

## COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B of the *Competition and Consumer Act 2010*

by

**TEG Live Pty Limited ACN 150 055 100**

### 1 Person giving the Undertaking

- 1.1 The Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by TEG Live Pty Limited ACN 150 055 100 (**TEG Live**) of Level 3, 175 Liverpool St, Sydney, in the State of New South Wales, for the purposes of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

### 2 Background

- 2.1 TEG Live is an Australian promoter of live content in music, sport, family entertainment and exhibitions that take place globally. TEG Live works closely with artist representatives, sporting federations, sporting teams, event producers, ticketing companies, venues, funding bodies, sponsors and other stakeholders to facilitate events.
- 2.2 USA Basketball (**USAB**) is the national governing body for basketball in the United States of America (**USA**). USAB is responsible for the selection, training and fielding of USA teams that compete in International Basketball Federation (**FIBA**)-sanctioned international basketball competitions. The National Basketball Association (**NBA**) operates the professional basketball leagues in the USA and works in collaboration with USAB in respect of FIBA-sanctioned international basketball tournaments and related commercial matters.
- 2.3 Between March 2018 and August 2019, pursuant to an agreement with USAB, TEG Live promoted basketball games featuring the USA men's national basketball team, including games in Melbourne on 22 and 24 August 2019 (the **Melbourne Games**), and a game on 26 August 2019 in Sydney (together, the **Games**).

### 3 Admission and Acknowledgment

- 3.1 As part of its role as promoter of the Games, TEG Live published advertising material that featured:
- (a) from 18 June 2018, visual representations purporting to be Marvel Stadium, formerly known as Etihad Stadium, mocked up to feature a basketball court and tiered seating surrounding the court (the **Tiered Seating Image**); and
  - (b) from 15 August 2018, statements about, and images and videos of specific USA basketball players, including high-profile players such as LeBron James, Kevin Durant, Paul George and James Harden (the **Player Advertisements**).

#### *Admission regarding the Tiered Seating Image*

- 3.2 By publishing the Tiered Seating Image, TEG Live made a representation that the seating arrangements available to consumers who attended the Melbourne Games would be of a specific nature and/or quality as depicted in the Tiered Seating Image, specifically, that the floor-level seats surrounding the court at the Melbourne Games would be tiered (the **Seating**

**Representations**) when in fact the seating was not tiered and TEG Live had no reasonable grounds for representing that the seating arrangements would be tiered.

- 3.3 TEG Live admits its conduct in relation to the Seating Representations was likely to have been false or misleading and therefore likely to have contravened sections 18, 29(1)(b) and 34 of the Australian Consumer Law (**ACL**) contained in Schedule 2 to the Act.

*Acknowledgement regarding the Player Advertisements*

- 3.4 By publishing the Player Advertisements, the ACCC is concerned that TEG Live made a representation that specific USA basketball players (including high profile players such as LeBron James, Kevin Durant, Paul George and James Harden) would play, or would be available to play, in the Games (the **Alleged Player Representations**) when in fact, those players did not play and the ACCC considers that TEG Live, in most cases, had no reasonable grounds for representing that those players would play or would be available to play.
- 3.5 In relation to the Alleged Player Representations, TEG Live:
- (a) acknowledges that it published the Player Advertisements in circumstances where although player images and names were approved for use by USAB and/or the NBA, many of the players featured did not ultimately participate in the Games and that consequently many ticket holders were disappointed; and
  - (b) acknowledges the ACCC's concerns that, in the circumstances described in 3.4 and 3.5(a) above, the Alleged Player Representations may have been false or misleading and may have contravened sections 18, 29(1)(g) and 34 of the ACL.

**4 Australian Consumer Law**

- 4.1 The ACL is contained at Schedule 2 to the Act and provides consumers with protection in respect of the goods and services they purchase from suppliers within Australia.
- 4.2 Section 18 of the ACL provides that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.
- 4.3 Section 29(1)(b) of the ACL provides that a person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services make a false or misleading representation that services are of a particular standard, quality, value or grade.
- 4.4 Section 29(1)(g) of the ACL provides that a person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services make a false or

misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits.

- 4.5 Section 34 of the ACL provides that a person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

## **5 TEG Live's Response**

- 5.1 TEG Live has cooperated with the ACCC from the commencement of its investigation, including by:
- (a) providing the ACCC with substantial information and detailed explanations regarding the context and basis upon which TEG Live used images and/or names of specific USA basketball players (provided by and approved by USAB and/or the NBA) and the use of the Tiered Seating Image from 18 June 2018; and
  - (b) from 16 August 2019, commencing a process for offering and providing refunds to consumers based on an assessment of their particular circumstances.
- 5.2 As at the date of this Undertaking, TEG Live has provided over \$967,000 in refunds to more than 800 complainants, with most of these refunds provided in response to complaints regarding the Player Representations.

## **6 Commencement and term of this Undertaking**

- 6.1 This Undertaking comes into effect when:
- (a) it is executed by TEG Live; and
  - (b) the Undertaking so executed is accepted by the ACCC (the **Commencement Date**).
- 6.2 The Undertaking has effect for three (3) years after the Commencement Date (the **Term**).
- 6.3 TEG Live undertakes to assume the obligations set out in Attachment A below.

## **7 Acknowledgements**

- 7.1 TEG Live acknowledges that:
- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
  - (b) the ACCC may, from time to time, make public reference to the Undertaking, including in news media statements and in ACCC publications; and
  - (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

## Execution

Executed by TEG Live Pty Limited (ACN 150 055 100) pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:



.....  
Signature of Director



.....  
Signature of Director/Company Secretary

Geoff Jones

.....  
Name of Director (print)

Sandra Rouse

.....  
Name of Director/Company Secretary (print)

03/04/20

.....  
Date

03/04/2020

.....  
Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

6 April 2020

.....  
Date

and signed on behalf of the Australian Competition and Consumer Commission by:



.....  
Rodney Graham Sims

Chair

6 April 2020

.....  
Date

## Attachment A

- 1 Upon the Commencement Date of this Undertaking, TEG Live undertakes for the purposes of section 87B of the Act to assume the obligations set out below.

### *Remedies in accordance with the ACL*

- 2 TEG Live will, within eight weeks of the Commencement Date, take reasonable steps to identify all customers who:
  - (a) purchased one or more tickets to the Games on or after 15 August 2018;
  - (b) made a refund request to TEG Live, Ticketek Pty Ltd or Ticketmaster Australasia Pty Ltd prior to the relevant Game on the basis that one or more USA players referred to in the Player Advertisements were not attending; and
  - (c) did not attend the relevant Game (**Player Representation Refund Customers**).
- 3 TEG Live will, within sixteen weeks of the Commencement Date, take reasonable steps to:
  - (a) email the Player Representation Refund Customers notifying them that they will receive a refund from TEG Live; and
  - (b) provide the Player Representation Refund Customers a full refund of the purchase price of their ticket(s).
- 4 TEG Live will, within eight weeks of the Commencement Date, take reasonable steps to identify all customers who purchased floor-level seats at the Melbourne Games between 18 June 2018 and 24 August 2019 (**Seating Representation Refund Customers**).
- 5 TEG Live will, within sixteen weeks of the Commencement Date, take reasonable steps to:
  - (a) email the Seating Representation Refund Customers notifying them that they will receive a refund from TEG Live; and
  - (b) provide the Seating Representation Refund Customers a full refund of the purchase price of their ticket(s).
- 6 In the event that TEG Live attempts to provide a refund to a customer pursuant to either paragraph 3(b) or 5(b) and is unable to process the refund, TEG Live will, within four weeks of becoming aware of the failed refund, contact the customer:
  - (a) where TEG Live can obtain the customer's mobile phone number, by SMS; and
  - (b) where TEG Live cannot obtain the customer's mobile phone number, by email,advising them of the failed refund and request that they contact TEG Live to provide their updated details.
- 7 TEG Live is not required to provide a refund to any customer who provides their contact details more than 21 days after being sent the SMS or email referred to in paragraph 6.
- 8 The content and form of all TEG Live emails and SMSs referred to in paragraphs 3(a), 5(a) and 6 will be approved by the ACCC.
- 9 TEG Live is not required to provide a refund to, or contact, a customer pursuant to paragraphs 3 and 5, where the customer has already received a full refund of the purchase price of each

ticket purchased. Where the customer has received a partial refund of the purchase price for each ticket purchased, TEG Live will refund the remaining amount and contact customers pursuant to paragraphs 3, 5 and 6.

- 10 TEG Live will provide a dedicated phone line from the Commencement Date for at least 18 weeks for the purpose of fielding customer enquiries relating to the refund process.

#### *Publication of marketing collateral*

- 11 TEG Live will include in any marketing collateral which it publishes, or causes to be published, in relation to the tour of Australia of any club or national sporting team from a different country (**International Team Sporting Tour**) a prominent disclosure that final team selection may be subject to change and that TEG Live cannot guarantee that all players selected for the International Team Sporting Tour will ultimately join the International Team Sporting Tour.
- 12 For International Team Sporting Tours, TEG Live will not include in any marketing collateral which it publishes, or causes to be published, imagery and/or names of any players without reasonable grounds for doing so.
- 13 For International Team Sporting Tours, where TEG Live includes in any marketing collateral which it publishes, or causes to be published, imagery and/or names of any players, and TEG Live becomes aware a player will not play in the relevant event, TEG Live will, as soon as possible, take all reasonable steps to:
  - (a) cease using imagery and names of the unavailable player; and
  - (b) correct any existing advertising that uses imagery and names of the unavailable players.
- 14 TEG Live will ensure prominent disclosures to customers regarding the nature of seating arrangements for all future events for which TEG Live sells tickets, including ensuring it does not use inaccurate descriptions and depictions of seating arrangements for all its events.

#### *Compliance Policy*

- 15 TEG Live will, within three months of the Commencement Date, implement an updated internal policy regarding TEG Live's commitment to compliance with the ACL (the **Compliance Policy**).
- 16 TEG Live will ensure the updated Compliance Policy contains:
  - (a) a statement of commitment to compliance with the ACL;
  - (b) an outline of how TEG Live and its employees will promote compliance with the ACL and monitor and enforce the Compliance Policy, including a statement that TEG Live will take appropriate action against any employee who does not comply with the Compliance Policy;
  - (c) a requirement for all employees to report any ACL compliance issues (including ACL compliance concerns) to the TEG Live legal team; and
  - (d) a guarantee that whistleblowers with ACL compliance concerns will not be prosecuted or disadvantaged in any way and that their reports will be kept confidential and secure.
- 17 TEG Live will report any non-compliance with this Undertaking to the ACCC as soon as practicable.

### *Employee training*

- 18 Within three months of the Commencement Date, TEG Live will ensure that a review is commenced of its current training practices and ensure that all TEG Live employees whose duties involve:
  - (a) the design and publication of marketing collateral; or
  - (b) the handling of, or management of staff who handle, customer complaints,receive updated training in relation to the Compliance Policy.
- 19 TEG Live will ensure that the training is developed by a suitably qualified compliance professional or legal practitioner with expertise in the ACL.
- 20 TEG Live will ensure that awareness of the Compliance Policy forms part of the current induction training of all new employees of TEG Live whose duties involve those described in paragraph 18 and that all new employees will receive training within three months of the commencement of their employment with TEG Live.
- 21 In line with current practices, TEG Live will also ensure that existing employees of TEG Live will receive periodic training with respect to the Compliance Policy.

### *Complaints handling system*

- 22 Within one month of the Commencement Date, TEG Live will ensure that a review is commenced of its complaints handling system.
- 23 TEG Live will ensure that the review is conducted by a suitably qualified compliance professional or legal practitioner with expertise in the ACL.
- 24 TEG Live will remedy any deficiencies identified in its review of its complaints handling system.

### *ACCC enquiries*

- 25 For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with TEG Live, and TEG Live will respond to such enquiries within a reasonable period of time.

### *Reporting*

- 26 TEG Live will, between 2 November 2020 and 11 November 2020, advise the ACCC of the following in relation to each of the Player Representation Refund Customers and the Seating Representation Refund Customers:
  - (a) whether the customer was a Player Representation Refund Customer or a Seating Representations Refund Customer;
  - (b) the customer's name or a reference number;
  - (c) the amount of the refund the customer received;
  - (d) the date TEG Live sent the email referred to in paragraph 3(a) and/or 5(a); and
  - (e) the date the customer received the refund referred to in paragraph 3(b) and/or 5(b); and

in the event TEG Live becomes aware the customer did not receive the refund:

- (f) the date TEG Live became aware the customer had not received the refund;
- (g) the date TEG Live sent the SMS or email referred to in paragraph 6;
- (h) the date the customer provided updated bank or credit card details;
- (i) the method the customer used to provide the updated bank or credit card details; and
- (j) if TEG Live did not provide the customer with a refund, the reason no refund was provided.

27 In January 2021, 2022 and 2023, TEG Live will provide the ACCC with a report for the preceding 12 months:

- (a) listing each International Team Sporting Tour TEG Live promoted;
- (b) where advertising for the International Team Sporting Tour included images of or references to individual players who did not participate in the International Team Sporting Tour (for example, by not playing in the relevant games or matches), providing:
  - i. details of the International Team Sporting Tour, including the name, date and venue of each event the player was advertised as participating in;
  - ii. the name of each player who did not participate in the International Team Sporting Tour whose image was used or who was referred to in advertising;
  - iii. TEG Live's basis for using each player referred to in paragraph 27(b)(ii) in advertising; and
  - iv. details of any remediation undertaken by TEG Live when it became aware the player would not play.