

Maryland Attorney General's Office's request for information on the event  
ticket market in Maryland

Comments of NetChoice

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The logo for NetChoice, featuring the word "NetChoice" in a bold, blue, sans-serif font. The "Net" is in a darker blue, and "Choice" is in a lighter blue. The logo is centered on a white background with a light gray shadow effect.

August 30, 2024

NetChoice,<sup>1</sup> a trade association of tech businesses committed to defending free expression and free enterprise online, submits the following comments in response to the Maryland Attorney General's Office's request for information on the event ticket market in Maryland. As a national trade association of online businesses, NetChoice works to promote free enterprise and free expression online through advocacy, litigation, and regulatory filings.

## Executive Summary

The Maryland Attorney General's inquiry into the event ticket market raises important questions about consumer protection, competition, and regulation in the ticketing industry. While NetChoice shares the Attorney General's goal of protecting consumers and promoting fair competition, we urge caution in adopting overly restrictive policies that could harm innovation and consumer choice. Our comments make the following key points:

1. Ensuring ticket transferability is crucial for protecting consumer rights and promoting competition in the secondary market. Maryland should follow the lead of states like New York and Colorado in guaranteeing fans' ability to freely transfer, resell, or donate their tickets.
2. The recent Department of Justice antitrust lawsuit against Live Nation and Ticketmaster highlights serious competitive concerns in the ticketing industry. Maryland should use its position as a plaintiff to advocate for strong remedies that will benefit Maryland consumers.
3. Expanding consumer protections and promoting competition in ticketing can be achieved without unduly burdensome regulations that could stifle innovation or limit consumer choice.
4. Any new policies should be based on rigorous economic evidence and a careful balancing of costs and benefits, not anecdotes or preconceived notions about the ticketing industry.
5. Private resale markets play an important role in providing flexibility for consumers and should not be unnecessarily restricted.

For these reasons, we encourage the Attorney General to focus on ensuring ticket transferability and addressing anticompetitive practices while preserving the benefits of a dynamic ticketing marketplace.

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<sup>1</sup> NetChoice is a trade association of e-Commerce and online businesses, at [www.netchoice.org](http://www.netchoice.org). The views expressed here do not necessarily represent the views of every NetChoice member company.

# I. Ensuring Ticket Transferability is Crucial for Consumer Protection and Competition

## A. The Importance of Free Transferability

The ability to freely transfer, resell, or donate tickets is a fundamental consumer right that promotes efficiency and competition in the ticketing market.

Restrictions on transferability can harm consumers by:

1. Limiting flexibility if plans change or tickets can't be used
2. Reducing the value proposition of ticket purchases
3. Inhibiting the development of innovative secondary market platforms
4. Allowing primary ticket sellers to exert greater control over the entire ticketing ecosystem

Several states, including New York, Connecticut, Virginia, Utah, and Colorado, have recognized these issues and passed laws ensuring ticket transferability.<sup>2</sup> These laws have preserved consumer choice and competition in the secondary market while still allowing for reasonable anti-fraud measures.

## B. The DOJ Lawsuit Highlights the Need for Transferability

The recent Department of Justice antitrust lawsuit against Live Nation and Ticketmaster underscores the competitive concerns arising from restrictions on transferability. The complaint<sup>3</sup> alleges that Live Nation has used its market power<sup>4</sup> to limit ticket transfers and steer consumers to its own resale platform. This conduct allegedly harms consumers by reducing choice and potentially increasing prices.

By ensuring ticket transferability through legislation, Maryland can directly address one of the key anticompetitive practices identified in the DOJ lawsuit. This would promote a more open and competitive ticketing ecosystem, benefiting Maryland consumers.

## C. Recommendations for Maryland

We urge Maryland to adopt legislation guaranteeing consumers' right to freely transfer, resell, or donate their tickets.

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<sup>2</sup> NY Arts & Cult Aff L § 25.30; CT Pub Act. 17-28 (2017); VA Stat. §§ 59.1-466.5-.7; UT Code §§ 13-54-102 (2019); Colorado Rev. Stat. § 6-1-718(3).

<sup>3</sup> *United States v. Live Nation Entertainment, Inc.*, Case 1:24-cv-03973, Complaint ¶¶ 108-110 (S.D.N.Y. May 23, 2024).

<sup>4</sup> *Id.* at ¶¶ 150-176

Key elements of such legislation should include:

1. Prohibiting non-transferable tickets
2. Banning ticket lock-in technologies that require the original purchaser's credit card or ID for entry
3. Preventing the cancellation of validly resold tickets
4. Ensuring consumers can transfer tickets through the platform of their choice, not just the primary ticket seller's system

## II. Addressing Anticompetitive Practices in the Ticketing Industry

### A. Lessons from the DOJ Lawsuit

The Department of Justice's antitrust lawsuit<sup>5</sup> against Live Nation and Ticketmaster alleges a range of anticompetitive practices in the ticketing industry. Key issues highlighted in the complaint include:

1. Use of long-term exclusive contracts to lock up venues and foreclose competition
2. Leveraging control over concert promotion to pressure venues into using Ticketmaster
3. Restricting ticket transferability to limit competition from secondary marketplaces
4. Acquiring potential competitors to maintain market dominance

These allegations suggest a pattern of conduct aimed at entrenching Ticketmaster's dominant position in primary ticketing and expanding control over the secondary market.

### B. Recommendations for Maryland

As a plaintiff in the DOJ lawsuit, Maryland has an opportunity to push for strong remedies that will benefit its consumers. We recommend that Maryland advocate for:

1. Structural relief, including potential divestiture of Ticketmaster from Live Nation
2. Prohibitions on long-term exclusive ticketing contracts
3. Separation of Live Nation's concert promotion and ticketing businesses
4. Mandates ensuring ticket transferability and interoperability between ticketing platforms

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<sup>5</sup> *Id.*

Additionally, Maryland should consider its own state-level actions to promote competition, such as:

1. Banning exclusive ticketing contracts longer than 3-5 years
2. Requiring transparency in ticket availability and pricing
3. Prohibiting discriminatory treatment of tickets sold through secondary markets

### III. Balancing Consumer Protection and Innovation

While addressing anticompetitive practices and ensuring transferability are crucial, it's important that new regulations don't inadvertently harm innovation or limit consumer choice. We urge Maryland to consider the following principles:

1. Technology neutrality: Avoid mandating specific technological approaches that could become outdated
2. Flexibility for new business models: Ensure regulations don't preclude innovative ticketing platforms or distribution methods
3. Proportionality: Target specific harmful practices rather than imposing broad, burdensome requirements on all market participants
4. Consumer choice: Preserve fans' ability to choose from a range of ticketing options and platforms

### IV. The Importance of Economic Evidence

Any new policies regarding the ticket market should be grounded in rigorous economic analysis, not anecdotes or preconceived notions. We encourage Maryland to:

1. Conduct or commission empirical studies on the effects of ticket transferability laws in other states
2. Analyze data on pricing, availability, and competition in Maryland's ticketing market
3. Consider both potential consumer benefits and compliance costs of proposed regulations
4. Evaluate the dynamic effects of policy changes on investment and innovation in the ticketing industry

## V. Recognizing the Role of Secondary Markets

While some have raised concerns about ticket resale, it's important to recognize the valuable role that secondary markets play in providing flexibility and expanding consumer choice. Properly regulated secondary markets can:

1. Allow consumers to recoup costs if they can't attend an event
2. Provide access to tickets for fans who missed the initial sale
3. Create price discovery mechanisms that can inform more efficient primary market pricing
4. Encourage competition and innovation in ticketing platforms and services

Rather than overly restricting secondary markets, Maryland should focus on ensuring transparency, preventing fraud, and promoting fair competition between primary and secondary ticket sellers.

## VI. Responses to Specific Questions

### 1. How event tickets are obtained for resale by professional resellers and brokers

Professional resellers and brokers obtain tickets through various channels:

- a) Primary market purchases: A significant portion (approximately 40-50%) of resold tickets are initially purchased from primary ticketing platforms or venue box offices.<sup>6</sup>
- b) Season ticket holder resales: An estimated 20-30% of resold tickets come from season ticket holders who sell some or all of their tickets to resellers.
- c) Contracts with venues or promoters: Roughly 10-15% of resold tickets are obtained through direct contracts or relationships with venues, promoters, or sports teams.
- d) Purchases from individual ticket holders: Approximately 10-15% of resold tickets are acquired from individuals who can no longer attend an event.
- e) Speculative selling: An estimated 5-10% of resale activity involves speculative selling, where tickets are listed before the reseller has them in hand.

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<sup>6</sup> Industry estimates based on NetChoice member data and public sources.

## 2. Price differences between primary and resale markets

The price difference between primary and resale markets varies widely:

- a) High-demand events: Resale prices can exceed face value by 200-500% or more.<sup>7</sup>
- b) Moderate-demand events: Resale prices typically range from face value to 50-100% above face value.
- c) Low-demand events: Some events see resale prices below face value, particularly close to the event date.
- d) Premium seats: The most desirable seats often see the largest markups, sometimes exceeding 1000% of face value for the most in-demand events.<sup>8</sup>

## 3. Factors impacting pricing in the resale market

Key factors influencing resale prices include:

- a) Supply and demand
- b) Event popularity
- c) Timing relative to the event date
- d) Seat location
- e) Day of week and time of event
- f) Weather (for outdoor events)
- g) Team/artist performance
- h) Local economic factors
- i) Competition from other events
- j) Primary market pricing strategies

## 4. Problems consumers are encountering in the resale market

Common issues in the resale market include:

- a) Denial of entry: While comprehensive data is lacking, our members report that less than 1% of resold tickets result in entry denial.

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<sup>7</sup> U.S. Government Accountability Office. (2018). Event Ticket Sales: Market Characteristics and Consumer Protection Issues.

<sup>8</sup> Budnick, D., & Baron, J. (2011). Ticket Masters: The Rise of the Concert Industry and How the Public Got Scalped.

- b) Use of bots: Some primary sales see bot purchase attempts accounting for over 50% of traffic.<sup>9</sup>
- c) Fraudulent sales: Industry estimates suggest that only 3-5% of secondary market ticket sales involve some form of fraud.<sup>10</sup>
- d) Counterfeit tickets: Major events often report hundreds of counterfeit tickets detected.<sup>11</sup>

Other issues include price transparency concerns, speculative ticket sales, cancellation of resold tickets, and confusion between primary and resale markets.

## 5. Impact of measures taken in other states

Several states have implemented consumer protection measures in the ticket market:

- a) Resale price caps: Some states like Arkansas have price caps, but they can reduce overall ticket availability and drive activity to unregulated channels.
- b) Ticket transferability laws: States like New York, Connecticut, Virginia, Utah, and Colorado have laws ensuring ticket transferability, preserving consumer choice and secondary market competition.<sup>12</sup>
- c) Anti-bot legislation: Many states have passed laws restricting the use of bots to circumvent ticket purchase limits, but enforcement challenges remain.

## VII. Conclusion

NetChoice appreciates the opportunity to provide these comments on the Maryland event ticket market. We share the Attorney General's goal of protecting consumers and promoting fair competition. However, we urge caution in adopting overly restrictive policies that could limit consumer choice or stifle innovation in the ticketing industry.

We strongly encourage Maryland to:

1. Adopt legislation ensuring free ticket transferability, following the model of states like New York and Colorado.
2. Use its position in the DOJ lawsuit to advocate for strong remedies addressing anticompetitive practices in the ticketing industry.
3. Focus on targeted interventions to address specific harms rather than imposing broad,

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<sup>9</sup> New York Attorney General's Office. (2016). Obstructed View: What's Blocking New Yorkers from Getting Tickets.

<sup>10</sup> Federal Trade Commission. (2020). Online Event Ticket Sales Workshop Report.

<sup>11</sup> National Association of Ticket Brokers. (2019). Annual Industry Survey.

<sup>12</sup> NY Arts & Cult Aff L § 25.30; CT Pub Act. 17-28 (2017); VA Stat. §§ 59.1-466.5-.7; UT Code §§ 13-54-102 (2019); Colorado Rev. Stat. § 6-1-718(3)



burdensome regulations.

4. Ground any new policies in rigorous economic evidence and analysis.
5. Preserve the benefits of secondary markets while ensuring appropriate consumer protections.

Thank you for your consideration of these comments. NetChoice stands ready to provide any additional information or perspective that may be helpful to the Attorney General's office in its important work.

Respectfully submitted,

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