



**For Public Filing**

December 5, 2018

***By Electronic Filing***

Donald S. Clark  
Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Ave., NW  
Suite CC-5610 (Annex B)  
Washington, DC 20580

**RE: FTC Workshop Examining Online Event Ticket Sales, Request for Comments,  
Project No. P18450**

Dear Mr. Clark:

Vivid Seats submits the following comments in response to the Commission's request for comments in advance of its upcoming workshop examining online ticket sales.

Please contact me with any questions.

Respectfully submitted,

\_\_\_\_\_/s\_\_\_\_\_  
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## **Vivid Seats Comments – FTC Online Ticket Workshop**

*December 5, 2018*

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## **I. Executive Summary**

The emergence of ticket resale marketplaces, over the past fifteen years, has benefitted consumers by enhancing choice, competition, and trust. In the past, fans who wanted to attend a sold-out concert had to transact with individual resellers, many of whom had limited inventory and lacked the scale necessary to offer the buyer guarantees on the validity of a ticket. In this low-information setting, fans lacked the visibility needed to make informed purchasing decisions. Ticket resale marketplaces, with Vivid Seats being a prominent example, have brought more information, technology, security, convenience, and selection to consumers.

Vivid Seats is committed to three key pro-consumer ticket policies: choice, competition, and trust:

- (A) Choice            Consumers should have the unfettered right to purchase and sell tickets free from legal or technological barriers that interfere with this right.
- (B) Competition    Consumers should be able to use the ticket platform of their choice and be protected from anticompetitive conduct and artificial restrictions that interfere with their ability to discover and sell tickets in an open, competitive marketplace.
- (C) Trust            Consumers should be protected from fraudulent or deceptive practices that erode consumer trust in ticket platforms.

## **II. Online Ticket Marketplace**

### **A. Overview**

The online ticket marketplace is divided between primary ticket platforms that facilitate the initial sale and delivery of tickets and secondary ticket platforms that facilitate

the sale and delivery of tickets after the first sale. In 2017, ticket purchasers spent at least \$35 billion dollars on primary and secondary online ticketing services combined.<sup>1</sup> Both the primary and secondary channels are dominated by a few large companies. The Department of Justice estimated that Ticketmaster had 80 percent share of the primary channel as of 2008,<sup>2</sup> and the Government Accountability Office found that “less than a dozen other companies control most of the rest of the primary market.”<sup>3</sup> StubHub operates the largest secondary channel.

The vast majority of ticket sales occur online, either through a website or mobile application. LiveNation, the parent company of Ticketmaster, reported that 93% of its primary tickets were sold online.<sup>4</sup> StubHub and Vivid Seats operate nearly exclusively online.

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<sup>1</sup> See Press Release, Live Nation Entertainment Reports Fourth Quarter and Full Year 2017 Results, 1-2 (Feb. 27, 2018) (reporting a total global GTV of \$30 billion and 16% growth in secondary global GTV); Press Release, Live Nation Entertainment Reports Fourth Quarter and Full Year 2015 Results, 2 (Feb. 25, 2016) (reporting a secondary global GTV of \$1.2 billion); Live Nation Entertainment Reports Fourth Quarter and Full Year 2016 Results, 1 (Feb. 23, 2017) (reporting 26% growth in secondary global GTV); Ebay Q4 Financial Highlights, 9 (Jan 31, 2018) (reporting a global total GMV of \$4.5 billion for Stubhub). We assume that the North American ticket market accounts for 70% of the global market and that Live Nation Entertainment holds 80% of the North American ticketing market.

<sup>2</sup> Competitive Impact Statement, *US v. Ticketmaster Entertainment, Inc.*, No. 1:10-cv-00139 at 8 (D.D.C. Jan. 25, 2010) (“Ticketmaster Competitive Impact Statement”). Other primary ticket vendors include Tickets.com, AXS, Paciolan, Eventbrite, eTix, Ticketfly, and SeatGeek.

<sup>3</sup> Government Accountability Office, GAO-18-347, *Event Ticket Sales: Market Characteristics and Consumer Protection Issues* at 4 (April 2018), <https://www.gao.gov/products/GAO-18-347> (“GAO Report”).

<sup>4</sup> Live Nation Entertainment, Inc., Annual Report (Form 10-K) at 5 (Feb. 27, 2018) (“Live Nation 2017 Annual Report”).

## B. Primary Ticket Channel

Tickets are sold on a first-sale basis directly from event venues, sports teams, or artists. Commonly, platforms such as Ticketmaster sell primary tickets on behalf of their clients.<sup>5</sup> Compared to the secondary channel, the primary channel has relatively limited inventory and sells tickets only at specific times.

Significant portions of ticket inventory are not available to the general public at the initial sale. Tickets to popular events are often held back and later released when the secondary ticket channel has established a higher price for reselling tickets, or they are reserved for presales, such as to holders of particular credit cards or for members of an artist's fan club. The GAO found that "10 to 30 percent of tickets for major concerts typically are offered through presales," although it can be as high as 65 percent.<sup>6</sup> Due to these dynamics in the primary marketplace for tickets, the secondary channel offers consumers a valuable, efficient platform to access tickets to which they lack meaningful ability to purchase at the first sale with a primary ticket vendor.<sup>7</sup>

As another example of how the primary ticket channel may not function effectively for prospective ticket buyers, some sports teams implement "geofencing" that precludes

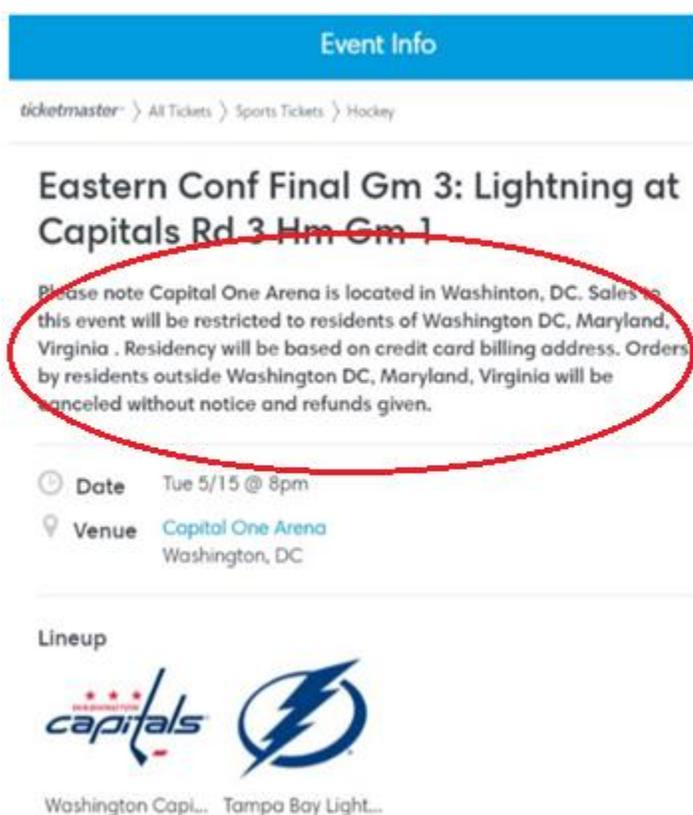
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<sup>5</sup> See *id.* at 5-6 (describing how Ticketmaster enters agreements with its clients on a multi-year basis to provide primary ticketing services and how "agreements with venue clients in North America and Australia generally grant us the right to sell tickets for all events presented at the relevant venue for which tickets are made available to the general public.").

<sup>6</sup> GAO Report at 7. An additional percentage of tickets are held back for "media outlets, high-profile guests, or friends and family of the artist." *Id.*

<sup>7</sup> See Peggy McGlone, *The Dedicated, and the Patient, Score Tickets to 'Hamilton' at the Kennedy Center*, Washington Post (Mar. 26, 2018), [https://www.washingtonpost.com/entertainment/theater\\_dance/the-dedicated-and-the-lucky-score-tickets-to-hamilton-at-the-kennedy-center/2018/03/26/c6508a14-30f3-11e8-94fa-32d48460b955\\_story.html](https://www.washingtonpost.com/entertainment/theater_dance/the-dedicated-and-the-lucky-score-tickets-to-hamilton-at-the-kennedy-center/2018/03/26/c6508a14-30f3-11e8-94fa-32d48460b955_story.html) (describing how some prospective purchasers got in line 24 hours before the box office opened after having previously waiting in line for nine hours and leaving empty-handed).

fans of a visiting team from being able to purchase tickets if they do not have a local zip code. For example, the Tampa Bay Lightning (through its primary ticket seller Ticketmaster) prevented anyone without a Florida zip code from buying tickets to its playoff games against the Washington Capitals. The Capitals in turn implemented a similar restriction.<sup>8</sup> The warning displayed on Ticketmaster for someone trying to buy tickets to the game is shown below.



The secondary ticket channel gives consumers who have purchased a ticket the ability to sell that ticket to anyone he chooses, free from artificial restrictions imposed by

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<sup>8</sup> See Rick Maese, *Lightning Ticket Restrictions Could Block the Red for Visiting Caps Fans*, Washington Post (May 9, 2018), <https://www.washingtonpost.com/news/dc-sports-bog/wp/2018/05/09/lightning-ticket-restrictions-could-block-the-red-for-visiting-caps-fans> (noting that “fans can still explore the secondary market for tickets to Friday’s Game 1 at Amalie Arena.”).

primary ticket brokers. It also gives consumers the opportunity to buy a ticket at a time and place convenient for them, regardless of inconvenient on-sale dates established in the primary channel.

### **C. Secondary Ticket Channel**

Consumers increasingly purchase tickets through online secondary ticket platforms to find tickets when they want them and at a price they are willing to pay. Primary ticket sellers like Ticketmaster also operate resale markets, with other companies operating exclusively as resellers. The largest secondary ticket platforms are StubHub, Ticketmaster, Vivid Seats, TicketNetwork, and SeatGeek.

Secondary ticket platforms provide consumers with flexibility by, among other things, alleviating the need of purchasers to monitor when tickets become available through a primary ticket vendor. Instead, a consumer can decide at any time that he wants to see popular teams or shows, even when tickets through the primary vendor have long since been sold out. Even if the primary vendor has not sold out a particular concert, the consumer may find that the only tickets left with the primary vendor are too expensive or not in the location where he wants to sit. Secondary ticket platforms give the consumer more options than the primary channel to find the event in which he is interested and at a price he is willing to pay for the kind of ticket he wants. In other words, online secondary platforms align desire, availability, and affordability.

## Advantages of a Secondary Ticket Channel

Flexibility	Competition	Availability	Affordability
<ul style="list-style-type: none"><li>• Purchase tickets days or hours before events rather than months</li><li>• Sell tickets</li></ul>	<ul style="list-style-type: none"><li>• Provides more choice and an alternative to primary ticket vendors</li></ul>	<ul style="list-style-type: none"><li>• Acquire tickets even when sold out through primary seller</li><li>• Pick desired dates and seat locations</li></ul>	<ul style="list-style-type: none"><li>• Find tickets at desired price point</li><li>• Market driven prices</li><li>• Frequently less expensive than primary market</li></ul>

The secondary channel can also be used to increase flexibility—

- For season ticket holders who cannot attend every game in their package, the secondary channel gives them a means to sell tickets to a game they cannot attend.
- For an event-goer who has purchased tickets far in advance but must later change plans.
- For large resellers who help finance live events by purchasing personal seat licenses & large blocks of season tickets and sponsoring events.

### III. Vivid Seats

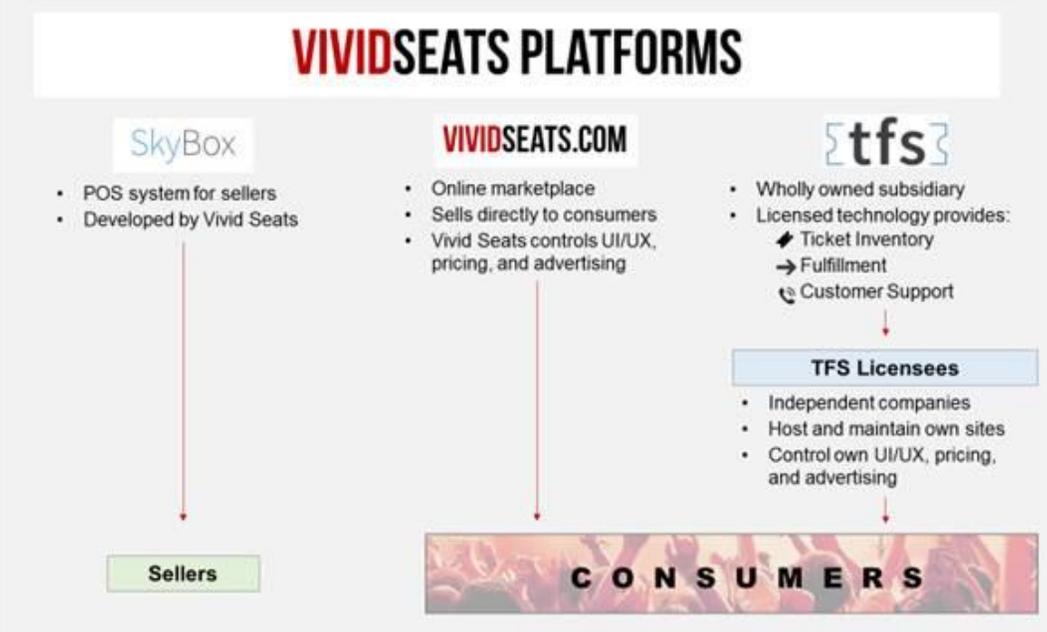
Founded in 2001, and headquartered in Chicago, Vivid Seats operates the nation's largest and fastest growing independent secondary ticket marketplace. Vivid Seats is a full-service, secondary ticket marketplace that facilitates transactions using innovative technologies to connect fans to their favorite sports, concerts, and theater events in a secured, guaranteed transaction. It provides those same fans—as well as ticket brokers—with the ability to sell tickets transparently and efficiently.

Vivid Seats connects buyers and sellers of live event tickets over a million times each year, sending thousands of fans to live sports, concert, and theater events each day.

Some consumers buy tickets early, and some buy them late. Some buyers choose to pay significant sums for highly-demanded events while others pay for tickets below the price for which they were initially acquired.

Vivid Seats operates three distinct platforms:

- The core retail marketplace that facilitates consumers buying tickets to live events;
- An industry-leading point of sale software solution called Skybox, which enables larger sellers to manage ticket inventory across the core marketplace as well as on other marketplaces; and
- A private label platform called Ticket Fulfillment Services (“TFS”), which licenses a set of tools to website owners who market their own offers to consumers.



**A. Advantages of Vivid Seats**

1. For Sellers

On the Vivid Seats marketplace, the seller sets his own price and quantity, and he can change those terms at any time. When a ticket sells, the seller receives an email from Vivid Seats notifying him of the sale. The seller will then upload his e-ticket or Vivid Seats

will provide him a prepaid UPS shipping label to ship tickets to the buyer. After the ticket has been delivered to the buyer, the seller receives a secure payment, less a service fee deducted from the total sale price.

Vivid Seats evaluates sellers by examining their business practices and track record. Vivid Seats imposes a number of requirements on sellers to ensure that it can offer buyers its 100% Buyer Guarantee that all tickets sold on the site are valid, authentic, and delivered in time for the event. Among other things, Vivid Seats requires every listing or seller to go through a screening process with a Vivid Seats verification team. Sellers may be required to complete an authorization form and include proof of purchase. In contrast to other secondary platforms, Vivid Seats prohibits sellers from engaging in unauthorized speculative selling (i.e., where a seller lists a seat without owning the ticket or knowing whether he will be able to acquire the ticket).<sup>9</sup>

## 2. For Buyers

Customers can purchase resale tickets with confidence through the Vivid Seats marketplace as Vivid Seats guarantees that every transaction will be secure.<sup>10</sup> Vivid Seats uses recognized industry standards on privacy and security.

Vivid Seats guarantees that every purchased ticket will be delivered before the event, even if a ticket is purchased at the last minute. And, it guarantees all tickets will be valid and authentic. Vivid Seats has among the strongest relationships with professional ticket resellers in the industry. Vivid Seats has a customer service team available to buyers,

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<sup>9</sup> The GAO identified speculative tickets as a potential consumer protection concern. *See* GAO Report at 31-32.

<sup>10</sup> *See* Vivid Seats, 100% Buyer Guarantee, <https://www.vividseats.com/guarantee.html> (last visited Nov. 30, 2018).

accessible by phone or online during extended business hours. This team can answer questions and resolve issues, such as how to ensure a last-minute ticket is delivered to a buyer in time for an event.

Vivid Seats has partnership agreements with a growing list of popular venues, leagues, and teams, including the LA Clippers, Chicago Bears, Green Bay Packers, Notre Dame, Duke, ESPN and Sports Illustrated.<sup>11</sup>

## **B. SkyBox and Ticket Fulfillment Services**

In addition to the Vivid Seats marketplace, Vivid Seats operates two industry-leading technology platforms, SkyBox and Ticket Fulfillment Services.

### **1. SkyBox**

SkyBox is a cloud-based ticket resale application that provides sellers with state of the art pricing tools, so that sellers can make informed decisions when pricing tickets.<sup>12</sup> It integrates with other marketplaces, keeping listings updated in real time. And it provides sellers with a single platform to manage all of their tickets:

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<sup>11</sup> See Vivid Seats, Partners, <https://www.vividseats.com/partners.html> (last visited Nov. 30, 2018).

<sup>12</sup> See Sky Box, Vivid Seats, <https://skybox.vividseats.com/welcome.html> (last visited Nov. 30, 2018).

QTY	SECTION	ROW	SEATS	UNIT COST	LIST (USD)	PROPERTIES	IN-HAND DATE	SPLIT TYPE	PUBLIC NOTES	INTERNAL NOTES	AUTO PRICING	CO-OP	BROADCAST	ACTIONS
4	BABY BUGGY ZONE	Z	6-9	\$0.00	214.4	SET	Now	Never Leave One			\$	No		
4	BABY BUGGY ZONE	Z	6-9	\$0.00		SET	Now	Never Leave One			\$	No		
2		8	2-3	\$200.00		SET	Now	Default			\$	No		
2		8	2-3	\$200.00		SET	Now	Default			\$	No		
4		19	9-12	\$85.00	\$75	SET	Now	Never Leave One			\$	No		
8		21	5-12	\$80.00	\$75	SET	Now	Never Leave One			\$	No		
8		6	16-23	\$85.00	\$75	SET	Now	Never Leave One			\$	No		
4	BABY BUGGY ZONE	Z	6-9	\$0.00	214.4	SET	Now	Never Leave One			\$	No		
4	BABY BUGGY ZONE	Z	6-9	\$0.00	214.4	SET	Now	Never Leave One			\$	No		

## 2. Ticket Fulfillment Services

TFS licenses a technology and services platform to independent websites. Started in 2014, TFS permits a business to market and sell tickets to events through the business' website, while the TFS technology provides backend functions including ticket inventory and secure payment processing to ensure timely delivery of tickets. TFS also provides clients with a support team and customer service center. The TFS platform enables these businesses to leverage their unique web and marketing acumen to sell tickets to consumers interested in attending live events.

Companies that license the TFS platform today are small businesses who apply their marketing expertise and business acumen to selling event tickets. TFS has high standards for companies interested in licensing the platform and evaluates prospective licensees at several stages of the process before they are allowed to participate in the platform:

- **Pre-contract.** The TFS team requires the prospective licensee to follow marketing and website best practices. TFS also vets how the prospective licensee plans to advertise and drive traffic to its site. TFS allows only high-performing marketers who use industry best practices to license the platform.

- **Contract.** All TFS contracts, at a minimum, stipulate that Vivid Seats reserves the right to request that the licensee alter or remove certain ads and that the licensee must do so within one business day. Licensees agree to follow advertising best practices. As explained below, major TFS licensees are required to certify that they are in compliance with the FTC's 2014 Consent Decree on transparency in ticket resale advertising.
- **Post-contract.** The TFS account management team periodically audits licensees' ads and websites. It is important to Vivid Seats that the licensees consistently provide a positive and seamless shopping experience for their customers. Vivid Seats reviews licensees' ad practices as well as their websites for appropriate disclosures, terms and conditions, site content, and general consumer experience.

Because of TFS's participation criteria and audits, the TFS program is limited to relatively few, but high-quality, sites and marketers. This stands in contrast to competing platforms that may have thousands of licensees. TFS prefers to maintain fewer licensees with the goal that each provides a positive, quality consumer experience.

Vivid Seats' clients licensing the TFS platform have contributed to competition and innovation in the ticketing industry and differentiated themselves in the market through regional- and genre-specific marketing, and other unique features such as interactive venue maps. The TFS licensees compete with one another and with other secondary ticket marketplaces through their marketing acumen, website design, ease of user interface, and through price competition by, for example, determining how much of a service fee to attach to sales. Such differentiation to attract buyers creates competition that benefits consumers.

For example, TFS licensee TicketCity features a blog highlighting upcoming events and interactive maps showing the view from a selected section of the venue:

The screenshot displays the TicketCity website interface. At the top, there is a navigation bar with various sports categories: NFL, NBA, MLB, NHL, College Football, Golf, Tennis, College Baseball, Cities, and Buy Tickets. Below the navigation bar, there are three featured images: a stadium at night, a man in a suit, and a man in a red hat. The main content area features two blog posts. The first post is titled "7 College Football Facts You Probably Didn't Know About This Season" by Juston, dated October 18, 2018. The second post is titled "2018 Conference Championship Games Ranked by Secondary Ticket Sales" by Rafael Rivas, dated November 26, 2019. To the right of the blog posts is a "CATEGORIES" sidebar with a list of categories and their respective counts: About TicketCity (66), Auto Racing (15), Awards Shows (1), City Guides (7), College Baseball (9), College Basketball (28), College Football (63), Concerts (65), Event Guide (17), Festival Lineup (7), Golf (23), Horse Racing (7), Hot Events (19), and Insiders Guide (14). Below the blog posts, there is a section for "Chicago Bulls at Washington Wizards" with a date of Friday, December 08, 2018, and a "100% money-back order guarantee" badge. The main content area is dominated by an interactive stadium seating chart for the Capital One Arena in Washington, DC. The chart shows various seating sections with prices ranging from \$34 to \$413. To the left of the chart is a list of seating options with their respective prices: Lower Level 116 (from \$42), Lower Level 117 (from \$47), Lower Level 118 (from \$45), Lower Level 119 (from \$74), Lower Level 120 (from \$67), Lower Level 121 (from \$125), and Mezzanine Level 400 (from \$34). To the right of the chart is a "Your Selection" section showing the chosen section (Lower Level 112, Row T) and a "Buy" button. Below this, there are "Other tickets in Lower Level 112" with options for Row I (\$134 each), Row K (\$137 each), Row L (\$141 each), and Row A (\$215 each). A "View more" button is also present. At the bottom, there is a "Similar sections" section showing Lower Level 100 (from \$144).

TFS licensees own, host, and maintain their own websites. They control the user interface and experience. They also set any service fees. TFS licensees also control their own marketing strategies and execution—each licensee determines which set of keywords to bid on, and for how long.

#### IV. FTC Consent Decree with TicketNetwork

In 2014, the FTC sued TicketNetwork and several of its partners and executives under the FTC Act, alleging that the defendants misled consumers into thinking they were buying event tickets from the original venue at face value.<sup>13</sup> TicketNetwork is a secondary ticket reseller that lists tickets from resellers and has a program through which partners resell tickets in TicketNetwork's inventory through their own websites.<sup>14</sup> The FTC settled with TicketNetwork and the other defendants through a consent decree.<sup>15</sup>

The Consent Decree, among other things, requires that TicketNetwork:

- Cannot use the word "official" except if the venue, primary seller, or original ticket issuer has authorized it to resell tickets on its behalf.<sup>16</sup>
- Cannot use the name of any venue, team, or performer in a URL appearing in search engine ads except: (1) where the name appears only within the subdirectory or subfile portion of such actual or display URL (i.e., after the top-level domain and first "/" ) or (2) the ad indicates that the site is a ticket reseller not affiliated with the venue or performer.<sup>17</sup>
- Unless authorized by the venue, primary seller, or original ticket issuer, cannot misrepresent that they are a primary ticket site or are offering tickets at face value by: (1) using names or images of venues, performers, or teams in ads or websites (2) using terms like: box office, arena, stadium, theater, performing arts center in ads (truthful use of such terms or images is allowed). The consent decree does *not* prohibit truthful and non-misleading use of any such terms or images.<sup>18</sup>

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<sup>13</sup> See Complaint for Permanent Injunction and Other Relief, *FTC v. Ticket Network, Inc., et al.*, 3:14-cv-01046 (D. Conn. July 24, 2014).

<sup>14</sup> See *id.* at 3; see also Ticket Network, Affiliate Marketing Program, <http://tnaffiliateprogram.com>.

<sup>15</sup> See Final Judgement and Order for Permanent Injunction and Other Relief, *FTC v. Ticket Network, Inc.*, 3:14-cv-01046 (D. Conn. July 24, 2014) ("FTC Consent Decree").

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* at 7.

- Prominently disclose on the page tickets are offered for sale, the search engine ad landing page, and on the payment page that: (1) the site is a resale marketplace and not a venue or box office; (2) the ticket price may exceed face value; and (3) the site is not owned by the venue, performer, or team.<sup>19</sup>

In part because the Consent Decree is the most significant pronouncement from the FTC concerning secondary ticket channels, Vivid Seats uses the Consent Decree as a guidepost for TFS licensees.

## **V. Industry Reliance on Search, and in Particular, on Google Search**

The online ticket marketplace is highly reliant on traffic acquired through Google searches. Secondary ticket platforms are particularly reliant on Google’s search results to surface relevant options to consumers searching for live event tickets. That is because when a consumer wants to purchase a ticket for a particular event, he more often than not first performs a search for that artist or event on Google’s platform. A large proportion of consumers typically use Google’s search functionality rather than going directly to an online ticket marketplace and then entering a search on the marketplace’s internal search engine.

This aspect of the online ticket ecosystem puts a high premium on the marketing acumen of online ticket platforms, and in particular, their ability to display ads to consumers through winning auctions on AdWords. Econometric studies have confirmed the importance of AdWords—one study found “total click-through rates, conversions rates and revenues in the presence of both paid and organic search listings are significantly

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<sup>19</sup> *Id.* at 8.

higher than those in the absence of paid search advertisements.”<sup>20</sup> A Harvard Business School analysis of paid search results on Yelp showed that advertising increases a restaurant’s Yelp page views by 25% on average and that these effects were particularly pronounced for smaller businesses.<sup>21</sup>

As of July 2018, Google generates 63% of all desktop searches in the United States, compared to 24% for Microsoft’s Bing and 12% for Verizon’s Oath (formally known as Yahoo). For mobile searches, Google has a 93% market share.<sup>22</sup> For Vivid Seats specifically, Google generates a majority of both total paid search clicks and mobile paid search clicks.

The importance of the Ad Words ecosystem, and Google’s rules relating to this ecosystem (described below), put Google in the position of being something akin to a functional regulator in the secondary ticket marketplace. What rules Google adopts, and how it enforces those rules, can have a dramatic impact on the secondary ticket channel. At times, Google’s enforcement or failure to enforce can have market-distorting effects on the secondary ticket marketplace.

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<sup>20</sup> Sha Yang & Anindya Ghose, *Analyzing the Relationship Between Organic and Sponsored Search Advertising: Positive, Negative or Zero Interdependence?* (Oct. 19, 2009) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1491315](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1491315).

<sup>21</sup> See Weijia Dai & Michael Luca, *Effectiveness of Paid Search Advertising: Experimental Evidence*, Working Paper 17-025, at 2-3 (Oct. 1, 2016), [https://www.hbs.edu/faculty/Publication%20Files/17-025\\_dce88d96-f2d7-4147-80b3-f1d345a76765.pdf](https://www.hbs.edu/faculty/Publication%20Files/17-025_dce88d96-f2d7-4147-80b3-f1d345a76765.pdf).

<sup>22</sup> Market Share of Search Engines in the United States 2008-2018, Statista, <https://www.statista.com/statistics/267161/market-share-of-search-engines-in-the-united-states> (last visited Nov. 30, 2018).

## VI. Google AdWords Policy on Secondary Ticket Platforms

Google has adopted an AdWords policy for secondary ticket platforms that requires ticket resellers to be certified before advertising with AdWords.<sup>23</sup> The certification requirements are sometimes similar to, and appear to be modeled after, the FTC Consent Decree. As discussed below, at times, Google's enforcement of its AdWords policy has been inconsistent between and among industry participants and this inconsistency has affected the online ticket market.

The AdWords policy imposes a set of rules on secondary ticket platforms that want to use AdWords:

First, the policy requires advertisers to disclose that its site is a secondary market and is not a primary provider of tickets. The disclosure should be easily visible and clearly explained within the top 20% of the page on the reseller's website, including the home page and any landing pages. The disclosure must not be provided in a closable notification format and the font must be equal to or bigger than the majority of the text on the page.<sup>24</sup>

Second, Google's policy states that advertisers should not imply in ads that the site is the primary provider of tickets, with words like "Official," or by including the artist, league, team, show, or venue name in the URL (including the sub-domain or domain path).

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<sup>23</sup> See Google, Advertising Policies Help, *About Event Ticket Reseller Certification*, <https://support.google.com/adwordspolicy/answer/7577050> (last visited Nov. 30, 2018); Google Ads Blog, *An Update to Our Event Ticket Reseller Policy* (Feb. 7, 2018), <https://adwords.googleblog.com/2018/02/update-ticket-reseller-policy.html> (last visited Nov. 30, 2018).

<sup>24</sup> Google, Advertising Policies Help, *About Event Ticket Reseller Certification*, <https://support.google.com/adwordspolicy/answer/7577050> (last visited Nov. 30, 2018).

Third, Google’s policy requires advertisers to prominently disclose that ticket prices may be higher than face value (meaning the price offered by the primary provider).

Fourth, Google’s policy requires advertisers to provide a price breakdown during the checkout process and before the customer provides payment information. The breakdown should show the specific costs added, such as taxes, and any fees that have been added.

Both Vivid Seats and all TFS licensees that applied for Google certification for secondary ticketing sites have obtained that certification. For a period of time, however, Google was not requiring equivalent certification standards from all secondary channel participants. Ticketmaster, for example, which offers primary and resale tickets on the same event page, was classified as a “hybrid” website and, although offering the same or similar resale inventory as other resale websites, was not required by Google to meet policy requirements that were as exhaustive as those required of other marketplaces. This decision, since corrected, gave Ticketmaster an advantage over other channel participants who needed to dedicate developer time and website real estate for compliance with Google’s AdWords policy.

## **VII. Interference from Primary Channel**

Dominant participants in the primary channel pose a threat to consumers’ ability to buy and sell tickets free from artificial restrictions on their ability to do so, including by—

- Forcing secondary channel customers to disclose to the originating primary channel their personally identifiable information in order to use tickets they have purchased on a non-related secondary ticket platform, such as Vivid Seats.

- Developing and implementing technological measures to control and potentially restrict the downstream distribution of tickets.
- Limiting the overall number of tickets made available to the public to purchase when tickets first go on sale (a practice called “holdbacks.”).

**A. Practices that Harm Consumers**

1. Forcing consumers to disclose personally identifiable information to the primary channel participant

Dominant primary channel participants force some customers—including ones with whom that participant has no pre-existing relationship—to disclose personally identifiable information to such participant in order to take possession or use tickets earlier purchased on a non-related secondary ticket platform. This practice represents a growing trend that eventually will apply to anyone purchasing resale tickets that were originally sold by the primary channel participant. This forced disclosure of a consumer’s personally identifiable information is a blatant leveraging of market positioning by the dominant primary ticket platform to insinuate itself into the downstream disposition of tickets between buyers and sellers of tickets.

While sometimes this strategy is framed as a means of ensuring authenticity of tickets and preventing fraud in the ticket marketplace, there are many ways of accomplishing those goals without the forced disclosure of personally identifiable information of customers with whom the primary channel participant has no preexisting relationship.

The mechanics of a primary channel participant’s forced collection of personally identifiable information work as follows:

1. A consumer purchases a ticket from someone offering the ticket for sale on a secondary platform (e.g., Vividseats.com).

2. If the ticket originally had been sold by the primary channel participant, the seller of the ticket transfers the ticket to the customer via the participant's website.
3. The customer receives an email from Vivid Seats informing the customer that the seller has initiated the transfer of the ticket.
4. The customer receives an email from the primary channel participant with an "Accept Tickets" link.
5. The customer clicks the link in the email from the primary channel participant.
6. To accept the transfer, the customer is prompted to create an account with the primary channel participant (requiring first name, last name, email, zip code, and country) or log into an existing account.
7. After creating an account with the primary channel participant or logging into an existing account, the ticket is made available for use.

Note that the buyer must create the account with the primary channel participant *after he has already purchased the tickets through a secondary channel*. The buyer must either use an existing account with the primary channel participant to accept the transfer or must create a new account to accept the transfer. The buyer does not have the option of canceling the order before the buyer submits his personally identifiable information to the primary channel participant.

2. Implementing technological measures to control the downstream distribution of tickets.

Increasingly, issuers of tickets in the primary market are experimenting with technological means, such as rotating QR codes, to render tickets either completely non-transferable or transferable only through a resale marketplace owned by the primary market participant.

We support a consumers' right to resell tickets by requiring that tickets be transferrable in a marketplace of the consumer's choice. Consumers who purchase tickets

expect that they can sell or give those tickets away—unfettered by technological or license terms imposed by the primary channel. Without such an ability, fans who face unexpected circumstances, such as a work commitment or family emergency, would be forced to return to the primary issuer, and confront onerous resale terms, or incur a financial loss. Either outcome harms consumers.

Recognizing the consumer value of an online ticket resale marketplace, the rapid increase in use of such secondary sale channels, and the importance of promoting a free market, legislators in Connecticut, Virginia, and Colorado have all recently joined New York by passing laws that prohibit entities from barring or inhibiting the resale of tickets.<sup>25</sup>

3. Restricting the availability of a large number of seats for purchase to the public at the time when tickets first go on public sale

Some primary channel participants, acting in cooperation with promoters, artists, and/or corporate sponsors, do not offer all available seats through the initial public sale. The seats that are not initially offered are referred to as “holdbacks.” This strategy effectively throttles the supply of tickets in the opening moments of a sale when demand is highest. In some cases, more than half of all available seats at an arena are held back.<sup>26</sup> This

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<sup>25</sup> See e.g., N.Y. Arts & Cult. Aff. Law § 25.30 (“Prohibited for any operator of a place of entertainment, or operator’s agent, to restrict by any means the resale of any tickets...”); Va. Code Ann. § 59.1-466.6 (“No person that issues tickets for admission to an event shall issue any such ticket solely through a delivery method that substantially prevents the purchaser of the ticket from lawfully reselling the ticket on the Internet ticketing platform of the ticket purchaser’s choice.”); Conn. Gen. Stat. Ann. § 53-289d (“No person shall employ an entertainment event ticketing sales system that fails to give the purchaser an option to purchase tickets that the purchaser may transfer to any party, at any price and at any time...”).

<sup>26</sup> See Robert Cribb and Marco Chown Oved, *Got Tickets to Saturday’s Bruno Mars Show? The Guy Sitting Beside You May Have Paid Hundreds of Dollars Less*, Toronto Star (Sept. 18, 2018), <https://www.thestar.com/news/investigations/2018/09/18/got-tickets-to-this-weekends-bruno-mars-show-heres-why-the-guy-sitting-beside-you-may-have-paid-hundreds-of-dollars-less.html>

practice, which is not transparent to the general public, frustrates consumers who discover that an event has “sold out” quicker than would be expected.

In addition, consumers are harmed by the artificial restriction of supply at the point of initial sale, as the price of an event’s tickets may increase after the initial sale. Once the market has established a higher price created by the limited supply of available tickets, the primary channel participants (or their partners) can sell the held back tickets at the higher price. Further, a primary channel participant might hold back cheaper tickets, forcing consumers to purchase higher-priced tickets. After the higher price tickets have been sold out, the cheaper tickets will be made available.

### **VIII. State Laws Restricting Consumer Choice**

Beginning in late 2017 and continuing through the present, eBay, the parent company of StubHub, has engaged in a multi-state lobbying campaign to promote state legislation that would restrict consumers’ ability to find tickets on competing secondary ticket platforms, where those tickets might be cheaper than those made available by StubHub. eBay has promoted nearly identical single-issue bills in Florida, Alabama, Maryland, Tennessee, Missouri, New Jersey and Michigan.<sup>27</sup> These bills restrict operators of

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(“The investigation, which analyzed the box office seven times in the first hour of sales, found fewer than half of the seats in the arena for sale.”).

<sup>27</sup> S.B. 197, 2018 Leg., Reg. Sess. (Al. 2018); S.B. 693, 2018 Gen. Assemb., 438th Sess. (Md. 2018); H.B. 2343, 99th Gen. Assemb., 2nd Reg. Sess. (Mo. 2018); S.B. 2665, 218th Leg., Reg. Sess. (Nj. 2018); H.B. 4224, 99th Leg., Reg. Sess. (Mi. 2018); S.B. 1024, 2018 Leg., Reg. Sess. (Fl. 2018); S.B. 1640, 110<sup>th</sup> Gen. Assemb., (Tn. 2018).

ticketing websites that are not affiliated with a venue, team, or artist from using the venue, team, or artists' name in the domain or subdomain of the secondary ticket website's URL.<sup>28</sup>

Although supporters of these bills have claimed that the bills are intended to prevent ticket buyers from being misled,<sup>29</sup> these proposed bills would ban all uses of those categories of terms, rather than banning only the deceptive or misleading uses of a venue, team, or artist name in the URL. As a result, smaller marketplaces that lack StubHub's brand recognition, and thus can benefit by truthful and non-misleading display URLs, are unable to do so. As an example, a secondary ticket platform that had an inventory of tickets to the Dodgers' game might display a URL as follows:

"dodgerstickets.secondaryticketplatform.com." Such display would communicate to a potential consumer that the website sells tickets for an upcoming Dodgers game.

StubHub's advocacy would ban this non-misleading URL.

The FTC has explicitly permitted subdomain URL marketing techniques by unaffiliated ticket websites. The FTC Consent Decree with TicketNetwork establishes two broad methods for which ticket resellers can use a venue, team, or artist name in their display URLs. First, these terms can be placed in a subdirectory of a display URL (i.e., after the top-level domain and the first "/").<sup>30</sup> In addition, a reseller can use a venue or entity's

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<sup>28</sup> *See id.*

<sup>29</sup> Stubhub, Written Testimony Submitted to New Jersey State Assembly in support of Assembly Bill 4081/Senate Bill 2665 – An Act Concerning Internet Ticket Sales and Supplementing P.L.1983, c.135 (C.56:8-26 et seq.) (Oct. 15, 2018).

<sup>30</sup> FTC Consent Decree, Section I.B.(1).

name *anywhere* in its display URL so long as the ad conveys that the website is unaffiliated with the venue, team, or artist.<sup>31</sup>

While Vivid Seats currently does not use the non-affiliated terms of venue, team, or artist name in the domain or subdomain of a URL, Vivid Seats nonetheless supports the prohibition of only the deceptive use of terms that are likely to mislead or confuse consumers.

## **IX. Conclusion**

Vivid Seats appreciates the opportunity to submit comments in advance of the Commission's March 2019 workshop examining online event ticket sales. We look forward to working with the Commission going forward.

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<sup>31</sup> *Id.* The FTC recently in *1-800 Contacts* condemned a practice that restricted the use of 1-800 Contacts' trademark in competitors' URLs as "inherently suspect" and harmful to consumers. Press Release, Federal Trade Commission, *FTC Commissioners Find that 1-800 Contacts Unlawfully Harmed Competition in Online Search Advertising Auctions, Restricting the Availability of Truthful Advertising to Consumers* (Nov. 14, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/ftc-commissioners-find-1-800-contacts-unlawfully-harmed>.