

Friday 3 March 2017

Mr Scott Gregson
Acting Chief Operations Officer
Australia Competition and Consumer Commission
Via email

RE: Complaint against ticket resellers Viagogo and Ticketmaster Resale

The following complaint outlines three areas where CHOICE believes Viagogo and Ticketmaster Resale have breached the Australian Consumer Law by engaging in misleading and deceptive conduct in relation to the resale of event tickets:

- 'Fast selling events', 'last tickets remaining' and 'cheapest ticket' misleading claims (Viagogo)
- Misleading refund claims (Ticketmaster)
- Drip pricing practices (Viagogo)

CHOICE is of the view that the issues raised in this letter are a clear breach of the Australian Consumer Law's prohibitions against misleading and deceptive conduct (s18) and false and misleading representations (s29). We encourage the ACCC to take action, and are happy to offer any assistance needed.

Kind regards,

Matt Levey
Director, Campaigns, Content & Communications

Misleading 'last remaining tickets', 'last chance' and demand claims on Viagogo

Viagogo deliberately misleads consumers into thinking that tickets are almost sold out, sold out on other platforms or in high demand to persuade consumers to make an immediate purchase on their platform.

Case study: Trombone Shorty at the Metro Theatre, Sydney¹

CHOICE visited the Viagogo and Ticketek websites on Thursday 2 March to compare the prices of tickets for 'Trombone Shorty & Orleans Avenue' a music act playing in Sydney in April.

Music act Trombone Shorty is playing at the Metro Theatre in Sydney on April 10, 2017. Tickets are available through the Ticketek platform and general admission tickets were available for purchase at the time of this complaint. Tickets are available for general admission at a price of \$73.30 + \$5.30 fee for delivery of tickets.

At the time of this complaint, tickets for this show were also available on ticket reseller platform Viagogo. No tickets were available for resale on Ticketmaster Resale for this concert. The listed price for tickets on Viagogo at the time of viewing was \$349.00, which was then increased to \$441.20 to include VAT, booking fee and 'Secure Ticket Handling'.

The booking process appears to be deliberately designed to confuse consumers on the availability and cost of tickets.² Viagogo makes multiple misleading claims throughout the booking process, including:

- "LAST CHANCE! To see Trombone Shorty in Sydney"
- "You've just scored the cheapest ticket in Section: General Admission"
- "Tip: These are the last tickets left at this price, don't wait until it's too late!"
- "Tickets for Trombone Shorty & Orleans Avenue are in high demand"
- "warning sign* Last ticket in this section!"

¹ See Appendix A for screenshots of the booking process where these claims are made

- “*warning sign* Less than 1% of tickets left for this event”
- “*warning sign* Only 1 tickets [sic] left”
- “*warning sign* Only a few tickets left”

Given that tickets were easily available on the original ticket seller’s website (Ticketek), it seems highly unlikely that the Viagogo claims above were accurate. Making these claims is used for the sole purpose of pushing the consumer to purchase the resale ticket. Any claims about price should reflect that the cheapest available price is for Viagogo only, in order to not mislead consumers.

Case study: ADELE, ‘cheapest tickets in town’

CHOICE visited the Viagogo and Ticketmaster websites on March 3, 2017 to compare the prices of tickets to ADELE on Sunday 5 March, 2017 at The Gabba in Brisbane.³

At the time of searching, there were still tickets available for purchase on the original ticket seller’s website, Ticketmaster. The cheapest ticket on Ticketmaster was listed at \$105.95 (D Reserve).

On the same day, D reserve tickets on Viagogo were listed for ADELE on Sunday 5 March at \$143.40 plus an additional \$45.05 booking fee. Viagogo advertised these tickets as the “Cheapest in Brisbane!”.

The site should clearly indicate that the tickets are the cheapest available on their website, rather than the cheapest available in a given city as tickets were still freely available on the original seller’s website. As tickets on the original seller’s website are 66% of the Viagogo listed price, ‘Cheapest in Brisbane’ is a misleading claim.

Misleading refund claims

Ticketmaster Resale makes claims that their tickets are guaranteed. Should a consumer encounter a problem using their ticket, they are lead to believe they’ll be protected in all instances:

³ See Appendix B

“Ticketmaster promised you will receive valid tickets in time for your event when purchased through the Ticketmaster Resale Marketplace, or you’ll get your money back.”⁴

However, CHOICE found that Ticketmaster Resale has a specific term that prohibits consumers from contacting a venue directly to check the validity of tickets, highlighted in section 3.7 of the Ticketmaster Resale Buyer Agreement:

“3.7 Queries and Ticket Validity. All queries relating to tickets purchased via the Website must be directed to Ticketmaster Resale at resale.service@ticketmaster.com.au rather than to the relevant venue, promoter or producer. Subject to the applicable ticket, promoter/producer and venue terms and conditions, if a ticket You purchase via the Website does not give You entrance to the applicable event, We will refund 100% of the purchase price You paid for that ticket as part of our Ticketmaster Guarantee. However, if You breach the applicable ticket, promoter/producer or venue terms and conditions (or if You breach the Agreement including, without limitation, by directing any queries relating to the tickets to the venue or promoter/producer rather than Ticketmaster Resale) and as a result are not able to gain entry to the event, then You are not entitled to receive any refund under the Ticketmaster Guarantee.”⁵

Where tickets originally sold through Ticketmaster are listed on Ticketmaster Resale, Ticketmaster has ticket verification processes in place to protect consumers. Where tickets have originally been purchased through other outlets, Ticketmaster Resale is not able to fully guarantee that the end buyer will be able to access an event, particularly if the terms of the original ticket sale prohibit onselling, despite making claims that tickets are guaranteed.

Ticketmaster Resale does not disclose which listings are for "verified" tickets originally sold through Ticketmaster, and which were bought from other outlets, creating confusion for consumers.

⁴ See Appendix C

⁵ Ticketmaster Resale Buyer Agreement: <https://resale.ticketmaster.com.au/Legal/Legal?content=BuyerAgreement>, accessed 02/03/2017

The best way for a consumer to know in advance if their ticket is valid is to contact the venue to check the ticket. However, because on-selling may breach the terms and conditions of the original ticket sale, this may result in the venue voiding the on-sold ticket.

In the first instance, the customer contacting the venue regarding their on-sold ticket means that they are no longer covered by Ticketmaster's guarantee in the event that they are refused entry to the event. In the second instance, where the purchasing of the ticket through an unofficial channel has "breach[ed] the applicable ticket, promoter/producer or venue terms and conditions", this again means that they are not covered by Ticketmaster's guarantee if refused entry.

In effect, where the terms and conditions of a ticket sale prohibits on-selling, the very act of using Ticketmaster Resale's service will render a ticket invalid, and allow Ticketmaster to disclaim refund responsibilities under their own guarantee.

Drip pricing

Viagogo also uses drip pricing tactics to trick consumers into paying large fees for resale tickets. Viagogo is advertising the cost of the ticket without disclosing specific, unavoidable booking fees until the end of the booking process. The following example illustrates how a consumer is not aware of the exorbitant 25% VAT and Booking Fee until the point of payment.

Case study: Viagogo drip pricing, Trombone Shorty ticket⁶

Ticket selection confirmation:

The ticket fee of \$349 is the only cost displayed, with a disclaimer stating '+ Booking, Handling and Tax'.

Please confirm how many tickets you would like to purchase   

Number of Tickets	<input type="text" value="1"/>
Price/Ticket	AU\$ 349.00
SUBTOTAL	AU\$ 349.00
	<small>+ Booking, Handling and Tax</small>



All of our tickets are 100% guaranteed

What does that mean? It means that you can buy with confidence. We **guarantee** that you'll get valid tickets in time for the event.

Over 10 million fans have gone to their favourite events!

Check Out

⁶ All screenshots 02/03/2017

[386546](#), accessed

Ticket delivery method:

At this point in the booking process a 'Secure Ticket Handling' fee is added, at \$4.95.

YOUR DETAILS (4) DELIVERY (3) PAYMENT (2) REVIEW (1)

These tickets will no longer be reserved in: 05:29
[Release My Tickets](#)

Trombone Shorty & Orleans Avenue

Monday, 10 April 2017 18:30
Metro Theatre, Sydney, Australia
Less than 1% of tickets remaining

Section: General Admission

Notes:
Unrestricted view (what's this?)

Only a few tickets left

Ticket price	AU\$ 349.00 per ticket
Number of Tickets (Edit)	1
Secure Ticket Handling	AU\$ 4.95
SUBTOTAL	AU\$ 353.95

+ Booking and VAT

Choose Your Delivery Method

E-Ticket
E-Ticket - Electronic Delivery

[PDF](#)

[Continue](#)

Secure Checkout

Payment method:

At this next stage an additional \$87.25 is added to the ticket price (25% of original listed ticket price).

YOUR DETAILS (4) DELIVERY (3) PAYMENT (2) REVIEW (1)

These tickets will no longer be reserved in: 05:13
Release My Tickets

27 other people are viewing Trombone Shorty tickets

Trombone Shorty & Orleans Avenue
Monday, 10 April 2017 18:30
Metro Theatre, Sydney, Australia
Less than 1% of tickets remaining
Section: General Admission
Notes: Unrestricted view (what's this?)
Only a few tickets left

Ticket price	AU\$ 349.00 per ticket
Number of Tickets (Edit)	1
Subtotal	AU\$ 349.00
VAT and Booking Fee	AU\$ 87.25
Secure Ticket Handling	AU\$ 4.95
TOTAL PRICE	AU\$ 441.20

Choose Your Payment Method
Credit or Debit Card

You will be able to review and edit these details before you place your order.

Secure Checkout

Viagogo does not disclose with consumers that their unavoidable additional fees are \$4.95 and 25% of the ticket cost respectively. Viagogo drips these costs to the consumer, attempting to mislead consumers into purchasing the ticket at an inflated cost.

Viagogo should disclose their fees in the first stage of ticket selection, instead of incrementally.

Appendix A: Viagogo resale of Trombone Shorty, Sydney⁷

Official concert listing on Ticketek Australia⁸

TICKETEK

1. Venue / Date 2. Choose Tickets 3. Sign In / Create Account 4. Payment 5. Confirmed

Trombone Shorty
 Metro Theatre
 624 George Street, Sydney NSW 2000
 Mon 10 Apr 2017 7:30PM

Venue Map

GA
 TICKETEK
 GENERAL ADMISSION

Price Category

Dancefloor Over 18s

Select a Ticket Type and Quantity

Ticket type	Price Per Ticket/Item [†]	Qty
Adult (Over 18's ONLY - Photo ID req)	\$73.30	1

How would you like to receive your tickets?[†]

- Mobile Ticket - The fastest way to get your tickets! \$5.30
- Print-At-Home ezyTicket \$5.30
- Venue / Pre-Paid Collection Outlet \$5.30
- Regular Mail \$5.30

IMPORTANT: Web enabled smartphone eg. iPhone required. Tickets are viewed on a mobile web browser. You will be sent an SMS link to open your ticket. [Mobile ticket FAQs](#).

† Pricing and Fee Information

For this event, a one-off service & handling fee of \$5.30 per transaction applies on all purchases. The actual service and handling fee may vary depending on the venue and method of delivery selected, or where you add other items to your basket. All

⁷ All screenshots obtained through the booking process at <http://www.viagogo.com/Concert-Tickets/Jazz-and-Blues/Trombone-Shorty-Tickets/E-1986546>, accessed 02/03/2017

⁸ Trombone Shorty original seller page, Ticketek <https://premier.ticketek.com.au/shows/show.aspx?sh=TROMBONE17>, accessed 02/03/2017

Viagogo: cheapest ticket claim:

 **You've just scored the cheapest ticket in Section: General Admission**
 Tip: These are the last tickets left at this price, don't wait until it's too late!

These tickets will no longer be reserved
in: 07:13

Release My Tickets

Please confirm how many tickets you would like to purchase   

Number of Tickets

Price/Ticket AU\$ 349.00

SUBTOTAL AU\$ 349.00
+ Booking, Handling and Tax



All of our tickets are 100% guaranteed

What does that mean? It means that you can buy with confidence. We *guarantee* that you'll get valid tickets in time for the event.

Over 10 million fans have gone to their favourite events!

Check Out

Secure Checkout



Viagogo: only 1 ticket left claim:

Trombone Shorty & Orleans Avenue
 Metro Theatre, Sydney, Australia
 Monday, 10 April 2017 18:30 ([More Trombone Shorty Events](#))

⚠ Less than 1% of tickets left for this event



General Admission

How Many Tickets?

Any

1

2

3+

⚠ Only 1 tickets left

Show best value tickets? ?

Section	Price
General Admission E-Ticket ✓ Unrestricted view (what's this?)	A\$349.00 1 ticket ⚠ Last ticket in this section!

Buy

Viagogo: tickets in high demand claim:

Tickets for Trombone Shorty & Orleans Avenue are in high demand

These tickets are not yet available, please wait...

You are next in the queue to buy this ticket

Trombone Shorty & Orleans Avenue
 Monday, 10 April 2017 18:30
 Metro Theatre, Sydney, Australia
 Notes:
 ✓ Unrestricted view (what's this?)



Section
General Admission



Please wait - This may take a few minutes

Tickets for this event are in high demand. If you are no longer interested, please open up your place in the queue to another fan.

Viagogo: only a few tickets left claim:

YOUR DETAILS
DELIVERY
PAYMENT
REVIEW

4
3
2
1
✓

These tickets will no longer be reserved
in: 05:29

Release My Tickets

Trombone Shorty & Orleans Avenue
 Monday, 10 April 2017 18:30
 Metro Theatre, Sydney, Australia
⚠ Less than 1% of tickets remaining
 Section: General Admission
 Notes:
 ✓ Unrestricted view (what's this?)

⚠ Only a few tickets left

Ticket price	AU\$ 349.00 per ticket
Number of Tickets (Edit)	1
Secure Ticket Handling	AU\$ 4.95
SUBTOTAL	AU\$ 353.95
	+ Booking and VAT

Choose Your Delivery Method

E-Ticket
E-Ticket – Electronic Delivery 

Continue

 Secure Checkout


Viagogo: last chance, likely to sell out claim:

The screenshot shows a ticket listing for 'Trombone Shorty & Orleans Avenue' at the Metro Theatre in Sydney, Australia, on Monday, 10 April 2017 at 18:30. The page includes a 'Recently Viewed' header with links to 'Trombone Shorty & Orleans Avenue - 11 APRIL' and 'Snarky Puppy'. A pink banner states 'Tickets are likely to sell out soon!' with a tip to buy now. A dark notification box indicates '16 other people are viewing this event' and 'Less than 1% of tickets left for this event'. The main heading reads 'LAST CHANCE! TO SEE TROMBONE SHORTY IN SYDNEY'. Below this, the event details are listed: 'Trombone Shorty & Orleans Avenue', 'Metro Theatre, Sydney, Australia', and 'Monday, 10 April 2017 18:30 (More Trombone Shorty Events)'. A 'How Many Tickets?' section prompts the user to select a quantity to find the best tickets, with options for 'Any', '1 Ticket', '2 Tickets', and '3+ Tickets'.

Appendix B: Viagogo resale of ADELE, Brisbane

Official concert listing on Ticketmaster:

ticketmaster® Search Artist, Team, or Venue

New South Wales/Australian Capital Territory ▾ My Account ▾ Help

Music Sports Arts, Theatre & Comedy Family & Attractions Gift Cards Buy & Sell Guaranteed Tickets **ticketmaster® RESALE**

Adele Live 2017
(8)
The Gabba, Woolloongabba, QLD
Sun 5 Mar 2017, 07:30 PM
Details: [Adele](#)
Please Note: Fees & Charges: A Handling Fee from \$7.70 per transaction applies. In addition a delivery fee may apply depending on the mode of delivery see [...more](#)
[Event Info](#) | [Onsale Times](#) | [Price Range](#) | [Ticket Limits](#) | [Delivery, Handling & Ticket Fees](#)

FIND SEATS FOR ME *Prices include per ticket fees but exclude per transaction delivery & handling fees which will be added to the final total

QTY: 1 | TICKET TYPE: Reserved Seating | PRICE & SECTION: AU \$105.95, Arena Fl... Search Again

REQUEST ACCESSIBLE TICKETS

Per order delivery and/or handling fees are added when applicable.

Best Available from Venue

These tickets held for: 01:14
Sec SEC 75 \$105.95 ea
Row GG, Seats 357 Buy
Grandstand Seating, 4. D Reserve Seating, ... more

Reserved Seating
TICKET PRICE \$105.95 x 1
HANDLING FEE \$7.70
SUBTOTAL (Reserved Seating) \$113.65
Prices are in AU\$

More tickets from venue

PLEASE SELECT A SEAT MAP
Adele Live 2017

Viagogo: Cheapest in Brisbane!

Search by location

All cities

Sat 04 Mar 2017 19:30 🔥 Selling fast!	In 2 DAYS	📍 Brisbane, Australia Gabba - Brisbane Cricket Ground Adele	View Tickets
Sun	In	📍 Brisbane, Australia	Cheapest in Brisbane!

5

3/03/2017 3:01 PM

e Tickets | Adele Tour 2017 and Concert Tickets - viagogo

<http://www.viagogo.com/Concert-Tickets/Alternative-and-Indie/Adele-Ti..>

05 Mar 2017 19:30 🔥 Selling fast!	3 DAYS	Gabba - Brisbane Cricket Ground Adele	View Tickets
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Appendix C: Ticketmaster Resale Guarantee

Our commitment to you as a Buyer

close 



Ticketmaster promises you will receive valid tickets in time for your event when purchased through the Ticketmaster Resale Marketplace, or you'll get your money back.

If a problem arises you won't have to deal direct with the seller. Ticketmaster Resale will step in on your behalf to source replacement tickets that are comparable or better – at no additional cost to you.

In the unlikely event we can't get the seller to deliver your original tickets or we can't source replacements on your behalf, we promise that you will get 100% of your money refunded.

We're here for you when you need us. Contact us anytime with questions or problems. Our fan support team is here to ensure you have an incredible experience.

The details

If you have a problem with your tickets – if they've not arrived, are the wrong ones or you receive correct tickets but experience problems entering the event, then all you need to do is contact our fan support team and we'll take it from there. There's no additional cost to you for this – it's all part of Ticketmaster Resale's service, committing to create a safe and transparent marketplace for buyers and sellers of tickets.

You can reach us at 1300 651 607 or resale.service@ticketmaster.com.au or by writing to Ticketmaster Resale at Level 5, 364 Lonsdale Street, Melbourne, Victoria 3000. If you're contacting us before the event has taken place use phone or email to make sure we have time to try to source alternative tickets.

Contact us at any time prior to the event, although please note if it's within 5 days of the event taking place it may be more difficult to source alternative tickets and your options may be limited to receiving a refund. If you are contacting us after the event has taken place because you experienced problems with your tickets, you must do so within 5 days of the event to make sure we can take the issue up with the seller in good time. However, please note that if you received incorrect tickets but didn't contact us before the event took place you won't be able to claim under the Ticketmaster Guarantee. You should check your tickets carefully when they arrive to make sure they match the ones you purchased.

This commitment is given to you by Ticketmaster Resale in addition to your rights and remedies as a consumer under applicable law (including the Australian Consumer Law) in respect of goods and services supplied by Ticketmaster Resale or third parties. Our services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be acceptable quality and the failure does not amount to a major failure.