New Zealand Court of Appeal decides that Swiss choice of law and jurisdiction clause is an unfair term

The New Zealand Court of Appeal has held that a Swiss choice of law and jurisdiction clause in terms and conditions entered into with New Zealand consumers is an unfair term under New Zealand fair trading legislation: *Viagogo GmbH v Commerce Commission* [2026] NZCA 576.

The proceeding was brought by the New Zealand Commerce Commission under the Fair Trading Act 1993 (NZ), which enables the Commerce Commission to apply for a declaration that a term in a standard form consumer contract is an unfair term. The defendant was viagogo, a company incorporated in Switzerland, which operates a global website for the re-sale of tickets to live events. Viagogo uses a Swiss choice of law and jurisdiction clause in its contracts with New Zealand consumers buying tickets on the New Zealand viagogo platform. The clause provides that contracts are to be governed by "the Swiss laws" and that all disputes are to be "resolved exclusively by the competent Courts of Geneva, Switzerland", while also reserving an option for viagogo "of taking legal action against You at Your domicile".

The Court of Appeal decided that the clause is unfair in relation to both choice of law and jurisdiction. It based its conclusion on "[the] lack of transparency [of the clause] as to claims that New Zealand consumers have under New Zealand's local laws". Viagogo had conceded that the clause would not be effective to stop New Zealand consumers from bringing claims against it in New Zealand under New Zealand consumer legislation. But the Court concluded that the clause was still unfair because it did not alert consumers to the limited effectiveness of the clause. This lack of transparency gave "rise to the likely prospect that New Zealand consumers will not pursue any claim they would otherwise have had under the Fair Trading Act in the Disputes Tribunal in New Zealand". For a more detailed analysis of the judgment, please follow this link.