

FTC Invites Comment on Online Ticket Sales, Examines GAO Report

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The Federal Trade Commission (FTC) recently announced that it will hold a series of public hearings examining whether changes in the economy, evolving business practices, new technologies or international developments might require adjustments to competition and consumer protection law, enforcement priorities and antitrust policy. These hearings will be similar in form and structure to the Global Competition and Innovation Hearings held in 1995. The FTC has invited public comment in advance of each of the hearings and also will consider additional public comment upon completion of the entire series of hearings.

As part of these efforts, on March 27, 2019, the staff of the FTC will hold a workshop focused on consumer protection and competition issues related to online event ticket sales. The FTC noted that consumers and competitors frequently have complained about practices in this industry, and FTC staff therefore is seeking public input in advance of the workshop by **December 5, 2018**, including about the scope of possible discussion topics and potential participants. The workshop will feature opening remarks by Commissioner Rebecca Kelly Slaughter and seeks to gather various industry representatives, consumer advocates, trade associations, academics and government officials to discuss online event ticket sales.

In advance of the hearing, FTC staff is reviewing a report about this industry that was recently issued by the U.S. Government Accountability Office (GAO). The GAO examined online ticket sales for concert, theater and major league sporting events by interviewing various industry participants and reviewing industry data. The GAO concluded that generally, ticket prices are lower in what it calls “the primary market,” whereas tickets usually sell at prices above face value in the “secondary market.” The report also described problems faced by consumers who purchase tickets online and offered several proposed solutions, including some market-based approaches that could be adopted by primary ticket sellers.

GAO Report

The GAO estimated that in 2017, online ticket sales revenues in the United States totaled approximately \$7.1 billion. Ticketmaster has an estimated 80 percent share of primary ticket sales, with approximately a dozen other companies engaging in primary ticket sales. StubHub has an estimated 50 percent share of secondary ticket sales, and there are many other companies engaging in secondary ticket sales, including Ticketmaster.

Despite the size of this industry, ticket sales are not directly federally regulated. The FTC sometimes challenges ticket practices under the FTC Act, which prohibits unfair or deceptive acts. The Department of Justice monitors competition in the event ticketing industry and has approved certain mergers, including the Live Nation and Ticketmaster merger in 2010. States also use unfair and deceptive acts and practices laws to address ticketing issues.

Several government agencies are contemplating legislative or regulatory measures that would directly target ticket sales. For example, in 2017, New York Attorney General Eric Schneiderman issued a report titled “Obstructed View: What’s Blocking New Yorkers From Getting Tickets.” The report described concerns about online ticket sales and potential legal measures that the state was considering to address those concerns. Other states have expressed similar concerns with online ticketing practices.

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Pricing and Sales Practices

The GAO examined ticket pricing and sales practices in several entertainment segments, including concert, theater and major league sporting events. It found that concerts and events tend to use ticket holds and presales to reward loyal fans, accounting for approximately 10 percent to 30 percent of available tickets. Artists sometimes reduce the face value of concert tickets for various reasons, including to ensure sold-out shows and to provide access for fans of all income levels. Some artists use agreements with brokers or secondary ticket resale sites to recoup some of the additional revenues made from tickets that are resold.

The GAO found that professional sports leagues leave most decisions about ticket pricing and distribution to individual member teams. Between 55 percent and 85 percent of tickets to professional sporting events are sold through full- or partial-season ticket packages, but many teams save some single game-day tickets for fans or for guests of arena owners. All sports leagues that the GAO interviewed indicated that their teams generally do not use holds or presales for game tickets. Unlike tickets to other entertainment events, sporting tickets generally are priced to maximize revenue, rather than below the estimated value of the ticket to ensure sold-out events.

Across all segments of entertainment events, primary ticket sellers use brokers, but the extent of this use varies dramatically by industry segment and/or team. The GAO reported that in major league sports, teams sell up to 30 percent of tickets using brokers, whereas other entertainment vendors indicated that they use brokers for less than 10 percent of ticket sales. Ticket sellers indicated that they continue to use brokers in order to reduce risk by guaranteeing a certain level of sales.

According to representatives from four secondary ticket exchanges interviewed by the GAO, professional brokers make the majority or overwhelming majority of sales on the exchanges. Other sellers include fans who purchase season tickets but cannot attend every game, or ticket purchasers who can no longer attend an event and want to recoup the cost of their ticket. While all sellers set their own prices on secondary ticket exchanges, some exchanges offer pricing recommendations. Most of the exchanges allow adjustment of prices over time, so sellers can lower prices if tickets are not selling, or raise prices if demand warrants.

All online ticketing platforms analyzed by the GAO assessed fees to consumers. Fees averaged 27 percent for primary sales and 31 percent for secondary sales, with the GAO observing fees ranging from 20 percent to 56 percent. These include fees set by the seller, the selling platform and/or the venue

operator. Fees for sporting events are lower on average than fees for concerts or theater, averaging 20 percent for sporting events and 30 percent for other events on primary ticket selling platforms.

Concerns and Proposed Solutions

The GAO identified several consumer protection concerns based on its investigation:

- Brokers have a competitive advantage (through technology, bots and other resources, as described below);
- Fees are not clearly disclosed (or are only visible after selecting a ticket and proceeding to checkout);
- The dollar amounts of fees are too high;
- Some online tickets are speculative or fraudulent; and
- Consumers are harmed by designated resale exchanges (*i.e.*, those resale platforms that are linked to the primary ticket seller).

The GAO also proposed several potential legislative or regulatory actions to address these consumer protection concerns related to ticket resale:

- Prohibition of nontransferable tickets;
- Price caps;
- Required up-front disclosure of fees;
- Required disclosure of face value of ticket on resale sites; and
- Required disclosure of ticket availability.

Additionally, some industry players have suggested market-based approaches to address concerns about secondary ticket resale activity, including: delivery delays; dynamic pricing; a verified fan program; new technology (using identification codes to ensure ticket authenticity); adding additional events (mainly for concerts); and face-value resale exchanges.

Some industry participants are already implementing requirements that may improve customer experience. For example, Google now requires enhanced disclosures from ticket resellers using its advertising platform that are designed to protect consumers from scams or from becoming confused about whether the seller is a primary or secondary seller.

Some or all of these concerns and proposed solutions may be discussed at the March 2018 FTC hearing. Industry participants may consider voicing their opinions by written submission (**due by December 5, 2018**) or participation in person at the workshop.