



Australian  
Competition &  
Consumer  
Commission

23 Marcus Clarke Street  
Canberra ACT 2601

GPO Box 3131  
Canberra ACT 2601

Our ref: #1002430  
Contact officer: William Herron  
Contact phone: 02 6243 1244

tel: (02) 6243 1111  
fax: (02) 6243 1199

20 September 2017

[www.accc.gov.au](http://www.accc.gov.au)

JS

***Via email to: [foi+request-4058-d13a2113@righttoknow.org.au](mailto:foi+request-4058-d13a2113@righttoknow.org.au)***

Dear JS

### **Decision on freedom of information request**

I refer to your email dated 29 August 2017 in which you request access, under the *Freedom of Information Act 1982* (Cth), to the following:

*'a copy of the originating documents in Australian Competition and Consumer Commission v Viagogo AG.'*

### **Decision**

I have decided to **release** these documents to you in accordance with the Schedule (Attachment A). Your review rights are set out in Attachment B.

I am authorised under s.23 of the Act to make this decision.

### **Understanding the schedule**

In relation to the Schedule, please note:

- (a) Column 1 of the Schedule refers to each document by a document number created for the purpose of processing this request;
- (b) Column 2 of the Schedule gives, where applicable, the name and organisation of the author of the document;
- (c) Column 3 of the Schedule gives, where applicable, the name and organisation of the addressee of the document;
- (d) Column 4 of the Schedule shows the date appearing on the document;
- (e) Column 5 of the Schedule briefly describes the document or, where applicable, each part of a composite document;
- (f) Column 6 of the Schedule gives the number of pages of the document or, where applicable, each part of a composite document;

- (g) Column 7 of the Schedule shows my decision on whether, and what form, access has been granted to the document, where applicable;
- (h) Column 8 of the Schedule sets out my findings on material questions of fact and the reasons for my decision. The subsection or paragraph referred to is the subsection or paragraph of the Act relied upon in support of each claim of exemption from disclosure. I have outlined my reasons for decision in attachment B.

**Charges**

Under the Act the first 5 hours (\$100.00) of processing your request are free. As the cost of processing your request is less than \$100.00, there are no charges for processing your request.

Enclosed are copies of the 2 documents which were 'Granted' as per the Schedule.

**Publication of documents released under FOI**

In accordance with s.11C of the Act, I have decided to publish the documents released on the ACCC's Disclosure Log. This will occur within ten business days of the documents being released to you.

Yours sincerely



Will Herron

FOI Coordinator  
ACCC Legal Group

Sent by email 20/09/2017

**ATTACHMENT A**  
**Schedule of documents**

<b>Doc No</b>	<b>Author</b>	<b>Addressee</b>	<b>Date</b>	<b>Description</b>	<b>No of folios</b>	<b>Access</b>	<b>Findings, Reasons and Brief Descriptio</b>
1	ACCC	Federal Court Australia	29.8.2017	Notice Application - ACCC v VIAGOGO AG	7	Granted	
2	ACCC	Federal Court Australia	29.8.2017	Notice Concise Statement - ACCC v VIAGOGO AG	17	Granted	

## ATTACHMENT B

### INFORMATION ON RIGHTS OF REVIEW

#### 1. ACCC Internal Review

Under s.54 of the FOI Act, you can apply for an internal review of my decision by writing to the ACCC within 30 days of receipt of this letter indicating that you seek an internal review of this decision.

If you make an application for review, another officer of the ACCC will review and make another decision in regards to these documents.

There is no charge payable for requesting an internal review. No particular form is required to apply for review. You will need to set why the decision should be changed.

Please send any correspondence to:

FOI Coordinator

Australian Competition & Consumer Commission

GPO Box 3131

Canberra ACT 2601

If you make an application for internal review and we do not make a decision within 30 days or such further period as the IC allows, the original decision is considered affirmed. In such circumstances, you can seek review of our deemed decision by the IC.

#### 2. Review by the Information Commissioner

You may ask for a review of a decision by the Australian Information Commissioner (IC). You do not have to go through our internal review process first for this process. If you do choose to seek an internal review, you can still seek IC review for the internal review decision if we refuse access to the documents.

You must apply in writing and you can lodge your application in one of the following ways:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)

Post: GPO Box 5218, Sydney NSW 2001

Fax: +61 2 9284 9666

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

If you disagree with the Information Commissioner's review decision, you can appeal to the Administrative Appeals Tribunal (AAT).

The Tribunal is a completely independent review body with the power to make a fresh decision. A filing fee of \$861.00 (as at 1 July 2014) should accompany your application, unless you are granted legal aid or you come within an exempt category of persons (check with the Tribunal registry in your State). The Registrar or Deputy Registrar may waive the fee on the ground that its payment would impose financial hardship on you. The fee may be refunded if you are successful.

### **3. Complaint to the Information Commissioner**

You may request the Information Commissioner to investigate action taken by the ACCC in relation to this Freedom of Information request. There is no fee for making a complaint. The Information Commissioner will consider your complaint and, if appropriate, conduct an investigation into it. Any investigation will be completely independent.

You must lodge your complaint in writing and do so in one of the following ways:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)

Post: GPO Box 5218, Sydney NSW 2001

Fax: +61 2 9284 9666

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

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## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 28/08/2017 7:58:41 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

**Document Lodged:** Originating Application - Form 15 - Rule 8.01(1)  
**File Number:** NSD1489/2017  
**File Title:** AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v VIAGOGO AG  
**Registry:** NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA  
**Reason for Listing:** First Case Management Hearing  
**Time and date for hearing:** 15/09/2017, 9:30 AM  
**Place:** Court Room Not Assigned, Level 17 Law Courts Building Queen's Square, Sydney



A handwritten signature in blue ink, appearing to read 'Ronald Eden'.

**Dated:** 29/08/2017 9:38:24 AM AEST

**Registrar**

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

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Form 15  
Rules 8.01(1); 8.04(1)

## Originating application

No. NSD of 2017

Federal Court of Australia

District Registry: NSW

Division: General

Commercial and Corporations National Practice Area (Regulator and Consumer Protection)

### AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

**VIAGOGO AG**

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Federal Court of Australia, Law Courts Building, Queens Square Sydney.

Date:

Signed by an officer acting with the authority  
of the District Registrar

3469-0000-7686v1

Filed on behalf of

Australian Competition and Consumer Commission, Applicant

Prepared by

Frances Williams of Corrs Chambers Westgarth and Victoria Brigden  
and Kristina Stern SC of counsel.

Law firm

**Corrs Chambers Westgarth**

Tel (07) 3228 9332

Tel (07) 3228 9332

Email frances.williams@corrs.com.au

Address for service

Level 43, 111 Eagle Street, Brisbane, Queensland, 4000

[Version 2 form approved 09/05/2013]



## Details of claim

The Court's jurisdiction to hear the present case and to grant the relief sought is found in s138(1) of the CCA, and s39B(1A)(c) of the *Judiciary Act 1903* (Cth).

On the grounds stated in the Concise Statement, the Applicant claims:

## Declarations

1. A declaration that during the period 1 May 2017 to 26 June 2017, the Respondent, in trade or commerce, in connection with the supply or possible supply of services:
  - (a) by using the word "Official" in its advertisements on Google, and
  - (b) failing to disclose, or adequately disclose that it was not a primary ticket seller, represented to consumers located in Australia (**Consumers**) that:
  - (c) they could purchase official original (i.e not resold) tickets through <http://www.viagogo.com/au/> (the **Viagogo Australian website**); and/or
  - (d) the Respondent had approval from, or was affiliated with, the relevant team, musician, entertainer or event promoter, organiser or venue (**Host**) as an "official" agent of the Host to sell original (i.e. not resold) tickets to the Host's event(s) directly to the public;

when, in fact:

- (e) the tickets available from the Viagogo Australian website were being resold via an online secondary ticketing platform, and/or
- (f) the Respondent did not have any such affiliation or approval;

and thereby:

- (i) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18 of the Australian Consumer Law, being Schedule 2 to the *Competition and Consumer Act 2010* (Cth);
  - (ii) engaged in conduct that was liable to mislead the public as to the nature of the services Viagogo provided, in contravention of s34 of the Australian Consumer Law; and
  - (iii) made false or misleading representations that Viagogo had an approval or affiliation in contravention of s29(1)(h) of the Australian Consumer Law.
2. A declaration that during the period 1 May 2017 to 26 June 2017, the Respondent, in trade or commerce, in connection with the supply or possible supply of services, by its conduct in making representations on the "Tickets and Seating Selection Page" of the Viagogo Australian website that a Consumer could purchase tickets for the amount stated on that webpage, when, in fact Consumers could not purchase tickets for the





amounts stated on that webpage because Consumers had to pay additional fees, thereby:

- (i) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18 of the Australian Consumer Law; and
- (ii) made false or misleading representations with respect to the price at which Consumers could acquire tickets through the Viagogo Australian website, in contravention of s 29(1)(i) of the Australian Consumer Law.

3. A declaration that on 18 May 2017, the Respondent, in trade or commerce, in connection with the supply or possible supply of services, by its conduct in making representations on the "Tickets and Seating Selection Page" of the Viagogo Australian website that a Consumer could purchase:

- (a) a ticket for a seat in the Grand Circle section at the Princess Theatre in Melbourne to see a performance of the musical "The Book of Mormon" on Saturday 20 May 2017 through the Viagogo Australian website for A\$135 per ticket;
- (b) three tickets for seats in the Bronze section of the Gabba cricket ground in Brisbane to attend the Ashes cricket test match on Sunday, 26 November 2017 through the Viagogo Australian website for A\$110.05 per ticket;
- (c) two tickets for seats in the Upper Tier section at Rod Laver Arena in Melbourne to attend a Cat Stevens concert on Monday, 27 November 2017 through the Viagogo Australian website for A\$225 per ticket;

when in fact a Consumer could not purchase any of those tickets from the Viagogo Australian website for the relevant prices because Consumers had to pay additional fees:

- (i) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18 of the Australian Consumer Law; and
- (ii) made false or misleading representations with respect to the price at which Consumers could acquire each of the tickets referred to in (a), (b) and (c) above through the Viagogo Australian website, in contravention of s29(1)(i) of the Australian Consumer Law.

4. A declaration that on 18 May 2017, the Respondent, in trade or commerce, in connection with the supply or possibly supply to another person of goods or services of a kind ordinarily acquired for personal or household use or consumption, by its conduct in stating on the "Delivery Page" of the Viagogo Australian website a price for each of the tickets in proposed declaration 3 that excluded further fees payable without also specifying, in a prominent way and as a single figure, the price for each of those tickets that included the additional fees payable, thereby:



- (i) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18 of the Australian Consumer Law; and
  - (ii) made a part-price representation in contravention of s48(1) of the Australian Consumer Law.
5. A declaration that during the period 1 May 2017 to 26 June 2017, by the Respondent's conduct in making statements such as "Less than 1% of tickets left for this event" or "Less than 1% of tickets remaining", "Only 2% of tickets left", "Tickets are likely to sell out soon", "Only a few tickets left", "Only 8 tickets left", "LAST CHANCE!" and "Tickets for this event are selling fast" in circumstances where the Respondent did not disclose at any time throughout the booking process on the Viagogo Australian website for purchasing tickets that the references to the number or percentage of tickets still available for any of the events were references to the number or percentage of tickets available for purchase through the Viagogo Australian website only, and not references to the total number or percentage of tickets remaining available to the event, the Respondent thereby:
- (i) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s18 of the Australian Consumer Law; and
  - (ii) engaged in conduct liable to mislead the public as to the quantity of tickets available to events advertised on the Viagogo Australian website, in contravention of s34 of the Australian Consumer Law.

## **Injunctions**

6. An order pursuant to s232 of the Australian Consumer Law that for a period of five years from the date of this order the Respondent, whether by itself, its officers, employees, agents or otherwise howsoever, be restrained, in the course of the supply or possible supply of services to Consumers for the sale of tickets on the Viagogo Australian website, from representing, in trade or commerce, that:
- (a) Consumers can purchase official original (i.e. not resold) tickets through the Viagogo Australian website, when that is not the case;
  - (b) the Respondent is affiliated with or has approval from a particular Host as an "official" agent of the Host to sell original (i.e. not resold) tickets to the Host's event(s) directly to the public, when that is not the case;
  - (c) Consumers can purchase tickets for a stated price on a webpage on the Viagogo Australian website when they cannot do so without paying further fees to purchase the tickets;



- (d) Consumers can purchase tickets for a stated price on a webpage on the Viagogo Australian website which exclude further fees payable without also specifying, in a prominent way and as a single figure, the price for each of those tickets including the additional fees payable; and
- (e) only a set number or percentage of tickets are available without expressly stating that the reference to tickets is to those available for purchase through the Viagogo Australian website and not the total number or percentage of tickets remaining for the event.

## **Publication orders**

- 7. An order pursuant to s246(2)(a), (b), (c) and/or (d) of the Australian Consumer Law, directing the Respondent to prominently publish information on the Viagogo Australian website homepage, in a form and in terms to be determined following the publication of reasons in the proceeding, and including information for consumers concerning the following matters:
  - (a) the findings of the Court;
  - (b) the Respondent's conduct which is the subject of the proceedings;
  - (c) the Respondent's obligations under the Australian Consumer Law;
  - (d) the Respondent's obligations under these orders; and
  - (e) the manner in which consumers can make a complaint to the Respondent regarding its conduct.

## **Pecuniary penalties**

- 8. An order pursuant to s224(1)(a)(ii) of the Australian Consumer Law that within 30 days of the date of this order, the Respondent pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of the Respondent's contraventions of s29, 34 and 48 of the Australian Consumer Law set out in the proposed declarations in paragraphs 1 to 5 above.

## **Compliance Program orders**

- 9. Pursuant to s 246(2) of the Australian Consumer Law, the Respondent is:
  - (a) within 90 days of this order, to establish and implement an Australian Consumer Law Compliance Program to be undertaken by each employee of the Respondent or other person involved in the Respondent's business who deals or who may deal with Consumers, being a program designed to minimise the Respondent's risk of future contraventions of s18, 29, 34 and 48 of the Australian Consumer Law in relation to the sale of tickets on the Respondent's Australian website; and



- (b) for a period of 3 years from the date of this order, maintain and continue to implement the Australian Consumer Law Compliance Program referred to in order 9(a) above.

## Costs

10. An order that the Respondent pay the Applicant's costs.

## Further Order

11. An order that a copy of the reasons for judgment, with the seal of the Court affixed thereon, be retained on the Court file for the purposes of s137H(3) of the *Competition and Consumer Act 2010* (Cth).
12. Such further or other order as the Court considers appropriate.

## Applicant's address

The Applicant's address for service is:

Place: Corrs Chambers Westgarth, One One One, Level 43, 111 Eagle Street, Brisbane, Queensland, 4000

Email: frances.williams@corrs.com.au

The Applicant's address is:

Place: Level 24, 400 George Street, Brisbane, Queensland, 4000.

## Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 28 August 2017

  
Signed by Frances Millicent Williams  
Solicitor for the Applicant

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## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 28/08/2017 7:58:41 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Concise Statement  
File Number: NSD1489/2017  
File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v VIAGOGO AG  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, appearing to read 'Wanda Soden'.

Dated: 29/08/2017 9:38:28 AM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.





Federal Court of Australia  
 District Registry: New South Wales  
 Division: General

**AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**  
 Applicant

**VIAGOGO AG**  
 Respondent

**IMPORTANT FACTS GIVING RISE TO THE CLAIM**

- 1 The Respondent, viagogo AG (**Viagogo**) is a company incorporated in Switzerland and a foreign corporation within the meaning of that term in section 4 of the *Competition and Consumer Act 2010* (Cth) (the **CCA**). Viagogo facilitates the re-sale of, and arranges delivery of, live sport, music and entertainment tickets (**tickets**) by third party owners of tickets to consumers located in Australia (**Consumers**) via an online secondary ticketing platform on its website at <http://www.viagogo.com/au/> (the **Viagogo Australian website**), which are advertised in Australian dollars under the headings "Top Events in Australia" and "Top International Events".
- 2 This proceeding relates to Viagogo's conduct between 1 May 2017 to 26 June 2017 (**Relevant Period**) in representing to Consumers that it was the official seller of particular tickets, representing that tickets for particular events were scarce or close to running out, representing the price of tickets without including significant fees also payable on purchase, and not disclosing those fees to Consumers who were seeking to purchase tickets until considerably later in the sales process.

**Official Site**

- 3 During the Relevant Period, Consumers who searched for tickets to a particular event on the Google search engine saw advertisements for Viagogo at the top of the search results which included the words "Buy Now, viagogo Official site". The overall impression created by the advertisements, and in particular the use of the word "Official", was that Viagogo was the official seller of the particular tickets that the Consumers had searched for. It was not clear from the advertisements that Viagogo was operating an online secondary ticketing platform on which third party owners of tickets resold their tickets. Consumers who clicked on the link in the advertisements were taken to the Viagogo Australian website which did not disclose, or adequately disclose, to Consumers that Viagogo was not a primary ticket seller.

Filed on behalf of	Australian Competition and Consumer Commission, Applicant		
Prepared by	Frances Williams and settled by Kristina Stern SC and Victoria Brigden of Counsel.		
Law firm	<b>Corrs Chambers Westgarth</b>		
Tel	(07) 3228 9332	Fax	(07) 3228 9444
Email	frances.williams@corrs.com.au		
Address for service	Level 43, 111 Eagle Street, Brisbane, Queensland, 4000		

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## Purchasing tickets through the Viagogo Australian website

- 4 During the Relevant Period, there were a number of webpages on the Viagogo Australian website that a consumer was required to progress through in order to purchase tickets. Screen shots of those webpages taken during the Relevant Period and their defined names for the purposes of this Concise Statement are set out in Schedule 1. Each of the webpages referred to below is a webpage on the Viagogo Australian website.
- 5 On the "Homepage", tickets for different events were advertised with a price "From A\$x" (with x being a dollar amount in Australian dollars). The ticket prices on the "Homepage" were set by the seller, not Viagogo. In addition to that price, Viagogo charged two additional fees: a "VAT and Booking Fee" and a "Secure Ticket Handling Fee" (**Viagogo Fees**). Viagogo Fees comprised a significant percentage of the total ticket prices charged to Consumers, with the booking component of the "VAT and Booking Fee" being the most significant at 27.6% for most events. The existence and amount of Viagogo Fees was not disclosed on the "Homepage" and was only incrementally disclosed throughout the booking process on the Viagogo Australian website.
- 6 On the "Tickets and Seating Selection Page", which appeared after a Consumer selected an advertised event for which he or she was interested in purchasing tickets, the price for the tickets was displayed as "A\$x" (the **initial price**). This was the first time in the booking process that a Consumer could select a ticket based on location within a venue and price within a displayed range of prices. On this page, for at least part of the Relevant Period, there was no indication that Viagogo Fees were payable in addition to the stated prices.
- 7 Tickets available for Consumers to purchase through the Viagogo Australian website on the "Tickets and Seating Selection Page" on 18 May 2017 included:
- a) a ticket for a seat in the Grand Circle section at the Princess Theatre in Melbourne to attend "The Book of Mormon" on 20 May 2017 for A\$135 per ticket (**Book of Mormon ticket**);
  - b) three tickets for seats in the Bronze section of the Gabba cricket ground in Brisbane to attend the Ashes cricket test match on 26 November 2017 for A\$110.05 per ticket (**Ashes tickets**); and
  - c) two tickets for seats in the Upper Tier section at Rod Laver Arena in Melbourne to attend a Cat Stevens concert on 27 November 2017 for A\$225 per ticket (**Cat Stevens tickets**), (collectively **18 May Advertised Events**).
- 8 After a Consumer selected the ticket he or she wished to purchase, the Consumer progressed to the "Quantity Selection Page", where a visible ten minute timer began to count down the remaining time the Consumer had to complete the purchase. On this page, for at least part of the Relevant Period, the price for the relevant tickets was displayed as "SUBTOTAL AU\$ x" in bold black font, with the words "+ *Booking, Handling and VAT*" in smaller, light grey italicised font below. This was the first time in the booking process that a

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Consumer was informed that further amounts may be payable in addition to the ticket price the Consumer had already selected. No further details about Viagogo Fees were disclosed on this page. The price for the tickets was displayed in this same manner on the next two pages in the booking process: the "Buyer Details page" and the "Delivery Page".

- 9 On each of the "Quantity Selection Page" and "Delivery Page" of the Viagogo Australian website on 18 May 2017, the price of the Book of Mormon ticket was displayed as "SUBTOTAL AU\$135", the price of the Ashes tickets was displayed as "SUBTOTAL AU\$330.15", and the price of the Cat Stevens tickets was displayed as "SUBTOTAL AU\$450".
- 10 After a Consumer progressed in the booking process to the "Payment Page" and inserted his or her payment details and confirmed his or her billing address, the price for the relevant tickets, which was displayed as "SUBTOTAL AU\$ x" in bold black font, was increased to include the "Secure Ticket Handling Fee". For at least part of the Relevant Period, the words "+ *Booking and VAT*" appeared in smaller, light grey italicised font below the price as displayed.
- 11 On the "Payment Page" of the Viagogo Australian website on 18 May 2017, the prices of the tickets for the 18 May Advertised Events were increased by \$4.95 to reflect the "Secure Ticket Handling Fee" amount Viagogo charged for electronic delivery, which was the only method of delivery available. The subtotal prices were: the Book of Mormon ticket "SUBTOTAL AU\$139.95", the Ashes tickets "SUBTOTAL AU\$335.10", and the Cat Stevens tickets "SUBTOTAL AU\$454.95".
- 12 After a Consumer provided his or her payment details and progressed to the "Review Page", the price was displayed as a "TOTAL PRICE AU\$ x". This price included, for the first time, all of the Viagogo Fees and represented a significant increase in price from the initial price represented to Consumers. For 18 May Advertised Events, at this stage in the process, the price of the Book of Mormon ticket increased by \$37.50 to "TOTAL PRICE: AU\$177.45" (which was a 31% increase on the initial price); the price of the Ashes tickets increased by \$91.71 to "TOTAL PRICE: AU\$426.82" (which was a 29% increase on the initial price); and the price of the Cat Stevens tickets increased by \$125 to "TOTAL PRICE: AU\$579.95" (which was a 29% increase on the initial price).
- 13 The total prices of the tickets for the 18 May Advertised Events were able to be quantified by Viagogo by at least the "Delivery Page" of the Viagogo Australian website (if not sooner for the Book of Mormon ticket and Ashes tickets). By that stage in the booking process, Viagogo had all necessary information to calculate the Viagogo Fees because the number of tickets had been selected, Viagogo had information that the purchaser was Australian (so VAT was not payable), and electronic delivery was the only method of delivery available.



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## Quantity or percentage of tickets available for an event

- 14 During the Relevant Period, throughout the booking process for purchasing tickets through the Viagogo Australian website, a number of statements were displayed on the Viagogo Australian website to Consumers which represented that the tickets they were looking for were scarce. These statements included statements as to the number of tickets remaining such as: "Less than 1% of tickets left for this event" or "Less than 1% of tickets remaining", "Only 2% of tickets left", "Tickets are likely to sell out soon", "Only a few tickets left", "Only 8 tickets left", "LAST CHANCE!" and "Tickets for this event are selling fast".
- 15 Viagogo did not disclose at any time throughout the booking process for purchasing tickets that the references to the number or percentage of tickets still available for any of the events were references to the number or percentage of tickets available for purchase through the Viagogo Australian website only, and not references to the total number or percentage of tickets available to the event, including those available from other ticket sources.

## SUMMARY OF RELIEF SOUGHT FROM THE COURT

- 16 The Applicant seeks the relief set out in the accompanying Originating Application, comprising declarations under s21 of the *Federal Court Act 1976* (Cth), orders for pecuniary penalties under s224 of the Australian Consumer Law (ACL), injunctions pursuant to s232 of the ACL, corrective publication orders and orders requiring Viagogo to implement a compliance program under s246 of the ACL, and costs.

## PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

- 17 By using the word "Official" in its advertisements on Google during the Relevant Period, and failing to disclose, or adequately disclose, that it was not a primary ticket seller, Viagogo represented that Consumers could purchase official original (i.e. not resold) tickets through the Viagogo Australian website, and/or Viagogo was affiliated with, or had approval from, the relevant team, musician, entertainer or event promoter, organiser or venue (Host) as an "official" agent of the Host to sell original (i.e. not resold) tickets to the Host's event(s) directly to the public. By making these representations in circumstances where the tickets available on the Viagogo Australian website were being resold on an online secondary ticket platform, and Viagogo did not have any such approval or affiliation, Viagogo, in trade or commerce, engaged in misleading or deceptive conduct in contravention of s18 of the ACL; and conduct liable to mislead the public with respect to the nature of the services Viagogo provided in contravention of s34 of the ACL; and made false or misleading representations that Viagogo had an approval or affiliation that it did not have in contravention of s29(1)(h) of the ACL.
- 18 By making representations during the Relevant Period on the "Tickets and Seating Selection Page" of the Viagogo Australian website:
- a) that a Consumer could purchase tickets for the amount stated on that webpage;

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b) on 18 May 2017, that a Consumer could purchase the Book of Mormon tickets for A\$135 each; the Ashes tickets for A\$110.05 per ticket; and the Cat Stevens tickets for A\$225 per ticket,

when in fact a Consumer could not purchase any of those tickets on the Viagogo Australian website for those amounts because he or she also had to pay the Viagogo Fees, Viagogo, in trade or commerce, engaged in misleading or deceptive conduct in contravention of s18 of the ACL; and made false or misleading representations with respect to the price at which Consumers could acquire tickets through the Viagogo Australian website in contravention of s29(1)(i) of the ACL.

- 19 By Viagogo's conduct in making part price representations to Consumers in relation to the tickets for the 18 May Advertised Events by stating, on the "Delivery Page" of the Viagogo Australian website on 18 May 2017, a price for each of the tickets for the 18 May Advertised Events that excluded the Viagogo Fees, which were quantifiable at the time the representations were made, without also specifying, in a prominent way and as a single figure, the price for each of the events that included the Viagogo Fees, Viagogo, in trade or commerce, engaged in misleading or deceptive conduct in contravention of s18 of the ACL; and made a part price representation in contravention of s48(1) of the ACL.
- 20 By making representations during the Relevant Period that tickets were scarce, as referred to in paragraph 14, in the circumstances outlined in paragraph 15, Viagogo engaged in misleading or deceptive conduct in contravention of s18 of the ACL; and conduct liable to mislead the public with respect to the quantity of tickets available to events advertised on the Viagogo Australian website in contravention of s34 of the ACL.

## ALLEGED HARM

- 21 As a result of Viagogo's conduct, Consumers were misled into thinking that they were purchasing original (not resold) tickets from an "official" agent of the Host, at prices which were significantly lower than the actual prices they would be charged in order to purchase the tickets from the Viagogo Australian website, and that there were very few tickets left available for the event, which led them to continue with the process of purchasing tickets on the Viagogo Australian website rather than seeking to buy tickets from alternative sources, potentially at lower prices.

Date: 28 August 2017



Signed by Frances Millicent Williams

Lawyer for the Applicant

This concise statement was prepared by Frances Williams of Corrs Chambers Westgarth and settled by Kristina Stern SC and Victoria Brigden of Counsel

# Released under FOI

## Certificate of lawyer

I, Frances Williams, certify to the Court that, in relation to the concise statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 28 August 2017

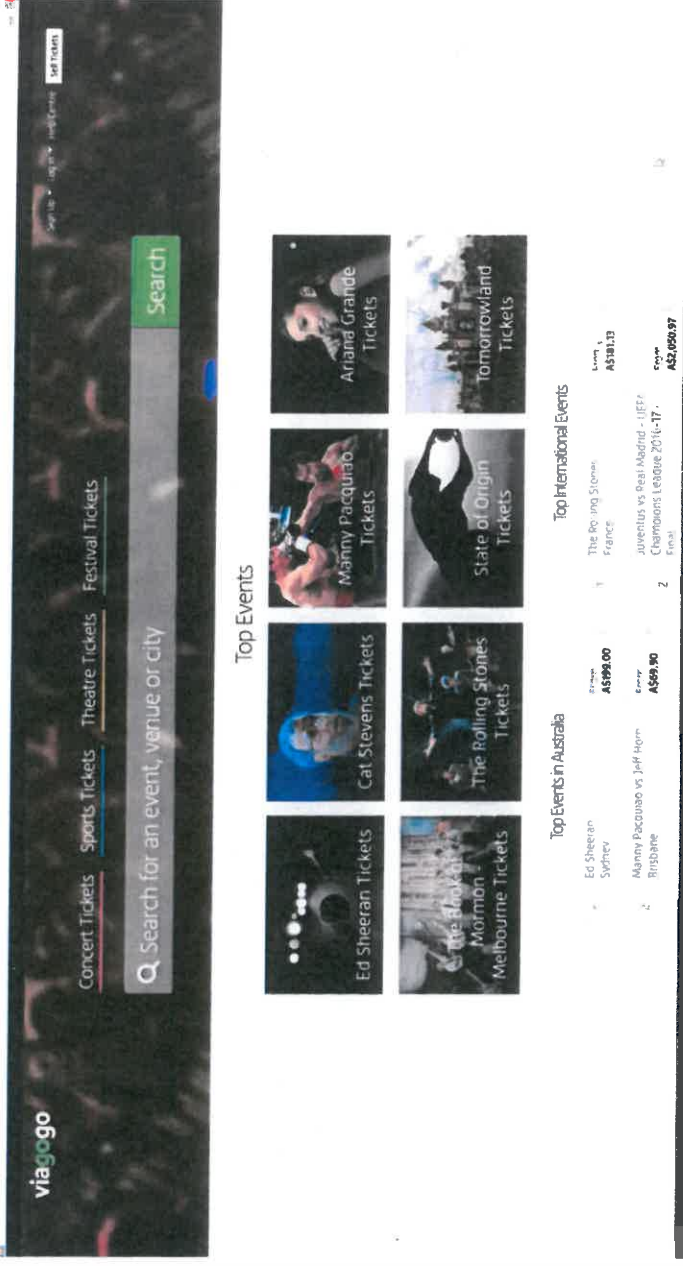


Signed by Frances Millicent Williams

Lawyer for the Applicant

**Schedule 1 – Webpages in the Viagogo Booking Process**

During the Relevant Period, as a Consumer navigated through the process of purchasing tickets on the Viagogo Australian website, the Consumer was taken to a number of webpages in the following order:

# Order	Defined Page Name	Image
(1)	<p>Homepage:  <a href="https://www.viagogo.com/au">https://www.viagogo.com/au</a></p>	 <p>The screenshot shows the Viagogo homepage with a dark background. At the top, there are navigation tabs: Concert Tickets, Sports Tickets, Theatre Tickets, and Festival Tickets. Below these is a search bar with the text 'Search for an event, venue or city' and a green 'Search' button. The main content area features several event tiles: Ed Sheeran Tickets, Cat Stevens Tickets, Manny Pacquiao Tickets, Ariana Grande Tickets, Tomorrowland Tickets, The Rolling Stones Tickets, and Juventus vs Real Madrid Tickets. At the bottom, there are two sections: 'Top Events in Australia' and 'Top International Events'. The 'Top Events in Australia' section lists Ed Sheeran Sydney (Price: AS\$99.00) and Manny Pacquiao vs Jeff Horn Brisbane (Price: AS\$9.90). The 'Top International Events' section lists The Rolling Stones France (Price: AS\$11.13) and Juventus vs Real Madrid - UEFA Champions League 2016/17 (Price: AS\$268.97).</p>

(2)

**Category Specific Page**  
If the event was not on the Homepage, a Consumer could have clicked on, for example, the "concert tickets", "sports tickets", "theatre tickets" or "festival tickets" button at the top of the Homepage and gone to those specific pages.



(3)

**Event Specific Page**

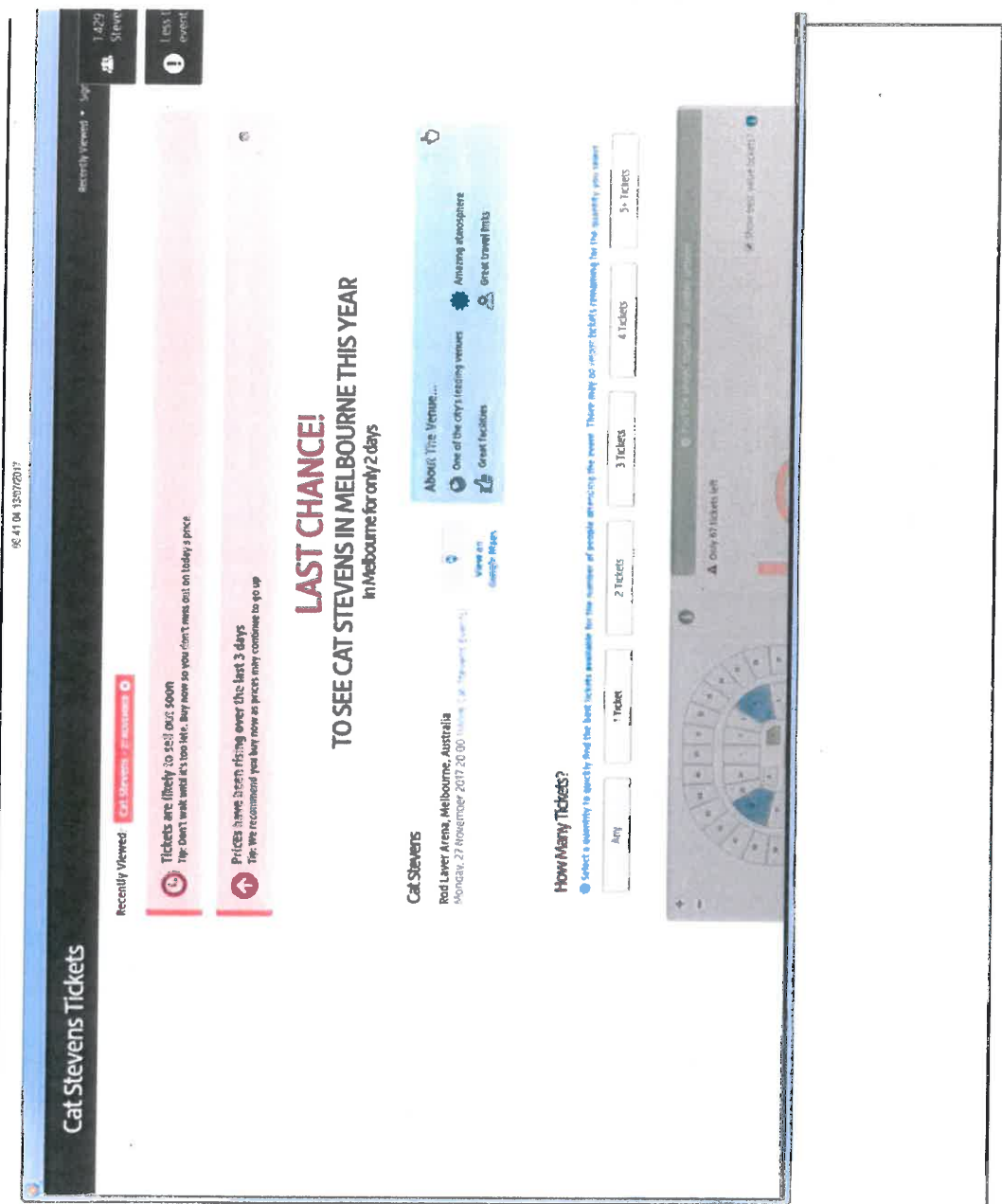
The Consumer was directed to this page upon selecting the event from either the Homepage or the Category Specific Page.

This page provided a brief description of the event.

The screenshot shows the 'Cat Stevens Tickets' page. At the top, there is a navigation bar with 'Recently Viewed', 'Sign Up', and 'Log In'. Below this is a header with 'Cat Stevens Tickets' and a 'TICKETS ON SALE TODAY' badge. The main content area features a profile picture of Cat Stevens, the event title 'Cat Stevens Tickets', and a description: 'One of the great contemporary songwriters, Cat Stevens will take you on a journey of music and meaning to places you never thought you would go. Cat Stevens will be performing live with his band, The Cat Stevens Band, at the Sydney Opera House on Wednesday 22 November 2017. Tickets are available now. Get yours today!'. A red banner indicates '1,420 other people are viewing Cat Stevens Tickets'. Below this is a search bar labeled 'Search by location'. A list of dates and locations is displayed, including Perth, Adelaide, Melbourne, and Melbourne, Australia. A 'View Tickets' button is visible for each date. A warning icon indicates 'About to sell out - only few tickets left'.



(4) **Tickets and Seating Selection Page**  
 On this page the Consumer was required to identify the quantity of the tickets he/she wished to purchase and select seats from the available options.



11:47:40 14/07/2017

**Cat Stevens**  
 Rod Laver Arena, Melbourne, Australia  
 Monday, 27 November 2017 20:00 [View on Google Maps](#)

**In Melbourne for only 2 days**

About The Venue...  
 One of the city's leading venues Amazing atmosphere   
 Great facilities [Great travel links](#)

**I would like 2 tickets to see Cat Stevens**

**Less than 1% of tickets left for this event**

**Only 24 tickets left**

**Section: Upper Tier**  
 2 tickets  
 Price: A\$225.00  
 Buy

**Section: Upper Tier**  
 2 tickets  
 Price: A\$250.99  
 Buy

**Section: 30 | Row PP**  
 2 tickets  
 Price: A\$280.80  
 Buy

**Section: 22 | Row R**

**Sorry, we've had to turn off the interactive Seat Map for this event as many customers are trying to purchase tickets at this time.**

**SELECT AREAS**

- Floor
- Upper Tier
- Lower Tier

**Only 24 tickets left**

**Only 24 tickets left**

**Only 1 tickets left**



(5)

Quantity Selection Page

On this page the Consumer was required to confirm the number of tickets he/she intended to purchase.

09 49 48 13072017

### Cat Stevens Tickets

You've just scored the cheapest tickets in Section Upper Tier 7g! These are the last tickets at this price. Don't wait until it's too late!

These tickets will no longer be reserved for 09:49

Please note that these tickets may not be available at this price if you release them

**Cat Stevens**  
 Monday, 27 November 2017 20:00  
 The Gabba, Brisbane, Australia  
 Section: 7500 Tier 7g Most popular section  
 Notes:  Unreserved seats  Guaranteed to arrive in time

All of our tickets are 100% guaranteed

Please confirm how many tickets you would like to purchase

Number of Tickets: 2  
 Price per Ticket: AUS 225.00  
 SUBTOTAL: AUS 450.00

Over 33 people have bought this ticket

About The Venue...  
 One of the city's leading venues  
 Amazing atmosphere  
 Great facilities  
 Great view from every seat  
 Comfortable seats  
 Great travel links

Continue with 2 tickets

Secure Checkout

### 2 YOUR DETAILS

(6)

Buyer Details Page

On this page the Consumer was asked to provide his/ her contact details, including an Australian telephone number.

This page will not appear if the Consumer had already logged into his/her Viagogo account.

RF 46 28 13/07/2017

### Cat Stevens Tickets

QUANTITY SELECT ON 1

These tickets will no longer be reserved in: 08 34

Please note that these tickets may not be available at the price if you release them

**Cat Stevens**  
Monday, 27 November 2017 20:00  
The Elvina Melbourne, Australia  
Less than 7% of tickets remaining

Notes:  
 Unreserved seats  
 Guaranteed to arrive at home  
 Never be sold together

Only a few tickets left  
 Price per ticket: AUS 225.00 per ticket  
 Number of Tickets: 2  
 SUBTOTAL: AUS 450.00

Quantity: 1  
 First Name: Mitchell  
 Last Name: Shepherd  
 Email Address: mitchell.shepherd@sccc.gov.au  
 Confirm Email Address: mitchell.shepherd@sccc.gov.au  
 Phone Number: 07 3635 4689  
 Australia (+61)

Secure Checkout

3 DELIVERY  
 4 PAYMENT  
 5 REVIEW

(7)

**Delivery Page**

On this page the Consumer was required to choose the delivery method of the ticket or tickets (if different delivery methods were available).

In this example, there is only one delivery method available.

The screenshot shows the 'Cat Stevens Tickets' website interface. At the top, the date '06/04/16 19:07:2017' is visible. The main navigation bar includes 'QUANTITY SELECTION' (1), 'YOUR DETAILS' (2), and 'E-TICKETS' (3). The current step is '1 QUANTITY SELECTION', with a sub-header 'Choose Your Delivery Method'. A warning message states: 'These tickets will no longer be reserved for 07:58. Please note that these tickets may not be available at this price if you release them.' Below this, the event details are: 'Cat Stevens Monday, 27 November 2017 20:00 Rod Laver Arena, Melbourne, Australia'. A note indicates 'Less than 1% of tickets remaining'. The 'Section' is 'Lower Tier' and 'Notes' include 'The restricted area is not available for purchase. Select the standard admission.' The 'Price per Ticket' is 'AUS 225.00 per ticket' and the 'Number of Tickets' is '2'. The 'SUBTOTAL' is 'AUS 450.00'. A 'Continue' button is present, along with a 'Secure Checkout' icon and a 'McAfee SECURE' logo. A 'TV' logo is also visible in the bottom right corner of the page.

(8)

Payment Page

On this page, the Consumer provided his/her Credit or Debit Card details and confirmed his/her Billing Address.

09:58:54 13/07/2017

DELIVERY

This event is in high demand, so these tickets may not be available at this price later

Choose Your Payment Method

Credit or Debit Card

Card Number

Expiry Date

Name as it appears on your card  
Mitchell Shepherd

Card Security Code

Billing Address

Mitchell Shepherd  
Level 24, 400 George Street  
Brisbane QLD 4000  
Australia

Add a new address +

---

These tickets will no longer be reserved in: 07:00

Secure My Tickets

Please note that these tickets may not be available at this price if you release them

Priority Seat

110 other people are viewing this event

There is 1 person viewing these tickets!

Cal Stevens

Monday, 27 November 2017 20:00  
Pro Leger arena, Melbourne, Australia

Less than 7% of tickets remaining

Section: Upper Tier Most popular section

Notes

- Unrestricted view
- Guaranteed to arrive in time
- May be washed together

Only a few tickets left

Price per Ticket: AU\$ 225.00 per ticket

Number of Tickets (incl): 2

Secure Ticket Handling: AU\$ 46 per ticket

SUBTOTAL: AU\$ 454.98

7 tickets left

**(9)**

**Review Page**

This was the final webpage in the booking process before purchase.

06:54:30 13/07/2017

**Yes, and I can't wait!**

**No, I've seen Cat Stevens before**

**These tickets will no longer be reserved in: 05:37**

**These tickets may not be available at this price if you release them**

**Over 10 million fans have gone to their favourite events!**

**Cat Stevens**

**Monday, 27 November 2017 20:00**

**God Laver Arena Melbourne Australia**

**Less than 1% of tickets remaining**

**Only a few tickets left**

**Price per ticket: AUS 225.00**

**Number of Tickets (left): 1**

**VAT and Booking Fee: AUS 52.50 per ticket**

**Secure Ticket Handling: AUS 48.48 per ticket**

**TOTAL PRICE: AUS 579.95**

**Congratulations! You will be credited with 30,036 points!**

**About The Venue...**

- One of the city's leading venues
- Amazing atmosphere
- Great facilities

Your ticket location in the venue

**Screen: 00074**

- More computer screens
- More computer screens
- More computer screens
- More computer screens
- More computer screens

**Don't forget to send your friends a reminder to pay you back!**

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