



**Senate Standing Committee on Investigations and Government Operations & Senate
Standing Committee on Commerce, Economic Development, and Small Business
Joint Public Hearing on Ticket Sales for Live Events in New York State
April 22, 2021**

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Thank you for inviting Consumer Reports to testify on consumer protections in New York State's primary and secondary ticket marketplaces. This hearing is taking place at a unique time. Live events have been put at a standstill for more than a year, and it is still not clear when they will fully restart. As the worst of the pandemic appears to be behind us, artists, venues, and fans are eager to get back to plays, concerts, and sporting events. We are all hopeful that our favorite venues will open up and that we will once again be able to gather together and share experiences.

This hearing is important however, because these two committees have the opportunity to examine the ticketing marketplaces that exist in New York, and to address the potentially unfair and deceptive practices occurring in New York State's primary and secondary ticket marketplace. Consumer Reports¹ urges your committees to use this discussion to augment your understanding of the scope of consumer harm in the ticketing marketplace, and to consider appropriate legislation to establish transparency, and promote better and more informed choices, for consumers.

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. Based in Yonkers, NY, Consumers 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.

As you well know, Americans have long expressed frustration with the online ticketing marketplace. In 2018, in advance of a workshop on event ticketing at the Federal Trade Commission, 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 experiences with both Consumer Reports and the Federal Trade Commission. These consumers, representing all 50 states, the District of Columbia, and Puerto Rico - and more than 500 New Yorkers - 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 became clear from these stories that the online event ticketing marketplace is not 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 findings came as no great surprise given existing examinations of the ticket marketplace, including a 2016 investigation by New York Attorney General Eric Schneiderman that looked into market manipulation and pricing abuses related to ticket sales in New York. That report highlighted the fact that a majority of ticket sales for popular concerts and other events were not being reserved for the general public; instead brokers and bots were buying tickets in bulk, crowding out fans from purchasing tickets when first offered for sale, and then reselling the tickets back to the public at substantial markups. Further, the Attorney General found that ticket sellers and venues routinely charged high add-on fees for service or "convenience" charges for unclear purposes, that appeared to bear little relationship to the value of any ancillary services actually provided. Finally, the Attorney General noted that ticket sellers were imposing restraints of trade such as resale price floors, which limited the ability of consumers to benefit from lower prices.

Hidden Prices Have Real Impact on Consumers

The hidden fees charged by ticket sellers are frustrating to consumers, and they distort the marketplace and cause consumer harm. 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 deceptive; at a minimum they make prices unclear, hinder effective consumer decision making, and dull the competitive process.”²

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.³ And financial disclosures⁴ indicate that nearly half the revenue of Live Nation, the largest ticket seller in the country,⁵ comes from those fees.

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 only as the consumer is completing 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.⁶

Recent research has found that the movement of sales from in-person to online may further contribute to industry obfuscation of prices, in two ways, with internet sales containing more hidden charges than brick and mortar sales. Ellison and Ellison argue

² National Economic Council, *The Competition Initiative and Hidden Fees* (Dec. 2016), at: https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/hiddenfeesreport_12282016.pdf.

³ Government 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>.

⁴ 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>.

⁵ 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>.

⁶ 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.

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.⁷

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 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.⁸ 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.

More Can be Done to Protect Consumers

New York has taken steps to protect consumers in this marketplace through the enactment of laws requiring transparency and disclosures, as well as by prohibiting the most egregious “white label” websites that fool consumers into thinking that they are buying from the venue itself. These protections have made a significant difference, and set a standard for other states and the federal government to follow.

Consumer Reports, along with the more than 500 New Yorkers who shared their views with us and with the FTC, urges you to renew these expiring protections, and to look for ways to further strengthen them.

Consumers shopping online for event tickets deserve to be told, at the start of the shopping process, the full price they will be expected to pay, to know whether they are buying tickets on the primary or secondary market, and to have accountability from the seller that the ticket they are purchasing is valid.

⁷ 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>.

⁸ 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>.