

MinterEllison

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BY EMAIL: Consumerlaw@treasury.gov.au

Manager
Consumer and Corporations Policy Division
Treasury
Langton Cres
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Dear Consumer Policy Division

Consultation regarding Draft Ticket Resale Information Standard

We act for viagogo AG.

viagogo has asked us to provide a summary of any legal issues that we consider are created by the Draft Information Standard. viagogo has prepared a separate submission regarding the Exposure Draft of the *Competition and Consumer (Australian Consumer Law—Electronic Ticket Resale Service) Information Standard 2019 (Draft Information Standard)* which is currently open for public consultation.

The brief table **enclosed** with this letter identifies a number of potential issues with the current drafting of the Draft Information Standard, along with suggested alternate drafting.

It is critically important that any information standard is clear as to the nature of the obligations it imposes and the identity of those upon whom such obligations are imposed. Significant pecuniary penalties can apply under the Australian Consumer Law where a person does not comply with an information standard. For that reason, Treasury should take care to ensure that any information standard is clear, so that consumers and industry participants can readily understand the nature of the obligations imposed, and also to ensure that the standard can be enforced.

We have also addressed the application of the Draft Information Standard to only some participants in the market and included suggested drafting. As a general matter, we note the object of the *Competition and Consumer Act 2010* is to enhance the welfare of Australians through the promotion of competition and fair trading. To ensure there is consistency with the object of the Act, any standard should not undermine competition by failing to impose regulatory obligations on all relevant players in the market.

Please let us know if you would like to discuss any issues further.

Yours sincerely

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Draft Ticket Resale Information Standard

Draft Information Standard Section	Issue	Proposed Alternate Drafting
<p>s 6(1)(b): <i>"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."</i></p>	<p>The Draft Information Standard applies only to:</p> <ul style="list-style-type: none"> ▪ electronic platforms, ▪ with the sole or dominant purpose of facilitating a secondary market in tickets to events. <p>The current drafting risks regulatory under-capture by failing to regulate tickets which are resold other than by means of an electronic platform, or via a platform that does not meet the 'sole or dominant purpose' limb.</p> <p>Reference to a platform having a 'sole or dominant' purpose creates uncertainty. It requires a subjective assessment to be made about what should be a straightforward requirement for the suppliers of certain services to display particular information to consumers.</p>	<p>In order to ensure the Draft Information Standard applies to all participants operating in the secondary market for tickets, and to avoid uncertainty regarding the application of a 'sole or dominant purpose' test, we recommend Treasury consider the following drafting:</p> <p><i>"s 6(1)(b) <u>the information is supplied by means of a publication or an electronic platform whose sole or dominant purpose is to that facilitates a secondary market in tickets for admission to events.</u>"</i></p>
<p>s 6(2)(b): <i>"the total price, excluding a charge that is payable in relation to sending the ticket to a person, that the consumer would reasonably be expected to pay to purchase the ticket from a person who is authorised to provide the first supply of tickets for the event."</i></p>	<p>The proposed drafting of this subsection is unclear and imprecise and should be revisited by Treasury. It risks being misunderstood by participants in the market and the lack of precision in the current drafting may create uncertainty about the ability to enforce the obligation.</p> <p>It is unclear who must undertake the assessment and how an analysis regarding a consumer's 'reasonable expectation' as to price is meant to be carried out.</p> <p>For example, the Explanatory Statement provides that this task <i>"may require a person to compare the characteristics of the ticket to similar tickets sold by the original ticket seller"</i>. It is unclear:</p> <ul style="list-style-type: none"> ▪ whether that person is the individual ticket seller or the platform provider; and ▪ how that is to be undertaken, especially if tickets to an event are sold out in the primary market. 	<p>We understand that the Draft Information Standard is intended to implement a decision taken by the Consumer Affairs Ministers on 26 October 2018. The Communique from that meeting refers to the need to display 'face value' to ensure that consumers are aware of how much above (or presumably also below) face value they are paying.</p> <p>We recommend that consideration be given to simplified drafting such as:</p> <p><i>"s 6(2)(b) <u>the face value printed on the ticket, excluding charges for delivery, where that face value is provided to the publication or platform by the person listing the ticket for sale.</u>"</i></p> <p>We also recommend that consideration be given to issues regarding the calculation of face value, and whether the task required by the information standard can workably be undertaken in practice in the market.</p>