

Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

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

February 26, 2020

Ms. Stephanie Burns, Vice President & General Counsel, StubHub

Please note that Ms. Burns’ last day with StubHub was Friday, May 1st. Marty Linne is serving as Interim General Counsel and has provided responses to the questions below.

The Honorable Diana DeGette (D-CO)

1. During a briefing with Committee staff, StubHub officials indicated that the company does not classify tickets as “speculative” if the seller has a “right” to the ticket and fulfills a consumer’s order by the listed delivery date. StubHub officials also indicated that the company does not require sellers to disclose whether they possess the tickets they list for sale. In cases where sellers do not possess tickets they are offering for sale, would StubHub support requiring sellers to disclose clearly and conspicuously that they do not possess these tickets?

StubHub does not believe that physical possession is the appropriate standard for determining whether a ticket is speculative. Purchase and delivery are commonly not simultaneous events. In fact, it is a common practice for the primary ticketer or team to delay delivery of tickets until just days or (in extreme cases) hours before the event itself.

StubHub requires sellers to provide buyers a delivery date, which we believe enables consumers to make informed purchasing decisions. We are concerned that requiring a possession disclosure could confuse consumers into thinking a ticket is speculative when it is not.

StubHub is supportive of exploring disclosures to inform consumers when a listed ticket is purely speculative – i.e. the seller does not have the right to that ticket.

2. In your testimony to the Committee, when asked about Ticketmaster’s dominance in the industry and reports of retaliation if Ticketmaster was not chosen as the primary ticketer for an event, you stated that, “we have had reports to us of experiences of retaliation if StubHub was used as the ticketing partner.” Please describe in detail reports of retaliation if StubHub was used as a ticketing partner for an event or concert.

StubHub cannot detail the retaliation or threat of retaliation in a public record, as doing so would disclose sensitive business information, however I can confirm that

StubHub has received threats of retaliation by Ticketmaster when we've approached potential partners with ticketing solutions. Additionally, StubHub is aware that these potential partners have received threats of retaliation by Ticketmaster.

As you're aware, the Department of Justice announced an extension and modifications to the consent decree that governs the 2010 merger of Live Nation and Ticketmaster in December 2019.

The Department found that:

"...Defendants have repeatedly conditioned and threatened to condition Live Nation's provision of live concerts on a venue's purchase of Ticketmaster ticketing services, and they have retaliated against venues that opted to use competing ticketing services – all in violation of the plain language of the decree.¹"

The Department's motion to modify the original consent decree includes six anonymous examples of Live Nation's retaliatory tactics.

3. What types of competitive advantages do brokers have and how do they unfairly disadvantage average consumers?

Brokers are an established part of the ticket ecosystem and play an important role in the dispersion of tickets. Brokers obtain tickets through legitimate channels, often partnering directly with tickets issuers. This practice helps ticket issuers disperse the economic risk associated with hosting an event. It also provides fans with alternative purchase opportunities. Fans benefit from open secondary markets where law-abiding brokers operate.

The Honorable Brett Guthrie (R-KY)

1. In 2014, StubHub opted to switch to an "all-in" pricing structure and then in 2015, StubHub switched back to the previous model of listing lower prices and adding fees before checkout. When StubHub switched back to the previous model of listing lower prices and adding fees before checkout it added a toggle feature on its website to allow consumers to add a filter that can show consumers at the beginning of the purchase flow what the estimated total will be, including taxes and fees. How accurate is this estimate that is provided to consumers compared to the final purchase total that the consumer sees at the end of the purchase flow?

The estimate provided by the toggle is a reflection of what the all-in price of the ticket would be at the moment the ticket listing is created. This includes the ticket's list price as well as relevant taxes and fees.

Any discrepancies between the estimated all-in price provided by the toggle and the final purchase price are associated with service fees being dynamic. Service fees may shift up

¹ *United States of America, et al. v. Ticketmaster Entertainment, Inc., and Live Nation Entertainment, Inc.*, Case 1:10-cv-0139-RMC, Document 22, filed 1/8/20 (p. 4 of 24).

or down based on several factors over the course of the listing. This type of dynamic pricing is prevalent across e-commerce because it provides the flexibility to test price sensitivity, optimize conversion, and allow companies to better compete.

For all StubHub purchases, including those using the toggle, actual taxes and fees are clearly and conspicuously disclosed to buyers before payment information is collected or confirmed and the purchase is finalized.

StubHub continues to examine our pricing toggle to create the best possible user experience for consumers.

2. Does your company or any of its affiliated websites sell dynamically priced tickets?

Many of our sellers employ dynamic pricing. As with other industries, including retail and travel, dynamic pricing is a core tenant of live event ticketing. Prices rise and fall in response to market dynamics.

The only platform owned and operated by StubHub in the U.S. is www.stubhub.com.

- a. What percentage of overall sales does dynamically priced tickets represent?

All tickets sold on StubHub are dynamically priced at the discretion of the seller.

- b. Does your company or any of its affiliated websites make disclosures to consumers when a ticket is dynamically priced, and what that means? If so, what does that look like?

All tickets sold on StubHub are dynamically priced at the discretion of the seller.

StubHub includes the following disclosure on our website: “*You are buying tickets from a third party; StubHub is not the ticket seller. Prices are set by sellers and may be above face value.*”

3. Your testimony notes that “[p]roviding fans information on the number of tickets available for sale, when these tickets will be offered, and at what price will create a clearer picture of event accessibility and help to inform fans’ decisions on if, and when, to buy.” How would more information regarding ticket availability help inform fans?

The primary ticket onsale process is opaque to fans. There is a lack of clarity on the number of tickets available for sale, the timing those tickets will be made available for sale, and the prices at which those tickets will be sold.

There is no visibility into how many tickets are allocated for pre-sales, or “early” sales for certain segments of people such as fan clubs, “verified fans,” or specific credit-card holders, etc. If fans understand that the vast majority of tickets are being sold through one of these channels, such as Ticketmaster’s “Verified Fan” program, they may be more inclined to register to improve their chances of securing a ticket. Alternatively, if

only a small number of tickets are allocated to “Verified Fans,” then customers may elect not to participate and focus their attention on the general onsale.

Similarly, fans have no visibility into the fact that a number of tickets are never made available for sale because they are held back by promoters or sold separately to professional resellers, industry insiders, sponsors, or the artists themselves.

When a general onsale occurs, there is a presumption that all of the remaining tickets for that show will be made available for sale at that moment. Yet, that is often not the case and fans are frequently frustrated when tickets appear to “sell-out” quickly.

It is now common practice for primary ticket sellers to release additional tickets for sale over the weeks or months following the general onsale, and these tickets are often dynamically priced to reflect current market rates. Without visibility into this process, fans falsely believe a show is sold out and are either unaware or confused when new tickets become available at varying prices.

As fans better understand ticket availability and supply, they can make more informed decisions around pricing. If supply appears to be outpacing demand, then fans can anticipate discounted tickets sales in the marketplace. Alternatively, if demand is outpacing supply, then fans may be more comfortable paying the established market rates.

StubHub believes a secure, transparent, and competitive ticket marketplace unequivocally supports fans. Understanding how tickets are made available for sale is a critical part of creating transparency.

- a. Would providing more information about the number of tickets available help bots be more efficient? Why or why not?

StubHub does not believe providing the number of tickets available for sale will make bots more efficient. Bots are designed to bypass ticket limits and procure as many tickets as possible, regardless of how many are available for sale. Transparency in the number of tickets available for sale is not likely to make these software programs more efficient, however it can provide consumers insight into their chances of accessing tickets at any given point of sale.

The use of bots is illegal today and the industry should focus on collaborating with enforcement agencies to go after bad actors. Combatting bots should not be used as an excuse to sustain opaque onsale practices that were in effect well before the advent of bot technology.

4. Your testimony notes that StubHub has FanProtect Guarantee, so that in the “rare instances” where there is something wrong with a ticket purchased on StubHub, your company provides a comparable or better replacement ticket – or – in the instances when that is not possible – a

full refund inclusive of fees. When StubHub says “rare instances” what does that mean? How often does this happen?

The “rare instances” we are referring to include instances of fraud or the failure of a seller to fulfill the ticket sold. StubHub’s best estimate is that less than 1.5% of orders are impacted, the majority of which our customer experience team is able to address prior to the event. This is critical to provide a seamless event experience for our customers.

StubHub considers the worst customer experience a “rejection at the gate,” - i.e. where a ticket is presented at the event and is not valid for entry. StubHub’s 2019 rejected at the gate metrics were less than 0.25%.

- a. What are the most common reasons that something would be wrong with a ticket purchased on StubHub?

The most common reasons why something would be wrong with a ticket purchased on StubHub include failure to fulfill the ticket sold or seller fraud.

With respect to a seller’s failure to fulfill a ticket sold, the most common cause can be attributed to seller error. For example, the seller may accidentally sell the ticket on a different platform and forget to take the ticket listing down from StubHub. Similarly, a seller may inadvertently upload/deliver the wrong tickets – i.e. the event, date, or seats are different from what was advertised.

With respect to seller fraud, the most common activity is when a seller attempts to sell a ticket that was purchased fraudulently from a primary ticket seller – i.e. purchased using a stolen credit card, etc.

StubHub operates a world-class Trust and Safety team who work diligently behind the scenes to combat against bad actors and protect consumers. StubHub uses a combination of fraud detection tools and strategies to prevent attempts at fraud in real time. These tools include those available on the commercial market as well as in-house expertise and custom tools built for our business.

We not only work to prevent fraud; but we investigate attempts at fraud and strive to understand any claims made so we can educate ourselves and penalize bad actors. Our investigations team partners directly with local, state, federal, and international law enforcement on proactive and reactive investigations as warranted. StubHub is incredibly proud of the work of our Trust and Safety team.

- b. Does the consumer have a choice as to whether they get a replacement ticket or a refund?

Whenever possible, StubHub will work to provide a replacement ticket for our consumers. When a replacement ticket is not possible, StubHub will provide a refund, inclusive of all fees.

The Honorable Bill Flores (R-TX)

1. Does StubHub have exclusive and/or priority relationships with event sponsors to resell tickets to the event sponsors' events?

StubHub has relationships with event sponsors to be the preferred resale marketplace for an event. This type of relationship is common in the live event industry. StubHub, Ticketmaster (through secondary sales platforms like TM⁺, NHL Ticket Exchange, etc.), VividSeats, AEG (through AXS Official Resale), and others have similar relationships with event sponsors.

2. In the cases where event sponsors have the relationships mentioned above, it appears that when a customer uses StubHub to resell a ticket that the customer originally purchased directly from an event sponsor, StubHub charges a fee for the transaction in the form of a reduction/discount in proceeds from the sale of that ticket. With respect to this practice:

- a. How much is that fee?

It is free to list a ticket on StubHub. StubHub will only charge a sell fee if the ticket sells. For consumer sellers, the sell fee is a fixed percentage of the list price. Please refer to StubHub's submission to the Subcommittee on December 23, 2019 for the amount of fees charged to consumer sellers.

Professional sellers pay a service fee that is governed by the terms of StubHub's incentive-based Top Seller program or an individual agreement with StubHub. As is the case with many industry participants – including TM⁺, VividSeats, TicketNetwork, and AXS Official Resale – StubHub's Top Seller program allows the business to build relationships with trusted professional sellers to ensure our users have access to legitimate, diverse, and high-quality inventory for the events they want to attend.

- b. Is the fee a percentage of resale proceeds or a dollar amount?

The sell fee is a percentage of the list price.

- c. How is that fee set?

For consumer sellers, the sell fee is a fixed percentage based on their historical sales volume. For professional sellers, the sell fee is variable based on several factors, including the seller's historical sales volume, type of event, the event

genre, and others.

- d. Does the event sponsor receive a part of that fee?

Each StubHub partnership has unique terms that are negotiated directly with the event sponsor. Partnerships range from simple advertising sponsorships to the full integration of ticketing services, and many partnerships include revenue sharing on the resale of tickets. As a marketplace, StubHub generates revenue from fees. The revenue share is typically a percentage of either the gross sales from the event or a percentage of revenue generated from the event. There are limited instances where a partnership deal includes a set fee per transaction as well.

- i. If yes, why does the original event sponsor deserve to receive additional proceeds?

StubHub believes there is value in establishing partnerships with event sponsors for both business and consumer reasons. The cost of the partnership is ultimately at the discretion of the event sponsor. Partnerships that designate a secondary platform as an “official” or “preferred” resale marketplace typically require a revenue share.

- ii. What is the allocation of those fees to the event sponsor, StubHub, others (specify)?

Each StubHub partnership has unique terms. The specific terms of these partnerships are confidential; however, we can provide a generic example for reference.

Example: Team Basketball and XYZ Secondary Ticketing Platform enter into a partnership where XYZ is the official secondary ticket marketplace of Team Basketball. As such, XYZ agrees to pay Team Basketball 20% of the revenue generated from sales of Team Basketball’s event tickets and Team Basketball agrees to advertise XYZ as their official partner.

3. Are there any disclosures on your resale apps, website, or other resale methodologies which disclose to the event sponsor customer the allocation of those fees, including the amounts of the resale fee that is kicked back to the original event sponsor?

StubHub does not delineate how fees are allocated internally or to partners on our app or website. We do provide a general explanation of why fees are charged in our Help Center².

² “StubHub’s ticket fees,”

<https://stubhub.custhelp.com/app/results/kw/StubHub%26%23039%3Bs%20Ticket%20Fees/okcsNewSearch/true/okcsSearchSession/ZIVwV3gON3pTQ2RyWThuSENxamsOM2IYeFNxRFFCeWx0UFVLQ1VraUFPNG1veGxuMHdtOFJtWm1mZkVzWEIXa0NtY010bll1c0wyeX5nSTBSZ21SQkt6dUt5cDBIVklyfkJnN3F3TVZHM>

- a. If not, why not?

StubHub fully discloses all fees to buyers and sellers before a transaction is completed but does not delineate how those fees are allocated internally or to partners. Many of those details would be considered confidential business information.

To StubHub's knowledge, there has not been a robust need or desire for this information amongst customers. Across the live events industry we are not aware of a marketplace or retailer that publicly breaks down how fees are internally utilized or shared with partners.

- b. If applicable, do you believe that the event sponsor customer is entitled to know how much the event sponsor (from whom the customer has already purchased a ticket) is receiving from the resale of the customer's ticket?
4. What value is the customer receiving for the portion of the fee kicked back to the original event sponsor?

StubHub believes that partnering with event sponsors is not only positive for our business, but for our fans as well. Partnerships acknowledge the valuable role that secondary ticket sales play in the live events industry and can provide a more seamless experience for StubHub customers, particularly when partnerships include an integration of ticketing services.

A robust, transparent, and competitive ticket market is unequivocally in the best interest of fans. Yet increasingly, due to the use of digital ticketing technology, it can be difficult for marketplaces to compete when a partnership is not established.

This is most evident with Ticketmaster's use of SafeTix technology. For example, through Ticketmaster's SafeTix technology (at times referred to as "rolling barcodes"), tickets can be made completely non-transferable, or a more likely outcome, transferability/resale can be limited solely to Ticketmaster's own secondary platforms.

Non-transferable ticketing will soon be the industry standard. It's been reported that Ticketmaster intends to move all of its ticket sales – which equate to 70 – 80% of every primary ticket sold – to its SafeTix platform by 2021³. Without event sponsors

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³ Dave Brooks, "Black Keys Ticketing Blame Game Overshadows Larger Issues Ahead for Concert Business," billboard (September, 24, 2019), available at: <https://www.billboard.com/articles/business/touring/8530801/blackkeys-ticketing-ticketmaster-safetix>

Ms. Stephanie Burns

Page 9

establishing partnerships with competing marketplaces, competition in secondary ticket sales may cease to exist.