



LAWYERS

TO Scott Gregson DATE 12 September 2005  
AT Australian Competition & FROM Gina Cass-Gottlieb  
Consumer Commission  
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CC Peter Armitage/ OUR REF 991434  
Amanda Taggart  
AT Blake Dawson Waldron PAGES 6 (including cover)  
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Dear Mr Gregson

**THIRD LINE FORCING NOTIFICATIONS N31439 AND N31440 LODGED BY VISA AND TICKETEK**

Please see attached.

Regards

pp Gina Cass-Gottlieb



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12 September 2005

Mr Scott Gregson  
A/g General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
Dickson ACT 2602

Dear Mr Gregson

**THIRD LINE FORGING NOTIFICATIONS N31439 AND N31440 LODGED BY VISA AND TICKETEK**

We refer to your letter of 2 September 2005 to Peter Armitage of Blake Dawson Waldron, regarding third line forging notifications N31439 and N31440 lodged on 15 August 2005. Gilbert + Tobin acts for Ticketek in relation to the notifications. We would appreciate it if you could copy future correspondence on this matter to us.

Some of the questions in response to your letter of 2 September 2005 are best answered by VISA, and we understand that they will respond separately. However, some of the issues you have raised relate to how Ticketek allocates tickets and those issues are covered below.

In preparing these notifications Ticketek carefully considered the issues raised previously by the Commission in respect of premium seat allocations and priority seating periods. As detailed below, Ticketek is confident that the limitations proffered to the Commission in respect of the conduct notified strike an appropriate balance which both:

- addresses the range of circumstances in which the concerns or possible detriments expressed by the Commission have any real likelihood of arising; and

- can be practicably implemented from the perspective of a ticketing services provider building an event efficiently and effectively.

Ticketek would like to take this opportunity to clarify the basis on which it has notified the Commission of the Ticketek Offers (as defined in the notifications) and provide further detail as to the practical and likely implications of the limitations proffered for the conduct.

**Where Ticketek is responsible for 60% to 100% of the House**

If Ticketek is responsible for selling 60 to 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.

The same limitations would apply in respect of Premium Seating Offers.

Where a ticketing company has 60% to 100% of the ticketing to an event or series of events, the predominant task of the ticketing provider is to sell large quantities of inventory. That is best achieved through a combination of open offers to the public and a range of other more targeted value propositions.

Where a ticketing company has such a majority of the ticketing to an event the company has a reasonably large degree of flexibility to create within the venue a series of segments, each with sufficient flexibility to address the needs and preferences of patrons. The needs and preferences of patrons can include seating groups together, preferences of groups to be nearer or further from the stage or meeting the special seating access requirements of particular patrons. In addition to seating preferences, patrons also have different preferences about how they want to receive information about events, for example through the print media, local event guides, television or websites, as well as targeted emails or SMS services. Some key target segments, such as the youth segment, are also inundated with information and are interested in receiving messages from trusted service providers and known brands.

It should also be noted that where a ticketing provider has such a majority of the ticketing to an event, its brand is closely associated with the public and promoter's perceptions as to whether the ticketing for the event as a whole was professional, efficient and fair and the strong incentive upon the ticketing company is to structure its offers to achieve that result.

Consistent with that degree of flexibility, the parties have limited the allocation to no more than 40% of the tickets to be allocated to the Ticketek Offers.

**Where Ticketek is responsible for 30% to 59% of the House**

If Ticketek is responsible for selling 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.

The same limitations would apply in respect of Premium Seating Offers.

Where a ticketing company has 30% to 59% of the ticketing to an event or series of events, the predominant drivers upon the ticketing provider to provide a range of general offers and diverse value propositions is similar.

However, with another ticketing provider or providers holding substantial bodies of tickets that driver is generally both to compete with the other ticketing providers to sell tickets in general offers but also to seek different and innovative value propositions that appeal to patrons.

Inherent, therefore, in splitting ticketing between providers is a drive to seek out and find segments of the community for whom the event can be made appealing and the combined effect is to broaden the avenues through which tickets are sold. Consequently, where the ticketing provision is split there should be less concern as to the access of broad sections of the public to tickets.

It should also be noted that while a ticketing provider with only 30% to 59% of the tickets retains a reasonable degree of flexibility to further segment its allocation, that flexibility is not as great. Consequently, it is prudent that the limits on the proportion of tickets that can be subject to the Ticketek Offers be somewhat more flexible, so that of Ticketek's allocation no more than 67% can be subject to the Ticketek Offers.

However, it should not be assumed that there is any real likelihood that access to tickets would be any more restrictive, as it is likely that the ticketing company or companies responsible for the remainder of the tickets would pursue different sales avenues from Ticketek, in effect increasing the diversity of sales channels.

In your letter, you note that in a worst case scenario, it would be possible that "no tickets are made available through Ticketek to persons not using a VISA card". As a result of the limitations on the proposed conduct described above, that is not the case in any situation in which Ticketek is responsible for selling 30% or more of the tickets to a series of events. If Ticketek is responsible for selling 30% or more of the tickets to a series of events, then the proportion of Ticketek tickets that can be subject to the Ticketek Offers is capped. The result of the cap is that the guaranteed minimum proportion of Ticketek tickets not subject to the Ticketek Offers represents at least 10% of all tickets where Ticketek has a relatively small proportion of the ticket allocation, and can be as high as 60% of all tickets where Ticketek has the entire allocation.

#### **Where Ticketek is responsible for 29% or less of the House**

With a significantly limited stock of tickets to sell, a ticketing company is typically involved in a specialist capacity to seek out niche value propositions. Also, such a ticketing provider generally has comparatively little flexibility to further segment or sub-divide its seating allocation without compromising its ability to meet the needs and preferences of patrons identified above.

However, where a ticketing company has 29% or less of the ticketing to an event or series of events, the practical reality is that another ticketing provider has, or providers have, the majority of the house.

As noted above, that other ticketing provider has, or providers have, both the flexibility and incentive to make tickets both broadly available in general offers as well as creating specialist value propositions for patrons.

If that majority ticketing provider were to seek to make similar allocations, it is logical to conclude that they would similarly notify the conduct to the Commission and proffer appropriate limitations in respect of their conduct to address the concerns of the Commission.

The issue the Commission raises that there may be *no* tickets available outside offers similar to those notified is, therefore, not a likely scenario even where Ticketek has 29% or fewer of the seats.

#### **Further general assurances**

Ticketek notes the Commission's statement in its letter dated 2 September in respect of notifications N31432 and N31433 that where there is a range of general conduct notified, the parties are on notice that the immunity may be revoked if it becomes apparent that the conduct undertaken pursuant to the immunity is detrimental.

The Commission can be confident that Ticketek is mindful of that fact and that provides an additional reason why Ticketek will make every reasonable effort to ensure that at all times the public is not exposed to detriment.

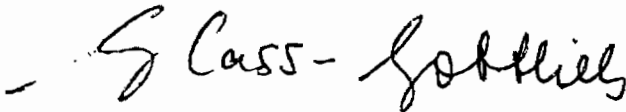
#### Summary

The matters set out above are in the context of the relevant statutory test which is concerned with balancing the likely effects of the conduct. Ticketek considers that it has addressed all such likely effects and it is not practicable to address residual theoretical circumstances that, for the reasons set out above, are unlikely to occur – particularly where to do so would impinge upon efficient and effective satisfaction of consumer needs and preferences.

Ticketek also requests that before the Commission consider further pursuing issues concerning such unlikely circumstances the Commission also give consideration to the range of public benefits that each of VISA and Ticketek have raised with the Commission.

If you have any questions regarding this letter, please contact Gina Cass-Gottlieb on 9263 4005.

Regards



Gina Cass-Gottlieb

copy to: Peter Armitage/Amanda Taggart, Blake Dawson Waldron