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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony in Support of SB0539 - Commercial Law – Consumer Protection – Sale and Resale of Tickets

Madame Chair, Madame Vice Chair, and Fellow Members of the Senate Finance Committee:

By enshrining several new consumer protections into law, SB0539 will shift power, control, and profit from professional ticket scalpers and the platforms that facilitate them to artists, fans, and venues that simply seek to provide, enjoy, and host entertainment in our State.

Background

Renowned figures like Beyoncé and Taylor Swift have undoubtedly captivated the entertainment sphere in recent times. Yet, amidst the fervor surrounding their tours, a glaring issue has emerged: the persistent frustration and outrage with the online ticket-purchasing process. Both artists encountered substantial hurdles with ticket sales for their concerts, garnering considerable media scrutiny. The ensuing spotlight prompted the U.S. Department of Justice to launch an antitrust investigation into Live Nation Entertainment. As the nation's premier online ticket vendor, owner of numerous live venues, and manager for a plethora of touring artists, Live Nation's dominance raises concerns about fair competition.

In response, the Senate Judiciary Committee convened a hearing titled “That's the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment,” signaling a concerted effort to address the grievances voiced by the public. While the federal government grapples with the complex issue of potential monopolistic practices, there remains ample room for state-level intervention to enhance the ticket purchasing experience for Maryland residents.

While some may argue that access to live entertainment is a luxury rather than a necessity akin to food or shelter, the undeniable positive impact it has on individuals and communities cannot be overlooked. The prevailing state of the marketplace, characterized by exploitation and greed, underscores the urgent need for intervention. It is incumbent upon the State to safeguard the interests of consumers, artists, and venues alike.

The Ticket Buying Experience

Gone are the days when fans queued at box offices clutching paper tickets. The advent of technology and the internet has revolutionized the ticket-buying experience, making it simultaneously more complex and more convenient. While the basic concept remains the same—

fans purchase tickets to events—they now navigate a labyrinth of online platforms and marketplaces.

In theory, purchasing tickets is straightforward: fans visit an online ticket platform, often Ticketmaster, select their desired tickets, and receive them electronically. However, the reality is far from simple, depending on how consumers enter the online marketplace. The ticket market is bifurcated into primary vendors, comprising venues and online ticket platforms, and the secondary market, consisting of ticket brokers and resale marketplace platforms like StubHub, SeatGeek, and Vivid Seats.

Complicating matters further, there's considerable overlap between the two markets. For instance, Ticketmaster operates a resale platform, and SeatGeek serves as both a primary and secondary platform. When multiple secondary platforms and primary vendors vie for ticket buyers' attention, consumers struggle to discern where to purchase tickets for the best seats at the lowest prices.

As a testament to this fractured landscape, Merriweather Post Pavilion has presented screenshots with their testimony revealing exorbitant prices on the secondary market, even when tickets are readily available on the primary market. This disparity underscores the challenges faced by consumers in navigating the ticket-buying process.

The Ticket Buying Marketplace

Generally, there are two distinctly different online marketplaces where tickets are bought and sold, the primary and the secondary markets:

- The primary market is one in which event organizers control the ticket price, the sharing of the revenue between the artist, venue operator, and ticket company, and which platform will sell the tickets. The prices set in the primary market heavily affect the volume and value of tickets in the secondary market. In general, it is most common to find underpriced tickets—tickets that sell on the primary market with a face value that is below their market value—so that event organizers can maximize the attendance of their target audience in order to increase customer loyalty, and merchandise sales.¹ To complicate ticket selling in the primary market, some artists have been known to hold back a certain number of tickets to sell on the resale market in order to take advantage of the higher prices while still maintaining fan loyalty by offering the initial tickets at a low price.²
- The secondary market is where tickets purchased on the primary market are resold. Ticket prices are usually significantly higher when purchased from someone in the

¹ The Event Ticketing Industry is Broken and in Need of Disruption, Aventus Network (May 19, 2017).

² Tyler Jenke, "Ed Sheeran's manager has admitted to selling tickets to resale services," The Music Network (Jun 3, 2018) available at <https://themusicnetwork.com/ed-sheeran-manager-sold-tickets-resale/>.

secondary market. A study conducted by the National Independent Talent Organizations (NITO) analyzed data from 65 different shows around the country in 2023 where artists represented by NITO members performed. According to their findings, on average, ticket buyers were charged twice as much when buying tickets in the secondary market.³ Secondary market platforms not only serve as a way for professional ticket brokers (i.e. businesses that purchase event tickets solely for the purpose of reselling them for a profit) to sell tickets, they also play an important role by allowing consumers who can no longer use their tickets a relatively simple way of recouping their money by reselling them to someone else.

The platforms, for a fee, provide the infrastructure and technology that make up the marketplace for brokers and individuals to resell their tickets. Professional ticket brokers either enter into agreements with sports teams and promoters to have access to tickets for resale or they compete with consumers in the primary marketplace to purchase tickets that they intend to resell at a profit on the platforms. These secondary market platforms, such as StubHub, Vivid Seats, TickPicks, SeatGeek, and the secondary platforms run by Ticketmaster and their main competitor AXS, generally speaking, are similar to eBay (the former parent company for StubHub) or Etsy.

Largely invisible in the world of ticketing are the ticket brokers themselves. The United States Government Accountability Office (GAO), found in their research that it is ticket brokers, offering large numbers of tickets at inflated prices, who are dominating the resale marketplaces. According to their 2018 report:

Brokers whose business is to purchase and resell tickets have a competitive advantage over individual consumers because they have the technology and resources to purchase large numbers of tickets as soon as they go on sale. Some consumer advocates, state officials, and event organizers believe that brokers unfairly use this advantage to obtain tickets from the primary market, which restricts ordinary consumers from buying tickets at face value. As a result, consumers may pay higher prices than they would if tickets were available on the primary market. In addition, some event organizers and primary ticket sellers have expressed frustration that the profits from the higher resale price accrue to brokers who have not played a role in creating or producing the event.⁴

Ticket Pricing Practices

One factor that impacts the price of tickets are the numerous fees and charges added to the initial face value. Different terms have been developed to describe these fees and charges, including “hidden fees,” “drip pricing,” “surprise charges,” and “undisclosed fees.” It has become commonplace to encounter unexpected or unexplained fees while purchasing live entertainment

³ NITO Ticket Resale Study. National Independent Talent Organization (Jul 2023)

⁴ GAO, *Event Ticket Sales: Market Characteristics and Consumer Protection Issues*, GAO-18-347 (May 14, 2023) available at <https://www.gao.gov/products/gao-18-347>.

tickets. You carefully select tickets to a concert or a sporting event, ones that allow you and your friends to sit together; then in the process of checking out of the online box office, a convenience charge is added on one page, then a venue fee is added on the next page, and by the time you get to the final payment page, three or four charges and fees have been added on—often increasing the price of the tickets by twenty percent or more, and blowing the group’s budget.⁵

Why is it so hard to find tickets in the primary market?

One widespread complaint from consumers trying to purchase tickets to popular shows or sporting events is that they are poised on their web browsers to buy tickets the moment they go on sale, but the available tickets are sold out within seconds or minutes of the initial sale. Consumers are unable to buy them, no matter how quickly they move the moment the tickets are available. Adding to their frustration is the fact that, almost immediately, they find tickets that they were unable to purchase at the on-sale site being advertised for sale on other websites, for much higher prices.

Using bots to buy tickets. In the context of the internet, a “bot” is simply a software application that runs automated tasks. Bots can be used for tasks as simple as automatically filling in forms to complex tasks like scraping websites to gather data. Bots are neither inherently good nor bad; they are simply a tool. Cybersecurity firm, Imperva, studies what it has termed “bad bots,” which are “software applications that run automated tasks with malicious intent.” In its 2023 report, Imperva found that bad bots make up 30 percent of all automated internet traffic and that bots generally made up 47.7 of all internet traffic in 2022.⁶

In the context of ticketing, bots are widely used to purchase high-demand tickets very quickly. Despite laws outlawing their use, the practice of using bots to rapidly buy up tickets to in-demand events (that the person deploying the bots turns around and sells at a hefty markup) is one of the main reasons consumers are unable to purchase tickets on the primary market. Bots are able to not only automate the ticket-buying process, they can also be used to identify when additional tickets are released and available for purchase. The use of bots has been so widespread that the federal government passed a law in 2016 to stop people from employing this scheme, the Better Online Ticket Sales Act (BOTS Act) (Pub. L. No. 114-274 (Dec. 4, 2016) 130 Stat. 1401). The BOTS Act prohibits the circumvention of a security measure, access control system, or other technological control measure used online by a ticket issuer. The Act also prohibits selling or offering to sell an event ticket obtained through such a circumvention violation, if the seller participated in, had the ability to control, or should have known about the violation.

A chief complaint by critics of the BOTS Act is that it lacks a consumer enforcement mechanism and is rarely enforced. In fact, the first enforcement took place in 2021 when the FTC brought an enforcement action against three New Yorkers who collectively made over \$26 million in

⁵ Tiffany, Kaitlyn. “How ticket fees got so bad, and why they won’t get better.” Vos (Jun. 12, 2019), available at <https://www.vox.com/the-goods/2019/6/12/18662992/ticket-fees-ticketmaster-stubhub-ftc-regulation>.

⁶ Imperva 2023 Bad Bot Report available at <https://www.imperva.com/resources/resource-library/reports/2023-imperva-bad-bot-report/>.

revenue over the matter of a few years. Despite the passage of the BOTS Act and recent FTC enforcement efforts, the use of bots continues to overwhelm the primary marketplace and frustrate consumers, and further, the use of bad bots in ticketing has continued to increase.

The Problem of Speculative Tickets

A speculative ticket refers to instances in which a seller offers a ticket for sale on a secondary ticket exchange before the seller has the ticket in hand. In some cases, secondary sellers may not disclose the fact that they are selling speculative tickets. These practices harm consumers who either do not receive the tickets they purchased or receive tickets that differ from the ticket or seat advertised. Even if consumers receive refunds for the ticket price, they may have already incurred nonrefundable costs to attend the event, such as travel or hotel expenses.⁷

For over a decade, secondary resale markets have allowed the sale of tickets that sellers do not actually possess. Specifically, speculative ticket sales work as follows, according to the Center for Investigative Reporting:

Brokers advertise inventory – sometimes a specific seat, sometimes a seating area – on a resale site, often at a price significantly higher than face value. When a customer selects tickets and checks out, [the site] prompts the broker to then attempt to acquire those tickets elsewhere at a lower price. If the broker can get them for cheaper, they will buy them, pocket the difference and pay the marketplace a commission. If they can't, the broker will either have to make good on the initial offer and take a loss or renege on the sale.⁸

Ticket brokers often refer to this practice as the equivalent of agreeing to stand in line for someone at the box office. They will buy tickets when they go on sale, so that the consumer does not have to wait in front of their computer constantly refreshing their web browser. However, the consumer is often not aware that they are buying a ticket that the seller does not possess, nor do they realize they are paying a premium price, significantly above the face value, for a ticket that they may or may not receive.

This practice creates considerable confusion for consumers who cannot purchase tickets from the primary box office because they have not gone on sale yet but appear to be able to purchase tickets for a premium price on the secondary market.

Solution

SB0539 would:

→ **Require ticket sellers to offer all-in pricing with an itemized list of all charges.**

⁷ Duncan, Byard. "How is this Legal?" The Center for Investigative Reporting, March 8, 2021, available at <https://revealnews.org/article/how-is-this-legal/>.

⁸ Ibid.

This eliminates unpleasant surprise fees at the end of the transaction but also ensures that consumers see the base price and all fees from the beginning and throughout the transaction. This is the version of all-in pricing that has consensus support within the artist community; it ensures that fees aren't hidden, and consumers are fully informed.

Note: Versions of this idea exist in NY, CA, NV, UT, and is under consideration in many other states.

→ **Limit resale of tickets to original purchase price (including fees and taxes).**

This eliminates the commercial incentive for brokers to buy up as many tickets as they can for high demand events and resell them for many times the original price. This will mean many more eventgoers will be able to purchase tickets at the artist's intended price; Maryland consumers will pay millions less to third parties that aren't even involved in putting on the event. So many of the problems articulated above would be solved by completely changing the incentive structure of this marketplace, which is why this provision is both needed and responsive to the core issue at hand. This provision stems from a simple belief that tickets should be for fans, not investors.

Note: Resale price caps exist in KY, RI, and NJ, Cincinnati OH, New Orleans LA, Kansas City MO, Las Vegas NV. NM and MD have laws that apply this policy to just certain categories of events, and many municipalities apply it to specific geographic locations and time periods.

→ **Limits the fees charged by resale sites to 10%.**

This means that resale sites like Stubhub, Seatgeek, Vivid Seats etc can continue to operate, but they can't profit from massive markups or outrageously high fees anymore for Maryland events.

Note: Versions of this idea exist in RI & NJ

→ **Requires transferability for most tickets made available to the general public.**

Resale restrictions are currently employed most frequently by venues/artists/teams/presenters to try and ensure that ticketbuyers can pay the intended price instead of having to pay inflated prices on the secondary market. Because other parts of the bill solve those problems, most transferability restrictions are no longer necessary.

The bill allows for reasonable restrictions—for example, a symphony orchestra that has a grant funded program for discounted tickets made available just for students would be able to ensure that these discounted tickets stay with the targeted population.

Note: Transferability mandates exist in NY, VA, IL, CO, and CT

→ **Bans speculative tickets**

Speculative tickets are one of the most nakedly predatory and deceptive practices in live event ticketing; they're hated by artists, fans, venues, and promoters. Speculative tickets happen when predatory resellers list and sell tickets they don't actually possess, banking on their ability to use technological tools and aggressive tactics to get tickets before actual fans and sell them, typically

at a substantial markup. They also degrade the ticket buying experience for ordinary ticketbuyers.

This can result in frustrated fans getting stuck outside venues when their promised tickets aren't delivered; while they may eventually get a refund, this is no consolation, particularly if they traveled for an event.

Maryland is one of a handful of states that currently requires disclosure of speculative tickets, but this has proven inadequate. A complete ban would solve the problem once and for all.

Note: A version of this is law in NV, currently under consideration in PA, WA, CA, AZ, MA and other states.

→ Requires resellers to share ticketbuyers' contact information with resale ticket purchasers in case of cancellation or schedule change.

This ensures that venues/artists/teams/presenters can contact all ticketbuyers, something they've long wanted to do for safety/logistical/weather reasons. Currently, venues, artists, teams, and presenters only have contact info for buyers who purchased their tickets on the primary market.

Per the Fiscal Note, SB0539 would have a modest cost to the state resulting from the hiring of additional staff at the Consumer Protection Division (CPD). In addition to this bill, SB0541, the Maryland Online Data Privacy Act, would require additional CPD staff as well. It is my hope that the additional staff needed for both bills would be less than CPD cites and that the staff can work on implementing both bills.

Amidst the myriad perspectives surrounding this issue, I have spent considerable time crafting this bill. Through extensive engagement with over a dozen stakeholders, I've endeavored to ensure its thoughtfulness, balance, and responsiveness to the severity of the problem at hand. While some may argue that the bill favors certain parties, I firmly believe it stands as a testament to our commitment to supporting artists, fans, and local venues. If advocating for these crucial stakeholders means taking a stand, then I'm proud to be by their side.

For these reasons, I respectfully request a favorable report on SB0539.