



MEMORANDUM

February 21, 2020

To: Subcommittee on Oversight and Investigations Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “In the Dark: Lack of Transparency in the Live Event Ticketing Industry”

On Wednesday, February 26, 2020, at 10 a.m. in the John D. Dingell Room, 2123 of the Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing entitled, “**In the Dark: Lack of Transparency in the Live Event Ticketing Industry.**” The hearing will examine practices in the live event ticketing marketplace.

I. BACKGROUND

Most ticket sales to live events take place online either through mobile applications or websites.¹ In 2017, online ticketing services reportedly represented a \$9 billion market in the United States.²

A small number of companies conduct the majority of live event ticketing sales.³ The live event ticketing marketplace consists of the primary market and the secondary market. Tickets generally originate on the primary market where companies provide the initial sale of tickets for events. Secondary market ticketing companies facilitate the resale of tickets between third parties (such as brokers or consumers) through their online resale platforms, but generally do not maintain their own ticket inventory.⁴

The live event ticketing industry is generally not regulated at the federal level.⁵ The Federal Trade Commission (FTC) Act does prohibit, however, unfair or deceptive acts or practices in or affecting commerce. Accordingly, the FTC can bring enforcement actions for

¹ Government Accountability Office, *Event Ticket Sales: Market Characteristics and Consumer Protection Issues* (Apr. 2018) (GAO-18-347) [hereinafter, GAO-18-347].

² *Id.*

³ *Id.*; *Live Nation Rules Music Ticketing, Some Say with Threats*, New York Times (Apr. 1, 2018).

⁴ GAO-18-347.

⁵ *Id.*; *Top Ticketing Platforms Plead for Regulation*, Forbes (Jul. 18, 2019).

unfair or deceptive practices related to event ticketing and ticketing companies, but it cannot seek civil penalties.⁶ States have also been active in this area, bringing enforcement actions against ticketing companies and enacting laws to regulate live event ticketing, such as limitations on nontransferable tickets and ticket resale prices.⁷

II. CONSUMER PROTECTION ISSUES

In recent years, consumer complaints, press stories, and government reports have documented a number of potentially harmful consumer practices occurring in the ticketing marketplace.⁸ For instance, a 2018 report by the Government Accountability Office (GAO) found that consumers continue to lack transparency when attempting to buy tickets in the primary and secondary marketplaces. In its report, GAO documented several industry practices that might mislead and disadvantage ticket buyers.⁹ Similarly, an investigation by the New York Attorney General (NYAG) found that there were persistent consumer complaints and problems in the live event ticketing industry, including a variety of practices that prevent the public from accessing tickets.¹⁰

Consumer groups have also raised concerns regarding the ticketing marketplace. For example, in comments submitted to the FTC, the National Consumers League highlighted what it regards as deceptive practices occurring in the marketplace and urged the FTC to address these practices.¹¹ Key issues raised by consumer groups and other stakeholders include: (A) hidden fees and all-in pricing; (B) restrictions on transferability; (C) “white-label” websites; (D) limited ticket availability; and (E) speculative tickets.

A. Hidden Fees and All-in Pricing

When buying tickets online, both primary ticket sellers and secondary resale marketplaces often add fees on top of the ticket list price.¹² The type and amount of fees can

⁶ 15 U.S.C. § 41 *et seq.*; GAO-18-347.

⁷ GAO-18-347.

⁸ See, e.g., *id.*; *Why Ticket Prices are Going Through the Roof*, Consumer Reports Magazine (June 30, 2016); *‘I’m Getting Ripped Off’: A Look Inside Ticketmaster’s Price Hiking Bag of Tricks*, CBC News (Sept. 18, 2018); *The Concert Ticket Industry Is Still Broken*, Slate (May 3, 2017).

⁹ GAO-18-347.

¹⁰ New York Attorney General, *Obstructed View: What’s Blocking New Yorkers from Getting Tickets* (2016) [hereinafter, NYAG, *Obstructed View*].

¹¹ National Consumers League and Sports Fans Coalition, Comments of the National Consumers League and Sports Fans Coalition to the Federal Trade Commission Regarding: “Online Event Ticket Workshop” (2018).

¹² GAO-18-347.

vary by transaction, and may include a facility fee, service fee, and/or processing fee.¹³ Because these fees often are not disclosed until the end of the transaction, consumers may be unaware of the total cost of the ticket and less able to accurately compare prices.¹⁴ For example, as part of its audit, GAO noted that companies failed to prominently display fees and, in some instances, required consumers to create or log in to accounts before they could view the charged fees.¹⁵

According to GAO, disclosing the total cost of the ticket at the start of the ticketing process (known as “all-in pricing”) could increase transparency and help consumers make more informed choices when purchasing tickets.¹⁶

B. Restrictions on Transferability

Event organizers may designate tickets for an event as nontransferable, prohibiting consumers from transferring or reselling purchased tickets to another individual. Transferability restrictions can affect consumers’ decision-making on whether to purchase a ticket and limit their choices in how they wish to use their tickets. For example, these restrictions can limit ticketholders’ ability to sell tickets they can no longer use due to unforeseen circumstances and frustrate consumers wishing to buy tickets as gifts for others.¹⁷

Additionally, in some instances, it is unclear whether buyers are adequately informed that tickets they purchased are nontransferable. For example, the *Los Angeles Times* reported in September 2019 that hundreds of fans were turned away from a Black Keys concert at the Wiltern because they unknowingly purchased tickets on the secondary market that were nontransferable.¹⁸ Some have suggested that transferability restrictions allow consumers to access tickets at a face-value price because they prevent the resale of these tickets at a higher price on the secondary market.¹⁹ Additionally, some stakeholders have argued that transferability restrictions may prevent fraud and enhance security.²⁰ Others have suggested, however, that restricting transferability allows primary sellers to impose more control over the ticketing marketplace.²¹

¹³ *Id.*; *Ticket Fee Frenzy: When You Buy a Ticket, the Cost of the Seat is only the Beginning*, Consumer Reports Magazine (June 30, 2016).

¹⁴ GAO-18-347.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Why the Black Keys Shut Out Hundreds of Fans, Causing Chaos at the Wiltern*, Los Angeles Times (Sept. 20, 2019).

¹⁹ GAO-18-347.

²⁰ *Ticketmaster Launches SafeTix for Digital Tickets*, IQ Magazine (May 17, 2019).

²¹ NYAG, *Obstructed View*.

C. “White-Label” Websites

“White-label” websites are another potential source of consumer confusion.²² In this instance, the term “white-label” refers to ticket resale websites that employ deceptive marketing practices, including by using the names and logos of venues on their webpages to appear as official event venue websites.²³ As a result, consumers may believe they are browsing an official venue website, when in fact they are using websites unaffiliated with the venue. GAO found that the white-label websites it reviewed typically charged higher prices and fees than official venue websites or other resale sites.²⁴

D. Limited Ticket Availability

Some live events may offer only a limited number of tickets to the general public.²⁵ One practice limiting ticket availability is “holds,” which refers to when venues, promoters, agents, or artists hold back a certain number of tickets from public sale.²⁶ For example, through its investigation, the NYAG found that close to 16 percent of tickets were “held back” in a sample of New York’s top grossing concerts.²⁷ In addition to “holds,” tickets may be available prior to general sale to select groups through non-public “presales.”²⁸ For instance, the NYAG found that approximately 38 percent of tickets to popular shows it examined were reserved for advance “presale” events.²⁹ Consumers often lack information regarding ticket availability, and the NYAG noted that this lack of transparency impedes consumers’ ability to make informed choices and obtain reasonably priced tickets to popular events.³⁰

E. Speculative Tickets

A speculative ticket refers to instances in which a seller offers a ticket for sale on a secondary ticket exchange before the seller has the ticket in hand. In some cases, sellers may not disclose the fact that they are selling speculative tickets.³¹ These practices harm consumers when they do not receive the tickets they purchased or receive tickets that differ from the ticket

²² GAO-18-347.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ NYAG, *Obstructed View*.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ GAO-18-347.

or seat advertised. Even if consumers receive refunds for the ticket price, they may have already incurred nonrefundable costs to attend the event, such as travel or hotel expenses.³²

III. FEDERAL EFFORTS TO PROTECT CONSUMERS

The Committee has taken a number of important actions to increase transparency and protect consumers in the live event ticketing marketplace. For example, in 2016, the Committee, and subsequently the House of Representatives, passed H.R. 5104, the “Better On-line Ticket Sales Act of 2016,” also known as the “BOTS Act,” which prohibits the use of computer software to purchase tickets by circumventing security measures of ticketing websites; the Senate companion to this legislation became law in December 2016.³³

To better understand consumer protection issues in the live event ticketing industry, the Committee sent a bipartisan letter to GAO in September 2016 requesting that GAO study the industry and its impact on consumers.³⁴ In July 2018, the Committee’s then-Ranking Member sent a letter to the FTC, requesting the agency examine a host of consumer protection issues in this marketplace.³⁵ In June 2019, the FTC held a workshop where industry representatives, consumer groups, and other stakeholders addressed various concerns about the current state of the live event ticketing industry.³⁶

Furthermore, on November 21, 2019, the Committee launched an investigation into the live event ticketing industry, sending bipartisan letters to six companies that represent a

³² *Id.*

³³ H.R. 5104, 114th Cong. (2016) and S. 3183, 114th Cong. (2016). In addition, in June 2019, Chairman Pallone and Congressman Pascrell reintroduced H.R. 3248, the “Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act of 2019,” which establishes, among other things, certain transparency requirements for ticket availability, speculative tickets, fees, and “white-label” websites. *See* H.R. 3248, 116th Cong. (2019).

³⁴ Letter from Rep. Fred Upton, Chairman, House Committee on Energy and Commerce, Rep. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, and Rep. Bill Pascrell, Jr., to Gene L. Dodaro, Comptroller General of the United States (Sept. 12, 2016).

³⁵ In July 2018, then-Ranking Member Pallone and Congressman Pascrell sent a letter to FTC Chairman Joseph Simons calling on the FTC to “act against deceptive and unfair practices” in the live events marketplace and address the consumer protection issues highlighted in GAO’s 2018 report. *See* Letter from Rep. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, and Rep. Bill Pascrell, Jr., to Joseph Simons, Chairman, Federal Trade Commission (July 20, 2018).

³⁶ As part of this workshop, the FTC elicited public input in advance of the workshop and received close to 7,000 comments. *See* Federal Trade Commission, *Online Event Tickets Workshop* (www.ftc.gov/news-events/events-calendar/2019/03/online-event-tickets); Federal Trade Commission, *FTC to Hold Workshop Examining Online Event Ticket Sales* (Oct. 4, 2018) (press release).

substantial segment of the primary and secondary markets and offer diverse perspectives on industry practices.³⁷ These letters sought information on each company's policies and practices relating to potentially harmful consumer practices occurring in the ticketing industry.

IV. WITNESSES

The following witnesses have been invited to testify:

Amy Howe
President & Chief Operating Officer
Ticketmaster

Bryan Perez
Chief Executive Officer
AXS

Stephanie Burns
Vice President and General Counsel
StubHub

Ryan Fitts
Vice President, Legal Affairs
Vivid Seats

Don Vaccaro
Co-Founder and Chief Executive Officer
TicketNetwork

Joe Choti
President & Chief Executive Officer
Tickets.com

³⁷ Specifically, the Committee sent letters to Live Nation, parent company of Ticketmaster; Anschutz Entertainment Group, parent company of AXS, StubHub, Vivid Seats, TicketNetwork, and Tickets.com. *See* House Energy and Commerce, *Energy and Commerce Committee Launches Investigation into Potential Unfair and Deceptive Practices in the Live Event Ticketing Industry* (Nov. 21, 2019) (press release).