



December 5, 2018

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Re: Online Event Ticket Sales Workshop, Project No. P18450

Thank you for inviting comment in advance of the Federal Trade Commission's workshop on online ticketing. Consumer Reports¹ urges the Commission to use this workshop to gain an understanding of the scope of consumer harm in the ticketing marketplace, and to use its enforcement and regulatory authority to establish transparency, and promote better and more informed choices, for consumers.

Americans are frustrated with the online ticketing marketplace. Consumer Reports reached out to our members asking them to share their stories about ticketing and ticket fees, and more than 6,600 wrote back, sharing their comments with both Consumer Reports and the Commission. These consumers, representing all 50 states, the District of Columbia, and Puerto Rico² shared a general frustration with the purchase process. Many gave concrete examples of frustrations with hidden fees raising the price of a ticket well beyond what the individual had understood to be the price; with bait-and-switch tactics that left them uncertain about what they had bought, and whether the tickets were legitimate; and with the opaque operations of the secondary ticket market. It is clear from these stories that the online event ticketing marketplace is not

¹ Consumer Reports is an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumer Reports works for pro-consumer policies in the areas of financial services and marketplace practices, antitrust and competition policy, privacy and data security, food and product safety, telecommunications and technology, travel, and other consumer issues, in Washington, DC, in the states, and in the marketplace. Consumer Reports is the world's largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 6 million members and publishes its magazine, website, and other publications.

² Comments came from a wide geographical area, with at least one comment from each state, and more than 100 comments coming from each of 18 states.

transparent, and does not operate in a manner that enables consumers to make informed purchase choices and reliably secure rights of ownership in the tickets.

These problems are exacerbated by a concert ticket marketplace that is now highly concentrated, with LiveNation/Ticketmaster dominating ticket sales and promotion, and having scant competitive incentive to improve the shopping experience for consumers.³

While this comment will focus primarily on the need for transparency in pricing, these consumer stories have raised concerns about a wide range of issues of interest to the FTC as it examines the online ticketing marketplace. We will touch on some of those issues here, but we note that all of the consumer stories have also been submitted to the Commission, and are available on the docket.

Consumers have been harmed by the opaque pricing mechanism used by online ticketers. If a fee is certain to be charged to a consumer in order for that consumer to receive a product or service, that fee should be included in the base, advertised rate. Also, any additional fees that a consumer might expect to need to pay should be disclosed early enough in the ticketing process to enable the consumer to use that information in making a purchasing decision. And finally, the fees themselves should be set at an amount that reflects the cost of providing that additional product or service; companies should not be able to mask price or rate hikes through additional fees.

And these fees quickly add up: the Government Accountability Office (GAO) estimated that “the average event ticket fee on a primary sale is 27 percent of face value,” while fees on resale sites average 31 percent of the (often inflated) price.⁴ And financial disclosures⁵ indicate that nearly half of Live Nation’s, the largest ticket seller in the country,⁶ revenue comes from those fees. We understand that the FTC has found hidden and opaque fees to be problematic, as applied to other industries, and recognizes that there is more the Commission can do to enforce against practices that lead to consumer harm.

³ See Ben Sisario and Graham Bowley, “Live Nation Rules Music Ticketing, Some Say With Threats,” *New York Times*, April 1, 2018, at: <https://www.nytimes.com/2018/04/01/arts/music/live-nation-ticketmaster.html>.

⁴Government Accountability Office, “Event Ticket Sales: Market Characteristics and Consumer Protection Issues,” April 2018 (GAO-18-347), at: <https://www.gao.gov/products/GAO-18-347>.

⁵ Live Nation, Live Nation Entertainment Reports Fourth Quarter And Full Year 2017 Results (Feb. 27, 2018), at: <https://finance.yahoo.com/news/live-nation-entertainment-reports-fourth-212300600.html>.

⁶ David Dayen, The Ticket Monopoly Is Worse Than Ever (Thanks, Obama), *The New Republic* (May 15, 2018), at: <https://newrepublic.com/article/148419/ticket-monopoly-worse-ever-thanks-obama>.

Consumer Stories of Hidden Fees, Inconsistent Pricing, and Inflated Prices

Nearly 6,500 consumers submitted comments to the Commission and Consumer Reports, expressing frustration and confusion over the ticket-buying process. Many do not understand how fees are calculated, under what conditions they are charged, or what the fees actually cover. Many consumers noted, for example, that they were charged a convenience fee for printing the tickets at home—a fee that ranged from a reported \$1 to up to \$10—when it would almost certainly cost the seller more to print and mail the tickets than make them available online to be printed. And many retailers discourage close inspection of the ticketing process by including a timeclock, urging the consumer to purchase quickly, instead of re-starting the search process once full costs are revealed.

These consumers expressed a consistent demand for transparency and clarity, and disbelief that ticket sellers continue to be able to mask fees until the end of the purchase process, often after a payment method has been provided.⁷

The opaque and variant additional fees that accompany online tickets prevent consumers from effectively budgeting for events. William in Pennsylvania attended three events at the same arena and bought his tickets through the same ticket vendor each time. For each event, the “facility charge” and the “service fee” were different. William wrote: “102.95 Total just in fees...and fees that you do not know what they are until you have to click order. They also aren't consistent from event to event. Why is the facility charge and service fee different when the shows are at the same venue?!”⁸ These experiences have been widely reported elsewhere, with the *New York Times* pointing to a 2016 concert in Nashville, Tennessee, at which Ticketmaster charged a \$14.75 fee on a \$36 ticket in a venue owned by Live Nation. According to the story, in an internal email, Live Nation’s chief executive, stated that this fee was “not defensible.”⁹

Consumers face difficulty when navigating the online ticket marketplace, as another consumer’s recent experience with a ticket resale site demonstrates. Between the ticket price mark-up far over the face value, and the additional fees, Karen in Maryland spent more than three times the cost of tickets to a local performance of *The Nutcracker* by

⁷ The GAO also found this in their April 2018 report: “Some ticket websites GAO reviewed did not clearly display fees or disclosed them only after users entered payment information.”

⁸ William’s shared with Consumer Reports his receipts and information from the ticket seller’s website regarding the fees he paid for these three concerts.

⁹ *New York Times*, April 1, 2018.

using SecureBoxOffice.com, a site that she “assumed” was the box office website “as that is what it said.” Karen’s husband Bryan also submitted a comment about this same practice. He provided much of the same detail, and wrote that the reseller:

has very misleading and unscrupulous business practices that are intended to deceive and scalp unwary ticket searchers of their money. I can understand charging a \$10 or \$20 mark-up for providing this service, but a 300% mark-up should be unlawful.

To make matters worse, Karen’s order confirmation makes clear that the reseller did not actually have the tickets in hand at the time of her order. It reads: “The seller is committing to procure these tickets for you upon receipt of your order.”¹⁰ This is not a case of a consumer being forced to pay more for an in-demand, sold-out show. In fact, as of December 5, tickets remain available from the venue for the exact show Karen purchased her tickets for. Rather than paying more than \$500 for five tickets on the secondary market, Karen could have spent just \$163.75.¹¹

Consumer stories like these are supported by evidence found by the GAO in their May 2018 report, stating: “‘White-label’ resale sites, which often appear as paid results of Internet searches for venues and events, often charged higher fees than other ticket websites—sometimes in excess of 40 percent of the ticket price—and used marketing that might mislead users to think they were buying tickets from the venue.”¹²

Hidden Prices Have Real Impact on Consumers

Research provides backing for the complaints that consumers have brought to us. In December 2016, the National Economic Council issued a report, *The Competition Initiative and Hidden Fees*, that provided an overview of research into the impact of hidden fees in the marketplace. The report notes that these fees, which are generally structured as they are “in order to drive down the perceived price and lure consumers to make purchasing decisions based on misinformation” are, at worst, “fraudulent or

¹⁰ Both of these comments are available on the docket. Additionally, Consumer Reports has received documentation of this complaint, including information referenced in the complaint about these tickets being speculative.

¹¹ Weinberg Center for the Arts Performance of the Nutcracker for Sunday, December 9, 2018 at 2 pm. See <https://weinbergcenter.org/book-online> (last accessed Dec. 5, 2018).

¹² GAO (April 2018).

deceptive; at a minimum, they make prices unclear, hinder effective consumer decision making, and dull the competitive process.”¹³

In fact, economic and psychological research has found that this kind of pricing produces real welfare losses for consumers. A study by the Office of Fair Trading in the United Kingdom into the impact of price frames on consumer behavior found that drip pricing—a practice in which additional fees are added to a low base price as the consumer completes the purchase—was the price structure that both caused the biggest welfare losses and the most consumer errors of all the tested structures. The authors explain:

If a consumer sees a low base price and they make the decision to buy the good, they shift their reference point because they imagine already possessing the good. Later, when they realise that there are additional costs and charges, it is thus more difficult for them to give up the good which they already have ‘in their basket.’ Therefore, they purchase the good despite the increase in price... Subjects reported that they still bought the good after they found out the additional charges, but felt cheated and annoyed because their pay-off was reduced.¹⁴

Relevant to the FTC’s inquiry into online event ticketing, recent research has found that the movement of sales from in-person to online may contribute to industry obfuscation of prices, with internet sales containing more hidden charges than brick and mortar sales. Ellison and Ellison argue that technology enables consumers to more easily price search, leading to intense price competition, which can have a side effect of increasing incentives for sellers to hide some of the price. And online sales can also make it easier for sellers to hide portions of a price, or add on costs later in the purchasing process.¹⁵

Another researcher who compiled a review of partitioned pricing (PP) research—another form of drip pricing in which the full costs are broken out into multiple parts—noted that in “recent years, the use of PP in the marketplace has increased and firms’ PP strategies have become more complex and sophisticated, often making it

¹³ National Economic Council, *The Competition Initiative and Hidden Fees* (Dec. 2016), at: https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/hiddenfeesreport_12282016.pdf.

¹⁴ Office of Fair Trading, *The Impact of Price Frames on Consumer Decision-Making* (May 2010), at: https://webarchive.nationalarchives.gov.uk/20140402165040/http://oft.gov.uk/shared_oft/economic_research/OFT1226.pdf.

¹⁵ Glenn Ellison and Sara Fisher Ellison, “Search and Obfuscation in a Technologically Changing Retail Environment: Some Thoughts on Implications and Policy,” *NBER Innovation Policy and The Economy*, 6, forthcoming, at: <https://economics.mit.edu/files/13457>.

more difficult for consumers to accurately process.” This researcher notes that for most online shopping, partitioned pricing has become the norm, rather than all-in pricing.¹⁶ These studies are finding that, as consumers move online to conduct more shopping, they are better able to comparison shop and seek out deals, but they simultaneously face a greater risk of encountering hidden fees, unnecessary add-ons, and other actions that obfuscate the final price of the product or service.

As discussed above, consumers came to Consumer Reports with stories of ticket sales with hidden fees that they did not see until well into the purchase process. They understand the phenomena that economists and psychologists describe. As Barbara in Ohio wrote:

I actually buy tickets to events, plays, and shows quite often. I search for the best night, best seats, and best prices. After all of that searching and comparing, I proceed to actually placing the order. That is when the added fees show up. After all that effort, and with a time limit to complete the order before the seats are lost, I go ahead and pay what I have to. I feel it is unfair that I don't find out the true cost until the clock is ticking. Please do something about these additional fees.

Another consumer provided the other side of the coin—the frustration in discovering late in the purchase process that fees make an already expensive ticket purchase unaffordable. As Michael in Ohio wrote:

You get excited; your children or children's children get excited about going to an event that is already on the expensive side. And right before you finish checking out, you realize that the fees, etc. have driven the advertised price beyond what you can afford. Everyone is disappointed. These advertised enticements must stop; they must reflect actual costs!!

And finally, another consumer made a simple analogy to explain the absurdity of add-on fees. Regan in South Carolina wrote:

If listing the total price...is liable to reduce sales, then misrepresenting the price is a deliberate tactic to deceive a shopper and snare them with a higher price tag once they're already, proverbially, at the front of the check-out line.

¹⁶ Greenleaf, Eric et.al., “The Price Does Not Include Additional Taxes, Fees, and Surcharges: A Review of Research on Partitioned Pricing”, *Journal of Consumer Psychology* (Volume 26, Issue 1, January 2016), at: <https://www.sciencedirect.com/science/article/abs/pii/S105774081500042X>.

I know what the sales tax is in my state. I can figure that part out. But I've never gone grocery shopping and been hit with a "soup packaging fee" after I've scanned my Campbell's cans, or a "semolina macaroni product-drying surcharge" once I'm ready to pay for my linguine. And with good reason. Seems about time we bring the online purchase of tickets into the realm of reason and require a little truth in advertising.

More Can be Done to Protect Consumers

Combatting hidden fees in the marketplace is squarely within the mission of the FTC, as it has previously recognized. In 2012, at a conference on “The Economics of Drip Pricing,” then-Chairman Leibowitz note that “sadly, in recent years, drip pricing has become almost ubiquitous.” He went on to describe several examples of such pricing, including a nightclub in D.C. that charged \$12 for parking, plus “a \$4.75 service fee per ticket and a \$4 order processing fee.”¹⁷

Since that time, the Commission has taken a close look at hotel resort fees, sending letters to numerous hotels in 2012 warning that their advertising of hotel rooms without disclosure of mandatory resort fees “may violate the law by misrepresenting the price consumers can expect to pay for their hotel rooms.” The letters went on to say that: “We believe that online hotel reservation sites should include in the quoted total price any unavoidable and mandatory fees, such as resort fees, that consumers will be charged to stay at the hotel.”¹⁸

While the Commission has not announced any enforcement actions against hotel fees since those 2012 letters were sent, it has continued its work on hidden fees in other contexts. This April, it charged Lending Club with deceiving consumers by “falsely promising consumers they would receive a loan with ‘no hidden fees,’ when, in actuality, the company deducted hundreds or even thousands of dollars in hidden up-front fees from the loans.”¹⁹

The FTC has also previously taken steps to improve the online ticket marketplace for consumers. To date, the Commission’s actions have largely focused on transparency

¹⁷ U.S. Federal Trade Commission, A Conference on the Economics of Drip Pricing (May 21, 2012).

¹⁸ Federal Trade Commission, “FTC Warns Hotel Operators that Price Quotes that Exclude 'Resort Fees' and Other Mandatory Surcharges May Be Deceptive” (Nov. 28, 2012), at: <https://www.ftc.gov/news-events/press-releases/2012/11/ftc-warns-hotel-operators-price-quotes-exclude-resort-fees-other>.

¹⁹ Federal Trade Commission, “FTC Charges Lending Club with Deceiving Consumers,” (April 25, 2018), at: <https://www.ftc.gov/news-events/press-releases/2018/04/ftc-charges-lending-club-deceiving-consumers-0>.

and disclosure with respect to whether tickets are being sold on the primary market or the secondary market, that prices on resale sites may exceed face value, and whether tickets are “in hand” or are “speculative.”

In a 2010 complaint against Ticketmaster and its affiliates, including TicketsNow, the Commission alleged that the companies used “deceptive bait-and-switch tactics to sell event tickets to consumers.”²⁰ The primary complaint was focused on a practice in which Ticketmaster displayed that no tickets were available and steered consumers to TicketsNow, where tickets were “substantially higher than face value.”²¹ Additionally, Ticketmaster did not inform consumers that the resale tickets on TicketsNow were not “in hand” but were “speculative”—essentially, phantom tickets.²² With relation to fees, the FTC stated that TicketsNow, on its “ticket listing page,” only displayed the price of the tickets and did not include the service and shipping fees.²³ While the final judgment focused on other practices and did not include an order for Ticketmaster and TicketsNow to change their practices with respect to fees, it is clear that this practice has been noted as problematic by the Commission in the past.²⁴

Similarly, the Commission joined with the state of Connecticut in 2014 in a settlement with three companies—including SecureBoxOffice—that operated white-label sites for ticket resale. The complaint alleged that these three companies’ advertisements and websites misled consumers into thinking they were buying tickets from the venue at face value. The settlements prohibited the companies from misrepresenting themselves as venue websites going forward.²⁵ However, as noted above, consumers remain confused by these sites. And the GAO found continuing issues with white label sites that “could be confused with that of the official venue.”

²⁰ Federal Trade Commission, “Ticketmaster and TicketsNow Settle FTC Charges of Deceptive Sales Tactics, Refunds for Springsteen Concertgoers Provided; FTC Warns Other Ticket Resellers” (Feb. 18, 2010), at: <https://www.ftc.gov/news-events/press-releases/2010/02/ticketmaster-ticketsnow-settle-ftc-charges-deceptive-sales>.

²¹ Complaint at ¶¶ 14-15, Federal Trade Commission v. Ticketmaster LLC, No. 10-cv-01903 (N.D. Ill. Feb. 18, 2010), ECF No. 1.

²² *Id.* at ¶¶ 23-24, 40-41, 44-45.

²³ *Id.* at ¶ 17.

²⁴ Judgment, Federal Trade Commission v. Ticketmaster LLC, No. 10-cv-01903 (N.D. Ill. Feb. 18, 2010), ECF No. 6.

²⁵ Federal Trade Commission, “TicketNetwork and Marketing Partners Ryadd and Secure Box Office Settle Charges of Deceptively Marketing Resale Tickets,” (July 24, 2014), at: <https://www.ftc.gov/news-events/press-releases/2014/07/ticketnetwork-marketing-partners-ryadd-secure-box-office-settle>.

Unfortunately, this series of actions has not yet led to the kind of changes to the marketplace that consumers are demanding. The Better Online Ticket Sales Act of 2016, which is targeted at preventing computer programs from buying up massive quantities of tickets to popular shows so that brokers can resell them at higher prices, has also left the broad range of issues in the ticket marketplace untouched. The comments recently submitted to both the Commission and Consumer Reports demonstrate high levels of consumer frustration and confusion in the online ticketing marketplace. Consumers too often cannot figure out the full cost of tickets until they are deep into the process, and may be concerned that, if they cancel a purchase to look for a better deal, they will miss out on finding any tickets at all. All of these practices harm consumers, because they are paying more for an event than they understood the event to cost, they are prevented from knowing the full ticket price before the end stages of purchasing, and they are discouraged from purchasing tickets due to the manipulative, opaque, and expensive online ticketing process.

While steps have been taken by the FTC, the states, Congress, and the private sector to strengthen the ticketing system and improve transparency and clarity for consumers, there is much more to be done. Consumer Reports, along with the more than 6,600 commenters who shared their views with us and with the Commission, urges the Commission to use this upcoming workshop to explore enforcement, regulatory, and other legal steps that can be taken to ensure, for starters, that consumers who are shopping for online event tickets can see the full price they will be expected to pay at the start of the shopping process, know whether they are buying tickets on the primary or secondary market, and can be certain that the ticket they purchase is valid.

Thank you for the opportunity to comment in advance of the March 27, 2019 workshop consumer protection and competition issues related to the online event-ticket marketplace. If you have any questions, please feel free to contact me by email at Anna.Laitin@consumer.org, or at 202-462-6262.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anna Laitin". The signature is fluid and cursive, written in a professional style.

Anna Laitin
Director, Financial Policy
Consumer Reports