

AUST. COMPETITION &
CONSUMER COMMISSION
15 AUG 2005

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Our reference
PJA.AJT.02-1383-8501

15 August 2005

FILE No.
DOC:
MARS/PRISM.

Mr Scott Gregson
General Manager
Adjudication Branch
ACCC
Level 7
123 Pitt Street
SYDNEY NSW 2000

Dear Mr Gregson

Form G Notifications of Exclusive Dealing Conduct

We act for Visa International Service Association.

We enclose a form G Notification of Third Line Forcing Conduct on behalf of the following entities:

- (a) Visa International Service Association; and - N31439
- (b) Ticketek Pty Ltd. - N31440

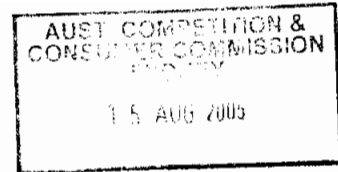
We also enclose a cheque in the amount of \$1,100.00, comprising filing fees for Visa International (\$1000.00), as well as \$100.00 for Ticketek, which is a Pty Ltd company.

If you have any queries, please do not hesitate to contact Peter Armitage on (02) 9258 6119 or Amanda Taggart on (02) 9258 5696.

Yours faithfully



SYDNEY
MELBOURNE
BRISBANE
PERTH
CANBERRA
LONDON
PORT MORESBY
JAKARTA
SHANGHAI



FORM G

Commonwealth of Australia

Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct, or of proposed conduct, of a kind referred to in sub-sections 47(6) and (7) of that Act in which the person giving notice proposes to engage.

1. (a) **Name of persons giving notice:**

- (i) Ticketek Pty Ltd (**Ticketek**); and
- (ii) Visa International Service Association (**VISA**)

(b) **Short description of businesses carried on by those persons:**

(i) **Ticketek Pty Ltd**

Ticketek is in the business of providing ticketing arrangements at venues across Australia.

(ii) **VISA**

VISA is an association of financial institutions which operates a world-wide payment system in which member financial institutions offer a wide range of card-based and non-card-based payment products and services to consumers and other entities, and payment acceptance capabilities to merchants, all of which utilise VISA payment processing systems.

(c) **Address in Australia for service of documents on those persons:**

c/o – Peter Armitage
Partner
Blake Dawson Waldron
Level 35
225 George Street
SYDNEY NSW 2000

2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

Ticketek will provide a number of offers to individuals who are holders (**Cardholders**) of a payment card (either a debit card or a credit card) bearing the VISA acceptance mark (**VISA Card**). Cardholders wishing to take advantage of the offers must use their VISA Card. The offers currently contemplated are described below:

- (i) Priority Booking Periods - VISA Cardholders will be offered the opportunity to purchase tickets to selected Ticketek events before such tickets are available for sale to the general public.

The tickets available for such events in the Priority Booking Periods may be for premium seating sections, other reserved seating sections, non-reserved (general admission) seating sections, or a combination of these sections. The duration of the Priority Booking Period for VISA Cardholders for any event will not exceed 2 months and is expected often to be significantly shorter.

Additionally, in circumstances in which Ticketek is responsible for selling:

- A. 60-100% of the tickets to a series of events (or where the event is not part of a series, that single event), no more than 40% of the Ticketek seats to each concert/event would be available pursuant to a Priority Booking Period for VISA Cardholders;
- B. between 30% and 59% of the tickets to a series of events (or where the event is not part of a series that single event), no more than 67% of the Ticketek seats to each concert/event would be available pursuant to a Priority Booking Period for VISA Cardholders offer. This has the result that a maximum of 40% of the total tickets for each concert or event may be made available to VISA Cardholders in a Priority Booking Period.

The other tickets (per concert/event) would be available outside the Priority Booking Period.

In circumstances in which Ticketek is responsible for selling less than 30% of the tickets to a series of events (or where the event is not part of a series that single event), Ticketek may make the whole of that allocation available pursuant to a Priority Booking Period for VISA Cardholders offer.

- (ii) Premium Seating Offers – VISA Cardholders will be able to purchase tickets for seats in selected seating sections of the venue where Ticketek shows or events are held. The sections will be comparatively desirable seats in the venue, due to positioning relative to the stage or performer, or to other relevant characteristics of the venue or event. For this reason tickets for Premium Seating Offers may be priced at a premium to other seating sections for the event. These seats will usually be available in the Priority Booking Period.

“Premium tickets” refers to tickets that may be perceived as ‘most desirable’ tickets by customers, based on criteria set by venue managers, event promoters or other event organisers. Although the criteria used to categorise certain tickets as “Premium” will vary depending on the nature of the event, these could include the position of these seats relative to the

stage, venue acoustics, or visibility to key elements on the stage or venue grounds.

In circumstances in which Ticketek is responsible for selling:

- A. 60-100% of the Premium tickets to a series of events (or where the event is not part of a series that single event) no more than 40% of Premium seats for each concert/event would be allocated to a Premium Seating Offer to VISA Cardholders; and
- B. between 30% and 60% of the Premium tickets to a series of events (or where the event is not part of a series that single event), no more than 67% of Premium seats for each concert/event would be allocated to a Premium Seating Offer to VISA Cardholders. This has the result that a maximum of 40% of the total Premium tickets for each concert or event may be made available to VISA Cardholders in a Premium Seating Offer

In circumstances in which Ticketek is responsible for selling less than 30% of the Premium tickets to a series of events (or where the event is not part of a series that single event), Ticketek may make the whole of that allocation available pursuant to a Premium Seating Offer for VISA Cardholders offer.

For convenience, the offers specified in sub-paragraphs (i) to (ii) (inclusive) above are hereafter referred to as the **Ticketek Offers**.

(b) **Description of the conduct or proposed conduct:**

Background

Ticketek and VISA have established a marketing relationship in Australia to jointly promote the Ticketek Offers, to provide benefits to consumers holding VISA Cards.

Proposed conduct

VISA will enter into an arrangement with Ticketek whereby VISA Cardholders have the opportunity to take advantage of the Ticketek Offers by purchasing the relevant products or services using their VISA Card.

Access to the Ticketek Offers will usually be via a VISA-hosted website or the VISA section of the Ticketek website, on condition that the Cardholder pays for the Ticketek Offers using his or her VISA card. The purchase price of the products or services will be debited by the member financial institution that issued the relevant card to the Cardholder's account with that financial institution.

There are about 7.6 million VISA credit cards on issue in Australia. Approximately 70% of individuals in Australia that hold a credit card hold a VISA-branded credit card. 3.9 million individuals hold VISA-branded debit cards.

The proposed Ticketek Offers may constitute third line forcing pursuant to sections 47(6) and/or 47(7) of the *Trade Practices Act* (Cth). This is because it may be

argued that the Ticketek Offers will only be available to consumers if the consumers acquire the payment services of VISA.

(c) **Effects of the proposed conduct**

The effect of any third line forcing will be insignificant for the following reasons:

- (i) Approximately 70% of credit card holders in Australia have a VISA credit card and 3.9 million individuals in Australia have a VISA debit card. The proposed conduct will provide these VISA Cardholders with a benefit if they choose to take advantage of the Ticketek Offers;
- (ii) Each Priority Booking Period is expected to run for no more than 2 months and are expected often to run for shorter periods.;
- (iii) Each Premium Seating Offer would run for no more than 3 months and are expected often to run for shorter periods;
- (iv) For events where Ticketek has secured ticketing rights to
 - (A) all venues related to an event (e.g., in cases where a concert tour plays in multiple locations), and
 - (B) All seats for those venues,

the persons not using a VISA Card will continue to have access to premium seats and to tickets outside of the Priority Booking Period, as further explained below.
- (v) Where a "Priority Booking Period" or a "Premium Seating Offer" is offered to VISA Cardholders by Ticketek, the general public not holding VISA Cards will continue to have access to tickets as described in section 2(a) above.
- (vi) On average, approximately 80% of tickets to Ticketek events are purchased using a credit card. Of this 80%, approximately 65-70% of purchasers use a VISA Card to perform the transaction. Accordingly, only a relatively small proportion of the general public and an even smaller number of those typically purchasing tickets to Ticketek events will be precluded from taking advantage of the Priority Booking Period and/or Premium Seating Offers. However, that small number of people will continue to have access to no less than 60% of the number of tickets for each Ticketek Offer, as outlined above.
- (vii) Following the expiration of any Priority Booking Period for VISA Cardholders (which will not exceed 2 months), all remaining tickets will go on sale to the general public (including those which may have formed part of the Priority Booking Period Offer).

(d) **Benefits of the proposed conduct**

Live entertainment is an intensely competitive industry. For many events, whilst there is a core audience of "fans", the challenge is to successfully attract sufficient additional people to make the event viable.

An important part of attracting broad audiences and ensuring the commercial viability of an event, is to provide a wide variety of value propositions to consumers, including discounts, package deals and value-adds.

Extensive and sufficient public benefits arise from the conduct notified in that it contributes to:

- making a broad range of value propositions available to consumers as possible; and
- making commercially viable events that may otherwise not be viable.

The proposed Ticketek Offers will provide VISA Cardholders, who are not an insubstantial percentage of the public and a high proportion of Cardholders generally, with benefits associated with ticketing to entertainment events and performances. The statistics set out above in relation to VISA Card ownership, indicate that the majority of consumers will have access to the Ticketek Offers. These consumers will obviously benefit from the enhanced value propositions (Priority Booking and Premium Seating offers).

Further, other consumers not holding VISA Cards will also benefit indirectly from the activity. VISA faces competition from MasterCard, American Express, Diners Club and others, each of whom make similar types of offers to their cardholders. The Ticketek Offers are a pro-competitive response by VISA (in conjunction with Ticketek) to the similar offers made by its competitors. Examples of such offers include a recent offer by American Express to purchase tickets to "The Producers" in a 2 week pre-sale period, exclusive to American Express Cardholders. Competition (which may include offers such as the Ticketek Offers) between VISA and other card companies is expected to continue, and the notified conduct is expected to spawn further pro-competitive responses from VISA's competitors, which will be of benefit to consumers.

For the reasons above, there is no significant detriment to the public as a result of the proposed conduct. Any minimal detriment is substantially outweighed by the public benefits outlined above.

3. (a) **Class or classes of persons to which the conduct relates:**

VISA Cardholders.

(b) **Number of those persons:**

(i) **At present time:**

Approximately 70% of the eligible population of credit card holders holds a VISA-branded card. When added to numbers of VISA debit card holders, there are approx 11.5 million VISA Cards on issue in Australia.

(ii) **Estimated within the next year**

The number of VISA Cardholders is estimated to grow by 6.9% in the next year.

(c) **Where the number of persons stated in items 3(b) is less than 50, their names and addresses**

Not applicable.

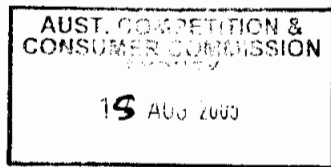
4. **Name and address of persons authorised by the person giving this notice to provide additional information in relation to this notice**

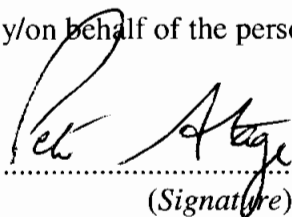
Peter Armitage
Partner
Blake Dawson Waldron
Level 35
225 George Street
SYDNEY NSW 2000

Telephone: (02) 9258 6119
Facsimile: (02) 9258 6999
Email: peter.armitage@bdw.com

Dated:

Signed by/on behalf of the person giving this notice




.....
(Signature)

Peter James Armitage
(Full Name)

Partner, Blake Dawson Waldron
(Description)