



December 5, 2018

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:

Internet Association appreciates the opportunity to respond to the Commission's request for comments in advance of its upcoming workshop examining online ticket sales. With its dual competition and consumer protection missions, the Commission is well qualified to analyze issues in the online ticket industry.

Internet Association is the only trade association that exclusively represents leading global internet companies on matters of public policy. Our mission is to foster innovation, promote economic growth, and empower people through the free and open internet. We believe the internet creates unprecedented benefits for society, and as the voice of the world's leading internet companies, Internet Association works to ensure policymakers, consumers, and other stakeholders understand these benefits.

The internet gives consumers an unprecedented ability to search and find products that they want on terms that work for them. In countless marketplaces, the internet has disrupted inefficient chains of distribution by more efficiently connecting buyers and sellers on terms that



work for both parties. While these pro-consumer dynamics certainly apply to the online ticket ecosystem—facilitated by such companies as Internet Association members Vivid Seats and StubHub—the online ticket marketplace faces challenges that threaten to undermine those efficiencies.

First, only a finite number of seats exist for any event, and the online marketplace for initial sales of tickets is dominated by Ticketmaster, which controls at least 80% of the primary ticket market.¹ There is a significant risk of consumer harm in the online ticket marketplace, because Ticketmaster employs tactics that make it pricier for consumers to purchase tickets and harder for consumers to resell tickets they have purchased on Ticketmaster’s platform.

Second, six states have antiquated laws that significantly restrict consumers from selling their tickets to willing buyers at market value. While the original purpose of the laws might have been to protect consumers from unscrupulous practices in the secondary market, today both StubHub and Vivid Seats guarantee every ticket sold on their platforms through robust consumer protection commitments that – at a minimum – commit to a full refund, inclusive of fees, if the ticket purchased is not valid. Rather than protect consumers, state laws that restrict reselling of tickets harm consumers who would otherwise be able to sell tickets to events they may no longer be able or desire to attend, forcing them to absorb the financial loss of the purchase price. State laws that place artificial price caps on reselling are ineffective, difficult to enforce, and harm consumers by limiting their ability to buy and sell in a mutually beneficial transaction.

¹ Competitive Impact Statement, *US v. Ticketmaster Entertainment, Inc.*, No. 1:10-cv-00139 at 8 (D.D.C. Jan. 25, 2010). In its 2017 Annual Report, Live Nation stated that it is “the world’s leading live entertainment ticketing sales and marketing company, based on the number of tickets we sell. . . nearly 500 million tickets in 2017 through our systems.” Live Nation Entertainment, Inc., Annual Report (Form 10-K) at 2 (Feb. 27, 2018).



I. The Internet Has Made Purchasing Tickets Easier and More Consumer-Friendly

The internet has vastly increased the ability of ticket purchasers to find and purchase tickets from the comfort of their home. Ticket purchasers:

- No longer need to drive to a physical box office.
- No longer need to wait in line overnight or for several hours at the box office or a ticket vendor's storefront to purchase tickets.
- Have the ability to see interactive maps of the venue and make purchasing decisions based on the desired intersection of price, location, and availability.

This ease of use is reflected in the online ticket market's growth and popularity. The GAO Report on ticketing notes that the online ticket market is now a \$9 billion dollar industry, with Ticketmaster reporting that 93% of its primary tickets sold online in 2017.²

II. The Secondary Ticket Marketplace Benefits Consumers

The secondary ticket market provides consumers with the flexibility to find the tickets they want at a price they are willing to pay. Secondary ticket platforms like Internet Association members StubHub and Vivid Seats:

- Create more choice in the market and allow consumers the flexibility to purchase tickets at any time leading up to an event, even after primary ticket vendors are reportedly "sold out" of inventory.
- Facilitate consumers selling tickets when their schedule no longer permits them to attend an event.
- Give consumers more flexibility to purchase tickets at full range of market-based prices – often including below the original prices listed by the venue or primary ticket platform.

The secondary market thus provides consumers with more choice and an easy-to-use alternative

² Government Accountability Office, GAO-18-347, Event Ticket Sales: Market Characteristics and Consumer Protection Issues at 4 (April 2018), <https://www.gao.gov/assets/700/691247.pdf> ("GAO Report").



to the primary ticket vendors.

III. The Continued Success of the Secondary Market Faces Challenges

The consumer-friendly success story of the secondary market faces threats on two fronts: the market leader's ability to exert control over the primary and secondary market for ticket sales which is already limited by the available number of seats, and state laws preventing or restricting the secondary sale of tickets.

A. Ticketmaster Anti-Consumer Practices

It has been estimated that the largest platform for primary ticket sales in a market that is naturally confined to the number of seats that exist in each venue had an 80 percent share of the primary market as of 2008.³ If the market leader in primary ticket sales is able to (1) artificially and non-transparently limit the supply of tickets when the tickets are initially available for purchase through practices like holdbacks and presales; (2) use technologies, such as rotating QR codes, or terms and conditions placed on the initial sale of a ticket to attempt to control the downstream distribution of every ticket it sells; and (3) develop technologies that prevent a consumer from purchasing a ticket on the secondary market without first establishing an account with that company, consumers are harmed by higher prices and artificial restrictions that make it more difficult for them to sell tickets for events they can no longer attend. Such practices prevent the market from working efficiently.

B. State Laws Preventing or Restricting the Secondary Sale of Tickets

The FTC has long been concerned about state laws that impede interstate commerce

³ Competitive Impact Statement, *US v. Ticketmaster Entertainment, Inc.*, No. 1:10-cv-00139 at 8 (D.D.C. Jan. 25, 2010).



across many different industries.⁴ This concern is relevant to the secondary ticket market as six states continue to place major restrictions on the resales of tickets, as follows:

Arkansas

- Criminalizes selling or offering to sell a ticket for a price higher than either (a) the original price charged plus a “reasonable charge” for handling a credit card, or (b) the price printed on the ticket.⁵

Kentucky

- Criminalizes selling or offering to sell a ticket at a price greater than the price charged at the place of admission or printed on the ticket unless authorized by the issuer.⁶

Louisiana

- Allows Internet sales of tickets “at any price” only if the organizer of the event and the operator of the location of the event authorizes such resales.⁷

Massachusetts

- Criminalizes the resale of tickets without a license and prohibits the sale of tickets for more than two dollars, plus service charges, over the price printed on a ticket.⁸

Michigan

- Allows for the sale of a ticket above general admission if the seller has written permission from the owner, lessee, operator, or manager of the venue. Prohibits the resale of a ticket if the ticket is original sold (1) “under restrictive conditions” at a rate less than general admission where the purchaser’s name appears on the ticket or the purchaser is the registered owner of the ticket, or (2) if the purchaser’s name appears

⁴ See Fordham Annual Conference on International Antitrust Law & Policy, at 3-4 (Oct. 24, 2003), https://www.ftc.gov/sites/default/files/documents/public_statements/state-intervention/state-action-u.s.perspective/fordham031024.pdf (citing state lobbying effort supporting physician price fixing as part of the problem of public restraints on competition); Staff of the Federal Trade Commission, “Possible Anticompetitive Barriers to E-Commerce: Wine,” at 3-5 (July 2003), https://www.ftc.gov/sites/default/files/documents/reports/possible-anticompetitive-barriers-e-commerce-wine/winereport2_0.pdf (“State bans on interstate direct shipping represent the single largest regulatory barrier to expanded e-commerce in wine.”); Edith Ramirez, Chairwomen, Fed. Trade Comm’n, Keynote Remarks at The Hal White Antitrust Conference, at 7 (June 1, 2015), https://www.ftc.gov/system/files/documents/public_statements/672561/150601batesw_hite.pdf. (“The FTC plays an equally valuable role in protecting consumers against regulatory barriers to nascent competition – barriers erected by governmental authorities but often solicited by entrenched commercial interests.”).

⁵ Ark. Code Ann. § 5-63-201.

⁶ Ky. Rev. Stat. Ann. § 518.070.

⁷ La. Stat. Ann. § 4:1.

⁸ Mass. Gen. Laws Ann. ch. 140, § 185D.



on the ticket and the ticket states that it is nontransferable and sold only to the person whose name appears on the face of the ticket.⁹

Rhode Island

- Prohibits the sale, offer to sell, or attempt to sell tickets at an amount greater than face value plus tax, and a reasonable service charge not to exceed \$3.00 or 10%, whichever is greater. Allows the sale of tickets over face value plus taxes and fees if the seller has written permission from the owner or operator of the property where the event is being held. The writing must specify the price for which the ticket will be sold.¹⁰

These laws are antiquated and do not reflect existing consumer behavior or expectations.

In fact, several states have moved forward to ensure a free, open, and competitive ticket market for consumers. New York, Virginia, and Connecticut have laws in place to ensure fans always have the right to buy a transferable ticket and protects them from penalty if they choose to transfer that ticket¹¹. Colorado and Illinois have even more consumer-friendly statutes that essentially prohibit any terms or conditions being placed on the purchase of a ticket that would limit lawful resale.

⁹ Mich. Comp. Laws Ann. § 750.465.

¹⁰ R.I. Gen. Laws Ann. § 5-22-26.

¹¹ 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. . .”).



I. Conclusion

Internet Association appreciates the opportunity to participate in the Commission's review of the online ticket marketplace. We look forward to working with the Commission as it continues its work in this space.

Respectfully submitted,

Michael Beckerman, President & CEO
Internet Association