



Australian Live Music Business Council

Unfair Trading Practices

Consultation on the design of proposed general and specific prohibitions
November 2024

Submission to: consumerlaw@treasury.gov.au

ABOUT THE ALMBC

www.almbc.org.au

The Australian Live Music Business Council (ALMBC) proudly represents a wide spectrum of business owners and industry professionals who are essential to getting live music on stage, on tour and seen by domestic and international audiences.

Our membership includes venue operators and owners, festival and event promoters, booking agents, artist managers, production and site suppliers and the extensive technical teams responsible for lighting, sound, rigging and more.

We champion the interconnected nature of our industry and advocate for strategies that support all facets of the live music ecosystem.

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We exist to:

- Provide a voice to government and within the overall music industry for the small to medium Australian businesses that make up the grass roots, live music supply chain;
- Support Australian live music businesses to improve their commercial operations and ability to compete in a global market;
- Bring about positive reforms and best practice across the industry; and
- Champion the interconnected nature of our industry and advocate for policy and strategies that support all facets of the live music ecosystem.

INTRODUCTION

Australian Consumer Law (ACL) sets minimum baseline standards for business conduct and promotes fair trading by creating a range of rights and protections. This includes general prohibitions against misleading or deceptive conduct, unfair contract terms, and unconscionable conduct, as well as the prohibition of some specific unfair practices (such as bait advertising and pyramid schemes).

The ALMBC is aware of several examples of unfair trading practices that cause (or are likely to cause) consumer harm and harm to other businesses, but which fall into existing gaps within the ACL. Although the ACL provides a range of protections against unfair practices, the ALMBC argues that these provisions are outdated in some respects and therefore may be ill-equipped to address the existing examples we will examine.

The harmful impacts of these examples to consumers and businesses include financial loss, loss of commercial opportunity and more.

The harmful impact of these examples to the music industry as a whole is the reduction in trust in purchasing, consumers choosing not to engage further, reduction of trust in the overall market and more.

We note that Australia faces similar challenges to other countries in terms of adapting consumer protection laws in the context of technological change. Other international jurisdictions, such as the United Kingdom, the European Union and the United States have a general ban or prohibition on unfair trading practices and have introduced specific regulation targeting unfair commercial conduct resulting from evolving business practices, particularly digitally enabled commerce.

The ALMBC's response focuses on three areas:

1. The impact of Dynamic Ticket Pricing
2. The impact of unfair contracting practices for some major festivals
3. Ticketing Barriers to Competition and Risk

DYNAMIC TICKET PRICING

The Focus questions posed by this consultation in regards to drip pricing practices, dynamic pricing, online account requirements are:

1. What unfair drip pricing practices causing consumer harm do you consider are not adequately covered by the existing ACL provisions?

Many ticketing companies and in particular, major globally owned ticketing companies, include substantial extra fees, compared to independent sellers for the same tickets and this has been described as up to triple the fees of independent sellers of the same tickets.¹

Many fees are not explained and are added towards the final moments of ticket purchasing.

The ALMBC believes strongly that, just like food packaging, and just like GST requirements, all fees need to be separately listed and explained clearly both in the initial stages of purchase and on the final receipt.

The status quo sees audiences in some locations paying much larger prices to see the same act, or simply paying hefty prices that are not explained. Our feedback from ticket purchasers is that they are less likely to purchase tickets at all after experiencing the feeling of being 'ripped off' in this way.

2. What reforms to the ACL may be required to address any unfair drip pricing practices? For example, should businesses be specifically required to disclose 'per transaction' fees up-front before consumers enter a purchasing process? What other reform options should be considered?

As above

3. What reforms to the ACL are required to protect against dynamic pricing where businesses increase the price of the goods or services during the course of the purchasing process? Should the ACL be amended to specifically prohibit this practice?

The ALMBC understands the need for some surge pricing, for example when it is raining an uber will cost more. This is frustrating, however widely understood and the higher amount is known up front.

The ALMBC argues that any dynamic pricing for music concert tickets should be banned. There is no call for this practice and the downsides to the consumer and the industry are many and varied.

As a note, the industry should be encouraging early bird pricing with cheaper tickets available earlier and tickets gaining in expense the closer to the event. This would be an appropriate way for companies to gain income without any need for dynamic pricing and would be an easily understood process for all consumers.

If dynamic pricing is allowed, then ticketing companies must:

- Advise that the ticket is dynamically priced

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<https://www.theguardian.com/music/2024/oct/19/australia-concert-goers-pay-higher-fees-to-ticketing-giants-industry-modelling>

- Advise the standard ticket price (rack rate) and the rate the ticket cost is being increased by
- Display the quantity tickets left so that consumer can make a decision to proceed at a higher rate
- Refund the higher rate if a second / further show is released (as often occurs after tickets sell out to a concert)
- Allow extended time period to finalise a ticket purchase if the ticket is being dynamically priced above the standard ticket price so the consumer can make a decision without being pressured into missing out decisions

Dynamic Pricing should be prohibited under the ACL for concert ticketing.

4. Can you provide any specific examples of dynamic pricing, where businesses have increased the price of the goods or services during the course of the purchasing process, in an Australian or international context?

The recent Greenday concert tour included dynamic pricing, through Live Nation. Ticket prices were wildly variable with some tickets up to \$500. We believe this is different than announcing higher prices up-front for tickets close to the stage. Dynamic pricing encourages hasty purchases with poor planning. Some purchasers reported being alarmed at the final price they paid for their tickets.

Globally fans have been upset to find that the final price has been up to three times higher than anticipated for Ticketmaster concerts for artists like Bruce Springsteen or Harry Styles².

5. Do you consider reform to the ACL is necessary to address consumer harms associated with businesses requiring account creation for online purchases? If so, is requiring a retailer to provide a 'guest' check-out option appropriate to address the consumer harm? Are there other options that should be considered?

The ALMBC asserts that there should always be a 'Guest' check out option. A major asset for ticketing companies is the contact details of many thousands of purchasers that can then be directly marketed to. The forced creation of accounts is a major issue across many online business sectors and forcing of accounts should be banned.

6. Should any prohibitions relating to dynamic pricing and online account requirements also apply to protect small businesses in their dealing with other businesses?

Across dynamic pricing and online account requirements, small businesses that engage with major corporations face identical issues to individual consumers and should be treated identically.

² <https://www.radiotimes.com/going-out/tickets/what-is-dynamic-pricing/>

7. What are the likely costs to business, and benefits to consumers, of introducing prohibitions to address these practices?

There will only be positive outcomes for the industry and the consumer:

- Consumers will know what price they are paying and will understand the fees they are paying clearly
- Consumers will feel more positive towards their artists and the ticketing companies
- Consumers will feel safe as they purchase tickets

UNFAIR CONTRACTING PRACTICES

As well as the impact on consumers from unfair practices, there are significant impacts on other businesses, in particular where a sole trader, micro business (company with a sole director or with one or two directors or employees) is contracting against a major globally-owned company with exceptionally greater power in the industry.

Currently, the ACC accepts vertical integration of company ownership in the Australian music industry, where one company (and their subsidiaries) can own all facets of the system such as the artist, management, booking agent, label, publishing, venues, ticketing and more. A clear and predictable outcome of this, is that when any artist or partner causes any kind of disruption or annoyance to any part of that system, they can quickly find themselves without ongoing gig bookings and contracting opportunities.

So in this instance, the globally-owned company reigns supreme in the contracting power they have over the small players in the industry. The ALMBC has witnessed this on many occasions with emerging artists being booked to perform at major globally-owned festivals; artists being booked for tours with major players; sole traders or micro-businesses engaged to provide production services for a major festival; the list is extensive.

The ALMBC understands these kinds of power-differences are to be anticipated but also believes that the ACL should include provisions to prohibit unfair practices such as:

- festival contractual exclusions around exclusivity, timeframes and milage.

Major festivals regularly force artists to sign contracts that exclude the artist from playing any other shows in the country within a 4-6 month period. When a festival then cancels without payment to the artist, the artist is left with many months of no income as well as the lost anticipated festival payment and anticipated income from merchandise sales at the festival. Currently the artist bears the risk for this 100%. These impacts are identical for sole traders and micro-businesses contracted to the festival.

- distribution of risk when major environmental or disaster impacts occur to artists and contractors

Major festivals routinely provide no deposit and include provisions in their contract for non-payment of artists when natural disasters or environmental impacts such as major rain

events cause the cancellation of the event. Further, some major festivals force artists to provide their own insurance against their own cancellation. This insurance is impossible for artists to gain because insurance companies require significant information such as event plans, wet weather plans, etc, which the artist is not privy to. Again, this is identical for sole traders and microbusinesses contracted to the festival.

- non-payment of deposits by major festivals to all artists and contractors

As above - some festivals refuse to pay deposits to artists and contractors, meaning that the full risk of loss is transferred to these smaller players. Major global companies can afford to announce new festivals with grand displays and then cancel if ticket sales are poor. For major companies this may be a 'loss-leading' exercise - that is, a way to test the market or to hold a space against a competitor, even if the company has little commitment to go through with the festival. Allowing contractual arrangements that mean artists and contractors booked do not need to be paid, provides no incentive for the company to go through with the festival - instead it encourages major companies to take major risks, knowing that their costs if a cancellation occurs, are minor. Smaller artists and contractors caught up in this process cannot afford these losses and many have closed business because of the large losses they have incurred.

TICKETING BARRIERS TO COMPETITION AND RISK

Promoters are in the business of taking risk and should not be allowed to pass that risk on to their vendors, suppliers or artists, as outline above.

Currently ticketing agents are unregulated and can hoard the large windfalls of income generated from initial ticket sales without any requirement to keep these funds in trust. If the festival / event fails, then consumers should be refunded their tickets in full, however currently these funds can be held out of the country and are likely not to be refunded to the consumer in the event of a cancellation.

The ALMBC believes that Ticket Agents could be regulated the same way travel agents and real estate agents are regulated, to stop the practice of ticket companies loaning or advancing ticket funds that should be held in trust.

Whilst there is legitimate reason patrons may not be able to attend an event and wish to on-sell their ticket, the re-sale market should be restricted so tickets cannot be resold for more than 10% face value, thereby stopping speculation from scalpers and stopping them artificially inflating prices.

Making ticket scalping illegal on all events regardless of venue or government ownership is an appropriate prohibition.

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