

December 4, 2018

Federal Trade Commission  
Office of the Secretary  
Constitution Center  
400 7th Street, N.W.  
5th Floor  
Suite 5610 (Annex B)  
Washington, DC 20004

Re: FTC to Hold Workshop Examining Online Event Ticket Sale - Agency Seeks  
Input in Advance of March 2019 Workshop; Project No. P18450

On behalf of the National Association of Ticket Brokers (“NATB”), I appreciate the opportunity to submit these comments as part of the Federal Trade Commission’s (“FTC”) examination of online ticket sales ahead of the March 2019 workshop. I hope this information lends additional, helpful context around the primary and secondary ticket markets as the FTC examines the issues and, more specifically, challenges that impact consumers. An open, transparent and competitive primary and secondary resale markets for tickets - free of unfair and harmful restrictions - is in the best interest of consumers.

In our comments we provide a broad overview of the full ticketing ecosystem, as there are many players in the primary and secondary markets. As the FTC outline for the workshop indicates, there are issues that frequently arise in connection with online event ticket sales include practices that prevent consumers from obtaining tickets or mislead consumers. These issues stem from specific practices and activities by marketplace participants in both the primary and secondary market. Importantly, practices that attempt to control ticket supply are ultimately the most influential in terms of affecting ticket prices and consumers’ ability to access tickets for purchase.

As you continue your work examining the ticket market, please feel free to reach out if you have any questions or need further clarification on any of the responses.

Best regards,

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## **I. BACKGROUND AND SUMMARY**

### **A. About The National Association Of Tickets Brokers (“NATB”)**

NATB is a not-for-profit organization that represents professional ticket resellers. NATB has long advocated for the rights of ticket buyers and its membership which, importantly, is comprised of brokers that conduct their businesses under a set of consumer protection measures and Code of Ethics that are in the interest of operating a reputable professional business and serving customers well. NATB is a National Partner of the Council of Better Business Bureaus (“BBB”).

NATB was formed in 1994 with the mission to: (1) promote the highest standards of conduct among ticket brokers involved in the resale of event admission tickets; (2) ensure that consumers and professional ticket resellers have the right and freedom to buy and sell tickets in a secondary marketplace governed by free-market principles, not restrictive and counter-productive laws, rules and regulations; (3) facilitate consumer protection in the secondary ticket market; (4) assure that consumer interactions with NATB Members are conducted with integrity, reliability and convenience; and (5) educate the public concerning the secondary ticket market and ticket-brokering services.

Since its inception, NATB has strenuously advocated for an open secondary marketplace. In turn, NATB and its Members have always recognized that such a market must be free from fraud and deceit to operate properly. Indeed, one of the organizational steps taken by NATB was to establish a Code of Ethics that includes numerous consumer protection measures. A copy of the Code of Ethics is attached hereto at Attachment A. NATB also established Ethical Complaint Procedures to implement the standards and objectives set forth in the Code of Ethics. The procedures allow consumers to file complaints with NATB about the conduct of any NATB Member. A copy of the Ethical Complaint Procedures is attached hereto at Attachment B.

Notably, the consumer protection measures required to be adhered to under the Code of Ethics are more stringent than those in any state, federal or local statute or regulation. For example, NATB Members provide consumers with a 200% refund protection on guaranteed tickets, which helps consumers buy with confidence. The Code of Ethics prohibits the use of computer software commonly known as “bots” which rapidly buy up event tickets before consumers have a fair chance to do so. NATB’s longstanding position on the issue of bots is simple; we are opposed to bots - when tickets go on sale, all purchasers-fans and professional resellers alike-should be competing with one another and not ticket-hoarding software to make a purchase.

In addition to acting in an ethical and professional manner, NATB’s Members are good neighbors in their communities and participate in the NATB charity program, NATB Gives Back. As part of these charitable endeavors, NATB has partnered with the Ronald MacDonal House Charities (“RMHC”). Through that

partnership, NATB Members have contributed tens of thousands of tickets, thousands of volunteer hours and hundreds of thousands of dollars to the RMCH. On October 22, 2010, NATB was made a member of RMHC's prestigious Ray Kroc Heritage Society and recognized on its Donor Wall, located at MacDonald's World Headquarters.

**B. The Evolution Of The Secondary Market In The United States**

When NATB was established in 1994, over 20 states either outlawed the resale of tickets or placed heavy restrictions such as price caps on the amount a ticket could be resold for. There was also a bright line between the primary sale of tickets by content providers and the secondary market. Over the 25 years since NATB's creation, state legislators and regulators have recognized that efforts to outlaw or heavily restrict ticket resale were not only counterproductive but harmed consumers. As a result, those laws have been stricken and only a few states continue to have restrictive laws on the books. This development reflects the simple truth that an open secondary market benefits consumers in a number of ways. First, it allows resale to be conducted by professional resellers. It is beyond dispute that outlawing resale does not end the practice, which has been in existence since Shakespearian times. Rather, it drives the business into darkness where fraud is more likely to occur versus in the transparent light of day. Second, the opening of markets allows the implementation of consumer protection measures which many states have adopted. Third, restricted markets limit supply which in turn increases the cost to consumers. The reality of a closed market is that it does nothing to change demand. But by limiting supply, prices increase. Thus, while people bemoan the current cost of high demand events, restrictions on resale will only drive the prices higher as historical experience confirms. The more efficient approach is to let market forces control the price, so long of course as consumers are protected. Indeed, this works so well that, as the Government Accountability Office ("GAO") re-affirmed in 2018, a large percentage of tickets in the resale marketplace sell below the cost charged on the initial sale.

Over time, the opening up of the resale market has led to a second trend: The blurring of the line between the primary and secondary markets. Almost every sports team has its own "authorized" ticket resale marketplace. Artists and concert promoters routinely divert tickets from the general public on-sale to programs and marketplaces that engage in resale. Live Nation and its wholly owned subsidiary Ticketmaster, who have a stranglehold on each and every step in the ticketing process from running venues, managing artists and ticketing, own and operate ticket resale marketplaces through Ticketmaster Resale and Ticketsnow.com. So, as you can see, the primary market is very much part of the secondary market. In fact the GAO reports that the second largest player in the secondary market, behind StubHub, is now Ticketmaster. As discussed in detail below, the content providers and Ticketmaster do not want to end resale, instead they want to control it. This has led to a number of anti-consumer practices that the FTC should address.

### C. The Ticketing Ecosystem

Efforts are ongoing in many different forms that restrict the purchase, sale and transfer of tickets. To understand the playing field, it is important to understand the various participants.

Tickets originate from “primary market” issuers, namely directly from a team, music artist or box office and in many cases through Live Nation’s well-known ticket issuing company, Ticketmaster. Ticketmaster serves as the worldwide largest contract issuer of tickets in the primary market. The company also owns or manages the vast majority of venues where music artists perform. Many teams, venues and artists contract Ticketmaster to manage and issue their tickets. Notably, it is very common now for Ticketmaster to also sell its resale service as a value-add bundle. In these arrangements the company shares fee revenue it collects from ticket resale with its clients. Bear in mind that fees are paid in the initial sale of this same ticket, therefore fees are foisted upon consumers for a second time, on the same ticket, when resold on the Ticketmaster platform (versus through a different resale channel). These resale agreements may also come with additional strings attached for the ticketholder (which we outline below), like a price floor for resale where the minimum price for a resale ticket neglects actual supply and demand market value – which is often impacted by things like the weather or a team’s winning or losing streak. When this happens, if consumers won’t bear the arbitrary price floor, purchased tickets can go to waste and the seat goes empty.

The “secondary resale market” for tickets is where tickets are resold or transferred by ticketholders (akin to pre-owned vehicles) and is comprised of several components:

- **Exchanges.** These marketplace sites, like StubHub, SeatGeek, and Vivid Seats, provide a platform for ticketholders to resell their tickets. While these exchanges are best known for their easy accessibility online to buy, sell and transfer tickets, some have agreements with teams, leagues, and music artists to provide ticketholders with an exclusive resale platform. Exchanges do not necessarily own tickets, rather they provide a platform where a ticketholder can market and sell tickets to a buyer.
- **NATB Ticket Brokers.** The Members of the NATB are professional ticket resale companies located throughout the U.S., Canada and abroad. Each abides by a Code of Ethics and provides a 200% money back guarantee to customers. Many Members of NATB have been in business for 20 years or longer and their success is built on repeat customers. NATB Members have physical places of business and many employ teams of staff. They are investors in live events in that they pay the original seller their full asking price plus all applicable taxes and fees, thereby transferring any financial risk from the original issuer to the broker. While the intention of the broker is to earn a profit on their investment, there is risk. It is estimated that over 40% of

tickets on the resale market sell for below face value.

- **Non-NATB Ticket Brokers.** Not all ticket brokers are the same and therefore brokers should not be painted with one broad brush. Brokers who are not Members of NATB or who have not applied for NATB membership cannot and should not be assumed to follow the same Code of Ethics and business practices as NATB Members (such as providing a refund guarantee). The BBB, National Consumers League, Angie’s List, some sports teams and certain state Attorneys Generals advise customers to ensure their broker is a Member of the NATB.
- **Season Ticket Holders.** Many season ticket holders resell some of their purchased tickets to, in part, recoup the ever-rising cost of ticket packages. It is vital that these season ticket holders have a choice in how they market and sell their tickets and that their tickets be freely transferable. Attempts underway to limit that ability would lead down a path to monopolistic practices, anti-competitive measures and higher prices.
- **Rogue Ticket Resellers.** These are the occasional reseller who are often the ones who post tickets on websites without guarantees. Or they post tickets on exchanges at exorbitant and unrealistic prices. It is important to know that just because you see tickets posted on an exchange at an astronomical cost compared to others, this does not reflect the cost of tickets. Those specific tickets are unlikely to sell because purchasers will not bear such a price.

**D. Overview: Issues Facing Consumers In The Ticketing System**

Today, efforts are underway in many different forms that restrict the purchase, sale and transfer of tickets. Large powerful players in the primary market do not want to foreclose the secondary resale market. They want to control and own it. Some of these key issues and challenges facing consumers include; ticket holdbacks, slow ticketing to create the illusion of ticket scarcity, delayed ticket delivery, restrictions on transferability, ticket cancellations, non-renewal of season tickets, resale platform exclusivity, minimum prices dictated by the primary market for resale that disregards actual market value, dynamic pricing in the primary market that renders the traditional sense of “face value” obsolete, and, finally, excessive service charges.

In addition, given the FTC’s purview of consumer data protection, NATB encourages the FTC to examine how a purchaser’s data is collected during the ticket buying process, how it is shared across players in the industry, and the risk it presents. There was a very large incident of data theft in 2018 with Ticketmaster involving credit card skimming. Given the sheer volume of live events and primary and secondary ticket sales, there is a tremendous amount of personally identifiable information and banking/credit card information that travels in this industry. At a time when venue operators, teams and music artists seek more data on who ultimately is in possession of a ticket or who ultimately is

sitting in the seat, the idea of B2B deals that involve the sharing of this sensitive information can be unnerving. We encourage the FTC to examine this issue closely to determine what the specific risks are and how they can be mitigated – which may include a prohibition of the sharing of this information.

When examining today’s ticket system, it is important to begin with the origination of the ticket and its first sale. How many tickets are made available for public sale for any given event, at any given venue, is a complete mystery and this impacts cost. Efforts to enact laws to require transparency so that consumers can make a more educated purchase decision have been fought by the primary market at every turn. In fact this year a strong law in New Jersey that capped ticket holdbacks at five percent of a venue was weakened through an unfortunate legislative maneuver hidden from the public. This important consumer protection law ultimately was rescinded entirely without public comment or a hearing. The entity that controls or can hide the true inventory of tickets that go on sale first in the primary market is the entity that is empowered to control virtually all issues that are pervasive downstream and into the secondary resale market. This includes a consumer’s access to tickets, how these tickets are presented and made available for purchase, and the cost of those tickets.

As a point of background, brokers have financial risk exposure because they pay for tickets from the issuer – the team, the artist – and then take on the financial risk of selling them at a later time in hopes to at least recoup the investment cost regardless of the market demand for those tickets down the line. It is not uncommon for ticket prices to lower over time when demand is sluggish.

The original issuer, having sold the tickets to a reseller, no longer needs to worry about that seat going unsold. In this regard, professional ticket brokers are financial investors for every event in which they purchase tickets and transfer the financial risk. The industry suffers a bad reputation largely because powerful companies would like to enter into business agreements or facilitate policies or practices where they gain full control of all resale activity. For example, according to Ticketmaster’s 2016 third quarter earnings report, the company sold more than \$1billion of secondary tickets in the first nine months of 2016. In fact, the CEO of Ticketmaster’s parent company (Live Nation), Michael Rapino, reported that the company’s “integrated secondary and primary ticketing output continues to benefit fans allowing them to see their options in one location, driving secondary GTV up 33% year-to-date to over \$1bn.”

While striving to gain control of all resale activity, Ticketmaster routinely enters into agreements to share fee revenue with the original content rights holder. This is the financial incentive that allows the company to monopolize the ticketing system. It makes a profit on the original sale, and then again on the resale. Meanwhile Ticketmaster assumes no risk – if the original ticket does not sell, it does not suffer the loss. Professional ticket brokers, on the other hand, have a financial interest in seeing fans in seats. When there are fans in seats, everyone wins. Players and artists have an audience, concessions make money supporting

employment and jobs, local restaurants and hotels thrive, municipalities receive taxes, and the original ticket issuer is paid full asking price. It is a win-win situation.

But because of these market dynamics, there are harmful trends underway. Brokers are having their accounts cancelled simply because they are brokers – despite the fact that as consumers they pay full asking price in the original sale and bear the risk of stale inventory while primary ticket sellers no longer have to once the original sale has occurred. For instance, toward the end of February 2017, country singer Eric Church cancelled 25,000 tickets to his spring tour solely because he speculated that they were purchased by brokers. This continues today, after tickets are sold to brokers, when so-called “sweeps” are arbitrarily conducted. We believe this is done after the ticket sale when the primary – sports team, venue, or Ticketmaster – experiences seller’s remorse and believes they can sell the same ticket again and fetch a higher price. The problem here is that it can result in a fully valid ticket being sold by a broker to a consumer being later cancelled by the original issuer. This could lead to denials of admission and confusion at the gate. The consumer is harmed, and the broker (in the case of NATB Members) is harmed by honoring the 200% guarantee.

In this situation and in others, brokers are unfairly blamed for the frustration consumers experience when they cannot access tickets when they publicly go on sale. In reality, the problem is caused by the fact that the primary market holds back so many tickets from ever going on sale that a limited supply meets a market of high demand.

Fortunately, there is a vibrant secondary market today. Thanks to a variety of ticket resale exchanges consumers can usually find the tickets they are looking for. According to economist Anne Hobson with the R Street Institute, secondary-market vendors create value for consumers by providing crucial market information both to venues and to consumers.

Also, an issue related to the so-called “face value” of a ticket. This does not really exist anymore, in its traditional sense, for a couple of reasons. First, as Ticketmaster executives have publicly admitted, added fees are essentially “an extension of the ticket price” and therefore fees that average close to 30% of the base price distort the printed “face value.” Second, the primary market is adopting at a rapid pace the dynamic pricing approach found in the secondary market. Based on supply and demand, this means that a consumer might pay at the initial sale versus weeks from then can be significantly different. This is why greater transparency around true ticket supply is so important and needed. Meanwhile, on the secondary resale market, competing ticket resellers who offer tickets across a variety of online platforms must compete head-to-head and therefore there is a truer representation of ticket supply on the resale market that drives demand-side pricing. This is why the position of NATB is to retire the traditional view of “face value.”

## **II. THE PRIMARY TICKET MARKET: ISSUES AT PLAY THAT NEGATIVELY IMPACT CONSUMERS AND FANS**

Efforts to restrict the purchase, sale and transfer of tickets are harmful. In the ticketing system, there is virtually no transparency about the true number of tickets offered when they go on sale to the public, which is why it is so difficult for consumers to make an informed decision as to whether or not they are being offered a reasonable ticket price. Access to tickets and the pricing of tickets are the two leading forces at play in the primary market, and both are tightly controlled by the content rights holder and its ticket sales and distribution agents (usually Ticketmaster).

These are several of the primary market issues worthy of the FTC's examination:

### **A. Ticket Holdbacks and a Lack of Transparency with Ticket Availability**

Event promoters and venues commonly place "holds" on large numbers of tickets before they go on sale to the public. It has been revealed that sometimes more than half of the tickets (54%) are set aside for performers, fan clubs and the ticket-sellers themselves, only to be then sold (sometimes immediately) elsewhere at prices higher than face value. To be fair, the number of held tickets not being made available to the public at initial sale should be fully disclosed prior to public sale in order to permit fully-informed consumer decisions.

Holdbacks and pre-sales can leave few tickets for the public. Indeed, for many of the top shows, less than 25% of tickets were actually released to the general public in an initial public on-sale. For example, just over 1,600 tickets (12% of all tickets) were released to the public during the initial public on-sale for a July 24, 2014 Katy Perry concert at Barclays Center. For two Justin Bieber concerts at Madison Square Garden, on November 28, 2012 and November 29, 2012, fewer than 2,000 tickets (15% of all tickets) to each show were released to the public during the initial public on-sale.

Importantly, not all events are instant sell-outs. In sports, where there are many games at the same venue, there are often many partners involved in marketing and selling ticket sales – including professional ticket brokers. With music, specifically events in high-demand like the 2018 Taylor Swift Reputation Tour, tickets can become very difficult to access, and prices can begin high and generally remain that way until the event. With the Reputation Tour, a combination of (1) massive holdbacks, and (2) slow ticketing (discussed below) were employed to make the tour extremely profitable for Taylor Swift while extremely frustrating and expensive for fans. It was reported that unlike her prior tour, virtually no venue fully sold-out in 2018, leaving unsold tickets and empty seats at apparently most stops along her tour.

Holdbacks from the initial public on-sale of tickets distorts the market dynamics for the event in question from the moment tickets go on sale until the day of the event. Holdbacks do not empower purchasers to determine on their own whether or not they are being offered a fair price, or whether or not more tickets will be available at a future date. Holdbacks are, essentially, the primary root of the complete and total lack of transparency when it comes to ticket availability. Other harmful practices and activities are enabled by ticket backs, such as the slow-ticketing program by Ticketmaster called Verified Fan, or the dynamic pricing of tickets by Ticketmaster where one day a ticket may cost \$300 and a few weeks later it may be \$50 (which is discussed below).

Absent a prohibition on holdbacks, the solution to remedy the pervasive problem is to require Ticketmaster and others contracted to sell primary tickets to disclose publicly the number of tickets and percentage of a venue's seating capacity held-back and released for the public on-sale. This way consumers will be in a stronger position to make informed decisions about ticket purchasing.

**B. Slow Ticketing And Delayed Delivery**

The latest attack on ticket transferability comes in the form of a program called "Verified Fan," by Ticketmaster, that initially was presented as a program to fight illegal software bots from hacking its online purchasing system. Verified Fan was rolled out in 2017 and has become a nightmare for ticket buyers because it makes the process of purchasing tickets more complex. It has led to less choice in terms of where people can purchase or resell tickets, which has resulted in higher prices.

With Verified Fan, the original issuer of tickets holds back large amounts of tickets during the public on-sale, thus creating the illusion of scarcity resulting in consumers being induced into paying more than they should given the market of available tickets is distorted. Additional tickets are then trickled on to the market at a slow enough pace to meet the inflated consumer demand. In some cases the Verified Fan program encouraged consumers to "boost" their odds at being offered the chance to buy tickets by first purchasing merchandise. This inducement to make additional purchases comes before the consumer is even made aware of the ticket inventory from which they can elect to buy tickets. It has been reported in the media and also posted on social media that some consumers felt burned by purchasing merchandise first, only to learn later that expensive, unaffordable tickets were all that were available.

Another anti-consumer practice is delayed delivery. It is becoming common for consumers to pay for their tickets and their credit cards are charged full price plus all associated fees and taxes, but do not receive their tickets. Instead, the seller retains the tickets and does not release them until the day of the event or 24 or 48 hours in advance. This practice prohibits a ticketholder from reselling or giving away their tickets if they desire.

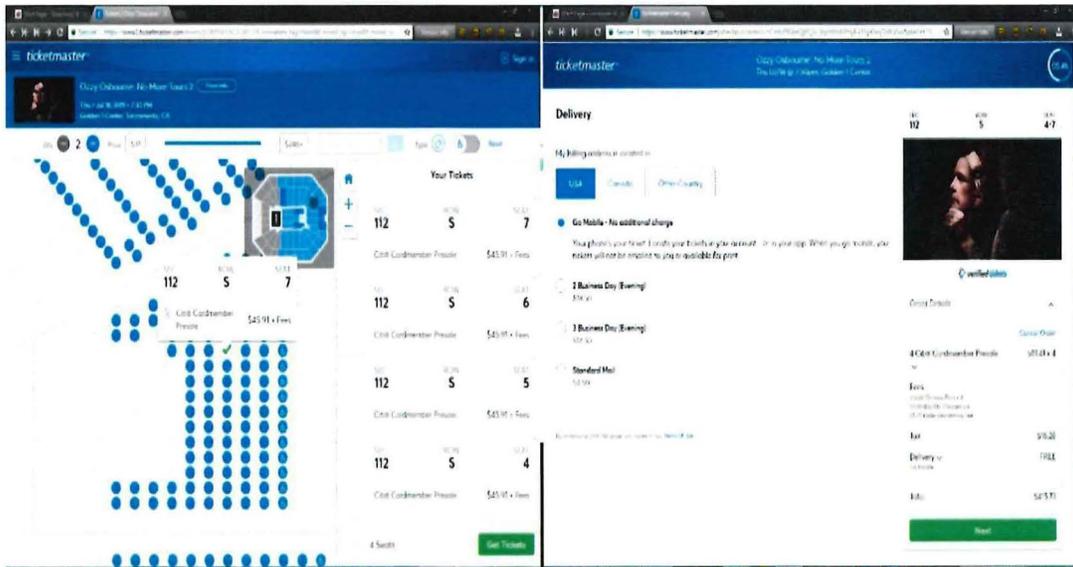
Importantly, some states (New York, Colorado, Virginia and Connecticut) have passed laws protecting ticket transferability rights, making it illegal for the original seller (after being paid) from limiting or restricting a ticketholder’s ability to transfer the ticket. These laws also prevent discrimination against ticketholders who purchased their tickets from a secondary market outlet – including online exchanges or a professional ticket broker.

**C. Online Shopping Cart Hidden Price Changes**

A recent and alarming trend has been reported to NATB that involves the Ticketmaster.com online ticket purchasing system. According to reports, it is not uncommon for the base price of tickets to suddenly and arbitrarily change during the online shopping cart process. And, unless a purchaser clicks on a details button to expand a window and review a detailed list of various fees and costs, he or she may never realize that without any notice the selected \$45 ticket (example below) suddenly changed in price to \$81 plus fees.

Upon first glance, this appears to be an intentional scheme to deceptively lure a consumer into making a purchase selection and once they are deep within the online purchase process, raise the price in a discrete and inconspicuous matter.

The screen shots below were sent to NATB as an example:



1. Selection of A \$45.91 ticket

2. Ticket price (not because of fees) jumps to \$81.41 when “order details” are expanded

**D. Restricting Ticket Transferability**

Some performers, promoters and venues use paperless tickets which require the credit card holder who purchased them to show the card and an ID at the door of the event. This impedes the right of the ticket owner to use the tickets as desired: perhaps to sell them, or to give them away, for instance, if it proves impossible to attend the event. They claim this is to reduce fraud, when in reality it is merely a scheme to restrict your right to sell or transfer your tickets. Meanwhile recent experience shows arenas are not equipped to handle paperless tickets resulting in fans being unable to enter events with their tickets only to seek refunds.

In 2018, Ticketmaster rolled-out its latest paperless scheme, called “Presence,” which ties venue entry to a ticketholder’s smart phone. While this may seem convenient, it is a system to prevent ticketholders from reselling their purchased tickets on their own terms. When a ticket is purchased and full asking price is paid, along with fees and taxes, the ticketholder should be able to use it, resell it, or give it away if he/she chooses.

The Institute for Policy Innovation reports that “these restrictions reduce consumer choice, degrades the product that consumers purchase, and causes harm to competition, which forces consumers to either pay higher prices, enjoy less value, or (most likely) both.” In addition, according to the American Antitrust Institute, “transferability restrictions on tickets unjustifiably limit consumer choice and depart from bedrock competitive market principles.

In July 2016, *the Minneapolis Star Tribune* conducted its own analysis comparing restricted and unrestricted secondary tickets to Beyoncé and Adele concerts. This analysis shows clearly that where restrictions are put in place to limit a ticketholder’s ability to transfer tickets, the market and therefore the consumer, suffer from more limited choice (less tickets) and higher prices. This particular analysis shows that for two very popular shows in high demand, secondary market tickets in an unrestricted mode were available for \$165 compared to the restricted model for \$699.

**E. Ticket Cancellations/Non-Renewal Of Season Tickets**

Some sports teams are cancelling, threatening to cancel, or choosing not to renew accounts of season ticket holders they believe are reselling tickets. This is unfair and punishes the most vested ticket holders of a team. Many season ticket holders cannot attend every game so they may give them away or sell some, others may resell a portion of their tickets as a means to afford their full ticket package. Reselling tickets that would otherwise go unused puts a fan in the seat - a win-win situation when you consider attendees at live events tend to make purchases at concessions. Plus, a team should prefer filled seats over empty seats. Importantly, these tickets are being resold, not sold for the first time, meaning the team has already been paid the price of the ticket package plus any associated fees.

**F. Exclusive Resale Platform Requirements that Dictate Ticket Pricing**

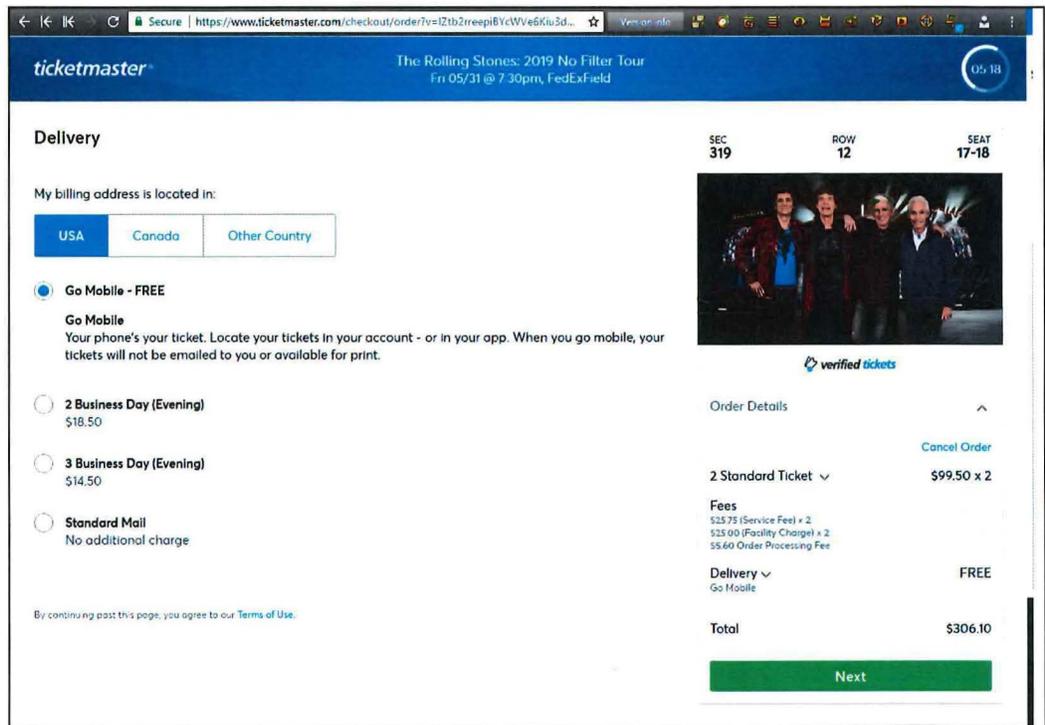
Some leagues, teams and primary ticket platforms are requiring ticket buyers to use a designated resale ticket platform should they wish to resell their tickets with terms set and controlled by the team. Some have taken away season tickets from ticketholders who defy this mandate. This restricts a ticketholder's choice of where to sell their tickets, limits options for those looking for tickets, and stifles competition in the market, all of which drives up the prices of tickets while creating arbitrary hurdles for fans. To make matters worse, these exclusive platforms often charge additional fees on top of those already paid upon initial purchase. They also set arbitrary minimum resale prices (called "price floors") instead of permitting free market pricing of tickets (buying and selling at actual market value). In many instances, therefore, when the price floor exceeds market value, these closed resale platforms result in empty seats and the ticket going to waste.

As part of a multi-state Settlement Agreement in November 2016 with the Attorneys General of New York, Ohio, Pennsylvania, Massachusetts, Florida and the District of Columbia, the National Football League ("NFL") agreed to halt its league-wide "price floor" policy that artificially restricted the resale price of NFL tickets in the secondary market. In addition, the Settlement Agreement prohibits the NFL from directing or requiring ticketing practices among teams that are designed to preclude fans from using competing exchanges. This is an important precedent, and certainly a win for consumers and fans.

**G. Service Charges**

Consumers are by now well-acquainted with the experience of buying a ticket at face value, only to see its price substantially inflated by fees and charges. A prime example of this is the delivery fee, often charged even in the case of an "e-ticket" which is printed by customers in their own homes at their own cost. NATB believes that all additional fees and charges should be made clear at time of purchase and included in the actual sale price. Fees alone can add upwards of an extra 20-30% above face value according to the GAO.

The screen shot below was sent to NATB as an example of dynamic, excessive fees. This also serves as evidence that the so-called \$99.50 "face value" of these tickets is patently false, when the total for two tickets exceeds \$300. In this case, these same tickets only 24 hours earlier were available on the Ticketmaster.com website except they did not bear the additional \$25.75 service fee shown below. As Ticketmaster's own executives have admitted, indeed fees are an extension of the ticket price, except consumers are initially led to believe on a prior screen that they are selecting a \$99.50 ticket.



### **III. THE SECONDARY TICKET MARKET: ISSUES AT PLAY THAT NEGATIVELY IMPACT CONSUMERS AND FANS**

#### **A. The Use Of Bots To Circumvent Ticket Sellers' Safeguards**

The use of computer software commonly known as “bots” to rapidly buy up event tickets before fans have a fair chance to do so is detrimental to consumers, and the overall ticketing industry. When tickets go on sale, people should not be competing with ticket-hoarding software to make a purchase.

NATB has long advocated for an open ticket marketplace free of fraud and deceit. That is why we have supported legislative initiatives to ban bots and why we have publicly supported the passage of the federal BOTS Act in 2016, and in the states (for instance NATB commended NY Governor Andrew Cuomo for signing into law legislation (S.8123/A.10713) to combat unfair and illegal ticket purchasing and reselling practices).

Bots laws aim to crack down on bots - with the stated end goal of leveling the playing field for fans trying to buy tickets. NATB and its Members oppose the use of bots. We sincerely hope these laws have the intended impact and fans are no longer competing with bots to get tickets. Unfortunately, the field is far from level and fans are going to be disappointed when tickets are often still in short supply. This is because there are many harmful issues at play in the overall ticketing system (detailed above) that make it harder for fans to get tickets to events they want to go to.

**B. Fraudulent Or Speculative Tickets**

NATB's position is that people who sell counterfeit tickets or perpetrate scams should be prosecuted and penalized to the full extent of the law. Indeed, the NATB has worked with law enforcement authorities, leagues, teams and artists to prevent, catch and prosecute such insidious conduct. Counterfeit tickets force the consumer to miss the game or show he or she paid for, often at a high price. NATB Members offer consumers the peace of mind and protection of a 200% refund on guaranteed tickets, and our Ticket Owner Ten Commandments, a copy of which can be found at <https://www.natb.org/ten-commandments-of-ticket-buying/>, contains must-know "buyer-beware" tips and guidelines.

Speculative tickets are different. If a seller has a contractual or otherwise reasonable expectation that he or she will obtain tickets to a live event, then selling them earlier is not harmful. For instance, if an individual buys tickets in February and is charged by Ticketmaster for those tickets but because of delayed delivery policy this individual will not get them until 48 hours before the show in July, it is more than reasonable to presume he or she will obtain them. These are not speculative tickets, just like selling tickets from a purchased season ticket package is not speculative. On the other hand, selling tickets for which the seller does not have and has no reasonable expectation he or she will have, is the definition of speculative ticket sales and it is a practice NATB opposes. There are unnecessary risks involved in this kind of sales practice, which ultimately and inexcusably puts at risk a consumers' assurance that his or her purchase will be fulfilled.

NATB adopted its 200% money-back guarantee to add an extra layer of consumer confidence. More than a money-back refund, there is a serious financial loss for a broker who speculates a sale merely on the hopes of obtaining them. This policy has been extremely effective at making this issue a non-issue.

**C. Deceptive Websites**

As NATB has discussed with FTC staff, our organization opposes the practice of giving consumers the false impression that they are buying direct from the box office or team. This position is part of NATB's Code of Ethics. NATB supports efforts to rid the system of such practices.

**D. National Licensing**

Licensing of those involved in the ticketing ecosystem makes sense. It affords consumers remedies and inhibits fraud. Thus, NATB supports licensing requirements designed to provide information about resellers and ensure that resellers abide by consumer protection measures. This form of licensing serves to pare market participation to those who are willing to enter markets in a transparent manner and a means for consumers and regulators to hold them

accountable for their business practices. Indeed, this concept is a lynchpin of NATB.

The difficulty with licensing is that there is a patchwork of differing and often contradictory licensing regulations in the various states and municipalities. This results in jurisdictional confusion as to whether a reseller is subject to licensing in a particular locale. Moreover, some licensing requirements are so onerous that they discourage rather than foster participation; the interests to be served by licensing. Accordingly, NATB supports a licensing approach that includes consumer protection measures, strong enforcement and reasonable licensing fees and requirements.

It is important to note that the same licensing concept should be applied to other market participants, including exchanges and primary market participants. When New York was conducting a review of the ticketing industry a few years ago, then New York Governor Eliot Spitzer stated that permitting a free market to work its magic is the smart approach and the government should regulate the primary market as it regulates the secondary market.

#### **IV. CONCLUSION**

NATB believes in an open and transparent secondary resale market, where ticket holders can continue to resell tickets as they choose at actual market value. We support any legislative or regulatory efforts that would advance these goals and ensure a continued open secondary market.

Importantly, when you consider policies and practices developed by large powerful players in the primary market to constrain the function of the open secondary market for the purpose of commandeering it to control it and profit more from it, new laws and rules may be necessary to protect the secondary market, to protect ticketholders, and to keep the primary players in check. In many ways the existence of a secondary resale market for tickets and an abundance of more than one source from which consumers can purchase tickets helps to keep in check the large and powerful forces in the primary market.