

July 7, 2025

The Honorable Gail Slater
Assistant Attorney General
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

The Honorable Andrew Ferguson
Chair
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Comments of the Progressive Policy Institute on the “Public Inquiry to Identify Unfair and Anticompetitive Practices and Conduct in the Live Concert and Entertainment Industry” (Docket No. ATR-2025-0002)

The Progressive Policy Institute (“PPI”) is pleased to provide comments in response to the U.S. Department of Justice (“DOJ”) and Federal Trade Commission (“FTC”) Request for Information (“RFI”) on the “Public Inquiry to Identify Unfair and Anticompetitive Practices and Conduct in the Live Concert and Entertainment Industry” (Docket No. ATR-2025-0002), issued May 7, 2025.¹

PPI is a catalyst for policy innovation and political reform based in Washington, D.C., with a mission to create pragmatic ideas for moving America beyond ideological and partisan deadlock. PPI is home to a program on competition advocacy that focuses on antitrust enforcement and competition policy that benefits consumers and workers.² PPI has produced leading legal-economic research and commentary on the importance of competition in live events ticketing markets, examples of which are appended to this comment.³

¹ “Justice Department and Federal Trade Commission Seek Information on Unfair and Anticompetitive Practices in Live Ticketing,” Department of Justice, May 7, 2025, <https://downloads.regulations.gov/ATR-2025-0002-0002/content.pdf>.

² For more information on PPI, please visit progressivepolicy.org.

³ See, e.g., “Letter from Diana Moss Re: New York Senate Bill S8221 and Assembly Bill A8659, Progressive Policy Institute, June 2, 2025, <https://www.progressivepolicy.org/wp-content/uploads/2025/06/PPI-Letter-re-NY-S8221.pdf> and “Letter from Diana Moss, Re: California Senate Bill SB785 (Caballero),” Progressive Policy Institute, June 11, 2024, https://www.progressivepolicy.org/wp-content/uploads/2024/09/CA-SB-785-Comments_PPI_6.11.24.pdf.

I. The Executive Order's Focus On "Middlemen" Overlooks the Live Nation-Ticketmaster Monopoly

The White House issued Executive Order 14254 ("EO"), Combating Unfair Practices in the Live Entertainment Market, on March 31, 2025.⁴ The EO focuses on "unscrupulous middlemen" that impose "egregious" fees on tickets that are sold in the secondary, or resale, market.⁵ The EO asserts that these practices gouge consumers and deprive artists of profits and declares that rent-seeking behavior "capitalize[s] on market distortions that must not be allowed to persist."⁶ The EO directs the DOJ and FTC to "ensure that competition laws are appropriately enforced in the concert and entertainment industry, including where venues, ticketing agents, or combinations thereof operate to the detriment of artists and fans."⁷

The EO directs the FTC to: (1) propose regulations to ensure price transparency at all stages of the ticket-purchase process; and (2) prevent unfair, deceptive, and anti-competitive conduct. Both of these directives pertain exclusively to the secondary ticketing market, without reference to the primary ticketing market, in which Live Nation-Ticketmaster has commanded a durable monopoly for decades.⁸

The EO omits any reference to the "elephant in the room" in the debate over live event ticketing. That is, namely, Live Nation-Ticketmaster's monopoly in the primary ticketing market that continues to stifle competition, to the detriment of consumers and artists. The EO reinforces Live Nation-Ticketmaster's well-known and well-worn narrative that antitrust enforcers and lawmakers should pay no attention to its monopoly power and its consequences for consumers and artists.⁹ Instead, the EO focuses on scalpers that account, in reality, for a minuscule fraction of sales in the resale ticketing market .

Finally, the EO promotes the idea of "regulating all stages of the ticketing process" to promote price transparency.¹⁰ For an administration that has worked continuously to *remove* regulations in the U.S. economy, the EO's directives are in direct conflict with this policy.¹¹ Moreover, the EO reinforces Live Nation-Ticketmaster's efforts to deflect attention from its monopoly that continues to stifle competition in ticketing and redirect it toward regulation of the resale market, which provides the *only* source of competition for consumers.

⁴ "Combating Unfair Practices in the Live Entertainment Market," 90 Fed. Reg. 14699, March 31, 2025, <https://www.federalregister.gov/documents/2025/04/03/2025-05906/combating-unfair-practices-in-the-live-entertainment-market>.

⁵ "Combating Unfair Practices."

⁶ "Combating Unfair Practices."

⁷ "Combating Unfair Practices."

⁸ "Combating Unfair Practices."

⁹ DanWallLN (@DanWallLN), X (Dec 19, 2024, at 14:48 ET), <https://x.com/danwallln/status/1869832267381780807> [https://perma.cc/9E92-3QCK] (DanWallLN is an account held by Dan Wall, the Live Nation Entertainment's Executive Vice President for Corporate and Regulatory Affairs).

¹⁰ "Combating Unfair Practices."

¹¹ "Tracking Regulatory Changes in the Second Trump Administration," Brookings Institute, June 25, 2025, <https://www.brookings.edu/articles/tracking-regulatory-changes-in-the-second-trump-administration/>.

On May 7, 2025, the DOJ and FTC issued an RFI for public comment to “identify unfair and anticompetitive practices and conduct in the live concert and entertainment industry.”¹² In response to the EO, the RFI encourages the public to address both “harmful practices” and the “potential for regulation or legislation” to protect consumers.¹³ In parallel, the RFI encourages the public to comment on the competitive effects of “*current* state and federal regulations and laws” in the live concert and entertainment industry, including the secondary ticketing market.¹⁴

II. The Live Nation-Ticketmaster Monopoly is the Sole Source of Distortions in Ticketing Markets

The EO does not reference the pending DOJ and 40-state antitrust lawsuit against ticketing monopolist Live Nation-Ticketmaster: *U.S. v. Live Nation Entertainment*.¹⁵ PPI commends the agencies for including an important reference to the pending case in the RFI. The government’s allegations survived Live Nation’s motion to dismiss in March 2025, clearing the pathway for a trial on liability.¹⁶ The government DOJ has a strong and compelling case for how Live Nation-Ticketmaster’s exclusionary practices have harmed competition in ticketing markets, to the detriment of consumers and artists.

The 2010 merger of Live Nation and Ticketmaster linked together concert promotion, venue operation services, artist management services, and ticketing in a company with a wingspan that blankets the entire live events supply chain.¹⁷ At the time of the merger, Ticketmaster controlled over 80% of the primary ticketing market.¹⁸

The major concern at the time was that Live Nation-Ticketmaster’s dominance in ticketing would work to supercharge incentives to discriminate against venues that did not use both Live Nation’s *and* Ticketmaster’s services.¹⁹ This would stifle competition from competing ticketing services, thus steering fans back to Ticketmaster’s monopoly. The DOJ approved the merger in a consent decree that contained demonstrably ineffective non-discrimination and anti-retaliation “conduct” remedies.²⁰

¹² “Justice Department and Federal Trade Commission Seek Information on Unfair and Anticompetitive Practices in Live Ticketing,” Department of Justice, May 7, 2025, <https://downloads.regulations.gov/ATR-2025-0002-0002/content.pdf>.

¹³ “Justice Department and Federal Trade Commission Seek Information.”

¹⁴ “Justice Department and Federal Trade Commission Seek Information.”

¹⁵ “Justice Department and Federal Trade Commission Seek Information.”; *see also* Complaint, *U.S. v. Live Nation Entertainment*, No. 1:24-cv-03973, Southern District of New York, May 23, 2024, <https://www.justice.gov/atr/media/1353101/dl>.

¹⁶ Opinion and Order at 1, No. 1:24-cv-03973-AS, Southern District of New York, March 14, 2025, <https://www.justice.gov/atr/media/1394356/dl?inline> (denying Live Nation’s motion to dismiss).

¹⁷ Motion to Modify Final Judgment and Enter Amended Final Judgment at 4–5,” No. 1:10-cv-00139-RMC, District Court, District of Columbia, January 8, 2020, <https://www.justice.gov/atr/case-document/file/1233396/dl>.

¹⁸ Amended Complaint at 11, 14, *U.S. v. Live Nation Entertainment*, No. 1:10-cv-00139-RMC, District Court, District of Columbia, Jan. 28, 2010, <https://www.justice.gov/d9/atr/case-documents/attachments/2010/01/28/256322.pdf>.

¹⁹ Competitive Impact Statement, *U.S. v. Ticketmaster Entertainment*, No. 1:10-cv-00139, District Court, District of Columbia, Jan. 25, 2010, <https://www.justice.gov/atr/case-document/file/513376/dl>.

²⁰ *See* Final Judgment at 19–21, *U.S. v. Ticketmaster Entertainment*, No. 1:10-cv-00139, District Court, District of Columbia, July 30, 2010, <https://www.justice.gov/atr/case-document/file/513321/dl>.

In 2021, a DOJ investigation revealed evidence of Live Nation practices that were in violation of “the plain language” of the 2010 consent decree.²¹ DOJ offered evidence that Live Nation had repeatedly conditioned, and threatened to condition, the provision of live concerts on a venue’s purchase of Ticketmaster ticketing services.²² Moreover, the evidence showed that Live Nation retaliated against venues that used competing ticketing services. DOJ’s solution to this problem was simply to extend the ineffective remedies in the original consent decree.²³

Today, Ticketmaster’s share of the primary ticketing market is about 70%.²⁴ Live Nation reportedly holds an estimated 60% share of concert promotion and has exclusive contracts with about 70% of venues. Ticketmaster is also rapidly growing its share of the resale market.²⁵ Live Nation-Ticketmaster’s ongoing dominance throughout the live events supply chain markets continues to provide powerful incentives to maintain its monopoly in ticketing, especially by forcing venues into exclusive contracts that require the use of Ticketmaster’s ticketing services.

Live Nation-Ticketmaster also works to limit ticket transferability through ticket holdbacks and slow ticketing that is designed to disrupt competition in resale and (again) steer fans back to Ticketmaster.²⁶ Limiting ticket transfers has long been a powerful weapon in Ticketmaster’s arsenal for making it hard for fans to resell tickets at fair prices. Transferability restrictions, such as revolving encrypted barcodes that are baked into Ticketmaster’s SafeTix app, discourage fans from using competing resale ticketing platforms.²⁷ This also steers ticket buyers and sellers back to SafeTix, thus expanding Ticketmaster’s market position in resale.

The math behind Live Nation-Ticketmaster’s strategic anticompetitive practices is simple. With a monopoly in ticketing, any losses that Live Nation-Ticketmaster incurs from cutting off competing independent venues that do not choose Ticketmaster, or interfering with the resale market, are more than made up by the monopoly ticket fees collected on ticket sales from driving ticket buyers back to its own ticketing platform.²⁸

If the DOJ prevails on liability in *U.S. v. Live Nation Entertainment*, a structural remedy that breaks off Ticketmaster from Live Nation, and breaks up Ticketmaster into smaller ticketing

²¹ Motion to Modify Final Judgment and Enter Amended Final Judgment at 1, No. 1:10-cv-00139-RMC (D.D.C. Jan. 8, 2020), <https://www.justice.gov/atr/case-document/file/1233396/dl>.

²² Motion to Modify Final Judgment.

²³ Motion to Modify Final Judgment, at 6–11.

²⁴ Amended Complaint, *U.S. v. Live Nation Entertainment* at 15, 48, 73, 77, No. 1:24-cv-03973-AS, Southern District of New York, August 19, 2024, <https://www.justice.gov/archives/opa/media/1364366/dl?inline>.

²⁵ Amended Complaint, *U.S. v. Live Nation*, at 3, 16, 19.

²⁶ Dave Clark, “Skoufis, Others Question Ticket ‘Holdbacks’ in Taylor Swift Mess,” TicketNews, accessed July 2025, <https://www.ticketnews.com/2022/11/skoufis-others-question-ticket-holdbacks-in-taylor-swift-mess/>.

²⁷ Gaby Del Valle, “Ticketmaster’s Nontransferable ‘SafeTix’ are Anticompetitive, DOJ Suit Claims,” *The Verge*, August 19, 2024, <https://www.theverge.com/2024/8/19/24223774/ticketmaster-safetix-doj-antitrust-lawsuit-10-states-join>.

²⁸ A significant percentage of comments submitted in the DOJ/FTC RFI docket condemn Ticketmaster’s “service,” “processing,” and other add-on fees. “DOJ-FTC RFI on Anticompetitive Practices in Live Ticketing,” Regulations.gov, last accessed July 2025, <https://www.regulations.gov/document/ATR-2025-0002-0002/comment>.

platforms would permanently eliminate Live Nation-Ticketmaster's anticompetitive incentives.²⁹ More rivalry would lower ticket fees, improve the quality of ticketing technology and service, and better protect ticket buyers' privacy and data.

The DOJ's monopolization case is by far the most effective way to restore competition in markets that are distorted by Live Nation-Ticketmaster's durable monopoly.³⁰ Any regulation of ticketing markets before the DOJ's antitrust case has been resolved will create further distortions and interfere with any remedies the government may ultimately obtain, to the detriment of consumers and artists. PPI urges the agencies to proactively discourage regulation directed at the resale ticketing market during the pendency of the *U.S. v. Live Nation Entertainment* case.

III. Regulating Resale Would Hobble the *Only* Source of Competition in Ticketing, to the Detriment of Consumers and Artists

The EO's focus on the resale ticketing market creates a difficult task for the FTC and DOJ in complying with the Trump administration's directives to combat "unfair practices" in the live events market. That is, the agencies must navigate the EO's flawed premise that resale is chock full of middlemen who are bad actors that are the major source of market distortions. According to the EO, these middlemen include scalpers who use BOTs to buy up large quantities of tickets and resell them at enormous markups on the resale market.³¹

PPI encourages the FTC and DOJ to take a broader view of competition in the resale ticketing market. This includes looking beyond the role of middlemen that account for the minuscule percentage of resale tickets sold. For those limited instances, there are already numerous federal and state consumer protection laws on the books that can be enforced against instances of speculative ticketing and BOTs.³² This includes the Better Online Ticket Sales Act,³³ which the EO instructs the agencies to enforce in collaboration with state Attorneys General or consumer protection offices.³⁴

PPI also encourages the DOJ and FTC to resist the assumption that resale requires regulation and consider the *benefits* of resale markets to consumers or artists. Indeed, the resale ticketing market confers significant benefits on both consumers and artists. Well-functioning resale ticketing

²⁹ Diana Moss, "The Case for Why the Department of Justice Should Break Up Live Nation-Ticketmaster," *ProMarket*, April 25, 2024, <https://www.promarket.org/2024/04/25/the-case-for-why-the-department-of-justice-should-break-up-live-nation-ticketmaster/>.

³⁰ A significant percentage of comments submitted in the DOJ/FTC RFI docket explicitly decry Live Nation-Ticketmaster's monopolistic control over the ticketing market. "DOJ-FTC RFI on Anticompetitive Practices in Live Ticketing."

³¹ Combating Unfair Practices."

³² See e.g., 15 U.S.C.S. § 45(a) (LexisNexis, LEXIS through Pub. L. 119-20, approved June 20, 2025); see also N.Y. Arts & Cult. Aff. Law § 25.24 (Consol., Lexis through 2025 released Chapters 1-184); see also Cal. Bus. & Prof. Code § 22505.5(a) (Deering, LEXIS through legis. of First Reg. Sess. of Fifty-Seventh Leg. (2025), effective as of May 28, 2025).

³³ 15 U.S.C.S. § 45c (LexisNexis, LEXIS through Pub. L. 119-20, approved June 20, 2025).

³⁴ "Combating Unfair Practices." A significant percentage of comments submitted in the DOJ/FTC RFI docket highlight speculative ticketing and bot-driven scalping in the secondary market and urge tougher enforcement of existing consumer-protection laws (including the BOTS Act) to curb abuses. "DOJ-FTC RFI on Anticompetitive Practices in Live Ticketing."

markets provide an opportunity to match up more ticket buyers and sellers through an organized exchange, after tickets have been sold on the primary market.

Without resale markets, fans would be unable to resell their tickets in the event that they cannot attend an event. Without resale markets, willing buyers would be unable to obtain seats at events they want to see because they could not obtain a ticket on the primary market. The resale ticketing market, therefore, puts more fans in seats, often at lower prices, helping to fill up arenas and music venues so that artists can grow their fan base. Without freely-functioning, organized resale markets, fans would be the victims of the fraud and deception that were common before the advent of online ticket resale marketplaces.

PPI also encourages the DOJ and FTC to recognize and distinguish between fundamentally different types of consumer protection regulation that could have disparate and substantive effects on the resale ticketing market. For example, there are regulations that genuinely protect consumers from deceptive practices in ticketing, many of which are already on the books at the federal and state levels.³⁵

A second type of regulation promotes important transparency and transferability that facilitates well-functioning, competitive resale ticketing markets. For example, all-in pricing allows consumers to see the final price for a ticket, inclusive of all fees, so that they can better comparison shop across ticketing platforms. Ticket transferability allows tickets to be resold after their initial sale in the primary market and match up more fans with more artists, often at lower prices.³⁶

A third type of regulation masquerades as consumer protection but, in reality, is designed to stifle competition in ticketing. Live Nation-Ticketmaster has promoted these efforts in numerous states, many of which have been defeated time and again. These include restrictions that prevent consumers from finding resale ticket sites and giving the event presenter control of a ticket throughout its entire lifespan.³⁷

These and other provisions are designed to frustrate consumer access to the resale market, driving them back to Ticketmaster's monopoly ticketing platform. This type of regulation also harms artists who will play to less-than-full arenas and concert halls because fans cannot access the resale markets. PPI urges the DOJ and FTC to highlight the potential for these types of anticompetitive regulations.

³⁵ See e.g., 15 U.S.C.S. § 45c (LexisNexis, LEXIS through Pub. L. 119-20, approved June 20, 2025); see also 15 U.S.C.S. § 45(a) (LexisNexis, LEXIS through Pub. L. 119-20, approved June 20, 2025); see also N.Y. Arts & Cult. Aff. Law § 25.24 (Consol., Lexis through 2025 released Chapters 1-184); see also Cal. Bus. & Prof. Code, § 22505.5(a) (Deering, LEXIS through legis. of First Reg. Sess. of Fifty-Seventh Leg. (2025), effective as of May 28, 2025).

³⁶ "2023 Top Music Concert Ticket Resale Saving Report," Protect Ticket Rights, September 12, 2023, <https://www.protectticketrights.com/files/2023-top-music-concert-ticket-resale-savings-report-09.12.2023545274099.pdf>.

³⁷ See "Letter from Diana Moss, Re: California Senate Bill SB785."

IV. Regulation of the Resale Ticketing Market Benefits Stakeholders Who Share Monopoly Profits With Live Nation-Ticketmaster

Proposals to regulate the resale ticketing market that stifle competition are supported by select stakeholders who share profits with Live Nation-Ticketmaster. As noted, Live Nation-Ticketmaster profits enormously by interfering with competition in the resale ticketing market because it forces ticket buyers back to its monopoly ticketing platform. But the ticketing monopoly has worked hard to co-opt select segments of the industry to support regulation of resale for this purpose, including venues and artists.

For example, the EO asserts that middlemen in the live events markets impose “egregious” ticket fees and deprive artists of profits.³⁸ The EO is referring to the potential for artists to earn *additional* profits on the resale of a ticket, above and beyond what they earn from the original sale of the ticket in the primary ticketing market. Some artists have succumbed to pressure to support regulation of the resale market because they do not get a “cut” of the ticket sale when a ticket is resold. Artists are taking this position *even though* it is impossible to identify any resale market (e.g., used cars) where a seller continues to profit from subsequent resales of a product.

Live Nation-Ticketmaster has also co-opted many of the venues that have been harmed by the company’s anticompetitive practices that are the subject of the DOJ’s monopolization case in *U.S. v. Live Nation Entertainment*. These venues share in the monopoly profits generated by Live Nation-Ticketmaster’s exclusive contracts requiring venues to use the Ticketmaster platform in exchange for access to Live Nation talent. Maintaining these profits depends critically on squeezing out competition from the resale market and steering fans back to the monopoly ticketing platform. Many venues, therefore, support proposals to regulate the resale market that would have the effect of stifling competition.

Exclusive contracts allow Live Nation-Ticketmaster to amass the enormous market power that generates its sky-high ticket fees, poor quality service and a glitchy ticketing platform, and breaches of ticket buyers’ data privacy and security.³⁹ Fans are the ultimate victims of this anticompetitive practice. More, not less, competition from resellers would provide consumers with an important alternative to the current, dismal monopoly scenario. PPI urges the DOJ and FTC to acknowledge that regulation of the resale ticketing market would kneecap that competition.

V. Price Controls on Resale Ticket Prices Would Decimate the Market and Hand More Market Power to Live Nation-Ticketmaster

Price controls are the ultimate form of invasive regulation. For a number of economic reasons that PPI has explored with many state lawmakers, price caps on resale tickets would work to stifle competition and eliminate important choice for consumers.⁴⁰ Price caps would be an

³⁸ “Combating Unfair Practices.”

³⁹ Zeba Siddiqui, “Live Nation Probing Ticketmaster Hack Amid User Data Leak Concerns,” Reuters, June 3, 2024, <https://www.reuters.com/technology/cybersecurity/live-nation-probing-ticketmaster-hack-amid-user-data-leak-concerns-2024-06-01/>.

⁴⁰ “Letter from Diana Moss, Re: California Senate Bill SB785.”

indisputable “win” for Live Nation-Ticketmaster, which has advocated aggressively for them. Proposals to impose price caps on resale tickets in many states have failed, often after lawmakers are made aware of their effect on stifling competition and the perversity of regulating resale while the primary ticketing market, which Live Nation-Ticketmaster monopolizes, is allowed to operate unfettered by government regulation.⁴¹

Price controls set arbitrary ceilings on resale ticket price levels, creating artificial surpluses and shortages that induce enormous market inefficiencies and inequities. Price caps disincentivize ticket sellers and buyers from participating in the resale market because prices do not reflect the true value they place on a ticket. By disabling the resale market, price caps will deprive fans of a critical alternative for buying tickets outside the Live Nation-Ticketmaster monopoly and reinforce its grip on durable market power.

Price controls on resale tickets are also likely to drive ticket resale back to fraudulent shadow markets where millions of consumers were scammed before the advent of online marketplaces. Experience with regulation of the resale ticketing market in Ireland and Victoria, Australia, shows that it drives fraud and abuse.⁴²

The most effective tool for restoring competition to live event ticketing markets is antitrust enforcement against Live Nation-Ticketmaster’s anticompetitive, monopolistic conduct that has stifled competition and harmed fans and artists for decades. PPI urges the DOJ and FTC to consider that price controls and other regulatory restraints on resale ticketing could actually interfere with this landmark antitrust enforcement effort. These include thwarting antitrust analysis of markets by distorting resale prices, to creating immunities from antitrust enforcement as a result of federal and state regulatory regimes. If the agencies contemplate any regulation of resale ticketing at the federal level, PPI suggests that those recommendations be limited to promoting transparency and ensuring ticket transferability that protects consumers and artists.

PPI appreciates the opportunity to submit these comments to the DOJ and the FTC.

Respectfully submitted,

/s/ Diana L. Moss _____

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⁴¹ “Governor Polis Protects Live Event Consumers in Colorado, Vetoes Flawed Ticketmaster Bill,” Protect Ticket Rights, June 6, 2023, <https://www.protectticketrights.com/news/101/Governor+Polis+Protects+Live+Event+Consumers+in+Colorado+Vetoes+Flawed+Ticketmaster+Bill>.

⁴² “Ticket Fraud: Its Impact and the Cost of Market Regulation,” Bradshaw Advisory, March 16, 2025, <https://bradshawadvisory.com/insights/ticket-fraud-its-impact-and-the-cost-of-market-regulationnbs>.

June 2, 2025

The Honorable James Skoufis
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The Honorable Ron Kim
Chair, Committee on Tourism, Parks, Arts and Sports Development
New York State Assembly
188 State Street, Room 712
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Re: New York Senate Bill S8221 and Assembly Bill A8659

Dear Senator Skoufis and Assembly Member Kim:

The Progressive Policy Institute (PPI) is writing to express strong opposition to the proposed New York Senate Bill S8221 and Assembly Bill A8659.¹ The proposed legislation would impose price caps on the resale of live event tickets. The imposition of price controls on resale tickets would be an indisputable “win” for the Live Nation-Ticketmaster monopoly and a crushing loss for consumers and artists.

For a number of economic reasons that [PPI has explored with many state lawmakers](#), price controls, which are an invasive form of market regulation, will work to stifle competition across the live event ticket market, including the resale market. This will deprive fans of a critical alternative for buying tickets outside the Live Nation-Ticketmaster monopoly that already sells the vast majority of tickets in New York state. Price controls will, therefore, hand the live events and ticketing behemoth even more market power. PPI respectfully urges New York lawmakers to remove price cap requirements for resale ticketing from S8221 and A8659.

Price Controls Are an Invasive Form of Regulation That Will Distort Resale Ticket Markets and Stifle Competition

PPI urges New York lawmakers to consider that price controls severely distort markets, to the detriment of market participants. This is particularly true in ticketing, where S8221 and A8659

¹ 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. PPI is home to a [center on competition advocacy](#) with the goal of promoting competitive markets for the benefit of consumers and workers.

perversely contemplate *no* regulation of a monopolized primary ticket market yet invasive regulation of the competitive resale ticket market. Price controls will set arbitrary ceilings on resale ticket price levels. This will create surpluses and shortages that induce enormous inefficiencies and inequities and de-incentivize ticket sellers and buyers from participating in the resale market because prices do not reflect the true value they place on a ticket.

Price controls will, therefore, stifle competition from the resale ticket market, which fans badly need as an alternative to the Live Nation-Ticketmaster monopoly. Indeed, price controls will directly aid Live Nation-Ticketmaster in retaining its grip on monopoly power. Price controls on resale tickets are also likely to drive ticket resale back to fraudulent shadow markets where New Yorkers were scammed before the advent of online marketplaces. Experience with regulation of the resale ticket market in [Ireland and Victoria, Australia](#), shows that it drives fraud and abuse.

Instead of passing legislation that will guarantee these adverse outcomes, PPI respectfully suggests that New York lawmakers endeavor to keep ticket resale *unregulated* while promoting transparency and ticket transferability in resale ticket markets that protects sellers and buyers.

Proposals to Regulate Prices in Other States Have Failed Because Regulation Perpetuates Monopoly Profits for Some Stakeholders but Universally Harms Consumers

Proposals to regulate prices in the resale ticket markets in other states have failed. At the behest of three distinct groups — venues, artists, and Live Nation-Ticketmaster — a number of other states have introduced consumer protection-styled legislation to regulate resale prices. These “consumer protection” proposals are, in reality, intended to stifle competition in resale. They are based on a deeply flawed rationale that promotes the interests of market participants that profit from the Live Nation-Ticketmaster monopoly, at the expense of the consumer. Supporting a stake in monopoly profits for select stakeholders should not be the basis of legislation that purports to protect consumers.

For example, Live Nation-Ticketmaster profits enormously by interfering with competition in the resale ticket market, expressly because consumers are forced back to its monopoly primary ticketing platform. It does this, for example, through the use of exclusive contracts with venues that force them to use the Ticketmaster platform in exchange for access to Live Nation talent. Venues enjoy this close profit-sharing relationship with a monopolist, but maintaining profits depends critically on squeezing out competition from the resale market and steering fans back to the monopoly ticketing platform.

Perversely, exclusive contracts, which were reportedly prohibited in an earlier version of the New York bills, hurt artists. This is because Live Nation-Ticketmaster’s biggest leverage against venues is restricting access to Live Nation talent if they do not agree to use Ticketmaster as their ticketing platform. Artists have instead been encouraged to support regulation of the resale market because they do not get a “cut” of the ticket sale when a ticket is resold. Artists have taken this position, even though it is impossible to identify any resale market where a seller (e.g., of a used car) continues to profit from subsequent resales of their product. Moreover, the resale market puts more fans in seats, [often at lower prices](#), helping to fill up arenas and music venues

so that artists can grow their fan base. Price controls on resale tickets will interfere with this process.

Fans are the ultimate victims of Live Nation-Ticketmaster's anticompetitive practices, such as exclusive contracts, which are not addressed at all in the New York bills. Indeed, these contracts have allowed Live Nation-Ticketmaster to amass the enormous market power that generates its sky-high ticket fees, poor quality service and a glitchy ticketing platform, and [breaches of ticket buyers' data privacy and security](#). Competition from resellers provides consumers with an important alternative to this dismal monopoly scenario, yet the New York bill would knee-cap competition in the resale ticket market, which is the only alternative to the Live Nation-Ticketmaster monopoly.

State Ticketing Legislation is Likely to Interfere With Antitrust Enforcement, Which is Designed to Protect Consumers

PPI respectfully suggests that a patchwork of different state regulations, especially those that involve invasive market regulation, is not the best policy tool for addressing the ticketing markets. Antitrust enforcement against anticompetitive, monopolistic conduct that has stifled competition and harmed fans and artists is the better approach. PPI has been [the leading voice](#) in advocating for the U.S. Department of Justice (DOJ) [monopolization case against Live Nation-Ticketmaster](#), to which New York and numerous other states have signed on.

However, price controls and other regulatory restraints on resale ticketing could actually interfere with this landmark antitrust enforcement effort, in myriad ways. These range from thwarting antitrust analysis of markets by distorting resale prices, to creating immunities from antitrust enforcement as a result of state-level regulatory regimes. In light of the foregoing concerns, PPI encourages New York lawmakers to remove price caps on ticket resale from S8221 and A8659. PPI further urges lawmakers to hit the pause button on any state legislation regarding ticket resale during the pendency and outcome of the DOJ antitrust case against Live Nation-Ticketmaster.

PPI appreciates the opportunity to share our analysis and perspective on S8221 and A8659 and would be happy to engage in further discussion with New York lawmakers on this issue.

Respectfully submitted,



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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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