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IN THE DARK: LACK OF TRANSPARENCY IN THE LIVE EVENT TICKETING INDUSTRY

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

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[1]The information has been retained in committee files and also is available at https://docs.house.gov/meetings/IF/IF02/20200226/110588/HHRG-116-IF02-20200226-SD003.pdf.

[2]The information has been retained in committee files and also is available at https https://docs.house.gov/meetings/IF/IF02/20200226/110588/HHRG-116-IF02-20200226-SD006.pdf.

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[3]The information has been retained in committee files and also is available at https://docs.house.gov/meetings/IF/IF02/20200226/110588/HHRG-116-IF02-20200226-SD007.pdf.

[4]The information has been retained in committee files and also is available at https://docs.house.gov/meetings/IF/IF02/20200226/110588/HHRG-116-IF02-20200226-SD010.pdf.

IN THE DARK: LACK OF TRANSPARENCY IN THE LIVE EVENT TICKETING INDUSTRY

WEDNESDAY, FEBRUARY 26, 2020

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:00 a.m. in the John D. Dingell Room 2123, Rayburn House Office Building, Hon. Diana DeGette (chairman of the subcommittee) presiding.

Present: Representatives DeGette, Schakowsky, Kennedy, Ruiz, Kuster, Tonko, Clarke, Peters, Pallone (ex officio), Guthrie (subcommittee ranking member), Burgess, McKinley, Griffith, Brooks, and Walden (ex officio).

Also present: Representative Flores.

Staff Present: Mohammad Aslami, Counsel; Kevin Barstow, Chief Oversight Counsel; Jeffrey C. Carroll, Staff Director; Manmeet Dhindsa, Counsel; Austin Flack, Staff Assistant; Evan Gilbert, Deputy Press Secretary; Waverly Gordon, Deputy Chief Counsel; Tiffany Guarascio, Deputy Staff Director; Alex Hoehm-Saric, Chief Counsel, Communications and Consumer Protection; Zach Kahan, Outreach and Member Service Coordinator; Chris Knauer, Oversight Staff Director; Jon Monger, Counsel; ?Peter Rechter, Counsel; Tim Robinson, Chief Counsel; Emily Ryan, GAO Detailee; Andrew Souvall, Director of Communications, Outreach and Member Services; Benjamin Tabor, Staff Assistant; Rebecca Tomilchik, Staff Assistant; Anna Yu, Professional Staff Member; Jennifer Barblan, Minority Chief Counsel, Oversight and Investigations; Brittany Havens, Minority Professional Staff, Oversight and Investigations; Peter Kielty, Minority General Counsel; Bijan Koohmaraie, Minority Deputy Chief Counsel, Consumer Protection and Commerce; Tim Kurth, Minority Chief Counsel, Consumer Protection and Commerce; Ryan Long, Minority Deputy Staff Director; Brannon Rains, Minority Policy Analyst; Zack Roday, Minority Communications Director; and Callie Strock, Minority Press Secretary.

Ms. DEGETTE. The subcommittee on Oversight and Investigations hearing will now come to order.

OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Today the Subcommittee on Oversight and Investigations is holding a hearing entitled, "In The Dark: Lack of Transparency in the

Live Event Ticketing Industry." The purpose of today's hearing is to examine policies and practices in the live event ticketing industry. The Chair will now recognize herself for purposes of an opening statement.

Today's hearing will examine a lack of transparency in the live event ticketing industry, an industry that's rife with practices that are harmful to consumers. While many of us may remember standing in line at the box office to purchase tickets to a concert or sporting event or even buying tickets outside of an arena from a scalper, most ticket sales to live events now take place online through apps or ticketing websites.

In 2017 alone, online ticketing represented a nine billion-dollar market in the United States. Unfortunately, the industry's online financial success has often been at the expense of the consumer.

While it is certainly easier to buy tickets to live events today, online ticketing sales have led to anticonsumer practices across the industry. These practices have been well-documented by both State and Federal authorities. In 2016, for example, the New York Attorney General investigated the live event ticketing marketplace and found that, quote, "ticketing is a fixed game."

More recently, the Government Accountability Office found a number of concerning consumer protection issues in the industry, including difficulty buying tickets at face value, a lack of transparency around ticket fees, and misleading marketing practices.

In response to consumer concerns, in June, 2019, the Federal Trade Commission held a workshop designed to discuss problematic practices in the ticketing industry. As a part of that effort, consumer groups raised a host of consumer protection issues in the online marketplace to the FTC including practices that misled consumers about ticket prices or availability, the prevalence of certain ticketing websites that may confuse consumers about the entity from which they are purchasing tickets, and restrictions that limit a consumer's ability to transfer tickets.

On the heels of these investigations and the FTC workshop, last November the committee continued its effort in examining the ticketing industry by sending bipartisan letters to six ticketing companies that make up a diverse cross-section of the industry. The committee's letter inquired into a range of issues that impact consumers. The company's responses and the committee's investigation validated our concerns that consumers face a number of disturbing practices when trying to buy tickets online.

Today's hearing will give us the opportunity to hear directly from companies about these practices and what can be done. In particular, we will focus on five key findings today.

First, consumers attempting to buy tickets online continue to be confronted by high hidden fees. These fees are often not disclosed until the end of the transaction, which may mislead consumers about the total cost of the ticket and frustrate their ability to accurately compare prices. Today I want the companies who engage in this practice to explain why they wait until the very end of the buying process to pile on fees instead of providing the total cost upfront, which is known as all-in pricing.

Second, companies that place restrictions on consumers from transferring purchased tickets to another individual may be lim-

iting choice for consumers and driving up prices. I want to know why certain companies seem to be making it harder to transfer or to resell a ticket that he has already purchased and whether this practice is stifling the market and harming consumers. I also want to know if the practice really prevents fraud or if it's just an excuse to limit consumer choice.

Third, consumers appear to be impacted by a lack of transparency relating to ticket availability. Consumers may be unaware that only a limited number of seats frequently could be available by the time tickets go on sale to the general public. For example, the New York Attorney General's investigation found that a majority of tickets for the most popular concerts were reserved for industry insiders or presale events. I want to know how often this occurs, why it's occurring, and why some companies in the primary market are reluctant to let consumers know about the actual number of tickets available at the time of general sale.

The final two findings relate to white label websites and the selling of speculative tickets. White label websites may employ deceptive marketing practices to make consumers believe they are purchasing tickets from an official website when truly they are not. A speculative ticket refers to instances in which a seller offers a ticket for sale on a resale exchange before the seller has the ticket in hand. I want to know how prevalent these practices are, how they impact consumers, and whether the industry believes we should limit them.

As you can see, there's a lot to discuss today. It's clear that many of these practices place consumers at a disadvantage when buying tickets. I look forward to discussing how we can put the consumer first as we look towards findings solutions to make the industry much more transparent.

[The prepared statement of Ms. DeGette follows:]

PREPARED STATEMENT OF HON. DIANA DEGETTE

Today's hearing will examine the lack of transparency in the live event ticketing industry-an industry that is rife with practices that are harmful to consumers.

While many of us may remember standing in line at the box office to purchase tickets to a concert or sporting event, or even buying tickets outside of an arena from a scalper, most ticket sales to live events now take place online through apps or ticketing websites.

In 2017 alone, online ticketing represented a $9 billion market in the United States. Unfortunately, the industry's online financial success has often been at the expense of the consumer.

While it is certainly easier to buy tickets to live events today, online ticketing sales have led to anti-consumer practices across the industry. These practices have been well-documented by both state and federal authorities.

In 2016, for example, the New York Attorney General investigated the live event ticketing marketplace and found that [quote] "Ticketing is a fixed game."

More recently, the Government Accountability Office found a number of concerning consumer protection issues in the industry, including difficulty buying tickets at face value, a lack of transparency around ticket fees, and misleading marketing practices.

In response to consumer concerns, in June 2019, the Federal Trade Commission held a workshop designed to discuss problematic practices in the ticketing industry.

As part of that effort, consumer groups raised a host of consumer protection issues in the online marketplace to the FTC, including practices that mislead consumers about ticket prices or availability, the prevalence of certain ticketing websites that may confuse consumers about the entity from which they are purchasing tickets, and restrictions that limit a consumer's ability to transfer tickets.

On the heels of these investigations and the FTC workshop, last November, the Committee continued its effort in examining the ticketing industry by sending bipartisan letters to six ticketing companies that make up a diverse cross-section of the industry.

The Committee's letter inquired into a range of issues that impact consumers. The companies' responses and the Committee's investigation validated our concerns that consumers face a number of disturbing practices when trying to buy tickets online. Today's hearing gives us the opportunity to hear directly from companies about these troubling practices.

In particular, we will focus on five key findings today:

First, consumers attempting to buy tickets online continue to be confronted by high, hidden fees. These fees are often not disclosed until the end of the transaction, which may mislead consumers about the total cost of the ticket and frustrate their ability to accurately compare prices. Today, I want the companies to explain why they wait until the very end of the buying process to pile on fees instead of providing the total cost upfront, which is known as "all-in" pricing.

Second, companies that place restrictions on consumers from transferring purchased tickets to another individual may be limiting choice for consumers and driving up prices. I want to know why certain companies seem to be making it harder to transfer or resell a ticket that has already purchased, and whether this practice is stifling the market and harming consumers. I also want to know if this practice really prevents fraud as some companies suggest or if this is another excuse to limit consumer choice.

Third, consumers appear to be impacted by a lack of transparency related to ticket availability. Consumers may be unaware that only a limited number of seats could be available by the time tickets go on sale to the general public. For instance, the New York Attorney General's investigation found that a majority of tickets for the most popular concerts were reserved for industry insiders or pre-sale events. I want to know why this is occurring and why some companies in the primary market are reluctant to let consumers know about the actual number of tickets available at the time of general sale.

The final two findings relate to "white-label websites" and the selling of speculative tickets. "White-label" websites may employ deceptive marketing practices to make consumers believe they are purchasing tickets from an official website when they are not. A speculative ticket refers to instances in which a seller offers a ticket for sale on a resale exchange before the seller has the ticket in hand. I want to know how prevalent these practices are, how they impact consumers, and whether the industry believes we should limit them.

As you can see, the companies here today have a lot to answer for. It is clear that many of their practices are placing consumers at a disadvantage when buying tickets. I look forward to discussing how we can put the consumer first as we look toward finding solutions to make this industry much more transparent.

And with that, I'll yield back and I'll recognize the ranking member, Mr. Guthrie, from Kentucky for 5 minutes.

OPENING STATEMENT OF HON. BRETT GUTHRIE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEATH OF KENTUCKY

Mr. GUTHRIE. I thank you very much.

Thank you, Chair DeGette, for holding this hearing.

Many Americans have very fond memories of their first concert, their first football or baseball game. I know I do. I remember my first concert when I was 11 years old. I got to see Elvis, and I think what I remember about it more than anything was the effort to get tickets to see Elvis. My uncle had a dental office right next to the facility, and they rotated. People had to wait in long lines. As they kept adding shows, we kept getting opportunities to see Elvis. So I had a chance to do that.

But it's completely changed now and I know as we have everlasting memories of these concerts, purchasing tickets for live events can be a difficult process for consumers and whether it's extra fees, transferability of tickets, deceptive white label websites,

or speculative tickets, all of these issues can negatively impact the consumer experience. This is why we wrote a bipartisan letter to six companies in November, asking them about their policies and practices as it relates to live event ticketing.

Some of these issues create minor annoyances or inconveniences, such as not being able to see the total cost of the ticket with taxes and fees until the end of the purchase flow, but other issues can create major inconveniences, a financial loss for consumers, such as being denied entry into an event they potentially traveled a long distance to attend because unbeknownst to them it turns out the ticket they bought was not valid.

The Federal Trade Commission and States Attorneys General are the cops on the beat when it comes to overseeing this industry. For example, the FTC Act prohibits unfair and deceptive acts or practices in affecting commerce, and the FTC can enforce the act for issues related to event ticketing and ticketing companies. And State Attorneys General have tools to go after bad actors under their State consumers protection laws. If bad actors, some of which we see exploiting the secondary market, seek to deceive or mislead consumers, the FTC and State Attorneys General can and should hold them accountable.

In addition, the Better Online Ticket Sales Act of 2016, we call the BOTS Act, which became law in December of 2016, addresses tickets, and ticketing issues by prohibiting the circumvention of the security measure, access control systems, or other technological control measures used by online ticket issuers.

Live events are not just for concerts. They encompass other forms of entertainment such as theater and sporting events. Some of the issues we plan to discuss today do not equally apply to all events, and I think it is an important distinction to make throughout today's discussion where applicable. For example, with respect to ticket availability, a venue that a team plays at such as a stadium or arena, has a static number of tickets. In other words, you know how many seats that stadium holds and therefore, how many tickets are available for any given event. Conversely, with concerts, the stage and sound system configuration vary by artist and event type, impacting the number of seats that cannot be used because they're behind or to the side of the stage. As a result, the number of tickets for that type of event varies.

In addition, at today's hearing, we expect to discuss white label websites, which are sales websites built by one company that allows affiliates to use the software to build their own uniquely branded websites. While white label websites are not inherently bad, there are deceptive white label websites that often appear as paid results of internet searches for venues and events and contain a URL and/or language and images on a website that are designed in a way that might mislead consumers to think they are purchasing tickets directly from a venue or an artist. We think that it's an important distinction to make, as well, as we move forward in today's discussion.

Today's hearing serves as an important opportunity for us to examine and to dive into some of those concerns and issues that consumers face, while making the important distinctions between event types and legitimate versus nefarious practices and to dis-

cuss ways to better inform and protect the consumer. The bottom line: Consumers should be able to clearly know what they are buying, who they're buying it from, and what is included in the price of the ticket; ensure that what they purchase is legitimate, and will deliver to them—be delivered to them in time for the event and is valid and will be honored at the venue.

I thank our witnesses for being here today and being part of this important discussion.

And I yield back.

[The prepared statement of Mr. Guthrie follows:]

PREPARED STATEMENT OF HON. BRETT GUTHRIE

Chair DeGette, thank you for holding this hearing.

Many Americans have fond memories of their first concert, or their first football or baseball game—I know I do. While these events can create lasting memories, purchasing tickets for live events can sometimes be a difficult process for consumers. Whether it is extra fees; transferability of tickets; deceptive white-label websites; or speculative tickets—all of these issues can negatively impact the consumer experience. This is why we wrote a bipartisan letter to six companies in November asking them about their policies and practices as it relates to live event ticketing.

Some of these issues create minor annoyances or inconveniences, such as not being able to see the total cost of the ticket, with taxes and fees, until the end of the purchase flow. But other issues can create major inconveniences or financial loss for consumers, such as being denied entry into an event that they potentially traveled a long distance to attend - because unbeknownst to them, it turns out the ticket that they bought was not valid.

The Federal Trade Commission (FTC) and State Attorneys General are the cops on the beat when it comes to overseeing this industry. For example, the FTC Act prohibits unfair and deceptive acts or practices in or affecting commerce, and the FTC can enforce the act for issues related to event ticketing and ticketing companies. And State Attorneys General have tools to go after bad actors under their state consumer protection laws. If bad actors—some of which we see exploiting the secondary market—seek to deceive or mislead consumers, the FTC and State Attorneys Generals can—and should—hold them accountable.

In addition, the Better Online Ticket Sales Act of 2016 (The BOTS Act), which became law in December 2016, addresses ticketing issues by prohibiting the circumvention of a security measure, access control system, or other technological control measure used online by a ticket issuer.

Live event tickets are just not for concerts—they encompass other forms of entertainment such as theater and sporting events. Some of the issues we plan to discuss today do not equally apply to all events and I think that is an important distinction to make throughout today's discussion, where applicable. For example, with respect to ticket availability—a venue that a team plays at, such as a stadium or arena has a static number of tickets. In other words, you know how many seats that stadium holds, and therefore how many tickets are available for any given event. Conversely, with concerts, the stage and sound system configuration can vary by artist and event type, impacting the number of seats that cannot be used because they are behind or to the side of the stage. As a result, the number of tickets for that type of event varies.

In addition, at today's hearing, we expect to discuss white-label websites, which are sales websites built by one company that allows affiliates to use the software to build their own, uniquely branded websites. While white-label websites are not inherently bad, there are deceptive white-label websites that often appear as paid results of internet searches for venues and events and contain a URL and/or language and images on the website that are designed in a way that might mislead consumers to think they are purchasing tickets directly from a venue or artist. We think that is an important distinction to make as well as we move forward with today's discussion.

Today's hearing serves as an important opportunity for us to examine and dive into some of these concerns and issues that consumers face, while making the important distinctions between event types and legitimate versus nefarious practices, and to discuss ways to better inform and protect the consumer.

Bottom line, consumers should be able to clearly know what they are buying, who they are buying it from, what is included in the price of the ticket, ensure that what

they purchase is legitimate, will be delivered to them in time for the event, and is valid and will be honored at the venue.

I thank our witnesses for being here today and being part of this important discussion, and I yield back.

Ms. DEGETTE. I thank the gentleman.

The Chair now recognizes the chairman of the full committee, Mr. Pallone, for 5 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Chairman DeGette.

Today's hearing will bring some much needed transparency to the live event ticketing industry. Every day millions of Americans shop on the internet for tickets for live events like sporting events and concerts. In some ways, the internet has made this experience more convenient, but it also has led to consumers being ripped off as they try to navigate a ticketing industry that, for too long, has operated in the dark.

Consumers now face a myriad of harmful practices that can lead to them paying more for tickets or paying for tickets that they are prohibited from selling or transferring if they're unable to attend the event. In some instances, consumers are not even receiving the ticket as promised after they purchased it.

This hearing is meant not only to better understand the many challenges consumers face in the ticketing marketplace but to also identify steps to protect consumers from being ripped off.

This committee has taken action in recent years to improve the ticket buying experience for consumers. In 2016, the committee in the House passed H.R. 5104, the Better On-Line Ticket Sales Act of 2018, or the BOTS Act. This legislation was signed into law later that year. It cracks down on the use of computer programs that instantly buy up large quantities of tickets before real people can buy them so they can later be resold at higher prices.

Also in 2016, we asked the Government Accountability Office to investigate consumer protection issues in the live ticketing marketplace so that we could better understand the problem and GAO's investigation underscored a host of challenges that consumers face when trying to buy tickets online. For example, they found that websites often fail to display or disclose all the fees up front so that the total cost of a ticket can only be known at checkout. This makes it difficult for consumers to compare prices with other sites.

GAO also found that professional resellers have a competitive advantage over the typical consumer attempting to buy tickets on the primary market. This can force consumers to the secondary market, where they may face significant price increases. GAO also found that consumers can face deceptive marketing practices including, websites that may look similar to that of an official venue but instead often resell tickets for marked-up prices.

And these are all troubling examples of how consumers are being taken advantage of when they're just trying to purchase a ticket for a live event. It was these continuing concerns that led the committee last year to launch a bipartisan investigation into the industry, and our investigation found that the live events ticketing in-

dustry is still engaging in a number of anticonsumer practices. Consumers still experience hidden fees, restrictions on transferring a ticket to someone else, and deceptive and misleading websites.

It's clear that ticketing marketplace needs reform in order to ensure the market is transparent, fair, and working for consumers. In order to help correct some of the problems that still persist in the industry, last year, I joined Representative Pascrell in sponsoring the BOSS Act. This legislation would provide much-needed transparency and regulations to help level the playing field for consumers.

In the meantime, we need answers to several important questions today. We need to know what's going on to take for ticket sellers to—what it will take really for ticket sellers to list the total all-in price of the tickets upfront on their platforms.

We need to know why primary market sellers refuse to inform consumers about how many tickets are actually on sale to the general public, and it's time the industry is transparent with consumers about how many tickets are being held back for industry insiders, reserved for presales, or placed directly on the secondary market at a higher price.

We also need to know what additional disclosures are needed to protect consumers from potential deception or outright fraud by white label websites and the sale of speculative tickets.

And, finally, we need to know why hurdles and restrictions continue to be put in place for those looking to transfer tickets.

So it's time we finally bring transparency to this marketplace so that we can protect consumers which, of course, is always our primary goal.

And unless somebody else wants my time, I'm going to yield back, Madam Chair. Thank you.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Today's hearing will bring some much-needed transparency to the live event ticketing industry.

Every day, millions of Americans shop on the internet for tickets for live events like sporting events and concerts. In some ways, the internet has made this experience more convenient, but it has also led to consumers being ripped off as they try to navigate a ticketing industry that for too long has operated in the dark. Consumers now face a myriad of harmful practices that can lead to them paying more for tickets or paying for tickets that are prohibited from reselling or transferring if they are unable to attend the event. In some instances, consumers are not even receiving the ticket as promised after they purchased it.

This hearing is meant to not only better understand the many challenges consumers face in the ticketing marketplace, but to also identify steps to protect consumers from being ripped off. This Committee has taken action in recent years to improve the ticket buying experience for consumers.

In 2016, the Committee and the House passed H.R. 5104, the "Better Online Ticket Sales Act of 2016," or the "BOTS Act." This legislation was signed into law later that year. It cracks down on the use of computer programs that instantly buy up large quantities of tickets—before real people can buy them—so that they can later be resold at higher prices.

Also, in 2016, we asked the Government Accountability Office to investigate consumer protection issues in the live event ticketing marketplace so that we could better understand the problem.

GAO's investigation underscored a host of challenges that consumers face when trying to buy tickets online. For example, they found that websites often fail to display or disclose all of the fees upfront, so that the total cost of a ticket can only be known at checkout. This makes it difficult for consumers to compare prices with

other sites. GAO also found that professional resellers have a competitive advantage over the typical consumer attempting to buy tickets on the primary market. This can force consumers to the secondary market, where they may face significant price increases.

GAO also found that consumers can face deceptive marketing practices, including websites that may look similar to that of an official venue, but instead often resell tickets for marked up prices.

These are all troubling examples of how consumers are being taken advantage of when they are just trying to purchase a ticket for a live event.

It was these continuing concerns that led the Committee last year to launch a bipartisan investigation into the industry. Our investigation found that the live events ticketing industry is still engaging in a number of anti-consumer practices. Consumers still experience hidden fees restrictions on transferring a ticket to someone else and deceptive and misleading websites. It is clear that the ticketing marketplace needs reforms in order to ensure the market is transparent, fair and working for consumers.

In order to help correct some of the problems that still persist in the industry, last year, I joined Representative Pascrell in sponsoring the "BOSS Act." This legislation would provide much needed transparency and regulation to help level the playing field for consumers.

In the meantime, we need answers to several important questions today. We need to know what it's going to take for ticket sellers to list the total, all-in price of the tickets upfront on their platforms.

We need to know why primary market sellers refuse to inform consumers about how many tickets are actually on sale to the general public. It's time the industry is transparent with consumers about how many tickets are being held back for industry insiders, reserved for presales, or placed directly on the secondary market at a higher price.

We need to know what additional disclosures are needed to protect consumers from potential deception or outright fraud by white label websites and the sale of speculative tickets.

And, finally, we need to know why hurdles and restrictions continue to be put into place for those looking to transfer tickets.

It's time we finally bring transparency to this marketplace so that we can protect consumers.

Ms. DEGETTE. The chairman yields back.

The Chair now recognizes the ranking member of the full committee, Mr. Walden, for 5 minutes.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Good morning, Madam Chair, and welcome to all our witnesses and guests. Thank you all for being here.

As the—as Ranking Member Guthrie mentioned, purchasing tickets to a live event is something we can all relate to. Live—I didn't know he was 11 when he saw Elvis, though. That's—yes. Wow, you're old.

Live entertainment, whether it's a—whether it's a concert, a theater event, or a sporting event can lead to once-in-a-lifetime experiences that create lasting memories. However, a lack of transparency or deceptive acts and/or fraud in the industry can cause a lot of frustration to say the least, in some cases, financial harm to consumers.

Some of these issues include deceptive white label websites—you've heard about that—speculative tickets, fraudulent tickets, to name just a few. I look forward to hearing what the six companies before us today are doing about that and what you're doing to combat some of these issues, protect consumers, and ensure consumer satisfaction.

As Mr. Guthrie mentioned, it's important we keep in mind distinctions with ticket availability issues, different types of white label websites, and more. But it's equally important that we balance consumer protection with potentially unintended consequences, too, to the industry that will ultimately negatively impact consumers as we explore potential solutions to some of these issues.

For example, a 2018 U.S. Government Accountability Office report that was requested by, as you heard, the bipartisan leaders of the committee on event ticket sales and market characteristics and consumer protection issues noted that there are advantages and disadvantages to certain practices and in some cases, it's unclear whether new requirements would introduce new compliance challenges for the ticketing industry such as requiring companies to disclose proprietary information.

Therefore, it's important that this subcommittee gathers all the information necessary and the facts before determining what the potential solutions may be to further enhance consumer protection within the industry.

Furthermore, the Better Online Ticket Sales Act of 2016, known as the BOTS Act, was signed into law in 2016, yet neither the Federal Trade Commission nor the States have taken enforcement action under this statute to date. In addition to the issues outlined in the committee's bipartisan letter sent to the six companies in November, it would be helpful to hear from you-all before us today whether you see bots as an issue in the industry now and how, if at all, it is harmful to consumers, so the issue of bots.

I understand bad actors utilizing bots to game our system may be beyond our borders. That does not mean they are beyond our reach. I'm proud of this committee's leadership on extending the U.S. SAFE WEB Act that reaffirms the FTC's ability to hold foreign bad actors accountable. As with many problems, there's no easy fix and that's probably true with this as well.

This committee should work with the FTC, the Federal Trade Commission, as part of our investigation to figure out how we can address not only this bots issue but also other ticket issues that present create harm to consumers.

The most important thing to keep in mind across the issues that will be discussed today is the need for transparency and appropriate disclosures to consumers and, if there's adequate transparency, consumers will then have the necessary information they need in order to make an informed decision about whether or not they want to purchase a live event ticket, who they want to purchase the ticket from, and what kind of ticket they want to purchase and what the breakdown is for the total cost of the ticket including taxes and fees.

For example, if a consumer knows that a ticket's dynamically priced and knows what it means for a ticket to be dynamically priced, it should then be left to the consumer to decide whether or not they want to purchase a dynamically priced ticket. In addition, the limits placed on a ticket that designates whether the ticket's transferable or not should be clearly disclosed to consumers before the consumer purchases the ticket so that that consumer under-

stands the limitations placed on the ticket to help avoid possible frustration and financial loss down the road.

So, again, I want to thank you-all for being here today, testifying before the Oversight and Investigation Subcommittee. I look forward to listening to your testimony and working with my colleagues here on the committee on both sides to ensure that we make fully informed decisions that enhance consumer protection.

So with that, Madam Chair, I would yield back the balance of my time.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Chair DeGette, thank you for holding this hearing.

As Ranking Member Guthrie mentioned, purchasing tickets to a live event is something that we can all relate to. Live entertainment, whether it is a concert, theater event, or a sporting event, can lead to once in a lifetime experiences that create lasting memories. However, a lack of transparency, deceptive acts, and/or fraud in this industry can cause frustration and, in some cases, financial harm to consumers.

Some of the issues include deceptive white-label websites, speculative tickets, and fraudulent tickets, to name a few. I look forward to hearing what the six companies before us today are doing to combat some of these issues, protect their consumers, and ensure customer satisfaction.

As Ranking Member Guthrie mentioned, it is important that we keep in mind distinctions with ticket availability issues, different types of white label websites, and more. But, it is equally important that we balance consumer protection with potentially unintended consequencesto the industry that will ultimately impact consumers as we explore potential solutions to some of these issues.

For example, a 2018 U.S. Government Accountability Office (GAO) report that was requested by bipartisan leaders of this Committee on event ticket sales and the market characteristics and consumer protection issues noted that there are advantages and disadvantages to certain practices, and in some cases, it is unclear whether new requirements would introduce new compliance challenges for the ticketing industry, such as requiring companies to disclose proprietary information. Therefore, it is important that this Subcommittee gather all the necessary facts before determining what the potential solutions may be to ensure consumer protection within the industry.

Furthermore, the Better Online Ticket Sales Act of 2016 (BOTS Act) was signed into law in 2016, yet neither the Federal Trade Commission (FTC) nor the states have taken enforcement action under this statute to date. In addition to the issues outlined in the Committee's bipartisan letter sent to the six companies in November, it would be helpful to hear from the companies testifying before us today whether they still see bots as an issue in the industry and how, if at all, it is harmful to consumers.

I understand bad actors utilizing bots to game our system may be beyond our borders, but that does not mean they are beyond our reach. I am proud of this Committee's leadership on extending the U.S. SAFE WEB Act that reaffirms the FTC's ability to hold foreign bad actors accountable. As with many problems, there is no easy fix to this one either. This Committee should work with the FTC as part of our investigation to figure out how we can address not only this bots issue, but other ticket issues that present concrete harms to consumers.

The most important thing to keep in mind across all the issues that will be discussed today is the need for transparency and appropriate disclosures to consumers. If there is adequate transparency, consumers will then have the necessary information they need in order to make an informed decision about whether or not they want to purchase a live event ticket; who they want to purchase the ticket from; what kind of ticket they want to purchase; and what the breakdown is for the total cost of the ticket, including taxes and fees.

For example, if a consumer knows that a ticket is dynamically priced and knows what it means for a ticket to be dynamically priced, it should then be left to the consumer to decide whether or not they want to purchase a dynamically priced ticket. In addition, the limits placed on a ticket that designate whether the ticket is transferrable or not should be clearly disclosed to a consumer before the consumer purchases the ticket so that the consumer understands the limitations placed on the ticket, to help avoid possible frustration and financial loss down the road.

I want to thank the companies before us today for agreeing to testify before the Subcommittee. I look forward to listening to the testimony of the witnesses and working with our colleagues on the other side of the aisle to ensure that we make fully informed decisions to protect consumers. I yield back.

Ms. DEGETTE. The gentleman yields back, and that concludes the opening statements.

I ask unanimous consent that Members' written opening statements be made a part of the record.

Without objection, so ordered.

I now want to introduce our witnesses for today's hearing, and I want to thank all of you for coming today: Ms. Amy Howe, who's the President and Chief Operating Officer; Ticketmaster, Mr. Brian Perez, who's the Chief Executive Officer, AXS, Ms. Stephanie Burns, Vice President and General Counsel, StubHub, Mr. Ryan Fitts, Vice President, Legal Affairs, Vivid Seats, Mr. Don Vaccaro, Founder and Chief Executive, TicketNetwork, and Mr. Joe Choti, President and Chief Executive Officer, Tickets.com.

Again, thanks to all of you and I know all of you are aware the committee's holding an investigative hearing and, when doing so, we have the practice of taking our testimony under oath.

Does anyone object to testifying under oath today?

Let the record reflect the witnesses have responded "no."

The Chair then advises you that under the rules of the House and the rules of the committee, you are entitled to be accompanied by counsel. Does any of you desire to be accompanied by counsel today?

Let the record reflect that the witnesses have responded "no."

So, if you would, please, rise and raise your right hand so you may be sworn in.

[Witnesses sworn.]

Ms. DEGETTE. You may be seated.

Let the record reflect the witnesses responded affirmatively, and you're now under oath and subject to the penalties set forth in Title 18, Section 1001 of the U.S. Code.

The Chair now recognizes our witnesses for a 5-minute summary of each of their written statements. In front of you is a microphone, a timer, and a series of lights. The timer will count down your light, and the red light will turn on when your 5 minutes has expired.

So now I'd first like to recognize you, Ms. Howe, for 5 minutes for your opening statement.

TESTIMONY OF AMY HOWE, PRESIDENT AND 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; AND JOE CHOTI, PRESIDENT AND CHIEF EXECUTIVE OFFICER, TICKETS.COM

TESTIMONY OF AMY HOWE

Ms. HOWE. Good morning.

Chairman Pallone, Ranking Member Walden, Chair DeGette, Ranking Member Guthrie, and members of the subcommittee, thank you for the opportunity to appear before you today.

My name is Amy Howe, and I'm the president and chief operating officer of Ticketmaster, North America. As a leader in the live event ticketing industry, we share your interest in improving the ticketing ecosystem to better protect consumers. Before addressing the specifics of these important issues, I'd like to offer some important context.

The live entertainment industry is like no other. It's all about once-in-a-lifetime experiences to draw the most passionate fans.

Ms. DEGETTE. Excuse me, Ms. Howe, if you can just move that microphone a little closer——

Ms. HOWE. Is that better?

Ms. DEGETTE. We're been having problems with them dropping off. That's better. Thank you.

Ms. HOWE. Thank you.

To draw the most passionate fans on Earth to unforgettable moments in time. As we like to say, life only happens once. It sounds simple, but it helps remind our team that for each fan we serve, we have only one chance to get it right. We want the fan experience to be memorable and, importantly, simple, safe, and transparent. We do our best every day to deliver on this promise and keep Ticketmaster free from the unethical and illegal activities that hurt consumers.

The greatest challenge is simply supply and demand. Even in the world's biggest venues, events have limited capacity. This imbalance naturally causes disappointment for fans who are unable to get tickets and unfortunately, opportunity for bad actors to prosper.

We invest millions of dollars annually to protecting our platform so fans, clients, and brokers can avoid issues created by bad actors and engage within a legitimate, reliable ticketing marketplace. Unfortunately, there will always be those who want to cheat the system, take advantage of fans, and give our industry a bad name. The committee has rightly called out many of these tactics: Deceptive websites, speculative tickets, bots, and lack of transparency, amongst others.

When we received the committee's November inquiry, we saw that we have many of the same concerns. As we've shared with the committee, Ticketmaster bans speculative ticketing on our platform, we report deceptive websites, we combat bots, and we support all-in pricing. Let me quickly touch on each of these.

A leading obstacle to fans' ability to access tickets fairly is the proliferation of sophisticated consumer automation, or bots, which accesses thousands of tickets to resell them to fans at staggering prices. Forty percent of activity on ticketing sites today is automated, with nearly 70 percent of that traffic here in the U.S. alone.

Since 2018, Ticketmaster has blocked over 30 billion bot purchase attempts. We do this because we fundamentally believe tickets should go to fans at a price determined by the artist. We've also developed innovative technologies like Verified Fan and Smart

Queue to weed out bots and bad actors and we supported the 2016 BOTS Act, which made bots illegal.

Despite the massive investments we've made to help fans get fair access to tickets, we know this alone will not solve the problem which is why we strongly support bolstering the BOTS Act with more rigorous enforcement.

Second, speculative ticketing, which is when professional sellers offer tickets they don't have and may never have, is commonplace. Earlier this month The Rolling Stones announced their tour dates and within minutes, before the band had even released those tickets to the general public, hundreds of spec tickets were available on other resale marketplaces, some upwards of $3,000, or 7 times face value. Ticketmaster's resale policy prohibits spec tickets, we actively remove them from our site, and we support mandated disclosures or banning the practice all together.

Next, if you Google Rolling Stones tickets, you'll likely find official-looking ticket sites which are deceptive and misleading. These sites are actually fronts for resellers trying to trick fans into believing they're buying primary tickets when, in fact, what is being offered are inflated resale tickets. Ticketmaster bans and reports deceptive URLs and to ensure transparency on our marketplace, if we aren't the primary ticketer, we link to the official box office, a best practice we feel should be adopted industrywide.

Last, what consumers may not know is that every ticket we sell is owned by the event organizer and artist's team or venue and not by Ticketmaster. Event organizers determine pricing, fee structures, and on-sale strategies. Then we support and implement those decisions. What everyone does know is that their total ticket price is the face-plus fees but that total should be disclosed from the outset, not at the end of the purchase process, which is why we support legislative, mandating, industrywide all-in pricing and believe that there should be robust enforcement of this requirement.

As a leader of our company, I work alongside more than 3,000 dedicated employees who work tirelessly every day to provide a safe, reliable, and transparent experience for our fans and this is why we are here today, to share our approach and challenges, to hear your perspective, and to work together to identify legislative and regulatory solutions to improve the ticketing ecosystem.

I truly appreciate the opportunity to discuss these important issues and look forward to answering your questions. Thank you.

[The prepared statement of Ms. Howe follows:]

United States House of Representatives
Committee on Energy and Commerce
Oversight and Investigations Subcommittee
Hearing on Live Event Ticketing Industry
February 26, 2020

Written Testimony of
Amy Howe
President and Chief Operating Officer
Ticketmaster, North America

Chair DeGette, Ranking Member Guthrie and Members of the Subcommittee, thank you for the opportunity to appear today before the House Committee on Energy and Commerce, Oversight and Investigations Subcommittee to address several important issues regarding the live event ticketing industry. Ticketmaster appreciates the opportunity to participate in this hearing and agrees these are important topics.

My name is Amy Howe, and I am the President and Chief Operating Officer of Ticketmaster North America. Ticketmaster is a leading provider of live event ticketing and is the preferred platform for thousands of venues, sports teams, event owners and artists around the world, but particularly in the United States.

Since the Subcommittee's investigation began last November, Ticketmaster, through our parent company, Live Nation Entertainment, has actively engaged with the Subcommittee to provide a fulsome response to your requests for information. We believe the information we have provided firmly establishes that Ticketmaster provides the most responsible ticket marketplace in the industry today. Our mission is to connect artists, teams and venues with *real* fans, and we are thoroughly committed to business practices that promote transparency, deter deceptive practices and provide consumers with the ability to enjoy a concert, show or game, knowing their tickets are legitimate and secure.

Ticketmaster supports legislation to stop deceptive practices and ensure consumers have fair access to tickets. To put these issues into context and reinforce the need for legislative solutions, I will provide a brief overview of the live event ticketing industry, including the rise of certain unfair and deceptive practices that continue to plague consumers. In addition, I will provide a brief overview of the substantial efforts Ticketmaster has already made to protect consumers and steps that Congress and those in the ticketing industry can take to further protect consumers and Event Organizers alike.

I. Ticketmaster Supports Consumer – Friendly Legislation and Vigorous Enforcement

We are committed to developing products and processes to provide transparency and create a safe and reliable ticket marketplace that gets tickets into the hands of real fans. However, we also recognize that these solutions alone are insufficient without smart legislation and enforcement to prevent deceptive practices. As such, Ticketmaster supports federal legislation to address the issues raised in the Committee's letter.

To protect consumers, federal legislation should:

- Mandate all-in pricing on all ticket marketplaces – Consumers should be able to see the total cost of their tickets, including all fees, at the beginning of the purchase process, not only at the end. Requiring all live event ticketing marketplaces to move to "all-in" pricing (that is, to include all required fees in the price from the first purchase page), and robust enforcement of that requirement, would prevent price manipulation, promote transparency and protect consumers.

- Ban speculative tickets – Speculative tickets should be prohibited, or at the very least, include mandatory disclosures to protect consumers.

- Prohibit deceptive web sites – Deceptive "white label" web sites should be prohibited, and marketplaces should include clear and conspicuous disclosure of their relationship (or lack thereof) to the Event Organizer.

- Require transparent resale disclosures – Marketplaces should include clear and conspicuous disclosures of their relationship to the event owner; whether a ticket is a primary or resale ticket; and that a resale ticket price may exceed face value. Providing consumers with a link to the primary ticketer would provide consumers with additional, beneficial and actionable transparency.

- Strengthen enforcement of the Better Online Ticket Sales ("BOTS") Act of 2016 – Strong legislation without commensurate enforcement is a missed opportunity. We support enhanced enforcement of the BOTS Act of 2016, and we were particularly pleased to hear FTC Commissioner Slaughter testify that the FTC is "actively monitoring for enforcement opportunities." [1]

II. Live Event Ticketing – How it Works

Live event ticketing is a complex ecosystem made up of artists, sports teams, theatrical shows, promoters and venues, often collectively referred to as "Event Organizers." In almost all instances, it is the Event Organizer that has funded the live event, often putting substantial capital at risk with no guarantee of generating enough revenue to cover expenses or make a profit.

In the "primary market," tickets are sold for the first time by an Event Organizer. Event Organizers typically choose a ticketing provider to help them manage, market and sell tickets for their events. The ticketing provider supplies the software and services to help Event Organizers price, merchandise and sell their tickets; the hardware, equipment and support for venues' box offices; as well as customer service support to event consumers. Ticketmaster is the largest of the ticketing providers in the U.S. primary market,[2] and Ticketmaster does not charge its clients

[1] Remarks by Commissioner Rebecca Kelly Slaughter, Senate Commerce, Science and Transportation Committee, Consumer Protection, Product Safety, Insurance and Data Security Subcommittee, Hearing on Oversight of the Federal Trade Commission (Nov. 27, 2018).
[2] United States Government Accountability Office, Event Ticket Sales: Market Characteristics and Consumer Protection Issues (2018) ("GAO Report") at 4, *available at* https://www.gao.gov/assets/700/691247.pdf.

for these products and services. Other well-known primary ticketing providers include AXS, Paciolan, Tessitura, Tickets.com, Eventbrite, eTix, Audience View, Telecharge and SeatGeek. All decisions effecting tickets, such as the number of tickets to make available to the public, the prices for the tickets and any limitations on resale or transferability of tickets, are made by the Event Organizer, not the ticketing provider.

The "secondary market" or "resale market" refers to any subsequent resale of a ticket after the initial sale. This resale activity has, over time, moved to a predominantly online e-commerce transaction, and the leading players are StubHub and Vivid Seats. Other secondary marketplaces include Ticket Network, Gametime and SeatGeek. Ticketmaster participates in the secondary market through our integrated secondary marketplace as well as through the operation of several ticket exchanges we manage on behalf of certain sports teams or leagues, such as the NFL, NBA and NHL. Similarly, StubHub is the official secondary marketplace for MLB, WWE and dozens of NCAA teams.

In both the primary and secondary ticket markets, Ticketmaster is committed to making sure consumers experience a safe, simple and transparent ticket purchase process, particularly for high demand events. To that end, over the past several years, we have substantially increased our focus on, and investment in, new technology to create a fair and reliable marketplace for consumers.

III. The Imbalance Between Supply and Demand for High Demand Tickets Provides Bad Actors the Opportunity To Engage in Deceptive Practices that Harm Consumers

Most problems in live event ticketing are directly attributable to two basic economic concepts.

First, for the most popular live events, demand far exceeds supply, which means more fans want to attend than there are seats in the venue. While, on average, only 2.4% of events on our primary ticket marketplace sell out within 24 hours of the on-sale date, the demand for these events is often so high that it generates a significant amount of fan frustration. Unfortunately, unlike markets for other types of products where supply can be increased to meet demand, Event Organizers cannot simply increase the number of seats in a given venue and are often limited in the number of shows they can perform. As an example, in 2015, an estimated four million fans logged on to try to buy approximately 100,000 available tickets for Adele's six shows to be held in New York's Madison Square Garden, leading to millions of disappointed fans.

Second, primary tickets are often priced below actual market value. Where markets for other types of products may regularly increase prices in response to growing demand, that is often not the case for live events. Why would Event Organizers want to price tickets below market value? There are several reasons, but most often, it is so artists can build or maintain

goodwill by allowing fans of all income levels to access tickets, thus building a loyal, life-long fan base, especially among younger fans.[3]

These dynamics have contributed to the growth of a secondary ticket market estimated at $10 billion annually, with concerts representing $3.6 billion. In the words of the New York Attorney General, this allows some players in the ticketing ecosystem to "take the benefits intended for the consumer" by buying below-market price tickets and then selling them at an enormous profit.[4]

The amount of potential profit to be made by capitalizing on the imbalance between the prices Event Organizers set and the amount certain consumers are willing to pay has given rise to a number of deeply deceptive and unethical practices by some resellers and some marketplaces. Today, the majority of these practices are employed online, leveraging advanced technology like sophisticated computer automation (often called "bots"), to provide an unfair advantage in ticket purchasing and thus constraining a consumer's access to tickets. Other practices include the use of deceptive resale web sites that are intentionally made to look like official marketplaces, and listing speculative tickets the seller does not yet possess, deceiving fans through unfair pricing practices and a lack of clear and conspicuous disclosures.

IV. Deceptive and Unfair Practices that Hurt Consumers – and What Ticketmaster is Doing About Them

As we have discussed with the Subcommittee, Live Nation Entertainment and Ticketmaster share the Subcommittee's concerns about the proliferation of unfair and deceptive ticketing practices. We are committed to being part of the solution and have already invested heavily in trying to prevent deceptive practices and create the safest, most reliable and transparent ticket marketplace for consumers and the Event Organizers who bring them live events.

A. Consumers Want to Know the Total Price Up Front – Mandating All-In Pricing Will Provide Transparency

While consumers expect to pay fees on top of the face value ticket price, some may prefer to see the specific amount of the fees earlier in the purchase process. Some marketplaces also take advantage of the industry practice of disclosing the fees later in the purchase process to manipulate the list price of a ticket, making the ticket price appear less expensive upfront. These marketplaces charge consumers high fees, often through the deceptive "mark-downs" of resale tickets. This practice involves reducing the up-front list price of a ticket, only to add the amount of the reduction (or more) into the fees charged later in a transaction. According to the United States Government Accountability Office (the "GAO"), in its 2018 report *Event Ticket Sales: Market Characteristics and Consumer Protection Issues* (the "GAO Report"), these deceptive practices are often worse on the secondary market, where average fees are 10% higher than fees on the primary market.[5] Ticketmaster provided multiple examples of this deceptive practice to

[3] *See* New York State Office of the Attorney General, Obstructed View: What's Blocking New Yorkers from Getting Tickets (2016) ("NY AG Report") at 27, *available at* https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf.
[4] *Id.*
[5] GAO Report at 6.

the Committee in our written submission on December 23, 2019. In one such instance, a resale ticket was offered by a seller for $75. Ticketmaster advertised the ticket to consumers for $75, and after 17% in fees charged a total price of $87.75. A competitor "marked down" the exact same ticket by 10%, advertising the ticket to consumers for $68, but then added 36% in fees, for a total ticket price of $92.77. Thus, on the competitor's web site the ticket was initially presented as less expensive than what was offered on Ticketmaster, when in fact the ticket ended up being more expensive after the addition of fees. Examples of this type of deceptive practice meant to trick consumers into paying a higher all-in price are attached as Exhibit 1.

Ticketmaster discloses the full amount to be paid by a consumer – including all fees – *before* the consumer makes the final purchasing decision. We do not engage in the above-referenced mark-down practice employed by some secondary marketplaces.

Some ticket marketplaces claim to provide consumers the choice to see prices that include "estimated fees" by clicking on a filter to "show prices with estimated fees." Examples attached as Exhibit 2 demonstrate the inaccuracy of those estimates, which are likely to cause further consumer confusion that can be fixed by legally mandating up-front, accurate all-in pricing. To properly address these legitimate pricing concerns, we support moving to an all-in "up-front" fee display. However, we believe that for up-front pricing to effectively enable consumers to accurately compare prices, *all members* of the live event ticketing industry must be legally required to list all prices and fees up-front so that consumers can make meaningful comparisons between marketplaces.[6] Such up-front fee display is required in almost every other major market we operate in, including Canada, Australia, New Zealand, the European Union and others, and Ticketmaster complies with these laws.

Further, Ticketmaster publicly describes the fees a consumer may pay on our web site. For a full description, see https://help.ticketmaster.com/s/article/How-are-ticket-prices-and-fees-determined.

B. Consumers Should Have Fair Access to Tickets – Bots and Unfair Purchasing Behavior Unfairly Limit Access and Should be Stopped

The biggest threat to consumer access to tickets is unethical professional resellers who, among other things, use automation and violate rules to buy tickets. Ticketmaster is not opposed to resale when it is done right. Resale is a healthy part of the ticketing ecosystem when it serves as a marketplace for those who can no longer attend an event, for a season ticket holder who wishes to sell tickets to some games to help them finance their investment and for Event Organizers/rights holders, particularly in sports, who rely on professional resellers to broaden distribution. However, unscrupulous professional resellers want access to tickets to further their ability to manipulate the market through bots and other unfair practices, all of which prevent consumers from accessing tickets on the primary market.

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[6] *See* Francisco Rendon, "Bots! Transparency! 'Drip Pricing!' Online Ticketing Takes Center Stage At FTC Workshop" (Pollstar, June 24, 2019), *available at* https://www.pollstar.com/News/bots-transparency-drip-pricing-online-ticketing-takes-center-stage-at-ftc-workshop-138241.

Despite passage of the BOTS Act, which made the use of bots to purchase large quantities of tickets illegal, unscrupulous actors continue to use bots, depriving real fans of the opportunity to purchase tickets at the prices set by Event Organizers. Bots can purchase hundreds of regular and below market priced tickets simultaneously, before consumers have a chance to do so.[7] A report issued by the New York Attorney General (the "NY AG Report") identified a bot that in 2014 purchased over one thousand tickets for a U2 tour in *one minute*.[8] According to a 2019 report by Distil, a leading bot-mitigation software provider, 40% of activity on ticketing sites is computer automated, and up to 67% of bad bot traffic occurs in the United States.[9] When bots are used to purchase large quantities of tickets, fans who didn't have fair access to those tickets are left with the choice of either missing their favorite artist, team or theatrical performance, or paying drastically inflated prices.

Ticketmaster has invested tens of millions of dollars and considerable resources developing technologies that help real fans get fair access to tickets. Over the past several years, Ticketmaster has launched Verified Fan®, Smart Queue® and ticket limit products designed specifically to block bots and ensure real fans are getting access to events. Through these new technologies, we are now blocking almost three billion bot purchase attempts per month and anticipate blocking approximately 30 billion attempts in 2020.

Verified Fan technology uses algorithms and behavior analysis to increase consumer access to tickets during a pre-sale. Verified Fan identifies and prioritizes a registrant who is an actual fan likely to attend the show versus parties that are only buying to resell the ticket at inflated prices. Registrants identified as Verified Fans are subsequently provided a unique code that gives them a chance to purchase presale tickets on a first-come, first-serve basis. Verified Fan has been deployed by nearly 200 artists since its launch in 2017, and it has proven highly effective; the average volume of resale postings for these shows is 90% less than similar tours that have not used it, demonstrating that more primary tickets are reaching consumers who want to attend the event, rather than those who are looking to resell for their own economic gain.

Smart Queue technology places all prospective buyers in a waiting room where we manage the flow of traffic into the Ticketmaster shopping experience, while simultaneously detecting and blocking bots from accessing inventory. Instead of a rush to the on-sale that favors the bots, Smart Queue drops fans into a virtual line, requiring each user to sign in and provide a unique phone number for validation in order to increase consumer access to tickets. By monitoring traffic and layering advanced security measures, Smart Queue enables fans to view the entire venue and select the exact seats they want to buy, without fighting bots who historically had an overwhelming advantage.

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[7] *See* GAO Report at 19; Federal Trade Commission Workshop, Keynote Address, Professor Eric Budish, *That's the Ticket* (June 11, 2019) at 12, *available at* https://www.ftc.gov/news-events/events-calendar/2019/03/online-event-tickets-workshop.

[8] *See* NY AG Report at 18.

[9] *See* Daniel Sanchez, "Nearly 40% of Ticketing Traffic Comes from Bad Bots, Study Finds" (Digital Music News, Feb. 28, 2019), *available at* https://www.digitalmusicnews.com/2019/02/28/bots-ticketing-traffic/.

Ticket Limit Products: Further, when a ticket buyer exceeds ticket limits for a show, which are set by an Event Organizer to ensure broader consumer access to tickets, Ticketmaster has a fully-automated process that flags those orders in order to help enforce the ticket limits. This "over the ticket limit" ("OTL") product seeks to identify purchases in real time—in many instances attempted by bots—that exceed the posted ticket limits, and to put a stop to them.

Ticketmaster continues to be in an arms-race with bot users. In addition to the millions of dollars spent fighting bots, we have also supported legislation at the state and federal levels to ban bots and pursued private legal action against bot users.

Ticketmaster was proud to support the federal BOTS Act to ban the use of bots on ticketing platforms. Ticketmaster is actively working with state legislatures across the country to develop and enact anti-bot legislation, and in 2018 we supported successful efforts to pass laws in New York and New Jersey to crack down on ticketing bots. In addition, Ticketmaster continues to work with state Attorneys General and the Federal Trade Commission ("FTC") in an effort to enforce the provisions of the BOTS Act.

Ticketmaster has also pursued private lawsuits against bot users. Most recently, Ticketmaster invested substantial resources to litigate a case in federal court in the Central District of California, which resulted in a sweeping injunction against the defendant's use of bots and similar tools.[10]

C. Mandatory Inventory Disclosure Will Not Solve the Problem

Some in the industry have argued that the biggest threat to consumer access to tickets is not knowing how many tickets are available for sale and that artists, teams and other content owners should have to disclose the details on the number of tickets that will be made available for sale for their event. We disagree. In fact, as the recent GAO Report noted, it is "[u]nclear how useful [inventory disclosure] information is for consumers." *Id.* at 11, 36. We know of no other industry in which the owners are required to disclose their inventory levels.

Importantly, we believe that not only would mandatory inventory disclosure *not* help fans get fair access to tickets, but it would likely create more challenges for fans. Here's why. Disclosing this information would make it even easier for unethical brokers and bot users to determine the supply/demand profile for the most in-demand events, making it easier for them to target supply and manipulate the market. For instance, products such as Ticket Flipping (subscription-based services for professional resellers) actively scrape primary and secondary ticketing marketplaces and notify sellers how many tickets are still available for an event, what types of tickets are available and at what prices (see Exhibit 3). The very fact that professional resellers are willing to pay for this information suggests this information is extremely valuable to these professional resellers. Forcing Event Organizers to list available inventory by price tier would only give professional resellers an even more granular blueprint,

[10] *See* Final Judgment, *Ticketmaster LLC v. Prestige Entm't West Inc.*, No. 2:17-cv-07232-ODW (C.D. Cal., July 8, 2019).

resulting in more tickets on the secondary market at inflated prices, further reducing the odds of fair access for the average fan.

In addition, we do not believe that inventory disclosure will solve the underlying problem of getting real fans fair access to tickets for two reasons. *First*, for select high demand events, demand far outstrips supply—by a factor of 10 or more. Previously, I referenced that in 2015, an estimated four million fans logged on to try to buy approximately 100,000 available tickets for Adele's six shows at New York's Madison Square Garden. Knowing that 100,000 tickets were available when there were four million requests for those tickets (demand being 40x actual supply) would not have helped the average Adele fan get tickets to her show. *Second*, inventory disclosure would not level the playing field for a consumer competing in real-time against automated computer bots, which make tens of thousands of requests to purchase tickets during a high demand on-sale for every single attempt made by an actual consumer.

In summary, we believe that there are far more effective measures, including stronger enforcement of the 2016 BOTS Act, that will make more progress towards our shared goal of getting real fans fair access to tickets, a goal to which we are 100% committed.

D. Fake Tickets Prey on Consumers' Desire to Attend Popular Events – Fans Deserve to Know their Ticket will Work

Annually, almost five million unsuspecting fans buy fake tickets for live events.[11] A quick Google search will surface thousands of articles and other references to devastated fans who arrived at a sporting event or concert, only to discover their tickets were not real. In 2019, the Department of Justice indicted thirteen individuals on charges related to counterfeit tickets for some of the most popular live events, including several Super Bowls.[12] For decades, tickets with an anonymous, static bar code were the industry-standard. However, this technology created the opportunity for bad actors to easily duplicate tickets, taking screen shots or printing multiple copies, only to sell them to unsuspecting fans at highly inflated prices on the secondary market.

Ticketmaster has been at the forefront of developing innovative technologies that ensure consumers receive valid tickets, reducing fraud and providing consumers with better experiences when they go to see their favorite artists and sports teams.

Ticketmaster Presence® is our digital ticket platform that allows a fan to use their phone as their ticket through easy-to-use "tap and go" technology to enter a venue, similar to modern

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[11] *See* Jennifer Schlesinger, "Making your summer concert plans? How not to get scammed" (CNBC, May 3, 2014), *available at* https://www.cnbc.com/2014/05/02/making-your-summer-concert-plans-how-not-to-get-scammed.html (citing Sid Kirchheimer, *Scam Alert* (AARP, June 27, 2013), *available at* https://web.archive.org/web/20180715165121/http:/blog.aarp.org/2013/06/27/how-to-avoid-summer-event-ticket-scams-scalpers-tickets-fraud/); Jenna Cyprus, "More than 5 Million Fake Tickets are Sold Every Year. Here's How to Protect Yourself" (Digital Music News, Dec. 8, 2017), *available at* https://www.digitalmusicnews.com/2017/12/08/fake-tickets-scam-protect/.

[12] *See* U.S. Department of Justice, "Members of Counterfeit Ticket Rings Indicted for Trafficking Counterfeit Tickets for Marquee Events, Including the Super Bowl" (Jan. 31, 2019), *available at* https://www.justice.gov/usao-edpa/pr/members-counterfeit-ticket-rings-indicted-trafficking-counterfeit-tickets-marquee.

payment methods such as Apple Pay. More than 700 venues (including those used by the NFL) have implemented Ticketmaster Presence technologies, and more than 122 million fans have entered venues using the technology as of December 31, 2019. Counterfeit tickets have plummeted at venues that have implemented Presence. The venue operator at the Orlando City Stadium in Orlando, Florida, for instance, reported that adopting exclusively paperless tickets using Ticketmaster Presence reduced instances of fraud from over 120 cases per event to zero.[13] In addition, fans benefit from faster entry, easy mobile ticket transfers and an improved experience, including event updates, in-venue offers and upgrades. Presence technology provides venues better insight into who is entering the facility, resulting in better security.

SafeTix™, which was built on the Presence platform and launched in 2019, creates tickets that replace the static bar code with an encrypted rotating token sent to a fan's mobile device. The unique code refreshes automatically every few seconds, preventing an unscrupulous reseller from taking a screenshot or photocopying a ticket and fraudulently selling it to multiple unsuspecting consumers. A fan with a SafeTix ticket, including any fan to which the ticket was legitimately transferred, can be 100% certain their ticket is valid. In the 2019-20 NFL regular season, 10.2 million fans entered NFL stadiums using SafeTix, and there were no cases of reported fraud.

Not only does use of SafeTix technology ensure a consumer gets a valid ticket, but an artist can also use SafeTix to ensure their fans get access to tickets at the prices the artist sets by choosing to limit the transferability of their tickets. Limiting transferability of tickets is an important tool for Event Organizers to enforce their pricing decisions, and not allow inflated resale that hurts consumers. As reference to this point, the GAO Report noted that restricting Event Organizers from limiting the transferability of tickets reduces the "opportunity for consumers to access tickets at lower-face value price."[14]

On January 13, 2020, Pearl Jam announced that tickets for its Gigaton tour would be issued as mobile-only tickets and would be non-transferable.[15] The band made this decision to provide consumers access to their tickets at below-market prices, thereby preventing them from paying inflated prices on the resale market. The limitation on transferability of these tickets has been fully disclosed to consumers, with extensive communication to fans throughout the announcement and the sales process on Ticketmaster. For fans who are ultimately unable to attend the concert, Ticketmaster has developed a first-of-its-kind, Fan-to-Fan Face Value Ticket Exchange, where fans can sell their tickets for the amount they originally paid (including face value of $98, a $5 charitable amount and service charge), to other fans. The Exchange is free for both buyers and sellers to use without any additional fees. To eliminate consumer confusion, Ticketmaster also notified major secondary marketplaces and resellers that tickets for this tour are not available for resale. The GAO Report raised the concern that limiting transferability

[13] See Avery Yang, "*Orlando City SC: No Fraud Thus Far Thanks To Paperless Tickets*" (Sport Techie, July 10, 2017) *available at* https://www.sporttechie.com/orlando-city-sc-no-fraud-paperless-tickets/.
[14] GAO Report at 36.
[15] Exceptions are in Colorado and New York, which are the only states on the tour where state laws prohibit artists from placing any limits on transferability of tickets.

might restrict consumer flexibility if they cannot attend an event, but our innovative and free Fan-to-Fan Face Value Ticket Exchange, along with clear disclosures throughout the purchase process, directly address this concern.

To date, this technology has accomplished exactly what Pearl Jam was seeking to do. For the ten Pearl Jam shows in states that permit artists to restrict transfer, approximately 18,000 tickets per show were sold at face value, with fewer than 10 resale tickets per show listed for resale on secondary markets.[16] However, in Colorado and New York, the two states the tour will visit that prohibit any limitations on transferability of a ticket, thousands of tickets are available on secondary marketplaces for prices as high as $7075 per ticket, more than a 7000% increase over intended face value. We are very proud to have partnered with Pearl Jam on a product that enabled them to provide fair and easy access to their very best fans, while still giving consumers flexibility in the event they cannot attend. While a decision about transfer is an individual choice that each artist will make, I note that in our experience, the vast majority of artists have historically chosen not to restrict transfer and we think that trend is likely to continue.

E. Consumers are Tricked by Deceptive Web Sites and Lack of Resale Transparency – Deceptive Web Sites Should be Banned and the Type and Source of Tickets Should be Clearly Disclosed

Deceptive Web Sites. Deceptive "white label" web sites are essentially fake online box offices that frequently feature language and images of an artist, team, theatrical show or venue to give the false appearance of being an official or licensed sales channel for an event. Some secondary marketplaces routinely use or work with these deceptive web sites, which frequently offer resale tickets at inflated prices, even while face-value tickets are still available on the official box office or other primary site. Examples of such deceptive web sites are attached as Exhibit 4.

The GAO Report found deceptive web sites charge higher ticket prices and higher fees on average than other resale sites.[17] In addition to being deceptive and unfair to consumers, this practice violates the intellectual property rights of venues, Event Organizers and other rights holders who invest in building live experiences for consumers to enjoy.

Ticketmaster does not operate or work with any of these affiliate or deceptive web sites. We regularly work with industry partners, including Google, to make sure deceptive marketing such as this is not rewarded in search results. In the past year alone, we notified Google and various Internet Service Providers of at least thirty-three of these deceptive web sites on behalf of Event Organizers with whom we work. Ticketmaster supports and is prepared to partner with the FTC as it continues to enforce the laws against this unfair trade practice, and in 2019 several of our executives participated in the FTC's recent "That's the Ticket" workshop, which explored ways to increase protections for consumers in the online ticket marketplace.[18] We also work

[16] As of February 14, 2020.
[17] *See* GAO Report at 28.
[18] *See* Federal Trade Commission Workshop, Agenda, *That's the Ticket* (June 11, 2019), *available at* https://www.ftc.gov/news-events/events-calendar/2019/03/online-event-tickets-workshop.

continuously with state policymakers and regulators to enact and enforce state laws that specifically prohibit deceptive URLs in ticketing.

Lack of Clear Disclosures. In addition to working with deceptive "white label" web sites, most secondary web sites fail to be transparent with consumers. Specifically, they fail to disclose to consumers whether they have any official relationship with the venue or Event Organizer; whether a ticket is a primary or resale ticket; and if the ticket is resale, that the price may exceed face value. They also fail to indicate whether primary tickets are still available. Underscoring the need to provide this information to consumers, the GAO Report indicated that in almost 30% of the cases examined, the GAO "observed instances in which tickets were listed on the secondary market even when tickets were still available from primary sellers at a lower face-value price."[19]

Ticketmaster is an industry leader in this regard. Our platforms conspicuously list both primary and resale seats sold on a single integrated seat map. Ticketmaster is the *only* marketplace that clearly differentiates between primary tickets listed at face value from the initial seller (the venue or Event Organizer) and tickets listed for resale. We do this both with clear identifying language *and* by color-coding primary tickets and resale tickets distinctly, making it easy and straightforward for consumers to compare ticket prices for different ticket types.

Beginning in 2018, Ticketmaster started including links on our site to third party primary ticketing sites for many concerts and theater events where Ticketmaster is not the official ticket marketplace. A fan browsing Ticketmaster's concert and theatre ticket inventory will be able to compare prices for secondary tickets listed for sale on Ticketmaster's resale platform with primary tickets listed for sale *even by competitors*. Ticketmaster encourages other resale ticketing platforms to implement similar procedures to offer fans links to official box offices alongside their resale inventory.

F. Consumers are Harmed by Speculative Tickets, Which Should be Banned

Speculative ticketing is a mass arbitrage scheme employed by some ticket resellers to sell tickets they do not possess, and as such do not have a legal right to sell. Speculative tickets are frequently offered on secondary marketplaces without disclosure of their speculative nature, often before tickets have even been placed on sale by the Event Organizer. Once an unwitting consumer purchases the tickets, the reseller will then try to buy actual tickets for a lower price to provide to the purchaser.[20] The NY AG Report describes a 2016 Bruce Springsteen concert where tickets were being sold for as much as $5,800 each—*before* tickets had even gone on sale.[21]

Fans who buy speculative tickets often do not realize they have only purchased the *right* to buy tickets *if* the seller is able to acquire them and may have their "tickets" cancelled if the seller cannot deliver. Or, they may end up with different seats than those that the fans believed

[19] GAO Report at 14.
[20] *See* NY AG Report at 26.
[21] *See id.* at 26.

they had secured.[22] After generating headlines like "Heartbroken Seahawks fan cries on live TV because he can't get into the Super Bowl after broker sells him tickets 'it never had,'" one secondary marketplace's solution was simply to refund 200% of what the fan had paid,[23] leaving the fans without the tickets they bought for a once-in-a-lifetime event. Examples of deceptive speculative ticket practices in the industry are attached as Exhibit 5.

Ticketmaster strictly prohibits resellers from listing speculative tickets on its resale platform and conducts a thorough process to police the site and remove suspect listings. Specifically, for concerts and theatrical shows, Ticketmaster denies sellers the ability to list tickets for sale prior to an event's on-sale date and also prohibits season ticket holders for sports teams from listing tickets prior to the season ticket holder activation date determined by the team.

Although we believe a ban on speculative tickets would best protect consumers, if speculative ticketing continues to be permitted, federal legislation should include requirements for clear and conspicuous disclosure at the beginning of the ticket purchase process. The minimal disclosures used by secondary marketplaces today, when disclosures exist at all, are insufficient. Required disclosures should include that the seller does not yet have the tickets in hand and will attempt to purchase the tickets for the consumer and that there is a risk the tickets may be replaced with another ticket or may not be delivered at all. These disclosures should be coupled with a mandatory refund if tickets are not fulfilled, and an option for the consumer to choose a refund if replacement tickets are not to the consumer's liking. If speculative ticketing is to be allowed, robust, consistent disclosure requirements across all marketplaces are the only way to ensure consumers are protected.

* * *

Some of my best memories growing up involved seeing my favorite bands and watching the Sabres and Bills play in Buffalo. We all know the amazing feeling that comes from a smooth and seamless entertainment experience. Unfortunately, we are also aware of the result when deceptive practices in the ticketing experience are left unchecked. These negative experiences cast a shadow on the industry as a whole, and we stand committed to helping change that. We applaud you for shining a light on these important issues. Thank you also for this opportunity for Ticketmaster to advocate for the interests of live event fans and Event Organizers. On behalf of Ticketmaster and Live Nation Entertainment, we look forward to working with the Subcommittee and Congress to address these critical issues.

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[22] *See* GAO Report at 32.

[23] *See* Damien Gayle, "At least he didn't see his team lose! Heartbroken Seahawks fan cries on live TV because he can't get into the Super Bowl after broker sells him tickets 'it never had'" (Daily Mail, Feb. 2, 2015), *available at* https://www.dailymail.co.uk/news/article-2936521/At-didn-t-team-lose-Heartbroken-Seahawks-fan-cries-live-TV-t-Super-Bowlbroker-sells-tickets-never-had.html.

Ms. DEGETTE. I thank you, Ms. Howe.

I'm now pleased to recognize Mr. Perez for 5 minutes. Mr. Perez.

TESTIMONY OF BRYAN PEREZ

Mr. PEREZ. Good morning, Chair DeGette.

Ms. DEGETTE. Your microphone.

Mr. PEREZ. Good morning. Thank you.

Chair DeGette, Chairman Pallone, Ranking Members Guthrie and Walden, and other distinguished members, my name is Brian Perez and I am the CEO of AXS, a wholly owned subsidiary of Anschutz Entertainment Group, a leading sports and live entertainment company.

AEG is a privately held company that operates domestically and internationally across a number of segments within the live entertainment and sports industry, including AEG Real Estate, AEG Sports, AEG Presents, and AXS Ticketing.

AXS Ticketing provides primary and resale ticketing technology and services as the official authorized agent of various sports teams, venues, and live event promoters. I've been in the live entertainment business for over 20 years, having previously held positions at the NBA, Live Nation, the NHL's Dallas Stars, and Madison Square Garden.

I'd like to thank you for inviting me to testify at today's hearing, examining policies and practices in the live event ticketing industry. Our industry is one of world-class experiences and memories of a lifetime, and I appreciate the opportunity to provide our perspective on a business that impacts so many of your constituents. We are fortunate to work in this business, to be able to play some small part in these magical moments, and we fight every day to help our clients create a better fan experience because we are fans, too.

And I applaud the initiative of this hearing as I believe our shared goal is to get tickets into the hands of real fans at fair prices in a seamless, secure, and clear purchase experience.

Unfortunately, many of these events are limited in capacity and face excess demand and, even though artists often try to set a fair price that is available to fans from all walks of life, they are frustrated in their efforts by bad actors chasing profits, often using illegal practices to purchase tickets before the honest fan has a chance.

When paired with two of the most insidious practices to arise in our industry recently, speculative tickets and deceptive websites, it's no wonder that the consumer is left feeling disillusioned and out of luck. I'm thankful for the opportunity today to discuss how we're using technology in business practices to combat these bad actors.

I also believe that thoughtful legislation with aggressive enforcement can have a positive impact on curbing these practices. Thoughtful legislation and aggressive enforcement can also help level the playing field between primary and resale marketplaces, ensuring that we are all playing by the same rules, so that fans are more easily able to understand their options and the prices they are paying.

We support all-in pricing at the outset of the purchase transaction as long as it is applied equally and uniformly to all ticket sellers and marketplaces. As we have seen, if there is any wiggle room, bad actors will find a way to exploit it against the innocent consumer in the name of profiteering.

Once again, thank you for the opportunity to testify before the committee today and for your assistance in helping fans attend events at a fair price and in a fair manner. I look forward to answering your questions. And as the committee grapples with legislative solutions, AEG looks forward to being engaged in that process with you.

Thank you.

[The prepared statement of Mr. Perez follows:]

Testimony of Bryan Perez
Chief Executive Officer, AXS
House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations
"In the Dark: Lack of Transparency in the Live Event Ticketing Industry"
February 26, 2020

I. Introduction

Chair DeGette and Ranking Member Guthrie,

My name is Bryan Perez and I am the CEO of AXS Group LLC ("AXS"). AXS is a wholly-owned subsidiary of Anschutz Entertainment Group, Inc. ("AEG" or the "Company"), a leading sports and live entertainment company.

Thank you for inviting me to testify at today's hearing examining policies and practices in the live event ticketing industry. I appreciate the opportunity to provide our perspective on an industry that impacts our valued customers and so many of your constituents.

I have been in the live entertainment business for over 20 years. Prior to AXS, I was the President of Digital, Ticketing, and Media at AEG. I was also formerly the Senior Vice President and GM of NBA Digital, and served as CEO of Live Nation's Global Digital division, with prior positions at the NHL Dallas Stars and Madison Square Garden. I hold a JD/MBA from Stanford University and a BBA in Finance from the University of Texas at Austin.

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II. Overview of AEG Business Segments

Allow me to take this opportunity to explain the mission of AXS by putting my organization into the proper context through an overview of AEG's various business segments and their functions. Headquartered in Los Angeles, California, AEG is a privately-held company that operates, domestically and internationally, across a number of segments within the sports and live entertainment industry, including:

- *AEG Real Estate*, which owns and develops world-class venues, including major sports venues, theaters, and entertainment districts like STAPLES Center, Microsoft Theatre, and L.A. LIVE;

- *AEG Sports*, which owns and operates the Los Angeles Kings of the National Hockey League ("NHL"), the Los Angeles Galaxy of Major League Soccer ("MLS"), and other professional sports franchises and high-profile sporting events;

- *AEG Presents*, which is dedicated to all aspects of live music performances, including producing and promoting global and regional concert tours, music and special events, and world-renowned festivals; and

- *AXS*, which is a global ticketing platform, offering best-in-class ticketing technology in a single platform to suit every client size and type, from small music clubs to the largest sports stadiums.

Since its creation in 1994, AEG, as a private company, has invested billions of its own capital into the creation and development of world-class, multi-purpose live entertainment venues and districts located in major urban markets throughout the United States as well as abroad. AEG has also delivered content for those venues through its investment in professional sports teams, its concert promotion business, and its festivals that all have drawn millions of visitors each year. In so doing, these venues and districts have dramatically lifted land values, created new jobs and tax revenues, and spurred additional private investment.

AEG also has a non-controlling ownership interest in *ASM Global*, which is the world's leading venue management and services company and operates, in part, under the brand *AEG Facilities*. Through its worldwide network of venues, portfolio of powerful sports and music brands, and its integrated entertainment districts, AEG entertains more than 100 million guests annually.

As noted above, AXS is a wholly-owned subsidiary of AEG. AXS provides ticketing technology, systems, and services for both primary and resale ticket marketplaces, and is the ticketing partner for over 300 premier venues, sports teams, and event organizers around the world, including AEG, The O2, STAPLES Center, T-Mobile Arena, Sprint Center, Tele2Arena, Red Rocks Amphitheatre, the Cleveland Cavaliers, Toyota Center, the Houston Rockets, NCAA Final Four, and the Las Vegas Golden Knights.

AXS does not own any tickets that it sells, rather AXS acts in an agency capacity for its clients that sell such live event tickets to their fans. The goal of AXS's clients (and therefore AXS) is to get tickets into the hands of real fans at prices that are not inflated by brokers or other third parties uninvested in the event or the fan experience.

As noted above, AEG's live-entertainment division is *AEG Presents*, which promotes concerts and tours as well as owns and operates live music clubs, theaters, and festivals. AEG, through *AEG Presents*, owns a majority interest in Elevate Tickets, LLC ("Elevate"), a ticketing technology enterprise that specializes in providing a web-based primary ticketing platform solution to music festival owners, operators, and producers. Elevate differs from AXS and other traditional ticketing companies in that Elevate does not operate as a consumer-facing brand or marketplace, rather Elevate's technology is incorporated into its client's unique, customer-facing, event-branded website for the supported music festival. For this reason, when using the term "ticketing platforms," I am referring to AXS and Elevate, collectively.

While AXS has numerous third-party clients, AEG and its related companies are also clients of AXS. For example, AXS provides ticketing services for a number of venues that are owned or managed by *AEG Real Estate*, *AEG Presents*, or *ASM Global*. In addition, AXS provides ticketing services for live music and other events that are promoted by *AEG Presents* and for certain professional sports teams and other sports events that are owned by *AEG Sports*.

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Simply put, AEG exists to deliver for fans high-quality entertainment for the best value in the best markets.

Relatedly, AXS and Elevate exist to put tickets in the hands of fans. My colleagues and I are in this business because we all love live events—and as fans, we want to put tickets to live events in the hands of other fans.

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III. The Committee's November 21, 2019 Letter

As you know, the Company has made two voluntary written responses and briefed Committee staff in response to the letter dated November 21, 2019 (the "Committee Letter") in which the Committee requested information regarding the ticketing policies and practices of AEG and AXS. The Committee Letter asserts that consumers "face a host of troubling practices and trends in the ticketing industry," pointing specifically to five key issues: 1) a lack of transparency related to limited ticket availability; 2) speculative tickets that harm unknowing consumers; 3) "white-label" ticket websites that employ practices designed to deceive consumers; 4) tickets that cannot be transferred or resold, limiting consumer options; and 5) high, hidden fees.

I would like to address each of these issues in turn:

1) Brokers favor disclosure of ticket availability at the expense of consumers—

As a general matter, the Company favors transparency with respect to ticket availability, and in fact, that is one reason we developed interactive seat maps for the venues for which we sell tickets. Where a seat map is available, AXS and Elevate do indeed display the total number of seats for which tickets are available at the time that a consumer is viewing the map. Unfortunately, this positive step was immediately met with a troubling response from the resale community—notably, the practices of speculative mirroring (a site that mirrors not only our seating maps, but also copies literally every ticket listing we have) and artificial sell-outs (where a ticket reseller will scoop up all remaining tickets to make it seem as though there is higher demand)—both of which force consumers to pay higher prices.

We do not view transparency as to limited ticket availability as a fundamental problem. Rather, the problem confronting the overwhelming majority of consumers is that they feel they cannot obtain access to the seats they want. The culprit: brokers taking the seats consumers want. Unfortunately, sharing inventory levels will not fix that problem—not without addressing the problem of ticket brokers. In an April 2018 report, the Government Accountability Office ("GAO") stated that many primary market stakeholders said disclosure of ticket availability would in fact help brokers by giving them information useful in buying tickets and setting resale prices.

However, to the extent that the Committee believes that greater transparency is nonetheless a worthy goal, there are a range of other considerations that militate against the industry being able to provide complete transparency at every stage of the consumer experience. Allow us to cite two such factors.

- First, disclosure of ticket availability would help brokers by giving them useful information about how many tickets they should purchase and what prices they should set in the secondary market to make the highest profit off of true fans. For example, when ticket availability is low, brokers know that they can increase the markup on tickets in the resale market. In its April 2018 report, the GAO acknowledged that brokers are already at a "competitive advantage" relative to consumers, as brokers use human and technical means to buy up tickets as soon as they are released.

- Second, information regarding ticket sales is proprietary and confidential business information that artists and venues seek to keep protected. For example, an artist may be expected to sell out a venue on the first day of sales but does not actually do so. Protecting that information from the public allows AEG to be a good partner to the client.

Finally, we would also like to correct a misimpression we have observed about "presales," an increasingly common, but not well-understood marketing practice within the industry. The narrative that presales decrease availability of tickets to fans in the primary market is not accurate. When made, presales are often provided for the benefit of artist fan clubs and other groups that cater to fans, designed to ensure fans get the opportunity to buy tickets at the same price as available in the general on-sale. Presales are a critical component of how artists and teams manage their fan relationships. The presales do nothing to diminish supply; they merely transfer public demand from the general on-sale to an earlier sale.

Presales allow certain customers to purchase tickets before the general on-sale—but at the same, the initial face price is determined by the artist, not inflated resale prices. Presales are not intended to exclude certain segments among consumers. To the contrary, presales are intended to promote awareness of shows among consumers by harnessing the advertising and marketing capabilities of third-party entities such as radio stations, corporate sponsors, credit card companies, etc. In our experience, the number one reason fans miss events is because they were not aware of them in the first place. In other words, presales are a tool aimed at enabling more fans to learn about and attend shows than would otherwise be the case were presales not available to fans.

Further, there are extremely low barriers to the general public learning about the occurrence of presales, such as signing up for email updates through their preferred ticketing platform, venue, promoter, radio station, etc. Additionally, any consumer can typically obtain a presale code simply by running a search for the event and "presale code" on Google.

Presales are also an important tool for venues and promoters to sell tickets—which is their primary business objective. As noted above, venue owners have invested significant capital in the development and construction of sports and entertainment venues. Concert promoters deliver

events at their significant financial risk—often having to provide artists with substantial guarantees in advance. Allowing presales for the band itself and for marketing partners—which are willing to help sell tickets and invest in bringing events to these venues—is important to ensuring the financial viability of these ventures.

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2) AEG does not sell speculative tickets—

A "speculative ticket" is one that has either been put up for sale by someone who does not yet have the ticket in hand (perhaps because tickets to the event have not yet gone on sale), or lacks a contractual right to receive the ticket. Despite a somewhat catchy name, speculative ticketing is plain, old-fashioned fraud.

To be clear, AEG and its subsidiaries in their capacities as ticketing clients of AXS and Elevate (collectively, "AEG Clients"), AXS, and Elevate are not part of the problem. The Company—that is, AEG Clients, AXS, and Elevate—does not allow the sale of speculative tickets on our ticketing platforms. Unfortunately, as a Company, we know there are entities that scrape our entire site to create listings at inflated prices on their own sites, which is patently deceptive and results in fans paying more for tickets than otherwise necessary.

Bad actors responsible for Internet advertising, combined with speculative ticketing, drive fans to third-party websites to pay inflated prices before tickets have even gone on sale. As a result, fans are often left disappointed with their seats or without any seat at all. This also has created a lucrative business for resale sites. While illegal in some states, the practice is still widespread.

Ticket authentication and required detailed disclosure as to whether a ticket is speculative could mitigate the pervasiveness of this practice and deserves your consideration at the federal level. For example, the detailed disclosure should state that the ticket is not currently in the possession of the seller, may not be fulfilled, and the order may be cancelled. With this kind of robust disclosure, consumers would be far better informed both as to the nature of speculative ticketing and those who engage in it.

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3) AEG does not operate deceptive URL websites—

Deceptive URL websites, sometimes known as "white-label" sites, are pervasive and the scourge of the industry. These sites are not "white-label" at all; rather, they use the well-known name of a legitimate ticket source to lure unsuspecting consumers to click on their website after paying search engines to get them ranked higher in search results.

These misleading "white-label" websites use advertisements and websites to make customers think they are buying tickets from the original venue or event at face value. In reality, the customers are purchasing resale tickets at prices above face value. This problem is exacerbated

by the prevalence of consumers simply searching the Internet for ticket sources without first understanding that no formal affiliation to a venue, team, or artist may exist.

Elevate, AXS, Elevate and the AEG Clients do not work with, own, or operate any platform or website that makes any representation of affiliation or endorsement to a venue, team, or artist when in fact no formal affiliation or representation exists. AEG spends a significant amount of time and money in legal efforts to combat the deceptive sites purporting to be affiliated with AEG events. We support prohibitions on these sites and urge you to consider pursuing this outcome at the federal level.

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4) AXS and Elevate respect artists' decisions on the rare occasions that they choose limits on transferability, because they do so to benefit fans over brokers—

AXS and Elevate only limit transferability at the request of a particular artist or promoter. In our experience, artists or promoters choose to limit transferability very rarely, accounting for less than one percent (1%) of tickets sold on our ticketing platforms. When artists or promoters choose to limit transferability, they do it to in order to benefit fans by keeping the price of tickets low. When transferability limitations are in place, artists can set below-market prices and ensure those prices benefit fans, not brokers looking to make a profit by charging market-clearing prices in the resale market. For example, an artist may request that fans not pay more than a certain dollar amount per ticket, which is much lower than the price the market will bear.

Without transferability limits, brokers would purchase all of those tickets and sell them for huge markups in the resale market. Transferability limits allow the artist's fans to actually obtain tickets for the lower amount set by the artist. According to a January 2016 New York State Attorney General's report entitled, *Obstructed View: What's Blocking New Yorkers from Getting Tickets*: Nontransferable paperless tickets "appear to be one of the few measures to have any clear effect in reducing the excessive prices charged on the secondary markets and increasing the odds of fans buying tickets at face value." NY State Office of the AG, 36. As we have seen time and again, on the rare occasions it is used, controlling transferability works.

As a practical matter, when transferability or resale is restricted for a particular event (as requested by the artist), consumers are notified of any such restrictions during the purchase process, either within the purchase flow or in a pop-up message available within the flow. This amounts to several such notifications. In our experience, customers have not generally complained about difficulty in locating limitations on the transfer or resale of tickets on our ticketing platforms.

Limiting transferability with digital tickets also helps to combat fraudulent tickets. PDFs can be copied multiple times and resold simultaneously on several sites. Digital tickets issued by authorized sources ensure that fans will get in the venue, ensuring that artists can foster their relationships with their fans. The ugly reality is that, without limits on transferability, brokers

would buy up most of the tickets in the primary market that are underpriced. Brokers are able to sell those tickets in the secondary market at huge mark-ups.

With that said, we recognize that for some events, like sports games, it is critical for consumers to have the ability to transfer tickets to games when they cannot go. Limiting transferability and resale may prevent fans from recouping their money if they cannot attend an event and cause further inconvenience for those groups of consumers who would be forced to arrive together to gain entry to the venue (rather than have their tickets transferred to them from the ticket purchaser in their group). That is why we allow our clients to choose whether to implement limits on transferability. AXS and Elevate provide clients with technology that allows them to place limitations on the transfer of tickets in order to provide clients with the opportunity to control the distribution of tickets to their fans in the manner they deem desirable.

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5) AXS's and Elevate's fees are reasonable and transparent—

Our Company provides a valuable service, allowing consumers around the world to purchase tickets to live events from their homes and venues to efficiently manage their events, provide customer and box office services, scan people into the venue, and provide auditable financial processes and records for their tenants and clients (none of which are provided by resale only sites). Ultimately, the ticketing platforms' clients retain the face value of the tickets, so ticketing platforms must charge some ancillary fees as compensation for the services they provide.

AXS's and Elevate's fee disclosure practices are consistent with the most transparent ticketing platforms in the marketplace. Ancillary ticket fees are disclosed immediately after the consumer selects a seat. Unlike some other ticketing platforms, the fees are disclosed before consumers enter their credit card information and check out, without requiring a log in, and in the same font as ticket prices.

As we will discuss below, AEG supports all-in pricing requirements so long as they are applied equally to all primary and secondary sellers. If just one seller or type of seller is required to move to all-in pricing, it would lose business to the other sellers who are permitted to disclose fees later in the transactions. For example, if only primary sellers are required to adopt all-in pricing, resellers will mark down the face value of their tickets and charge more for buyers' fees later in the transaction. This is a practice already utilized by the major resale sites.

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IV. Policy Solutions

AEG believes that there are readily-available policy solutions to some of the problems addressed above. In particular, AEG would like to offer some specific recommendations for action in two areas: (a) enforcement of the BOTS Act, and (b) enactment of all-in pricing by Congress.

a) The FTC and state attorneys general should prioritize BOTS Act enforcement—

Brokers attempting to buy and sell a large number of tickets at inflated prices often use bots to do so. Bots allow brokers to manipulate ticketing platforms so that the brokers can buy a large amount of tickets at once and gain a huge advantage over individual consumers. Bots are designed to buy up all the tickets in the primary market, meaning that the only place consumers can obtain tickets is the resale market, where tickets are often sold for substantially higher prices.

To combat this problem, Congress passed the Better Online Ticket Sales Act ("the BOTS Act") in 2016. The BOTS Act criminalizes the use of bots to circumvent ticket purchasing limits and security measures put in place by ticketing platforms so that as many fans as possible can obtain tickets at reasonable prices. Under the statute, it is illegal to either sell or purchase tickets with the use of bots. The Federal Trade Commission ("FTC") and state attorneys general are authorized to enforce the statute.

To date, AEG is not aware of any successful action brought by state attorneys general or the FTC pursuant to the BOTS Act. One way in which law enforcement authorities can get tickets into the hands of fans is to utilize already-existing enforcement tools, such as the BOTS Act and similar state statutes. The FTC and state attorneys general should make prosecuting the illegal use of bots an enforcement priority, using the laws already in place. This would diminish the incentives prevalent in the market to use bots in order to obtain tickets for events at the expense of real fans, driving those fans to the higher-priced resale market.

AEG would ask the Committee to remind the FTC and state attorneys general of the existing authority to prosecute a set of bad actors who are distorting the ticket market in a manner that effectively prices out real fans from seeing their favorite artists.

b) AEG is supportive of all-in pricing, as long as it is required for all ticket sellers—

AEG is also supportive of regulations that require all-in pricing both in the primary and secondary markets. All-in pricing benefits consumers, because it requires ticketing platforms to disclose the full price of the ticket, including fees and taxes, at the beginning of the purchase process. However, any regulatory scheme mandating all-in pricing must apply equally to all actors in the market, including both primary and secondary sellers. If some actors are not required to adopt all-in pricing, those who do adopt it will be placed at a great disadvantage.

To that end, all-in pricing will also only succeed if there is an enforcement effort aimed at non-compliant actors. These bad actors will continue hiding fees unless there are real consequences for doing so. Regulations requiring all-in pricing for everyone would protect consumers while promoting fair competition. As we have seen from our experience since the BOTS Act was enacted into law, enforcement is the key to ensuring a fair marketplace.

V. Conclusion

Once again, thank you for the opportunity to testify before the Committee today. I look forward to answering your questions at the appropriate time. And as the Committee grapples with legislative solutions, AEG looks forward to being engaged in that process with you.

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Ms. DEGETTE. I thank the gentleman.

The Chair now recognizes Ms. Burns for 5 minutes for an opening statement.

TESTIMONY OF STEPHANIE BURNS

Ms. BURNS. Good morning.

Chair DeGette, Chairman Pallone, Ranking Member Guthrie, and members of the subcommittee. Thank you for the opportunity to participate in this important hearing.

StubHub shares the subcommittee's commitment to consumer protections and applauds your effort to look at the industry holistically on behalf of fans. StubHub was founded in 2000 and revolutionized secondary ticket sales by providing fans a safe, transparent, and trusted marketplace to buy and sell tickets online.

StubHub has more than 130 partnerships with major sports leagues, universities, teams, venues, and artists around the world. Every transaction on StubHub is protected by our industry-leading FanProtect guarantee. In those rare instances when there is something wrong with the ticket purchased on StubHub, we will provide a comparable or better replacement ticket or, in the limited instances where that is not possible, we provide a full refund inclusive of fees. StubHub's FanProtect guarantee is the hallmark of our business, and it is why we have earned the trust of fans.

Our mission is to connect fans to the joy of live events. A fair, secure, and competitive ticket marketplace is in the best interest of fans. In recent years our mission has been complicated by anticompetitive and anticonsumer practices. Many of these issues were identified by the committee during its investigation. I'll touch on three of these issues today, including transferability, transparency, and deceptive URLs.

First and most importantly for consumers is transferability. Fans should always have the option to purchase a freely transferable ticket at the initial point of sale. Primary ticket issuers are using terms and conditions in technology to place downstream restrictions on the tickets that fans have rightfully purchased. With ticket restrictions, ticket issuers can single-handedly eliminate consumer choice and foreclose competition.

For over three decades, Ticketmaster has been a dominant primary ticket issuer, accounting for approximately 80 percent of tickets sold. What you may not realize is that Ticketmaster is also a prominent secondary ticket resale platform. Ticketmaster is increasingly using its dominance in primary ticketing to extend its dominance to secondary ticket sales, which harms consumers. Here's how.

Through its SafeTix technology, Ticketmaster is able to disable ticket transferability completely or limit transferability solely to its proprietary platforms. Ticketmaster is using this technology to force consumers who purchase resale tickets on competing sites to complete the transaction within their own app. This means that consumers who elect to buy tickets on StubHub are forced to register with Ticketmaster, download the Ticketmaster app, and provide their personal data to Ticketmaster to receive their tickets. This practice is a blatant data grab. It has been reported that

Ticketmaster will apply SafeTix technology to all of its ticket sales by 2021. This is why Congress must act now.

Secondly, transparency. Bots are often blamed as the reason why fans have difficult accessing tickets. Thankfully Congress addressed this issue in the 2016 BOTS Act. StubHub proudly supported this effort. Bots are not the only reason why fans have difficult accessing tickets. In fact, large percentages of tickets are never made available to sale to the general public. According to a report by the New York Attorney General's office in 2016, an average of 54 percent of tickets are held back for events.

The average number of tickets made available to the public falls to 25 percent for top concerts and was noted to be as low as 12 percent for one concert at Madison Square Garden. In some instances, tickets are held back from the initial on-sale, gradually released, and often dynamically priced to reflect the current market rate, which may be higher than the original on-sale. Consumers deserve to know that ticket issuers are manipulating the release of ticket supply, resulting in higher prices.

Lastly, deceptive URLs. When you buy a ticket through StubHub, you buy it on StubHub.com. StubHub does not own or operate deceptive URLs, also known as white label sites. White labels are deceptive because they mislead consumers into believing they are affiliated with the venue, artist, or team when they are not. StubHub encourages the committee to investigate the fullest of harms associated with white label sites and stands ready to assist.

StubHub is committed to partnering with policymakers and industry stakeholders to promote a safe, transparent, and competitive live event ticketing industry to benefit fans across the globe.

Thank you again for the opportunity to testify today and for your consideration of our comments. I look forward to answering any questions you may have.

[The prepared statement of Ms. Burns follows:]

Testimony of Stephanie Burns
Vice President and General Counsel

House of Representatives Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

"In the Dark: Lack of Transparency in the Live Event Ticketing Industry"
Wednesday, February 26, 2020

Chair DeGette, Ranking Member Guthrie, and Members of the Subcommittee,

Thank you for the opportunity to participate in this important hearing today to discuss policies and practices of the live event ticketing industry. StubHub shares the Committee's commitment to consumer protection and applauds your effort to look at the industry holistically on behalf of fans.

StubHub was founded in 2000 and revolutionized secondary ticket sales by providing fans a safe, transparent, and trusted marketplace to buy and sell tickets online. Today, StubHub offers tickets to live events in more than 40 countries and has more than 130 partnerships with major sports leagues, universities, teams, venues, and artists around the world.

Every transaction on StubHub is protected by our industry leading FanProtect™ Guarantee. In those rare instances when there is something wrong with a ticket purchased on StubHub, we will provide a comparable or better replacement ticket – or – in the instances when that is not possible – a full refund inclusive of fees. StubHub's FanProtect™ Guarantee is the hallmark of our business and it is why we have earned the trust of fans around the globe.

Our mission is to connect fans to the joy of live events around the world. We believe that a fair, secure, and competitive ticket marketplace unequivocally supports the interests of fans. It ensures that fans have greater access to the events they want to experience and can make informed purchasing decisions based on user experience, fees, and customer service.

In recent years, our mission has been complicated by various anticompetitive and anti-consumer practices in the ticket industry. Many of these issues were identified by the Committee during its investigation, including restrictions on the transfer or resale of tickets, obscurity around the availability of tickets to the general public, and the use of deceptive URLs in ticket advertising practices.

Restrictions on Transferability & Consumer Choice

Increasingly, as a condition of initial sale, ticket issuers, sports teams, artists, theatres, and venues are using terms and conditions and technology to place downstream restrictions on the

tickets that fans have rightfully purchased. With ticket restrictions, ticket issuers can single-handedly eliminate consumer choice and foreclose competition.

For example, Ticketmaster's SafeTix technology enables Ticketmaster to control if, and how, ticket purchasers may transfer or resell their tickets. Through this technology, Ticketmaster can disable ticket transferability completely or it can limit transferability solely to its own proprietary platforms.

Additionally, when Ticketmaster is the primary ticket issuer, it is using this technology to require consumers who purchase resale tickets on competing sites to complete the transaction within Ticketmaster's own app in order for the user to obtain the purchased tickets. This means that consumers who buy tickets on StubHub are forced to register with Ticketmaster, download the Ticketmaster app, and provide their data to Ticketmaster in order to receive their tickets. This practice introduces an unnecessary level of friction for the consumer and it enables Ticketmaster to use valuable data of StubHub's customers for its own marketing purposes.

This technology is being utilized today and it has been reported that Ticketmaster will apply SafeTix technology to all tickets it sells or fulfills by 2021. This is particularly concerning in a marketplace where Ticketmaster controls approximately 70 – 80% of every ticket initially sold.

StubHub believes that fans should always have the option to purchase a transferable ticket at the initial point of sale that they can use, transfer, or resell without restriction.

We fully expect that you will hear arguments today from proponents of transferability restrictions that these restrictions are necessary to enhance security and limit fraud. These arguments are a smokescreen to justify a practice that is designed to limit consumer choice and thwart competition, which only serves to harm consumers.

The good news for consumers is that several states have adopted laws ensuring that they have the option to purchase a transferable ticket at the point of sale, including New York, Connecticut, Virginia, and Utah. Two more states – Illinois and Colorado– have laws in place that prohibit any restriction on the transfer or resale of a ticket.

StubHub encourages federal action in this area to ensure consumers across the U.S. are afforded the same protections.

Transparency & Ticket Accessibility

Bots are often singularly blamed as the reason fans have difficulty accessing tickets. To be clear, StubHub strongly supports, and has supported, legislation prohibiting the use of bots to procure tickets, including the 2016 BOTS Act.

However, it is important to note that bots are not the only reason why fans may have difficulty accessing tickets. Another major contributor is that large percentages of tickets are actually never put on sale to the general public.

According to a 2016 report by the New York Attorney General's office, an average of 46% of tickets go on sale to the general public during the general on-sale. The remaining 54% are held back for industry insiders, fan clubs, credit card pre-sales, artists and other sources. The average number of tickets made available to the public falls to 25% for top concerts and was noted to be as low as 12% for one concert at Madison Square Garden.

In many instances, tickets that have been held back from the general on-sale are gradually released over time leading up to the event and are often dynamically priced to reflect the current market rates.

Providing 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.

Deceptive URLS & "White Labels"

StubHub does not work with, own, or operate deceptive "white label sites".

StubHub has spent significant time advocating against this practice with regulators and policymakers, and we're pleased that today seven states have passed legislation specifically prohibiting the use of deceptive ticket website URLs.

It is also important to note that the consumer harm around "white-label" sites is not limited to deceptive URLs. Rather, certain ticket marketplaces partner with "white-label" sites in order to crowd out competitors in search engine results. The search results create the appearance of multiple, independent, and distinct ticket resale marketplaces; however, the links are in fact different portals to the same inventory and back-end infrastructure as the flagship site. This is blatant consumer deception.

StubHub encourages the Committee to investigate the full list of harms associated with "white-label" sites and stands ready to assist.

Conclusion

StubHub is committed to partnering with policy makers and industry stakeholders to promote a transparent, safe, and competitive live event ticketing industry to benefit fans across the globe.

Thank you again for the opportunity to testify today and your consideration of our comments. I look forward to answering any questions you may have.

Ms. DEGETTE. I thank you, Ms. Burns.

The Chair is now pleased to recognize Mr. Fitts for 5 minutes.

TESTIMONY OF RYAN FITTS

Mr. FITTS. Good morning.

Chair DeGette, Ranking Member Guthrie, and members of the committee, thank you for the opportunity to appear today on behalf of Vivid Seats.

Ms. DEGETTE. Mr. Fitts, I'm also going to ask to you move the microphone close. Thanks.

Mr. FITTS. Those of us fortunate enough to work at Vivid Seats aren't just employees. We're fans as well, and the fan experience is at the center of everything we do. We are committed to working with you to foster innovation, promote competition, protect fans in the ticket marketplace. That is why we are pleased to announce our support for proposals that would prohibit undisclosed speculative ticket sales, prohibit deceptive marketing practices by white label websites, and require upfront, all-in pricing at a level playing field.

And, significantly, we believe that the cornerstone of any congressional action in this industry must focus on protecting fans' rights to buy and sell tickets, when, where, and how they wish. This essential fan protection, known as transferability, has already been enacted by Colorado and by other States and no State has taken this right away. Importantly, it's opposed only by primary ticket sellers with market power who are trying to tighten their grip on tickets by restricting transferability which would leave fans with fewer choices and higher prices.

The ticketing marketplace today is a tale of two channels, a resale channel that has seen the vibrant competition and progress and a primary channel that has not. Vivid Seats, operates in the resale channel. I would like to take just a minute to note how far we have come.

As I'm sure many of you will remember, the resale market looked very different before Vivid Seats and companies like it came on the scene. Back then fans who were not fortunate enough to get a ticket through the primary seller had no safe and convenient way to obtain tickets, and fans who had tickets but could not use them had no safe and convenient way to sell them.

Many fans had to resort to unsecured channels like unverified Internet listings or back alley sales where counterfeit tickets were all too common. I remember back in the nineties trying to buy Cubs tickets on a street corner, never able to compare choices and always worried I was being sold a fake ticket. Vivid Seats was created to solve this problem.

Today, if fans want to buy a ticket at the last minute for an event that's otherwise sold out, our platform allows them to do. If fans have tickets that they cannot use, maybe something came up at work on a sudden illness, fans can sell those tickets on our platform and recover their costs. And every ticket sold on our platform is covered with a hundred percent industry-leading buyer guarantee.

We promise a valid ticket delivered on time and as described or your money back. If a fan has any questions or encounters any issues, we'll quickly provide a response from our 300-person call center that typically connects fans with live support in less than a minute.

We're very proud that Newsweek recently named us to its list of America's best companies for customer service, ranking us No. 1 in the ticketing industry, and we're also proud to have been chosen as the official partner for a host of well-known teams and brands including ESPN, the University of Colorado, the LA Clippers, the Chicago Bears, and many more.

Today Visit Seats competes vigorously in a vibrant secondary ticket channel which includes many of the companies represented on the panel with me today, and let me be clear. We love competition. It challenges us all to innovate and to strive to provide fans the best value. At Vivid Seats we think of new ways to rise to this channel every single day.

The scene is different in the primary channel, where only one company wields extensive control. That kind of market power can be abused in ways that hurt fans. Fans who try to purchase tickets from the primary seller often find that sales are limited to a short on-sale period with limited seating options typically held weeks or months in advance of the event.

Fans are hurt when the primary seller restricts the transferability of tickets. As is the case with most property, a ticket belongs to the fan who holds it. They should be able to transfer that ticket on the platform of their choice. By restricting transferability, primary sellers exert even more control over the marketplace, essentially mandating that tickets become available from one source and one source only.

Understanding the threat, the transferability restrictions posed for consumers, states including Colorado, Connecticut, Illinois, New York, Virginia, and Utah have enacted pro-consumer laws guaranteeing fans the right to resell tickets. We urge Congress to do the same.

I appreciate the opportunity to participate in this hearing, and Vivid Seats looks forward to working with Congress to create the best experiences possible for fans.

Thank you.

[The prepared statement of Mr. Fitts follows:]

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

Opening Statement of Ryan Fitts
Vivid Seats LLC

February 26, 2020

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Chairwoman DeGette, Ranking Member Guthrie, and Members of the Committee, thank you for the opportunity to appear today on behalf of Vivid Seats to discuss with you important issues in the ticket marketplace. Vivid Seats is committed to working with Congress to foster innovation, promote competition, and make sure that fans have the best experiences possible. Congress has an important role to play here, particularly as primary ticket sellers seek to use their market power to restrict the transferability of tickets, which would leave fans with fewer choices and higher prices. Recognizing this, legislatures in Colorado, Connecticut, Illinois, Virginia, New York, and Utah have enacted important legislation to protect fans' right to transfer and access tickets, and we support recently introduced provisions in the BOSS Act that would do the same.

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Those of us who are fortunate enough to work at Vivid Seats aren't just employees—we're fans, too, and we put the fan experience at the center of everything we do. Since our founding in 2001, Vivid Seats has disrupted the ticket marketplace with innovations that empower fans to buy and sell tickets when, where, and how they want to.

Before discussing the state of the ticket marketplace today, it is important to note how far we have come. As I am sure many of you will remember, the ticket marketplace looked very different before Vivid Seats and companies like it began offering convenient and trustworthy online resale marketplaces. Back then, tickets typically were available only from two sources—a

primary seller or an unsafe resale channel. As remains the case today, fans who tried to purchase tickets from primary sellers often found that sales were restricted to an "on sale" period that was held weeks or months before the event and provided limited seating options. Competition among primary sellers was, and still is, lacking or non-existent.

Fans who were not fortunate enough to get a ticket through the primary seller had no safe and convenient way to obtain tickets, and fans who had tickets but could not use them had no safe and convenient way to sell them. As a result, many fans had to resort to unsecure channels, like unverified Internet listings or on-the-street and back-alley sales, where counterfeit tickets were too common, where it was difficult to shop around for the best values, and where there was nobody to call for help if an issue arose. Simply put, the marketplace was not working, as there was no good way to match buyers with sellers.

Vivid Seats was created to solve this problem by providing fans with a secure, safe, and convenient place to buy and sell tickets to a wide variety of events. Today, if a fan wants to buy a ticket at the last minute, our platform allows her to do that. If a fan wants a ticket to a "sold out" event, our platform allows her to find one, and chances are good that we will have options available for her no matter how popular an event might be. If a fan wants to search among various ticket options—comparing tickets in different sections on different dates at different prices—our platform allows her to do that, too. And if a fan has a ticket that she cannot use— maybe something came up at work, a sudden illness or other unanticipated conflicts—the fan can sell the ticket on our platform or others like it.

When fans buy tickets on our platform, they do so with peace of mind. Every ticket sold on Vivid Seats' platform is backed by our industry-leading 100% Buyer Guarantee—a promise that the fan will receive valid tickets that match the description of the tickets for which they paid

and those tickets will be delivered on time for the event—or else the fan gets their money back. And if the fan has any questions or encounters any issues, we'll quickly provide a response from our 300-person call center that operates daily from 7:00 a.m. until midnight and typically connects fans with live support in less than a minute.

Our commitment to putting fans first is evident. Newsweek recently recognized Vivid Seats' commitment to deliver great, reliable experiences for fans, naming us to its list of America's Best Companies for Customer Service and ranking us #1 in the ticketing industry. And because of our track record as a safe, secure, and reliable platform, Vivid Seats has been chosen as the official ticketing partner for a host of well-known teams and brands, including ESPN, Rolling Stone, the University of Colorado Buffaloes, the Notre Dame Fighting Irish, the Chicago Bears, the Green Bay Packers, the San Francisco 49ers, and many more. Vivid Seats has become one of the most popular and trustworthy online ticket marketplaces in the world, sending thousands of fans to live sporting events, concerts, and theater performances across the country every day.

At Vivid Seats, we constantly are innovating, always looking for new ways to improve fans' experience. Just last year, we launched a redesigned mobile app to help fans discover and explore ticket offerings, and we launched Vivid Seats Rewards, a loyalty program that is unique in the industry, benefitting both casual fans and super-fans by allowing them to earn credits and discounts with no caps or blackout dates. In addition to our online ticket marketplace, Vivid Seats also offers software solutions like Ticket Fulfillment Services (TFS) that help companies sell tickets themselves. These companies, which Vivid Seats vets and holds to high standards, license our technology offerings to facilitate secure payment processing functions, to ensure timely delivery of tickets to their customers, and to access our nationally-recognized customer support

team and service center. Our TFS platform powers the event ticketing solutions offered by household names like Groupon, American Airlines, CapitalOne, and Caesars Entertainment.

I am proud of the work we're doing at Vivid Seats, not just for fans across the country but also for our neighbors in our community. Since our founding in Chicago in 2001, we have grown to over 500 employees—and we're still growing. As our footprint grows, so too does our responsibility to our neighbors. Last year, we launched our corporate social responsibility program, which supports the Ann & Robert H. Lurie's Children's Hospital of Chicago. We provide the joy of live events to many organizations, working with numerous veterans and civic oriented non-profits, and we sponsor events to support women in tech.

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Below, I address several issues that I understand Congress is considering as it examines the ticket marketplace and considers legislation in this area: transferability, speculative tickets, "white label" websites, and fees.

Transferability. While there has been much progress and vibrant competition in the resale channel, the primary channel is still dominated by a few players, and they are threatening to tighten their grip by restricting ticket transfers. The cornerstone of federal policy in this space must be ensuring that a ticket belongs to the fan who holds it, and the fan should be able to transfer the ticket on a platform of her choice if she does not use the ticket herself—as is the case with most property. Guaranteeing ticket transferability is good not just for each individual fan who holds a ticket or who wants one, it also is good for the entire ticket ecosystem because it promotes competition. We compete aggressively with many of the companies represented on this panel, and that competition drives us to innovate to improve the fan experience through better customer service, better prices, better inventory, and better experiences on our websites.

None of this vibrant competition, and the resulting innovation, could happen if tickets were not transferable. In that case, tickets would be available only through marketplaces controlled by the primary ticket seller, resulting in fewer choices and higher prices for fans. That, after all, is the consequence when you can buy a product from only one source and when you are prohibited from reselling the product once you have bought it. 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.

These restrictions result in less value and fewer options for fans—both those who have tickets and those who want them—as tickets become available from one source only, if they are available at all. Recognizing that transferability is good for competition, and competition is good for fans, 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.

Speculative Tickets. 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 would make undisclosed speculative ticket sales unlawful. It also is why we prohibit this type of speculation on our platform. We have an aggressive enforcement team that looks for unauthorized speculative ticket sales, and when we find them, we stop them. Sellers who violate our rules by listing unauthorized speculative tickets can face fines, suspensions, or even bans from our platform. We take our rules on unauthorized speculative ticket

sales very seriously because we believe that undisclosed speculative sales lead to bad experiences for fans, and they reflect poorly on the marketplace.

Vivid Seats also recognizes that some fans want the opportunity to make informed purchases from reliable sellers who will procure tickets on their 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). 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, which includes important protections for fans. All tickets listed in our Zone Program are prominently designated as such, and all sales in the Zone Program—just like all other sales on Vivid Seats' website—are backed by our 100% Buyer Guarantee.

White Label Websites. The Committee has expressed concerns about ticket resale websites that make representations of affiliation with or endorsement from a venue, team, or artist when in fact no formal affiliation or representation exists. These websites—sometimes called "white label" websites—may deceive fans into thinking they are buying tickets directly from the primary ticket seller and not through a resale channel. Vivid Seats shares the Committee's concern

with these types of websites, and we support legislation—like a bill that we are supporting in Michigan and a recently enacted law in New York—that prohibits such deceptive conduct.

We have adopted consumer protection policies in our own business to prohibit such practices. For example, Vivid Seats screens potential licensees of its TFS software to ensure that the technology is provided only to trusted businesses, and we require them to that comply with the Federal Trade Commission's 2014 consent decree with TicketNetwork. 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. We conduct audits of our licensees, and we take action when we become aware of violations of our policies.

Fees. Vivid Seats does not set the base price for tickets sold in our marketplace, and we do not receive any revenue from that base price; only the seller sets and receives the base ticket price. Instead, like many companies that operate marketplaces, especially online marketplaces, Vivid Seats earns service fees, which are a percentage of the ticket price. Those fees support and sustain Vivid Seats' investment in a marketplace that features technological innovations, reliability and security, and our industry-leading customer service. These features come with every ticket sold on Vivid Seats, regardless of the price.

More competition in a marketplace generally results in lower prices and better service, as consumers can shop around for the best values. That is one of the reasons why ticket transferability is so important. If sellers in the primary channel can restrict transferability—whether by prohibiting it, charging high fees for it, conditioning it on disclosure of private information, or

restricting it to resale marketplaces they control—it would result in higher prices and worse service by reducing competition and leaving fans with just one source for tickets.

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Vivid Seats appreciates the opportunity to testify today, and we look forward to working with Congress to create the best experiences possible for fans.

Ms. DEGETTE. I thank you, Mr. Fitts.
The Chair now recognizes Mr. Vaccaro for 5 minutes.

TESTIMONY OF DON VACCARO

Mr. VACCARO. Good morning, Chairman DeGette, Ranking Member Guthrie, and distinguished members of the subcommittee. My name is Don Vaccaro, and I am the chief executive officer of Ticket Network. I thank you for inviting me today to share information about our company and the ticketing industry.

Consumers deserve fair and equitable access to live entertainment events but face increasing difficulty in finding them. In response to the committee's questions, we have outlined a number of issues that exist and proposed remedies to fix them. They can be summarized in three key needs: Transferability, disclosure, and freedom. When tickets go on sale, there's nothing about the process that is clear for consumers. For starters, the supposed on-sale date for the general public is far from the first day tickets are available.

Presales for various groups are spread throughout the ticket process. Often huge portions of unpurchased tickets are hidden, creating the illusion of scarcity during both presales and general on-sales.

Consumers' fear of missing out are triggered when in really there are thousands of additional tickets waiting to be posted. These practices deceive consumers about ticket availability and keep prices high. These held-back tickets are dripped into the regular market down the road or sold directly through secondary websites.

The lack of transparency in the sales process is the biggest factor contributing to price inflation and ticketing. Clear disclosure of ticket prices and fees are hard to come by, both on the primary and secondary market.

Primary sellers often ply dynamic prices that move up during periods of high demand in tandem with false scarcity of inventory. This means that very few consumers have any hope of securing tickets at the published face value. Those prices are subject to enormous undisclosed fees that draw the overwhelming majority of consumer complaints, as evidenced by submissions to the FTC in advance of their hearing on tickets in June 2019. Which, according to our sample, more than 85 percent of the consumers' main issue was hidden fees, extra charges, and deceptive price advertising. The next largest issue was floor pricing and transferability.

Some websites impose floor prices and coordinate those with sellers. Those floors artificially inflate prices and harm consumers who bought tickets and can no longer attend.

FTC Commissioner Slaughter gave clear direction to ticket sellers to disclose fees up front or the FTC would intervene. We heeded her warning. Ticket Network has never allowed floor pricing and is leading the way in developing retail websites that don't trick consumers using high and hidden fees.

Ninety-nine percent of our retail websites, we offer consumers the option to view all-in prices including fees before any personal viable information is consumed. We also have approximately 30 percent of our websites charge no service fees at all to the con-

sumer and it's baked in, giving consumers a true transparent solution.

We believe that this model is a model for the industry. We also believe that there's no necessity for legislation for folks in this industry to do the right thing. We can do it now.

But perhaps the most egregious consumer abuse are systems that restrict the availability for consumers to transfer and resale tickets while simultaneously harboring an enormous amount of consumer data to sell to marketers and suppressing the ability of some classes of consumers from even participating in the process.

In summary, there are several commonsense measures that can vastly improve the customer experience. Transferability, transparency, and disclosure are the keys, rather than the ever-increasing concentration of market power in this individual in the hands of a few bad actors.

Thankfully there's a proposed solution out there. The BOSS Act from Representative Pallone, Pascrell, and Senator Blumenthal, on balance, it protects competition and takes vital steps for a more consumer-friendly experience and that's something we're striving for.

And just to echo, it's all about the consumers, hopefully. It's not about us. It's what's best for the consumers that's going to make this industry better.

Thank you.

[The prepared statement of Mr. Vaccaro follows:]

CONGRESSIONAL HEARING

IN THE DARK:

LACK OF TRANSPARENCY IN THE LIVE EVENT TICKETING INDUSTRY

Date: Wednesday, February 26, 2020 - 10:00am

Location: 2123 Rayburn House Office Building

Subcommittees: Oversight and Investigations (116th Congress)

Testimony of Donald J. Vaccaro

Co-Founder and Chief Executive Officer

TicketNetwork, Inc.

Before the

The Subcommittee on Oversight and Investigations of the

Committee on Energy and Commerce

February 26, 2020

INTRODUCTION

Chairwoman DeGette, Ranking Member Guthrie and Members of the Subcommittee, it is an honor and a privilege to be able to partner with this Committee to provide better transparency for consumers purchasing event tickets on primary and secondary markets.

Thank you for the opportunity to testify today on behalf of TicketNetwork, Inc. (TicketNetwork) regarding these important issues. Below are some highlights and perspectives regarding the issues being discussed today, specifically, "all-in" pricing, ticket transferability, speculative tickets, limiting ticket availability and deceptive websites harming consumers.

For those of you not familiar with TicketNetwork, allow me to briefly introduce to the members of the Subcommittee our company. I founded TicketNetwork in 2002 as a secondary marketplace with a simple idea to empower both ticket buyers and sellers to engage in free market transactions to buy and sell tickets to sporting events, shows, and concerts. With a wide selection of real-time ticket inventory, we provide a valuable service to consumers worldwide. Our mission is to provide access to tickets to live events and a safe, secure environment for transactions. As one of the industry leaders, TicketNetwork strives to provide "best in class" customer service and provide fair terms for its customers, both brokers and eventgoers.

TESTIMONY

The first issue I would like to touch on is so called "all-in" pricing as opposed to "drip" pricing. "All-in" pricing refers to displaying the full price a consumer will pay, including any and all fees, upfront. "Drip" pricing, in contrast, shows just a ticket price, adding subsequent fees (i.e. shipping charges, delivery fee, handling fees, etc.) later. In some instances, these hidden and

often high fees are not disclosed to the consumer until he or she is well into the purchasing process. Disclosing the full ticket price to consumers at the start of the shopping process, in our opinion, would be the best practice for both primary and secondary ticket sellers. This will make comparison shopping much easier, especially for inexperienced consumers. TicketNetwork currently offers an "all in" pricing option on 99% of our sites. Customers can select an option to see ticket listings including the ticket price and an estimate of all fees included at the maps or listing page. This enables consumers to shop based on the price they will pay and avoid being surprised by fees appearing at checkout. Some but not all the competitors in our industry provide "all-in" pricing options.

While TicketNetwork has increasingly embraced this model, "all-in" priced websites often operate at a disadvantage when consumers comparison shop, because drip pricing tickets will appear less expensive until the consumer sees the fees in connection with checking out. "All-in" priced tickets will look more expensive to consumers at first glance. Regardless of whether our competitors move in the direction of "all-in" pricing as a uniform pricing model, we feel such websites are much clearer for consumers, and we will continue to offer them so long as we can maintain them as a viable business model while attempting to scale up to compete with less-transparent marketplace websites.

Next I would like to address the issue of ticket transferability, which is a cornerstone of the TicketNetwork business model. Each consumer must have the ability to freely transfer any tickets purchased and cannot use for a wide array of reasons. We believe in full transferability of tickets purchased, which also goes to the core of the idea of a free market and limitations on one's ownership rights once goods are sold. The Supreme Court affirmed this right recently in *Impression Products v. Lexmark International* (No. 15-1189, 2016)[1] deciding 7 to 1 that Lexmark's right to control its products ended after the products were sold.

> "*The purchaser and all subsequent owners are free to use or resell the product just like any other item of personal property, without fear of an infringement lawsuit [...] Take a shop that restores and sells used cars*," chief justice John Roberts wrote in the majority opinion. "*The business works because the shop can rest assured that, so long as those bringing in the cars own them, the shop is free to repair and resell those vehicles. That smooth flow of commerce would sputter if companies that make the thousands of parts that go into a vehicle could keep their patent rights after the first sale.*"

[1] See here: https://www.supremecourt.gov/opinions/16pdf/15-1189_ebfj.pdf

The Connecticut legislature has embraced this concept for the ticketing industry as well. Public Act 17-28[2] was signed by the governor on June 6, 2017 and went into effect on January 1, 2018. The Act Concerning the Sale of Entertainment Event Tickets on the Secondary Market contains provisions covering the following:

> *(1) a prohibition on 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, without additional fees and without the consent of the person employing such ticketing system, with an exception carved out for a paperless ticketing system that does not allow for independent transferability of tickets, provided the purchaser of such tickets is offered the option, at the time of initial sale, to purchase the same tickets in another form that is transferrable, independent of such a ticketing sales system, including, but not limited to, paper tickets or e-tickets and without additional fees, regardless of the form or transferability of such tickets;*
>
> *(2) a prohibition on denying admission to an entertainment event to a ticket holder who possesses a resold ticket to such entertainment event based solely on the grounds that such ticket has been resold* [...]

Similarly, businesses should not be able to force[3] consumers to disclose their personal data for further reselling of this data to various "affiliates" just to be able to transfer the ticket to the other person by using their proprietary platform and dynamically generated admission codes.

The ability to freely transfer the ownership of tickets will promote natural free market price regulations, uninhibited by deceptive and unfair practices, such as coordinated floor pricing, artificial limits on ticket availability and gender discriminatory pricing. With your kind permission, I would like to give you a bit more information about these three issues.

In 2016 the practice of so called "floor pricing" was the subject of the multi-state settlement with the NFL, with New York Attorney General leading the charge[4].

> *"No sports fan should be forced to buy, or sell, a ticket at an artificially inflated price," said Attorney General Schneiderman. "Under the NFL's price floor scheme, fans were forced to pay inflated prices for even the least desirable NFL games. That is a slap to both sports fans and free markets. In the meantime, I encourage*

[2] See here: https://www.cga.ct.gov/2017/ACT/pa/pdf/2017PA-00028-R00HB-07114-PA.pdf

[3] TICKETING APP AXS SCRAPES EVERYTHING IT CAN GET FROM YOUR PHONE. Seeing your favorite band live will probably cost you more in data than in dollars. By Paris Martineau. https://theoutline.com/post/5628/how-a-concert-ticket-steals-your-personal-data?zd=2&zi=o6aaapkl

[4] See here: https://ag.ny.gov/sites/default/files/11.15.2016_-_nfl_tix_investigation_final.pdf

every NFL team—and every team in professional sports—to heed the call of all sports fans and remove price floors from every team-authorized secondary ticket market."

We ban "floor pricing" on all our sites, a practice which the NFL has now officially abandoned, but is still common on secondary marketplaces aligned with rights-holders. Fair markets allow competitive ticket pricing for customers that can lead to prices below face value. We were shocked to hear Ticketmaster, SeatGeek and StubHub admit to the coordinated implementation of floor pricing at June's FTC workshop. Placing such artificial marketplace constraints against downward price pressure often puts TicketNetwork at a competitive disadvantage[5], but we are determined to do what is best for customers.

We further believe that gender neutral pricing is the best option for all our consumers, and especially LGBTQ community. We ban all gender-discriminatory pricing (when one gender is given preferential pricing for admission over another) for all tickets listed on our exchange.

Finally, I strongly believe that artificially limiting ticket availability only harms consumers and further inflates already expensive ticket prices. Allow me to elaborate further on this issue mostly affecting primary ticket sellers. Upon the general on-sale offering of tickets to an event, consumers typically believe that they have a chance to purchase tickets for all, or at least most, of the tickets in each venue. In fact, less than half of the tickets for an event, on average, are ever made available to the general public[6]. In 2016, the New York Attorney General's office found that on average, only 46% of popular concert tickets are made available to the general public[7]. Similarly, the Government Accountability Office (GAO), found that the live event ticket industry frequently lists tickets directly with brokers to "capture a share of higher secondary market prices without the reputation risk of raising an events ticket price directly[8]."

Let me give you several examples of concert tickets (the type of tickets that are most often held back):

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[5] NFL routinely cautions consumers not to purchase tickets from secondary sources: https://www.packers.com/news/packers-urge-caution-when-purchasing-game-tickets-through-secondary-source-2019

[6] See here: https://www.ftc.gov/system/files/documents/public_comments/2018/12/06714-163065.pdf

[7] See here: https://www.ftc.gov/news-events/press-releases/2014/07/ticketnetwork-marketing-partners-ryadd-secure-box-office-settle

[8] U.S. Gov't Accountability Office, GAO-18-347 Congressional Requesters: Event Ticket Sales Market Characteristics and Consumer Protection Issues (April 2018).

- Of the 750,000 tickets for Adele's 2016 North American tour, it is estimated that only 300,000 were made available to the general public.[9]
- For Justin Bieber's January 18, 2013 show in Nashville, Tennessee, 93% of the tickets were set aside for presale and insiders. Many of the tickets were allocated to Bieber's management company and were later listed on ticket resale websites at inflated prices.[10]
- After tickets to Jimmy Buffet's April 2018 show in Hattiesburg Mississippi sold out in two minutes, the executive director of the venue complained that the promoter, Live Nation, had set aside a "sizable block" of tickets before they went on sale.[11]
- Katy Perry's contract riders stipulated that her management company could withhold from the box office unlimited numbers of tickets expressly for the purpose of reselling them.[12]
- Only 30% of tickets for the Barclays Center 2012 New Year's Eve show starring Jay-Z and Coldplay were sold to the public.[13]

Congress did establish a "firewall" between managers and promoters in the boxing industry by enacting the Muhammad Ali Boxing Reform Act.[14] We believe this initiative should be taken further and become applicable to other live events as well.

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[9] Ray Waddell. Adele Ticket Blowout Frustrates Fans, with Ticketmaster Taking the Heat, Billboard (Dec. 15, 2015). https://www.billboard.com/articles/news/6813725/adele-tour-sold-out-angry-fans-ticketmaster

[10] Kyle Anderson, Justin Bieber has been scalping his own tickets, says Nashville TV Station, Entertainment Weekly (Sep. 28, 2012, 8:43pm) https://ew.com/article/2012/09/28/justin-bieber-ticket-scalping-nashville/

[11] TicketNews, Sizable block of Holdbacks Precipitate Rapid Jimmy Buffett Sellout, TicketNews (April 10, 2018), https://www.ticketnews.com/2018/04/sizable-block-jimmy-buffett-tickets-held-back/

[12] The Smoking Gun. Drivers Beware: Don't Stare at Katy Perry Singer's tour rider offers 23-point wheelman policy, The Smoking Gun (May 19, 2011). http://www.thesmokinggun.com/documents/celebrity/katy-perry-concert-rider-138490

[13] State of New York. "Obstructed View: What's blocking New Yorkers from Getting Tickets," Office of the New York Attorney General. Pg. 14. January 28, 2016 ("Schneiderman report") Online: https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

[14] Section 5. (b) FIREWALL BETWEEN PROMOTERS AND MANAGERS-
'(1) IN GENERAL- It is unlawful for--
'(A) a promoter to have a direct or indirect financial interest in the management of a boxer; or
'(B) a manager--
'(i) to have a direct or indirect financial interest in the promotion of a boxer; or
'(ii) to be employed by or receive compensation or other benefits from a promoter, except for amounts received as consideration under the manager's contract with the boxer.
"H.R. 1832 — 106th Congress: Muhammad Ali Boxing Reform Act." www.GovTrack.us. 1999. https://www.govtrack.us/congress/bills/106/hr1832

Another way to combat practices that are harmful to consumers is to require ticket sellers to disclose the actual face value of tickets to consumers. In Q3 of 2019, we beta tested a website that displayed the face value of tickets to the end consumer. We plan to continue aggressively testing this model in Q2 of 2020. However, certain venues and promoters have complained about showing face prices directly to consumers, due to the fact that it commonly shows that consumers purchase tickets for below face value on the secondary market, particularly in instances where the primary market enabled variable "dynamic" pricing to maximize prices at periods of high demand.

Additionally, TicketNetwork has installed state of the art artificial intelligence to identify and purge tickets listed on our exchange that indicate exorbitant and predatory pricing. That said, identifying speculative inventory[15] is very difficult to do, as the definition is inherently vague, and an inflated price is only one indicator of a potentially speculative ticket. Ultimately, our primary concern as a marketplace is that the consumer receives the ticket purchased – and that it is the ticket he or she expected to receive. If a seller has the right to a ticket, but doesn't yet have that ticket in hand (e.g., a season ticket holder), and offers that ticket for sale to help fund the purchase of the season ticket package, the holder should be entitled to offer that ticket prior to receiving a hard copy of the ticket from the team. Given the advancements in technology and ticket delivery systems, a requirement that a seller have a ticket "in hand" is quickly becoming antiquated.

A free market is the best regulator of prices, and the product (in this case – event tickets) can be priced only as high as the market will bear. As supply and demand shift, the price will go down if there is insufficient demand at a given price. In fact, promoters and artists alike are interested in pricing their tickets at the top of what the market will bear and brokers create the proverbial supply / demand tension testing what the market will bear. And that is why we see venues and artists holding back blocks of tickets, which has a larger impact on price increases than anything the brokers or secondary markets can do.

One way to identify brokers with intentions of not providing tickets as advertised, the ultimate concern relating to speculative tickets, is to offer consumers a mandatory 200% refund for cancelled ticket orders applicable to both primary and secondary markets.

That said, we must go further to empower consumers. We support a growing call for a complete ban on binding arbitration clauses for disputes relating to live event tickets. In 2011, Ticketmaster changed its Terms of Use to require purchasers to settle disputes in arbitration. Now, when you buy a ticket, "you agree to waive any right to a jury trial or to participate in a

[15] For the purposes of this testimony, we identify "speculative" tickets as tickets offered for sale while the seller has no reasonable expectation of obtaining the tickets listed. See further here: Obstructed View: New York State. From the Office of Attorney General Eric T. Schneiderman: What's Blocking New Yorkers from Getting Tickets. https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

class action." Allowing arbitration clauses demotivates consumers seeking remedy, as their recovery is likely to be very small. With class actions, there's strength in numbers. This is a real leverage for bad actors to avoid predatory and unfair practices.

In one example, *Lee v. Ticketmaster LLC*[16], a customer pursued a class action against the world's largest ticket seller for conspiring with brokers to resell event tickets on approved Ticketmaster resale websites, enabling the company to cash in twice by collecting fees on the initial sale and upon resale. The plaintiff argued that this scheme constituted unlawful and unfair business acts and unjust enrichment at the expense of consumers. A trial court dismissed the case and compelled arbitration, siding with Ticketmaster who argued that its online terms of use policy required users to arbitrate all disputes.

There is also an example of successful Congressional actions in a similar situation. On November 2, 2002, President Bush signed into law the Motor Vehicle Franchise Contract Arbitration Fairness Act designed to address a disparity in bargaining power between motor vehicle dealers and manufacturers. This law makes pre-dispute arbitration clauses in motor vehicle franchise contracts unenforceable under the Federal Arbitration Act unless both parties consent after the dispute arises. Congress should act again to eliminate the effect of these arbitration clauses in live event ticket terms and conditions.

Finally, I would like to conclude my testimony with my thoughts on so called "white label" websites, although this term is not entirely accurate. The "white label" or "private label" concept is widely accepted in many industries. For example, one vitamin complex manufactured in the same laboratory may be sold under a dozen of different names or "private" ("white") labels. Similarly, TicketNetwork's powerful exchange platform is available to our clients to use under their own private label brand, which is a wide-spread practice, and allows private label websites to market to different segments of consumers, provide additional services and otherwise fairly compete with one another which only benefits consumers. It is my understanding that the respected members of this Subcommittee are mostly concerned with a different issue, namely websites posing as an actual venue or an artist attempting to "trick" consumers into thinking that they are dealing with a primary source of tickets, when in practice, this is not the case. To further avoid confusion on the issue, I will refer to these websites as "fake label" websites, to better reflect their deceptive nature.

In July of 2014, TicketNetwork entered a consent decree[17] with the FTC that, among other things, outlines clear and concise rules for conduct of operation of a white label website that is not deceptive and is designed to simply refer to a venue or an artist without becoming a fake

[16] No. 18-cv-05987, 2019 U.S. Dist. LEXIS 57661 (N.D. Cal. Apr. 3, 2019)

[17] https://www.ftc.gov/news-events/press-releases/2014/07/ticketnetwork-marketing-partners-ryadd-secure-box-office-settle

label website tricking consumers. This conduct includes avoidance use of the term "official" and clearly indicating that the site is a reseller not affiliated with the applicable venue, team, performer or other entity, among others. It is our understanding that the FTC conducted extensive research and concluded that the steps recommended in the decree will be sufficient steps to protect consumers.

It is our view that all white label sites that TicketNetwork operates conduct business well within the guidelines set out by the FTC and are NOT "fake" label websites.

Finally, the results of the FTC Workshop complaint data showed that only 70 out of the 2000 complaints we reviewed were caused by false and deceptive advertisements. Note that this number includes ALL forms of deceptive advertisement and is by far not the biggest issue consumers were complaining about in 2019.

Hidden, deceptive and exorbitant fees topped the list of complaints at 897 (45%), complaints for high or excessive fees totaled 749 (37%), which brings the total of all fee related complaints to 82% of the 2000 we reviewed. Transparency and upfront fee disclosure are also on the list of customers' primary concerns.

CONCLUSION

TicketNetwork is committed to providing a consumer-friendly fair and open marketplace for ticket brokers and the general public. Greater transparency in ticket sales, through all-in pricing, limited holdbacks, and greater freedom of transferability and pricing will benefit consumers and bring the prices down to whatever the open market determines the prices should be.

Ms. DEGETTE. Thank you, Mr. Vaccaro.

The Chair now recognizes Mr. Choti for 5 minutes.

TESTIMONY OF JOE CHOTI

Mr. CHOTI. Good morning, Madam Chair and distinguished members of the committee. My name is Joe Choti, and I'm the chief executive officer and president of Tickets.com.

I appreciate the opportunity to participate in today's hearing and contribute to the committee's efforts to improve the transparency and ensure fairness for our consumers in live event ticketing industry.

Tickets.com is a technology company whose core product is the primary ticketing platform known as ProVenue. ProVenue serves as the core of a comprehensive suite of products and services that are utilized by over 250 United States client organizations that sell primary tickets, their primary tickets, on their own brand in their own box office and through online measures.

While client organizations solely establish the policies and practices for a ticket sold through ProVenue, Tickets.com provides an array of technological features and functionality that allows venues to create events, establish ticket quantities, create and adjust pricing, list availability, and establish and display fees, all designed to enhance the patrons' live event ticketing experiences that can be utilized to address consumer protection concerns identified at this morning's committee.

Tickets.com is constantly striving to improve and innovate patrons' live event ticketing experiences. We look forward to working with the committee towards our mutual goals. Hopefully, today's panel can be a step forward in that direction. I thank you for the opportunity to testify, and I look forward to your questions later on this morning.

[The prepared statement of Mr. Choti follows:]

Written Testimony of Joseph F. Choti
President & CEO, Tickets.com, LLC

Before the United States House of Representatives Committee on Energy & Commerce
Subcommittee on Oversight & Investigations
Hearing on "In the Dark: Lack of Transparency in the Live Event Ticketing Industry"
February 26, 2020

Chair DeGette, Ranking Member Guthrie, and Members of the Subcommittee; Chair Pallone, Ranking Member Walden and other Distinguished Members. My name is Joe Choti. I am the President and CEO of Tickets.com, LLC. I appreciate the opportunity to share information about our company and contribute to the Committee's efforts to improve transparency and ensure fairness for consumers in the live event ticketing industry.

Tickets.com Company Background

Tickets.com is a technology company whose core product is the primary ticketing platform called ProVenue. ProVenue serves as the core of a comprehensive suite of products and services that are utilized by our 250 plus United States client organizations to sell primary market tickets under their own brand[1]. ProVenue is a software as a service (SaaS) solution that is customized by each client organization for both box-office and online, including mobile, ticket sales.

Online tickets sales by client organizations utilizing the ProVenue ticketing platform to sell client organization tickets under the client's own branded purchase flow. There is no singular Tickets.com purchase flow for online ticket sales, but rather unique purchase flows for each client organization. Nor is there a singular Tickets.com patron account; patrons purchasing tickets may establish separate and unique user accounts with each client organization.

[1] Please note that throughout this testimony that references to "client organization" and/or "client" refer to Tickets.com's clients which typically operate one or more venues. References to "patrons" and "consumers" refer to individual ticket purchasers.

While Tickets.com operates a business to consumer website www.tickets.com, the website does not serve as a primary market ticket platform. Rather, the website is designed to help fans discover the world's live entertainment events and to direct fans to client organization websites to purchase tickets through the client branded, Tickets.com hosted, online purchase flow.

Tickets.com also has technology, known as Replay, which ProVenue client organizations can optionally utilize to facilitate secondary market ticket sales by their patrons. However, no client organizations are currently utilizing the Replay secondary sales technology.

Consumer Protection Issues

We welcome the opportunity to be here. Tickets.com fully supports the Committee's efforts to increase transparency and access for consumers. We have appreciated our engagement with your staff in preparation for today's hearing and my goal today is to share with you how Tickets.com has approached these matters and provide insight and discuss how some of the committee's proposals would directly impact our industry. While client organizations establish the policies and practices for tickets sold through ProVenue, Tickets.com provides an array of technological features and functionality designed to enhance patrons' live event ticketing experience that can also be utilized to address the consumer protection concerns identified by the Committee.

High Ticketing Fees

Tickets.com does not set or influence the ticket prices or ticketing fees charged to consumers. All pricing and related ticketing fees charged to consumers are solely defined by and through client organizations. Typical online ticketing fees that may be charged to consumers

include per-ticket convenience fees, per-order processing fees and delivery fees for delivery of physical tickets.

Tickets.com's agreements with client organizations often, but not always, include service fees based on online ticket sales volumes; however, it is solely the client organization's decision whether to pass on these service fees, in whole or in part, to patrons in the form of ticketing fees. Tickets.com typically does not earn any fees for box office sales.

While Tickets.com does not set ticketing fees, observationally we have noticed that ticketing fees charged to patrons tend to be significantly higher for concert tickets. Like many of the other consumer protection issues identified by the Committee, the problematic business practices primarily impact consumers purchasing concert tickets for events where ticket demand far exceeds ticket supply. However, the vast majority of tickets sold by Tickets.com client organizations are for events where ticket supply exceeds consumer demand where the challenges of ensuring consumer access to face value tickets are not applicable and related ticketing fees tend to be materially lower.

Disclosure of Ticketing Fees & All-In Pricing

Tickets.com's ProVenue ticketing platform allows client organizations the option of configuring the purchase flow to make patrons aware of the type and amount of ancillary fees at various points and includes functionality to present the consumer with All-In Pricing.

In all instances, ancillary fees are displayed to the patron in the shopping cart prior to completing the purchase and in advance of requesting payment information. Additionally, if a client organization elects to utilize "all-in" pricing functionality, patrons purchasing tickets are presented with the total ticket cost, including ancillary fees, throughout the entire purchase process.

While "all-in" pricing provides a mechanism to present the patron a single ticket price that includes ancillary fees at the beginning of a purchase flow, disclosing some ancillary fees that vary based on patron choices (e.g. ticket delivery options) is impossible at the beginning of a transaction. Specifically, the following are examples of ancillary charges, which may be charged that are unknown prior to finalizing a purchase:

a. Method of delivery fees, if any, which may vary based on how the ticket purchasers chooses to have the ticket delivered (e.g. overnight delivery versus standard post versus digital deliver);

b. Per-Order processing fees, if any, are generally applied on a per-order basis which, depending on the client organization, may include tickets for multiple events, dates and seating locations in a single shopping cart;

c. Parking Fees, if any, which are generally optional add-on fees elected by customer during the purchase process; and

d. Fees for other optional add-on or upsell items offered during the purchase process, including for example, a premium fee for concessions included with a game ticket, fees for promotional merchandise items or special offers for additional tickets.

By necessity the above ancillary charges would be difficult, if not impossible to disclose, at the beginning of a transaction in an "all-in" manner, so are generally displayed in the shopping cart prior to the customer completing their purchase.

Restrictions on Transferability

The ProVenue ticketing platform has a variety of features that a client organization, in its sole discretion, may utilize to control patron resale or transferability of tickets. The limitation of

ticket transferability and resale is determined and controlled solely by client organizations. Tickets.com technology is agnostic and allows client organizations to provide patrons a seamless ticket transfer experience or place a variety of restrictions on transferability.

We agree with the Committee that certain restrictions on transferability of tickets can limit consumer options. Observationally, most client organizations do not impose transferability restrictions on their tickets and rather utilize Tickets.com's technology to offer patrons the ability to transfer or resell tickets they can't otherwise utilize to enhance their patrons' live ticketing experience.

However, certain transferability and resale controls can be utilized as a tool to aid in insuring that patrons have greater access to face-value tickets as noted by the New York Attorney General in its investigation of ticketing industry practices.[2] As the NYAG noted, non-transferrable tickets can effectively reduce ticket broker activity and ticket speculation and by extension increase the availability of face-value tickets for the general public.

Additionally, client organizations may limit transferability of subsets of tickets for reasons that do not impact consumers, including, for example, to prohibit donated tickets from entering the secondary market place or restricting a venue access pass to a single individual.

Limited Ticket Availability & Disclosure

Tickets.com provides a variety of technological solutions that client organizations may optionally utilize, to ensure that consumers are afforded a reasonable opportunity to obtain face-value tickets. Available System Configurations include protected promotions, account-specific offers, single-use offer codes, geographic sales restrictions, event run purchase limits and ticket quantity limits. Additionally, Tickets.com profiles, maintains and blocks purchases from known

[2] New York Attorney General, *Obstructed View: What's Blocking New Yorkers from Getting Tickets* (2016) available at: http://www.ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

malicious purchasers and deploys measures to thwart BOT attacks. These technological tools help client organizations insure tickets are available to their patrons rather than ticket brokers and speculators.

As with ticketing fees, Tickets.com does not determine the number or allocation of tickets made available for presales, holds, general sales or other categories of sales for any events sold by client organizations. The ProVenue ticketing platform includes functionality that allows client organizations, at their sole discretion, to configure allocations for presales, holds, general sales and other categories. Whether to disclose the total number of tickets available to the general public is a decision made solely by the client organization. While technologically it's possible to display available inventory versus total event capacity in the online purchase flow, this is not standard functionality and to date has not been requested by a client organization. However, if a client organization enables the seat-map view, a patron can see the total number of seats that the client organizations has made available at that moment in time.

While requiring disclosure of available tickets has been suggested to increase transparency for high demand ticket onsales, such proposals should take into account that advance disclosure requirements may be counter-productive at increasing the availability of high demand tickets. Specifically, Tickets.com has worked with venues and artists that will open up additional seating during an onsale as a concert nears sell-out or add additional shows once a concert sells out. Regulations requiring advance disclosures of onsale availability should be crafted to permit opportunities to offer consumers such additional ticket availability.

Conclusion

Chair DeGette, Ranking Member Guthrie, and Members of the Subcommittee; Chair Pallone, Ranking Member Walden and other Distinguished Members, Tickets.com is constantly

striving to improve patrons live event ticketing experiences and looks forward to working with the Committee to increase consumer transparency and access to live event tickets. We urge the Committee to carefully consider the potential ramifications of proposed regulations to insure that consumer access to high demand live event tickets is not reduced or ticket prices increased due to increased regulatory compliance. Hopefully today's panel can be a step along that path. I thank you for the opportunity to testify and look forward to answering your questions.

Ms. DEGETTE. I thank the gentleman.

It's now time for members to ask you questions, and the Chair will recognize herself for five minutes.

Ms. Burns, the 2016 New York Attorney General report that you referenced in your testimony found that the industry's use of holdbacks and presales restrict consumers' access to tickets. In fact, for some popular concerts, an average of 54 percent of tickets were held back for industry insiders, fan clubs, credit card presales, artists, and other sources, according to the report.

In your testimony, you said that ticket holdbacks are a major contributor to the limited number of face-value tickets available to the general public.

If you can tell me, Ms. Burns, very briefly, how prevalent are those hold banks in the ticketing industry and why should consumers care about them?

Ms. BURNS. Well, the holdbacks are an issue in our industry because it limits supply.

Ms. DEGETTE. Right. How prevalent are they?

Ms. BURNS. They're prevalent. Just in terms of how prevalent, I couldn't give you a figure but they're incredibly prevalent. It's a common practice of primary ticket issuers, but it's an issue for consumers because it limits supply.

Ms. DEGETTE. Right.

Ms. BURNS. Right? And when you have limited supply and you have especially for events that are high in demand, it creates a false sense of scarcity and over time, as those tickets are trickled out, can result in higher prices for fans than if they were originally offered just all at once.

It also limits access to fans who, you know, you want to purchase those tickets and the lack of transparency is just, you know, an issue in the industry in general.

Ms. DEGETTE. Thank you.

Ms. Howe, from your—from your perspective, how many of the concerts that are or the events that you sell do you have the holdbacks in the range of 54 percent, that type of range?

Ms. HOWE. Thank you for the question, Chair DeGette.

Let me clarify some misconceptions. I want to try to tease apart holds from presales for a minute. True holds, which are effectively tickets that the artist is holding back for friends and family, VIP, and in some cases promotions, are single digits. There's no incentive for the artist to want to hold that inventory back. When they're going on sale and 90 percent of their marketing dollars are being spent at the on-sale, they want to get that inventory out there.

Ms. DEGETTE. So you just don't agree with what the——

Ms. HOWE. I don't agree respectfully.

Ms. DEGETTE. OK. I want to go back to you, Ms. Burns, because you talked about ticket transferability and what you said in your written testimony is arguments in support of transfer restrictions was a smoke screen. Can you tell me why that you hold that—why that's your perspective?

Ms. BURNS. Yes. So I believe what you may be referring to is the argument of fraud being used as a justification for limits on transferability. We believe that's a smoke screen because, if you look at

the incidents of fraud, it's actually quite low in the ticketing industry, especially as we move towards mobile ticketing.

So, it's really the issue here is using technology really to hold consumers captive when they purchase a ticket so that if they want to resell that ticket, they're forced to do so through the platform or the mobile system of the primary issuer.

Ms. DEGETTE. Thank you.

And Ms. Howe, what's your perspective on that?

Ms. HOWE. If you believe that five million fraudulent tickets a year are low, we would disagree with that.

The issue around transferability is—let me clarify. This is a very small percentage of events that use nontransferable tickets today. When it's used, it is used for a very consumer-friendly practice which is to get tickets into the hands of real fans at below-market prices. So Pearl Jam most recently, many of you are familiar with, is using this and what we're seeing, if you look at those States that allow artists to restrict transfer, Pearl Jam is selling a 98-dollar ticket, 5-dollar charitable fee, and there's virtually no inventory on the resale market.

In those two States, New York and Colorado, where they've pulled that right away from the artist, you're seeing thousands of tickets on the secondary market for $7,000. So——

Ms. DEGETTE. OK. Thank you. I have just a few minutes left, and I have one more question for everybody.

Which of your—do any of your businesses sell these white label tickets, engage in this? Let the record reflect everybody has—oh, Mr. Vaccaro.

Mr. VACCARO. I apologize. We have multiple definitions of what a white label site is.

Ms. DEGETTE. You got to turn your mike on.

Mr. VACCARO. I apologize. We have multiple different definitions of what a white label site is. I can go into it with you but basically, we allow consumers, as well as other folks here, to sell tickets on a website that's branded to them.

Ms. DEGETTE. OK. Would you agree that we need more disclosure of these sites so consumers know where they're buying their tickets?

Mr. VACCARO. I would answer that——

Ms. DEGETTE. You just said you support this bill.

Mr. VACCARO. I supported the bill and I think we have enough and I think the disclosures comply with what the FTC said and I'll—

Ms. DEGETTE. OK. I'm out of time. Thanks.

Does everybody else agree? Just—does anybody disagree that we need more controls on these white label sites? No. OK. Everybody agrees.

Mr. Guthrie, you're recognized for 5 minutes.

Mr. GUTHRIE. Thank you very much. I appreciate the ranking member of the full committee thinking I'm too young to have seen Elvis, but that was 1975. I have a question——

Ms. DEGETTE. End of his career——

Mr. GUTHRIE. End of—yes, it was 1975, a couple of years before he passed unfortunately.

Can you briefly describe, each of you—and I only have a few minutes. So, I want to make sure I—so "briefly" is the right word—the type of business model. I know you have a primary market, secondary market, white label software, et cetera; what type of market you guys operate in and if any affiliates operate as the marketplace? I know Ticketmaster's in this category. I don't know if the others—I know, Mr. Choti, you might be but you have a primary and secondary and, if you do, how do those interact with each other?

So Ms. Howe and then I'll go down the list——

Ms. HOWE. Correct. Thank you for your question. We have a primary market. The business models, we compete for the exclusive rights to ticket a venue and the fees which are shared and split with the venue, go to providing an important service which is protecting our consumers in the marketplace and making sure we can get them in safely.

We also compete in the secondary market. We are a number three player. So we have a much smaller share of secondary market, and we got into that because we thought it was important for us to be able to provide a safe and transparent way for consumers to buy all tickets, both primary and secondary.

Mr. GUTHRIE. OK. Mr. Perez.

Mr. PEREZ. Similar to Ticketmaster, we operate in the primary segment where we're the authorized agent for the initial release of tickets for sports teams, venues, and event promoters. We also operate a resale platform that's integrated with the primary. So all tickets that are sold on our resale platform are ones that we've issued originally. So they're verified, canceled, and reissued directly to the purchaser.

Mr. GUTHRIE. OK. Ms. Burns.

Ms. BURNS. We are at our core a marketplace, so a secondary ticketing marketplace, and we have relationships with—where we're the official secondary partner for leagues, teams.

We also have a primary business. It's a very small portion of our business. We have experienced challenges with trying to break into primary ticketing when we're up against a competitor that has an 80 percent market share.

Mr. GUTHRIE. OK. Mr. Fitts.

Mr. FITTS. We operate a resale marketplace called vividseats.com where buyers and sellers are put together to vie for tickets. We offer a wide variety, and people can compete on prices and understand what the full amount inventory available on resource is.

We also offer a technology solution called Ticket Fulfillment Services which sells fulfillment solutions to companies that want to provide tickets to their consumers such as Capital One, such as Groupon, American Airlines, and Caesars Entertainment.

Mr. GUTHRIE. Thanks. So, Mr. Vaccaro, just to give you a chance to answer more of the question more because none of them previously did. The white label, so you were talking about how you have branded.

White label has a lot of different definitions. It doesn't necessarily mean bad. So if you have a chance to talk about your business practice in that area, if you can turn the mic. I am sorry.

Mr. VACCARO. Thank you. For the Armed Forces, we have a website called armedforcestravel.com. So what we do is we power that engine which is owned by the government, to give military members tickets with no service charges and no shipping fees. OK. So we're the official provider for them. We provide them that website.

I was hearing about the other folks here and anyone who wants a website we will help them or we would help them out with the back end, providing them fulfillment services for those websites. Each deal is different. Some people market their own websites. Some people we provide more functionality to and less.

But, you know, just to be clear, I think a lot of other folks here might be more involved in white label type websites than they're properly communicating.

Mr. GUTHRIE. OK. Thank you.

And Mr. Choti.

Mr. CHOTI. We're a technology company that focuses on the primary market. We provide a solution for venues to, you know, create events, create configurations for those events, establish ticket quantities, adjust and modify pricing of tickets, list availability, and establish fees, fees and how those fees are applied.

Mr. GUTHRIE. OK. I'll start with you and go backward then. So, fees, so how do you establish—who determines the fees, how do you establish the fees, and what are the fees used for?

Mr. CHOTI. Again we're a technology platform, and we give the tools and the functionality to our venues and decide how and where and when they want to invoke certain pieces of functionality.

Mr. GUTHRIE. OK. Mr. Vaccaro, how do y'all determine fees?

Mr. VACCARO. On the sites that we control, we determine fees by what the others in the marketplace are charging to match the fees and displays as close to them and return, get a return on investment for our marketing dollars.

So all the money and fees basically goes to marketing.

Mr. GUTHRIE. OK. Mr. Fitts, I don't know if I'll have time to get all the way down but we'll try.

Mr. FITTS. In resale, the cost has two components, the base price which is set by the seller and not by us and the fee which we assess and the fee is used to pay for the call center I described in my opening statement——

Mr. GUTHRIE. How do you determine the fees? How do y'all determine——

Mr. FITTS. It's market competition. So it's subject to discipline by the market. If there's a lower price, we have to match it.

Mr. GUTHRIE. OK. I'm out of time but Ms. Burns she'll let you finish if you'll be brief, each one of you.

Ms. BURNS. OK. We are the marketplace. So sellers determine the prices of tickets. As Mr. Fitts explained, there's two components to pricing. There are the price of the ticket and the fees we charge. Because we're a marketplace, the sellers determine the price of the tickets.

Mr. GUTHRIE. If your fee's too high, people aren't going to use your site.

Mr. PEREZ. Fees on our platform, both primary and resale, are set by the client, and they're usually determined by market analysis.

Mr. GUTHRIE. Ms. Howe?

Ms. HOWE. Similar to Mr. Perez, fees are determined with the event organizer, and we share in a portion of those fees.

Mr. GUTHRIE. Thank you. I appreciate the indulgence of the Chair, and I yield back.

Ms. DEGETTE. The Chair now recognizes the chairman of the full committee, Mr. Pallone, for 5 minutes.

The CHAIRMAN. Thank you, Madam Chair.

I'm particularly concerned by the hidden fees that the ticketing industry charges American consumers at the end very end of the purchase process, and we're all familiar with this: You search for a ticket online, and one price is initially displayed, but, when you go to check out, hefty fees are added, and the final price is much higher than the original price shown.

There was a 2016 report by the National Economic Council that stated, I quote: At their worst, such fees can be fraudulent or deceptive; at a minimum, they make prices unclear, hinder effective consumer decisionmaking, and dull the competitive process.

So let me start with Ms. Howe. In your written testimony, you stated, and I quote: Consumers should be able to see the total cost of their tickets, including all fees, at the beginning of the purchase price process, not only at the end.

So let me ask you, Ms. Howe: How would providing the total ticket price at the beginning of the purchase process as opposed to the end benefit consumers?

Ms. HOWE. Thank you for your question, Chairman Pallone.

We believe that providing full disclosure, not just the face value of the ticket, but the fees, will help aid a consumer in making the right decision. So, instead of getting so far down the purchase path, you should know upfront what you're paying for and where those fees are going.

The CHAIRMAN. And how would—you further stated that requiring all live event ticketing marketplaces to move to all-in pricing would, and I quote, prevent price manipulation, provide transparency, and protect consumers.

But is it Ticketmaster's position that it would support all-in pricing?

Ms. HOWE. Absolutely. We support it, but what we believe, it needs to be mandated and that all marketplaces need to comply.

The CHAIRMAN. So, if—as a dominant player in the industry, if you voluntarily implemented this, I mean, you don't see that as being effective? You think it has to be mandated by law?

Ms. HOWE. It's a good question. The reason we don't believe it's going to be effective is it's confusing to consumers. Right now, yes, you need consumers to understand apples to apples, and, today, if you look at Ticketmaster and you go to another marketplace, that ticket may seem more expensive, but the other marketplaces are marking that down and putting fees as high as 40 to 50 percent on the back end. So they're making ill-uninformed decisions if you don't have apples to apples.

The CHAIRMAN. OK.

And let me ask Mr. Perez. I'd like to get your views on this issue of all-in pricing. In a briefing with the committee staff, I understand you told the committee that disclosure of a ticket's full price needs to occur as early in the purchase process as possible. So why is it important to provide the full ticket price to consumers upfront, and would you support a bill to mandate it?

Mr. PEREZ. Thank you for the question, Chairman Pallone. Because of the customer confusion between the primary and the resale market, they are price shopping across for the same ticket inventory across multiple websites. And it's our belief that, with legislation that requires all of us to show the fees all in upfront, then people would be able to make informed decisions on the value and the cost of the ticket that they're purchasing.

The CHAIRMAN. OK.

And then let me finally ask Ms. Burns. I understand that Stubhub implemented all-in pricing from 2014 to 2015, but ultimately moved away from that model. Why did Stubhub move away from all-in pricing, and do you believe Stubhub's experience would have been different if other players in the industry had followed your lead?

Ms. BURNS. Yes. And I just want to make one clarification.

The CHAIRMAN. Sure.

Ms. BURNS. We actually do show all-in pricing on our site today, and we allow it through search, as well as ticket-listing pages. Consumers have an optional view to search based on all-in pricing, so we leave it to the consumer, which we think is the right thing to do.

But, to answer your question, the reason why we moved away from it is because it was confusing for consumers when we were offering all-in pricing and other ticketers were not because consumers just didn't understand that they were viewing prices that were inclusive of fees; they thought they were viewing prices that were exclusive of fees.

So, for all-in pricing to work, we believe there needs to be clear guidelines, you know, clear requirements of what constitutes all-in pricing, as well as universal and consistent enforcement.

The CHAIRMAN. OK. Well, I think it's critically important that consumers have complete information about how much they're going to spend on tickets at the beginning, not at the end. I think all three of you agree.

So, going forward, I hope the industry will cooperate with us in our efforts to put the consumer first, and all of you said that you would support a mandate, and, Ms. Burns, I appreciate your adding that we have to be specific about what that means because I think that's important, too.

Thank you.

Thank you, Madam Chair.

Ms. DEGETTE. I thank the gentleman.

The Chair now recognizes Mr. Walden for 5 minutes.

Mr. WALDEN. Thank you, Madam Chair.

I've got a question for all the witnesses, and it is, who makes the decision as to whether or not tickets are transferable?

Ms. Howe, can we just start with you and——

Ms. HOWE. Sure. Thank you for that question.

The event organizer is making that decision, so it's the——
Mr. WALDEN. Right.
Ms. HOWE [continue]. Artist, the sports team, the——
Mr. WALDEN. I understand.
Ms. HOWE. Broadway producer.
Mr. WALDEN. Does everyone agree with that? Mr. Perez?
Mr. PEREZ. In our experience, it's the artists themselves. It's not even the event organizer. We've never issued nontransferable tickets that weren't the direct request of an artist.
Mr. WALDEN. All right. Ms. Burns? Does anybody disagree with this notion?
Ms. BURNS. I have a disagreement, actually. I think what's important in answering the question about transferability is, is the ticket transferable on any platform, or transferable only within the platform of the primary issuer? I think there is a key distinction there.
Mr. WALDEN. All right.
Ms. BURNS. In the latter case, the primary issuer is actually making the choice to make that ticket nontransferable, meaning——
Mr. WALDEN. Well——
Ms. BURNS [continue]. If it can only be sold on that primary issuer's platform——
Mr. WALDEN. Oh.
Ms. BURNS [continue]. Then they are making the choice——
Mr. WALDEN. Yes.
Ms. BURNS [continue]. That it's nontransferable.
Mr. WALDEN. Ms. Howe, do you want to respond to that?
Ms. HOWE. Can I clarify that?
Mr. WALDEN. Yes, sure.
Ms. HOWE. That's not accurate——
Mr. WALDEN. Oh.
Ms. HOWE [continue]. For a couple of things. One is there are very few cases where transfer is restricted. We don't——
Mr. WALDEN. What would those be?
Ms. HOWE [continue]. Make that decision. We don't make that decision. In the—there's only been a few since—and I just wanted to correct the record from the opening statements. SafeTix does not equal nontransferable tickets. So, yes, we've invested in digital tickets, but we've invested in that because we want to shut down the fraudulent ticket market. It does have the capability to restrict transfer. It has only been used in a couple of situations—Pearl Jam most recently, which I mentioned earlier—and, just on this Monday, we ticketed the Kobe Bryant Memorial Service, and his wishes were to make sure that—his family's wishes were to get those tickets at well-below-face market prices and do that in a way that didn't create a secondary market. All that money went to charity.
So there are situations where restricted transfer is great for the consumer, and it's great for the content owner.
Mr. WALDEN. All right. Anybody else wants to——
Mr. VACCARO. If I can just interject that Connecticut has a very pro-consumer law, and it's the venue that ultimately has responsibility for the transfer of the tickets. So the venue is the bad actor if you can't transfer the ticket, not the promoter or anything. And

Connecticut's law requires that you be able to transfer the ticket without giving any personally identifiable information to the venue to transfer the ticket, regardless if the venue is located in Connecticut or out of State.

Mr. WALDEN. All right. Mr. Fitts, you want to weigh in on that?

Mr. FITTS. Yes. Thank you. Transferability means competition, right? So marketplaces should have to compete with one another for that ticket on the resale marketplace. If a ticket is transferable, it means that different marketplaces can offer it and compete about services, compete over fees. The danger with SafeTicket, which sounds like a nice product, but it has dangers that eventually that become a walled garden for only Ticketmaster to operate. That's the danger here, and that's why we need the BOSS Act to protect transferability.

Mr. WALDEN. Do any of you oppose electronic ticketing? Just as a consumer, I kind of like that.

Mr. VACCARO. The only thing I oppose is when you mandate it—when you mandate it. For example, with the CCPA, it was mandated that, look, you need a mobile phone. You need an app.

Mr. WALDEN. Right.

Mr. VACCARO. People came out that it was disenfranchising for people who didn't have it. Plus, a lot of the primaries came out that they gathered so much information from you, including your gender or change in gender, and they sold that information to marketers to help you market that. They gave you IP addresses of your customers. It's a very much concern with the military members. They also put in devices on those phones——

Mr. WALDEN. Now, who was doing this?

Mr. VACCARO [continue]. On your location.

Mr. WALDEN. Who was doing this?

Mr. VACCARO. Both AXS and Ticketmaster.

Mr. WALDEN. Do either of you want to respond to that?

Ms. HOWE. Let me just clarify. Ticketmaster is not mandating the use of digital tickets.

Mr. WALDEN. Right.

Ms. HOWE. It's our job to create the technology and let me give you some numbers. For the NFL, which was the first league to use SafeTix and digital ticketing at scale. There are some teams that have 95 percent digital tickets, and there are some that have 25 percent. That is a team decision; that's not a Ticketmaster decision.

Mr. WALDEN. It's an option. OK. What about the information gathering and sale piece that he referenced?

Ms. HOWE. Sorry. Can you repeat——

Mr. WALDEN. Everything from gender to IP addresses.

Mr. VACCARO. I can supply you all the documentation. I gave it to your committee.

Mr. WALDEN. All right.

Mr. VACCARO. Your staff members. It was on their website. It all came apart because of the California Consumer Protection——

Mr. WALDEN. All right.

Mr. VACCARO [continue]. Act, Privacy Act, and they're saying, what information do you disclose? And the amount of information, if you want to transfer a ticket, is enormous. So you, as a consumer, before you even buy your tickets, you pay a cost. If you

want to do mobile only and nontransferable, you have to give them so much information that they, in turn, sell to marketplace.

Mr. WALDEN. I just want her to be able to—and I'm out of time, but can you just——

Ms. HOWE. I'm sorry. That's not accurate, at least for Ticketmaster. I can't speak for other platforms. You're providing—the only information you're providing is your name, your phone number, and your email address to be able to receive transfer, and we cannot do anything with that data. The only thing we can do is troubleshoot and fulfill that ticket. We can't market. So that's at least how we do it on our platform.

Mr. WALDEN. Thank you for letting them answer, Madam Chair. Thanks.

Ms. DEGETTE. Thank you. The gentleman's time has expired.

The Chair now recognizes the Chair of the Consumer Protection Subcommittee that will be considering the BOSS Act, Ms. Schakowsky.

Ms. SCHAKOWSKY. Thank you, Madam Chair.

Consumers continue to be negatively affected by practices occurring in the ticketing marketplace, and many of the practices have been well documented—some of you have mentioned some of the concerns—and have gone on for quite a while. I just want to go down the row and ask each of you, just yes or no, do you believe that we need more legislation to adequately protect consumers?

Ms. Howe, I'll begin with you.

Ms. HOWE. Absolutely, we do.

Mr. PEREZ. Yes, we do.

Ms. BURNS. Yes.

Mr. FITTS. Yes, we do.

Mr. VACCARO. Yes, or enforcement of the current laws.

Mr. CHOTI. Without question.

Ms. SCHAKOWSKY. Or, or and?

Mr. VACCARO. Or.

Mr. CHOTI. Without question.

Ms. SCHAKOWSKY. So I think there is pretty much agreement here that we need to do something, and the plan is that we will.

So now I want to hear firsthand from those in the industry about harms that impact consumers. Let me just ask, what do you believe are the most significant anticonsumer practices that are taking place in the industry? I don't have a lot of time. So, again, I'd like to go down the row, beginning with you, Ms. Howe. Your company, Ticketmaster, is the largest primary seller of tickets. You begin. What do you think?

Ms. HOWE. We're concerned about bots. Thirty billion bots blocked a year is preventing ticket consumers from getting access. We're concerned with speculative ticketing, deceptive websites, and the lack of proper resale disclosures for consumers.

Ms. SCHAKOWSKY. Thank you.

Mr. Perez?

Mr. PEREZ. Bots, for sure, and deceptive websites, and speculative ticketing.

Ms. SCHAKOWSKY. Ms. Burns?

Ms. BURNS. We think that ticket transferability reigns supreme. So anything that disables ticket transferability or anything that

limits ticket transferability to a specific platform, that's harmful to consumers because it limits choice.

Ms. SCHAKOWSKY. Thank you.

Mr. Fitts?

Mr. FITTS. Ticket transferability is the key issue facing the industry today. That's why States like Colorado have passed laws requiring that tickets be transferable. It's necessary for the consumer to be able to compete—I mean, to be able to see others compete for that ticket.

Ms. SCHAKOWSKY. Thank you.

Mr. Vaccaro?

Mr. VACCARO. Ticket transferability, data sharing, and floor pricing.

Ms. SCHAKOWSKY. So you're the only one that has really raised the privacy issue, I think.

Mr. VACCARO. I think there is a lot of consumers who aren't aware of what came out, and there were articles with it. A lot of reasons why the other folks don't raise it is some of the other folks, as part of their thing, they actively sell all that data, and, contrary to what they said, I gave your staff the links.

Ms. SCHAKOWSKY. OK.

Mr. VACCARO. It says: We market to this. We market—we sell your gender. They put it right in there. Your IP address——

Ms. SCHAKOWSKY. I, heard that. Thank you.

Mr. VACCARO. OK.

Ms. SCHAKOWSKY. OK. And Mr. Choti?

Mr. CHOTI. Bots, deceptive websites, and data sharing and utilization. Our model is different than most models in the marketplace today, where our client, our venue's data, is their data, and we don't share that with any third party or ourselves.

Ms. SCHAKOWSKY. Great. I'm going to ask Ms. Howe and Ms. Burns, but others, if there is time, can respond. The FTC has a role to play, or could play, and so I wanted to just ask you what the FTC has also held—held a workshop and what you think that the Federal Trade Commission can do to protect consumers. Ms. Howe?

Ms. HOWE. Thank you for the question.

Most important thing is to enforce the 2016 BOTS Act. It is an arms race. We invest a lot of money, but without stronger enforcement, it's going to be very difficult to fundamentally solve that problem.

Ms. SCHAKOWSKY. Ms. Burns? FTC.

Ms. BURNS. Yes, I agree with regard to the BOTS Act, which Stubhub was a strong supporter of, that more can be done with enforcement and I believe that's a cooperation between Congress, the FTC, and DOJ. Also believe the FTC can do more to support and maintain competition, healthy competition, within ticketing. It has enforcement authority there as well.

Ms. SCHAKOWSKY. OK. Anybody else that wants to just briefly comment on the role of the regulator, Federal Trade Commission?

Mr. Fitts?

Mr. FITTS. If I may, the FTC should also be concerned with holdbacks and that practice, and they should take a look at that perhaps but also transferability and the ways that tickets are exchanged between exchanges.

Ms. SCHAKOWSKY. Thank you.

Mr. VACCARO. I would—I would—just adding to that, I would say that Commissioner Slaughter from the FTC made one mandate. She either—said: People in this industry, either you fix the hidden prices, or the FTC will find a solution for you.

That was the main mandate. I think we did it. I believe that Stubhub did it with the toggle. So now we have some players. Other ones haven't.

Ms. SCHAKOWSKY. Thank you. My time is up, and I yield back. Thank you.

Ms. DEGETTE. Thank the gentlelady.

Chair now recognizes Mr. Burgess for 5 minutes.

Mr. BURGESS. Thank you.

And I actually want to go back to something that Ranking Member Walden was talking about, and that is the issue on the issuing of digital tickets and moving to all digital tickets, and then how does the nondigital individual interface with the ticket-selling world?

Mr. Fitts and Ms. Burns, maybe you can address that. Going to all—everyone has to buy their ticket on a smartphone, but there are still people out there who don't have the technology.

Mr. FITTS. I'll take that. Yes. I mean, the problem with requiring a smartphone is it does eliminate individuals who don't have a smartphone from attending events. I think, without a paper option, that could, you know, foreclose people from attending. I think digital tickets could be a positive, but, again, there is a danger that transferability is shut off simply with the flip of a switch, and then you have a closed garden, a walled garden, and people aren't able to compete.

Mr. BURGESS. So Ms. Burns?

Ms. BURNS. I agree with that. I don't have anything to add there.

Mr. BURGESS. So, Ms. Howe, you looked like you wanted to say something.

Ms. HOWE. Yes. Let me just clarify. With digital tickets, it's always an option for a fan to get a paper ticket at the box office. So, if they don't have a smartphone, they can always work with customer service, and they can get that at the box service.

Mr. BURGESS. Yes, but then they've got to stand in line in the cold outside the ticket window, right? They should do it with a smartphone. OK.

Mr. Vaccaro, you brought up an interesting point about the collection of digital data, and you brought up the California law and State law on privacy and how that is now beginning to impact—I guess for all of you, impact your business. Have you had any difficulty meeting the demands in the European side of things with the GDPR? Has that surfaced as an issue for any of you?

Mr. VACCARO. We comply with them. It was an issue. It was a cost to us. I think, ultimately consumers will benefit from it, and I think consumers are much more wary now about their data and what's it used for. So, as far as us as—no, we comply with it. We did it. It was expensive, but we did it.

Mr. BURGESS. Has anyone found difficulty with complying——

Ms. HOWE. No.

Mr. BURGESS [continue]. With either the California law of the GDPR? Yes, sir, Mr. Perez?

Mr. PEREZ. No. In fact, GDPR is set up very well for compliance with the California law. And just for the record, we do not sell data to anyone. We provide the data to our venues so they can service all fans when they show up at the event, regardless of where they purchased the ticket. It's a ability to provide customer service. With paper tickets and PDF tickets, we have no idea who these people are, where they got the tickets, and we cannot help them, and that really pains us.

Mr. BURGESS. Let me just ask you a question, because privacy is going to be something that may—that the Energy and Commerce Committee writ large is going to have to deal with it. Does anyone have any thoughts and advice that you would give the committee when we're dealing with how to reconcile what's happening in California with the rest of the country? Is a national standard something that to which we should aspire?

Mr. VACCARO. I would say a national standard would make it much simpler on businesses that you don't have to comply with 50 State laws on privacy, and there is an argument to be made that California's law gives an advantage over California businesses rather than out-of-state businesses because the way they apply the law. But, yes, you're right, a national standard, much easier for businesses to comply with rather than dealing with 50 different States.

Mr. BURGESS. Yes, it's always been my thesis that the Founders, when they wrote the Constitution, the Commerce Clause was written with the idea that eventually we'll get to a world of e-commerce where we want to be able to sell things across the several States without boundaries.

Yes, Mr. Fitts?

Mr. FITTS. I think, though, there is a privacy issue here in our industry, and that's a practice, I think, sometimes engaged in by primary marketplaces where, if a ticket is sold on my marketplace, it's digital, they require my customer to log into their marketplace to download the ticket. That creates a relationship that my customer didn't intend, and it's a forced transfer of PII. So, I mean, that's concerning. I look to the BOSS Act to address that.

Mr. BURGESS. And you think it would be addressed in the BOSS Act?

Mr. FITTS. I think the language on that point could be a little stronger, but I think that—I see that as friction to transferability that exists right now, that should be eliminated.

Mr. BURGESS. I agree.

I'll yield back, Madam Chair.

Ms. DEGETTE. Thank the gentleman.

Chair now recognizes the gentleman from California, Mr. Ruiz?

Mr. RUIZ. It happens to me all the time.

Thank you, and thank you to the witnesses that are here today.

One of the primary economic drivers in my district is tourism: Palm Springs, California; Coachella Valley. People who fly into Palm Springs from around the country often will buy tickets to shows or concerts during their time in the Coachella Valley. Many

of you may have heard of the Coachella and Stagecoach festivals that attract hundreds of thousands of people each year.

Starting next year, tourists will have a new attraction: an NHL hockey team based in Palm Springs. When people visit my district for these events, they spend money at our local businesses and patronize our hotels and restaurants. I want to be sure that their experience is a good one, and that starts with the ticket-buying process.

One practice that is particularly concerning to me is the use of deceptive white label websites. These ticketing websites deceive consumers into believing the websites are affiliated with a venue, team, or artist when, in fact, no such affiliation exists.

Ms. Howe, in your testimony, you contended that, quote, some secondary marketplaces routinely use or work with these deceptive websites, unquote. How prevalent are deceptive white label websites and how are they harming consumers?

Ms. HOWE. Thank you for the question.

Last year alone, we worked with Google and other ISPs to shut down over 30 of these deceptive websites, and it's incredibly misleading. They're posing as official websites of the venue, the artist, the team, and you're pushing a consumer to a secondary site oftentimes that has been——

Mr. RUIZ. How prevalent are they?

Ms. HOWE. I don't know the exact number, but——

Mr. RUIZ. And how would you say they harm consumers?

Ms. HOWE. They are—they're resell sites. So, when you're pushing—a consumer thinks they're buying from an official box office, an official team site, and you're posing as——

Mr. RUIZ. And it costs more?

Ms. HOWE [continue]. A resell site, it costs more, absolutely.

Mr. RUIZ. Thank you.

Mr. Vaccaro, the FTC brought an action against your company in 2014, alleging that it licensed tools and services to clients who created websites that misrepresented affiliations with certain venues. For example, the FTC alleged that a TicketNetwork client created a web page that appeared to be affiliated with a Radio City Music Hall. According to the FTC's complaint, the client advertised the site as the, quote, official ticket source online, unquote, for Radio City Music Hall tickets even though the website had no affiliation with the venue.

Mr. Vaccaro, your written testimony noted that TicketNetwork entered into a consent decree with the FTC that contains, quote, clear and concise rules, unquote, on how to operate white label websites that are not deceptive.

Mr. Vaccaro, what are you doing to ensure that TicketNetwork's clients do not create websites that misrepresent an affiliation with the venue?

Mr. VACCARO. Thank you. That's great.

The first thing we do is the FTC laid out some pretty clear and concise rules to follow: Don't use the word "official." There was——

Mr. RUIZ. How are you implementing those recommendations?

Mr. VACCARO. We told any websites who buy that from us not to do it.

Mr. RUIZ. Do you follow up and check with them?

Mr. VACCARO. We follow up as much as we can, but we also have affiliates——

Mr. RUIZ. As much as you can, what does that mean? You don't, or you do?

Mr. VACCARO. We do follow up. I don't know the exact answer, the procedure of how we follow up or how we review each of them, but I can get back to you on that.

Mr. RUIZ. OK. I think that will be important because that's what this whole topic is about.

Mr. Fitts, I understand that your company also licenses tools and services to third-party ticketing websites. In your testimony, you described how Vivid Seats screens potential licenses and requires them to comply with the FTC's consent decree with TicketNetwork.

Mr. Fitts, given these precautions, are you certain that your licensees are not engaged in deceptive white label practices?

Mr. FITTS. We agree to——

Mr. RUIZ. You've got to turn it on.

Mr. FITTS. I'm sorry. I'm not on. We agree that false impressions left with consumers about affiliations does not exist.

Mr. RUIZ. So how certain that—so you're pretty certain that your licensees are not engaged in these deceptive white label practices?

Mr. FITTS. Exactly. Our licensees do not deceive anybody.

Mr. RUIZ. Ms. Burns, do you believe the FTC is sufficiently deterring companies from engaging in deceptive white label practices, or do you think more needs to be done?

Ms. BURNS. I think the FTC has done a good job of working with the industry to crack down on white label sites. However, I think more can be done.

Mr. RUIZ. Like what?

Ms. BURNS. Consistent policing, working with industry to identify them——

Mr. RUIZ. OK.

Ms. BURNS [continue]. And taking swift action.

Mr. RUIZ. All right. Mr. Choti, same question: Do you believe the FTC is sufficiently deterring companies from engaging in deceptive white label practices, or do you think more needs to be done?

Mr. CHOTI. I think more needs to be done. I've seen a decrease in white label solutions out there. We as a ticketing company go out and routinely see if there are people with deceptive URLs and work with Google, likes of Google to have them shut down.

Mr. RUIZ. Thank you. I yield back.

Ms. DEGETTE. I'm sorry about that.

Chair now recognizes the gentleman from Virginia for 5 minutes.

Mr. GRIFFITH. Thank you, Madam Chair.

In preparing for this hearing, Mr. Perez, my team had me visit ticketflipping.com. Not something I would ordinarily do, but this is a website that sells training materials to help people become ticket brokers. On the site, they sell a plug-in that gives a ticket broker the ability to know how many tickets are available for AXS, your company, events, and specific data about remaining tickets. It seems to me that this information must be pretty valuable to brokers if they are designing plug-ins to monitor sell rates on your website.

What is the value of this information, and, in your opinion, is there a benefit to disclosure of this information by venues?

Mr. PEREZ. In my opinion, there is no benefit of this disclosure to the consumer. I think that the brokers that are using that information are trying to gauge supply and demand so they can maximize profits, and what we're seeing now—when we talk about inventory disclosures, many of us on the panel today have moved to seat maps where we fully disclose all the seats available in a seat map.

Almost instantly, we saw, when we did that, people scraping every single listing on our site, recreating a site that does not own any of those tickets at a higher price, and, when they close that transaction at a higher price, would come to our website and purchase the actual ticket.

In our minds, that's complete and total deception and fraud, and so we're concerned that providing the bad actor and broker community a roadmap with how to maximum profits is going to harm consumers.

Mr. GRIFFITH. Well, what if you don't give them the actual seats, but you just tell them how many are available? In other words, you know, we still have 3,842 seats left? Does that—that—because I——

Mr. PEREZ. The other—so——

Mr. GRIFFITH. As we've seen, I would like to see that information, too, because, if I'm trying to decide whether I want to buy now or wait until later—I'm not sure I can attend—that would help me decide whether I'm buying today or buying next week.

Mr. PEREZ. Yes, correct.

The other thing that we've seen is, as inventory gets low, there are a number of entities out there that, overnight, come in and scoop up all the tickets. So you'd be selling 10, 20 tickets a day, and then, in one night, you'd sell 200 tickets, the show would be sold out, one entity would try and control those tickets and now artificially raise the resale market.

So, again, we share—we have the same concern in that particular situation. I think what is probably easier to accomplish and more palpable for everybody is the total number of tickets at the outset——

Mr. GRIFFITH. Yes.

Mr. PEREZ [continue]. And we talked about it earlier by the way of, for sports teams, we know how many seats are in the venue. For concerts, we know roughly how many seats are going to be available subject to production realities.

Mr. GRIFFITH. Do you all have the capability to monitor when somebody is selling the tickets for an upscale? And I think, Ms. Howe, you mentioned earlier some prices that was going on in Colorado. Can you all monitor what the increase in the price is over what it was at the—on the face value of a ticket? You can go ahead, either one of you.

Mr. PEREZ. We try. There are so many websites out there that it's almost impossible to monitor every single one of them.

Mr. GRIFFITH. All right.

Ms. HOWE. That's right.

Mr. GRIFFITH. All right. Now, Ms. Howe, in ticketing, it seems consumer complaints hit a peak when they are unable to access tickets. How often—I think it would help the committee? How often do you have sellout events? How often does the demand exceed the supply?

Ms. HOWE. Thank you for the question.

So, if you look at last year, there were about 60,000 music events. Only 30 percent of those sold out, and, if you look at the number that sold out within the first 24 hours, it was about 2.5 percent. So there is very, very high-demand events, but it's a relatively small percentage of the events.

Mr. GRIFFITH. And what—can you explain to us what technologies your company is using to try to develop to reduce the presence of bots when you're selling tickets to these events that are expected to be high-demand events?

Ms. HOWE. Absolutely. As I mentioned in my opening remarks, we're blocking three billion bots a month, and, this year, we expect to block close to 30 billion.

We are doing a number of things. We are leveraging state-of-the-art technology to block bots on the perimeter of our marketplace, but we're also investing in smart, innovative products that are letting fans get to the front of the line—in front of both bots and professional brokers, so we're giving them fair access.

Mr. GRIFFITH. In those events, if people are willing to pay a higher price, why not have the face value be higher as well in the first place, and wouldn't that benefit the artists more?

Ms. HOWE. It's a great question, and we have a terrific product that we've launched a few years ago. It's a platinum product which effectively allows the artist to do exactly that. So, for those best seats in the house, if the artist wants to recapture that value instead of it going to a middleman, they're able to do that effectively.

Mr. GRIFFITH. All right. And I appreciate it, and I yield back.

Thank you, Madam Chair.

Ms. HOWE. Thank you.

Ms. DEGETTE. The Chair now recognizes the gentlelady from New Hampshire for 5 minutes.

Ms. KUSTER. Thank you very much, Madam Chair, and I appreciate all of you being here for this hearing today. I want to get back to the transferability question. I was just poised to do it when my colleague reclaimed his time, but, Mr. Fitts, proponents of placing restrictions on ticket transferability, have argued that those restrictions help keep ticket prices low, but, in your testimony, you argue that transferability restrictions, quote, would leave fans with fewer choices and higher prices.

Do you think that proponents of transferability restrictions truly believe that these restrictions keep prices lower for consumers, or is there something more nefarious underlining this position?

Mr. FITTS. I wouldn't necessarily characterize their testimony, but I would say that transferability leads to competition, and so, when a ticket is transferable, multiple marketplaces need to compete over it, and so that means doing things like having a 100 percent buyer guaranty, a call center available at extended hours. They have to compete for those issues.

They also need to compete on price, of course, because, if a fee is too high in one market, it won't sell. So transferability breeds competition. The danger of the lack of transferability is it cuts it off and restricts it to one player.

Ms. KUSTER. Which would result in higher prices for consumers presumably?

Mr. FITTS. Presumably, it could lead to higher prices and lower service levels.

Ms. KUSTER. And lower service. OK.

Ms. Burns, beyond controlling ticket price, proponents of nontransferable tickets also contend these restrictions enhance event security and limit fraud, but in your testimony, you called these arguments, quote, a smokescreen designed to limit consumer choice.

How prevalent is fraud in the secondary ticket marketplace, and why do you think concerns about fraud are a smokescreen or a bogus argument?

Ms. BURNS. I can't speak to numbers for the entire industry. I just know what the numbers are for Stubhub, and I can tell you they're incredibly low, far less than one-half of a percent of tickets subject to fraud on our site.

So we believe it's a smokescreen as justification to hold the consumer captive, again, with the primary ticketer, who also has a secondary platform—if they want to transfer that ticket within the platform—again, I think it's important to distinguish between is the ticket nontransferable, or is it nontransferable outside the primary issuer's platform?

But I think it's a smokescreen because the primary issuer doesn't do any background check on the buyer, right, nor do they even know who that buyer may be taking to an event as their guest. They could be taking multiple people, and their identity is unknown.

So, again, it's why I think it's—it's an excuse, and it's not a valid justification.

Ms. KUSTER. Thank you.

In addition to outright transfer prohibition, some ticket issuers permit resale, but only through certain processes. In its response to the committee, Stubhub stated Ticketmaster is increasingly requiring consumers who buy resale tickets on non-Ticketmaster sites, like Stubhub, to complete their purchase through Ticketmaster's website or app.

Do you think this is a genuine privacy issue, or, again, do you think this workaround is just to capture your customer? What do you think the purpose of that is, and then we'll let others respond?

Ms. BURNS. Yes. I think it's an anticompetitive issue, but it raises a privacy issue in the process, right, because the consumer who purchases their ticket off Stubhub or any other platform, when Ticketmaster is the primary issuer, that consumer has to go through Stubhub in order to receive their—or—sorry—through Ticketmaster in order to receive their ticket, and, in that process, they download their app, they register an account, hand over their personal data. Yet, at the time of the purchase, they may have had no intention of doing any business of any sort with Ticketmaster.

Ms. KUSTER. And can I just guess as a consumer that, then, they get a flood of emails marketing to them from both Stubhub and now Ticketmaster as well?

Ms. BURNS. You would have to ask that question of my colleague here, Ms. Howe.

Ms. KUSTER. Anyone want to comment from Ticketmaster?

Ms. HOWE. I'm happy to comment.

Ms. KUSTER. Sure.

Ms. HOWE. When a ticket is—if a digital ticket is bought on another platform and fulfilled within Ticketmaster, we have no rights to market to that consumer. The only thing we can—the only information we can use is to fulfill that ticket and, if there are issues, customer service issues, that's how we use that information. We cannot market to that consumer. We cannot sell that data.

Ms. KUSTER. What's the information that you require at that second step?

Ms. HOWE. Name, phone number, email address.

Ms. KUSTER. OK. Thank you.

I yield back.

Ms. DEGETTE. Gentleman from New York is recognized for 5 minutes.

Mr. TONKO. Thank you, Madam Chair, and welcome to the panel.

I'm proud of all of the work my home State of New York has done to address consumer harms in the ticketing industry. A 2016 report by the New York attorney general found that brokers use illegal bots to seize large blocks of tickets. And I'm proud to have helped passed the BOTS Act in 2016, which made the use of ticket bots illegal. However, several of our witnesses' responses have indicated that bots still exist within the marketplace, so we must keep working to ensure illegal bots are not stealing tickets away from the public.

But, in addition to bots, the report also found that consumers often lack access to tickets because many tickets are put on hold for industry insiders and presale events.

So, Mr. Fitts, your response to the committee stated that—and I quote—perceived scarcity at the on-sale is not caused by bots. It is primarily caused by holdbacks engineered by the ticketing company that operates the on-sale process, close quote.

Mr. Fitts, how serious of a problem are holdbacks, and why should consumers care about this practice?

Mr. FITTS. Well, holdbacks are a concern for consumers because the consumer is asked to make a decision in a high-pressure situation on an on-sale for concert where they don't have full information. It's a very different thought if there is 80 tickets left versus 8,000. So that's holding back a key piece of information from the consumer that they could really use.

And so, when they report as sold out, the consumer might not understand that there is more tickets coming later, and they may have paid a different price, but the sellout may not be legitimate.

Mr. TONKO. We're hearing that some of it might—that holdbacks might be a vast minority of the tickets that go for sale. Is that true? I mean, the report also indicated that it might be as high as 50 percent.

Mr. FITTS. Yes. I know that I've seen media coverage, like the Toronto Star, for example, that showed something much more extensive than the small percentage. So, based on that report, I disagree.

Mr. TONKO. Ms. Burns, one way to address holdbacks is to increase transparency around ticket availability. In your testimony, you stated that this information will—and I quote—create a clearer picture of event accessibility and help to inform fans' decisions on if and when to buy tickets.

How would increasing transparency around ticket availability help consumers?

Ms. BURNS. Because you would know how many tickets are available at the event, and it may inform your decision as to whether purchase at the on-sale or to wait.

Mr. TONKO. Thank you.

And, Ms. Burns, some have argued against disclosing information on ticket availability. For instance, Ticketmaster contends that disclosing this information would benefit brokers and bots by—again, quoting—making it easier for them to target supply and manipulate the market.

So, Ms. Burns, do you buy this argument, or do you believe that we should err on the side of more disclosure?

Ms. BURNS. No. I think the argument is disingenuous in that, you know, the purpose of the holdback is, again, to create a scarcity of supply. So, you know, as tickets are trickled out over time, again, it's designed to maintain prices or potentially increase prices as you near the event.

Mr. TONKO. Thank you.

Mr. Vaccaro, you wrote in an op-ed in 2016 entitled "More Transparency in Ticket Sales and No More Bots," in that piece, you argued in favor of disclosing ticket availability and stated, and I quote: If consumers knew the truth, they would no longer be fans.

So why should there be more transparency surrounding ticket availability, and what types of disclosures would be most helpful for consumers?

Mr. VACCARO. So I'm not an economist, and I don't pretend to be, but I know that, when I speak to them, they say many industries do a similar thing: They create a scarcity of supply, which effectively moves a supply curve to the left, which raises the equilibrium price, all right. So a lot of monopolies do that. A lot of other people do that by creating that scarcity of supply.

And when you do those multiple presales, you only see a few amounts of tickets, a lot of people don't even realize how many people in the—are in the presale. So you manipulate consumers to think there is a scarcity; they buy at higher numbers. That's why, over time, ticket prices are going down; they're not going up.

Mr. TONKO. And, with the holdbacks issue, is it as large a number of tickets as some have reported, or is it a very slight number? Is it—can it reach 50 percent?

Mr. VACCARO. I would say it could—well, let me clarify that because I think it's an important distinction to make. In most sports teams, they disclose the amounts of tickets, all right? The real issue that we're really talking about here is more or less concerts, OK.

So, in concerts, it is amazing not only how many tickets they hold back, but there is also venues that have unmanifested seats that they sell that aren't even available to the public that are unmanifested. So the holdback number is even higher than what insiders report because they don't even count the nonmanifested tickets as tickets that are going on sale.

Mr. TONKO. So it can approach 50 percent?

Mr. VACCARO. Yes.

Mr. TONKO. Thank you very much.

With that, Madam Chair, I yield back.

Ms. DEGETTE. Thank the gentleman.

Chair now recognizes the gentlelady from New York, Ms. Clarke, for 5 minutes.

Ms. CLARKE. Thank you, Madam Chairwoman, and thank you, Ranking Member, for convening this very important hearing. I want to thank our witnesses as well for your testimony and testifying here today.

In my district in Brooklyn, New York, I have both the Barclays Center and the historic Kings Theatre, which draws crowds from across the borough, city, and tri-state area. Whether people are taking their families to see a Nets game or a concert, it is very important to me that the consumers are protected against harmful practices which have filled the marketplace for far too long.

Having said that, I want to circle back to an issue that was mentioned earlier, Ms. Howe. Can you please clarify something you said for me, and that is: I'm trying to determine on what—what you do with consumer data you receive from customers who buy tickets on other platforms like Stubhub, and what is it that you cannot do with that data?

Ms. HOWE. Thank you for the question.

The only thing we can—the only information we receive is the consumer's name, email, and phone number, and the only thing we can do with that is fulfill the ticket, and, if there is an issue fulfilling that, we use it for customer services. So all consumers have to opt-in for marketing purposes. That's regardless of what platform they're buying on.

Ms. CLARKE. So there is nothing that you can do outside of just basically obtaining the data; is that what you're saying?

Ms. HOWE. I'm saying that we cannot use any information that is acquired from another platform for any marketing purposes, correct?

Ms. CLARKE. OK. Very well.

According to a 2018 article in the New York Times, Live Nation operates more than 200 venues worldwide, promotes more than 30,000 shows around the world, and manages over 500 artists. At the same time, Ticketmaster, which merged with Live Nation in 2010, handles tickets for 80 of the top 100 arenas in the country, and sold more than 500 million tickets in 2018.

After the merger between Live Nation and Ticketmaster, Live Nation is arguably the most powerful company in the entertainment industry. In fact, an article in The Economist called Live Nation a, quote, vertically integrated behemoth, end quote. The New York Times article I quoted from above also contained alarming claims about how Live Nation is wielding its market power.

Mr. Perez, according to the article, Live Nation threatened to bypass shows at venues managed by your company unless the venue used Ticketmaster as the ticketer for the venue. To your knowledge, has Live Nation ever threatened to retaliate against a venue if it doesn't use Ticketmaster as its platform, Mr. Perez?

Mr. PEREZ. I have not heard it. The threat has not been made to me personally. I do know people that have had comments made to them.

Ms. CLARKE. Ms. Howe, are you aware of any instances where Live Nation or any of its affiliates threatened to bypass a venue unless Ticketmaster was used as the primary ticketing platform?

Ms. HOWE. I'm not aware of any. You're referring to as many as of you know, we just agreed to extend the consent decree with the DOJ, and we believe that that will take this issue off the table. We will compete on our own innovation and our own right, not because of content.

Ms. CLARKE. OK. In response to The New York Times article, Ticketmaster's president stated that its industry, quote, is not the—not the result of any unfair advantages resulting from being a part of the Live Nation entertainment, end quote.

Ms. Burns, in your testimony, you stated that, in recent years, Stubhub's mission has been, quote, complicated by various anticompetitive, anticonsumer practices in the ticketing industry, end quote.

How does Ticketmaster's dominance contribute to the anticompetitive and anticonsumer practices in the industry?

Ms. BURNS. I wish we had more time than we do to discuss this, but we—we have had reports to us of experiences of retaliation if Stubhub was used as the ticketing partner. As—but what's important to understand is, you know, Ticketmaster, in maintaining its dominance, there are three things really. They're, you know, 80 percent of the primary ticketing share. They operate or control 80 of the top 100 venues in this country, and they—Live Nation, their parent, is the promoter for over 400 artists.

So, when you have that kind of control over the industry, it is very difficult, once you—once you start and do business with them, to ever exit this ecosystem is how we're referred to—an ecosystem that Ticketmaster has created. That's exactly it. They've created this ecosystem that is very difficult to leave.

And so, as a result, it is hard. We have had experience in trying to enter the primary ticketing segment and have experienced difficulty as a result of, you know, this dominance in the market.

Ms. CLARKE. Very well.

I yield back. Thank you very much, Madam Chair.

Ms. DEGETTE. Chair now recognizes the gentleman from California, Mr. Peters, for 5 minutes.

Mr. PETERS. Maybe just to follow up, is it—so I've heard some discussion of whether tickets should betransferable. It's obviously a big issue. Is it ever appropriate to hold back any tickets from being transferable or to do kind of the off-the-manifest kind of things? Is that something that is ever appropriate? Mr. Perez?

Mr. PEREZ. I'll give you a specific example. In the State of Colorado, there is a venue that we ticket, Red Rocks, and the first row of that very iconic venue is reserved for ADA seating——

Mr. PETERS. Right.

Mr. PEREZ [continue]. And because of laws, we're unable to verify people's disabilities, and, as part of the consent decree with Denver Arts & Venues and some advocacy groups, we're actually able to make those tickets nontransferable to have a greater influence over those tickets being resold and making sure that the people with disabilities are the ones who are actually using it.

Mr. PETERS. OK. How about if the venue or the band wants to hold back tickets for itself? Is that something that could be nontransferable? Is it ever appropriate for that to be nontransferable? Ms. Howe?

Ms. HOWE. There are holds, and then there is the issue of should that ticket be nontransferable. Artists can hold back inventory for important purposes——

Mr. PETERS. I see Mr. Vaccaro seems to be objecting to that kind of practice. Is that true, or——

Mr. VACCARO. Well, just for clarity's sake——

Mr. PETERS. Is that a transparency issue?

Mr. VACCARO. I think that, as far as holdbacks, that bands and the artists should be able to hold back whatever tickets they want, just as long as they disclose them to the public. So, as far as holdbacks, it's that.

I think the problem with transferability is it gets to a slippery slope on what could be transferred or not, and, you know, a classic example is Ed Sheeran said his tickets aren't transferable, nobody can make it to the show, the tickets were selling for less than face value. Even though he had a face value exchange, he wouldn't let consumers transfer them, and, especially when you get to transferability——

Mr. PETERS. I understand that, but I'm sort of thinking there is a difference between 100 percent nontransferable and five percent nontransferable.

Mr. VACCARO. I agree with you.

Mr. PETERS. OK.

Mr. VACCARO. I think you're correct; it's a huge distinction.

Mr. PETERS. Is that a line that you think Congress could draw in an effective way?

Mr. VACCARO. I think it would be very difficult without—very difficult to do unless it was very tightly written so that people couldn't use that to advance their, let's say, monopoly on tickets. That's the problem.

Mr. PETERS. OK. Maybe a question for Ms. Howe. You know, we were just—Ms. Burns was pointing out how many venues you own in our district. House of Blues, the Padres, Humphreys, The Civic Center. Some of these venues have experienced this kind of fraud, and they seem to have little recourse against brokers and platforms that engage in this deceptive behavior.

What are the remedies, and what suggestions do you have for us to address this kind of problem?

Ms. HOWE. Thank you for the question.

A couple of things. One is, as I mentioned in my opening remarks, we're fighting bots every month and every day. We're blocking—we'll block three billion every month, 30 billion this year. But, more importantly, we need to figure out how to change the condi-

tions at on-sale. So we're investing in products like Verified Fan and Smart Queue that allow real fans to actually get those tickets instead of brokers and secondary markets.

We're also investing in digital technology that shuts that fraudulent ticket market down, so, instead of the anonymous barcode that can be—you can take a screenshot and send it to somebody else, and it's a fraudulent ticket, that digital ticket is now tied to your identity.

Mr. PETERS. Ms. Burns, you had made—you're making an anti-competitive argument. Does this kind of vertical integration for security make the challenge a little more difficult for you?

Ms. BURNS. Absolutely. They control the supply chain end to end, starting with artists, you know, the venue.

Mr. PETERS. So, given the concern about security, how would you suggest we draw the line at—between primary and secondary?

Ms. BURNS. I'm not sure I'm tracking the question.

Mr. PETERS. So Ms. Howe has made an argument that, because she's issuing the tickets——

Ms. BURNS. Yes.

Mr. PETERS [continue]. She has a way to make sure that they're followed kind of through the course of the transfer.

Ms. BURNS. Yes.

Mr. PETERS. That, again, seems to root transferability into the same concern you had before.

Ms. BURNS. And I think it's—I think it's possible to use technology. You know, we should explore the use of technology in order to track the ticket——

Mr. PETERS. Right.

Ms. BURNS [continue]. You know, prevent fraud.

Where we take issue is how Ticketmaster is doing it and through the use of SafeTix technology is not for that purpose. We don't think it's, you know, for the legitimate purpose of cracking down on fraud because, again, remember, they don't do any sort of background check onthe——

Mr. PETERS [continue]. Member.

Ms. BURNS [continue]. Individual. They don't know who else is going, like—so, in terms of, you know, tracking those issues, it's just not used for that purpose.

Mr. PETERS. You think they're two different issues?

OK. My time is expired, but I appreciated all the witnesses being here, and I look forward to working on this.

I yield back.

Ms. DEGETTE. I thank the gentleman, and I'm very pleased to recognize the gentleman from Texas, Mr. Flores, who is not a member of this subcommittee, but we're always happy to have you here, and now you're recognized for 5 minutes for questions.

Mr. FLORES. Thank you, Madam Chair.

I have some questions for Ms. Burns with Stubhub.

Let me give you the background first. There are situations where a customer buys a ticket from an event sponsor, and then, later on, they decide they can't use that ticket, and then they use your platform to resell the ticket because of an arrangement that you had with the original ticket—the original event sponsor, and there is a

fee charged for that resale in the form of a reduction amount of proceeds that are received by the ticket seller.

So how much is that fee?

Ms. BURNS. The fee that's charged to seller—so there is no fee charged to the seller to actually list on our site. There is a fee that's charged on the sell, and it depends on who the seller is.

Mr. FLORES. OK. And then the—how is that fee set?

Ms. BURNS. Well, again, the fee is set based on who the seller is. So we have agreements with our sellers, and so——

Mr. FLORES. But the seller is the customer. Are you talking about the event sponsor is the seller in this case? So let's say I buy a ticket——

Ms. BURNS. Right.

Mr. FLORES [continue]. And I pay the full price for it from the event sponsor.

Ms. BURNS. Yes.

Mr. FLORES. And Stubhub has never been part of the transaction, and then, if I want to resell it, the only way I can resell it is because of some arrangement that the event sponsor has with Stubhub. I sell the ticket, and then there is this big discount taken, this big fee that's taken off, and I get the net proceeds. So who sets that fee?

Ms. BURNS. Who sets the fee is Stubhub sets the fee with that seller.

Mr. FLORES. OK. And then does the original event sponsor receive part of that fee?

Ms. BURNS. I don't know.

Mr. FLORES. OK. Would you supplementally respond to that for us and let us know?

Ms. BURNS. Absolutely.

Mr. FLORES. And, if yes, why does the original event sponsor receive part of the fee for something they've already received full value for is the question?

And then the next question is, is there any disclosure to the customer that part of that fee is going back to the original event sponsor that the customer bought the ticket from?

Ms. BURNS. OK. We'll follow up with you.

Mr. FLORES. You'll get back with us on that?

Ms. BURNS. Yes, I'm happy to do that.

Mr. FLORES. And if there is any disclosure—if not, why not, doesn't the customer deserve to see what that is?

And then the last question would be: What value to the customer is there for paying an additional fee back to the event sponsor?

Ms. BURNS. I just want to make something clear. As is it relates to fees, we are fully transparent as to fees that are charged to the customer on our site, right? The customer knows, throughout the search and the sale and the—and the sale, the checkout process, what fees they are being charged. At no point, when they purchase a ticket, do they not know what fees they will be charged at the time of payment.

Mr. FLORES. Right. And I'm not saying there is no transparency in terms of the amount of the fee.

Ms. BURNS. Yes.

Mr. FLORES. It is just—a 15 percent fee for a $100 ticket seems pretty expensive when—particularly if the original event sponsor is getting part of that fee. There is getting some sort of a kickback for part of that fee. So we need to figure that out because I've noticed, in some situations, the fee was 10 percent one year, and then, the very next year, it's 15 percent. So we need to figure out why did that just suddenly—why did the amount of the fee go up 50 percent in one year?

And then one just sort of an editorial comment for all of you in this space, and that is that there is—as you've heard from, I think, most everybody that's testified or asked questions, there has been a—there is a lot of customer angst about what happens in this space, and I think it would behoove all of you that, when you're designing your processes, your policies and pricing and procedures, that put yourself in the customers' shoes, look at it through the customers' eyes, and I think, if you do that, you wouldn't be in front of this panel today.

So thank you. I yield back the balance of my time.

Ms. DEGETTE. Thank the gentleman.

Chair just has—I just have one more question to clarify.

Ms. Howe, you had said several times that Ticketmaster, when it takes the data, it takes the name, the email address, and the phone number of the purchaser. Is that right?

Ms. HOWE. Correct.

Ms. DEGETTE. And that it doesn't resell, or it doesn't market to those people?

Ms. HOWE. We are not—only if a consumer opts in do we have the right to market to them?

Ms. DEGETTE. OK. What about if a person puts their—is trying to purchase the ticket on one of the reselling platforms like Stubhub? Is the—is Ticketmaster's policy the same way if they—only if they opt-in?

Ms. HOWE. Correct. They can only—they opt-in, and it's even more restrictive if it's bought on another platform.

Ms. DEGETTE. What's the——

Ms. HOWE. In other words, we can only use that information to fulfill the ticket and provide any service needed to do that.

Ms. DEGETTE. OK. Thank you.

And I want to thank the entire panel. This was actually a very, very informative hearing for everybody on the committee on both sides of the aisle, and now it's going to go over to the Consumer Protection Subcommittee for action on the BOSS Act, but this was really useful for us.

And I'd like to insert into the record by unanimous consent the report by the New York attorney general on the ticketing industry entitled "Obstructed View: What's Blocking New Yorkers From Getting Tickets"and the report by the Government Accountability Office entitled "Event Ticket Sales Market Characteristics and Consumer Protection Issues" and, in addition, I'd ask unanimous consent that the contents of the document binder be introduced into the record and to authorize staff to make the appropriate redactions.

Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Ms. DEGETTE. And let's see. I guess—oh, I'd like to remind Members—I'd ask—I'd like to ask the witnesses, if you have—if you've been requested to provide additional information, that you do so.

And, with that, this subcommittee is adjourned. Thank you.

[Whereupon, at 12:01 p.m., the subcommittee was adjourned.]

December 12, 2019

The Honorable Frank Pallone, Jr.
Chairman
House Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Greg Walden
Ranking Member
House Committee on Energy and Commerce
U.S. House of Representatives
2322 Rayburn House Office Building
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The Honorable Diana DeGette
Chair
Subcommittee on Oversight and Investigations
U.S. House of Representatives
2125 Rayburn House Office Building
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The Honorable Brett Guthrie
Ranking Member
Subcommittee on Oversight and Investigations
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The Honorable Jan Schakowsky
Chair
Subcommittee on Consumer Protection and Commerce
U.S. House of Representatives
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Washington, D.C. 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Subcommittee on Consumer Protection and Commerce
U.S. House of Representatives
2322 Rayburn House Office Building
Washington, D.C. 20515

Re: Response to November 21, 2019 Letter

Dear Chairman Pallone, Ranking Member Walden, Chair DeGette, Ranking Member Guthrie, Chair Schakowsky, and Ranking Member McMorris Rodgers:

Anschutz Entertainment Group, Inc. ("AEG") is submitting this initial response to your letter dated November 21, 2019 (the "Committee Letter") addressed to Dan Beckerman, President and CEO of AEG. AEG understands the Committee is concerned about potentially unfair and deceptive practices occurring in the ticketing industry. AEG shares such concerns, and welcomes the opportunity to both respond to your requests for information and provide you with information regarding AEG's efforts to combat such practices.

Headquartered in Los Angeles, California, AEG is a leading sports and live entertainment company. AEG is a privately-held company that operates, domestically and internationally, across a number of segments within the sports and live entertainment industry, including:

- *AEG Real Estate*, which owns and develops world-class venues, including major sports venues, theaters, and entertainment districts like STAPLES Center, Microsoft Theatre, and L.A. LIVE;

800 W. Olympic Blvd, Suite 305 • Los Angeles, CA 90015

- *AEG Sports*, which owns and operates the Los Angeles Kings of the National Hockey League (NHL), the Los Angeles Galaxy of Major League Soccer (MLS), and other professional sports franchises and high-profile sporting events;

- *AEG Presents*, which is dedicated to all aspects of live music performances, including producing and promoting global and regional concert tours, music and special events, and world-renowned festivals; and

- *AXS*, which is a global ticketing platform, offering best-in-class ticketing technology in a single platform to suit every client size and type, from small music clubs to the largest sports stadiums.

AEG also has a non-controlling ownership interest in *ASM Global*, which is the world's leading venue management and services company and operates, in part, under the brand *AEG Facilities*. Through its worldwide network of venues, portfolio of powerful sports and music brands and its integrated entertainment districts, AEG entertains more than 100 million guests annually.

AXS is a wholly-owned subsidiary of AEG. AXS provides ticketing technology, systems, and services for both primary and resale ticket marketplaces, and is the ticketing partner for over 300 premier venues, sports teams, and event organizers around the world, including AEG, The O2, STAPLES Center, T-Mobile Arena, Sprint Center, Tele2Arena, Red Rocks Amphitheatre, the Cleveland Cavaliers, Toyota Center, the Houston Rockets, NCAA Final Four, and the Las Vegas Golden Knights.

AXS does not own any tickets that it sells, rather AXS acts in an agency capacity for its clients that sell such live event tickets to their fans. The goal of AXS clients (and therefore AXS) is to get tickets into the hands of real fans at prices that are not inflated by brokers or other third parties uninvested in the event or the fan experience.

While AXS has numerous third-party clients, AEG and its related companies are also clients of AXS. For example, AXS provides ticketing services for a number of venues that are owned or managed by *AEG Real Estate*, *AEG Presents*, or *ASM Global*. In addition, AXS provides ticketing services for live music and other events that are promoted by *AEG Presents* and for certain professional sports teams and other sports events that are owned by *AEG Sports*.

Regarding the requests for information and documents contained in the Committee Letter, AEG is working to gather responsive information as quickly as possible. Set forth below are responses to a portion of the requests that AEG has obtained to date. As discussed with Committee staff on December 5th, AEG will be providing additional responses on a rolling basis. The responses below relate to AXS's domestic primary and resale ticketing services business in the United States, on an aggregated basis unless specifically provided otherwise below. For convenience, AEG has copied the full text of each Question in the Committee Letter and has inserted AEG's response below each Question.

Question 4. At what point during the purchase process does your company make the consumer aware of the type and amount of ancillary fees charged?

Response: The type and amount of ancillary fees charged to consumers are disclosed by AXS when the tickets are selected (i.e., put into a "shopping cart") for purchase. After a consumer selects a seat they would like for a show, the consumer proceeds to a price confirmation page. On that price confirmation page, the all-inclusive cost of the ticket is listed, along with a breakdown of all components of the price (e.g., face value of the ticket, fees, and any taxes). This information is available whether consumers are purchasing via the internet, mobile web, or a

mobile application. Examples as to primary market and resale tickets ticket fee disclosures are included in the Appendix to Response to Question 4, attached hereto.

Question 4 a. Where and how is this information communicated to consumers?

Response: Please refer to Response to Question 4, above, and the Appendix to Response to Question 4, attached hereto.

Question 4 b. Since January 1, 2016, has any federal, state, or local entity or individual taken legal action against your company regarding the lack of "all-in" pricing? If so, please provide a list of such actions, the claim alleged in each action, and, if applicable, the results of any such action.

Response: No, AEG and AXS are not aware of any such action.

Question 5. Regarding ticket refunds, in what instances does your company provide consumers with a refund for the total cost of the ticket, including any ancillary fees?

Response: AXS provides ticket refunds for the total cost of the ticket, including any ancillary fees, when an event is cancelled, for both primary and resale market tickets.

Question 5 a. Does your company provide consumers with a refund for the total cost of speculative tickets?

Response: AXS does not sell speculative tickets.

Question 5 b. Is your company's refund policy disclosed to the consumer during the transaction process? If yes, please explain what information is provided to consumers, how your company discloses this information to consumers, and at what point in the purchasing process this information is disclosed.

Response: Yes, AXS's refund policy is disclosed to the consumer by AXS's ticketing platforms during the transaction process. Prior to purchasing any ticket, the consumer is presented with the cost and a statement that by purchasing the ticket, the consumer agrees to the Purchase Agreement, which is provided to consumers and available at https://www.axs.com/about-purchase-agreement_US_v1.html. Additionally, the refund policy is available in the AXS Help Center at https://support.axs.com/hc/en-us/sections/200173115-Cancelled-Postponed-Relocated-Events.

Question 5 c. Please provide a copy of all policies related to ticket refunds.

Response: Copies of ticket refund-related policies and related disclosures to consumers with respect to primary market and resale ticket transactions tickets sold via AXS are available in the Purchase Agreement, https://www.axs.com/about-purchase-agreement_US_v1.html, and in the Help Center, https://support.axs.com/hc/en-us/sections/200173115-Cancelled-Postponed-Relocated-Events.

Question 6. Does your company sell ticket insurance, or contract with or otherwise permit a third-party to sell ticket insurance on your platform or website? If so, please explain the ticket insurance that your company offers, including whether the ticket insurance is a set price or calculated based on the cost of the ticket, and what the ticket insurance covers.

Response: AXS offers ticket insurance on AXS.com for both primary market and resale ticket

transactions through a third-party company for many events. Insurance costs vary, and are influenced by factors such as the price of the ticket and the number of tickets purchased. Ticket insurance provides coverage (i.e., a refund of the price paid) in the event that a consumer cannot attend an event for which they purchased tickets due to specified reasons such as illness, sudden medical emergencies, death of a family member or companion, accident, or mechanical issue en route to the event, or another covered event. Anyone who purchases ticket insurance has access to the terms, including what is considered a "covered event," prior to purchase. An example of such disclosure is included in the Appendix to Response to Question 6, attached hereto.

Question 9 a. Does your company disclose to the public the number of tickets sold in presale? If yes, when and how is this information conveyed to consumers?

Response: AXS does not disclose to the public the number of tickets sold in a presale. However, for concerts where a seating map is available, the map will display the total number of seats for which tickets are available at the time that a consumer is viewing the map. AXS discloses when presales are available to consumers via advertising, email announcements, and social media.

Question 9 c. Do tickets put on "hold" for an artist, venue, promoter, or other entity ever get released to the general public for purchase? If yes, when and how are consumers informed of the availability of these tickets?

Response: Yes, tickets put on "hold" often get released to the general public for purchase. Consumers may be informed by AXS or its ticketing partners, via advertising, emails or other communications (e.g., via social media) when additional tickets are released.

Question 10 b. At what point in the ticket purchasing process are consumers informed that tickets cannot be transferred or resold? Please explain where and how this information is communicated to the consumer.

Response: When transferability or resale is restricted for a particular event (as requested by the artist), the consumer is notified of any such restrictions during the purchase process, either within the purchase flow or in a pop-up message available within the flow. An example of such communications is included in the Appendix to Response to Question 10, attached hereto.

Question 11. Does your company permit the sale of speculative tickets on your company's platform?

Question 11 a. What disclosure does your company make to alert consumers of the speculative nature of the ticket and how and when in the purchase process is this disclosure made?

Question 11 b. What actions has your company taken to address speculative tickets sold on your company's platform, including legal or other actions taken to enforce your company's speculative tickets policy?

Question 11 c. In the past year, have any speculative tickets been sold on your company's platform(s)?

Question 11 d. Please provide all policies related to the sale of speculative tickets on your company's platform.

Response: AXS does not permit the sale of speculative tickets on its ticketing platforms.

Question 12. Does your company work with, own, or operate any platform and/or website that make any representation of affiliation or endorsement to a venue, team, or artist, when in fact no formal affiliation or representation exists (also known as white-label websites)? If yes, please provide a list of these websites and explain:

Question 12 a. How your company coordinates with any such websites, including the sharing of technology and/or sales inventory.

Question 12 b. If and how your company notifies consumers that the website and/or platform is not endorsed or affiliated with the venue, team, or artist represented on your company's properties.

Question 12 c. For 2016, 2017, and 2018, what percentage of your company's total revenue is derived from white-label websites as that term is described above?

Response: AXS does not work with, own, or operate any platform or website that makes any representation of affiliation or endorsement to a venue, team, or artist, when in fact no formal affiliation or representation exists.

***

The submission of this information does not waive, nor is it intended to waive, any rights, privileges, or immunities of AEG with respect to this matter, including any applicable attorney-client, work product, or other privilege or immunity. Moreover, to the extent that non-responsive information has inadvertently been disclosed, AEG does not agree to any expansion in the scope of the Committee Letter. AEG expressly reserves any applicable privileges and immunities to which it is entitled under applicable law.

The responses in this letter may include confidential business information and sensitive details regarding AEG internal business practices, and should therefore be kept confidential. Because of the sensitive nature of this information, in the event that the Committee intends, during its inquiry into this matter, to disclose any AEG information contained in this letter to an agent, employee, or other person affiliated with any competitor, AEG requests that it be given one week advance notice in order to permit it to address the issue with the Committee. Similarly, in the event that the Committee intends to disclose any of this information in any public forum or to a third party who does not expressly agree to maintain the confidentiality of the information, AEG requests that it be given one week advance notice in order to permit it to address the issue with the Committee.

If you have any questions regarding the contents of this letter, please do not hesitate to contact AEG's outside counsel, Evans Rice or Aaron Cutler, at (202) 637-5600.

Respectfully submitted,

Dan Beckerman
President & CEO
Anschutz Entertainment Group, Inc.

APPENDICES TO RESPONSES

APPENDIX TO RESPONSE TO QUESTION 4

Primary Market Purchase Flow

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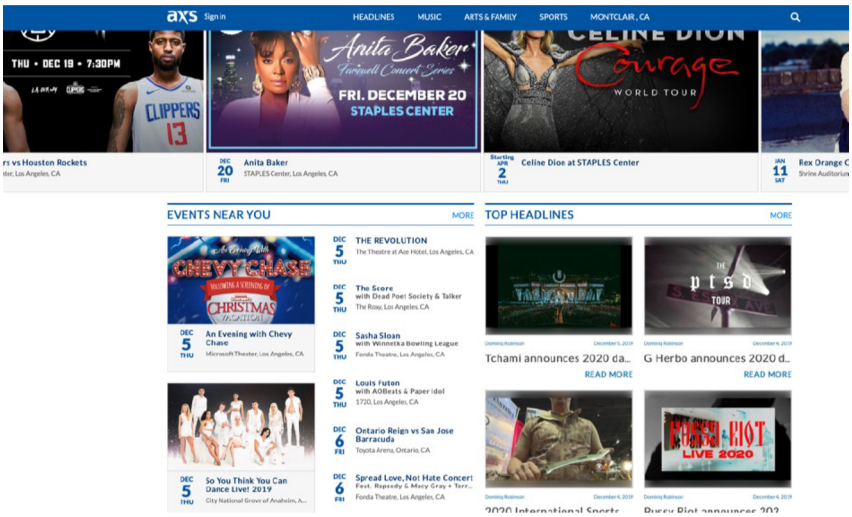

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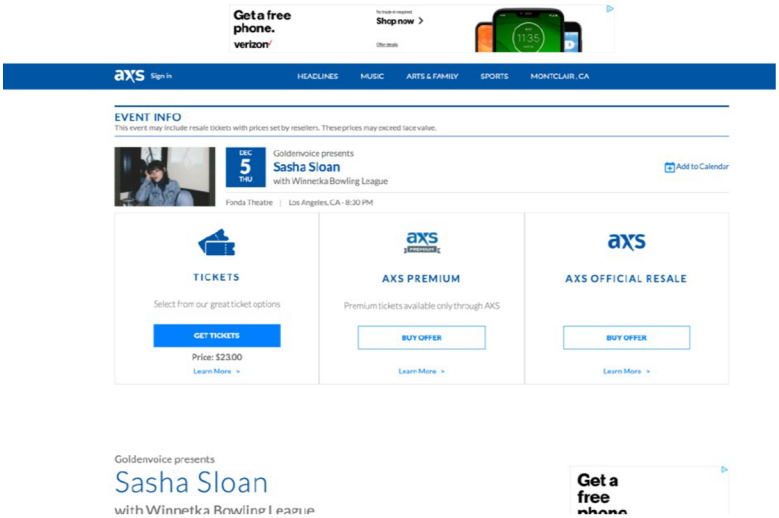

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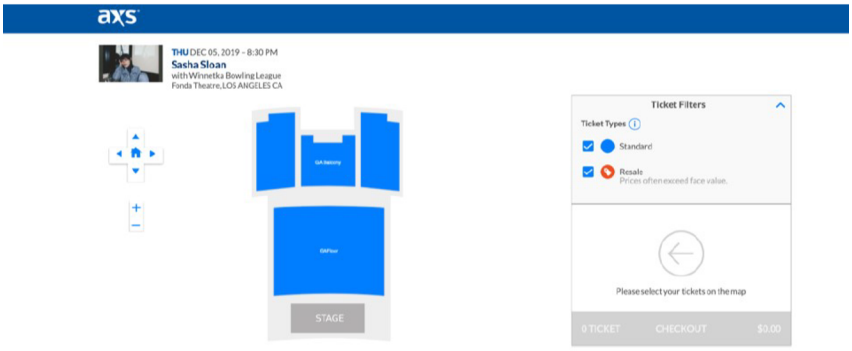

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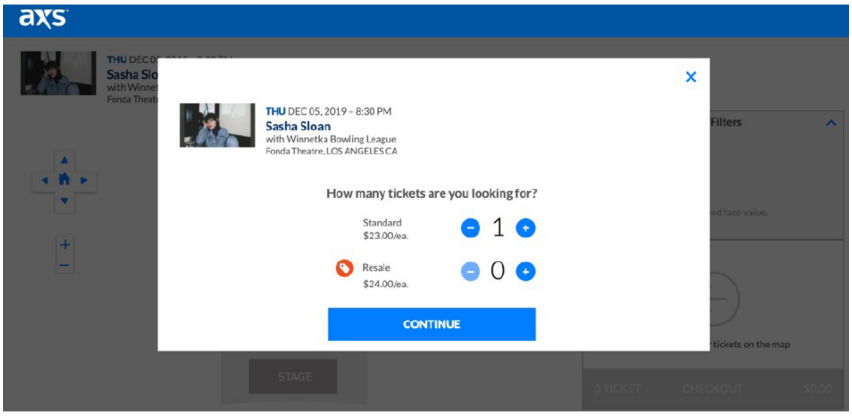

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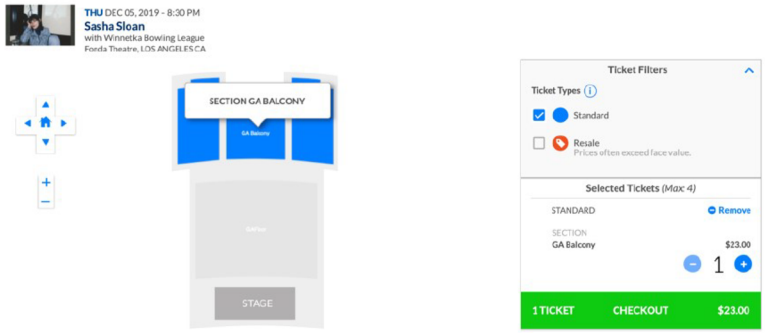

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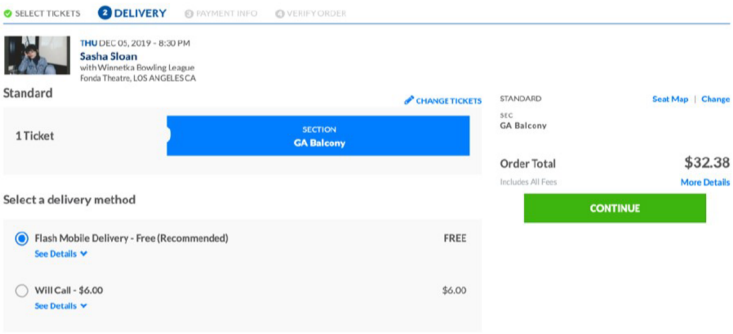

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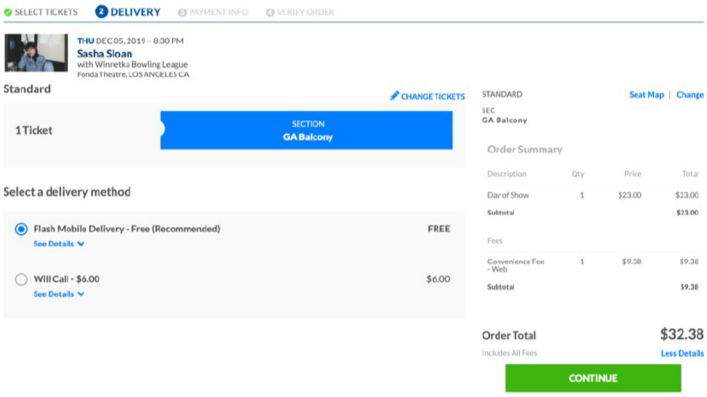

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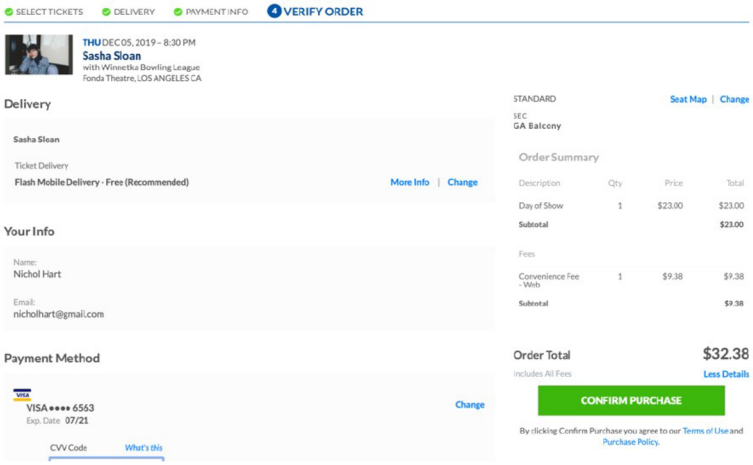
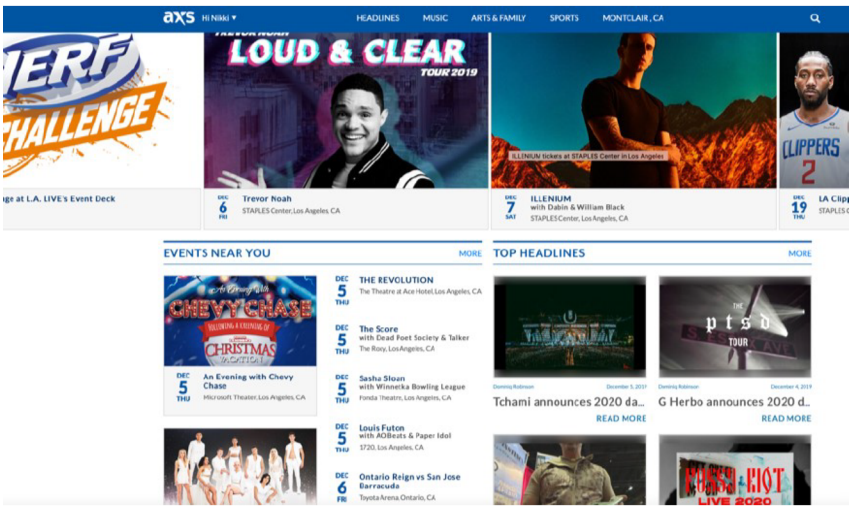


<u>Secondary Market Purchase Flow</u>

Home Page



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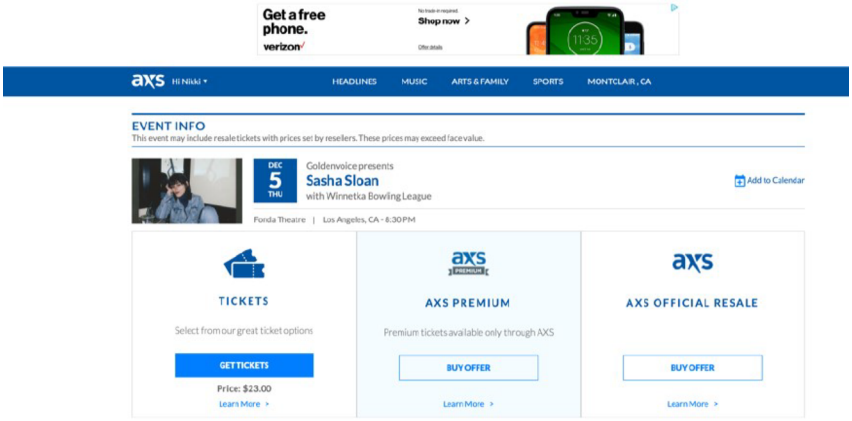
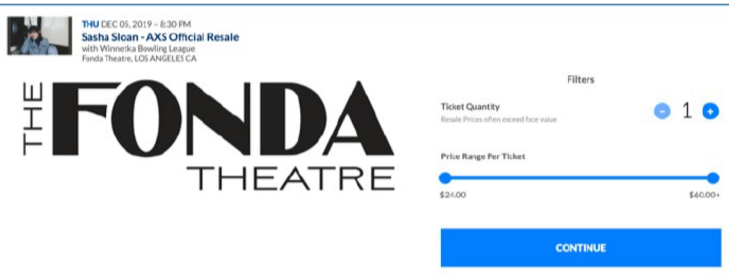


"AXS Official Resale" – "Buy Offer"



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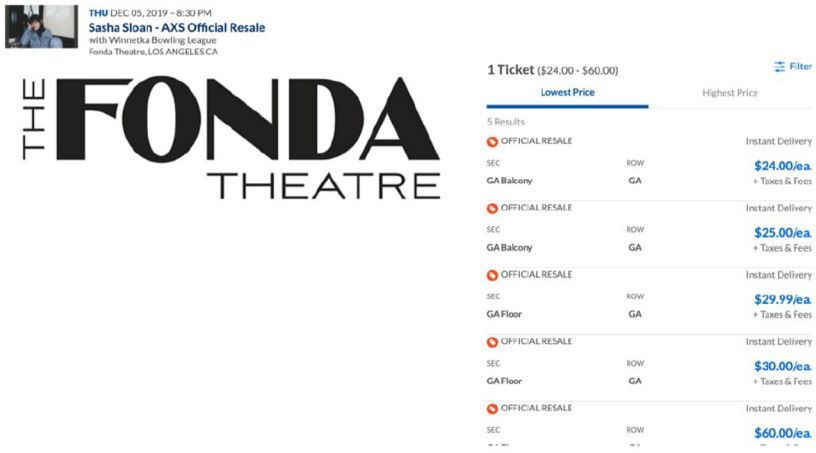
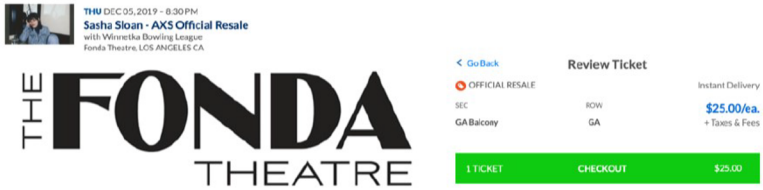


Select Ticket



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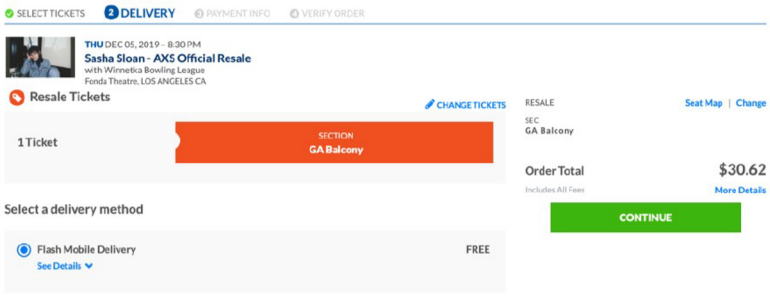
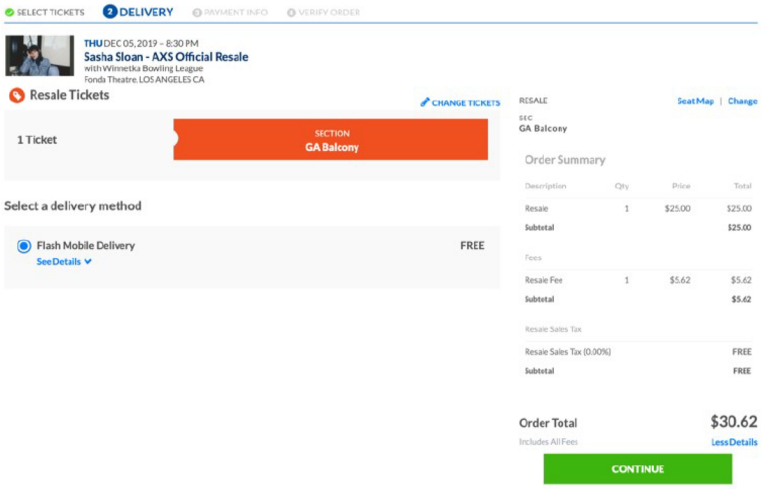
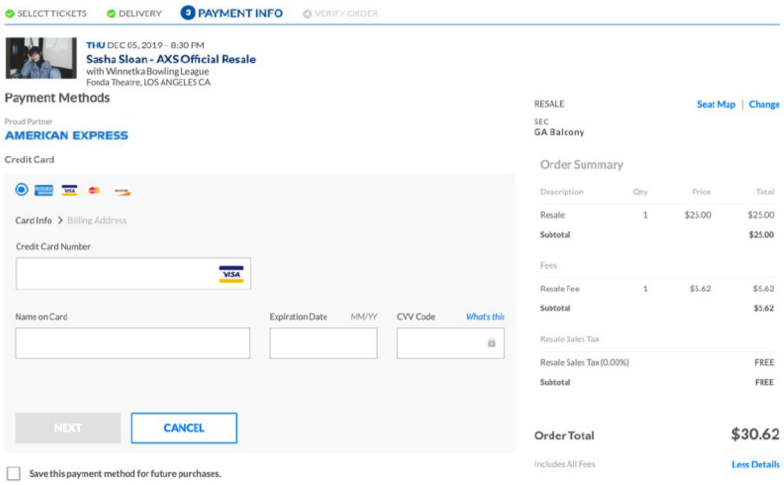


“More Detail”



“Continue”



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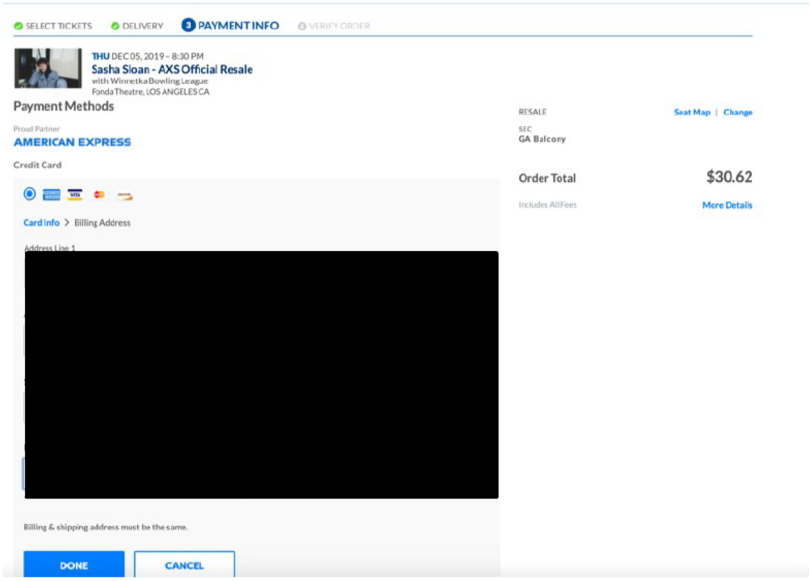

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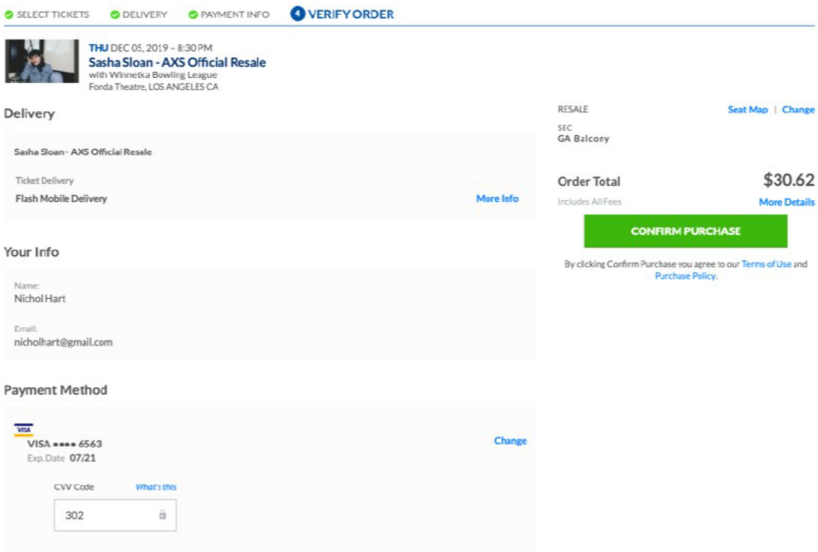
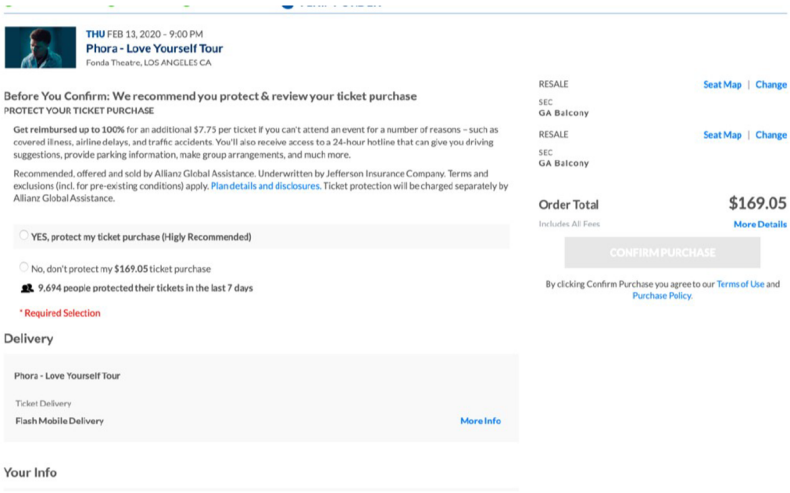

SELECT TICKETS
DELIVERY
PAYMENT INFO
VERIFY ORDER
THU DEC 05, 2019 - 8:30 PM
Sasha Sloan - AXS Official Resale
with Winnetka Bowling League
Forda Theatre, LOS ANGELES CA
Delivery
Sasha Sloan - AXS Official Resale
Ticket Delivery
Flash Mobile Delivery
More Info
Your Info
Name:
Nichol Hart
Email:
nicholhart@gmail.com
Payment Method
VISA •••• 6563
Exp.Date 07/21
Change
CVV Code
What's this
302
RESALE
Seat Map | Change
SEC
GA Balcony
Order Total
$30.62
Includes All Fees
More Details
CONFIRM PURCHASE
By clicking Confirm Purchase you agree to our Terms of Use and Purchase Policy.

APPENDIX TO RESPONSE TO QUESTION 6

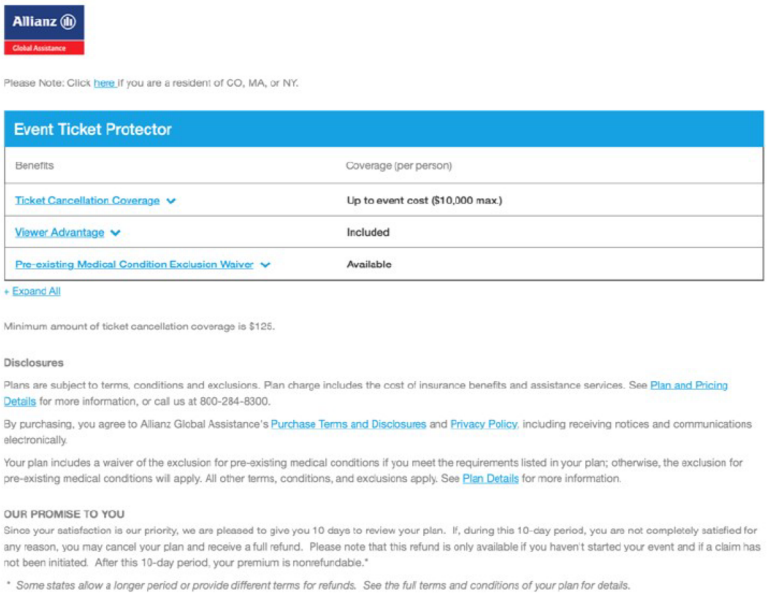
Ticket Insurance Purchase Flow

After clicking through the event details, selecting a ticket, and deciding on a delivery method, a customer will click "Continue." At that point, prior to confirming the purchase, if the ticket is eligible for ticket insurance the consumer will be given the option to purchase insurance.



In order to confirm purchase, you must select "Yes" or "No" in response to the insurance offer.

“Plan details and disclosures”



Allianz
Global Assistance

Please Note: Click here if you are a resident of CO, MA, or NY.

Event Ticket Protector

Benefits	Coverage (per person)
Ticket Cancellation Coverage	Up to event cost ($10,000 max.)
Viewer Advantage	Included
Pre-existing Medical Condition Exclusion Waiver	Available

+ Expand All

Minimum amount of ticket cancellation coverage is $125.

Disclosures

Plans are subject to terms, conditions and exclusions. Plan charge includes the cost of insurance benefits and assistance services. See Plan and Pricing Details for more information, or call us at 800-284-8300.

By purchasing, you agree to Allianz Global Assistance's Purchase Terms and Disclosures and Privacy Policy, including receiving notices and communications electronically.

Your plan includes a waiver of the exclusion for pre-existing medical conditions if you meet the requirements listed in your plan; otherwise, the exclusion for pre-existing medical conditions will apply. All other terms, conditions, and exclusions apply. See Plan Details for more information.

OUR PROMISE TO YOU

Since your satisfaction is our priority, we are pleased to give you 10 days to review your plan. If, during this 10-day period, you are not completely satisfied for any reason, you may cancel your plan and receive a full refund. Please note that this refund is only available if you haven't started your event and if a claim has not been initiated. After this 10-day period, your premium is nonrefundable.*

** Some states allow a longer period or provide different terms for refunds. See the full terms and conditions of your plan for details.*

Please Note: Click here if you are a resident of CO, MA, or NY.

Event Ticket Protector	
Benefits	Coverage (per person)
Ticket Cancellation Coverage ^	Up to event cost ($10,000 max.)
Provides reimbursement for non-refundable ticket payments and deposits if you cannot attend due to covered illness, death or other specific unforeseen circumstances.	
Viewer Advantage v	Included
Pre-existing Medical Condition Exclusion Waiver v	Available

+ Expand All

Minimum amount of ticket cancellation coverage is $125.

Disclosures

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Please Note: Click here if you are a resident of CO, MA, or NY.

Event Ticket Protector	
Benefits	Coverage (per person)
Ticket Cancellation Coverage	Up to event cost ($10,000 max.)
Viewer Advantage	Included
A broad range of services to help you 24 hours a day from anywhere in the world, whether you need emergency cash, flight information, legal assistance, a message sent home or help dealing with a medical emergency.	
Pre-existing Medical Condition Exclusion Waiver	Available

+ Expand All

Minimum amount of ticket cancellation coverage is $125.

Disclosures

Plans are subject to terms, conditions and exclusions. Plan charge includes the cost of insurance benefits and assistance services. See Plan and Pricing Details for more information, or call us at 800-284-8300.

By purchasing, you agree to Allianz Global Assistance's Purchase Terms and Disclosures and Privacy Policy, including receiving notices and communications electronically.

Your plan includes a waiver of the exclusion for pre-existing medical conditions if you meet the requirements listed in your plan; otherwise, the exclusion for pre-existing medical conditions will apply. All other terms, conditions, and exclusions apply. See Plan Details for more information.

OUR PROMISE TO YOU

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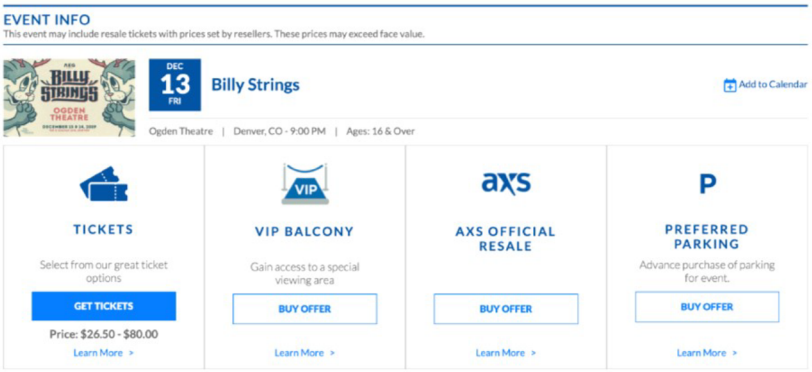
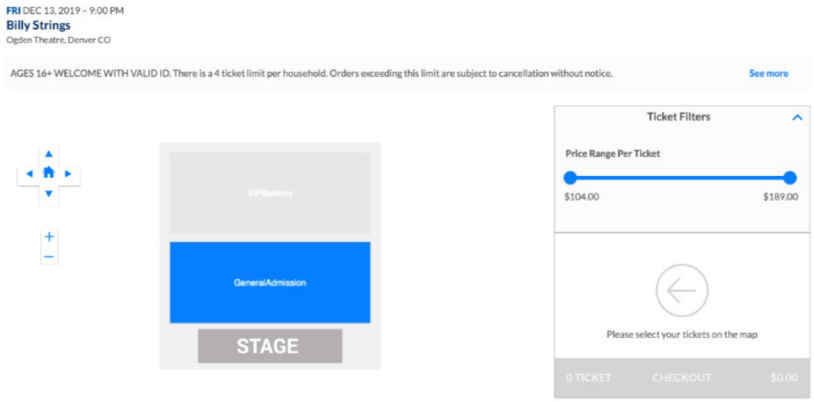
APPENDIX TO RESPONSE TO QUESTION 10

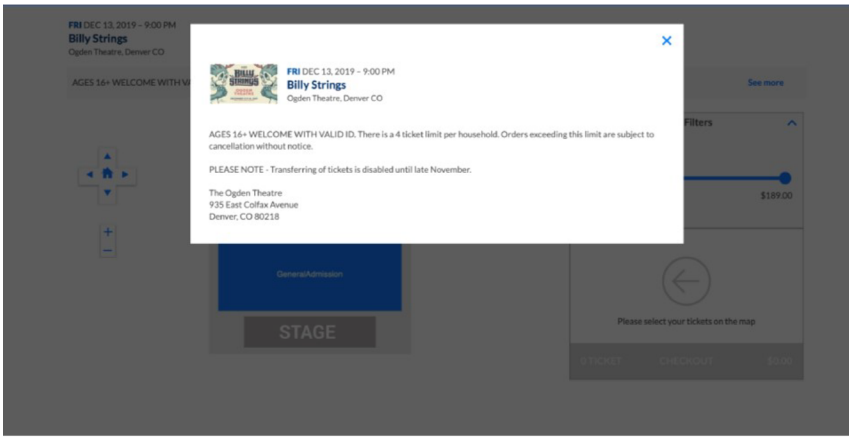
Event Detail Page



"Get Tickets"



“See More”


FRI DEC 13, 2019 – 9:00 PM
Billy Strings
Ogden Theatre, Denver CO
AGES 16+ WELCOME WITH V
FRI DEC 13, 2019 – 9:00 PM
Billy Strings
Ogden Theatre, Denver CO
AGES 16+ WELCOME WITH VALID ID. There is a 4 ticket limit per household. Orders exceeding this limit are subject to cancellation without notice.
PLEASE NOTE - Transferring of tickets is disabled until late November.
The Ogden Theatre
935 East Colfax Avenue
Denver, CO 80218
See more
Filters
$189.00
General Admission
STAGE
Please select your tickets on the map
0 TICKET
CHECKOUT
$0.00

January 31, 2020

The Honorable Frank Pallone, Jr.
Chairman
House Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Greg Walden
Ranking Member
House Committee on Energy and Commerce
U.S. House of Representatives
2322 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Diana DeGette
Chair
Subcommittee on Oversight and Investigations
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Brett Guthrie
Ranking Member
Subcommittee on Oversight and Investigations
U.S. House of Representatives
2322 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jan Schakowsky
Chair
Subcommittee on Consumer Protection and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Subcommittee on Consumer Protection and Commerce
U.S. House of Representatives
2322 Rayburn House Office Building
Washington, D.C. 20515

Re: Second Response to November 21, 2019 Letter

Dear Chairman Pallone, Ranking Member Walden, Chair DeGette, Ranking Member Guthrie, Chair Schakowsky, and Ranking Member McMorris Rodgers:

This letter comprises the second voluntary response of Anschutz Entertainment Group, Inc. ("AEG" or "the Company") to your letter dated November 21, 2019 ("the Committee Letter"). This second response supplements the Company's first response dated December 12, 2019 ("First Response"). For the Committee's convenience, AEG has reproduced herein the responses previously provided in its First Response. The Company reiterates its commitment to cooperating with your inquiry, and we look forward to continuing our dialogue regarding the information you requested.

As the Company explained in its First Response in more detail, and incorporated here by reference, AEG is a privately-held company that operates across a number of segments within the sports and live entertainment industry. AXS Group LLC ("AXS") is a wholly-owned subsidiary of AEG. AXS provides ticketing technology, systems, and services for both primary and resale/secondary ticket marketplaces, and is the ticketing partner for over 300 premier venues, sports teams, and event organizers around the world.

800 W. Olympic Blvd, Suite 305 • Los Angeles, CA 90015

AEG's live-entertainment division is AEG Presents, which promotes concerts and tours as well as owns and operates live music clubs, theaters, and festivals. AEG, through AEG Presents, owns a majority interest in Elevate Tickets, LLC ("Elevate"), a ticketing technology enterprise that specializes in providing a web based primary ticketing platform solution to music festival owners, operators, and producers. Elevate differs from AXS and other traditional ticketing companies in that Elevate does not operate as a consumer-facing brand or marketplace, rather Elevate's technology is incorporated into its client's unique, customer-facing, event-branded website for the supported music festival. As used herein, the term "ticketing platforms" refers to AXS and Elevate, collectively.

The Company's First Response provided responses to requests 4, 4(a)-(b), 5, 5(a)-(c), 6, 9(a), 9(c), 10(b), 11, 11(a)-(d), 12, and 12(a)-(c). This letter provides responses to requests 1, 2, 7, 9, 9(b), 10, 10(c)-(d), 13, and 14, and supplemental responses to requests 4, 4(a)-(b), 5, 5(a)-(c), 6, 9(a), 9(c), 11, 11(a)-(d), 12, and 12(a)-(c). While AXS and Elevate have numerous third-party clients, AEG and its subsidiaries are also clients of AXS and Elevate. For example, AXS provides ticketing services for a number of venues that are owned or operated by AEG Real Estate or AEG Presents and for professional sports teams and other sports events that are owned by AEG Sports. In addition, AXS and Elevate provide ticketing services for live music events and festivals that are owned, operated, or promoted by AEG Presents. As such, the Company is providing in this letter responses that are generally informed by the perspective of AEG and its subsidiaries in their capacities as ticketing clients of AXS and Elevate (collectively, "AEG Clients").

[redacted]

Question 2. What fees does your company charge per ticket sale, and how are those fees calculated? Please provide a copy of any policies related to how your company sets and calculates fees.

Response:

Consumers purchasing tickets on the primary ticketing market to events that are: (i) ticketed through AXS or Elevate; (ii) owned or promoted by AEG Clients; or (iii) otherwise hosted at AEG Clients' venues are customarily charged a ticketing fee (sometimes referred to as a "convenience fee," "service fee," "processing fee," or other similarly-named fee) which is assessed on either a per-ticket or per-order basis. If a consumer wishes to receive their tickets by mail, a per-order delivery or

shipping fee may also be charged. Typically, electronic delivery of tickets is free to consumers. Ticket fees charged to the consumer are determined on a sliding scale typically based on the face value of the ticket and are set by clients (i.e., the venues, teams, promoters, or event owners) in collaboration with the ticketing partner (e.g., AXS or Elevate when they are the ticketing partner) after reviewing a number of factors, such as market rates at comparable venues or events, rebate amounts owed to the promoter under the applicable event agreement, and potential price resistance thresholds as the fee schedules increase with ticket prices.

In the secondary market for event tickets facilitated by the AXS secondary marketplace, customers utilizing such secondary marketplace to sell or purchase tickets are assessed a ticket fee (typically, a "buyer fee" or "seller fee," as applicable). The ticket fees charged to the buyer and seller are generally calculated as a percentage of the price of the tickets for which the seller posts and sells the ticket. All such fees are set by the venue, team, promoter, and the event owner in collaboration with the ticketing platform, taking into account current prevailing market rates.

AEG and its subsidiaries do not maintain written policies regarding setting or calculating primary market or secondary market ticket sales fees.

Question 4. At what point during the purchase process does your company make the consumer aware of the type and amount of ancillary fees charged?

Response from December 12 Letter:

The type and amount of ancillary fees charged to consumers are disclosed by AXS when the tickets are selected (i.e., put into a "shopping cart") for purchase. After a consumer selects a seat they would like for a show, the consumer proceeds to a price confirmation page. On that price confirmation page, the all-inclusive cost of the ticket is listed, along with a breakdown of all components of the price (e.g., face value of the ticket, fees, and any taxes). This information is available whether consumers are purchasing via the internet, mobile web, or a mobile application.

Supplemental Response:

The type and amount of ancillary fees charged to consumers are disclosed by Elevate when the tickets are selected (i.e., put into a "shopping cart") for purchase. On the price confirmation page, the all-inclusive cost of the ticket is listed, along with a breakdown of all components of the price (e.g., face value of the ticket, fees, and any taxes). An example of a ticket fee disclosure for Elevate is included in the Appendix to Response to Question 4, attached hereto.

Question 4 a. Where and how is this information communicated to consumers?

Response from December 12 Letter:

Please refer to Response to Question 4, above.

Supplemental Response:

Please refer to Response to Question 4, above, and the Appendix to Response to Question 4, attached hereto, which provides an example of an Elevate disclosure.

Question 4 b. Since January 1, 2016, has any federal, state, or local entity or individual taken legal action against your company regarding the lack of "all-in" pricing? If so, please provide a list of such actions, the claim alleged in each action, and, if applicable, the results of any such action.

Response from December 12 Letter:

No, AEG and AXS are not aware of any such action.

Supplemental Response:

Elevate is also not aware of any such action.

Question 5. Regarding ticket refunds, in what instances does your company provide consumers with a refund for the total cost of the ticket, including any ancillary fees?

Response from December 12 Letter:

AXS provides ticket refunds for the total cost of the ticket, including any ancillary fees, when an event is cancelled, for both primary and resale market tickets.

Supplemental Response:

Elevate defers to its clients regarding the circumstances in which to offer a refund. Historically, Elevate has offered a refund in every instance in which an event was cancelled in its entirety. In the case where AEG Presents or another AEG Client is the ticketing client, the AEG Client works with AXS or Elevate to provide ticket refunds for the total cost of the ticket, including any ancillary fees, when an event is cancelled. Additionally, if an event is postponed, the AEG Client will honor the same ticket for the rescheduled date. Requests for refunds upon rescheduling are evaluated on a case-by-case basis. In addition, ticket refunds may sometimes be provided as a customer service matter when circumstances of a customer's experience warrant such a refund, as evaluated on a case-by-case basis.

Question 5 a. Does your company provide consumers with a refund for the total cost of a speculative ticket?

Response from December 12 Letter:

AXS does not sell speculative tickets.

Supplemental Response:

The Company does not sell speculative tickets, including for any events where an AEG Client is the ticketing client or where AXS or Elevate is the ticketing platform. Because the Company does not sell such speculative tickets, a consumer who purchased a speculative ticket would need to seek a refund from the third party from whom the consumer purchased the ticket if and when that purchase was not fulfilled.

Question 5 b. Is your company's refund policy disclosed to the consumer during the transaction process? If yes, please explain what information is provided to consumers, how your company discloses this information to consumers, and at what point in the purchasing process this information is disclosed.

Response from December 12 Letter:

Yes, AXS's refund policy is disclosed to the consumer by AXS's ticketing platforms during the transaction process. Prior to purchasing any ticket, the consumer is presented with the cost and a statement that by purchasing the ticket, the consumer agrees to the Purchase Agreement, which is provided to consumers and available at https://www.axs.com/about-purchase-agreement_US_v1.html. Additionally, the refund policy is available in the AXS Help Center at https://support.axs.com/hc/en-us/sections/200173115-Cancelled-Postponed-Relocated-Events.

Supplemental Response:

Yes, Elevate's refund policy is disclosed to the consumer by Elevate's ticketing platforms during the transaction process. Prior to purchasing any ticket, the consumer is presented with the cost and a statement that by purchasing the ticket, the consumer agrees to the Purchase Terms, which are provided to consumers and available at https://www.elevatetickets.com/purchaseterms.html.

In the case where AEG Presents or another AEG Client is the ticketing client for a given venue or event, any additional or different refund terms imposed by such AEG Client are communicated to consumers through the applicable ticketing platform during the transaction process.

Question 5 c. Please provide a copy of all policies related to ticket refunds.

Response from December 12 Letter:

Copies of ticket refund-related policies and related disclosures to consumers with respect to primary market and resale ticket transactions tickets sold via AXS are

available in the Purchase Agreement, https://www.axs.com/aboutpurchase-agreement_US_v1.html, and the Help Center, https://support.axs.com/hc/en-us/sections/200173115-Cancelled-Postponed-RelocatedEvents.

Supplemental Response:

Copies of ticket refund-related policies and related disclosures to consumers with respect to AEG Clients' tickets sold via ticketing partners are available on the ticketing partners' website(s). Elevate's refund policy is available in its Purchase Terms, https://www.elevatetickets.com/purchaseterms.html.

Question 6. Does your company sell ticket insurance, or contract with or otherwise permit a third-party to sell ticket insurance on your platform or website? If so, please explain the ticket insurance that your company offers, including whether the ticket insurance is a set price or calculated based on the cost of the ticket, and what the ticket insurance covers.

Response from December 12 Letter:

AXS offers ticket insurance on AXS.com for both primary market and resale ticket transactions through a third-party company for many events. Insurance costs vary, and are influenced by factors such as the price of the ticket and the number of tickets purchased. Ticket insurance provides coverage (i.e., a refund of the price paid) in the event that a consumer cannot attend an event for which they purchased tickets due to specified reasons such as illness, sudden medical emergencies, death of a family member or companion, accident, or mechanical issue en route to the event, or another covered event. Anyone who purchases ticket insurance has access to the terms, including what is considered a "covered event," prior to purchase.

Supplemental Response:

Elevate offers ticket insurance at checkout on its website. The insurance is underwritten by a third-party insurer that handles all aspects of the underwriting and claims processing. The price of the insurance can be either a flat amount or a percentage of the total ticket cost, depending on the type and the price of the ticket. The insurance policy provides reimbursement for non-refundable ticket payments and deposits if the consumer cannot attend due to a covered illness, death, or other unforeseen circumstances. An example of an Elevate disclosure regarding ticket insurance is included in the Appendix to Response to Question 6, attached hereto.

Question 7. How does your company determine the number of tickets that will be sold or distributed for any given event that are 1) presales; 2) holds; 3) general sales; and 4) other categories of sales to the extent not already covered?

Response:

Neither AXS nor Elevate determine ticket inventory availability for a given event, including the number of tickets that will be sold in categories such as presales, general sales, other categories, or tickets that will be held for later sales. The client or, more specifically, the venue, promoter, team, or artist, make those determinations, as they are ultimately responsible for the success of the event and bear the financial risk.

Determinations by ticketing clients, including AEG Clients, regarding what number of event tickets will be held or distributed as presales, holds, or general sales for any given event are made on a case-by-case basis (depending on the event, artist/team, promoter, venue, market, and production elements) and are influenced by a number of factors, including overall venue seating configuration for the event, including tickets reserved for ADA/companion seating, tickets contractually committed to premium seat holders (e.g., suites and club seats) and sponsors, potential production kills (e.g., seats obstructed by staging), ticket holds for artists (headliner and support) and their fan clubs, promoter holds for in-house sales, tickets held back for potential marketing use, and holds for dynamically-priced tickets.

Tickets that are previously included in holds and/or presales that remain unsold or are otherwise not distributed are typically released as general sales prior to the commencement of the event.

Question 9. Does your company disclose the total number of tickets available to the general public? If yes, when and how is this information conveyed to consumers?

Response:

AXS, Elevate, and AEG Clients do not disclose the total number of tickets available to the general public. The number of tickets available at any one time can vary significantly from one moment to the next, as consumers (or, simultaneously, thousands of BOTs) can place tickets in their shopping cart, making tickets temporarily unavailable, only to be released seconds later. However, for events where a seating map is available, the map will display the total number of seats for which tickets are available at the time that a consumer is viewing the map.

Question 9 a. Does your company disclose the total number of tickets sold in presale? If yes, when and how is this information conveyed to consumers?

Response from December 12 Letter:

AXS does not disclose to the public the number of tickets sold in a presale. However, for concerts where a seating map is available, the map will display the total number of seats for which tickets are available at the time that a consumer is viewing the map. AXS discloses when presales are available to consumers via advertising, email announcements, and social media.

Supplemental Response:

Elevate and AEG Clients do not disclose to the public the number of tickets sold in a presale.

Question 9 b. Does your company disclose to the public the number of tickets held back by an artist, venue, promoter, or other entity? If yes, when and how is this information conveyed to consumers?

Response:

AXS, Elevate, and AEG Clients do not disclose the total number of tickets held back by an artist, venue, promoter, or other entity.

Question 9 c. Do tickets put on "hold" for an artist, venue, promoter, or other entity ever get released to the general public for purchase? If yes, when and how are consumers informed of the availability of these tickets?

Response from December 12 Letter:

Yes, tickets put on "hold" often get released to the general public for purchase. Consumers may be informed by AXS or its ticketing partners, via advertising, emails or other communications (e.g., via social media) when additional tickets are released.

Supplemental Response:

Yes, tickets put on "hold" often get released to the general public for purchase. As noted above, AXS's and Elevate's clients (along with artists or other content owners) determine ticket availability and timing of ticket availability for primary sales of event tickets. After the initial presale (if applicable) and after the initial public onsale, additional tickets that were initially in a "hold" status may become available as determined by the ticketing clients (along with artists or other content owners) in their sole discretion, and additional show dates may be added in response to demand for tickets. When AXS and Elevate are informed of such occurrence, the ticketing platforms update their systems accordingly and may also assist clients, including AEG Clients, in sending email announcements to interested consumers.

Question 10. Does your company sell tickets with limits on the transferability or resell limitations of tickets, including limits on the mechanisms or platforms by which a ticket may be transferred? If yes, please describe such limitations in detail and the reasons for such limitations.

Response:

AXS and Elevate provide clients with technology that allows them to place limitations on the transfer or resale of tickets in order to provide clients with the opportunity to control the distribution of tickets to their fans in the manner they deem desirable. AXS and Elevate apply such transfer or distribution restrictions at the direction of their ticketing clients.

AEG Clients as a general rule do not instruct ticketing platforms, including AXS or Elevate, to impose limits on transferability or resale because AEG Clients believe that customers generally prefer to have the option to sell and transfer tickets as they choose. AEG Clients do, however, require ticketing platforms to impose transferability and resale restrictions in limited circumstances such as when an artist or promoter requests or requires such restrictions be put in place for an event or when low (or no) cost ticket inventory is sold or distributed in the primary market where allowing transferability would undermine efforts to sell seats in a venue or for an event at market prices.

An artist may require that the promoter and the venue (including an AEG Client) instruct AXS or Elevate to restrict resale so that the artist can ensure that their fans are not disadvantaged by ticket brokers who buy a large number of tickets during the first minutes of an onsale (often with the use of illegal BOTs). Additionally, artists do not always want to price their tickets at the face value that the market will bear, but rather artists prefer to set their own, lower, price. In these cases, restricting transfer or resale increases the likelihood that true fans buy the tickets, not those wishing to turn a quick profit. In AXS's and Elevate's experience, artists and venues often employ transfer controls when they want to help ensure that real fans have a chance to get a range of seats at face value.

Question 10 b. At what point in the ticket purchasing process are consumers informed that tickets cannot be transferred or resold? Please explain where and how this information is communicated to the consumer.

Response from December 12 Letter:

When transferability or resale is restricted for a particular event (as requested by the artist), the consumer is notified of any such restrictions during the purchase process, either within the purchase flow or in a pop-up message available within the flow.

Question 10 c. To the extent that a transfer or resale is done using technology used, owned, or operated by your company, what information about the consumer and the transfer is collected; for what purposes is such information used; is the information shared with third parties and, if so, for what purpose; and how is the consumer informed of such information practices?

Response:

With respect to transfer of tickets utilizing AXS and Elevate technology and resale using the AXS secondary technology, the ticketing platforms collect an email address from transferees of tickets and information necessary to complete a purchase (e.g., name, address, email address, and payment information) from purchasers of tickets.

AXS and Elevate share such ticket purchase information with the applicable ticketing client for the event. AEG Clients that receive such information use consumer data they are provided to ensure the security of their services and to prevent fraud; provide customers information about AEG's services, venues and events, or products and services customers purchase or request; support events (including by providing customer service); improve services and products; personalize customers' experience (including marketing and advertising of services and products of interest); and other legitimate business purposes in accordance with applicable privacy policies and law.

AXS, Elevate, and AEG Clients do not share such information with third parties except as authorized in the terms of purchase and applicable privacy policies. Consumers are informed of information use policies during the transaction and such information is also readily available on AXS's and Elevate's websites: https://solutions.axs.com/axs-privacy-policy/ and https://www.elevatetickets.com/privacy.html.

Question 10 d. Please provide all policies related to the transferability or resell limitations of tickets.

Response:

AXS and Elevate do not generate or maintain policies related to the transferability or resale limitations of tickets. As noted above, clients, including AEG Clients, have the right to determine whether and in what manner they desire to issue tickets to their events, including whether to provide a policy with respect to transfer or resale of tickets to their events.

Question 11. Does your company permit the sale of speculative tickets on your company's platform?

Question 11 a. What disclosure does your company make to alert consumers of the speculative nature of the ticket and how and when in the purchase process is this disclosure made?

Question 11 b. What actions has your company taken to address speculative tickets sold on your company's platform, including legal or other actions taken to enforce your company's speculative tickets policy?

Question 11 c. In the past year, have any speculative tickets been sold on your company's platform(s)?

Question 11 d. Please provide all policies related to the sale of speculative tickets on your company's platform.

Response from December 12 Letter:

AXS does not permit the sale of speculative tickets on its ticketing platforms.

Supplemental Response:

The Company does not sell speculative tickets, including for any events where an AEG Client is the ticketing client or where AXS or Elevate is the ticketing platform.

Question 12. Does your company work with, own or operate any platform and/or website that make any representation of affiliation or endorsement to a venue, team, or artist, when in fact no formal affiliation or representation exists (also known as white-label websites)?

If yes, please provide a list of these websites and explain:

Question 12 a. How your company coordinates any subject websites, including the sharing of technology and/or sales inventory.

Question 12 b. If and how your company notifies consumers that the website and/or platform is not endorsed or affiliated with the venue, team, or artist represented on your company's properties.

Question 12 c. For 2016, 2017, and 2018, what percentage of your company's total revenue is derived from white-label websites as that term is described above?

Response from December 12 Letter:

AXS does not work with, own, or operate any platform or website that makes any representation of affiliation or endorsement to a venue, team, or artist, when in fact no formal affiliation or representation exists.

Supplemental Response:

Elevate and the AEG Clients do not work with, own, or operate any platform or website that makes any representation of affiliation or endorsement to a venue, team, or artist when in fact no formal affiliation or representation exists.

Although Elevate uses the term "white label" on its website (i.e., "*Elevate Tickets matches a robust, white-label ticketing platform with comprehensive, full service operations*"), that term means that clients may customize the Elevate platform to fit their specific event/website aesthetic so that consumers experience consistency when moving from the event website through the ticket-buying process. In short, the Elevate platform operates within the client's "official" website for a given music festival, rather than as a distinct consumer facing ticketing exchange.

Question 14. What mechanisms does your company have in place to ensure that consumers are afforded a reasonable opportunity to obtain face-value tickets? What analysis has your company completed to determine the effectiveness of these mechanisms?

Response:

AXS and Elevate support the rights of artists to determine the manner in which they want to distribute tickets to their concerts, as they are closest to their fans. Therefore, AXS and Elevate provide tools to increase the availability of face-value tickets, such as BOT detection, distributions through fan clubs, pre-registration with pre-sales, digital ticket delivery, and controls on resale designed to provide access to true fans over scalpers.

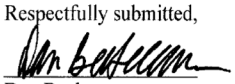
***

The submission of this information does not waive, nor is it intended to waive, any rights, privileges, or immunities of AEG with respect to this matter, including any applicable attorney-client, work product, or other privilege or immunity. Moreover, to the extent that non-responsive information has inadvertently been disclosed, AEG does not agree to any expansion in the scope of the Committee Letter. AEG expressly reserves any applicable privileges and immunities to which it is entitled under applicable law.

The responses in this letter may include confidential business information and sensitive details regarding AEG internal business practices, and should therefore be kept confidential. Because of the sensitive nature of this information, in the event that the Committee intends, during its inquiry into this matter, to disclose any AEG information contained in this letter to an agent, employee, or other person affiliated with any competitor, AEG requests that it be given one week advance notice in order to permit it to address the issue with the Committee. Similarly, in the event that the Committee intends to disclose any of this information in any public forum or to a third party who does not expressly agree to maintain the confidentiality of the information, AEG requests that it be given one week advance notice in order to permit it to address the issue with the Committee.

If you have any questions regarding the contents of this letter, please do not hesitate to contact AEG's outside counsel, Evans Rice or Aaron Cutler, at (202) 637-5600.

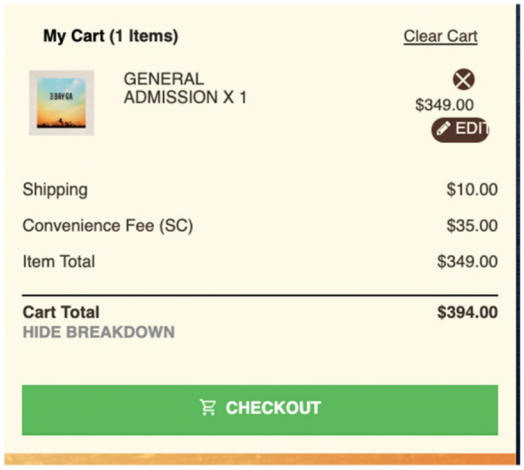
Respectfully submitted,



Dan Beckerman
President & CEO
Anschutz Entertainment Group, Inc.

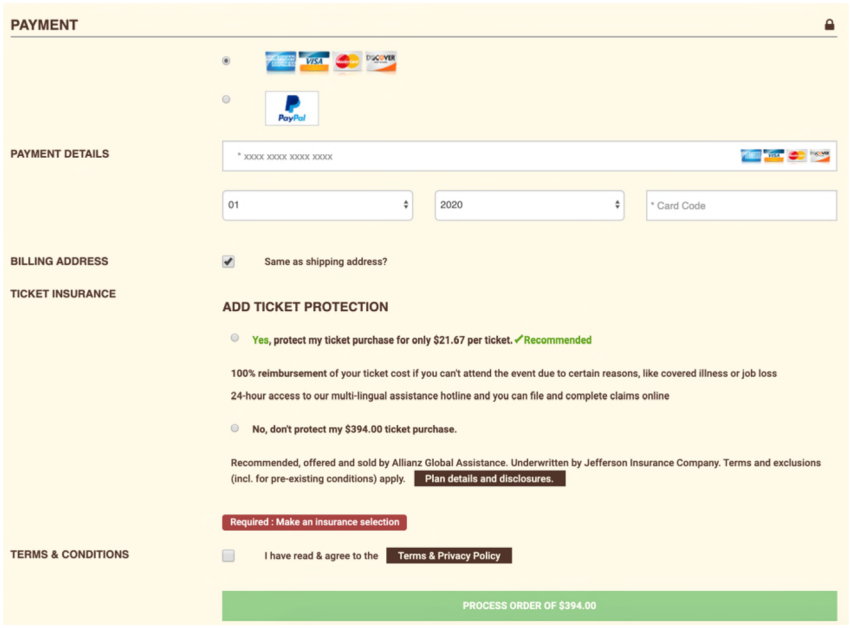
APPENDICES TO RESPONSES

APPENDIX TO RESPONSE TO QUESTION 4



APPENDIX TO RESPONSE TO QUESTION 6

Insurance is offered at check out. The customer must make a selection (Yes/No) to process the order.



The "Plan Details and Disclosures" are available here: https://www.allianzworldwidepartners.com/usa/terms-and-conditions/001004685#/productcollapse1

Please Note: Click here if you are a resident of CO, MA, and NY.

Event Ticket Protector

Benefits	Coverage (per person)
Ticket Cancellation Coverage	Up to event cost ($10,000 max.)
Ticket Interruption Coverage	Up to event cost ($10,000 max.)
Viewer Advantage	Included
Pre-existing Medical Condition Exclusion Waiver	Available

+ Expand All

Minimum amount of ticket cancellation and ticket interruption coverage is $150.

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

HR Committee on Energy and Commerce
Information Request – Proposed Responses
As of December 10, 2019

	Committee Request	Response
1	*Please provide a list of all primary market ticket platforms and secondary market ticket exchanges owned or operated by your company, and the total number of tickets sold on each platform or exchange in 2018.*	[redacted]
2	*What fees does your company charge per ticket sale, and how are those fees calculated? Please provide a copy of any policies related to how your company sets and calculates fees*	TicketNetwork charges service fees to consumers in connection with the purchase of tickets on some of its sites
		Service fees are calculated as a percentage of the retail price shown on the website. The service fee covers the order processing, credit card fees, marketing costs, and website operating costs. The service fee can range from 0% to about 25%. In 2018, approximately 20% of ticket sales (based on aggregate ticket price) were not subject to any service fee charged to the customer.
3	*How much revenue did your company generate from ticket fees in calendar years 2016, 2017, and 2018? Please provide this figure for each of your company's primary (if applicable) and secondary ticket sales platforms.*	Below is the breakout for TicketNetwork Exchange service fees charged to customers for 2016-2018.

Year	Total GTV	Service Fee	Total Service Fee as % of Total Ticket Value
[redacted]	[redacted]	[redacted]	15.4%
[redacted]	[redacted]	[redacted]	16.9%
[redacted]	[redacted]	[redacted]	16.1%

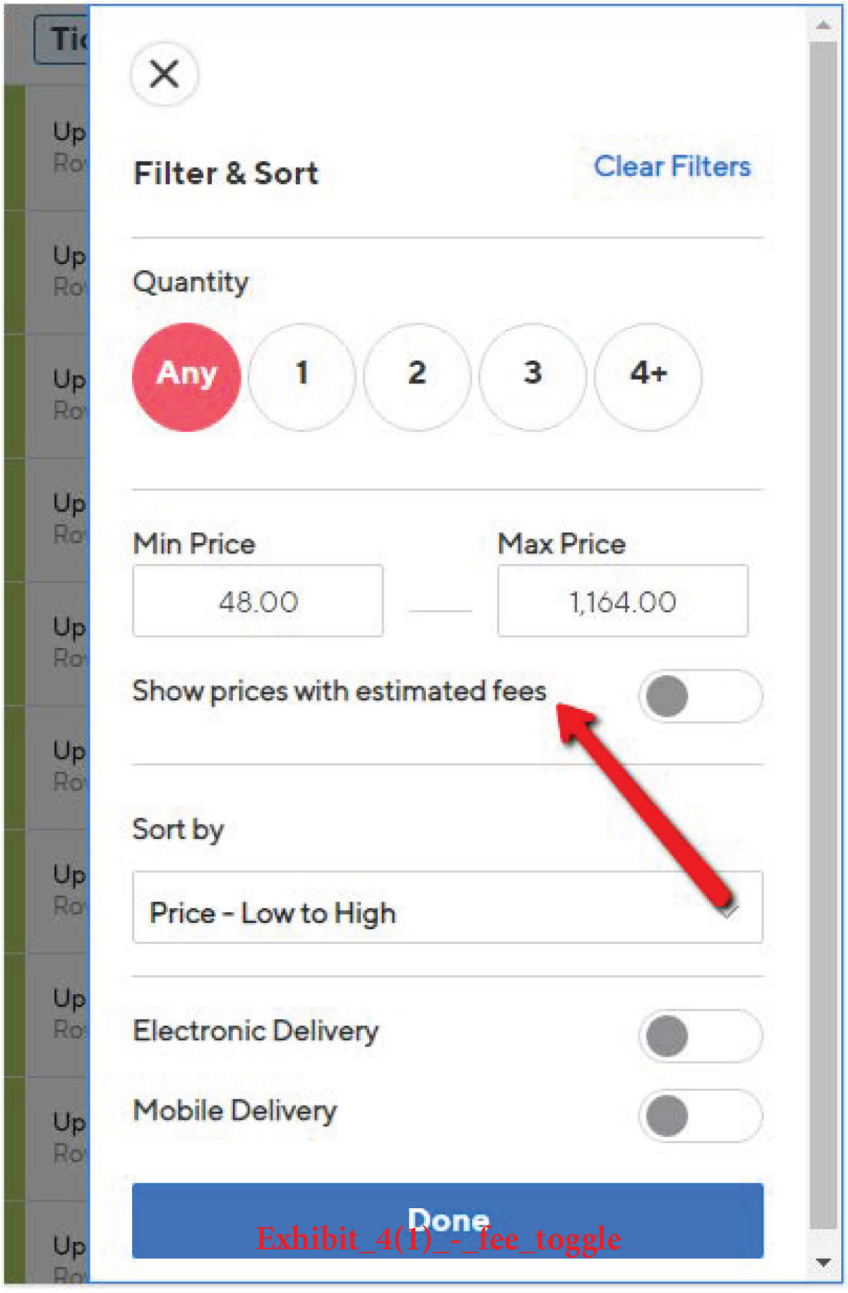
	Committee Request	Response
		[redacted] does not charge any services fees to customers for its primary market tickets. There are fees payable by the event organizers who may elect to pass those costs along to the consumer].
4	*At what point during the purchase process does your company make the consumer aware of the type and amount of ancillary fees charged?*	Sites using the TicketNetwork marketplace include a toggle within the ticket search filter window for a consumer to elect to have all ticket prices shown with all estimated fees included. See the example attached hereto as Exhibit 4(1). If such filtering feature is not selected, the ticket price is shown without fees, and with a notice that such price excludes fees. Upon selecting such a ticket, prior to entering billing information, the customer is shown an Order Total, with an itemized list of components thereof, which includes the service fee and an explanation thereof. See the example attached hereto as Exhibit 4(2).
4(a)	*Where and how is this information communicated to consumers?*	See the response to question 4 above. **Exhibit to follow**
4(b)	*Since January 1, 2016, has any federal, state, or local entity or individual taken legal action against your company regarding the lack of "all-in" pricing? If so, please provide a list of such actions, the claim alleged in each action, and, if applicable, the results of any such action*	There have been no such legal actions taken against TicketNetwork.
5	*Does your company sell ticket insurance, or contract with or otherwise*	[redacted]

	Committee Request	Response
	permit a third-party to sell ticket insurance on your platform or website? If so, please explain the ticket insurance that your company offers, including whether the ticket insurance is a set price or calculated based on the cost of the ticket, and what the ticket insurance covers.	[redacted]
6	*Does your company permit the sale of speculative tickets on your company's platform?*	In certain instances, sellers on the TicketNetwork exchange with an excellent history of delivery of tickets and demonstrated arrangements to obtain tickets are able to offer tickets without possessing such tickets at the time of offer, as we believe to be the case on most secondary market sites. For example, tickets to attend the 2020 Masters Golf Tournament are not currently available, however, TicketNetwork and its competitors each show listings for tickets to the event. TicketNetwork provides clear disclosure that the seller does not yet possess the tickets but will provide them locally. See screenshots attached hereto as Exhibit 6.
6(a)	*What disclosure does your company make to alert consumers of the speculative nature of the ticket and how and when in the purchase process is this disclosure made?*	TicketNetwork's terms and conditions state: "For certain live events, we permit a limited number of pre-approved sellers to offer tickets for sale that they do not currently possess. These tickets may be marked on the listing as "Flex Tickets" or as "tickets not in hand." If you purchase Flex Tickets or tickets marked as "not in hand," the seller is committing to obtain the tickets described to you upon receipt of your order. These tickets, like all tickets sold on the site, are backed by our 100% guarantee. After you place your order and your order is confirmed by the seller, we guarantee that your tickets will be within the area listed or one comparable or better and that you will receive these tickets in time for the event, or you will get your money back."

	Committee Request	Response
		See an example of Flex Ticket disclosure attached as Exhibit 6(a)(1). As mentioned above with respect to the 2020 Masters Golf Tournament, in certain instances, disclosure is made to alert consumers that the ticket seller does not possess the tickets being offered. See examples of such disclosure attached as Exhibit 6(a)(2).
6(b)	*What actions has your company taken to address speculative tickets sold on your company's platform, including legal or other actions taken to enforce your company's speculative tickets policy?*	TicketNetwork takes very seriously any failure by any broker on its exchange to fail to deliver timely any tickets that have been purchased for an event. Whether such failure results from speculative tickets, technical failure, or broker negligence or fraud, any so called "busted" transaction will result in financial penalties to the applicable brokers through reimbursement as well as reduced broker rating (which will lead to an increase in fraud protection fees payable by such broker). See excerpt from the TicketNetwork Broker Guidelines regarding the impact of "busted" orders attached as Exhibit 6(b).
6(c)	*In the past year, have any speculative tickets been sold on your company's platform(s)?*	Yes. It is our belief that "speculative" tickets have been sold on the TicketNetwork exchange in the past year. Some of these would have been sold within the guidelines required for the sale of tickets not in hand. Some "speculative" tickets may have been sold and delivered without incident. In other instances, sellers have failed to deliver tickets to buyers, and it is unclear as to the reason for such failure. Some of these instances would appear to be due to the broker offering speculative tickets. But it is not necessarily possible for the marketplace to determine whether the basis for a failed delivery was that the broker offered, and did not follow through on, a "speculative" ticket sale. The largest issue has been identified from primary tickets and the Cleveland Indians who at times sell tickets and they arbitrarily cancel those tickets to gain a competitive advantage over secondary market sellers

	Committee Request	Response
6(d)	*Please provide all policies related to the sale of speculative tickets on your company's platform*	See excerpt from TicketNetwork's terms and conditions above in response to item 6(a). See excerpt from the TicketNetwork Broker Guidelines, to which each participating broker agrees to be bound, regarding speculative tickets attached hereto as Exhibit 6(d).
7	*Does your company work with, own, or operate any platform and/or website that make any representation of affiliation or endorsement to a venue, team, or artist, when in fact no formal affiliation or representation exists (also known as white-label websites)? If yes, please provide a list of these websites and explain:*	To our knowledge, no companies, platforms, or sites that TicketNetwork works with, owns or operates make any representation of affiliation or endorsement to any venue, team, or artist.
7(a)	*How your company coordinates with any such websites, including the sharing of technology and/or sales inventory*	Not applicable.
7(b)	*If and how your company notifies consumers that the website and/or platform is not endorsed or affiliated with the venue, team, or artist represented on your company's properties*	As mentioned above, to our knowledge, no companies, platforms, or sites that TicketNetwork works with, owns or operates make any representation of affiliation or endorsement to any venue, team, or artist. In fact, the secondary market sites owned or operated by TicketNetwork contain express language that such site is a secondary market. See examples of such disclosure attached hereto as Exhibit 7(b).
7(c)	*For 2016, 2017, and 2018, what percentage of your company's total revenue is derived from white-label websites as that term is described above?*	Not applicable.

	Committee Request	Response
8	*What protocols are in place to ensure that tickets resold on your company's platform(s) were not originally purchased using bots or fictitious accounts? What analysis has your company completed to determine the effectiveness of these protocols?*	All seller certify that they do not use illegal bot devices. At no time has any primary sellers, venue or artist have ever notified us that they even think tickets that were sold on our exchange were from BOT devices.


Filter & Sort
Clear Filters
Quantity
Any
1
2
3
4+
Min Price
48.00
Max Price
1,164.00
Show prices with estimated fees
Sort by
Price - Low to High
Electronic Delivery
Mobile Delivery
Done
Exhibit_4(I)_-_fee_toggle

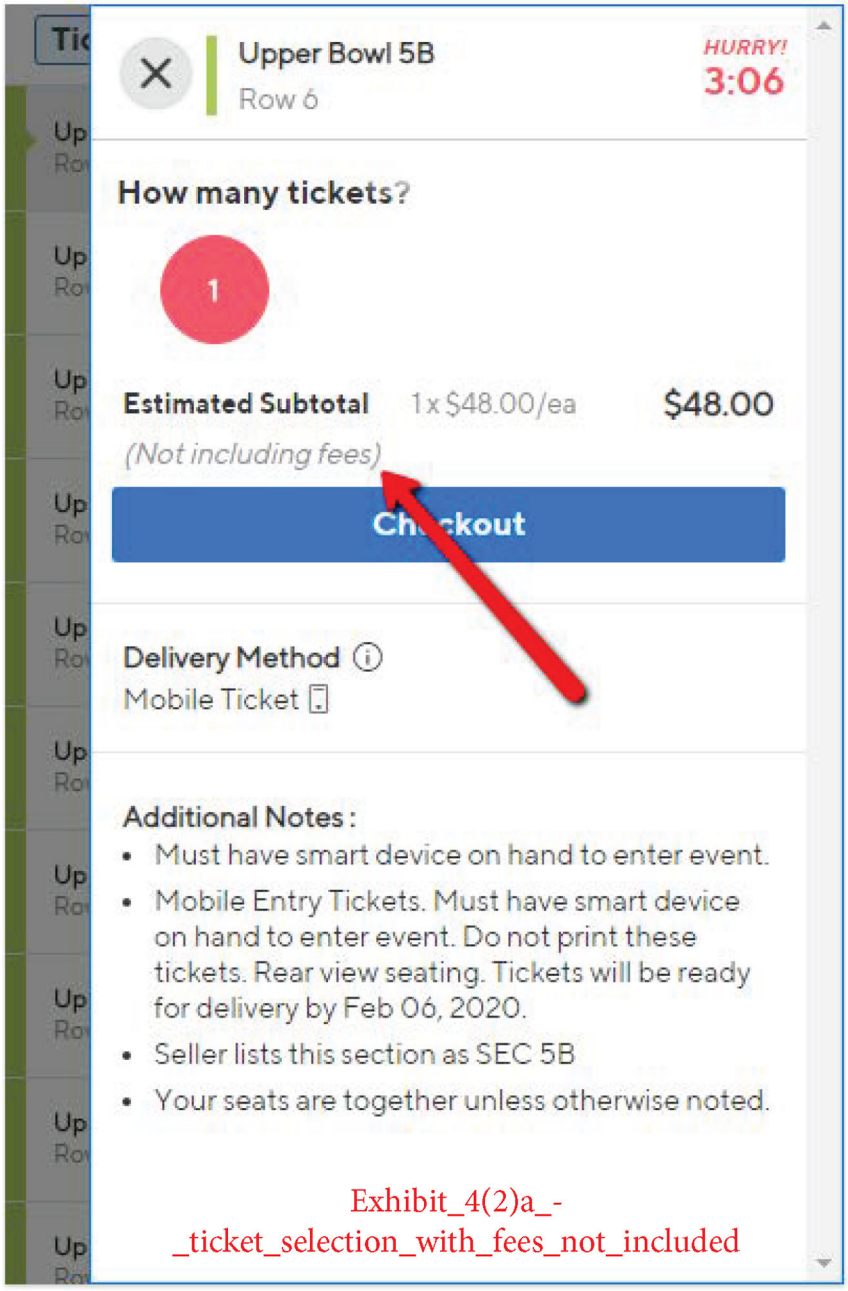


Exhibit_4(2)a_-_ticket_selection_with_fees_not_included

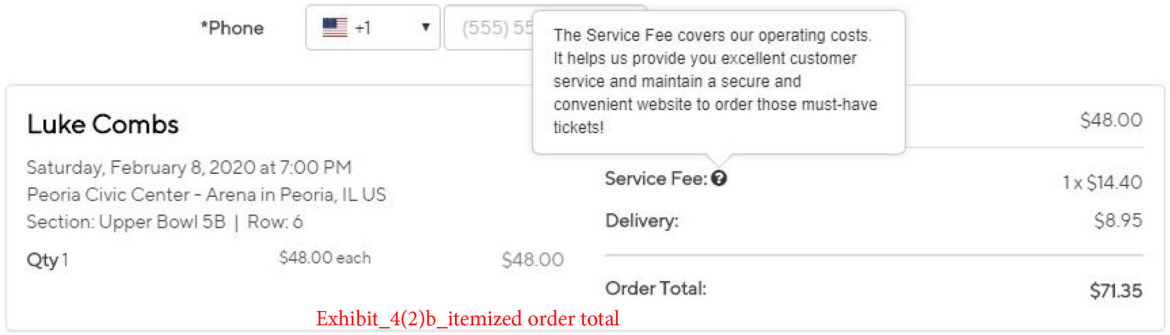
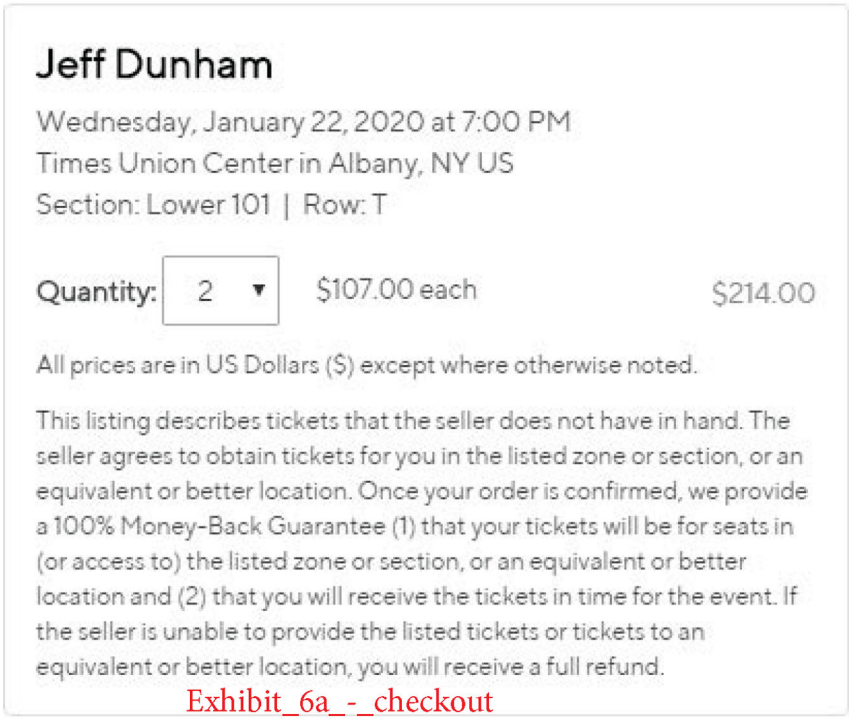


Exhibit_4(2)b_itemized order total



Jeff Dunham

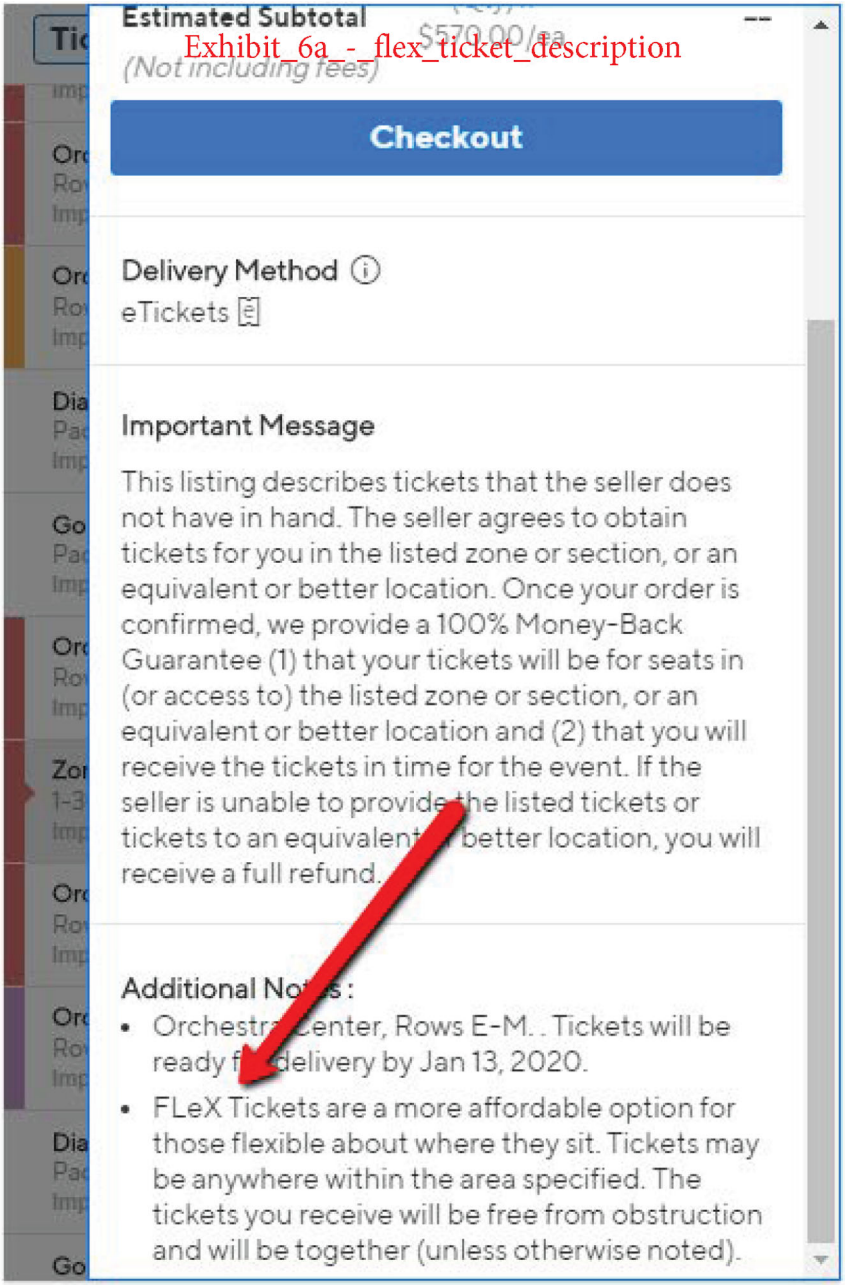
Wednesday, January 22, 2020 at 7:00 PM
Times Union Center in Albany, NY US
Section: Lower 101 | Row: T

Quantity: 2 ▾ $107.00 each $214.00

All prices are in US Dollars ($) except where otherwise noted.

This listing describes tickets that the seller does not have in hand. The seller agrees to obtain tickets for you in the listed zone or section, or an equivalent or better location. Once your order is confirmed, we provide a 100% Money-Back Guarantee (1) that your tickets will be for seats in (or access to) the listed zone or section, or an equivalent or better location and (2) that you will receive the tickets in time for the event. If the seller is unable to provide the listed tickets or tickets to an equivalent or better location, you will receive a full refund.

Exhibit_6a_-_checkout


Estimated Subtotal
$570.00 /ea
(Not including fees)
Exhibit_6a_-_flex_ticket_description
Checkout
Delivery Method
eTickets
Important Message
This listing describes tickets that the seller does not have in hand. The seller agrees to obtain tickets for you in the listed zone or section, or an equivalent or better location. Once your order is confirmed, we provide a 100% Money-Back Guarantee (1) that your tickets will be for seats in (or access to) the listed zone or section, or an equivalent or better location and (2) that you will receive the tickets in time for the event. If the seller is unable to provide the listed tickets or tickets to an equivalent or better location, you will receive a full refund.
Additional Notes :
Orchestra Center, Rows E-M. . Tickets will be ready for delivery by Jan 13, 2020.
FLeX Tickets are a more affordable option for those flexible about where they sit. Tickets may be anywhere within the area specified. The tickets you receive will be free from obstruction and will be together (unless otherwise noted).

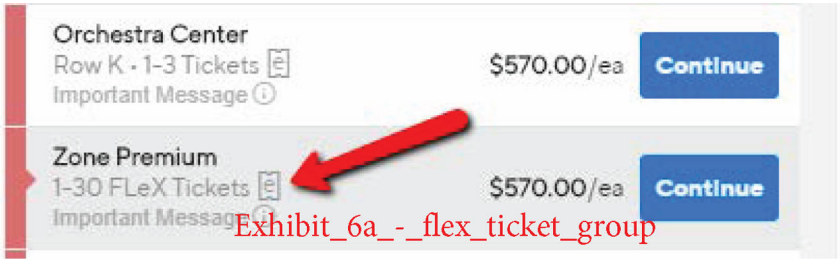


Exhibit_6a_-_flex_ticket_group

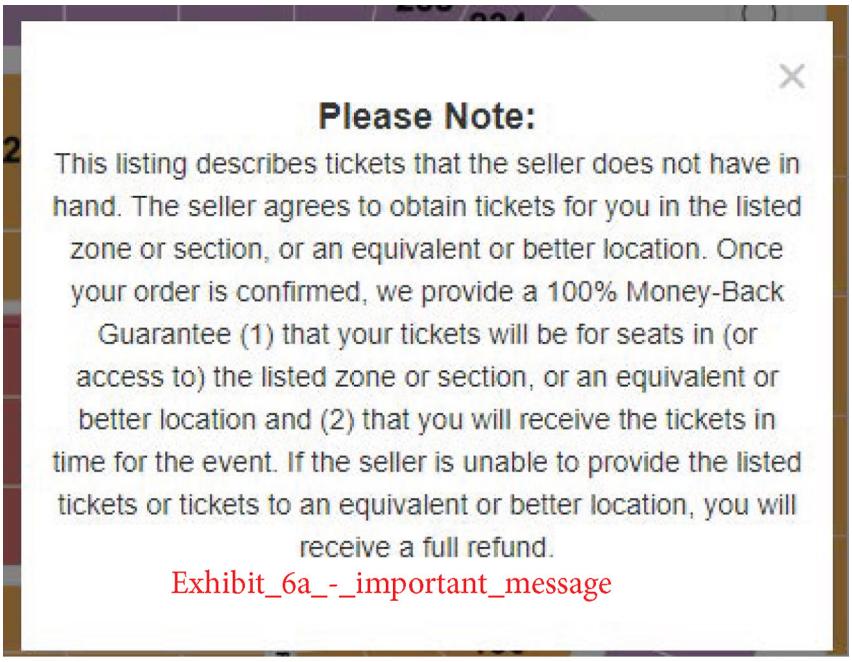


Exhibit_6a_-_important_message

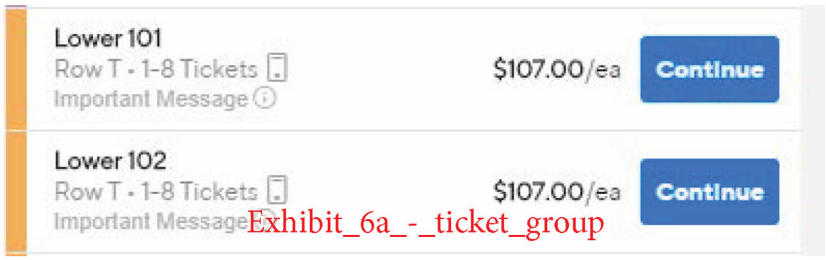


Exhibit_6a_-_ticket_group

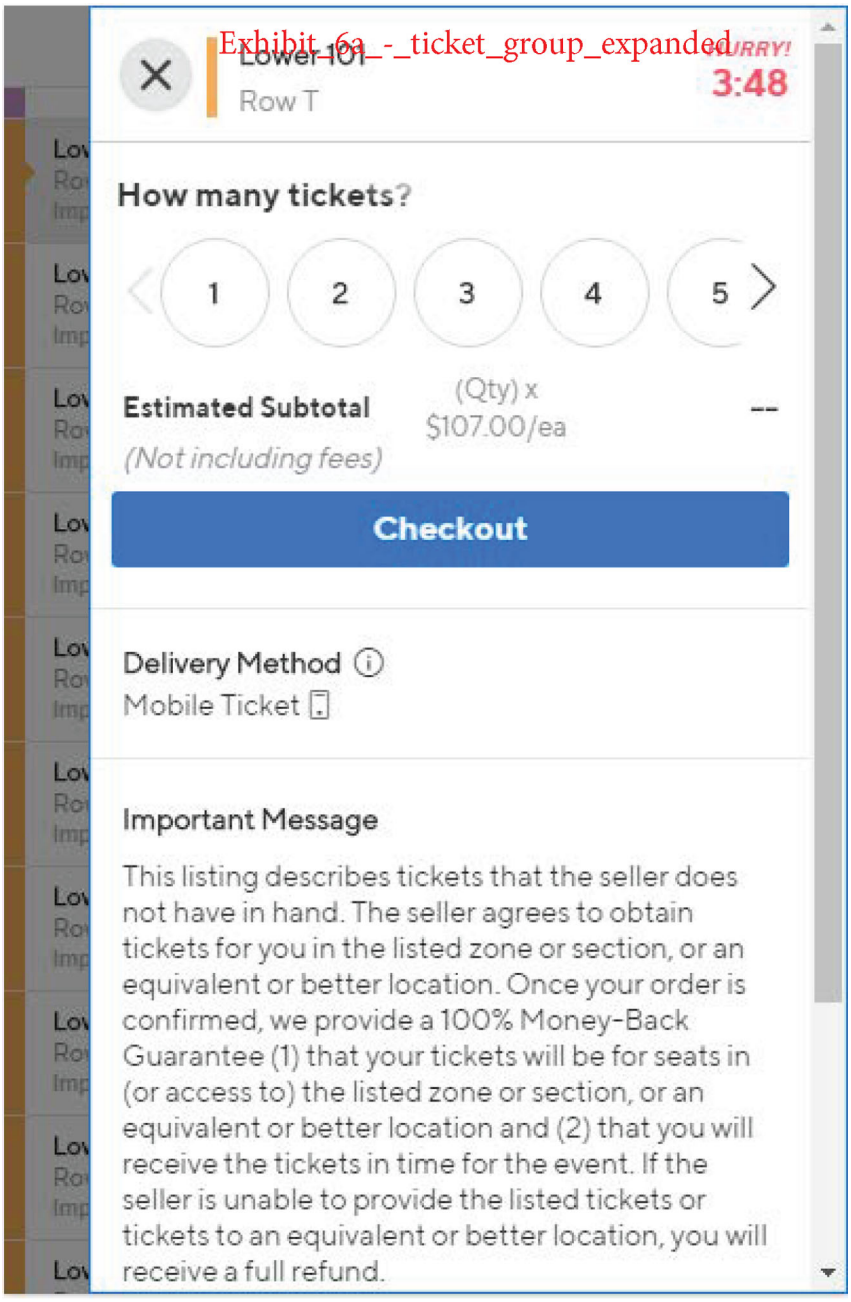


Exhibit_6a_-_ticket_group_expanded
Lower 101
Row T
HURRY!
3:48
How many tickets?
1
2
3
4
5
Estimated Subtotal
(Not including fees)
(Qty) x
$107.00/ea
--
Checkout
Delivery Method
Mobile Ticket
Important Message
This listing describes tickets that the seller does not have in hand. The seller agrees to obtain tickets for you in the listed zone or section, or an equivalent or better location. Once your order is confirmed, we provide a 100% Money-Back Guarantee (1) that your tickets will be for seats in (or access to) the listed zone or section, or an equivalent or better location and (2) that you will receive the tickets in time for the event. If the seller is unable to provide the listed tickets or tickets to an equivalent or better location, you will receive a full refund.

Exhibit_6b_Broker Rating

X. Broker Rating

Detailed information about your company's Broker Rating can be found in your WebAdmin account. Brokers can see their company's current status at any time by clicking on the "My Broker Rating" area at the top of the WebAdmin page.

A PDF download describing all broker rating metrics in detail is also available in your WebAdmin account. Brokers should check the **TicketNetwork®** Announcement Center in their WebAdmin account for links and details. All Brokers are responsible to check frequently for updates to Broker Rating, and are encouraged to attend monthly *Straight Talk with Don* webinars to learn of upcoming changes. When changes and/or updates are made to Broker Rating metrics, an announcement will be posted in the Broker's POS and WebAdmin accounts.

The following chart outlines Penalty Orders that may affect your Broker Rating. All penalties are in effect for three (3) months after application of the penalty by **TicketNetwork®**.

PENALTY	REJECTED ORDERS AFFECTING FILL RATE
Agency complaint	8
Alternate - not reported by Broker prior to customer reporting:	5
Alternate - reported by Broker prior to customer reporting:	0.25
"Not Alternate" Tickets delivered to customer:	4
Rejected order filled by Broker:	4
Busted *Mercury* Order:	1 point deducted from *Mercury* rating
Invalid Tickets *Mercury* Order:	1 point deducted from *Mercury* rating
Busted TND or Fulfillment Order:	4
Invalid Tickets TND or *Mercury* Order:	8
Busted TND or Fulfillment order, reported by Broker prior to customer reporting:	2
Invalid Tickets TND or Fulfillment order, reported by Broker prior to customer reporting:	4

TicketNetwork® reserves the right to change the policies detailed in this Guidebook from time to time as it deems necessary, with or without prior notification. A Broker's continued use of TicketNetwork®'s products and services, including the TND and Fulfillment Programs, constitutes acceptance of these policies and any changes thereto. TicketNetwork® and the swirl logo are registered Trademarks of Ticket Software LLC.

Ticket Software LLC © January 2007, November 2016

a. Tournament Tickets

Tournament and playoff tickets that depend on results of future events may be listed without performers as long as the venue and date are known.

Tournament and playoff tickets cannot be listed if the date or venue is TBD except where **TicketNetwork®** has established an exception to this policy for a specific event. In these cases, **TicketNetwork®** will send email notification and/or place an announcement in WebAdmin regarding the exception. Brokers are responsible for updating their listings regardless of when the teams or performers are announced.

b. Speculative Tickets

Brokers shall only list tickets under two conditions: (1) when they have the tickets "in hand," or (2) when they can provide proof of purchase of the tickets.

Brokers shall not list speculative tickets.

Speculative tickets are defined as Inventory that is posted before tickets can possibly be purchased or where proof of ownership cannot be established. Sometimes speculative tickets are also referred to as "short selling." Inventory can only be listed before an event's on-sale date if the Broker can prove that they have tickets in hand matching the section and row indicated in uploaded data.

Another type of speculative ticket is Inventory that is posted on the **TicketNetwork®** Exchange when tickets are still readily available from the primary ticket source and the Broker cannot prove that any inventory risk has been taken.

Any Inventory that is sold as a "get-in" ticket, or represents the worst possible ticket to an event, at a price which does not reflect assumed market value for such a seat is also a type of speculative ticket. This Inventory shall not be listed.

TicketNetwork® reserves the right to question the validity of any Broker's inventory at any time, for any reason, at the sole discretion of **TicketNetwork®**. Tickets that are suspected to be speculative may be blocked from the Exchange without prior notice to the Broker, at **TicketNetwork®**'s discretion. Brokers are notified via an automatically-generated email when listings are removed. Brokers suspected of listing speculative inventory will be given the following deadlines to produce proof of ownership:

*5 pm ET for inventory that was removed prior to 12:00 Noon ET the same day.
*10 am ET the following day for inventory that was removed after 12:00 Noon ET the prior day.

Any Broker who does not meet these deadlines will not have the removed inventory restored to the Exchange at any time.

TicketNetwork® reserves the right to change the policies detailed in this Guidebook from time to time as it deems necessary, with or without prior notification. A Broker's continued use of TicketNetwork®'s products and services, including the TND and Fulfillment Programs, constitutes acceptance of these policies and any changes thereto. TicketNetwork® and the swirl logo are registered Trademarks of Ticket Software LLC.

Exhibit_6d_excerpt re speculative tickets

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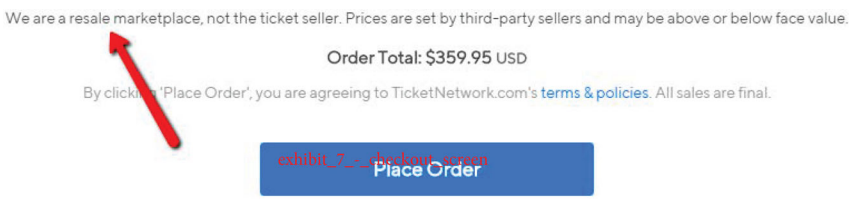
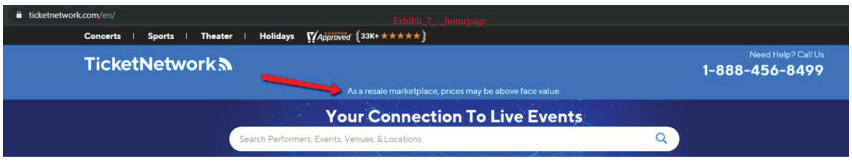

We are a resale marketplace, not the ticket seller. Prices are set by third-party sellers and may be above or below face value.
Order Total: $359.95 USD
By clicking 'Place Order', you are agreeing to TicketNetwork.com's terms & policies. All sales are final.
exhibit_7_-_checkout_screen
Place Order


ticketnetwork.com/en/
Exhibit_7_-_homepage
Concerts | Sports | Theater | Holidays
Approved {33K+ ★★★★★}
TicketNetwork
Need Help? Call Us
1-888-456-8499
As a resale marketplace, prices may be above face value.
Your Connection To Live Events
Search Performers, Events, Venues, & Locations

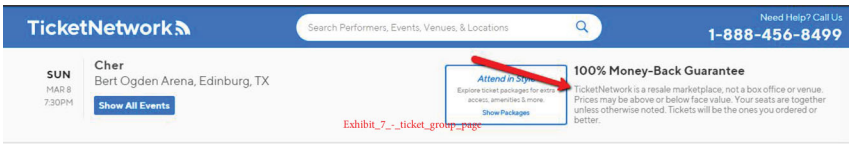


Exhibit_7_-_ticket_group_page

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. Amy Howe, President & Chief Operating Officer, Ticketmaster

The Honorable Diana DeGette (D-CO)

1. At the hearing, you testified that "all consumers have to opt-in for marketing purposes, that's regardless of what platform they're buying on" and that Ticketmaster "cannot use any information that is acquired from another platform for any marketing purposes." However, Ticketmaster's privacy policy (effective January 1, 2020) (the "policy") expressly notes that Ticketmaster collects consumer information, including "from third parties," and uses this information "for marketing purposes." The policy also details how consumers may "opt out of receiving [Ticketmaster's] marketing emails," but is silent on any "opt-in" requirement.

    a. Does Ticketmaster define any secondary ticketing websites as "third parties" under the policy? If yes, please explain how the policy is consistent with your testimony that Ticketmaster "cannot use any information that is acquired from another platform for any marketing purposes."

Secondary ticketing websites are considered third parties under our privacy policy. However, the response I provided was in the context of the NFL "open ticketing" relationship, in which Ticketmaster provides ticket validation services to other ticket marketplaces, including Stubhub and SeatGeek, on behalf of the NFL. As I stated in my testimony, Ticketmaster receives information about a buyer of NFL tickets from SeatGeek or StubHub, solely to validate and fulfill their customer's tickets. This is required under our agreement with the NFL, and Ticketmaster does not use the information for any other purpose, including marketing unless a consumer opts-in.

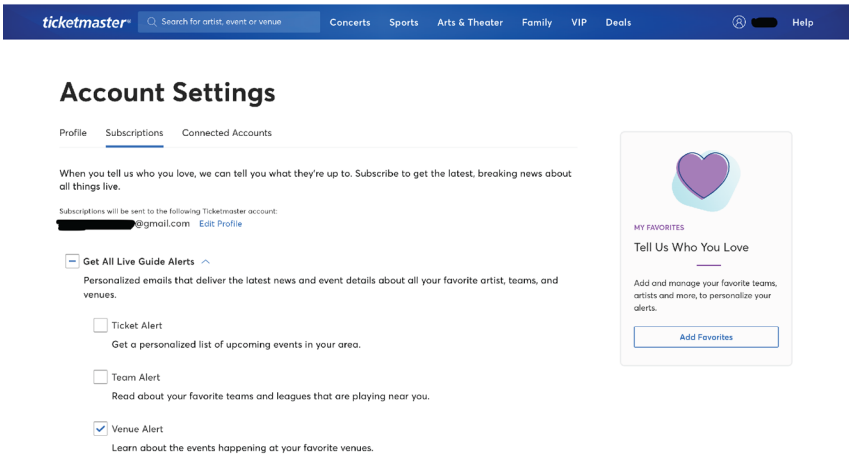
    b. If "all consumers have to opt-in for marketing purposes," why is Ticketmaster's policy silent on any "opt-in" requirement?

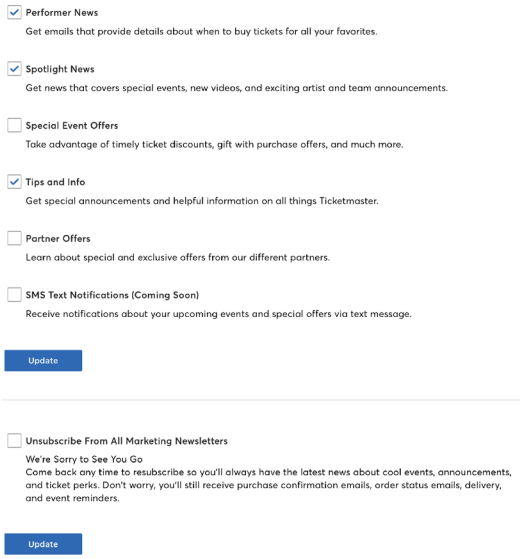
Ticketmaster's privacy policy addresses consumers' privacy rights on Ticketmaster's website. My response was in the context of our relationship with the NFL, and my statement referred to Ticketmaster's policy of not using consumers' information from secondary ticketing websites for marketing purposes without their opt-in consent.

c. The policy also states that "if you buy tickets from [Ticketmaster] we'll enroll you in our newsletter." Most consumers who purchase tickets through Ticketmaster "opt in" to receive this newsletter? If not, please explain how the policy is consistent with your testimony that "all consumers have to opt-in for marketing purposes…"

Consumers who buy tickets on Ticketmaster's website have the option to opt-out of receiving the newsletter. The opt-out screen is below. Again, my statement was made in the context of our specific relationship with the NFL and the marketplaces it has licensed to sell validated NFL tickets, including Stubhub and SeatGeek.

Where consumers have purchased tickets directly from Ticketmaster's website, they can unsubscribe from any marketing email, change marketing preferences in their Ticketmaster account. Ticketmaster provides robust and meaningful customer privacy protections and is compliant with both the California Consumer Privacy Act, as well as Europe's Global Data Protection Regulation. All of our consumers are able to email our dedicated global privacy team or opt-out of receiving communications under mechanisms we created to comply with our global privacy control framework, which provides all consumers, irrespective of location, optionality and choice as to how their information is used.





2. The policy also states that Ticketmaster "will share [consumer] information with our business partners," who may "send[] you marketing communications." It also states that Ticketmaster "will share information with third parties who sell products or services to you," such as third parties who sell "merchandise."

   a. Must consumers first "opt-in" before Ticketmaster shares their data with Ticketmaster's "business partners" or other third parties who sell consumer products or services? If not, please explain how the policy is consistent with your testimony that "all consumers must opt-in for marketing purposes…"

Consumers have the ability to opt-out of the sharing of their information from the Ticketmaster website with our business partners and third parties. As indicated in my answer to 1(c) above, Ticketmaster takes privacy extremely seriously and has invested significantly to ensure we operate under a global privacy control framework, which provides all consumers, irrespective of location, optionality and choice as to how their information is used.

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

As I stated in my written testimony, two concepts that create an imbalance within the ticketing industry are: (1) supply and demand, and (2) pricing. First, for many of the highest-profile events, the demand from consumers for tickets far exceeds the number of seats available to purchase. Second, the performing artists often set the prices of these in demand tickets well below true market value in order to build or maintain goodwill by allowing fans of all income levels to access tickets.

This creates a lucrative opportunity for players in the ticketing ecosystem to take advantage of a supply/demand imbalance that mixes with below market prices intended for real fans. This "arbitrage" opportunity is not small. In 2019, we estimate the secondary concert market to exceed $10 billion, almost all of which is paid by fans to the benefit of middle men and resale marketplaces like Stubhub, Vivid Seats, and Ticket Network, not the Event Organizer, artist or team who paid to produce the event. We believe the vast majority of concert resale activity on these sites is sold by professional brokers, not individual fans.

This economic incentive results in significant investment in tools by bad actors to capitalize on this arbitrage opportunity. The most egregious of these tools involves the use of bots, which programmatically attack the primary market ticket systems with billions of real-time requests to select and purchase tickets. For some of the highest demand events, this activity is akin to using a computer to purchase millions of lottery tickets with different numbers while a consumer can only buy a single ticket. Bots are also used to reserve and hold, not purchase, thousands of tickets at a time, thereby creating artificial demand by shutting actual consumers out from buying tickets at face value while driving up prices of comparable tickets on the secondary market.

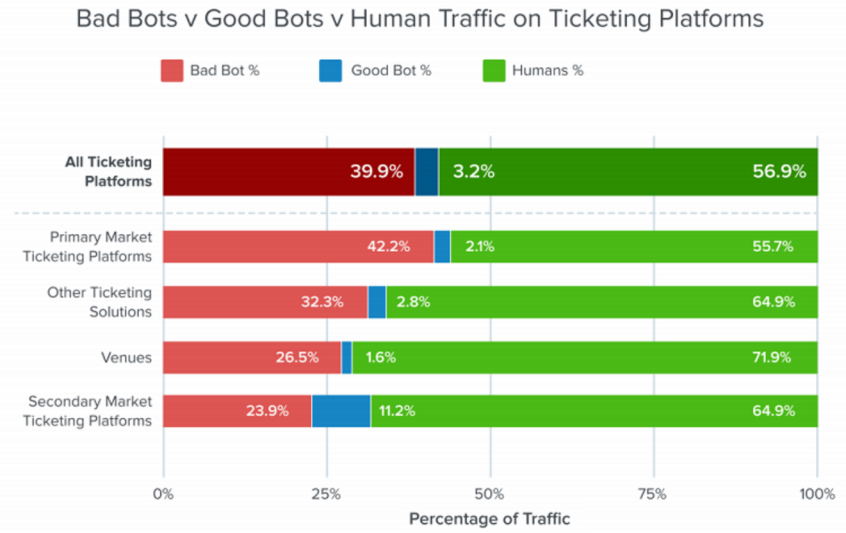
Bots are able to (i) detect and reserve ticket inventory, often in a matter of seconds; (ii) control multiple accounts to exploit published ticket limits; (iii) create accounts with false information to hide the identity of a purchaser; and (iv) harvest data about pricing and consumer demand in order to aid decision making that drives up the price on the secondary market.

Ticketmaster has made deep and substantial investments in fighting these tactics with a combination of proprietary tools and technologies as well as implementation of leading third-party tools such as Distil and IP-based blocking technology. We have also added an additional layer of security by requiring all newly created accounts on Ticketmaster to employ Two-Factor Authentication, which makes it more difficult to create single-use accounts in bulk.

The reality of the situation is that, in spite of the passage of the BOTS Act (of which Ticketmaster was a staunch supporter), the number of bots Ticketmaster has blocked from our site has continued to grow exponentially, tripling in the time since the BOTS Act was enacted. According to a 2019 report by Distil, a leading bot-mitigation software provider, 40% of activity on ticketing sites is computer automated, and up to 67% of bad bot traffic occurs in the United States.[1] Even worse, Distil reports that bot attacks on primary market platforms like Ticketmaster is almost double that of attacks on secondary market platforms, further illustrating the challenge consumers have buying tickets in the first instance at the price set by the Event

[1] See Daniel Sanchez, "Nearly 40% of Ticketing Traffic Comes from Bad Bots, Study Finds" (Digital Music News, Feb. 28, 2019), available at https://www.digitalmusicnews.com/2019/02/28/bots-ticketing-traffic/.

Organizer. When blocked from buying face value tickets in the first instance, consumers are often forced to purchase tickets at inflated prices on the secondary market sites if they want to attend an event.



Brokers can also disadvantage consumers by selling tickets they do not possess. Speculative ticketing is essentially a mass-arbitrage scheme employed by some brokers to sell tickets they do not possess, and, as such, do not have a legal right to sell. Speculative tickets are frequently offered on secondary marketplaces without disclosure of their speculative nature, often before tickets have even been placed on sale to the general public by the Event Organizer. These marketplaces do very little to stop speculative listings placed on their websites. In many cases, consumers purchase speculative tickets on the secondary market at inflated prices when face value tickets are still available on the primary market.

The Honorable Brett Guthrie (R-KY)

1. As you know, the Better Online Ticket Sales Act (BOTS Act) was signed into law in 2016. Neither the Federal Trade Commission (FTC) nor the states have taken any enforcement action under the BOTS Act. Your testimony notes that "[w]e need enhanced enforcement of the BOTS Act of 2016." Can you explain why you think enhanced enforcement is necessary?

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?

Bots continue to plague the online ticketing process. Despite passage of the BOTS Act, unscrupulous actors continue to use bots, depriving real fans of the opportunity to purchase tickets at the prices set by Event Organizers. In 2019 alone, Ticketmaster blocked nearly 3 billion purchase attempts by bots each month. It is absolutely clear that the prevalence of the use of bots, even four years after enactment of the BOTS Act, demonstrates the need for more aggressive enforcement of the law.

In addition to the tens of millions of dollars Ticketmaster has spent fighting bots, we have also supported legislation at the state and federal levels to ban bots and pursued private legal action against bot users. Although we have taken such legal action, and we have successfully assisted in the passage of state level bans on bots, there has been no meaningful deterrence against their usage. Unfortunately, the economic incentive to utilize bots (further evidenced by the $10B resale market), still outweighs the risk of an enforcement action. We stand willing and able to help the Federal Trade Commission, state Attorneys General and other law enforcement agencies in any attempt to help protect consumers from these bad actors, and to provide the deterrence necessary to stop what is currently the single biggest impediment to consumers' fair access to tickets.

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?

Ticketmaster utilizes "all-in" pricing in almost every country and jurisdiction in which we operate and are legally required to do so, including Canada, the European Union, Australia, and New Zealand. Unfortunately, the reality is that, for any single marketplace to avoid being disproportionately harmed by using all-in pricing, all members of the live event ticketing industry must be legally required to list all prices and fees up-front. In the absence of this requirement, consumers cannot make meaningful (apples-to-apples) price comparisons between marketplaces.

We believe that consumers should be able to see the total cost of their tickets, including all fees, at the beginning of the purchase process, not only at the end. Requiring all live event ticketing marketplaces to move to "all-in" pricing (that is, to include all required fees in the price from the first purchase page), and robust enforcement of that requirement, would prevent price manipulation, promote transparency, and protect consumers.

As the Government Accountability Office (GAO) concluded "[s]ellers that do not provide enough or full information on prices through hidden fees could have a competitive advantage because they would be perceived as offering lower prices over their competitors who do provide

full information showing the price."[2] As a result, Ticketmaster supports legislation that would require all-in pricing in the United States, and there seemed to be consensus among the witnesses at the hearing for such a requirement.

3. Your testimony notes that "[s]ome marketplaces also take advantage of the industry practice of disclosing the fees later in the purchase process to manipulate the list price of the ticket, making the ticket price appear less expensive upfront." Please explain what you mean by that and how that is different than how Ticketmaster discloses its fees to consumers who purchase tickets on its website.

    a. In your opinion, how prevalent is this practice throughout the industry?

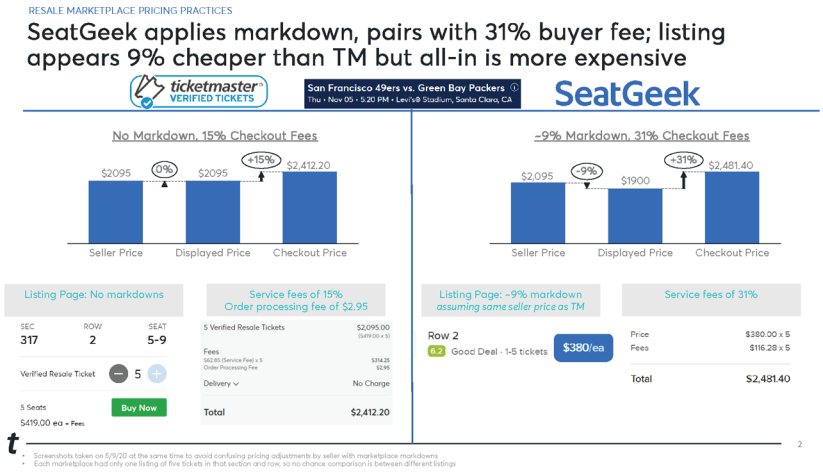
Not disclosing fees at the beginning of the purchase process enables a marketplace to manipulate the list price of a ticket to make such prices appear less expensive upfront, a practice commonly used in the industry and known as "marking down" tickets. This practice involves reducing a ticket's up-front list price, only to add the amount of the reduction into the mandatory fees charged later in the transaction.

Ticketmaster provided multiple examples of this deceptive practice to the Committee in our written submission on December 23, 2019.

In one such instance, a resale ticket was offered by a seller for $75. Ticketmaster advertised the ticket to consumers for $75, and, after 17% in fees, charged a total price of $87.75. A competitor "marked down" the exact same ticket by 10%, advertising the ticket to consumers for $68, but then added 36% in fees for a total ticket price of $92.77. Thus, on the competitor's website, the ticket was initially presented as less expensive than what was offered on Ticketmaster, when, in fact, the ticket ended up being 6.5% more expensive after the addition of fees. Based on our observations, this practice appears to be growing on other resale platforms, comprising a majority of their ticket listings.

To be clear, Ticketmaster does not engage in the practice of marking down resale tickets and transferring the difference to fees. Extensive examples of this type of deceptive and egregious practice meant to trick consumers into paying a higher all-in price were attached to our written testimony as Exhibit 1, and a recent example from May 12, 2020 appears below.

[2] Government Accountability Office, *Event Ticket Sales,* at 42 (April 2018), *available at* https://www.gao.gov/assets/700/691247.pdf ("GAO Report").



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

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

Ticketmaster provides a number of tools which enable our Event Organizers to dynamically price tickets.

Dynamic pricing is a commonly used practice across many industries with perishable inventory. It allows event organizers to price to market, which can result in ticket prices either decreasing or increasing. When demand exceeds supply, dynamically pricing the ticket (up) allows the Event Organizer and artist to capture the true market value of the ticket, money that would otherwise go to brokers. In situations where supply exceeds demand, particularly in the last-minute window, dynamically pricing tickets (down) allows the Event Organizer and artists to sell tickets that they wouldn't otherwise sell, thereby allowing more fans to purchase tickets to an event at more affordable prices.

For most high-demand concerts, the percentage of seats being dynamically priced (up to market) is approximately 5% of the total. Nevertheless, some concert promoters and artists are finding dynamic pricing to be a much more effective way to increase total gross sales from a show, while, in some cases, decreasing the average ticket price paid by fans for the rest of the house. This is accomplished by selling some of the best seats in the house for much more than they previously would have, which enables them to decrease the price of some of the seats further away from the stage. What's important to note, however, is that these market prices are the same prices fans would have paid for these best seats, they are simply paying the artist (the

IP owner) rather than a middleman. Over time, as artists continue to make the majority of their income from touring, and as live events become increasingly expensive to produce, we anticipate more concerts will use dynamic pricing to recapture economics that were previously lost to secondary resellers.

The practice of dynamic pricing is more prevalent in the sports industry, where teams use a variety of tools and practices, including selling tickets to professional sellers to increase distribution. In the case of sports, mid-week games against weaker opponents may be dynamically priced lower, whereas weekend games against playoff contenders may yield higher prices.

b. Are tickets that are held back at the on-sale by the artist, promoter, venue, etc. later posted for sale as dynamically priced tickets rather than face value?

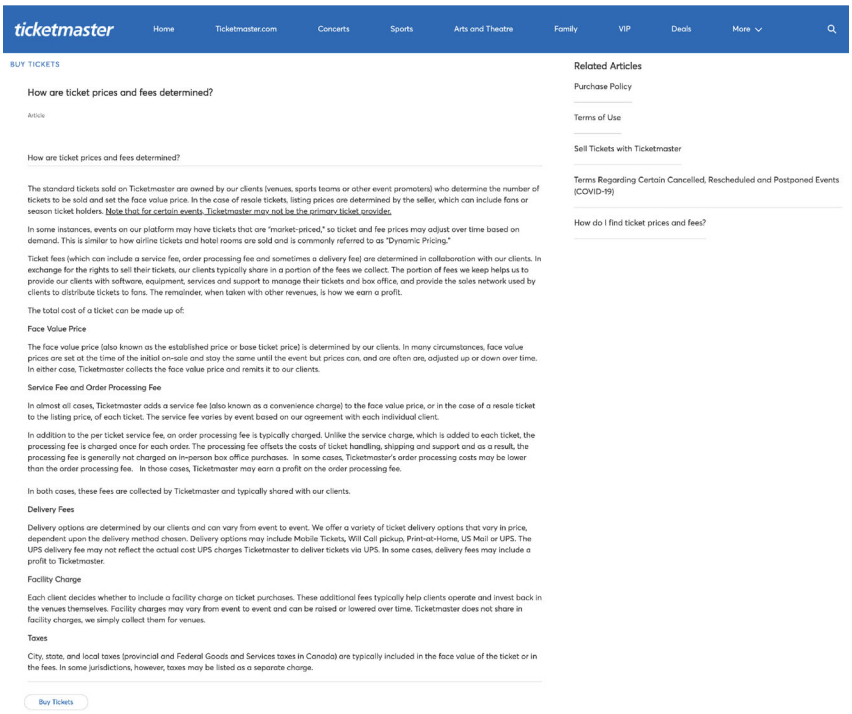
In the vast majority of cases, the number of seats truly "held back" by an artist is extremely small, currently averaging approximately 5% or less of the total seats being made available for sale to consumers. These seats allow the Event Organizer or artist to allocate tickets for marketing and promotion, sponsors, VIPs, and to family, friends, sponsors, and crew and even to address production issues that impact seats.

It is possible that, for any given event, these tickets could be opened for sale to the public and priced dynamically. That decision would be made by the Event Organizer, and would be affected by a number of variables, including the quality of the seats, the demand for the event, the time to the event, and the available supply of similar tickets. Since demand for tickets is typically highest at the on-sale, Event Organizers are not rewarded for holding back tickets that would otherwise sell at market clearing prices during the highest demand sales window. Tickets that are released late in the sales cycle are typically priced at face value to ensure they are sold by show time.

In any and all cases, as a platform, it is our strong belief that pricing and inventory management decisions should be the sole right of the Event Organizer, the rights holder who has developed their intellectual property, paid rent to the facility, and paid for all the staffing and production required to perform. These decisions should not be made by ticketing platforms or anyone else who does not own the IP nor has taken any risk to create the event in the first place.

c. 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?

Yes, we disclose in our "Pricing and Availability FAQs" and our "What ae Official Platinum Seats?" FAQs that prices are subject to change and may be priced dynamically. Screen shots are included below.



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BUY TICKETS

How are ticket prices and fees determined?

Article

How are ticket prices and fees determined?

The standard tickets sold on Ticketmaster are owned by our clients (venues, sports teams or other event promoters) who determine the number of tickets to be sold and set the face value price. In the case of resale tickets, listing prices are determined by the seller, which can include fans or season ticket holders. Note that for certain events, Ticketmaster may not be the primary ticket provider.

In some instances, events on our platform may have tickets that are "market-priced," so ticket and fee prices may adjust over time based on demand. This is similar to how airline tickets and hotel rooms are sold and is commonly referred to as "Dynamic Pricing."

Ticket fees (which can include a service fee, order processing fee and sometimes a delivery fee) are determined in collaboration with our clients. In exchange for the rights to sell their tickets, our clients typically share in a portion of the fees we collect. The portion of fees we keep helps us to provide our clients with software, equipment, services and support to manage their tickets and box office, and provide the sales network used by clients to distribute tickets to fans. The remainder, when taken with other revenues, is how we earn a profit.

The total cost of a ticket can be made up of:

Face Value Price

The face value price (also known as the established price or base ticket price) is determined by our clients. In many circumstances, face value prices are set at the time of the initial on-sale and stay the same until the event but prices can, and are often are, adjusted up or down over time. In either case, Ticketmaster collects the face value price and remits it to our clients.

Service Fee and Order Processing Fee

In almost all cases, Ticketmaster adds a service fee (also known as a convenience charge) to the face value price, or in the case of a resale ticket to the listing price, of each ticket. The service fee varies by event based on our agreement with each individual client.

In addition to the per ticket service fee, an order processing fee is typically charged. Unlike the service charge, which is added to each ticket, the processing fee is charged once for each order. The processing fee offsets the costs of ticket handling, shipping and support and as a result, the processing fee is generally not charged on in-person box office purchases. In some cases, Ticketmaster's order processing costs may be lower than the order processing fee. In those cases, Ticketmaster may earn a profit on the order processing fee.

In both cases, these fees are collected by Ticketmaster and typically shared with our clients.

Delivery Fees

Delivery options are determined by our clients and can vary from event to event. We offer a variety of ticket delivery options that vary in price, dependent upon the delivery method chosen. Delivery options may include Mobile Tickets, Will Call pickup, Print-at-Home, US Mail or UPS. The UPS delivery fee may not reflect the actual cost UPS charges Ticketmaster to deliver tickets via UPS. In some cases, delivery fees may include a profit to Ticketmaster.

Facility Charge

Each client decides whether to include a facility charge on ticket purchases. These additional fees typically help clients operate and invest back in the venues themselves. Facility charges may vary from event to event and can be raised or lowered over time. Ticketmaster does not share in facility charges, we simply collect them for venues.

Taxes

City, state, and local taxes (provincial and Federal Goods and Services taxes in Canada) are typically included in the face value of the ticket or in the fees. In some jurisdictions, however, taxes may be listed as a separate charge.

Buy Tickets

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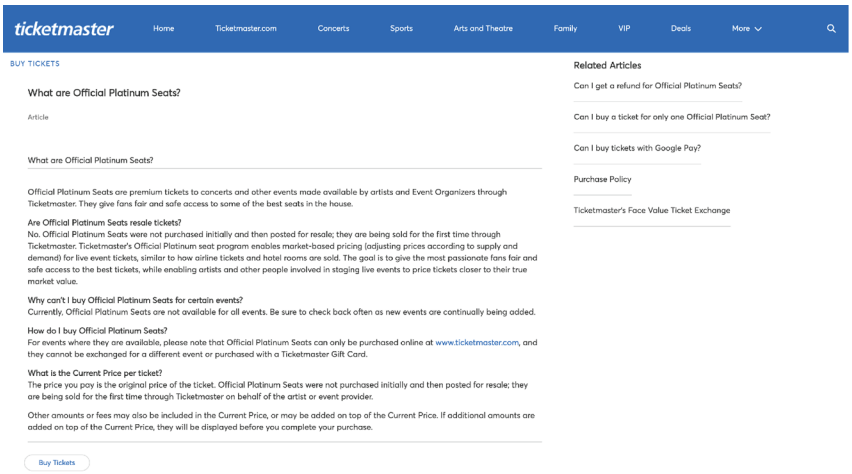
Purchase Policy

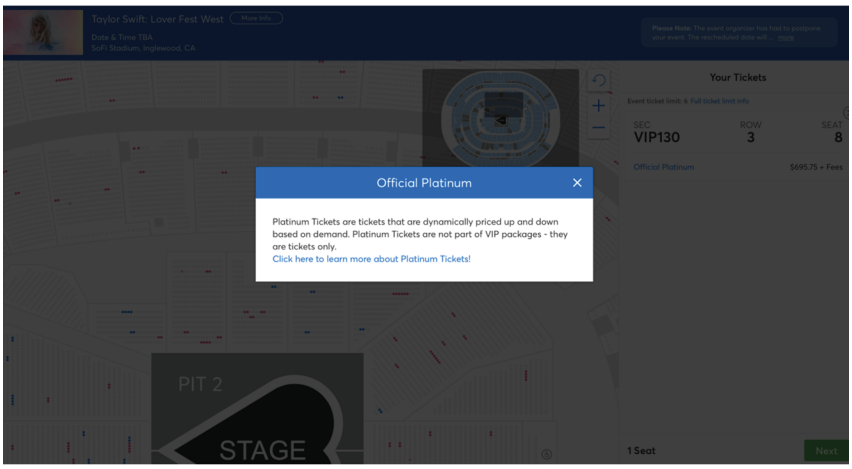
Terms of Use

Sell Tickets with Ticketmaster

Terms Regarding Certain Cancelled, Rescheduled and Postponed Events (COVID-19)

How do I find ticket prices and fees?





5. Your testimony notes that you believe "that not only would mandatory inventory disclosure not help fans get fair access to tickets, but it would likely create more challenges for fans. Why do you believe this type of disclosure would likely create more challenges for fans?

a. What do you believe would be more helpful to fans?

Although some in the industry have attempted to argue that the biggest threat to fair access for consumers is not knowing how many tickets are made available for sale, this argument is non-sensical. As we stated, lack of access to primary tickets is created by high-demand and/or bots, not because tickets are being held back by Event Organizers.

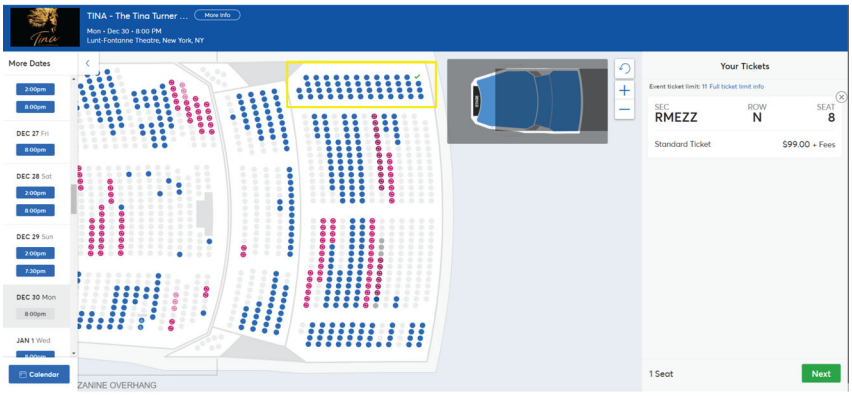
Despite arguments to the contrary, Event Organizers do not have a financial incentive to hold back tickets because Event Organizers generate the most revenue during the primary on-sale. As a result, mandating inventory disclosure would not increase the availability of tickets for real fans. Even the recent GAO Report noted it was "[u]nclear how useful [inventory disclosure] information is for consumers."[3]

Ironically, our standard practice of showing all available inventory has already proven to make it even harder in some cases for consumers to access tickets as it makes it much easier for unethical brokers and bot users to determine the demand profile of an event. In doing so, these entities are able to more effectively target supply and manipulate the market by using Ticketmaster's pricing data to set higher prices on the secondary market.

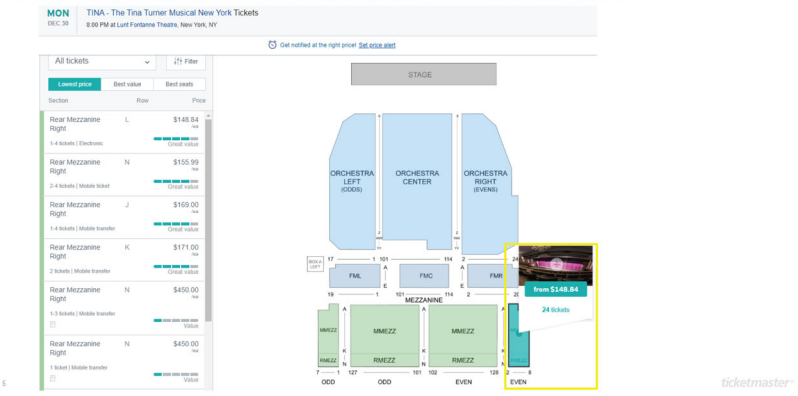
A particularly egregious practice that relies on the misuse of an event's inventory availability is commonly known as "mirroring." In this scheme, brokers search primary marketplaces using computer automation to determine what tickets are available. With this information, these bad actors falsely represent all available primary seats as valid resale listings, but at prices often well above face value. Only after an unwitting consumer purchases one of the speculative ticket listings does a seller buy the tickets in the primary market to fulfill the order.

[3] *Id.* at 36.

STUBHUB MIRRORING PRIMARY INVENTORY
NO TICKETS HAVE BEEN SOLD IN REAR MEZZANINE RIGHT SIDE



STUBHUB MIRRORING PRIMARY INVENTORY
24 SEATS DISPLAYED IN REAR MEZZANINE RIGHT SIDE

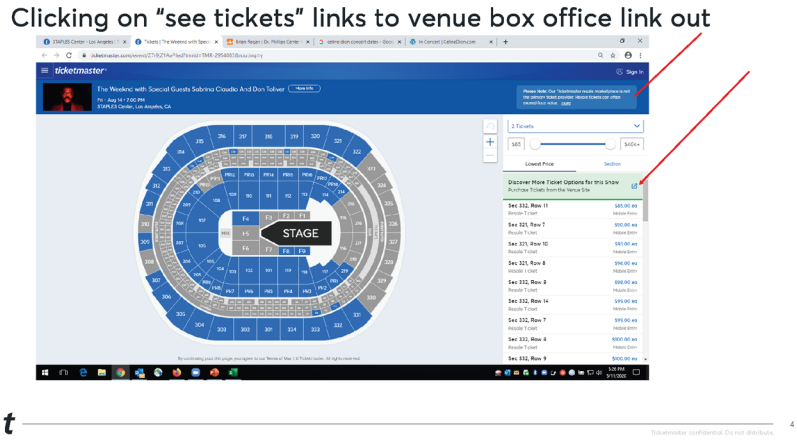


In other cases, certain brokers use products such as TicketFlipping (a subscription-based service for professional resellers available at www.ticketflipping.com) to actively scrape primary and secondary ticketing marketplaces and notify sellers how many tickets are still available for an event, what types of tickets are available, and at what prices. The very fact that professional resellers are willing to pay for this information suggests that this information is extremely valuable, and that it can be used to manipulate ticket prices on the secondary market. Put simply, inventory disclosure does not provide fans with better access to seats; it provides unscrupulous

actors with a roadmap regarding how many seats are available and how they can leverage inventory information to charge higher prices to fans on the secondary market.

6. Your testimony notes that beginning in 2018, Ticketmaster started including links on its site to third party primary ticketing sites for many concerts and theater events where Ticketmaster is not the official ticket marketplace. Why did Ticketmaster start doing this and what percentage of events does this apply to?

As I mentioned in my testimony, these links permit a fan browsing Ticketmaster's concert and theatre ticket inventory to compare prices for secondary tickets listed for sale on Ticketmaster's resale platform with primary tickets listed for sale *even by competitors*. We believe fans should know if they are buying primary or resale tickets and from whom they are buying tickets. It's why we differentiate those tickets on our main pages and why we are clear and link out to third party websites when we are not the primary provider. We are not aware of ANY other marketplace that does either of these things. Ticketmaster encourages other resale ticketing platforms to implement similar procedures to offer fans links to official box offices alongside their resale inventory. The implementation and frequency of this practice has varied over time.



7. Approximately what percentage of events that your company sells tickets for have tickets that are non-transferrable

   a. Your testimony notes that the vast majority of artists have historically chosen not to restrict transfer and you think that trend is likely to continue. Why is that?

For calendar years 2016, 2017 and 2018, the percentage of tickets sold via Ticketmaster with transfer limitations was 1.8%, 0.8% and 0.2%, respectively. In all cases, we believe it is in the Event Organizer's sole discretion to determine how tickets are distributed and the rules by which they can be transferred. As stated above, the Event Organizer owns the IP and has taken all costs and risk for the event as a such, if the tickets are non-transferable, we see no reason they should not be able to do so.

To be clear, however, the primary use case for limiting the transferability of tickets is to ensure tickets will be more affordable for consumers. By making tickets non-transferable, Event Organizers and artists can ensure that the person who purchases the ticket is a true fan who plans on attending the event, not someone who is buying for the sole purpose of reselling that ticket, likely at an inflated price. As reference to this point, the GAO Report noted that restricting Event Organizers from limiting the transferability of tickets reduces the "opportunity for consumers to access tickets at lower-face value price."[4]

As one example, on January 13, 2020, Pearl Jam announced that tickets for its Gigaton tour would be non-transferable. The band made this decision to provide consumers access to their tickets at below-market prices, thereby preventing consumers from paying inflated prices on the resale market. The limitation on transferability of these tickets has been fully disclosed to consumers, with extensive communication to fans throughout the announcement and the sales process on Ticketmaster.

For fans who are ultimately unable to attend the concert, Ticketmaster has developed a first-of-its-kind, Fan-to-Fan Face Value Ticket Exchange ("Exchange"), where fans can sell their tickets for the amount they originally paid (including face value of $98, a $5 charitable amount and service charge), to other fans. To eliminate consumer confusion, Ticketmaster also notified major secondary marketplaces and resellers that tickets for this tour are not available for resale.

This technology has accomplished exactly what Pearl Jam was seeking to do. For the ten Pearl Jam shows in states that permit artists to restrict transfer, approximately 18,000 tickets per show were sold at face value, with fewer than 10 resale tickets per show listed on secondary markets. However, in Colorado and New York, the two states that prohibit any limitations on transferability of a ticket, thousands of tickets are available on secondary marketplaces for prices as high as $7075 per ticket, more than a 7000% increase over intended face value.

We are very proud to have partnered with Pearl Jam on a product that enabled the band to provide fair and easy access to their very best fans, while still giving consumers flexibility in the event they cannot attend. While a decision about transferability is an individual choice that each artist will make, we reiterate that, in our experience, the vast majority of artists have historically chosen not to restrict transfer as any restriction or limitation could impede sales. So to the contrary, the use cases we often see that involve a request for non-transferability are limited to the most highly in demand shows where demand far exceeds supply and where the artist/content owner wants to ensure their true fans get access to tickets at well below market prices.

[4] *Id.*

8. In the event that your company sells tickets that are deemed non-transferable, what efforts are taken to ensure that consumers and secondary marketplaces are aware that the tickets are non-transferrable to avoid confusion and frustration down the road?

    a. If you make attempts to notify the secondary market that an event has non-transferrable tickets, what response do you typically receive? Do you generally still see the secondary marketplaces posting those tickets?

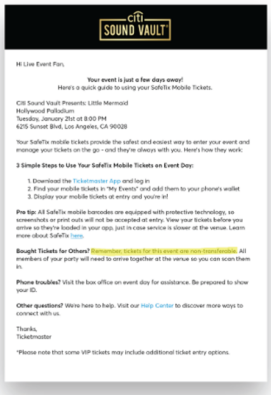
As discussed above, we believe it is in the Event Organizer's sole discretion to determine how tickets are distributed and the rules by which they can be transferred. If an artist wants to make tickets more affordable for his/her fans by designating their tickets non-transferable, we see no reason they should not be able to do so. However, we also believe that any limitations should be clearly disclosed prior to purchase so consumers have the information needed to make an informed purchasing decision.

On the Ticketmaster marketplace, consumers are informed of the non-transferable nature of tickets on the first page of the transaction process, again before checkout, and in confirmation and event-reminder emails. In addition, if an Event Organizer designates an entire event as non-transferable, we notify other marketplaces via email before the event's primary on-sale. We typically receive an acknowledgement of the non-transferability of an event, and such other marketplaces generally do not subsequently post tickets for that event.

Non-Transferable Ticket Notification:

Email Confirmation

Prior to their event, fans are sent an email with explicit mobile entry instructions for their show, again highlighting that tickets are non-transferable.



Citi SOUND VAULT

Hi Live Event Fan,

Your event is just a few days away!
Here's a quick guide to using your SafeTix Mobile Tickets.

Citi Sound Vault Presents: Little Mermaid
Hollywood Palladium
Tuesday, January 21st at 8:00 PM
6215 Sunset Blvd, Los Angeles, CA 90028

Your SafeTix mobile tickets provide the safest and easiest way to enter your event and manage your tickets on the go - and they're always with you. Here's how they work:

3 Simple Steps to Use Your SafeTix Mobile Tickets on Event Day:

1. Download the Ticketmaster App and log in
2. Find your mobile tickets in "My Events" and add them to your phone's wallet
3. Display your mobile tickets at entry and you're in!

Pro tip: All SafeTix mobile barcodes are equipped with protective technology, so screenshots or print outs will not be accepted at entry. View your tickets before you arrive so they're loaded in your app, just in case service is slower at the venue. Learn more about SafeTix here.

Bought Tickets for Others? Remember, tickets for this event are non-transferable. All members of your party will need to arrive together at the venue so you can scan them in.

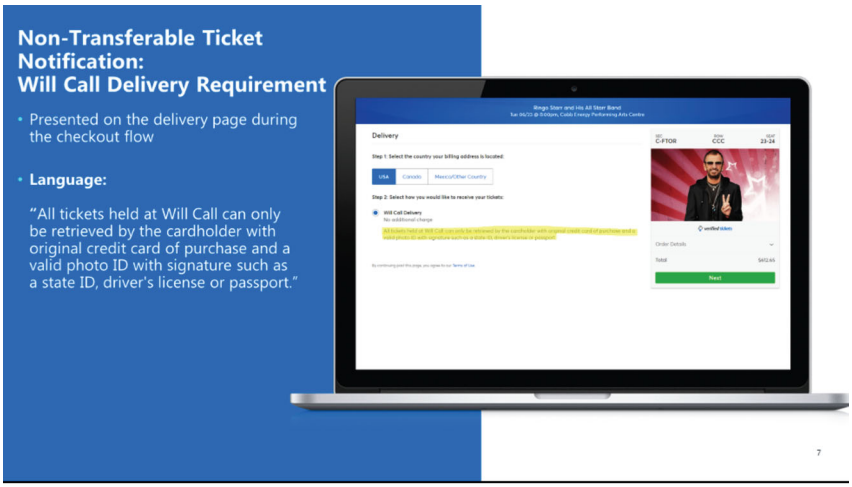
Phone troubles? Visit the box office on event day for assistance. Be prepared to show your ID.

Other questions? We're here to help. Visit our Help Center to discover more ways to connect with us.

Thanks,
Ticketmaster

*Please note that some VIP tickets may include additional ticket entry options.

5



9. Your testimony notes that Ticketmaster "conducts a thorough process to police the site and remove suspect listings. Can you describe this process?

   a. Approximately how many suspect listings does Ticketmaster find on its site annually?

Ticketmaster has a stringent policy against posting tickets the seller does not actually possess and a thorough process by which we police our site and remove suspect listings. In order to enforce Ticketmaster's ban on speculative tickets, we've implemented a multi-phased approach described below, which resulted in Ticketmaster removing approximately 160,000 tickets in 2019:

- The Ticketmaster system precludes sellers from posting tickets for sale that do not have a barcode when Ticketmaster is the primary ticketer. This means that there can be no speculative listings in the Ticketmaster marketplace for events where Ticketmaster is the primary ticketer.

- In addition, we actively monitor for and input into the Ticketmaster system the public on-sale date for all events on our marketplace, including those where we are not the primary ticketing company. If a posting is attempted on an event before it has gone on sale to the general public, the system will deny the posting. In addition, Ticketmaster employs a full-time employee, dedicated solely to monitoring our site for speculative and other suspicious listing

- If a speculative listing is found, the listing is removed. The person who posted the ticket is automatically notified and asked for proof of ownership for the ticket. If the person can provide proof of ownership, the tickets are reinstated.

- All incidents are logged, and an email file is sent to Ticketmaster's Legal department on a weekly basis, specifying the number of speculative tickets removed.

10. Your testimony notes that although you believe a ban on speculative tickets would best protect consumers, if speculative ticketing continues to be permitted, federal legislation should include requirements for clear and conspicuous disclosure at the beginning of the ticket purchase process." In your opinion, what requirements are needed?

We believe that an outright ban on speculative tickets is best for consumers. It is deceptive marketing to list a ticket, or any item, for sale when a seller has no legal right to the ticket and no guarantee they will have the ticket in the future. Fans who buy speculative tickets often do not realize they have only purchased the *right* to buy tickets *if* the seller is able to acquire them and may have their "tickets" canceled if the seller cannot deliver or, they may end up with different seats than those the fans believed they had secured.

If speculative ticketing continues to be allowed, requiring clear and conspicuous disclosures can help protect unwitting consumers. These disclosures should include information that (1) the seller does not yet have the tickets in hand and will attempt to purchase the tickets for the consumer, (2) the seller does not have a contract to obtain the offered ticket at a certain price from the person in possession of the ticket (or the person who has a contractual right to obtain the ticket), and (3) there is a risk the tickets may be replaced with another ticket, or may not be delivered at all.

These disclosures should be coupled with a mandatory refund if tickets are not fulfilled, and an option for the consumer to choose a refund if replacement tickets are not to the consumer's liking.

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. Bryan Perez, Chief Executive Officer, AXS

The Honorable Frank Pallone, Jr. (D-NJ)

1. In a 2018 report, GAO found that [quote] "the technology and other resources of professional brokers give them a competitive advantage over individual consumers in purchasing tickets at their face-value price." And in your written testimony, you explained that some brokers use bots to [quote] "manipulate ticketing platforms so that the brokers can buy a large amount of tickets at once and gain a huge advantage over individual consumers." What types of competitive advantages do brokers have and how do they unfairly disadvantage average consumers?

As noted, brokers have a competitive advantage over average consumers because brokers can employ personnel and software, or "bots," to buy up many tickets in the primary market as soon as they are released. When tickets go on sale, brokers deploy bots to complete multiple simultaneous searches of the primary ticket seller's website and reserve or purchase hundreds of tickets faster than any human can. Other brokers employ numerous personnel who can also conduct multiple searches and purchase tickets on behalf of the broker at the same time and use multiple names, addresses, credit card numbers, or IP addresses to avoid ticket purchase limits.

The practical effect of these techniques is that brokers are often capable of buying up most of the tickets in the primary market, meaning that the only place consumers can obtain tickets is the resale market, where tickets are sold for significantly higher prices. Notably, tickets to popular events are frequently underpriced in the primary market. Brokers make a practice of marking up tickets in the resale market for a substantial profit. Their profits come at the expense of the average consumer, who is unable to compete with brokers for face-value tickets in the primary market.

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.

Yes. Brokers attempting to buy and sell a large number of tickets at inflated prices often use bots to do so. Bots allow brokers to manipulate ticketing platforms so that the brokers can buy a large amount of tickets at once and, in so doing, gain a huge advantage over individual

consumers. Bots are designed to buy up tickets in the primary market, driving consumers to obtain tickets in the resale market, where tickets are often sold for substantially higher prices.

The BOTS Act criminalized the use of bots to circumvent ticket purchasing limits and security measures put in place by ticketing platforms so that as many fans as possible can obtain tickets at reasonable prices. However, to date, AEG is not aware of any successful action brought pursuant to the BOTS Act. In its April 2018 report, the Government Accountability Office ("GAO") acknowledged that brokers continue to use bots to amass a large number of tickets very quickly and create a competitive advantage over average customers.

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?

Yes, there would be a benefit to consumers. BOTS Act enforcement actions would diminish the incentives prevalent in the market to use bots in order to obtain tickets for events at the expense of real fans, driving those fans to the higher-priced resale market. The FTC and state attorneys general should make prosecuting the illegal use of bots an enforcement priority.

Enforcement of the BOTS Act would also be consistent with action other countries are taking to prevent the fraudulent purchase and resale of tickets on a large scale. For example, on February 13, 2020, the Leeds Crown Court in the United Kingdom found two men guilty of fraudulent trading for utilizing different names and IP addresses to bulk purchase tickets from primary sellers and for selling speculative tickets.

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?

AEG's subsidiary ticketing platforms, AXS and Elevate, do not currently utilize all-in pricing (i.e. displaying only a lump sum total price as opposed to displaying a breakdown of the components that comprise the total price) because the nature of the ticketing market is such that ticketing platforms cannot compete on a level playing field if some actors utilize all-in pricing functionality and other actors do not. Done in isolation from the rest of the ticketing market, all-in pricing by AXS and Elevate would create the false appearance that the tickets sold by AXS and Elevate are priced higher than those on other sites. Even a toggle function would significantly undermine AEG's ability to compete in the market unless all other platforms utilized the same functionality.

This is why AEG is supportive of regulations that would require all-in pricing for every actor in the market. All-in pricing benefits consumers because it requires ticketing platforms to disclose the full price of the ticket, including fees and taxes, early in the purchase process. However, any regulatory scheme mandating all-in pricing must apply equally to all actors in the market, including both primary and secondary sellers. If some actors are not required to adopt all-in pricing, those who do adopt it will be placed at a great disadvantage.

3. Your testimony notes that "resellers will mark down the face value of their tickets and charge more for buyers' fees later in the transaction" and that this is a practice already utilized by the major resale sites. How often do you see this occurring?

AEG has observed that this practice is regularly utilized by the major resale sites. Notably, the GAO found in its 2018 report, "Fees charged by secondary ticket exchanges we reviewed were higher than those charged by primary market ticket companies. Secondary ticket exchanges often charge service and delivery fees to ticket buyers on top of the ticket's listed price." For a compilation of illustrative examples of this practice, AEG refers you to Exhibit 1 ("Deceptive Pricing: Markdowns Paired with High Fees") included in Ticketmaster's prepared written testimony in connection with the instant hearing.

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

AXS and Elevate sell dynamically priced tickets when requested to do so by their clients. AXS and Elevate do not own the tickets that they sell; rather, AXS and Elevate act in agent capacities for clients, such as venues or promoters, which sell such live event tickets to their fans. As a result, clients ultimately determine when to sell dynamically priced tickets, enabling the price of the ticket to change based on demand. Dynamic pricing is beneficial because it decreases the incentives for brokers to buy up all the tickets on the primary market and sell them at a substantial markup on the secondary market. In essence, if the primary seller is able to sell tickets at the market rate using dynamic pricing, brokers are less likely to make a profit in the secondary market.

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

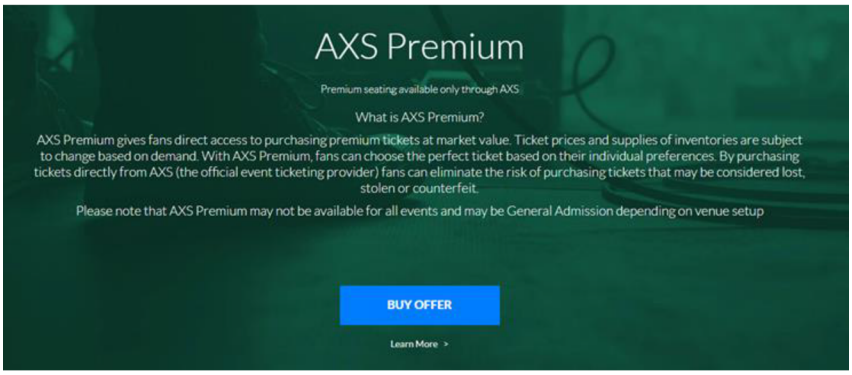
AEG does not have statistics available regarding the percentage of overall sales that dynamically priced tickets represent; it is our estimation that the percentage is small.

b. Are tickets that are held back at the on-sale by the artist, promoter, venue, etc. later posted for sale as dynamically priced tickets rather than face value?

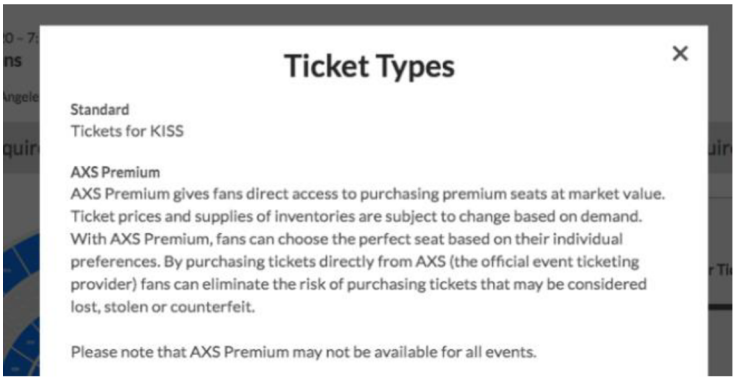
The determination as to whether to hold back some tickets for dynamic pricing is made by the client, not AXS or Elevate. AXS and Elevate do not maintain records regarding when such determinations were made. AEG and its subsidiaries in their capacities as ticketing clients of AXS and Elevate (collectively, "AEG Clients") may hold back some tickets for dynamic pricing in order to adjust prices up or down to reflect market demand. Dynamic pricing, which is also widely utilized in other industries (e.g., airlines, hotels), decreases incentives for brokers to sell tickets at a markup on the secondary market.

c. 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?

Yes, each dynamically priced ticket offered by AEG contains language alerting consumers that the ticket may be priced dynamically (i.e. the price of the ticket may change based on demand). For example, the disclosure language that AXS uses is as follows:



When tickets that are priced dynamically are comingled with other tickets in an interactive seat map, AXS also utilizes the following disclosure:



Finally, language regarding tickets that may have been priced dynamically can be found on the AXS FAQ page:

https://support.axs.com/hc/en-us/articles/200747215-What-is-AXS-Premium.

5. Your testimony notes that sharing inventory levels will not fix [the] problem without addressing the problem of ticket brokers. Please explain what you mean by that statement.

The main problem confronting consumers is that they feel they cannot obtain access to live events they want to attend. This results from brokers utilizing technology, including bots, and personnel to buy up the supply of face-value tickets on the primary market and selling those tickets at substantial markups on the secondary market. This problem cannot be rectified by sharing inventory levels. In fact, according to the 2018 GAO report, disclosure of inventory levels could help brokers by giving them information about how many tickets they should purchase and what prices they should set in the secondary market in order to maximize profits. For example, when ticket availability is low, brokers know that they can raise prices on tickets in the resale market.

Instead, there are more effective and readily-available policy solutions to address the problem created by brokers and bots. For example, the BOTS Act criminalizes the use of bots to circumvent ticket purchasing limits and existing security measures in place on ticketing platforms so that as many fans as possible can buy reasonably-priced tickets. The FTC and state attorneys general should make prosecuting the illegal use of bots an enforcement priority, using the BOTS Act. This would diminish the incentives brokers have to use bots in order to obtain tickets for events at the expense of real fans, driving those fans to the higher-priced resale market.

6. Approximately what percentage of events that your company sells tickets for have tickets that are non-transferrable?

From 2016 to 2018, the number of AXS events for which tickets were non-transferrable was less than 1%. Elevate did not have electronic transfer capabilities until late 2019, so it does not have data responsive to this question.

7. In the event that your company sells tickets that are deemed non-transferable, what efforts are taken to ensure that consumers and secondary marketplaces are aware that the tickets are non-transferrable to avoid confusion and frustration down the road?

When transferability is restricted for a particular event (as requested by the artist), the customer is notified of any such restrictions during the purchase process, either within the purchase flow or in a pop-up message available within the flow. Additionally, AXS and Elevate frequently notify secondary marketplaces that tickets for an event are non-transferable.

   a. If you make attempts to notify the secondary market that an event has non-transferrable tickets, what response do you typically receive? Do you generally still see the secondary marketplaces posting those tickets?

AXS and Elevate seek to ensure that tickets deemed by clients to be non-transferable are not transferred on the secondary market. AXS and Elevate notify the consumer during the purchase process that the ticket is non-transferable. AXS and Elevate are not generally aware of any consumers complaining to us about non-transferability. AXS and Elevate frequently notify secondary marketplaces when tickets for an event are non-transferable. In those instances, the secondary marketplaces often, but not uniformly, will not offer such tickets for sale.

8. Your testimony notes that "without limits on transferability, brokers would buy up most of the tickets in the primary market that are underpriced." However, your testimony goes on to say that you "recognize that for some events, like sports games, it is critical for consumers to have the ability to transfer tickets to games when they cannot go." Can you please explain why there is a distinction between sporting events and concerts with respect to the transferability of tickets?

Fans typically buy tickets to one concert on a date they have determined they will be able to attend. However, the sports universe presents a different dynamic because season ticket holders buy tickets to many different dates at once. For example, National Basketball Association ("NBA") and National Hockey League ("NHL") season ticket holders buy tickets to 41 games as part of their season ticket packages. Most fans cannot attend all 41 games, so they must be able to transfer their tickets to others or sell them on the secondary market. For single-night concerts, transferability restrictions are more practical and may benefit fans by preventing brokers from buying up all the primary market tickets and selling them for substantially higher prices on the resale market.

9. Your testimony states that "speculative ticketing is plain, old-fashioned fraud." Please elaborate.

Speculative tickets are tickets that have been put up for sale by someone who does not yet have the ticket in hand or lacks a contractual right to receive the ticket, and therefore may never be able to provide the fan with the ticket he or she purchased. As a result, fans may be left without a seat at all, despite having paid for a ticket, or be left with a different ticket than the one purchased. That practice is fraudulent because it allows bad actors to take fans' money without, in many cases, providing what was originally offered in return.

   a. Your testimony also notes that while the practice is illegal in some states, it is still widespread. How do you know that it is still widespread?

AEG is aware there are entities that scrape our sites to create listings at inflated prices on their own sites before tickets even go on sale, which is patently deceptive and results in fans paying more for tickets than otherwise necessary. The Company regularly sees such inflated listings on third party sites before tickets go on sale. AEG refers you to Exhibit 5 of Ticketmaster's written testimony ("Speculative Ticketing"), which contains examples of deceptive speculative ticketing in the secondary market. Additionally, the GAO stated in its 2018 report:

> [N]umerous industry representatives told us that [secondary] sites commonly do not enforce [the prohibition on speculative tickets] and listing of speculative tickets was widespread. One common form of speculative ticketing occurs when brokers offer tickets after a popular artist has announced a concert schedule but not yet begun ticket sales, according to industry representatives.

The January 2016 New York State Attorney General's report entitled, *Obstructed View: What's Blocking New Yorkers from Getting Tickets* also reported that brokers continue to sell speculative tickets.

10. Does your company monitor its websites or affiliate websites for speculative tickets?

    a. What actions does your company take if it finds or is made aware of a speculative ticket being listed?

AXS and Elevate do not permit the sale of speculative tickets on their ticketing platforms, whether in the primary or secondary marketplaces, and our sites are designed such that sellers cannot list a speculative ticket at all.

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.

<u>The Honorable Brett Guthrie (R-KY)</u>

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

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[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 Center[2].

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[2] "StubHub's ticket fees," https://stubhub.custhelp.com/app/results/kw/StubHub%26%23039%3Bs%20Ticket%20Fees/okcsNewSearch/true/okcsSearchSession/ZlVwV3q0N3pTQ2RyWThuSENxams0M2lYeFNxRFFCeWx0UFVLQ1VraUFPNG1veGxuMHdtOFJtWm1mZkVzWElXa0NtY010blI1c0wyeX5nSTBSZ21SQkt6dUt5cDBlVklyfkJnN3F3TVZHM

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 2021[3]. Without event sponsors

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H5_an5NdnM3OXZaQW9TcmVnSFVUYWxrdGczQUN0aWF3MUgwIQ!!/page/1/priorTransactionID/1058906268/transactionID/1058906268

[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

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

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; barclays.centerbrooklyn.com; or 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 and barclays.centerbrooklyn.com) are operated by OnlineCityTickets.com, which is a TFS licensee, and that third website you have identified (ticketoffices.com/venues/sap-center-tickets) is operated by 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 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 website prominently discloses the following: "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 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.

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. Donald Vaccaro, Co-Founder & Chief Executive Officer, TicketNetwork

The Honorable Diana DeGette (D-CO)

1. Your written testimony stated that "[i]t is our view that all white label sites that TicketNetwork operates conduct business well within the guidelines set out by the FTC …." Please detail the process by which you monitor your private-label clients' compliance with the 2014 FTC consent decree.

As stated in the initial written testimony, we would like to clarify that in using the term "white label sites" in the above cited quotation, we are using the term "white label site" to apply to a concept that is widely accepted in many industries. That meaning is "a third party owned event ticketing website using TicketNetwork's exchange platform under that third party's own private brand which allows clients who own those websites to market to different segments of consumers, provide additional services and otherwise fairly compete with one another all under their own privately branded website" rather than the meaning the Committee had given the term "white label websites" in its letter of November 21, 2019 which was "any platform and/or website that make any representation of affiliation or endorsement to a venue, team, or artist, when in fact no formal affiliation or representation exists." We make this distinction because we believe we do not do business with "white label websites" based on the definition of "white label website" in the Committee's letter of November 21, 2019 because we have processes to prevent relationships with those kinds of white label websites (which we consider "fake websites").

We perform periodic audits of our clients' private label websites to ensure compliance with the 2014 FTC consent decree. Private label website account managers work regularly with private label website clients, reviewing their websites for compliance with the consent decree disclosure requirements and requiring modifications to any area that does not meet these requirements.

Please also note that contrary to the representations made by AXS' CEO Bryan Perez at the Committee Hearing of February 26, 2020 it is our understanding that AXS offers white label websites (as shown on Attachment 1 taken from a Wikipedia page) including but not limited to toyotacenter.com which sells tickets for events in Houston, Texas.

An important concept of the FTC consent decree was fair advertising. We have maintained compliance with the consent decree and practiced fair advertising even as others in the market have used advertising tactics that have not necessarily been fair. For example, both Ticketmaster and AXS distribute their ticket inventory to websites such as bandsintown.com and eventful.com; for example, the consumer selects tickets on bandsintown and then is redirected from bandsintown to Ticketmaster, so the consumer ultimately purchases from the Ticketmaster website rather than the original website they visited. Please see Attachment 2 included with these responses for materials discussing or displaying these distribution relationships.

It should also be noted that at the FTC workshop "Online Event Tickets Workshop – An FTC Workshop about Online Ticket Sales" on June 12, 2019 Jeff Poirer, who is StubHub's GM of Music and Theatre according to LinkedIn, stated that one of the contributing factors to their high fees is increased marketing costs caused by competition, he stated, "We have spent and seen prices for paid search advertising go up to incredibly high rates over the past few years in large part due to some of the bad actors out there that are pumping up keyword bids to adequately – basically, compete in the marketplace" leading us to believe they do not like fair competition for online advertising because it is costly to them and they would benefit from having fewer ticket selling websites in the market because those websites drive up StubHub's costs of online advertising.

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

It is our view that, as industry insiders, ticket brokers may have information and access to resources not available to average consumers, including details about the myriad of presales available to those on certain venue mailing lists or holding certain credit cards. Some ticket brokers may: (a) know that the primary market ticket sellers regularly hold back tickets to create artificial demand and they know how to monitor the timing of when these tickets are released into the market, allowing the broker to purchase those tickets while the general public believes the event has sold out and before the general public becomes widely aware of the sale of such additional tickets (b) have relationships with venues, teams, or concert promoters and are directly involved in the sale process in an unofficial capacity (c) serve as consignment portals for season ticket holders who prefer to avoid the hassle of understanding the market to sell tickets they cannot use (d) be sophisticated enough to use historical sales data to anticipate price fluctuations and (e) provide resources for ticket holders to sell tickets (that would have otherwise gone unused or sold far below what the consumer paid) for a fair price.

We believe the only potential way this advanced knowledge of the ticketing industry possessed by experienced brokers can unfairly disadvantage consumers is that as a result of ticket brokers' activities fewer tickets are sold to consumers at what is considered "face value". However, this disadvantage is outweighed by the benefits ticket brokers bring to the industry. Without ticket brokers, a single source provider (the primary seller) would be able to control all access to the marketplace, set price floors and could restrict consumers

from transferring a ticket they cannot use thus suffering a financial loss. Additionally, ticket brokers invest in entertainment events in a variety of ways which subsidizes the cost to event producers through corporate sponsorships, investing in Broadway shows and other forms of entertainment, and providing liquidity to promotors through pre-purchasing tickets in blocks to many entertainment events. They also create awareness for those entertainment events through advertising which reduces the risk of loss to event producers. Unfortunately, it seems many venues, teams, promoters and artists do not publicize these ticket broker investments and their relationships with ticket brokers because of fear of repercussions from primary market ticket sellers.

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.

Yes, it is still a challenge. The use of bots to rapidly purchase event tickets is detrimental, allowing users to manipulate demand and drive up prices significantly. However, we do not believe the practice is as rampant as the public perceives it to be. We can say that it is reasonable to assume that we list tickets originally purchased from Ticketmaster and AXS because of their position in the market. As of today, neither Ticketmaster nor AXS has communicated to us that any of the tickets sold on our exchange were obtained using bots.

   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?

We believe enforcement actions under the BOTS Act would benefit consumers. Enforcement actions would show that there are consequences for any person using bots to evade limits on ticket purchasing which would deter the use of bots and help keep prices equitable. Enforcement action might also uncover that even if the use of bots is not rampant in the industry, certain ticket sellers may be using bots and may have taken measures to conceal this. For example, we have been told that Vivid Seats has a confidentiality policy which would likely prohibit disclosure of any business practices that support or encourage the use of bots, yet Vivid Seats lists tickets from an extremely large number of ticket brokers. Additionally, in the past Vivid Seats and StubHub listed tickets bought by ticket brokers who were accused of violating New York law by using bots to purchase large numbers of tickets on websites; the ticket brokers settled with the New York Attorney General regarding the matter in 2016 a press release about the settlement is available here: https://ag.ny.gov/press-release/2017/ag-schneiderman-announces-419-million-settlements-six-companies-illegally.. Enforcement actions would also likely show that despite the public perception, the use of bots is not rampant in the resale ticket market and is not the primary reason for scarcity of tickets; therefore enforcement would help consumers (who may be hesitant to buy tickets on the resale ticket market based on that mistaken belief) become more comfortable buying on the resale market.

2. Your testimony notes that 99 percent of your sites currently offers an 'all-in' pricing option. Do those sites use 'all-in' pricing for every event for which it posts tickets?

   Yes, it is offered for every event, however on some websites all-in pricing is the default with no toggle required; on others, it is available as a toggle in the search filters on an event page.

   a. When did your sites start offering an 'all-in' pricing option?

      We have had various iterations of all-in pricing available on the websites for several years. The current iteration where some websites show all-in pricing as an optional toggle feature and others show all-in pricing is the default display was made available in 2019. We made the decision to implement all-in pricing in part because Commissioner Rebecca Kelly Slaughter from the FTC, in her opening remarks for the FTC workshop "Online Event Tickets Workshop – An FTC Workshop about Online Ticket Sales" on June 12, 2019 issued a call to the ticketing industry to provide all-in pricing and suggested that if we did not provide all-in pricing the government should take action to create a law enforcement or regulatory solution. Unfortunately, we have not seen all ticket sellers implement all-in pricing, most notably Ticketmaster and AXS, yet to our knowledge the FTC has failed to take action to create a law enforcement or regulatory solution.

   b. Your testimony notes that "[c]ustomers can select an option to see ticket listings including the ticket price and an estimate of all fees included at the maps or listing page." When you say that customers can select an option, does that mean on these sites, the 'all-in' pricing feature is the default setting, or is it an optional toggle feature?

      It varies by website. For some websites all-in pricing is the default display on others it is an optional toggle feature. Please see Exhibit 4(1) of TicketNetwork's response to the Committee's letter of November 21, 2019 for a visual example of this feature.

   c. Since the majority of the ticketing industry does not currently use 'all-in' pricing, how, if at all, does the use of 'all-in' pricing affect your sites that use it?

      Showing all-in pricing may discourage consumers who are comparison shopping from purchasing on that website and decrease website sales. This likely happens because websites that do not show all-in pricing appear to have a lower price. For example, if a consumer sees a ticket initially priced at $100 with all-in pricing, but sees the same ticket initially priced at $85 without all-in pricing, the consumer will likely purchase from the website without all-in pricing even if the eventual addition of the service fees mean the final price is more than $100. If all event ticketing websites used the same pricing model, it would be easier for consumers to make a more accurate price comparison and all online ticket marketplaces would be on a level playing field for selling the tickets to the consumer. Additionally, we believe all-in pricing could be beneficial to ticket sellers because the customer satisfaction and

appreciation resulting from this transparency could generate high ratings and positive viral marketing.

3. Your testimony notes that in 2019 you beta tested a website that displayed the face value of tickets to the end consumer and you plan to aggressively test that model in Q2 of 2020. Can you please explain this model, and how it is different than the current model used by your sites?

   The model we tested was based on showing the face value next to the website's price for the ticket so that the consumer would be able to quickly understand the amount of increased or decreased cost from the face value. However, as this information is not shared by the primary ticket marketplace, we cannot reliably provide the consumer with accurate information of the face value. The current model used by websites we own and operate (and used by all other secondary ticket exchanges and secondary ticket selling websites, to the best of our knowledge) does not show the face value. It should also be noted that the term "face value" is vague, it could mean the price printed on the ticket but that does not include additional fees charged even by the primary market seller, meaning the ticket price is not actually the amount paid by the original buyer. In our model we defined "face value" as the original amount paid for the ticket.

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

   We understand "dynamically priced" to mean prices adjusted based on various factors including popularity, purchase patterns, demographic information or other data using supply machine learning and purchase pattern dynamic pricing algorithms. Websites we own or operate do not sell dynamically priced tickets.

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

      None of the websites we own or operate sell dynamically priced tickets.

   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?

      None of the websites we own or operate sell dynamically priced tickets.

5. Your testimony discusses coordinated "floor pricing," artificial limits on ticket availability, and gender discriminatory pricing. Can you explain what you mean by each of those practices and the impact these practices have on consumers?

   In our view, Floor Pricing means setting a minimum price below which a ticket cannot be sold. This is generally at the behest of the original seller (event organizer, venue, etc.) who does not wish to see tickets sold at a true market value if that true market value is below

the price of their remaining unsold inventory. This negatively impacts both parties to the ticket resale transaction: resellers may struggle to sell their tickets because a price floor doesn't allow them to price to where a consumer would buy; and consumers are required to pay artificially higher prices because the price floor does not allow true competition with the original ticket seller.

The negative impact of floor pricing on consumers buying event tickets was demonstrated when, in 2016, the New York State Attorney General started an investigation into whether the National Football League's ticket pricing practices, including putting a price floor on tickets sold on the league websites, violated antitrust laws. Later that year, the NFL agreed not to push its teams to set minimum ticket prices on online ticket exchanges as part of a settlement with attorneys general from Florida, Massachusetts, New York, Ohio, Pennsylvania and the District of Columbia. A copy of the Settlement Agreement is available at https://ag.ny.gov/sites/default/files/11.15.2016_-_nfl_tix_investigation_final.pdf

Our belief is that floor pricing is or should be illegal. While we do not use floor pricing, we noticed that at the FTC workshop "Online Event Tickets Workshop – An FTC Workshop about Online Ticket Sales" on June 12, 2019 an FTC attorney asked representatives of Seat Geek, Ticketmaster and StubHub if they use floor pricing and they acknowledged that they do.

Artificial Limits on Ticket Availability – Event organizers frequently set aside large blocks of tickets that are not made available to the general public at the initial general sale. Many of these are for presale offerings where fan clubs, venue clients, season ticket holders, credit card partners, media partners and others are given special access to large blocks of tickets prior to such tickets being offered for general sale. Even once that process is complete, the sale to the general public often does not include all of the remaining ticket inventory. Entire rows and even sections of a venue may be hidden from the first general sale, only displayed after the row or section in front is sold through, creating an illusion of scarcity. This can extend for weeks, as additional blocks of seats are made available for previously "sold out" shows to consumers who missed their chance on the first day of sale. This process harms consumers by tricking them into believing that there is far lower supply than in reality, causing them to purchase at a higher price than if they were able to see how much of a venue was still available, or that the "sold out" show was actuality far from sold out.

Gender Discriminatory Pricing – In some instances, ticket prices differ based on the gender of the individual purchasing the ticket. For example, a nightclub/dance event might charge male patrons a higher ticket price– sometimes substantially more –than a female patron for a ticket to the same event. Beyond the simple mathematical issue of one gender paying more than another for the same product, there is a universe of gender identity and expression issues involved in such practices which lead to unequal treatment based on gender.

This pricing based on gender is discriminatory and violates certain state laws including California's Gender Tax Repeal Act of 1995 and Vermont's Pubic Accommodations Act.

6. Does your company monitor its websites or affiliate websites for speculative tickets?

We understand the term "speculative ticket" to mean a ticket that is listed for sale where the individual or company listing it does not own it, nor do they have any right to obtain it at the time it is listed.

We do not believe that there is an effective way to monitor for speculative tickets, but any failure by any ticket broker to deliver timely any tickets that have been purchased (whether such failure results from speculative tickets, technical failure, or broker negligence or fraud) on our site will result in financial penalties to the ticket broker through reimbursing the consumer 100% of the purchase price, a potential increase in the fee the broker pays for using TicketNetwork's services, and in some circumstances a refund to the customer for any documented out of pocket costs for travel or accommodations. We may also remove their event tickets from the TicketNetwork exchange in some instances. If an event organizer contacts us indicating that they believe a listing contains speculative tickets, we investigate their claim, and remove the listing if we find the claim to be valid. In general, on our exchange very few consumers do not receive the tickets they ordered.

Notwithstanding the general difficulty involved in monitoring for speculative tickets, we try to be as helpful to the consumer as we can, and we comply with laws. For example, in accordance with New York law, for the few ticket sellers who have established a reputation with us where we permit them to list tickets which they do not have in hand and may not have a written contract to obtain, we disclose the fact that the tickets may be speculative as defined by New York law and require that the consumer acknowledge that they have read that disclosure prior to purchase.

It is worth noting that certain tickets listed for sale by primary sellers and promoters are arguably speculative tickets. For example, tickets to the fraudulent Fyre Festival of 2017, Ultra Music Fest in Miami and the Super Bowl in Dallas, Texas in 2011.

On our exchange, very few consumers do not receive the tickets they ordered; and as a remedy for consumer dissatisfaction for not receiving their tickets, secondary market exchanges were in full agreement at a 2018 closed door meeting at New York Governor Cuomo's office to guarantee a 200% refund on undelivered tickets. Although all the secondary market exchanges would agree to such a policy, none of the primary market companies would agree to this. We believe requiring a 200% refund would address failure to deliver speculative tickets.

a. What actions does your company take if it finds or is made aware of a speculative ticket being listed?

If we are made aware of factors that could indicate that tickets listed are speculative, we investigate and remove the listing if we reasonably believe the tickets are speculative tickets or are likely to be speculative tickets.

7. Your testimony notes that "identifying speculative inventory is very difficult to do, as the definition is inherently vague, and inflated price is the only indicator of a potentially speculative ticket." Why do you believe that the definition of a speculative ticket is vague and how would you define a speculative ticket?

   The term "speculative ticket" could have more than one meaning. The various meanings contemplated by states that have passed legislation or are contemplating proposed legislation exemplifies this. Among the various definitions are the following: a ticket the person listing does not have ready to deliver to the buyer upon listing it, a ticket the person listing does not have ready to deliver to the buyer upon listing and which the seller has no reasonable expectation of obtaining, a ticket the person listing does not have ready to deliver to the buyer upon listing and which the seller has no contract to obtain, a ticket the person listing does not have ready to deliver to the buyer upon listing and which the seller has no contract or other agreement to obtain.

   We define a speculative ticket as a ticket offered for sale though the seller has no reasonable expectation of obtaining the ticket.

8. Your testimony notes that "[o]ne way to identify brokers with intentions of not providing tickets as advertised, the ultimate concern relating to speculative tickets, is to offer consumers a mandatory 200% refund for cancelled ticket orders applicable to both primary and secondary markets." Does your company or its affiliates offer a 200 percent refund for canceled ticket orders?

   We do not, currently, offer a 200% refund, as that is not industry standard.

   Although we do not offer a 200% refund we have found that requiring the 100% refund, penalizing the broker with financial penalties, removing their event tickets from the TicketNetwork exchange and/ or, if applicable, requiring that the broker reimburse the consumer for any documented out of pocket costs incurred for event accommodations and travel serves as a deterrent.

   a. If not, what is your company's refund policy?

      If the tickets originally ordered are not available for any reason, customers are offered comparable or better tickets to the same event at no additional cost. If no such alternative options are available, the customer receives a refund of 100% of their purchase price (or their payment method is not charged, depending on the stage in the transaction the issue arises).

9. How many white-label websites does your company own, operate, or affiliate with?

As described above, we do not own, operate or affiliate with white label sites as that term is defined by the Committee in its letter of November 21, 2019 which was "any platform and/or website that make any representation of affiliation or endorsement to a venue, team, or artist, when in fact no formal affiliation or representation exists."

a. Your testimony notes that in 2014, TicketNetwork entered a consent decree with the Federal Trade Commission (FTC), that among other things, outlines clear and concise rules for conduct of operation of a white label website that is not deceptive and is designed to simply refer to a venue or an artist without becoming a website that is tricking consumers. Your testimony states that "[i]t is our view that all white label sites that TicketNetwork operates conduct business well within the guidelines set out by the FTC and are NOT "fake" label websites." How does TicketNetwork know this?

We know this based on the following:

(1) All websites have the FTC consent decree required disclaimers on each event's ticketing page at the top of the page (this wording is controlled by TicketNetwork so this can not be removed), and on the checkout page prior to the user completing their purchase in each case it is clearly stated that the website is a resale marketplace or that the website is a reseller and that prices may be above face value. The portion of each page containing the required disclosures is controlled in full by TicketNetwork and cannot be altered by white label website owners, save for having the styling match the branding of the website.

(2) All private label website owners must sign a contract. The contract includes a policy which prohibits the private label site owner from doing any of the following: (i) Using the word "official" in search engine advertisements, actual or display URLs, websites, webpages, or any other forms of advertising. (ii) Using the name of any venue, stadium, arena, theater, performing arts center, center, event, tour, performer, or sports team in URLS in search engine advertisements except the name may appear after the top-level domain. If the ad clearly indicates the site is a ticket reseller and not affiliated with the venue or entity, the name may appear anywhere in the URL, including the sub domain and the domain name.(iii) Using the name of any venue, stadium, arena, theater, performing arts center, center, event, tour, performer, or sports team in search engine advertisements, websites, webpages, or any other content which would lead a reasonable consumer to believe that the webpage or website is owned or maintained by a venue, primary seller, or original ticket issuer. (iv) Using photos, images, depictions or illustrations of venues, stadiums, arenas, theaters, performing arts centers, centers, events, tours, performers, or sports teams in a way that makes it seem like the webpage is the event's primary page unless the private label website owner has proper licensing to use such photos,

images, depictions or illustrations. (v) Removing the disclosure on the ticket listing pages and checkout pages which states: "We are a resale marketplace, not the ticket seller. Prices are set by third-party sellers and may be above face value." and (vi) Using search engine advertising for a niche site, unless the website's initial landing page advertisement clearly and conspicuously makes the disclosure that the site is a resale marketplace, not the ticket seller, and prices may be below or above face value. If the private label website owner engages in any of the behaviors listed in this paragraph, we take disciplinary action which may include contract termination.

(3) We perform periodic audits of private label websites to confirm compliance with the 2014 FTC consent decree.

(4) Private label website account managers work regularly with private label website clients, reviewing their websites for compliance with the consent decree disclosure requirements and requiring modifications to any area that does not meet these requirements. In our contract language we encourage private label website owners to inform us if they believe another private label website owner is engaging in any of the prohibited behaviors.

i. Does it audit or review its white-label websites to ensure that they are in compliance with the FTC guidelines?

We do not own or operate white label sites as that term is defined by the Committee. To ensure compliance with the FTC guidelines, private label websites are reviewed periodically by TicketNetwork staff. If we notice that something does not comply with our contract with the private label website owner, or if a customer complaint raises a compliance issue, we contact the private label website owner to make sure the noncompliance is addressed in a timely manner.

b. Your testimony notes that 70 out of 2000 complaints that you reviewed were caused by false and deceptive advertisements; 897 complaints were due to hidden, deceptive and exorbitant fees; and 749 of the complaints were for high or excessive fees. In addition to complying with FTC's guidelines to address false and deceptive advertisements, is TicketNetwork doing anything to address the other areas of complaint on its white label sites?

For clarity those were the first 2,000 complaints lodged by consumers to the FTC for the ticketing industry in general, of those 70 complaints referenced here is the breakdown of which company is the subject of the complaint to the extent we could identify the company: Ticketmaster – 4 and Stub Hub – 1; we were also able to identify event promoters - 50 and venues 1 time.

As previously stated, we do not own or operate white label sites as that term is defined by the Committee. In order to address complaints related to hidden, deceptive and exorbitant fees; and high or excessive fees all of our sites provide a disclosure of fees prior to the consumer entering payment information. Additionally, we constantly seek to improve products and practices. Any complaints received are noted, discussed internally and used to guide best practices that we develop as we and the ticketing industry evolve. Our goal is to alleviate consumer confusion or issues and provide best-in-class service to our private label website owners, ticket brokers, and consumers.

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. Joe Choti, President & Chief Executive Officer, Tickets.com

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.

TDC: Yes. While the adoption of the BOTS Act has been helpful, Tickets.com still sees significant BOTS activity, especially during high demand ticket onsales.

   a. Your testimony notes that Tickets.com "profiles, maintains and blocks purchases from known malicious purchasers and deploys measures to thwart BOT attacks." Can you provide examples of how Tickets.com does this and how successful its efforts are to thwart BOT attacks?

TDC: Tickets.com provides a variety of solutions that client organizations may optionally utilize to address BOTS and other malicious purchaser activity. These solutions are implemented primarily through vigilant monitoring of the online ticket purchase flows for high demand events. For example, Tickets.com maintains lists by IP addresses, email addresses and payment card information of known malicious purchases that are referenced to prevent ticket purchases by listed users. Additionally, Tickets.com utilizes third party software tools to monitor and inspect online purchase flow traffic, utilizing default rules and artificial intelligence, to determine the traffics legitimacy and to prevent and block purchases by automation and scripters (BOTS).

   b. 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?

TDC: Yes. Automated purchases represent perhaps the most significant impediment for consumers to successfully secure desired tickets during onsales. While it is difficult to speculate how significant an impact increased enforcement of the BOTS Act may have, Tickets.com believes that increased enforcement would provide consumers a better opportunity of securing good tickets during high demand onsales.

2. Does your company and/or affiliated websites utilize 'all-in' pricing and/or an 'all-in' pricing toggle feature? Why or why not?

TDC: Tickets.com's ProVenue ticketing platform allows client organizations the option of utilizing "all-in" pricing functionality where patrons purchasing tickets are presented with the total ticket cost, including ancillary fees, if any, throughout the entire purchase process.

a. If so, what percentage of your websites and/or affiliated websites utilize 'all-in' pricing?

TDC: Approximately five percent (5%) of Tickets.com clients are currently utilizing an all-in pricing purchase flow. This includes clients that do not pass any ticketing service charges directly onto their patrons and those that, at the beginning of the purchase flow when selecting tickets, disclose the total price and a detailed breakdown of the ticket price and ticketing fees comprising the total price.

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

TDC: The use of dynamic pricing policies and tools is at the sole discretion of Tickets.com client organizations. The ProVenue ticketing platform provides client organizations a variety of tools that could be utilized to analyze ticket sales and make pricing decisions. Once pricing decisions are made, client organizations can adjust ticket prices manually through the ProVenue user interface or by utilizing the price file import utility. Client organizations may also engage third party integrators to assist in price change recommendations.

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

TDC: Because the decision to sell dynamically priced tickets is made solely by client organizations, Tickets.com does not have insight into what percentage of tickets sold are dynamically priced tickets.

b. Are tickets that are held back at the onsale by the artist, promoter, venue, etc. later posted for sale as dynamically priced tickets rather than face value?

TDC: Because all decisions related to ticket holds and how to price such holds are made at the sole discretion of the applicable client organizations, Tickets.com does not know how such tickets are priced.

c. 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?

TDC: The use and any related disclosure of dynamic pricing policies is at the sole discretion of client organizations. Tickets.com's ProVenue ticketing platform provides a variety of ways for client organizations to disclose the use of dynamic pricing and other terms and conditions to consumers throughout the purchase flow, including customized text information, web links to

client organization specific terms and, optionally, requiring affirmative patron acknowledgement to complete a purchase.

4. Your testimony notes that "[w]hile requiring disclosure of available tickets has been suggested to increase transparency for high demand tickets onsales, such proposals should take into account that advance disclosure requirements may be counter-productive at increasing the availability of high demand tickets." Please explain why this may be counter-productive at increasing the availability of high demand tickets.

TDC: As noted in my testimony, Tickets.com has routinely worked with venues and artists that will open up additional seating during a ticket onsale as a concert nears sell-out or add additional shows once a concert sells out. For example, many venues have flexibility to add additional seats on the floor or to open additional seating sections (e.g. on side, behind main stage, upper levels, etc.) that could be made available for purchase in the midst of a high demand onsale. Additionally, some venues and artists are able to add additional shows upon selling out already scheduled dates. Requiring advance disclosure of available tickets does not necessarily increase consumer availability while adding seats and shows does. Regulations requiring advance disclosures of onsale availability should be crafted to permit opportunities to offer consumers such additional ticket availability.

5. Your testimony notes that "most client organizations do not impose transferability restrictions on their tickets and rather utilize Tickets.com's technology to offer patrons the ability to transfer or resell tickets they can't otherwise utilize to enhance their patrons' live ticketing experience." Please explain why you believe that most of Tickets.com's client organizations offer patrons the ability to transfer or resell tickets?

TDC: While limitation of ticket transferability are determined and controlled solely by client organizations, as noted in my testimony, observationally, most client organizations do not impose transferability restrictions on their tickets. I believe this is because in the competitive live event industry, client organizations, typically venue operators and/or teams, realize that allowing such transferability is valuable in retaining the business of the primary ticket purchaser, but also results in potentially exposing additional consumers to their entertainment product. Additionally, venues prefer to have a ticket utilized because each patron contributes to critical ancillary revenue streams such as concessions and merchandise sales, which would be negatively impacted by limiting transferability.

   a. How does the importance of ticket transferability differ between sporting events and concerts?

TDC: The importance of transferability would increase for any venue that relies on season subscriptions or season ticket sales because of the likelihood that a primary season ticket purchaser will not be able to attend all events over the course of the ticketed season. This is especially relevant for sporting events where season ticket packages can include dozens of individual event tickets.

In contrast, for high demand concerts, which tend to be one-off events, transferability restrictions can further aid in insuring that patrons have access to face-value tickets as noted by the New York Attorney General in its investigation of ticketing industry practices (see http://www.ag.ny.gov/pdfs/Ticket_Sales_Report.pdf) recommending that New York end its ban on non-transferrable paperless tickets to effectively reduce ticket broker activity and by extension increase the availability of face-value tickets for the general public.

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