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L A W Y E R S

Date 12 September 2005

Our reference
PJA.AJT.02-1383-8501

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To Mr Scott Gregson / Mr Michael Green
Adjudication Branch
Australian Competition & Consumer
Commission
Fax: **02 6243 1211**

Your reference
C2005/1032

Dear Mr Gregson and Mr Green

Third line forcing notifications N31439 (VISA) and N31440 (Ticketek)

Please see the attached letter in relation to the above notifications.

Yours faithfully

Blake Dawson Waldron

Number of pages including this cover sheet 6

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C2005/1368

12 September 2005

Dear Mr Gregson and Mr Green

Third line forcing notifications N31439 (VISA) and N31440 (Ticketek)

We refer to your letter of 2 September 2005 in relation to the above third line forcing notifications which were lodged with the ACCC on 15 August 2005. Set out below is VISA's response to the issues that the ACCC has raised.

Defined terms used in this letter have the meaning given to them in the notifications referred to above.

1. Broad Range of Events

The ACCC has identified a concern that the notified conduct could cover a broad range of events. That is certainly the case, and is in fact the purpose of these notifications.

VISA and Ticketek propose to enter into a series of arrangements which could constitute third line forcing and each of which have similar characteristics, as described in general terms in these notifications.

The parties could, of course, file a separate notification in relation to each such offer, as and when each one is finalised between the parties. However, if the parties did so, it seems likely that we would reach a point where some general "boundaries" or "limitations" were being applied by the ACCC to each offer (due to the fact that each offer would be in substantially, if not exactly the same terms, but relate to a different event).

That being the case, it seemed preferable from both the ACCC's perspective and the parties' perspective, not to be required to file/review what would be, in substance the same notifications from Ticketek and VISA time and again.

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Accordingly, what these notifications seek to do is to establish those "boundaries" upfront, and allow the parties to proceed within those boundaries, rather than calculating/negotiating those boundaries by trial and error, over a series of the same or very similar notifications.

It is for this reason, (ie, that the end result is effectively the same) that the ACCC should not be concerned in relation to the generality of the notifications.

2. **Benefits Linked to Potential Detriments?**

The ACCC has highlighted a concern regarding the link between the public benefits of the proposed conduct and the public detriments of the conduct. Whilst it is the case that tickets sold in a Priority Booking Period or a Premium Seating Offer will not be available to the general public, there is not a direct inverse relationship between public benefits and public detriments, as the ACCC seems to suggest.

As illustrated below, the limitations which are part of the proposed conduct mean that there can be a significant public benefit, without a resulting public detriment of the same quantum. The limitations placed on the number of tickets affected by the proposed conduct have the result that any public detriments which may arise, are significantly reduced.

In light of this, it is of course very important that the limitations on the proposed conduct strike an appropriate balance. This is discussed further below.

3. **Limitations Strike an Appropriate Balance**

VISA submits that the limitations placed on the proposed conduct strike an appropriate balance between promotion of events through valuable offers to consumers and limitations on access to tickets for the general public.

In particular, the limitations on the percentages of tickets that will remain available for the general public, both through Ticketek and more generally, demonstrate that any public detriments are limited and do not outweigh the public benefits of the notified conduct.

Set out below is some further information on the limitations proposed and some illustrations of how the limitations will operate in practice.

3.1 **Where Ticketek is responsible for selling 60% to 100% of all tickets**

- **Limitation:** Where Ticketek is responsible for selling 60% to 100% of the tickets to an event or a series of events, no more than 40% of the Ticketek seats to each event would be available pursuant to a Priority Booking Period.

In light of the above limitation on the notified conduct, the following table sets out how many tickets Ticketek would be able to sell in a Priority Booking Period,

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how many tickets would remain available through Ticketek to the general public and through other channels, assuming there were 100 tickets available to a particular event.

Percentage of total Tickets allocated to Ticketek	No of tickets allocated to Ticketek, based on a total of 100 tickets for the event	Max percentage of Ticketek tickets that may be sold via Ticketek Priority Booking Period by Ticketek	Max number of tickets that may be sold via Ticketek Priority Booking Period	Balance of <u>Ticketek</u> tickets otherwise available (not via Priority Booking)	Number of non-Ticketek tickets available
100%	100	40%	40	60	0
90%	90	40%	36	54	10
80%	80	40%	32	48	20
70%	70	40%	28	42	30
60%	60	40%	24	36	40

As can be seen from the above table, where a Priority Booking Period is operating and where Ticketek is responsible for selling between 60% to 100% of the tickets to an event or series of events, a substantial majority (between 60% and 76%) of total tickets will remain available for purchase otherwise than pursuant to a Priority Booking Period, both through Ticketek and (where Ticketek does not have 100% of the tickets) other ticketing providers.

It is clear from the above table that a minimum of 60% of Ticketek's tickets will remain available for purchase by various payment means through Ticketek. Additionally, where Ticketek is not responsible for selling all tickets to an event, 60% of Ticketek's tickets **plus** all the tickets not sold through Ticketek will be available for purchase by various payment means.

The ACCC has raised a concern that a Promoter may allocate non-Ticketek tickets to a restricted category of the public, with the result that the general public would only be able to purchase a small number (or no tickets) through Ticketek. As can be seen from the above table, the commitment that a minimum of 60% of Ticketek's tickets will not be subject to a Priority Booking Period should give the ACCC considerable comfort.

Accordingly, VISA submits that it is clear that the ACCC should not be concerned in relation to this limb of the notified conduct.

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3.2 Where Ticketek is responsible for selling 30% to 59% of all tickets

- **Limitation:** Where Ticketek is responsible for selling 30% to 59% of the tickets to an event or a series of events, no more than 67% of the Ticketek seats to each event would be available pursuant to a Priority Booking Period.

In light of the above limitation on the notified conduct, the following table sets out how many tickets Ticketek would be able to sell in a Priority Booking Period, how many tickets would remain available through Ticketek to the general public and through other channels, assuming there were 100 tickets available to a particular event

Percentage of total Tickets allocated to Ticketek	No of tickets allocated to Ticketek, based on a total of 100 tickets for the event	Max percentage of Ticketek tickets that may be sold via Ticketek Priority Booking Period by Ticketek	Max number of tickets that may be sold via Ticketek Priority Booking Period	Balance of Ticketek tickets otherwise available (not via Priority Booking)	Number of non-Ticketek tickets available
59	59	67%	40	19	41
50	50	67%	33	17	50
40	40	67%	26	14	60
30	30	67%	20	10	70

As can be seen from the above table, where a Priority Booking Period is operating and where Ticketek is responsible for selling between 30% to 59% of the tickets to an event or series of events, a substantial majority (between 60% and 80%) of the total tickets will remain available for purchase otherwise than pursuant to a Priority Booking Period.

It is clear from the above table that a minimum of 33% of Ticketek's tickets will remain available for purchase by various payment means through Ticketek.

Where Ticketek has only a small percentage of total tickets to the event (ie, 30%), it will nonetheless offer at least 33% of those tickets to consumers for payment by any means. Whilst this may appear to result in only a small percentage of tickets available to consumers generally through Ticketek, this number is primarily a function of the small proportion of the total tickets allocated to Ticketek in the first instance, not because of the restrictions proposed in this

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notification. However, in those circumstances, 70% of tickets would remain available for purchase through channels other than Ticketek.

As the ACCC has pointed out, it is theoretically possible that a Promoter may decide to allocate all non-Ticketek tickets to a restricted group. However, the likelihood of this happening in circumstances where there are 70% of tickets remaining (for sale by channels other than Ticketek), is very remote. Furthermore, any such problem is the result of the Promoter's independent decision as to how to best market the event and is not the result of the notified conduct.

Accordingly, the ACCC should not be concerned in relation to this limb of the notified conduct.

3.3 Where Ticketek is responsible for selling 29% or less of all tickets

Where Ticketek is responsible for selling 29% or less of all tickets to a particular event or series of events, the parties consider that it is not appropriate to place a restriction on the percentage of tickets that Ticketek may offer to VISA Cardholders through a Priority Booking Period.

In those circumstances, at least 71% of all tickets will be available for purchase by the general public through means other than Ticketek. Additionally, as noted above, it is very unlikely in those circumstances, that a Promoter would seek to "allocate" such a large number of tickets to a restricted group.

Accordingly, due to the small number of tickets available for sale through Ticketek, it is not necessary to place a restriction on the Priority Booking Period in order to ensure sufficient access to tickets by consumers.

We trust that this additional information has addressed the ACCC's concerns in relation to these notifications and that it will not take any further action at this stage in respect of the notified conduct.

If you have any queries in relation to the matters discussed in this letter, please do not hesitate to contact us.

Yours sincerely

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