

Manager
Consumer and Corporations Policy Division
Treasury
Langton Cres
Parkes ACT 2600

Via email: Consumerlaw@treasury.gov.au

Dear Consumer and Corporations Policy Division,

Submission regarding Competition and Consumer (Australian Consumer Law – Electronic Ticket Resale Service) Information Standard 2019

viagogo welcomes the opportunity to comment on the Draft Standard on electronic ticket resale services. We are keen to improve safe access to event tickets for the Australian public. To deliver this, we have invested heavily over recent years to provide Australians with the premier event ticketing marketplace for individuals to sell and purchase the widest selection of tickets to the events they wish to see.

Below we provide some information about viagogo and our ticketing marketplace, as well as some specific comments regarding the Exposure Draft of the Competition and Consumer (Australian Consumer Law – Electronic Ticket Resale Service) Information Standard 2019 (**Draft Standard**).

In all of our recommendations, our aim is to ensure that any Standard is clear, workable, and covers all operators who facilitate the resale of tickets, including general platforms and dual operators in the primary and resale markets. To further assist you, we have also requested that our legal counsel provide a summary of any legal issues that could be created by the proposed Information Standard. That is attached.

We have carefully reviewed the Draft Standard and have identified three key issues which we would like Treasury to consider:

- We are concerned that as it is currently drafted the Draft Standard **risks not covering a significant proportion of resold tickets**. If introduced, we consider the Standard should apply to all ticket sales to ensure that all consumers who purchase resold tickets receive the same information, regardless of where they buy them.
- **viagogo already clearly discloses to consumers that it operates as a ticket resale marketplace**. To the extent that such disclosure language is considered necessary, then we recommend that Treasury consider the clear and accurate language that is already used on the viagogo platform as a template to guide the drafting of the Standard.
- **Section 6(2)(b) of the Draft Standard should be removed, or its language simplified to ensure clarity**. viagogo believes that, as drafted, s 6(2)(b) is impossible to administer fairly and will lead to confusion for consumers and operators. Given the very significant penalties that can result from a failure to comply with the Standard, it is critically important that organisations understand what they are required to do in order to comply. We do not believe this is possible given the current wording. As such, we believe this section should be removed or at least significantly redrafted.

About viagogo

viagogo is a global online ticketing marketplace for live sport, music and entertainment tickets. We aim to provide buyers with the widest possible choice of tickets to events across the world. We offer a secure, safe and transparent option for reselling tickets that the original purchaser no longer wants or does not intend to use. These sellers provide Australian consumers a second chance to buy the tickets they may have missed out on first time round.

We started this business in 2006 in the United Kingdom because we saw an inherent need for a safe and secure place for the general public to buy and sell their live event tickets. Similarly, before we started StubHub in the United States in 2000, we saw the same problems with countless people purchasing tickets on unsecure marketplaces such as eBay, Gumtree and Craigslist or fraudulent ticket resale sites where the buyers were not only left without tickets, but also had zero recourse to recoup their losses.

We consider that there are a number of significant benefits offered by the ticket resale market:

- Prior to the existence of secure online ticket marketplaces like viagogo, buyers who wished to purchase tickets had no transparency into supply and pricing of tickets for events. Outright ticket fraud was all too common as consumers were forced to take their chances outside venues or through informal channels, leaving themselves with no recourse should things go wrong.
- Ticket resale sites arose to provide consumers with a safe, secure and transparent option. By so doing, platforms like viagogo serve a necessary function that assists consumers. These sites offer access to events because of the limited number of tickets released by primary ticket sellers.
- viagogo echoes comments in the 'Ticket Reselling in Australia' Consultation Regulation Impact Statement (Nov 2017) that consumers value access to a resale market for reasons including convenience, time saving, avoiding the 'hysteria' of the purchase process, and to help with last minute decisions. Our research shows people use the ticket resale market for a number of reasons. Buyers have typically missed out on tickets in pre-sale or general release. They might be attending an event out of town, are only interested in a specific location at the venue or ticket type or have only heard about an event at the last minute. If necessary, these people are typically happy to pay a premium to secure tickets for "must see" events. Sellers may be unable to attend an event due to unforeseen circumstances like a change of plans or diary clashes. This is not surprising when you consider many events are sold out many months in advance.

viagogo does not buy or sell tickets, and it does not set prices. Once a buyer purchases a ticket on viagogo they are protected by the viagogo guarantee which provides for a suitable replacement or a full refund in the event of the wrong ticket being provided, failure to gain entry after producing a ticket purchased on our platform or failure to have the ticket arrive on time for the event.

We allow our sellers to integrate with many reputable international and local delivery providers and provide turnkey instructions on how the seller can arrange ticket delivery in a trackable way. In the event of a cancelled event, buyers will receive a full refund including any additional fees and taxes.

We provide 24/7 customer care and our staff are available to Australian consumers through email, our online portal, or by phone through an event specific phone line which is staffed by dedicated customer service agents who understand the nuance and sensitives of our industry.

viagogo has partnered with many of the world's leading brands in sport and entertainment, and over the last year, we have helped thousands and thousands of Australians safely buy or sell tickets to a wide range of events across the country and around the world. Additionally, we also help the thousands of in-bound tourists make the most of their time while visiting Australia.

Response to the draft Competition and Consumer (Australian Consumer Law – Electronic Ticket Resale Service) Information Standard 2019

Application of the Instrument (“Sole or Dominant Purpose”)

A critical aspect of the Draft Standard is the participants in the market to which it will apply. Section 6(1)(b) of the Draft Standard sets out a key test regarding the services that the Standard will cover:

"the information is supplied by means of an electronic platform whose sole or dominant purpose is to facilitate a secondary market in tickets for admission to events."

viagogo supports a fair and transparent market for event tickets that puts consumers first. However, viagogo was established because sites that did not specialise in ticket resale failed to offer purchasers a safe, transparent experience. If the Standard is not applied fairly to all marketplaces or sites where event tickets are regularly bought and sold, viagogo believes that sellers will move to unregulated sites, frustrating the primary purpose of the Standard.

There are several aspects of the application of the Draft Standard under s 6(1)(b) that we consider will negatively impact consumers and also create an unfair burden on dedicated secondary platforms used by consumers.

- First, under the Draft Standard social media platforms (i.e. Facebook Marketplace) and general goods resellers (i.e. Gumtree) would continue to be able to offer tickets without the same transparency demanded of secondary ticketing platforms. This would exclude some of the largest online marketplaces for ticket re-sale.

We believe it would be in the best interests of consumers (who, as noted in the Consultation Regulation Impact Statement, make purchases across many platforms) for such information to be provided across all websites where tickets are re-sold. Selective application would result in some consumers being provided more or less information than others arbitrarily.

Targeting part of the sector for greater transparency while allowing others to maintain current standards or practices will only serve to make platforms like viagogo less competitive or appealing. We hold real concerns that this will see buyers and sellers moving to unregulated, anonymous secondary ticketing outlets with no consumer recourse or support.

- Second, it is unclear if the Draft Standard applies to what we call 'dual operators'. As you may be aware, the primary ticketing industry is dominated by a very small number of large actors, namely Ticketek and Ticketmaster; some operators in the primary market also have ties to (or are even owned by) event organisers, artists and artists' agents. These market participants have now recognised the need for secondary platforms and, despite their terms and conditions stating in many instances that resold tickets may be invalidated, they promote their own "in-house" secondary ticket sales to Australian consumers on their platforms.

Dual operators should be included in any future Information Standard. They offer a secondary ticketing platform in exactly the same way that platforms like viagogo operate – the seller of the ticket is not the platform – and thus they should be held to the same standards of transparency. We would be concerned if the "sole or dominant" limb of s 6(1)(b) could be used by these dual operators to suggest that their secondary platforms are not covered by the regulatory regime. This should be clarified to ensure that any Standard does not favour certain participants in the event ticketing market.

We submit that the Draft Standard should apply to all publications (both on and offline) and, in particular, that it should not be limited to platforms that focus only on facilitating the sale of tickets between buyers and sellers.

Information regarding resale service – section 6(2)(a)

viagogo supports the principle behind this aspect of the Draft Standard, and we believe we already comply with the substance of the change that is proposed. Currently, we display prominently and clearly on both our home page and the event page the following text on our Australian platform:

“We're the world's largest secondary marketplace for tickets to live events. Prices are set by sellers and may be below or above face value.”

We believe our language is clear and meets and exceeds the objectives outlined in s 6(2)(a) by clearly informing the consumer that we are a secondary ticket marketplace. This is the common phraseology to describe our industry and is familiar to Australian consumers. Our language also clearly alerts consumers to the fact that pricing, set by sellers, may be below or above face value. viagogo recommends that this type of disclosure be the industry standard. This has been designed to allow all consumers using such platforms to make a clear and informed decision.

If the Government seeks to include mandatory language across the sector, then we recommend that the language provided in the Draft Standard be revisited in light of the information that is already provided to consumers by viagogo. The language currently used in the Draft Standard is vague and risks misleading consumers. In particular, we note the following:

- We have significant concerns regarding the inclusion of “original ticket seller” and the context provided in the Explanatory Statement. Not all “original ticket sellers” operate their trade through websites, mobile apps or electronic platforms as described in the explanatory text regarding s 6(2). This ill-defined term fails to appreciate modern ticketing channels and the common use of brokers by event organisers and promoters around the world and in Australia.
- We are concerned that the proposed language devalues the benefits that the secondary market offers to consumers which were outlined in the Consultation Regulation Impact Statement. As drafted, the text appears to suggest that resold tickets offer the holder fewer rights than tickets sold at the initial point of sale. As the Consultation Regulation Impact Statement noted, ticket reselling in Australia is not illegal. For example, under the regime in NSW, any resale restriction imposed by a primary seller is void to the extent that it provides for a ticket to be cancelled or rendered invalid where it has been resold in accordance with the regime: *Fair Trading Act*, s 58J.

In summary, to the extent mandatory language is considered necessary, we recommend that drafting along the lines of that already used on the viagogo Australian website is appropriate (i.e. a secondary marketplace for tickets where prices set by sellers may be below or above face value). In particular, our view is that any mandatory language should not contain reference to the “original ticket seller”.

Information regarding face value – section 6(2)(b)

viagogo believes that s 6(2)(b) should be removed or, at the very least, redrafted. This aspect of the Draft Standard does not align with current market conditions; as drafted, it is not able to be administered; and it is likely to create significant confusion for consumers and operators.

It is unclear from the drafting: (i) how the price of a ticket in the first supply of tickets for the event is to be determined; and (ii) who is required to undertake that exercise. In circumstances where there are significant penalties under the Australian Consumer Law for supplying goods or services that do not comply with an information standard, we consider that the scope of the obligations should be clear.

(i) How the price of tickets in the first supply of tickets for the event is to be determined

viagogo supports greater transparency to the extent that transparency is possible. Certain information may only be provided by ticket sellers, and viagogo recommends that any obligation should not require viagogo or any other person to speculate on price, and by so doing, inadvertently display incorrect information to consumers.

We raise the following questions in relation to the drafting of s 6(2)(b) in its current form:

- Does the reference to the total price being what the "*consumer would reasonably be expected to pay to purchase the ticket*" simply refer to the "face value" printed on the ticket (noting the issues with the concept of face value noted below); or
- Does the concept of a reasonable expectation require a subjective assessment to be made by the individual ticket seller (or, an even more unlikely scenario, the platform provider)?

While viagogo can require sellers to list the face value of tickets they wish to sell, it is not possible for viagogo – or indeed any tickets resale platform – to independently confirm the face value of tickets.

There are many structural reasons for this. For example, face value is not always printed on tickets, many tickets are only received mere days before the event, and there is no standard receipt information provided by primary market sellers to the broader market which could be used to validate such a request.

In addition, many tickets do not have a readily or independently ascertainable face value, including without limitation, season or other membership tickets, corporate box tickets, promotional tickets, sponsors or house tickets, and tickets originally sold as a part of a VIP or similar package.

Further, the use of face value as a way of representing to consumers the price they would have paid for a ticket in the first supply for an event does not account for broader trends in the ticketing industry. The introduction of dynamic pricing (consumers paying different face values for near identical tickets at different times) in the primary market would, we suggest, render the obligation entirely unworkable as:

- A primary purchaser may have reasonably paid a higher (or lower) price than the face value on the ticket, and this would presumably become the new standard value.
- Dynamic pricing and the prices paid are often obscured by design by primary ticketing operators to give the appearance that the consumer is securing a better or exclusive deal, when in reality they have paid a higher cost than the person sitting next to them for an identical experience.

In addition, for many events, more than half of the tickets are never sold at the public on sale. This issue was expressly recognised in the Consultation Regulation Impact Statement, where Treasury noted anecdotal evidence that the volume of tickets that never make it to public sale in the primary market could be between 5% and 50% (p 11). For this significant group of tickets that are never sold, it is entirely unclear to us what the buyer would be "reasonably expected to pay", as provided for in draft s 6(2)(b).

(ii) Our proposal

Given the difficulty in ascertaining a face value, we believe that this aspect of the Draft Standard should be removed altogether. However, if the Government's intention is to require the display of face value on ticketing platforms:

- The concept of face value should be clearly defined and not require any assessment to be made by an individual ticket seller (for example, 'where available, the price printed on the ticket').
- The responsibility for meeting this requirement should rest with individual sellers, not the secondary platform. That is, platforms would display the face value provided by the individual ticket seller.

- To the extent any verification is required, the primary ticket market would either need to agree or be required to provide in a timely fashion information about the number and face value of tickets sold to all events.

Finally, Treasury should have regard to any unintended impact the Draft Standard may have on competition. For example, to potentially require ticket resale platforms to speculate about the face value of any ticket would give dual operators trading in both the primary and ticket resale market an unfair advantage. Care should be taken to ensure the compliance burden imposed by the Information Standard does not favour ticketing platforms who offer both primary and resale ticketing (for example, to the extent those platforms have direct access to pricing in the primary market). There is no justification for any unfair allocation of effort, and we are not aware of a similar approach in other common law jurisdictions.

Other suggested content

We have been consistent at state, federal and international levels for several years in our repeated calls for increased transparency in pricing so that consumers are fully aware and confident in their ability to make an informed purchasing decision.

In order for a consumer to have a better understanding of the ticketing sector and their options or choices within that sector, we believe the following information should be disclosed for all ticketed events:

- The primary market should clearly disclose all ticket prices for which they are advertising (including in cases of dynamic pricing).
- As with any good or service, the fair price can only be determined if the quantity is known, so the primary market should also disclose the total number of tickets available on public sale and the total number of tickets that have been held in reserve from public sale.
- In order to avoid any suspect practices, the primary market should provide a breakdown of ticket allocations to VIP arrangements and dynamic pricing to all consumers as early as possible.
- To the extent there is any requirement to validate face value, there must be a timely disclosure of face value pricing by the primary market. If secondary platforms were to validate listings, primary sellers would need to promptly share their pricing information with secondary sites.
- As is the case under the New South Wales regulatory regime, viagogo considers that as a general matter a ticket should not be invalidated simply because it has been resold.

Conclusion

We would welcome further discussion of these proposals at your earliest convenience. In particular, we are keen to ensure that any Standard is clear, workable, and covers all operators who facilitate the resale of tickets, including general platforms and also dual operators across the primary and secondary markets

Yours sincerely,

Cris Miller