

**THAT'S THE TICKET: PROMOTING
COMPETITION AND PROTECTING
CONSUMERS IN LIVE ENTERTAINMENT**

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED EIGHTEENTH CONGRESS

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**THAT'S THE TICKET: PROMOTING
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TUESDAY, JANUARY 24, 2023

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in Room 216, Hart Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Whitehouse, Klobuchar, Blumenthal, Hirono, Booker, Ossoff, Graham, Cornyn, Lee, Cruz, Hawley, Cotton, Kennedy, Tillis, and Blackburn.

**OPENING STATEMENT OF HON. RICHARD J. DURBIN,
A U.S. SENATOR FROM THE STATE OF ILLINOIS**

Chair DURBIN. This hearing of the Senate Judiciary Committee will come to order.

I would like to welcome everyone to today's hearing. It is the first Committee hearing of the 118th Congress. Allow me the opportunity to share some good news about the Committee.

Last Congress was productive. We reported nearly 40 bipartisan bills, including bills that were ultimately signed into law to protect survivors of sexual assault and harassment, protect the safety of Federal judges and their families, invest and support law enforcement, and more. We restored the Committee's oversight role over the Justice Department, Department of Homeland Security, and the FBI, and held numerous bipartisan hearings on topics ranging from the fate of the Federal Bureau of Prisons to the FBI's mishandling of the Larry Nassar investigation, to holding war criminals accountable in our country. We worked in a successful fashion to fill vacancies on the Federal court, the Justice Department, the Sentencing Commission, and more.

We did all this despite the challenges of an evenly divided Committee and Senate. Although he is not here at the moment, I want to thank Senator Chuck Grassley of Iowa for his service as Ranking Committee Member in the last Congress. He was a real partner in ensuring the business of this Committee was done.

And I would like to welcome the new Ranking Member, my friend, Senator Lindsey Graham. He and I have worked together on many issues over many years, and I look forward to working with him again and all the Members of the Committee during the next 2 years.

I would now like to turn to the subject of today's hearing, which focuses on competition in the ticketing and live entertainment industry. Live event ticketing garnered a lot of attention toward the end of 2022. Most notably in November, when Ticketmaster's systems failed during the presale for Taylor Swift's new tour, leaving millions of fans stuck in virtual queues for hours waiting to buy tickets.

While Ticketmaster and its parent company, Live Nation Entertainment, have offered explanations for these issues, these issues are symptomatic, I think, of a larger problem. The ticketing and live entertainment markets lack competition, and they are dominated by a single entity, Live Nation.

Live Nation merged with Ticketmaster in 2010 in a deal that joined the country's largest ticketing company with its largest event promoter. The Justice Department and attorneys general from many States, including Illinois, sued to block the merger. The plaintiffs ultimately allowed the merger to go through but put in place a consent decree with a set of conditions and divestitures designed to ensure competition in ticketing and live entertainment markets.

Unfortunately, that consent decree does not appear to have been effective. In the decade plus since the merger, Live Nation has consolidated its dominant position in the ticketing and live entertainment markets, and the result is a competition-killing strategy that has left artists and fans paying the price.

Before turning to Senator Graham, I would like to thank Senator Klobuchar, who has brought competition policy to the forefront of our national conversation as Chair of the Subcommittee on Competition Policy, Antitrust, and Consumer Rights. And also thank her Ranking Member, Senator Mike Lee of Utah.

Senator Klobuchar and Senator Lee asked for this hearing and have led the effort in putting it together. They have assembled an expert panel of witnesses who will discuss how ticketing and live entertainment markets became so concentrated to the detriment of consumers, the impacts of that concentration, and the steps we need to take to bring competition back.

I am going to turn to Senator Graham for opening remarks. Then Senators Klobuchar and Lee will speak. Then I will welcome and swear in the six witnesses and at that point hand the gavel to Senator Klobuchar to continue.

Senator Graham.

**OPENING STATEMENT OF HON. LINDSEY O. GRAHAM,
A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA**

Senator GRAHAM. Thank you, Mr. Chairman. We are in a new Congress, a chance to start over and move forward hopefully in a productive fashion.

I think this hearing today represents the best of the Committee. I want to thank Senator Lee and Senator Klobuchar for coming together, bringing us together over a matter that matters to a lot of Americans. I think sort of the big theme here today is consolidation of power in the hands of few can create problems for the many.

Competition is a good thing, and we will determine today what happened. How did the system fail so spectacularly? What can we

do in the future? But I think this hearing, and maybe the fruits of this hearing, represents sort of the better nature of the Judiciary Committee. We have a reputation of fighting among ourselves, which is okay because we have differences of what should happen in the country. But we also have a reputation of being able to solve problems for the Nation, and I intend to do both.

Senator Grassley was a great Ranking Member. I know our Chairman well. I admire Senator Durbin. He is a man can fight, but he can also find consensus.

And social media seems to be one of the areas that the Congress and the public is desirous of us doing something. These companies are the most powerful on the planet. They have almost unlimited money. They cannot be sued, and there is no real regulatory environment. So, Mr. Chairman, if you are looking for something to do together, I think dealing with the problem of social media would be something the Committee should focus on.

I look forward to working with you in this hearing today as a sign that the Judiciary Committee is in business early on in the new Congress. And out of this hearing, I hope we can make a better experience for the consumer being able to buy tickets to things that you want to see without such a debacle.

So thank you very much.

Chair DURBIN. Thanks, Senator Graham.
Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,
A U.S. SENATOR FROM THE STATE OF MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Chair Durbin, Ranking Member Graham, for holding this hearing and working with Senator Lee and myself.

This is clearly a bipartisan endeavor. We have interest from both sides of the aisle. And I think you all know, as Senator Durbin mentioned, that competition policy is very important to me. I believe in capitalism, and to have a strong capitalist system, you have to have competition. You cannot have too much consolidation, something that, unfortunately for this country—as an ode to Taylor Swift—I will say we know “all too well.”

In over 75 percent of our industries ranging from agriculture to pharmaceuticals, to tech, to live events, a smaller number of large companies now control more of the business than they did 20 years ago. At the end of last year, I worked with Members of this Committee and our bipartisan partners—particularly, I want to mention Senator Grassley, and over in the House—Neguse, Cicilline, and Buck—to finally update our merger fee statute that had not been updated for decades. That is going to bring in \$100 million a year for our enforcement agencies from the Justice Department to the FTC. It is really important.

We also passed a key bill that Senator Lee has been advocating for on venue with the tech companies and allowing the State AGs to keep the cases in the States where they bring them. I think you are going to see more cases and more investigations coming out of the Justice Department. Watch for it. And I think that is going to be very important.

But why am I here today and have taken this on? I love music. So I grew up in the suburbs. In high school, I remember loading into Johnny Royer's van with my friends and going off to see Led Zeppelin and the Cars and Aerosmith. And now I do not think it is very easy for high school kids to make their money at Baker Square Pie Shop on the weekend and buy tickets to these major concerts.

My State also has made more than its share of contributions to music, from Prince to Bob Dylan to Lizzo. And in fact, First Avenue, the iconic event space where Prince got his start and was made famous in the movie "Purple Rain," is a point of pride for the people in our State, and it is one of the reasons Senator Cornyn and I worked so hard to pass the Save Our Stages bill, which was the biggest investment in the arts in the history of America.

So whether it is for fans, performers, promoters, or venue operators, we need to make sure we have competition to bring prices down and bring innovation in and stop the fiascos. Today, Live Nation does not just dominate the ticketing—it is about 70 percent of the big concert market—but also they own many of the major venues. And for the venues that they do not own, they tend to lock in on 3-, 5-, 7-year agreements, which means that the competitors that are out there are not able to even compete when it comes to the ticketing. Finally, they dominate the promoting.

So we have talked to many venues—some of which are not willing to come forward, unlike one of them that is here today—but that say even if they are not out there threatening them, they are afraid to go to someone else because then they are not going to get the acts that they want. This is all a definition of monopoly. Because Live Nation is so powerful that it does not even need to exert pressure, it does not need to threaten, because people just fall in line.

They continue to expand. Ticketmaster has gotten into the ticket resale game so they can charge fees when the ticket is first sold and then additional fees on the resale of the same ticket.

The live event experience has become increasingly out of reach for so many fans. One GAO study found that 27 percent of the ticket price was the fees. A recent study found that for some tickets, it is as high as 75 percent of face value.

And we also know it affects service. As millions of Taylor Swift fans found out last fall, there are few consequences for failing to deliver the service. But Taylor Swift—I think it is important for our colleagues and all to note—is just one example. Whether it is Bruce Springsteen or BTS or Bad Bunny or, in the past, Pearl Jam or the Pixies, fans, artists, and venues are facing real issues with Live Nation.

I am hopeful this can be a constructive hearing. The purposes of the hearing, one, so the public can find out what is happening. Sometimes that on its own gets change. Second, investigations are reportedly going on—we have not had that confirmed—out of the Justice Department. This is helpful for them. And the third reason is that our colleagues on a bipartisan basis can work together on legislation.

Senator Blumenthal has been involved in this issue for many years, and we can do something not just to strengthen our anti-

trust laws, which we must do generally, but also specifically in the ticketing industry when it comes to transparency and resale and the like.

Restoring competition to our markets is about making sure that fans get fair prices and better service. Concert-goers today should be able to have the same experiences I had when I was in high school, when it did not cost very much to just be able to go see a band and remember it forever.

Thank you.

Chair DURBIN. Thank you, Senator Klobuchar.
Senator Lee of Utah.

**OPENING STATEMENT OF HON. MICHAEL S. LEE,
A U.S. SENATOR FROM THE STATE OF UTAH**

Senator LEE. Thank you, Mr. Chairman, and thank you, Chairwoman Klobuchar.

I am really looking forward to my ongoing service on the Antitrust Subcommittee, along with Senator Klobuchar as Chair. To be honest, I had hoped, as of a few months ago, to get the gavel back. But once again, “She’s cheer captain, and I’m on the bleachers.” So it was nice of—

Senator KLOBUCHAR. You are a little more than that.

Senator LEE. Nice of Taylor Swift to have written a song about this very situation.

But all joking aside, this hearing for me is not only about the latest ticketing disaster that has made headlines. My daughter Eliza might disagree, but there are much bigger issues involved than this one event, although that one event is not to be discounted and is itself significant.

The ticketing market in the United States is a complex industry involving artists, agents, promoters, venues, primary and secondary ticketing companies, and of course, fans, many of whom we see outside of our buildings today. As I was driving up this morning, I could not help but notice I had never seen more smiling and happy demonstrators than I saw today. I think Swifties have figured something out. They are very good at getting their message across.

Their messages have come across in many forms over the last couple of months, including a letter I received from a young woman named Erin Harding in Utah, a young woman who is only 16 years old. She sent me a letter and an accompanying PowerPoint presentation. I think Erin Harding has a bright future ahead of her, perhaps as an antitrust lawyer or perhaps in a number of other fields as well, but it has been an impressive response.

We have got to remember that for those who follow antitrust policy, the ticketing space in the last few years has also offered a natural experiment for evaluating both the efficiency claims of merging parties and the Federal Government’s efforts to protect competition using antitrust laws. Back in 2010, the Obama Justice Department Antitrust Division concluded an investigation into the then-proposed merger of Ticketmaster, the Nation’s largest and dominant ticketing provider, and Live Nation, the country’s largest concert promoter. In a complaint alleging that the merger violated the Clayton Act, the Department argued that it would eliminate re-

cent, but quickly growing head-to-head competition in the marketplace for ticketing services.

However, instead of just stopping the merger, the Obama Justice Department in 2010 said that the Department would approve it if, and only if, the parties agreed to a proposed consent decree. The consent decree that was entered into by Ticketmaster and Live Nation addressed two additional concerns.

First, that the combination of the two companies would allow the merged firm to tie the provision of ticketing services and concert promotion. In other words, that Live Nation could force venues to use Ticketmaster in order to get concerts and vice versa. And second, that it might retaliate against venues that did not comply with this arrangement.

Now Ticketmaster will tell you that the settlement agreement was something that they were willing readily to enter into. They were not bothered by the consent decree at all because this would, according to them, essentially be the functional equivalent of their offering the sleeves off of their vest, and Ticketmaster and Live Nation readily agreed not to engage in behavior that the merged firm had no incentive and no intention of undertaking. And yet here we are almost 13 years later faced with a flotilla of allegations and complaints that the merged entity has done exactly what it said would never happen.

There are news reports that the Justice Department has opened a new investigation into Ticketmaster's conduct, but Congress has an important role to play here as well. While DOJ undoubtedly wants to know whether Ticketmaster is violating the consent decree, Congress should be asking whether the consent decree was the right decision in the first place.

Was the divestiture sufficient to ensure competitive pressure on the combined entity of Ticketmaster and Live Nation? Were the behavioral remedies capable of preventing that very kind of abuse? If the allegations that we are likely to hear today are true, if they can be proven, they raise very serious doubts about the sufficiency of the DOJ's efforts and arguably counsel in favor of a new approach going forward.

With all that in mind, today is the perfect opportunity to do what this Committee is supposed to do—exercise oversight over the executive branch's law enforcement efforts and consider whether, to what extent, in what ways new legislation or perhaps just better enforcement of existing laws might be needed to protect the American people.

I am glad that we are here today, and I look forward to hearing from each of our witnesses.

Thank you.

Chair DURBIN. Thanks, Senator Lee.

Let me welcome the six witnesses whom I will introduce. Joe Berchtold serves as Live Nation Entertainment's president and CFO. In this role, Mr. Berchtold oversees finances of the world's largest live entertainment and ticketing company. Prior to joining Live Nation, Mr. Berchtold was president of Technicolor Creative Services at Technicolor and a partner with McKinsey and Company, leading their West Coast media practice.

Jack Groetzinger, co-founder and CEO of SeatGeek, a mobile-focused ticketing platform. The company originally launched as an aggregator of resale ticket listings but now operates as both a primary ticket outlet and secondary marketplace for sports teams and live event venues. Prior to co-founding SeatGeek, Mr. Groetzinger was an associate counsel with Bain & Company.

Jerry Mickelson is the co-founder of Jam Productions of Chicago, a Chicago-based concert promotion agency and one of the largest independent producers of live concert entertainment in the country. This is a return trip for Mr. Mickelson. He testified before the Antitrust Subcommittee in February 2009 at a hearing on the then-pending merger of Ticketmaster and Live Nation. At the time, he warned us of anticompetitive effects the merger could have, stating, quote, "It is my belief this merger is vertical integration on steroids," end quote. I look forward to hearing an update on his views.

Sal Nuzzo, senior vice president of the James Madison Institute, or JMI, a Tallahassee-based think tank focusing on free market economics in Florida. In that role, Mr. Nuzzo oversees JMI's policy operation, coalition building, and strategy development. His writings have been published in the Wall Street Journal, National Review, the Hill, and Newsweek.

Kathleen Bradish serves as the American Antitrust Institute's vice president for legal advocacy. Ms. Bradish, prior to joining AAI, worked as counsel for Cleary Gottlieb and was an attorney in the Department of Justice's Antitrust Division. While at the Department of Justice, she represented the Antitrust Division in trade issues, including leading the negotiations of competition chapters in the U.S.-Mexico-Canada Agreement and in the Transatlantic Trade and Investment Partnership.

Clyde Lawrence is a leader of the band Lawrence and a musician, composer, and producer. In December, Mr. Lawrence wrote an op-ed in The New York Times titled, "Taylor Swift's Live Nation Debacle Is Just the Beginning." In it, Mr. Lawrence explained how Live Nation's market dominance negatively impacted artists like himself. I look forward to hearing his perspective today.

After I swear in the witnesses, each will have 5 minutes to make an opening statement and then turn to Senators' questions. As I mentioned, after I have administered the oath, I will pass the gavel to Senator Klobuchar to preside over the remainder of the hearing.

First, could all of the witnesses please stand to be sworn in?

Do you affirm the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

[Witnesses are sworn in.]

Chair DURBIN. Let the record reflect that all of the witnesses have answered in the affirmative.

And before I ask Mr. Berchtold to give his opening statement, the ceremonial handing of the gavel.

Senator KLOBUCHAR. Thank you, sir.

Chair DURBIN. Mr. Berchtold?

STATEMENT OF JOE BERCHTOLD, PRESIDENT AND CHIEF FINANCIAL OFFICER, LIVE NATION ENTERTAINMENT, BEVERLY HILLS, CALIFORNIA

Mr. BERCHTOLD. Chair Durbin, Ranking Member Graham, Senators Klobuchar and Lee, and other Members of the Committee, I am Joe Berchtold, president and chief financial officer of Live Nation Entertainment. I thank you for the invitation to appear today to address these important issues in the live entertainment industry so we can together work to make things better.

For almost 20 years, Live Nation has operated in the United States and around the world with an “artist first” business model that is focused on helping put artists on stage and connecting them with their fans. We believe that the artist-fan connection is the foundation of the live entertainment industry, the source of nearly all commercial value, and the number one thing that public policy should protect.

Over this period, we have helped the industry grow rapidly. In 2022, live music was a \$12 billion industry in the United States, 4 times what it was in 2005. To fuel this growth, Live Nation has invested billions of dollars funding artists globally, \$9 billion in 2022 alone.

Given our level of investment in artists, it is also critical for Live Nation to have the most effective platform possible for selling tickets. Since our 2010 merger with Ticketmaster, we have invested over \$1 billion in capital to improve the Ticketmaster system. Much of this was on technologies to eliminate fraud and to get tickets to fans instead of ticket scalpers using bots, a prime example of which is our Verified Fan service.

Today’s Ticketmaster is best in class in conducting large on-sales, marketing concerts, preventing frauds, and getting tickets into the hands of real fans.

I do want to take a moment to address some confusion about what Ticketmaster and other primary ticketing platforms do and do not do. Primary ticketing companies, including Ticketmaster, do not set ticket prices. We do not decide how many tickets go on sale and when, and we do not set service fees. Pricing and distribution strategies are determined by the artists and their teams.

Service fees, even if they are called ticketing fees, are retained mainly by the venues. And their portion of the service fee that Ticketmaster retains has been falling steadily over time. This leads to the topic of today’s hearing, competition in ticketing markets.

We hear people say that ticketing markets are less competitive today than they were at the time of the Live Nation-Ticketmaster merger. That is simply not true. In 2009, the Department of Justice alleged that Ticketmaster’s market share was over 80 percent. It is a different story today. The most obvious change is the emergence of the enormous secondary ticketing market in which Ticketmaster has a modest market share and many strong competitors.

But also in primary ticketing, the Ticketmaster of 2010 did not face the level of competition that we face today with new competitors highly capitalized, including SeatGeek, AEG’s AXS, and Eventbrite, along with established competitors, including Tickets.com and Paciolan. Ticketmaster has lost, not gained, market

share since the merger. And as I mentioned, today's competitive bidding process with numerous credible alternative ticketing companies results in getting less of the economic value in a ticketing contract every year.

There are problems in the ticketing industry, problems we believe can and should be addressed through legislation. Many are the direct result of industrial-scale ticket scalping that goes on today, a \$5 billion industry in concerts alone in the United States fueled by practices that run counter to the interests of artists and their fans.

The recent on-sale experience with Taylor Swift, one of the world's most popular artists, has highlighted the need to address these issues urgently. We knew bots would attack that on-sale and planned accordingly. We were then hit with three times the amount of bot traffic that we had ever experienced, and for the first time in 400 Verified Fan on-sales, they came after our Verified Fan password servers as well.

While the bots failed to penetrate our systems or acquire any tickets, the attack required us to slow down and even pause our sales. This is what led to a terrible consumer experience, which we deeply regret. We apologize to the fans. We apologize to Ms. Swift. We need to do better, and we will do better.

Ticketmaster learned valuable lessons from this on-sale. In hindsight, there are several things we could have done better, and let me be clear that Ticketmaster accepts its responsibility as being the first line of defense against bots in our industry. It is an ever-escalating arms race. But in this forum, where we are here to discuss public policy, we also need to recognize how industrial scalpers using bots and cyber attacks to unfairly gain tickets has contributed to this awful experience.

There are many things we can and should accomplish together. We should enlarge the scope of the BOTS Act and increase enforcement. We should enact categorical prohibitions on fraudulent ticket practices, including deceptive URLs and offering for-sale tickets before they are on sale on the primary. We should mandate all-in pricing so that fans see the full cost of their tickets from the start.

We share your goal of making the live entertainment industry better for artists, teams, and fans alike, and it is in that spirit that I sit before you today to work with you to make the fan experience better.

I look forward to answering your questions.

[The prepared statement of Mr. Berchtold appears as a submission for the record.]

Chair DURBIN. Mr. Groetzinger?

**STATEMENT OF JACK GROETZINGER, CHIEF EXECUTIVE
OFFICER, SEATGEEK, NEW YORK, NEW YORK**

Mr. GROETZINGER. Good morning, Chairman Durbin, Ranking Member Graham, Senators Klobuchar and Lee, and Members of the Committee.

My name is Jack Groetzinger. I am the co-founder and CEO of SeatGeek. And like so many millions, I am a fan. I grew up in Cleveland, Ohio, and my happiest childhood memories are going to

see Cleveland Crunch games with my dad. That is an indoor soccer team. Seeing Cavs games with friends.

My co-founders and I started SeatGeek because we believe profoundly in the power of live events as these magical things that create incredible moments and yet believe that the experience of actually buying tickets is very much the opposite—antiquated, ripe for innovation. I have spent the last 13-plus years working in this industry, and there are 3 things that are clear to me and are clear to many others who work in live entertainment.

Number one, a lack of robust competition in our industry meaningfully stunts innovation, and consumers are who suffer. Number two, venues fear losing Live Nation concerts if they do not use Ticketmaster. And number three, the only way to restore competition in this industry is to break up Ticketmaster and Live Nation.

Some quick background on SeatGeek. We started the company in 2009, and initially, as was mentioned, we were a search engine that allowed users to search across a lot of sites. The company evolved. It grew over time, and importantly to this discussion, in 2016, we entered the primary ticketing market.

Throughout our evolution, we have maintained intense focus on consumers. We have launched many industry-first features that make it easier and more affordable for fans to go to events. I am super proud of all of the work that we have done at SeatGeek, but I also recognize the ongoing challenges that face our industry, some of which have recently been front page news.

The best way to address those challenges is to ensure there is robust competition where businesses and consumers can select the best products and services based on their merits. That does not happen today. It does not happen because Live Nation controls the most popular entertainers in the world, routes most of the large tours, operates the ticketing systems, and even owns many of the venues.

This power over the entire live entertainment industry allows Live Nation to maintain its monopolistic influence over the primary ticketing market. As long as Live Nation remains both the dominant concert promoter and ticketer of major venues in the U.S., the industry will continue to lack competition and struggle.

As discussed, Live Nation Entertainment is the product of the 2010 merger of Ticketmaster and Live Nation, and as also mentioned, they entered into a consent decree, which banned Ticketmaster from threatening or retaliating against venues by withholding Live Nation concerts. That did not work. It has not worked at all.

The DOJ's 2009 investigation confirmed that Live Nation had violated the consent decree repeatedly almost since its inception. The DOJ identified numerous examples of Live Nation threatening and retaliating against venues that did not contract with Ticketmaster.

Today, Ticketmaster's estimated market share is over 70 percent of the U.S. primary ticketing market. Ticketmaster is the primary ticketing provider for more than 80 percent of the NBA, NHL, and NFL teams. Live Nation is also the largest promoter of major concerts in the world, promoting more than 73 percent of the top 25 tours in the U.S. in 2021.

It is no mystery why no other company has significantly penetrated the primary ticketing market. Major venues in the U.S. know that if they move their primary ticketing business from Ticketmaster, they risk losing revenue they earn from Live Nation concerts. They know this because Live Nation has told them so, directly and indirectly, through its public pronouncements, private communications, and subsequent retaliation against venues that have signed deals with a competitor.

The DOJ found that as a consequence of Live Nation's conduct, quote, "Venues throughout the United States have come to expect that refusing to contract with Ticketmaster will result in the venue receiving fewer Live Nation concerts or none at all," unquote.

Our industry provides a cautionary tale about how behavioral remedies cannot solve the problems inherent in an anticompetitive merger. The only effective remedy now is a structural one, the dissolution of the common ownership of Ticketmaster and Live Nation. To improve our industry, we must restore competition. At SeatGeek, we deeply care about the live event industry and believe it is time to give fans, teams, artists, and venues alike the choices they deserve.

It is a privilege to be included in this discussion. Thank you so much for your time and attention.

[The prepared statement of Mr. Groetzinger appears as a submission for the record.]

Senator KLOBUCHAR [presiding]. Thank you very much, Mr. Groetzinger.

And next up, we have with us Mr. Mickelson. Thank you, and thank you for your work you do with the Palace in St. Paul, Minnesota.

STATEMENT OF JERRY MICKELSON, CHIEF EXECUTIVE OFFICER AND PRESIDENT, JAM PRODUCTIONS, LLC, CHICAGO, ILLINOIS

Mr. MICKELSON. Thank you, Senator. Thank you, Chairman Durbin, Ranking Member Graham, Senator Klobuchar, and Senator Lee, along with all the other Members of the Senate Judiciary Committee, for allowing me to appear before you today.

I am here to speak on behalf of my colleagues, fellow promoters, and most importantly, the concert fans. My appearance before you is based on my 50 years of experience in the live entertainment industry. For the record, my name is Jerry Mickelson, CEO and president of Jam Productions, a company that has produced and promoted events since 1972.

As a primer for those who may not know, let me briefly talk about the job of promoters. We work with agents and managers to route tours into markets across the country. We make guaranteed payment to artists, contract with the venue to hold the event, market the show, put tickets on sale, and produce the show. We pay all the costs and assume all the risks.

When Live Nation loses money on a concert, they can make up for that with operating income from ticketing and sponsorships. We cannot do that. We do not have those. Pepsi does not earn money from Coke, but our competitor Live Nation earns money from selling tickets to our concerts.

In 2009, I appeared in front of the Committee to testify about the proposed merger of Live Nation and Ticketmaster. At that hearing, I stated the unification of these two goliaths would create a business with extraordinary market power and clout unlike any that I have ever seen in my lifetime.

I testified that if this merger was allowed to produce—proceed, the combined entity would have the ability to suppress or eliminate competition in many segments of the industry. Today, we know with certainty that this merger is vertical integration on steroids, using dominance in one market to expand its power and dominance in another, cutting out the competition and harming the consumers.

From my vantage point, the arena-level concerts used to be Jam’s most profitable segment of the business because that is where we earn our money. In 1996, Jam produced 100 concerts in arenas, but in 2011, 1 year after the merger, that decreased to 46 concerts. And in 2022, we only produced 14 arena concerts. Live Nation went after the arena business, and they succeeded in driving us and other independent promoters out of that sector.

Live Nation effectively eliminated competition for indoor arena shows by utilizing the following methods: purchasing national indoor tours in arenas and for their outdoor amphitheaters; threatening financial penalties on a tour deal if the artist wanted to work for Jam; paying a band 100 percent or more of the gross ticket sales; and Live Nation-managed artists typically only perform for Live Nation-promoted shows at the arena level.

Now Live Nation is going after music theaters and clubs of all sizes in an effort to control the entire live music industry from the top to the bottom. From 2010 to 2021, Live Nation added 61 theaters and 41 clubs to their already large arsenal of venues. The near complete domination of arenas because of the merger could soon happen in theaters and clubs in every community in the country.

On a 2016 Live Nation earnings call, Michael Rapino, their president and CEO, said one of the company’s biggest goals was to convince artists to agree to integrate the primary and secondary ticket markets to grow Live Nation’s share. Rapino stated, and I quote, “Artists, the more they get comfortable with seeing primary and secondary together, our market share grows.” With that statement, Rapino acknowledged that they are not serving artists. They are serving themselves.

There are two antitrust decisions I would like to bring to your attention where vertical integration played a prominent role in restricting competition. The 1948 Supreme Court decision in the *U.S. v. Paramount* led to the abolishment of block booking and forced the movie studios to sell off their theater chains. An excerpt from the *Eastman Kodak* case states, “the Court has held many times that power gained through some advantage can give rise to liability if a seller exploits his dominant position in the market to expand his empire into the next.”

Every time that Live Nation or Ticketmaster blames anybody else for the significant issues and increasingly high fees, remember that many times they are the venue, the promoter, and the manager of that artist. By controlling ticketing and promotion, the artist’s management company, they are choking off competition that

would offer an alternative to the broken system we see today. This was most acutely seen in Taylor Swift, and it is playing out across the live music industry every day and generating fan outrage and despair.

Thank you for your time, and I look forward to answering your questions.

[The prepared statement of Mr. Mickelson appears as a submission for the record.]

Senator KLOBUCHAR. Thank you very much, Mr. Mickelson.

Next up, Mr. Nuzzo.

**STATEMENT OF SAL NUZZO, SENIOR VICE PRESIDENT, THE
JAMES MADISON INSTITUTE, TALLAHASSEE, FLORIDA**

Mr. NUZZO. Madam Chairwoman, Members of the Committee, I would like to thank you for the honor and the opportunity to appear before you this morning.

My name is Sal Nuzzo, and I serve on the policy team at the James Madison Institute in Tallahassee, Florida. We are a non-profit economic policy think tank that focuses on the policy issues impacting Florida's 22 million residents.

Fresh out of college and starting a career in policy, I dreamt of one day testifying before the United States Senate on an issue of profound importance, maybe international monetary policy or perhaps a Supreme Court nomination. But as my 14- and 13-year-old daughters informed me last night, "Dad, nothing you speak on in your career will be as important as what you say today. Don't mess this up."

So here we go. Florida is home to 13 major sports teams, 15 Major League Baseball spring training facilities, NASCAR, F1, the PGA, LPGA, college, and numerous other sports venues. I say that because most of those venues serve as concert sites when they are not in use during their respective seasons. In Florida, sports and live entertainment is a \$6.5 billion market, a sizable share of the Nation's \$133 billion economic impact in this area.

So this issue is important to Floridians not just with respect to primary ticketing, but also the secondary ticket market, which I would like to open with. I would like to offer our perspective by way of a brief analogy.

Because I am an employee of a nonprofit organization, I drive a 15-year-old Volvo with 200,000 miles on it. God bless the Swedes. I purchased it from a private seller in 2015, and much to my kids' dismay, it is still going strong.

Volvo did not place a single restriction on the automobile when I purchased it, and with and when I decide to sell it, they will likely have no role in the transaction. In fact, I do not think they have a clue what has happened to the car since it left their dealership. This is true for just about every auto manufacturer. Consequently, our auto market is a robust, thriving, and diverse industry largely adhering to the forces of supply and demand.

The same could be the case for the market governing the selling, marketing, and resale of tickets to sports competitions and concerts. It could be, but it has not occurred. There is, as we have spoken about, one dominant market player approaching 80 percent of the primary market. This does allow them the ability to leverage

that dominance through service fees, exclusivity requirements, and other practices that are ultimately borne by consumers.

At its core, a debate is occurring over what a person actually obtains when they purchase a ticket. Some would argue that the purchaser is simply leasing or renting a space in a venue and that the lease is subject to terms and conditions. In our opinion, that logic rests on a misguided assumption that the commodity is the venue.

Ask anyone attending a Jaguars game, or a Harry Styles concert for that matter, where they are going, and they will reply, "I am going to the Jags game," or "I am going to take my daughters to see Harry Styles." They would not reply with, "Oh, I am going to TIAA Bank Field this afternoon," or "Just taking my kids to Amway Arena tonight."

The stadium may have a life span of 50 years, but an individual purchases a commodity with a much more limited life span, a couple of hours. This distinction, in our opinion, is vital to the debate over the issues within the event ticketing space.

Over the last several years, we have heard the term "consumer welfare standard" uttered much more frequently. Questions over whether the standard is still applicable in today's innovation economy, whether it should be replaced with some other form of subjective measure, and in the age of tech platforms what consumer welfare even means. I would ask you all today as we conduct this hearing to set that principle aside. In this area, we would contend that consumer welfare is very clearly defined and reflective of the issues and challenges within this industry.

Those representing the dominant player in the market would contend that their growth has allowed them to innovate and make advances that greatly benefit consumers. A few million Taylor Swift fans would respond, "This is why we can't have nice things."

To be clear, from our perspective the issue is not the Taylor Swift crash, per se. That merely revealed how a lack of competition over time has corroded innovation and distorted the market. I would ask, suppose a robust, vibrant, and competitive market for ticketing had been allowed to evolve and innovate over the last 20 years, would the Taylor Swift crash have occurred? It is a hypothetical, of course, but absolutely one worth considering.

I will conclude my remarks with a call to you as policymakers. On this topic, in this arena, consumer welfare is very clear to define, and there are actual harms to consumers from anticompetitive practices.

Thank you to all, and I appreciate the opportunity to be before you today.

[The prepared statement of Mr. Nuzzo appears as a submission for the record.]

Senator KLOBUCHAR. Thank you very much, Mr. Nuzzo.

And next up, Ms. Bradish.

**STATEMENT OF KATHLEEN BRADISH, VICE PRESIDENT FOR
LEGAL ADVOCACY, AMERICAN ANTITRUST INSTITUTE,
WASHINGTON, DC**

Ms. BRADISH. Thank you, Chairman Durbin, Ranking Member Graham, Senators Klobuchar and Lee, and Members of the Committee.

It is an honor to be here today to lend the American Antitrust Institute's perspective to the issue of competition in live entertainment. AAI applauds Senate lawmakers for turning their attention to a serious competition issue that hurts concert-goers, artists, and smaller competitors across the live entertainment industry. There are a few major points and policy recommendations that I would like to highlight today.

First, Live Nation-Ticketmaster is an example of, on one hand, a very traditional monopoly in the mode of Standard Oil and, on the other, a 21st century digital player like other online platforms dominating an ever-widening swath of its industry. Its dominance in markets up and down the live entertainment supply chain creates the incentive and the ability to limit competition to protect its market position.

On the concert side, this includes excluding smaller or independent concert promoters and venues. In digital ticketing, this includes excluding ticket resellers and brokers who provide important competition via the secondary ticketing market.

Customers pay the price for these monopolistic acts with higher ticket prices and fees, lower quality, less choice, and less innovation. Artists who lack the blockbuster power of a Swift or a Springsteen lose out. Smaller rivals in the supply chain also lose out.

Second, we should learn from the failure of the conduct remedies that were a condition of the DOJ's clearance of the 2010 merger of Live Nation and Ticketmaster. A lengthy DOJ investigation concluded in 2020 that Live Nation-Ticketmaster repeatedly violated the requirements of the consent decree. Unfortunately, rather than seeking an effective structural remedy, DOJ simply amended some of the language in the consent decree and extended the decree for another 5½ years. The amended decree did nothing to change Live Nation-Ticketmaster's anticompetitive incentives.

This current DOJ has recognized the ineffectiveness of behavioral remedies that run counter to a company's incentives. DOJ should pursue new enforcement action to obtain effective structural relief. This could be through a consummated merger challenge under Section 7 of the Clayton Act or a monopolization case under Section 2 of the Sherman Act. Separating ticketing from promotion and venues would eliminate the incentives to stifle competition, and reducing the market share of Ticketmaster through spinoffs would address Ticketmaster's incentives to limit competition in secondary ticketing.

Protecting consumers, artists, and smaller rivals from Live Nation-Ticketmaster's harmful conduct will require multiple policy tools, including strong antitrust enforcement against Live Nation-Ticketmaster and legislative action. AAI urges enforcers and lawmakers to consider three major features of a multipronged approach to the Live Nation-Ticketmaster monopoly problem.

First, consider standards that enable the agencies to challenge vertical mergers as effectively as horizontal mergers. The incipency standard in Section 7 of the Clayton Act is designed to prevent all mergers that may enhance market power and lead to anti-competitive effects.

We currently have a structural presumption for horizontal mergers. We badly need a presumption for vertical mergers either through legislative action or new antitrust guidelines that get adopted by the courts.

Second, support more vigorous antitrust enforcement with legislation designed to strengthen and clarify the U.S. antitrust laws. Senator Klobuchar's proposed Competition and Antitrust Law Enforcement Reform Act is a leading example. The bill would, among other things, update legal standards for mergers and strengthen the standard for prohibiting exclusionary conduct by dominant firms. Such reforms would reduce the formidable burdens on the Government for bringing monopolization and merger cases.

Finally, consider the merits of an oversight regime to facilitate access to and transparency in ticketing. Dominant digital platforms can engage in practices designed to sell preference, such as steering music fans to Ticketmaster's proprietary ticketing services. Solutions to these problems may well require establishing rules of the road or codes of conduct for digital ticketing platforms. Such legislation has been proposed at both the State and Federal level.

Thank you for the opportunity to testify today, and I look forward to your questions.

[The prepared statement of Ms. Bradish appears as a submission for the record.]

Senator KLOBUCHAR. Thank you very much.

And last, but not least, is Clyde Lawrence of the band Lawrence. And I will say looking at your testimony ahead of time, Mr. Lawrence, I particularly enjoyed the line that perhaps you will repeat that while you are so proud of your band, "We are not artists yet on the level of acts like Taylor Swift or Bruce Springsteen, though we do hope one day to be big enough to crash a ticketing website."

With that, I turn it over to you, Mr. Lawrence.

**STATEMENT OF CLYDE LAWRENCE, SINGER-SONGWRITER,
LAWRENCE, NEW YORK, NEW YORK**

Mr. LAWRENCE. Thank you. I hope it will get as big a laugh when I say it as when you just did.

Good morning, Senators, and thank you for inviting us today to the most unique gig we have had in years.

My name is Clyde Lawrence, and this is Jordan Cohen. We are two of the eight members of Lawrence, a soul-pop band from New York City.

Before telling you more about who we are, it is important to clarify who we are not. We are not lawyers or economists with expertise in antitrust policy. And as Senator Klobuchar said, we are also not artists on the level of acts like Taylor Swift or Bruce Springsteen, though we do hope to one day be big enough to crash a ticketing website.

What we are, however, are seasoned artists who have toured extensively over the last 7 years, starting with empty bars, then working our way up to headlining sold-out shows for thousands of people, and seeing our music chart on Top 40 radio. While we became musicians because of our passion for making music, we realized early on that we needed to embrace the entrepreneurial aspects of pursuing careers as artists.

Ever since we started touring, we have tried to be vocal about the lopsided deal mechanics we were facing, even including the lyric “Live Nation is a monopoly” in our latest album. Whether or not it meets the legal definition of a monopoly is someone else’s call to make. We are here just to tell you what we have observed.

While Jordan and I discuss those dynamics in depth in our written testimony, most of the issues we face stem from the fact that Live Nation-Ticketmaster often acts as three things at the same time—the promoter, the venue, and the ticketing company. Let us imagine we just played a sold-out show at a venue Live Nation owns and operates. When an artist plays these venues, they are required to use Live Nation as the promoter.

Far from simply advertising, the promoter coordinates and pays the upfront cost to put together a concert, such as renting and staffing a venue and striking a deal with the performer. Since both our pay and theirs is a share of the show’s profits, we should be true partners aligned in our incentives: Keep costs low while ensuring the best fan experience. But with Live Nation not only acting as the promoter, but also as the owner and/or operator of the venue, it seriously complicates these incentives.

At the end of the show, costs will have eaten into most of the money made that evening, and due to Live Nation’s control across the industry, we have practically no leverage in negotiating them. If they want to take 10 percent of the revenues and call it a facility fee, they can and have. If they want to charge \$30,000 for the house nut, they can and have. And if they want to charge us \$250 for a stack of 10 clean towels, they can and have.

Once these costs, some of which went to Live Nation subsidiaries, are taken into account, the remainder is split between Live Nation and the band. In a world where the promoter and the venue are not affiliated with each other, we can trust that the promoter will look to get the best deal from the venue. However, in this case, the promoter and the venue are part of the same corporate entity, so these line-items are essentially Live Nation negotiating to pay itself. Does that seem fair?

The tickets were listed at \$30, and our pay ended up shaking out to about \$12 of each ticket. But in this hypothetical show, the fan did not pay \$30 for that ticket. The fan paid \$42 because Ticketmaster tacked on a 40 percent fee. And for the record, we have had them go as high as 82 percent.

As with promotion, if an artist plays at a Live Nation venue, the artist has no choice but to have the show ticketed by Ticketmaster. And to be clear, we have absolutely zero say or visibility in how much these fees will be. We find out the same way as everyone else, by logging on to Ticketmaster once the show already goes on sale. And in case you are wondering, no, we the artists do not get a cent of that fee.

So of the \$42 a fan spent on a ticket, we receive \$12. But whereas Live Nation’s costs were already covered at this point in the calculation, we still need to pay for our touring costs. In our case, roughly 50 percent of our earnings is used to cover expenses. So that leaves us with \$6 for an 8-piece band pretax, and we also have to pay our own health insurance.

To be fair, many of the issues we have addressed here are not exclusive to Live Nation-Ticketmaster, and we have had a number of positive experiences with parts of Live Nation. Their venues are often filled with hard-working and passionate people, and most importantly, we love that all of their venues have one consistent Wi-Fi network and password. That one is a real game-changer.

Jokes aside, we truly do not see Live Nation as the enemy. They are just the largest player in a game that feels stacked against us as artists and often our fans as well.

Ultimately, when looking at the current state of the industry, we are left with lots of questions. Why is it that all of Live Nation's costs get recouped before the show hits its profit point, yet ours, the artists', don't? Why is there so little transparency as to what line-items, such as facility fees, actually go towards?

Why is it standard for Live Nation to take a 20 percent commission on our merchandise sales while we never receive a cent of their ancillary revenues like concessions, alcohol, and parking? Finally, why is Live Nation allowed to freely set exorbitantly high ticket fees without any transparency or input while in other industries the Government has mandated caps on various types of junk fees?

We look forward to seeing these questions get some answers. Thank you for your time, and we hope to see some of you at one of our band's concerts. If you would like to come, let me know, and I will throw you on the guest list to help you avoid the ticket fees.

[The prepared statement of Mr. Lawrence appears as a submission for the record.]

Senator KLOBUCHAR. Thank you very much, Mr. Lawrence. I think we are willing to pay, but we really appreciate your testimony.

[Laughter.]

Mr. LAWRENCE. It is on us.

Senator KLOBUCHAR. Okay. With that, I am going to turn it over for the first round of questioning to our Chair, Senator Durbin.

Chair DURBIN. Thanks, Senator Klobuchar.

Mr. Lawrence, I am going to stick with you for a minute because you made it clear that you do not set the ticket price, and Mr. Berchtold said he does not have anything to do with the ticket price. Who does set the ticket price?

Mr. LAWRENCE. That is an excellent question. That was actually the thing I was most surprised to hear in Mr. Berchtold's speech because we definitely have absolutely no say. And if we actually ask the venues in advance, which we often do, they say that is a Ticketmaster thing. So the fees, I mean.

We actually do set, sorry, the ticket prices. The base price the artist does have a say in setting for sure. But those added Ticketmaster service fees we have absolutely no say, and the venues claim that it is a Ticketmaster thing.

Chair DURBIN. Mr. Berchtold, do you want to add anything to that?

Mr. BERCHTOLD. Thank you. Yes.

As Mr. Lawrence said, the band sets the ticket price. The service fee level is set by the venue. I—

Chair DURBIN. You control the venue.

Mr. BERCHTOLD. In——

Chair DURBIN. Do you not?

Mr. BERCHTOLD. Of approximately——

Chair DURBIN. Live Nation?

Mr. BERCHTOLD. Of approximately 4,000 venues in the United States, per Pollstar, Live Nation operates approximately 200. So roughly 5 percent of the venues in the country.

Chair DURBIN. Are they the biggest?

Mr. BERCHTOLD. No, sir. They are generally not, not the biggest. The biggest tend to be the sports venues, the arenas, the stadiums controlled by the sports teams or the owners of the sports teams.

Chair DURBIN. Mr. Groetzinger, you had an experience at Barclays, did you not, in terms of an opportunity for your company to take over a venue that had been controlled by Ticketmaster. How did that work?

Mr. GROETZINGER. The New York Times reported a few weeks ago how once we took over ticketing for the Barclays Center in Brooklyn, the Barclays Center saw a marked decrease in the number of concerts from Live Nation that were sent to that venue versus historical averages. So earlier, last year, the Barclays Center management came to us and said we would like to keep using you for ticketing our basketball, but we want to be able to use Ticketmaster to ticket concerts. And we looked into it and could not get the economics to work. So we said to them, listen, let us just part ways amicably, and we did.

Chair DURBIN. So they used their power of the marketplace to diminish the number of acts at that venue, and the venue decided they had to go back to Ticketmaster?

Mr. GROETZINGER. There was certainly, as Pollstar public data shows, a marked increase in the number of shows Live Nation played at that venue after the venue decided to move away from Ticketmaster.

Chair DURBIN. Mr. Berchtold, is that true?

Mr. BERCHTOLD. I believe, Senator, that what The New York Times indicated was that another venue opened in the marketplace. So you now had two venues vying for the shows that were not going to Madison Square Garden and that the number of shows going to Barclays from all the major promoters went down as a result of that increased competition. I have not heard of any allegations that we changed in any way our booking of concerts for that venue.

It is a matter that I watch very closely, given the profile of the New York market. I understand every decision about every show, where it was placed and why. We have records determining that in no cases was there any retaliation against Barclays in the placement of shows.

Chair DURBIN. Mr. Groetzinger, last word on Barclays?

Mr. GROETZINGER. I do not have more to add specifically on retaliation there. I would note that the DOJ report in 2019 found numerous instances of Live Nation threatening and retaliating against venues once they had moved away from Ticketmaster. In one case, the Live Nation president told the venue that they would, quote, unquote, “go nuclear” if they left.

So the threat is real. It has been documented. It happens across many venues.

Chair DURBIN. Mr. Mickelson, Mr. Berchtold defended his market position in one element, saying it was the battle of the bots. Have you run into that phenomena?

Mr. MICKELSON. A ticketing company's—one of the things they are supposed to do is have solutions to bots. And for the leading ticket company not to be able to handle bots is, for me, pretty—an unbelievable statement. But you cannot blame bots for what happened to Taylor Swift. There is more to that story that you are not hearing.

Chair DURBIN. Ms. Bradish, you probably heard Mr. Berchtold's suggestions and read in his testimony three things he thinks need to be done, which included all-in pricing on the tickets, fighting deceptive URLs as an example, and creating a civil action under the BOTS Act. Any reaction from you to those suggestions?

Ms. BRADISH. Well, none of those suggestions goes to the core of what we have been talking about today, which is the antitrust problem, the fact that Live Nation-Ticketmaster, because of its market power, has the incentive to do things to exclude competition in all of its markets up and down the supply chain for live entertainment.

So I appreciate those suggestions. Many of them may be good ideas, but it does not change the fact that Live Nation-Ticketmaster is a monopoly and will act because that is its incentive to exclude competition.

Chair DURBIN. Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you very much, Senator Durbin.

Next up, Senator Lee.

Senator LEE. Thank you, Madam Chairman.

Ms. Bradish, I would like to start with you. Back in 2010, the antitrust complaint filed by the Department of Justice against the proposed merger between Ticketmaster and Live Nation alleged, among other things, that Ticketmaster had at the time an 83 percent market share with no competitor, no single competitor having more than 4 percent of the market. It also alleged that Live Nation, for its part, was Ticketmaster's biggest customer and was the leading concert promoter at the time, of course.

It also alleged that Live Nation had begun competing directly with Ticketmaster for ticketing services, rising over a very short period of time to 16 percent of the market share, in just 2 months, a kind of a meteoric rise. So with that in mind, why, in your view, did the Department of Justice settle what seems to be a strong case that appears to involve the elimination of head-to-head competition with a monopolist? And would you agree that what we have here is not a shortcoming necessarily of our antitrust laws, but error, perhaps gross negligence in enforcing them?

Ms. BRADISH. Well, I think that there are two elements to why the DOJ would take a consent decree rather than pursue a case in court. Obviously, a case in court involves risk, and the fact is that to pursue a vertical merger in court—and recent experience backs that up—is difficult. It is very difficult for DOJ to win a vertical merger case.

Senator LEE. You mean post-*Dr. Miles*?

Ms. BRADISH. Mm-hmm.

Senator LEE. Yes.

Ms. BRADISH. Yes, so that it is hard, given the current state of the law, for DOJ to pursue a vertical merger case. So that will make them in many cases hesitant to do that.

Senator LEE. Right.

Ms. BRADISH. The second issue I think that comes up here is the need for witnesses in a court case. And in a situation where there is a pervasive fear of the dominant firm, where venues and promoters and other independent rivals have—will potentially suffer consequences—and history since then suggests that that is the case—they would have to testify in court. And to get someone to take that risk is not an easy ask.

Senator LEE. The point about *Dr. Miles* and *Leegin* is interesting, although if I am not mistaken, they pitched this as a horizontal merger, did they not? Did not the complaint identify it as a horizontal, not a vertical?

Ms. BRADISH. Well, there is a horizontal component as well as a vertical component. The remedy—the conduct remedy part of it clearly goes to the vertical part of the issue.

Senator LEE. Now the consent decree includes a divestiture and also prohibitions on tying—on tying the ticketing services and the concert promotion. You want to say anything about how those have worked in practice and why?

Ms. BRADISH. Well, obviously, the investigation that culminated in the 2020 modification to the consent decree showed that, in fact, this was repeatedly violated. The DOJ described six instances but also pointed to a pervasive environment of fear of retaliation. And as a result, it shows that when a company has incentives to act in a particular way, a consent decree is not necessarily going to stop them from doing that.

Senator LEE. Right. Mr. Berchtold, do you want to respond?

Mr. BERCHTOLD. Yes. I absolutely acknowledge, Senator, that the Department of Justice alleged six issues in 2019, which led to our decision with them to extend the consent decree. We did not feel it made sense to be seen as defending the theories of retaliation or threats. It is not our business practice. It goes against our fundamental focus on alignment with the artist, the idea that we would ever put our interests ahead of theirs. So we were comfortable extending the consent decree.

As she mentioned, there were several things that changed because we had different interpretations, and one of the things that we have done is, in instances where venues are seeking to tying a ticketing and a content—and a concert agreement into an overall deal, we have eliminated those so that there cannot be any instance where there is the perception of threats or retaliation associated with that bundling done at the venue's request. So we have simply eliminated that from our service set, along with the establishment of monitors to make sure that any venue employee or others could confidentially report any issues.

Senator LEE. Is it accurate to say that at a minimum, that Live Nation at a minimum was a motivated and capable potentially, if not likely, competitor?

Mr. BERCHTOLD. I am sorry? I—

Senator LEE. At the time of the merger.

Mr. BERCHTOLD. Oh, oh.

Senator LEE. Is it accurate to say that at the time of the merger, Live Nation was an emerging nascent competitor and likely a very capable potential competitor?

Mr. BERCHTOLD. I would say, Senator, that Live Nation at the time was finding that it was very difficult to build its own ticketing system, that one of the driving motivations to the Ticketmaster merger was the feeling that it was not going to successfully build its own system, and it sought to find one that could more effectively serve its needs of selling tickets for fans.

Senator LEE. Yes. I am out of time, but you know, they had sold 6 million tickets, and they did rise to a pretty prominent position in the marketplace in 2 months. So that is not nothing. We will get to that later.

Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you very much.

I will start with you, Ms. Bradish. As a former antitrust attorney who studied these markets, do you agree that the ticketing market was more competitive when Ticketmaster was competing with Live Nation as separate companies?

Ms. BRADISH. Certainly. And especially where you have a potential—a new entrant that is showing the ability to increase its market share rapidly and with great success, that is precisely the kind of pressure that you would want to have on a dominant player to make sure that they act in a competitive fashion. The loss of that is the loss of competition.

Senator KLOBUCHAR. Exactly. Mr. Berchtold, we have heard serious concerns from artists, promoters, venues that Live Nation's dominance in the concert tour promotion can pressure venues to use Ticketmaster's primary ticketing service exclusively. How else would you explain the fact that Ticketmaster has 80 percent of major venues contracts in the U.S.?

Mr. BERCHTOLD. It is absolutely our policy to not pressure, threaten, or retaliate against venues by using content as part of the ticketing discussion.

Senator KLOBUCHAR. Mr. Mickelson, have you seen Live Nation leveraging its power as the leading concert promoter to pressure venues to use Ticketmaster for primary ticketing? How are they able to do that?

Mr. MICKELSON. When speaking with people that either own or manage venues, their biggest fear is if they leave Ticketmaster, they will lose content. So whether it is said or not, it is implied that if I do not use Ticketmaster, I am not going to get all the shows that I would like to have.

Senator KLOBUCHAR. I get it.

Mr. MICKELSON. And by the way, if you look at the difference between the Target Center in Minneapolis and the Xcel Energy Center in St. Paul, the Target Center is ticketed by AXS. The Xcel Energy Center is ticketed by Ticketmaster. Look at the number of shows that play Xcel, and you will see they far exceed the number of shows that play Target. And when you look at and break it down a little farther, you will see that most of the shows that play Xcel

are Live Nation shows, and they bring very few to the AXS-controlled venue, the Target Center.

Senator KLOBUCHAR. Okay. Thanks for that local reference.

Mr. BERCHTOLD, one way that Live Nation eliminates competitive pressure is by locking venues into multiyear contracts, whether they are 3 years, 5 years, 7 years. If you have tied up 80 percent of major concert venues with multiyear contracts, where is there room for one of your competitors to get in the door?

Mr. BERCHTOLD. Yes, Senator. First, I would note that the 80 percent reference, I believe, is from a 2008 Department of Justice study, and we believe that our market share is substantially lower than that. I will—

Senator KLOBUCHAR. How much lower?

Mr. BERCHTOLD. We would—a variety of ways of estimating the market share in the industry. Depending on what you include, we believe our market share would be somewhere between the 50 and 60 percent range.

Senator KLOBUCHAR. Keep going.

Mr. BERCHTOLD. Yes, I will absolutely acknowledge that it is the standard practice of venues in the United States who own ticketing rights to maximize the value of the ticketing rights they own by having long-term exclusive agreements with primary ticketing companies. Those ticketing contracts tend to last 3 to 5 years on average.

I would note a very specific indication of the high level of competitiveness is, first, that with almost every contract renewal we have over the past decade, more of the money gets accrued to the venues as opposed to the primary ticketing provider, which would be one indicator of a very competitive marketplace.

Second, I would note the success that SeatGeek had between 2018 and 2022. Adding roughly 15 percent of the NFL and the NBA teams as primary ticketing clients showed the level of movement of these clients.

Senator KLOBUCHAR. Okay. Ms. Bradish, do these type of exclusive contracts, do they shut out competitors? To me, like if you can't go to anyone else, what are you going to do?

Ms. BRADISH. Exactly. And I think it is a standard given in anti-trust law that the longer the exclusivity in a contract, the greater the risk of a competitive effect. And the fact that they are able to get this length of contract indicates something about their market power.

So, of course, it makes it much harder for a—particularly a newer entrant to get into the market if everybody is already tied up.

Senator KLOBUCHAR. And Mr. Groetzinger, do you think that, to go to another topic, that Live Nation's concert promotion business, the fact that they are combined, has made it harder for you to compete for primary ticketing with Ticketmaster?

Mr. GROETZINGER. Yes, absolutely it has. Typically, we will go to a prospective client. We will show them our technology. They will get excited. They will get excited about how it is going to make the experience better for their fans and allow them to run their business better. And then they will start to think about the concert threat, and they will talk, and discussions will often close at that

point because they have heard or have been explicitly threatened in a way that they know they will lose concerts if they move away from Ticketmaster.

And one other thing I would note that I think particularly is scary on that last topic is in response to some of the oversight and poking that has happened recently, we have seen Ticketmaster moving from 5 years, which used to be the standard length for a contract in our industry, to 10 in many cases. They are trying to lock things down so that if there is more pressure, they have at least signed a lot of these decade-long deals.

So there is not a lot of time. If we want competition in this industry, it is already going to be very hard to change. Longer contracts make that even harder, and that is what they have been pushing for recently.

Senator KLOBUCHAR. Exactly. Last, Mr. Lawrence, what was the amount you said the percentage of your tickets, some of the highest ones you have had recently that were fees?

Mr. LAWRENCE. Typically with Ticketmaster, we will see a 40 percent-ish or closer to 50 percent fee added on top. We have seen really outlandish numbers like we had a show last spring where there was an 82 percent fee on top of the base price. And again, we have no say—or we do not even know what it is going to be until it goes on sale.

Senator KLOBUCHAR. Mr. Berchtold, you heard Mr. Lawrence. With Ticketmaster's market power, which we all know exists—we would be kidding ourselves if we said it did not exist—why have you not done more to reduce fees?

Mr. BERCHTOLD. As I noted in my comments, Senator, the fees are set by the venues. The Live Nation venues have fees that are consistent with the other venues in the marketplace and cover the costs of the operation of those venues.

Senator KLOBUCHAR. Mr. Lawrence wants to reply.

Mr. LAWRENCE. We definitely ask venues before almost every show what is the ticket fee going to be, both venues that Live Nation owns and ones that they just operate, and they always certainly do not take responsibility for the fees. So I am not—I do not know who is doing the fees, but we ask that question to the venues, and they say not only do we not choose what it is, we do not even know what it is. We cannot even tell you what it is going to be. So I do not know where the answer lies, but no one is taking responsibility.

Senator KLOBUCHAR. Okay. Last word, Ms. Bradish. Transparency would be helpful to know what the fees are. Is that right?

Ms. BRADISH. Yes, absolutely. The market cannot work well without transparency.

Senator KLOBUCHAR. Okay. Clearly, there is not transparency when no one knows who sets the fees.

Okay. With that, Senator Cornyn.

Senator CORNYN. Thank you very much.

Appreciate all the witnesses being here, and this obviously is a concerning status quo. I just want to reflect a couple years back during the height of the pandemic, we wondered whether any of these venues would—many of these venues would survive, including in my State in Texas. And it is great to see that the work that

Congress did with Save Our Stages and other support that Senator Klobuchar and I led had a positive impact on preserving many of these especially smaller venues and making it possible for many of the small businesses, which, Mr. Lawrence, I guess you would qualify as a small business, can continue to provide entertainment in these venues.

I think what we have heard today does cry out for some response by Congress, but candidly, I am not sure that the antitrust laws are the best tool in our toolbox. But that is something that we will be talking more about in the near future.

Mr. BERCHTOLD, I am intrigued by a couple of your statements. You said that you have an “artist first” business model, and then you later said you would never put your interests ahead of theirs. Is that your testimony?

Mr. BERCHTOLD. Yes, Senator, that is the approach of our business. Culturally, we believe that it is all about getting that artist on stage, letting them connect with their fans. And we believe if we support that and consistently act that way, then we will have a long and successful business working with artists and providing them services.

Senator CORNYN. I guess without the artists, you would not have a business?

Mr. BERCHTOLD. That is correct, sir.

Senator CORNYN. Mr. Lawrence, has that been your experience, that Live Nation never puts their interests ahead of the artist and that they have an “artist first” business model?

Mr. LAWRENCE. I think, generally, when we show up to play a show, the people that work for Live Nation at the venue absolutely, you know, try to be partners to us in putting on the best concert. I think that the places where sometimes maybe you could feel like it is not “artist first” is just in the structure of the way—some of the deals with the artists.

When you look at the settlement sheet at the end of the night, where—which breaks down who gets paid what, some of those line-items where we have no say in setting any of the prices of those things, yet some of them are Live Nation directly setting the price for things that they are paying to other entities that they might own, which directly impacts the profit pool from which the artist pay is being derived. Those are the moments where I would not say it is not “artist first”—I mean, who is to say—but like those are the moments where it feels like we are not truly aligned in our incentives.

Senator CORNYN. Well, for your band to make 6 bucks out of a \$42 ticket price—

Mr. LAWRENCE. Yes, that does not feel great.

Senator CORNYN [continuing]. Does not strike me as “artist first.”

Mr. LAWRENCE. I would agree with that.

Senator CORNYN. Mr. Berchtold, you talked about how many—how few venues that Live Nation actually owns, but the truth is that you have these—I think you alluded to this, sir—you have these long-term exclusive rights contracts with many venues that you do not actually own or that you have some sort of partial ownership where you have effective at least contractual control over those venues. Is that correct?

Mr. BERCHTOLD. Senator, if I could differentiate on the ticketing side and the ticketing contracts, as opposed to on the promotion side. So on the promotion side of the business, which Senator Klobuchar was asking about, there are roughly 4,000 venues in the United States. Roughly 200 of them we operate, often do not own the underlying business, but operate the buildings. And then we have roughly 40 more buildings with which we have an exclusive promoter relationship.

So it is a very—that is a very small portion of the market for venues.

Senator CORNYN. Whether or not you actually own the venue, you do have effective influence and maybe in some cases outright control over what the venue charges in terms of the ticket price. Correct?

Mr. BERCHTOLD. In roughly 240 buildings, or 5 or 6 percent of the market, sir, yes.

Senator CORNYN. Mr. Mickelson, why is it so hard for the average consumer to get access to tickets, and who benefits from less consumer access? It's not the artist, I assume?

Mr. MICKELSON. That is a good question, Senator. Let us take the Taylor Swift fiasco as an example.

The fans had to sign up through Verified Fan to be able to even buy a ticket. Ticketmaster knew that the demand was enormous, bigger, larger than most any other show. And when they set the tickets up for sale, there are two ways you can do that. You can set the tickets so that they are best available, which means that you will sell more tickets because the fans do not have a choice, or you can do pick-a-seat, where it slows the process down.

The process, when it is slowed down, increases the money that Ticketmaster makes because they make money on fees. And as ticket prices go up due to dynamically priced tickets, Ticketmaster makes more to that. So it is to their advantage to slow the process down and to do pick-a-seat so that it created the frenzy that drove the prices up, which again they are getting—Ticketmaster is getting a percentage of that fee. And the higher the ticket price, the higher the fee. So I think that it was driven by the corporate bottom line in the Taylor Swift fiasco, Ticketmaster's bottom line.

Senator CORNYN. I see my time is up. Thank you.

Senator KLOBUCHAR. Thank you very much, Senator Cornyn.

Senator Whitehouse.

Senator WHITEHOUSE. Thanks, Senator Klobuchar.

Let me start off by offering a Rhode Island welcome to Mr. Lawrence.

Mr. LAWRENCE. You have seven out of the eight members of our band went to Brown University. So we have a lot of Rhode Island pride.

Senator WHITEHOUSE. That is pretty impressive. What were your favorite venues?

Mr. LAWRENCE. We played at a local venue called AS220 a bunch.

Senator WHITEHOUSE. Oh, yes.

Mr. LAWRENCE. But honestly, we mostly played at like house parties on campus. That was kind of where we got our start. We also played recently a bunch at Fete Music Hall.

Senator WHITEHOUSE. Well, AS220 is a great organization, and I am proud to have you in the middle of this. This is a group that emerged from our terrific Brown University.

Mr. LAWRENCE. Thank you.

Senator WHITEHOUSE. You mentioned in your testimony today that when artists like you play a Live Nation venue, you typically are also required to use Ticketmaster and a Live Nation-owned promoter. If that were not the expectation, what would the difference, do you think, be for your band and your fans?

Mr. LAWRENCE. Well, if we had the ability to weigh different offers, then we would just be able to see a more apples-to-apples comparison of what kind of deals we could get in a given venue. But you are correct in saying that, yes, when we pick a given venue, if it is a venue that Live Nation is either the exclusive promoter or the operator or the owner of, there is no opportunity but to just receive a deal that we have no ability to negotiate from Live Nation.

And yes, the tickets have to be ticketed by Ticketmaster. There is a—you know, it would be great to be able to find out, oh, if it was this ticketing company, it might be a different fee, or I know Mr. Berchtold is saying that the venue sets the fee, which has not been our experience. But you know, ideally, we would be able to see, oh, if it was this company, it would be this, or whatever.

Senator WHITEHOUSE. Could you say a little bit more about how that has not been your experience?

Mr. LAWRENCE. It has 100 percent not been our experience. Yes. There has literally not been a single time in our career when we have played at a Live Nation venue where we had any opportunity to not have Live Nation be the promoter or not have Ticketmaster be the ticketing company.

Senator WHITEHOUSE. Have you heard of any other artists who have been able to figure out a way around that, or do you think that all artists are up against the same wall that you have described of inevitability?

Mr. LAWRENCE. Yes. As far as I am aware, no one has had a different experience than me. I know at the highest levels of playing like stadiums or arenas, there might be an opportunity to have a certain promoter come in and do that arena, but I do not—that is not my area. In terms of—

Senator WHITEHOUSE. In time, Mr. Lawrence. In time.

Mr. LAWRENCE. Yes, hopefully. Hopefully.

[Laughter.]

Senator WHITEHOUSE. Well, thanks very much. I appreciate you being here.

And thank you, I guess it is Acting Chair Klobuchar, for the hearing.

Senator KLOBUCHAR. All right. Thank you very much, Senator Whitehouse.

And I noticed, Mr. Nuzzo, that Mr. Lawrence has been getting a lot of the questions, and I know your daughters are watching. So Senator Lee and I promise we will ask you a question on a second round if no one else does. That is a little cue for you guys.

Next up, we have Senator Blackburn.

Senator BLACKBURN. Thank you, Madam Chairman. And thank you to you all for being here.

In Tennessee, this has been an issue where there has been a lot of conversation about it. And Mr. Berchtold, thank you for your time yesterday to talk about this. As I told you, we have got a lot of people that are very unhappy with the way some of this has been approached. And there is frustration. We talked yesterday about the bots and how they impact Ticketmaster's operations and that you have blamed bot attacks on causing the crash during the Taylor Swift ticket sales, and ticket vendors seem to view bot attacks as normal to their operations.

And Chair Durbin had mentioned and, of course, we all know the BOTS Act is something when I was in the House that got passed, signed into law. Senator Schumer had carried that over in the Senate. The FTC has only enforced this once, and they have had the authority to do this since 2016.

So this is an unacceptable situation. Senator Blumenthal and I are going to do some more work on this at Commerce, at the Commerce Committee, at the Consumer Protection Subcommittee.

But I do have a couple of questions. I have got about four questions, Mr. Berchtold, and I want to move quickly through this. So do not try to just run the clock out on me, which I do not appreciate that.

So the data that you collect. Now there is a 2019 report that showed that Ticketmaster's app has more downloads and more active users than any of its competitors. And I bet if I went down, everybody would shake their head yes that that is correct. And you have the most monthly active user growth that anyone is seeing. So—and I want you to submit the answers to this to me in writing.

But let us take the Orange Bowl app, which I downloaded last month taking my grandsons to the Orange Bowl. Go Vols! A big win there. That app is powered by Ticketmaster.

Now when you use that app, you can purchase parking, official merchandise, access travel sites. So you are getting a lot of consumer data and consumer information. So I want to know what are you doing with that data?

Now you told me yesterday you block about 90 percent of the bot attacks that you get, but that is a failing grade, and we know that because—and there ought to be people you can get some good advice from. Because our critical infrastructure in this country, whether it is utilities—electric, water, power—banking services, credit card processors, payment processors, healthcare companies, you know what, they get bot attacks every single day by the thousands. By the thousands. And they have figured it out, but you guys have not? This is unbelievable.

You ought to be able to get some good advice from some people and figure this out. So what are you doing with the information as you get this bot attack? Are they coming in here and scooping up consumer information?

When consumers buy tickets from StubHub and they are required to return to Ticketmaster to have their order fulfilled, are you getting their data? And what are you doing with it? Are you then sharing it with these other vendors? What kind of protections are around it? How are you safeguarding this?

So I would like a response to that in writing from you because that is going to determine how we move forward. The FTC has the responsibility. They have the authority, but you, sir, are responsible to the consumers. You are controlling 70 percent, 80 percent of the ability of consumers to access tickets to sporting events, to concerts.

And when I run into an entertainer—and Mr. Lawrence, you need to come to Nashville. We are going to have to——

Mr. LAWRENCE. We have been there. We just played a couple months ago.

Senator BLACKBURN. Come on back. Make it your home.

Mr. LAWRENCE. Sure thing.

Senator BLACKBURN. People love Tennessee. But you know, we need to have an answer to this. Yes, the FTC has the authority. Yes, the legislation was signed into law. I agree that they are not exercising it, but how many times have you called the FTC and said we need your help?

Mr. BERCHTOLD. Yes, Senator. We will submit in writing the answers to your questions that you requested.

Senator BLACKBURN. How many times have you called the FTC and say, help me with this?

Mr. BERCHTOLD. We worked with the FTC on an investigation I believe it was late 2019 or 2020. We obviously post—during COVID shut down.

Senator BLACKBURN. So you called them once? You called them once and said help me out?

Mr. BERCHTOLD. That was the time that we were able to have the information, work with them to get prosecution.

Senator BLACKBURN. Why is it that you cannot identify a bot attack? You told me yesterday you have a hard time distinguishing between a bot attack and a consumer. But the local power company down here that is not the billion-dollar company you are, they can tell when they have got a bad actor in their system. They have figured out how to define a bot in their system, but you cannot?

Mr. BERCHTOLD. Yes, Senator——

Senator BLACKBURN. Do we need to make certain you have better people around your IT team?

Mr. BERCHTOLD. Yes, Senator. It is absolutely an ever-going arms race in terms of fighting the bots. These are bots that are not trying to generally break into our system. They are bots that are trying to impersonate people to get tickets on an automated basis faster and putting true fans at a disadvantage.

Senator BLACKBURN. It is American consumers, true fans. Yes, American consumers.

Madam Chairman, I have one other question if we do a second round.

Senator KLOBUCHAR. Okay. That will be good. We will do a second round because we also want to get to solutions here, and I appreciate your questions, Senator Blackburn.

Next up, Senator Blumenthal.

Senator BLUMENTHAL. Thanks so much, Chairman Klobuchar, and thank you for your great work on this issue and so many others involving antitrust. And my thanks as well to Senator Lee.

Thank you to everyone for being here today.

Mr. Berchtold, I want to congratulate and thank you for an absolutely stunning achievement. You have brought together Republicans and Democrats in an absolutely unified cause, and may I suggest respectfully that, unfortunately, your approach today in this hearing is going to solidify that cooperation because as I hear and read what you have to say, it is basically “It is not us. It is everyone, but us.”

And the fact of the matter is that Live Nation-Ticketmaster is the 800-pound gorilla here. You have clear dominance, monopolistic control. This whole concert ticket system is a mess. It is a monopolistic mess, and the numbers refute many of your arguments. That is the reason we have had two—count them, two—consent decrees and why the Justice Department is now investigating violations of that second consent decree.

Ticketmaster had the temerity to imply that the debacle involved in pre-ticket sales was Taylor Swift’s fault because she was failing to do too many concerts. And may I suggest respectfully that Ticketmaster ought to look in the mirror and say, “I’m the problem. It’s me.”

And the reason is quite simply that you are the ones ultimately responsible for the astronomically rising prices, the exorbitant hidden fees, the sold-out shows, the bots, and scalpers. We just had an exchange with Senator Blackburn. You have reported once, over this entire history once, an incident involving bots.

I agree with Senator Blackburn that there needs to be stronger enforcement by the FTC. It has taken almost no action against the bots, despite our support for the BOTS Act, and that is the reason why I am supporting legislation talking about remedies, legislation called the BOSS Act, which would require transparency, accountability for hidden fees, for bots. Will you support the BOSS Act?

Mr. BERCHTOLD. Yes, Senator. We absolutely agree that—

I am sorry. Senator, we absolutely agree there are a lot of problems in this industry, and as the leading player, we have an obligation to do better. If I—

Senator BLUMENTHAL. Will you support the BOSS Act?

Mr. BERCHTOLD. I do not know all of the specific elements. I know there are many elements that we agree upon. I believe there are some issues that we have some differing views, and we have offered to discuss those. We would like to continue to discuss those going forward.

Senator BLUMENTHAL. Will you support legislation to require complete transparency all-in to provide stronger enforcement powers against bots and scalpers?

Mr. BERCHTOLD. We absolutely support all-in pricing. We absolutely support greater enforcement, greater penalties, and expansion of the prohibition on bots.

Senator BLUMENTHAL. You know, the FTC has failed in some of its enforcement duties, but that is because Live Nation-Ticketmaster has failed to do the reporting that is required to enable enforcement, and I think that really betrays the contention that you have been active against it. And I think that consumers and artists and venues are all fed up with the system that exists right now.

And I think to the people who are fed up, I would say continue your criticism if you are angry and frustrated. You have the power to demand action, and we should act with new legislation.

If the Department of Justice establishes violation of the consent decree, unwinding the merger ought to be on the table. If the Department of Justice establishes facts that involve monopolistic and predatory abuses, there ought to be structural remedies, such as breaking up the company. We will see what the Department of Justice finds.

And to the FTC, we owe the duty of providing resources that are needed for more effective enforcement and the incentive and the kind of encouragement and support for action in this area.

Let me ask you, will you support other kinds of legislation that would enable more transparency in this area?

Mr. BERCHTOLD. As a general concept, absolutely. We support more transparency. And I also commit that if you pass harder laws on bots with greater enforcement that I will commit that we will do our part to support them.

Senator BLUMENTHAL. And will you take action against the bots?

Mr. BERCHTOLD. If we get the laws that are going to be enforced and supported and have real teeth and penalties against people, we will do our best—

Senator BLUMENTHAL. Well, you have the power right now to take action. Why have you not done it?

Mr. BERCHTOLD. We have a limited level of power on something that has not been consistently enforced.

Senator BLUMENTHAL. You have unlimited power to go to court. Under the current BOTS Act, which we have supported, we have given you the right of action. You are the only ones who have the resources and the knowledge to take effective action right now. Why have you not done it?

Mr. BERCHTOLD. Well, we would love the support of further laws, of working with the FTC, getting other information on the actual sale of the bot-generated tickets on the various secondary platforms.

Senator BLUMENTHAL. Now if you are concerned about artists, consumers, venues, and about the public interest, you would take action under current law. You have the right of action. You have the resources, and you have the kinds of legal authority to do it. And so that is why I come back to where I began. Your approach seems to be it is everyone else who is responsible here, not us, and I hope that that approach will change in the future.

Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you. Thank you, Senator Blumenthal.

Next up, we have Senator Kennedy and then Senator Hirono.

Senator KENNEDY. Mr. Berchtold, am I saying that right?

Mr. BERCHTOLD. Yes, Senator, thank you.

Senator KENNEDY. Mr. Berchtold, I am not against big, per se. I am against dumb. And the way your company handled the ticket sales for Ms. Swift was a debacle, and whoever in your company was in charge of that ought to be fired.

Number two, I hear two things today. I hear some of you saying that we have an antitrust situation here, and that is wrong from

an academic perspective and a consumer protection perspective. I hear others of you saying Live Nation is making too much money, and we want some of it. Okay? But I hear all of you saying you care about the consumer, and I take you at your word.

So how would you feel about adopting a rule which it seems to me would satisfy the bot situation. Let us just adopt a rule—well, strike that. I do not want to make it a suggestion because I want to think it through more. But let me ask you your opinion. You are the experts.

What if we adopt a rule that said tickets to a Taylor Swift concert or Mr. Lawrence's band's concert are nontransferable? Now you are not going to have a problem with bots, okay? If you have got a scalper trying to buy 2,000 tickets, they do not want 2,000 tickets. They want a profit. And it will hold down ticket prices. Why do we not do that?

Don't everybody jump in at once.

Mr. LAWRENCE. I mean, I think whether it was that or only transferable at face value. I am not an expert on the secondary ticketing market, so all I can tell you is that from the artist's perspective, we would not make a dollar less if that were implemented.

Senator KENNEDY. Yes, but Mr. Lawrence, if you care about the consumer—and I hear you say that you do—I will tell you what the consumer is concerned about. The consumer is not concerned about how many lawyers can dance on the head of a pin and whether this is an antitrust violation or not of the FTC. The consumer is concerned about the price.

Mr. LAWRENCE. Yes. So I am saying I think—

Senator KENNEDY. So would you support nontransferability or you can only transfer it at face value?

Mr. LAWRENCE. I mean, I think it is a really interesting question. I am not an expert on it.

Senator KENNEDY. How about you, Ms. Bradish?

Ms. BRADISH. Well, I think nontransferability is making a judgment in lieu of what a customer would make.

Senator KENNEDY. I understand what it means. Would you support that?

Ms. BRADISH. No.

Senator KENNEDY. Okay. How about you, Mr. Nuzzo?

Mr. NUZZO. I would respectfully not support such a rule.

Senator KENNEDY. Okay. How about you, Mr. Mickelson?

Mr. MICKELSON. Mickelson, but that is good.

Yes, Senator, a good question. Totally support nontransferability, totally.

Senator KENNEDY. Okay, thank you. Next, sir?

Mr. GROETZINGER. I respectfully think transferability is important for consumers.

Senator KENNEDY. You think it is important? Is it important for consumers or for the middleman?

Mr. GROETZINGER. Like let us say I am going to a show with Jerry, and I buy the tickets. I want to be able to send that ticket to Jerry so that we can go together.

Senator KENNEDY. That is the exception rather than the rule.

Mr. GROETZINGER. Yes, I mean, certainly I think there is interesting ways we could use—

Senator KENNEDY. A few people may have to eat the ticket. They get sick. They cannot go. But most people will think about that before they buy the ticket.

Now if you want to hold down prices, cut out the middlemen and the middlewomen, you want to cut out bots, make it nontransferable or transferable only at price, at face value. Couldn't a major artist, couldn't a Bruce Springsteen say—whose music I love—couldn't he say, Look, I have got market power. I am going to set this price for the ticket, I am going to set this price for the service fee, and it is going to be nontransferable.

Couldn't an artist do that with market power?

Mr. GROETZINGER. Yes, for sure. Yes, I think it is an interesting idea, and some artists—

Senator KENNEDY. Problem solved.

Mr. GROETZINGER. Some artists have done that—

Senator KENNEDY. Problem solved.

Mr. GROETZINGER. For sure.

Senator KENNEDY. How about that, Mr. Berchtold?

Mr. BERCHTOLD. Yes, Senator. We would fully support an artist's right to make their shows nontransferable.

Senator KENNEDY. I did not ask that. Do you support—do you support nontransferability or not?

Mr. BERCHTOLD. We would support nontransferability, yes.

Senator KENNEDY. Well, then why—a big part of the problem is just solved. Okay? If you care about the consumer, you are going to hold the price down. You are going to cut out the middleman.

Now we still have the problem of some of your colleagues say you are making too much money. Some of them say, I hear them say you are making too much money, and we want some of it. I hear others saying you are making too much money, and that is hurting the consumer because those fees get passed on.

If you care about the consumer, cap the price. Cut out the bots. Cut out the middle people. And give—if you really care about the consumer, give the consumer a break. Not every kid can afford whatever it is, \$500, to go see Taylor Swift.

And I would like to see Ms. Swift or Mr. Springsteen or some of the other major artists step up and say you know what, we are going to support nontransferability, and we are going to cap the fees that are added on here, and we are going to make sure that the artist is paid a fair price. Everybody else can make a profit, but you cannot make an obscene profit, especially the scalpers.

If we do that, now we've done something. Now we've gone beyond how many lawyers can dance on the head of a pin and whether the FTC ought to be involved. And we know fully well that'll happen sometime in the next century. And whether something is a technical violation of the antitrust law, which we have to go litigate.

Senator KLOBUCHAR. Okay.

Senator KENNEDY. My work here is done.

Senator KLOBUCHAR. Senator Hirono. Thank you, Senator Kennedy.

Senator HIRONO. Thank you, Madam Chair.

I think that, Mr. Nuzzo and Ms. Bradish, you just responded that you would not support nontransferability. Very briefly, could you explain why not?

Ms. BRADISH. Well, I think it goes to a regulatory solution to something that should be a competition issue. If there were competition, if we solve the competition issue here, then customers will get what they want. So I think this is—it does not get to the heart of the matter, essentially.

Senator HIRONO. Mr. Nuzzo?

Mr. NUZZO. Yes, thank you very much, Senator.

It is a good question, and ultimately, we would look at it in a couple of ways. One is a property rights issue. As an individual purchasing a ticket, I should have the ability to transfer that ticket at a market rate.

Second, I would point to a statistic—I believe it was from a GAO report—that close to, if not a majority of the tickets on the resale market are going for under the market value. So while I would contend that I am not going to pay \$500, let alone \$5,000, to go see Taylor Swift, the secondary market allows artists like the band Lawrence, who are selling to smaller venues and are growing, the ability to fill those venues, especially when those cases come where an individual is unable to use their ticket.

Senator HIRONO. So isn't Ticketmaster also in the secondary market?

Mr. NUZZO. I believe the largest secondary market is StubHub, but I do believe Ticketmaster is either building or growing a secondary resale market.

Senator HIRONO. Yes. So I am surprised that Mr. Berchtold says that he would definitely support nontransferability. Nothing is simple.

Mr. Lawrence, as you sit here, can you tell me what you hope will happen after this hearing?

Mr. LAWRENCE. Yes, it is a great question. I think that we have a few specific things that we would just love to see change in the industry how ever—how ever we are able to get there. To list a few, I think that dealing with this whole inconsistency around ancillary revenues, which is something that we are not talking about as much today, the idea that Live Nation or, frankly, most promoters typically take 20 percent or more of our gross merchandise sales from the night under the idea that they are providing the real estate, but we are providing all the customers.

As Mr. Nuzzo was talking about, you say you are going to see a Harry Styles show. You are not going to XYZ arena. So how come we do not get any of their bar sales? That is one example. I could keep listing more.

Expansion of off-platform ticketing or ticketing choice. Caps on fees like we are talking about. Greater transparency on the settlement sheets that we receive at the end of the night. That is a whole other conversation that I could list 10 things about the way those are formatted and broken out in a way that feels not totally ideal or fair to artists.

I could go on and on.

Senator HIRONO. So there are a number of things that we can do, do these kinds of things for you to be able to probably negotiate better.

Now, Ms. Bradish, do we have to change any laws in order to enable an artist like Mr. Lawrence to do what he wants to be able to do?

Ms. BRADISH. Well, I think we need to support strong antitrust enforcement. We have to give the agencies the resources and the legislation, the clarity of legislation that will enable them to attack practices like this. So, yes, we need to support and give resources to the existing antitrust agencies and the existing laws, and we should consider other laws, like Senator Klobuchar's law, that would clarify and strengthen those antitrust laws.

Senator HIRONO. Also the BOSS Act, which I—Senator Blumenthal's bill, which I signed on to, which creates greater transparency.

You testified, Ms. Bradish, that there should be a presumption for vertical mergers as we do for horizontal mergers. What would that presumption be for vertical mergers?

Ms. BRADISH. Well, for vertical mergers, we can look at—we can obviously look at the share in a particular market. We can look at their ability, the ability of the monopolist to exercise power in another market downstream or upstream. There are a number of ways to get at the same problem, but the idea is that you give the DOJ or FTC a foothold in order to be able to bring the case before a court, a foothold to be able to say this is illegal, presumptively illegal.

Senator HIRONO. Do we need to amend the Sherman Act to create such a presumption for vertical mergers, or do we need to strengthen the Clayton Act, Section 7?

Ms. BRADISH. Well, I think that the current Clayton Act and Sherman Act do not have the presumptions for horizontal mergers. Those come from the case law. So we do not necessarily need to change the fundamental contours of the Clayton Act and the Sherman Act. In fact, I would suggest that the Clayton Act already has built this in.

Senator HIRONO. The Live Nation-Ticketmaster merger has already occurred. I am interested in what we can do to prevent this kind of market share capture in other vertical mergers.

And I just want to mention that we have been talking a lot about the debacle, I would say, of the Taylor Swift situation, and back in 2018, thousands of people in Hawaii tried and failed to get Bruno Mars tickets, and similar kinds of occurrences happened in Hawaii. And I heard Mr. Berchtold say that after the merger they spent \$1 billion to improve the Ticketmaster system so that what you had in 2018, quite a few years after the merger, you had the similar kind of situation with Bruno Mars, and then you have Taylor Swift. So I am just wondering what kind of improvements to the Ticketmaster system that is actually being followed.

Thank you very much.

Senator KLOBUCHAR. Thank you very much, Senator Hirono, for using that example.

Next up, we have Senator Hawley.

Senator HAWLEY. Thank you, Madam Chair. Thanks to the witnesses for being here.

Mr. Berchtold, if I could just start with you? Your company is currently under a consent decree with the Justice Department. Is that correct?

Mr. BERCHTOLD. Yes, Senator, we are.

Senator HAWLEY. Running through 2025. Is that right?

Mr. BERCHTOLD. Yes, Senator.

Senator HAWLEY. This is because the Justice Department says that your company repeatedly conditioned and threatened to condition Live Nation's provision of live concerts on a venue's purchase of Ticketmaster's ticketing services. Is that correct?

Mr. BERCHTOLD. The Department of Justice alleged there were six instances in 2019 that they thought were violations. We agreed to extend the decree rather than to debate it in court because we had no interest in being perceived as defending the notion of threatening or retaliating.

Senator HAWLEY. Yes. Well, kind of extraordinary to have a consent decree running for such a long period of time and have you not even fight it in court.

Let us talk about what your company is doing to try to control the resale market. You have been pushing something called SafeTix, which, as I understand, it is a digital ticketing system. You need your phone for it, right? There is an app. It generates a bar code that then regenerates every few seconds. You cannot print it off. You have got to use the app for it.

Is that basically correct? Do I have the basics right there?

Mr. BERCHTOLD. Yes, Senator. One of the major investments we have made over the past decade has been shifting ticketing from a paper ticket or PDF to a on-the-phone digital ticket as a major issue toward security and to eliminate fraud. These—

Senator HAWLEY. Yes, I want to come back to that, but just so I understand the way the system works. So once you have got the app, somebody has got a ticket on the app can digitally transfer that ticket to another app user, but they cannot print it off and resell the ticket on StubHub, for instance. Is that correct?

Mr. BERCHTOLD. Yes, Senator. They cannot print it off because the notion of printing it would open susceptibility to fraud and duplication of that ticket.

Senator HAWLEY. So you could only—let me just be clear about the way this works. You could only resell it through the Ticketmaster ecosystem. Is that right?

Mr. BERCHTOLD. No, Senator. Those tickets are often resold on StubHub, SeatGeek, and other secondary ticketing platforms.

Senator HAWLEY. Okay. So let me just ask you about the counterfeiting question here. I mean, what kind of scale are we talking about here? I mean, how many percentage—what percentage of tickets sold on the secondary market do you think are counterfeit?

Mr. BERCHTOLD. Well, I think given today's digital ticket, the counterfeit ticket has been all but eliminated. We still have a large issue with speculative tickets being sold, where the seller does not actually own the right to the ticket but is selling it to the fan, who is unaware of that. But the old issue of having a PDF photocopied multiple times and resold has been eliminated.

Senator HAWLEY. How does the resale of the SafeTix, how does the resale with another entity, let us say StubHub just for illustrative purposes, how does that work? How can I—if I had a SafeTix ticket, how could I resell it on StubHub?

Mr. BERCHTOLD. You could list your ticket on StubHub. There would be a buyer. The buyer would buy the ticket. You would transfer that ticket to the recipient's Ticketmaster account if it were a concert. If it were an NFL ticket, to their StubHub account.

Senator HAWLEY. Do you have any plans to restrict the resaleability of digital tickets through third-party entities like StubHub or others?

Mr. BERCHTOLD. We have no plans to restrict that transferability. We do believe that the artist should have the right to set the rules, as we were discussing earlier, in terms of the nature of the transferability. We believe there should be no difference between the rules that we, Ticketmaster, follow and what any of the other platforms can do.

Senator HAWLEY. So let me just ask you about the transferability question. Why is it good for consumers to limit transferability? I heard your exchange with Senator Kennedy. I do not understand why it is a good thing for the ticket buyer to not be able to resell her tickets or his tickets.

Mr. BERCHTOLD. Yes, Senator. I think tickets, and concerts in particular, are a unique animal in that those tickets are often underpriced by the artist because they want to deliver value to the fans. And that creates the opportunity, a \$5 billion a year opportunity in the United States, for the industrial scalping of tickets using bots to unfairly gain possession of those tickets, illegally gain possession of those tickets and resell them on the secondary.

So the transferability comes into play as part of the discussion or this comes into the discussion on transferability given that illegal activity that is enabled by ease of transfer.

Senator HAWLEY. But are there other examples of markets, ticket markets where we limit transferability in that way?

Mr. BERCHTOLD. Senator, I am not aware of other markets where you have such a substantial arbitrage in the value.

Senator HAWLEY. Yes, it just—I mean, you cannot do it, obviously, with movie tickets, let us say. I mean, those are freely transferable. I just worry about the effect on consumers and prices. If you tell a consumer who buys her ticket that she cannot then turn around and sell it, I mean you talk about a market intervention, that is a pretty significant one.

I understand why the artists would like it, and I certainly understand why you would like it. It is not clear to me why it is good for consumers.

Mr. BERCHTOLD. Yes, Senator. I think we believe it is good for consumers because it would mean that the consumers could buy all of those tickets rather than having what is often 20 to 30 percent of concert tickets purchased by scalpers using bots and put on the secondary market directly.

Senator HAWLEY. Let me just—Madam Chair, I know I am over time, and Senator Cruz wants to ask questions. Let me just really quickly here ask Ms. Bradish if I could. I want to come back to this consent decree extension that is now running out through 2025.

What DOJ alleged in 2020 was pretty significant. They said that there had been violation of the earlier consent decree, that Live Nation had retaliated, that they violated the plain language of the decree. It is not normal, is it, for antitrust consent decrees to get extended like this after violations are identified. Am I correct?

Ms. BRADISH. That is correct.

Senator HAWLEY. So what do you think is going on here?

Ms. BRADISH. Well, I think it certainly shows that the problem that they anticipated in 2010 is—actually has come to pass in 2020. It means that Ticketmaster-Live Nation is a monopolist whose conduct needs to be supervised.

I do not think that this changes their incentive. So it makes it very difficult in the long run for DOJ to actually supervise it.

Senator HAWLEY. You do not think it changes Live Nation's incentives you are saying?

Ms. BRADISH. Right. I mean, their incentives are still to bully others.

Senator HAWLEY. Right. What should happen then, in your view?

Ms. BRADISH. A structural remedy. There should be a spinoff. There should be disintegration of the vertical integration.

Senator HAWLEY. Very good. Thank you, Madam Chair.

Senator KLOBUCHAR. Very good. Thank you, Senator Hawley.

Before Senator Cruz, Senator Tillis was here first. Thank you, Senator Tillis.

Senator TILLIS. Thank you, Senator Klobuchar.

Mr. Lawrence, "Don't Lose Sight," "Do You Wanna Do Nothing With Me?" and let's see, what is the other one? Oh, "It's Not All About You." Sounds like you have been eavesdropping on conversations among Senators as an inspiration for those songs.

[Laughter.]

Mr. LAWRENCE. Thank you.

Senator TILLIS. I also just want to point to the fact we are looking at, I think—at the time, anyway—the youngest member of the Songwriters Guild after you helped your dad figure out how to do the Miss America pageant or revise it for the purposes of that movie?

Mr. LAWRENCE. Something like that, yes.

Senator TILLIS. Let me ask you, first off on the issue of transferability, I am a Ticketmaster user. I am a season ticket holder for the Carolina Panthers. It seems to me that I like the idea of an artist being able to do that. Maybe that is what Taylor Swift should have done because it would have probably avoided the situation we had there. But I think a broad brush policy on non-transferability has all kinds of problems, to the point that Senator Hawley made, and I could think of other ones.

I also think when we talk about scalpers, there are scalpers out there. But there are also people that are speculating on the market being able to demand a higher price. That sounds like a free market principle I do not want to get too far ahead of. So I think we have to be very careful when we talk about things like that.

Mr. Berchtold, I am trying to—clearly, Ticketmaster and Live Nation are in the crosshairs. So can you give me two things? I was also prompted by the discussion you had with Senator Blumenthal. One, tell me what you are doing to address what you think—

whether or not you believe they are valid, you can see forces working against you. What specifically is Ticketmaster and Live Nation doing to prevent Congress from doing something to you?

Mr. BERCHTOLD. Well, thank you, Senator.

I think that, first, we are here today. We would like to engage in a discussion about what are the policy changes that can be made that can make this a better consumer experience. We believe all-in pricing makes a lot of sense. It simply is clear up front what price you are paying.

We believe that there are absolutely deceptive practices that take place today in ticketing. I could give an—

Senator TILLIS. If I may?

Mr. BERCHTOLD. Yes.

Senator TILLIS. Because I am going to stick to time.

Mr. BERCHTOLD. Yes, sorry.

Senator TILLIS. I think that it would—and I am sure you are already thinking about it. But it is getting ahead of something that is probably but for good-faith efforts on you all's part, you may get a congressional prescription that is not—that is going to have some bad side effects.

Mr. Lawrence—and this back to you also, Mr. Berchtold—is there a mechanism now where Mr. Lawrence knows exactly what the underlying transaction for a given performance or given production resulted in? In other words, can he get—at the end of the day, he charged, I think they set a price at \$30 for one venue. Is there any sort of backend reporting to a performer saying this is how it all stacked up, and this is how everybody in the mix actually benefited from it?

I mean, do you have that sort of transparency today?

Mr. LAWRENCE. At the end of the day, we are given a settlement sheet, but that settlement sheet gives us the base price. So it would be that \$30. But I would also add that I mentioned earlier about a thing called facility fees, where not only does the settlement sheet not show the extra \$12 that might bring it to \$42, it will sometimes even say like \$27, even though the base price was \$30 because the venue is also just sort of arbitrarily taking an additional \$3.

So the sheet we get says the tickets were sold for \$27 rather than \$30 or even \$42, which feels a little bizarre to me.

Mr. BERCHTOLD. Yes, I believe that the general notion of a settlement is correct. If Mr. Lawrence and others are not getting the rate cards on the service fees up front and having that made available to them, that is a problem on our end that I will look into coming out of this.

Senator TILLIS. It seems like that needs to be there on the front end.

Mr. BERCHTOLD. I agree with that, and I think that there should be total transparency that Mr. Lawrence has. If there is a facility fee, he should know what that is. I think that is fairly standard practice. Again, we represent a minority of venues, but I think that the full transparency should be available to Mr. Lawrence and others in his position.

Senator TILLIS. Mr. Nuzzo, in the remaining 20 seconds, what do you want to say?

Mr. NUZZO. I think transferability is extraordinarily important. I think to your point about there are far more externalities and side effects to completely excluding transferability, and that is something that kind of underscored the first part of my remarks this morning.

Senator TILLIS. I think as we go through that, I, for one, love hypercompetitive market forces. Where we get into the rub is to what extent has it gone from hypercompetitive to anticompetitive? And I think that this hearing and subsequent discussions are going to be helpful to strike the right balance.

I am probably somewhere in the middle, not necessarily pulling for either team. But I do think that there is work that we need to do here. Some of it has to be self-regulation from the entities playing in this space.

Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you very much, Senator Tillis.

Senator Cruz.

Senator CRUZ. Thank you, Madam Chair. Thank you to each of the witnesses for being here.

I think this is an issue that impacts a great many families. Whether you go to sporting games—I go to a lot of—a lot of sporting activities—or whether you go to concerts or whether you go to plays, families enjoy going out. They enjoy entertainment. And going through the process of getting a ticket can sometimes be gratifying and a lot of times really frustrating.

I start from the principle that free markets are good, that if you want to have goods and services delivered to consumers that free and competitive markets are the most effective way to do so at the most price-competitive levels. I also start from a principle that monopolies are bad. That monopolies historically have hurt consumers, driven up costs, reduced options, and made the consumer experience markedly worse.

I also would make an observation that in the Big Tech sphere in particular, we have seen monopolies being willing to be particularly abusive. I want to start with a question for the witnesses, and Mr. Groetzinger, I am going to start with you and just ask, in your judgment, is Ticketmaster a monopoly?

Mr. GROETZINGER. Unequivocally.

Senator CRUZ. Mr. Mickelson?

Mr. MICKELSON. Yes, sir. Without a doubt.

Senator CRUZ. Mr. Nuzzo?

Mr. NUZZO. Yes, absolutely.

Senator CRUZ. Ms. Bradish?

Ms. BRADISH. It is certainly acting like a monopoly.

Senator CRUZ. Mr. Lawrence?

Mr. LAWRENCE. I am not sure.

Senator CRUZ. Okay. So, Mr. Berchtold, do you agree with the other witnesses on this panel?

Mr. BERCHTOLD. We absolutely believe the ticketing business has never been more competitive. We believe that fact is demonstrated by every venue renewal that has multiple credible offers in a bidding process.

Senator CRUZ. So are they just making it up? Why does everyone else perceive you as a monopoly? Where is that coming from?

Mr. BERCHTOLD. I cannot speak to all of their motivations on their points of view, but I think that if you simply look at what is the market power exercised by venues, which is perhaps not fully understood in our business.

Senator CRUZ. How about on the ticketing side, what percent of the market do you all have?

Mr. BERCHTOLD. I would estimate, depending on how you want to count what is in the market, between 50 and 60 percent.

Senator CRUZ. Fifty and 60? And depending on how you count it, does anyone have a markedly different measure of that?

Mr. MICKELSON. Yes, sir. Yes, Senator.

Senator CRUZ. Okay.

Mr. MICKELSON. They have 87 percent of the ticketing contracts at the NBA and the NHL arenas. They have 93 percent of the ticketing contracts at the NFL stadiums. Those are the most important venues. You cannot include—if he is including—he is including—it is yes. I will stop there.

Senator CRUZ. And can I fairly blame Mr. Berchtold for the Texans having such a lousy season, and the Rockets having such a lousy season, and the Cowboys just losing? I mean, it has been—but the Astros did win the World Series. So I have something to cheer about. But I guess I cannot blame you for that, but I recognize the frustration.

Let me ask you, Ticketmaster's dominant position in the marketplace, how does it hurt consumers? Mr. Groetzinger?

Mr. GROETZINGER. Most fundamentally by eliminating competition. There is not a vibrant group of dozens of companies out there competing to build the best consumer experience.

Senator CRUZ. And what does that mean if you want to go, go see a game? What does that mean for a consumer? How is life worse because there is not a more effective competition in the marketplace?

Mr. GROETZINGER. It means you are beholden to whatever Ticketmaster-Live Nation gives you, and they have an incentive to not innovate and to maintain the status quo because the status quo benefits them versus having a vibrant group of competition that is working to do what is best for consumers, artists, venues, all of the stakeholders in this industry.

Senator CRUZ. Mr. Mickelson?

Mr. MICKELSON. It is a bigger question than just Ticketmaster because when you combine Live Nation with Ticketmaster, it is the different question.

Senator CRUZ. Well, answer it that way then, the two together.

Mr. MICKELSON. Yes. Look, the combination of the two provides them with a different business model than the rest of us independent promoters. We have to make money at putting on concerts. They do not because they make more money from ticketing and from sponsorship than they do from concerts. And concerts is basically a loss leader for them to bring more talent and bring more content to the arenas that they are servicing to get the ticketing contracts.

Senator CRUZ. So your testimony is they are essentially undercutting the competition in the live performance market and subsidizing it using the ticket revenue. Is that right?

Mr. MICKELSON. Ticket revenue and sponsorship revenue, yes.

Senator CRUZ. Okay. Mr. Nuzzo?

Mr. NUZZO. And here is how it looks to the consumer. A friend of mine sent me a screen shot of a ticket purchase she made for I believe it was a Shania Twain concert in Orlando, and the tickets were \$227 each. But when she got to the final screen where she had to actually hit the button to make the order, they turned into \$291 a piece. That works out to a 30 percent bump on the very last screen of the transaction.

She had no choice at that point but to accept that bump in price. That is how it looks to a consumer.

Senator CRUZ. Ms. Bradish?

Ms. BRADISH. Well, I think Sal brings up a great point with choice. It reduces the choice. Not just of consumers who have to pay higher ticket fees, but also of artists like Mr. Lawrence. They do not have a choice of what venues to go to, what ticketing businesses that they will be dealing with. And for others all up and down the supply chain in live entertainment, these kind of behaviors reduce choice.

Senator CRUZ. And Mr. Lawrence, finally, for artists what is the impact?

Mr. LAWRENCE. The impact is that we have very little say or transparency or choice in a lot of aspects of how the financials of our deals are put together and no say or choice or visibility in what our fans experience when buying our tickets.

Senator CRUZ. And if the Chair will give me the indulgence of one very quick final question?

Senator KLOBUCHAR. Sure.

Senator CRUZ. Which is one of the things that has come up has been all-in ticketing, both for consumers and/or transparency for artists. Do any of the witnesses disagree with the proposition that that would be a good idea and a material improvement from where we are today?

Mr. MICKELSON. No disagreement from Jam as an independent promoter, none.

Senator CRUZ. Okay. Well, some area of agreement. That is always a good thing. Now if you could help the Texans, that would be appreciated.

Senator KLOBUCHAR. All right. Thank you, Senator Cruz.

And I just want to clarify, Senator Cruz had some good questions about the market percentage of you, Mr. Mickelson, and you brought them up. And because I think people need to hear these numbers. So according to your testimony, 87 percent of Billboard's Top 40 tours in 2022 were performed at venues ticketed by Ticketmaster. Is that right?

Mr. MICKELSON. That is correct, 80—yes, 87 percent.

Senator KLOBUCHAR. Eighty-seven percent.

Mr. MICKELSON. Yes, correct.

Senator KLOBUCHAR. And do you disagree with that, Mr. Berchtold?

Mr. BERCHTOLD. I do not know the numbers that he is talking about. I have not done the analysis. So I could not comment on it.

Senator KLOBUCHAR. Okay. Well, we will do that in writing, but it seems to me like that is a lot.

Okay. And then, second, another thing that he brought up, you brought up, Mr. Mickelson, in answer to Senator Cruz. Today, 87 percent of NBA teams, 87.5 percent of NHL teams, and 93 percent of NFL teams—I assume including the Vikings—have exclusive ticketing agreements with Ticketmaster. Is that right?

Mr. MICKELSON. That is correct. And the teams are broken down in my testimony that I provided.

Senator KLOBUCHAR. Okay. Dispute?

Mr. BERCHTOLD. That seems inconsistent, Senator, with the information that I indicated about SeatGeek taking between 2018 and 2022, 15 percent of the NFL and the NBA market.

Senator KLOBUCHAR. Okay. Well—

Mr. BERCHTOLD. I would say that I do acknowledge we absolutely have the leading share in those because—there is no mystery—we have the best product, and we have a product that is particularly suited to the very—

Senator KLOBUCHAR. Okay. We were just doing—

Mr. BERCHTOLD [continuing]. Complex requirements—

Senator KLOBUCHAR. We were just doing facts here. So, but I understand your answer.

Mr. Groetzinger, do you want to reply to that?

Mr. GROETZINGER. Yes. I wholeheartedly disagree with the assertion around product. I think we do not know who has the best product because there is not competition. There is only one real choice that a venue can make.

Senator KLOBUCHAR. Okay. And then, in 2020, the DOJ confirmed that Ticketmaster has been the, quote, “largest primary ticketing service provider for major concert venues in the United States for at least three decades.” I do not think we doubt that. Anyone?

Okay. Next, Live Nation revenue grew from \$5 billion to over \$11.5 billion from 2010 to 2019. Is that correct, Mr. Berchtold?

Mr. BERCHTOLD. I do not have the exact numbers, but that sounds right.

Senator KLOBUCHAR. Okay. Then we have—I am just going to quote from a New York Times article, 2018, that said this. And if it is wrong, you tell me. And maybe it has changed a bit because it is 2018: “Ticket prices are at record highs, service fees are far from reduced, and Ticketmaster, part of the Live Nation empire, still tickets 80 of the top 100 arenas in the country. No other company has more than a handful. No competitor has risen to challenge its preeminence.”

Mr. BERCHTOLD. As I indicated in my comments—I believe you said that was 2018. Between 2018 and 2022, SeatGeek in particular has been very effective in winning major NFL and NBA clients.

Senator KLOBUCHAR. Okay, but do you know, Mr. Groetzinger, if we are like 5 off for the number of arenas or what we are here?

Mr. GROETZINGER. I think we are debating small percentages. The—my data that our team polled was that Ticketmaster is the primary ticketing provider for more than 80 percent of the NBA, NHL, and NFL teams. I would also note—

Senator KLOBUCHAR. More than? Say it again.

Mr. GROETZINGER. More than 80 percent.

Senator KLOBUCHAR. Eighty percent.

Mr. GROETZINGER. Yes. And that was around the same percentage back in 2009, when we were first looking at this.

Senator KLOBUCHAR. Yes. I just want to dispel this notion, Ms. Bradish, that this is not a monopoly, and then we can go from there about solutions. So, so let us talk about that.

Ms. Bradish, you talked about the need to update our antitrust laws. Senator Lee and I have had numerous hearings. We have made headway, as I noted, at the end of the year to focus to help our antitrust enforcers so they are not taking on the biggest companies the world has ever known with duct tape and band-aids, when we know the number of people that work at these agencies are in some cases less than it was during the Nixon administration, and yet these companies have grown bigger and bigger. So I appreciate the support of the United States Senate on this front, Democrats and Republicans.

Now we have to go to the next step, which is albeit harder. We have some specific things we are all working on—on tech when it comes to issues like ticket prices. But the issue here is that we have seen a narrowing of our antitrust laws, and that is why I think for both discriminatory conduct and mergers, we need to step back a bit, as a number of us have on this Committee, and look at some changes. They do not have to be exactly the changes each person wants, but could you talk about the importance of making it easier to enforce these antitrust laws when we have seen 75 percent of the industries in our Nation, from cat food to caskets, see more consolidation?

Ms. BRADISH. Yes. I mean, in particular with respect to vertical mergers and monopolization Section 2 cases, case law has narrowed and narrowed and narrowed the window for the enforcers to go after this kind of conduct. So anything that will open that window, that will give an opportunity for the enforcers to actually get at this conduct and this kind of merger activity is going to be what we need to restore competition.

Senator KLOBUCHAR. Okay. Anyone want to add to that?

Okay. Some of today's witnesses we know have raised—and we really appreciate all of you—concerns about ticketing, especially you, Mr. Lawrence, with some very practical things. It would be great if some of these kind of smaller things that are difficult for you to deal with just got resolved after this hearing. We love that. Shows we did something for the day for a change.

[Laughter.]

Senator KLOBUCHAR. So that is great. But I think we all know, as Ms. Bradish has been pointing out and as Mr. Mickelson and Mr. Groetzinger and Mr. Nuzzo have been pointing out, these things are sometimes bigger than that. And let us get what we can right now, but there are bigger things.

So one of the things we have heard complaints about is so-called drip pricing, when the consumer does not see the full price of the ticket, including fees, up front and has to wait until near the end of the transaction process to get the final price. This is what was just pointed out, right, Mr. Nuzzo?

Mr. NUZZO. Yes, correct.

Senator KLOBUCHAR. Okay, very good. Should Congress mandate all-in pricing on ticketing platforms so that the full ticket price is disclosed up front?

Mr. NUZZO. I would stipulate that there is likely an interstate commerce reason for Congress to act in this capacity. I live in north Florida. There are a lot of people from south Georgia that come to Tallahassee occasionally when the Florida State Seminoles are having a winning season. And so from the extent and the nexus of interstate commerce, I would stipulate there is probably a window for Congress to act, even though I would also like to state on most issues I am a States person.

Senator KLOBUCHAR. I just guessed it.

[Laughter.]

Senator KLOBUCHAR. Okay. Anything anyone wants to add to that? I noticed you were consulting with—I would like to say your lawyer, but it is your bandmate, Mr. Lawrence—

Mr. LAWRENCE. Yes.

[Laughter.]

Senator KLOBUCHAR [continuing]. In answer to this question. It was very—

Mr. LAWRENCE. He doubles as the saxophonist—

Senator KLOBUCHAR [continuing]. Very impressive. All right. Go ahead.

Mr. LAWRENCE. I just wanted to say I think while the spirit of the all-in pricing thing is a great idea, a concern that I have is if artists continue to have no say in the—

Senator KLOBUCHAR. Got it.

Mr. LAWRENCE [continuing]. On-top portion of the fees.

Senator KLOBUCHAR. Yes.

Mr. LAWRENCE. Then like while, as we talked about, I do have a say in setting the base ticket price, all of a sudden if I set a ticket price of \$30, but then they are just seeing an all-in fee of \$50, at least in the current system, fans know which is the base ticket price and which is the fee.

So even if the drip pricing were eliminated, it would still be great to know—

Senator KLOBUCHAR. You want to do something up front to—go ahead.

Mr. LAWRENCE. If there was something on that first screen that still said these are the added Ticketmaster fees.

Senator KLOBUCHAR. Agree.

Mr. LAWRENCE. So that the fans know.

Senator KLOBUCHAR. That was my second question.

Mr. LAWRENCE. Yes.

Senator KLOBUCHAR. Like you should be a Senator, I think.

[Laughter.]

Senator KLOBUCHAR. So what you are saying is you want to have the—you want to know, differentiate on the fees, and then you also want to deal with this pricing thing at the end.

Mr. LAWRENCE. What I really want is for artists to have a say in those fees and for them to be lower. But in the current—under the current system where we have absolutely no say or transparency in the fees, yes, I would not want to have to take any responsibility of those to our fans.

Senator KLOBUCHAR. Okay. We have—anyone on this?

Okay. We also have heard about sellers offering to sell tickets they do not even have. That is speculative ticket sales when they do not have it. Is that something that Congress should prohibit?

Mr. Mickelson?

Mr. MICKELSON. Definitely. I mean, you go on—you go online on any high-demand show, and they are selling tickets that they do not have. Absolutely. And Mr. Berchtold could certainly opine about that, but that needs to be banned somehow.

I do not know whether it is Congress or by State by State, but something needs to be done. It is deceptive and just not right.

Senator KLOBUCHAR. Okay. Then we—I know you, Ms. Bradish, talked about this idea of spinning off companies. We have all seen that as a remedy that would most likely be coming from the Justice Department. So all we can do here is put forward the evidence, and these are sworn testimonies back and forth under law so that the Justice Department can look at this discussion. But clearly, this is something that could be looked at.

Because I think we can legislate on some of these things about pricing, but if you truly have a situation where you have a monopoly on these—this three corners of this triangle, right, which is—which is this combo of the ticketing and the promotions and then the arenas, or not all arenas are on the long contracts—long-term contracts on the arenas. That is also an issue that we—that creates this problem for us where the customers are basically trapped in the middle.

So anything anyone wants to comment about that, and how that would aid you in competing, Mr. Groetzinger or Mr. Mickelson?

Mr. MICKELSON. Thank you.

Again, when I look back at history, which always guides us, I look back at the *Paramount* case, *U.S. v. Paramount* in the late 1940s, where the movie studios contracted and controlled the actors. They made the films. They had the distributor, and they had the movie theaters that those played in. The Government broke that up, and then it became fairer for everybody else to compete. So I think that is a solution you need to look at.

I think another solution might be maybe no exclusive ticketing contracts at buildings. In Europe, in the UK, they do not have exclusive ticketing contracts.

Senator KLOBUCHAR. That is what my last question was going to be.

Mr. MICKELSON. Sorry.

Senator KLOBUCHAR. And we will count that answer—no, it is interesting. So they do not have that—

Mr. MICKELSON. Right.

Senator KLOBUCHAR [continuing]. in Europe? Okay. All right. Anything more?

Mr. GROETZINGER. Oh, sorry. I was just going to mention another difference between the Europe and U.S. market is that for Europe soccer teams, for EPL teams, they typically do not have concerts. So they are not worried about this whole concert threat that we have been talking about.

Senator KLOBUCHAR. Mm-hmm.

Mr. GROETZINGER. And as a result, you see a markedly different market outcome where those venues actually make the ticketing decision based on the merits of the product, what is actually best for their fans and best for their business.

Senator KLOBUCHAR. Mm-hmm.

Mr. GROETZINGER. And we have been talking about the 80 percent or so market share that Ticketmaster has here in the U.S. among major sports teams. That is only 20, 20 percent of EPL teams. Where SeatGeek is fortunate, due to a stronger product, they have about 10 of the 20 EPL teams there.

Senator KLOBUCHAR. Okay. Senator Lee is deferring to Senator Blackburn. Thank you.

Senator BLACKBURN. And thank you, Madam Chairman.

Let me just say we do appreciate you all being here, and we need—Music City USA needs you all to be successful. And this is an issue of fairness. Whether it is the consumer, whether it is the artist, whether it is the production manager, this is an issue of fairness. And right now, we have a system that is not fair.

Now I want to pick up on the issue of spec tickets. And Mr. Berchtold, you and I discussed this a little bit yesterday, and you mentioned the Madonna tour that already there are tickets available on the secondary market. This is presale, pre the window opening. You have Zach Bryan, who is not working with you, but on his tour. But you said the secondary market has those tickets.

Well, as I thought about this last night and thought about our discussion and worked on my questions, I thought why is it that these secondary markets are so brazen that they would go ahead and put these tickets up for sale? It does not make sense, does it?

But you know what does, what it does is raise the question is it that the bots have become so aggressive and so certain that you are not going to do anything to them, that you are not going to shut them down, that they just move forward and advertise things they have not yet purchased because they have figured out you will not call the FTC. You will not report them. You have not built the kind of cyber safeguards that are necessary to protect the consumer, and you are building a treasure trove of information on these consumers.

I bet you even have a marketing arm that takes all that data. You know somebody is partial to some certain type tours, and then you are marketing back to them, sending them notifications. But let us talk about this. Why is it that you believe these sites have moved forward with advertising tickets that they have not yet purchased? Why are they so confident?

Mr. BERCHTOLD. Senator, I agree with your assessment that those markets that put up—

Senator BLACKBURN. Okay, you agree with my assessment, sir.

Mr. BERCHTOLD. Yes. Yes.

Senator BLACKBURN. So what are you going to do about this? Are you going to strengthen your protections so that these bots cannot get in there?

You know, you told me yesterday—let us talk about this a little bit. You told me yesterday that you have a difficult time deciding what is a bot and what is a consumer. So why is it that you have not developed an algorithm to sort out what is a bot and what is

a consumer? Why is it that the bank can do it? As I said earlier, why is it the local power company can do it, but you cannot?

Mr. BERCHTOLD. Yes, Senator. We are continually investing in advance bot detection. It is an arms race. There is so much money at stake.

Senator BLACKBURN. Well, how much have you invested, and what is your timeline for securing your site so that consumers know their data is secure with you? When are you planning to have this done?

Mr. BERCHTOLD. Yes. We have invested over \$1 billion over the past decade. In addition to specific technology to stop bots, we have developed products such as Verified Fan, which is intended—

Senator BLACKBURN. Okay. As we talk about Verified Fan, why is it that that data is not protected to the point to prohibit these incursions and these hacks coming in to that information? And as you have precleared these individuals and pass them as Verified Fans, then what are you doing to protect their information? How do they know that their information is secure on your site?

Mr. BERCHTOLD. Yes, Senator. Using Verified Fan, the bots have not gotten in. But that does not stop them from attacking the system.

Senator BLACKBURN. Well, you told us that with the Taylor Swift instance, that it was the Verified Fan that was a problem. So is Verified Fan safe, or is Verified Fan not safe? I mean, which—what are we looking at here?

Mr. BERCHTOLD. Verified Fan was effective in making sure that the tickets that were sold were sold to fans. It was successful in that we are compliant with CCPA, with GDPR in terms of data security. It was an issue of the load on the system from the combination of bots pretending to be humans to try to get in.

Senator BLACKBURN. Oh, so you were underestimating the popularity of a Taylor Swift concert and ticket.

Now let me ask you about this. This is another thing I thought about from our conversation yesterday. You said that the only course of action for Ticketmaster in identifying a buyer is a bot is after the transaction is completed. You said you could not tell until after.

Because I discussed with you how some fans will have tickets in their cart, and then during the checkout process, the tickets leave the cart. And I asked why you would not empty the cart of the bot. And you said, well, it is hard to figure this out until the transaction is completed.

So why is it that you can only do that? Why can't you algorithmically flag these suspicious transactions during the sale process? Because once they have got that, then the consumer cannot get that ticket. Once they are into somebody's cart and you are processing that card, then that is not available to the consumer.

So, sir, with all due respect, you have not solved your problem by saying, well, we flag it at the end. The issue is you have got to beef up your systems, your verification systems. You have to strengthen your cyber protections. Sounds like you need to some good advice on how to follow some of the protections that are there for financial institutions and credit card processors and healthcare institutions and utilities.

And we are hopeful that you are going to be able to do that. As I said, we need all of you to be successful and to be fair.

And by the way, Mr. Lawrence, come to Nashville. Be happy to have you there.

Thank you, Madam Chairman.

Mr. LAWRENCE. Absolutely.

Senator KLOBUCHAR. There you go. A good invitation.

Senator Lee.

Senator LEE. Thanks so much.

We have had a lot of talk in the last few rounds about restrictions on the ability of a consumer, a purchaser of a ticket, being able to sell it to someone else. A lot of people seem to think that is somehow a solution. I think it is a “nightmare dressed like a daydream.” I do not think we ought to go there. There are a lot of complaints about doing this.

Look, no one is particularly fond of scalpers, generally speaking. But this is not about scalpers. This is about the purchasers of the tickets themselves. They may have perfectly legitimate reasons, whether it is a change of plans or otherwise, to resell tickets that they have already purchased.

In a number of States, including New York, Illinois, and my home State of Utah, we have laws that restrict these sorts of things. In Utah specifically, the Ticket Transferability Act in place in my State requires that at least 90 percent of tickets for an event be transferrable.

And so, Mr. Nuzzo, we will start with you on this one. Do you think Federal policymakers ought to take a similar approach with this, or is this particular issue best left to the States?

Mr. NUZZO. Thank you, Senator.

And I would reiterate the comment I made earlier about there being a nexus with interstate commerce. In any State, you are going to have folks from out of State purchasing tickets to an in-State concert event, sports stadium. So there is a role for the Congress to play in this.

Senator LEE. Is it one that needs to be played? I mean, you are not suggesting that there would be a dormant commerce—I could not resist—

Senator KLOBUCHAR. Oh, no.

Senator LEE [continuing]. Would not be a dormant commerce problem with the States doing it?

Mr. NUZZO. No. No, I do not. But I do recognize the efficiencies by a Federal solution, as opposed to a 50-State patchwork, in this realm.

Senator LEE. That makes sense.

Ms. Bradish, the most common justification that we hear when this sort of thing comes up about ticket transferability is that artists want it. And now the artists, as the argument goes, want to stop scalpers and help their friends, help their followers, their biggest fans. But why should artists be able to tell their fans what to do with a ticket purchased from the venue?

Does that really sound like something that you would do in defense of the very same people you want to buy your ticket is tell them if you have got a change in plans you are out of luck, or does

it sound more like Ticketmaster and certain other actors, including in some cases artists, are simply sharing monopoly rent?

Ms. BRADISH. Exactly. And I think what this points out is that when an industry suggests its own cures, we also have to look at the possibility that it has another effect, which is in this case perhaps to keep customers within the Ticketmaster ecosystem.

Senator LEE. Right. Right.

Mr. Groetzinger, sticking to the issue of ticket transferability, it seems to be that impairing transferability might also harm competition and, therefore, consumers, by preventing legitimate secondary ticketing companies from gaining any traction. And the logic there is that if you are stopping legitimate secondary ticketing companies from gaining any traction, you are also forestalling would-be future nascent competitors who could rise up through the marketplace and potentially challenge Ticketmaster. Do you share this concern?

Mr. GROETZINGER. I think that is exactly right, and I think this industry already lacks competition. Reducing transferability just exacerbates that problem. A related issue is if the incumbent were to allow transferability, but only on its own platform or only allow fulfillment on its own platform, it is a way to force all consumer data and all transaction fees onto that platform.

Senator LEE. Right. Now, Mr. Berchtold, if I purchase a ticket on Ticketmaster, is that my ticket? And if it is my ticket, is that not my property to use or dispose of or transfer as I deem fit?

Mr. BERCHTOLD. Senator, I think this discussion on transferability exists simply because of the volume of industrial scalping that takes place, the harvesting of those tickets that disrupts the relationship between the artist and the fan. And as we submitted, one of the notes was a letter from Garth Brooks, who is well known for being one of the leading advocates of providing a great show and a great value for his fans, who called out very specifically that it is the scalping that takes place that is the origin of the problems that we have, and everything else is a derivative issue.

Senator LEE. Well, there are other issues, of course. And that may be his view, but he is not—I do not think he is necessarily considering the consumer welfare standard or the Sherman Act or the Clayton Act when making that statement.

So I am going to ask you this. Will you, on behalf of Ticketmaster, commit right now to offering fair, reasonable, non-discriminatory API access to legitimate secondary ticketing services to facilitate the safe and easy transfer of tickets without limiting customers to the Ticketmaster app? And if not, why not?

Mr. BERCHTOLD. Senator, first, we believe that the artist does have the right to set the rules by which ticket transfer takes place in today's environment with the high volume of scalping. Second, with digital tickets, there needs to be the maintenance of a digital right master that is held centrally. And as part of fraud prevention, we are not going to put that out in the wild to enable fraud.

Senator LEE. I would like to get Mr. Groetzinger's response to that and also ask Mr. Groetzinger to just talk about how competition with Ticketmaster has impacted innovation in the ticketing space.

Mr. GROETZINGER. The NFL provides a great counter example to that, where the NFL has created an ecosystem where ourselves, Ticketmaster, and StubHub all compete. Those APIs exist, and it works really well for NFL fans. There is no technical reason, there is no master manifest reason that could not exist in other venues. It is just a business reason that it does not. And I am sorry, I forgot your other question.

Senator LEE. Just tell me how competition with Ticketmaster, how has competition with Ticketmaster impacted innovation in the ticketing space?

Mr. GROETZINGER. I think it has severely stunted it. Like I mentioned earlier, I would love to have a ton of brilliant, vibrant developers and companies trying to make better solutions, trying to—I would love that this bot issue we have not been talking about for a decade because so many people have been competing to build a better mousetrap that it did not exist anymore.

Senator LEE. Right.

Mr. GROETZINGER. And unfortunately, that is not—

Senator LEE. So the absence of competition has stunted it. To the extent you were able to see some developing semblance of competition, how does or how will or how would that impact innovation in the ticketing space?

Mr. GROETZINGER. Yes, what makes it really hard for us is we are trying our darnedest to build the absolute best ticketing software on Earth and make tickets more accessible to fans, get more people to go to events. We believe we have that. We will then go to a venue and try to bid competitively, and they make a choice against what is the best technology because they are afraid of losing concerts if they do not choose SeatGeek. And I think while that underlying reality exists, it is going to be very, very hard, if not impossible, to have a fair, vibrant, competitive market.

Senator LEE. Thank you. I see my time has expired.

Thank you, Madam Chair.

Senator KLOBUCHAR. Very good. Senator Hawley.

Senator HAWLEY. Thank you, Madam Chair.

Mr. Berchtold, if I could just come back to you. You told me in our last exchange that a safe ticket, a digital ticket with Ticketmaster, could be sold elsewhere. On StubHub, for example, right? Am I remembering correctly?

Mr. BERCHTOLD. Yes, Senator.

Senator HAWLEY. But what you did not say, but which is I think deeply relevant here, is that in order to get that digital ticket, the person who buys it has to come inside the Ticketmaster ecosystem. Correct? They have got to get the Ticketmaster app because it is a digital Ticketmaster ticket. Yes?

Mr. BERCHTOLD. Yes. That is the same standard if I buy a ticket on a—from a venue that SeatGeek is the primary ticketing provider for. If I want to buy a ticket on Vivid, I then have to have a SeatGeek app in the same way.

Senator HAWLEY. Well, this is a huge advantage to you, though, is it not? Because if you are forcing any buyer—and we are talking about the resale market here, just to be clear. In the resale market, you are forcing any purchaser to come into your ecosystem to sign up. And I notice, by the way, that you advertise—this is from your

own website. You advertise that one of the advantages of the safe ticket digital ticket is that it will allow event owners to communicate directly with event attendees, including those who buy their ticket through resale, and allow them to engage with the attendees after an event is over.

In other words, you are talking about data. You are selling, effectively, the data of all of these people who have not bought direct from you. They want to buy on the resale market, but they have got to come into your ecosystem and give you their data in order to get this ticket. That is tremendous advantage to you, no?

Mr. BERCHTOLD. It is—Senator, it does not quite work that way. It is our policy that if an account is established solely for the purposes of receiving a ticket, we do not use that data for purposes of marketing.

Senator HAWLEY. So, wait a minute. They cannot communicate—when you say on your website that anybody who has a safe ticket, that the event owner will be able to engage with them once the event is over, will be able to offer personalized food and beverage and merchandise offers, that is not true?

Mr. BERCHTOLD. In the context of the event itself, I believe there is some ability to reach out to connect with those fans—

Senator HAWLEY. Once the event is over, you say.

Mr. BERCHTOLD. Ticketmaster does not use that data for marketing to individuals.

Senator HAWLEY. Well, how do they contact them once the event is over?

Mr. BERCHTOLD. That copy may not be accurate, sir.

Senator HAWLEY. This is on your website.

Mr. BERCHTOLD. Yes, I will have to look at it and—

Senator HAWLEY. This is how you are advertising your digital ticketing to folks who—to event owners.

Mr. BERCHTOLD. Yes. I will have to take a look at that. It does not sound accurate.

Senator HAWLEY. Well, what it sounds like is a data industrial complex. I mean that you, a monopoly, are now forcing—in the resale market, you are using your monopoly on the front end to create a monopoly in the resale market, where you are forcing everybody in the resale market to come into your ecosystem, effectively. Of course, you also have your own resale platform.

So, I mean, basically they are going to have to come into your ecosystem anyway to get a ticket that they bought on StubHub. Why even go to StubHub or anywhere else? Why not just come to you directly, right?

I mean, this is how monopolies work. You leverage market power in one market to get market power in another market, and it looks like you are doing that in, frankly, multiple markets. You are doing it in the resale market. You are doing it with data.

Mr. Groetzing, you are nodding your head. Am I right about this?

Mr. GROETZINGER. Yes. Very much agree.

Senator HAWLEY. Just explain to everybody why that is significant. Because you commented on this just a second ago. You said that if you had a player who could force everybody onto one platform and all consumers to put their data into one person's plat-

form, we would have a big problem. Is that not what Ticketmaster is doing, effectively?

Mr. GROETZINGER. Exactly. And it stifles competition completely. We were giving the StubHub example earlier. Mr. Berchtold gave the example of the StubHub seller having to then transfer on Ticketmaster. The reality is that recipient needs to create a Ticketmaster account, download the app, sign in. Basically, they are forced to sign up to Ticketmaster just to receive the ticket that they bought on StubHub.

Senator HAWLEY. Yes, when you think about it, it is really something. You are forcing everybody who just wants to get this ticket on the resale market who has not bought from you, Mr. Berchtold, to begin with. You are forcing them to become your customer in order to take possession of this ticket.

I mean, that is—that is really something. I mean, hats off to you, I guess, for being innovative and using your monopoly. But I have to tell you, from a competition standpoint, this really, really worries me because this looks like a way to, again, further leverage your market power in one market to expand it into other markets. And I just do not see how consumers win out of this exchange.

Thank you, Madam Chair.

Senator KLOBUCHAR. Very good. Thank you. Well said, Senator Hawley.

Do you want to have a closing statement here, Senator Lee? I think we end, as we always do, with the two of us. Please go ahead.

Senator LEE. This has been a really helpful hearing. I appreciated each of your comments and insights. It is the first time we have ever held an antitrust hearing with a band member rather than a lawyer accompanying a witness, and so thank you for coming as well.

This is an important issue, and it relates to a lot of things that we confront on this Subcommittee from time to time. It deals with the intersection of consumer rights, consumer welfare, and our antitrust laws. And so it is very important that we maintain fair, free, open, and even fierce competition in this as in every other space.

And the reason we focus on that is because when there is competition, it does two things, both of which are very valuable to the average American. It increases quality, and it reduces price. We want those things to happen, and so that is why we focus as we do on this.

I have to throw out, in deference to my daughter Eliza, one more Taylor Swift quote: “Karma is a relaxing thought. Aren’t you envious that for you it’s not?”

That is all I have got to say. Thank you.

Senator KLOBUCHAR. Well, thank you, Senator Lee.

I throw out one other one, and that is when I believe she said to you if you do not do a hearing on this, I am going to call Amy Klobuchar directly. Is that possible?

[Laughter.]

Senator KLOBUCHAR. Okay, very good.

All right. So I want to thank all of our witnesses. I think this was a good hearing because we had Senators on both sides of the aisle making very valid points about competition. It may have been

a coincidence it was the first hearing of the entire Congress, but maybe not.

Because, one, it was bipartisan. Good sign for the Senate. Two, it was about competition and our economy that goes way beyond the ticketing industry. As I have pointed out, 75 percent of the industries in this country we have seen more and more consolidation.

We have an active Justice Department now and FTC. We have provided them funding because we actually know they bring money in when they do their job. But mostly, this has also been reflected in so many of my colleagues' comments about fans. It is about those events that bring us together, and especially as we come out of this pandemic and come out of our 300 million-plus silos, people have loved going to see live music again, to see live concerts, to be part of that experience.

And one of our goals here, regardless of what State people are from or what party that they belong to, is to give them that experience. Mr. Lawrence, to make them feel part of a fan base and part of something that makes them feel good or makes them think about the lyrics to a song or makes them just rejoice in being part of our arts and part of our culture. So that is why you have seen this tremendous turnout here.

We are very interested in actually doing something and not just throwing popcorn. I think you know we have been respectful throughout this hearing, and I think part of that is our desire to actually move on this issue.

As I have noted, even getting the public's attention on this—and we know, we thank the fans that may be still outside, we hope still watching on C-SPAN. I thank them for keeping this alive, and I thank all of you for your work in this important industry.

But the solutions are there for the taking. Some of them are smaller things that can be done right away. Some of them are things that the Justice Department may order as either part of their oversight with the consent decree or new investigations or new outcomes, some of which have been discussed here. Some of them are things that we can do right here. And of course, we are always going to have some disagreements in this body, I do not think you are surprised, over what the best course is, but there is some general agreement on some of these ideas when it comes to pricing and transparency and the like.

And finally, our job is oversight and making sure that our agencies that actually do the work are funded so they can do it. And I am proud of the work we did at the close of last year to do that.

So, with that, we are going to keep the record open for a week. I want to thank our staff for their work on it, and in particular, Marc and Avery and Keagan, who are behind me, and also Senator Lee's staff for their work on this, as well as Senator Grassley's staff over the many years on this issue, and Senator Durbin for allowing us to have this hearing when we do not even have the Subcommittees formed yet so we can get working on this right away.

So, with that, the hearing record is going to remain open for 1 week until January 31, 2023.

Thank you very much. The hearing is now over and adjourned.
[Whereupon, at 12:51 p.m., the hearing was adjourned.]
[Additional material submitted for the record follows.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List
Hearing before the
Senate Committee on the Judiciary

“That’s the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment”

Tuesday, January 24, 2023
Hart Senate Office Building, Room 216
10:00 a.m.

Joe Berchtold
President and Chief Financial Officer
Live Nation Entertainment, Inc.
Beverly Hills, CA

Jack Groetzinger
Chief Executive Officer
SeatGeek, Inc.
New York, NY

Jerry Mickelson
Chief Executive Officer and President
Jam Productions, LLC
Chicago, IL

Sal Nuzzo
Senior Vice President
The James Madison Institute
Tallahassee, FL

Kathleen Bradish
Vice President for Legal Advocacy
American Antitrust Institute
Washington, D.C.

Clyde Lawrence
Singer-songwriter
Lawrence
New York, NY

**United States Senate
Judiciary Committee
January 24, 2023**

**Opening Statement of
Joe Berchtold
President and Chief Financial Officer,
Live Nation Entertainment, Inc.**

Chair Durbin, Ranking Member Graham, Senators Klobuchar and Lee, and other Members of the Committee, I'm Joe Berchtold, the President and Chief Financial Officer of Live Nation Entertainment, Inc. I thank you for the invitation to appear today to address important issues in the live entertainment industry.

For almost 20 years, Live Nation has operated in the United States and around the world with an artist-first business model focused on helping put artists on stage and connecting them with their fans.¹ We believe that the artist-fan connection is the foundation of the live entertainment industry, the source of nearly all commercial value, and the number one thing that public policy should protect.

Over this period we have helped the industry grow rapidly – in 2022 live music was a \$12 billion industry in the United States, four times what it was in 2005. To fuel this growth, Live Nation has invested billions of dollars funding artists globally – \$9 billion in 2022 alone. We put that money at risk, because our business model is to provide revenue guarantees as a minimum income to artists, which is now generating the vast majority of their total income. In fact, since 2011 our overall our artist payment has increased 67% to an average of \$178,000 per show. Even in the smaller clubs and theaters category our average artist fee is \$47,000 per show.

The first thing this business model means is that we are always trying to achieve sell-outs. That's the goal of every concert promoter, since the promoter only makes money if enough

¹ Live Nation's dedication to growing a healthy, vibrant live entertainment ecosystem is reflected by the enduring relationships we have built with artists, content owners, and venue partners, a number of which have submitted letters expressing their support of the key role we have played in their success. I ask that these letters be submitted with my testimony. See Exhibit 1.

tickets are sold to cover the guarantee. Nearly every strategic decision we help artists make, from tour routing to selecting venues to pricing tickets, is driven by the goal of maximizing attendance which requires offering the kind of consumer experience that will build lifetime fans.

Given our level of investment in artists, it is also critical for Live Nation to have the most effective platform possible for selling tickets. Most people tend to think of a ticketing platform as a transaction engine. That is part of it, but the ticketing system is also a critical tool for marketing concerts. Prior to our merger with Ticketmaster in 2010 we did not believe any existing platform adequately met these needs, including Ticketmaster. Since the merger, we have invested over \$1 billion in capital to improve the Ticketmaster system. We created an entirely new, modern computing architecture. We developed digital ticketing to eliminate fraud. We created our Verified Fan® service to get tickets to fans instead of ticket scalpers using bots. And we've invested millions in anti-BOT technology every year. Ticketmaster comes under a lot of criticism, and I look forward to addressing that today. But I can say with great confidence that technologically Ticketmaster is a much better ticketing system today than it was in 2010. Its performance in large onsales is the best in the industry, it has the best marketing capabilities of any ticketing system, and it is far and away the leader in preventing fraud and getting tickets into the hands of real fans.

I will pause for a moment to note what Ticketmaster and all other ticketing platforms do and don't do, because some of the criticisms leveled at Ticketmaster misunderstand what ticketing companies do.

Ticketmaster provides venues and sports teams a variety of tools to plan events, manage ticket inventories, market the events, sell the tickets of course, and handle access control at entry gates. We also provide artists, sports teams and other content owners analytics and advice to support their distribution and pricing strategies. But primary ticketing companies, including Ticketmaster, do not set ticket prices, do not decide how many tickets go on sale and when they go on sale, do not set service fees. Pricing and distribution strategies are determined by artists and teams – and while Ticketmaster provides support for these decisions, we do not use

algorithms to set prices. In most cases venues set service and ticketing fees, and the majority of those fees go to the venue, not to Ticketmaster. Indeed, for as long as Live Nation has owned Ticketmaster, the portion of the service fee that Ticketmaster retains has been falling and the venue's share has been increasing. That leads to the topic of today's hearing: competition in ticketing markets.

We hear people say that ticketing markets are less competitive today than they were at the time of the Live Nation-Ticketmaster merger. That is simply not true. In 2009 the Department of Justice alleged that Ticketmaster's market share was over 80%. It is a different story today. The most obvious change is the emergence of the enormous secondary ticketing market, in which Ticketmaster has a modest market share and many strong competitors. But also in primary ticketing, the Ticketmaster of 2010 did not face the level of competition we face today from new competitors including SeatGeek, AEG's AXS, and Eventbrite, along with established competitors including Tickets.com and Paciolan. Today, there is intense competition for every ticketing contract that goes out to bid—far more than there was in 2010. Ticketmaster has lost, not gained, market share, and every year competitive bidding results in ticketing companies getting less of the economic value in a ticketing contract while venues and teams get more. The bottom line is that U.S. ticketing markets have never been more competitive than they are today, and we read about new potential entrants all the time.

There are problems in the ticketing industry – problems that we believe can and should be addressed through legislation. Many are the direct result of the industrial-scale ticket scalping that goes on today, which is a \$5 billion dollar industry in concerts alone and is fueled by practices that run counter to the interests of artists and fans.

The recent onsale experience with Taylor Swift, one of the world's most popular artists, has highlighted the need to address these issues more urgently. A fact of life in our industry is that when a hugely popular artist goes out on tour, there will inevitably be more demand from their fans than there are tickets to go around. Overall, about 5% of shows sell out on or close to the day of the onsale, and about 20% sell out eventually. There is also a longstanding practice in

the industry for artists to price tickets well below their market value so they are more affordable. Those supply, demand and pricing conditions lead to scalping, which in the age of the internet is largely accomplished by using bots to acquire tickets and online secondary marketplaces to sell them.

There was unprecedented demand for Taylor Swift tickets. We knew bots would attack that onsale, and planned accordingly. We were then hit with three times the amount of bot traffic than we had ever experienced, and for the first time in 400 Verified Fan onsales they came after our Verified Fan access code servers. While the bots failed to penetrate our systems or acquire any tickets, the attack required us to slow down and even pause our sales. This is what led to a terrible consumer experience that we deeply regret. As we said after the onsale, and I reiterate today, we apologize to the many disappointed fans as well as to Ms. Swift.

Ticketmaster learned some valuable lessons from this onsale. In hindsight there are several things we could have done better – including staggering the sales over a longer period of time and doing a better job setting fan expectations for getting tickets. And let me be clear that Ticketmaster accepts its responsibility to be the first line of defense against bots in this ever-escalating arms race. But in this forum where we are here to discuss public policy, we also need to recognize how industrial scalpers breaking the law using bots and cyberattacks to try to unfairly gain tickets contributes to an awful consumer experience. We are doing everything we can to fight the people who attack our onsales and steal tickets meant for real fans, but we need help passing real reforms to stop this arms race.

Let me close by mentioning a few things we can accomplish together.

First, Congress took a step in the right direction when it passed the BOTS Act in 2016. But in hindsight the prohibition on bots is too narrow and there is not nearly enough enforcement – particularly of the provision that makes it unlawful to sell or offer to sell a ticket obtained by bots if the seller should have known about the violation. We think that private parties including Ticketmaster should be able to bring civil actions to enforce the BOTS Act.

Second, there should be clear and categorical laws prohibiting the host of deceptive sales practices that are evident on secondary sites. So-called “speculative ticket sales” – offering for sale tickets you don’t own or have an existing right to obtain – should be illegal. So should the practice that we witnessed last week when a number of secondary ticketing sites were offering tickets for sale the day a new tour was announced, well before any onsales. The use of deceptive URLs that claim “official” status when they are nothing of the kind should also be banned.

Third, we need federal legislation to mandate “all-in pricing,” meaning that fans should know the full cost of their tickets from the start. The various fees can be broken out and displayed as well, but the all-in price is the real price of admission, and that ought to be the first thing a fan sees.

Live Nation is a company full of people who are passionate about artists, sports and entertainment. Our mission is to make live events the best experience possible. I admit that we are not perfect – it is in fact my job to identify things we can do better and close the gap between where we are and where we want to be. We also share your goal of making the live entertainment industry better for artists, teams and fans alike. And it is in that spirit that I sit before you today: to work with you to make the fan experience better. I look forward to answering your questions.

Exhibit 1

Open Letter to U.S. Congress

As an entertainment company, I have worked with Ticketmaster for many years now. In the beginning, we did a lot of our ticketing independently. As you grow, however, you start playing the larger venues and you learn each venue has their own contract with a chosen ticket selling agency that you, as an artist, have to go through in order to play that building. Ticketmaster held the rights to a large number of places I wanted to play. With that said, as you work with a company, that company becomes individual people. What I witnessed was a true concern and care for ticket buyers as each on-sale was enacted. For example, now, decades later and more aware of what I can ask for, I wanted to play AT&T Stadium in Texas. AT&T Stadium does NOT use Ticketmaster as their ticketing agency. I had grown to love and trust the people at Ticketmaster so much, I told the Cowboys organization that I couldn't come play there unless they let Ticketmaster come in and do the on-sale. This was not because of Ticketmaster, but a choice I made.

Any program will shut down or freeze if too much demand is put on the system. We learned this a few times. And when it happens, there are some things that are not in your control. But how you respond to anything is always in your control. Ticketmaster has responded in an appropriate way for all of our situations. And what I learned is, it is as much up to me as the artist to protect the people who have made me an artist when it comes to how much demand I put on a ticketing system.

When it comes to smaller venues, residencies, etc., the price of a ticket is going to be high. That's just because of the lesser number of seats pushed by the price the artist is demanding from the venue. We let our people know that and then it is up to the Entertainer to find other ways for people who can't afford the cost of that ticket to sing along for a lesser price or even free.

While I have you☺ My question is, as a country, why don't we just make scalping illegal? The crush of bots during an on-sale is a huge reason for program failure NO MATTER WHO THE TICKET SELLING COMPANY is. And the one who ALWAYS pays for this atrocity is the customer, the LAST one on whom that burden should fall. Making scalping illegal eliminates bots, eliminates dynamic pricing controversies, puts less pressure on the system because it puts everyone on a level playing field.

Thank you for your time and attention to this matter. Best of luck on your decision.

God bless,

Garth Brooks



January 19, 2023

To Whom It May Concern:

UniverSoul Circus has partnered with Ticketmaster for 30 years. The comprehensive services provided by Ticketmaster has helped grow our business from 14 shows annually to over 800. This was only achievable because Ticketmaster offers a unique cohesive experience that connects us, the business partner along with the consumer, we both share. Their technology allows us to conveniently sell tickets in multiple locations and account for each of those tickets individually in real time. They bring much appreciated financial transparency allowing the accounting office to reconcile and settle shows immediately after each performance. The many analytical reports served through the portal or app keeps us on top of the game understanding if we need to shift marketing or pricing which is life or death for a live event.

Ticketmaster worked with our IT providers to engineer a state-of-the-art traveling box office as well as a centralized ticketing control center and group sales operation in our corporate headquarters. They provide live support in every city we go to. Their advancements in marketing and digital prowess allowed our organization to become more efficient in how we sell tickets streamlining the process while also expanding our reach to audiences we might not have the ability to communicate with otherwise.

Thanks to the API's Ticketmaster has set up we have been able to partner with the likes of Fevo, Groupon and Goldstar to name a few by providing real time inventory to them which increases our revenue channels. The constant improvements in ticket security have saved us hundreds of thousands of dollars annually from issues with customers with fraudulent tickets.

Ticketmaster is a progressive, forward thinking, transformative organization. As consumer buying habits continue to rapidly evolve, they have consistently introduced new platforms, upgraded equipment, and developed software to help our industry sell more tickets better. They have taken the time to communicate with us to genuinely understand our needs and meet them. From providing customized reporting, analytical tools, as well as finding partners that synergize our goals. They are focused on always improving the process which allows us to focus on what we do best, create produce and promote content.

We look forward to continued growth in our partnership.

Sincerely,

A handwritten signature in black ink, appearing to read "Cedric G. Walker".

Cedric G. Walker
President/CEO



January 18, 2023

Via Email

To Whom It May Concern:

I have been working in the arena business for 33 years...for 3 years I worked with TICKETRON and then for the past 30 years with TicketMaster. That many years should tell you how much I believe in and trust TicketMaster. In those years there has never been another ticketing company who has come close to providing the cutting edge technology, the best customer service and become our best and longest partner. This partnership has allowed the Allstate Arena and the Rosemont Theatre to be in the top producing arenas and theatres in the entire country year after year!

Pat

Patrick Nagle
Executive Director
Allstate Arena
Rosemont Theatre



January 18, 2023

To Whom It May Concern,

We are reaching out to communicate our unyielding support of and faith in our partnership with Ticketmaster as the ticketing platform, technology and services provider for the Los Angeles Football Club and Banc of California Stadium.

After careful evaluation of all other providers, as well as experience across our ownership group and executive team with Ticketmaster and other providers, it was and remains our belief that Ticketmaster's comprehensive solution is superior to all others in countless respects – for example, overall quality of technology, the ability to combat those with bad intent and BOTS with the aim of defrauding fans, unrivaled reporting features and data and analytics capabilities that enable better decision making, volume and quality of third party technologies integrated via APIs, quality of end-to-end user experience, season ticketing and back office solutions to support our day-to-day business operations, variety of marketing services to drive results in our business, and operational support to address in a timely manner any and all issues that arise.

At the end of the day, Ticketmaster has earned our trust through their hard work, integrity and commitment to our collective success. Since taking on our business in 2019, they have driven significant increases in our revenue and helped us achieve significant growth in our overall business. We have been recognized by numerous third parties for our success and as one of, if not, the best organization in all of Major League Soccer, and we strongly believe that none of that recognition would have come our way had we not partnered with Ticketmaster.

Please do not hesitate to reach out if you would like to discuss this matter further (213-519-9890).

Best regards,

A handwritten signature in blue ink, appearing to read 'Larry S. Freedman'.

Larry S. Freedman
Co-President and Chief Business Officer



January 19, 2023 (Via Email)

To Whom it May Concern,

As the Chief Revenue Officer of the Miami Dolphins and Hard Rock stadium, each year I oversee numerous live entertainment events including 10 Miami Dolphins events, 24 Miami Open tennis sessions, Formula One racing, and numerous concert and soccer events. It is imperative that we have a ticketing partner that can support our complex and evolving ticketing requirements, help us provide the best possible customer experience, and serve as a resource for us to drive revenue for the business.

We have evaluated multiple ticketing providers for our organization over the past decade, and we continue to find Ticketmaster best suited to satisfy our expanding and evolving business needs. Our business model requires reliable pre-sales and on-sales throughout the year, reaching both domestic and international customers. Ticketmaster's marketing services provide important data to let us segment and reach potential customers. Their operational technology consistently processes high volumes of ticket sales during critical windows of time.

We strive as an organization to sell directly to customers and build quality relationships with them. Ticketmaster's technology to counteract ticket "bots" allow us to sell a larger majority of our seats directly to customers attending our events. In addition, the APIs provided by Ticketmaster allow us to quickly access ticket transactional data, enhancing the safety and security of all who attend Hard Rock Stadium events. This also enables us to identify and communicate with active ticket holders, providing better service at events and prioritizing communication for future events.

In addition to the customer-facing technology, Ticketmaster's back-office solution creates flexibility for our team to create pre-sale and on-sale solutions that match our specific business needs, including customer renewals, relocation, upgrades, deposit conversions, and on-sales. Their solution allows our organization the autonomy to manage inventory and classify each



ticket “price code” for detailed reporting. Their interactive seat maps, virtual venue, and gate access solution technology create an unparalleled customer sales and service experience.

In conclusion, we have complete faith in Ticketmaster’s ability to serve our organization. Their technology and partnership allow us to create a great customer experience, while enabling us to drive revenue and add value to the organization. We will continue to recommend them to any counterparts looking for a trusted partner on these critical aspects of the live entertainment business.

Jeremy

Jeremy Walls

Miami Dolphins, Hard Rock Stadium & Formula 1 Crypto.com Miami Grand Prix
Senior Vice President and Chief Revenue Officer

[Hard Rock Stadium](#) / O:(305) 943-6519

January 19, 2023

VIA EMAIL

Senator Dick Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Senate Judiciary Hearings on Live Entertainment Industry Ticketing Issues

Dear Senator Durbin:

I am writing to express our support for our long-time ticketing services and technology partner, Ticketmaster, in connection with the upcoming Senate Judiciary Committee hearings on the live entertainment industry, and its focus on ticketing issues. The Braves' franchise was founded in 1871 and is the longest continuously operating franchise in professional sports. Ticketmaster has been a trusted partner of the Atlanta Braves for several decades.

With our partners in Cobb County, we opened Truist Park and the Battery Atlanta in 2017, and it has become one of the premiere sports and entertainment destinations in the Southeast. We have invested hundreds of millions of dollars in our facilities, technology and on-field talent, and employ several thousand people and generate millions in economic impact for Cobb County and the State of Georgia. Last year we welcomed over 3,000,000 fans to Truist Park, and another 7,000,000 to the Battery Atlanta. The safety and security of our fans and their experience visiting our venues is paramount to our business and its core values.

Ticketmaster has been a key partner of ours in providing a convenient, safe, and secure ticketing experience to our millions of fans and visitors over the years. Despite significant competition, Ticketmaster remains the best in class in the ticketing services and technology space, with capabilities and functionality that far exceed their competitors. Ticketmaster has invested significant resources in its technology, its capability to fight bad actors including "BOTS" that try to mislead and defraud fans, and its data security and reporting features. Ticketmaster's platform is also by far the best user experience, allowing us to service a wide variety of ticket buyers and Ticketmaster's back-office solutions, administration, and support are all vital to the success of our great franchise.

Ticketmaster has been a valued and trusted partner of ours for several decades and we rely greatly on their expertise and guidance in this space as we continue to move forward. I would be happy to provide any additional information that may be helpful to you and the Senate Judiciary Committee as you continue to evaluate this important industry and related issues, and the impact on fans and consumers.

Sincerely,

Derek Schiller
President & CEO

cc: Senator Jon Ossoff



Kroenke Sports & Entertainment

January 20, 2023

To Whom It May Concern:

Please accept this letter on behalf of Kroenke Sports & Entertainment in support of our event ticketing provider, Ticketmaster.

Recent circumstances surrounding ticket sales, operations and the back end technology that supports these transactions prompted this letter in support of Ticketmaster. Specifically relating to the Taylor Swift ticketing situation, unprecedented demand for tickets led to purchase access delays not only on the Ticketmaster system but on other ticketing systems servicing various other venues.

As we have learned with other recent failures of operational technology fulfilling the needs of the general public (Southwest Airlines, Federal Aviation Administration in recent weeks), technological failures are prone to happen and can happen at any time for any organization.

As difficult as challenges like these are hard to handle and explain, what has impressed our organization with Ticketmaster is that through trying times, they continue to strive to achieve and deliver the best products for their fans and clients with the best research and development investment in the ticketing business. We believe Ticketmaster provides our businesses with the most advanced ticketing technology available including the best consumer protection technology to shield our fans from bad actors price gauging, counterfeit tickets, etc.

Ticketing is the life blood of our sports and entertainment businesses and we find Ticketmaster to be the industry leader in all technological, marketing, customer services and experiences, etc. along with supporting all of the revenue enhancing experiences for our businesses. We successfully host hundreds of events annually across several venues in Denver, Los Angeles and London and in the rare instances where there may be a systems issue, they are always standing behind us and our fans with the best possible services and solutions.

We appreciate the opportunity to speak on behalf of our ticketing services partner, Ticketmaster.

Sincerely,

Matt Bell
Senior Vice President, Venue Operations
Kroenke Sports & Entertainment

1000 Chopper Circle, Denver, Colorado 80204 303.405.1100 BallArena.com





January 19, 2023

To Whom it May Concern,

I am pleased to provide this letter in support of Ticketmaster, the longstanding ticketing partner of TD Garden.

Home of the NHL's Boston Bruins and the NBA's Boston Celtics franchises, TD Garden hosts over 3.5 million people attending over 200 sporting events, concerts, and other performances each year. As we strive to ensure a safe, seamless, and efficient ticketing experience for every guest, we especially value Ticketmaster's gold standard reporting capabilities, enhanced user experience features, and innovative security technologies like encrypted mobile ticketing and account verification.

We have successfully used the Ticketmaster platform for over a decade, and we look forward to our continued ticketing partnership.

Sincerely,

Amy Latimer
President
Delaware North Companies, Inc. – Boston/TD Garden



January 18, 2023

To Whom It May Concern,

Vinik Sports Group (VSG) is elevating the game in the sports and entertainment industry. Home to an NHL franchise, a collegiate athletics property, two event venues, a digital media company, and retail and e-commerce platforms, VSG creates world-class experiences that grow brands, drive revenues and impact the community.

VSG maintains a preference for long-term, win-win partnerships — and Ticketmaster is just that. Ticketmaster expertly manages the ticketing production and services for a variety of concerts, events, and games for Tampa Bay Lightning, the Yuengling Center on the campus at the University of South Florida, and Raymond James Stadium — totaling approximately 250 events that reach roughly 3 million ticket holders annually.

VSG is on a mission to deliver unrivaled fan experiences, and one meaningful way we do this is by partnering with Ticketmaster to make ticket buying easy, safe, and reliable.

For 30 years, Ticketmaster has been supporting VSG in the following valuable ways:

- Ticketing technology
- Innovative products
- Platform of TM1
- Data on our diverse audiences
- Streamlined & fan-centric customer journeys
- Targeted marketing efforts
- Personalized account team for support
- Resources to hit revenue goals
- Global distribution channels

Since opening our doors in 1996 to what is now AMALIE Arena and expanding our reach throughout Tampa Bay, VSG has counted on Ticketmaster's expertise as the global market leader in live event ticketing products and services. We look forward to continuing this long-standing partnership with Ticketmaster as we remain relentlessly focused on our shared fan-first strategy to deliver innovative ticketing technology, best-in-class service, and world-class plus experiences.

Sincerely,
Kevin Preast

A handwritten signature in cursive script that reads "Kevin Preast".

Chief Venue Officer (CVO), Vinik Sports Group
401 Channelside Drive, Tampa, FL 33602



**That's the Ticket: Promoting Competition and
Protecting Consumers in Live Entertainment**

**Testimony of Kathleen Bradish
Vice President of Legal Advocacy
American Antitrust Institute**

**Before the United States Senate
Committee on the Judiciary**

January 24, 2023

Thank you Chairman Durbin, Ranking Member Grassley, and Members of the Committee. It is an honor to be here today to lend the American Antitrust Institute's (AAI's) perspective to the issue of competition in live entertainment. AAI is an independent, nonprofit organization devoted to promoting competition that protects consumers, businesses, and society.¹ We serve the public through research, education, and advocacy on the benefits of competition and the use of antitrust enforcement as a vital component of national and international competition policy. As the leading progressive organization dedicated to promoting competition, for the benefit of consumers, workers, and small businesses, AAI applauds Senate lawmakers for turning their attention to the question at hand today.

I. Summary of Major Themes

My testimony addresses the following major themes:

- ***Live Nation-Ticketmaster is a leading example of both a traditional monopoly and a modern dominant digital player.*** Its dominance in markets in the live entertainment supply chain creates strong incentives to exclude smaller rivals such as smaller or independent concert promoters and venues. Ticketmaster's dominance in digital ticketing also creates incentives to limit competition from ticket resellers and brokers, thus impairing the functioning of the important secondary ticketing market. Customers pay the price with higher ticket prices and ticket fees, lower quality, less choice and less innovation.

¹ For more information, please see <https://www.antitrustinstitute.org>.

- ***The failure of conduct remedies in the 2010 Consent Order is both hard evidence of Live Nation-Ticketmaster's monopoly power and a call for further enforcement action.*** Demonstrated violations of the Consent Order led DOJ to extend the Order and amend it. The amendment, however, does not change Live Nation-Ticketmaster's incentives to exclude its smaller competitors. As a result of conduct and practices that frustrate competition in the secondary ticketing market, the Live Nation-Ticketmaster monopoly has harmed many different participants in the entertainment industry: artists without the bargaining power of blockbuster bands, smaller competitors, and consumers. And because it is insulated from competition, Live Nation-Ticketmaster has little incentive to engage in innovation to improve its products and services, likely contributing to debacles like the Taylor Swift incident.
- ***The Department of Justice should pursue new enforcement action and obtain effective structural relief.*** The most effective remedy for addressing harmful conduct by Live Nation-Ticketmaster is structural relief. This could be obtained through a consummated merger challenge under Section 7 (Clayton Act) *or* a monopolization case under Section 2 (Sherman Act). Eliminating incentives to harm competition in artist management, concert promotion and venues could be addressed by minimizing or eliminating vertical integration. But addressing Ticketmaster's incentives to limit competition in secondary ticketing could require breaking up Ticketmaster itself.
- ***Protecting consumers, artists, and smaller rivals from Live Nation-Ticketmaster's harmful conduct will require multiple policy tools.*** Strong antitrust enforcement against Live Nation-Ticketmaster is the most important prong of a plan to reinject competition in live entertainment. But legislative action is also vitally important to bootstrap stronger enforcement. Proposals to strengthen and modernize the antitrust laws would support more vigorous enforcement, as would those that create a "rules of the road" framework for access and transparency in live entertainment ticketing.

II. Live Nation-Ticketmaster is a Leading Example of Both a Traditional Monopoly and a Modern Dominant Digital Player

The 2010 merger of Live Nation and Ticketmaster joined together artist management, concert promotion, venue operation, and ticketing in a monolithic, multi-level supply chain in the live entertainment business. The \$2.5 billion transaction combined Ticketmaster, the market leader in artist management and dominant seller of tickets to live music events across the country, with Live Nation, the leading concert promoter. In 2008, Ticketmaster held contracts for more than 80% of large venues. Live Nation, which handled just over 30% of major concert events, was the second leading owner-operator of concert venues in the country, and also provided ticketing services that competed directly with Ticketmaster.²

The DOJ's investigation of the proposed merger was joined by seventeen states. In challenging the deal, the government raised vertical and horizontal competitive issues, alleging that the proposed merger would lessen competition substantially for primary

² John E. Kwoka and Diana L. Moss, *Behavioral merger remedies: Evaluation and implications for antitrust enforcement*, 57 ANTITRUST BULL. 979 (2012), at 990-992.

others, involving data analytics, information technology, mobile operating systems, and e-Commerce. These acquisitions have created the digital superstructure to support Ticketmaster's dominant ticketing platform. In an increasingly digital and data-driven industry, Live Nation-Ticketmaster's monopolistic hold will only increase. Its own Form 10K shows that Ticketmaster has an even greater share of mobile app sales than traditional website sales and far greater presence in both than in traditional outlet sales.⁶

In sum, it is critical for policymakers in framing competition policy solutions to the Live Nation-Ticketmaster monopoly problem to consider the company's vast vertical integration throughout the live entertainment supply chain *and* emergence as a dominant digital ticketing platform. This landscape is the starting point for understanding the strength of the company's anticompetitive incentives to squeeze out rivals and impede competition in virtually every part of the supply chain. Consumers, artists, and smaller rivals all pay the price through the loss of choice that is the inevitable outcome of monopoly.

III. The Failure of Conduct Remedies in DOJ's 2010 Consent Order is Both Hard Evidence of the Harmful Live Nation-Ticketmaster's Monopoly Power and a Call for Further Enforcement Action

At the time of the 2010 merger, Ticketmaster's monopoly in ticketing was already well established. The government acknowledged as much when it stated: "*Ticketmaster has dominated primary ticketing, including primary ticketing for major concert venues, for over two decades.*"⁷ By allowing a merger that coupled Live Nation's concert promotion services with Ticketmaster's entrenched monopoly in ticketing, harm to consumers, artists, and smaller rivals was virtually guaranteed. The merger served to "supercharge" the firm's incentives and ability to foreclose competing venue operators, or raise their costs, by cutting them off from access to critical inputs (i.e., concerts) unless they *also* contracted with Ticketmaster for (its higher margin) ticketing services.

The DOJ did not, therefore, need a crystal ball to predict the likelihood the behavioral remedies in the 2010 Consent Order would fail. Indeed, Live Nation-Ticketmaster has become an even more "durable" monopoly in the intervening years, as it continues to dominate the live entertainment markets. For example, in 2018 the New York Times reported: "*Eight years after the merger, the ticketing business is still dominated by Live Nation and its operations extend into nearly every aspect of the concert world. Ticket prices are at record highs. Service fees are far from reduced....No competitor has risen to challenge its pre-eminence.*"⁸ Today, 13 years after the merger, Live Nation's share of the concert promotion market has reportedly risen to about 60%, while Ticketmaster has maintained its dominant, 80% share in ticketing.

Live Nation-Ticketmaster's consistently high and even expanding market shares is compelling evidence that the remedies in the 2010 Consent Order failed to stop the

⁶ Live Nation Entertainment, 10-K for the year ending December 31, 2021, p. 6, available at https://d1io3yog0oux5.cloudfront.net/_d2b887510cdc4efb0a99d3749abb92db/livenationentertainment/db/670/6205/annual_report/Live+Nation+2021+Annual+Report.pdf

⁷ Amended Complaint, *supra* note 3, at 10.

⁸ Ben Sisario and Graham Bowley, *Live Nation Rules Music Ticketing, Some Say With Threats*, NYTIMES.COM, Apr. 1, 2018, <https://www.nytimes.com/2018/04/01/arts/music/live-nation-ticketmaster.html>.

company's continued growth in market power. The evidence of violations spelled out in the DOJ's 2020 Motion to Amend the Consent Order shows the abject failure of its behavioral remedies.⁹ Accounts from six anonymous venue operators describing Live Nation-Ticketmaster's violations of the Consent Order included threats, conditions, and retaliation designed to force venue operators into contracting with Ticketmaster as their primary ticketing service.¹⁰

As DOJ recognized in its 2020 motion to amend the Consent Order, Live Nation-Ticketmaster's "violations have so permeated the industry that venues now fear retaliation and expect conditioning from Live Nation as a matter of course if they do not contract with Ticketmaster. As a result, Defendants' actions have deterred entry into primary ticketing and foreclosed current competitors from winning venues' primary ticketing contracts."¹¹ Time has shown that the behavioral remedies imposed by the government in the 2010 Consent Order did not restore, much less spur, competition in the primary ticketing market, thus confirming the merger's presumptive illegality.

Live Nation-Ticketmaster's disregard of the DOJ Consent Order is not even the full story. Since the 2010 Consent Order, Live Nation-Ticketmaster has worked to find other ways to leverage its market power in the live entertainment supply chain. For example, the company has engaged in a systematic campaign to extend its market power throughout the broader ticketing market.¹² Resale, or secondary, markets can enhance efficiency by providing a venue for fans to sell and buy tickets, balance supply and demand, and even expand demand for live music, to the benefit of artists and concert goers alike. But Live Nation-Ticketmaster has stood in the way of this potential threat to its monopoly by practices that disadvantage resellers. These potentially include restrictions on the transferability of tickets, holding back ticket inventory, releasing tickets only a short time before show times, and giving resale tickets unfavorable placement in search results.¹³ These practices lend support to the concern that Live Nation-Ticketmaster uses its market power to make sure customers stay within its sphere of influence.

Music fans, artists with relatively little bargaining power, and smaller competitors have all suffered at the hands of the Live Nation-Ticketmaster monopoly. The conduct remedies in the 2010 Consent Order and its 2020 amendment do not do enough to protect them. The company has only grown larger, stronger, and more inescapable in the live entertainment business. Given its investigative work and knowledge of the industry, however, DOJ, if bolstered by the support of lawmakers and policymakers, is now in a unique position to address this entrenched monopoly.

⁹ United States v. Ticketmaster Entertainment, Inc. and Live Nation Entertainment Inc., Motion To Modify Final Judgment and Enter Amended Final Judgment, Case No. 1:10-cv-00139-RMC (D.D.C. Jan. 8, 2020) ("Motion to Amend"), at 7.

¹⁰ *Id.*

¹¹ *Id.* at 18.

¹² See, e.g., *StubHub, Inc. v. Golden State Warriors, LLC*, No. C 15-1436 MMC (N.D. Cal. Nov. 5, 2015).

¹³ See, e.g., Alejandra Reyes-Velarde, *Why the Black Keys shut out hundreds of fans, causing chaos at the Wiltern*, latimes.com, Sep. 20, 2019, <https://www.latimes.com/california/story/2019-09-20/black-keys-wiltern-tickets-ticketmaster>.

IV. The Department of Justice Should Pursue New Enforcement Action and Obtain Effective Structural Relief to Address the Live Nation-Ticketmaster Monopoly Problem

Evidence that the company violated the 2010 Consent Order supported, and should have led to a fundamentally different enforcement outcome in 2020. Rather than seeking a more effective remedy, DOJ simply extended by another contracting cycle the conduct remedies that its investigation showed to be inadequate and easily violated.¹⁴ The company's incentives have not changed and it has, therefore, simply been given more time to perfect new “workarounds” and new ways to avoid government detection. Moreover, the company still has the power to silence market participants who fear its retaliation.

This is nothing new. It is well established that behavioral remedies do nothing to change a merged firm's incentives to exercise market power.¹⁵ They create a system of quasi-regulation under which conduct must be continually monitored—a task for which the agencies and courts are ill-suited. Because conduct remedies invoke rules and requirements designed to constrain powerful profit motives that are driven by the exercise of market power, they create strong incentives for the merged company to find “workarounds” to the remedies. Moreover, conduct remedies rely heavily on smaller rivals to report violations of the Consent Order—an expectation that is invariably quashed by rivals' fear of retaliation from powerful incumbents.¹⁶

Repeating DOJ's decade-old enforcement error by extending ineffective conduct remedies in 2020 has arguably done a disservice to artists, consumers, and smaller rivals in the live entertainment business. Instead, DOJ should have taken action to permanently reduce or eliminate Live Nation-Ticketmaster's incentive to engage in anticompetitive conduct. Structural remedies are the *only* remedial mechanism capable of deterring the anticompetitive conduct unsuccessfully addressed by the 2010 Consent Order. For example, a structural remedy would have: (1) separated Ticketmaster's ticketing services from Live Nation's concert promotion and venue operation; or (2) required divestiture of a share of Ticketmaster's position in the ticketing market sufficient to eliminate the demonstrated incentives to foreclose rivals or raise their costs.

If an effective structural remedy was not obtainable by amending the 2010 Consent Order in 2020, the DOJ could have taken stronger enforcement action by bringing a *new case* against Live Nation-Ticketmaster. For example, a structural remedy could have been achieved through a successful consummated merger challenge under Section 7. The agencies have imposed structural remedies before in consummated mergers with post-merger adverse

¹⁴ United States v. Ticketmaster Entertainment, Inc. and Live Nation Entertainment Inc., Amended Final Judgment, Case No. 1:10-cv-00139-RMC (D.D.C. Jan. 28, 2020) (“2020 Consent Order”).

¹⁵ Kwoka and Moss, *supra* note 2. See also, Diana L. Moss, *Realigning Merger Remedies with the Goals of Antitrust*, Chapter 3, THE GUIDE TO MERGER REMEDIES, Global Competition Review (2019).

¹⁶ These problems were acknowledged by the current AAG for Antitrust when he stated in 2017 that “[i]nstead of protecting the competition that might be lost in an unlawful merger, a behavioral remedy supplants competition with regulation.” See Makan Delrahim, Asst Att’y Gen, Dep’t of Justice, Antitrust Div, Keynote Address at American Bar Association’s Antitrust Fall Forum, Nov. 16, 2017, www.justice.gov/opa/speech/assistant-attorney-general-makandehrahim-delivers-keynote-address-american-bar.

effects, as is the case in Live Nation-Ticketmaster.¹⁷ A Section 2 case against Live Nation-Ticketmaster in 2020 would have obtained similar, if not stronger, relief.

Documented evidence of anticompetitive conduct provides a strong basis for government action to bring a Section 7 or Section 2 case. And while DOJ did not choose this course in 2020, it should do so now. If such a case is successful, it could seek a structural remedy that separates ticketing from Live Nation-Ticketmaster's other products and services that would, in fact, reduce or eliminate incentives to exclude rivals. Live Nation-Ticketmaster's more recent efforts to limit competition in the resale market are further evidence of the need for new enforcement and should, potentially, also be challenged in a new antitrust complaint under either Sherman Act Section 2 or Clayton Act Section 7. Again, should the government prevail, an effective structural remedy could require spin offs from Ticketmaster to facilitate more competition in ticketing platforms and reinject competition in primary and secondary ticketing.

V. Protecting Consumers, Artists, and Smaller Rivals From Live Nation-Ticketmaster's Harmful Conduct Will Require Multiple Policy Tools

Live Nation-Ticketmaster's continued monopolistic conduct is a failure of vertical merger enforcement. It shows the need for a multi-pronged approach in live entertainment and in any sector with the pervasive competition problems that result from dominant firms or tight oligopolies. AAI urges enforcers and lawmakers to consider three major features of a multi-pronged approach to the Live Nation-Ticketmaster monopoly problem.

First, the Live Nation-Ticketmaster problem makes a strong case for standards that enable the agencies to challenge vertical mergers as effectively as horizontal mergers (i.e., the "structural presumption"). The incipiency standard in Section 7 of the Clayton Act is designed to prevent *all* mergers that may enhance market power and lead to anticompetitive effects.¹⁸ Those include concentrative horizontal mergers that threaten harm competition and consumers.¹⁹ But they also include vertical mergers. While vertical mergers do not increase market concentration, they can create incentives for the firm to exercise market power against its competitors at one level of the supply chain by giving it control of another point in the chain. This can result in higher prices, lower quality, and less innovation in any given market in a supply chain.

Second, more vigorous antitrust enforcement should be supported by legislation designed to modernize, strengthen, and clarify the U.S. antitrust laws. Senator Klobuchar's proposed

¹⁷ See, e.g., *Chicago Bridge & Iron Co. v. FTC*, 515 F.3d 447 (5th Cir. 2008); Justice Department Reaches Settlement with Parker-Hannifin, Divestiture Will Restore Competition in Markets for Aviation Fuel Filtration Products, U.S. Department of Justice, Dec. 18, 2017, <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-parker-hannifin>; and *Consummated Merger Challenges – The Past Is Never Dead*, Remarks of J. Thomas Rosch Commissioner, Federal Trade Commission, before the ABA Section of Antitrust Law Spring Meeting Washington, DC, Mar. 29, 2012, https://www.ftc.gov/sites/default/files/documents/public_statements/consummated-merger-challenges-past-never-dead/120329springmeetingspeech.pdf.

¹⁸ See 15 U.S.C. § 18.

¹⁹ See *United States v. Phila. Nat'l Bank*, 374 U.S. 321, 338 (1963) and *Brown Shoe Co. v. United States*, 370 U.S. 294, 317 (1962).

Competition and Antitrust Law Enforcement Reform Act (S. 225 or “CALERA”) is a leading example. The bill would, among other things, update legal standards for mergers and shift the burden to the merging parties to prove their deal would not violate the law.²⁰ The bill would also prevent harmful conduct by dominant firms by strengthening the standard for prohibiting anticompetitive, exclusionary conduct. Other reforms proposed in the CALERA bill include seeking civil fines for antitrust violations and increasing agency resources. Such reforms would reduce the formidable burdens on the government for bringing both monopolization and merger cases.

Finally, the competition challenges posed by Ticketmaster’s transformation into a dominant digital platform may well require lawmakers to consider the merits of an oversight regime to facilitate access to and transparency in ticketing. For example, digital technology can facilitate practices designed to “self-preference” by steering music fans to Ticketmaster’s proprietary ticketing services inside the Ticketmaster digital system. Among other concerns, this could frustrate fans’ ability to access the secondary ticketing market. Constructive solutions to these problems may well require a regime designed to establish “rules of the road” or codes of conduct for digital ticketing platforms. These problems are significant enough that lawmakers have proposed legislation at both the federal and state levels to address them.²¹ Such efforts should be an integral part of a multi-pronged approach to addressing competition problems in live entertainment.

²⁰ *Competition and Antitrust Law Enforcement Reform Act of 2021*, 117th Congress, <https://www.congress.gov/bill/117th-congress/senate-bill/225>.

²¹ See, e.g., *The Curious Case of U.S. Ticket Resale Laws*, seatgeek.com, Feb. 22, 2017, <https://seatgeek.com/tba/articles/ticket-resale-laws/>.

Testimony of Jack Groetzinger
Co-Founder and CEO, SeatGeek

Senate Judiciary Committee Hearing
That's the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment

January 24, 2023

Good Morning, Chairman Durbin, Ranking Member Graham, Senators Klobuchar and Lee, and Members of the Committee. My name is Jack Groetzinger. I am a co-founder and CEO of SeatGeek, a technology company that focuses on improving the experience of purchasing tickets to live events. Thank you for the opportunity to testify today and for the work of this committee to address and remediate anticompetitive and monopolistic practices. Our economy functions better when there is robust competition that fosters innovation and protects consumers.

**SeatGeek Offers an Innovative, Procompetitive Product
That is Popular with Venues and Fans**

My co-founders and I started SeatGeek because we believe in the power of live events but felt the experience of purchasing tickets was antiquated and ripe for innovation. Since 2009, we have been on a mission to build the most advanced ticketing platform on earth, one that empowers fans with the best possible user experience. We have invested over one hundred million dollars in product and engineering to bring modern technology and a best-in-class mobile experience to the ticketing industry. Founded as a ticket aggregator, SeatGeek evolved into a consumer ticketing marketplace by 2014 and entered the primary ticketing market in 2016. One of the main reasons we entered primary ticketing was we realized that the primary ticketer (in

most cases, Ticketmaster) controls so much of what happens throughout the entire ticketing ecosystem.

Throughout our evolution—from aggregator to marketplace to primary ticketing platform—we have maintained our focus on the consumer. We were the first to ascribe “value” to a ticket by considering seating location and price to generate a “Deal Score” that allows consumers to easily compare hundreds of tickets and find the best deals. We provide a toggle that allows consumers to see the all-in price of a ticket as well as a breakdown of fees early in the purchase process.

SeatGeek also created interactive maps with 3D views from available seats to give fans a better understanding of what they are buying. With “SeatGeek Swaps,” an industry-first among major ticketers, we created a platform that gives fans the flexibility to return their ticket for 100% credit on a future purchase. And through our “Rally” product, we provide a fully personalized event experience platform that allows fans to check the weather, find driving directions to the stadium, order food from their seats, buy merchandise, and book a ride-hailing service back home.

We use an open infrastructure that makes a team’s primary tickets available not only through SeatGeek but also through any number of third parties. This approach allows fans greater choice in ticketing options and stands in sharp contrast to the Ticketmaster model.

Our efforts have resonated with fans. In each year from 2016-2021 (except COVID-impacted 2020), SeatGeek surveyed its users for their opinions about SeatGeek and competing ticketing services. Each year, the survey results have indicated that SeatGeek’s Net

Promoter Score (“NPS”) is the highest of any major ticketing provider.¹ Significantly, SeatGeek’s NPS scores are at their highest when SeatGeek is the primary ticketer.

Since entering primary ticketing in 2016, some of the world’s premier sports teams and venues have moved to SeatGeek thanks to the strength of our technology. We have entered into partnerships with leading venues and franchises, including approximately one-half of English Premier League teams; a handful of NBA, NHL, and NFL teams, including the Dallas Cowboys, New Orleans Saints, Utah Jazz and (my hometown) Cleveland Cavaliers; and Jujamcyn Theaters, which owns five major Broadway theaters.

**To Fix Ticketing for Live Events in the United States,
We Must Restore Competition**

I’m proud of the work we have done at SeatGeek over the past twelve years, but I also recognize the ongoing challenges facing our industry, some of which have recently become front page news headlines. At a time when most other industries are rapidly innovating to meet consumer needs, much of our industry is moving in the opposite direction. These challenges include:

- Restrictions on the transferability of tickets
- Restrictions on where tickets can be purchased
- Difficult and deceptive user experiences
- Legacy systems that do not meet consumer expectations
- The display of fees at the very end of the purchase process, sometimes even after a consumer has entered their credit card information
- Consumer perceptions that fees are too high
- A lack of innovation to create new features that improve the fan experience

¹ NPS refers to a percentage, expressed as a value from -100 to 100, to gauge consumer satisfaction.

Every industry has its challenges. In most industries, however, robust competition and an open market bring capital, fresh thinking and innovation, quickly attacking antiquated services and taking market share. New entrants develop better, faster, more stable solutions; consumers seek out the most consumer-friendly products and services; businesses choose the best products based on the merits of those products; industry incumbents must react to these innovations or risk being left behind. This does not happen in the live event ticketing industry.

Innovation in live event ticketing has been stunted because Live Nation Entertainment, Inc. (“LYV”) controls the most popular entertainers in the world, the ticketing systems, and even many of the venues. This power over the entire live entertainment industry allows Live Nation to maintain its monopolistic influence over the primary ticketing market. As long as Live Nation remains both the dominant concert promoter and ticketer of major venues in the United States, our industry will continue to struggle with the challenges that face it today.

The Formation of Live Nation Entertainment and the Department of Justice’s (“DOJ”) Concerns

LYV is the product of the 2010 merger of Ticketmaster Entertainment LLC (“Ticketmaster”) and Live Nation Entertainment, Inc. (“LYV”). Live Nation is the largest promoter of major concerts, promoting (and thus controlling the placement of) more than 73 percent of the top 25 concert tours in the United States by gross revenue.² Live Nation’s grip on concert content gives LYV substantial power over major venues, including professional sports venues that host major concerts. Major sports venues rely on being able to host such concerts,

² Pollstar, *2021 Year End Top 200 North American Tours*, (Dec. 13, 2021), https://data.pollstar.com/chart/2021/12/Top200NorthAmericanTours_984.pdf.

not only for the substantial direct revenue from the concerts themselves, but also for their attractiveness to sponsors and buyers of suites and season ticket packages.

At the time of the merger, the DOJ recognized that until Live Nation's entry into primary ticketing the previous year, Ticketmaster had "dominated the market for primary ticketing services to major concert venues in the United States." The DOJ found that despite a dramatic decline in ticket distribution costs as consumers increasingly used the internet for ticket purchases, "the ticketing fees retained by Ticketmaster ha[d] not fallen, and Ticketmaster ha[d] continued to enjoy large profit margins." The DOJ also noted significant entry barriers to the ticketing market, including "Ticketmaster's practice of signing long-term exclusive contracts with venues."³

The DOJ believed that Live Nation posed a "major threat" to Ticketmaster's dominance.⁴ The DOJ concluded that Live Nation, which owned, operated, or selected the primary ticketing provider for more than 75 live entertainment concert venues,⁵ was better positioned to overcome the market's entry barriers than any other existing or potential competitor "because it could achieve sufficient scale to compete effectively with Ticketmaster simply by ticketing its own venues."⁶ The DOJ further noted that Live Nation, the country's largest concert promoter, "possessed a unique competitive advantage in that it could bundle access to important concerts

³ Competitive Impact Statement at 4, *U.S. v. Ticketmaster Entertainment, Inc.*, Case No. 1:10-cv-00139 (D.D.C.) (Jan. 25, 2010) (hereinafter "CIS").

⁴ *Id.* at 10.

⁵ Amended Complaint at 12, *U.S. v. Ticketmaster Entertainment, Inc.*, Case No. 1:10-cv-00139 (D.D.C.) (Jan. 25, 2010) ("hereinafter "Amended Complaint").

⁶ CIS at 4.

with its ticketing service.”⁷ By 2009, Live Nation was already providing primary ticketing services to more than 15 percent of the capacity of major U.S. concert venues.⁸

Accordingly, the DOJ viewed the merger as a threat to competition in the U.S. primary ticketing market. The DOJ concluded that the merger would (i) “eliminate the financial benefits that venues enjoyed during the brief period when Live Nation was poised to challenge Ticketmaster’s dominance”; (ii) diminish innovation in primary ticketing services; and (iii) increase barriers to entry and expansion, including “requir[ing] competitors to offer venues both primary ticketing services and access to content” in order to compete effectively.⁹ The DOJ was also concerned that the “loss of competition would likely result in higher prices for and less innovation in primary ticketing services.”¹⁰

**Live Nation’s Continued Market Domination is the Result of
Threats and Retaliation, Leaving Venues Fearful of Change**

The DOJ’s concerns have proven well-founded. Twelve years after the merger, Ticketmaster’s stranglehold on the primary ticketing market endures, insulated from meaningful competition despite a highly unpopular product offering whose failings have become front page headlines. Ticketmaster has an estimated market share in excess of 70 percent of the U.S. primary ticketing market and dominates ticketing for major professional sports teams and venues, serving as the primary ticketing provider for more than 80 percent of NBA, NHL, and NFL teams and venues.

⁷ *Id.*

⁸ Amended Complaint at 14.

⁹ CIS at 11.

¹⁰ *Id.* at 2.



Based on internal SeatGeek Data.

Ticketmaster continues to control the primary ticketing market despite the DOJ’s efforts, through provisions in a negotiated consent decree (“Final Judgment”) that was entered against LYV by a federal court, to facilitate the entry and expansion of additional competitors.

The recent Taylor Swift concert on sale provides yet another window into Ticketmaster’s market dominance of major sports venues. Taylor Swift’s recently announced concert tour includes 52 shows across 18 venues. Forty-seven of those shows—approximately ninety percent—are at a Ticketmaster venue. Without action by the DOJ, this is unlikely to change anytime soon. Major sports venues typically enter into multi-year exclusive agreements with a ticketing platform. In response to the first signs of competition, Ticketmaster has moved to even longer exclusive agreements with venues, sometimes as long as ten years.

It is no mystery why Ticketmaster’s competitors have not gained greater market share in the primary ticketing market. Major venues in the United States know that if they move their primary ticketing business from Ticketmaster to a competitor, they risk losing the substantial revenue they earn from Live Nation concerts. They know this because LYV has told them so, directly and indirectly—through its public pronouncements, private communications, and subsequent retaliation against venues that have defied Ticketmaster and signed deals with a

preferred competitor. LYV has engaged in this behavior despite twice being ordered—and agreeing—not to do so: in the 2010 Final Judgment, and in a 2020 Amended Final Judgment that modified and extended the Final Judgment.

The DOJ's 2019 investigation confirmed that LYV had violated the Final Judgment directly and repeatedly, almost from its inception. Even in an apparently abbreviated investigation,¹¹ the DOJ was able to identify six distinct examples of LYV threatening to pull live shows from venues that did not contract with Ticketmaster and/or retaliating against venues that did not contract with Ticketmaster by withholding Live Nation concerts, including:

- A Ticketmaster executive telling one venue, “if you move in that direction (i.e., not renew with Ticketmaster), you won’t see any Live Nation shows.”
- Ticketmaster’s President warning the executive of another venue that if the venue selected a competing primary ticketer, Ticketmaster’s response “would be ‘nuclear’” and “though he would deny it if I repeated it, Live Nation would never do a show in our building . . .”
- Ceasing to contact a venue about booking Live Nation concerts after that venue selected a Ticketmaster competitor as its primary provider, only to re-start discussions with the venue after the venue switched back to Ticketmaster and saying the venue was “back in the family.”¹²

The DOJ found that as a consequence of LYV’s conduct, “venues throughout the United States have come to expect that refusing to contract with Ticketmaster will result in the venue receiving fewer Live Nation concerts or none at all.”¹³

¹¹ Only three months elapsed between the DOJ’s public confirmation of its investigation and the announcement of a resolution.

¹² Motion to Modify Final Judgment and Enter Amended Final Judgment at 8,9, *United States v. Ticketmaster*, No. 10-cv-00139, (D.D.C. Jan. 8, 2020).

¹³ *Id.*

DOJ Action is Required to Bring Necessary Changes to Ticketing in the U.S.

Neither consent decree has deterred LYV's anticompetitive behavior. To the contrary, LYV's Chief Executive Officer has asserted publicly that regardless of the language of the consent decree, LYV can and will "do what's right for our business" and place concerts "where we make the most economics," and that a non-Ticketmaster venue "won't be the best economic place anymore because we don't hold the revenue."¹⁴

Entertainment industry analysts also recognize that Ticketmaster's dominance in primary ticketing arises in part from Live Nation's control of concert revenue. For example, a 2016 J.P. Morgan report explains:

We see Ticketmaster retaining its primary tickets dominance. Live Nation has over 12,500 ticket clients (venues) and has seen a renewal rate over 100% for the past six years. Such continued dominance can be perplexing at first, but is explained by realizing that venue owners' desire to sign with Ticketmaster is less about hardware or software, and *more about filling seats with Live Nation produced concerts. For any venue, moving to an alternative ticketing platform essentially incentivizes LYV to book shows at alternative locales.*¹⁵

And a 2020 report published in Barron's states:

Ticketmaster typically has an upper hand in negotiating with venues, as it also controls access to the talent. *If the firm declines to use Ticketmaster, then LYV can elect to take its talent to an alternative venue.* This contractual moat is compounded by Live Nation's frequent practice of installing its own hardware at the venue, using proprietary software to process tickets.¹⁶

¹⁴ Jem Aswad, *Live Nation-Ticketmaster Chief Michael Rapino Talks Dept. of Justice Inquiries*, Variety (Sep. 18, 2019), available at <https://variety.com/2019/biz/news/live-nation-ticketmaster-michael-rapino-dept-of-justice-inquiries-1203341144/#> (hereinafter "Rapino Interview").

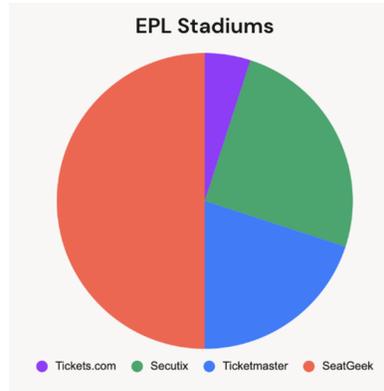
¹⁵ J.P. Morgan, *Behind the Music: A Free Cash Flow Growth Story With High Barriers to Entry; Initiating at Overweight*, Aug. 18, 2016 at 23 (emphasis added), cited in Exhibit 2 to 2019 White Paper (Farrell Report) ¶ 198.

¹⁶ Christine Jurzenski and Avenir Capital, *Live Nation Stock Can More Than Double in 3 Years, Analyst Says*, Barron's (April 8, 2020) (emphasis added), available at

LYV's ongoing behavior has chilled competition in the U.S. primary ticketing market and prevents innovative entrants, including SeatGeek, from competing on the merits. Competition will continue to be suppressed even if LYV never makes another threat, because venues understand the consequences they risk should they switch ticketing providers. The barriers to competition are exacerbated by the long-term contracts prevalent in the industry, such that opportunities for competitors to make inroads on LYV's dominance are limited.

Live Nation may say that there's never been more competition in ticketing. We at SeatGeek appreciate that compliment, but it is a far cry from the competition that should exist in an open market where companies can compete fairly on the merits of their offering. The United Kingdom's English Premier League provides a view of what such a market might look like. The venues that host English Premier League teams—which include major franchises such as Liverpool, Manchester United and Chelsea—do not rely on concerts for revenue. Thus, they do not rely on Live Nation. As a result, venues choose a ticketing platform based on the merits of the technology. In contrast to its eighty percent plus market share of major sports venues in the United States, Ticketmaster tickets only twenty percent of the teams in the English Premier League.

<https://www.barrons.com/articles/live-nation-stock-can-more-than-double-in-three-years-analyst-51586380765>.



Based on internal SeatGeek Data.

Our industry provides a cautionary tale about how behavioral remedies—even when well-intentioned and enforced appropriately—cannot solve the problems inherent in an anticompetitive merger. If it's clear that a merger will harm competition and no divestitures can solve the problem, I respectfully suggest that the right response is to *block* it—not to permit it with promises of good behavior from the merging parties under a supervisory process. It has become clear that no available behavioral remedy will assure venues that they are free to choose their ticketing providers on the merits. Therefore, the only effective remedy now available is a structural one: dissolution of the common ownership of Live Nation and Ticketmaster. SeatGeek deeply cares about this industry and it's time to give fans, teams, artists and venues the choice they deserve. It is encouraging to hear that the DOJ is actively investigating this matter once again.

It is a privilege to be included in this discussion. Thank you for your time and attention.

PREPARED STATEMENT OF CLYDE LAWRENCE

Good morning Senators. My name is Clyde Lawrence, and this is Jordan Cohen. We are two of the eight members of Lawrence, a soul-pop band from New York City, and we are honored to have been invited here today to speak with you.

Before telling you more about who we are, it's important to clarify who we are not. We're not lawyers or economists with expertise in antitrust policy. Neither are we historians of the music industry who can track the impact of the Live Nation/Ticketmaster merger, which occurred well before we started touring. Lastly, we're not artists on the level of acts like Taylor Swift or Bruce Springsteen, though we do hope to one day be big enough to crash a ticketing website.

What we are, however, are seasoned artists who have toured extensively over the last seven years, starting with empty bars and working our way up to headlining sold out shows for thousands of people, most recently selling 6000 tickets in our hometown of New York City. We've played hundreds of concerts, many in the Live Nation/Ticketmaster ecosystem. While we became musicians because of our passion for making music, we realized early on that we needed to embrace the entrepreneurial aspects of pursuing sustainable careers as artists. We've chosen to remain a fully independent band, meaning we have no deal with a major label (or a subsidiary of one), which is rare for a band of our level (in 2022, we had the highest charting Top 40 Radio hit of any fully independent artist), and has allowed us to have a more direct and nuanced understanding of our band's business and how the music industry operates around us.

Ever since we started touring, we noticed what felt like lopsided deal mechanics in certain aspects of the live music industry, and we've always made an effort to be transparent about it. Fitting for this panel, a song from our latest album contains the lyric "Live Nation is a Monopoly." Whether or not it meets the legal definition of a monopoly is someone else's call to make; we're just here to tell you about what we've observed.

The Consequences of Live Nation as Promoter and Venue

First, while ticketing is extremely important—and we will discuss it—the ways that artists are most directly affected by Live Nation lies in other aspects of their practices, ones that we think are likely to get less discussion today, so we figured we'd start there. On the most basic level, Live Nation acts as the exclusive "promoter" for a large percentage of the venues throughout the country, including many, such as the House of Blues chain, that they own directly. For any of these venues, when an artist chooses to put on a show there, they have no choice but to have Live Nation act as the "promoter." Far from simply advertising the show, the promoter coordinates and pays the upfront costs to put together a concert, such as renting a venue, staffing the event, and striking a deal with the performer. In the live music market, our promoter should be a true partner to us. Since both our pay and theirs is theoretically a share of the show's profits, we should be aligned in our incentives: keep costs low while ensuring the best fan experience.

But with Live Nation not only acting as the promoter but also as the owner and/or operator of the venue, it complicates these incentives when looking at line items in a show's settlement sheet, which ultimately determines how much each party gets paid. Think about line items like "rent" for the venue, or other more opaquely named fees like "house nut" or "facility fee." In a world where the promoter and the venue are not affiliated with each other, we can trust that the promoter will look to get the best deal from the venue; however, in this case, the promoter and the venue are part of the same corporate entity, so the line items are essentially Live Nation negotiating to pay itself. And to be clear, due to Live Nation's control across the industry, we have practically no say or leverage in discussing these line items, nor are we afforded much transparency surrounding them. If they want to take 10% of every ticket and call it a "facility fee," they can (and have); if they want to charge us \$250 for a stack of 10 clean towels they can (and have). But it's not just the fact that we have no say in the Live Nation's promoter's costs that are paid to a Live Nation venue, perhaps the most frustrating part is that practically none of *our* touring costs (our crew, travel, accommodations, or insurance, to name just a few) are covered. If profit is defined as revenues minus costs, then the number Live Nation presents in the settlement sheet as the show's "profit" is actually not a profit for us at all, because unlike them, we still have all of our costs to deduct.

Another pain point for artists is the significant loss of revenues due to promoter merchandise cuts. Typically, the promoter takes a sizable percentage (roughly 20%) of an artist's merch sales, and once we factor in our costs of creating and transporting the merch, it can be an even larger percentage (40%) of an artist's bottom line. The argument is that the venue is providing us the retail space for us to sell our merch. Sure. But we're providing all of the customers, and yet receive no cut from their many ancillary revenue streams. Live Nation getting around 20% of our gross merch sales while we get nothing on ticketing fees, bar tabs, coat checks, and parking passes doesn't make a lot of sense to me.

The Consequences of Live Nation as Promoter and Ticketer

Now let's talk about ticketing. As with promotion, if an artist plays at a Live Nation venue, the artist has no choice but to have the show ticketed by Ticketmaster. I'm sure much of today's discussion will be focused on the exorbitantly high ticketing fees that are charged on top of the ticket's base price, and understandably so given its impact on average Americans. But here are some insights into what that looks like from the artist's side. To be clear, we have absolutely *zero* say in what these fees are, and when we try not even to negotiate the fees (which we know would be a road to nowhere), but even just to find out how much they will be, we are told nothing. Put simply, we find out the same way as everyone else: by logging onto Ticketmaster when the show goes on sale, and seeing as much as a 40% fee or more (e.g., \$12 on top of our typical \$30 ticket). Although many ticketing companies have large fees, in our experience, Ticketmaster's are typically the highest, with us having seen as much as an 82% fee for a Live Nation show last year. And to be clear, we—the artist—do not get a cent of that fee. All of it goes to Ticketmaster. How is it fair that we're agreeing to share in the profits of a show with Live Nation, but then they're able to add fees of which they keep 100%, making it so that we're not actually sharing the fan's total payment in the agreed-upon proportions?

But it goes beyond the fees – there are other reasons why an artist might prefer not to use Ticketmaster. Representatives at Ticketmaster can be hard to get a hold of to make changes or fix errors in events. When fans buy tickets, all of their personal info goes exclusively to Ticketmaster, while none of it is shared with the artist. It's safe to assume that most fans would rather receive email blasts from their favorite bands over a ticketing company. And while, in our experience, venues that don't work with Ticketmaster often allow artists the ability to sell a reasonable percentage of the show's capacity through an "off-platform" service of their choice, Ticketmaster rarely allows this option at all beyond a rigid and opaque "Fan Club" allotment.

An Example Show

For those outside of the music industry, we've been told that the specific deal mechanics of a live show are difficult to envision, so we thought it would be helpful to give an example show. Deals vary widely, though this one runs along the lines of what my band gets. Let's imagine we just played a sold-out show at a venue Live Nation owns, whether in Illinois or Texas or Massachusetts. Costs will have eaten into most of the money made that evening: \$30,000 for the "house nut" (the fixed fee the venue takes), \$10,000 for marketing, \$1,000 for Insurance, a small per-person amount for ASCAP/BMI licenses, and of course, the \$250 for clean towels. Once these costs, some of which went to Live Nation subsidiaries (though we do not always have transparency into which ones), are taken into account, the remainder is split between Live Nation and the band. The tickets were sold for \$30, and our pay ended up shaking out to about \$12 of each ticket, or 40 percent of the gross.

But in this hypothetical situation the fan didn't pay \$30 for the ticket. The fan paid \$42 because Ticketmaster tacked on its aforementioned substantial ticket fee. So of the \$42 a fan spent on a ticket, we received \$12. And from that \$12, we need to pay for touring costs. Roughly 50 percent of our portion is used for touring expenses — a number that aligns with some other artists we know, while many others have trouble just breaking even. So that leaves \$6 per ticket for us, an eight-piece band... pretax — and we pay for our own health insurance.

Conclusion

To be fair, many of the issues we've addressed here are not specific to Live Nation/Ticketmaster. But the company's powerful position across the industry makes it a leader in setting standards. Not to mention their horizontal and vertical reach makes it hard to create competition. Competition is beneficial for many reasons, but innovation is one of the most important. For example, companies in the ticketing space might bring major innovations that allow for lower fees, greater transparency and analytics for artists, and advancements in handling the problematic secondary ticketing market (such as facilitating a safer and fairer system that keeps prices lower while allowing artists to benefit in the resale of their tickets). But it doesn't matter how innovative these other ticketing companies are; if every Live Nation show needs to be ticketed exclusively through Ticketmaster, there's no chance for them to break through.

With all of this said, we have had a number of positive experiences with parts of Live Nation. Their venues are often filled with hard-working and passionate people. And there is a benefit in having a system where you can work your way up, playing differently sized rooms throughout your career, all with one consistent Live Nation regional representative as a point of contact, not to mention one consistent Wi-Fi network and password. That one's a real game changer. Jokes aside, we truly don't see Live Nation as the enemy. They are just the largest player in a game that feels stacked against us as artists, and often our fans as well.

Ultimately, when looking at the current state of the live music industry, we're left with lots of questions.

Why is it that all of Live Nation's costs get recouped before the show hits its profit point, yet ours don't?

Why is it that we rarely have any say in setting the budgets, even for line items on our settlement sheet that are being paid directly from Live Nation to other entities that they own?

Why is there so little transparency as to what line items like "facility fees" actually go towards?

Why is it standard for the venue/promoter to take a 20% commission on merch sales, while we never receive a cent of the venue/promoter's ancillary revenues like concessions, alcohol, and parking?

Why does Live Nation/Ticketmaster unilaterally own the data they collect from my fans that buy tickets to my show?

Finally, and perhaps most relevant to this hearing, why does Live Nation get to unilaterally set an exorbitantly high ticket fee without any transparency towards the artist, while in other industries, the government has mandated caps on various types of "junk" fees?

I look forward to seeing these questions get some answers. Thank you for your time, and I hope to see some of you at one of my band's concerts. If you'd like to come, let me know so I can throw you on the guest list and help you avoid the ticket fees.

**TESTIMONY OF JERRY MICKELSON
CEO and President of Jam Productions, LLC**

**Before the United States Senate Judiciary
“That’s The Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment”
Tuesday, January 24, 2023 at 10 AM
Hart Senate Office Building Room 216**

INTRODUCTION

Thank you Chairman Durbin, Ranking Member Graham, Senator Amy Klobuchar, and Senator Lee along with all the other members of the Senate Judiciary Committee for allowing me to appear before you to hear my testimony about the competitive harms that have arisen after the merger of Ticketmaster and Live Nation in 2010 that has not promoted competition nor protected the consumer in the live entertainment sector. I am here today to speak on behalf of my colleagues, fellow promoters, concert fans and many other interested and concerned stakeholders in the live music industry.

My appearance before you today is based on my 50 years of experience in the live entertainment industry. For the record, my name is Jerry Mickelson, CEO and President of Jam Productions, a company that has produced and promoted concerts, theatrical productions, and special events since 1972, when I co-founded one of the nation's largest self-funded independent producers of live entertainment headquartered in Chicago. I was a kid back then, starting a concert company with my partner at the age of 20, and just for the record, I still love this profession that now spans 5 decades.

On Tuesday, February 24, 2009, I appeared before the United States Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights entitled "The Ticketmaster/Live Nation Merger: What Does It Mean For Consumers and the Future of the Concert Business?" So did Seth Hurwitz, the owner of IMP Presents & the 9:30 Club here in Washington (DC), who at that time noted, "it took something as simple as not being able to get Bruce Springsteen tickets to finally wake the public up." Funny how history repeats itself since here we are today, 14 years later, with the public not being able to purchase Taylor Swift tickets.

At this 2009 hearing, I stated the unification of these two Goliaths would create a business with extraordinary market power and clout unlike any that I have ever seen in my lifetime. I testified that if this merger was allowed to proceed, the combined entity would have the ability to suppress or eliminate competition in many segments of the music industry, including rival concert promoters, primary and secondary ticketing companies; artist management firms; venue management companies; record companies; artist merchandise, music apparel, and licensing companies. **I said it in 2009, and I will repeat it today, this merger was and still is vertical integration on steroids.**

IMPACTS OVER THE LAST 14 YEARS

The witnesses before this Committee 14 years ago predicted a consolidation of the live entertainment industry and devastating impacts for promoters, ticketing, and venues across the country if the merger between Live Nation and Ticketmaster.

Yet, the federal government approved the merger.

I am sad to say that our 2009 predictions have played out over the last decade exactly how they thought, and our company Jam has not been immune.

After the merger, Live Nation went after the arena business, and they succeeded in driving independent promoters out of that sector.

Over the years, Jam produced 1,499 shows with these performers; after 2010 (when the merger was allowed), Jam only produced 61 shows with them, and by 2015 the company only produced 1 show.

Now, Live Nation is going after music venues and clubs of all sizes. The near complete domination of arenas because of the merger could soon happen to music venues - large and small - in every community in the country. This next phase of consolidation is already impacting promoters, venues, and, most importantly, fans. As you will read in this testimony, everything from how much fans pay for shows to fan safety could be impacted.

JAM HAS BEEN SHUT OUT OF ARENA LEVEL SHOWS

Jam's most profitable segment of the concert business was the shows the company produced in indoor arenas. Live Nation has effectively eliminated this part of our business by utilizing five methods; (1) purchasing tours for their outdoor amphitheaters; (2) leveraging their outdoor shows to procure the indoor concerts; (3) threatening financial penalties on a tour deal if the artist wanted to work for Jam; (4) paying a band 100% or more of the gross ticket sales; and (5) the band was managed by Live Nation.

Exhibit A is a snapshot of the superstar artists who no longer work with Jam for these reasons. They include Aerosmith, Billy Joel, Bon Jovi, Dave Matthews, Def Leppard, Eagles, Elton John, Genesis, John Mayer, Journey, Kiss, Kid Rock, Metallica, Motley Crue, Pearl Jam, Phish, Red Hot Chili Peppers, Santana, Van Halen, etc.

In addition, Jam never has had the opportunity to put in an offer to work with many of the new superstars such as Beyonce, Shakira, Drake, The Weeknd, Rihanna, Justin Bieber, Harry Styles, Billie Eilish, Kane Brown, Nicki Minaj, Cardi B, Post Malone, etc.

Last but not least, there is one other factor that plays into Live Nation's ability to lock up artists and venue ticketing contracts which appeared in their 10-Q for the 3rd Quarter of 2022.

- o As of September 30, 2022, we have non-cancelable contracts related to minimum performance payments with various artists, other event-related costs, and non-recoupable ticketing contract advances of approximately \$3.9 billion.
- o In these situations, Live Nation tries to lock up the talent so its competitors are not able to produce any of their concerts.

SUMMARY OF LIVE NATION'S BUSINESS

Ticketmaster is the world's leading live entertainment ticketing sales and marketing company selling over 282 million tickets in 2021. Prior to the global COVID-19 pandemic, TM sold over 485 million tickets and served nearly 11,500 clients worldwide in 2019. Ticketing is the most profitable segment for Live Nation.

Live Nation owns, operates, has exclusive booking rights for, or has an equity interest in 320 venues that include 68 outdoor amphitheaters (5,000 to 30,000 capacity), 21 arenas (5,000 to 20,000 capacity), 104 theatres (1,000 to 6,500 capacity), 57 clubs (less than 1,000 capacity), 15 music halls (1,000 to 2,000), 39 festival sites and 15 other venues.

Live Nation is the largest live entertainment company in the world, connecting over 310 million fans across all of their concerts and ticketing platforms in 45 countries in 2021 and over 580 million fans in 2019 prior to the global COVID-19 pandemic.

Live Nation is the largest producer of live music concerts in the world, connecting over 35 million fans to more than 17,200 events for over 4,400 artists in 2021. The company connected nearly 98 million fans to more than 40,000 events for over 5,000 artists in 2019 prior to the global COVID-19 pandemic.

Live Nation is one of the world's leading artist management companies based on the number of artists represented. Their artist management companies manage music artists and acts across all music genres. As of December 31, 2021, they had 100 managers providing services to more than 450 artists.

Live Nation's global footprint is one of the world's largest music sponsorship & advertising networks for corporate brands and includes one of the world's leading e-commerce websites. This part of the business has typically been the 2nd most profitable segment for Live Nation.

THE BUSINESS OF TICKETMASTER

NBA, NHL & NFL Exclusive Ticketing Contracts At Arenas & Stadiums

Ticketmaster has exclusive ticketing agreements with professional sports teams and leagues in arenas and stadiums.

- 87% of the NBA teams have exclusive agreements with Ticketmaster in arenas across North America. Out of 30 basketball teams, Ticketmaster provides the tickets for 26, AXS has 3 & SeatGeek has 1. (Exhibit B)
- 87.5% of the NHL teams have exclusive ticketing agreements with Ticketmaster. Out of 32 hockey teams, Ticketmaster provides the tickets for 28, AXS has 2, Paciolan has 1 & tickets.com has 1. (Exhibit C)

- 93% of the NFL teams have exclusive ticketing agreements with Ticketmaster. Out of 32 football teams, Ticketmaster provides tickets for 30 & SeatGeek provides tickets for 2. (Exhibit D)

There is a simple reason why Ticketmaster has this incredible stranglehold on exclusive ticketing agreements in arenas and stadiums. With its monopoly power, there are a number of teams/venues who are seriously concerned that Live Nation will withhold their concert tours from their buildings unless Ticketmaster is the ticketing provider.

2022 Concert Tour Ticketing Analysis

Exhibit B provides an analysis of the largest concert tours in 2022 that illustrates the ticketing monopoly which Ticketmaster has been able to achieve.

- 1st page lists Billboard's Top 40 Tours in 2022. (Exhibit E)
- 87% of Billboard's Top 40 Tours in 2022 were ticketed by Ticketmaster in the U.S. (Exhibit F)
- 87% of Billboard 2022 Top 40 Tours were performed at venues that were ticketed by Ticketmaster in the U.S. (Exhibit G)
- 89% of all shows in Billboard's 2022 Top 25 Stadiums were ticketed by Ticketmaster in the U.S. (Exhibit H)

Live Nation Venues

Live Nation continues to increase the number of venues it controls. Their strategy is to deliver more shows, grow their fan base, and increase ticket sales by continuing to build out their portfolio of venues, expanding their business into additional music markets, and further building their presence in existing markets.

In 2012 Live Nation owned, operated, had exclusive booking rights, or had an equity interest in 139 venues. By the end of 2021, that number increased to 320 venues. (Exhibit I)

- 19 additional Amphitheatres (from 49 to 68)
- 10 additional Arenas (from 11 to 21)
- 61 additional Theatres (from 43 to 104)
- 41 additional Clubs less than 1,000 (from 16 to 57)
- 3 additional Music Halls 1,000 to 2,000 (from 12 to 15)
- 35 additional Festival Sites (from 4 to 39)
- 15 Other Venues (from 0 to 15)

A further analysis reveals how Live Nation is going to deliver more shows.

- With its 68 amphitheatres, Live Nation has no competition during the summer months in its outdoor venues with capacities between 5,000 to 30,000 where, at times, they pay an artist in excess of 100% of the gross ticket sales.
 - At times, Live Nation has leveraged its outdoor amphitheatres in order to procure North American indoor arena tours.
- The 39 festival sites make Live Nation the largest and most dominant festival producer with its portfolio that includes Lollapalooza, Bonnaroo, Bottlerock, Governor's Ball, Austin City Limits, and Boston Calling to name just some of their festival brands.
- Adding 61 theatres and an additional 41 clubs over the past 11 years (with more in development) is an eye-opening warning to every independent promoter whose business model relies on these 2 segments of the concert industry.

Artist Management

Live Nation, with its more than 100 artist managers, guided the careers of more than 450 performers in 2021 and more than 500 performers in 2019. Live Nation believes they are one of the world's leading artist management companies.

In its 2017 Annual Report, Live Nation offered an updated list of its management company subsidiaries (each defined by LN owning a significant stake in their operation).

In the US, these include Roc Nation Management, 24 Artist Management, Blueprint Artist Management, Spalding Entertainment, LMG Management, Mick Artists Management, Three Six Zero Group, Vector Management, Career Artist Management, and Philymack Management (home to Nick Jonas and Demi Lovato, pictured).

Combined with listed UK management subsidiaries such as Plan B Management and Quest (UK), these partners give Live Nation a rare level of power in the world of artist management.

Sponsorship & Advertising

Live Nation monetizes its physical and digital assets through long-term sponsorship agreements and advertising. There were 560 sponsors in 2021 and nearly 1,200 in 2019 prior to the global COVID-19 pandemic, through a combination of strategic partnerships, local venue-related deals, national agreements, and digital campaigns, both in North America and internationally. Live Nation's sponsors include some of the most well-recognized national and global brands across diverse sectors, including Citibank, American Express, Cisco, Hilton, Red Bull, and Anheuser Busch.

ANTI-COMPETITIVE EFFECTS OF THIS MERGER

On February 24, 2009, Michael Rapino, CEO of Live Nation, also appeared in front of the Senate subcommittee where he stated, "Far from harming consumers, or promoters or artists, this deal will benefit them and spur competition and innovation, which we welcome."

On January 25, 2010, the DOJ issued a press release stating the merger between Live Nation, and Ticketmaster would be allowed to proceed that went on to say, "The Department of Justice's proposed remedy promotes robust competition for primary ticketing services and preserves incentives for competitors to innovate and discount, which will benefit consumers," said Christine Varney, Assistant Attorney General in charge of the Department of Justice's Antitrust Division. "The proposed settlement allows for strong competitors to Ticketmaster, allowing concert venues to have more and better choices for their ticketing needs, and provides for anti-retaliation provisions, which will keep the merged company in check."

The past 13 years have shown, contrary to Mr. Rapino and Ms. Varney, that consumers have been harmed in a number of ways, competition has not been spurred, rival promoters continue to lose market share to LN and, while concert venues have more choices for their ticketing needs, these ticketing companies are not able to compete due to the exclusive ticketing arrangements with Ticketmaster which in a large part are a consequence of Live Nation being the world's largest provider of talent to venues across the country.

TAYLOR SWIFT FIASCO CAUSED HARM TO TAYLOR & HER FANS

Ticketmaster knew in advance the unprecedented demand for Taylor Swift tickets was off the charts. So rather than minimizing the time it takes to complete a transaction by only allowing the fans to choose "Best Available", Ticketmaster decided to slow the process down by using "Pick A Seat" mode to increase ticket prices which raises the TM fees for tickets being sold in the Platinum and Secondary markets.

David Marcus, executive VP and head of music at Ticketmaster, stated, "We're not trying to sell all of her tickets in one minute; we're trying to figure out how to sell tickets in a more modern way." What he is actually saying is that slowing the process down during the on-sale drives the price up since the supply is being manipulated to limit its release to the fans on a show where the demand is so extraordinarily high. So in their effort to increase the price of a ticket (which grows the revenue that Ticketmaster earns from the fees that are generated from the sale of primary and secondary tickets), the fans got screwed.

There were two very simple 'fixes' that could have been implemented.

- Put fewer shows on sale at the same time.
 - Only go up with five to 10 shows per day rather than all at once.
- Or stagger the times the Verified Fans could get into the queue.
 - 5,000 to 10,000 fans are notified they can get in line/purchase tickets between 10 AM to 10:30 AM.
 - Another 5,000 to 10,000 fans get in line from 10:30 AM to 11 AM.
 - Another 5,000 to 10,000 fans from 11 AM to 11:30 AM and so on and so forth.

Through its use of Verified Fan, Ticketmaster is shifting the primary market to look more like the secondary. Michael Rapino, Live Nation's CEO, stated "I think I've said out loud many times that **we welcome secondary and primary merging together. We think we're the beneficiary of that over time.**" While Ticketmaster is growing its revenue and market share with higher ticket prices in the primary and secondary markets, it comes at the expense of fans who cannot afford to purchase a good seat to a concert.

LIVE NATION SCALPING TICKETS

Scalping tickets, now referred to as selling tickets in the secondary market, causes harm to the fans in 2 ways: (1) removes some of the best locations of seating inventory for the fans to purchase; and (2) dramatically increases the price of these tickets which many fans might not be able to afford.

In a 2019 Billboard article, Live Nation acknowledged that the company had facilitated the transfer of concert tickets directly into the hands of scalpers through the years, at times through the request of various artists, without giving fans the chance to buy them through normal channels at face value.

When Live Nation made it possible for Metallica tickets to be scalped in the secondary market, there was economic harm suffered by fans and promoters such as Jam, AEG & Frank Productions when the band pulled out of our shows in 2017 and performed for Live Nation since they were able to pay the band hundreds of thousands of dollars more than we could from this scheme. Note that from 1986 to 2009, JAM produced 92 concerts with Metallica but has not produced one show with them since.

COVID-19 SHUTDOWN OF CONCERT INDUSTRY

The concert industry was completely shut down beginning in March of 2020.

In April of 2020 LN postponed 90% of its shows due to the pandemic but refused to reimburse its customers for dates that were postponed into the future that had not been set. House of Representatives Bill Pascrell and Katie Porter sent a letter to Michael Rapino of Live Nation demanding consumers be compensated by stating, "Your decision to confiscate their money is reprehensible and should be reversed immediately."

Representative Porter went on to say, "I applaud Ticketmaster for continuing to shine in what is apparently a competition to provide the worst customer service in any industry."

ASTROWORLD

On November 5, 2021, the Astroworld music festival, produced by Live Nation, was held in Houston, Texas. During the course of the festival, 10 members of the audience sustained fatal injuries, and over 300 suffered non-fatal injuries.

Following these events, approximately 450 civil lawsuits were filed against Live Nation Entertainment, Inc. and related entities, asserting insufficient crowd control and other theories, and seeking compensatory and punitive damages.

This terrible tragedy could have been prevented had this fest been properly and safely produced.

WOULD COKE WOULD LET PEPSI DISTRIBUTE ITS PRODUCTS?

Why should Jam be forced to sell tickets to its Live Nation competitor through its Ticketmaster system? Jam is generating profits for LN that will be used to further their business interests to the detriment of my company.

CLOSING COMMENTS

As I have pointed out, this merger is much larger than just the ticketing business since both Live Nation and Ticketmaster have used their combined market dominance to monopolize the entire music industry. This is a very compelling reason to vigorously enforce antitrust legislation, but make no mistake about it, this can be very difficult because of the enormous political power these companies have attained.

The enforcement of antitrust laws over the years has been uneven depending on the party in power rather than preserving the interests of our free market economy to sustain and foster competition in order to protect consumers and companies from unfair and harmful business practices. I hope and pray that the issues I have raised today will lead policymakers and our enforcement agencies to conclude that the fans and a large part of the nation's live entertainment industry has been seriously harmed by this Live Nation/Ticketmaster merger.

Thank you for your time.

EXHIBIT A

Artists	1st Year	Year Of Last Show	# Of Shows	After 2010	After 2015
Aerosmith	1974	2001	74	0	0
Barry Manilow	1975	2013	75	9	0
Billy Joel	1977	2007	27	0	0
Bob Seger	1976	2014	23	7	0
Bon Jovi	1987	2003	73	0	0
Coldplay	2001	2005	7	0	0
Dave Matthews	1994	2011	53	4	0
Def Leppard	1983	2005	112	0	0
Eagles	1974	2008	24	0	0
Elton John	1979	2009	30	0	0
Genesis	1976	1992	36	0	0
Green Day	1994	2017	31	4	0
Iron Maiden	1983	2000	22	0	0
James Taylor	1975	2006	36	0	0
Jane's Addiction	1988	2001	24	0	0
Janet Jackson	1990	2015	15	7	0
John Mayer	2002	2013	23	2	0
Journey	1978	2002	89	0	0
Judas Priest	1978	2018	38	0	0
Kid Rock	1999	2013	39	7	0
Kiss	1975	2009	76	0	0
Linkin Park	2001	2011	13	4	0
Metallica	1986	2009	92	0	0
Motley Crue	1983	2000	67	0	0
My Chemical Romance	2005	2011	2	1	0
Paul McCartney	1989	1993	5	0	0
Pearl Jam	1992	2014	35	2	0
Phish	1991	2011	54	3	0
Red Hot Chili Peppers	1985	2017	38	6	0
Rod Stewart	1979	2008	18	0	0
Roger Waters	1984	2000	10	0	0
Santana	1975	2014	62	1	0
Smashing Pumpkins	1991	2016	71	4	1
Sting	1985	2004	32	0	0
Tim McGraw	1994	2006	16	0	0
Van Halen	1978	2004	57	0	0
TOTAL			1,499	61	1

EXHIBIT B

NBA (Out of 30 teams TM provides the tickets for 26, AXS has 3 & SeatGeek has 1) - TM 87%

VENUE NAME	TEAM NAME	CITY	TICKET PROVIDER
State Farm Arena	Atlanta Hawks	Atlanta, GA	Ticketmaster
TD Garden	Boston Celtics	Boston, MA	Ticketmaster
Barclays Center	Brooklyn Nets	Brooklyn, NY	Ticketmaster
Spectrum Center	Charlotte Hornets	Charlotte, NC	Ticketmaster
United Center	Chicago Bulls	Chicago, IL	Ticketmaster
Rocket Mortgage FieldHouse	Cleveland Cavaliers	Cleveland, OH	SeatGeek
American Airlines Center	Dallas Mavericks	Dallas, TX	Ticketmaster
Ball Arena	Denver Nuggets	Denver, CO	Ticketmaster
Little Caesars Arena	Detroit Pistons	Detroit, MI	Ticketmaster
Chase Center	Golden State Warriors	San Francisco, CA	Ticketmaster
Toyota Center	Houston Rockets	Houston, TX	AXS
Gainbridge Fieldhouse	Indiana Pacers	Indianapolis, IN	Ticketmaster
Crypto.com Arena	Los Angeles Clippers	Los Angeles, CA	AXS
Crypto.com Arena	Los Angeles Lakers	Los Angeles, CA	Ticketmaster
FedExForum	Memphis Grizzlies	Memphis, TN	Ticketmaster
FTX Arena	Miami Heat	Miami, FL	Ticketmaster
Fiserv Forum	Milwaukee Bucks	Milwaukee, WI	Ticketmaster
Target Center	Minnesota Timberwolves	Minneapolis, MN	AXS
Smoothie King Center	New Orleans Pelicans	New Orleans, LA	Ticketmaster
Madison Square Garden	New York Knicks	New York, NY	Ticketmaster
Paycom Center	Oklahoma City Thunder	Oklahoma City, OK	Ticketmaster
Amway Center	Orlando Magic	Orlando, FL	Ticketmaster
Wells Fargo Center	Philadelphia 76ers	Philadelphia, PA	Ticketmaster
Footprint Center	Phoenix Suns	Phoenix, AZ	Ticketmaster
Moda Center	Portland Trail Blazers	Portland, OR	Ticketmaster
Golden 1 Center	Sacramento Kings	Sacramento, CA	Ticketmaster
AT&T Center	San Antonio Spurs	San Antonio, TX	Ticketmaster
Scotiabank Arena	Toronto Raptors	Toronto, ON	Ticketmaster
Vivint Arena	Utah Jazz	Salt Lake City, UT	Ticketmaster
Capital One Arena	Washington Wizards	Washington, DC	Ticketmaster

EXHIBIT C

NHL (Out of 32 teams TM provides the tickets for 28, AXS has 2, Pacioloan has 1 & tickets.com has 1) - TM 87.5%

VENUE NAME	TEAM NAME	CITY	TICKET PROVIDER
Honda Center	Anaheim Ducks	Anaheim, CA	Ticketmaster
Mullett Arena	Arizona Coyotes	Tempe/Phoenix, AZ	Ticketmaster
TD Garden	Boston Bruins	Boston, MA	Ticketmaster
KeyBank Center	Buffalo Sabres	Buffalo, NY	Tickets.com
Scotiabank Saddledome	Calgary Flames	Calgary, AB	Ticketmaster
PNC Arena	Carolina Hurricanes	Raleigh, NC	Ticketmaster
United Center	Chicago Blackhawks	Chicago, IL	Ticketmaster
Ball Arena	Colorado Avalanche	Denver, CO	Ticketmaster
Nationwide Arena	Columbus Blue Jackets	Columbus, OH	Ticketmaster
American Airlines Center	Dallas Stars	Dallas, TX	Ticketmaster
Little Caesars Arena	Detroit Red Wings	Detroit, MI	Ticketmaster
Rogers Place	Edmonton Oilers	Edmonton, AB	Ticketmaster
FLA Live Arena	Florida Panthers	Sunrise/Miami, FL	Ticketmaster
Crypto.com Arena	Los Angeles Kings	Los Angeles, CA	AXS
Xcel Energy Center	Minnesota Wild	St. Paul/Minneapolis, MN	Ticketmaster
Bell Centre	Montreal Canadiens	Montreal, QC	Ticketmaster
Bridgestone Arena	Nashville Predators	Nashville, TN	Ticketmaster
Prudential Center	New Jersey Devils	Newark, NJ	Ticketmaster
UBS Arena	New York Islanders	Elmont/New York, NY	Ticketmaster
Madison Square Garden	New York Rangers	New York, NY	Ticketmaster
Canadian Tire Centre	Ottawa Senators	Ottawa, ON	Ticketmaster
Wells Fargo Center	Philadelphia Flyers	Philadelphia, PA	Paciolan
PPG Paints Arena	Pittsburgh Penguins	Pittsburgh, PA	Ticketmaster
SAP Center	San Jose Sharks	San Jose, CA	Ticketmaster
Climate Pledge Arena	Seattle Kraken	Seattle, WA	Ticketmaster
Enterprise Center	St. Louis Blues	St. Louis, MO	Ticketmaster
Amalie Arena	Tampa Bay Lightning	Tampa Bay, FL	Ticketmaster
Scotiabank Arena	Toronto Maple Leafs	Toronto, ON	Ticketmaster
Rogers Arena	Vancouver Canucks	Vancouver, BC	Ticketmaster
T-Mobile Arena	Vegas Golden Knights	Las Vegas, NV	AXS
Capital One Arena	Washington Capitals	Washington, DC	Ticketmaster
Canada Life Centre	Winnipeg Jets	Winnipeg, MB	Ticketmaster

EXHIBIT D

NFL (Out of 32 teams TM provides the tickets for 30 & SeatGeek has 2) - TM 93%

VENUE NAME	TEAM NAME	CITY	TICKET PROVIDER
State Farm Stadium	Arizona Cardinals*†	Glendale/Phoenix, AZ	SeatGeek
Mercedes-Benz Stadium	Atlanta Falcons	Atlanta, GA	Ticketmaster
M&T Bank Stadium	Baltimore Ravens	Baltimore, MD	Ticketmaster
Highmark Stadium	Buffalo Bills	Buffalo, NY	Ticketmaster
Bank of America Stadium	Carolina Panthers	Charlotte, NC	Ticketmaster
Soldier Field	Chicago Bears*†	Chicago, IL	Ticketmaster
Paycor Stadium	Cincinnati Bengals	Cincinnati, OH	Ticketmaster
FirstEnergy Stadium	Cleveland Browns	Cleveland, OH	Ticketmaster
AT&T Stadium	Dallas Cowboys	Dallas, TX	SeatGeek
Empower Field at Mile High	Denver Broncos	Denver, CO	Ticketmaster
Ford Field	Detroit Lions*	Detroit, MI	Ticketmaster
Lambeau Field	Green Bay Packers	Green Bay, WI	Ticketmaster
NRG Stadium	Houston Texans	Houston, TX	Ticketmaster
Lucas Oil Stadium	Indianapolis Colts*	Indianapolis, IN	Ticketmaster
TIAA Bank Field[D]	Jacksonville Jaguars	Jacksonville, FL	Ticketmaster
GEHA Field at Arrowhead Stadium	Kansas City Chiefs*	Kansas City, MO	Ticketmaster
Allegiant Stadium	Las Vegas Raiders*	Las Vegas, NV	Ticketmaster
SoFi Stadium[E]	Los Angeles Chargers*	Los Angeles, CA	Ticketmaster
SoFi Stadium[E]	Los Angeles Rams*	Los Angeles, CA	Ticketmaster
Hard Rock Stadium	Miami Dolphins	Miami, FL	Ticketmaster
U.S. Bank Stadium	Minnesota Vikings	Minnesota, FL	Ticketmaster
Gillette Stadium	New England Patriots	New England, NV	Ticketmaster
Caesars Superdome	New Orleans Saints	New Orleans, NV	Ticketmaster
MetLife Stadium[B]	New York Giants	New York, CA	Ticketmaster
MetLife Stadium[B]	New York Jets	New York, CA	Ticketmaster
Lincoln Financial Field	Philadelphia Eagles	Philadelphia, PA	Ticketmaster
Acrisure Stadium	Pittsburgh Steelers	Pittsburgh, PA	Ticketmaster
Levi's Stadium	San Francisco 49ers	San Francisco, CA	Ticketmaster
Lumen Field	Seattle Seahawks	Seattle, WA	Ticketmaster
Raymond James Stadium	Tampa Bay Buccaneers	Tampa Bay, FL	Ticketmaster
Nissan Stadium	Tennessee Titans*	Nashville, TN	Ticketmaster
FedExField	Washington Commanders*	Washington, DC	Ticketmaster

Billboard's Top 40 Tours in 2022 – EXHIBIT E

Rank	Artist	Total Gross	Attendees	Shows
1	Bad Bunny	\$373,463,379	1,826,339	65
2	Eiton John	\$334,385,023	2,071,661	84
3	<i>Ed Sheeran</i> ¹	\$246,287,916	3,047,696	63
4	Harry Styles	\$214,408,180	1,475,091	71
5	Coldplay	\$208,000,727	2,260,651	40
6	The Rolling Stones	\$179,349,815	949,454	20
7	Red Hot Chili Peppers	\$176,998,650	1,465,881	31
8	Def Leppard & Motley Crue	\$173,474,649	1,313,207	35
9	Kenny Chesney	\$135,046,047	1,299,282	41
10	The Weeknd	\$131,056,262	904,744	19
11	Morgan Wallen	\$128,718,950	1,001,930	66
12	Lady Gaga ³	\$125,333,755	879,995	29
13	Daddy Yankee	\$125,233,791	1,128,444	54
14	Billie Eilish	\$106,194,096	939,970	68
15	Paul McCartney	\$105,077,796	423,125	16
16	Eagles	\$104,175,869	549,275	40
17	<i>Guns N' Roses</i> ¹	\$93,383,197	1,088,227	27
18	Dua Lipa	\$89,302,575	1,190,356	71
19	Justin Bieber	\$89,107,888	636,861	42
20	My Chemical Romance	\$87,926,378	714,563	55

Rank	Artist	Total Gross	Attendees	Shows
21	Imagine Dragons	\$87,531,563	1,051,017	59
22	Backstreet Boys	\$85,796,497	1,084,672	82
23	KAROL G	\$83,801,316	606,370	56
24	Chris Stapleton	\$83,080,631	951,268	69
25	Genesis	\$81,935,379	450,148	35
26	Iron Maiden	\$76,147,773	984,488	47
27	BTS	\$75,489,240	458,144	11
28	Eric Church	\$71,765,149	625,358	42
29	Kendrick Lamar	\$70,379,144	512,589	42
30	Phish	\$68,598,398	609,385	40
31	Roger Waters	\$66,330,771	510,362	40
32	<i>Kevin Hart</i> ²	\$66,316,354	842,512	151
33	Billy Joel	\$65,906,424	478,268	19
34	Dave Matthews Band	\$62,563,364	691,479	52
35	Andre Rieu	\$62,533,259	683,182	75
38	Trans-Siberian Orchestra	\$54,649,313	767,442	98
37	Post Malone	\$53,477,171	366,082	30
38	John Mayer	\$51,783,882	382,800	32
39	<i>Silk Sonic</i> ² (<i>Bruno Mars & Anderson .Paak</i>)	\$50,400,043	169,757	34
40	<i>John Mulaney</i> ²	\$50,246,452	644,728	109
Grand Total		\$4,002,058,243	36,948,576	2,060

1. Ed Sheeran and Guns N' Roses were all international dates; 2. Kevin Hart and John Mulaney are comedy tours mostly played in smaller venues; 3. Silk Sonic's dates were all at a Las Vegas residency at the Park MGM Theater, 9 of Lady Gaga's U.S. tour dates were a Las Vegas residency at the Park MGM; Source: <https://www.billboard.com/2022-year-end-boxscore-charts/> (Billboard rankings based on tour dates from 11/1/21 – 10/31/22)

87% of Billboard's Top 40 Tours in 2022 were ticketed by Ticketmaster in the U.S. - EXHIBIT F

	Artist	TM	AXS	Paciolan	Tickets.com	Seat Geek	Amp Tickets	eTix	U.S. Shows
1	Bad Bunny	87%	9%	2%	2%	0%	0%	0%	54
2	Elton John	92%	5%	2%	2%	0%	0%	0%	61
4	Harry Styles	96%	4%	0%	0%	0%	0%	0%	46
5	Coldplay	100%	0%	0%	0%	0%	0%	0%	12
6	The Rolling Stones	100%	0%	0%	0%	0%	0%	0%	6
7	Red Hot Chili Peppers	94%	0%	0%	6%	0%	0%	0%	18
8	Def Leppard & Motley Crue	82%	0%	0%	18%	0%	0%	0%	33
9	Kenny Chesney	88%	2%	5%	2%	0%	2%	0%	41
10	The Weeknd	100%	0%	0%	0%	0%	0%	0%	16
11	Morgan Wallen	80%	7%	9%	2%	0%	2%	0%	55
12	Lady Gaga	73%	0%	0%	27%	0%	0%	0%	11
13	Daddy Yankee	90%	10%	0%	0%	0%	0%	0%	31
14	Billie Eilish	91%	3%	3%	0%	3%	0%	0%	32
15	Paul McCartney	69%	0%	13%	19%	0%	0%	0%	16
16	Eagles	83%	7%	3%	0%	7%	0%	0%	29
18	Dua Lipa	86%	11%	4%	0%	0%	0%	0%	28
19	Justin Bieber	77%	17%	3%	0%	3%	0%	0%	35
20	My Chemical Romance	90%	6%	3%	0%	0%	0%	0%	31
21	Imagine Dragons	86%	8%	3%	3%	0%	0%	0%	36
22	Backstreet Boys	91%	2%	4%	2%	0%	2%	0%	54
23	KAROL G	74%	23%	2%	0%	0%	0%	0%	47
24	Chris Stapleton	91%	3%	2%	2%	0%	2%	2%	66
25	Genesis	91%	0%	0%	0%	9%	0%	0%	11
26	Iron Maiden	95%	0%	5%	0%	0%	0%	0%	21
27	BTS	100%	0%	0%	0%	0%	0%	0%	8
28	Eric Church	79%	9%	9%	0%	2%	0%	0%	43
29	Kendrick Lamar	76%	18%	3%	0%	3%	0%	0%	38
30	Phish	100%	0%	0%	0%	0%	0%	0%	37
31	Roger Waters	76%	15%	6%	0%	3%	0%	0%	34
33	Billy Joel	95%	0%	5%	0%	0%	0%	0%	19
34	Dave Matthews Band	94%	6%	0%	0%	0%	0%	0%	51
35	Andre Rieu	83%	17%	0%	0%	0%	0%	0%	12
36	Trans-Siberian Orchestra	78%	9%	9%	0%	4%	0%	0%	46
37	Post Malone	89%	4%	4%	0%	4%	0%	0%	27
38	John Mayer	87%	6%	3%	0%	3%	0%	0%	31
	Total	87%	7%	3%	2%	1%	0%	0%	1,136

Analysis excludes Ed Sheeran and Guns N' Roses (non-U.S.), Kevin Hart and John Mulaney (comedy), Silk Sonic (Las Vegas residency) and Lady Gaga's Las Vegas residency at the Park MGM
 Source: <https://www.billboard.com/2022-year-end-boxscore-charts/> (Billboard rankings based on tour dates from 11/1/21 - 10/31/22)

87% of Billboard's Top 40 Tours in 2022 Top 40 were performed at venues ticketed by Ticketmaster in the U.S.
 Market share ranges from 79-94% depending on venue category **EXHIBIT G**

Venue Categories	TM	AXS	Paciolan	Tickets.com	SeatGeek	AmpTickets	eTix	Billboard 2022 Top 40 Tours (U.S. Shows)
Top 25 Stadiums	93 (89%)			11 (11%)				104 (100%)
Other Stadiums	82 (89%)		3 (3%)	7 (8%)				92 (100%)
Top 50 Venues (15,000+ capacity)	416 (86%)	49 (10%)	12 (2%)		4 (1%)			481 (100%)
Top 25 Venues (10,000-15,000 capacity)	54 (79%)	10 (15%)	4 (6%)					68 (100%)
Other Amphitheaters	172 (94%)	6 (3%)	1 (1%)			4 (2%)		183 (100%)
Other Arenas	138 (81%)	7 (4%)	16 (9%)	2 (1%)	8 (5%)			171 (100%)
Theaters	28 (82%)	5 (15%)					1 (3%)	34 (100%)
Atlantic City Beach	3 (100%)							3 (100%)
Grand Total	986 (87%)	77 (7%)	36 (3%)	20 (2%)	12 (1%)	4 (0%)	1 (0%)	1,136 (100%)

Analysis excludes Ed Sheeran and Guns N' Roses (non-U.S.), Kevin Hart and John Mulaney (comedy), Silk Sonic (Las Vegas residency) and Lady Gaga's Las Vegas residency at the Park MGM
 Source: <https://www.billboard.com/wp-content/uploads/2022/12/december-06-2022-year-in-touring-billboard-bulletin.pdf> (Billboard rankings based on tour dates from 11/1/21 – 10/31/22)

89% of all shows in Billboard's 2022 Top 25 Stadiums were ticketed by Ticketmaster in the U.S. - EXHIBIT H

Rank	Stadium	Location	Ticketing	Gross	Attendees	All Shows	Top 40 Tours
1	Allegiant Stadium	Las Vegas	TM	\$182,503,448	1,019,733	24	12
2	SoFi Stadium	Inglewood	TM	\$107,812,310	546,888	11	11
3	Foro Sol	Mexico City					
4	MetLife Stadium	East Rutherford	TM	\$76,088,195	487,740	9	9
5	Stade de France	Paris					
6	Soldier Field	Chicago	TM	\$53,715,084	355,037	7	7
7	Wembley Stadium	London					
8	Fenway Park	Boston	Tickets.com	\$50,669,064	310,716	9	8
9	Camping World Stadium	Orlando	TM	\$50,661,701	425,579	16	5
10	Hard Rock Stadium	Miami	TM	\$43,248,123	269,917	6	7
11	Croke Park	Dublin					
12	Rogers Centre	Toronto					
13	Mercedes-Benz Stadium	Atlanta	TM	\$39,926,362	292,326	6	5
14	Gillette Stadium	Foxborough	TM	\$38,479,873	286,942	6	5
15	King Baudouin Stadium	Brussels					
16	Levi's Stadium	Santa Clara	TM	\$35,288,145	223,315	5	5
17	Minute Maid Park	Houston	TM	\$34,042,190	193,809	5	5
18	Deutsche Bank Park	Frankfurt					
19	Olympiastadion	Munich					
20	Petco Park	San Diego	TM	\$31,035,911	159,305	5	4
21	Globe Life Park in Arlington	Arlington	TM	\$30,856,585	198,418	5	5
22	Nationals Park	Washington	TM	\$28,633,370	180,771	5	5
23	Bank of America Stadium	Charlotte	TM	\$28,381,683	217,888	5	5
24	Wrigley Field	Chicago	Tickets.com	\$27,494,731	216,352	6	3
25	Mile High Stadium	Denver	TM	\$27,142,024	242,088	6	3
U.S. Total				\$885,978,799	5,626,824	136	104
TM Total				\$807,815,004 (91%)	5,099,756 (91%)	121 (89%)	93 (89%)
Tickets.com Total				\$78,163,795 (9%)	527,068 (9%)	15 (11%)	11 (11%)

Top 40 Tours excludes Kevin Hart and John Mulaney (comedy)
 Source: <https://www.billboard.com/wp-content/uploads/2022/12/december-06-2022-year-in-touring-billboard-bulletin.pdf> (Billboard rankings based on tour dates from 11/1/21 - 10/31/22)

EXHIBIT I**Live Nation Controlled Venue Summary from their 2012 Annual Report**

The following table summarizes the number of venues by type that we owned, leased, operated, had booking rights for and/or had an equity interest in as of December 31, 2012:

Venue Type	Capacity	Owned	Leased	Operated	Booking Rights	Equity Interest	Total
Stadium	More than 30,000	-	-	-	2	-	2
Amphitheater	5,000 - 30,000	8	28	6	7	-	49
Arena	5,000 - 20,000	1	3	4	3	-	11
Music Theater	1,000 - 6,500	7	25	3	7	1	43
Club	Less than 1,000	3	10	-	3	-	16
House of Blues	1,000 - 2,000	2	10	-	-	-	12
Festival Site	N/A	4	-	-	-	-	4
Theatrical Theater	Less than 5,000	-	1	1	-	-	2
Total venues		25	77	14	22	1	139
Venues not currently in operation		1	3	-	-	-	4

Live Nation Controlled Venue Summary from their 2021 Annual Report

The following table summarizes the number of venues by type that we owned, leased, operated, had exclusive booking rights for or had an equity interest in as of December 31, 2021:

Venue Type	Capacity	Owned	Leased	Operated	Exclusive Booking Rights	Equity Interest	Total
Stadium	More than 30,000	—	—	1	—	—	1
Amphitheater	5,000 - 30,000	10	39	3	16	—	68
Arena	5,000 - 20,000	1	14	2	4	—	21
Theater	1,000 - 6,500	8	60	10	24	2	104
Club	Less than 1,000	4	40	1	12	—	57
Restaurants & Music Halls	1,000 - 2,000	2	13	—	—	—	15
Festival Sites ⁽¹⁾	Varies	2	—	37	—	—	39
Other Venues	Varies	—	12	—	—	3	15
Total venues in operation		27	178	54	56	5	320
Venues currently under construction		—	3	—	—	3	6
Venues not currently in operation		3	1	—	4	2	10
Total venues in operation by location:							
North America		19	130	16	56	5	226
International		8	48	38	—	—	94

Opening Remarks
Senate Judiciary Hearing
Sal Nuzzo, Senior Vice President
The James Madison Institute

Mr. Chairman, members of the committee...I would like to thank you for the honor and opportunity to appear before you this morning.

My name is Sal Nuzzo, and I serve on the policy team at The James Madison Institute in Tallahassee, Florida. We are a non-profit think tank that focuses on economic policy issues impacting Florida's 22 million residents.

Florida is home to 13 major sports teams, in addition to 15 MLB spring training facilities, NASCAR, F1, the PGA, LPGA, college, and numerous other sports venues. Most of those stadiums also serve as concert sites when not in use during their respective seasons.

In Florida - sports and live entertainment is a \$6.5 billion market, a sizable share of the \$133 billion national impact.

This issue is important to Floridians – not only with respect to primary ticketing but also the secondary market, which I would like to open with.

I would like to offer our perspective by way of a quick analogy.

Because I am an employee of a not-for-profit organization, I drive a 15-year-old Volvo approaching its 200,000th mile driven. God bless the Swedes. I purchased it from a private seller in 2015, and much to my kids' dismay, it's still going strong. Volvo didn't place restrictions on the vehicle when it was first purchased, and if/when I decide to sell it, Volvo will likely have no role in the transaction. In fact, I really don't think they have any clue what's happened with the car since it left their dealership.

This is true for just about every automobile manufacturer. Consequently, our auto market is a robust, thriving, diverse industry largely adhering to supply and demand forces.

The same could be the case for the market governing the marketing, selling, and resale of tickets to sports, competitions, concerts, etc. It could be - but it has not occurred.

There is one dominant market player, with more than 80 percent of the primary market. This allows them to leverage their dominance through service fees, exclusivity requirements, and other practices that are ultimately borne by consumers.

At its core, a debate is happening over what a person actually obtains when they purchase a ticket. Some would argue that the purchaser is simply leasing or renting a space in a venue, and that lease is subject to terms and conditions. In our opinion, that logic rests on a misguided assumption that the commodity is the venue.

Ask anyone attending a Jaguars game, or a Harry Stiles concert where they are going, and they'll reply "I'm going to the Jags game," or "I'm going to see Harry Stiles." They would not reply with "oh I am going to TIAA Bank Field today" or "just taking my daughters to Amway Arena this evening."

The stadium may have a lifespan of 50 years, but an individual purchases a commodity with a very limited lifespan - a couple of hours. That distinction is vital to the debate over the issues within the event ticketing market.

Over the past several years, we have heard the term Consumer Welfare Standard used with greater frequency. Questions over whether the Standard is still applicable in today's innovation economy, whether or not it should be revised or replaced with some other subjective measure, and in the age of tech platforms what consumer welfare even means.

I would ask you all to set that aside for today. In this area, we would contend that consumer welfare is clearly defined and reflective of the issues within the industry.

Those representing the dominant player would contend that their growth has allowed them to innovate and make advances that greatly benefit consumers.

A few million Taylor Swift fans would disagree.

To be clear, from our perspective, the issue isn't the Taylor Swift crash per se. That merely revealed how a lack of competition over time has corroded innovation and distorted the market.

I would ask - suppose a robust, vibrant, and competitive market for ticketing had been allowed to evolve and innovate over the past 20 years. Would the Taylor Swift debacle have occurred? It's a hypothetical of course - but one worth considering.

I'll conclude my remarks with a call to you as policymakers. On this topic, in this area, consumer welfare is very clear to define, and there are clear harms to consumers from anticompetitive practices.

Joe Berchtold
President and Chief Financial Officer
Live Nation Entertainment, Inc.
Questions for the Record
Submitted January 31, 2023

QUESTIONS FROM SENATOR BOOKER

In 2008, DOJ estimated that Ticketmaster held more than 80 percent of market share in the primary ticket market. Ten years later, in its 2018 report, GAO reported that Ticketmaster was still the primary market leader. Ticketmaster also enjoys significant market share in the secondary market, a position that GAO estimated was the second largest. What's concerning is that it seems that Ticketmaster's behavior in the primary market is constraining other companies in the secondary market.

At an on-sale, a consumer purchases a ticket for an event to be held at a later date. Ticketmaster, however, does not deliver a ticket until just before an event occurs.

- a. What kind of influence should artists have on transferability?
- b. Do you find that it is beneficial for an artist to influence capping ticket prices and/or resale amount?

**Questions for the Record from Senator Alex Padilla
Senate Judiciary Committee
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment”
January 24, 2023**

Questions for Mr. Joe Berchtold

1. In 2016, Congress passed the *Better Online Ticket Sales Act* to thwart attempts by individuals and organizations to automate the process of purchasing tickets en masse using ticket bots. Since the passage of the law, the Federal Trade Commission and Department of Justice have announced only one enforcement action of the law. In your testimony, you highlighted the challenge that bots posed in facilitating Taylor Swift presale ticket sales.
 - a. **In your testimony at the hearing, you shared with the committee that Ticketmaster worked with the FTC to report one instance of bots on your system since 2016. Is that correct? If so, why not refer more instances to the FTC?**
 - b. **In your testimony, you shared that since 2010, your company has invested over \$1 billion to improve the Ticketmaster system and that the company invests millions in anti-bot technology every year. In 2022, the company reported over \$15 billion in revenue. How much money did you invest in 2022 to address the problem of bots acquiring tickets?**
 - c. **What challenges are you currently facing in combating bots on Ticketmaster?**
 - d. **What steps are you taking to investigate and pursue the purveyors of bots that tried to purchase tickets during the Taylor Swift pre-sale? Have you filed a report to any federal agencies, if not, why not?**
 - e. **On average, how many tickets for events serviced by Ticketmaster fall into the hands of bots?**
 - f. **What if any changes did you see in the use of bots to purchase tickets in the wake of the passage of the *BOTS Act*?**
 - g. **What would help you and others in the industry tackle the problem of bots in online ticket sales?**
2. Presale tickets were initially listed for Swift’s Eras Tour using Ticketmaster’s Verified Fan technology on November 15, 2022. When the presale opened, the pre-registered fans who had received unique codes to access the site were placed in a virtual queue. Many reported spending hours, or even days, stuck in this line, while others were kicked out of

the line due to website failures. In your testimony you acknowledged that this resulted in a terrible experience for millions of Ms. Swift's fans and for Ms. Swift herself. **In response to this failure, what is your company doing to fortify your systems against bots and ensure that customers and artists are treated fairly in future ticket sale offerings?**

3. When purchasing tickets on Ticketmaster, consumers see two prices, the price of the face of the ticket and then additional fees associated with the cost of the ticket called "service fees." In reviewing tickets for sale in California in the coming weeks, for many tickets the service fees were as much as 50% of the total cost of the ticket.
 - a. **For each show in which Ticketmaster is selling a primary ticket, how is the service fee calculated? Which parties are involved in setting the price, and how is the money from that fee typically allocated?**
 - b. **Tickets include "service fees", "facility charges", and order processing fees. What do each of these fees account for? And for those shows in which the company provides ticketing services alone, from which sets of fees does Ticketmaster typically get a cut?**
 - c. **Are service fees consistent for the venue or do they fluctuate by artist?**
 - d. **In ticket resales, are the fees Ticketmaster charges a flat processing rate? Or does Ticketmaster charge a percentage of the total cost of the ticket?**
 - e. **For venues in California in which Live Nation Entertainment does not promote the show or own or operate the venue, but Ticketmaster is used to process primary ticket purchases, what was the average total amount of service fees associated with each ticket in 2017, 2018, 2019, 2020, 2022, and 2023?**
 - f. **For venues in California in which Live Nation Entertainment promotes the show or owns or operates the venue, and Ticketmaster is used to process primary ticket purchases what was the average total amount of service fees associated with each ticket in 2017, 2018, 2019, 2020, 2022, and 2023?**
 - g. Customers can typically avoid most if not all of the service fees associated with an online ticket sale if they purchase tickets directly from the Box Office of a venue. This calls into question the true need for service fees to account for costs in hosting and promoting shows. In your testimony you stated that Ticketmaster does not set service fees.
 - i. **In negotiating service fees for ticket sales with venues, in your experience are those fees reflective of a true calculation cost of what may actually entail a reasonable charge for the services offered by the**

venue? Or do they reflect what venues believe they can get away with charging their customers?

- ii. In 2022, what percentage of shows for which Ticketmaster facilitated ticket sales were customers unable to purchase tickets through a physical box office? Please provide this number as a percentage of total shows, as well as a percentage of the total tickets sold.
 - iii. In 2022, what percentage of shows for which Ticketmaster facilitated ticket sales were customers unable to purchase tickets through a physical box office for Live Nation-owned or operated venues? Please provide this number as a percentage of total shows, as well as a percentage of the total tickets sold.
 - h. Do all of the venues you own or operate in California have a physical box office at which customers can go to purchase tickets in person and avoid the service fees? On average how many days per week and hours per week are Live Nation owned or operated venue box offices open for ticket sales?
 - i. Would you support legislative efforts to cap or limit service fees to what is reasonably associated with the cost of putting on a show?
4. One proposal to address industrial scalping of tickets is to cap the price at which a ticket can be resold on the secondary market. **Does Live Nation believe that capping resale ticket prices would help address the scalping problem you highlighted in your testimony?**
5. In his testimony Mr. Lawrence alleged that Live Nation’s role as both an exclusive promoter for venues the company owns or operates means that artists like himself and others do not benefit from a promotor that is aligned with their interests to keep costs low and ensure that artists are fairly compensated at the end of show. Specifically, he testified that:

“Far from simply advertising the show, the promoter coordinates and pays the upfront costs to put together a concert, such as renting a venue, staffing the event, and striking a deal with the performer. In the live music market, our promoter should be a true partner to us. Since both our pay and theirs is theoretically a share of the show’s profits, we should be aligned in our incentives: keep costs low while ensuring the best fan experience. But with Live Nation not only acting as the promoter but also as the owner and/or operator of the venue, it complicates these incentives when looking at line items in a show’s settlement sheet, which ultimately determines how much each party gets paid. Think about line items like “rent” for the venue, or other more opaquely named fees like “house nut” or “facility fee.” In a world where the promoter and the venue are not affiliated with each other, we can trust that the promoter will look to get the best deal from the venue; however, in this case, the promoter and the venue are part of the same

corporate entity, so the line items are essentially Live Nation negotiating to pay itself.”

- a. Do you agree with Mr. Lawrence’s characterization of Live Nation’s role and incentives for shows in which you act as both the exclusive promoter and venue owner or operator? Why or why not?**
6. During the hearing the Mr. Lawrence alleged that the settlement sheet they receive at the end of a show does not fully explain what costs like “facility fees” and others are for, and that this kind of documentation is not available to them ahead of the show. You affirmed that transparency should be available to Mr. Lawrence and other artists. **Does Live Nation commit to ensuring that artists like Mr. Lawrence are fully aware of what the costs on settlement sheets are for, and to providing artists this kind of information ahead of shows?**
7. Please list all of the venues Live Nation Entertainment owns or operates in California.
8. Please list all of the venues for which Live Nation is the exclusive promoter in California.
9. Please list of the venues for which Ticketmaster is the exclusive ticket sale operator in California.

**Questions for the Record
Senator Chuck Grassley**

**“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment Hearing”
January 24, 2023**

Questions for Mr. Berchtold

- 1) Constituents have expressed concerns that Live Nation surprises consumers with large fees that are often hidden until after they’ve chosen their ticket and put in their information. In your testimony, you suggested all-in-pricing legislation so consumers can know up front what is their total ticket price. Seat Geek already uses all-in-pricing. What is preventing Ticketmaster from doing the same?
- 2) Constituents have expressed concerns over the large number of bots and scalpers that obtain tickets and re-sell them at an enormous price. What are Ticketmaster’s plans to address this problem going forward to protect fans?

Sen. Mike Lee
Questions for the Record
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment”
January 24, 2023

JOE BERCHTOLD, LIVE NATION

1. Will Live Nation commit to offering fair, reasonable, and non-discriminatory API access to legitimate secondary ticketing services to facilitate the safe and easy transfer of tickets without limiting customers to the Ticketmaster app? If not, why?
2. In your submitted testimony, you included letters from artists and venues in support of Live Nation, including one from Garth Brooks. I really like Garth Brooks, but it’s hardly standing outside the fire for a billionaire performer like Brooks to defend working with Live Nation. He even refers to himself in the letter as “an entertainment company”—the bargaining leverage is vastly different than between Live Nation and bands like Lawrence. How are small, independent performers supposed to protect their interests in the face of Live Nation’s massive market position?
3. Does Live Nation take into consideration a venue’s primary ticketing vendor when determining where or when to schedule live concerts?
4. In 2020, the Justice Department extended your consent decree by another five years after identifying a number of violations. You have insisted that Live Nation does not have the incentive to pressure venues into using Ticketmaster or vice versa, but the violations prove that some Live Nation employees do in fact see the incentive. How do we know there are not even more venues out there that have been pressured by or faced retaliation from Live Nation, but which are simply too afraid to speak up?
5. In your testimony, you stated that it is Live Nation’s “policy that if an account is established solely for the purposes of receiving a ticket, we do not use that data for purposes of marketing.” In a further exchange, you stated that, “in the context of the event itself, I believe there is some ability to reach out to connect with those fans.”
 - a. Please explain how you know that a consumer opened an account “solely for the purposes of receiving a ticket.”
 - b. Please provide a copy of the company’s written policies pertaining to data collection and marketing 1) to consumers who purchase tickets directly from the company and 2) to consumers who purchase tickets on a third-party resale platform but then register for a Ticketmaster account in order to take possession of the tickets that they purchased on the third-party platform.

- c. Does your company or any of your venue clients use data obtained from resale customers through the ticket transfer process for marketing purposes? Does your company use data obtained from resale customers, such as customers' event preferences, to target those customers in a different way in future communications?
 - d. Does Live Nation use information collected from a secondary ticketing company's customer as part of a resale transaction to compete with secondary ticketing companies? If so, does Live Nation believe that the antitrust laws permit a company with the market power of Live Nation to compel current or potential competitors to share customer data in order to access the marketplace?
 - e. Does the data that Live Nation collects from consumers give it a competitive advantage over its rivals? If so, does this barrier to entry further entrench Live Nation's market power? If not, in which case the data would seem to be of little use, will Live Nation commit to minimizing the data it collects and retains on consumers?
6. In your testimony, in response to the question, "do you have any plans to restrict the resale ability of digital tickets through third party entities like StubHub or others?" you replied that, "we do believe that the artists should have the right to set the rules" on transferability.
 - a. You did not, however, acknowledge that artists who request non-transferable tours are often managed by Live Nation. Please detail how Live Nation advises artists under its management on ticket transferability.
 - b. Why should the preferences of artists trump the welfare of consumers and preferences of the free market?
7. Has Ticketmaster, Live Nation, or a subsidiary or agent of either entity ever instructed a third-party resale marketplace not to facilitate sales for certain tours? If so, please describe each such instance in detail.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Joe Berchtold, President and CFO of Live Nation Entertainment

I. Directions

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To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. One of Live Nation Entertainment/Ticketmaster's ("Ticketmaster") practices is to restrict the actual delivery or transfer of a ticket until a day or so before the show. By doing so, it restricts that buyer from transferring or selling their ticket by depriving them of sufficient time to do so.
 - a. Tell me why this is good for consumers.

2. In 2020, the Department of Justice was sufficiently concerned about Ticketmaster's anticompetitive behavior to extend the original 2010 merger consent decree through 2025, based on six verified violations of the 2010 agreement. Such behavior included retaliating against concert venues for using another ticketing company, threatening concert venues, and tying ticketing services to concert promotion business.
 - a. Has Ticketmaster become complacent in the absence of a competitor of equal size?

3. During the hearing, you pushed back against statistics that demonstrated that Ticketmaster had upwards of 70, even 80, percent of the concert and live event market, stating that this data was outdated. Please explain what percent of the overall ticket marketplace is controlled by Ticketmaster.
 - a. What percent of the primary ticket marketplace does Ticketmaster control?
 - b. What percent of the secondary ticket marketplace does Ticketmaster control?
 - c. What percent of the ticket marketplace for sports does Ticketmaster control?
 - d. What percent of the ticket marketplace for live entertainment does Ticketmaster control?

4. At the hearing, Mr. Groetzinger indicated the NFL has an open API that allows a variety of ticket vendors to all compete for their business. They do not have a "digital rights master" and it is working successfully.

- a. Can this model be transferred to venues and entertainment of all types?
 - b. If not, why not?
5. What is the justification for Ticketmaster retaining central control over the transferability of tickets?
 - a. Why must consumers create a Ticketmaster account to receive a transferred ticket?

Questions from Senator Tillis
for Joe Berchtold

1. Do you currently have the necessary tools, be it legislative (e.g., the Better Online Ticket Sales Act), legal, and/or technical, to stop bots from impacting your platform? If not, what more is needed?
2. What steps does your platform currently take to prevent bots from purchasing tickets?
3. What limitation, if any, does your platform place on the number of tickets that can be purchased from the same account?
4. What steps does your platform take to identify duplicative accounts, where the email and/or username for these duplicative accounts may differ, but the person behind the account is the same?
5. What steps will you be taking moving forward to address these issues?

6. Please describe how exactly your "Verified Fan" system works to prevent bots on your system? How is this different from other shows?
7. How do you decide which shows will use the "Verified Fan" system? Why isn't the "Verified Fan" system used for all of your shows?
8. How have you validated and tested the "Verified Fan" system?
9. When someone is able to purchase a ticket who is not a "Verified Fan," where does the failure typically occur?
10. Can you please explain your understanding of the term "holdbacks" and whether LiveNation engages in this practice? And if so, why?
11. Please explain how you can and if you will increase transparency regarding the various costs listed on a "settlement sheet," which is provided to artists on the backend? Also, will you implement a means by which to provide this information, to artists before events occur?

12. Do you think that greater transparency in ticketing will improve the ticket purchasing experience for consumers? Please explain your thinking.

13. The process of transferring ownership of a ticket can be confusing and cumbersome for consumers.
 - a. What can be done to streamline this process for consumers?

 - b. From what I understand, the NFL requires ticketing partners to integrate with one another. Can this process be applied to concert tickets as well?

Senate Judiciary Committee

“That’s the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment”

Questions for the Record

for Joe Berchtold

President and Chief Financial Officer, Live Nation Entertainment, Inc.

QUESTIONS FROM SENATOR BLACKBURN

1. As of 2019, the Ticketmaster application had more downloads and more active users than any of its competitors. Many applications are powered by Ticketmaster, collecting troves of data on consumers.
 - a. What does Ticketmaster do with the data they collect from consumers?
 - b. When bots attack the site, do they gain access to the consumer data that Ticketmaster collects?
2. When consumers purchase tickets through StubHub, they are required to return to the Ticketmaster site to have their order fulfilled.
 - a. Does Ticketmaster collect these consumers’ data?
 - b. If so, what other vendors does Ticketmaster share this data with?
 - c. What protections and safeguards does Ticketmaster have in place surrounding consumer data?
3. You have asserted that Ticketmaster has a difficult time identifying bot attacks.
 - a. Why can Ticketmaster not distinguish between a bot attack and a consumer?
 - b. What is your timeline and specific plan to secure your sites so consumers know their data is safe and that they will have the ability to purchase tickets?
4. You have mentioned you feel that Ticketmaster is blamed for “spec” tickets on secondary ticket sites. As an example, you pointed to tickets for Madonna’s upcoming tour that are already available for sale on some secondary sites. Why do you think the sellers on these sites believe they can obtain these specific tickets? Is it because they know Ticketmaster is not stopping them from being procured by bots and scalpers?
5. You have also suggested that, if you do not initially identify a buyer as a bot, the only course of action for Ticketmaster is to cancel the sale after the fact. That, however,

does not make those tickets available to consumers. Instead of letting the transaction occur, why does Ticketmaster not flag suspicious transactions during the actual sale period?

- 6. You have stated that part of the problem with the current issues in the ticketing industry is that consumers do not understand aspects of how the industry works. Specifically, you pointed to the fact that most consumers do not understand the difference between the primary and secondary ticket markets. Given all the failures of Ticketmaster, is it fair to blame consumers for not understanding what is actually a very complex and flawed industry?**

Kathleen Bradish
Vice President for Legal Advocacy
American Antitrust Institute, Washington, D.C.
Questions for the Record
Submitted January 31, 2023

QUESTIONS FROM SENATOR BOOKER

1. In 2008, DOJ estimated that Ticketmaster held more than 80 percent of market share in the primary ticket market. Ten years later, in its 2018 report, GAO reported that Ticketmaster was still the primary market leader. Ticketmaster also enjoys significant market share in the secondary market, a position that GAO estimated was the second largest. What's concerning is that it seems that Ticketmaster's behavior in the primary market is constraining other companies in the secondary market.

At an on-sale, a consumer purchases a ticket for an event to be held at a later date. Ticketmaster, however, does not deliver a ticket until just before an event occurs.

- a. What kind of influence should artists have on transferability?
 - b. Do you find that it is beneficial for an artist to influence capping ticket prices and/or resale amount?
2. Microsoft is proposing to buy the largest game developer, Activision.
 - a. Is the lesson learned from the Ticketmaster-Live Nation case that behavioral remedies are often inadequate to protect consumers and competition?

**Questions for the Record from Senator Alex Padilla
Senate Judiciary Committee
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment”
January 24, 2023**

Questions for Ms. Kathleen Bradish

1. Consumers and artists lose out when tickets are bought in a primary ticket sale en masse for the purpose of being resold on the secondary marketplace for a profit. Some ticketing companies operate as both the primary ticketing seller as well as the secondary seller, meaning that they make money both on the initial sale of tickets as well as when tickets are resold. **Do you believe that companies who operate both as primary and secondary ticket sellers have an adequate market incentive to effectively address problems like the use of bots in acquiring tickets in the primary market?**
2. In purchasing tickets online many consumers are dissatisfied with the amount of service fees associated with the price of tickets.
 - a. **Service fees are negotiated between venues and ticketing operators, both of whom may have an incentive to keep those fees high. Would competition in ticketing resolve the concern that these fees are too high, or is this an area where additional rules of the road may be necessary?**
 - b. **Can we learn anything from how other countries have dealt with live entertainment ticketing to ensure that the ecosystem benefits all the actors involved from artist to consumer?**
 - c. **How do service fees and overall ticket prices in the United States compare with other countries?**
3. **Why is ticket transferability important for consumers and competition in live entertainment?**

Questions for the Record
Senator Chuck Grassley
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment Hearing”
January 24, 2023

Question for Ms. Bradish

1) You spoke about Live Nation’s disregard for the consent orders and important consumer welfare concerns relating to Live Nation’s dominance in the entertainment industry. How has the failure by the DOJ/FTC to enforce these orders harmed consumers in the past decade? Also, could you elaborate on possible solutions to protect consumers?

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

**Questions for the Record for Kathleen Bradish, Vice President of Legal
Advocacy American Antitrust Institute**

I. Directions

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To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. Your testimony discusses how Live Nation-Ticketmaster is a leading example of both a traditional monopoly and a modern dominant digital player. At the time of the 2009 merger, DOJ raised concerns that Ticketmaster's dominance in the market would result in entrance difficulties to would-be competitors. Could this barrier to entry explain Ticketmaster's complacency?
2. In light of violations found by the DOJ, the consent decree was extended for another five years. Do you consider the 2010 DOJ consent agreement to have been a successful solution to the concerns posed by the Live Nation/Ticketmaster merger?
3. In what way(s) did the 2010 DOJ consent agreement fail to address the market domination issues posed by Ticketmaster?
4. What steps might be taken by the DOJ and FTC to tamp down on the alarming outcomes of market domination by a single firm?
5. Should similar mergers in this industry be permitted in the future?
6. What legislative language would you recommend adoption to strengthen protections against exclusionary conduct?
7. What legislative language would you recommend to prevent self-preferencing by digital firms?
8. What are possible legislative solutions to prevent the ticketing market from arriving at this type of anti-competitive behavior in the future?

Questions from Senator Tillis
for Kathleen Bradish

1. Do you think that greater transparency in ticketing will improve the ticket purchasing experience for consumers? Please explain your thinking.
2. What legislative solutions do you recommend to benefit consumers and to improve operations in this industry?
3. The process of transferring ownership of a ticket can be confusing and cumbersome for consumers. What can be done to streamline this process for consumers?
4. Does the industry currently have the necessary tools, be it legislative (e.g., the Better Online Ticket Sales Act), legal, and/or technical, to stop bots from impacting ticketing platforms? If not, what more is needed?

**Jack Groetzinger
Chief Executive Officer
Seatgeek, Inc.
Questions for the Record
Submitted January 31, 2023**

QUESTIONS FROM SENATOR BOOKER

In 2008, DOJ estimated that Ticketmaster held more than 80 percent of market share in the primary ticket market. Ten years later, in its 2018 report, GAO reported that Ticketmaster was still the primary market leader. Ticketmaster also enjoys significant market share in the secondary market, a position that GAO estimated was the second largest. What's concerning is that it seems that Ticketmaster's behavior in the primary market is constraining other companies in the secondary market.

At an on-sale, a consumer purchases a ticket for an event to be held at a later date. Ticketmaster, however, does not deliver a ticket until just before an event occurs.

- a. What kind of influence should artists have on transferability?
- b. Do you find that it is beneficial for an artist to influence capping ticket prices and/or resale amount?

**Questions for the Record from Senator Alex Padilla
Senate Judiciary Committee
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment”
January 24, 2023**

Questions for Mr. Jack Groetzinger

1. In 2016, Congress passed the Better Online Ticket Sales Act to thwart attempts by individuals and organizations to automate the process of purchasing tickets en masse using ticket bots. Since the passage of the law, the Federal Trade Commission and Department of Justice have announced only one enforcement action of the law.
 - a. **In your capacity as a primary ticket seller, has Seat Geek experienced a problem with scalpers employing bots to acquire tickets? How much does Seat Geek invest in thwarting bots that wish to acquire tickets as a primary ticket seller?**
 - b. **What steps does Seat Geek take to ensure that tickets listed on your secondary platform were not procured by bots?**
 - c. **How much money have you invested since 2016 to ensure that tickets listed on your platform were not procured by bots?**
 - d. **Has Seat Geek reported any instance of bots to the FTC or DOJ since 2016?**
2. **Does Seat Geek support requiring “all in pricing” in ticket sales so that consumers see the full price of a ticket on the front end of an online ticket shopping experience?**
3. One proposal to address industrial scalping of tickets is to cap the price at which a ticket can be resold on the secondary market. **What are Seat Geek’s views on capping the price at which tickets may be resold?**
4. When purchasing tickets on Seat Geek, consumers see two prices, the price of the face of the ticket and then additional fees associated with the cost of the ticket called “service fees.” In reviewing tickets for sale in California in the coming weeks, for many tickets the service fees were as much as 50% of the total cost of the ticket.
 - a. **For each show in which Seat Geek sells the primary ticket, how is the service fee calculated? Which parties are involved in setting the price, and how is money allocated?**
 - b. **How are Seat Geek’s fees on its secondary ticket market set? Are those fees a flat rate for processing the order, or does Seat Geek collect a fee that reflects a percentage of the total cost of the ticket?**

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

**Questions for the Record for Jack Groetzinger, Co-Founder and CEO,
SeatGeek**

I. Directions

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II. Questions

1. What would a monopoly look like in the ticketing marketplace?
2. Does Live Nation Entertainment's market dominance pose a threat to the live entertainment industry?
3. What are the markets most dominated by Live Nation?
4. What will be the most challenging markets to enter for Live Nation's competitors?
5. How can the ability of consumer transferability be retained while reducing the ability of scalpers to interfere with the ability of artists to set prices?

Questions from Senator Tillis
for Jack Groetzinger

1. Do you think that greater transparency in ticketing will improve the ticket purchasing experience for consumers? Please explain your thinking.
2. What legislative solutions do you recommend to benefit consumers and to improve operations in this industry?
3. The process of transferring ownership of a ticket can be confusing and cumbersome for consumers. What can be done to streamline this process for consumers?
4. Does the industry currently have the necessary tools, be it legislative (e.g., the Better Online Ticket Sales Act), legal, and/or technical, to stop bots from impacting ticketing platforms? If not, what more is needed?

Clyde Lawrence
Singer-songwriter, Lawrence, New York, NY
Questions for the Record
Submitted January 31, 2023

QUESTIONS FROM SENATOR BOOKER

In 2008, DOJ estimated that Ticketmaster held more than 80 percent of market share in the primary ticket market. Ten years later, in its 2018 report, GAO reported that Ticketmaster was still the primary market leader. Ticketmaster also enjoys significant market share in the secondary market, a position that GAO estimated was the second largest. What's concerning is that it seems that Ticketmaster's behavior in the primary market is constraining other companies in the secondary market.

At an on-sale, a consumer purchases a ticket for an event to be held at a later date. Ticketmaster, however, does not deliver a ticket until just before an event occurs.

- a. What kind of influence should artists have on transferability?
- b. Do you find that it is beneficial for an artist to influence capping ticket prices and/or resale amount?

**Questions for the Record from Senator Alex Padilla
Senate Judiciary Committee
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment”
January 24, 2023**

Questions for Mr. Clyde Lawrence

1. **In your experience, how much do the extra fees associated with ticket sales and venue operation per ticket differ between venues that are Live Nation/Ticketmaster associated as compared to those with no Live Nation/Ticketmaster affiliation?**
2. One proposal to address industrial scalping of tickets is to cap the price at which a ticket can be resold on the secondary market. **As an artist do you have views on setting price caps for ticket resales?**
3. Since the hearing and in response to your testimony, Ineffable Music Group announced that it would remove the 20% merchandise sale fees at the venues they operate. **Do you think this should be standard in industry?**

Questions for the Record
Senator Chuck Grassley
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment Hearing”
January 24, 2023

Question for the band Lawrence

1) You testified about the problems you and others in the industry have faced with Live Nation acting as the promoter, the venue, and the ticketer for shows. Can you elaborate on how the vertical reach of Live Nation makes it difficult to negotiate as an artist, and how that affects your fans? What solutions would you recommend industry, antitrust enforcers and Congress consider to address these problems?

Questions from Senator Tillis
for Clyde Lawrence

1. Do you think that greater transparency in ticketing will improve the ticket purchasing experience for consumers? Please explain your thinking.
2. What legislative solutions do you recommend to benefit consumers and to improve operations in this industry?
3. The process of transferring ownership of a ticket can be confusing and cumbersome for consumers. What can be done to streamline this process for consumers?
4. Does the industry currently have the necessary tools, be it legislative (e.g., the Better Online Ticket Sales Act), legal, and/or technical, to stop bots from impacting ticketing platforms? If not, what more is needed?

**Jerry Mickelson
Chief Executive Officer and President
Jam Productions, LLC, Chicago, IL
Questions for the Record
Submitted January 31, 2023**

QUESTIONS FROM SENATOR BOOKER

In 2008, DOJ estimated that Ticketmaster held more than 80 percent of market share in the primary ticket market. Ten years later, in its 2018 report, GAO reported that Ticketmaster was still the primary market leader. Ticketmaster also enjoys significant market share in the secondary market, a position that GAO estimated was the second largest. What's concerning is that it seems that Ticketmaster's behavior in the primary market is constraining other companies in the secondary market.

At an on-sale, a consumer purchases a ticket for an event to be held at a later date. Ticketmaster, however, does not deliver a ticket until just before an event occurs.

- a. What kind of influence should artists have on transferability?
- b. Do you find that it is beneficial for an artist to influence capping ticket prices and/or resale amount?

Questions for the Record
Senator Chuck Grassley
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment Hearing”
January 24, 2023

Question for Mr. Mickelson

1) Constituents have expressed concerns that Live Nation’s reach, accomplished partly by its vertical integration, significantly harms local communities and local economies. Could you explain how Live Nation’s dominance and influence in areas like record companies, artist merchandise, music apparel, and venues negatively affect local economies and smaller companies in those industries?

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Jerry Mickelson, CEO and President of Jam Productions

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II. Questions

1. Does Live Nation Entertainment's market dominance threaten the live entertainment industry?
 - a. How so?
 - b. What are those threats?
 - c. What steps can Congress take to address these threats?
2. In 2009, you testified before the Antitrust Subcommittee on the Live Nation/Ticketmaster merger, then pending before the Department of Justice.
 - a. In what way(s) did the 2010 DOJ consent agreement fail to address the market domination issues posed by Ticketmaster?
3. How can the ability of consumer transferability be expanded while reducing the ability of scalpers to interfere with the ability of artists to set prices?

Questions from Senator Tillis
for Jerry Mickelson

1. Do you think that greater transparency in ticketing will improve the ticket purchasing experience for consumers? Please explain your thinking.
2. What legislative solutions do you recommend to benefit consumers and to improve operations in this industry?
3. The process of transferring ownership of a ticket can be confusing and cumbersome for consumers. What can be done to streamline this process for consumers?
4. Does the industry currently have the necessary tools, be it legislative (e.g., the Better Online Ticket Sales Act), legal, and/or technical, to stop bots from impacting ticketing platforms? If not, what more is needed?

Questions for the Record
Senator Chuck Grassley
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment Hearing”
January 24, 2023

Question for Mr. Nuzzo

1) You spoke about Live Nation’s disregard for the consent orders and important consumer welfare concerns relating to Live Nation’s dominance in the entertainment industry. How has the failure by the DOJ/FTC to enforce these orders harmed consumers in the past decade? Also, could you elaborate on possible solutions to protect consumers?

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Sal Nuzzo, Senior Vice President, James Madison Institute

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous witness declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. What, in your opinion, makes a Live Nation Entertainment a monopoly?
2. What remedies should be taken by the DOJ and FTC to address this concentrated market power?
3. In light of violations found by the DOJ, the Live Nation/Ticketmaster consent decree was extended for another five years. Do you consider the 2010 DOJ consent agreement to have been a successful solution to the concerns posed by the Live Nation/Ticketmaster merger?
4. In what way(s) did the 2010 DOJ consent agreement fail to address the market domination issues posed by Live Nation/Ticketmaster?
5. Should similar mergers in this industry be permitted in the future?
6. What legislative language would you recommend adoption to strengthen protections against exclusionary conduct?
7. What legislative language would you recommend to prevent self-preferencing by digital firms?
8. What are possible legislative solutions to prevent the ticketing market from arriving at this type of anti-competitive behavior in the future?

Questions from Senator Tillis
for Sal Nuzzo

1. Do you think that greater transparency in ticketing will improve the ticket purchasing experience for consumers? Please explain your thinking.
2. What legislative solutions do you recommend to benefit consumers and to improve operations in this industry?
3. The process of transferring ownership of a ticket can be confusing and cumbersome for consumers. What can be done to streamline this process for consumers?
4. Does the industry currently have the necessary tools, be it legislative (e.g., the Better Online Ticket Sales Act), legal, and/or technical, to stop bots from impacting ticketing platforms? If not, what more is needed?



February 14, 2023

Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Written Questions for the Record from Senate Committee on the Judiciary
Issued January 31, 2023

Dear Chairman Durbin, Ranking Member Graham, Senator Klobuchar, Senator Lee, et al.,

Live Nation welcomes this opportunity to respond to the written questions we received from Senators Blackburn, Booker, Cruz, Grassley, Klobuchar, Lee, Padilla, and Tillis, and thanks the Judiciary Committee for the interest they have shown in learning more about the live events industry. As we discussed during the January 24, 2023 hearing on the ticketing industry, and as we expressed in our prior correspondence, the live events industry faces a number of unique challenges—principally, the proliferation of industrial-scale scalping and deceptive ticketing practices. At the same time, the industry today is more competitive than ever before, and we are seeing rapid innovation and dynamic disruption while the number of live events continues to grow well beyond even pre-pandemic levels. We are optimistic for the future of the live events and entertainment industry, and we appreciate the chance to share our perspective with this Committee.

Many of the questions we received concern the state of competition in the ticketing industry. In the answers that follow, we provide more data showing that both primary and secondary ticketing markets are highly competitive. Ticketmaster remains the largest primary ticketing company, but it has steadily lost market share and has lowered pricing despite having by far the best product in the industry—sure signs that it is not the monopolist that some claim. Competition for primary ticketing contracts occurs through competitive bidding, and the intensity of that bidding process is now greater than ever. Venues and teams retain a larger portion of the value of a ticketing deal every year. We are proud that most continue to choose Ticketmaster, but that is because in today's competitive market they can buy the services they prefer—Ticketmaster's—at highly competitive prices.

Several Senators have also asked questions about ticket transferability. This is the real fault line between Ticketmaster and its rivals such as SeatGeek. Live Nation and Ticketmaster strongly support secure ticket transfer and technologies allowing artists and sports teams to control the terms of resale for the shows and games that they put on. The pricing that artists

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and teams choose should not be the target of ticket scalpers and the resale marketplaces that support them. An artist's desire to have low prices should be respected. If it wants to restrict transfers to face value only, it should be able to do so. If it wants to take the profit out of using bots to hijack tickets meant for real fans, it should be able to do so. Unfortunately, SeatGeek and others see common sense restrictions on ticket transferability, clearly benefiting artists and fans, as a threat to their secondary ticketing business—businesses overwhelmingly serving professional ticket resellers, not fan-to-fan exchange. That is the hidden agenda behind these attacks on Ticketmaster.

We urge Congress to recognize this and continue to move public policy in the directions that serve artists and fans. The BOTS Act should be expanded, and its enforcement mechanisms strengthened. Speculative and fraudulent resale practices should be banned. Federal law should give artists and other event providers clear authority to set the terms of resale for their events.

Please find enclosed our responses to each Senator's questions, which are addressed separately and in alphabetical order.

Sincerely,

A handwritten signature in blue ink that reads "Daniel M. Wall".

Daniel M. Wall
Executive Vice President
Corporate and Regulatory Affairs
Live Nation Entertainment, Inc.

Enclosure



Senator Blackburn

- 1. As of 2019, the Ticketmaster application had more downloads and more active users than any of its competitors. Many applications are powered by Ticketmaster, collecting troves of data on consumers.**

- a. What does Ticketmaster do with the data they collection from consumers?**
- b. When bots attack the site, do they gain access to the consumer data that Ticketmaster collects?**

Ticketmaster's approach to consumer data is outlined in its privacy policy, which is available here: <https://help.ticketmaster.com/s/article/Ticketmaster-Privacy-Policy>. Ticketmaster is committed to ensuring the safety and security of the fans that use its applications and websites, and meets and even exceeds industry standard consumer privacy protections, as well as GDPR, CCPA, and all other applicable data use regulations. In fact, Ticketmaster invests tens of millions of dollars annually in information security and privacy safeguards, and our policies far surpass any national standards in this area.

Every ticketing company, primary and secondary, uses consumer data for marketing. Ticketmaster delivers curated messaging to fans, whether it be about shows, events, presales or offers through email, SMS or social media marketing. For each channel, we rely on the individual fan's chosen method(s) of communication:

1. For email marketing, fans can opt out through their account settings, or by following a link at the bottom of every email.
2. For SMS marketing, fans must have provided opt-in marketing consent to receive messages.
3. For social media marketing through platforms like Facebook or TikTok, fans receive messaging based on their preferences within the social media platform. We do not share the contact information of any fan with social media platforms.

Curated messaging based on purchase histories and other signals is intended to help artists stay connected with their fans, and ensure that fans are kept informed of upcoming concerts and events that they might be interested in. That data is always within the consumer's control—they can unsubscribe or update their preferences at any time.

In the live event industry, the term "bots" generally refers to automated scripts deployed by unscrupulous ticket scalpers to siphon tickets away from real fans and onto secondary platforms, where the tickets can often be sold for a significant premium over the price that the artist preferred to charge. By their nature, these bot attacks neither seek to obtain nor in fact



obtain access to consumer data; they are simply intended to buy tickets faster than any human being can. We know of no occasion when consumer data in our possession was compromised by bot attacks.

2. When consumers purchase tickets through StubHub, they are required to return to the Ticketmaster site to have their order fulfilled.

a. Does Ticketmaster collect these consumers' data?

b. If so, what other vendors does Ticketmaster share this data with?

c. What protections and safeguards does Ticketmaster have in place surrounding consumer data?

In 2019, Ticketmaster pioneered an innovation in digital ticketing called SafeTix, which was designed to ensure that the recipient of a transferred ticket can be confident that it is valid and not fraudulent. Historically, the secondary ticketing industry has been plagued by widespread fraud. Scammers could acquire a single legitimate ticket with a barcode (e.g., embodied in a .PDF file) and copy it, selling multiple copies to multiple unsuspecting fans. While each ticket appeared real, on the day of the event, only the first person to use the barcode would be allowed into the event and the others would be turned away. SafeTix is Ticketmaster's solution to that problem, and our competitors have launched similar innovations for the same reasons: to protect fans from fraud.

We presume the reference to a StubHub customer having to "return" to Ticketmaster is about the process for a SafeTix transfer. Ticketmaster's resale competitors like to complain that they are disadvantaged by the fact that Ticketmaster, if it sold the primary ticket, needs to issue a new ticket to whomever bought the ticket from a resale site. Respectfully, it makes no sense that the minor inconvenience to consumers in having to effectuate a transfer through Ticketmaster is unreasonable given the benefit (a) to the consumer in getting a secure digital ticket and (b) to the resale site in being able to offer secure digital tickets. Rather than limiting secondary ticketing, the SafeTix technology supports a robust resale ecosystem because where SafeTix is used, fans can confidently buy and sell on any platform without the waste and distrust caused by fraudulent ticket transfers.

The suggestion that Ticketmaster gets some meaningful competitive advantage from data acquired through SafeTix transfers is misplaced. Most SafeTix transfers are to consumers who already have Ticketmaster accounts. On those occasions when the recipient of a SafeTix ticket does not already have a Ticketmaster account, Ticketmaster collects a limited amount of information in order to register the new ticketholder and be able to confirm that the new ticketholder is who they say they are: an email address, name, phone number, and zip code. Ticketmaster follows industry practice in sharing this limited information with venues so that the venue can, for example, alert fans if a show has been canceled, and for use in the event of an emergency. We understand that our competitors do the same. However, we do not use



information acquired only through SafeTix transfers for our own marketing (unless the fan opts in to receive such marketing).

Ticketmaster is also committed to ensuring the safety and security of all fans who use its applications and website—including those who use it only for the limited purpose of receiving a resold ticket. Ticketmaster fully complies with and even exceeds industry standard consumer privacy protections, as well as GDPR, CCPA, and all other applicable data use regulations. Additional details regarding Ticketmaster's approach to consumer data are outlined in its privacy policy, which is available here: <https://help.ticketmaster.com/s/article/Ticketmaster-Privacy-Policy>.

3. You have asserted that Ticketmaster has a difficult time identifying bot attacks.

a. Why can Ticketmaster not distinguish between a bot attack and a consumer?

b. What is your timeline and specific plan to secure your sites so consumers know their data is safe and that they will have the ability to purchase tickets?

We never publicly state how we distinguish bots from consumers, as doing so would give bad actors a playbook to cheat the system. In general, we have developed sophisticated methods to determine in real time whether a call on the Ticketmaster system exhibits characteristics we have previously associated with bots and actors using bots. We would be happy to arrange a confidential briefing on this subject. Ticketmaster has hands-down the most sophisticated bot fighting technologies in the world, and does more to fight bots than all others in the industry combined.



There is no magic solution to the scourge of bots, because the fight against them exhibits the characteristics of an arms race. We constantly upgrade our capabilities, but the bad actors constantly look for new ways to break through our defenses. For example, we are very proud of our Verified Fan product, which is the industry-leading technology in these efforts. By pre-registering fans, we move the onsale to secure servers accessible only with codes unique to each registered fan. So what has happened now? As you can see in the photo, brokers are recruiting individuals to pose as Verified Fans. Needless to say, we are investigating and will follow-up with appropriate authorities, but this gives one a sense of the challenges. We nevertheless continue to innovate and adapt: the recent Beyoncé onsale is an example of this, and an indicator of how these efforts are already paying off. We implemented a new approach to the Beyoncé onsale, including by separating Verified Fan registration into groups of cities. Though demand for Beyoncé's Renaissance World Tour exceeded supply of available tickets by over 800% in some cities, we nonetheless succeeded in getting tickets into the hands of tens of thousands of real fans.



Though demand for Beyoncé's Renaissance World Tour exceeded supply of available tickets by over 800% in some cities, we nonetheless succeeded in getting tickets into the hands of tens of thousands of real fans.

We emphasize again that ticket bots have not presented data security issues. They are after tickets, not consumer data.

4. You have mentioned you feel that Ticketmaster is blamed for "spec" tickets on secondary ticket sites. As an example, you pointed to tickets for Madonna's upcoming tour that are already available for sale on some secondary sites. Why do you think the sellers on these sites believe they can obtain these specific tickets? Is it because they know Ticketmaster is not stopping them from being procured by bots and scalpers?

Speculative ticketing does not depend on the seller getting the tickets for the specific seats offered for sale. The strategy is to cover the speculative offer with seats that are as good or better. The scalper is betting that between the time of the sale and the time when it needs to deliver the tickets it can buy something the buyer will accept at a purchase price lower than the buyer paid for the spec ticket. Essentially the scalper is engaging in a form of arbitrage based on its superior knowledge of the likely selling prices for tickets at different points in time.

When listing speculative tickets for sale, scalpers and bots do not need to consider whether Ticketmaster will be able to stop them. They already know that Ticketmaster will not accept speculative listings. But StubHub, SeatGeek, Vivid Seats, and others will, so they have plenty of outlets for engaging in this fraud. And this is unfortunately a largely risk-free practice. If the broker can fulfill the order, they pocket a huge profit, and if they can't, they can simply refund the speculative purchase.



Speculative ticketing is a fraudulent and deceptive practice, and one that Ticketmaster emphatically denounces. Ticketmaster does everything in its power to prevent third-party sellers from engaging in the practice on our own resale platform, including an unequivocal, outright ban as a matter of policy. Speculative ticketing should be unlawful in the U.S., as it is in much of Europe and the UK.

5. You have suggested that, if you do not initially identify a buyer as a bot, the only course of action for Ticketmaster is to cancel the sale after the fact. That, however, does not make those tickets available to consumers. Instead of letting the transaction occur, why does Ticketmaster not flag suspicious transactions during the actual sale period?

Ticketmaster identifies and blocks the overwhelming majority of bots in real time. The small minority that get through Ticketmaster's defenses obtain tickets. There are then post-sale processes by which Ticketmaster may learn that something is amiss and what initially appeared to be a genuine consumer was not. At that point, Ticketmaster will likely first try to determine whether the tickets have been resold. If they have not been resold and are still in the possession of the bad actor, we will most likely cancel the tickets, block the buyer, and put the canceled tickets on sale again at the regular face value price. That way they are made available to real consumers.

It is more complicated if the illicitly purchased tickets have been resold, because in that circumstance they are likely in the hands of real consumers (albeit ones who paid scalper prices). In those cases, Ticketmaster will generally consult with the artist's team on a plan of action.

6. You have stated that part of the problem with the current issues in the ticketing industry is that consumers do not understand aspects of how the industry works. Specifically you pointed to the fact that most consumers do not understand the difference between the primary and secondary ticket markets. Given all the failures of Ticketmaster, is it fair to blame consumers for not understanding what is actually a very complex and flawed industry?

We certainly do not blame consumers for not understanding the industry. We have made the point that some criticism of Ticketmaster reveals misunderstandings, for example that service fees on primary tickets are set and pocketed solely or mainly by Ticketmaster. It also has to be said that participants in the industry who know better misrepresent its workings to assign blame to Ticketmaster for things that are not arguably its fault. A prime example would be resale competitors diverting attention from their own support of scalping by trying to blame Ticketmaster for the problem.

Live Nation and Ticketmaster work hard to educate fans and the broader public about how the ticketing process works and who is responsible for bot attacks and huge resale markups. We regularly post updates on the Ticketmaster blog, explaining developments around recent or upcoming live events. See <https://blog.ticketmaster.com/>. For events in which we offer tickets for



resale as well as primary sale, we prominently label resale tickets and display them in a different color in order to ensure that fans are not confused while giving them as broad a choice of ticket as possible. Currently, before a high-profile onsale when demand is expected to exceed supply, Ticketmaster engages in major public outreach to explain the systems through which tickets will be sold and how fans can give themselves the best chance of buying a ticket. Furthermore, unlike our competitors in the resale market, Ticketmaster bans the unfair and deceptive practice of speculative ticket sales. All of our efforts stem from our fundamental belief that the artist-fan connection is best served with transparency.



Senator Booker

In 2008, DOJ estimated that Ticketmaster held more than 80 percent of market share in the primary ticket market. Ten years later, in its 2018 report, GAO reported that Ticketmaster was still the primary market leader. Ticketmaster also enjoys significant market share in the secondary market, a position that GAO estimated was the second largest. What's concerning is that it seems that Ticketmaster's behavior in the primary market is constraining other companies in the secondary market.

At an on-sale, a consumer purchases a ticket for an event to be held at a later date. Ticketmaster, however, does not deliver a ticket until just before an event occurs.

a. What kind of influence should artists have on transferability?

b. Do you find that it is beneficial for an artist to influence capping ticket prices and/or resale amount?

Ticketmaster's behavior in the primary market is unequivocally *not* constraining other companies in the secondary market. The secondary ticketing market has experienced enormous expansion in recent years, and is highly competitive. Ticketmaster's resale competitors SeatGeek, StubHub and Vivid Seats likely control 75% or more of that market. Furthermore, they are the resale marketplaces that cater to and are therefore preferred by the professional resellers who, contrary to popular understanding, account for the vast majority of sales on those resale platforms. (Fan-to-fan exchange is a small part of their business.)

We do understand that these companies complain about ticket transferability. Every time Ticketmaster releases some new tool or feature to promote the connection between artists and fans and prevent scalping—from secure digital ticketing to SafeTix to allowing artist restrictions on resale—arguments demonizing Live Nation and/or Ticketmaster follow as a matter of course. The spread of misinformation around the purpose for these innovations is meant to protect the flow of tickets to the professional ticket arbitrageurs, to the detriment of fans. On any such issues, we will always take the side of the artist, the fan, and the connection between the two that the artist intended.

Live Nation believes that the artist or team should have the primary say in the transferability of a ticket to their concert or game—including whether it is transferable, and if it is, when and how the ticket can be transferred. One must understand that when an artist plans a live event or tour, they decide precisely how much each ticket should sell for in the primary onsale, and for a variety of reasons, they often choose to set those prices well below what the market would otherwise support. They may be trying to build long-term relationships with fans, they may be trying to appeal to younger or otherwise less-affluent audiences, and some are simply offended by what tickets can go for on resale markets. The common thread is that when



artists decide to price their tickets below market, the intended beneficiary of that choice *is the fan*, not the scalper who sees an easy arbitrage opportunity to make a quick profit. Ticket transferability technology is meant to protect the artist's well-intentioned decision to price at a reasonable level, but the secondary ticketing sites see it as a threat to their inventory levels, and therefore demonize it. But in our view, if artists want to preserve the integrity of their pricing decisions by designating those tickets non-transferable or only transferable at face value, we see no reason they should not be able to do so. To be clear, Live Nation does not oppose "fan freedom," as our rivals claim; we simply define it to include freedom from having the interests of scalpers and resale sites override artist decisions to keep prices lower than they surely would be in a world with unlimited transferability.

With respect to delayed delivery, this practice is another example of promoting artists, sports teams, and fans over brokers and other professional resellers. Delivery delays give Ticketmaster time to determine whether tickets have been purchased in violation of ticket limits or Ticketmaster's Terms of Use, and to cancel them if that is in fact the case. See https://help.ticketmaster.com/s/article/What-is-a-ticket-delivery-delay?language=en_US ("A delivery delay is used to prevent tickets from being accessed until we can confirm everyone has adhered to the event ticket limit and didn't use unfair ticket technology to buy in bulk. In other words, we want to make sure no one has ordered more than their fair share of tickets and the process is fair."). In short, it helps to prevent bad actors who have accessed tickets improperly from covering their tracks by passing them off onto good-faith buyers. Delivery delays, however, do not stop real fans from reselling their valid tickets.

Further, it is not Ticketmaster's decision whether to delay delivery. Artists, teams, and venues decide whether to release their tickets with a delivery delay and instruct Ticketmaster accordingly. We encourage the practice for the reasons given above, but the decision is not ours to make.



Senator Cruz

- 1. One of Live Nation Entertainment/Ticketmaster's ("Ticketmaster") practices is to restrict the actual delivery or transfer of a ticket until a day or so before the show. By doing so, it restricts that buyer from transferring or selling their ticket by depriving them of sufficient time to do so.**

a. Tell me why this is good for consumers.

Delayed delivery gives Ticketmaster time to determine whether tickets have been purchased in violation of ticket limits or Ticketmaster's Terms of Use, and to cancel them if that is in fact the case. See https://help.ticketmaster.com/s/article/What-is-a-ticket-delivery-delay?language=en_US ("A delivery delay is used to prevent tickets from being accessed until we can confirm everyone has adhered to the event ticket limit and didn't use unfair ticket technology to buy in bulk. In other words, we want to make sure no one has ordered more than their fair share of tickets and the process is fair."). In short, it helps to prevent bad actors who have accessed ticket improperly from covering their tracks by passing them off onto good-faith buyers. Delivery delays, however, do not stop real fans from reselling their valid tickets.

Further, it is not Ticketmaster's decision whether to delay delivery. Artists, teams, and venues decide whether to release their tickets with a delivery delay and instruct Ticketmaster accordingly. We encourage the practice for the reasons given above, but the decision is not ours to make.

- 2. In 2020, the Department of Justice was sufficiently concerned about Ticketmaster's anticompetitive behavior to extend the original 2010 merger consent decree through 2025, based on six verified violations of the 2010 agreement. Such behavior included retaliating against concert venues for using another ticketing company, threatening concert venues, and tying ticketing services to concert promotion business.**

a. Has Ticketmaster become complacent in the absence of a competitor of equal size?

Respectfully, we do not agree that there were six verified violations of the 2010 Consent Decree. There were numerous competitor complaints alleging violations, most of which the DOJ investigated but then chose not to pursue. The DOJ then alleged six violations over a nine-year time period during which there were hundreds of ticketing negotiations. Though we have never agreed with DOJ's allegations of retaliation, we decided to extend and modify the Consent Decree in 2020 because we did not want to be in a position where it appeared that we were defending behaviors that do not reflect our business practices and should have no place in this industry.



Ticketmaster has not become complacent. To the contrary, a once-complacent Ticketmaster was reinvigorated by the merger with Live Nation. As soon as the merger was completed, Live Nation set out to improve Ticketmaster, modernize its many antiquated systems, and reorient it around an artist- and consumer-focused business model. Technologically, and from both a consumer and artist perspective, Ticketmaster is a much better ticketing system today than it was in 2010. Its performance in large onsales is without peer, it has the best marketing capabilities of any ticketing system, and it is far and away the leader in preventing fraud and getting tickets into the hands of real fans. The proof here is in the wide array of artists including Taylor Swift who are not promoted by Live Nation but who come to Ticketmaster asking to use the tools we have developed to help them direct the tickets to their shows securely and in the manner that best serves their interests. Artists have also asked us to support their onsales through other ticketing providers with Verified Fan. Rival promoters also regularly choose to have their shows ticketed by Ticketmaster based on product quality. An example is Another Planet Entertainment, the top independent promoter operating in the San Francisco Bay area and Northern California, whose founder Gregg Perloff was quoted in 2018 as follows:

"[W]e use Ticketmaster and a lot of people told us how can you use your competitor's ticketing company. We made a decision after interviewing all the different ticketing services that for us—cause we did general admission and reserved seat shows—that if you take away whether Ticketmaster is involved with Live Nation or not, Ticketmaster for all the abuse they take is the best ticketing company in the world, and if what we are trying to do is to sell tickets and make it that somebody can actually buy a ticket and get the right seat we decided—and I worked with Ticketmaster before they merged—that we would stay with them in spite of the fact that so many people, particularly independent promoters were telling us we were out of our minds."

Ticketmaster also faces far more competition today than it did at the time of the merger, so it cannot afford to be complacent. This was addressed in Mr. Berchtold's testimony. SeatGeek alone provides stiffer primary ticketing competition than any Ticketmaster rival in 2010. This is evident in more than wins and losses—Ticketmaster wins the most because it has the best product by far. It is evident because each time we seek to renew a venue contract we find ourselves competing against multiple credible offers in the bidding process and are forced to adjust our terms accordingly. Every year ticketing companies get a lower portion of the economic value in a ticketing contract while venues and teams get more. We can confidently say that U.S. ticketing markets have never been more competitive than they are today and, far from being complacent, we are constantly reevaluating how to remain competitive.

3. During the hearing, you pushed back against statistics that demonstrated that Ticketmaster had upwards of 70, even 80, percent of the concert and live event market, stating that this data was outdated. Please explain what percent of the overall ticket marketplace is controlled by Ticketmaster.

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800-653-8000



- a. **What percent of the primary ticket marketplace does Ticketmaster control?**
- b. **What percent of the secondary ticket marketplace does Ticketmaster control?**
- c. **What percent of the ticket marketplace for sports does Ticketmaster control?**
- d. **What percent of the ticket marketplace for live entertainment does Ticketmaster control?**

We fully appreciate the interest in our market shares, which are the subject of multiple QFRs. It is difficult, however, for any one company to accurately or reliably estimate shares since they depend on the often unknown and confidential sales information of competitors. The determination of whether any segment or subsegment is a "relevant market" also requires data not available to Ticketmaster.

What we are able to say is what Mr. Berchtold said in his testimony: our best estimate is that our share of any plausibly defined primary ticketing market does not exceed 50-60%. It will be lower if sports are included with concerts in the market definition, as it should be. Despite our alleged dominance, Ticketmaster has lost, not gained, market share since the merger. Given the robust competition Ticketmaster faces every day, we respectfully disagree that we "control" any portion of a relevant primary ticketing market.

Ticketmaster's market share in secondary ticketing is very difficult to determine because of major, non-public companies participating in the space. We believe our share is likely in the 20-25% range. That would include concerts and sports in the market, which is undoubtedly required with respect to secondary ticketing.

4. At the hearing, Mr. Groetzinger indicated the NFL has an open API that allows a variety of ticket vendors to all compete for their business. They do not have a "digital rights master" and it is working successfully.

- a. **Can this model be transferred to venues and entertainment of all types?**
- b. **If not, why not?**

The technology that Mr. Groetzinger referenced is an API that the NFL commissioned to facilitate resale of its tickets. It is not "open" to the industry, but rather only available to the NFL's business partners. It is a bespoke implementation with underlying contractual commitments from the ticketing participants that is expressly designed to protect the rights of the content owner (here the NFL) to control the means by which tickets to its events are sold and



resold among fans. We wholly support technology that ensures that content owners can determine how their tickets are sold. We also support, and indeed have pioneered, the development of technology that protects fans from fraud and abuse. We do not support any concept of an "open API" that would advance fraudulent resale practices or encourage ticket arbitrage.

5. What is the justification for Ticketmaster retaining central control over the transferability of tickets?

a. Why must consumers create a Ticketmaster account to receive a transferred ticket?

Historically, the secondary ticketing market has been plagued by widespread fraud. Scammers could acquire a single legitimate ticket with a barcode (often embodied in a .PDF file) and copy it, selling each copy to a different unsuspecting fan. While each ticket appeared valid, on the day of the event, only the first person to use the barcode would be allowed into the event; the other buyers would be turned away at the door.

SafeTix is Ticketmaster's solution to that problem. It ensures that, at events where the technology is used, when a ticket is transferred from one party to another, the recipient can be confident that they will in fact be allowed in, because no one else can be digitally authorized to enter in their place. The product works by virtue of a protected registry which ties each ticket to the identity of the bona fide ticket holder. When a legitimate transfer occurs, the registry is updated accordingly. As a result, no ticket can be sold to more than one person at a time.

In order for that technology to operate—that is, for the registry to serve its role in preventing fraud—a small but irreducible amount of information about each ticketholder is required. When the recipient of a SafeTix ticket already has a Ticketmaster account, that account already has the necessary information and is thus used to authenticate the purchaser. When the recipient of a SafeTix ticket does not already have a Ticketmaster account, Ticketmaster collects a limited amount of information in order to be able to confirm that the new ticketholder is who they say they are: an email address, name, phone number, and zip code.



Senator Grassley

- 1. Constituents have expressed concerns that Live Nation surprises consumers with large fees that are often hidden until after they've chosen their ticket and put in their information. In your testimony, you suggested all-in-pricing legislation so consumers can know up front what is their total ticket price. SeatGeek already uses all-in-pricing. What is preventing Ticketmaster from doing the same?**

Ticketmaster has long advocated for transparency in ticket prices and has no desire to surprise consumers. Ticketmaster is fully prepared to adopt all-in pricing for our customers—we advocated for and celebrated the adoption of legislation mandating all-in pricing in New York, and we operate successful ticketing marketplaces in countries all over the world where all-in pricing is legally required. Our experiences in these markets have taught us that all-in pricing is both an excellent way of promoting transparency for fans, and a system that works best if all actors in the market have adopted it.

As for the comparison with SeatGeek, there is some misunderstanding. In general, Ticketmaster and SeatGeek take a similar approach to how prices and fees are reflected on each website. For all-in pricing to work, we believe that all members of the live event ticketing industry should be required to use it—that's the only way that consumers will be able to easily compare prices across different sites as they shop for tickets.

- 2. Constituents have expressed concerns over the large number of bots and scalpers that obtain tickets and re-sell them at an enormous price. What are Ticketmaster's plans to address this problem going forward to protect fans?**

We never publicly state how precisely we fight bots, as doing so would give bad actors a playbook to cheat the system. In general, we have developed sophisticated methods to determine in real time whether a call on the Ticketmaster system exhibits characteristics we have previously associated with bots and actors using bots. We would be happy to arrange a confidential briefing on this subject.



Senator Lee

1. Will Live Nation commit to offering fair, reasonable, and non-discriminatory API access to legitimate secondary ticketing services to facilitate the safe and easy transfer of tickets without limiting customers to the Ticketmaster app? If not, why?

Respectfully, the question is too general for us to answer yes or no. Our history shows that we are not using API access to protect Ticketmaster's position in secondary ticketing. During the January 24, 2023, Judiciary Committee hearing, we discussed specific API technology that the NFL commissioned to facilitate resale of its tickets. We embraced that technology because it advanced our customer's business goals, was part of a broader deal structure that made sense for Ticketmaster, and the project was entirely consistent with our mission to eradicate fraud and protect the rights of the content owner (here, the NFL) to manage the means by which tickets to its events are sold and resold among fans. We have discussed similar integrations with other sports leagues and their authorized secondary ticketing services.

We have no interest in supporting API technology that facilitates fraudulent and speculative ticketing practices on supposedly "legitimate secondary ticketing services." In support of and at the direction of content owners, we would most likely condition any API on the reseller's willingness to abide by artist directions on how resale is conducted and provide reasonable compensation to Ticketmaster, which is the sports model. But insofar as no secondary ticketing service has made a commercial proposal for API access, we cannot really say how we would respond to such as request.

2. In your submitted testimony, you included letters from artists and venues in support of Live Nation, including one from Garth Brooks. I really like Garth Brooks, but it's hardly standing outside the fire for a billionaire performer like Brooks to defend working with Live Nation. He even refers to himself in the letter as "an entertainment company"—the bargaining leverage is vastly different than between Live Nation and bands like Lawrence. How are small, independent performers supposed to protect their interests in the face of Live Nation's massive market position?

Of course the observation is correct that artists vary in their popularity and market power. Not everyone is Garth Brooks. But we would respectfully disagree with the proposition that someone who started out small and then became today's Garth Brooks does not have standing to weigh in on the issues we are discussing. Mr. Brooks knows a great deal about the industry, about Ticketmaster, and about the destructive effects of today's industrial-scale ticket scalping.

Live Nation is invested in the success of artists and their live events throughout their careers, and it wants nothing more than for them to succeed. Smaller, independent performers have always faced daunting challenges trying to grow their audience and sell more tickets. The fact remains that for most shows, tickets never sell out. And today consumers are choosing



among more entertainment options than ever before, both within live music space as well as other forms of entertainment on social platforms, TV shows, and other content. Live Nation's mission is to help artists of all sizes connect with more fans. That is why Live Nation has invested billions of dollars funding artists globally—more than \$8 billion in 2022 alone. We only succeed when artists do first.

Artists also have choices when it comes to choosing a promoter for their next show or tour. This has never been more true. Today, Live Nation faces significant competition for live event promotion from companies such as AEG Presents, Outback Presents, Another Planet Entertainment, LiveStyle, and many more. Small, independent performers also have the choice of working with local promoters—further expanding their competitive options. If they do not wish to play Live Nation venues, they have thousands of other choices—Live Nation only operates 4% of the music venues in the United States.

3. Does Live Nation take into consideration a venue's primary ticketing vendor when determining where or when to schedule live concerts?

Several factors inform artists' choices of where to perform. The main factor is venue capacity and configuration. Which venue gives the artist the best chance of selling the most tickets at the best pricing? Other factors include: the venue's location, reputation, demographic base, technological capabilities, acoustics, and availability—as well as the fans' concert-going experience, the artists' prior experience at the venue, and the venue's notoriety based on other artists having played there. Promoters consult with artists on venue selection and tend to focus on the same factors.

Artists and promoters give some consideration to the ticketing provider a venue uses because the ticketing system can affect the likelihood of a sellout. Among its other features, the ticketing platform is a marketing engine and the ability to market shows effectively is important to promoters, since they are the principal risk-bearing actors in the live entertainment ecosystem. Some artists also want the features that Ticketmaster offers, such as Verified Fan, to get tickets to real fans rather than bots and scalpers. That said, the ticketing system is just one factor bearing on the likelihood of a successful concert, and rarely determinative.

Live Nation content categorically is not dependent on whether the venue uses Ticketmaster.

4. In 2020, the Justice Department extended your consent decree by another five years after identifying a number of violations. You have insisted that Live Nation does not have the incentive to pressure venues into using Ticketmaster or vice versa, but the violations prove that some Live Nation employees do in fact see the incentive. How do we know there are not even more venues out there that have been pressured by or faced retaliation from Live Nation, but which are simply too afraid to speak up?



Live Nation does not pressure venues or threaten retaliation to keep them from "speaking up." That is a fiction created by those who understand that a handful of alleged Decree violations over 12 years does not make for a compelling argument that Live Nation habitually engages in these behaviors. Among other failings, the argument ignores that under the Amended Decree there are robust processes for reporting potential violations to the Outside Antitrust Monitor confidentially.

5. In your testimony, you stated that it is Live Nation's "policy that if an account is established solely for the purposes of receiving a ticket, we do not use that data for purposes of marketing." In a further exchange, you stated that, "in the context of the event itself, I believe there is some ability to reach out to connect with those fans."

- a. Please explain how you know that a consumer opened an account "solely for the purposes of receiving a ticket."**
- b. Please provide a copy of the company's written policies pertaining to data collection and marketing 1) to consumers who purchase tickets directly from the company and 2) to consumers who purchase tickets on a third-party resale platform but then register for a Ticketmaster account in order to take possession of the tickets that they purchased on the third-party platform.**
- c. Does your company or any of your venue clients use data obtained from resale customers through the ticket transfer process for marketing purposes? Does your company use data obtained from resale customers, such as customers' event preferences, to target those customers in a different way in future communications?**
- d. Does Live Nation use information collected from a secondary ticketing company's customer as part of a resale transaction to compete with secondary ticketing companies? If so, does Live Nation believe that the antitrust laws permit a company with the market power of Live Nation to compel current or potential competitors to share customer data in order to access the marketplace?**
- e. Does the data that Live Nation collects from consumers give it a competitive advantage over its rivals? If so, does this barrier to entry further entrench Live Nation's market power? If not, in which case the data would seem to be of little use, will Live Nation commit to minimizing the data it collects and retains on consumers?**

Nearly all SafeTix transfers are to consumers who already have Ticketmaster accounts. The very small amount of incremental data Ticketmaster obtains through accounts established



merely to receive SafeTix transfers would not give Ticketmaster a significant competitive advantage were it used for marketing, which it is not. There is no written statement of this policy. It was a decision made by Live Nation because rivals were complaining about the supposed competitive advantage of using the data, when in fact the amount of incremental data is so small that conflict over the issue serves no purpose.

There are different ways to discern that an account was established for ticket transfer only, but the principal signal is that there is no activity in the account except for a free transfer.

Every ticketing company, primary and secondary, uses consumer data for marketing. Curated messaging based on purchase histories and other signals is intended to help artists stay connected with their fans, and ensure that fans are kept informed of upcoming concerts and events that they might be interested in. That data is always within the consumer's control—they can unsubscribe or update their preferences at any time. In every case, Ticketmaster fully complies with the antitrust laws and exceeds industry standard consumer privacy protections, as well as GDPR, CCPA, and all other applicable data use regulations. Additional details regarding Ticketmaster's approach to consumer data are outlined in its privacy policy, which is available here: <https://help.ticketmaster.com/s/article/Ticketmaster-Privacy-Policy>.

The suggestion that Ticketmaster somehow forces its resale competitors to turn over "their customers' data" is incorrect, but the implication that this might be anticompetitive is altogether baseless. As explained before, all legitimate resale marketplaces benefit from SafeTix and secure digital ticket transfers.



6. In your testimony, in response to the question, "do you have any plans to restrict the resale ability of digital tickets through third party entities like StubHub or others?" you replied that, "we do believe that the artists should have the right to set the rules" on transferability.

a. You did not, however, acknowledge that artists who request non-transferable tours are often managed by Live Nation. Please detail how Live Nation advises artists under its management on ticket transferability.

b. Why should the preferences of artists trump the welfare of consumers and preferences of the free market?

Ticket transferability restrictions remain uncommon in Live Nation's experience. The vast majority of shows take place without any significant restriction on who can resell tickets and at what price.

On the rare occasion when artists do choose to restrict transferability, there are a wide range of reasons why they may do so, including:

- The artist has deliberately set ticket prices low and wants to ensure that fans who attend the show pay only the face value and no more;
- The artist has chosen to distribute tickets to their fan club or in a similarly targeted approach and wants to ensure that the fans who show up are the ones who actually have that connection to the artist;
- The artist wants to diminish the incentive for scalpers to use bots to disrupt the primary onsale, which leads to disappointed fans who may blame the artist at least in part; or
- The artist is opposed to ticket scalping and wants to prevent scalpers from getting rich on the artist's music and performance.

These opinions tend to be very personal for the artists. If Live Nation is the promoter, it may talk through the pros and cons of restricting transferability with the artist but there is no general Live Nation position one way or another. Again, the great majority of Live Nation promoted shows have no transferability restrictions. If it were Live Nation's agenda to push ticket transferability restrictions and its position as a promoter gave it the ability to do so, one would think the practice would be widespread. It is not.



We disagree strongly with the suggestion that facilitating an artist's desire to minimize scalping by using our restricted transfer technologies "trump[s] the welfare of consumers and preferences of the free market." This is a principal talking point of the major secondary platforms but there is absolutely nothing about scalping that promotes consumer welfare or a free market. Scalpers do not remedy a market imperfection, as they like to argue. They raise prices to consumers, transferring in return tickets that were meant to be less costly. There are exceptions, most notably in sports where teams use legitimate ticket brokers as a form of distribution. But the bot-driven, industrial-scale scalping of concert tickets that we witness today imposes enormous losses on consumers with no gains except for the scalpers themselves and the resale sites that support them.

There are tools that simultaneously allow artists to cut out scalpers, while also giving fans options to resell their tickets if need be. One of the key examples is a face value exchange, which is a tool Ticketmaster built so that fans can resell tickets at exactly what they paid. This gives them resale options, while preventing scalpers from profiting by marking up tickets. In order to enforce such benefits, tickets can only be bought and sold on marketplaces willing to follow the terms set by the artist—which usually is only Ticketmaster.

7. Has Ticketmaster, Live Nation, or a subsidiary or agent of either entity ever instructed a third-party resale marketplace not to facilitate sales for certain tours? If so, please describe each such instance in detail.

Occasionally artists or promoters will ask each primary ticketing company that they are working with that also has a secondary site (e.g., Ticketmaster and SeatGeek) to delay turning on resale until primary sales have reached a certain threshold. This is a form of channel management. Live Nation has made such requests, and Ticketmaster has received such requests from artists and other promoters.



Senator Padilla

1. In 2016, Congress passed the Better Online Ticket Sales Act to thwart attempts by individuals and organizations to automate the process of purchasing tickets en masse using ticket bots. Since the passage of the law, the Federal Trade Commission and Department of Justice have announced only one enforcement action of the law. In your testimony, you highlighted the challenge that bots posed in facilitating Taylor Swift presale ticket sales.

a. In your testimony at the hearing, you shared with the committee that Ticketmaster worked with the FTC to report one instance of bots on your system since 2016. Is that correct? If so, why not refer more instances to the FTC?

In his testimony before the Judiciary Committee, Live Nation President Joe Berchtold referenced one example of our collaboration with FTC in the fight against bots. If that left the impression that we have only reported one instance of bots to the FTC, we welcome this opportunity to clarify matters. In fact, we have approached the FTC on multiple occasions to report bots, and have asked that they enforce the laws against bots, including the BOTS Act. The FTC is well aware that bot attacks occur all the time. The problem we are all facing is not that bot attacks are underreported, nor that the FTC does not take the issue seriously. It is that it is exceedingly difficult to use any U.S. legal procedures to address a problem that makes use of the internet and bot farms largely outside the U.S.

The BOTS Act lacks a private right of action. (There was some confusion about that during the hearing, but it does not provide such a right.) Ticketmaster has nevertheless filed a variety of lawsuits relating to the illegal use of bots on our platform—when we are able to identify a perpetrator over whom we can obtain jurisdiction. Each of these lawsuits resulted in our obtaining a permanent injunction preventing these actors from continuing to abuse our platform at the expense of fans. We would welcome adding a private right of action to the BOTS Act enforcement scheme. We would make use of it. In all events, our commitment to fighting bots is second to none. Trying to blame Ticketmaster for a problem that it fights more than anyone else serves only the scalpers and their resale marketplace partners.

b. In your testimony, you shared that since 2010, your company has invested over \$1 billion to improve the Ticketmaster system and that the company invests millions in anti-bot technology every year. In 2022, the company reported over \$15 billion in revenue. How much money did you invest in 2022 to address the problem of bots acquiring tickets?

Given the nature of the technologies that we invest in, and the multi-year costs incurred, we have no ready way to quantify these investments by year. That said, we are always working on better ways to fight bots, and in 2022 alone, we invested more than \$100 million in product



and technology maintenance and upgrades. Further, over the past five years—including the COVID pandemic when the live entertainment business was essentially shut down—we have invested \$900 million in a variety of digital infrastructure upgrades, Amazon Web Services (AWS), licensing, hardware, and relevant staff that makes us overall better equipped to handle modern commerce and the constantly evolving cyber threats that we face.

c. What challenges are you currently facing in combating bots on Ticketmaster?

As we have often said, the fight against bots is in the nature of an arms race, with the bad actors developing workarounds to every new tool we develop, after which we come up with a new innovation, and so on *ad infinitum*.

We constantly upgrade our capabilities, but the bad actors constantly look for new ways to break through our defenses. For example, we are very proud of our Verified Fan product, which is the industry-leading technology in these efforts. By pre-registering fans, we move the onsale to secure servers accessible only with codes unique to each registered fan. So what has happened now? As you can see in the photo, brokers are recruiting individuals to pose as Verified Fans. Needless to say, we are investigating and will follow-up with appropriate authorities, but this gives one a sense of the challenges. We nevertheless continue to innovate and adapt: the recent Beyoncé onsale is an example of this, and an indicator of how these efforts are already paying off. We implemented a new approach to the Beyoncé onsale, including by separating Verified Fan registration into groups of cities. Though demand for Beyoncé's Renaissance World Tour exceeded supply of available tickets by over 800% in some cities, we nonetheless succeeded in getting tickets into the hands of tens of thousands of real fans.



We would be happy to further brief you on these challenges confidentially.

d. What steps are you taking to investigate and pursue the purveyors of bots that tried to purchase tickets during the Taylor Swift pre-sale? Have you filed a report to any federal agencies, if not, why not?

We have referred this issue to federal agencies and asked them to investigate. Given our understanding that there may be active investigations, we cannot provide more detail at this time. In this matter and as a matter of course, we are dedicated to working with all relevant authorities in the fight against bots.



e. On average, how many tickets for events serviced by Ticketmaster fall into the hands of bots?

We do not know; it is not possible to know. However, since we developed Verified Fan, we have noticed that shows serviced by that technology appear to have far fewer tickets on the secondary market than other shows. For example, for a high-demand show that did not use Verified Fan, 20-30% of the inventory might show up on resale sites; by contrast, when Verified Fan is the only distribution channel used, less than 5% of the inventory shows up on resale sites. The difference may be due to the protection from bot attacks that Verified Fan offers. If it is, the implication is that a high percentage of the concert ticket inventory on resale sites was acquired by brokers using bots.

f. What if any changes did you see in the use of bots to purchase tickets in the wake of the passage of the BOTS Act?

We are unable to make any cause-and-effect assessment like this. The problem has not gone away, of course.

g. What would help you and others in the industry tackle the problem of bots in online ticket sales?

There needs to be more attention on the connection between the brokers that use bots and the resale sites that they use to sell these unlawfully acquired tickets. Ticketmaster is the only ticketing company that makes any serious effort to find evidence of the provenance of the tickets listed on its resale site and remove the tickets and the seller when there is evidence of bot use. We do not claim to be perfect; it is very difficult to do. But in general other resale sites with which we compete do nothing. They adopt a "See No Evil" strategy that makes them a safe haven for the high-volume scalpers.

2. Presale tickets were initially listed for Swift's Eras Tour using Ticketmaster's Verified Fan technology on November 15, 2022. When the presale opened, the pre-registered fans who had received unique codes to access the site were placed in a virtual queue. Many reported spending hours, or even days, stuck in this line, while others were kicked out of the line due to website failures. In your testimony you acknowledged that this resulted in a terrible experience for millions of Ms. Swift's fans and for Ms. Swift herself. In response to this failure, what is your company doing to fortify your systems against bots and ensure that customers and artists are treated fairly in future ticket sale offerings?

The main cause of the problems we experienced on November 15 was an attack on the password servers that support our Verified Fan product, the industry-leading technology in the fight against bots. Our engineers developed a way to stop that attack in a matter of hours while the onsale was taking place, which is what allowed it to continue. Our mitigation measures have



held up in subsequent attacks on other onsales. That said, the number of fans affected would have been less had we staggered the onsales. We learned a valuable lesson and have adapted. For example, in the recent Beyoncé onsale we implemented a new approach of separating Verified Fan registration into groups of cities. Though demand for Beyoncé's Renaissance World Tour has vastly exceeded supply (by over 800% in some cities), we are having a successful onsale.

3. When purchasing tickets on Ticketmaster, consumers see two prices, the price of the face of the ticket and then additional fees associated with the cost of the ticket called "service fees." In reviewing tickets for sale in California in the coming weeks, for many tickets the service fees were as much as 50% of the total cost of the ticket.

- a. For each show in which Ticketmaster is selling a primary ticket, how is the service fee calculated? Which parties are involved in setting the price, and how is the money from that fee typically allocated?
- b. Tickets include "service fees", "facility charges", and order processing fees. What do each of these fees account for? And for those shows in which the company provides ticketing services alone, from which sets of fees does Ticketmaster typically get a cut?
- c. Are service fees consistent for the venue or do they fluctuate by artist?
- d. In ticket resales, are the fees Ticketmaster charges a flat processing rate? Or does Ticketmaster charge a percentage of the total cost of the ticket?
- e. For venues in California in which Live Nation Entertainment does not promote the show or own or operate the venue, but Ticketmaster is used to process primary ticket purchases, what was the average total amount of service fees associated with each ticket in 2017, 2018, 2019, 2020, 2022, and 2023?
- f. For venues in California in which Live Nation Entertainment promotes the show or owns or operates the venue, and Ticketmaster is used to process primary ticket purchases what was the average total amount of service fees associated with each ticket in 2017, 2018, 2019, 2020, 2022, and 2023?
- g. Customers can typically avoid most if not all of the service fees associated with an online ticket sale if they purchase tickets directly from the Box Office of a venue. This calls into question the true need for service fees to account for costs in hosting and promoting shows.



In your testimony you stated that Ticketmaster does not set service fees.

- i. In negotiating service fees for ticket sales with venues, in your experience are those fees reflective of a true calculation cost of what may actually entail a reasonable charge for the services offered by the venue? Or do they reflect what venues believe they can get away with charging their customers?
- ii. In 2022, what percentage of shows for which Ticketmaster facilitated ticket sales were customers unable to purchase tickets through a physical box office? Please provide this number as a percentage of total shows, as well as a percentage of the total tickets sold.
- iii. In 2022, what percentage of shows for which Ticketmaster facilitated ticket sales were customers unable to purchase tickets through a physical box office for Live Nation-owned or operated venues? Please provide this number as a percentage of total shows, as well as a percentage of the total tickets sold.
- h. Do all of the venues you own or operate in California have a physical box office at which customers can go to purchase tickets in person and avoid the service fees? On average how many days per week and hours per week are Live Nation owned or operated venue box offices open for ticket sales?
- i. Would you support legislative efforts to cap or limit service fees to what is reasonably associated with the cost of putting on a show?

It is not possible for us to provide answers to the detailed parts of some of these questions in the available time, nor could we provide that information other than confidentially.

There is not a single answer to the questions about who sets service fees and who gets the money. Service fees are ordinarily set by venues, and venues typically retain the majority of those fees. The allocation is determined during the process of negotiating a ticketing services contract, and usually takes the form of a per-ticket fee to Ticketmaster or a percentage fee to Ticketmaster.

Nomenclature is not uniform either. Normally, "service fees" is used for the compensation for the venue and the ticketing company, "facility charges" is normally an added fee for the venue, and "order processing fees" are a pass-through for credit card fees. That said, the various silos are not sacrosanct, and given the thousands of negotiations that take place there will be



departures from these generalities. Ticketmaster's compensation is almost always a minority portion of the service fees.

Resale fees developed around a percentage of the ticket price model. There are buyer fees and seller fees, with the former typically higher than the latter.

We understand the observation about no service charges associated with some box office sales, but it would be incorrect to view service charges as directly correlated with the unit costs of allowing one fan to attend a specific show. In setting service fees, venues tend to focus on their likely ticket sales in the aggregate—i.e., all or at least numerous shows during the life of the contract, and what level of fees it will take to cover their costs. They understand that they will host shows with higher and lower ticket prices, resulting in more variation in fees than in the variable costs of hosting the shows. They understand they may not collect any fees on box office sales, if they choose not to charge such fees. It all goes into a broad calculation about what is a workable fee structure.

We do not believe that it is feasible or wise to legislate caps or limits on service fees to what is reasonably associated with the cost of putting on a show. The fees compensate two actors in the live entertainment value chain, the venue and the ticketing company, neither of which shares in the face value of the ticket or is excessively profitable. Any cap would certainly have ripple effects on other revenue streams, and it could come mainly at the expense of the venues. Venues rely on their majority share of service fees to cover their fixed and variable costs, including the many employees and independent contractors that work a show.

4. One proposal to address industrial scalping of tickets is to cap the price at which a ticket can be resold on the secondary market. Does Live Nation believe that capping resale ticket prices would help address the scalping problem you highlighted in your testimony?

Live Nation believes that should be an artist's choice. If artists want to bolster their decision to make tickets more affordable by designating those tickets non-transferable, only transferable at face value, or only transferable at face value plus some increment, we see no reason why they should not be able to do so. And yes, we do believe that caps would disincentivize scalping to some degree.

5. In his testimony Mr. Lawrence alleged that Live Nation's role as both an exclusive promoter for venues the company owns or operates means that artists like himself and others do not benefit from a promoter that is aligned with their interests to keep costs low and ensure that artists are fairly compensated at the end of show. Specifically, he testified that:

"Far from simply advertising the show, the promoter coordinates and pays the upfront costs to put together a concert, such as renting a venue, staffing the event, and striking a deal with the performer. In



the live music market, our promoter should be a true partner to us. Since both our pay and theirs is theoretically a share of the show's profits, we should be aligned in our incentives: keep costs low while ensuring the best fan experience. But with Live Nation not only acting as the promoter but also as the owner and/or operator of the venue, it complicates these incentives when looking at line items in a show's settlement sheet, which ultimately determines how much each party gets paid. Think about line items like "rent" for the venue, or other more opaquely named fees like "house nut" or "facility fee." In a world where the promoter and the venue are not affiliated with each other, we can trust that the promoter will look to get the best deal from the venue; however, in this case, the promoter and the venue are part of the same corporate entity, so the line items are essentially Live Nation negotiating to pay itself."

a. Do you agree with Mr. Lawrence's characterization of Live Nation's role and incentives for shows in which you act as both the exclusive promoter and venue owner or operator? Why or why not?

Live Nation does not agree with Mr. Lawrence's characterization of Live Nation's role or incentives. Live Nation is proudly and foremost an artist-first company. And as one of the world's most trusted promoters of live events, Live Nation prides itself on offering artists the best experiences to connect with their fans, and artists count on Live Nation to do so. Live Nation is always looking for ways to further improve its services to artists, and to better compete against its competitors. Live Nation owns or operates a very small number of venues in the United States and does not own or operate any of the largest arenas or stadiums. Specifically, of more than 4,000 venues in the United States, Live Nation operates only about 200. These venue relationships allow Live Nation to offer artists yet another option for their upcoming tours or shows.

We also respectfully disagree that artists are disadvantaged when one company acts as both the exclusive promoter and venue owner or operator. That is a very common combination of interests in live entertainment. It is the most efficient way for some smaller venues to operate. Jam Productions, Ltd., Mr. Mickelson's company, has these dual roles with regard to several venues in Chicago. In many cases, Live Nation is able to offer artists a better quality service and a greater share of an event's profits by eliminating the added coordination and financial costs that come with renting a third-party venue. Live Nation knows that artists have a choice when it comes to choosing a promoter for their next tour or show, and so Live Nation works hard to offer artists the best experience and financial package it can.

6. During the hearing the Mr. Lawrence alleged that the settlement sheet they receive at the end of a show does not fully explain what costs like "facility fees" and others are for, and that this kind of documentation is not available to them ahead of the show. You affirmed that transparency should be



available to Mr. Lawrence and other artists. Does Live Nation commit to ensuring that artists like Mr. Lawrence are fully aware of what the costs on settlement sheets are for, and to providing artists this kind of information ahead of shows?

Live Nation strives to be as transparent as possible with artists about the services it provides, including before an artist even chooses to work with Live Nation. Live Nation is always happy to explain contract terms, rate cards, settlement sheets, or answer artists' questions to ensure they understand the terms of their agreement with Live Nation. It is also important to recall that most artists work through an agent that has deep familiarity with industry norms and the major players' practices, including Live Nation's.

7. Please list all of the venues Live Nation Entertainment owns or operates in California.

Amphitheaters:

- Shoreline Amphitheatre (Mountain View)
- Concord Pavilion (Concord)
- FivePoint Amphitheater (Irvine)
- North Island Credit Union Amphitheatre (San Diego)
- Glen Helen Amphitheater (San Bernardino)
- Toyota Amphitheater (Wheatland)

Large Indoor:

- Hollywood Palladium (Los Angeles)
- The Masonic (San Francisco)
- The Wiltern (Los Angeles)

Clubs:

- Ace of Spades (Sacramento)
- Belasco (Los Angeles)
- Echoplex (Los Angeles)
- Echo (Los Angeles)
- Observatory OC (Santa Ana)
- Observatory SD (San Diego)
- The Fillmore (San Francisco)
- House of Blues (Anaheim)
- House of Blues (San Diego)
- Cobbs Comedy Club (San Francisco)
- Punch Line Comedy Club SAC (Sacramento)

9348 Civic Center Drive, Beverly Hills, CA 90210
800-653-8000



Punch Line Comedy Club SF (San Francisco)

Joint Venture – Live Nation has a majority percentage, but a partner operates the venue:

Peppermint Club

City Management Deals – Live Nation operates for fee on behalf of City:

Fox PAC (Riverside)
RMA (Riverside)
Magnolia (El Cajon)

8. Please list all of the venues for which Live Nation is the exclusive promoter in California.

There are seven such venues, and we would be pleased to provide the names confidentially.

9. Please list of the venues for which Ticketmaster is the exclusive ticket sale operator in California.

Throughout the United States, including California, venues typically award ticketing services contracts through a competitive bidding process where the winning ticketing service provider is granted an exclusive contract for a period of time. Most of Ticketmaster's venue contracts in California are like this. We would be pleased to provide the names confidentially.



Senator Tillis

1. Do you currently have the necessary tools, be it legislative (e.g., the Better Online Ticket Sales Act), legal, and/or technical, to stop bots from impacting your platform? If not, what more is needed?

We believe that the BOTS Act was an important first step, but that its scope and enforcement mechanisms could be improved. We support broadening the scope of the provisions defining what practices are unlawful, making it harder for resale sites to ignore the provenance of the inventories on their marketplaces, and providing a private right of action.

That said, the more effective solution to bots lies in making scalping harder and less attractive. Bots are simply a means to an end: they capture inventory to use in large-scale online ticket arbitrage. The many scalper-friendly business practices prevalent on some secondary marketplaces (not Ticketmaster) therefore need to be addressed. For example, there should be federal legislation prohibiting a secondary ticketing exchange platform/reseller from:

- Advertising/representing to have the initial ownership rights to a ticket before its public sale;
- Reselling a ticket without first disclosing to the purchaser the location of the seat or area of the ticket; and/or
- Reselling a ticket or advertising a ticket for resale unless the reseller has the ticket in their possession or has a written contract to obtain the ticket from a person who has the initial rights to the ticket.

We also support federal legislation that clearly empowers artists and other event providers to set the rules for the resale of tickets to their shows and games. The legislation should provide that no State law may deprive artists of this power.

2. What steps does your platform currently take to prevent bots from purchasing tickets?

As stated in response to other QFRs, we would be happy to provide a confidential briefing on that subject, but it is not something we can address publicly.

3. What limitation, if any, does your platform place on the number of tickets that can be purchased from the same account?



Ticketmaster follows whatever directions it receives from artists about ticket limits. Ticketmaster has an active program to enforce ticket limits, which includes extensive efforts to link credit cards and other data points to the same account.

4. What steps does your platform take to identify duplicative accounts, where the email and/or username for these duplicative accounts may differ, but the person behind the account is the same?

We would be pleased to brief you on these efforts. It is not something that we can address publicly.

5. What steps will you be taking moving forward to address these issues?

We would be happy to address this in a confidential briefing.

6. Please describe how exactly your "Verified Fan" system works to prevent bots on your system? How is this different from other shows?

Verified Fan is one of Ticketmaster's premier innovations; it protects real fans from bots used by unscrupulous resellers to buy tickets before fans can in order to resell them at vast premiums on secondary platforms. While Verified Fan does not guarantee that all fans will be able to get tickets to a given show, which would be impossible for many events given the level of demand, the technology is designed to weed out bots and brokers and get tickets to real fans. To date, in over 400 Verified Fan onsales, the system has been highly effective. We observe far fewer tickets on resale markets when Verified Fan is used than when it is not used.

Verified Fan consists of three steps: (1) Registration, (2) Verification, and (3) Access Code or Waitlist. During step (1), a fan lets us know that they are interested in purchasing tickets to a show by signing into their Ticketmaster account and selecting the relevant show. They then receive a confirmation email letting them know that they have signed up. In step (2), Ticketmaster vets each request by evaluating whether it appears to have been made by an individual, not a bot, and checking that the user's account is not associated with any irregular behaviors in past sales that would suggest a professional reseller. Finally, for shows with particularly high demand, some fans receive access codes via a lottery-style process while others are placed on a waitlist. Fans are advised of which group they are in before the sale.

7. How do you decide which shows will use the "Verified Fan" system? Why isn't the "Verified Fan" system used for all of your shows?

Ticketmaster does not decide when to use Verified Fan. Artists choose whether they will use the Verified Fan system for their shows, and we honor their choice. We have found that the Verified Fan product is especially suitable for larger onsales with high demand, where there is a more acute threat of bots and resellers targeting tickets. That said, we do not limit artists from enabling Verified Fan when they choose to use it for any show.



8. How have you validated and tested the "Verified Fan" system?

Yes. Verified Fan has been deployed on behalf of artists more than 400 times since 2017, and those campaigns are subject to rigorous monitoring and evaluation in an effort to improve the program and ensure it serves fans. We measure key performance indicators including, but not limited to, registration rates, email engagement rates, participation rates for selected fans, purchase rates and most importantly, secondary market listings as a percentage of tickets sold to Verified Fans. We also monitor qualitative responses, especially on social media, to ensure our messaging is appropriate and increases fan understanding and awareness. Finally, we regularly undertake customer satisfaction surveys where particular focus is placed on fans who have participated in the program. Verified Fans are Ticketmaster's highest "Net Promoters," which is a measure of the percentage of customers likely to recommend a company's products or services.

9. When someone is able to purchase a ticket who is not a "Verified Fan," where does the failure typically occur?

Tickets are only sold to registered Verified Fans. As discussed elsewhere, we are experiencing a small scale issue with brokers recruiting individuals to pretend to be buying tickets for themselves. We do not believe that affects meaningful ticket volumes.

10. Can you please explain your understanding of the term "holdbacks" and whether Live Nation engages in this practice? And if so, why?

Artists make a variety of decisions regarding how best to allocate and price tickets for their tours and events. The term "holdback" refers to the standard industry practice wherein artists, venues, or teams hold a reasonable number of tickets for production or customer service issues, friends, family, and sponsors from being released during the onsale. If these tickets are ultimately unused for those purposes, they may, and often do, release them for sale to the general public at a later time.

As a general matter, however, artists want to get tickets into the hands of their most ardent fans. And it is in no one's interest to "hold back" tickets to the point that they go unsold. The tools Ticketmaster makes available to artists and other event organizers are designed to maximize the probability of a sell-out at appropriate prices, and to ensure that access to tickets is convenient, fair, and equitable for the stakeholders the event organizers prefer to engage. It will rarely be possible to achieve those goals in stadium and arena tours without broad participation by the general public.

Additionally, the concept of "holding back" tickets might appear to imply that all other tickets are made available at once, with the only exceptions being those held back by the artist or venue. In reality, there is rarely one primary onsale date for a major event—artists often choose to market different tranches of tickets on different days to different groups of fans, making use of tools like Verified Fan onsale. In every case, Live Nation believes that fans and the live



events industry as a whole are best served by letting the artist make the decision about how they want their tickets to reach their fans.

11. Please explain how you can and if you will increase transparency regarding the various costs listed on a "settlement sheet," which is provided to artists on the backend? Also, will you implement a means by which to provide this information, to artists before events occur?

Live Nation strives to be as transparent as possible with artists about the services it provides, including before an artist even chooses to work with Live Nation. Live Nation is always happy to explain contract terms, settlement sheets, or answer artists' questions to ensure they understand the terms of their agreement with Live Nation. It is also important to recall that most artists work through an agent that has deep familiarity with industry norms and the major players' practices, including Live Nation's.

12. Do you think that greater transparency in ticketing will improve the ticket purchasing experience for consumers? Please explain your thinking.

Undoubtedly. We welcome greater transparency in the ticketing industry, and have supported legislation providing for just that. Perhaps the most important area for heightened transparency is in ticket prices, which is why we support all-in pricing legislation. As we said during our testimony before this Committee, Ticketmaster is prepared to adopt all-in pricing for our customers. We celebrated the adoption of legislation mandating all-in pricing in New York, and operate successful ticketing marketplaces in countries all over the world where all-in pricing is legally required.

13. The process of transferring ownership of a ticket can be confusing and cumbersome for consumers.

a. What can be done to streamline this process for consumers?

Ticketmaster works hard to make transfer easy and straightforward, and in the rare case when an artist decides to limit transferability, we always ensure that fans are informed multiple times about what those restrictions are and if/how transferability will be allowed.

Reselling tickets through Ticketmaster is simple. A fan who wants to sell their tickets begins by entering their ticket details through a barcode, or by listing them directly from their Ticketmaster account. When the fan selects a price for the tickets, Ticketmaster breaks out the details so that the fan always knows exactly how much they'll earn from the sale. Creating a listing is always free, and a service fee is only collected if a buyer is found. No matter where the fan chooses to sell their tickets, transferring the tickets is always safe and secure.



b. From what I understand, the NFL requires ticketing partners to integrate with one another. Can this process be applied to concert tickets as well?

During the January 24, 2023, Judiciary Committee hearing, we discussed specific API technology that the NFL commissioned to facilitate resale of its tickets. We embraced that technology because it advanced our customer's business goals, we were compensated through what we got from the NFL deals, and the project was entirely consistent with our mission to eradicate fraud and protect the rights of the content owner (here the NFL) to manage the means by which tickets to its events are sold and resold among fans. We have discussed similar integrations with other sports leagues and their authorized secondary ticketing services.

We have no interest in supporting API technology that facilitates fraudulent and speculative ticketing practices or helps scalpers disrupt the intended connections between artist and fans. We would most likely condition any API on the reseller's willingness to abide by artist directions on how resale is conducted and provide reasonable compensation to Ticketmaster, which is the sports model. But insofar as no legitimate secondary ticketing service has made a commercial proposal for API access with regard to concerts, we cannot really say how we would respond.

Kathleen Bradish
 Vice President for Legal Advocacy
 American Antitrust Institute, Washington, D.C.
 Questions for the Record
 Submitted January 31, 2023

QUESTIONS FROM SENATOR BOOKER

1. In 2008, DOJ estimated that Ticketmaster held more than 80 percent of market share in the primary ticket market. Ten years later, in its 2018 report, GAO reported that Ticketmaster was still the primary market leader. Ticketmaster also enjoys significant market share in the secondary market, a position that GAO estimated was the second largest. What's concerning is that it seems that Ticketmaster's behavior in the primary market is constraining other companies in the secondary market.

At an on-sale, a consumer purchases a ticket for an event to be held at a later date. Ticketmaster, however, does not deliver a ticket until just before an event occurs.

- a. What kind of influence should artists have on transferability?

Generally, a well-functioning, competitive secondary ticketing market should work to the benefit of both artists and consumers. Secondary markets allow consumers to resell their tickets for events and permit tickets to be traded from consumers that value them less, to those that value them more. Efficient reallocation of tickets benefits artists, who see positive effects of full venues, including increased demand for their shows. Secondary markets would not exist without ticket transferability. So, artists should be fully informed about the importance of a well-functioning, competitive secondary market in formulating their views and policies governing transferability.

- b. Do you find that it is beneficial for an artist to influence capping ticket prices and/or resale amount?

No. Caps on ticket prices amounts to economic regulation of the primary and secondary ticketing markets. Such intervention is generally limited to markets where there is a demonstrated and significant market failure, such as a natural monopoly (e.g., public utility regulation). Imposing price caps in other situations would result in significant losses in efficiency and potential harm to consumers, artists, and innovation. In the absence of such a market failure, public policy solutions should focus – as is the case in Live Nation – on policies such as stronger antitrust enforcement (e.g., a Section 2 case with a breakup remedy) and legislation that sets the “rules of the road” for secondary markets.

2. Microsoft is proposing to buy the largest game developer, Activision.
 - a. Is the lesson learned from the Ticketmaster-Live Nation case that behavioral remedies are often inadequate to protect consumers and competition?

Yes. The Ticketmaster- Live Nation case shows that behavioral remedies are often inadequate to protect consumers and competition. This is especially true in cases like Ticketmaster-Live Nation where the remedies are contrary to the company's incentives. The merger "supercharged" the combined firm's incentives to foreclose competing venue operators, or raise their costs, by cutting them off from access to critical inputs (i.e., concerts), unless they contracted with Ticketmaster for ticketing services.

It is well established that behavioral remedies do nothing to change the merged firm's incentive to exercise market power. See, e.g., John E. Kwoka and Diana L. Moss, *Behavioral merger remedies: Evaluation and implications for antitrust enforcement*, 57 ANTITRUST BULL. 979 (2012), at 990-992. Behavioral remedies create a system of quasi- regulation under which conduct must be continually monitored - a task for which the agencies and courts are ill-suited. Because conduct remedies invoke rules and requirements designed to constrain powerful profit motives that are driven by the exercise of market power, they create strong incentives for the merged company to find "workarounds" to the remedies. Moreover, conduct remedies rely heavily on smaller rivals to report violations of the consent decree - an expectation that is invariably quashed by rivals' fear of retaliation from powerful incumbents.

Questions for the Record from Senator Alex Padilla
Senate Judiciary Committee
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment”
January 24, 2023

Questions for Ms. Kathleen Bradish

1. Consumers and artists lose out when tickets are bought in a primary ticket sale en masse for the purpose of being resold on the secondary marketplace for a profit. Some ticketing companies operate as both the primary ticketing seller as well as the secondary seller, meaning that they make money both on the initial sale of tickets as well as when tickets are resold. **Do you believe that companies who operate both as primary and secondary ticket sellers have an adequate market incentive to effectively address problems like the use of bots in acquiring tickets in the primary market?**

A company, like LN-TM, that has market power in the primary ticketing market has perverse incentives to frustrate the functioning of a secondary market. This would be true if LN-TM did or did not have a stake in the secondary market. Even before LN-TM entered the secondary market, the company had implemented restrictive policies involving ticket transferability, ranking of resale search results, revolving barcodes, and ticket hold-backs that were designed to drive consumers back to their primary ticketing platform. These incentives have only worsened with LN-TM’s move into secondary ticketing. The bot problem is symptomatic of this. The only way to reduce incentives to engage in such exclusionary practices is to ensure that the primary and secondary ticket markets are competitive. With competition, there are far weaker incentives to engage in such practices or to leverage market power from one market to another.

2. In purchasing tickets online many consumers are dissatisfied with the amount of service fees associated with the price of tickets.
 - a. **Service fees are negotiated between venues and ticketing operators, both of whom may have an incentive to keep those fees high. Would competition in ticketing resolve the concern that these fees are too high, or is this an area where additional rules of the road may be necessary?**

More competition, extracted through stronger antitrust enforcement, is the best way to address the problem of high ticket fees. Unlike the process of setting the face-value of tickets, ticketing fees are purely the product of monopolistic price setting. This is true because LN-TM has significant market power along the live entertainment supply chain, from concert promotion, to venues, to ticketing. Thus, monopoly profits from supra-competitive ticket fees are simply divided between LN-TM affiliates. However, to the extent that high ticket fees, generated through the process of “drip pricing” and lack of transparency available to online purchasers, additional rules may be necessary through legislation.

- b. Can we learn anything from how other countries have dealt with live entertainment ticketing to ensure that the ecosystem benefits all the actors involved from artist to consumer?

A comparison of the U.S. and European live events sectors would inform this question, and is long overdue.

- c. How do service fees and overall ticket prices in the United States compare with other countries?

Respectfully, this question is best answered after the completion of a comparative analysis, so AAI cannot comment at this time.

3. Why is ticket transferability important for consumers and competition in live entertainment?

Generally, a well-functioning, competitive secondary ticketing markets should work to the benefit of both artists and consumers. Secondary markets allow consumers to resell their tickets for events and permit tickets to be traded from consumers that value them less, to those that value them more. Efficient reallocation of tickets benefits artists and teams, who see positive effects of full venues, which can increase demand for their shows and games. Secondary markets would not exist without ticket transferability, so it is a critical and important issue.

**Questions for the Record
Senator Chuck Grassley**

“That’s the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment Hearing”
January 24, 2023

Question for Ms. Bradish

1) You spoke about Live Nation’s disregard for the consent orders and important consumer welfare concerns relating to Live Nation’s dominance in the entertainment industry. How has the failure by the DOJ/FTC to enforce these orders harmed consumers in the past decade? Also, could you elaborate on possible solutions to protect consumers?

The failure of the 2010 DOJ consent arises less from DOJ’s unwillingness to enforce its requirements than from the fact that effective enforcement of the consent’s behavioral remedies is simply not possible. Behavioral remedies create a system of quasi- regulation under which conduct must be continually monitored – a task for which the agencies like DOJ are ill-suited. Because conduct remedies invoke rules and requirements designed to constrain powerful profit motives that are driven by the exercise of market power, they create strong incentives for the merged company to find “workarounds” to the consent’s prohibitions. Moreover, conduct remedies rely heavily on smaller rivals to report violations of the consent decree – an expectation that is invariably quashed by rivals’ fear of retaliation from powerful incumbents like Live Nation-Ticketmaster.

When consents cannot be enforced, customers often bear the brunt of the harms the consent was meant to remedy. In the case of Live Nation- Ticketmaster, this means higher ticket prices and ticket fees, less innovation, and less choice for consumers and artists.

In the case of Live Nation-Ticketmaster, a possible solution to protect consumers is for DOJ to bring an action under Section 2 of the Sherman Act and seek a structural remedy. Documented evidence of abuse is the strongest basis upon which a Section 2 case can rest. An adequate structural remedy could (1) separate Ticketmaster’s ticketing services from Live Nation’s concert promotion and venue operation; or (2) require divestiture of a share of Ticketmaster’s position in the ticketing market sufficient to eliminate the demonstrated incentives to foreclose rivals or raise their costs

More generally, possible solutions to protect consumers from single firm dominance must be multi-pronged. The first line of defense is stronger merger control. The incipiency standard embedded in Section 7 is designed to prevent harmful mergers before they occur. Without vigorous merger control, there is more pressure on both Section 2 and Section 1 to address harmful conduct that is likely the result of rising concentration from illegal mergers. At the same time, since the U.S. economy is now seeing the fallout from decades of weak merger control, strong Section 2 enforcement is also important. The need for structural relief, through break-up remedies (not behavioral remedies) is key to stronger monopolization enforcement.

In parallel to stronger antitrust enforcement (especially a new Section 2 case against LN-TM), a legislative “prong” is essential to ensuring more competition in live events. Antitrust enforcement is best suited to (1) improving the structure of markets so they are more conducive to competitive outcomes and (2) reducing the ability and incentive of market participants (i.e., LN-TM) to exercise market power. Legislative solutions are best suited to creating a “regime” that ensures a level playing field, including greater ticketing transparency and bans on the use of bots that impede the functioning of ticket markets.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

**Questions for the Record for Kathleen Bradish, Vice President of Legal Advocacy
American Antitrust Institute**

1. Your testimony discusses how Live Nation-Ticketmaster is a leading example of both a traditional monopoly and a modern dominant digital player. At the time of the 2009 merger, DOJ raised concerns that Ticketmaster's dominance in the market would result in entrance difficulties to would-be competitors. Could this barrier to entry explain Ticketmaster's complacency?

Yes. When competition in an industry is reduced by high barriers to entry, the potential effect is not only higher prices, but also lower quality and less innovation. A Ticketmaster facing robust competition would have incentives to improve its service and find innovative solutions to industry challenges. Without effective competition, there is significantly less pressure to make the investments required to improve service.

2. In light of violations found by the DOJ, the consent decree was extended for another five years. Do you consider the 2010 DOJ consent agreement to have been a successful solution to the concerns posed by the Live Nation/Ticketmaster merger?

No. Live Nation-Ticketmaster's repeated violations of the 2010 DOJ consent agreement show that the 2010 DOJ consent, and specifically its conduct remedies, did not adequately address the concerns posed by the merger.

The 2020 DOJ consent is arguably a boon to Live Nation-Ticketmaster. With the extension of five and a half years, the 2020 DOJ consent further codifies the conduct requirements that the company has so ably violated for the last decade. With amended conduct remedies, the company is free to engage in behavior that went undetected by the government or was not reported by market participants out of fear of retaliation, and to perfect new "workarounds."

3. In what way(s) did the 2010 DOJ consent agreement fail to address the market domination issues posed by Ticketmaster?

The failed conduct remedies in the 2010 DOJ consent did nothing to prevent Live Nation-Ticketmaster from engaging in exclusionary conduct. The remedies did not restore, much less spur, competition in primary ticketing market. This is not surprising. Behavioral remedies do nothing to change the merged firm's incentive to exercise market power. See, e.g., John E. Kwoka and Diana L. Moss, *Behavioral merger remedies: Evaluation and implications for antitrust enforcement*, 57 ANTITRUST BULL. 979 (2012), at 990-992. Behavioral remedies create a system of quasi- regulation under which conduct must be continually monitored – a task for which the agencies and courts are ill-suited. Because conduct remedies invoke rules and requirements designed to constrain powerful profit motives that are driven by the exercise of market power, they create strong incentives for the

merged company to find “workarounds” to the consent’s prohibitions. Moreover, conduct remedies rely heavily on smaller rivals to report violations of the consent decree – an expectation that is invariably quashed by rivals’ fear of retaliation from powerful incumbents.

4. What steps might be taken by the DOJ and FTC to tamp down on the alarming outcomes of market domination by a single firm?

There are two important prongs of antitrust enforcement that would address single firm dominance. The first line of defense is stronger merger control. The incipency standard embedded in Section 7 is designed to prevent harmful mergers before they occur. Without vigorous merger control, there is more pressure on both Section 2 and Section 1 to address harmful conduct that is likely the result of rising concentration from illegal mergers. At the same time, since the U.S. economy is now seeing the fallout from decades of weak merger control, strong Section 2 enforcement is also important. The need for structural relief, through break-up remedies (not behavioral remedies) is key to stronger monopolization enforcement.

5. Should similar mergers in this industry be permitted in the future?

Live Nation-Ticketmaster has acquired over 40 companies since the merger in 2010. Without further research, it is not possible to determine how many of these acquisitions were reportable under federal HSR requirements. Nonetheless, it does appear that as further acquisitions were made post-2010, antitrust review was particularly lax. A blanket prohibition on further mergers would raise significant questions about targeting the antitrust laws in particular sectors, which may resemble “industrial planning” when the laws were designed to be generalist law enforcement and apply across all sectors. However, any mergers involving a party with significant market share should be deemed presumptively illegal by enforcers and the courts. In such cases, the most effective remedy is for the agency to move to enjoin a transaction. This means stronger antitrust scrutiny of further transactions, and a willingness of enforcers to move to block them.

- a. What legislative language would you recommend adoption to strengthen protections against exclusionary conduct?

While AAI cannot suggest specific legislative language, we support several reforms that would make it easier for the government to bring and prevail in monopolization cases. These include: (1) use of direct evidence of market power, without the need to define a relevant antitrust market; (2) a significant burden shift from plaintiff to defendant to show that their exclusionary conduct is pro-competitive, especially in cases where a firm is dominant.

6. What legislative language would you recommend to prevent self-preferencing by digital firms?

While AAI cannot suggest specific legislative language, we support several reforms that

would make it easier for the government to bring and prevail in monopolization cases that involve exclusionary conduct--which includes self-preferencing by dominant owners of digital platforms. These include, but are not limited to, prohibitions on practices that: (1) produce search results that ensure the superior visibility of the platform owner's proprietary products/services over those of rivals', and (2) deploy biased "algorithmic" suggestions or recommendations to users that steer them toward the platform owners' proprietary products/services, without the user's knowledge.

7. What are possible legislative solutions to prevent the ticketing market from arriving at this type of anti-competitive behavior in the future?

AAI believes that the preferred policy tool for preventing future LN-TM-type outcomes is stronger merger control. That means legislation that strengthens, clarifies, and modernizes Section 7 of the Clayton Act, along the lines of what Senator Klobuchar has proposed in her *Competition and Antitrust Law Enforcement Reform Act*. AAI generally disfavors targeted, industry-specific antitrust legislation because it carves a role for antitrust that comes close to "industrial planning." The antitrust laws are generalist law enforcement and should be strengthened and clarified across the board and apply to all sectors.

**Questions from Senator Tillis
for Kathleen Bradish**

1. Do you think that greater transparency in ticketing will improve the ticket purchasing experience for consumers? Please explain your thinking.

Yes. A lack of transparency in the ticket-purchasing process is symptomatic of the LN-TM monopoly. The process of “drip pricing,” whereby ticket purchasers see the final price only late in the online search process, and after they have expended significant search costs (e.g., time, frustration, etc.), clouds transparency and supports LN-TM’s exercise of market power. This problem is also true of other sectors, such as airline ancillary fees. Additional rules may be necessary through legislation to address the transparency problem.

2. What legislative solutions do you recommend to benefit consumers and to improve operations in this industry?

In parallel to stronger antitrust enforcement (especially a new Section 2 case against LN-TM), a legislative “prong” is essential to ensuring more competition in live events. Antitrust enforcement is best suited to (1) improving the structure of markets so they are more conducive to competitive outcomes and (2) reducing the ability and incentive of market participants (i.e., LN-TM) to exercise market power. Legislative solutions are best suited to creating a “regime” that ensures a level playing field, including greater ticketing transparency and bans on the use of bots that impede the functioning of ticket markets.

3. The process of transferring ownership of a ticket can be confusing and cumbersome for consumers. What can be done to streamline this process for consumers?

A well-functioning, competitive secondary ticket market works to the benefit of both artists and consumers. Secondary markets allow consumers to resell their tickets for events and permit tickets to be traded from consumers that value them less, to those that value them more. Efficient reallocation of tickets benefits artists and teams, who see positive effects of full venues, which can increase demand for their shows and games. Secondary markets would not exist without ticket transferability. In maintaining its monopoly in primary ticketing, and leveraging its market power to the secondary market, LN-TM has implemented restrictive policies such as revolving barcodes and ticket-holdbacks that are designed to drive consumers to their ticketing platform. With more competition in primary ticketing, the ability and incentives to exercise this type of market power would be limited. This could be done most effectively through antitrust enforcement (e.g., a Section 2 case against LN-TM), but also through legislation that would prohibit conduct that limits transferability.

4. Does the industry currently have the necessary tools, be it legislative (e.g., the Better Online Ticket Sales Act), legal, and/or technical, to stop bots from impacting ticketing platforms? If not, what more is needed?

Respectfully, AAI has not closely followed legislation that addresses bots so is unable to offer comment at this time.

RESPONSES OF JACK GROETZINGER TO QUESTIONS SUBMITTED BY SENATOR BOOKER,
SENATOR PADILLA, SENATOR CRUZ, AND SENATOR TILLIS

From Senator Ted Cruz

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous witness declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. What would a monopoly look like in the ticketing marketplace?

A monopoly in the ticketing space looks exactly like what Live Nation Entertainment, Inc. ("Live Nation") enjoys today: a market share in excess of 70% of the US primary ticketing market; the exclusive ticketing partner for more than 80% of NBA, NHL, and NFL teams and venues; and the promoter for 72% of the top 25 grossing live tours in 2021.

It is no mystery why Live Nation's competitors have not gained greater market share in the primary ticketing market. Major venues in the United States know that if they move their primary ticketing business from Ticketmaster to a competitor, they risk losing the substantial revenue they earn from Live Nation concerts. They know this because Live Nation has told them so, directly and indirectly—through its public pronouncements, private communications, and subsequent retaliation against venues that have defied Ticketmaster and signed deals with a preferred competitor. Live Nation has

engaged in this behavior despite twice being ordered—and agreeing—not to do so: in the 2010 negotiated consent decree (the “Final Judgment”), and in a 2020 Amended Final Judgment that modified and extended the Final Judgment.

In addition to Live Nation’s ability to maintain market dominance through its double monopoly position in concert promotion and primary ticketing, significant barriers to entry into primary ticketing exist. These include the significant investment costs in building a viable product and Live Nation/Ticketmaster’s long-term exclusive contracts. At the time of the 2010 merger between Live Nation and Ticketmaster, the Department of Justice noted the significant barriers to entry into primary ticketing, explicitly highlighting these long term exclusive agreements which severely limit the ability of potential competitors to win business. We believe Ticketmaster has recently entered into exclusive agreements with professional sports teams and venues that may be as long as ten years.

2. Does Live Nation Entertainment’s market dominance pose a threat to the live entertainment industry?

Yes. Live Nation’s market dominance poses many threats to the live entertainment industry and impacts different constituents in different ways. We do not attempt to speak on behalf of other impacted groups such as artists and promoters. We appreciate that these groups were also represented at the January 24 hearing.

Our response and efforts focus on Live Nation’s impact on the ticketing industry as that is where we attempt to compete and work every day to improve the experience for consumers purchasing tickets to live events. To date, innovation in live event ticketing has been stunted because Live Nation controls the most popular entertainers in the world, the ticketing systems, and even many of the venues. This power over the entire live entertainment industry allows Live Nation to maintain its monopolistic influence over the primary ticketing market. As long as Live Nation remains both the dominant concert promoter and ticketer of major venues in the United States, our industry will continue to struggle with the challenges that face it today.

3. What are the markets most dominated by Live Nation?

At the highest and broadest level, Live Nation/Ticketmaster dominates the North American ticketing landscape. More specifically, they most dominate venues that are dependent on concert revenue; this is what drives monopoly market share in major U.S. arenas and stadiums. Live Nation/Ticketmaster is the primary ticketer for more than 80% of NBA, NHL, and NFL teams and venues. Live Nation is able to maintain this market dominance because it also controls the major concert tours. For example, Live Nation was the promoter for 72% of the top 25 grossing live tours in 2021.

Live Nation's market dominance is perhaps most acute with respect to amphitheaters, where Live Nation/Ticketmaster either has booking deals or owns and operates the largest amphitheater venues in North America. As a result, primary ticketing providers such as SeatGeek essentially do not attempt to compete for these ticketing contracts.

4. What will be the most challenging markets to enter for Live Nation's competitors?

In attempting to win primary ticketing business, it is most challenging for any competitor of Ticketmaster where the venue depends on concert revenue. These venues are most challenging because venues fear the loss of Live Nation content if they leave Ticketmaster.

They fear this because Live Nation has told them so, directly and indirectly—through its public pronouncements, private communications, and subsequent retaliation against venues that have defied Ticketmaster and signed deals with a preferred competitor. Live Nation has engaged in this behavior despite twice being ordered—and agreeing—not to do so: in the 2010 Final Judgment, and in a 2020 Amended Final Judgment that modified and extended the Final Judgment.

The Department of Justice's 2019 investigation confirmed that Live Nation had violated the Final Judgment directly and repeatedly, almost from its inception. Even in an apparently abbreviated investigation, the DOJ was able to identify six distinct examples of Live Nation threatening to pull live shows from venues that did not contract with Ticketmaster and/or retaliating against venues that did not contract with Ticketmaster by withholding Live Nation concerts, including:

- A Ticketmaster executive telling one venue, "if you move in that direction (i.e., not renew with Ticketmaster), you won't see any Live Nation shows."
- Ticketmaster's President warning the executive of another venue that if the venue selected a competing primary ticketer, Ticketmaster's response "would be 'nuclear'" and "though he would deny it if I repeated it, Live Nation would never do a show in our building . . ."
- Ceasing to contact a venue about booking Live Nation concerts after that venue selected a Ticketmaster competitor as its primary provider, only to re-start discussions with the venue after the venue switched back to Ticketmaster and saying the venue was "back in the family."¹

The DOJ found that as a consequence of Live Nation's conduct, "venues throughout the United States have come to expect that refusing to contract with Ticketmaster will result in the venue receiving fewer Live Nation concerts or none at all."²

¹ Motion to Modify Final Judgment and Enter Amended Final Judgment at 8,9, *United States v. Ticketmaster*, No. 10-cv-00139, (D.D.C. Jan. 8, 2020).

² *Id.*

5. How can the ability of consumer transferability be retained while reducing the ability of scalpers to interfere with the ability of artists to set prices?

Our goal is to get tickets into the hands of fans. Due to the lack of competition in the live event industry, current solutions do not adequately address the demands of on sales for extremely popular events. We need to work together as an industry to get fans to the front of the virtual line to purchase tickets, which entails changing the current "on-sale" model that Live Nation / Ticketmaster forces the industry to use through its Verified Fan product.

Rightsholders have the ability to set the initial sale prices for their tickets; a robust resale market does not interfere with this ability. Once a ticket has been sold by the rightsholder, the purchaser should be allowed to transfer the ticket freely or sell the ticket at a market-clearing price. Restricting the transferability of tickets will not eliminate consumer demand from high-demand events. Such restrictions are likely to drive resale onto less scrupulous marketplaces that are unable or unwilling to ensure successful transactions. Efforts to restrict the resale market are often attempts by Live Nation / Ticketmaster to extend its market dominance in primary ticketing into the secondary ticket market at the expense of consumers.

From Senator Alex Padilla

- 1. In 2016, Congress passed the Better Online Ticket Sales Act to thwart attempts by individuals and organizations to automate the process of purchasing tickets en masse using ticket bots. Since the passage of the law, the Federal Trade Commission and Department of Justice have announced only one enforcement action of the law.

 - a. In your capacity as a primary ticket seller, has SeatGeek experienced a problem with scalpers employing bots to acquire tickets? How much does SeatGeek invest in thwarting bots that wish to acquire tickets as a primary ticket seller?****

Like many other industries, the ticketing industry is subject to nefarious practices utilizing bots and other forms of online fraud. We continue to test and deploy technical solutions to address these practices. We attempt to eliminate bot traffic and get tickets into the hands of fans utilizing a number of tools, including the following:

- **Advanced Bot Detection:** SeatGeek's platform employs technologies that leverage sophisticated algorithms and machine learning techniques to detect and block bots in real-time. This helps us to prevent bots from being able to acquire tickets through our system.
- **Manual Verification:** Ticket purchases are manually reviewed to help ensure that they were made by a human and not a bot and not fraudulent. We have a review process in place that checks for unusual behavior and anomalies that could indicate the use of bots.

- Limited Ticket Purchases: We limit the number of tickets that can be purchased by a single user to prevent bulk purchases by bots. This helps to ensure that tickets are made available to a wider range of fans.
- Secure Payment Processing: Our platform uses secure payment processing to prevent fraudulent transactions.

By implementing these and other measures, we continually strive to prevent bots from accessing our primary platform. Our goal is always to ensure a secure and fair ticket purchasing experience for our customers.

b. What steps does SeatGeek take to ensure that tickets listed on your secondary platform were not procured by bots?

It is difficult for secondary marketplaces to determine whether tickets listed for resale on their platforms were initially procured by bots on another primary platform. Once purchased, these tickets appear like any others when being resold. The opportunity to detect and prevent fraudulent bots activity resides with primary marketplaces. This is why SeatGeek works actively to detect and block bots on its own primary platform in order to prevent tickets from being fraudulently or illegally procured in the first place.

c. How much money have you invested since 2016 to ensure that tickets listed on your platform were not procured by bots?

We take the issue of bots very seriously. We employ proprietary technology combined with cutting-edge third party technologies that are wholly dedicated to security and prevention, including:

- Fraud detection and prevention software which runs at checkout time and operates at the transaction level. It's machine-learning driven and considers hundreds of factors, in addition to well-established warning signals such as IP address, device and email address.
- A bot detection system to detect and prevent the automated creation of accounts. This system presents the user with a challenge captcha if marked as suspicious.
- In-house waiting room technology to ensure controlled access to ticket inventory that will block manual or scripted attempts to circumvent the purchase queue.

d. Has SeatGeek reported any instance of bots to the FTC or DOJ since 2016?

SeatGeek has not reported any instances of bots to the FTC or DOJ since 2016. SeatGeek has implemented various measures to combat the use of bots, and we look forward to working with Congress and relevant federal government agencies to improve efforts in this area.

2. Does Seat Geek support requiring “all in pricing” in ticket sales so that consumers see the full price of a ticket on the front end of an online ticket shopping experience?

Yes, we believe that all-in pricing is best for consumers and have supported this at the federal and state level. For all-in pricing to be useful to consumers, it must be applied consistently across marketplaces. We believe that the best approach is a federal solution that ensures fans will see the same type of price display regardless of which marketplace they are transacting on. Adopting an all-in pricing disclosure standard would allow consumers to comparison shop more easily across platforms. SeatGeek provides consumers with the ability to see the all-in price early in the purchase process; we use a toggle to allow consumers to view both the all-in price of a ticket or the base price of a ticket plus fees and ancillary charges. Consumers can then elect to save their preference as the default setting for future purchases.

3. One proposal to address industrial scalping of tickets is to cap the price at which a ticket can be resold on the secondary market. What are Seat Geek’s views on capping the price at which tickets may be resold?

SeatGeek believes that allowing ticket prices to fluctuate dynamically in response to supply and demand is a better system for consumers than one that imposes price caps. Consumers benefit when markets operate efficiently, and for markets to operate efficiently, tickets must be allowed to find a market-clearing price. Price caps impair market efficiency by limiting price discovery and limiting the development of a robust marketplace. Caps on ticket resale fail to address the real problem in the live event industry: the absence of competition.

4. When purchasing tickets on Seat Geek, consumers see two prices, the price of the face of the ticket and then additional fees associated with the cost of the ticket called “service fees.” In reviewing tickets for sale in California in the coming weeks, for many tickets the service fees were as much as 50% of the total cost of the ticket.

a. For each show in which Seat Geek sells the primary ticket, how is the service fee calculated? Which parties are involved in setting the price, and how is money allocated?

The fees on primary tickets are governed by our contracts with venues.

b. How are Seat Geek’s fees on its secondary ticket market set? Are those fees a flat rate for processing the order, or does Seat Geek collect a fee that reflects a percentage of the total cost of the ticket?

SeatGeek generally charges a percentage markup on the listed ticket price and a per-ticket fee that covers fixed costs per order. We also separate delivery fees, which are only used for hard stock tickets based on cost and sales tax, if any.

Because many consumers are likely to compare prices across secondary marketplaces prior to making a purchase, we must ensure that our fees remain competitive with the many other secondary

ticket marketplaces. SeatGeek's fees are in a range commensurate with other market participants' fees, and are driven by the same supply and demand factors as in any other market.

Questions from Senator Tillis

- 1. Do you think that greater transparency in ticketing will improve the ticket purchasing experience for consumers? Please explain your thinking.**

All-in pricing, which provides consumers greater transparency into the total cost of a ticket at the beginning of the purchase process, would improve the ticket purchasing experience. SeatGeek already provides consumers with the ability to see the all-in price early in the purchase process; we use a toggle to allow consumers to view both the all-in price of a ticket or the base price of a ticket plus fees and ancillary charges. Consumers can then elect to save their preference as the default setting for future purchases.

- 2. What legislative solutions do you recommend to benefit consumers and to improve operations in this industry?**

We believe there are two areas in particular where policymakers can meaningfully improve consumer safeguards for fans: (1) adopting an all-in pricing standard; and (2) ensuring consumers' right to transfer their tickets.

All-In Price Displays

Requiring primary and secondary ticket platforms to display straightforward, all-in pricing is a common sense measure that would allow consumers to comparison shop across platforms and select the option that best meets their needs. This entails displaying the all-in price, inclusive of fees, in the first instance a ticket price is displayed and before credit card information is entered.

Transferability

Many ticketholders are dismayed to find that when they are no longer able or no longer wish to attend an event for which they purchased tickets, they cannot recoup their costs due to transferability restrictions that require them to list their ticket on a particular platform. These restrictions are typically defended on the basis of fraud prevention, however this concern does not adequately explain why ticketholders should not be able to resell their tickets on a platform of their choice. Selling fraudulent tickets is already illegal, and ticket platforms, including SeatGeek, have extensive fraud prevention measures in place. Further, technical solutions now allow multiple ticketing platforms to integrate, safeguarding buyers and sellers against fraud and deceptive practices while ensuring consumers have a choice about where to transact.

3. The process of transferring ownership of a ticket can be confusing and cumbersome for consumers. What can be done to streamline this process for consumers?

Transferring ownership is streamlined when marketplaces are integrated directly with ticketing providers, allowing for seamless fulfillment of tickets and barcodes. In some instances – such as the National Football League’s ticket exchange – this is a requirement of participation. While such integrations already exist, Live Nation/Ticketmaster refuses to extend this functionality more broadly. Due to the lack of competition in live event ticketing, there’s little incentive for it to make this functionality available more broadly.

When promoters and ticketing companies attempt to restrict the transfer or sale of tickets to their own marketplaces, consumers pursue alternative methods to transfer or sell tickets, further complicating the transfer process and frustrating consumers. Restoring robust competition to live event ticketing is the best way to streamline this process for consumers. Robust competition and an open market bring capital, fresh thinking and innovation, quickly attacking points of consumer frustration. This does not happen in the live event ticketing industry today.

4. Does the industry currently have the necessary tools, be it legislative (e.g., the Better Online Ticket Sales Act), legal, and/or technical, to stop bots from impacting ticketing platforms? If not, what more is needed?

To truly change and transform the live entertainment industry, Live Nation / Ticketmaster must no longer be allowed to exert its power as a monopoly. The absence of robust competition in primary ticketing limits innovation in many areas, including new technical solutions that may further address the threat from bots.

Questions from Senator Booker

In 2008, DOJ estimated that Ticketmaster held more than 80 percent of market share in the primary ticket market. Ten years later, in its 2018 report, GAO reported that Ticketmaster was still the primary market leader. Ticketmaster also enjoys significant market share in the secondary market, a position that GAO estimated was the second largest. What’s concerning is that it seems that Ticketmaster’s behavior in the primary market is constraining other companies in the secondary market.

At an on-sale, a consumer purchases a ticket for an event to be held at a later date. Ticketmaster, however, does not deliver a ticket until just before an event occurs.

a. What kind of influence should artists have on transferability?

We believe that consumers benefit most when tickets that they purchase are transferable. Opposition to transferability often comes from Live Nation as it attempts to restrict resale to its own platform. If an artist does decide to restrict transferability for any reason, it is important that these

restrictions be applied consistently across all marketplaces. When Live Nation restricts transferability, ostensibly at an artist's behest, it typically only prohibits fans from transferring their tickets on platforms other than Ticketmaster, suggesting that Live Nation merely wants to extend its dominance in primary ticketing further into the resale market.

b. Do you find that it is beneficial for an artist to influence capping ticket prices and/or resale amount?

SeatGeek believes that allowing ticket prices to fluctuate dynamically in response to supply and demand is a better system for consumers than one that imposes price caps. Consumers benefit when markets operate efficiently, and for markets to operate efficiently, tickets must be allowed to find a market-clearing price. Price caps impair market efficiency by limiting price discovery. We believe caps on ticket resale fail to address the real problem in the live event industry: the absence of competition.

Clyde Lawrence
Singer-songwriter, Lawrence, New York, NY
Questions for the Record
Submitted January 31, 2023

QUESTIONS FROM SENATOR BOOKER

In 2008, DOJ estimated that Ticketmaster held more than 80 percent of market share in the primary ticket market. Ten years later, in its 2018 report, GAO reported that Ticketmaster was still the primary market leader. Ticketmaster also enjoys significant market share in the secondary market, a position that GAO estimated was the second largest. What's concerning is that it seems that Ticketmaster's behavior in the primary market is constraining other companies in the secondary market.

At an on-sale, a consumer purchases a ticket for an event to be held at a later date. Ticketmaster, however, does not deliver a ticket until just before an event occurs.

- a. What kind of influence should artists have on transferability?
- b. Do you find that it is beneficial for an artist to influence capping ticket prices and/or resale amount?

ANSWER

Secondary ticketing is much less my area of expertise and focus. It is a complicated issue where any decision would come with consequences good and/or bad that I may not be considering. That said, my instinct is that artists should be part of the conversation when it comes to transferability on a show-by-show basis. A common argument is that concert tickets should be subject to a free market like any other good, but clearly there is a precedent for certain types of tickets (like airline tickets) and other similarly licensed goods being subject to non-transferability and other terms. An artist's decision of how to price their show isn't solely a calculation of supply and demand (although that can be a big part of it) — there may be several reasons why an artist might choose to price their ticket below what they perceive to be market value, or above for that matter, both of which I think are absolutely their right.

So if an artist actively chooses to price their ticket below market value, and then sees fans being forced to pay high amounts (that they receive no financial cut of) for those same tickets, clearly the artist's vision for the fan's experience is not being realized. I think in an ideal world, just as artists work with venues/promoters to determine the optimal base ticket price for a given show, artists should be able to work with venues/promoters in advance of the show's on-sale to determine whether tickets should be able to be sold in a secondary market, and if so, what a maximum resale amount might be. Some major artists have the agency to implement some of these ideas to benefit their fans, but in an ideal world all

artists would have similar such ability to implement these terms to benefit all fans. I also think creating a mechanism through which artists could receive a cut of those secondary market tickets, although how exactly that would function is something on which I'd want to consult colleagues of mine with more knowledge on this particular topic.

Questions for the Record from Senator Alex Padilla
Senate Judiciary Committee
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment”
January 24, 2023

Questions for Mr. Clyde Lawrence

1. **In your experience, how much do the extra fees associated with ticket sales and venue operation per ticket differ between venues that are Live Nation/Ticketmaster associated as compared to those with no Live Nation/Ticketmaster affiliation?**

ANSWER:

They don’t differ all that much. Anecdotally we’ve definitely seen Ticketmaster’s fees at our shows be marginally higher than most other companies, but we’ve also heard that that is not always the case and that it might be a product of which particular Ticketmaster and non-Ticketmaster venues we are playing. Same goes for facility fees and some other line items. There are also some nuanced ways that we sometimes find Live Nation’s settlement sheets to be more misleading/lacking in transparency, but that is more of a formatting/clerical issue than anything truly nefarious (and it doesn’t affect the artist’s bottom line). There are examples of times when some venues we play stray from the industry standard and give more artist-friendly terms (like not taking a large cut of the artist’s merch revenues, or giving us a favorable “door deal”), and in those cases, the venues giving those artist-friendly terms are almost always not Live Nation venues. So in that sense, you could say that Live Nation is giving us an industry standard deal, but we feel those industry standards aren’t totally fair to artists to begin with and Live Nation could help play a leading role in changing them.

2. **One proposal to address industrial scalping of tickets is to cap the price at which a ticket can be resold on the secondary market. As an artist do you have views on setting price caps for ticket resales?**

Secondary market is not my area of expertise, but I definitely could see value as an artist in setting caps for ticket resales. The terms of possible secondary market resale is also something that venues, promoters and artists could work together to determine on a show-by-show or tour-by-tour basis, just as they do for base ticket prices and plenty of other decisions. And this should be done for all artists and all shows, not just the mega superstars who use their power to negotiate with these companies. There could also be a mechanism by which the artist could participate in these secondary profits.

3. **Since the hearing and in response to your testimony, Ineffable Music Group announced that it would remove the 20% merchandise sale fees at the venues they operate. Do you think this should be standard in industry?**

Absolutely. I applaud Ineffable Music Group and several other independent venues for taking this step. Venues can make the argument that they are providing us retail space and therefore deserve a cut. That makes sense on some level. But we're providing the customers, so unless we get a cut of their bar sales, parking passes, concessions, ticket fees, and other ancillary revenues, it's not ethically or logically defensible to take a 20% cut of merch revenues (which after the cost of creating and shipping the merch can be over 30% of profits). It's as simple as that.

Questions for the Record
Senator Chuck Grassley
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment Hearing”
January 24, 2023

Question for the band Lawrence

1) You testified about the problems you and others in the industry have faced with Live Nation acting as the promoter, the venue, and the ticketer for shows. Can you elaborate on how the vertical reach of Live Nation makes it difficult to negotiate as an artist, and how that affects your fans? What solutions would you recommend industry, antitrust enforcers and Congress consider to address these problems?

ANSWER:

Ultimately, the reason why their reach makes it hard to negotiate is because the artist has very little say or transparency in negotiating the different aspects of their show, and it can create complicated dynamics in the incentive structure. For example, if the promoter does not own the venue, they and the artist are both incentivized to rent the venue for the most competitive and affordable rate. If the promoter owns the venue, however, that doesn’t necessarily remain the case. That’s just one example, but similar points could be made across various “line items” in a settlement sheet’s costs. To be clear, Live Nation is not the only promoter that also often owns their own and/or operate venues, but as the industry leader they have a lot of power to set standards on how these types of rates are set, or just as importantly, how transparently they are communicated with artists. I think that in general, artists should be afforded more transparency into how the venue/promoter/ticketing company entity’s “line items” are being calculated, and what their true profits are across various revenue streams in a show. I also think that certain fees can simply be capped or regulated, like ticket fees, facility fees, and other types of costs that vertically integrated companies can use to skew deal structures. Ultimately, it’s not my place as an artist with no expertise in anti-trust to say whether promoters and venues (and ticket companies for that matter) should be allowed to all be part of the same entity, as long as they aren’t able to use that power to set ticket fees, facility fees, high rent costs or other types of line items in ways that keep the artist from getting their fair share of the fan-paid revenues.

Questions from Senator Tillis
for Clyde Lawrence

1. Do you think that greater transparency in ticketing will improve the ticket purchasing experience for consumers? Please explain your thinking.

I'm not an expert in how to optimize the experience for consumers, as my focus is on speaking about artists' experiences. Certainly eliminating what Senator Klobuchar referred to as "drip pricing" seems like a good idea — consumers should know from as early on in the transaction as possible what their total cost will be. That being said, it is very important that even in a world where we have "all-in" pricing, that consumers are still made aware of how this price is broken down between base prices and different types of fees. For example, if a \$30 ticket will have a \$12 fee, consumers should be made aware from the beginning that it will cost them \$42, but as an artist, I would want them to know that the cost that I had control over setting was the \$30, and that the other \$12 is not something I had control over.

2. What legislative solutions do you recommend to benefit consumers and to improve operations in this industry?

I'm not an expert in legislation, nor am I an expert in the consumer's experience. There's clearly precedent of capping fees in other industries, and the President's recent call to pass the Junk Fee Prevention Act could be a good first step as long as it is drafted in a way to truly benefit consumers and artists.

3. The process of transferring ownership of a ticket can be confusing and cumbersome for consumers. What can be done to streamline this process for consumers?

I'm not an expert in the consumer's experience with ticketing platforms' features. As an artist, the goal is for our shows to be accessible to our fans and not a confusing or cumbersome experience. At the same time, we want to protect our fans from scalpers and anyone else who would take advantage of them. Anything to improve this experience would be beneficial.

4. Does the industry currently have the necessary tools, be it legislative (e.g., the Better Online Ticket Sales Act), legal, and/or technical, to stop bots from impacting ticketing platforms? If not, what more is needed?

I'm not an expert in anything to do with bots.

Jerry Mickelson
 Chief Executive Officer and President
 Jam Productions, LLC, Chicago, IL
 Questions for the Record
 Submitted January 31, 2023

QUESTIONS FROM SENATOR BOOKER

In 2008, DOJ estimated that Ticketmaster held more than 80 percent of market share in the primary ticket market. Ten years later, in its 2018 report, GAO reported that Ticketmaster was still the primary market leader. Ticketmaster also enjoys significant market share in the secondary market, a position that GAO estimated was the second largest. What's concerning is that it seems that Ticketmaster's behavior in the primary market is constraining other companies in the secondary market.

At an on-sale, a consumer purchases a ticket for an event to be held at a later date. Ticketmaster, however, does not deliver a ticket until just before an event occurs.

Ticketmaster wants to control the secondary market just like they do the primary. As an example, Ticketmaster sells/re-sells tickets for Jam concerts even though Ticketmaster is not the primary ticketing provider. See examples below from a show Jam is promoting at Riviera Theater in Chicago, Illinois. Screenshots are attached to this document.

- Weyes Blood tickets have a face value of \$25 but are listed on Ticketmaster for \$654/ticket.
- Paolo Nutini tickets have a face value of \$40 for Mezzanine tickets and \$30 for GA Floor tickets, but are listed on Ticketmaster for over \$300 and \$197 respectively.
- Lizzy McAlpine tickets have a face value of \$34.50 for the Second Balcony, but those same tickets are listed on Ticketmaster for \$7,193 to \$9,371.
- M83 tickets have a face value of \$65 for Mezzanine tickets, but are listed on Ticketmaster anywhere from \$265 to \$425.

To the detriment of consumers, Ticketmaster also wants to blur the lines between the primary and secondary market for their own benefit. Michael Rapino, Live Nation's CEO, has stated, "I think I've said out loud many times that we welcome secondary and primary merging together. We think we are the beneficiary over time."

a. **What kind of influence should artists have on transferability?**

I believe those taking the financial risk on an event should have authority over the transferability of tickets. That includes artists, who are responsible for touring and artistic expenses, along with promoters and venues who are at risk for show and event expenses.

The secondary ticketing market may provide limited convenience to fans who find themselves unable to attend the show they bought tickets to see, but industrial-

strength resellers often utilize illegal and deceptive practices to buy up tickets in bulk, preventing fans from obtaining tickets at face value and inflating ticket prices true fans must pay to attend a show. Limiting transferability and delayed delivery of tickets are practices artists and promoters utilize to cut down on scalping and increase the likelihood of fans accessing tickets at face value.

Secondary resale platforms empower resellers to do this while substantially marking up the price of these tickets and their associated ticket fees. It's worth noting that reseller platforms, including Ticketmaster, charge 10% of the ticket price as a fee to the seller, on top of an average 31% fee to the buyer. That is significantly higher than the primary market, where the average ticket fee is 27% and no seller fee. This was found in the 2018 GAO report. Ultimately, artists, fans, promoters, and venues lose money through these practices. Unfortunately, speculative ticketing and deceptive practices by resellers empowered by resale platforms exacerbate the financial impacts of transferability on fans and artists.

b. Do you find that it is beneficial for an artist to influence capping ticket prices and/or resale amount?

Yes, I fully support capping resale prices and amounts. Promoters and venues work with artists to determine ticket prices for their shows. It is the secondary ticketing market where artists have no influence, and fans, on average, pay more while artists lose out.

I would be in favor of limiting the resale of tickets to face-value prices. However, if that is not possible, then capping secondary ticket prices should be a priority so the fans are not gouged nor shut out from attending performances due to the tickets becoming unaffordable.

TICKETMASTER SELLING TICKETS TO SHOWS WHEN IT IS NOT THE VENUE'S TICKETING PROVIDER

WEYES BLOOD – MARCH 11, 2023 – RIVIERA THEATRE (CHICAGO) - \$25 FACE VALUE

Section	Price
Sec MEZZANINE, Row C	\$235.00 ea
Sec GENERAL ADMISSION	\$654.00 ea

PAOLO NUTINI – MARCH 13, 2023 – RIVIERA THEATRE (CHICAGO) – \$40 MEZZANINE FACE VALUE & \$30 FACE VALUE FLOOR/GA

Section	Price
Sec FLOOR	\$192.00 ea
Sec MEZZANINE, Row A	\$235.00 ea
Sec MEZZANINE LEFT, Row B	\$255.00 ea
Sec GENERAL ADMISSION	\$256.00 ea
Sec MEZZANINE CENTER, Row A	\$306.00 ea
Sec MEZZANINE CENTER, Row A	\$323.00 ea

LIZZY MCALPINE – APRIL 21, 2023 – RIVIERA THEATRE (CHICAGO) – \$34.50 SECOND BALCONY FACE VALUE

Lowest Price	Section
Sec FLOOR GENERAL ADMISSION	\$262.00 ea
Sec MEZZANINE, Row C	\$388.00 ea
Sec FIRST BALCONY, Row M	\$485.00 ea
Sec SECOND BALCONY, Row X	\$793.00 ea
Sec SECOND BALCONY, Row R	\$849.00 ea
Sec SECOND BALCONY, Row P	\$34.50 ea

M83 – MAY 2, 2023 – RIVIERA THEATRE (CHICAGO) – \$65 MEZZANINE FACE VALUE

Lowest Price	Section
Sec FLOOR GENERAL ADMISSION	\$235.00 ea
Sec MEZZANINE, Row C	\$255.00 ea
Sec MEZZANINE CENTER, Row B	\$65.00 ea
Sec MEZZANINE CENTER, Row B	\$96.00 ea
Sec MEZZANINE CENTER, Row A	\$316.00 ea
Sec MEZZANINE CENTER, Row A	\$425.00 ea

Questions for the Record
Senator Chuck Grassley
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment Hearing”
January 24, 2023

Question for Mr. Mickelson

1) Constituents have expressed concerns that Live Nation’s reach, accomplished partly by its vertical integration, significantly harms local communities and local economies. Could you explain how Live Nation’s dominance and influence in areas like record companies, artist merchandise, music apparel, and venues negatively affect local economies and smaller companies in those industries?

As I stated in my 2009 and 2023 testimonies before the U.S. Senate Judiciary Committee, the Live Nation-Ticketmaster merger is vertical integration on steroids.

Live Nation operates or is affiliated with 226 of the best North American venues, including the overwhelming majority of amphitheaters and best outdoor festivals, important segments in our industry. They are the largest promoter in the world. They own Ticketmaster, which is the primary ticketing market leader across all live events in the U.S. They manage 500 of the biggest artists in music. They own an artist merchandise company. They leverage all their assets and the market power that comes along with them to steer the entire live entertainment industry in the direction they dictate – and that harms competition.

Live Nation's dominance in the industry makes it increasingly challenging for smaller companies, often locally-owned promoters and venues, to compete in the live entertainment industry. For instance, Live Nation's ticketing market dominance and their significant bargaining power when negotiating artist contracts can make it difficult for smaller companies to secure top talent and attract audiences, potentially leading to reduced revenue, profits, and potential closure. Similarly, Live Nation's exclusive agreements as a promoter with certain venues and festivals can limit opportunities for smaller players in the industry to start or survive.

My company, Jam, has not been immune to these impacts.

Since 1972, Jam has produced thousands of indoor arena-level concerts across the country, which in the past was the most profitable segment of our business, in other words, Jam’s bread and butter. As part of this submission, an analysis was performed of a cross-section of 50 top-tier performers that Jam worked with since 1974. Over that period, Jam produced 1,677 arena-level shows with these performers, but after 2010 (when the merger was allowed), Jam only produced 94 shows with them, 13 shows after 2015 and one after 2019.

Independent venues and promoters are pillars in our local communities, and we use our revenue to sustain and support our small businesses, allowing us to continue offering live entertainment in small towns and big cities across America. The revenues we generate stay within our local communities and support our local workforces. Fans coming to our events frequent nearby bars and restaurants, stores, car services, and hotels, giving a significant boost to local economies in every state in America. Unlike resale platforms, when we collect fees that support venue operations from a ticket sale, we pump it right back into the live entertainment ecosystem. We want to get low-priced tickets into the hands of true fans.

ARENA PERFORMERS JAM USED TO PROMOTE						
Acts	Year Beginning	Year Last Show	# Of Shows	After 2010	After 2015	After 2019
Aerosmith	1974	2001	74	0	0	0
Arcade Fire	2005	2011	5	1	0	0
Arctic Monkeys	2006	2013	6	1	0	0
Barry Manilow	1975	2013	75	9	0	0
Beck	1994	2018	23	2	2	0
Bill Maher	1996	2013	11	2	0	0
Billy Joel	1977	2007	27	0	0	0
Black Keys	2006	2012	10	4	0	0
Blink-182	2000	2001	4	0	0	0
Bob Seger	1976	2014	23	7	0	0
Bon Jovi	1987	2003	73	0	0	0
Coldplay	2001	2005	7	0	0	0
Dave Matthews	1994	2011	53	4	0	0
Def Leppard	1983	2005	112	0	0	0
Eagles	1974	2008	24	0	0	0
Elton John	1979	2009	30	0	0	0
Genesis	1976	1992	36	0	0	0
Green Day	1994	2017	31	4	0	0
Iron Maiden	1983	2000	22	0	0	0
James Taylor	1975	2006	36	0	0	0
Jane's Addiction	1988	2001	24	0	0	0
Janet Jackson	1990	2015	15	7	0	0
John Mayer	2002	2013	23	2	0	0
Journey	1978	2002	89	0	0	0
Judas Priest	1978	2018	34	0	0	0
Kid Rock	1999	2013	39	7	0	0
Kiss	1975	2009	76	0	0	0
Linkin Park	2001	2011	13	4	0	0
Lizzo	2016	2019	5	5	5	0
Madonna	1985	1990	4	0	0	0
Maroon 5	2003	2005	6	0	0	0
Matchbox Twenty	1997	2013	33	3	0	0
Metallica	1986	2009	92	0	0	0
Motley Crue	1983	2000	67	0	0	0
Muse	2000	2022	15	5	5	1
My Chemical Romance	2005	2011	2	1	0	0
Paul McCartney	1989	1993	5	0	0	0
Pearl Jam	1992	2014	35	2	0	0
Phish	1991	2011	54	3	0	0
Ray LaMontagne	2004	2014	14	8	0	0
Red Hot Chili Peppers	1985	2017	38	6	0	0
Rod Stewart	1979	2008	18	0	0	0
Roger Waters	1984	2000	10	0	0	0
Santana	1975	2014	62	1	0	0
Smashing Pumpkins	1991	2016	71	4	1	0
Stevie Nicks	1994	2001	6	0	0	0
Sting	1985	2004	32	0	0	0
Tim McGraw	1994	2006	16	0	0	0
U2	1981	1997	23	0	0	0
Van Halen	1978	2004	57	0	0	0
Weezer	2001	2011	17	2	0	0
TOTAL SHOWS			1677	94	13	1

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Jerry Mickelson, CEO and President of Jam Productions

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous witness declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. Does Live Nation Entertainment's market dominance threaten the live entertainment industry? Yes.

a. How so?

Live Nation threatens every aspect of live entertainment: promoters, managers, venues, ticketing, merchandising, artists, artist management, and fans.

The merger of Live Nation and Ticketmaster back in 2010 created a company with extraordinary market power and clout unlike any other. Ticketmaster's pre-merger dominance in ticketing and Live Nation's consolidation of promoters and venues was and still is vertical integration on steroids. This combined entity has used its monopoly power to harm consumers, suppress or eliminate competition in many segments of the music industry, including rival concert promoters, primary and secondary ticketing companies, artists management firms, venue management companies, and artist merchandise companies.

b. What are those threats?

The industry is negatively impacted due to Live Nation and Ticketmaster's market power influencing a continued consolidation of the live entertainment market, their unchecked and aggressive expansion into the secondary ticket resale market, venue management (including the largest amphitheater operator in the nation), artist management, their negotiating power over artists to lock them up under exclusive contracts, their required exclusivity agreements with venues - they - ticket, radius clauses built into festival offers (which limits the ability for artists to work with a different promoter in a geographical area), and limits on opportunities for emerging and diverse artists given their emphasis on well-known, established acts.

However, unfortunately, these are not actually threats but rather our reality. Those of us who compete against Live Nation have to deal with this vertical monopoly every day just to stay in business. The

consolidation of the concert industry by Live Nation has had devastating impacts on promoters, ticketing providers, artist managers, venues, merchandise companies, and others in the live music industry.

Live Nation has effectively eliminated the arena part of our business by utilizing nine methods:

1. Purchasing tours for their outdoor amphitheaters.
2. Leveraging their outdoor amphitheater shows to procure indoor shows.
3. Leveraging their summer festivals to procure indoor concerts.
4. Threatening financial penalties on a tour deal if artists wanted to work for Jam.
5. Paying a band 100% or more of the gross ticket sales.
6. Managing the largest acts in live entertainment.
7. Utilizing Ticketmaster's ticketing fees & inside deals with the arena.
8. Facilitating ticket sales directly to scalpers.
9. By merging the primary and secondary ticket markets, Ticketmaster makes money off of competing promoters' shows without their permission.

Ticketmaster lists tickets for all shows in their primary platform, including Jam shows, leading to customer confusion and their profit at our expense. Michael Rapino, Live Nation's CEO, has stated, "I think I've said out loud many times that we welcome secondary and primary merging together. We think we are the beneficiary over time."

c. What steps can Congress take to address these threats?

Congress should leverage its oversight authority to guide the U.S. Department of Justice to revise the Live Nation consent decree to restrict Live Nation's attempts to extend its industry dominance to the secondary ticketing resale market and artist management.

Congress should consider leveraging bipartisan legislative solutions they are considering to ensure consumers are protected in the technology platform market to protect fans in the live entertainment market. Bills that could be a template for managing Live Nation's market dominance include "The Platform Competition and Opportunity Act", which would ban major online players from buying competitive threats, and the "Ending Platform Monopolies Act", which would crack down on conflicts of interest between large tech platforms' business lines.

Congress needs to give control of our tickets to at-risk promoters and artists even as they transfer to the secondary market. This would allow us to stop the biggest monopoly in our industry from profiting from our hard work. Predatory and deceptive practices utilized by industrial-strength scalpers only serve to stop real fans from getting tickets and direct tickets onto the secondary market where, according to GAO, Ticketmaster is already the 2nd-biggest player.

Congress should pass an update to the BOTS Act that provides a legislative definition of "access control system" and "security measure," or the Federal Trade Commission (FTC) should consider a rulemaking to clarify the definition of those terms on a regulatory basis. Both Congress and the FTC should develop strong accountability and true enforcement measures for Ticketmaster's bot-prevention technology to be updated.

2. In 2009, you testified before the Antitrust Subcommittee on the Live Nation/Ticketmaster merger, then pending before the Department of Justice.

a. In what way(s) did the 2010 DOJ consent agreement fail to address the market domination issues posed by Ticketmaster?

The witnesses before the U.S. Senate Judiciary Committee 14 years ago predicted a consolidation of the live entertainment industry and devastating impacts for promoters, ticketing, and venues across the country if the merger between Live Nation and Ticketmaster.

Yet, the federal government approved the merger.

I am sad to say that our 2009 predictions have played out over the last decade exactly how they thought, and our company Jam has not been immune.

After the merger, Live Nation went after the arena business, and they succeeded in driving independent promoters out of that sector.

Since 1972, Jam has produced thousands of indoor arena-level concerts across the country, which, in the past, was the most profitable segment of our business; in other words, Jam's bread and butter. Attached to this submission is an analysis that was performed on a cross-section of 50 top-tier performers that Jam worked with since 1974. Over that period, Jam produced 1,677 arena-level shows with these performers, but after 2010 (when the merger was allowed), Jam only produced 94 concerts with them, 13 shows after 2015 and only 1 after 2019.

A snapshot of the superstar artists who no longer work with Jam includes Aerosmith, Billy Joel, Bon Jovi, Dave Matthews Band, Def Leppard, Eagles, Elton John, Genesis, John Mayer, Journey, Kiss, Kid Rock, Metallica, Motley Crue, Pearl Jam, Phish, Red Hot Chili Peppers, Santana, Van Halen, etc.

In addition, Jam has not had any opportunity to make offers on the new superstars such as Beyonce, Billie Eilish, Cardi B, Drake, Harry Styles, Justin Bieber, Kane Brown, Nicki Minaj, Post Malone, Rihanna, Shakira, The Weeknd, etc. Jam has been completely shut out.

Now, Live Nation is going after music venues and clubs of all sizes. The near complete domination of arenas because of the merger could soon happen to music venues - large and small - in every community in the country. This next phase of consolidation is already impacting promoters, venues, and, most importantly, fans. Everything from how much fans pay for shows to fan safety could be impacted.

This is primarily due to the U.S. Department of Justice's lack of true and effective enforcement and oversight of the Live Nation consent decree to ensure that the terms of Live Nation's consent decree are being followed. I mean no disrespect to the DOJ since it is not easy to

police a company whose intent is to suppress competition and harm the consumer for the benefit of their shareholders.

Even more alarming for the entire live entertainment industry is that the consent decree does not account for Live Nation's and Ticketmaster's expansion into the secondary resale ticketing market, including instances of bypassing fans and releasing tickets directly to scalpers so that they can charge increased fees and ticket prices on the secondary market. This market manipulation practice shuts out artists, promoters, and venues from a fair and free market. It also did not account for Live Nation's consolidation of artist managers under Artist Nation.

3. How can the ability of consumer transferability be expanded while reducing the ability of scalpers to interfere with the ability of artists to set prices?

A critical first step for Congress to ensure a free and fair transferable ticket market is putting in place basic consumer protections, including a national ban on deceptive URLs and the use of trademarks used by resellers to trick consumers into believing they are buying a ticket from a venue, festival, or artist and paying face value tickets and fees.

Congress must also protect consumers by prohibiting secondary ticketing exchanges from selling speculative tickets, capping the resale price of tickets at face value, and requiring resellers to display prominently that they are not the primary ticket marketplace and prominently show the original face value of the ticket.

Please note that non-transferability typically only occurs at the sole request of the artist so their fans can pay the ticket price which the artist set. It is rare that tickets are not allowed to be transferred.

ARENA PERFORMERS JAM USED TO PROMOTE						
Acts	Year Beginning	Year Last Show	# Of Shows	After 2010	After 2015	After 2019
Aerosmith	1974	2001	74	0	0	0
Arcade Fire	2005	2011	5	1	0	0
Arctic Monkeys	2006	2013	6	1	0	0
Barry Manilow	1975	2013	75	9	0	0
Beck	1994	2018	23	2	2	0
Bill Maher	1996	2013	11	2	0	0
Billy Joel	1977	2007	27	0	0	0
Black Keys	2006	2012	10	4	0	0
Blink-182	2000	2001	4	0	0	0
Bob Seger	1976	2014	23	7	0	0
Bon Jovi	1987	2003	73	0	0	0
Coldplay	2001	2005	7	0	0	0
Dave Matthews	1994	2011	53	4	0	0
Def Leppard	1983	2005	112	0	0	0
Eagles	1974	2008	24	0	0	0
Elton John	1979	2009	30	0	0	0
Genesis	1976	1992	36	0	0	0
Green Day	1994	2017	31	4	0	0
Iron Maiden	1983	2000	22	0	0	0
James Taylor	1975	2006	36	0	0	0
Jane's Addiction	1988	2001	24	0	0	0
Janet Jackson	1990	2015	15	7	0	0
John Mayer	2002	2013	23	2	0	0
Journey	1978	2002	89	0	0	0
Judas Priest	1978	2018	34	0	0	0
Kid Rock	1999	2013	39	7	0	0
Kiss	1975	2009	76	0	0	0
Linkin Park	2001	2011	13	4	0	0
Lizzo	2016	2019	5	5	5	0
Madonna	1985	1990	4	0	0	0
Maroon 5	2003	2005	6	0	0	0
Matchbox Twenty	1997	2013	33	3	0	0
Metallica	1986	2009	92	0	0	0
Motley Crue	1983	2000	67	0	0	0
Muse	2000	2022	15	5	5	1
My Chemical Romance	2005	2011	2	1	0	0
Paul McCartney	1989	1993	5	0	0	0
Pearl Jam	1992	2014	35	2	0	0
Phish	1991	2011	54	3	0	0
Ray LaMontagne	2004	2014	14	8	0	0
Red Hot Chili Peppers	1985	2017	38	6	0	0
Rod Stewart	1979	2008	18	0	0	0
Roger Waters	1984	2000	10	0	0	0
Santana	1975	2014	62	1	0	0
Smashing Pumpkins	1991	2016	71	4	1	0
Stevie Nicks	1994	2001	6	0	0	0
Sting	1985	2004	32	0	0	0
Tim McGraw	1994	2006	16	0	0	0
U2	1981	1997	23	0	0	0
Van Halen	1978	2004	57	0	0	0
Weezer	2001	2011	17	2	0	0
TOTAL SHOWS			1677	94	13	1

Questions from Senator Tillis
for Jerry Mickelson

- 1. Do you think that greater transparency in ticketing will improve the ticket purchasing experience for consumers? Please explain your thinking.**

I believe primary and secondary ticket resellers should utilize all-in pricing to clearly disclose the full final cost of a ticket and fees to the consumer, with the “face value” of the ticket that the artist is charging, and all fees separate and itemized.

Secondary ticket resellers should be required to disclose the original face value and fees of each ticket sold with all additional ticket price increases and secondary reseller and platform fees separate and itemized.

Secondary ticket resellers and platforms should be required to prominently display a permanent banner at the top of their website with a disclaimer that it is not the primary ticket marketplace. For each ticket sold, secondary ticket resellers should be required to link back to the primary site and include a message that primary tickets might still be available.

2. What legislative solutions do you recommend to benefit consumers and to improve operations in this industry?

Protecting Fans

A critical first step for Congress to ensure a free and fair transferable ticket market is putting in place basic consumer protections, including a national ban on deceptive URLs and the use of trademarks by resellers to trick consumers into believing they are buying a ticket from a venue, festival, or artist and paying face value prices and fees. These protections should have real financial punishments to disincentivize those who violate the rules.

Congress should also protect consumers by prohibiting secondary ticketing exchanges from selling speculative tickets, capping the resale price of tickets to face value, and requiring resellers to display prominently when they are not the primary ticket marketplace. Enforcement is a must.

I also believe those who take on the risk to put on a show, including artists, promoters and venues, must have oversight into how tickets are allowed to transfer on the secondary market. Currently Ticketmaster, the second largest reseller of tickets,

is advertising and profiting off Jam shows, sometimes making more on events than we are. We need the ability to protect our fans and help true fans access tickets in front of industrial-strength scalpers, who utilize illegal and deceptive practices to profit from our events while taking no risk and providing no value to communities.

Ensuring Live Entertainment Competition

While not legislative, Congress should leverage its oversight authority to ensure the U.S. Department of Justice takes action to stop Live Nation's market dominance by enforcing and potentially expanding their consent decree in 2025 to restrict their actions on the secondary market and in artist management, two key areas that underpin their monopolistic behavior and were not contemplated by the initial consent decree of 2010.

U.S. vs. Paramount provides an important precedent for the federal government acting to stop the market dominance of multiple entertainment companies. The major movie studios had a near-monopoly on the movie business in the United States. Each studio had exclusive contracts with actors and directors; owned the distribution company; owned the theaters where their movies played; worked with each other to control how movies were shown in independent theaters; and, in

some cases, owned the companies that processed the film.

The U.S. Supreme Court ruling in the *Paramount* case led to the breakup of studio-theater monopolies and forced the studios to sell the movie theaters they controlled.

There are striking parallels between the *Paramount* case and the situation our industry faces.

At the very least, Live Nation's consent decree should be expanded. They should be forced to sell all of its venues (indoor & outdoor), divest themselves from Ticketmaster, stop managing artists, and cease block booking tours.

3. The process of transferring ownership of a ticket can be confusing and cumbersome for consumers. What can be done to streamline this process for consumers?

Ticketing companies, promoters, and venues have been focusing on offering pathways to allow the exchange of tickets at face value. One solution of many that have emerged is Lyte, a platform enabling promoters and venues to facilitate the exchange of tickets among fans for face value and

minimal fees. The current resale system using major secondary ticketing platforms is largely rigged against true fans trying to resell a ticket. The proliferation of promoter- and venue-fueled technology solutions to limit price gouging by scalpers on the secondary ticket resale market will aid in this process, but so will action by Congress to protect consumers.

4. Does the industry currently have the necessary tools, be it legislative (e.g., the Better Online Ticket Sales Act), legal, and/or technical, to stop bots from impacting ticketing platforms? If not, what more is needed?

The Better Online Ticket Sales (BOTS) Act's central impediment to effectiveness is a lack of enforcement by the Federal Trade Commission (FTC). We also know that the largest ticket provider in the nation, Ticketmaster, has admitted that their bots-prevention technology is flawed following the Taylor Swift tour ticket sale debacle.

Congress should leverage its oversight authority to ensure that the FTC is enforcing the BOTS Act actors using ticket scalping bots and by holding large ticketing providers accountable for ineffective security protecting fans and artists from bots. Fines

also need to be meaningful, or the legislation is meaningless.

Congress should also consider creating grants that state attorneys general may apply for with the sole focus of providing resources for the enforcement of the BOTS Act and enforcing other consumer protections in the ticketing marketplace. Congress should pass an update to the BOTS Act that provides a legislative definition of “access control system” and “security measure.”

Finally, venues, promoters, and artists lack the ability to enforce the terms of the ticket after being sold on the primary market. Congress should adopt legislation that assists the licensor in enforcing the terms of those licenses by holding the secondary platforms accountable for resale violations.

Questions for the Record
Senator Chuck Grassley
“That’s the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment Hearing”
January 24, 2023

Question for Mr. Nuzzo

1) You spoke about Live Nation’s disregard for the consent orders and important consumer welfare concerns relating to Live Nation’s dominance in the entertainment industry. How has the failure by the DOJ/FTC to enforce these orders harmed consumers in the past decade? Also, could you elaborate on possible solutions to protect consumers?

It is my contention that the lack of enforcement has enabled Live Nation to continue and potentially expand their tactics. As recently as this past month, Barclays Center in New York left SeatGeek after only one year and returned to Ticketmaster when they began seeing a substantial drop off in the number of acts performing at their venue. This is, in our opinion, a clear example of how the tactics serve to reinforce the “implicit threat” of not using Ticketmaster as the provider. Without those live acts, the economics of the venue don’t work.

As to the harms on consumers – the biggest and most obvious harm is with respect to fees. Leveraging its dominance, Ticketmaster is able to command up to, and in some cases greater than, 30 percent service fees on tickets. These fees are tacked on at the very end of the process, on the very last screen before purchasing. So an individual purchasing is left with two bad choices – pay the exorbitant fees on top of the ticket price (a choice they didn’t realize until the very end of the transaction), or give up their place in line and lost the seats.

A helpful analogy would be the auto market. If I work up a price and payment plan for a used Ford F-150 with a dealership, and then at the end they attempt to add on a bunch of fees, I can choose to get up, leave the dealership, and purchase a used F-150 from any number of other willing sellers. I can even pull up my phone and find the exact same year/make/color/mileage/options and negotiate. That’s because the auto market is competitive. The same should be the case for the ticketing and live event market. It is not – and while Live Nation would attempt to make the case that tickets and autos are apples and oranges, the fact is that ultimately they are both consumer-driven markets where choice and competition benefit consumers more than anticompetitive tactics.

As to the question on solutions – I think there are solutions to address issues on pricing, solutions to address some of the contract challenges (how long the venues are forced to have an exclusive ticket provider), and solutions to the vertical integration challenges. Ultimately, however, what we should all seek is more competition. At this juncture, I don’t know of a solution short of a complete spin-off of the merger that gets at the core challenge.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Sal Nuzzo, Senior Vice President, James Madison Institute

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous witness declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

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If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. What, in your opinion, makes a Live Nation Entertainment a monopoly?

In our opinion, Live Nation presents three components making it a monopoly worthy of action.

- *First is the vertical integration present between Ticketmaster as a ticket platform and Live Nation representing talent.*
- *Second is market size. While Ticketmaster would contend that they only control about 50 percent of the venue market, the devil is in the details on that statistic. A more important and valuable way to look at this is what percentage of the major venues does the company control? Take out the small venues holding less than a few thousand people, the small community theaters probably being included in the denominator that Live Nation would like to use. The number is almost certainly at 80 percent or above.*
- *Lastly, and this is vital to the question of Congressional/DOJ action, is that Live Nation has, and likely will continue to, used its market dominance to stifle competition in ways outside of the normal market forces, and in ways that violate the consumer welfare standard.*

2. What remedies should be taken by the DOJ and FTC to address this concentrated market power?

In 2019, the DOJ found that Live Nation repeatedly violated the original terms of the 2010 consent decree authorizing the merger. If recollection is correct, Live Nation agreed to six of the incidents of finding by DOJ.

While neither I nor JMI are antitrust attorneys, it is our position that these violations represent evidence worthy of DOJ taking action up to and including the dissolution of the merger.

3. In light of violations found by the DOJ, the Live Nation/Ticketmaster consent decree was extended for another five years. Do you consider the 2010 DOJ consent agreement to have been a successful solution to the concerns posed by the Live Nation/Ticketmaster merger?

Simply put, no. The market continues to move in a direction that is anticompetitive. The recent case of Barclays arena canceling its contract with SeatGeek after just one year, returning to Ticketmaster, and the clear evidence that as a result of using SeatGeek the

arena saw a decline in the number of artists they were able to book, shows that what is happening is a mob-style implicit threat. Other venues around the country take notice. They don't want to be the next Barclays arena.

4. In what way(s) did the 2010 DOJ consent agreement fail to address the market domination issues posed by Live Nation/Ticketmaster?

From our perspective, the original consent agreement sounded reasonable. It was the execution, monitoring, and enforcement of the agreement where the failures occurred.

5. Should similar mergers in this industry be permitted in the future?

I would be hesitant to give a definitive yes/no answer on a hypothetical, but what I can certainly say is that any future merger in this specific industry should be viewed far more critically than the Ticketmaster Live Nation merger was at the time.

6. What legislative language would you recommend adoption to strengthen protections against exclusionary conduct?

From our perspective, the fix for the challenges related to exclusionary conduct are rooted in the vertically integrated monopoly present in ticketing and talent representation. This has resulted in a considerable lack of competition as technology has advanced. Congress, in our opinion, doesn't necessarily need to pass a legislative fix – the remedy is to address the specific monopoly and anticompetitive behavior at its root and then allow an actual market to fill the space.

Without a vertically integrated monopoly like Live Nation Ticketmaster, competitors would have more equitable access to the market. Equity of opportunity is the goal.

7. What legislative language would you recommend to prevent self-preferencing by digital firms?

I would reiterate our answer in question six here. We don't believe that legislation would be specifically appropriate in trying to catch up to technology advances. Ultimately the question should be asked as to why self-preferencing occurs. It occurs because one dominant player has all of the market share and can dictate the terms of the market.

The key is more competition in the marketplace. From there, self-preferencing would be

minimal, as it would become a liability in the process. Venues and talent would be able to choose from a provider that doesn't require such conditions.

8. What are possible legislative solutions to prevent the ticketing market from arriving at this type of anti-competitive behavior in the future?

I believe that protecting ticket transferability is one critical component of the puzzle where Congress can play a role. The secondary ticket market is vital to the economics of live event. As I stipulated in an answer to a question presented during the hearing, the majority of tickets on the secondary market are sold for face value or less than face value. Without this option, many acts would be playing in half-empty venues. It's only the Bruce Springsteen and Taylor Swift price spike examples that make media mention. For every \$5,000 Springsteen ticket, there are thousands of tickets to acts all over the country that are sold for a fraction of the face value to fans looking to see a new performer.

Another is all-in pricing. The dynamics at play in concert ticketing, with at times millions of people trying to obtain tickets at the same time, make it far easier for a company like Ticketmaster to hide fees until the last possible point in the sales process. This presents a Hobson's Choice – a fan has to accept a 30-plus percent bump in the final cost, or start the process all over and lose the seats that they had been seeking.

Questions from Senator Tillis
for Sal Nuzzo

1. Do you think that greater transparency in ticketing will improve the ticket purchasing experience for consumers? Please explain your thinking.

I think it will – and the reason has to do with the nature of the timing on purchasing tickets for high-demand acts. By the time a person gets to the final screen of a ticket purchase, if they see a final price 30 percent higher than they thought, they are left with two bad choices – pay the inflated price that they didn't know about until then, or start the process over and forfeit the seats they wanted (and which will likely be gone).

I would like to indicate though, that the hidden fee issue is a symptom of the lack of competition in the market, not the sole challenge. With a robust market for ticketing services, this issue would likely not occur, because competitors would address it on their own. Because Ticketmaster has such a stranglehold on the market, they have been able to perpetrate the fee tactic.

2. What legislative solutions do you recommend to benefit consumers and to improve operations in this industry?

At the federal level – I think the congress could protect transferability in ticket purchases, and also could mandate all-in pricing.

In theory, I think the ticket transferability issue is a more reasonable path for the congress than all-in pricing, because I would like the market to address pricing issues on its own. With that said, I don't believe the market forces exist currently to address that.

3. The process of transferring ownership of a ticket can be confusing and cumbersome for consumers. What can be done to streamline this process for consumers?

Protecting ticket transferability would go a long way to breaking apart many of the tactics that Ticketmaster appears to be using to throttle the secondary ticket market (as it attempts to get control of it).

Our fundamental position is that choice leads to competition which breeds market solutions. So, if the issue of competition can be addressed (i.e. more of it in this arena), market solutions that solve challenges present in the secondary market and with transferability will be worked through in the most efficient way.

4. Does the industry currently have the necessary tools, be it legislative (e.g., the Better Online Ticket Sales Act), legal, and/or technical, to stop bots from impacting ticketing platforms? If not, what more is needed?

I would suggest that in its current form, no. The reason is that, ultimately, Ticketmaster is in the business of selling tickets. At the end of the day, they have no specific incentive to care if tickets are purchased by fans, or by bots and then resold to fans. In fact, the “best” possible scenario for Ticketmaster is to have exclusive rights to the secondary market and then bots buy up all the tickets and resell them on the Ticketmaster platform. Ticketmaster makes money on the selling, and then on the resale. With as much of the market cornered as they have, there is no financial reason for them to operate otherwise.

With a more robust and competitive environment in both the primary and secondary markets, innovations like blockchain can provide value to ALL parties – the artist, venue, and consumer. I’ve personally seen companies working on solutions using blockchain technology with ticketing that would remedy many of the challenges concerning bots, hackers, fake tickets, etc. – these technologies are stifled as a result of anticompetitive and monopolistic tactics.

It’s also important to note that bots, hackers, and nefarious actors in the industry will always exist. It is our contention that because there is practically speaking only one vertically integrated player in the industry, bots and hackers will always be a step or two ahead. There’s only one system they (bad actors) need to beat. With a robust and competitive market, innovative methods to thwart bots and hackers will develop on their own.

United States Senate Committee on the Judiciary
*Hearing: January 24, 2003: "That's the Ticket: Promoting Competition and Protecting
Consumers in Live Entertainment"*

Joint statement of:

Future of Music Coalition
Artist Rights Alliance
American Association of Independent Music
Music Workers Alliance
Union of Musicians & Allied Workers

As groups working to elevate the voices of varied communities of musicians, songwriters, composers, producers, engineers, DJs, and independent record labels, we welcome the committee's attention to this important and timely topic. We also welcome renewed attention to the intersection of music industry issues and antitrust policy.

This hearing comes at a pivotal moment for competition policy generally and for music communities specifically. In the past several years, a growing movement to revitalize antitrust policy has challenged regulators, enforcers, and policymakers to look beyond short-term consumer-facing price effects to the impacts on producers and the health of the overall marketplace, using all the available tools to ensure antitrust keeps up with the massive changes happening in our economy. Meanwhile, the pandemic and the resulting stress on many music revenue streams has made visible a range of systemic problems and long-standing power imbalances within our industry. While pandemic relief measures, including Save Our Stages offered crucially important emergency steps to keep independent venues alive, we cannot be content to build our way back to a pre-pandemic live events status quo that was unsustainable for too many.

In competition policy, the interests of music creators and music listeners are closely aligned: both benefit from a marketplace environment where a broad range of diverse partners—promoters, venues, ticketing providers, and others— all compete to best serve diverse artists and audiences' needs. Ownership consolidation can alter both the scope and character of competition, centralizing power while creating new incentives to abuse that power. Consolidation in live music was causing problems long before Live Nation and Ticketmaster (LNE/TM) were allowed to merge, but it's worth looking specifically at some of the outcomes musicians and fans have experienced since that merger closed.

It is easy to overestimate the amount of leverage that most musicians have over ticketing arrangements, particularly in the current environment. Most often, musicians are stuck using whatever arrangement the venue uses, and if they have objections, they must either find a different venue that uses a different ticket provider or skip the market entirely. Musicians with

leverage may be able to negotiate to offer fan-club or other presales, but still face fewer options than they would in a more competitive environment; as the demise of Songkick's ticketing platform illustrates.

Musicians have a role in setting the face price of the ticket—it usually represents a negotiated agreement between the artist's team and a live event promoter. Artists regularly work to balance their desire to offer fans an affordable experience with the need to generate revenue, particularly as production costs, travel costs, and audience expectations are all trending upward. Margins are narrow for many tours, and even now a positive COVID test on the road or unexpected COVID related expenses can easily imperil tours' profitability.

Typically, though, musicians have no role in setting fees above the face price of the ticket. Ticket fees are higher across the board, but it's important to understand LNE/TM's role in driving this dynamic. LNE/TM's huge footprint means the company is earning on ticketing fees for a huge swath of overall ticket transactions. Every time an independent promoter does a show at a Ticketmaster-contracted venue, they're helping enrich their most powerful competitor. Often though, they have no real choice. To be able to understand the degree to which TM/LNE control the landscape, one must look not just at the national marketplace but at individual geographic markets, and at particular categories of venue: large clubs, amphitheaters, arenas, and stadiums. If the promoter of Taylor Swift's tour can't find a way around working with Ticketmaster, that's a strong indicator of a monopoly problem.

Even venues that choose not to work with Ticketmaster may find that their tickets end up on Ticketmaster's resale site. LNE/TM can leverage its highly profitable ticketing business to advance its position in its lower-margin venue and concert promotion businesses, outbidding independent venues for top-grossing talent. To stay competitive, independent venues feel they must make that revenue back some other way. They often do this with increases in venue fees or food & beverage costs, passed along to consumers, or by taking a cut of artists' merchandise sales, which is a financial hit to artists and is also often ultimately passed along to consumers. While proponents of the 2010 merger pointed to the potential for lower fees because of the elimination of double marginalization, fees at LiveNation owned venues like the Fillmore San Francisco are frequently as high or higher than those offered by competitors. Without the financial cushion provided by top-grossing events, independent venues may feel less able to take creative risks by booking emerging talents and unheard community voices. This, coupled with further consolidation, harms communities, imperiling cultural diversity.

Some artists and managers have reported overall positive experiences with Live Nation, but that is not a defense against practices and terms that lower standards for the entire artist community. In 2020, news broke about a leaked memo where Live Nation unilaterally announced changes to contracts between its promoter business and artists. The conglomerate used its market power to dictate a 20 percent reduction in the compensation guaranteed to artists for playing a show regardless of ticket sales. Live Nation also shifted more financial responsibility to artists in the event that a concert or festival is canceled.

While it's true Live Nation walked back some of these provisions after the leaked memo provoked a strong backlash, it serves as a compelling example of just how brazenly Live Nation feels it can wield its market power. In a healthy competitive market, workers can respond to bad contract terms by choosing a different employer. But Live Nation operates so many popular festivals and venues that refusing to accept these terms is a choice many artists feel they can't make.

These are some of the reasons that our groups have encouraged the Department of Justice to unwind the LiveNation/Ticketmaster merger. We are proud to be members of the Break Up Ticketmaster coalition alongside a diverse array of groups who are similarly concerned about the company's unchecked power, and have helped focus public attention on this problem.

At the same time, we also want to be clear that Ticketmaster is not the only company in live music engaging in unfair business practices that harm musicians, independent venues, and fans. Taking a holistic view of the ticketing marketplace requires a serious critical look at the role played by resellers and brokers.

These companies also represent a key driver of high ticket prices by making it more difficult for artists to get tickets to fans at prices below what a theoretical market would bear. The worst of these companies employ automated technologies like those targeted by the BOTS Act. Some sell speculative tickets, where fictional tickets are sold before the actual on-sale date, based on the speculation that the seller will be able to obtain tickets to meet demand. One company even offers to purchase existing Ticketmaster consumer accounts in an apparent attempt to use these old accounts to bypass Ticketmaster's bot detection and fraud prevention protocols and more effectively pose as legitimate ticket buyers. At a structural level, even the most reputable secondary market companies operate with a business model that incentivises them to increase prices as much as possible, funneling as much revenue as possible away from artists, venues, and promoters to third parties that contribute nothing to the event but higher prices that have put the price of attending a live music performance out of reach for too many consumers.

While artists and fans alike would benefit from efforts to increase competition in the primary ticketing marketplace, there's nothing inherently anti-competitive about artists choosing to work with ticketing companies to limit the availability of tickets on the secondary market, or to ensure tickets make it to real fans rather than brokers and resellers. Ticketbuyers' frustration with Ticketmaster/LiveNation should not be used to advance policies that would primarily benefit extractive secondary sellers.

Concern about the secondary market doesn't mean that ticket buyers who are unable to attend the event due to illness or conflicts must take a financial hit. Many of these consumer concerns could be addressed by broader implementation of face value fan-to-fan marketplaces, ideally without additional fees. Ticketmaster and AXS both have implemented versions of this technology.

There is a connection between the bad practices happening in the secondary marketplace and Ticketmaster's domination of primary ticketing. Because Ticketmaster has the primary ticket marketplace mostly locked down, would-be competitors and their investors focus instead mostly on the secondary marketplace. Too much of the investment flowing into ticketing ends up directed toward innovative and efficient ways to snap up tickets before real fans, to be sold at wildly inflated prices. In turn, primary ticketing companies end up feeling forced to focus more of their resources on systems and technologies aimed at keeping inventory away from predatory resellers, in an escalating arms race. It defies common sense that Ticketmaster itself should be allowed to enter the secondary ticket marketplace, where it becomes both the primary seller and buyer of the same good.

Out of control prices on the primary and secondary ticket markets places further distance between artists and their fans. That distance undermines one primary reason for artists to subject themselves to grueling tour schedules, namely the ability to promote new music to likely consumers of sound recordings, which are now ubiquitously available to consumers through digital streaming services, but at shockingly low royalty rates for artists and their label partners. Live performance and selling recorded music are two separate businesses, and artists shouldn't have to combine both (often supplemented by gig economy work or service economy jobs) just to support their families.

None of these problems are inevitable; rather they reflect the outcome of a series of public policy choices. The Department of Justice conditioned its approval of the Ticketmaster/LiveNation merger on a consent decree that included both structural and behavioral elements, and promised "vigorous enforcement." With the benefit of hindsight, we can see the error of that approach: the structural elements of the consent decree failed to create any meaningful competition. For example, it required that Ticketmaster license a ticketing software product to competitor AEG, but AEG decided not to even use that software. Behavioral conditions included a prohibition on retaliating against venues that chose other ticket services, or sharing data between the ticketing and promotions side of the business, but while the Trump DOJ found clear evidence of consent decree violations, they chose only to modify and extend the consent decree rather than undoing the merger.

One of the many problems with behavioral conditions is that they create an ongoing monitoring obligation, not just for enforcers, but for the stakeholders that may have the least amount of agency and capacity: workers and small businesses. Essentially this amounts to a new form of uncompensated labor that artists and their teams are expected to perform, even though many lack expertise or legal resources to know whether any unfair treatment they may be experiencing is illegal. This can be true for venues as well, and the challenge is made even more difficult by massive information asymmetries; artists and venues may be impacted by anticompetitive behavior but may not have access to direct documentary evidence. Fears of retaliation remain widespread, and with good reason, given the results of the last DOJ investigation.

Media reports indicate that current DOJ leadership has undertaken a fresh investigation, and our groups have encouraged the DOJ to use the opportunity to correct past mistakes and break up LiveNation/Ticketmaster. However, the agencies need not stop there; they can use the lessons of this merger to shape their approach to merger reviews moving forward. DOJ and FTC are currently in the process of drafting revised merger guidelines, and these new guidelines should explicitly make clear that if the authorities conclude that a merger is likely to lessen competition, they should seek to block the transaction outright. The guidelines can incorporate insights about new ways that dominant firms can use gatekeeper power, leveraging across markets, and data exploitation to reinforce their dominance, marginalize rivals, and lower wages.

Furthermore, the FTC can make use of its broad Section 5 authority to ensure some clear rules of the road that protect workers and fans against the harms resulting from unfair methods of competition in the live sector and in other parts of the music ecosystem. The FTC's recent policy statement on Section 5 offers a promising framework. All-in pricing disclosure is currently on the table in the FTC's current "junk fees" rulemaking, and this could address one recurrent consumer frustration, as long as the rule is well-enforced and includes specific itemization of all the various types of fees.

DOJ and FTC both benefit from congressional oversight, but Congress can also do more. As conversations about possible ticket reform move forward, it's crucial to center the lived experience of working musicians and other impacted parties, including fans and independent venues. Legislation could address speculative ticketing, and require transparency provisions, without weakening artists' ability to make decisions about how to run ticketing for their own shows, based on what they understand about their specific audiences. Ultimately, music communities need a live music marketplace characterized by competition, diversity of practice, and creative autonomy. For that to happen, neither Ticketmaster/Live Nation nor the brokers and resellers should be making the rules.

Last week, country artist Zach Bryan announced a summer tour of arenas and amphitheaters, avoiding Ticketmaster-contracted venues entirely. While this may have required skipping some major markets (and might not have been possible at all if he was touring stadiums), Bryan aims to offer a fan-friendly experience, with comparatively low prices and fees. Notably, Bryan also made clear his intention to ensure tickets get to fans rather than bots and resellers by working with AXS to use rotating bar code technology instead of paper tickets, instituting limits on transferability, and creating a fan-to-fan face value resale option so no one is stuck with a ticket they can't use. This approach isn't right for every artist, but it's important that artists be able to choose the options that make sense for their specific fan communities. As the Committee considers these issues, one guiding question might be: what would make it possible for more artists—particularly those without Bryan's fame and clout— to have the agency and freedom to ensure a better fan experience?

We look forward to further discussion with the Committee and thank you for your consideration.



Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

January 31, 2023

Re: Questions from January 24, 2023 Hearing

Dear Chair Durbin, Ranking Member Graham, Senator Klobuchar, Senator Lee, et al.,

Thank you for the opportunity to testify last week before the Senate Judiciary Committee regarding a number of challenges the live events industry faces. Live Nation shares many of the concerns articulated during the hearing regarding unfair and deceptive ticketing practices and a wide range of other issues. This correspondence addresses several questions posed last week to which we agreed to respond in writing.¹

1. Bots are a symptom of the underlying problem of industrial-scale ticket scalping

A number of colloquies during the hearing concerned the topic of “bots,” meaning in most cases automated scripts deployed by unscrupulous ticket scalpers to siphon tickets away from real fans and onto secondary platforms, where the tickets can often be sold for a significant premium over the price the artist preferred to charge. The term is sometimes also applied to other kinds of cyberattacks aimed at ticketing systems.

Ticketmaster does not shirk its responsibility to fight bots. In the first place, most bot attacks are directed at Ticketmaster onsales—putting us as the first line of defense, a role we accept. But if that were not enough, Ticketmaster’s integration with Live Nation, the world’s leading concert promoter, requires Ticketmaster to value and prioritize the rights and preferences of artists to get tickets directly into the hands of their actual fans over the narrow interests of the ticket scalpers that employ bots. That is among the primary respects in which Ticketmaster differs from StubHub, SeatGeek, Vivid Seats, and other companies that derive the bulk of their revenue from maintaining secondary resale

¹ Live Nation’s dedication to grow a healthy, vibrant live entertainment ecosystem is reflected by the enduring relationships that we have built with artists, content owners, and venue partners, a number of which have submitted letters expressing their support of the key role we have played in their success. In addition to the letters enclosed with my written testimony submitted in advance of the hearing, another letter is attached hereto. See Exhibit 1.



platforms. Those companies cater—in their commercial practices and lobbying alike—to the high-volume scalpers who sell far more tickets than could be acquired properly and who we believe are behind a majority of tickets listed for resale in the United States.² Ticketmaster does not. Ticketmaster sees its role, first and foremost, as providing tools to artists and other event organizers to choose how the tickets to their events are distributed. If an artist prefers that tickets to his or her concert be sold to real fans rather than professional resellers, at a price lower than what could be commanded if profit-maximization were the only consideration, then Ticketmaster is in the business of helping the artist achieve that goal.

We do so in a variety of ways. A few of the leading examples are as follows:

- We have developed products such as Smart Queue and Verified Fan, which are the market-leading tools for ensuring that real humans—not scalpers using bots—have the opportunity to purchase tickets. It is no accident that SeatGeek has no comparable product for its primary ticketing service: SeatGeek is on the side of the scalpers, not the artists.
- We have filed multiple lawsuits over the illegal use of bots on our platform. See *Ticketmaster v. Joseph Shalom*, *Ticketmaster v. Blazing Tickets*, *Ticketmaster v. Higs Tickets*, and *Ticketmaster v. Prestige Entertainment West*. In each case, we successfully secured permanent injunctions barring these scalpers from ever again creating or using bots to purchase tickets through Ticketmaster.
- We have repeatedly approached the Federal Trade Commission to use its authority under the 2016 BOTS Act, which lacks a private right of action, to bring enforcement actions against the bad actors in this space. While I mentioned one illustrative example of cooperation with the FTC during my testimony, I did not mean to suggest that that was the only instance in which we have sought to work with the agency on these issues.

² In our experience legitimate resale such as fan-to-fan sales and sales by brokers who acquire inventories properly amounts to 3-5% of total seats. That tends to be the volume of resale tickets we see on secondary sites for Verified Fan events (a tool discussed in the written testimony I submitted in advance of the hearing). Without that bulwark against bots in place, we often see 20-30% of the tickets for concerts appearing more or less immediately on secondary platforms. That additional, ill-gotten inventory is essential to the viability of SeatGeek and similar sites.



There is a real disagreement in the industry between the artist-focused companies who believe that scalping is a problem that needs to be addressed, and our resale-focused competitors who depend on scalping for their profits. We hope that you will join us in siding with artists and fans over scalpers and bots.

2. Digital Ticketing Prevents Fraud

Another series of questions last week concerned a Ticketmaster product called SafeTix—an innovation in digital ticketing designed to ensure that the recipient of a transferred ticket can be confident that it is valid and not fraudulent.

Historically, the secondary ticketing market has been plagued by widespread fraud. Scammers could acquire a single legitimate ticket with a barcode (often embodied in a .PDF file) and copy it, selling each copy to a different unsuspecting fan. While each ticket appeared valid, on the day of the event, only the first person to use the barcode would be allowed into the event; the other buyers would be turned away at the door.

SafeTix is Ticketmaster's solution to that problem. It ensures that, at events where the technology is used, when a ticket is transferred from one party to another, the recipient can be confident that they will in fact be allowed in, because no one else can be digitally authorized to enter in their place. The product works by virtue of a protected registry which ties each particular ticket to the identity of the bona fide ticket holder. When a legitimate transfer occurs, the registry is updated accordingly. As a result, no ticket can be sold to more than one person at a time.

In order for that technology to operate—that is, for the registry to serve its role in preventing fraud—a small but irreducible amount of information about each ticketholder is required. When the recipient of a SafeTix ticket already has a Ticketmaster account, that account already has the necessary information and is thus used to authenticate the purchaser. When the recipient of a SafeTix ticket does not already have a Ticketmaster account, Ticketmaster collects a limited amount of information in order to register the new ticketholder and be able to confirm that the new ticketholder is who they say they are: an email address, name, phone number, and zip code.

As I explained at the hearing, when someone shares that information with Ticketmaster solely to take receipt of a SafeTix ticket, our policy is not to use that information for marketing. I do not believe that anything on our website says otherwise, but we are now reviewing all of our materials to make sure our commitments are clear: we do not use transfer information for marketing purposes and have no intention of doing so. SeatGeek, by contrast, does not have a consumer-protecting policy like ours: a customer buying a resale ticket to an event for which SeatGeek is the primary ticketing



company is forced to download the SeatGeek app and input personal information—and SeatGeek then relentlessly spams such customers with unrequested advertisements. The SeatGeek witness did not disclose that at the hearing.³

3. The Need for a Prohibition on Speculative Tickets

Another issue that caused some confusion at the hearing was the issue of “speculative tickets.” This is when, for example, tickets for a popular event are scheduled to go on sale on a Friday and SeatGeek, Stub Hub and Vivid Seats advertise the availability of tickets days before the sale starts. They establish an “event page” on which lying sellers can fool good-faith buyers into thinking that they can in fact purchase tickets, at a time when it is literally impossible to do so—and then the sellers scramble to see how many of the promised tickets they can ultimately get their hands on to fulfill the sale they’ve committed to make. The scheme, along with several common variants, are essentially equivalent to a “futures” contract in securities markets, except that only one party to the transaction knows that the asset being sold is actually one the seller just hopes to be able to get its hands on.

Speculative ticketing is an extremely deceptive practice—one both confusing and harmful to the consumer who ends up buying tickets on the sites of major resale platforms—who are often fully complicit in the fraud—with no seat assignment or guarantees at prices much higher than the face value of the ticket. This practice is illegal in much of Europe and the UK, and it should be in the US as well. Ticketmaster does everything in its power to prevent third-party sellers from engaging in the practice on our own resale platform—including an unequivocal, outright ban as a matter of policy—but the threat of legal sanctions is an important additional deterrent. We were pleased to see Mr. Groetzinger from SeatGeek express his support for a ban on speculative ticketing in response to a question from Senator Klobuchar, and hope that his public stance reflects a genuine reversal of his company’s practices in the past.

³ He also suggested that the recent decision by Barclays Center in Brooklyn to switch away from SeatGeek was the product of some malfeasance by Ticketmaster. It was not. Our understanding is that Barclays experienced technical problems with SeatGeek that caused it to go back into the market. News reports appear to confirm this. See Dave Brooks, “Barclays Center Ditched SeatGeek for Ticketmaster After Recurring Tech Issues,” *Billboard* (Jan. 26, 2023) (available at <https://www.billboard.com/pro/barclays-center-seatgeek-ticketmaster-change-tech-issues/>) (“Sources point to problems with ticket sales for the Strokes, Genesis and more as a major factor in the decision.”).



* * *

Thank you again for the opportunity to engage with the Committee on these important issues. On behalf of all of us at Live Nation, we look forward to continuing to work with you to implement public policy solutions to the pressing and real problems fans too often confront when they seek to buy tickets to popular events in the United States.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Berchtold".

Joe Berchtold
President
Live Nation Entertainment, Inc.

Enclosure

EXHIBIT 1

LANDERS CENTER

January 23, 2023

To Whom it May Concern –

Could not be more thrilled to call Ticketmaster our ticketing platform partner. There are two items in that one small sentence that express more than most realize. First, Landers Center is a 10K-seat arena located in Southaven, MS, a suburb of Memphis, TN; and managed by the DeSoto County CVB, a public government entity. This information about our venue is consequential in understanding how a small venue like Landers Center finds itself annually in the top-100 venues worldwide in ticket sales. Because we have a true partner in Ticketmaster that provides the best ticketing platform in the world. Without Ticketmaster we could not have sold over 25K tickets for \$3.5 million dollars in just a few hours for three back-to-back-to back Morgan Wallen shows in December of 2021. The technology, the operational support, the marketing assistance, and the trust and experience from Ticketmaster is paramount to our business here at Landers Center as it is across the world for other venues and artists. Without them we would not be able to offer the entertainment variety to our community and do so in a timely and organized fashion.

The world continues to change, and Ticketmaster has kept up with the technology for fans and the revenue opportunities for venues AND artists. Please don't be fooled by the words of others that "Ticketmaster is driving up ticket prices." That comment is asinine and uninformed at best. Artists start ticket pricing, agents and promoters move & adjust the pricing and Ticketmaster follows the instructions given to them by box office managers. All along the way offering each entity an opportunity to profit, including Ticketmaster. There's nothing wrong with that and nothing hidden either. We are not talking about Southwest Airlines that basically blamed weather and ceased to function for nearly a week during the Christmas holidays and left people stranded while profiting billions last year. Ticketmaster took grief for selling more tickets at one time than ever before for Taylor Swift recently and did so better than any other ticketing company in the world. No one could have accomplished what they accomplished. Was it perfect? No. Could it have been better? Yes. And I can assure you that if the Messina Touring Group and Ticketmaster had the opportunity of hindsight might have chosen a different way to sell Taylor's on-sale to the public.....oh, and not just her fans, but to do it while keeping tickets from professional scalpers, BOTS and brokerage houses across the country.

If there's anything that should come from these Senate hearings on January 24th it should be nothing more than Senators trying to understand the live entertainment and ticketing industry and then passing legislation to limit BOTS and companies on the secondary market that prey on fans selling them fake, falsified, or non-existent tickets to shows and ballgames. It's heartbreaking to tell a fan that they wasted their hard-earned money on a ticket not from a reputable source and we can do nothing for them but sell them another ticket (if available) from Ticketmaster.....buyer beware.

I want to conclude with two key items: One, profit is not a dirty word and two, Ticketmaster is a valued and trusted partner. If I can be of value in any other way in these regards, please do not hesitate to contact me.

Sincerely –



J. Todd Mastry
Executive Director
Landers Center
BankPlus Amphitheater

4560 Venture Drive • Southaven, MS 38671
Local 662-280-9120 • Toll Free 1-888-280-9120 • Fax 662-280-5927



January 18, 2023

Via Email

To Whom It May Concern:

I have been working in the arena business for 33 years...for 3 years I worked with TICKETRON and then for the past 30 years with TicketMaster. That many years should tell you how much I believe in and trust TicketMaster. In those years there has never been another ticketing company who has come close to providing the cutting edge technology, the best customer service and become our best and longest partner. This partnership has allowed the Allstate Arena and the Rosemont Theatre to be in the top producing arenas and theatres in the entire country year after year!

Pat

Patrick Nagle
Executive Director
Allstate Arena
Rosemont Theatre



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TOURING 12/16/2022

Taylor Swift's Eras Tour on Track to Sell \$590M in Tickets. Here's Where That Money Goes

Swift's poised to become Billboard Boxscore's highest-grossing female act, but her strategy to keep seats off the secondary market cost her ticket partners money.

BY DAVE BROOKS



Taylor Swift Beth Garrabrant*

When [Taylor Swift \(https://www.billboard.com/artist/taylor-swift/\)](https://www.billboard.com/artist/taylor-swift/) sells the remaining 170,000 tickets for her 52-date Eras tour later this month, the U.S. trek will have generated \$591 million in sales, *Billboard* estimates. The average ticket price is \$215, according to concert business sources.

This total will make Swift the highest-grossing female touring artist of all time, according to the *Billboard* Boxscore chart, topping current title holder [Madonna \(https://www.billboard.com/artist/madonna/\)](https://www.billboard.com/artist/madonna/) whose Sticky & Sweet Tour (of 2008 and 2009) currently holds the No. 1 slot with a

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(<https://www.billboard.com/artist/ed-sheeran/>), whose 2017–2019 Divide shows grossed a total of \$776.2 million.

Normally with a tour of this scale, artists share some revenue with a promoter and an agent. In this case, Swift will presumably keep a higher share of revenue, because she's not represented by one of the major booking agencies and because independent promoter **Louis Messina** is booking the entire tour and providing some of the services an agency normally would.

Other companies involved in the tour won't do as well as they normally do, either. Ticketmaster and SeatGeek, which handled sales for the tour, normally allow ticket buyers to sell tickets on their secondary markets and take a percentage of that revenue. (Ticketmaster handled sales for 47 shows, while SeatGeek sold seats for the remaining five.) But Swift would not allow the companies who handled primary ticket sales to also sell secondary market tickets. As well, Swift asked Ticketmaster to help make sure tickets went to fans, rather than scalpers, and the company says it used its Verified Fan technology to reduce the number of tickets on resale sites by 75%.

That's an expensive decision. Ticketmaster makes a much higher margin on resale tickets than primary tickets, since it keeps all of the fees it charges — typically 10% of the sale price for the seller and another 20% for the buyer. The company still charges a 25% service fee for all primary ticket sales. However, it only keeps a small percentage of that money, \$3.50 to \$5 per ticket, which for this tour will come out to about \$7.6 million to \$10.8 million. The rest of the fees normally go to venues and promoters. (Ticketmaster, like most ticketing companies, also charges 2.75% for credit card processing, of which it keeps about 10% and pays the rest to credit card companies. The Eras tour generated approximately \$13.8 million in these fees, *Billboard* estimates.) All told, by the time Ticketmaster sells the remaining 170,000 tickets, the company's total revenue will add up to between \$9 million and \$12.9 million.

Ticketmaster's efforts to fight scalpers means that relatively few tickets wound up on the secondary market — but the ones that did are expensive. A month after the presale, on Dec. 14, the average resale ticket price was \$1,425, according to TicketIQ, which tracks secondary ticket sales across multiple marketplaces.

TicketIQ estimates that about 1,100 resale tickets are available per show, out of an average of about 50,000. At an average price of \$1,425, that would work out to about \$1.6 million worth of tickets per show on the secondary market. Assuming that Ticketmaster would have captured about 15%–20% of those purchases, based on 2018 estimates by the United States Government Accountability Office, that means that the company could have brought in an additional \$12.5 million to \$16.4 million in revenue, of which Ticketmaster would have kept \$3.8 million to \$5 million in fees, if Swift had allowed the company to sell tickets on its own secondary market.

SeatGeek, which has a 12% share of the secondary market according to its April earnings report, agreed to turn off resale for the five shows it ticketed on the tour, but not the 47 shows sold by Ticketmaster. (Ticketmaster blocked secondary sales for the SeatGeek shows.) That means SeatGeek could make

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1/20/23, 4:10 PM

Taylor Swift's Record-Setting Eras Tour Ticket Sales: Who Gets Paid? – Billboard

Working with Swift has benefits beyond the financial, of course. In addition to the prestige of working with an artist of that stature — and enduring the embarrassment of the flubs around the Nov. 15 presale — Ticketmaster will presumably see an increase in app downloads and usage of its digital ticket platform, which has been a priority for the company.



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Journey Member Sues Longtime Bandmate for Charging \$1M in Personal Costs to Shared Amex

BY BILL DONAHUE

23 mins ago

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U.S. Senate
Committee on the Judiciary
That's The Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment

Statement of Ryan J. Fitts
Vivid Seats LLC

January 22, 2023

Vivid Seats thanks the Senate Judiciary Committee for its attention to the health and vitality of the live event ticket market in the United States. The Committee's hearing is timely. As the pandemic ebbs, people are returning to live entertainment in droves, which is good news for the entire industry including fans, artists, teams, venues, and ticketing platforms. As fans return to regularly attending live events, they are discovering some changes. For example, during the pandemic the ticketing ecosystem has largely migrated to being digital. As a result, most consumers never hold a physical ticket to their event. Instead, they must download an app in order to receive, use or even transfer an already purchased ticket.

The success of the live events industry depends on fans being able to find and procure tickets to live events. With the evolution of smartphones and changes brought about during the pandemic, the ticket marketplace has evolved to look very different than it did two, five, ten, or twenty years ago. The secondary (or "resale") ticket marketplace is a great example of what can occur when a market is allowed to operate freely - thanks to ample competition, fans have experienced increased choice, flexibility, and transferability of their tickets.

Vivid Seats is an online ticket marketplace that utilizes our technology platform to connect fans of live events seamlessly with ticket sellers. We offer award-winning customer service and accompany that with the leading loyalty program in the industry that rewards every purchase. Before Vivid Seats and companies like it began offering convenient and trustworthy online resale marketplaces, tickets typically were available only from two sources—a primary seller or an unsafe, non-transparent, often unreliable 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. Far too often, fans encountered (and still face today) lengthy wait times during an on-sale process and frustration caused by inexplicable disconnections, disruptions and limited seating options. 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 to the benefit of fans and 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 may allow her to find one. 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. Just like other internet marketplace industries that facilitate the sale of household goods or crafts between third-party buyers and sellers, we do so in a convenient, consumer-friendly way.

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 (located in Coppell, TX) that operates daily from 7:00 a.m. until midnight and typically connects fans with live support in less than a minute.

Consumers greatly benefit when there is sufficient competition in ticketing markets:

- They have greater choice and flexibility in purchasing tickets for live events. People buy their tickets from us because they enjoy the experience that we provide.

Rather than hovering over a website at 10:00 AM on a Thursday, they can buy or sell at a time that makes sense for their lifestyle. Our Zone Program, a ticket acquisition service, permits fans to rely on our marketplace to pre-order hard-to-find tickets.

- Competition creates better pricing for consumers as many fans look for deals shortly before events. A report by the U.S. Government Accountability Office acknowledges that many tickets (about 40%) sell on the secondary market for less than their initial price (we note that “face value” is no longer a static definition since it is becoming common for primary ticket sellers to employ supply-and-demand dynamic pricing).
- To provide the best value possible for our customers, we have created the industry’s leading loyalty program. When customers buy ten tickets from Vivid Seats, the eleventh is on us.
- In addition, with our order fulfillment rate at nearly 100%, Vivid Seats takes pride in making ticket resale safer for customers by virtually eliminating ticket counterfeiting and providing consumers with unparalleled protection.

While most of the many millions of live events draw no scrutiny, occasionally some underscore the importance of maintaining vibrant competition in ticketing markets and some of the challenges posed by the fact that initial ticket sales are dominated by large, vertically integrated companies several of whom also operate some of the nation’s largest resale platforms. The fact is, without stronger protection, consumers will continue to have difficulty accessing tickets and, if they would like, transferring them efficiently. They will struggle to navigate an on-sale environment that pushes them to pay higher prices, particularly by facilitating artificial scarcity of tickets through hold-backs (the practice of restricting the number of tickets available at an on-sale without disclosing what number of tickets are available for purchase by fans). They will continue to encounter practices by primary ticket sellers – such as the delivery of electronic tickets within just hours of an event – that make it more difficult to transfer or give away tickets that are already purchased. And they will be doing so in a digital ticket environment that they cannot control and that forces them to share personally identifiable information (or “PII”) with primary sellers even if they are buying tickets in the secondary market. Since electronic tickets “live” on the digital

system controlled by the primary seller, these companies can force resale customers to disclose PII when tickets are transferred. This allows these primary sellers to acquire the PII of their competitors' customers, whether or not these resale buyers ever intended to share their PII.

Congress and regulators each have a role to play to ensure fans are protected. Vivid Seats supported the enactment of the Better Online Tickets Sales Act (BOTS Act) in 2016 and the Federal Trade Commission's subsequent actions to enforce it. The BOTS Act provided important protections to thwart the use of ticket bots. This important law should be enforced. Bots have no place in ticketing.

While the BOTS Act was an important first step, Congress and regulators should do more to increase transparency and competition throughout the live event ticket market. Vivid Seats supports legislation that would ensure fans can transfer tickets and that would provide greater transparency to fans during every step of ticket purchasing. Below, I address several issues that Congress should consider as it examines the ticket marketplace and considers legislation in this area:

Transferability. While there has been much progress and vibrant competition in the resale ticketing channel, the primary channel is still dominated by a few players. These players are leveraging their position in the primary space to grow their position in resale, and one of the key tactics employed to further this aim is restricting ticket transfer. The cornerstone of federal policy in this space must be to ensure that a ticket belongs to the fan who holds it. 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 ticketing ecosystem because it promotes competition. We compete aggressively with other resale marketplaces, 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. Unfortunately, today, some powerful players in the primary ticketing channel are using their size and influence to impose greater friction outside of their walled garden by restricting fans' ability to transfer tickets. Tactics employed to create this friction include withholding delivery of tickets until forty-eight hours before an event, prohibiting fans from transferring tickets

altogether or requiring that transfers occur only on the marketplace 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 so that fans can remain in control of the tickets they purchased, regardless of where they live.

Holdbacks. On-sale frustrations will not be solved for fans until Congress requires that primary ticket sellers disclose to fans when they are holding back inventory from the on-sale. To accurately evaluate purchase price, fans should understand if a venue is holding back inventory. After all, how can a buyer evaluate whether a price is fair unless they can properly understand the availability of the product? Congress should end the practice of creating false sell outs to drive higher prices.

Pricing Transparency. Vivid Seats believes that all ticketing companies should disclose the “all-in” price (inclusive of fees) at the beginning of the transactions. Both primary sellers and resale marketplaces should compete on a level playing field where final pricing is clear to the customer. Congress should legislate this requirement so that all market participants are held to the same standard.

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 use a website to hire someone to stand in line for them for a “Black Friday” shopping event or deliver food from a local restaurant that does not have its own delivery services, Vivid Seats allows fans to connect with service providers who know how to deliver tickets.

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.

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

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'You're either Beyoncé or you're working class': Concerts have a record year, but most musicians are struggling

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By [Bill Peters](#) Follow

As Ticketmaster parent puts up record profit and revenue, rising costs in a snarled live-music ecosystem punish artists who are not among the upper echelon of the industry's earners. 'Literally everybody raised their prices but us,' one says.



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'You're either Beyoncé or you're working class': Concerts have a record year, but most musicians are struggling - MarketWatch

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When tour and production manager Rosanna Freedman took the jazz collective Snarky Puppy on the road this year, she found logistical problems everywhere. To secure almost anything — from audio consoles to monitoring wedges to hotel rooms — the band had to compete with other artists, a crypto event, a Formula One competition and a resurgence in tourism. For one show in Europe, the band needed a Hammond organ, but nobody could find one. For another, the monitoring system they received was not the one they had ordered, requiring two hours to untangle the technical issues.

And amid the clamor for basic tour supplies, costs — for trucks, crews, flights, equipment and textiles for printing shirts — have spiked 20% to 40% compared with prepandemic levels, she said.

"It's kind of every man for themselves this year," she said. "Kind of odd, after we all came together to support each other in live events when we thought the world was ending."

During the first two years of the pandemic, many artists weren't able to tour, depriving them of their primary source of income in an industry where making a living is already difficult for all but the most popular artists. But when live concerts returned, a similar divide returned with them, with the biggest artists grossing hundreds of millions of dollars while everyone else fought for leftovers as they ran straight into the premium-priced dysfunction that has defined the pandemic-era economy.

Live Nation Entertainment Inc. LYV, +2.58%, the Ticketmaster parent that is [reportedly facing a Justice Department antitrust investigation](#) after a snarled rollout of Taylor Swift concert tickets, put up record annual sales and profit through the first nine months of this year. Pollstar, a trade publication that tallies concert-industry data, [recently described 2022](#) as "a historic, record-setting high-bar of a year returning with astronomical grosses, ticket sales and average prices."

But those stratospheric gains haven't filtered down to smaller artists who play in clubs and theaters. More bands out on tour have meant lower sales and income. And as both well-established and lesser-known artists head back out, the dislocation has put a finer point on their longstanding frustrations with an industry they say leaves them more vulnerable than others to inflation.

Pre-COVID, they say, tours were already difficult to plan and often lost money. Streaming micropayments had commoditized their work. And funding, labor-law and insurance protections, for COVID-related cancellations or anything else, were, and remain, weak.

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Carsie Blanton, a singer-songwriter based near Philadelphia, said last month that she'd been touring since June of last year at venues that hold 100 to 400 people, playing more than 150 shows over that time. But after dealing with rising travel costs, flight and other COVID-related cancellations, as well as the theft of a laptop and some electronics, she said she would likely only net a few thousand dollars for those months of work.

"Most countries as wealthy as ours provide arts funding, and without it, the middle class has dropped out of our industry like so many others," she said. "These days, you're either Beyoncé or you're working class."

'Literally everybody raised their prices but us'

Some bigger artists have canceled tour dates, prompted by the pandemic's spiral of burnout, steeper costs and persistent shortages. Fuel prices have spiked. Flight delays and rescheduled shows are far more common. Hotels are harder to find. Backed-up vinyl presses have raised the risk of album delays and lost merchandise sales at shows. Many people on sound and touring crews left the industry in 2020 and didn't come back. Venues are juggling their own higher costs following nearly two years on life support due to the pandemic. And the financial fallout of getting with COVID-19 can be devastating.

For the music industry's biggest gatekeepers, who are better able to wield money and size to ride out the pandemic, the financial returns have been the exact opposite. Live Nation, carried by a wave of pent-up demand and ticket-price increases, last month reported record sales of \$6.2 billion and record quarterly net income of \$331 million for its third quarter, according to FactSet data. The company also booked record quarterly attendance — more than 44 million people across 11,000 events.

"Momentum is strong with early signs pointing to continued growth in 2023 across our businesses," executives said in the company's earnings release. "Ticket sales for shows in 2023 are pacing even stronger than they were heading into 2022, up double-digits year-over-year, excluding sales from rescheduled shows."

As demand for premium tickets booms, Live Nation has leaned into VIP sales at amphitheaters and festivals, and fans are spending more at those venues. For the most popular artists who can fill those event spaces, the rebound has been a windfall. Reggaeton artist Bad Bunny brought in more than \$393 million on his worldwide tour this year, according to Pollstar — by far the most of any artist. A distant second, by some \$120 million, was Elton John, the publication said.

From 2019: Are concert tickets too cheap? Ticketmaster executives think so

The gains have been uneven amid lingering pandemic-related caution for smaller venues, Pollstar data suggests. Gross proceeds for larger outdoor amphitheaters and stadiums shot up 18% and 81% this year, respectively, when compared with 2019, the data shows. But for the indoor clubs that smaller acts

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 depend on, the gains were more muted — at 5% — and for theaters and arenas, they fell compared with prepandemic levels. The number of tickets sold at clubs, theaters and arenas also fell this year compared with 2019.

And even as ticket prices balloon, artist pay hasn't always risen in tandem.

"Literally everybody raised their prices but us," said Ryan Wisler, a hip-hop producer and rapper who performs under the name Kno.

'Going backwards'

Wisler performed throughout the Western U.S. and Europe this year with members of his longtime group CunninLynguists and the rapper Sadistik, a tour that had initially been planned for 2020 but was postponed. When he and a pared-down crew returned to the road this year, he said some tickets were going for roughly double what the group might normally charge. But the terms of their pay, set prior to lockdown, stayed the same.

For a normal short tour, he said, if his cut ends up being between \$10,000 and \$20,000, he considers it a win. This time around, he said he'd made about half what he might regularly take in.

Wisler said options for cost cutting were limited. They opted not to bring along a dedicated merchandise salesperson, tour manager or DJ. In pre-COVID times, renting a van might cost up to \$1,200 for less than a month, but renting a seven-passenger microbus in Germany for three weeks, he said, ran as high as \$10,000. He eventually found a cheaper rental in Switzerland — \$3,500 for around two weeks — but had to shuffle the group's itinerary in the process.

From 2020: A summer without music? The show must go on for musicians despite coronavirus cancellations

And due to manufacturing hiccups, a 10th-anniversary vinyl edition of an album took roughly a year to ship, he said, and the group's merch-fulfillment connection didn't receive it until the week the group was leaving on tour, which meant they were unable to take the album with them. Not having that album to sell at shows, Wisler said, easily amounted to thousands of dollars in lost sales.

"I saw the vinyl for the first time because a fan had gotten it in the mail and brought it to the show," he said.

For Taja Cheek, a Brooklyn-based experimental musician who performs under the name L'Rain, a broken foot meant she had to seek out hotels with elevators and ground-floor rooms during her European tour. Breakdowns and vehicle shortages, she said, have forced other musicians she knows to take trains and airplanes, which can be more expensive.

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"Major-label artists were reaching out to my tour manager to see if we had leads on Sprinters, which is pretty crazy," she said.

Cheek's second album, "Fatigue," drew a significant amount of critical acclaim following its release last year. But she said she's been breaking even or losing money on tour — something she said she didn't fault anyone for in an industry where tours commonly lose thousands of dollars before merchandise sales. She said she was still trying to find the right mix — of merch sales and bigger events — to make the costs work, while supporting everyone else on tour with her.

"I've seen in some conversations, too, people are like 'Oh, well you can always just tour with a smaller band,' and that's true," she said. "But that's also taking work away from people that are expecting it or needing it."

Artists have noticed cutbacks and complications elsewhere. The vehicles for rent in the U.S. are a bit older than usual. A hot meal at a venue or hotel in Europe, where touring support is typically more generous than in the U.S., might be replaced with a banana. Tour managers have done double duty as drivers, since rates for professional drivers have skyrocketed. Brexit has created heaps of paperwork and extra fees. Low-cost airlines in Europe aren't as low-cost anymore.

"We're staying in slightly worse hotels than we would have been," said Felicity Hall, who manages artists like Mark Lettieri, Public Service Broadcasting and Alabama 3, best known for writing the theme song for "The Sopranos." "So it's a downgrade of quality of experience as well, which is really sad, because it feels then to the band like they're going backwards."

See also: [Livestreamed performances are surging among musicians during coronavirus crisis](#)

Alliz Espi, tour manager for Los Angeles-based singer and multi-instrumentalist Louis Cole and a handful of other artists, said they couldn't always use the airline credits they'd held onto after shows were postponed if tour routes ended up changing.

"With rebooking new flights, flight prices increased, which meant we sometimes spent more than the original ticket vouchered," she said.

And in 2022, any foray through Europe — Cole had one this year — has had to contend with a string of airline strikes. Even if you show up at an airport four to five hours early, you can still miss your flight if only two or three security checkpoints are open, Espi said.

'Thousands of dollars to sit in a room'

Meanwhile, thousands of people are still getting COVID-19 every day. William Tyler, a Nashville musician who has played guitar for bands like Lambchop and the Silver Jews and who works as a solo

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artist, said he got hit with a breakthrough infection from the Delta variant last year. The week-plus quarantine, spent in a hotel in New York, forced him to cancel a tour.

"I was spending thousands of dollars to sit in a room, basically," he said. He added: "I never really have felt cavalier or confident, even, about touring since then."

On a good night for a solo concert, he said, he can make up to \$2,000. But he said some tours he'd signed on for this year required him to fly to one city, rent a car and return it to a different city.

"Factor in hotels and gas and all of that, and just realizing that what I was going to net was, frankly, break-even, at this point in my career, I just sort of don't want to do stuff like that," he said.

Spencer Peppet, who sings and plays guitar for the Ophelias, an indie-folk band that formed in Cincinnati, said the band was still asking people to wear masks at shows. Fans largely have done so, she said, even though most venues don't require it.

"The touring climate has changed a lot," she said. "I feel more of a responsibility to keep my bandmates safe, and it can be overwhelming when most things are completely out of our control."

'The hardest thing of this tour'

Meanwhile, experienced crew members are in short supply and have hiked what they charge to keep up with their own cost of living. Freedman, the manager for Snarky Puppy, said less experienced crews are more common.

"It's been the hardest thing of this tour," said Freedman. "Local crew who tell me it's their first day on the job, and no one to show them what to do."

Concert venues, meanwhile, are trying to dig themselves out from the lockdowns of 2020 and are sometimes struggling to pay more to attract workers. Nailing down show schedules has become more difficult.

"The trouble we now have is guarantees need to be much higher than they were, in order to cover additional travel," Hall said. "But people aren't paying higher guarantees because they can't afford crew."

Dayna Frank, the board president of the National Independent Venue Association and the chief executive of a company that runs venues and promotes shows in Minneapolis and St. Paul, Minn., said costs across the board at those venues had jumped between 25% and 30% compared with pre-COVID levels. In September, she said the company, First Avenue Productions — whose venues include the First Avenue Mainroom and 7th St Entry — had canceled 17 shows.

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With cancellations more common, she said, local music and events that aren't as dependent on touring, like dance nights, could become more important heading into next year. But she said even with those adjustments, the explosion of the secondary-ticket market is siphoning money away from the people doing the work to put on shows. So-called "speculative" ticket scams have led to confusion at the door.

"It hurts the venue and the artists and the local economy," Frank said. "We rely, especially as a small business, on people going to a lot of shows and making live music and live events a part of their culture. So anytime somebody pays more for that, and especially when it's not going to benefit the artist, it's damaging. So it's a huge priority to help fans find tickets at face value."

More musicians are trying to organize in an effort to secure greater protections. Peppet, of the Ophelias, said she joined the Union of Musicians and Allied Workers in 2020, not long after it formed, in an effort to secure pandemic unemployment aid for musicians. She said she's pushing for things like healthcare, artist grants and gear libraries, and for abolishing merch cuts — or the slice many venues take from merchandise sales. Marc Ribot, a guitarist and acting chair for the Music Workers Alliance, said tech platforms, labels and live-music presenters were exploiting artists' work.

"The real question isn't (only?) why the flight to the gig was expensive: It's why the gig didn't pay enough to cover it even though ticket prices have gone through the roof," he said over email.

MarketWatch Picks: [3 useful sites — that you may not know about — to buy tickets to concerts, sporting events, shows and more](#)

The MWA, founded in 2019, helped secure pandemic-related aid for artists in the New York state budget. But Ribot said arts policy, and funding, has focused on venues, and that governments at all levels failed to understand the importance of touring to a vibrant arts ecosystem. He said no tour insurance currently covers cancellations related to COVID.

"Often, the incredible risks of this environment have outweighed the benefits," Ribot said. "Inflation is just one more weight on the negative scale."

Lost luggage, staying home

For artists with years of touring under their belt, the backdrop has also played a role in changing how they think about touring altogether. Lateef Daumont, a rapper in Oakland, Calif., better known as Lateef the Truthspeaker, said artists eventually face the question of whether touring — in cities that know you and cities that don't — is worth the time. The answer, he said, is different for everyone.

"Does it make more sense for me to be spinning my wheels in Mississippi or Memphis than it does right here in my backyard, with people that I love that can come out and see it, create something that's artistic that's a real example of my stuff?" he said.

<https://www.marketwatch.com/story/youre-either-beyonce-or-youre-working-class-concerts-have-a-record-year-but-most-musicians-are-struggling-116...> 7/9

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For more: [Taylor Swift calls botched Ticketmaster sale 'excruciating' to watch](#)

Daumont, who has also taken on responsibility for his crew's Quannum music label, said that more recently, he's been helping put together more events. But he said artists could be asking for more than what they're used to, and that more money was flowing into new venues than people thought.

"I feel like artists entered into this after the pandemic and, understandably, after not working, coming back and being like 'Hey, let me just get that \$5,000 I was getting paid beforehand,'" he said. "Meanwhile, on the corporate side, they're more than willing to shell out more money" to open and support new clubs and other investments.

For those who are still touring, the benefits are sometimes inadvertent. Espi, the tour manager for Cole, said that when they arrived on the Italian island of Sardinia during their tour this summer, their luggage didn't make it, leaving them without clothing or equipment. For the next seven days, she said, they squeezed in trips between shows to buy clothes at whatever shops they could find, including a beach shop in Fano where they found pink shorts, sailor hats and other beachwear that they wore onstage. As for the luggage, it got back to everyone nearly a month later.

"They did look absolutely awesome, though," she said.



Barron's: Tesla Price Cuts Aren't a Sign of Weakness. They're a Show of Strength.

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Bill Peters

Bill Peters is a Los Angeles-based MarketWatch reporter who covers earnings.

Testimony for the Record from the Break Up Ticketmaster Coalition

The Break Up Ticketmaster Coalition¹, made up of organizations representing artists, managers, music industry workers, young voters, and over 100,000 music, theater, and sports fans who have experienced harms in the live events industry due to Live Nation Entertainment's ("Live Nation") concentrated market power would like to provide the following Testimony for the Record to the Senate Judiciary Committee's hearing, *That's the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment*. For too long Live Nation's monopoly has gone unchecked, and as a coalition we advocate to structurally change Live Nation's business model to restore competition to the live events industry.

Each coalition member has experienced Live Nation's market dominance and abuse that harms artists, live event industry workers, venues, and fans. While the ticketing business line, Ticketmaster, is often the most visible to the general public, Live Nation's control of multiple businesses within this industry—from concert promotion to venue and festival ownership, and artist management services—solidifies its monopoly status and presents the true threat to competition.

Through Ticketmaster, Live Nation controls the majority of the "primary" ticketing market for live events. The two companies merged in 2010 after a negotiated consent decree with the Department of Justice (DOJ). Before the merger, Live Nation and Ticketmaster were briefly direct competitors. In 2008, Live Nation decided not to renew its exclusive contract with Ticketmaster, and instead enter the primary ticketing marketplace. Ticketmaster had dominated the ticketing services for nearly 83% of major concert venues in the country up until this point. Tickets.com, the nearest competitor, provided services for less than 4% of the market.²

When Live Nation launched its own primary ticketing platform, it intended to compete with Ticketmaster by leveraging its position as a major operator of concert venues and a major event promoter. They were successful in competing with Ticketmaster. By the time the merger was announced in February 2009, Live Nation had won more than 16% market share in the primary ticketing space.³ The proposed merger was challenged by the DOJ on anti-competitive grounds, a position supported by a number of stakeholders. Now, Ticketmaster is more than just the primary ticketing platform. It operates a secondary marketplace as well, and uses its leverage in the primary market to harm consumers and potential competition on the secondary market.

But as a ticketing platform it makes money by running both a primary and secondary/resale service. When serving as the ticketing platform for an event, Ticketmaster's primary marketplace takes a percentage of the ticket sale revenue, as well as collects a series of platform service fees that are tacked on to each sale. It also runs a "secondary" or resale platform, where tickets that were supposedly (although not always) purchased from the primary marketplace can be re-sold, often at a profit.⁴ Ticketmaster leverages its 80

¹ <https://www.breakupticketmaster.com>

² *United States, et al. v. Ticketmaster Entertainment, Inc., et al. (2010)*, page 10.

<https://www.justice.gov/atr/case-document/complaint-224>

³ *United States, et al. v. Ticketmaster Entertainment, Inc., et al. (2010)*, page 13.

<https://www.justice.gov/atr/case-document/complaint-224>

⁴ Krista Brown, Moe Tkacik, "Ticketmaster's Dark History," *The American Prospect*. December 21, 2022.

<https://prospect.org/power/ticketmasters-dark-history/>

percent of the major venue ticket sales market and its vertical integration to advance its position in the promoter, venue, management, and secondary resale lines of business.

For years, Live Nation/Ticketmaster have also used its dominant market positions to drive financial returns by fleecing consumers with junk fees. Between 1996 and 2003, the average concert ticket price rose 82 percent, while the CPI rose only 17 percent.⁵ Evidence suggests Ticketmaster’s use of its market power to impose junk fees as the primary driver of these increases.

Since Live Nation merged with Ticketmaster in 2010 over the platform’s deceptive fee practices, a myriad of lawsuits highlighting the deceptive nature of their fee structure have been filed. Specifically, a 2020 class action complaint noted that Ticketmaster’s anticompetitive behavior led to its dominance, and “as a result, over 70% of tickets for major concert venues in the U.S. are sold through Ticketmaster, despite that—as it has done for years—Ticketmaster charges supracompetitive fees made possible by its dominant market position.”⁶

In a 2020 lawsuit alleging antitrust violations against Ticketmaster, its own expert admitted that the company generates gross profits of more than 80%, largely generated by unnecessary fees.⁷ Similarly, in 2017, Ticketmaster CEO Michael Rapino admitted that some of their ticket fees are “not defensible.”⁸ By contrast, the non-Ticketmaster-controlled marketplaces generally have lower prices for consumers. The GAO highlighted this difference when comparing fees in the UK, where fees can be anywhere from a third to half that of the US, to the US, with average fees of 22% and as high as 38%.⁹ Live Nation leverages this highly profitable ticketing business to advance its position in its lower-margin venue and concert promotion businesses. Live Nation controlled 320 venues in 2021.¹⁰

⁵ Krista Brown, “*Better than Revenge: Swifties Help Expose Ticketmaster’s Monopoly*,” Rolling Stone Magazine, November 23, 2022. <https://www.rollingstone.com/music/music-features/taylor-swift-ticketmaster-live-nation-monopoly-antitrust-commentary-1234635257/>

⁶ *Van Iderstine et al v. Live Nation Entertainment, Inc. et al. (2020)*. Ticket News. <https://www.ticketnews.com/wp-content/uploads/Live-Nation-Accused-Of-Monopolizing-Ticket-Sales.pdf>

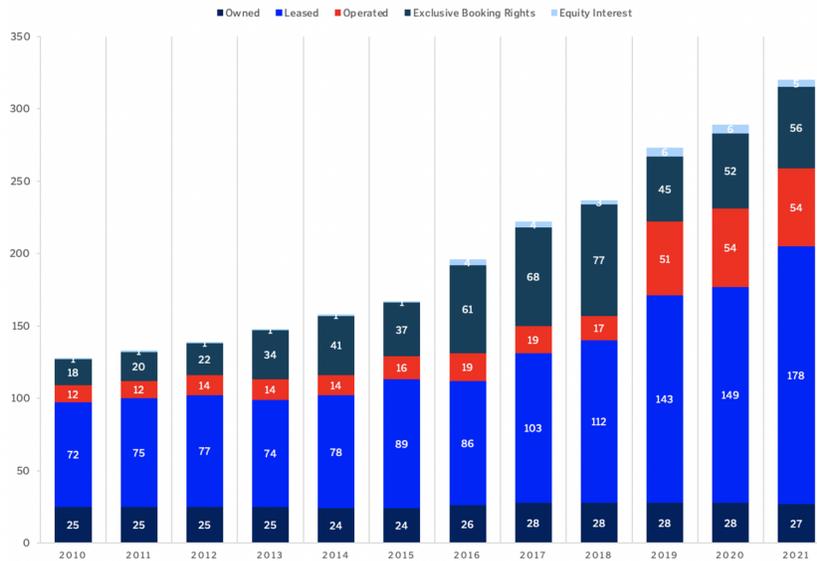
⁷ *Van Iderstine et al v. Live Nation Entertainment, Inc. et al. (2020)*

⁸ Dave Brooks, “*Live Nation’s Michael Rapino Admits Some Ticket Fees ‘Not Defensible’*,” Billboard. 2017. <https://www.billboard.com/pro/michael-rapino-deposition-ticketmaster-fees-songkick-shuts-down/>

⁹ *Event Ticket Sales: Market Characteristics and Consumer Protection Issues*. Government Accountability Office, Report to Congressional Requesters. April 2018. <https://www.gao.gov/assets/gao-18-347.pdf>

¹⁰ Live Nation 2021 Annual Report. https://d1io3yog0oux5.cloudfront.net/_d2b887510cdc4efb0a99d3749abb92db/livenationentertainment/db/670/6205/annual_report/Live+Nation+2021+Annual+Report.pdf

LIVE NATION VENUE CONTROL FROM 2010 TO 2021



(See Appendix)

Given that live music events constitute a primary revenue stream for many musicians, sometimes constituting the overwhelming majority of their income, this control of the venues provides Live Nation with significant leverage over artists' livelihoods.¹¹ As the dominant player in concert promotion services, controlling over 60 percent of the market, it is an ever increasing challenge for artists to make money without Live Nation taking a significant portion of concert revenue.¹²

The Break Up Ticketmaster Coalition commends the Senate Judiciary committee for holding this vitally important hearing. A competitive live-event industry is critical to consumers, small business owners, and artists, especially as we begin to put the COVID-19 pandemic behind us and return to concert halls, theaters, and sports arenas. Live Nation's monopoly over this industry demands structural solutions. We hope this hearing will be the beginning of Congress examining anticompetitive behavior in this industry to restore a fair market. Each member of the coalition will be happy to engage with the committee to further this investigation and seek appropriate remedies.

¹¹ *Heckman v. Live Nation Entertainment*. US District Court Central District of California, Western Division. (2022). <https://www.ticketnews.com/2022/01/live-nation-ticketmaster-anti-competitive-lawsuit/>. Page 12.

¹² *Heckman v. Live Nation Entertainment*. Page 15.

United States Senate Committee on the Judiciary**That's the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment****January 24, 2023****Submission to the Record by the Coalition for Ticket Fairness**

The Coalition for Ticket Fairness (CTF) is a non-profit organization that promotes fair practices in the ticketing industry, including open transferability and protecting the rights of customers, fans, and season ticketholders. CTF is concerned that restrictive ticket markets and lack of market competition are having a negative impact on live entertainment fans. We are grateful to the Committee for holding this hearing to explore competition in the ticketing space and to shed light on a myriad of anti-consumer issues including substantial and often undisclosed fees, questionable availability of tickets, and use of fan's personal information.

CTF has worked closely the New York State Legislature to develop pro-transferability laws. We hope that our testimony provides guidance to the Committee and staff as you consider legislation on this important topic, and we look forward to being a resource in that process.

The ticket market is complex and interconnected. There are multiple stakeholders with often differing interests. It is important to have regulatory guidelines in place to encourage competitive practices and ensure fans have access to the information necessary to make informed decisions.

Exclusive Venue Ticketing Contracts Negatively Impacts Fans

In the United States, the decision to select a primary ticketing provider is made by the venue. These venues are often approached with a financial incentive to sign a long-term contract and monies may be given up-front to be earned off a share of future ticketing service charge revenue. Should a performer wish to play that venue, then they must use the venue's ticketing provider. They are usually prohibited by contract (that they were not an original party to) from selling more than a small percentage of the tickets. This may stifle competition and deny the artist the choice to sell with another provider, or even multiple providers. This situation currently persists in the United States because of the deep-rooted Ticketmaster model of long-term exclusive contracts. Historically, the more competition there is, the more choice there is, and the more providers can innovate, improve service, and lower costs.

Provide Transparency in Availability, Prices, and Fees

How many seats are available when a show goes on sale? How much are they? What will a customer pay for the convenience of not having to go to the box office to get those tickets? If you ask these questions before tickets go on sale, the answer is usually "no one knows." There is

a lack of information, and this apparently is by design. Prior to tickets actually being on sale, ticket prices are not posted on the Ticketmaster website; neither are the service fees for those tickets. In fact, except where required by state law, customers don't even know about service charges until they are prepared to check out. If the customer then decides to release their tickets due to price, they risk the chance of missing the opportunity to purchase altogether.

The reality is the promoter is under no obligation to disclose any advance information to the customer. While we don't believe it is the role of government to regulate how much someone can charge, government can require that fans are given reliable information in advance of the sale. Price is not disclosed, neither is how many tickets will be sold. Holdbacks and variable pricing are a means by which a promoter can attempt to use lack of information to slowly release inventory, often at very high prices to give the illusion of scarcity. The fear of missing out can cause a fan to make a split-second emotional decision to spend more than they may have wanted. Any meaningful legislative solution should include a requirement that primary ticket sellers disclose how many tickets are available for each sale or presale, how many are in each price category, and what the prices and service charges are.

Convenience fees or service charges evolved from providing the service of saving a customer of having to go to the box office of the venue to purchase their tickets. It started with charge-by-phone and outlets in a region where people could go and purchase their tickets in person. Now, because venues get an ever-increasing piece of the service, they are incentivized to NOT sell a ticket in person without service charge. In fact, venues often choose to not sell tickets at their box office for the first 24 hours of a sale, when all the choice seats are sold and for in-demand events there will almost certainly be no tickets available without service charge. The convenience fee becomes a required fee. Many Live Nation owned and operated venues charge a service charge at the box office too. In reality, there is often no way to obtain a ticket for the true "face value." If the fee is a fee of convenience, there should be a way to purchase a ticket for the advertised price, without any add-on fees. Any steps taken by the government, should allow customers to purchase tickets fee-free.

Importance of Customer Privacy

Senator Hawley was very astute to notice the potential problems with Ticketmaster's "Safe-Tix." Ticketmaster has presented Safe-Tix as a way to eliminate fraud. While it does prevent a ticket from being printed several times, it does not prevent other types of fraud related to ticket sales. We believe the fraud argument is merely a pretext for a massive data grab. Teams and venues have complained that they do not have a relationship with the people attending the venue. By requiring people to open an account and provide information, they can build a profile of people attending events. They know what event they went to, and where they sat. Ticketmaster has a system called "Presence" that builds profiles on attendance. What are they doing with that data? On the section of their website marketing to venues they claim that with Presence you can "Utilize billions of data points to identify fans, target marketing efforts, and exceed sales and revenue goals." Because fans must use Ticketmaster to gain entry, even if they don't engage in a

financial transaction, their data is captured, and being used for who knows what? There needs to be thought put in to permitted use of this data. American consumers are tired of being marketed to at every possible opportunity.

Transferability Creates a Healthy Marketplace

Markets need competition to keep prices in check. The ability for primary ticketers to compete among each other is not the only competition needed. It is important to understand the secondary ticket market acts organically as a check against the primary market as well.

Not all tickets are sold at the time of initial on-sale. Often, teams and promoters will hold back tickets to dynamically price them. They may be called many things: “Platinum,” “Premium” or come as part of a package where the client gets a small value piece of merchandise along with their ticket. Effectively it’s pricing to the upper part of the market and at different times. There may be people who have made a decision to attend a show in the months between the event going on sale to the time it happens. Over that time, plans may change, people may no longer wish to attend, or others may find they can’t attend. For whatever reason, the market for tickets is dynamic over time. Entrance of sellers and buyers into the marketplace gives consumers choices. The more choices they have, typically the lower the prices are within that subset of a market. Sellers compete to sell against other sellers. This can include the primary sellers as well. Since primary sellers can (and do) drip tickets into the market, those few tickets have no competing tickets against them unless there is a seller of tickets to compete against them. This can only be done with unrestricted transfer.

There are currently teams in both professional and college sports that will take large amounts of tickets they never sell and work with sites on the secondary market to price them. Often these companies will instruct the team to revoke the season tickets of another person because they are sold often. They don’t do this for the fan. They do this to eliminate competition and control as many seats on the marketplace as possible. The argument is that something like a \$4 resale ticket is too cheap and damages the team’s brand. In reality, this is an anti-competitive practice that teams will use to sell fewer tickets above a market clearing price, but to ensure prices don’t fall too low. It is important that along with any requirements that tickets be freely transferrable that tickets cannot be cancelled, service refused, or in the case of season tickets, not renewed simply because they are resold. While often shouted as “fan friendly,” these actions run contrary to competition and will often raise prices by having fewer tickets available for sale.

Closed Loop Marketplaces Negatively Impact Consumers

Certain teams will permit customers to sell tickets they cannot use, but only on their own endorsed platform. These platforms have listing rules including price caps, but more important, price floors. Teams may have their own inventory that is either better than or cheaper than tickets fans are attempting to sell. As a result, while fans are permitted to resell, with rules and controls blocking fan’s ability to sell at a market price, they may be left unable to recoup their money

because a team is pricing them out of the market. Similarly, if a price is capped and ticket holders are threatened with revocation of their seats, they are forced to sell below the true value of their tickets that would be obtainable in a free and open market. Both price floors and price caps run contrary to a competitive marketplace and hurt both sellers and consumers.

Conclusion

The ticket market is complicated, often with competing interests. The Coalition for Ticket Fairness strongly believes that regulations fostering competition will be beneficial for all consumers. It is important to understand that in a free market, sometimes demand overwhelms supply and while artists are incentivized to add more shows, if they fail to do so, prices will rise. Consumers will have choices and the impact would be less than if one entity, whose job it is to maximize revenue, has complete control of the tickets. Competition in the primary market, as well as disclosing the number and types of seats both sold and unsold, will give consumers better information in their buying decisions. Allowing people to resell valid tickets will act as a check on monopolistic behavior and while prices may sometimes be above their initial cost, will be lower than if a single entity has complete and total control over how and to whom tickets may be sold.



January 23, 2023

US Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington DC, 20510

**Re: COMMENTS TO THE SENATE COMMITTEE ON THE JUDICIARY ON
PROBLEMS IN AMERICA'S TICKETING MARKETS**

My name is Gary Adler and I am Executive Director and Counsel of the National Association of Ticket Brokers ("NATB"). I am writing to comment on the problems in the markets for the sale of sports and entertainment tickets; an issue under consideration by the Senate Committee on the Judiciary. Specifically, as it efforts to control the resale market by Live Nation/Ticketmaster and the need to protect consumers and protect a vibrant and competitive market for tickets to live events. These comments focus on two of the most pervasive and serious problems in the live event ticketing industry; restrictions on transferability and the lack of transparency as to ticket holdbacks.

ABOUT The NATB

The NATB was formed in 1994 by a group of concerned ticket resellers who desired to establish an industry-wide standard of conduct and to create ethical rules and procedures to protect the public and foster a positive perception of the industry. While the goals of the NATB are many, our primary objective is to represent the interests of professional ticket resellers by promoting consumer protection, facilitating an open and competitive ticket industry and educating the public about the secondary market for ticket sales.

Through self-governance, the NATB provides enhanced protections for ticket-buying consumers. Upon its formation in 1994, the NATB set up a stringent Code of Ethics which contains numerous consumer protection measures. For example, the NATB Code of Ethics forbids the use of automated software that purchase large blocks of tickets and bump average consumers out of online queues when trying to buy tickets. The NATB Code of Ethics also provides strict refund policies (a 200% guarantee in the unlikely events tickets are not delivered as promised) and prohibits the use of ticket bots and deceptive websites.

**LIVE NATION/TICKETMASTER'S EXPRESS DESIRE TO CONTROL THE RESALE
OF TICKETS**

There can be no doubt that Live Nation/Ticketmaster is intent on controlling not only the initial sale of tickets but also the subsequent resale of those tickets. Indeed, Ticketmaster has repeatedly indicated that it is going after the resale market on behalf of its content provider clients.

In an interview shortly after events reopened, Michael Rapino, Chief Executive Officer and President of Live Nation, Inc. stated that it was Live Nation/Ticketmaster's intent to capture the multi-billion-dollar resale market for the artists from the resellers who do not deserve it.



In a written response to Congressman Pascrell in relation to the Bruce Springsteen dynamic-ticketing issue, Live Nation/Ticketmaster made its intent perfectly clear: “As the resale ticketing market has grown to more than a \$10 billion dollar industry over the past few years, artists and teams have lost that revenue to resellers who have no investment in the event going well or any of the people working behind the scenes to bring the event to life. As such, Event Organizers have looked to market-based pricing to recapture that lost revenue.”

This policy is being implemented as shown by the recent Paramore tour where the artist and Live Nation are trying to prevent resale. Paramore said: “As many of you know, we partnered with Ticketmaster for our Los Angeles shows to control the ability to resell tickets strictly through Ticketmaster’s Ticket Exchange Program, preventing anyone from reselling tickets for profit.”

RESTRICTING RESALE HARMS THE PUBLIC

We bring Live Nation/Ticketmaster’s expressed intent to control resale to the Committee’s attention because consumers benefit from competition and an open and free secondary market where many companies have to vie for their business. That is why the NATB supports laws that make it illegal for companies to provide tickets solely through a delivery method that allows the original seller to control and monopolize the resale market by preventing customers from lawfully reselling tickets. It is critical that consumers maintain the ability to comparison shop for live event tickets just like most other items they purchase. If Ticketmaster is not offering tickets a consumer wishes to purchase, they should be able to purchase tickets they prefer from a competing seller without fear that Ticketmaster will somehow abuse its market power and technology to invalidate tickets sold by another seller, for example. This is precisely what has happened for some shows, and it is a far-reaching abuse of technology.

Indeed, the advent of mobile ticketing enhances the ability of a company like Live Nation/Ticketmaster to control a ticket from issuance to scan. It empowers the original seller to fully dominate and control all resale and transfer of tickets, often limited to a single platform of the original seller’s choosing like Ticketmaster, where additional fees and arbitrary pricing terms are set.

The Institute for Policy Innovation reports that: “these restrictions reduce consumer choice, degrades the product that consumers purchase, and causes harm to competition, which forces consumers to either pay higher prices, enjoy less value, or (most likely) both.” In addition, according to the American Antitrust Institute, “transferability restrictions on tickets unjustifiably limit consumer choice and depart from bedrock competitive market principles.”

Let’s consider what limiting ticket transferability can mean for consumer prices. In 2016, the *Minneapolis Star Tribune* conducted its own analysis comparing restricted and unrestricted secondary tickets to Beyoncé and Adele concerts. This analysis showed that for two very popular shows in high demand, secondary market tickets in an unrestricted mode were available for \$165 compared to the restricted model at \$699. As the NATB has long stated, efforts to restrict the reselling of tickets will not accomplish that goal, as a secondary market for all sorts of products including tickets will always exist, but what it will do is constrain that market and force the prices of tickets on marketplaces higher. It can also drive ticket resale off reputable platforms that come with a host of consumer protections including refunds and guarantees, and push resale back to



unsafe and risky forms of ticket sales (for example purchasing tickets with cash from an online classified ad or buying from a nefarious scammer outside of a venue).

Importantly, some states (New York, Colorado, Utah, Virginia and Connecticut) have passed laws protecting ticket transferability rights, making it illegal for the original seller (after being paid) from limiting or restricting a ticketholders ability to transfer the ticket. These laws also prevent discrimination against ticketholders who purchased their tickets from a secondary market outlet – including online exchanges or a professional ticket broker.

THE LACK OF TRANSPARANCY AS TO HOW MANY TICKETS ARE MADE AVAILABLE TO THE PUBLIC HURTS CONSUMERS

The NATB has always recognized that an open secondary market must be transparent and free of fraud and decent to function properly. We have long supported fair and transparent live event ticket ecosystem. For example, the NATB has supported a requirement of “all-in pricing.” As I shared as a panelist at the seminal 2019 FTC Workshop on online ticket sales, this is not an easy objective to accomplish. The challenge is that such a requirement would only work and be effective if (i) it was required of every ticket seller and (ii) there was rigorous and expeditious enforcement. The lack of uniformity and enforcement would result in harm to consumers who chase what they believe is a better price only to pay more than they would have after fees were added by the seller that offered the carrot of a lower price.

Another key transparency concept the NATB advocates for is disclosure as to how many tickets are made available for purchase by the public. Notably, this concept has been brought up before numerous state legislatures and has been vehemently opposed by Live Nation/Ticketmaster.

Live Nation/Ticketmaster commonly places “holds” on large numbers of tickets before they go on sale to the public. To be fair, the number of held tickets not being made available to the public at initial sale should be fully disclosed prior to public sale in order to permit fully-informed consumer decisions. Some lawmakers (federal and state) are calling for more transparency around this issue. This is not just a matter of transparency, as holdbacks support a system called “slow ticketing” where tickets are slowly offered for sale in a manipulative way that maintains higher demand and higher prices. Holdbacks and slow ticketing create artificial scarcity, where an event may appear to be sold-out or in high demand, when in reality there are many more tickets. It’s a deceptive marketing practice that should end.

Reports indicate that in certain instances only 46% of tickets become available when tickets go on sale, leaving less than half to meet demand – which is the reason events sell out too quickly and lead to frustration over supply and market price

The recent fiasco regarding the Taylor Swift tour provides an exemplar of the problem caused by the lack of transparency. While demand for Taylor Swift tickets was extraordinary, no information was provided as to how many tickets were actually being made available. There was no transparency around ticket hold backs. After tickets initially were made available, additional tickets suddenly appeared weeks later. Industry experts believe these tickets were intended to be put on sale as Ticketmaster Platinum tickets – tickets that were the same as those initially offered, but at drastically higher prices (similar to the \$5,000 tickets offered for Bruce Springsteen months earlier). Following the ticketing fiasco for Swift, it is likely that the plans for Platinum ticket sales were scrapped and these remaining tickets were sold at original price (\$100 - \$400 each).



Consumers deserve to be armed with information about ticket availability so they can make fully-informed decisions about ticket prices and whether to buy that ticket. Enhanced transparency would help accomplish this.

CONCLUSION

Live event ticketing is broken. The NATB applauds this Committee for its efforts to understand the problems and initiate attempts to fix them. A competitive and transparent market for the sale and resale of tickets is essential to a system that benefit consumers. Protecting ticket transferability and requiring disclosure of ticket holds is also imperative.

Sincerely,

Gary Adler
NATB Executive Director and
Counsel



Sports Fans Coalition Testimony for the Record
That's the Ticket: Promoting Competition and Protecting Consumers in Live
Entertainment.
Tuesday, January 24th, 2023

Sports Fans Coalition¹, the nation's leaders consumer advocacy organization for sports policy, submits the following brief testimony in response to the January 24th, 2023 Senate Judiciary Committee held a hearing, *That's the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment*. Thank you to Chairman Durbin, Chairwoman Klobuchar, and Ranking Member Lee for leading such an important, thorough, and insightful hearing. However, there are a few points I wish to emphasize for the record.

Sports Fans Coalition has advocated for a number of pieces of fan-friendly, state-level legislation in more than a dozen states, including in Utah. The most important protection we advocate for is transferability. In almost every state we hear from Ticketmaster that if transferability is mandated, artists will not come. As many committee members pointed out Tuesday morning, Ticketmaster controls where the artists go. State lawmakers should now see Ticketmaster's stance on transferability not as a warning, but as a threat to their constituents.

Senator Kennedy, specifically, signaled his opposition to transferability and that it only helps scalpers. I would like to take the opportunity to address a few points. He suggests that prohibiting transfer altogether would drive down prices. In reality, the opposite would be true. Prices on the secondary market fluctuate depending on supply and demand. And, especially as you get closer to an event, prices can fall below "face value" as fans look to get whatever they can to recoup costs.

The fact is, transferable tickets are the cornerstone of a fan-friendly marketplace. At this time, the secondary market is the only semblance of competition at any point of the live event value chain. Fans who invest hundreds if not thousands of dollars in season tickets to games should have the right to transfer those seats to friends or family on whatever platform they choose, and

¹ Sports Fans Coalition is a national non-profit advocacy organization devoted to representing fans wherever public policy impacts the games we love. We are best known for leading the campaign to end the Federal Communications Commission's sports blackout rule, which we accomplished in 2014 despite massive opposition from the NFL and broadcast industry. We also created the Sports Bettors' Bill of Rights, a set of five principles we believe should accompany sports betting legislation to protect consumers while maximizing state revenues. These principles now govern sports betting in DC, Maryland, and Virginia. The right for fans to transfer their tickets to their friends and family is another perennial issue of ours. Most recently, we worked to get the Equal Pay for Team USA Act signed into law.



not be locked into Ticketmaster's systems, as Senator Hawley pointed out.

The economic incentive of any live event should be to fill the venue to its fullest capacity. This way, more concessions and merchandise can be sold to fans. Transferability ensures that the maximum number of seats are filled at an event because it provides more avenues of access to tickets for fans. It also allows a fan who has become sick or has another conflict with the event to recoup their costs, instead of, as Senator Kennedy put it, "eat the ticket."

There is another aspect of the ticketing market that did not get as much time or attention that SFC believes should – the prevalence of undisclosed holdbacks for tickets. Generally, fans believe that during the public on-sale of tickets, they have a chance to purchase tickets for all, or at least most, of the tickets in a given venue. Unfortunately, this is not the case; less than half of the tickets for an event, on average, are ever made available to the general public.

In 2016, the New York Attorney General's office found that, on average, only 46% of popular concert tickets are available to the general public. The rest are held back for industry insiders to sell on the secondary market.² Similarly, the Government Accountability Office (GAO), found that the live event 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." To no surprise, major league sports are also at fault. The GAO estimates that sports leagues sell 30% of their seats directly to brokers. Likewise, theater companies will sell around 8-10% of their seats directly to scalpers.³ The problem is not necessarily that holdbacks occur but that fans are not informed how many tickets are actually for sale. The consumer frustration has most recently reached a breaking point with Philadelphia Eagles fans trying to get tickets to the NFC Championship game, seemingly because of undisclosed holdbacks.⁴

Sports Fans Coalition supports many of the legislative proposals discussed during the hearing, so long as those bills protect the fans' right to transfer their ticket and provide for other adequate consumer protections. For many years have endorsed Senator Blumenthal's BOSS Act and would wholeheartedly support its reintroduction this Congress. We would also support language that strengthens the BOTS Act.

² Eric T. Schneiderman, "Obstructed View: What's Blocking New Yorkers from Getting Tickets" Office of New York (State Attorney General) https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

³ U.S. Gov't Accountability Office, GAO-18-347, Congressional Requesters: Event Ticket Sales Market Characteristics and Consumer Protection Issues (April 2018) (11).

⁴ Shamus Clancy, "Buying Eagles playoff tickets on Ticketmaster is a disaster" Philly Voice, January 24th, 2023 <https://www.phillyvoice.com/eagles-news-buy-playoff-tickets-ticketmaster-nfc-championship-game-prices-san-francisco-49ers-stubhub-lincoln-financial-field/>



Again, Sports Fans Coalition would like to thank the Committee for its thoughtful investigation into the lack of competition in the live event marketplace and how that harms consumers. SFC looks forward to working with the committee in the future to address many of these harms and to restore competition in the marketplace.



January 30, 2023

Senator Amy Klobuchar
Chairwoman
Subcommittee on Competition Policy, Antitrust, and Consumer Rights
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairwoman Klobuchar,

On behalf of the 3.7 million members who make up WorkMoney, we respectfully submit the following comments from our members who shared their personal experiences with Ticketmaster, LiveNation, and their attempts to see live performances over the last few years.

The Senate Judiciary Committee hearing on Tuesday, January 24th 2023 highlighted many anti-consumer practices and exposed the various ways that hidden fees and costs are used by these companies. We want to ensure that when costs and fees are discussed, the committee remembers that it is everyday Americans who are reaching deeper and deeper into their pockets to be able to attend events. For some, these fees are so high that they no longer can afford to attend.

WorkMoney members want to share with your Committee that these costs have prevented them from celebrating important life events with family and friends, including milestone birthdays with their children. These costs have prevented residents from accessing and enjoying venues in their communities, often which were built using tax dollars from those very people. Equally, WorkMoney received stories about poor customer service and egregious refund policies.

Enclosed are only some of the stories WorkMoney members shared about how these costs impact their ability to enjoy live performances within their communities.

We thank you, Chairman Durbin, and other members of the committee for holding this important hearing.

- WorkMoney



Steven	Minneapolis, MN	I bought tickets for George Strait and Chris Stapleton. Face value per ticket was \$250ish. After taxes and fees they were \$336 a piece!
Virginia	Annandale, MN	We used Ticketmaster for Pink Floyd concert that was canceled. Took almost a year to get a refund. We'll never use Ticketmaster again!
Monica	Litchfield, MN	Oh yes, my husband and I are looking to go see a comedian. After all the fees and \$60 Ticketmaster fee, we have to rethink about going.
Kimberley	Belleville, IL	I had planned to treat my sister and myself to a show in St.Louis this weekend. That is until I saw that the tickets were between \$295 - \$3000 a piece. She and I have spent 3-4 years between us raising our grandchildren. We deserve a sister's Night out. But not at those prices! It hurts my heart that I can't do this for her. Talk about mad and upset.
Mary	Dolton, IL	Yes. I wanted Taylor Swift tickets. They make it so the average/low income person can't afford the tickets yet these are the people that they all get rich off the costs. I blame the artists as well. I wanted Adele, Bruno Mars, Usher, Beyoncé, Miley, and others but just can't afford tickets way over \$100-200 dollars!
Elizabeth	Rochelle, IL	I have to save all year for birthdays, Christmas, and Easter to afford for my 3 grandchildren. My SSI is very low and I could never afford concerts.
Kelvin	Forest Park, GA	I haven't even been to a concert and can't afford it anymore. I did go to see ZZTop for \$100 a ticket in a small place in Tennessee, but hotel, food, and show was so much. I was broke and haven't caught up yet
Ginnie	Peachtree Corners, GA	35.00 Frozen tickets ended up being 68.00 a piece. With 6 people, it was a lot for me. I could not let the little one miss it but it was so expensive.
Jessie	Athens, GA	Yes. Ticketmaster/live nation has been awful about driving up prices and fees for concert tickets. I would go to so many more shows if the tickets were not scalped and resold at those prices.
Ann	Savannah, GA	Yes! I bought 4 cheap tickets to Barry Manilow for \$15.50 each. Should be \$62. Nope, \$118 after fees



Ashley	Canton, GA	Yes! I wanted to see Blink 182 with my brother and to get 2 tickets - in the nosebleed section - would have been almost \$500! So no Blink 182 for us
Jan M	Marietta, GA	There should be other ticket options available for a show that big. What happens here is there's several apps where people go in and buy from Ticketmaster and resell on Seat Geek, they mark up prices from Ticketmaster, and hope they make a profit. The closer it gets to dates of shows that haven't sold out, their prices drop. The last show I checked was a small venue and only here 3 days, a decent tix was \$180-200.



February 2, 2023

Joe Berchtold
Live Nation Entertainment, Inc.
9348 Civic Center Drive
Beverly Hills, CA 90210

Via email

Dear Mr. Berchtold:

We write to follow up on your testimony before the Senate Judiciary Committee last week on the state of competition in ticketing and the live entertainment industry. As the hearing demonstrated, there is a strong bipartisan consensus about taking steps to improve the way America's ticketing industry functions. We must ensure that we have competition in the market to drive down prices, encourage companies to innovate, and give consumers choice.

While we appreciate your willingness to testify and to answer questions, there are several issues that were left unaddressed or which require follow up. Therefore, we ask that you provide written responses to the following questions by February 15, 2023.

1. According to testimony from Mr. Mickelson, 87% of Billboard's Top 40 Tours in 2022 were performed at venues ticketed by Ticketmaster in the U.S. Do you dispute this number? If so, please explain why and provide documents in support of your position.
2. According to testimony from Mr. Mickelson, 87% of NBA teams, 87.5% of NHL teams, and 93% of NFL teams have exclusive ticketing agreements with Ticketmaster. Do you dispute any of these numbers? If so, please explain why and provide documents in support of your position.
3. In 2018, the *New York Times* reported that Live Nation tickets 80 of the top 100 arenas in the country. How many of the top 100 arenas does Live Nation ticket today?
4. Approximately how many concerts per year do Live Nation and Ticketmaster serve as both the promoter and ticketer?
5. You testified that Paciolan is one of Ticketmaster's competitors. How many venue contracts for ticketing services has Ticketmaster lost to Paciolan in each of the last three years? For each, please provide the venue name and approximate size.
6. In the past three years, has Live Nation entered into any agreements with venues where the contract term for ticketing services is longer than five years? If so, please provide a list of those venues and the contract term lengths.
7. Live Nation is subject to a consent decree that bars Live Nation from retaliating against a venue for using another company's ticketing services, and from threatening to retaliate for such choosing of another ticketing company. Will Live Nation commit to third party audits to confirm that it is neither threatening to retaliate or actually retaliating against venues that select other ticketing services providers in 2026 and beyond?

United States Senate
WASHINGTON, DC 20510

Music and live events connect communities and bring people together. It is vital that we keep the concert experience accessible to everyone, and competition plays an important role to help achieve that goal.

Sincerely,



Amy Klobuchar
United States Senator



Mike Lee
United States Senator



Senator Klobuchar & Senator Lee

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As noted in response to other QFRs, we fully appreciate the interest in market shares. The various data points we are asked to confirm are what critics like to cite as evidence of Ticketmaster's alleged monopoly power. We respectfully dispute the utility of these arguments for several reasons. First and foremost, monopoly power is properly understood as the ability of a firm to maintain prices above competitive levels because the firm is insulated from competition from new entrants or expansion by existing competitors. It has long been held that even a 100%



market share will not prove monopoly power (even assuming the "market" is defined properly) if the firm lacks the ability to maintain prices above competitive levels. That perspective is necessary because some firms have very high market shares, "monopoly shares" even, on the merits of their products and services, or sometimes simply because they established a large share in the absence of meaningful competition.

In 2009, prior to the Live Nation-Ticketmaster merger, Ticketmaster had an extremely high market share in primary ticketing: 80-90% depending on how the market was defined. But that was 13 years ago. The relevant questions today are (a) whether Ticketmaster has been able to maintain that share in the face of new entrants and expansion by existing competitors, and (b) whether Ticketmaster has been able to maintain prices above competitive levels. The answer to both questions is "no."

It is difficult for any one company to accurately or reliably estimate shares since they depend on the often unknown and confidential sales information of competitors. The determination of whether any segment or subsegment is a "relevant market" also requires data not available to Ticketmaster. Nevertheless, we stand by what Mr. Berchtold said in his testimony: our best estimate is that our share of any plausibly defined primary ticketing market does not exceed 50-60%. It will be lower if sports are included with concerts in the market definition, as it should be. Despite its alleged dominance, Ticketmaster has lost, not gained, market share since the merger—strong evidence that it *lacks* monopoly power.

It is important to recall that competition for primary ticketing contracts takes place through competitive bidding. There is general agreement that in bidding markets "backward looking" measures of market power such as shares are less important than evidence that bears on the intensity of current bidding. Particularly where quality varies, there is a logical competitive outcome in which the best firm wins much more often than others, *but at competitive prices* rather than the supracompetitive prices that infer monopoly power. That is what one witnesses in primary ticketing. Ticketmaster is far and away the best product—the product that a large majority of customers want to buy and will buy if they can get it at a competitive price. That said, our competitors in this space include well-financed, multi-billion dollar companies. Robust competitive bidding from firms such as SeatGeek, AXS and Paciolan (in the college sports niche) creates the credible threat that requires Ticketmaster to offer competitive prices and terms and conditions. Ticketmaster loses far too often to ignore the threat. As just a few examples of the robust competition we face, since 2010 our rivals SeatGeek, AXS, and Tickets.com have gained at least 33 major league sports venue contracts. And in this setting, Ticketmaster has most certainly not been able to maintain prices above competitive levels. Ticketmaster's share of the value of a ticketing deal has steadily declined in recent years as competition has intensified. Once again, that is strong evidence that Ticketmaster lacks monopoly power.

We cannot confirm Mr. Mickelson's claims about large tours and sports leagues. It makes sense that Ticketmaster would serve many of the largest tours—regardless of who promotes those tours—because many artists and many of the venues that host the largest tours exhibit a strong preference for Ticketmaster's services. See Dave Brooks, *Barclays Center Ditched*



SeatGeek for Ticketmaster After Recurring Tech Issues, Billboard (1/26/23), <https://www.billboard.com/pro/barclays-center-seatgeek-ticketmaster-change-tech-issues/>. Ticketmaster's performance in large onsales is without peer, it has the best marketing capabilities of any ticketing system, and it is far and away the leader in preventing fraud and getting tickets into the hands of real fans. Ticketmaster also has a strong customer proposition for sports leagues and teams. However, none of numbers Mr. Mickelson provides for sports leagues is correct. In the time available we have been unable to confirm the *New York Times* numbers.

In the time available we have been unable to determine how many concerts per year Live Nation promotes while Ticketmaster provides ticketing. It certainly happens often, but to be clear the promotions and ticketing businesses are managed separately, and the company does not use any influence it has over tour routing to influence competition for ticketing contracts, or vice versa.

With respect to Paciolan, it dominates primary ticketing for college sports. The company claims to ticket 160 colleges and universities, including 80% of the Power Five conference schools and at least 20 top college programs. It claims to have sold more than 120M tickets last year. It also has a substantial presence in performing arts venues and arenas. Very recently, Paciolan entered into an agreement with SeatGeek to be its new secondary college ticket market partner.

Ticketmaster would be pleased to share confidentially data on contract lengths.

Live Nation does not need to be subject to a consent decree or any similar legal obligation to refrain from retaliating against a venue for using another company's ticketing services, and from threatening to retaliate for such choosing of another ticketing company. Live Nation has no interest in such practices, which are wholly incompatible with our artist-first focus and our business ethics. That sort of behavior will always be against Live Nation policy.

