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EXECUTIVE SUMMARY

The value of the U.S. live music market is expected to top almost \$20 billion in 2026, with ticket sales accounting for 75% of revenues.¹ Live events, which connect fans with beloved musical artists and sports teams through shared experiences, are some of the most exciting for consumers. Yet the Live Nation-Ticketmaster monopoly continues to generate overwhelmingly negative public opinion in the U.S., as fan frustration with a lack of competition in primary ticketing services, sky-high ticket fees, and a dysfunctional primary ticket continues to mount.²

This should come as no surprise. Live Nation-Ticketmaster controls the entire live events supply chain. Live Nation commands 75% of the markets for concert promotion and exclusive contracts with venues, and Ticketmaster has an 80% share in ticketing.³ Long overdue attention to Live Nation-Ticketmaster's anticompetitive conduct in ticketing is, therefore, a welcome development for millions of fans who have paid a high price for the company's entrenched monopoly power.

This Progressive Policy Institute (PPI) report unpacks the policy tools that are part of federal and state efforts to address competition and consumer protection in ticketing. These developments have the potential to transform the live events ecosystem and will leave an indelible imprint — for better or worse — on consumers, artists, independent venues, and small businesses. For example, the monopolization case filed against Live Nation-Ticketmaster by the U.S. Department of Justice (DOJ) and 40 states and the District of Columbia could, if successful, lead to a breakup of the company and spur competition in ticketing. This would increase choice, reduce ticket fees, and pressure companies to improve quality.

Another prong of federal-state activity in ticketing is a crop of proposed consumer protection laws designed to increase transparency in ticket pricing and reduce deceptive practices in the primary and secondary (i.e., “resale”) ticket markets. Yet another development is a handful of proposed state laws that seek to impose economic regulation on the resale market while leaving the monopolized primary ticket market to operate free of external controls. These laws would cap prices and fees for tickets resold in the competitive online marketplaces.⁴

Caps on resale ticket prices and fees go well beyond the conventional boundaries of traditional consumer protection. The resale market balances supply and demand for tickets, compensates for inefficiencies in primary ticketing, and provides the *only* source of competition for millions of music and sports fans.⁵ PPI’s report flags the concern that such regulation will significantly disrupt, and even wipe out, the resale market — defeating the goal of promoting competition and protecting fans.

State regulation of the resale ticket market also risks a policy collision with antitrust enforcement. Antitrust is the most effective tool for fixing the Live Nation-Ticketmaster monopoly that is the source of problems in live event ticketing. PPI’s report unpacks the building blocks for understanding these issues and offers four major takeaways for antitrust enforcers and lawmakers.

- **An antitrust “breakup” of the entrenched Live Nation-Ticketmaster monopoly is essential for restoring competition in the primary ticket market. Any pre-trial settlement would be a failure of enforcement to rid an important market of an entrenched monopoly and to protect competition and consumers.**
- **Policies that maintain a viable and robust resale ticket market are essential for protecting and providing choice for live events fans. With no functional resale market, ticket buyers have no place to go but back to Ticketmaster, where they pay monopoly ticket fees.**
- **Numerous federal and state legislative proposals advance helpful consumer protection provisions for ticketing. These proposals also bootstrap antitrust enforcement by easing ticket supply constraints and promoting comparison shopping in the competitive online resale marketplaces.**
- **State proposals to impose price controls on resale risk hobbling the resale market, creating a patchwork of different state regulations, and interfering with antitrust enforcement. States should model legislation after, or even defer to, federal proposals that avoid price controls and stick expressly to strengthening consumer protection in ticketing.**

I. THE SURGING POPULARITY OF LIVE EVENTS

Live music and sports events are a unique form of entertainment, enjoyed by millions of fans worldwide. The markets that support live events are some of the most important in the modern economy. This is not because they are particularly dynamic or feature transformative technologies. Rather, the markets connect fans with beloved musical artists and sports teams for unique, shared experiences.

By a wide margin, live music concerts are the largest form of entertainment, surpassing live sports and film.⁶ For many top artists, the bulk of their income comes from shows and tours, which support local income and job creation through consumer spending on hospitality, restaurants, shopping, and tourism.⁷ Industry analysis predicts a 7% annual average growth rate for the U.S. live music industry from 2026-2031.⁸ Revenues are projected to increase by about 37% over this period, to about \$27 billion,⁹ driven largely by demand from the millennial and the Gen Z generations.¹⁰

Moreover, ticket prices increased 45% between 2019 and 2024, with a resurgence of demand after live music events resumed after the COVID-19 pandemic in 2020.¹¹ Despite growth in the demand for live events, one constant remains. The supply chain continues to be dominated by one firm, Live Nation-Ticketmaster. Live Nation commands 75% of the markets for concert promotion and exclusive contracts with venues, and Ticketmaster has an 80% share in ticketing.¹²

Live Nation-Ticketmaster's entrenched monopoly stands in stark contrast to the growing popularity of live events. Negative public opinion of the company in the U.S. illustrates

this tension.¹³ Moreover, continued outrage over Ticketmaster's monopoly ticket fees and the use of "dynamic pricing" by a dominant firm has further exposed the competition problem in ticketing.

II. THE LIVE NATION-TICKETMASTER MONOPOLY IS INCOMPATIBLE WITH CONTINUED GROWTH IN LIVE EVENTS

A little history is helpful for highlighting how the Live Nation-Ticketmaster monopoly creates a drag on the growth of live events. In 2010, the DOJ gave Live Nation and Ticketmaster an almost "free pass" to merge.¹⁴ The merger created a behemoth with a wingspan covering the entire live events supply chain: artist management, concert promotion, venue management, and primary ticketing.

At the time, Ticketmaster's market share of primary ticketing was 80%, far above what is considered a dominant firm by U.S. antitrust standards.¹⁵ It remains at this level 16 years later, buttressed by Live Nation's high shares in adjacent markets, such as exclusive contracts with venues and concert promotion. This means that Ticketmaster has monopolized primary ticketing in the U.S. for the better part of three decades. Whereas ticket prices are set primarily by the artist, Ticketmaster's market power is most evident in the high fees it charges on tickets, which are typically a percentage of the ticket price.¹⁶ The more tickets Ticketmaster sells, the more monopoly fees it collects.

Had the government decided to block the merger of Live Nation and Ticketmaster under Section 7 of the Clayton Act in 2010, the live events industry might be better able to accommodate growth in demand for live events.¹⁷ Instead, the DOJ resolved concerns over a loss of

competition and harm to consumers with “conduct” remedies. Codified in a 2010 consent decree, these remedies, including non-discrimination and anti-retaliation provisions, were designed to prevent the company from exploiting its dominance to stifle competition from smaller ticketing rivals.¹⁸

Needless to say, conduct remedies do nothing to eliminate powerful economic incentives to exercise market power. They also rely on smaller market players to report violations but who are reluctant to do so because they fear retaliation. Indeed, a decade later, a DOJ investigation revealed that Live Nation was violating “the plain language” of the 2010 decree that prohibited the company from conditioning the provision of live concerts on the requirement that an independent venue use Ticketmaster’s services.¹⁹ The DOJ’s evidence showed that Live Nation had, in fact, retaliated against venues that did not comply.

The DOJ’s solution to this problem was not to take stronger enforcement action. Instead, it extended the ineffective remedies in the 2010 decree for another five years.²⁰ The 2020 amended decree staved off a deeper DOJ investigation that would have uncovered the full extent of Live Nation-Ticketmaster’s anticompetitive conduct since the 2010 merger. This in-depth investigation eventually materialized in May of 2024, when the Biden DOJ filed an antitrust case under Sections 1 and 2 of the Sherman Act.²¹ The case was joined by 40 states and the District of Columbia, one of the largest federal-state antitrust actions in U.S. history.²²

In December 2025, Live Nation-Ticketmaster filed a motion for summary judgment, arguing that the evidence produced in the case did not

support the government’s claim.²³ If the court agrees, the case can be decided, as a matter of law, without a jury trial that is set to begin in March 2026.²⁴ In parallel with federal-state antitrust enforcement action, there are a number of private antitrust cases alleging that Live Nation-Ticketmaster engaged in anticompetitive conduct that harms consumers. Many of these cases seek damages for monopoly “overcharges.”²⁵

III. LIVE NATION-TICKETMASTER’S CAMPAIGN TO DOMINATE ALL TICKET MARKETS

A. The Chokehold on the Primary Ticket Market

Live Nation-Ticketmaster holds virtually all bargaining leverage vis-à-vis music fans, independent venues, and artists because of its dominant market positions. Even A-List artists like Taylor Swift must deal with Ticketmaster. For example, the Eras Tour was promoted by an affiliate of competitor AEG.²⁶ However, because Live Nation controls most of the venues where Swift appeared, AEG had no choice but to use Ticketmaster, even though it operates AXS, its own ticketing service. Smaller artists have no bargaining leverage. As a result, they face lopsided revenue-sharing agreements with Live Nation and exorbitant fees and commissions that diminish their earnings from ticket and merchandise sales.²⁷

Live Nation-Ticketmaster’s major tool for maintaining its monopoly is the “exclusive contract.”²⁸ These contracts force independent venues to use Ticketmaster’s services. If they decline exclusivity, venues pay a steep price by losing access to Live Nation talent. With high market shares in concert promotion and ticketing, independent venues have virtually no choice but to accept exclusive contracts.

To be sure, Live Nation risks incurring financial losses by cutting off venues if they reject exclusivity. But those losses are more than compensated for by higher revenues from monopoly ticket fees that result from stifling competition in primary ticketing. The magnitude of Live Nation-Ticketmaster's dominance means that even the threat of enforcing its restrictive policies keeps venues "in line."²⁹ By sharing in Live Nation-Ticketmaster's monopoly profits, some independent venues have developed strong incentives to "go along" with policies that maintain its dominance.

Analysis reveals the impact of exclusive agreements on ticket fees. For example, the non-exclusive Los Angeles venue, Crypto.com Arena, was previously home to both the NBA's Lakers, ticketed by Ticketmaster, and the Clippers, ticketed by AXS. A recent survey reveals that in 2023, fees (as a percentage of list ticket price) on tickets for NBA games at Crypto.com Arena are 14 percentage points lower than the national average for NBA ticket fees.³⁰ In contrast, fees on tickets for Wizards games — played at the Capital One Arena, a venue that is exclusive to Ticketmaster — are 26 percentage points higher than the national NBA ticket fee average. This analysis supports the idea that non-exclusive contracting disciplines competition in ticketing, driving down ticket fees.

B. The Relationship Between the Primary and Resale Ticket Markets

The relationship between the primary ticket market, where the Live Nation-Ticketmaster monopoly calls the shots, and the resale market is complex. Resale is a direct outgrowth of the primary market. Namely, for many concert events, tickets in the primary market are deliberately underpriced to attract and build

a fan base for artists.³¹ Underpricing primary tickets increases the probability that an event sells out and also boosts revenue from merchandise and concessions.³²

High demand for underpriced tickets, however, distorts the primary market.³³ For example, it quickly translates to unmet demand when there are supply constraints such as limited venue seating capacity and ticket "holdbacks." Holdbacks involve reserving tickets for the "news media, artist, managers, agents, the record company, the fan club, the promoter, and the tour sponsor," creating artificial scarcity and driving up demand even further.³⁴ Industry sources estimate that holdbacks account for 20% to over 50% of all primary tickets sold for A-list musical artist performances.³⁵ When coupled with underpricing tickets and venue capacity constraints, ticket holdbacks put the excess demand problem on steroids.

With these forces in play, it is no surprise that a robust secondary ticket market operated by exchanges and competitive resale marketplaces has developed in the U.S. Unlike the primary market, ticket prices are determined in the resale market by supply and demand. This provides music fans access to tickets they could not otherwise obtain on the primary market while offering artists the opportunity to put more fans in seats. Because resale ticket prices are more reflective of market conditions, they are also typically more volatile.³⁶

Live events fans have come to rely on resale exchanges and marketplaces that inject efficiency and reduce fraud.³⁷ The secondary market is the only way fans can recoup what they paid for tickets in the primary market due to changed plans, illness, family obligations,

and work schedules. Even Ticketmaster admits to the importance of resale.³⁸ And while ticket buyers may object to higher resale prices for events that are in high demand, they are delighted to pay lower resale prices for events that are in lower demand.

Artists have a difficult relationship with the resale market. Underpricing primary tickets and ticket holdbacks cause significant market dysfunction that the resale ticket market compensates for. While it is not surprising that artists also want to capture resale revenues or “royalties,” it also means they want to collect ticket revenue from sales in the primary market and again when those tickets are resold. Ticketmaster’s use of dynamic pricing that varies in real time with changes in supply and demand responds to this pressure. Dynamic pricing reduces the volume of tickets sold in the secondary market, shifting revenue back to the primary market. This assuages artists’ concern that they are not getting a cut of resale ticket sales, and Ticketmaster generates even more monopoly profits from ticket fees.³⁹ Not surprisingly, however, concert-goers dislike dynamic pricing. Because they tend to buy early due to the fear that a concert will sell out, fans pay dramatically higher primary ticket prices.⁴⁰ Fan backlash during the Bruce Springsteen and Oasis concerts in the U.S. and U.K. illustrates this problem.⁴¹

C. Interference In the Resale Market

To recap, Ticketmaster exercises market power in the primary market by locking independent venues into exclusive contracts to use Ticketmaster for primary ticketing. This has forestalled the emergence of any effective competition in the primary market. This brings us to the resale market and Ticketmaster’s

interference with the transfer of tickets and campaign to denigrate resale. The express purpose of this strategy is to steer fans back to Ticketmaster’s integrated primary-secondary platform, where it can sell more tickets and collect monopoly fees.

Since the time of the merger, Ticketmaster has made steady incursions into resale and amassed market share. For example, with \$4.5 billion in gross transaction value from resale in 2022, more than double what it earned in 2019, Ticketmaster eclipsed many of its rivals with a market share of close to 33%.⁴² Stifling competition in resale is a virtually costless strategy. Ticketmaster gains by steering ticket buyers to its integrated ticketing platform, where it double-dips on fees for tickets that it has already sold on the primary market. Dominating the resale market is, therefore, both easy and lucrative, enough so that Ticketmaster can afford to publicly endorse a 20% price cap on resale tickets.⁴³

The hyper-profitability of hamstringing competition in resale explains Ticketmaster’s strategy to denigrate established, competitive resale marketplaces while touting its own resale business. Live Nation-Ticketmaster has branded exchanges and marketplaces as traditional “scalpers.”⁴⁴ However, proxy data analysis using news coverage hits for the search term “ticket scalping” turns up “Live Nation-Ticketmaster” 75% of the time, followed by Facebook, Craigslist, and eBay.⁴⁵ News coverage on “scalping” does not mention resellers such as StubHub, SeatGeek, and Vivid Seats. Research also shows that consumers are willing to purchase tickets from reliable exchanges and competitive resale marketplaces and are far less likely to purchase tickets from Craigslist or

a street scalper because they are considered higher risk.⁴⁶

State laws governing ticket resale recognize these fundamental differences. For example, about 27% specify that the law only applies to resale within a physical proximity of a venue.⁴⁷ Another 65% of state laws explicitly allow online resale or require the reseller to have a license and provide refunds. The remaining 8% of state laws allow resale with the consent of the venue operator or event organizer. These state carveouts support the legitimacy of resale marketplaces, a reality that Ticketmaster has implicitly accepted by moving rapidly into resale.

For example, in 2008, Ticketmaster acquired Tickets Now, an online ticket resale platform. The acquisition generated Federal Trade Commission (FTC) concern about deceptive sales tactics such as using Ticketmaster's primary ticket platform to steer consumers to its resale platform.⁴⁸ In 2009, Ticketmaster ventured into "paperless" ticketing, which gave the company more control over the transfer of tickets to the resale market.⁴⁹

In 2013, it introduced Ticketmaster Resale, which integrated Ticketmaster's primary and secondary market sales, showing tickets *together* on the same seat map, and increasing the probability that ticket buyers will purchase resale tickets from Ticketmaster.⁵⁰ Integration of Ticketmaster's primary and resale services also provides the opportunity to leverage personal information culled from registration and verification requirements to lock ticket buyers into its system. In 2017, the company announced Verified Fan technology, where ticket buyers register ahead of sale dates to receive

codes allowing them to purchase tickets to tours and shows via preferential placement in a lottery.

In 2018, Ticketmaster introduced the "Fan-to-Fan" ticket resale system, and in 2019, Ticketmaster rolled out its SafeTix app that requires all ticket transfers, from primary to resale, occur on its platform.⁵¹ The app relies on revolving QR codes, known to trigger uncertainty and anxiety for the ticket buyer that a resale ticket won't work at the venue.⁵² The DOJ's amended complaint in its 2024 lawsuit notes "Ticketmaster's rapid increase in secondary market share coincided with its launch of SafeTix technology in or about 2019."⁵³ Collectively, Ticketmaster's acquisitions and strategies in resale have been designed to stifle competition from other resellers, under the guise of protecting ticket buyers from fraud and deception.

IV. ANTITRUST ENFORCEMENT TARGETS THE SOURCE OF THE COMPETITION PROBLEM IN TICKETING

In 2024, the DOJ filed a major antitrust monopolization case against Live Nation-Ticketmaster. The case alleges that the company uses its monopoly positions in multiple markets to stifle competition in primary ticketing.⁵⁴ The DOJ case gets to the root of dysfunction in ticketing. If the government prevails, it will clear a path for strong antitrust remedies to restore competition and choice in primary ticketing.⁵⁵ This will lower ticket fees to consumers and return more revenue to smaller artists that lack bargaining power.

Potential antitrust remedies include injunctive relief, such as prohibiting Live Nation-Ticketmaster from engaging in exclusive

contracts with venues that help maintain its market power. In *U.S. v. Google*, the court banned exclusive contracts for default placement of Google search on browsers and devices.⁵⁶ A similar prohibition would sever the link between Live Nation's anticompetitive conduct and consumer harm. The government could also ask the court to enjoin further venue acquisitions by Live Nation to reduce its control over the major distribution channel for live events.

While such remedies are possible, they would not fully restore competition in primary ticketing. Shrinking the size and dominance of Live Nation-Ticketmaster with structural remedies, such as asset divestitures, is essential for reducing or eliminating the company's ability or incentive to exercise market power. Two types of divestitures would be necessary. First, a complete divestiture of Ticketmaster would eliminate Live Nation's incentive to throttle independent venues with exclusive contracts. However, transferring ownership of Ticketmaster to another market participant, without reducing its size, will preserve incentives for a *different* owner to limit competition in ticketing.

A second divestiture is necessary to avoid this outcome. This means breaking up the divested Ticketmaster into smaller parts, to be purchased by viable competitors (e.g., AXS, SeatGeek, StubHub, Vivid Seats, and others). This is similar to the breakup of AT&T into several smaller "Baby Bells" in 1984.⁵⁷ Without the shackles of Live Nation-Ticketmaster's exclusive contracts and vertical integration, independent venues could freely choose from competing ticketing platforms.

Giving independent venues a choice would work to spur new entry and more competition

in primary ticketing, lowering ticket fees and improving service quality, ticketing technology, and the protection of user data and privacy. Anything less than a breakup remedy in the DOJ's Live Nation-Ticketmaster case would be yet another failed antitrust enforcement action in ticketing and a disservice to competition and millions of ticket buyers.

V. THE WORST AND THE BEST OF FEDERAL AND STATE LAWS THAT TARGET TICKETING

A. The Surge in Proposed Ticketing Laws

Federal and state laws governing ticketing generally fall within the ambit of consumer protection that prohibits unfair, deceptive, or fraudulent business or trade practices. These laws can both require and prohibit certain activities in ticketing. For example, event organizers may be required to offer ticket refunds due to event cancellation, or if a ticket fails to grant admission, is not delivered, or is counterfeit. Increasing price transparency so that consumers can see the total cost of a ticket, inclusive of the price and all fees, before they purchase, also protects ticket buyers. Three proposed House and Senate bills crafted around the Transparency In Charges for Key Events Ticketing (TICKET) Act address pricing transparency, resale practices, and refunds.⁵⁸

Federal and state laws may also prohibit the use of automated software (i.e., "bots") that buy up chunks of tickets on the primary market for sale in the secondary market, and "speculative" tickets that are not yet in the possession of a reseller, or listed on multiple websites. The federal BOTS (Better Online Ticket Sales) Act "prohibits individuals from circumventing a ticketer's system to purchase more tickets than permitted by the ticketer."⁵⁹ Two proposed House and Senate bills on the Mitigating Automated

Internet Networks Event Ticketing (MAIN Event) Act also focus on bot prevention.⁶⁰

Consumer protection laws can also promote a well-functioning resale market by prohibiting ticket holdbacks and ensuring transferability so that fans can resell their tickets. These provisions support the functioning of the resale market, competition, and the benefits it delivers to fans and artists. As the DOJ's case moves forward, federal and state lawmakers have proposed a swath of ticketing bills. There are currently over 50 proposed bills in 20 states, most of which ramp up consumer protections for ticketing. However, some state bills go well beyond the conventional boundaries of consumer protection to impose economic regulation on resale through price and fee caps.

Most proposed federal ticketing bills in Congress adhere closely to consumer protection principles while responding to developments in ticketing markets. The volume of state bills has increased markedly over the last few years. For example, the National Conference on State Legislatures' legislation tracker shows an uptick in the number of proposals between 2023 and 2024.⁶¹ Over this two-year period, there is a 21% increase in state ticketing bills passed and/or enacted. However, there is a 38% increase in state bills that failed to pass into law and a 15% decrease in pending bills. The increase in the failure rate and decline in volume of pending bills, relative to the rate of passed bills, likely reflects controversy over the harmful effects of state bills that seek to regulate resale.

B. The Best of State Ticketing Legislation

One of the biggest developments in federal and state legislation is the uptick in up-front, all-in pricing requirements. Without all-in pricing,

the total price, inclusive of all fees and taxes, is shown to the ticket buyer at the end of an often laborious search process. Exhausted from searching, consumers are more likely to simply buy the ticket, even if it is more than they wanted to pay. This so-called "drip pricing" is inefficient and anti-consumer. In contrast, all-in pricing provides the ticket buyer with the total ticket cost at the start, and throughout, the search process. This allows ticket buyers to decide whether to keep searching, or switch to other resale sites, enabling comparison shopping and spurring competition.

Nine states currently have laws that require full disclosure of ticket prices and fees.⁶² Those laws, however, do not specify when in the purchase process this information must be shared with the ticket buyer. The default assumption is that the requirement applies at the end of the process, or point of sale. While this protects consumers from "surprise fees," it does not avoid drip pricing.⁶³ Twenty-four proposed state bills provide for all-in pricing. However, like existing laws, six of those bills do not specify the point in the ticket search process where full disclosure is required, or require it at the point of sale.⁶⁴

Eighteen bills require all-in pricing at the first display of ticket price information, and throughout the search process.⁶⁵ These bills, if passed, will mark a major advance in consumer protection. They recognize the value of price transparency, comparison shopping, and price competition, especially against the backdrop of a monopolized primary ticket market. This legislative consensus ultimately motivated the FTC to pass a rule that requires upfront, all-in pricing for ticket sales.⁶⁶ As noted, however, many of the state proposals on all-in pricing

conflict with the FTC rule, which risks further complicating the ticket-buying process for fans.

There are also a number of state bills containing provisions that improve the functioning of the resale market. One is a prohibition on ticket holdbacks that, as noted earlier, exacerbate dysfunction in the primary market that has negative spillover effects on the resale market. For example, a proposed New York bill restricts the withholding of primary tickets from public sale of more than 10% of seating capacity.⁶⁷

Another provision that supports the functioning of resale is mandating transferability. Six states currently protect consumers' rights to resell their tickets: Colorado, Connecticut, Illinois, New York, Utah, and Virginia. Some laws require, for example, that "consumers be offered a freely transferable ticket option (meaning not mobile-only and not locked to one specific ticketing platform or system, such as Ticketmaster or AXS)."⁶⁸ Some state proposals, however, only conditionally prohibit restrictions on the transferability of tickets. These include bills in California, Washington D.C., Wisconsin, and Washington⁶⁹ that protect transferability, subject to certain conditions that are often tied to the definition of a ticket as a "license."⁷⁰

For example, California bill A.B. 1349 defines a "ticket" as a "license that is subject to terms and conditions determined by the rights holder and venue operator."⁷¹ "Tickets as licenses" grant event organizers like Live Nation-Ticketmaster and its owned venues, or the venues its controls under exclusive contracts, significant latitude to prevent ticket buyers from selling their tickets in the resale market. These bills should be viewed with extreme caution.

C. The Worst of State Ticketing Legislation

Some state proposals seek to impose economic regulation on resale by capping resale ticket prices and fees. These bills raise serious concerns. Masquerading as "consumer protection" laws, they contemplate invasive regulation that will hobble the resale market, the only competitive ticket market that often delivers lower prices and fees to consumers.⁷²

For example, a price cap, or ceiling, will drive a "wedge" between demand and supply, creating an artificial shortage. If applied to the resale ticket market, this means that a significant percentage of fans will fail to secure resale tickets. Moreover, caps or prohibitions on ticket fees will also quash incentives for resale marketplaces to remain in the market, or invest in ticketing platform technology.

Rhode Island law currently enforces regulations that cap the prices of resale tickets to a few dollars above face value.⁷³ Proposed state legislation over the last few years, however, reveals a dramatic increase in resale ticket price cap proposals, including, at the time of this writing, 10 bills to cap ticket prices, 11 bills to cap resale ticket fees, and five (of 21 total bills) to cap *both* resale ticket prices and fees. Proposals in New York and Wisconsin that leave decisions on price caps to the artist or event operator effectively cede the decision to Live Nation-Ticketmaster. Since Live Nation-Ticketmaster supports price controls on resale, it is safe to conclude that resale prices will be regulated in these states.⁷⁴

If state bills containing resale price or fee caps pass, the number of states that regulate resale will increase dramatically, with adverse effects

on resale markets, competition, and consumers. First, as fans become frustrated with securing tickets on the resale market, they will lose confidence and eventually stop comparison shopping. This will destabilize the resale market, eliminate the only source of competition in ticketing, and steer fans back to Ticketmaster's integrated ticketing platform. Fans who still want and need to buy on the resale market will be driven back to the fraudulent shadow markets where they were scammed before the advent of online resale marketplaces. Experience with regulation of the resale ticket market in Ireland and Victoria, Australia, shows that it drives fraud and abuse.⁷⁵

Second, state regulation of resale risks a policy collision with antitrust enforcement. For example, government-mandated interference with the resale market will thwart antitrust review and remedies. Investigations into anticompetitive practices and consumer harm involve a detailed analysis of ticket prices. Resale price caps will distort the process of price discovery in the ticketing markets, making it harder for enforcers to determine the extent of monopoly overcharges on Ticketmaster's fees.

Price controls on resale tickets will also create a balkanized, patchwork of state regulation. A significant percentage of music fans travel out of state to see concerts.⁷⁶ The ticket shortages caused by price caps in some states will drive fans to states where prices are not capped. This will leave empty seats in price-capped states and increase ticket price volatility in uncapped states.

Finally, a regulatory regime for resale ticket prices at the state level could create immunity from antitrust law. For example, the "filed rate

doctrine" bars damages awards in private antitrust cases involving claims over rates or prices set by federal and sometimes state agencies. Price caps on resale tickets could well qualify as "filed rates," limiting the role of private enforcement in promoting competition in ticketing markets.⁷⁷

Similarly, price regulation in resale ticketing could immunize federal antitrust enforcement under the "state action doctrine." This is a risk in states with a "clearly articulated" policy to displace competition through price regulation and "active supervision" of that policy.⁷⁸ The loss of antitrust enforcement through either of these immunities will remove a vital tool for protecting competition and consumers.

State lawmakers should be fully cognizant of the significant risks of imposing economic regulation on the resale market. Federal lawmakers have been careful to avoid proposals that regulate resale with price controls. State lawmakers should consider mirroring those proposals, or even deferring to federal law, that sticks expressly to strengthening consumer protection in ticketing.

VI. MAJOR TAKEAWAYS

Antitrust enforcers, lawmakers, and policymakers are at a crossroads in addressing competition and consumer concerns in the live events markets in the U.S. The choice and timing of policy are critical decisions that require careful thought and coordination. One pathway is the restructuring of the ticketing market using antitrust remedies to break Live Nation-Ticketmaster's monopoly hold on the live events supply chain. Another, complementary avenue involves consumer protection initiatives to increase price transparency and prohibit

deceptive practices that thwart consumers' ability to purchase tickets.

Antitrust enforcement and consumer protection legislation should work hand-in-hand to support competition in ticketing. However, price regulation of resale markets will hobble the operation of the only market where there is competition, while simultaneously interfering with antitrust enforcement. Good public policy suggests that state lawmakers should endeavor to keep ticket resale *unregulated* and instead focus on promoting pricing transparency and ticket transferability in resale. This will preserve antitrust's ability to address the source of the competition problem in ticketing, the Live Nation-Ticketmaster monopoly, while ameliorating many of the issues that state regulatory bills seek to fix. PPI's analysis reveals four major recommendations for state lawmakers involving ticketing legislation..

- **The Live Nation-Ticketmaster monopoly is the source of systemic competition and consumer problems in the primary ticket market. Antitrust should be the tip of the spear for correcting this problem. Breaking up the entrenched monopoly is essential for restoring competition. Any pre-trial settlement would be a failure of enforcement to rid an important market of an entrenched monopoly and to protect competition and consumers.**
- **Protecting the viability of the resale ticket market is a policy imperative. The resale market balances supply and demand in ticketing, compensates for many of the distortions in the primary market, and is the only source of competition for ticket buyers. With no functional resale market, ticket buyers have no place to go but back to Ticketmaster, where they pay monopoly ticket fees.**
- **Numerous federal and state legislative proposals advance helpful consumer protection provisions for ticketing. These include enhancing transparency in ticket buying and preventing deceptive practices. This type of consumer protection also works to bootstrap antitrust enforcement by easing ticket supply constraints and promoting comparison shopping in the competitive online resale marketplaces.**
- **State proposals to impose price controls in the resale ticket market go well beyond consumer protection. This invasive regulation of resale risks hobbling the resale market, creating a patchwork of different state regulations, and interfering with antitrust enforcement. States should model legislation after, or even defer to, federal proposals that avoid price controls and stick expressly to strengthening consumer protection in ticketing.**

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