

From Senator Ted Cruz

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous witness declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. What would a monopoly look like in the ticketing marketplace?

A monopoly in the ticketing space looks exactly like what Live Nation Entertainment, Inc. ("Live Nation") enjoys today: a market share in excess of 70% of the US primary ticketing market; the exclusive ticketing partner for more than 80% of NBA, NHL, and NFL teams and venues; and the promoter for 72% of the top 25 grossing live tours in 2021.

It is no mystery why Live Nation's competitors have not gained greater market share in the primary ticketing market. Major venues in the United States know that if they move their primary ticketing business from Ticketmaster to a competitor, they risk losing the substantial revenue they earn from Live Nation concerts. They know this because Live Nation has told them so, directly and indirectly—through its public pronouncements, private communications, and subsequent retaliation against venues that have defied Ticketmaster and signed deals with a preferred competitor. Live Nation has

engaged in this behavior despite twice being ordered—and agreeing—not to do so: in the 2010 negotiated consent decree (the “Final Judgment”), and in a 2020 Amended Final Judgment that modified and extended the Final Judgment.

In addition to Live Nation’s ability to maintain market dominance through its double monopoly position in concert promotion and primary ticketing, significant barriers to entry into primary ticketing exist. These include the significant investment costs in building a viable product and Live Nation/Ticketmaster’s long-term exclusive contracts. At the time of the 2010 merger between Live Nation and Ticketmaster, the Department of Justice noted the significant barriers to entry into primary ticketing, explicitly highlighting these long term exclusive agreements which severely limit the ability of potential competitors to win business. We believe Ticketmaster has recently entered into exclusive agreements with professional sports teams and venues that may be as long as ten years.

2. Does Live Nation Entertainment’s market dominance pose a threat to the live entertainment industry?

Yes. Live Nation’s market dominance poses many threats to the live entertainment industry and impacts different constituents in different ways. We do not attempt to speak on behalf of other impacted groups such as artists and promoters. We appreciate that these groups were also represented at the January 24 hearing.

Our response and efforts focus on Live Nation’s impact on the ticketing industry as that is where we attempt to compete and work every day to improve the experience for consumers purchasing tickets to live events. To date, innovation in live event ticketing has been stunted because Live Nation controls the most popular entertainers in the world, the ticketing systems, and even many of the venues. This power over the entire live entertainment industry allows Live Nation to maintain its monopolistic influence over the primary ticketing market. As long as Live Nation remains both the dominant concert promoter and ticketer of major venues in the United States, our industry will continue to struggle with the challenges that face it today.

3. What are the markets most dominated by Live Nation?

At the highest and broadest level, Live Nation/Ticketmaster dominates the North American ticketing landscape. More specifically, they most dominate venues that are dependent on concert revenue; this is what drives monopoly market share in major U.S. arenas and stadiums. Live Nation/Ticketmaster is the primary ticketer for more than 80% of NBA, NHL, and NFL teams and venues. Live Nation is able to maintain this market dominance because it also controls the major concert tours. For example, Live Nation was the promoter for 72% of the top 25 grossing live tours in 2021.

Live Nation's market dominance is perhaps most acute with respect to amphitheaters, where Live Nation/Ticketmaster either has booking deals or owns and operates the largest amphitheater venues in North America. As a result, primary ticketing providers such as SeatGeek essentially do not attempt to compete for these ticketing contracts.

4. What will be the most challenging markets to enter for Live Nation's competitors?

In attempting to win primary ticketing business, it is most challenging for any competitor of Ticketmaster where the venue depends on concert revenue. These venues are most challenging because venues fear the loss of Live Nation content if they leave Ticketmaster.

They fear this because Live Nation has told them so, directly and indirectly—through its public pronouncements, private communications, and subsequent retaliation against venues that have defied Ticketmaster and signed deals with a preferred competitor. Live Nation has engaged in this behavior despite twice being ordered—and agreeing—not to do so: in the 2010 Final Judgment, and in a 2020 Amended Final Judgment that modified and extended the Final Judgment.

The Department of Justice's 2019 investigation confirmed that Live Nation had violated the Final Judgment directly and repeatedly, almost from its inception. Even in an apparently abbreviated investigation, the DOJ was able to identify six distinct examples of Live Nation threatening to pull live shows from venues that did not contract with Ticketmaster and/or retaliating against venues that did not contract with Ticketmaster by withholding Live Nation concerts, including:

- A Ticketmaster executive telling one venue, "if you move in that direction (i.e., not renew with Ticketmaster), you won't see any Live Nation shows."
- Ticketmaster's President warning the executive of another venue that if the venue selected a competing primary ticketer, Ticketmaster's response "would be 'nuclear'" and "though he would deny it if I repeated it, Live Nation would never do a show in our building . . ."
- Ceasing to contact a venue about booking Live Nation concerts after that venue selected a Ticketmaster competitor as its primary provider, only to re-start discussions with the venue after the venue switched back to Ticketmaster and saying the venue was "back in the family."¹

The DOJ found that as a consequence of Live Nation's conduct, "venues throughout the United States have come to expect that refusing to contract with Ticketmaster will result in the venue receiving fewer Live Nation concerts or none at all."²

¹ Motion to Modify Final Judgment and Enter Amended Final Judgment at 8,9, *United States v. Ticketmaster*, No. 10-cv-00139, (D.D.C. Jan. 8, 2020).

² *Id.*

5. How can the ability of consumer transferability be retained while reducing the ability of scalpers to interfere with the ability of artists to set prices?

Our goal is to get tickets into the hands of fans. Due to the lack of competition in the live event industry, current solutions do not adequately address the demands of on sales for extremely popular events. We need to work together as an industry to get fans to the front of the virtual line to purchase tickets, which entails changing the current “on-sale” model that Live Nation / Ticketmaster forces the industry to use through its Verified Fan product.

Rightsholders have the ability to set the initial sale prices for their tickets; a robust resale market does not interfere with this ability. Once a ticket has been sold by the rightsholder, the purchaser should be allowed to transfer the ticket freely or sell the ticket at a market-clearing price. Restricting the transferability of tickets will not eliminate consumer demand from high-demand events. Such restrictions are likely to drive resale onto less scrupulous marketplaces that are unable or unwilling to ensure successful transactions. Efforts to restrict the resale market are often attempts by Live Nation / Ticketmaster to extend its market dominance in primary ticketing into the secondary ticket market at the expense of consumers.

From Senator Alex Padilla

- 1. In 2016, Congress passed the Better Online Ticket Sales Act to thwart attempts by individuals and organizations to automate the process of purchasing tickets en masse using ticket bots. Since the passage of the law, the Federal Trade Commission and Department of Justice have announced only one enforcement action of the law.
 - a. In your capacity as a primary ticket seller, has SeatGeek experienced a problem with scalpers employing bots to acquire tickets? How much does SeatGeek invest in thwarting bots that wish to acquire tickets as a primary ticket seller?****

Like many other industries, the ticketing industry is subject to nefarious practices utilizing bots and other forms of online fraud. We continue to test and deploy technical solutions to address these practices. We attempt to eliminate bot traffic and get tickets into the hands of fans utilizing a number of tools, including the following:

- **Advanced Bot Detection:** SeatGeek’s platform employs technologies that leverage sophisticated algorithms and machine learning techniques to detect and block bots in real-time. This helps us to prevent bots from being able to acquire tickets through our system.
- **Manual Verification:** Ticket purchases are manually reviewed to help ensure that they were made by a human and not a bot and not fraudulent. We have a review process in place that checks for unusual behavior and anomalies that could indicate the use of bots.

- Limited Ticket Purchases: We limit the number of tickets that can be purchased by a single user to prevent bulk purchases by bots. This helps to ensure that tickets are made available to a wider range of fans.
- Secure Payment Processing: Our platform uses secure payment processing to prevent fraudulent transactions.

By implementing these and other measures, we continually strive to prevent bots from accessing our primary platform. Our goal is always to ensure a secure and fair ticket purchasing experience for our customers.

b. What steps does SeatGeek take to ensure that tickets listed on your secondary platform were not procured by bots?

It is difficult for secondary marketplaces to determine whether tickets listed for resale on their platforms were initially procured by bots on another primary platform. Once purchased, these tickets appear like any others when being resold. The opportunity to detect and prevent fraudulent bots activity resides with primary marketplaces. This is why SeatGeek works actively to detect and block bots on its own primary platform in order to prevent tickets from being fraudulently or illegally procured in the first place.

c. How much money have you invested since 2016 to ensure that tickets listed on your platform were not procured by bots?

We take the issue of bots very seriously. We employ proprietary technology combined with cutting-edge third party technologies that are wholly dedicated to security and prevention, including:

- Fraud detection and prevention software which runs at checkout time and operates at the transaction level. It's machine-learning driven and considers hundreds of factors, in addition to well-established warning signals such as IP address, device and email address.
- A bot detection system to detect and prevent the automated creation of accounts. This system presents the user with a challenge captcha if marked as suspicious.
- In-house waiting room technology to ensure controlled access to ticket inventory that will block manual or scripted attempts to circumvent the purchase queue.

d. Has SeatGeek reported any instance of bots to the FTC or DOJ since 2016?

SeatGeek has not reported any instances of bots to the FTC or DOJ since 2016. SeatGeek has implemented various measures to combat the use of bots, and we look forward to working with Congress and relevant federal government agencies to improve efforts in this area.

2. Does Seat Geek support requiring “all in pricing” in ticket sales so that consumers see the full price of a ticket on the front end of an online ticket shopping experience?

Yes, we believe that all-in pricing is best for consumers and have supported this at the federal and state level. For all-in pricing to be useful to consumers, it must be applied consistently across marketplaces. We believe that the best approach is a federal solution that ensures fans will see the same type of price display regardless of which marketplace they are transacting on. Adopting an all-in pricing disclosure standard would allow consumers to comparison shop more easily across platforms. SeatGeek provides consumers with the ability to see the all-in price early in the purchase process; we use a toggle to allow consumers to view both the all-in price of a ticket or the base price of a ticket plus fees and ancillary charges. Consumers can then elect to save their preference as the default setting for future purchases.

3. One proposal to address industrial scalping of tickets is to cap the price at which a ticket can be resold on the secondary market. What are Seat Geek’s views on capping the price at which tickets may be resold?

SeatGeek believes that allowing ticket prices to fluctuate dynamically in response to supply and demand is a better system for consumers than one that imposes price caps. Consumers benefit when markets operate efficiently, and for markets to operate efficiently, tickets must be allowed to find a market-clearing price. Price caps impair market efficiency by limiting price discovery and limiting the development of a robust marketplace. Caps on ticket resale fail to address the real problem in the live event industry: the absence of competition.

4. When purchasing tickets on Seat Geek, consumers see two prices, the price of the face of the ticket and then additional fees associated with the cost of the ticket called “service fees.” In reviewing tickets for sale in California in the coming weeks, for many tickets the service fees were as much as 50% of the total cost of the ticket.

a. For each show in which Seat Geek sells the primary ticket, how is the service fee calculated? Which parties are involved in setting the price, and how is money allocated?

The fees on primary tickets are governed by our contracts with venues.

b. How are Seat Geek’s fees on its secondary ticket market set? Are those fees a flat rate for processing the order, or does Seat Geek collect a fee that reflects a percentage of the total cost of the ticket?

SeatGeek generally charges a percentage markup on the listed ticket price and a per-ticket fee that covers fixed costs per order. We also separate delivery fees, which are only used for hard stock tickets based on cost and sales tax, if any.

Because many consumers are likely to compare prices across secondary marketplaces prior to making a purchase, we must ensure that our fees remain competitive with the many other secondary

ticket marketplaces. SeatGeek's fees are in a range commensurate with other market participants' fees, and are driven by the same supply and demand factors as in any other market.

Questions from Senator Tillis

- 1. Do you think that greater transparency in ticketing will improve the ticket purchasing experience for consumers? Please explain your thinking.**

All-in pricing, which provides consumers greater transparency into the total cost of a ticket at the beginning of the purchase process, would improve the ticket purchasing experience. SeatGeek already provides consumers with the ability to see the all-in price early in the purchase process; we use a toggle to allow consumers to view both the all-in price of a ticket or the base price of a ticket plus fees and ancillary charges. Consumers can then elect to save their preference as the default setting for future purchases.

- 2. What legislative solutions do you recommend to benefit consumers and to improve operations in this industry?**

We believe there are two areas in particular where policymakers can meaningfully improve consumer safeguards for fans: (1) adopting an all-in pricing standard; and (2) ensuring consumers' right to transfer their tickets.

All-In Price Displays

Requiring primary and secondary ticket platforms to display straightforward, all-in pricing is a common sense measure that would allow consumers to comparison shop across platforms and select the option that best meets their needs. This entails displaying the all-in price, inclusive of fees, in the first instance a ticket price is displayed and before credit card information is entered.

Transferability

Many ticketholders are dismayed to find that when they are no longer able or no longer wish to attend an event for which they purchased tickets, they cannot recoup their costs due to transferability restrictions that require them to list their ticket on a particular platform. These restrictions are typically defended on the basis of fraud prevention, however this concern does not adequately explain why ticketholders should not be able to resell their tickets on a platform of their choice. Selling fraudulent tickets is already illegal, and ticket platforms, including SeatGeek, have extensive fraud prevention measures in place. Further, technical solutions now allow multiple ticketing platforms to integrate, safeguarding buyers and sellers against fraud and deceptive practices while ensuring consumers have a choice about where to transact.

3. The process of transferring ownership of a ticket can be confusing and cumbersome for consumers. What can be done to streamline this process for consumers?

Transferring ownership is streamlined when marketplaces are integrated directly with ticketing providers, allowing for seamless fulfillment of tickets and barcodes. In some instances – such as the National Football League’s ticket exchange – this is a requirement of participation. While such integrations already exist, Live Nation/Ticketmaster refuses to extend this functionality more broadly. Due to the lack of competition in live event ticketing, there’s little incentive for it to make this functionality available more broadly.

When promoters and ticketing companies attempt to restrict the transfer or sale of tickets to their own marketplaces, consumers pursue alternative methods to transfer or sell tickets, further complicating the transfer process and frustrating consumers. Restoring robust competition to live event ticketing is the best way to streamline this process for consumers. Robust competition and an open market bring capital, fresh thinking and innovation, quickly attacking points of consumer frustration. This does not happen in the live event ticketing industry today.

4. Does the industry currently have the necessary tools, be it legislative (e.g., the Better Online Ticket Sales Act), legal, and/or technical, to stop bots from impacting ticketing platforms? If not, what more is needed?

To truly change and transform the live entertainment industry, Live Nation / Ticketmaster must no longer be allowed to exert its power as a monopoly. The absence of robust competition in primary ticketing limits innovation in many areas, including new technical solutions that may further address the threat from bots.

Questions from Senator Booker

In 2008, DOJ estimated that Ticketmaster held more than 80 percent of market share in the primary ticket market. Ten years later, in its 2018 report, GAO reported that Ticketmaster was still the primary market leader. Ticketmaster also enjoys significant market share in the secondary market, a position that GAO estimated was the second largest. What’s concerning is that it seems that Ticketmaster’s behavior in the primary market is constraining other companies in the secondary market.

At an on-sale, a consumer purchases a ticket for an event to be held at a later date. Ticketmaster, however, does not deliver a ticket until just before an event occurs.

a. What kind of influence should artists have on transferability?

We believe that consumers benefit most when tickets that they purchase are transferable. Opposition to transferability often comes from Live Nation as it attempts to restrict resale to its own platform. If an artist does decide to restrict transferability for any reason, it is important that these

restrictions be applied consistently across all marketplaces. When Live Nation restricts transferability, ostensibly at an artist's behest, it typically only prohibits fans from transferring their tickets on platforms other than Ticketmaster, suggesting that Live Nation merely wants to extend its dominance in primary ticketing further into the resale market.

b. Do you find that it is beneficial for an artist to influence capping ticket prices and/or resale amount?

SeatGeek believes that allowing ticket prices to fluctuate dynamically in response to supply and demand is a better system for consumers than one that imposes price caps. Consumers benefit when markets operate efficiently, and for markets to operate efficiently, tickets must be allowed to find a market-clearing price. Price caps impair market efficiency by limiting price discovery. We believe caps on ticket resale fail to address the real problem in the live event industry: the absence of competition.