-Reserve adult seats to a matinee
- For all performances:
A-Reserve: \$50
B-Reserve: \$40
C-Reserve: \$35
- Friday/Saturday night performances:
Adult: \$75 - \$100
Pensioner/Concession: \$55 - \$80
- Adult tickets up to \$100
Child (3-15 years) tickets up to \$75

5. What price advertising is allowed in print, e-newsletter and online banner ads considering there is minimal space?

Given space restrictions in print, e-newsletter and online banner ads, LPA recommends excluding price information and referring consumers to websites or program brochures where complete ticket price information can be found.

If ticket price information is included in print, e-newsletter and online banner ads, make sure that any parameters (including additional fees*) associated with that ticket price are clearly specified. Additionally, make sure the same advertisements direct consumers to where they can find complete pricing information (such as on the event website).

** See the response to Question 6 below and section 20 of the Ticketing Code of Practice – Industry Code for further information about additional fees*

6. How should booking fees and credit card fees be shown in print ads?

When booking fees and credit card fees apply, consumers need to be made aware that these fees and charges exist. It is best to be as specific as possible about such fees and charges in print ads.

For example:

- A \$5 booking fee applies per transaction
- All credit card payments attract a 1.5% surcharge*

7. Can we use the term ‘additional booking and ticketing fees may apply’ or ‘additional credit card fees apply’ in ads?

See response to Question 6 above.

8. At what point in the purchase process do merchant fees need to be displayed?

Businesses that accept card payments for ticket purchases (or any other goods or services) are charged a merchant fee by their bank for each card transaction. As this is a cost of doing business, there are two ways in which companies may wish to recoup these costs – either by:

- i. factoring this cost into the ticket price, such that an all-inclusive price is represented to consumers. With this approach, no fees related to card payments need to be displayed to consumers.
- ii. charging a surcharge on top of the ticket price. The RBA has set surcharging standards which apply if businesses wish to surcharge for card payments (please see Questions 22 to 24 below in the Credit Cards section for more information). If a business intends to surcharge then consumers must be informed upfront as early as possible in the transaction that a surcharge applies for card payments or for a particular type of card (e.g. AMEX) and the amount of that surcharge. This implies that a surcharge is not applied when payment is made in cash.

9. Can we charge a booking fee for tickets purchased at the box office on the day?

It is up to each individual business to decide whether it charges a booking fee for all ticket purchases (whether they be online or at the box office) or for purchases in particular instances (e.g. online only). If booking fees (and other charges) apply, they should be made clear (verbally if at the box office or over the phone, or in writing if online) to consumers before making a ticket purchase.

If the booking fee can be calculated in advance (for example, it is a flat fee per ticket and not per transaction) and is unavoidable, the initial price should include this amount. Failure to do so can be considered ‘drip pricing’ (where a price is advertised at the beginning of a transaction and then additional fees are incrementally disclosed) and may be in breach of the *Ticketing Code of Practice – Industry Code* and the ACL.

10. Is there standardised terminology for ticket pricing that can be used across our industry? (i.e. booking fee, transaction fee, etc.)

There is currently no standard terminology for fees that may be charged as part of a ticket purchase. LPA advises Members to be specific and avoid terminology that is vague or unclear.

11. Who is responsible for ensuring price advertising is compliant with ACL?

All Members have a responsibility to ensure that price advertising they issue is compliant with the ACL.

12. What information should be advertised for dynamic pricing to be compliant with ACL?

The key principles of the ACL are that information is “clear, accurate and not misleading”. If producers/promoters wish to employ dynamic pricing, then it is advisable to inform consumers that ticket prices may change.

The following wording could be used: *Ticket prices are subject to change without notice and may fluctuate based on market demand.*

Consumers should then be directed to where they can find complete and current pricing information.

13. For discounts, is it okay to use terms like ‘Buy 4 and save’ without advertising the ticket price?

Yes, it is OK to advertise discounts using terms such as ‘Buy 4 and save’ without advertising the ticket price as long as it is clear what tickets the discount applies to and what the discount is based on. For instance, if the discount only applies to tickets for the event on one day of the week, this must be clear in the advertisement. Or, if the discount, say 20%, only applies to the ticket price and not the handling/transaction fees or credit card/processing charges or any other applicable fees, this must also be clear in the advertisement. Otherwise consumers may be led to believe it is 20% off all tickets (child and adult every day of the week etc) or 20% off the total amount payable for the ticket, when this is not the case.

In this scenario the issue is whether the full terms of the offer are clear. Therefore any disclaimer or qualification which clarifies when the discount applies and what the discount applies to is important. The qualification wording must be clear and prominent in the context so that consumers can understand what the ‘real’ offer is and not be misled by the advertisement. Therefore the qualification wording must not be placed in an obscure location, using text that is too small, flashed on screen for only a moment or use voice overs that are too quick or quiet. Generally, the qualification should be at least as prominent as the discount or price advertisement. Using disclaimers or qualifications that the consumer cannot readily see or hear may result in the consumer being misled. This may be a breach of the ACL.

14. Are there exceptions or different rules for TV and radio advertising?

The ACL applies to all advertisements, irrespective of the medium used to convey the representation. As such, the same rules apply for television, radio, print and internet advertising.

Certain publications such as the Classification Handbook (FreeTV Commercials Advice) do provide guidance for producing TVCs with disclaimers. However compliance with these publications does not mean the commercial will comply with the ACL, as each commercial will depend on its own particular circumstances as to whether there is an issue under the ACL. The ACCC does not approve advertisements and it is up to each business which advertises its goods and services to ensure compliance with the ACL.

15. In email communications/newsletters (EDMs), what terms and conditions need to be included? How comprehensive do the terms and conditions need to be?

We understand that it is impractical to provide full ticket terms and conditions as part of email communications and newsletters. Where applicable, the EDM should clearly make reference to and provide a link to the full ticket terms and conditions on an external website.

You also need to ensure that you comply with all relevant spam laws when sending EDMs. The Australian Communications and Media Authorities website (www.acma.gov.au) has further information about these laws.

B. Refunds

16. What kinds of ‘incidents’ fundamentally affect enjoyment of an event?

The *Ticketing Code of Practice – Consumer Code* states that consumers may receive a refund for major incidents that affect enjoyment of an event. The incident may be covered by one or more Consumer Guarantees under the ACL, in which case, the refund or exchange may be mandatory. Alternatively, where an incident that affects a consumer’s enjoyment is not covered by a Consumer Guarantee, the venue/producer/promoter may provide a refund or exchange at their discretion.

Issues to consider when determining whether a refund must be provided include:

- Was the event presented in full and to the expected quality?
- Was the event presented at the expected venue and the expected time?
- Was the headline act changed or cancelled (i.e. not replaced)?
- How many people were affected by the incident – the entire audience or only a few?
- Did audience members leave before the conclusion of the performance?
- Did audience members raise complaints prior to or during the performance?

Examples of incidents where refunds should be provided include:

- A technical failure (e.g. lighting, sound) that prohibits the event from being presented at all, or to a significant extent.
- Misleading advertising or marketing of an event, to the point that the event advertised was not the event that was delivered.
- The event is moved to a different venue (which is not within the reasonable vicinity of the original venue) or a different day.

Examples of incidents where discretionary refunds or other good faith offering (e.g. partial refund, complimentary tickets to another show) could be provided include:

- Disruptive behaviour of a nearby audience member prohibits the person from enjoying the event
- Understudies are used that are reading from a script.

For a festival or other event that has several acts, when is an act considered a ‘support’ act and when are they considered a ‘headline’ act for the purposes of determining if a refund needs to be provided?

Headline and support acts should be clearly identified in marketing and promotional material.

Section 14 of the *Ticketing Code of Practice – Consumer Code* states that “a Member is not required to provide a refund or exchange where a support act is replaced or if the acts appearing at a festival change.”

In a concert context, where there is generally one headline act with a support act, consumers are not entitled to a refund if the support act changes, but are entitled to a refund if the single headline act changes.

In a festival context, there are generally multiple acts (and there may be a mix of well-known and lesser known acts) and consumers are not entitled to a refund if there are changes to the festival line up. A Member may, of course, choose to provide a discretionary refund in such circumstances.

18. Do consumers need to be informed of the condition that latecomers may not be allowed to enter an event until an appropriate interval? Are they entitled to a refund if they haven't been informed prior as part of the Terms and Conditions?

It is advisable to include, as part of the ticket terms and conditions, provisions regarding the implications for late arrival. The Ticketing Code of Practice makes it clear that if latecomers are not to be admitted, it should be made clear in the ticket terms and conditions or pre-event information provided to the consumer. The Ticketing Code of Practice also clearly states that latecomers are not entitled to a refund.

19. Do we have to disclose all the authorised sellers that consumers can buy tickets from for our event? Or can we just link to the main primary seller?

Consumers need to be provided with as much information as possible to make informed ticket buying decisions. As such, it is advisable that all authorised sellers are disclosed, especially as this helps curb unauthorised ticket resales and ticket fraud. In instances where an authorised seller is not accessible to the general public, disclosure is not necessary.

20. How can a secret show disclose information about event location that is compliant with ACL but is still in keeping with the premise of the event being held at a secret location?

Section 19 of the *Ticketing Code of Practice – Industry Code* outlines what information must be provided to consumers when they buy a ticket, including the name and address of the venue. When the premise of the event is held at a secret location, consumers should be provided with information about the general vicinity of the event (e.g. Melbourne CBD) and when they will find out about the location (e.g. 48 hours before the event). Any caveats, restrictions or information about the venue that consumers might consider relevant should also be provided (e.g. vicinity not accessible by public transport; limited parking; exposed to the elements). The ticket terms and conditions may also wish to make clear that refunds may not be provided for inability to attend the event due to location/venue.

21. Is there a timeframe within which refunds have to be provided for postponed or cancelled events?

Under ACL, if a consumer is entitled to a refund then he/she must receive the refund within a reasonable time. There is no prescribed time limit for when refunds must be provided however what is 'reasonable' will depend on the circumstances and how long it would take to process and pay refunds. For example, if this could be easily done within 4 weeks, it would probably not be reasonable to do so in 4 months.

While many ticketing companies/producers/promoters will outline and communicate the process (including timeframes) for refunds related to postponed or cancelled events, there may be instances

where consumers are unaware of this process. As such, if a consumer seeks a refund outside of the refund timeframes, the refund must still be provided.

C. Credit Cards

22. How do ticketing companies deal with patrons that claim chargebacks from their bank for tickets purchased?

The way in which ticketing companies deal with chargebacks varies and will, in part, depend on the way in which they choose to manage chargeback risk.

If ticketing companies (or any merchant, for that matter) receive a chargeback claim, they have the ability to provide evidence to counter the claim.

23. Should credit card charges be included 'inside' or 'outside' the price of the ticket?

It is up to individual companies to decide whether to include credit card charges on the 'inside' or 'outside' of the ticket price. When included on the 'inside', consumers are presented with an all-inclusive ticket price, such that the costs associated with accepting card payments (and other business costs) are factored into the ticket price. However, if credit card charges are included on the 'outside' (that is, consumers are charged an additional fee when paying for tickets using a card) then the RBA's Surcharging Standards apply.

The RBA's Surcharging Standards came into effect on 1 September 2016 for large merchants and will come into effect for small/medium merchants on 1 September 2017. The Surcharging Standards prohibit merchants from charging more than the actual cost of accepting the debit or credit card.

The Surcharge Standards apply when ticket buyers are charged an additional fee for using a debit or credit card to pay for tickets. The Surcharging Standards do not apply for commercial relationships (e.g. the relationship between a ticketing company and a producer/promoter).

More information about the Surcharging Standards can be found at the following links:

<http://www.rba.gov.au/media-releases/2016/mr-16-15.html>

<http://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/q-and-a/card-payments-regulation-qa-conclusions-paper.html>

<https://www.accc.gov.au/business/pricing-surcharging/payment-surcharges>

24. I'm a producer/promoter. Are there rules around what venues/ticketing companies can when consumers buy tickets to my show using a card?

The RBA's Surcharging Standards only apply when an additional fee is charged to consumers if they pay for ticket purchases using a card.

The RBA's Surcharging Standards do not apply for commercial relationships (e.g. the relationship between a venue/ticketing company and a producer/promoter) – so there are no legislated rules about how venues/ticketing companies set their fees to deliver services.

25. Can credit card charges be blended or averaged out?

If ticket buyers are charged a card payment surcharge, then the surcharge amount/rate must not be more than the actual cost of accepting payment of that particular card. The surcharge amount/rate cannot be a blend or an average of different cards. So, if for example, a ticket buyer pays using a VISA credit card, then the surcharge must be no more than the actual cost to accept payment from a VISA credit card.

If merchants choose to set a single surcharge rate/amount, then the surcharge amount/rate needs to be set at the lowest cost of acceptance, so as to comply with the surcharging standards.

Scenario	Options
Surcharge applied to both debit and credit card purchases	<ul style="list-style-type: none"> • Apply differential surcharging – different rates apply to debit cards and each type of credit card • Apply a single surcharge rate – typically the lowest cost of acceptance relates to debit cards, therefore the surcharge rate must be set at the debit card rate
Surcharge applied to credit card purchases only	<ul style="list-style-type: none"> • Apply differential surcharging – different rates applicable for each type of credit card • Apply a single surcharge rate – the surcharge rate needs to be set at the lowest rate across all credit cards

D. Ticket Proceeds Received in Advance of Events

26. Do the rules regarding ticket proceeds received in advance of events apply to cinemas?

Compliance with the Ticketing Code of Practice is a condition of LPA membership and therefore, cinema Members must comply with all provisions in the Ticketing Code of Practice. LPA appreciates that the risks associated with running a cinema business are different to other businesses. However, the intent of the ticket proceeds provisions is to ensure that if circumstances arise when consumers are entitled to a refund then Members have sufficient funds to honour those refunds.

27. Can a regular bank account be used to hold ticket proceeds received in advance of events, or does it need to be in a trust account?

Ticket proceeds received in advance of events may be held in a regular bank account, as long that account has been opened specifically for that purpose. A single general account may be used to hold ticket proceeds from multiple events, provided that a separate ledger account is maintained in respect of each event.

Companies that have an interest in ticket proceeds may wish to do their own due diligence, based on individual circumstances, to ensure customer funds are protected at all times.

28. Is the requirement to hold ticket proceeds received in advance of events in a separate account a legal requirement?

The requirement in the Ticketing Code of Practice to hold ticket proceeds received in advance of events in a separate account is not a legal requirement (unlike for real estate agents and lawyers). However, compliance with the Ticketing Code of Practice is a condition of LPA membership and a Member's failure to meet any of the obligations contained in the Ticketing Code of Practice may result in disciplinary action.

LPA considers holding ticket proceeds received in advance of events in a separate account good practice so that consumer monies are clearly delineated from operational budgets and to ensure that sufficient funds are available to meet any refund liabilities.

E. Fair Access to Tickets

29. What disability access needs to be provided to allow those with disability fair access to purchase tickets?

All reasonable attempts should be made to ensure people with disability are able to access and purchase tickets.

Members should consider making 'accessible tickets' available for online purchase. Where online purchase is not possible, Members should consider allowing bookings to be made out of hours via phone message or e-mail, and should have processes in place to allocate tickets for sell-out performances.

Members should also ensure that relevant access information is made available as early as possible, so that people with disability know what their options are for buying tickets.

30. Is it okay if additional seats are released to events that were previously advertised as being sold out?

For some events, it is common practice for a proportion of ticketing inventory to be held back from sale, and then released at a later stage if there is demand for tickets. It is OK for this practice to continue. However, in this scenario, Members should ensure that advertisements do not suggest that the entire event is sold out but it should be made clear that only certain dates/times/tranches of tickets have been sold out. Failure to do so may be considered misleading and deceptive and in breach of the ACL.

F. Ticket Resale and Scalping

Please note that LPA is currently looking at secondary ticket market activity with a view to providing further guidance to Members.

31. In which states is ticket scalping illegal?

There is no overarching national legislation that prohibits ticket scalping. In some states, ticket scalping is illegal for designated events or in designated venues. The table below provides an overview of ticket scalping legislation in Australia.

State	Overview of legislation
NSW	<ul style="list-style-type: none"> Under the <i>Major Events Act 2009</i>, ticket scalping is only prohibited in areas around the Sydney Cricket Ground, the Sydney Football Stadium, and Sydney Olympic Park precinct
VIC	<ul style="list-style-type: none"> Under the <i>Major Sporting Events Act 2009</i>, ticket scalping is only prohibited for declared events – e.g. AFL Grand Final There is no legislation pertaining to the resale of tickets for live entertainment events
QLD	<ul style="list-style-type: none"> There are two pieces of legislation in Queensland that make ticket scalping an offence for certain events: the <i>Major Sports Facilities Act 2001</i> and the <i>Major Events Act 2014</i> The provisions in the <i>Major Sports Facilities Act 2001</i> apply to ticketed events at Stadiums Queensland venues, including: <ul style="list-style-type: none"> – Suncorp Stadium – The Gabba – The Brisbane Entertainment Centre – 1300 SMILES Stadium – The Queensland Sport and Athletics Centre – The Sleeman Sports Complex – Cbus Super Stadium – The Queensland Tennis Centre – Metricon Stadium Ticket holders are permitted to on sell their tickets provided the cost of the ticket is no more than 10% above the original ticket price. An exemption exists for the lawful resale of tickets above the 10% margin by non-profit organisations for bona fide charitable fundraising purposes.

	<ul style="list-style-type: none"> • The provisions in the <i>Major Events Act 2014</i> prohibit the resale of tickets to a declared event: <ul style="list-style-type: none"> – Within a controlled area (as defined in a map contained within the relevant regulation) – For more than 10% above the original ticket price • The above conditions do not apply if the reseller has written permission to resell tickets from the event organiser
WA	<ul style="list-style-type: none"> • No legislation
SA	<ul style="list-style-type: none"> • Under the <i>Major Events Act 2013</i>, it is illegal to resell tickets for a declared event, without written approval from the event organiser: <ul style="list-style-type: none"> – Within a controlled area (as defined in a map contained within the relevant regulation) • For more than 10% above the original ticket price
TAS	<ul style="list-style-type: none"> • No legislation
ACT	<ul style="list-style-type: none"> • The <i>Major Events Act 2014</i> prohibits reselling a ticket to a declared event for more than the original ticket price and without written consent of the event organiser
NT	<ul style="list-style-type: none"> • No legislation

32. What is considered an authorised ‘reseller’?

An authorised reseller is one that has approval from the event organiser to resell tickets on behalf of ticket holders who can no longer attend the event – e.g. Australian Open Fan Marketplace, Splendour in the Grass resale facility. Authorised resellers do not exist for most events.

33. Is it OK to resell a ticket, if the ticket holder gives back the ticket to the venue box office because he/she is no longer able to attend?

Yes, it is OK to resell a ticket in this circumstance.

G. Complaints

34. Who should have a complaints procedure? i.e. venue, ticketing agency, promoter

All LPA Members must have a complaints handling and dispute resolution procedure. Key principles that Members should consider when developing a complaints handling and dispute resolution procedure are outlined in Section 6 of the *Ticketing Code of Practice – Industry Code*.

The complaints handling and dispute resolution procedure should be tailored to suit each Member's unique context, as the nature of complaints raised with Members will vary depending on the type of business (i.e. venue, ticketing company, producer/promoter).

35. What's the best way to deal with complaints made on social media? Should this be included in our complaints handling procedure?

If you receive a legitimate ticketing complaint that requires action, then you should follow the process outlined in your organisation's complaints handling policy. Consumers may make complaints through a variety of channels (e.g. social media, email, phone), and it is important that your organisation's complaints handling policy takes into account these various channels and how to deal with the complaint (e.g. all complaints regardless of the method for making the complaint should be referred to your organisation's complaints officer). It may also be appropriate for your organisation to include a process for dealing with complaints in its social media policy.

36. Can the LPA Member and/or consumer contact the LPA Complaints Officer with a complaint?

Both an LPA Member and consumer can contact the LPA Complaints Officer with a complaint.

Typically, the LPA Complaints Officer receives complaints from consumers after having made a complaint to the ticketing company or venue or producer/promoter but was unsatisfied with the outcome. Sometimes, a consumer will contact LPA directly without having first made a complaint to the ticketing company or venue or producer/promoter.

LPA Members also refer complaints to the LPA Complaints Officer for an independent opinion, typically when the Member is dealing with a tricky complaint.

37. Does the complaints handling policy need to be displayed at the box office?

Member's complaints handling policy should be readily accessible so that consumers know how to make a complaint. LPA suggests that the policy should be accessible on the Member's website. It may not be practical to display your complaints handling policy at the box office, and LPA suggests that there are hard copies which can be provided to consumers upon request.

38. Does there need to be a link on the ticket's terms and conditions to the complaints policy?

Providing a link on the ticket's terms and conditions to the complaints handling policy is one way to direct consumers to the information they need to lodge a complaint. In some instances, it may not be practical to do so; where it is possible, LPA suggests making the link available in the ticket terms and conditions.

H. Pre-sales

39. How can we conduct a pre-sale that is compliant with ACL? What presale arrangements need to be publicly advertised?

In general terms, exclusive dealing involves one business imposing restrictions on another business in relation to with whom, in what or where they can deal. Some forms of exclusive dealing are only prohibited under the Competition and Consumer Act (Act) if they substantially lessen competition. Another form of exclusive dealing, known as third line forcing (where a business will only supply goods or services, or give a particular discount, on the condition that the purchaser also buys goods or services from a particular third party), is prohibited outright regardless of its effect on competition.

The Act allows for a process known as ‘notification’ where parties that propose to engage in exclusive dealing may obtain protection under the Act if the conduct is in the public interest. This is done by lodging a prescribed form (Form G) with the ACCC detailing the proposed conduct. For a third line forcing notification, the protection from legal action commences automatically 14 days after a valid notification is lodged unless the ACCC revokes the protection (which it may do at any point). For a notification concerning other forms of exclusive dealing conduct, protection commences on the date a valid notification is lodged. Details on how to lodge a notification can be found on the ACCC website: <https://www.accc.gov.au/business/applying-for-exemptions/notifications>

Notifications are frequently lodged by ticketing service providers in relation to arrangements they wish to enter into with other organisations to provide special offers. As an example, these may include the offer of pre-sales or discounted tickets to holders of a particular credit card, such as a Visa card or customers of a particular business, such as Telstra.

40. Are pre-sales that do not include a third party (e.g. subscribers) considered exclusive dealing/third line forcing and hence need to be compliant with ACCC’s pre-sale rules?

Pre-sales that do not include a third party business do not meet the ACCC’s definition of exclusive dealing and third line forcing. In general terms, exclusive dealing involves one business imposing restrictions on another business in relation to with whom, in what or where they can deal.

It is acceptable for a performing arts company to offer a pre-sale to its subscription base (as there is no third party involved in the transaction), provided that the offer was not conditional on (for instance) the members also having purchased a particular third party product, or being a member of another organisation.

41. Are discounts that are provided to consumers of a third party product (i.e. if consumers receive a discount for tickets after purchasing a product sold by a third party) considered third line forcing and hence need to be compliant with ACCC’s exclusive dealing rules?

Discount offers to consumers of third party products will most likely amount to third line forcing. The opposite scenario would also be considered third line forcing – i.e. where Company A refuses to give a discount in relation to the supply of goods or services to a person for the reason that the person has not acquired goods or services from Company B.

The ACCC generally considers such ‘discount promotions’ to be an example of third line forcing conduct, but conduct which only requires limited assessment because it usually results in public benefits, such as allowing consumers access to discounted goods and services. Therefore, a notification (Form G) needs to be lodged with the ACCC.

42. How long does a pre-sale need to be to be considered a ‘reasonable amount of time’?

When consumers are notified of a pre-sale, they need to be made aware how long the offer will last.

The principle of ‘reasonable amount of time’ applies in the context of bait advertising. Pre-sales do not have to be for a ‘reasonable time’ – what’s important is that the period of time for which the offer is available is clearly disclosed.

43. Do both parties have to pay the fee for a Form G?

Notifications can only be lodged by the party engaging in the third line forcing conduct and the party lodging the notification must pay the fee. Where more than one party is engaging in third line forcing conduct, each of them should lodge a Form G and pay the required fee. At present, the fee for notifications in relation to third line forcing is \$100 per business. If businesses are found to engage in practices of exclusive dealing (without notifications) then the pecuniary penalties may be up to the greater of \$10 million, 3 times the benefit or 10% of the annual turnover of the relevant businesses.

44. Is there a pre-sale cap?

The ACCC has not prescribed a ‘cap’ on the number of tickets that may be sold via pre-sale where those sales would amount to third line forcing.

When a notification is lodged, often the applicants specify that there will be a cap on the number of tickets that will be the subject of the special offer (for example, no more than a specified percentage of total inventory of tickets will be made available via the special offer). There appears to be no set percentage, but we have seen notifications that propose a variety of ‘caps’ up to 60% and others which mention no limit at all. It will depend on the particular facts of each notification as to whether the ACCC will accept the arrangement and whether a cap is necessary.

However it appears to be common practice that a ‘cap’ on the amount of tickets being offered is included as part of the third line forcing notifications to the ACCC.

A Member is free to sell any number of tickets via pre-sale to its own members if the pre-sale does not amount to third line forcing or exclusive dealing.

I. Other

45. If an event has a ‘no pass outs’ policy, it is legal/enforceable?

If the event has a ‘no pass outs’ policy, such a condition must be clearly stated in the ticket terms and conditions, and a copy of terms and conditions must be provided to consumers prior to ticket purchase. You should only include a ‘no pass outs’ policy if it is reasonably necessary for the event.

46. If a patron with a disability buys a ‘meet and greet’ ticket, do we have to allow his/her companion in the meet and greet? Artists usually cap the number of ‘meet and greet’ they are willing to do, so including a companion may breach this cap.

If a patron with a disability buys a ‘meet and greet’ ticket and attends an event with a companion, then the companion should be permitted to accompany the patron to the meet and greet component if it is reasonable for the patron with the disability to require the support or assistance of their companion. Many people with a disability are accompanied by a companion to events because their disability means that they require special care.

Where to find the Ticketing Code and Supplementary Guides

The Ticketing Code and Supplementary Guides can be found on the LPA website:

www.liveperformance.com.au

Who to contact for more information

For more information or queries related to the Ticketing Code, please contact the Policy & Governance team:

info@liveperformance.com.au

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