



April 2018

# EVENT TICKET SALES

## Market Characteristics and Consumer Protection Issues

Accessible Version

# GAO Highlights

Highlights of [GAO-18-347](#), a report to congressional requesters

## Why GAO Did This Study

Tickets for concerts, theater, and sporting events can be purchased—typically online—from the original seller (primary market) or a reseller (secondary market). Some state and federal officials and others have raised issues about ticketing fees, the effect of the secondary market on ticket prices, and the transparency and business practices of some industry participants. Event ticketing is not federally regulated. However, federal legislation enacted in 2016 restricts bots (ticket-buying software). Also, the Federal Trade Commission (FTC) has taken two enforcement actions related to deceptive marketing by ticket sellers under its broad FTC Act authority.

GAO was asked to review issues around online ticket sales. This report examines (1) what is known about online ticket sales, (2) consumer protection issues related to such sales, and (3) potential advantages and disadvantages of selected approaches to address these issues.

GAO focused on concert, theater, and major league sporting events for which there is a resale market. GAO analyzed data on fees, ticket volume, and resale prices from a variety of sources; reviewed the largest ticket sellers' websites and purchase processes; and reviewed federal and state laws and relevant academic literature. GAO also interviewed and reviewed documentation from government agencies; consumer organizations; ticket sellers; venue operators; promoters and managers; sports leagues; and academics (selected for their experience and to provide a range of perspectives).

View [GAO-18-347](#). For more information, contact Michael Clements at (202) 512-8678 or [ClementsM@gao.gov](mailto:ClementsM@gao.gov)

April 2018

## EVENT TICKET SALES

### Market Characteristics and Consumer Protection Issues

#### What GAO Found

Ticket pricing, resale activity, and fees for events vary. Tickets to popular events sold on the primary market sometimes are priced below the market price, partly because performers want to make tickets affordable and maintain fans' goodwill, according to industry representatives. Tickets are often resold on the secondary market at prices above face value. In a nongeneralizable sample of events GAO reviewed, primary and secondary market ticketing companies charged total fees averaging 27 percent and 31 percent, respectively, of the ticket's price.

Consumer protection issues include difficulty buying tickets at face value and the fees and marketing practices of some market participants.

- Professional resellers, or brokers, have a competitive advantage over consumers in buying tickets as soon as they are released. Brokers can use numerous staff and software ("bots") to rapidly buy many tickets. As a result, many consumers can buy tickets only on the resale market at a substantial markup.
- Some ticket websites GAO reviewed did not clearly display fees or disclosed them only after users entered payment information.

"White-label" resale sites, which often appear as paid results of Internet searches for venues and events, often charged higher fees than other ticket websites—sometimes in excess of 40 percent of the ticket price—and used marketing that might mislead users to think they were buying tickets from the venue.

Selected approaches GAO reviewed, such as ticket resale restrictions and disclosure requirements, would have varying effects on consumers and businesses.

- **Nontransferable tickets.** At least three states restrict nontransferable tickets—that is, tickets whose terms do not allow resale. Nontransferable tickets allow more consumers to access tickets at a face-value price. However, they also limit consumers' ability to sell tickets they cannot use, can create inconvenience by requiring identification at the venue, and according to economists, prevent efficient allocation of tickets.
- **Price caps.** Several states cap the price at which tickets can be resold. But according to some state government studies, the caps generally are not effective because they are difficult to enforce.
- **Disclosure requirements.** Stakeholders and government research GAO consulted generally supported measures to ensure clearer and earlier disclosure of ticket fees, although views varied on the best approach (for example, to include fees in an "all-in" price or disclose them separately).

Some market-based approaches are being used or explored that seek to address concerns about secondary market activity. These approaches include technological tools and ticket-buyer verification to better combat bots. In addition, a major search engine recently required enhanced disclosures from ticket resellers using its advertising platform. The disclosures are intended to protect consumers from scams and prevent potential confusion about who is selling the tickets.

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**Abbreviations**

BOTS Act  
DOJ  
FTC  
IP

Better Online Ticket Sales Act of 2016  
Department of Justice  
Federal Trade Commission  
Internet protocol

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April 12, 2018

The Honorable Greg Walden  
Chairman  
The Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

The Honorable Bill Pascrell, Jr.  
House of Representatives

The Honorable Fred Upton  
House of Representatives

In recent years, consumers and others have raised issues about the online ticket marketplace for concerts, commercial theater, and sporting events.<sup>1</sup> For example, some consumers have complained about difficulty obtaining face-value tickets for popular events at the primary, or initial, sale to the general public—only to find the tickets immediately available at high markups on the secondary, or resale, market. In response, event organizers and legislators have targeted ticket bots—automated software that ticket brokers can use to buy large volumes of tickets. The Better Online Ticket Sales Act of 2016 (BOTS Act) restricted the use of bots and gave the Federal Trade Commission (FTC) and state attorneys general the authority to pursue violators with civil actions.<sup>2</sup> Other issues that have been raised include the amount of ticket fees and restrictions on transferring some tickets.

You asked us to review the marketplace and consumer protection issues related to online ticket sales. This report examines (1) what is known about primary and secondary online ticket sales, (2) the consumer protection concerns that exist related to online ticket sales, and (3)

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<sup>1</sup>For purposes of this report, we use “online” to refer to activity that occurs on a website or through a mobile application. Although this report focuses on online ticketing, in some cases the issues discussed could also apply to tickets purchased via telephone or at a physical location.

<sup>2</sup>Better Online Ticket Sales Act of 2016, Pub. L. No. 114-274, 130 Stat. 1401 (2016) (BOTS Act).

potential advantages and disadvantages of selected approaches to address these concerns.

To address the first objective, we obtained and analyzed data on ticket volume and resale prices obtained from ticket sellers' websites for a nonprobability sample of 22 events, which were selected to represent a variety of event types and popularity levels. We collected data from October 16 through December 20, 2017. We also reviewed trade industry data on ticket prices and sales.

To address the second objective, we reviewed the websites of 6 primary market ticket sellers, 11 secondary ticket exchanges, and 8 ticket sellers using "white-label" websites.<sup>3</sup> For a sample of 31 events, chosen to reflect a mix of event types and venue sizes (e.g., arenas, theaters), we reviewed the process of purchasing tickets online and documented when and how clearly fees and restrictions were disclosed. In addition, we assessed the accuracy of information that customer service departments of three large secondary ticket exchanges provided. We also reviewed relevant enforcement activity by federal and state agencies and obtained and analyzed summary complaint data from FTC's Consumer Sentinel Network database.

To address the third objective, we reviewed federal and selected state laws and examined the experiences of three U.S. states (Connecticut, Georgia, and New York) with relevant event ticketing laws. We also reviewed foreign government reports to obtain information on relevant ticketing restrictions in two foreign countries (Canada and the United Kingdom) with similar consumer protection issues reviewed in this report. For all three objectives, we reviewed documentary evidence (such as academic studies, trade reports and databases, and industry literature) and interviewed staff from FTC, Department of Justice (DOJ), and three state offices of attorney general; consumer organizations; primary and secondary ticket sellers; venue operators, event promoters, and artists' managers and agents; major sports leagues; and academics who have studied the ticket marketplace—all of whom were selected for their experience and to provide a range of perspectives. For more information on our scope and methodology, see appendix I.

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<sup>3</sup>A white-label website is a sales website built by one company that allows affiliates to use the software to build their own, uniquely branded websites.

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We conducted this performance audit from November 2016 to April 2018, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We conducted our related investigative work in accordance with investigative standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

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## Background

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### The Ticketing Marketplace

The marketplace for primary and secondary ticketing services consists of several types of participants, including primary market ticketing companies, professional ticket brokers, secondary market ticket exchanges, and ticket aggregators (see table 1). Other parties that play a role in event ticketing, as discussed later in this report, include artists and their managers, booking agents, sports teams, producers, promoters, and operators of event venues (such as clubs, theaters, arenas, or stadiums).<sup>4</sup>

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**Table 1: Key Participants in the Primary and Secondary Markets for Event Tickets**

Participant	Description
Primary market ticketing companies	Companies that provide initial-sale ticketing services for events
Professional ticket brokers	Companies or individuals who buy tickets, usually on the primary market, with the intention of reselling at a profit
Secondary market ticket exchanges	Online resale platforms that facilitate transactions between third parties (brokers or consumers), but generally do not maintain their own ticket inventory

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<sup>4</sup>Although the terms vary with use, “promoter” generally refers to a person or company that contracts with artists or their representatives to arrange events. Promoters also secure venues in which events will occur, arrange for production services, and market events to the public. “Producer” generally refers to a person or company that oversees all aspects of a theater production, including hiring creative staff (such as writers, directors, composers, choreographers, and performers), securing financing and a venue, and promoting the event. For this report, we use “event organizers” to refer to a combination of artists, managers, booking agents, promoters or producers, and venue operators.

Participant	Description
Ticket aggregators	Websites that aggregate in one place the resale listings from multiple secondary ticket exchanges

Source: GAO. | GAO-18-347

The private research firm IBISWorld estimated that online ticketing services (including ticketing for concerts, sporting events, live theater, fairs, and festivals) represented a \$9 billion market in 2017, which included both the primary and secondary markets.<sup>5</sup> Another private research firm, Statista, estimated that U.S. online ticketing revenues for sports and music events totaled about \$7.1 billion in 2017.<sup>6</sup> Estimates of the total number of professional ticket sellers vary. IBISWorld estimated that the U.S. market for online event ticket sales included 2,571 businesses in 2017. The Census Bureau lists more than 1,500 ticket services companies as of 2015 based on the business classification code for ticket services. However, this does not provide a reliable count of companies in the event ticketing industry because it includes companies selling tickets for services such as bus, airline, and cruise ship travel, among other services.

However, a small number of companies conducts the majority of event ticket sales. In the primary ticket market—where tickets originate and are available at initial sale—Ticketmaster is the largest ticketing company. DOJ estimated that Ticketmaster (whose parent company is now Live Nation Entertainment) held more than 80 percent of market share in 2008, and it was still the market leader as of 2017.<sup>7</sup> Less than a dozen other companies control most of the rest of the primary market, by our estimates. In the secondary market—where resale occurs—more companies are active, but StubHub estimated it held roughly 50 percent of market share as of 2017. According to Moody’s Investors Service, Ticketmaster, which in addition to its primary market ticketing has a U.S. resale subsidiary, held the second-largest market share as of 2016.

<sup>5</sup>IBISWorld, *Online Event Ticket Sales in the US.: Market Research Report*, (December 2017)

<sup>6</sup>Statista, “Event Tickets,” accessed January 17, 2018, <https://www.statista.com/outlook/264/109/event-tickets/united-states>.

<sup>7</sup>Competitive Impact Statement, *United States of America v. Ticketmaster Entertainment, Inc.*, No. 1:10-cv-00139 (D. D.C. Jan. 25, 2010); Live Nation Entertainment, Inc., Annual Report (Form 10-K) (Feb. 27, 2018). DOJ based its market share estimate on the number of major concert venues Ticketmaster served at the time.

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The majority of ticket sales occur online, through a website or mobile application. Ticketmaster's parent company reported that 93 percent of its primary tickets were sold online in 2017.<sup>8</sup> The industry research group LiveAnalytics reported that in 2014, 68 percent, 50 percent, and 49 percent of people attending concerts, sporting events, and live theater or arts events, respectively, had recently purchased a ticket online.<sup>9</sup>

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## Regulation

The event ticketing industry is not federally regulated. However, the Federal Trade Commission Act prohibits unfair or deceptive acts or practices in or affecting commerce, and FTC can enforce the act for issues related to event ticketing and ticketing companies.<sup>10</sup> One federal statute specifically addresses ticketing issues—the BOTS Act, which prohibits, among other things, circumventing security measures or other systems intended to enforce ticket purchasing limits or order rules.<sup>11</sup> The act also makes it illegal to sell or offer to sell any event ticket obtained through these illegal methods and granted enforcement authority to FTC and state attorneys general.<sup>12</sup>

The Department of Justice's Antitrust Division plays a role in monitoring competition in the event ticketing industry. In 2010, Live Nation and Ticketmaster—respectively, the largest concert promoter and primary ticket seller in the United States—merged to form Live Nation Entertainment, Inc. DOJ approved the merger after requiring Ticketmaster to license its primary ticketing software to a competitor, sell off one ticketing unit, and agree to be barred from certain forms of retaliation against venue owners who use a competing ticket service. DOJ may also inspect Live Nation's records and interview its employees to determine or

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<sup>8</sup>Live Nation Entertainment, Inc. 2017 10-K.

<sup>9</sup>LiveAnalytics, *U.S. Live Event Attendance Study*, June 2014. These included ticket purchases from both primary and secondary market sources.

<sup>10</sup>See 15 U.S.C. § 45(a)(1) (2017); 15 U.S.C. § 45c (2017).

<sup>11</sup>BOTS Act, *supra*.

<sup>12</sup>BOTS Act, §2(a)-(c).

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secure compliance with the terms of the final judgment clearing the merger.<sup>13</sup>

State government agencies generally invoke state laws on unfair and deceptive acts and practices to address ticketing violations, according to representatives of two state attorney general offices. In addition, several states have laws that directly apply to event ticketing. For example, some states restrict the use of bots, several other states impose price caps (or upper limits) on ticket resale prices, and states including Connecticut, New York, and Virginia restrict the use of nontransferable tickets (tickets with terms that do not allow resale). Several states require brokers to be licensed and adhere to certain professional standards, such as maintaining a physical place of business and a toll-free telephone number, and offering a standard refund policy.<sup>14</sup>

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## Ticketing Practices, Prices, Fees, and Resale Vary by Industry and Event

The concert, sports, and theater industries vary in how they price and distribute tickets. Many tickets are resold on the secondary market, typically at a higher price. Among a nongeneralizable sample of events we reviewed, we observed that primary and secondary market ticketing companies charged total fees averaging 27 percent and 31 percent, respectively, of the ticket's price.

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### On the Primary Market, Ticketing Practices Vary by Industry and Popular Events Are Sometimes Priced below Market

#### Concerts

Ticketing practices for major concerts include presales and pricing that varies based on factors like location and the popularity of the performer.

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<sup>13</sup>*United States of America v. Ticketmaster Entertainment, Inc.*, No. 1:10-cv-00139 (D.D.C. July 30, 2010).

<sup>14</sup>In addition to certain state requirements, at least 200 brokers belong to the National Association of Ticket Brokers, which requires its members to adhere to a code of ethics that includes a variety of customer service and consumer protection provisions.

Tickets to popular concerts are often first sold through presales, which allow certain customers to purchase tickets before the general on-sale. Common presales include those for holders of certain credit cards or members of the artist's fan club, although promoters, venues, or other groups also may offer presales. Credit card companies might provide free marketing for events or other compensation in exchange for exclusive early access to tickets for their cardholders. In addition, the artist usually has the option to sell a portion of tickets to its fan club. The venue's ticketing company might want to limit the number of tickets allocated to fan clubs because the artist and manager can sell them through a separate ticketing platform, according to three event organizers we interviewed.

There are no comprehensive data on the proportion of tickets sold through presales because this information is usually confidential. Industry representatives told us that 10 percent to 30 percent of tickets for major concerts typically are offered through presales, although it can be as many as about 65 percent of tickets for major artists performing at large venues. In addition, fan club presales usually represent 8 percent of tickets, although it may be more if the fan club presale uses the venue's ticketing company, according to two event organizers. A large ticketing company told us that 10 percent of tickets may be available for fan club presales. A 2016 study by the New York State Office of the Attorney General found that an average of 38 percent of tickets were allotted to presales for the 74 highest-grossing concerts at selected New York State venues in 2012–2015.<sup>15</sup>

Additionally, venues, promoters, agents, and artists commonly hold back a small portion of tickets from public sale. "Holds" may be given or sold to media outlets, high-profile guests, or friends and family of the artist. They also may be used to provide flexibility when the seating configuration is not yet final. Promoters typically will release unused holds before the event, offering the tickets to the public at face value.

As with presales, little comprehensive data exist on the proportion of tickets reserved for holds. Industry representatives told us holds typically represent a relatively small number of tickets—a few hundred for major

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<sup>15</sup>New York State Office of the Attorney General, *Obstructed View: What's Blocking New Yorkers from Getting Tickets* (New York, N.Y.: 2016). This figure included both fan club and credit card presales. Some of the concerts included multiple shows or tour stops by the same artist.

events or perhaps a thousand for a stadium concert. The New York Attorney General report's review of a sample of high-grossing New York State concerts found that approximately 16 percent of tickets, on average, were allocated for holds. Of those holds, many went to venue operators—for example, one arena with around 21,000 seats usually received more than 900 holds per concert held there.

The average face-value ticket price in 2017 among the top 100 grossing concert tours in North America was \$78.93, according to Pollstar.<sup>16</sup> Concert ticket prices vary by city or day of the week, based on anticipated demand. The main parties involved in price setting are the artist and her or his management team, promoter, and booking agent. Venues sometimes provide input based on their knowledge of prevailing prices in the local market. Ticketing companies sometimes offer tools or support to help event organizers price tickets based on their analysis of sales trends.

Concert ticket prices are generally set to maximize profits, according to event organizers. In terms of production costs, the artist's guarantee—the amount the artist is paid for each performance—is usually the largest expense. The most popular artists can command the highest guarantees and their concerts also tend to have the highest production costs.

However, for some high-demand events, tickets might be “underpriced”—that is, knowingly set below the market clearing price that would provide the greatest revenue.<sup>17</sup> Artists may underprice their tickets for a variety of reasons, according to industry stakeholders and our literature review:

- **Reputation risk.** Artists may avoid very high prices because they do not want to be perceived as gouging fans. Similarly, event organizers told us some artists have a certain brand or image—such as working-class appeal—that could be harmed by charging very high ticket prices.
- **Affordability.** Some event organizers told us that artists want to price tickets below market to provide access to fans at all income levels.

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<sup>16</sup>Pollstar, *2017 Year End Business Analysis* (Fresno, Calif.: Pollstar, 2018). Pollstar is a trade publication covering the worldwide concert industry.

<sup>17</sup>For the purposes of this report, we consider high-demand events to be those for which tickets sell out early in the on-sale and prices are higher on the resale market. The market clearing price refers to the price at which the number of tickets available for sale equals the number of tickets customers are willing to buy, resulting in neither a surplus nor a shortage.

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- **Sold-out show.** Event organizers may price tickets lower to ensure a sold-out show, which can improve the artist and event organizers' reputations and might help future sales.
  - **Audience mix.** Some artists prefer to have the most enthusiastic fans at their shows, rather than just those able to pay the most, especially in the front rows, where tickets are generally the most expensive.
  - **Ancillary revenue.** Better attendance through lower ticket prices can increase merchandise and concession sales, which can be a substantial source of revenue.

In addition, event organizers may unintentionally underprice concert tickets because of imperfect information about what consumers are willing to pay. Tickets are also priced based on the prices and sales of the artist's (or similar artists') past tours, but demand can be hard to predict. Three event organizers told us that they have started using data from the ticket resale market to help set prices because that is a good gauge of the true market price.

### Sporting Events

For major league professional sports, most decisions about ticket pricing and ticket distribution are made by the individual teams rather than by the league.<sup>18</sup> According to the three major sports leagues we interviewed, their teams generally sell most of their tickets through season packages, with the remainder sold for individual games. Teams favor packages because they guarantee a certain level of revenue for the season. Representatives of two major sports leagues told us that their teams sold an average of 85 percent and 55 percent, respectively, of their tickets through season packages. One league told us that some of its teams increasingly offer not only full-season packages, but also partial-season packages. Another league said that in some cases, its teams might need to reserve a certain number of single game-day tickets—for example, as part of an agreement when public funds helped build a new stadium.

Representatives of the three sports leagues we interviewed told us that their teams do not use presales and holds to the same extent as the concert industry. Although teams do not sell a significant number of

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<sup>18</sup>In this report, sporting events refer to games played by teams of the four largest professional sports leagues in the United States, which are Major League Baseball, the National Football League, the National Basketball Association, and the National Hockey League.

tickets through presales, they might offer first choice of seats to season ticket holders or individuals who purchased tickets in the past. In terms of holds, one league told us it requires its teams to hold a small number of tickets for the visiting team and teams might also hold a few tickets for sponsors and performers. Another league told us it does not have league-wide requirements on holds, but its teams sometimes hold a small number of seats for media.

Sports teams generally set their ticket prices to maximize revenue, based on supply and anticipated demand, according to the leagues we interviewed. Ticket prices typically vary year-to-year, based on factors such as the team's performance the previous season and playing in a new stadium.<sup>19</sup> Teams in many leagues use "dynamic pricing" for individual game tickets. They adjust prices as the game approaches based on changing demand factors, such as team performance and the weather forecast. The sports leagues with whom we spoke said teams' pricing considerations are based in part on a desire to have affordable tickets for fans of different income levels. In addition, one league told us its teams rely heavily on revenues other than ticket sales, such as from television deals and sponsorships.

### Theater

Tickets for Broadway and national touring shows are distributed through direct online sales as well as several additional channels, including day-of-show discount booths, group packages, and call centers.<sup>20</sup> Industry representatives told us that these shows use presales and holds, but not as extensively as the concert industry. At our request, a company provided us with data for five Broadway shows from June 2016 to September 2017.<sup>21</sup> Approximately 13 percent of tickets in this sample were sold through presales, almost all of which were group sales (offered

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<sup>19</sup>Patrick Rishe and Michael Mondello, "Ticket Price Determination in Professional Sports: An Empirical Analysis of the NBA, NFL, NHL, and Major League Baseball," *Sport Marketing Quarterly*, vol. 13, no. 2 (2004), 111.

<sup>20</sup>In this report, theater refers to Broadway and national tours, which are generally commercial productions. We are excluding community and most nonprofit theater.

<sup>21</sup>We asked a company that collects data on Broadway ticketing to provide us with summary statistics on holds and presales for a small sample of shows that played in June 2016 through September 2017, and to separate the results for high-demand shows (defined as selling 90 percent or more of available seats). The company selected and provided data on five shows, two of which were high-demand shows.

to particular groups prior to the general on-sale). Less than 1 percent of tickets in this sample were sold through presales offered to specific credit cardholders. Two shows in high demand held back an average of about 6 percent of tickets, while the other three shows held back about 1 percent.

Producers and venue operators generally set prices, which are influenced by factors like venue capacity and the length of run needed to recoup expenses, according to industry representatives. According to the Broadway League, from May 22, 2017, to February 11, 2018, the average face-value price of a Broadway show was \$123—an average of \$127 for musicals and \$81 for plays. Industry representatives told us they sell about 10 percent of tickets through day-of-show discount booths. Even the most popular shows typically offer steep discounts for a small number of tickets through lotteries or other means.

Tickets for some of the most popular Broadway shows have sometimes been underpriced, according to Broadway theater representatives, who told us they feel obligated to maintain relatively reasonable prices and to allow consumers of varying financial resources to attend their shows. Additionally, some shows are underpriced because their popularity was not anticipated. At the same time, in recent years, producers have started charging much higher prices (sometimes exceeding \$500) for premium seats or for shows in very high demand, which allows productions to capture proceeds that would otherwise be lost to the secondary market.

### Relationships between Event Organizers and Brokers

Sometimes event organizers work directly with brokers to distribute tickets on the secondary market. For high-demand events, event organizers may seek to capture a share of higher secondary market prices without the reputation risk of raising an event's ticket prices directly. For lower-demand events, selling tickets directly to brokers can guarantee a certain level of revenue and increase exposure (by using multiple resale platforms rather than a single ticketing site).

- In major league sports, teams sell up to 30 percent of seats directly to brokers, according to a large primary ticket seller.
- For Broadway theater, one company told us it regularly distributes about 8 percent to 10 percent of its tickets to a few authorized secondary market brokers.
- In the concert industry, it is unclear how often artists and event organizers sell tickets directly through the secondary market. Any

formal agreements would be in business-confidential contracts, according to industry representatives, and artists may be concerned about disclosing them for fear of appearing to profit from high resale prices.

All the artists' representatives with whom we spoke denied that their clients sold tickets directly to secondary market companies. However, a Vice President of the National Consumers League has cited evidence of cases in which ticket holds reserved for an artist were listed on the secondary market.<sup>22</sup> A representative of one secondary market company told us of two cases in which representatives of popular artists approached his company about selling blocks of tickets for upcoming tours.

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### Tickets to Popular Events Are Often Resold on the Secondary Market at Prices above Face Value

Ticket resale prices can be significantly higher than primary market prices and brokers account for most sales on major ticket exchanges. When tickets on the primary market are priced below market value—that is, priced less than what consumers are willing to pay—it creates greater opportunities for profit on the secondary market. Resale transactions typically occur on secondary ticket exchanges—websites where multiple sellers can list their tickets for resale and connect with potential buyers. Primary ticketing companies have also entered the resale market. For example, Ticketmaster allows buyers to resell tickets through its TM+ program, which lists resale inventory next to primary market inventory, and it owns the secondary ticket exchange TicketsNow.com.

Generally speaking, the secondary market serves two types of sellers: (1) those who buy or otherwise obtain tickets with the intent of reselling them at a profit (typically, professional brokers), and (2) individuals trying to recoup their money for an event they cannot attend (or sports season ticket holders who do not want to attend all games or use resale to finance part of their season package). Representatives from the four secondary ticket exchanges with whom we spoke each said that

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<sup>22</sup>Legislative Hearing on 17 FTC Bills, House of Representatives, Energy and Commerce Committee, Subcommittee on Commerce, Manufacturing, and Trade, 114th Cong. 187-198 (May 24, 2016) (statement of John Breyault, Vice President, Public Policy, Telecommunications, and Fraud; National Consumers League).

professional brokers represent either the majority or overwhelming majority of ticket sales on their sites.

Sellers set their own prices on secondary ticket exchanges, but some exchanges offer pricing recommendations. The exchanges allow adjustment of prices over time, and sellers can lower prices if tickets are not selling, or raise prices if demand warrants. Software tools exist that assist sellers in setting prices and in automatically adjusting prices for multiple ticket listings.

However, resale prices are not always higher than the original price, and thus brokers assume some risk. In some cases, the market price declines below the ticket’s face value—for example, for a poorly performing sports team. The leading ticket exchange network has publicly stated that it estimates that 50 percent of tickets resold on its site sell for less than face value. However, we were unable to obtain data that corroborated this statement.

Relatively few studies have looked at the ticket resale market for major concert, sporting, or theatrical events. Our review of relevant economic literature identified six studies that looked at ticket resale prices, one of which also looked at the extent of resale (see table 2). In general, the studies found a wide range of resale prices, perhaps reflecting the different methodologies and samples used or the limited amount of information on ticket resale. Additionally, the data reported are several years old and will not fully reflect the current market.

**Table 2: Selected Research on Ticket Resale Prices and the Extent of Resale**

n/a	n/a	n/a	Findings	Findings
Study title	Author and source	Study description	Ticket prices	Extent of resale
“Resale and Rent-Seeking: An Application to Ticket Markets”	Phillip Leslie and Alan Sorenson, <i>The Review of Economic Studies</i> , vol. 81, no. 1 (2013)	Using a sample of 56 concerts for popular artists in 2004, the study compared the number of tickets and resale prices from a major secondary ticket exchange and an online auction site to the number of tickets sold and prices in the primary market.	Seventy-four percent of tickets were resold above face value and 26 percent of tickets were resold below face value. The average resale price overall was 41 percent higher than the face-value price.	On average, about 5 percent of tickets were resold, with a range among concerts of 3–17 percent.
“Obstructed View: What’s Blocking New Yorkers from Getting Tickets”	New York State Office of the Attorney General (2016)	Reviewed data from six brokers on 90,000 sales transactions made from 2010–2014 that showed the prices at which the brokers purchased and resold the tickets.	On average, the resale price was 49 percent higher than the face-value price. By broker, the average markup ranged from 15 percent to 112 percent.	Not addressed (n/a).

n/a	n/a	n/a	Findings	Findings
Study title	Author and source	Study description	Ticket prices	Extent of resale
“Primary-Market Auctions for Event Tickets: Eliminating the Rents of ‘Bob the Broker?’”	Aditya Bhawe and Eric Budish, NBER Working Paper No. 23770 (National Bureau of Economic Research, Cambridge, Mass., 2017)	Reviewed face-value and resale prices of tickets to 576 concerts in 2007 and 2008. Looking at the best seats sold using auctions, the study compared the tickets’ original face-value prices to initial-sale (by auction) prices and secondary market prices.	Secondary market prices, which were close to the auction prices, were about double the tickets’ face-value prices.	n/a
“An Examination of Dynamic Ticket Pricing and Secondary Market Price Determinants in Major League Baseball”	Stephen L. Shapiro and Joris Drayer, <i>Sport Management Review</i> , vol. 17, no. 2 (2014)	Looking at 12 games in a Major League Baseball team’s 2010 season, the study compared the tickets’ face-value prices and season ticket holder prices to listed prices on a major secondary ticket exchange.	The average listed resale price was 103 percent higher than the average price paid by season ticket holders and about 45 percent higher than the average single game-day price. <sup>a</sup>	n/a
“An Examination of Underlying Consumer Demand and Sport Pricing Using Secondary Market Data”	Joris Drayer, Daniel A. Rascher, and Chad D. McEvoy, <i>Sport Management Review</i> , 15 (2012).	The study compared the secondary market sale price to the primary market price for all 32 NFL teams in the 2007– 2008 season.	The average secondary market price was 143 percent higher than the average primary market price.	n/a
“Pricing Behavior in Perishable Goods Markets: Evidence from Secondary Markets for Major League Baseball Tickets”	Andrew Sweeting, <i>Journal of Political Economy</i> , 120, no. 6 (2012).	The study compared 2007 ticket prices for the home games of 29 Major League Baseball teams to listed prices on a major resale exchange and online auction site.	The average listed resale price was about twice the corresponding face-value price, although prices declined as game-day approached. <sup>a</sup>	n/a

Source: GAO-selected research. | GAO-18-347

<sup>a</sup>“Listed” resale price refers to the price listed and not necessarily to the price at which the ticket actually sold.

For illustrative purposes, we reviewed secondary market ticket availability and prices for a nongeneralizable sample of 22 events.<sup>23</sup> Among our selected events, the proportion of seats that were listed for resale ranged

<sup>23</sup>We reviewed data from two ticket resale sites for a sample of 22 events, 17 of which we categorized as high-demand. We also reviewed data from the primary ticket market for each event. We defined high-demand events as those that were likely to sell out, which we assessed by reviewing past attendance at other events for the same artist, sports team, or theatrical event. We focused on high-demand events because they have been the focus of interest in issues regarding resale activity. For each event, we determined (1) the proportion of tickets listed on the secondary market, and (2) how listed resale prices compared to face-value prices. Events were selected to represent concert, sporting, and theater events at different demand levels (popular versus other events). We collected data between October 16 and December 20, 2017.

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from 3 percent to 38 percent. In general, among the 22 events we reviewed, listed resale prices tended to be higher than primary market prices. For example, tickets for one sold-out rock concert had been about \$50 to \$100 on the primary market but ranged from about \$90 to \$790 in secondary market listings.

For 7 of the 22 events, we observed instances in which tickets were listed on the resale market even when tickets were still available from primary sellers at a lower face-value price.<sup>24</sup> For example, one theater event had secondary market tickets listed at prices ranging from \$248 to \$1,080 (average of \$763), while a substantial number of tickets for comparable seats were still available on the primary market at \$198 to \$398.<sup>25</sup> We did not have data to determine whether the resale tickets actually sold at their listed price. However, as discussed later, it is possible that some consumers buy on the secondary market, at a higher price, because they are not aware that they are purchasing from a resale site rather than the primary seller.

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### Total Ticket Fees Averaged 27 Percent on the Primary Market and 31 Percent on the Secondary Market for Events We Reviewed

Ticket fees vary in amount and type among the primary and secondary markets, and among different ticketing companies and events.

#### Primary Market Fees

Companies that provide ticketing services on the primary market typically charge fees to the buyer that are added to the ticket's list price and can vary considerably. A single ticket can have multiple fees, commonly including a "service fee," a per-order "processing fee," and a "facility fee" charged by the venue. Most primary ticketing companies offer free

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<sup>24</sup>We did not have information on how many tickets were available at various price points and it is possible that the differences in pricing could have been due to the number or quality of seats on the primary market.

<sup>25</sup>To combine data from the two resellers, we computed median weekly ticket prices for each event from each vendor, and then computed an average weighted by the number of available tickets on each website. The primary and secondary market prices do not include fees.

delivery options, such as print-at-home or mobile tickets, but charge additional fees for delivery of physical tickets.

Venues usually have an exclusive contract with a single ticketing company and typically negotiate fees for all events at the venue, though in some cases they do so by category of event. Ticketing companies and venues usually share fee revenue and in some cases, the venue receives the majority of the fee revenue, according to primary ticketing companies.<sup>26</sup> In addition, event organizers told us that promoters occasionally negotiate with the venue to add ticket fees or receive fee revenue.

Ticketing companies told us that they do not have a set fee schedule and amounts and types of fees vary among venues. Fees can be set as a fixed amount, a fixed amount that varies with the ticket's face value (for example, \$5 for tickets below \$50 and \$10 for tickets above \$50), a percentage of face value, or other variations.

While ticketing fees vary considerably, the 2016 New York Attorney General report found average ticket fees of 21 percent based on its review of ticket information for more than 800 tickets at 150 New York State venues.<sup>27</sup> (In other words, a ticketing company would add \$21 in fees to a \$100 ticket, for a total price to the buyer of \$121.) The 21 percent figure encompassed all additional fees, including service fees and flat fees, like delivery or order processing fees.

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<sup>26</sup>Ticketing companies earn revenue from tickets they sell through their website, mobile application, call center, or physical outlets. However, they typically do not earn any fee revenue from season tickets or tickets sold through the venue box office, or through the artists' fan clubs when the fan club tickets are sold on a third-party ticketing company's platform.

<sup>27</sup>New York State Office of the Attorney General, 29, 41. The report collected fee information and ticket prices for 150 New York venues listed on three primary ticketing websites. For each venue, fee information was collected for up to three randomly selected events and, for each event, information was collected for every seating category (e.g., orchestra, balcony).

We conducted our own review of ticketing fees for a nongeneralizable sample of a total of 31 concert, theater, and sporting events across five primary ticket sellers' websites:<sup>28</sup>

- In total, the combined fees averaged 27 percent of the ticket's face value, and we observed values ranging from 13 percent to 58 percent.<sup>29</sup>
- Service fees were, on average, 22 percent of the ticket's face value, and we observed values ranging from 8 percent to 37 percent.
- Fourteen of the events we reviewed had an additional order processing fee, ranging from \$1.00 to \$8.20.
- Five of the events we reviewed had an additional facility fee, ranging from \$2.00 to \$5.10.

Table 3 shows the ticketing fees observed for events sold through three of the largest ticket companies we reviewed.

**Table 3: Observed Fees Charged by Three of the Largest Primary Ticketing Companies**

Company	Service fee charged to buyer (as a percent of the face value)	Facility fee	Order processing fee
Ticket company A	23–27%	None observed	\$1.00
Ticket company B	19–27%	\$2.00	None observed
Ticket company C	8–37%	\$2.85–\$5.10	\$3.92–\$8.20

Source: GAO analysis of primary ticket sellers' websites. | GAO-18-347

Notes: Not every ticket we observed had a facility fee or an order processing fee. In total, we observed 28 events from these three companies.

A sixth ticketing company that focuses on theater uses a different fee structure. It simply charges two flat service fees across all of its events (\$7 for tickets below \$50 and \$11 for tickets above \$50), plus a base per-order handling charge of \$3. Additionally, we noted that the 6 sporting events we observed tended to have lower fees than the 16 concerts and

<sup>28</sup>A GAO investigator and a GAO analyst collected data between June 19, 2017, and January 16, 2018 on the ticket fees charged for online purchase by five primary ticketing companies. From one to three concert, theater, and sporting events were reviewed for each company, covering 12 events and 10 venues in total. Ticket fees were also reviewed for an additional 20 events sold by the largest ticketing company.

<sup>29</sup>These totals encompassed both fees that were charged as a percentage of face value (such as "service" fees) and fixed-dollar fees (such as "order processing" fees).

9 theater events we observed. Specifically, sporting events had total fees averaging roughly 20 percent, compared to about 30 percent for concerts and theater.

Secondary Market Fees

Fees charged by secondary ticket exchanges we reviewed were higher than those charged by primary market ticket companies.<sup>30</sup> Secondary ticket exchanges often charge service and delivery fees to ticket buyers on top of the ticket’s listed price. For 7 of the 11 secondary ticket exchanges we reviewed, the service fee was a set percentage of the ticket’s list price. Three of the remaining exchanges charged fees that varied across events, and the fourth did not charge service fees. Among the 10 exchanges that charged fees:

- In total, the combined fees averaged 31 percent of the ticket’s listed price, and we observed values ranging from 20 percent to 56 percent.
- Service fees, on average, were 22 percent of the ticket’s listed price, and we observed values ranging from 15 percent to 29 percent.
- In addition to the service fee, 8 of the 10 exchanges charged a delivery fee for mobile or print-at-home tickets, ranging from \$2.50 to \$7.95.
- Eight of the exchanges also charged a fee to the seller (in addition to the buyer), which was typically 10 percent of the ticket’s sale price. (For example, if a ticket sells for \$100, the seller would receive \$90 and the exchange \$10.)

Table 4 provides additional information about the fees charged by three of the largest ticket resale exchanges.

**Table 4: Fees Charged by Three of the Largest Ticket Resale Exchanges**

Exchange	Service fee charged to buyer (as a percent of ticket price)	Delivery fee charged to buyer	Fee charged to seller (as a percent of ticket price)
Resale exchange A	10–25%	<ul style="list-style-type: none"> <li>• Download: \$2.50 or \$7.95</li> <li>• Mail: \$14.95</li> </ul>	0–10%

<sup>30</sup>A GAO investigator and a GAO analyst gathered information on fees charged for seven events on the websites of 11 secondary market ticketing companies, which included nine ticket exchanges and two aggregators of ticket resale websites. For each website, from three to five events were reviewed, which included at least one concert, theater, and sporting event per site.

Exchange	Service fee charged to buyer (as a percent of ticket price)	Delivery fee charged to buyer	Fee charged to seller (as a percent of ticket price)
Resale exchange B	21–24%	None	10%
Resale exchange C	29–30%	<ul style="list-style-type: none"> <li>• Download: \$7.95</li> <li>• Mail: \$15.00</li> </ul>	0–10%

Source: GAO review of secondary ticket exchange websites. | GAO-18-347

Note: We observed three events per resale exchange. For resale exchanges A and C, data were obtained both from our observations and from communication with company officials.

## Consumer Protection Concerns Include the Ability to Access Face-Value Tickets and the Fees and Clarity of Some Resale Websites

The technology and other resources of professional brokers give them a competitive advantage over individual consumers in purchasing tickets at their face-value price. Views vary on the extent to which the use of holds and presales also affect consumers. Many ticketing websites we reviewed did not clearly display their fees up front, and a subset of websites—referred to as white-label—used marketing practices that might confuse consumers. Other consumer protection concerns that have been raised involve the amount charged for ticketing fees, speculative and fraudulent tickets, and designated resale exchanges (resale platforms linked to the primary ticket seller).

### For Tickets to Popular Events, Consumers Often Must Pay More Than Face Value

Tickets to popular events often are not available to consumers at their face-value price, frequently because seats sell out in the primary market almost as soon as the venue puts them on sale.

#### Brokers' Competitive Advantage

Brokers whose business is to purchase and resell tickets have a competitive advantage over individual consumers because they have the technology and resources to purchase large numbers of tickets as soon as they go on sale. Some consumer advocates, state officials, and event organizers believe that brokers unfairly use this advantage to obtain tickets from the primary market, which restricts ordinary consumers from buying tickets at face value. As a result, consumers may pay higher prices than they would if tickets were available on the primary market. In

addition, some event organizers and primary ticket sellers have expressed frustration that the profits from the higher resale price accrue to brokers who have not played a role in creating or producing the event.

Some professional brokers use software programs known as bots to purchase large numbers of tickets very quickly. When tickets first go on sale, bots can complete multiple simultaneous searches of the primary ticket seller's website and reserve or purchase hundreds of tickets, according to the 2016 report by the New York State Office of the Attorney General.<sup>31</sup> Seats reserved by a bot—even if ultimately not purchased—appear online to a consumer as unavailable. This, in turn, can make inventory appear artificially low during the first minutes of the sale and lead consumers to the secondary market to seek available seats, according to event organizers we interviewed.<sup>32</sup> Bots can also automate the ticket-buying process, as well as identify when additional tickets are released and available for purchase. During its investigation of the ticketing industry, the New York State Office of the Attorney General identified an instance in which a bot bought more than 1,000 tickets to a single event in 1 minute.<sup>33</sup>

In addition, bots can be used to bypass security measures that are designed to enforce ticket purchase limits. For example, bots can use advanced character recognition to “read” the characters in a test

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<sup>31</sup>New York State Office of the Attorney General, 15. We did not identify comprehensive information on the prevalence of the use of bots in purchasing event tickets. Representatives from one primary ticketing company told us it believes bots accounted for 21 percent of online ticket inquiries (i.e., attempts to access the system and not necessarily actual purchases) for two high-demand shows over a 3 month period (which it identified based on certain characteristics associated with bot use). Other ticket sellers with whom we spoke said they believe bots are still widely used, especially for the most popular events. However, one said it did not have a reliable estimate on the use of bots, noting that they do not have any way of being certain whether or not a bot was used to purchase a ticket.

<sup>32</sup>Primary ticket sellers typically limit the amount of time buyers have to complete a purchase—for example, 10 minutes from selecting tickets to completing payment. During this time, the selected tickets are removed from the inventory and appear to other buyers to be unavailable.

<sup>33</sup>New York State Office of the Attorney General, 18.

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designed to ensure that the buyer is human.<sup>34</sup> Although the BOTS Act of 2016 restricts the use of bots, as discussed later, it is not yet clear the extent to which the act has reduced their use.

Brokers have other advantages over consumers in the ticket buying process, according to the New York State Attorney General's report and industry stakeholders we interviewed. For example, some brokers employ multiple staff, who purchase tickets as soon as an event goes on sale. In addition, brokers can bypass sellers' limits on the number of tickets allowed to be purchased by using multiple names, addresses, credit card numbers, or IP (Internet protocol) addresses.<sup>35</sup> Finally, to access tickets during a presale, some brokers join artists' fan clubs or hold multiple credit cards from the company sponsoring the presale.

### Role of Holds and Presales

Holds and presales may limit the number of tickets available to consumers at face value, according to some consumer groups, secondary market companies, and other parties. For example, the National Consumers League testified that events with many holds and presales sell out more quickly during the general on-sale because fewer seats are available.<sup>36</sup> Consumers may not be aware that many seats are no longer available by the time of the general on-sale. In addition, the National Consumers League and New York State Office of the Attorney General said they believe the use of holds and presales raise concerns about equity and fairness. They noted that most holds go to industry insiders who have a connection to the promoter or venue, while credit card presales are available only to cardholders, who typically are higher-income. The New York State Attorney General's office and seven event

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<sup>34</sup>A common security measure is the Completely Automated Public Turing test to tell Computers and Humans Apart, commonly known as CAPTCHA, which asks users to prove they are human by identifying characters in distorted text or by selecting images that meet certain requirements ("Identify all photos with a car"). In some cases, bots are programmed to bypass this test. In other cases, the bot submits images of the tests to human workers who complete it, according to the report of the New York State Office of the Attorney General.

<sup>35</sup>Ticketing companies often limit the number of tickets a consumer can purchase during a single transaction. An Internet protocol (IP) address is a unique string of numbers that identifies each computer using the Internet to communicate over a network.

<sup>36</sup>Breyault, 2, 5. The National Consumers League is a nonprofit consumer advocacy organization.

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organizers with whom we spoke expressed concerns that presales benefit brokers, who take special measures to access tickets during presales.

However, other industry representatives told us that holds and presales do not adversely affect consumers. They noted that for most events, the number of tickets sold through presales is not very high and few tickets are held back. Additionally, two event organizers and representatives from a primary ticketing company noted that most presales are accessible to a broad range of consumers—such as tens of millions of cardholders. As a result, the distinction between what constitutes a presale and a general on-sale can be slim. Furthermore, some fan clubs may try to limit brokers' use of presales. For example, one manager said his artist's fan club gives priority for presales to long-time fan club members.

In addition, some industry representatives noted that holds and presales serve important functions that can benefit consumers. For example, credit card presales can reduce event prices by funding certain marketing costs, and fan club presales can offer better access to tickets to artists' most enthusiastic fans, according to event organizers with whom we spoke. And as noted earlier, holds serve various functions, such as providing flexibility for seating configuration.

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### Some Ticketing Websites We Reviewed Were Not Fully Transparent about Ticket Fees and Relevant Disclosures

Among the largest primary and several secondary market ticketing companies, we identified instances in which fee information was not fully transparent. We reviewed the ticket purchasing process for a selection of primary and secondary ticketing companies' websites, including a subset of secondary market websites known as "white-label" websites. We reviewed the extent to which the companies' websites clearly and conspicuously presented their fees and other relevant information and also recorded the point at which fees were disclosed in the purchase process.<sup>37</sup> While FTC staff guidance states that there is no set formula for a clear and conspicuous disclosure, it states that among several key factors are whether the disclosure is legible, in clear wording, and

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<sup>37</sup>We did not, however, conduct a legal compliance review for these disclosures and we do not offer an opinion as to whether any of our findings about selected websites would meet the relevant FTC standard for unfair or deceptive practices.

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proximate to the relevant information.<sup>38</sup> In recent reports, the National Economic Council (which advises the President on economic policy) and FTC staff have expressed concern about businesses that use “drip pricing,” the practice of advertising only part of a product’s price up front and revealing additional charges later as consumers go through the buying process.<sup>39</sup>

### Primary Market Ticketing Companies

For the 23 events we reviewed, the largest ticketing company—believed to have the majority of the U.S. market share—frequently did not display its fees prominently or early in the purchase process.<sup>40</sup>

- For 14 of 23 events we reviewed, fees could be learned only by (1) selecting a seat; (2) clicking through one or two additional screens; (3) creating a user name and password (or logging in); and (4) clicking an icon labeled “Order Details,” which displayed the face-value price and the fees.
- For 5 of the 23 events, the customer did not have to log in to see the fees, but the fees were visible only by clicking the “Order Details” icon.
- For 4 of the 23 events, fees were displayed before log-in and without the need to take additional steps.
- Additionally, for 21 of the 23 events, ticket fees were displayed in a significantly smaller font size than the ticket price.

For the five other primary market ticketing companies whose ticketing process we reviewed, fees were displayed earlier in the purchase process and more conspicuously.<sup>41</sup> All five companies displayed fees before

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<sup>38</sup>Federal Trade Commission, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising* (March 2013) (staff guidance).

<sup>39</sup>White House National Economic Council, *The Competition Initiative and Hidden Fees* (Washington, D.C.: December 2016); and Mary W. Sullivan, *Economic Analysis of Hotel Resort Fees* (Washington, D.C.: January 2017), Federal Trade Commission Bureau of Economics Staff Report.

<sup>40</sup>We reviewed the purchase process on the company’s website for 23 events, which included events at 13 different venues of varying sizes, including arenas and theaters. We collected data between June 20, 2017, and January 16, 2018.

<sup>41</sup>For each of these five ticketing companies, a GAO investigator and a GAO analyst reviewed the purchase process for between one and three events. We believe these ticketing companies are among the largest in the U.S.

asking users to log in, including one that displayed fees during the initial seat selection process. Four of the five companies displayed fees in a font size similar to that of other price information and in locations on the page that were generally proximate to relevant information. However, for all companies we reviewed, fees and total ticket prices were not displayed during the process of browsing for different events.

We found that two primary ticket sellers that sometimes offer nontransferable tickets (that is, tickets whose terms and conditions prohibit transfer) had prominently and clearly disclosed the special terms of those tickets—for example, that the buyer’s credit card had to be presented at the venue and the entire party had to enter at the same time.<sup>42</sup> One company’s website displayed these conditions on a separate screen for 10 seconds before allowing the buyer to proceed. The other company’s website similarly displayed information about the tickets’ nontransferability on a separate page in clear language in a font size similar to the pricing information.

### Secondary Ticket Exchanges

We also reviewed disclosure of fees and other relevant information on the websites of 11 secondary ticket exchanges and resale aggregators.<sup>43</sup> Two of the 11 websites displayed their fees conspicuously and early in the purchase process, and a third site did not charge ticketing fees. However, we found that ticket resale exchanges sometimes lacked transparency about their fees:

- **Fees often were revealed only near the end.** Seven of the 11 websites disclosed ticket fees only near the end of the purchase process, after the consumer entered an e-mail or logged in. Three of those seven websites displayed fee information only after the credit card number or other payment information was submitted.
- **Fees sometimes were not conspicuously located.** On 2 of the 11 websites, some fees were not displayed alongside the ticket price, but instead were only visible by clicking a specific button.

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<sup>42</sup>According to industry stakeholders, nontransferable tickets are rarely used. Due to their rarity, we could only identify one event using nontransferable tickets from each of two ticket sellers at the time of our analysis.

<sup>43</sup>The 11 companies included 9 secondary ticket exchanges and 2 ticket resale aggregators, which aggregate listings from multiple exchanges. For each, we reviewed the purchase process for between three and five events.

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- **Font sizes were small in two cases.** On 2 of the 11 websites, fees were displayed in a font size significantly smaller than other text.

In contrast to primary market sellers, secondary market sellers' websites sometimes did not clearly disclose when a ticket was nontransferable.<sup>44</sup> Disclosures on secondary market ticket exchanges varied, in part because individual sellers are permitted to enter their own descriptions about ticket characteristics. In some cases, the seller identified nontransferable tickets only by labeling them "gc," indicating that a gift card would be mailed to the buyer to present for entry to the venue.<sup>45</sup>

To further review nontransferable ticket listings, we contacted the customer service representatives of three large secondary ticket exchanges to ask about a nontransferable ticket listing.<sup>46</sup> We asked if we would have difficulty using the ticket because the venue's or ticket seller's website stated that only the original buyer could use the ticket, with one website noting that picture identification might be required for entry. Customer service representatives of all three exchanges told us that despite the purported restrictions, we would be able to use the ticket to gain entry to the venue. To confirm these statements, we contacted officials of these venues, who acknowledged that picture identification had not been required for entry at these events.

Consumers may not always be aware they are purchasing tickets from a secondary market site at a marked-up price. In a 2010 enforcement action, FTC settled a complaint against Ticketmaster after alleging, among other things, that the company steered consumers to its resale site, TicketsNow, without clear disclosures that the consumer was being directed to a resale website. The settlement requires Ticketmaster, TicketsNow, and any other Ticketmaster resale websites to clearly and conspicuously disclose when a consumer is on a resale site and that prices may exceed face value, and to include "reseller price" or "resale

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<sup>44</sup>According to some industry stakeholders, nontransferable tickets are sometimes resold, although the tickets' terms and conditions prohibit it.

<sup>45</sup>Because nontransferable tickets often require the buyer's credit card or other identification be presented at the venue, brokers will sometimes purchase tickets using a prepaid card that is mailed to the buyer.

<sup>46</sup>For two of the companies, a GAO investigator and a GAO analyst sent eight e-mails to each customer service department. For the third company, five "live chats" were conducted with customer service representatives. Each e-mail or live chat inquired about one of two events using nontransferable tickets. We did not identify ourselves as representing GAO during these contacts.

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price” with ticket listings. In addition, in January 2018, the National Advertising Division, a self-regulatory organization, asked FTC to investigate the fee disclosure practices of StubHub, a large secondary ticket exchange, alleging the company did not clearly and conspicuously disclose its service fees when it provides ticket prices.<sup>47</sup>

### White-Label Websites for Ticket Resale

A subset of ticket resale websites, known as “white label,” used marketing practices that might confuse consumers. A company providing white-label support allows affiliates to connect its software to their own, uniquely branded website.<sup>48</sup> This is sometimes also described as a “private label” service in the industry. For event ticketing, a ticket exchange offering white-label support provides the affiliate company with access to its ticket inventory and services, such as order processing and customer service. However, the affiliate uses its own URL (website address), sets the ticket prices and fees, and conducts its own marketing and advertising. Two secondary ticket exchanges operate white-label affiliate programs, under which affiliates create unique white-label websites for ticket resale.

While we did not identify data on the number of white-label websites for event ticketing, they commonly appear in the search results for all types of venues, including smaller venues like clubs and theaters. White-label websites often market themselves through paid advertising on Internet search engines, appearing at the top of search results for venues. Thus, they are often the first search results consumers see when searching for

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<sup>47</sup>The National Advertising Division is an investigative unit of the Council of Better Business Bureaus’ Advertising Self-Regulatory Council. According to an Advertising Self-Regulatory Council press release, StubHub declined to comply with the division’s previous recommendations, stating that its fee disclosure practices were in line with industry practice and that consumers generally understand that fees will be added at the end of the purchase process. See Advertising Self-Regulatory Council, “NAD Refers StubHub Pricing Claims to FTC for Further Review After Advertiser Declines to Comply with NAD Decision on Disclosures” news release, January 16, 2018, <http://www.ascreviews.org/nad-refers-stubhub-pricing-claims-to-ftc-for-further-review-after-advertiser-declines-to-comply-with-nad-decision-on-disclosures/>.

<sup>48</sup>White-label programs are used in many industries, not just event ticketing. For example, there are white-label software search engines for booking airlines and hotels.

event tickets.<sup>49</sup> Figure 1 provides a hypothetical example of a white-label advertisement on a search engine, as well as the typical appearance of a white-label website.

Figure 1: Hypothetical Example of White-Label Search Results and Website

**Search:** GAO Arena tickets

**GAO Arena Tickets | 2018 Events**  
**(Ad)** gao-arena.tickets-boxoffice.com (800) 555-5555  
★★★★★ Rating for tickets-boxoffice.com  
Independent Marketplace Resale Tickets.  
Download Instantly · Excellent Customer Service  
Lots of Inventory, Seating Chart

**GAO Arena | Box Office. Order Now**  
**(Ad)** gaoarena.boxoffice.center.com (800) 555-5555  
Marketplace. Buy GAO Arena Tickets.

**GAO ARENA TICKETS**  
GAO Arena  
Operated by Ticket Box Office

We are a resale marketplace  
Prices may exceed face value  
This site is not owned by any venue

Home    FAQ    Policies    About us    Contact us

Mar 1, 2018	Rock n' Roll GAO Arena Washington, DC	Tickets
Mar 3, 2018	Rock n' Roll GAO Arena, Orchestra Washington, DC	Tickets
Mar 5, 2018	Rock n' Roll GAO Arena, Orchestra Washington, DC	Tickets

**Ticket Information**

<b>GAO Arena</b> The GAO Arena is a premier events center. Operating for over 50 years, the Arena has been used for sports activities and touring concerts for fans of all ages.	<b>Inventory</b> We are a resale marketplace, not a box office or venue. Ticket prices may exceed face value. This site is not owned by GAO Arena.	<b>Guarantee</b> 100% Buyer Guarantee. Tickets are authentic and will arrive before events
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Source: GAO. | GAO-18-347

Note: "GAO Arena" is a fictitious venue used for illustrative purposes.

<sup>49</sup>Two of the largest search engines offer advertising services that allow companies to appear in the search results related to selected products or services. Advertisers identify keywords relevant to their products and when users search for those keywords, their advertisements will appear on top of or next to the relevant search results. These advertised search results are usually identified in some manner to separate them from other search results. Use of paid search results for event ticketing is not limited to white-label websites and is a common marketing practice of many primary and secondary market ticket sellers.

In 2014, FTC and the State of Connecticut announced settlements with TicketNetwork—one of the exchanges operating a white-label program—and two of its affiliates after charges of deceptively marketing resale tickets.<sup>50</sup> The complaint alleged that these companies' advertisements and websites misled consumers into thinking they were buying tickets from the original venue at face value when they were actually purchasing resale tickets at prices often above face value. According to the complaint, the affiliate websites frequently used URLs that included the venue's name and displayed the venue's name prominently on their websites in ways that could lead consumers to believe they were on the venue's website. The settlements prohibited the company and its affiliates from misrepresenting that they are a venue website or that they are offering face-value tickets, and from using the word "official" on the websites, advertisements, and URLs unless the word is part of the event, performer, or venue name. They also required that the websites disclose that they are resale marketplaces, that ticket prices may exceed the ticket's face value, and that the website is not owned by the venue or other event organizers.

FTC staff with whom we spoke told us that they were aware that similar practices have continued among other white-label companies. Staff told us they have continued to monitor white-label websites and related consumer complaints. Additionally, a wide range of stakeholders with whom we spoke—including government officials, event organizers, and other secondary ticket sellers—expressed concerns about these websites. In particular, they were concerned that consumers confused white-label websites for the venue's website.

We reviewed 17 websites belonging to eight companies that were affiliates of the two secondary ticket exchanges offering white-label programs.<sup>51</sup> We identified the sites by conducting online searches for nine venues (including stadiums, clubs, and theaters) on two of the largest search engines. All nine of the venues had at least one white-label site

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<sup>50</sup> See *Federal Trade Commission v. TicketNetwork, Inc.*, No. 3:14-cv-1046 (D. Conn. Aug. 12, 2014); *Federal Trade Commission v. SecureBoxOffice, LLC*, No. 3:14-cv-1046 (D. Conn. Aug. 12, 2014); *Federal Trade Commission v. Ryadd, Inc.*, No. 3:14-cv-1046 (D. Conn. Aug. 12, 2014).

<sup>51</sup> Companies that use white-label ticketing sites typically have multiple websites displaying different URLs in online search results. We reviewed the purchase process for between one and four events per site. For each event, we recorded the prices and fees charged, and how and when the site disclosed its fees and that it was a resale site.

appear in the paid advertising above the search results. We observed the following:

- **Sites could be confused with that of the official venue.** Fourteen of the 17 white-label websites we reviewed used the venue's name in the search engine's display URL, in a manner that could lead a consumer to believe it was the venue's official website. In addition, 5 of the 17 webpages used photographs of the venue and 11 provided descriptions of the venue (such as its history) that could imply an association with the venue.
- **Fees were higher than on other resale sites.** Total ticketing fees (such as "service charges") for the white-label sites ranged from 32 percent to 46 percent of the ticket's list price, with an average of 38 percent. These fees were generally higher than those of other ticket resellers—for example, the secondary ticket exchanges that we reviewed charged average fees of 31 percent.
- **Fees were revealed only near the end.** All 17 of the white-label sites we reviewed disclosed their fees late in the purchase process. Ticketing fees and total prices were provided only after the consumer had entered either an e-mail address or credit card information.
- **Other key disclosures were present but varied in their conspicuousness.** All 17 of the white label webpages we reviewed disclosed on their landing page and check-out page that they were not associated with the venue and were resale sites whose prices may be above face value. However, this information was presented in a small font or in an inconspicuous location (not near the top of the page) for the landing page of 7 of these webpages, as well as for the check-out page of 12 of the 17 webpages.
- **Ticket prices were higher than other resale sites.** The ticket price charged for the events we reviewed on the white-label sites had an average markup of about 180 percent over the primary market price.<sup>52</sup> By comparison, other ticket resale websites we reviewed had an average markup of 74 percent.

In some cases, we observed white-label websites selling event tickets when comparable tickets were still available from the primary seller at a lower price. For example, two white-label sites were offering tickets to an

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<sup>52</sup>The primary market price includes the face value and any additional fees, which we obtained from the primary ticket sellers' websites. We compared the primary market price to the total price on the white-label site (including fees).

event for \$90 and \$111, respectively, whereas the venue's official ticketing website was offering comparable seats for \$34. (All figures include applicable fees). Given the significantly higher cost for the same product, some consumers may be purchasing tickets from a white-label site only because they mistakenly believe it to be the official venue's site. As we discuss in greater detail later in this report, in February 2018, Google implemented requirements for resellers using its AdWords service that are intended, among other things, to prevent consumer confusion related to white-label sites.

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## Other Consumer Protection Issues Have Been Identified

Ticket fees, the use of speculative tickets, ticket fraud, and designated resale exchanges have raised consumer protection concerns among government agencies, industry stakeholders, and consumer advocates.

### Amount Charged for Ticket Fees

Consumer protection advocates, event organizers, and some government entities have expressed concerns about high ticket fees.<sup>53</sup> For example, the New York State Attorney General's report expressed concern about what it deemed high ticketing fees charged for unclear purposes. The report found that among online platforms, vendors of event tickets appeared to charge fees to consumers higher than most other online vendors.<sup>54</sup> Concerns about high ticket fees also were frequently cited in 2009 congressional hearings on the proposed merger of Live Nation and Ticketmaster.<sup>55</sup> In addition, some managers and agents we interviewed said their clients were dissatisfied with high ticket fees. Data we received

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<sup>53</sup>As previously noted, we found that the primary and secondary markets had average fees of 27 percent and 31 percent, respectively, of face value or listed price.

<sup>54</sup>New York State Office of the Attorney General, 31.

<sup>55</sup>*Hearing on Competition in the Ticketing and Promotion Industry*, Judiciary Committee of the United States House of Representatives, Subcommittee on Courts and Competition Policy, 111<sup>th</sup> Cong. 1 (Feb. 26, 2009) and *The Ticketmaster/Live Nation Merger: What Does It Mean for Consumers and the Future of the Concert Business?*, Committee on the Judiciary of the United States Senate, Subcommittee on Antitrust, Competition Policy and Consumer Rights of the Committee, 111<sup>th</sup> Cong. 1 (Feb. 24, 2009). (For example, see testimony of Edmund Mierzwinski, Consumer Program Director, U.S. Public Interest Research Group.)

from FTC's Consumer Sentinel Network indicated 67 complaints related specifically to event ticket fees from 2014 through 2016.<sup>56</sup>

A 2010 analysis by the Department of Justice said that the dominance of one company, Ticketmaster, in the primary ticketing market allowed the company to maintain high ticket fees.<sup>57</sup> The report noted high barriers to entry for competitors, among which were high startup costs, Ticketmaster's reputation for providing quality service to venues, and long-term exclusive contracts that large venues typically sign with one ticketing company. In addition, with the merger, Live Nation Entertainment owns both the largest primary ticket seller (Ticketmaster) and largest promoter (Live Nation), and owns many large venues and an artist management company. When the ticketing company is owned by a major promoter, the combined firm's ability to bundle ticketing services and access to artists would require competitors to offer similar services in order to compete effectively, according to the Department of Justice analysis. In an attempt to mitigate these potential effects, the Department of Justice final judgment on the merger prohibited certain forms of retaliation against venues that contract with other ticketing companies. In the United Kingdom, where the venue and promoter typically contract with multiple ticket sellers, ticket fees are lower than in the United States—around 10 percent to 15 percent of the ticket's face value, according to a recent study.<sup>58</sup>

Industry experts generally consider the secondary market for event ticketing to be more competitive than the primary market because of the

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<sup>56</sup>FTC's Consumer Sentinel Network is a database of consumer complaints received by FTC, as well as those filed with certain other federal and state agencies and nongovernmental organizations, including the Consumer Financial Protection Bureau and the Better Business Bureaus. For our review, we asked FTC staff to search the database from 2014 through 2016 using the terms "ticket," types of events (e.g., concert, sport, theater, game, show), and "fee" or "charge." We asked FTC to limit the search to complaints received against 6 primary ticketing companies and 11 secondary ticket resale exchanges or aggregators.

<sup>57</sup>Competitive Impact Statement, *United States of America v. Ticketmaster Entertainment, Inc.*, No. 1:10-cv-00139 (D. D.C. Jan. 25, 2010).

<sup>58</sup>Michael Waterson, *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, a report prepared at the request of the United Kingdom Department for Business, Innovation and Skills and Department for Culture, Media and Sport (London: May 2016), 30-31.

large number of brokers participating in the industry.<sup>59</sup> According to a report by the National Economic Council, fees in this market may be higher than expected because of the lack of transparency described earlier—consumers may be more willing to accept high fees and less likely to comparison shop when fees are disclosed at the end of a multistep purchase process. An FTC staff report made a similar point regarding hotel resort fees, noting that fees disclosed only at the end of the shopping process could harm consumers by making it more difficult to comparison shop for hotels.<sup>60</sup> In addition, consumers who are led to believe that white-label ticketing sites are the official venue site may accept high fees because they think they are buying tickets from the primary ticketing provider, according to two industry representatives with whom we spoke.

The level of fees in the secondary market might also be affected by partnerships between the primary and secondary ticket seller. Primary ticketing companies sometimes offer resale options or use of designated resale exchanges (discussed below). The American Antitrust Institute has expressed the view that these relationships can reduce inventory for rival secondary sellers and in turn, can result in higher fees, as the primary ticket seller essentially has a monopoly over both markets.<sup>61</sup>

### Speculative Tickets

A speculative ticket refers to a ticket put up for sale by a broker when the broker does not yet have the ticket in hand, perhaps because the event has not yet gone on sale. Brokers may sell speculative tickets because they anticipate they will be able to secure the tickets (whether on the primary or secondary market) and sell them for a profit. The terms of use of most secondary sites we reviewed did not allow speculative ticket listings. However, while we were unable to identify comprehensive data on the extent of speculative tickets, numerous industry representatives told us that these sites commonly do not enforce this prohibition and

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<sup>59</sup>For example, see Daniel A. Rascher and Andrew D. Schwarz, “The Antitrust Implications of ‘Paperless Ticketing’ on Secondary Markets,” *Journal of Competition Law and Economics* 9, no. 3 (May 2013), 659.

<sup>60</sup>Sullivan, 27.

<sup>61</sup>James D. Hurwitz, *Restrictive Paperless Tickets: A White Paper by the American Antitrust Institute* (Washington, D.C.: 2012), 36-37, 41-42. The American Antitrust Institute is an independent, nonprofit organization dedicated to promoting competition through its research, education, and advocacy.

listing of speculative tickets was widespread. One common form of speculative ticketing occurs when brokers offer tickets after a popular artist has announced a concert schedule but not yet begun ticket sales, according to industry representatives.

Several concerns exist around the use of speculative ticketing:

- **The buyer may never get the ticket.** Speculative ticket listings can result in canceled orders if the broker cannot obtain the ticket, or cannot obtain it at a price that would result in a profit. For example, it was reported that many fans who thought they purchased tickets to the 2015 Super Bowl actually purchased speculative tickets that were subsequently canceled when the supply of tickets was less than expected.<sup>62</sup> According to industry stakeholders, consumers can typically obtain a refund on a canceled order from the broker or secondary ticket exchange, but may still face disappointment, inconvenience, or costs associated with nonrefundable travel to the planned event.
- **The seat location is not guaranteed.** Brokers selling speculative tickets typically do not specify the seat number but rather promise a certain section of the venue, according to two event organizers we interviewed. However, because the broker does not have the ticket in hand, consumers can receive seats that are worse or different than advertised.
- **Speculative ticketing can cause consumer confusion.** One large ticket resale exchange told us it only allows trusted brokers to sell speculative tickets under certain circumstances and requires sellers to use a special label for these listings. However, we observed other exchanges that are less transparent and do not make clear to the buyer that the ticket is speculative. Consumers may not be aware that tickets have not officially gone on sale yet and eventually may be available on the primary market at a lower price.

In its 2010 enforcement action against Ticketmaster and its resale exchange, TicketsNow.com, FTC alleged that the companies failed to tell buyers that many of the resale tickets advertised were being sold

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<sup>62</sup>For example, see Geoff Baker, "Super Bowl dream becomes nightmare for Seahawks fans after shortage of tickets," *Seattle Times*, January 31, 2015, accessed on February 8, 2018. <https://www.seattletimes.com/sports/seahawks/super-bowl-dream-becomes-nightmare-for-seahawks-fans-after-shortage-of-tickets/>.

speculatively.<sup>63</sup> The settlement required Ticketmaster and its affiliates to disclose if a ticket was being sold speculatively and to otherwise refrain from misrepresenting the status of tickets. FTC staff also sent warning letters to other resale companies that may have been at risk of violating the FTC Act with regard to their speculative ticketing practices. More recently, in 2015 a request by the New York State Attorney General resulted in three major ticket exchanges removing speculative ticket listings for an upcoming tour. Representatives from one of the secondary ticket exchanges told us that while it is difficult to determine if a listing is truly speculative, they have removed listings when they have information from event organizers to indicate that no one could have obtained the tickets.

Posing as a consumer, a GAO investigator made 11 inquiries to customer service representatives of two of the largest secondary ticket exchanges about two events listing tickets that appeared to be speculative.<sup>64</sup> The customer service representatives generally acknowledged that the sellers did not yet have the tickets in hand but assured the investigator that the tickets would be provided.

### Fraudulent Tickets

Event tickets are sometimes fraudulent—for example, a fraudster may create and sell a counterfeit ticket or multiple copies of the same print-at-home ticket, according to industry representatives. We did not identify comprehensive data on the extent of ticket fraud. Event organizers with whom we spoke said that they typically only see a handful of fraudulent tickets at popular events, and do not consider fraudulent ticketing to be a widespread problem. A limited search of FTC’s Consumer Sentinel Network data identified relatively few complaints—an estimated 19

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<sup>63</sup>Complaint at 8-9, Federal Trade Commission v. Ticketmaster L.L.C., No. 1:10-cv-01093 (D. Ill. Feb. 18, 2010).

<sup>64</sup>We identified ticket listings that appeared to be speculative by searching for events that had been announced but for which tickets had not yet been released through a general on-sale or presale. Acting in an undercover capacity, the investigator contacted one company’s customer service through eight e-mail inquiries (each sent from a different e-mail address) and the other company through three separate “live chats.”

related to fraudulent tickets from 2014 through 2016.<sup>65</sup> Industry representatives told us fraudulent tickets are most common for the most popular events and were often purchased on the street outside the venue or through an online classified advertisement.

According to industry representatives, fraudulent ticketing is rare on secondary market exchanges, in part because the exchanges can take action against sellers of fraudulent tickets, such as fining them or banning them from future sales. The National Association of Ticket Brokers requires its members to have a policy to reimburse consumers for fraudulent tickets.<sup>66</sup> Two secondary market participants told us the most common fraudulent activity they must address is credit card fraud by buyers rather than invalid tickets posted by sellers.

### Designated Resale Exchanges

Designated resale exchanges are resale platforms that are linked to the primary ticket seller. They are most commonly used in major league sports. The four major sports leagues have agreements with one of two ticketing companies that allow consumers to buy and sell tickets through an official “fan-to-fan” resale marketplace. In addition, some individual teams and venues have an agreement with a third company to use its resale platform, which uses paperless tickets and can facilitate ticket transfers from one consumer to another or restrict transfers altogether (such as with nontransferable tickets).

On these exchanges, when a consumer lists a ticket for resale, the exchange electronically confirms the seller’s identity, then cancels the original ticket information (such as a barcode) and reissues the ticket with the new buyer’s name.<sup>67</sup> According to the three sports leagues we interviewed, designated resale exchanges are generally optional—for

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<sup>65</sup>Our estimate of the number of complaints from 2014 through 2016 related to ticket fraud was derived by having FTC staff search the Consumer Sentinel Network for complaints including the term “ticket” and at least one term signifying fraud (e.g., “fake,” “invalid”). The search included only complaints against six primary ticketing companies and 11 secondary ticket resale exchanges or aggregators that we identified.

<sup>66</sup>The National Association of Ticket Brokers is a trade association that represents ticket sellers in the secondary market and is comprised of over 200 broker members.

<sup>67</sup>League officials we interviewed explained that although they have league-wide resale partnerships with certain companies, individual teams or clubs sometimes have their own partnerships with other companies.

example, the sports leagues allow brokers and consumers to use other secondary market exchanges as well.

A representative of one of the major sports leagues told us the exchanges provide added revenue to teams because the teams receive some of the fee revenues from sales on the exchanges. The exchanges provide data on event attendees, which is valuable for marketing and security purposes, according to another sports league and a primary ticket seller. In addition, the exchanges can reduce resale fraud because the primary seller verifies the legitimacy of the ticket being resold, according to representatives of the three leagues we interviewed.

However, some academics and secondary market participants we interviewed have argued that designated resale exchanges work to the detriment of consumers. For example, one academic study stated that a primary ticket seller's dominance in the secondary market can substantially reduce inventory for rival secondary sellers, thus impeding competition in the resale market.<sup>68</sup> The study stated that reduced secondary market competition, in turn, can result in higher fees.

In 2015, a U.S. district court dismissed StubHub's antitrust complaint against the Golden State Warriors basketball team and Ticketmaster, LLC. StubHub claimed that the Warriors' and Ticketmaster's exclusive resale agreement restricted secondary market competition for professional basketball tickets in the Bay Area, but the court disagreed.<sup>69</sup>

Some designated resale exchanges use price floors, below which consumers may not sell their tickets. One sports league's exchange has a price floor of \$6, while the exchanges of two other sports leagues do not have league-wide price floors, according to league representatives. In addition, we identified instances of individual teams using price floors on their designated resale exchanges.<sup>70</sup> One purpose of price floors is to protect brand reputation, according to league representatives, because too low a ticket price can lessen an event's perceived value. Price floors

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<sup>68</sup>Rascher and Schwarz, 693.

<sup>69</sup>Order Granting Defendants Motion to Dismiss, *StubHub, Inc. v. Golden State Warriors, LLC*, No. C 15-1436 MMC, 2015 U.S. Dist. LEXIS 151188, at \*4 (N.D. Cal. Nov. 5, 2015).

<sup>70</sup>For example, we identified one basketball team with a \$20 price floor for tickets sold on its designated resale exchange, and a baseball team's deal with a major ticket resale exchange that set a price floor of 50 percent of the ticket's original season ticket price.

also can prevent the secondary market from undercutting a team’s own (primary market) price. However, some consumer organizations and secondary ticket sellers said price floors were unfriendly to consumers. Season ticket holders might be unable to sell tickets for low-demand games for which market prices were lower than the floors. In addition, the New York State Attorney General’s office noted that consumers might not always be aware that price floors were in effect and thus pay more than they would on another exchange.<sup>71</sup>

## Effects of Ticket Resale Restrictions and Disclosures on Consumers and Business Would Vary

Policymakers, consumer organizations, and industry participants have proposed or implemented a number of ticket resale restrictions and disclosure requirements, each of which have or would have advantages and disadvantages for consumers or industry participants (see table 5). Event ticketing is not federally regulated and some industry participants are using or exploring technology and other market-based approaches to address concerns related to secondary market activity.

**Table 5: Potential Advantages and Disadvantages of Selected Legislative or Regulatory Actions Related to Ticket Resale**

Action	Description	Key advantages	Key disadvantages
Prohibiting nontransferable tickets	Prohibiting tickets that do not allow transfer from one person to another and therefore restrict resale	<ul style="list-style-type: none"> <li>Ensures ticketholders can recoup costs on tickets they cannot use</li> <li>Efficient allocation because tickets go to those willing to pay the most</li> </ul>	Reduced opportunity for consumers to access tickets at lower face-value price
Price caps	Capping the price at which tickets can be resold (i.e., limits the markup)	<ul style="list-style-type: none"> <li>Keeps prices down for consumers by restricting markups</li> <li>Still preserves consumers’ ability to resell and recoup costs</li> </ul>	<ul style="list-style-type: none"> <li>Challenging to enforce</li> <li>Could send resale activity underground, where there are fewer protections</li> <li>Inefficient allocation because tickets do not go to those willing to pay the most</li> </ul>

<sup>71</sup>New York State Office of the Attorney General, 32.

Action	Description	Key advantages	Key disadvantages
Requiring up-front disclosure of ticket fees or requiring all-in pricing	Legislative or regulatory requirement to provide up-front disclosure of fees during ticketing process or to wrap fees into the listed price	Increased transparency that allows better consumer decision making and facilitates comparison shopping	<ul style="list-style-type: none"> <li>• Would restrict companies' flexibility in choosing how to disclose fees</li> <li>• Compliance challenges</li> </ul>
Requiring disclosure of ticket's face value on resale sites	Legislative or regulatory requirement that resellers show a ticket's face value alongside the list price	<ul style="list-style-type: none"> <li>• Makes the markup transparent and helps ensure consumers know they are buying from a resale site</li> <li>• Can help consumers assess quality of seat</li> </ul>	<ul style="list-style-type: none"> <li>• Could impose challenges for businesses in identifying face value</li> <li>• Challenging to enforce</li> </ul>
Requiring disclosure of ticket availability	Legislative or regulatory requirement that venue or event organizers disclose how many tickets are available when event goes on sale	Transparency for consumers on how many tickets are actually available for sale	<ul style="list-style-type: none"> <li>• Unclear how useful this information is for consumers</li> <li>• Compliance challenges</li> <li>• May require businesses to disclose proprietary information</li> </ul>

Source: GAO | GAO-18-347

Note: None of these requirements are in effect at the federal level, but some have been implemented or considered at the state level, as described elsewhere in this report.

## Nontransferable Tickets Can Reduce the Price Some Consumers Pay but Also Limit Flexibility

Some event organizers make tickets to their events nontransferable—that is, the terms and conditions of the ticket prohibit its transfer from one person (in whose name the ticket is issued) to another. The prohibition can be enforced by requiring consumers to bring to the venue the credit or debit card used for purchase and matching photo identification. The consumer then receives a seat locator slip—akin to a consumer swiping a credit card at the airport to retrieve a boarding pass.

At least three states—Connecticut, New York, and Virginia—have laws that restrict ticket issuers' ability to sell nontransferable tickets.<sup>72</sup> Similar legislation has been introduced in several other states in recent years.<sup>73</sup>

<sup>72</sup>See N.Y. ARTS & CULT. AFF. LAW § 25.30(1)(c) (Consol. 2018); 2017 CONN. ACTS 17-28 (Reg. Sess.); VA. CODE ANN. § 59.1-466.5 - 59.1-466.7 (2017). New York's law has been in place since 2010, while Connecticut's and Virginia's laws were passed in 2017.

<sup>73</sup>For example, legislation was introduced in Alabama, Maryland, and Missouri that would restrict nontransferable tickets.

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The use of nontransferable tickets, even in states where they are legal, is relatively uncommon. For example, an artist advocacy group told us that some events that use them make only the first several rows of seats nontransferable. One large primary ticketing company told us it estimated that less than 5 percent of its events used nontransferable tickets, while another told us nontransferable tickets represented less than 1 percent of its tickets in total. Almost all nontransferable tickets are for concerts; the practice is rare for sporting events and theater, according to industry stakeholders with whom we spoke.

### Advantages of Nontransferable Tickets

Advantages to consumers of nontransferable tickets stem from the goal of preventing ticket resale—allowing consumers to pay face value rather than a higher price on the secondary market. As described earlier, markups on the secondary market can be substantial. Proponents of nontransferable tickets, which include a large primary ticket seller and some event organizers and well-known artists, have argued they are an important tool that makes it harder for brokers to resell tickets for profit.

We identified one empirical study on the effects of nontransferable tickets on resale activity. A 2013 study in the *Journal of Competition Law and Economics* compared two events using nontransferable tickets to comparable events using transferable tickets at the same venues. It found that nontransferable tickets significantly reduced resale and that prices were significantly higher for the relatively small portion of nontransferable tickets that were resold.<sup>74</sup>

In addition, there is anecdotal evidence that nontransferable tickets reduce the rate of resale and allow more consumers to access tickets at face-value prices. Many stakeholders told us that making tickets nontransferable reduces secondary market activity, with some stakeholders citing specific examples.<sup>75</sup> For instance, the manager of a

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<sup>74</sup>Rascher and Schwarz, 655-708. In this study, a theoretical model was developed and an empirical analysis was performed to demonstrate the potential impact of “paperless ticketing,” a form of nontransferable tickets, on the quantity and price of resale tickets relative to conventional ticketing.

<sup>75</sup>Industry stakeholders expressing this view included two primary ticket sellers; two booking agents; two venue managers; Broadway representatives; an artists’ advocate group; a manager; a promoter; a secondary ticket seller; and the New York State Office of the Attorney General.

large concert venue that primarily uses nontransferable tickets told us that resale is much less common for the venue's events than for comparable events at similar venues. Similarly, the manager of a major musical artist told us that using nontransferable tickets for a subset of seats on a recent arena tour resulted in minimal listings for those seats on the secondary market. The New York State Attorney General's report stated that nontransferable paperless tickets "appear to be one of the few measures to have any clear effect in reducing the excessive prices charged on the secondary markets and increasing the odds of fans buying tickets at face value."<sup>76</sup> But, while we identified evidence that nontransferable tickets limit resale, they may not eliminate resale because sellers may not follow the restriction.

### Disadvantages of Nontransferable Tickets

However, other parties—including primary and secondary market participants, consumer advocacy groups, academics, and government agencies—have noted that nontransferable tickets can have the following disadvantages to consumers and adverse effects on markets:

**Financial loss.** With nontransferable tickets, ticket buyers who cannot attend an event can lose the ability to recoup their money through resale.

**Inconvenience.** Nontransferable tickets can be inconvenient because the buyer may need to present identification, a debit or credit card, or both, to gain entry to the venue, which can create delays. Nontransferable tickets also can create challenges for consumers buying tickets for others (including as a gift) because the ticket terms may require the buyer and original purchase card be present to gain entry. However, a primary ticket seller and a promoter told us these obstacles can be overcome—for example, through mechanisms allowing buyers to transfer tickets upon request, and by using processes to speed venue entry (such as automated kiosks).

**Economic inefficiency.** When nontransferable tickets are priced below the prevailing market price in the primary market, this creates excess demand, and tickets are sold without regard to consumers' willingness to pay.<sup>77</sup> Traditional economics maintains that an efficient market would

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<sup>76</sup>New York State Office of the Attorney General, 36. The report recommended repealing the state's prohibition on nontransferable tickets.

<sup>77</sup>Rascher and Schwarz, 682.

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result in tickets going to those willing to pay the highest price, which nontransferability inhibits by restricting a secondary market.<sup>78</sup> In addition, some academics have noted that consumers may be less willing to buy nontransferable tickets because they do not offer the “insurance” that comes with the ability to resell them.<sup>79</sup>

**Potential impingement on property rights.** Some consumer groups and secondary market participants have argued that nontransferable ticket policies impinge on consumers’ property rights. These parties argue that once consumers buy a ticket, they should be able to do whatever they like with it.<sup>80</sup>

**Effect on competition.** The New York State Attorney General’s office and some economics literature have cautioned that use of nontransferable tickets by primary ticketing companies can impede competition in the secondary market by making these companies’ own resale exchanges the only way to transfer tickets.<sup>81</sup>

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## Caps on Resale Prices Can Have Advantages and Disadvantages

Several states have caps on the price at which tickets can be resold, while others have repealed caps and some studies have questioned their enforceability. For example, Kentucky generally prohibits the resale of event tickets for more than either face value or the amount charged by the venue, and Massachusetts prohibits resale by brokers of most tickets

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<sup>78</sup>Hurwitz, 43; Rascher and Schwarz, 667.

<sup>79</sup>See, for example, Pascal Courty, *Pricing Challenges in the Live Events Industry: A Tale of Two Industries* (January 2015), 7; Hurwitz, 38; and Rascher and Schwarz, 667. Staff we interviewed from the Department of Justice’s Antitrust Division also mentioned that the inability to resell nontransferable tickets could be a deterrent for potential buyers.

<sup>80</sup>Some courts have treated tickets as revocable licenses. For example, in a 2014 civil case regarding a National Football League (NFL) team’s ticket sales practices, the U.S. District Court of the Western District of Washington stated that tickets to an NFL game are not tangible goods, but instead revocable licenses. See e.g., *Williams v. NFL*, No. C14-1089 MJP, 2014 U.S. Dist. LEXIS 155488, at \*9 (D. Wash. Oct. 31, 2014); James T. Reese and Mark A. Dodds, “Let’s Hear It for the Home Team: *Williams v. National Football League* Upholds Geographic Ticket Sales Ban,” *Sport Marketing Quarterly*, vol. 24, no. 2 (2015).

<sup>81</sup>New York State Office of the Attorney General, 37; Hurwitz, 36-37; Rascher and Schwarz, 693-694.

for more than \$2 above face value, with the exception of relevant service charges.<sup>82</sup> New Jersey allows a maximum markup of 20 percent or \$3 (whichever is greater) for nonbrokers and a maximum markup of 50 percent for registered brokers, but does not limit resale prices for nonbrokers for sales over the Internet.<sup>83</sup> A number of other states—including Minnesota, Missouri, New York, and Connecticut—repealed their price cap laws in the 2000s. However, the New York State Attorney General’s 2016 report recommended bringing back a price cap, through a “reasonable limit” on resale markups.<sup>84</sup>

Price caps are generally intended to protect consumers from high markups and increase the fairness of ticket distribution so that the wealthiest consumers do not have disproportionate access to tickets. In theory, price caps offer consumers the advantages of nontransferable tickets without the disadvantages: they limit high secondary-market prices but still allow consumers to transfer tickets to others or resell tickets they cannot use.

However, three government studies we reviewed stated that price caps are difficult to enforce and are rarely complied with. A 1999 report by the New York Attorney General noted that ticket resellers “almost universally disregarded” a cap in place at the time.<sup>85</sup> Representatives from the office told us enforcement of such a cap might be easier now because the secondary market is largely on the Internet, which offers greater price transparency. A 2016 study of the United Kingdom’s ticket market noted that enforcement of a price cap was complicated by the fact that ticket resellers were not a well-defined group and sales could occur on various platforms and across jurisdictions.<sup>86</sup> Similarly, the New York State

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<sup>82</sup>See KY. REV. STAT. ANN. § 518.070 (LexisNexis 2017); MASS. GEN. LAWS ch. 140, § 185D (2017).

<sup>83</sup>N.J. STAT. § 56:8-33 (2017).

<sup>84</sup>New York State Office of the Attorney General, 37.

<sup>85</sup>New York State Office of the Attorney General, *Why Can’t I Get Tickets?: Report on Ticket Distribution Practices* May 1999, 21. New York repealed its price cap in 2007.

<sup>86</sup>Michael Waterson, *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, a report prepared at the request of the United Kingdom Department for Business, Innovation and Skills and Department for Culture, Media and Sport (London: May 2016), 22-23, 150-151.

Department of State noted in 2010 that enforcement of price caps can be challenging.<sup>87</sup>

In addition, critics of price caps have said that caps might force resale activity underground, which would reduce transparency and protections (such as refund guarantees) that legitimate secondary market exchanges provide. Both the largest ticket exchange and the largest primary market ticket company have opposed price caps, with the ticket exchange arguing that they would result in street-corner transactions, where the risk of counterfeit and fraud would be significant.<sup>88</sup> On formal exchanges, transactions can be monitored and regulated. As with nontransferable tickets, price caps also can create economic inefficiencies because tickets are not necessarily allocated to those willing to pay the highest price.<sup>89</sup>

A 2010 study by the New York State Department of State compared publicly available secondary market listings for high-demand concerts in New York to the same artists' concerts in nearby states with price caps. It found no definitive evidence that price caps resulted in greater or lesser availability on the secondary market or in lower resale prices.<sup>90</sup> The study noted that online resale prices routinely exceeded the price caps. However, the authors of the study acknowledged that their findings were limited by their inability to obtain data on ticket sales and availability from secondary sellers.

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## Stakeholder Views Vary on Effects of Additional Disclosure Requirements

Legislative or regulatory actions to improve disclosure and transparency of ticket fees, resale markups, and ticket availability have advantages and disadvantages.

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<sup>87</sup>New York State Department of State, *Report on Ticket Reselling and Article 25 of the Arts and Cultural Affairs Law* (Albany, N.Y.: Feb. 1, 2010), 33.

<sup>88</sup>StubHub, "StubHub Open Letter to Fans Following Passage of the Ontario Ticket Sales Act," December 13, 2017, accessed December 14, 2017, <https://www.newswire.ca/news-releases/stubhub-open-letter-to-fans-following-passage-of-the-ontario-ticket-sales-act-663928593.html>.

<sup>89</sup>See, for example, Hurwitz, 35.

<sup>90</sup>New York State Department of State, 26.

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## Up-front Fee Disclosure

Some government stakeholders have suggested improving fee transparency through a legal requirement to disclose ticket fees earlier in the purchase process. As discussed earlier, ticketing companies in the primary and secondary markets vary on when and how they disclose their fees, and some disclose fees only upon checkout. No federal law expressly addresses fee disclosure in event ticketing. However, at least one state requires disclosure of fees at the beginning of the purchase process.<sup>91</sup>

On the primary market, up-front fee disclosure helps decision making by informing consumers of the total ticket price early in the process. It also helps consumers decide whether to buy from the ticketer's website or at the box office, where there typically are no fees. On the secondary market, up-front fee disclosure aids comparison shopping by helping consumers identify the resale exchange with the best total price. Sellers that do not provide enough or full information on prices through hidden fees could have competitive advantage because they would be perceived as offering lower prices over their competitors who do provide full information showing the price. For products and services in general, FTC staff guidance advocates that fees be disclosed up front, particularly before the point at which the consumer has decided to make a purchase.<sup>92</sup>

Figure 2 provides examples of different approaches to displaying prices and fees.

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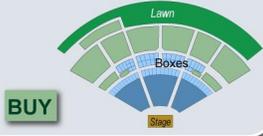
<sup>91</sup>Connecticut requires any advertisement for an in-state event to include the total price and the portion of that price (in dollars) that represents a service charge. CONN. GEN. STAT. § 53-289a (2017).

<sup>92</sup>For example, see Federal Trade Commission, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising*, March 2013, 14. Similarly, Canada's Competition Bureau, an independent Canadian law enforcement agency, has stated that not disclosing fees up front can be misleading to consumers because the advertised price is not attainable. See Competition Bureau Canada, "Calling All Ticket Vendors: Be Upfront about the True Cost of Tickets," July 4, 2017, accessed March 12, 2018, [https://www.canada.ca/en/competition-bureau/news/2017/06/calling\\_all\\_ticketvendorsbeupfrontaboutthetruecostoftickets.html](https://www.canada.ca/en/competition-bureau/news/2017/06/calling_all_ticketvendorsbeupfrontaboutthetruecostoftickets.html).

**Figure 2: Hypothetical Examples of How a Ticket Price and Fees Can Initially Be Displayed**

**Fees not displayed**

Quantity	Section	Row	Subtotal
1	204	17	\$140 + fees



**Fees displayed**

Quantity	Section	Row	Subtotal
1	204	17	<b>Subtotal:</b> \$140 <b>Service fee:</b> \$35 <b>Facility fee:</b> \$4 <b>Total:</b> \$179



**All-in pricing**

Quantity	Section	Row	Total price (including fees)
1	204	17	\$179



Source: GAO. | GAO-18-347

Note: These examples are illustrative and are not based on actual tickets or events.

Currently, FTC relies on the Federal Trade Commission Act—which prohibits unfair or deceptive acts or practices—to address problems related to fee disclosures. But FTC staff said it is challenging and resource-intensive to use the act to address inadequate fee disclosures industry-wide because it requires proving violations on a case-by-case basis.<sup>93</sup> FTC staff told us that, depending on the circumstances, a legislative disclosure requirement that specified requirements for fees could facilitate enforcement activity and create a more level playing field for consumers and sellers. Eleven industry stakeholders and three consumer advocacy groups with whom we spoke similarly expressed support for a requirement that ticketing fees be disclosed up front. Many noted that fees should be fully transparent to consumers.

<sup>93</sup>Industry stakeholders expressing this view included two managers, one agent, one promoter, two artist advocacy groups, four secondary market ticket exchanges, and the National Association of Ticket Brokers.

However, a primary ticket seller, two venue managers, and a secondary ticket seller we interviewed questioned the need for an up-front fee disclosure requirement. For example, a primary ticket seller stated that knowing fees up front would not affect a consumer's decision of whether or not to buy a ticket. The two venue managers believed that the timing of the fee disclosure was not important, as long as fees are disclosed before consumers complete the purchase. Representatives of one secondary ticket exchange said that up-front disclosure of fees could be challenging because a ticket's fee is not stable—for example, the fee can change based on price fluctuations, different delivery methods, and the use of promotion codes.

The National Economic Council has stated that “all-in pricing,” a form of up-front pricing, may be preferable to other methods of fee disclosure.<sup>94</sup> All-in pricing incorporates the ticket's face value and all mandatory fees and taxes, as illustrated in figure 2 above. According to the National Economic Council, all-in pricing eases comparison across vendors. The FTC staff report analyzing hotel resort fees supported all-in pricing for that industry because it said that breaking out fees, instead of providing a single total price, hindered consumer decision making and often resulted in consumers underestimating the total price.<sup>95</sup> Officials from two state attorney general offices told us that all-in pricing could be advantageous, noting that fee disclosures represent their most significant enforcement issue related to the ticketing industry.

Three secondary ticket sellers told us they might support a requirement to provide all-in pricing, but only if it was required of all ticket sellers. In 2014, the largest secondary market ticketing company began using all-in pricing, with its listings displaying a single total price that incorporated fees. However, the company soon discontinued all-in pricing as the default because, it told us, it put the company at a competitive disadvantage with other secondary market providers whose fees were not included in the initial ticket price displayed to consumers.<sup>96</sup> A requirement that all ticket sellers provide up-front fee disclosure would mitigate or resolve that issue.

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<sup>94</sup>White House National Economic Council, 16.

<sup>95</sup>Sullivan, 27.

<sup>96</sup>The company still provides the customer the option of displaying all-in pricing at the listing page, as do some other secondary market providers.

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One argument against a requirement for all-in pricing is that such regulation would restrict ticket companies' flexibility in choosing how to disclose fees. In addition, a manager, a promoter, and two artist advocacy groups said all-in pricing could give fans the incorrect impression that the artist was charging the full ticket price and receiving its revenues, because the portion of the price going toward ticketing fees would not be transparent.

### Disclosing Face Value on Resale Sites

Some federal and state policymakers have proposed requirements for resellers to disclose a ticket's face value on secondary ticket websites. Georgia and New York State have enacted similar requirements, with statutes requiring resellers to disclose both the face value of tickets and their list price.<sup>97</sup>

Requiring that ticket resellers disclose the ticket's face value can have several advantages. First, it makes the reseller's markup transparent. Second, it can help consumers assess the quality of the seat location and compare similar seats across resale listings. Third, it might reduce the possibility that consumers mistake a reseller's website for a venue website, as described earlier. This, in turn, could encourage consumers to recognize they are viewing a secondary market exchange and comparison shop for a better price elsewhere.

However, a requirement that resellers disclose a ticket's face value can present challenges because the definition of "face value" may not always be clear, according to three ticket resellers and FTC Bureau of Consumer Protection staff. If the face value does not incorporate fees and taxes charged on the primary market, it would not reflect the full amount paid by the original buyer. Similarly, some tickets are sold through VIP packages that do not itemize the price of the ticket and other components, such as backstage access or parking. In addition, with dynamic pricing, a ticket's face value can change frequently. Furthermore, season tickets may

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<sup>97</sup> Georgia's ticketing law requires brokers to disclose to the purchaser, in writing, the difference between a ticket's face value and the price being charged. GA. CODE ANN. § 43-4B-28(a)(3) (2017). New York requires licensed resellers to post a price list showing the established (face value) price charged by the operator of the place of entertainment for which the ticket is being resold. N.Y. ARTS & CULT. AFF. LAW §25.23 (Consol. 2018). At least two foreign jurisdictions—the United Kingdom and Ontario, Canada—have similar laws, according to a United Kingdom government study of the country's ticket resale market and a Canadian government press release.

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display a higher face value than the season ticket holder paid because teams usually sell the packages at a discount.

A requirement to disclose a ticket's face value also could create compliance costs for secondary ticket exchanges, and could be difficult to enforce, according to some stakeholders. Three secondary ticket exchanges told us they do not currently collect information on a ticket's face value and would have difficulty verifying the value provided by the listing broker—in part because of the challenges in defining face value, as described above. The New York State Office of the Attorney General stated in its 2016 report that most resellers cannot comply with the state's disclosure requirement because most secondary ticket exchanges do not offer the option to show the ticket's face value alongside its list price, despite having the capability to add such functionality.<sup>98</sup> In addition, an official from Georgia's Athletic and Entertainment Commission told us that resellers largely disregarded the state's requirement to disclose face value.

#### Disclosing Ticket Availability

Another proposal, advocated by secondary market stakeholders, among others, would require primary ticket sellers to disclose how many tickets are available when an event first goes on sale to the general public. For instance, a venue or ticket seller might be required to provide the venue capacity and number of tickets available for sale after accounting for presales and holds. A 2017 law in Ontario, Canada, requires primary ticket sellers to provide certain information about venue capacity and presales, according to testimony by the Ontario Attorney General.<sup>99</sup>

Such a disclosure would provide consumers a clearer picture of ticket availability and help them manage expectations and make informed decisions, according to three consumer advocacy groups and two academics with whom we spoke. In addition, the National Association of Ticket Brokers and a secondary ticket exchange stated that disclosing ticket availability would shed light on what some consider excessive holds and presales by the primary market. They said that brokers often are blamed when events quickly sell out on the primary market, whereas

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<sup>98</sup>New York State Office of the Attorney General, 34.

<sup>99</sup>*Official Report of Debates (Hansard) No. 136*, Legislative Assembly of Ontario, 2nd Session, 41st Parliament (Dec. 13, 2017).

there may have been relatively few tickets available for sale in the first place. The New York State Office of the Attorney General stated that the lack of transparency about the manner in which tickets are distributed creates a level of mistrust among consumers.

However, many primary market stakeholders with whom we spoke—including promoters, managers, venue operators, and primary ticket sellers—said such a disclosure would have little-to-no benefit. First, some of them noted that ticket inventory can change as event production details evolve and holds are released, making it difficult to provide an accurate number of tickets available at any one time. Second, some said this disclosure would be confusing or meaningless for consumers, with one promoter noting that for high-demand events, a consumer's odds of getting a ticket are low regardless of whether he or she knows the number of available tickets. Another promoter noted that the seat maps used to select seats when purchasing tickets already provide information on ticket availability. Many stakeholders also told us such a disclosure would only help brokers by giving them information useful in buying tickets and setting resale prices. In addition, a venue manager noted that information on ticket sales is considered proprietary and artists and event organizers should not be required to disclose confidential business information.<sup>100</sup>

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### Event Ticketing Is Not Federally Regulated and Some Stakeholders Cite Market-Based Approaches to Address Concerns about Secondary Market Activity

Federal agencies face constraints in addressing ticketing issues. Some industry players are implementing technological and market-based approaches that seek to address concerns about secondary market activity.

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<sup>100</sup>When initially introduced in October 2017, the Ticket Sales Act enacted by Ontario, Canada, included a provision requiring advance disclosure of the number of tickets to be sold to the general public, according to a statement by the Attorney General of Ontario. He stated that this provision was dropped after opposition from artists and venue operators, who claimed, among other things, that it would provide useful market information advantageous to ticket brokers.

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## Federal Regulatory Environment

As noted earlier, the event ticketing industry is not federally regulated. In contrast, in the airline industry, the Department of Transportation can issue regulations regarding the disclosure of airline fees.<sup>101</sup> Staff from FTC's Bureau of Consumer Protection told us that—in addition to the enforcement activity noted earlier—they monitor consumer complaints related to the event ticket industry. However, they said they have resource and other constraints that make it difficult to conduct industry-wide investigations related to ticketing practices.

Issues around the level and transparency of fees are not unique to the event ticketing industry. For example, as noted earlier, FTC staff have raised concerns about mandatory “resort fees” charged by many hotels but not immediately disclosed (such as in online price search results).<sup>102</sup> In addition, according to the National Economic Council, sellers of other goods and services—such as car dealers and telecommunications companies—sometimes offer low prices up front that rise substantially with the addition of mandatory fees revealed later in the purchase process.<sup>103</sup> As such, options for regulating the transparency of fees can have applicability broader than that of event ticketing.

As noted earlier, the BOTS Act, which prohibits circumventing security measures or other systems intended to enforce ticket purchasing limits or order rules, went into effect in December 2016. However, a variety of industry, consumer, academic, and government stakeholders have expressed doubt that the BOTS Act would have much of an effect on prohibited bot use. Several of these stakeholders told us that bot users can easily evade detection and that enforcement of the act would be extremely difficult, in part because a lot of bot use occurs—or could shift—outside the United States. As of February 2018, FTC had not taken any enforcement action related to the act, but FTC staff told us they were monitoring the situation.

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<sup>101</sup>For example, since 2010, the Department of Transportation has taken or has proposed a range of actions to improve the transparency of airlines' fees for optional services, such as requiring certain airlines to disclose optional service fees on their websites. See GAO, *Commercial Aviation: Information on Airline Fees for Optional Services*, [GAO-17-756](#) (Washington, D.C. Sept. 20, 2017).

<sup>102</sup>Sullivan, 1.

<sup>103</sup>White House National Economic Council, 9-15.

The degree to which legislation combatting bots is effective may depend in part on the extent to which state attorneys general pursue enforcement actions. As of February 2018, we identified two states that had taken enforcement actions related to bot use. In May 2017, the New York State Office of the Attorney General announced settlements totaling \$4.11 million with five ticket brokers which, among other offenses, violated New York State law by using bots to purchase and resell tickets.<sup>104</sup> In April 2016, the office announced settlements totaling \$2.7 million with six ticket brokers for similar violations.<sup>105</sup> In February 2018, the Washington State Office of the Attorney General announced settlements totaling \$60,000 with two ticket companies that used bots in violation of the state's ticketing law.<sup>106</sup>

### Market-Based Approaches

Industry players, including ticket companies and event organizers, are using or exploring technology and market-based approaches that seek to address concerns about secondary market activity. Examples of these approaches and their potential effects include the following:

- **Delivery delays.** Ticket sellers sometimes use delivery delays, meaning they do not provide the ticket immediately upon purchase. Instead, buyers receive their tickets (in paper or print-at-home form) closer to the day of the event. Delivery delays can inhibit resale activity because they give brokers less time to buy and resell tickets, and allow primary ticket sellers to review whether brokers and bots made bulk purchases, according to some promoters and primary ticket sellers. However, secondary market sellers we interviewed generally argued against delivery delays, with two sellers saying it can

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<sup>104</sup>New York State Office of the Attorney General, *A.G. Schneiderman Announces \$4.19 Million In Settlements with Six Companies That Illegally Purchased and Resold Hundreds of Thousands of Tickets to Concerts and Other NY Events* (May 11, 2017).

<sup>105</sup>New York State Office of the Attorney General, *A.G. Schneiderman Announces \$2.7 Million In Settlements With Six Ticket Brokers That Illegally Bought And Resold Tickets In Bulk* (Apr. 27, 2016).

<sup>106</sup>Washington State Office of the Attorney General, *Ticket Sales Company to Pay \$60k for Use of Ticket Bots* (Feb. 8, 2018).

be inconvenient and stressful for consumers to receive a ticket just a few days before an event.<sup>107</sup>

- **Dynamic pricing.** The use of dynamic pricing—which adjusts prices over time based on demand—can reduce secondary market activity by pricing tickets closer to their market clearing price. Raising primary market ticket prices, such as through dynamic pricing, does not necessarily benefit consumers but can help ensure that more ticket revenue accrues to the artist or team rather than ticket resellers.
- **Verified fan program.** At least one major ticket company has a program to sell tickets to pre-approved “verified fans,” to help ensure that more consumers and fewer brokers can access tickets on the primary market.
- **New technology.** Two stakeholders noted the potential for distributed ledger technology in ticketing.<sup>108</sup> The technology associates a unique identification code with the ticket and its owner, which can help restrict transfer of the ticket and ensure its authenticity.
- **Adding concerts.** Artists can seek to make their ticket prices accessible by increasing the supply of seats—for example, one major artist has added concert dates with the express purpose of matching ticket supply to demand to prevent higher resale prices.
- **Face-value resale exchanges.** Resale exchanges used by some artists only allow resale at face value (plus a limited amount to account for primary market fees). This allows consumers to recoup their ticket costs if their plans change, while preventing resale markups.

Market-based approaches also may augment regulatory and enforcement action with regard to problems discussed earlier around transparency. In February 2018, Google’s AdWords service—which offers paid advertising alongside search results—implemented new certification requirements for businesses that resell event tickets. First, resellers using AdWords must clearly disclose on their website or mobile application that they are a secondary market company and not the primary provider of the tickets.

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<sup>107</sup>In addition, the National Association of Ticket Brokers and one ticket reseller told us they view delivery delays as an attempt to force ticketholders to use the primary sellers’ own secondary marketplaces. They said this was demonstrated by tickets that otherwise have delivery delays being available for instant resale on the resale sites of some primary sellers.

<sup>108</sup>Distributed ledger technology allows participants in a peer-to-peer network to share and retain identical secured records through a decentralized database.

They cannot imply they are the primary provider by using words such as “official” or by including the artist or venue name in their website’s URL—practices we noted earlier that were being used by some white-label websites. Second, resellers must prominently disclose when their ticket prices are higher than face value and disclose a price breakdown, including any fees, before the customer provides payment information. Google said in a statement that these measures were intended to protect customers from scams and prevent potential confusion. However, due to the recency of this change, it is too early to determine how it will affect the marketplace.

In addition, the advertising industry’s self-regulatory organization has taken steps to address potentially misleading pricing practices in the ticket industry. The Advertising Self-Regulatory Council sets standards for truth and accuracy for national advertisers, monitors the marketplace, and holds advertisers responsible for their claims.<sup>109</sup> As noted earlier, the organization recently referred a major ticket company to FTC for not following its recommendations to conspicuously disclose its fees.<sup>110</sup> Although the council can play a role in monitoring deceptive advertising related to ticketing, it also faces constraints—for example, it addresses practices case-by-case and its recommendations depend on voluntary compliance by the advertiser.

No matter what efforts are made to address concerns about the ticket marketplace, some of the consumer dissatisfaction with event ticketing stems from an intractable issue: demand for tickets to highly popular events exceeds supply. As such, no activity, outside of expanding the supply, is likely to effectively address one key source of consumer dissatisfaction: that tickets are not available to popular sold-out events.

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## Agency Comments

We provided a draft of this report to DOJ and FTC for review and comment. We received technical comments from FTC, which we incorporated as appropriate. We also provided relevant excerpts of the

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<sup>109</sup>Advertising Self-Regulatory Council, “ASRC Snapshot,” accessed February 2, 2018, <http://www.asrcreviews.org/about-us/>.

<sup>110</sup>Advertising Self-Regulatory Council, “NAD Refers StubHub Pricing Claims to FTC for Further Review After Advertiser Declines to Comply with NAD Decision on Disclosures,” (New York, NY: Jan. 16, 2018).

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draft for technical review to selected private parties cited in our report, and included their technical comments as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to DOJ, FTC, the appropriate congressional committees and members, and others. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-8678 or [clementsm@gao.gov](mailto:clementsm@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix II.



Michael Clements  
Director, Financial Markets and Community Investment

## Appendix I: Objectives, Scope, and Methodology

The objectives of this report were to examine (1) what is known about primary and secondary online ticket sales, (2) the consumer protection concerns that exist related to online ticket sales, and (3) potential advantages and disadvantages of selected approaches to address these concerns. The scope of our work generally focused on ticketing for large concert, theater, and sporting events for which there is a resale market.

To develop background information on the U.S. ticketing industry, we analyzed business classification codes from the North American Industry Classification System, which assigns a 6-digit code to each industry based on its primary activity that generates the most revenue. The code we selected, "All Other Travel Arrangement and Reservation Services," includes theatrical and sports ticket agencies, as well as automobile club road and travel services and ticket offices for airline, bus, and cruise ship travel. Because the Census data do not distinguish event ticketing from other services in particular, we determined the data do not provide a reliable count of companies in the event ticketing industry. In addition, we obtained publicly available data from private research firms and reviewed the largest publicly held ticketing companies' annual public filings with the Securities and Exchange Commission (Form 10-K). We also collected information from firms that collect data related to the ticketing industry, such as IBISWorld and LiveAnalytics.

To examine what is known about primary and secondary online ticket sales, we reviewed data related to ticket prices and sales published by Pollstar, a concert industry trade publication, and the Broadway League, a trade organization representing commercial theater. In addition, we obtained and analyzed data on ticket volume and resale prices for a nongeneralizable sample of 22 events. These events were selected because they (1) occurred in relatively large venues (more than 500 seats) that typically experience ticket resale activity; (2) represented a mix of event types (13 concerts, 3 commercial theater productions, and 6 sporting events); and (3) represented a mix of popularity, including 17 events that would be expected to be in high demand. We defined high-demand events as those that were likely to sell out, which we assessed by reviewing past attendance at other events for the same artist or

theatrical event. For sports, we assessed demand by reviewing team performance and rankings. We collected data from October 16 through December 20, 2017. For each event, we analyzed:

- **resale prices and volume**, through data obtained from publicly available listings on the websites of two secondary ticket exchanges;
- **primary market prices and availability**, through data obtained from the websites of primary market ticket sellers; and
- **event capacity**, through data obtained from Billboard or Pollstar (trade publications) for concerts, the Broadway League for theater, and ESPN.com (a media company) for sporting events.

To examine consumer protection concerns, we reviewed the websites of 6 primary market ticket sellers, 11 secondary ticket exchanges, and 8 “white-label” ticket websites.<sup>1</sup> We collected data from June 19, 2017, through January 16, 2018.

- For the primary market ticket seller that represents the majority of market share, we observed the online ticket purchase process for 23 events. Three events were selected using the process described below and the remaining 20 were chosen to reflect 2 events at each of 10 venues, selected because they were among the 200 top-selling arenas or 200 top-selling theaters in the United States in 2017, according to Pollstar.
- For each of the 5 other primary market ticket sellers and the 11 secondary ticket exchanges, we observed the online ticket purchase process for 1–5 events. For each primary ticket seller, we selected one event per category (concert, theater, and sports). For consistency and comparability across companies, we also limited events to the same state (which did not extensively limit ticket resale) and time period. We also selected 2 events in another state because they used nontransferable tickets. For the secondary ticket exchanges, we used 3–5 events from our review of primary ticket sellers’ websites. If the event was no longer available, we selected an alternative event at the same venue.

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<sup>1</sup>A white-label website is a sales website built by one company that allows affiliates to use the software to build their own, uniquely branded websites, which often appear as paid results of Internet searches for venues and events. We identified these websites by conducting searches on two of the largest search engines for the venues of the events we selected for review.

- For each of the 8 white-label ticket sellers, we reviewed 1–4 events from the events described above. In some cases, the same event was not available so we selected an alternative event at the same venue.

For these events—31 events in total—we documented (1) the ticket fees charged, (2) at what point in the purchase process the fees were disclosed, and (3) any restrictions to the ticket. In addition, we assessed the clarity, placement, and font size of the fees, restriction information, and—for white-label websites—disclaimers that the website was a ticket resale website. We worked with a GAO investigator to review the websites that required users to provide an e-mail address or credit card information before viewing fees. Analysts followed a protocol to help ensure consistency of observations and completed a data collection instrument for each website. A second analyst independently reviewed each website to verify the accuracy of information collected by the first analyst. Any discrepancies between the two analysts were identified, discussed, and resolved by referring to the source websites.

A GAO investigator acting in an undercover capacity contacted the customer service departments of three large secondary ticket exchanges to inquire about two events for which tickets were nontransferable (not allowed to be resold) and two events for which listed tickets were speculative (not yet in-hand by the seller). The nontransferable tickets were identified through press releases and articles about popular touring artists and the speculative tickets were identified by searching for events that had been announced but were not yet for sale on the primary market. The investigator contacted customer service through 16 e-mails to one company and 8 online “live chats” with another company. For the third company, the investigator sent 8 e-mails about nontransferable tickets and did not inquire about speculative tickets because this company labeled such tickets. We also contacted the venues hosting these events to help assess the accuracy of the information provided by the ticket companies’ customer service departments.

In addition, we reviewed enforcement activity by federal and state agencies related to ticketing and ticket companies. We also collected information on the number of consumer complaints by requesting the Federal Trade Commission (FTC) conduct a search of its Consumer Sentinel Network database, which includes complaints submitted to FTC, the Consumer Financial Protection Bureau, the Better Business Bureau, and other sources. The search results covered calendar years 2014–2016 and used the term “ticket” with terms related to events (e.g., “concert,” “sport,” “theater”), sold-out events (e.g., “sold-out”); fees;

fraudulent tickets (e.g., “fake”); delayed delivery (e.g., “late,”); or nontransferable tickets (e.g. “paperless”). We selected our initial search terms by reviewing terms used in similar complaints on the Better Business Bureau website. We made modifications to our search string based on suggestions from FTC staff who reviewed the results of a preliminary search. To help ensure that results were related to event ticket sellers, we limited the search to complaints against the 6 primary ticket sellers and 11 secondary ticket exchanges in our scope. We assessed the reliability of the complaint data by interviewing agency officials. In addition, we have assessed the reliability of Consumer Sentinel Network data as part of previous studies related to consumer protection and found the data to be reliable for the purposes of gauging the extent of consumer complaints about event ticketing. However, in general, consumer complaint data have limitations as an indicator of the extent of problems. For example, not all consumers who experience problems may file a complaint, and not all complaints are necessarily legitimate or categorized appropriately. In addition, a consumer could submit a complaint more than once, or to more than one entity, potentially resulting in duplicate complaints.

To examine the potential advantages and disadvantages of selected approaches to address consumer protection concerns, we reviewed federal and selected state laws related to event ticket sales. At the federal level, these included the Better Online Ticket Sales Act of 2016 and relevant provisions of the Federal Trade Commission Act. To determine which states had laws related to ticket resale or disclosure, we reviewed compilations of state ticketing laws from the National Association of Ticket Brokers, a secondary ticket seller’s website, and a law firm publication, and we conducted independent research and verification. We reviewed ticketing-related legislation—selected for its relevance to the approaches covered in our review—in Connecticut, New York, and Georgia. We reviewed state government reports and interviewed state officials to get information on the states’ experiences with these laws. We also consulted foreign government reports to obtain information on relevant laws or regulations in Canada and the United Kingdom, which have reported similar consumer protection issues as we reviewed in our report.

To address all of our objectives, we conducted searches of various databases, such as ProQuest, Academic OneFile, Nexis, Scopus, and the National Bureau of Economic Research, to identify sources such as peer-reviewed academic studies; law review articles; news and trade journal articles; government reports; and hearings and transcripts related to ticketing issues. We examined summary-level information about each

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piece of literature, and from this review, identified articles that were germane to our report. We generally focused on articles from 2009 and later. We identified additional articles and reports through citations in literature we reviewed and from expert recommendations.

For the articles we used to cite empirical findings or to support arguments on advantages and disadvantages of selected resale restrictions or disclosure requirements, we conducted a methodology and soundness review. We eliminated one study on pricing and one study on price caps because we believed the methods were not sufficiently rigorous.

In addition, we identified and reviewed relevant congressional testimony on proposed ticketing legislation. We reviewed the Department of Justice's competitive impact statement and testimonies with regard to the 2010 merger of Ticketmaster and Live Nation. We interviewed staff from the FTC's Bureau of Consumer Protection and Bureau of Economics, the Department of Justice's Antitrust Division, and the New York State Office of the Attorney General, and we conducted a group interview, coordinated by the National Association of Attorneys General, with staff from the offices of the attorney general of Pennsylvania and Texas. We also interviewed representatives of three consumer organizations: Consumer Action, the National Association of Consumer Advocates, and the National Consumers League; four trade associations: the Broadway League, Future of Music Coalition, National Association of Ticket Brokers, and the Recording Academy; as well as four primary ticket sellers, five secondary ticket exchanges and aggregators, one broker, five venue operators, three event promoters (who also operate venues), five artists' managers and booking agents, three major sports leagues, and three academics who have studied the ticket marketplace. These organizations and individuals were selected based on their experience and prominence in the marketplace and to provide a range of perspectives.

We conducted this performance audit from November 2016 to April 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our investigative staff agent conducted all related investigative work in accordance with investigative standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact

Michael E. Clements, (202) 512-8678 or [clementsm@gao.gov](mailto:clementsm@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Jason Bromberg (Assistant Director), Lisa Reynolds (Analyst in Charge), and Miranda Berry made key contributions to this report. Also contributing were Enyinnaya David Aja, Maurice Belding, JoAnna Berry, Farrah Graham, John Karikari, Barbara Roesmann, Jena Sinkfield, and Tyler Spunaugle.

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