

Request for Comments: Unfair or Deceptive Fees Trade Regulation Rule

**Federal Trade Commission
Matter No. R207011**

Response of the Sports Fan Coalition

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I. Introduction

On November 8, 2022, The Federal Trade Commission (“FTC”) issued an Advance Notice of Proposed Rulemaking (“ANPR”) to address certain deceptive or unfair acts or

practices relating to fees.¹ The Sports Fans Coalition (“SFC”) thanks the FTC for the opportunity to submit these comments regarding an issue critical to the American marketplace and the consumers we advocate for.

Sports Fans Coalition, founded in 2009, 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 are the creators of 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. We’ve also been on the front lines fighting massive media consolidations, the NFL’s concussion cover-up, corruption within the United States Soccer Federation and their inequitable treatment of women and youth. Opening the ticket resale market and combatting ticket fraud has been a priority of SFC’s for many years. We advocate on behalf of sports fans in all of these areas and more in Washington, D.C. and state capitals around the country.

For years, Sports Fans Coalition has been at the forefront of consumer advocacy in the sports policy arena. We’ve called on lawmakers and regulators at all levels of government to protect consumers. In 2018, during the “Online Event Ticket Workshop,” Sports Fans Coalition and the National Consumers League jointly filed comments calling for stronger protections, guarantees of transferability, the disclosure of holdbacks, all-in pricing, and BOTS Act enforcement.² While we have had successes in state legislatures on many of these fronts, the patchwork of state laws is not enough to protect consumers and competitors from the behemoth controlling the industry: Live Nation/Ticketmaster.

In the ANPR, the Commission acknowledged the effect junk fees have, stating, “American consumers, workers, and small businesses today are swamped with junk fees that frustrate consumers, erode trust, impair comparison shopping, and facilitate inflation.” The widespread use of these unfair and deceptive fees arise without notice, imposing unforeseen economic harm upon consumers at a rapidly rising rate.

¹ Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011, 87 Fed. Reg. 67413 (proposed Nov. 8, 2022) (to be codified at 16 C.F.R. 464), <https://www.federalregister.gov/documents/2022/11/08/2022-24326/unfair-or-deceptive-fees-trade-regulation-rule-commission-matter-no-r207011>.

² National Consumers League and Sports Fans Coalition, Comments to the Federal Trade Commission regarding ‘Online Event Ticket Workshop’ (Dec. 5, 2018), https://d3n8a8pro7vhmx.cloudfront.net/sportsfans/pages/1794/attachments/original/1544121071/SFC_NCL_FTC_Ticketing_Workshop_Comments_%28FINAL%29.pdf?1544121071.

The Commission has rightly identified “the inability of market participants to correct this course without intervention.”³ We hope that the rules promulgated from this proceeding serve as that necessary intervention. However, solely addressing fees is not enough to solve all the damaging practices that have been employed in this marketplace, and we hope the Commission will use these comments, and the thousands of others,⁴ to take further action. Below, per the commission guidance, we discuss conduct employed by Ticketmaster/Live Nation that falls explicitly within the several categories identified by the agency in the ANPR. These include:

- Misrepresenting or failing to disclose clearly and conspicuously the total cost of any good or service for sale;
- Misrepresenting or failing to disclose clearly and conspicuously the existence of any fees, interest, charges, or other costs not reasonably avoidable for any good or service;
- Misrepresenting or failing to disclose clearly and conspicuously whether fees, interest, charges, products, or services are optional or required;
- Misrepresenting or failing to disclose clearly and conspicuously any material restriction, limitation, or condition that may result in a mandatory charge in addition to the cost of the good or service or that may diminish the consumer's use of the good or service, including the amount the consumer receives;
- Misrepresenting that a consumer owes payments for any product or service the consumer did not agree to purchase;
- Billing or charging consumers for fees, interest, goods, services, or programs without express and informed consent;
- Billing or charging consumers for fees, interest, goods, services, or programs that have little or no added value to the consumer or that consumers would reasonably assume to be included within the overall advertised price;
- Misrepresenting or failing to disclose clearly and conspicuously the nature or purpose of any fees, interest, charges, or other costs.

Seeing these harms, on February 1, President Biden called on Congress and antitrust enforcement agencies to protect consumers saying, “While antitrust enforcement agencies have the authority to investigate and address anti-competitive conduct in the industry, the President urges Congress to act now to reduce these fees through legislation. Specifically, the President is calling on Congress to prohibit excessive fees, require the fees to be disclosed in the ticket price,

³ Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011, 87 Fed. Reg. 67413 (proposed Nov. 8, 2022) (to be codified at 16 C.F.R. 464), <https://www.federalregister.gov/documents/2022/11/08/2022-24326/unfair-or-deceptive-fees-trade-regulation-rule-commission-matter-no-r207011>.

⁴ As of February 7th, 2023 1,861 comments have been filed under this docket using the word “Ticketmaster.” Seemingly, the vast majority of these comments complain about Ticketmaster’s excessive, often hidden fees. This shows how critical it is that the FTC acts to create a fair, transparent, and competitive marketplace for concert, theater, and sports fans alike.

and mandate disclosure of any ticket holdbacks that diminish available supply.”⁵ The Commission sits in a unique position as both an antitrust enforcement agency and the agency empowered to protect fans from junk fees through rulemaking. We hope this ANPR will serve as a starting point for a more holistic view of the problems plaguing America’s sports fans.

II. Ticketmaster/Live Nation’s Practices Are Harmful to Consumers

a. Drip pricing in the primary and secondary markets inhibits comparison shopping and deceives consumers into paying more than anticipated

Similar to the FTC’s findings with hotel resort fees, drip pricing in the live event space harms and frustrates consumers.⁶ When consumers purchase tickets on the primary or the secondary market, they are charged significant fees in addition to the face value of the ticket. However, the final price is almost never included in the advertisements, and only appears at the very last stage of the checkout process. Not disclosing the final cost of a ticket is a false and deceptive practice and results in the consumer paying more than they would have had the advertising included the full price of a ticket. While consumers can choose not to purchase a ticket at the final stage when the real cost is revealed, researching and selecting seats takes a significant amount of time, and if consumers are lured into a deal under false pretenses, they are unlikely to leave and start the process over again if they are charged high fees that they did not originally anticipate.⁷

The GAO’s investigation of the primary ticketing market found that for the majority of the events they researched, mandatory fees were not disclosed in the advertised price. In fact, their investigation uncovered that consumers could only learn the true cost of their ticket by selecting a seat, clicking through one or two additional screens, creating an account or logging in to the website, and then clicking order details. The GAO also found that in 91% of the events they surveyed, ticket fees were displayed in a significantly smaller font size than the ticket price.⁸ On average, primary market fees add 27% to the face value of a ticket, with some fees adding as

⁵ The White House, FACT SHEET: President Biden Highlights New Progress on His Competition Agenda (Feb. 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/01/fact-sheet-president-biden-highlights-new-progress-on-his-competition-agenda/>.

⁶ Mary K. Sullivan, Federal Trade Commission, Bureau of Economics, Economic Issues: Economic Analysis of Hotel Resort Fees (Jan. 2017), https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resort-fees/p115503_hotel_resort_fees_economic_issues_paper.pdf; see also Nat’l Econ. Council, The Competition Initiative and Hidden Fees (Dec. 2016), https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/hiddenfeesreport_12282016.pdf.

⁷ U.S. Gov’t Accountability Off., GAO-18-347, Congressional Requesters: Event Ticket Sales Market Characteristics and Consumer Protection Issues (Apr. 2018) at 30.

⁸ *Id.* at 22.

much as 58% to the price of a ticket.⁹ While fee rates that high alone are concerning, the fact that these fees are not adequately disclosed upfront is the real problem for consumers.

The practice of drip pricing in the secondary market also impairs consumer price shopping. It diminishes competition by preventing consumers from making accurate comparisons by hiding the actual cost of a ticket until the end of the purchase. The average fee charged to secondary market consumers increases the cost of a ticket by an average of 31% and may range up to 56%.¹⁰ As if shopping for tickets wasn't complicated enough, the GAO found that 80% of the surveyed marketplaces charged a surprising "print-at-home" fee which ranged from \$2.50 to \$7.95.¹¹

To better understand Ticketmaster's fee structure, SFC looked at three upcoming games for each National Basketball Association ("NBA") Team. We went through the buying process for the one ticket listed as the least expensive for both primary and resale tickets. In more than 30 instances, Ticketmaster, and its partners, charged more than 50% of the price listed in fees. On average, Ticketmaster charges 49.2% in fees for primary tickets and 34.2% in fees for Verified Resale tickets, proving that left as an unchecked monopoly, Ticketmaster will raise fees on consumers, and that secondary market participants represent Ticketmaster's only real form of competition. Ticketmaster's fees for primary tickets ranged from 4.68% of the listed price to 183%.

More puzzling was that fees even had wide ranges within the same venue. For example, fees for tickets to a Denver Nuggets home game differed by 48.83%, 20.34% for February 2nd's game versus the Golden State Warriors, and 69.17% for February 7th's game versus the Minnesota Timberwolves. The same holds true for tickets to home games for the Milwaukee Bucks. A standard ticket to February 2nd's game against the Los Angeles Clippers costs \$10. After a \$6.35 service fee, a \$5.00 dollar facility fee, and a \$6.95 processing fee, the total is \$28.30 -- 183% in fees. However, tickets to the Miami Heat game later in the week are more expensive. After fees, the \$127 standard ticket becomes \$161.65; fees account for 27% of this price. If you are a lower-income fan, more of what you pay goes to services you never benefit from, the definition of a junk fee.¹²

b. Fees are the tip of the iceberg for what ails the live event industry

While Ticketmaster's market power allows them to charge inflated fees, their dominance in the marketplace also allows them to harm consumers in a litany of other ways. Another harmful practice Ticketmaster implements are restrictions on ticket transferability. The right for a

⁹ *Id.* at 16.

¹⁰ *Id.* at 17.

¹¹ *Id.* at 18.

¹² See Appendix I

consumer to transfer the ticket they purchased should be guaranteed, and although during a hearing before the Senate Judiciary Committee, Live Nation President and CFO Joe Bechtold stated that they have no plans to restrict the transferability of tickets,¹³ they have fought policies that would ensure transferability in state legislatures and Congress.¹⁴ While they try and shift blame to artists and events for this issue, the fact is that Ticketmaster, through Live Nation, controls most artists and events and dictates terms they have no power to limit. Ticketmaster is incentivized to limit or restrict the resale of tickets it originally sells to its own resale platform so that it can “double dip” on fees. Namely, Ticketmaster incentivizes resale on their own platform because they can charge a fee at the point of the first sale and a second fee on the resale transaction. Through technology that requires all tickets to be accessed in its app for entry to an event, Ticketmaster has created a cumbersome experience for consumers wanting to resell tickets on a competitor’s marketplace.

Ticketmaster also fails to maintain a technological system capable of handling consumer demands. Examples of the technological failures that have frustrated consumers have been plentiful over the past year, most notably the Taylor Swift ticket-purchasing debacle, which left thousands of would-be ticket purchasers trapped in a frequently crashing ticket-purchasing portal. These issues are not constrained to nationwide events. In the weeks leading up to the Philadelphia Eagles home playoff game in the National Football League playoffs, fans were subjugated to a frustrating battle to purchase the tickets that the team released through Ticketmaster.¹⁵ With no other options for customers to purchase these tickets, Ticketmaster has absolutely no incentive to ensure that its portals can process tickets in a smooth, consumer-friendly manner. In these cases, and the many others in which Ticketmaster has had frustrating technological issues, they have blamed ticket bots. Using bots as a scapegoat is a common tactic for Ticketmaster when avoidable issues arise in their systems, even though they offer no evidence of such bots being used.¹⁶

These technological deficiencies are also freely and knowingly exploited by scalpers¹⁷ without any pushback from Ticketmaster. For example, in July 2018, the Canadian Broadcasting Channel sent an undercover journalist to a ticketing conference in Las Vegas, Nevada. While

¹³ U.S. Senate Judiciary Committee, *That’s the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment*, (Jan. 2023) <https://www.judiciary.senate.gov/meetings/thats-the-ticket-promoting-competition-and-protecting-consumers-in-live-entertainment>.

¹⁴ Olivia Perreault, *Live Nation Lobby Kills Consumer Ticket Transfer Rights Protections in Indiana*, (Feb. 2020), <https://www.ticketnews.com/2020/02/live-nation-lobby-ticket-protection-indiana/>.

¹⁵ Beccah Hendrickson, *Eagles fans wait in long Ticketmaster queue for chance at playoff tickets*, (Jan. 2023), <https://6abc.com/philadelphia-eagles-divisional-round-tickets-nfl-playoffs-lincoln-financial-field/12680849/>.

¹⁶ John Breyault, Brian Hess, and Gary Adler, *The Taylor Swift Meltdown was About Greed, not Bots*, (Jan. 2023), <https://dcjournal.com/dear-congress-the-taylor-swift-meltdown-was-about-greed-not-bots/>.

¹⁷ For the purposes of this filing, it is important to note the difference between a “scalper” and a “broker.” The former engages in unethical and/or illegal behavior in the marketplace. The latter follows the local, state, and federal laws they are subject to and engages in ethical business practices.

there, several Ticketmaster representatives admitted to Ticketmaster's complete disregard towards clear evidence of scalpers who use bots and other deceptive practices to scoop up large amounts of tickets before the average consumer has a chance. Representatives commented, "I have brokers that have literally a couple of hundred accounts...It's not something that we look at or report." Ticketmaster representatives also expressed that they are not interested in whether clients use automated software and fake identities to bypass Ticketmaster's limits, stating, "[i]f you want to get to a good show, and the ticket limit is six or eight... you're not going to make a living on six or eight tickets."¹⁸ As this investigation shows, Ticketmaster is willing to look the other way when scalpers violate their terms of use as long as doing so benefits Ticketmaster's resale businesses, such as Ticket Exchange and TicketsNow. When a Ticketmaster representative was asked, "whether Ticketmaster will ban scalpers who thwart ticket buying limits," the Ticketmaster representative stated that "[w]e've spent millions of dollars on this tool (TradeDesk). ... The last thing we'd want to do is get brokers caught up to where they can't sell inventory with us."¹⁹

While SFC believes that the above conduct implemented by Ticketmaster is one of the biggest harms to consumers, the FTC should not overlook how Ticketmaster/Live Nation leverages its monopoly to threaten and intimidate venues. Due to their monopoly status, Ticketmaster can control venues and force them into exclusive contractual obligations to use Ticketmaster ticketing services. Venues fear losing Live Nation concerts if they don't use Ticketmaster.²⁰ While other companies desire to offer "primary ticketing services" for event organizers, none come close to Ticketmaster's size, scale, and influence. Ticketmaster's closest competitor, AEG/AXS, was hired by Taylor Swift to promote her tour. But even it acknowledged it did not have the option of selling Swift tickets through its platform since most stadiums booked for the tour were contractually bound to sell tickets exclusively through Ticketmaster.²¹ This venue example is indicative of the cabal that Live Nation/Ticketmaster has methodically developed over decades.

¹⁸ Laura Clementson, Rachel Houlihan & Dave Seglins. 'A Public Relations Nightmare': Ticketmaster Recruits Pros for Secret Scalper Program, CBC, Sept. 19, 2018, <https://www.cbc.ca/news/business/ticketmaster-resellers-las-vegas-1.4828535>.

¹⁹ *Id.*

²⁰ U.S. Senate Judiciary Committee, *That's the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment*, (Jan. 2023) <https://www.judiciary.senate.gov/meetings/thats-the-ticket-promoting-competition-and-protecting-consumers-in-live-entertainment>.

²¹ John Breyault, Brian Hess, and Gary Adler, *The Taylor Swift Meltdown was About Greed, not Bots*, (Jan. 2023), <https://dcjournal.com/dear-congress-the-taylor-swift-meltdown-was-about-greed-not-bots/>.

III. Excessive and Deceptive Fees and Restrictions Are Symptoms of A Larger Disease – Monopolization

The harmful practices presented in this comment are not the effect of an open and competitive market. The live event ticket marketplace is highly concentrated, allowing the controlling monopolist to worsen the shopping experience, cause confusion and frustration, and sideline competition, all resulting in harm to consumers. As the DOJ found in 2010, Ticketmaster’s dominant market position allows the company to charge higher and higher fees.²² However, its control of the market also empowers it to implement the other harmful practices this comment and the thousands of other comments from consumers and their advocates have highlighted as particularly harmful.

a. Evolution of the Ticketmaster/Live Nation Monopoly

Before Live Nation entered the primary ticketing market, Ticketmaster dominated the ticketing services for nearly 83% of all live event venues in the country. Tickets.com, the nearest competitor, provided services for less than 4% of the market.²³ In 2008, Live Nation launched its own primary ticketing platform intending 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 with Ticketmaster was announced in February 2009, Live Nation had won more than 16% market share in the primary ticketing space.²⁴ The proposed merger was challenged by the DOJ on anti-competitive grounds, a position supported by a number of stakeholders.

In the DOJ’s complaint against Ticketmaster, they estimated the merger would cause the Herfindahl-Hirschman Index (HHI), a key measure of market concentration, to increase more than 2,130 points to 6,900. At that level, concentration in the primary ticket marketplace would have been nearly four times above the 1,800 HHI that the DOJ’s and FTC’s Horizontal Merger Guidelines considered “highly concentrated.”²⁵ The DOJ prophetically argued that Ticketmaster-Live Nation would have no incentive to compete on fees, ticket restrictions, or other “quality enhancements.”²⁶ These concerns have been realized beyond what anyone could have predicted.

b. Post-Merger harms to competition and consumers

²² Competitive Impact Statement, *United States v. Ticketmaster Ent., Inc.*, 2010 WL 5699134 (D.D.C. July 30, 2010) (No. 1:10-CV-00139), <https://www.justice.gov/atr/case-document/competitive-impact-statement-209>.

²³ Complaint at 10, *United States v. Ticketmaster Ent., Inc.*, 2010 WL 5699134 (D.D.C. July 30, 2010) (No. 1:10-CV-00139), <https://www.justice.gov/atr/case-document/complaint-224>.

²⁴ *Id.* at 13.

²⁵ *Id.* at 14.

²⁶ *Id.* at 15.

Despite the clear anti-competitive concerns and the highly predictable consumer harms, the DOJ and the merging parties entered into a consent decree in January 2010. The consent decree included behavioral restrictions, minor divestitures, and prohibitions against retaliation against venue owners who choose not to bundle promotion and ticketing services.²⁷ However, the consent decree would not restrain Ticketmaster/Live Nation to a meaningful degree. As the DOJ said in 2019, “Despite the prohibitions in the Final Judgment, Live Nation repeatedly and over the course of several years engaged in conduct that, in the Department’s view, violated the Final Judgment.”²⁸ Still, today, whether explicit or implicit, we believe these threats still happen.

Thirteen years after the initial merger, the live event ticket market remains concentrated, with no new significant competitive entrant on the horizon. The fears of critics of the merger have been realized. Live Nation-Ticketmaster still controls about 80% of a multi-billion-dollar market.²⁹ Not only do they continue to have significant market power, but over the same time period, the entity has continuously captured a greater degree of the market, expanding the harmful effects of its monopoly by acquiring more than 30 additional companies in the live event marketplace, each time with little pushback from regulators.³⁰

This concentration has had a draining effect on the live event market at large. As in many other industries, as the market has become increasingly consolidated, the primary incentive for innovation, evolution, growth, and competition, has been almost entirely eliminated. During the Senate judiciary hearing, experts such as Sal Nuzzo, from the non-profit economic think tank the James Madison Institute, and Kathleen Bradish from the American Antitrust Institute, as well as market competitors such as SeatGeek, were unanimous in their observations that Ticketmaster’s dominant position has stunted innovation.³¹ Mr. Nuzzo stated, that “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.”³² Without competition, bad systems remain bad, leaving consumers frustrated and economically burdened.

²⁷ United States v. Ticketmaster Ent., Inc., 2010 WL 5699134 (D.D.C. July 30, 2010) (No. 1:10-CV-00139), <https://www.justice.gov/atr/case-document/final-judgment-180>.

²⁸ U.S. Dep’t of Justice, Antitrust Div., Off. of Public Affairs, Press Release 19-1,424, Justice Department Will Move to Significantly Modify and Extend Consent Decree with Live Nation/Ticketmaster (Dec. 19, 2019), <https://www.justice.gov/opa/pr/justice-department-will-move-significantly-modify-and-extend-consent-decree-live>.

²⁹ Bill Pascrell Jr., *Everyone’s Worst Fears About the Live Nation-Ticketmaster Merger Have Come True*, LA Times, May 17, 2018, <https://www.latimes.com/opinion/op-ed/la-oe-pascrell-live-nation-concert-ticketing-20180517-story.html>.

³⁰ See Appendix II.

³¹ U.S. Senate Judiciary Committee, *That’s the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment*, (Jan. 2023) <https://www.judiciary.senate.gov/meetings/thats-the-ticket-promoting-competition-and-protecting-consumers-in-live-entertainment>.

³² *Id.*

Yet perhaps more significant, as monopoly control over the industry has risen, almost across the board, the prices that consumers pay and restrictions they face in purchasing tickets have also grown. Through their unchecked monopoly position, Live Nation-Ticketmaster can unilaterally set industry-wide standards without opposition from competitors or regulators. As highlighted in this comment, these practices include restrictions on transferring tickets, deceptive and costly fees, a technological system susceptible to attacks and malfunctions, and many others. Overall, their monopoly position has led to a market that causes undue costs and hardship, sidelines competitors, and overall degrades the live event experience for millions of American consumers.

There exists bipartisan consensus that Ticketmaster is a monopoly that has leveraged its power to create a live event ticketing market that is harmful to consumers, artists, and the market as a whole. Senator Amy Klobuchar, member of the Senate Judiciary Committee and Chair of the Senate Antitrust Subcommittee, stated in the opening of her testimony during the Ticketmaster Senate hearing, “This is clearly a bipartisan endeavor.” She added, “This is all a definition of monopoly because Live Nation is so powerful that it doesn't even need to exert pressure, it doesn't 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's as high as 75 percent of face value. And we also know it affects service.” Republican Senator Mike Lee, the ranking member of the Antitrust Subcommittee, conveyed a mirrored sentiment, “Ticketmaster will tell you that the settlement agreement was something that they were willing readily to enter into. They weren't bothered by the consent decree at all because ... Ticketmaster and Live Nation readily agreed not to engage in behavior that the merged firm had not 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.”³³

IV. Proposed Rule for Adoption - All-In Pricing for All Live Event Ticketing Brokers (both primary and secondary)

All-in pricing means that consumers should be presented with the full cost of the ticket at the initial advertised price, not at the very last stage of the checkout process. This seemingly basic practice would create a transparent marketplace where consumers can adequately price shop for tickets and compare prices across a number of platforms. While this measure alone is not enough to solve all of the issues Ticketmaster's monopolization has caused for the live event ticketing market, it, along with other actions, would mark a meaningful step towards a fairer and more transparent ticketing industry.

³³ *Id.*

a. Ticketmaster and other industry actors have endorsed all-in pricing

Across the industry, there is nearly universal acceptance of an all-in pricing mandate at the federal level. Even Ticketmaster endorsed the practice in the Senate Judiciary Committee Hearing, Joe Berchtold, the President and CFO of Live Nation, stated, “We believe all-in pricing makes a lot of sense. It simply is clear up front what price you're paying.”³⁴

The National Association of Ticket Brokers, a group that “represents the interests of legitimate ticket brokers by promoting consumer protection and educating the public about our industry,”³⁵ endorsed all-in ticket pricing. In a comment to the FTC, they stated, “NATB supports fair and transparent live event ticket sales and has supported a requirement of ‘all-in pricing’ which would be the outcome of a prohibition on drip pricing.”³⁶

b. There must be marketwide application as it is not economically feasible for any one market participant to lead.

Even in its comment endorsing all-in pricing, the NATB urged caution, warning that such as rule would only be effective if it were required of every ticket seller.³⁷ Without universal adoption, no industry participant will willingly lead on this issue. The reason why is highlighted by StubHub’s previous attempt to do just that.

Recognizing the consumer hatred towards hidden fees, in 2014, StubHub began including all fees in the price of their tickets. Unfortunately, many consumers who engage in comparison shopping did not realize that while StubHub prices may have been higher at first glance, there would be no hidden fees. As a result, while trying to become more transparent in its pricing, StubHub lost business as consumers went to other secondary sellers who offered deceptively low prices. Similarly, StubHub also lost resellers who flocked to other platforms to sell their tickets.³⁸ StubHub was soon forced to return to the old pricing model.³⁹

What the StubHub example suggests, is that widespread drip pricing can lead to market failure as ticketers who try to increase transparency in their pricing lose market share to resale exchanges that engage in more deceptive drip pricing. As stated earlier, the large burden of

³⁴ *Id.*

³⁵ National Association of Ticket Brokers, <https://www.natb.org>.

³⁶ National Association of Ticket Brokers, Comment from National Association of Ticket Brokers ("NATB") <https://www.regulations.gov/comment/FTC-2021-0074-0024>.

³⁷ *Id.*

³⁸ Ethan Smith, *StubHub Gets Out Of ‘All In’ Pricing*, Wall Street Journal, Aug. 31, 2015, <https://www.wsj.com/articles/stubhub-gets-out-of-all-in-pricing-1441065436>.

³⁹ Katy Osborn, *Why Stubhub is Tacking on Ticket Fees Again*, Money, Sept. 1, 2015, <https://money.com/stubhub-fees-all-in-ticket-prices/>.

researching and selecting seats takes a significant amount of time, and if consumers are lured into a deal under false pretenses, they are unlikely to leave and start the process over again if they are charged high fees that they did not originally anticipate. Therefore, if a competitor's initial price appears higher than all others, even if the actual price is the same or lower, most consumers will end up purchasing the price that is initially presented as lower.⁴⁰ As such, the market cannot self-correct, as industry actors are incentivized against employing all-in pricing due to these previous cases.

c. Other industry examples also highlight the viability and approval of all-in pricing

All-in pricing would not be unique, or even uncommon, if applied to the live event ticketing market. It has been successfully implemented in other markets. While currently plagued by other problems, the United States airline industry has successfully applied all-in pricing, not due to voluntary adoption by industry competitors, but by government mandate. To comply with FAA regulations, carriers must provide disclosure of the full price to be paid, including government taxes/fees as well as carrier surcharges, in their advertising, on their websites, and in the passenger's e-ticket confirmation.⁴¹

The FTC has also sought to protect consumers from deceptive drip pricing in the hotel market. In 2012, the FTC warned 22 hotel operators that their failure to adequately disclose the true cost of booking a room by neglecting to disclose mandatory fees might be in violation of the law.⁴² Similarly, in 2017, the FTC's Bureau of Economics found that the non-disclosure of mandatory resort fees are likely harmful to consumers as the practice forces shoppers to either "incur higher total search and cognitive costs or to make an incomplete, less informed decision that may result in a more costly room or both."⁴³

Just as it is important to allow consumers to make price comparisons in the airline or hotel industry, it is equally important to allow consumers to make accurate price comparisons in the live event space. Sports Fans Coalition urges the FTC to provide guidance that all mandatory

⁴⁰ U.S. Gov't Accountability Off., GAO-18-347, Congressional Requesters: Event Ticket Sales Market Characteristics and Consumer Protection Issues (Apr. 2018) at 30.

⁴¹ U.S. Department of Transportation, *Airline Rules and Fares*, <https://www.transportation.gov/policy/aviation-policy/airline-rules-fares>.

⁴² Mary K. Engle, Associate Director for Advertising Practices, Federal Trade Commission, Div. of Advertising Practices, Warning Letter (Nov. 2012), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-warns-hotel-operators-price-quotes-exclude-resort-fees-other-mandatory-surcharges-may-be/121128hoteloperatorsletter.pdf>.

⁴³ Mary K. Sullivan, Federal Trade Commission, Bureau of Economics, Economic Issues: Economic Analysis of Hotel Resort Fees (Jan. 2017), https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resort-fees/p115503_hotel_resort_fees_economic_issues_paper.pdf.

fees be included in any advertised ticket price and be clearly disclosed throughout the purchasing process. It is simply unacceptable for a consumer to learn the true cost of their ticket right before purchase, especially when fees for tickets can sometimes increase the price of a ticket by 50% or more. We urge the FTC to take immediate action to rein in this deceptive practice and work with members of both the primary and secondary markets to end drip pricing once and for all.

V. Because Adopting this Proposed Rule Will Only Address Part of the Problem The Need Remains for the FTC to Conduct a 6(b) Study

In the absence of legitimate competition in the primary ticketing market, we would urge the FTC to investigate more than just the harmful effects drip pricing has on consumers but into all of the other consumer harms including transferability restrictions, disclosures of holdbacks, speculative ticket disclosures, and mandatory reporting of bots, to name just a few. A thorough and transparent study would shine a light on the full extent of Ticketmaster/Live Nation's action in the live event ticketing market. This would support Congress and regulators as they seek to craft evidence-based solutions to address the anticompetitive conduct currently in play in the market. Yet, perhaps just as important, such a study would bring before the American public the current reality of the live event ticketing market and the degree to which each consumer is impacted by Ticketmaster/Live Nation's monopoly conduct.

VI. The Need for Legislation

The FTC should also support federal and state legislative efforts to address the problems discussed by SFC and so many other commenters. The Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act (BOSS Act) provides an excellent pro-consumer model for the live event industry. The bill would empower the FTC to issue rules on transparency in primary and secondary ticket sales and, along with state attorneys general, enforce those rules. Specifically, rules that would:

- “require ticket sellers to make specified disclosures to purchasers, including with respect to ancillary charges and refunds;
- require ticket sellers to include ancillary charges in refunds to purchasers;
- prohibit a primary ticket seller from restricting the ability of a purchaser to resell tickets;
- prohibit certain secondary ticket sales by employees of entities that are involved in hosting, promoting, performing in, or selling tickets to events;
- prohibit the secondary sale of a ticket for the same seat to multiple persons at the same time; and
- include other specified requirements and prohibitions related to ticket sales.”⁴⁴

⁴⁴ Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act of 2019, H.R. 3248, 116th Cong., <https://www.congress.gov/bill/116th-congress/house-bill/3248>; Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act of 2019, S. 1850, 116th Cong., <https://www.congress.gov/bill/116th-congress/senate-bill/1850/>.

This bill is endorsed by consumer protection organizations like SFC but also for-profit ticketing platforms that seek a more fair, transparent, and competitive marketplace.

VII. Conclusion

Sports Fans Coalition thanks the Federal Trade Commission for opening this rulemaking and providing us the opportunity to comment on how the current fee structures in the live event ticketing industry harm consumers. As we have hopefully highlighted in detail throughout this comment, the FTC has an opportunity to bring fairness, transparency, and stability to an industry that is currently devoid of such qualities. We hope the commission will consider not only our comment but the thousands of other comments from consumers and their advocates urging the Commission to take immediate and concrete action in the live event ticketing industry.

Appendix I

The following games are ticketed by Ticketmaster. “Standard” means the ticket was sold on Ticketmaster’s primary market. “Verified Resale” means the ticket was originally sold on Ticketmaster and then resold on its secondary market. “Resale” means the ticket was purchased from a different primary ticketer and then resold on Ticketmaster.

More information is available at <https://bit.ly/TM-NBA-Games>.

Home Team	Ticket Type	AVERAGE of Percent of price listed	MIN of Percent of price listed	MEDIAN of Percent of price listed	MAX of Percent of price listed
Atlanta Hawks	Standard	22.47%	20.26%	22.14%	25.00%
	Verified Resale	27.88%	24.76%	26.52%	32.35%
Atlanta Hawks Total		25.17%	20.26%	24.88%	32.35%
Boston Celtics	Standard	15.84%	14.13%	15.18%	18.19%
	Verified Resale	24.51%	23.30%	24.11%	26.11%
Boston Celtics Total		20.17%	14.13%	20.75%	26.11%
Brooklyn Nets	Resale	24.89%	20.81%	25.67%	28.18%
Brooklyn Nets Total		24.89%	20.81%	25.67%	28.18%
Charlotte Hornets	Standard	64.41%	54.95%	66.00%	72.27%
	Verified Resale	29.98%	27.44%	31.25%	31.25%
Charlotte Hornets Total		47.19%	27.44%	43.10%	72.27%
Chicago Bulls	Standard	33.62%	20.59%	40.13%	40.13%
	Verified Resale	32.05%	30.42%	32.05%	33.67%
Chicago Bulls Total		32.99%	20.59%	33.67%	40.13%
Cleveland Cavaliers	Resale	26.95%	19.27%	26.63%	34.95%
Cleveland Cavaliers Total		26.95%	19.27%	26.63%	34.95%
Dallas Mavericks	Standard	24.85%	20.00%	27.27%	27.27%
	Verified Resale	32.74%	31.94%	31.94%	34.35%
Dallas Mavericks Total		28.80%	20.00%	29.61%	34.35%
Denver Nuggets	Standard	51.14%	20.34%	63.93%	69.17%
	Verified Resale	33.81%	23.92%	37.44%	40.07%
Denver Nuggets Total		42.48%	20.34%	38.75%	69.17%
Detroit Pistons	Standard	44.43%	28.85%	44.44%	60.00%
	Verified Resale	30.23%	23.56%	31.75%	35.39%
Detroit Pistons Total		37.33%	23.56%	33.57%	60.00%
Golden State Warriors	Standard	22.65%	18.60%	20.27%	29.08%
	Verified Resale	26.55%	24.28%	24.98%	30.38%
Golden State Warriors Total		24.60%	18.60%	24.63%	30.38%
Houston Rockets	Resale	61.42%	43.83%	61.43%	79.00%
Houston Rockets Total		61.42%	43.83%	61.43%	79.00%
Indiana Pacers	Standard	43.04%	4.68%	46.67%	77.78%
	Verified Resale	31.38%	20.04%	35.44%	38.67%
Indiana Pacers Total		37.21%	4.68%	37.05%	77.78%
Los Angeles Clippers	Resale	28.53%	23.66%	27.94%	34.00%
Los Angeles Clippers Total		28.53%	23.66%	27.94%	34.00%
Los Angeles Lakers	Standard	23.52%	23.52%	23.52%	23.52%
	Verified Resale	24.30%	23.66%	23.91%	25.34%
Los Angeles Lakers Total		24.11%	23.52%	23.79%	25.34%
Memphis Grizzlies	Standard	59.52%	59.52%	59.52%	59.52%
	Verified Resale	55.65%	34.67%	44.50%	87.80%
Memphis Grizzlies Total		57.59%	34.67%	59.52%	87.80%
Miami Heat	Standard	62.61%	47.65%	66.00%	74.19%

	Verified Resale	32.56%	24.56%	32.80%	40.31%
Miami Heat Total		47.59%	24.56%	43.98%	74.19%
Milwaukee Bucks	Standard	131.09%	27.28%	183.00%	183.00%
	Verified Resale	35.36%	23.21%	41.44%	41.44%
Milwaukee Bucks Total		83.23%	23.21%	41.44%	183.00%
Minnesota Timberwolves	Resale	33.22%	27.94%	29.79%	41.92%
Minnesota Timberwolves Total		33.22%	27.94%	29.79%	41.92%
New Orleans Pelicans	Resale	30.33%	21.40%	34.79%	34.79%
New Orleans Pelicans Total		30.33%	21.40%	34.79%	34.79%
New York Knicks	Standard	20.42%	15.00%	22.56%	23.71%
	Verified Resale	20.88%	17.72%	20.43%	24.48%
New York Knicks Total		20.65%	15.00%	21.49%	24.48%
Oklahoma City Thunder	Standard	62.50%	62.50%	62.50%	62.50%
	Verified Resale	40.78%	39.94%	41.20%	41.20%
Oklahoma City Thunder Total		51.64%	39.94%	51.85%	62.50%
Orlando Magic	Standard	28.65%	22.65%	30.17%	33.13%
	Verified Resale	25.24%	20.52%	26.10%	29.09%
Orlando Magic Total		26.94%	20.52%	27.59%	33.13%
Philadelphia 76ers	Standard	33.87%	21.43%	38.65%	41.52%
	Verified Resale	33.16%	21.98%	37.44%	40.07%
Philadelphia 76ers Total		33.52%	21.43%	38.05%	41.52%
Phoenix Suns	Standard	76.02%	69.48%	74.63%	83.96%
	Verified Resale	33.98%	27.17%	29.17%	45.58%
Phoenix Suns Total		55.00%	27.17%	57.53%	83.96%
Portland Trail Blazers	Standard	35.71%	28.57%	28.57%	50.00%
	Verified Resale	22.05%	19.94%	19.94%	26.25%
Portland Trail Blazers Total		28.88%	19.94%	27.41%	50.00%
Sacramento Kings	Standard	55.41%	38.62%	41.89%	85.71%
	Verified Resale	30.18%	27.67%	31.02%	31.83%
Sacramento Kings Total		42.79%	27.67%	35.23%	85.71%
San Antonio Spurs	Standard	80.03%	75.00%	77.89%	87.19%
	Verified Resale	40.87%	35.75%	36.35%	50.50%
San Antonio Spurs Total		60.45%	35.75%	62.75%	87.19%
Toronto Raptors	Standard	17.82%	13.68%	17.62%	22.14%
	Verified Resale	20.50%	20.50%	20.50%	20.50%
Toronto Raptors Total		19.16%	13.68%	20.50%	22.14%
Utah Jazz	Standard	64.21%	48.16%	70.29%	74.17%
	Verified Resale	36.04%	30.80%	33.75%	43.58%
Utah Jazz Total		50.13%	30.80%	45.87%	74.17%
Washington Wizards	Standard	90.10%	85.00%	85.00%	100.31%
	Verified Resale	41.26%	36.00%	39.69%	48.09%
Washington Wizards Total		65.68%	36.00%	66.55%	100.31%

Appendix II

Live Nation Entertainment Past Acquisitions		
Company	Date Acquired	Most Affected Nation
Veeps	Jan. 19, 2021	U.S.
Rival	Apr. 14, 2020	U.S.
OCESA	Dec. 6, 2021	Mexico/Colombia
Spaceland Presents	May 17, 2019	U.S.
Neste Event Marketing	Feb 20, 2019	U.S.
Embrace Entertainment	Feb. 26, 2019	Canada
UPGRADED	Oct. 18, 2018	U.S.
Emporium Presents	Oct. 3, 2018	U.S.
Red Mountain Entertainment	June 27, 2018	U.S.
Assets from CERG	Jan. 17, 2018	N/A
Frank Productions	Jan. 11, 2018	U.S.
Strobe Labs	Aug. 10, 2017	U.S.
AC Entertainment	Nov. 2, 2016	U.S.
Tickethour SA	July 27, 2016	U.S.
Greenlight Media and Marketing	May 4, 2016	U.S.
Founders Entertainment	Apr. 11, 2016	U.S.
Front Gate Tickets	June 10, 2015	U.S.
Universe	June 10, 2015	U.S.
C3 Presents	Dec. 19, 2014	U.S.
Eventjoy	Sept. 11, 2014	U.S.
HARD Events	June 27, 2012	U.S.
Cream Holdings Limited	May 9, 2012	U.S.