

June 11, 2024

The Honorable Rebecca Bauer-Kahan
Chair, Assembly Privacy and Consumer Protection Committee
1020 N Street, Rm. 162
Sacramento, CA 95814

Re: Senate Bill 785 (Caballero)

Dear Chair Bauer-Kahan:

Thank you for the opportunity to submit comments regarding Senate Bill 785 (“SB 785”). The Progressive Policy Institute (PPI) is a catalyst for policy innovation and political reform based in Washington, D.C., with offices in Brussels, the U.K., and Kiev. Its mission is to create radically pragmatic ideas for moving America beyond ideological and partisan deadlock. PPI is home to a [center on competition advocacy](#) with the goal of promoting competitive markets for the benefit of consumers and workers. PPI’s program areas include legal, economic, and policy analysis and commentary, across all areas of antitrust law and competition policy.

I. Live Nation-Ticketmaster Has Trained Its Sights on Limiting Competition From Ticket Resale

PPI has advocated for antitrust enforcement to play a leading role in promoting competition in the live events industry. Live Nation-Ticketmaster has dominated the markets that comprise the live events supply chain for more than 15 years. The company’s consistent and abusive exercise of market power has long stifled competition from independent venues and, most recently, in the secondary or resale ticketing market, which Ticketmaster has grown rapidly to dominate. Fans are the direct casualties of anticompetitive practices, which they pay for through sky-high ticket fees, barriers to accessing events, poor quality service and glitchy ticketing platforms, and [breaches of ticket buyers’ data privacy and security](#).

PPI’s Vice President and Director of Competition Policy, Diana Moss, has written extensively on the need for a U.S. Department of Justice (DOJ) monopolization case against Live Nation-Ticketmaster. Dr. Moss also analyzes federal and state [legislative proposals to intervene in the resale ticket market](#). For the reasons explained below, some proposals have stumbled through federal and state legislatures. Many of them are supported by Live Nation-Ticketmaster, a clear indication that intervening in resale ticket markets would serve only to preserve and reinforce the company’s monopoly power.

The DOJ [filed an antitrust case against Live Nation-Ticketmaster](#) on May 23, 2024. The state of California, along with 29 other states, signed onto the DOJ’s complaint. Dr. Moss has explained that, in the likely event the DOJ prevails in its case, [a breakup remedy is the only way](#) to end the company’s monopolistic practices, promote competition, and protect fans and artists. On the

other hand, some legislative proposals — despite their stated focus on protecting consumers — intervene in resale markets in ways that would exacerbate anticompetitive conduct by Live Nation-Ticketmaster.

This outcome would limit competition from resale, which is the *only* source of competition in ticketing, to the detriment of fans and artists. Such legislative proposals, including some provisions in SB 785, would be at odds with the DOJ antitrust case that seeks to reintroduce competition in live events. For this reason, PPI urges this Committee and legislators in other states and at the federal level to “table” legislation directed at the resale market during the pendency and outcome of the DOJ litigation.

II. Senate Bill 785 Could Hamstring, or Even Debilitate, Competition From Ticket Resale

PPI respectfully submits that SB 785 contains existing provisions that would hand more market power to Live Nation-Ticketmaster. It is PPI’s understanding that certain amendments are being considered that would exacerbate this problem. Many of these issues are explained by Dr. Moss in a recent commentary on the proposed “Fans First Act” (S. 3457) in the U.S. Senate. The commentary **Fans Last? How the Fans First Act Hands Live Nation-Ticketmaster More Market Power** appeared in ProMarket.org on February 14, 2024 and is included below.

As explained in the ProMarket.org commentary, many legislative proposals go beyond promoting the “Two T’s,” or ticketing “transferability” and “transparency,” which are central to competition from ticket resale. They introduce legal requirements that would hamstring competition from resale, or shut down resale ticket markets entirely. This runs counter to pro-competition public policy. Resale serves a vital function, namely, to facilitate fan access to events. Resale allows fans to reclaim ticket value if they cannot attend an event, while facilitating access by other fans, [often at lower prices](#). As a result, resale increases demand for artists and teams by matching up more ticket buyers with ticket sellers than is otherwise possible.

There are provisions in SB 785 that are pro-competitive, such as “all-in” pricing that helps ticket buyers make informed purchasing decisions, encourages comparison shopping, and therefore spurs competition. However, PPI is concerned about provisions that — as is clear from debates in other states — would tilt the scales toward Live Nation-Ticketmaster. These provisions would hand Live Nation-Ticketmaster even more control, steering fans away from the resale market and toward its own platform where it exercises significant market power.

III. Provisions of SB 785 That Stray From Consumer Protection and Limit Competition From Resale

PPI is particularly concerned about the following provisions of SB 785. PPI urges the Committee to reconsider their inclusion in the bill, or to modify them to remove conditions that would hamper or eliminate competition from resale.

A. SB 785 Section 9: Control of Terms and Conditions That Directly Impact Competition

This section states: “Nothing in this chapter shall infringe upon the right of an event presenter to impose terms and conditions on the sale, pricing, transfer, or resale of tickets to their events, or on the technologies that an event presenter uses in the sale of those tickets.”

This provision would give Live Nation-Ticketmaster and the enormous number of venues it controls the unilateral ability to restrict ticket transferability and transparency throughout the live events supply chain. For the reasons explained above, legislation should not obstruct resale by giving an event presenter control of a ticket throughout its entire life span, *i.e.*, after it has been sold the first time. Such provisions protect narrow interests in the supply chain and would hinder competition from resale, in a market that is already dominated by a monopoly.

B. SB 785 Section 12: Limiting Ticket Buyers' Ability to Search for Tickets Online

This section states, in part: "A person shall not use an internet website, or cause an internet website to be used, to display either of the following...(b) Any combination of text, images, web designs, or internet addresses that is substantially similar to the internet website of an event presenter or original seller, or any of their authorized agents, without the written consent of the event presenter or original seller."

As noted in the ProMarket.org commentary, such language could excessively restrict a reseller's ability to identify an event associated with a ticket online. This would, in turn, limit ticket buyers' ability to discover resale tickets in online searches. When deceptive practices involving the use of URLs are actually identified, violators should be held accountable through other appropriate enforcement mechanisms. SB 785's inclusion of this provision, however, would harmfully constrain competition from resale.

C. Potential Amendments to SB 785: Limiting Competition by Capping Resale Ticket Prices and Fees

Provisions that would regulate resale prices or fees by capping them, while Live Nation-Ticketmaster freely exercises market power in primary ticketing, plays directly into the hands of the monopoly. Capping resale prices and fees would debilitate competition from resale, preventing ticket sellers from matching up with ticket buyers at prices that reflect the level of consumer demand for events. Resale is the only source of competition in ticketing, [often delivering lower prices](#) than at a box office or its primary ticketer. By virtue of its monopoly, the primary ticketer is most often Ticketmaster.

PPI appreciates the opportunity to share its analysis and perspective on SB 785 and look forward to engaging with the Committee on this important issue.

Respectfully submitted,



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Fans Last? How the Fans First Act Hands Live Nation-Ticketmaster More Market Power

By [Diana L. Moss](#)

ProMarket.org

February 14, 2024

The Senate has introduced two bills to address ticketing transparency and competition in the live events industry. While the bills followed on the heels of Live Nation-Ticketmaster's mishandling of the Taylor Swift Eras Tour, the problems go back much further. Diana Moss argues that the most recent bill, the Fans First Act, while well-intentioned, risks undermining competition by hamstringing the resale market, which will only strengthen Ticketmaster's monopoly.

It has been just over a year since the Senate Judiciary Committee held a hearing on the dismal [state of competition in the ticketing industry](#) in the United States. The hearing was spurred by the epic meltdown of Live Nation-Ticketmaster's ticketing platform during the sale for the Taylor Swift Eras Tour. The parallel meltdown of Swifties who couldn't get tickets galvanized public attention, pulling Live Nation again into the spotlight as a leading U.S. monopolist. The live events behemoth has formidably high and stable market positions in ticketing, concert promotion, and venues, including Ticketmaster's 70% share of the high-profile ticketing market.

Singer-songwriter Clyde Lawrence spoke at the Senate hearing to visible evidence of a broken market—Live Nation-Ticketmaster is often the only choice for artists to sell tickets to their concerts. To appreciate the full harm from the live events monopoly, let's remember that the Taylor Swift debacle wasn't the first. Trouble over Ticketmaster's domination was brewing long before.

That includes [Pearl Jam](#)'s attempt to take on Ticketmaster on high ticket fees in 1995, long before the merger of Live Nation and Ticketmaster in 2010 put the monopoly problem on steroids. There was also [String Cheese Incident](#) in 2012, when the band bought and resold their own tickets to avoid Ticketmaster's fees. In 2022, [Bruce Springsteen](#) apologized to fans for high ticket prices related to Ticketmaster's dynamic pricing strategy.

There were other important takeaways from the Senate hearing, which spurred several legislative proposals to address competition and ticketing transparency. There was rare bipartisan agreement, in this case, acknowledging that Live Nation is, indeed, a monopolist. But there was also confusion about the resale ticket markets and troubling talk of limiting ticket transferability and capping resale ticket prices. This would effectively shut down the resale market. Not only do resale markets increase efficiency by matching up more fans with more artists and expanding demand for live events, they are also the only source of competition in ticketing.

While public outrage over the Live Nation monopoly has intensified, the playbook for fighting it is still being written. Take legislative proposals, where the goal should be to avoid policies that have unintended, adverse effects on competition. The [Unlock Ticketing Markets Act \(S. 1326\)](#), introduced in early 2023, prohibits exclusive contracts between a primary ticketer and a venue that are used by Ticketmaster to choke off competition. It's a smart bill that will help open up markets to competing ticketing platforms for primary sales and resales.

Another bill introduced in late 2023, the [Fans First Act \(S. 3457\)](#), aims to promote ticketing transparency and transferability. Fans First implicitly takes on Ticketmaster’s anticompetitive practices that work to stifle competition in resale, including ticket holdbacks, slow ticketing, restricted paperless ticketing, and delayed ticket delivery. These practices drive fans back to the Ticketmaster platform and its monopoly ticket fees.

In an effort to improve ticketing transparency and promote competition, however, Fans First ends up handing more market power to Ticketmaster. It comes as no surprise, therefore, that Ticketmaster endorsed the bill the day it came out. A careful read of Fans First reveals five major flaws that act to undermine competition from resellers.

First, Fans First defines a ticket as a “license to enter an event venue or occupy a particular seat or area in an event venue.” In light of Ticketmaster’s abusive ticketing practices, a ticket should *not* be defined as a license, it should be a ticketholder’s “right.” A license is a permission, which can be changed or revoked. The bill doesn’t spell out limitations on the ability of a ticketer or event organizer to change the terms of a ticket license in ways that would frustrate buyers of resale tickets. This effectively hands Ticketmaster another way to steer ticket buyers back to its own platform and stifle competition.

Second, Fans First requires secondary ticketing exchanges to provide a buyer with the option to provide their personal information to the artist and venue. While there are some data use limitations, information transfers are based on the flimsy pretext of venue safety and event cancellations. What the data transfer provision does is give Ticketmaster, as the original ticket seller, valuable information that the company will digitally harvest to steer fans back to its own platform for future purchases. Realistically, we can expect minimal enforcement of any data violations that are masquerading as legitimate reasons under the Fans First provision. Any legislative provision where smaller competitors hand over their customers’ sensitive information to Ticketmaster should be dead on arrival.

Third, Fans First restricts a reseller’s ability to identify the event associated with a ticket. Say you are searching online for U2 tickets. Under Fans First, a reseller can’t include the term “U2” in a URL. This provision works largely to Ticketmaster’s advantage because it limits how ticket buyers can discover resale tickets in online searches. It is one thing to limit URLs to avoid the false perception that a ticket is sold by the venue or event organizer. But is entirely another if a ticket buyer will never discover a reseller’s webpage because of restrictions on how resellers construct URLs. The bill’s provision would put control of a ticket buyer’s search process in the hands of Ticketmaster, steering them away from resellers and toward their own platform.

Fourth, Fans First includes a provision for a Government Accountability Office study of ticketing market practices. A major feature of GAO studies is issue “neutrality.” But Fans First includes questions for the study with baked-in assumptions that resellers engage in market manipulation and unfair, unethical, or illegal tactics to acquire and sell tickets. No similar assumptions about Ticketmaster’s practices are apparent in the bill’s GAO study mandate, which stacks it against resellers and toward Ticketmaster.

Finally, Fans First requires “all-in” ticket pricing. The total ticket price—including the ticket price, taxes, and ancillary ticket fees—must be disclosed in advertising and when first displayed to the buyer online. Hidden ticket fees prevent comparison shopping, where buyers click through screen

after screen, only to face an inflated total price at the end. But Fans First doesn't answer basic questions about how all-in pricing works with dynamic ticket prices. For example, will ticket sellers refrain from pro-competitive advertising if dynamic prices differ from advertised prices? This uncertainty risks tilting the market toward Ticketmaster, and against resellers. Avoiding this unintended consequence of all-in pricing will require more thought on the part of the legislative drafters.

With appreciation to members of Congress who are focused on the Live Nation monopoly, Fans First isn't ready for prime time. It works to shield a monopolist from competition, under the guise of protecting the public. Fans, artists, and smaller businesses in the live events industry should ask for a bill that is built solidly on promoting competition in ticketing. That means calling out Ticketmaster's market power and abusive ticketing practices, instead of one that targets the resale of previously purchased tickets.

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