

**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**

**Mr. Ryan Fitts, Vice President, Legal Affairs, Vivid Seats**

**The Honorable Diana DeGette (D-CO)**

- 1. In your written testimony, you stated that Vivid Seats’ TFS licensees are required to comply with the FTC’s 2014 consent decree with TicketNetwork (the “consent decree”). Among other things, the consent decree generally prohibits “[t]he use of names (including alternate spellings thereof) . . . of venues, stadiums, [or] arenas” in search engine advertisements. From 2014 to present, has any TFS licensee promoted its website through a search engine advertisement that included the name of a venue, stadium, arena, or any partial or alternate spelling of a venue, stadium, or arena? If yes, provide**
  - a. The number of such TFS licensees;**
  - b. A description of each search engine advertisement(s) responsive to this question, including the venue, stadium, or arena referenced in the advertisement(s); and**
  - c. The specific actions, if any, Vivid Seats took against each such TFS licensee, and the date on which each such action was implemented.**

Vivid Seats shares the Committee’s concern with ticketing websites that deceive fans into thinking they are buying tickets directly from the primary ticket seller and not through a resale channel. That is why Vivid Seats supports legislation—like a bill that we are supporting in Michigan, a recently enacted law in New York, and provisions of the BOSS Act—that prohibits such deceptive conduct. It also is why, in the absence of clear federal legislation addressing this particular issue, Vivid Seats voluntarily has required its TFS licensees to abide by the Federal Trade Commission’s 2014 consent decree with TicketNetwork.

As your questions note, the consent decree generally prohibits TicketNetwork from using the names of venues, stadiums, or arenas in certain contexts, like search engine advertisements and websites; however, the consent decree provides various exceptions, including where such names are presented only within the sub-directory or sub-file portion of a URL or where the ticket seller clearly indicates through descriptors, brand names,

business names, the content of the offer, or other means, that the site is a ticket reseller not affiliated with such venue or other entity.

Thus, to the extent that any TFS licensees use the names of venues, stadiums, or arenas in contexts covered by the consent decree, our understanding is that all such licensees comply with the consent decree's requirements by, at a minimum, not using the names of venues, stadiums, or arenas other than in URL's sub-files or sub-directories and/or by disclosing prominently that the website is a ticket reseller not affiliated with a venue, stadium, or arena. Because licensees make those disclosures and/or refrain from using the names of venues, stadiums, or arenas in other than URL's sub-files or sub-directories, the licensees' websites would not be considered deceptive under the consent decree.

**2. The consent decree also generally prohibits “[t]he use of names (including alternate spellings thereof) . . . of venues, stadiums, [or] arenas” in websites or webpages. As of the date of this request, do any TFS licensees currently operate websites containing webpages that display the name of any venue, stadium, arena, or any partial or alternate spelling of any venue, stadium, or arena? If yes, explain:**

**a. Why these websites do not violate Vivid Seats’ “consumer protection policies”; and**

**b. Why you believe your licensees “[d]o not deceive anybody,” as you testified at the hearing.**

Please see the response to Question #1 above.

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

In its April 2018 report on “Event Ticket Sales,” the Government Accountability Office (GAO) explained that “[s]ometimes event organizers work directly with brokers to distribute tickets on the secondary market. For high-demand events, event organizers may seek to capture a share of higher secondary market prices without the reputation risk of raising an event’s ticket prices directly. For lower-demand events, selling tickets directly to brokers can guarantee a certain level of revenue and increase exposure (by using multiple resale platforms rather than a single ticketing site).”

The most significant disadvantage that average consumers face in the ticketing industry today is the use of undisclosed holdbacks and transferability restrictions by primary ticket sellers. In the case of undisclosed holdbacks, sellers in the primary channel can create an artificial sense of scarcity by restricting the supply of tickets while denying fans the information they need to make informed decisions about the actual supply.

With respect to transferability, vibrant competition in the resale channel depends on tickets belonging to the fans who hold them and the fans being able to transfer the tickets on platforms of their choice if they do not use the ticket themselves. If tickets are not

transferable, then tickets would be available only through marketplaces controlled by the primary ticket seller, resulting in fewer choices and higher prices for fans. Unfortunately, today, some powerful players in the primary ticketing channel are using their size and influence to restrict fans' ability to transfer tickets, either by prohibiting fans from transferring tickets altogether or by requiring that transfers occur only on marketplaces that the primary ticket seller controls. Recognizing that transferability is good for competition and competition is good for fans, several states—including Colorado, New York, Connecticut, Virginia, Illinois, and Utah—have enacted pro-fan laws guaranteeing fans the right to resell tickets. Vivid Seats supports those laws, and we encourage Congress to enact similar legislation.

### **The Honorable Brett Guthrie (R-KY)**

1. **As you know, the Better Online Ticket Sales Act (BOTS Act) was signed into law in 2016. Are bots still a challenge in the live event ticketing industry? If so, please explain.**
  - a. **Would there be a benefit to the consumer if the FTC and states started to take enforcement actions under this statute? Why or why not?**

Vivid Seats opposes the use of bots and supports the BOTS Act, including appropriate FTC enforcement of that statute. In addition to bots, we believe that other issues warrant attention from Congress and the FTC as well, including undisclosed holdbacks and restrictions on transferability.

2. **Does your company and/or affiliated websites utilize 'all-in' pricing and/or an 'all-in' pricing toggle feature? Why or why not?**
  - a. **If so, what percentage of your websites and/or affiliated websites utilize 'all-in' pricing?**

Like many online marketplaces, Vivid Seats provides the total cost of a purchase, inclusive of all fees, prior to checkout. Vivid Seats would support an up-front all-in pricing requirement if it were implemented on a level playing field as part of comprehensive pro-consumer reforms to the ticketing industry.

3. **Does your company or any of its affiliated websites sell dynamically priced tickets?**
  - a. **What percentage of overall sales does dynamically priced tickets represent?**
  - 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?**

Vivid Seats provides a marketplace that connects sellers who have tickets to buyers who want them. The seller manually sets the price of the tickets and then can adjust the price,

either upwards or downwards, as she observes market conditions. A significant percentage of tickets sold on resale marketplaces sell below the purchase price on the primary market.

- 4. Your testimony notes that you have an aggressive enforcement team that looks at unauthorized speculative ticket sales and when you find them, you stop them. On average, how many speculative tickets does your enforcement team find on an annual basis?**

Please see the response to Question #5 below.

- 5. Vivid Seats has a program called the Zone Program. Please explain how this program differs from speculative tickets.**

**a. Your testimony notes that the Vivid Seats restricts participation in the Zone Program to pre-approved sellers who have a track record of delivering value for fans, and all sellers in the Zone Program must abide by Vivid Seats' Zone Seller Agreement. Approximately how many pre-approved sellers are part of Vivid Seats' Zone Program?**

**b. Approximately what percentage of tickets that are sold on Vivid Seats' website are zone tickets?**

**c. Are there any instances where a zone ticket was not fulfilled? If so, how often does this occur?**

Fans have a right to know what they are buying, and they have a right to get what they paid for. Fans can lose out if they buy tickets from a seller who, unbeknownst to the fan, does not yet have the ticket in hand and is unlikely to provide the ticket the fan purchased. That is why Vivid Seats supports legislation—like that enacted in California, New York, Tennessee, and Maryland—that makes undisclosed speculative ticket sales unlawful, and it also is why we prohibit this type of speculation on our platform. Vivid Seats' enforcement team takes action whenever it becomes aware of an unauthorized speculative ticket listing on its website.

We also recognize that some fans want the opportunity to make informed purchases from reliable sellers who will procure tickets on the fan's behalf. This option is valuable for fans who want to be certain that they will have tickets to a high-demand event, just as a consumer might pre-order a popular toy during the holidays or a book by a popular author. In these instances, the buyer knows that the store does not have the item in stock at the time the order is placed, but the seller commits to obtain the item for and deliver the item to the customer.

Vivid Seats offers this option through our Zone Program, which provides ticket availability, access, and convenience for fans by allowing them to purchase a ticket for an event within a specified zone, after which the seller will obtain and deliver a ticket in the selected zone (or sometimes a better zone). The Zone Program is different from

speculation because, among other things, there is a prominent up-front disclosure that the seller does not yet have the ticket at the time of purchase.

Vivid Seats restricts participation in the Zone Program to pre-approved sellers who have a track record of delivering value for fans, and who agree to abide by Vivid Seats' Zone Seller Agreement, which includes important protections for fans. This is one of the reasons why more than 99% of Zone Program ticket orders are fulfilled without any issue—meaning the buyer receives a ticket in the same zone the buyer selected. In those very rare instances where there is an issue in the fulfillment of a Zone Program order, Vivid Seats typically provides the customer an upgraded ticket at no additional cost or a replacement ticket with a partial refund.

Because certain requested information about the Zone Program is confidential and competitively sensitive, we have provided it to the Committee under confidentiality protocols and/or would be willing to discuss it further with you or your staff in an appropriate setting.

- 6. Your testimony notes that Vivid Seats screens potential licensees of its Ticket Fulfillment Service (TFS) software to ensure that the technology is provided only to trusted business. Further, your testimony notes that you conduct audits of your licensees. How often are these audits performed and what do you look for when conducting these audits?**
  - a. Your testimony notes that Vivid Seats takes action when you become aware of violations of your policies. Can you please provide examples of the actions that Vivid Seats has taken with respect to licensees violating your company's policies?**
  - b. Your testimony notes that "TFS licensees are not permitted to: use the name of a venue, team, or performer in the URL sub-domain; use the word "official" in connection with a venue, team, or performer unless it has been expressly authorized to do so by that venue, primary seller, or ticket issuer; or represent that the website is a primary ticketing site or is offering tickets at face value." Is Vivid Seats' TFS software currently used by websites such as [www.sap.centersanjose.com](http://www.sap.centersanjose.com); [barclays.centerbrooklyn.com](http://barclays.centerbrooklyn.com); or [ticketoffices.com/venues/sap-center-tickets](http://ticketoffices.com/venues/sap-center-tickets)?
    - i. If the TFS software is not currently used by these websites, has it previously been used? If so, when?**
    - ii. If the TFS software is used for these websites, does Vivid Seats believe that the URLs, such as the examples provided above, abide by its requirements that its TFS licensees not be permitted to use the name of a venue, team, or performer in the URL sub-domain? Why or why not?****

Vivid Seats shares the Committee's concern with ticketing websites that deceive fans into thinking they are buying tickets directly from the primary ticket seller and not through a

resale channel. That is why Vivid Seats supports legislation—like a bill that we are supporting in Michigan, a recently enacted law in New York, and provisions of the BOSS Act—that prohibits such deceptive conduct. It also is why, in the absence of clear federal legislation addressing this particular issue, Vivid Seats voluntarily has required its TFS licensees to abide by the Federal Trade Commission’s 2014 consent decree with TicketNetwork, various elements of which were listed in the testimony referenced in your question. Vivid Seats enforces that requirement by conducting monthly or more frequent audits of TFS licensees’ websites and ads, during which Vivid Seats examines TFS licensees’ websites and ads to ensure their compliance with the FTC consent decree’s requirements. Examples of enforcement actions include instances in which Vivid Seats has demanded that TFS licensees take actions—like discontinuing search engine advertisements, changing URLs, or making disclosures more prominent—to come into compliance with the terms of the consent decree.

With respect to the three particular websites you have identified, our understanding is that the first two ([sap.centersanjose.com](http://sap.centersanjose.com) and [barclays.centerbrooklyn.com](http://barclays.centerbrooklyn.com)) are operated by [OnlineCityTickets.com](http://OnlineCityTickets.com), which is a TFS licensee, and that third website you have identified ([ticketoffices.com/venues/sap-center-tickets](http://ticketoffices.com/venues/sap-center-tickets)) is operated by [TicketOffices.com](http://TicketOffices.com), which is also a TFS licensee. These websites appear to be in compliance with the terms of the FTC’s consent decree because, among other things, the websites clearly indicate through descriptors, brand names, business names, the content of the offer, or other means, that the site is a ticket reseller not affiliated with such venue or other entity. For instance, both of the [OnlineCityTickets.com](http://OnlineCityTickets.com) websites prominently disclose the following: “We are a resale marketplace. Prices may exceed face value. This site is not owned by any venue,” and “We are a resale marketplace, not a box office or venue. Ticket prices may exceed face value. This site is not owned by [SAP Center/Barclays Center],” and the [TicketOffices.com](http://TicketOffices.com) website prominently discloses the following: “[TicketOffices.com](http://TicketOffices.com) is a leading ticket resale marketplace. Prices set by sellers may be above or below original price,” and “We are a resale marketplace, not the SAP Center box office or venue. Ticket prices may exceed face value. This site is not owned by, operated by, or affiliated with SAP Center.” In addition, our understanding is that the [OnlineCityTickets.com](http://OnlineCityTickets.com) websites you identified cannot be located through search engines or search advertisements, and each of the websites you identified resolves to a URL that complies with the FTC’s consent decree, including by using the names of venues, teams, or performers only in URL sub-directories or sub-files, if at all.