

Statement of

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Before the

Committee on Commerce and Tourism
The Florida Senate, State of Florida

On

Senate Bill 392: Ticket Sales

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Chairman Detert, Vice Chair Dockery and members of the Committee:

My name is Greg Gundlach. I am the Coggin Distinguished Professor of Marketing at the University of North Florida in Jacksonville where I have been a member of the faculty since 2003. Before coming to the University of North Florida, I was the John Berry, Sr. Professor of Business at the University of Notre Dame where I served on the faculty since 1987. In addition to my current faculty appointment, I am also a Senior Research Fellow at the American Antitrust Institute (www.antitrustinstitute.org) in Washington DC, a non-profit consumer advocacy group devoted to promoting marketplace competition in the United States and around the world.

As a scholar in both the disciplines of marketing and law, I have studied and written on marketing practices including the consumer protection and competition policy implications of marketing restrictions that impact primary (i.e., original) and secondary (i.e., resale) markets like those addressed in Senate Bill 392 (and House Bill 225). I am here today in support of the free market principles codified in the bill and to speak about the concerns for consumer protection and competition policy that are raised by restrictions on paperless ticketing, otherwise known as "*restrictive paperless ticketing*."

At the outset, it is important to understand that the growing presence and use of paperless ticketing can offer significant benefits to consumers. Enabled through advances in information technology, e-tickets, paperless tickets and mobile tickets can provide enhanced convenience to consumers who might otherwise use paper ticketing when purchasing a ticket. Paperless ticketing also has the potential to offer similar benefits if and when a customer who has previously purchased a ticket desires to resell, share, gift or transfer that ticket to others. Although currently representing a small proportion of ticket sales, indications are that paperless ticketing will increase over time.

Consumer protection and competition based policy concerns do not necessarily arise for paperless ticketing in and of itself but are present when restrictions are imposed on the resale, sharing, gifting or other transfer of paperless tickets initially purchased. These restrictions can diminish the

convenience of paperless ticketing for consumers. They also raise significant consumer protection and competition policy concerns.

Restrictive paperless ticket practices include, but may not be limited to, outright prohibitions or bans on the resale or secondary transfer of paperless tickets, requirements to resell paperless tickets only through a single ticket reseller, restrictions on resale below or above a set price, (i.e., price ceilings and floors), limitations on gifts or donations of paperless tickets, limitations on season or series paperless tickets, and purchase requirements in the primary market that limit the resale or transfer of paperless tickets in the secondary market.

Practices that restrict competition in the secondary market for paperless tickets can harm consumers. They can do this through decreasing the efficiency and effectiveness of competition in the market for tickets, stifling new ideas and innovation concerning ticketing, and reducing variety and the choices available to consumers when purchasing and reselling tickets. At the very least, as noted, they can create substantial inconvenience to consumers and others.

Concerns for the occurrence of these harms are heightened where a firm imposing secondary market restrictions on paperless tickets, such as Ticketmaster,¹ is also the dominant seller of initial ticket sales in the primary market and when the same firm also controls many other aspects of the marketplace, including ownership of a subsidiary in the secondary market, Ticket Exchange, which is the exclusive place where Ticketmaster's tickets can be transferred. The combination of market dominance and extensive control can facilitate and encourage the type of abuses that raise consumer and competition based concerns for restrictive paperless ticket practices.

Justifications that have been advanced for restrictive paperless ticketing are the subject of considerable misinformation. These justifications include contentions that paperless ticketing restrictions prevent scalping and can help to protect against counterfeit, stolen or lost tickets among other justifications. However, an extensive analysis of restrictive paperless tickets by the American Antitrust Institute, to be released this week, concludes that "a review of the most commonly asserted justifications reveals that some may support the use of paperless tickets, but not necessarily of *restrictive* paperless tickets" and that many of the examined justifications "appear to be weak or pretextual." The analysis also concludes that with regard to these and other justifications, "even when demonstrable," they "do not outbalance the costs of chilling secondary market transaction."² Finally, I understand, as well, that SB 392 retains all of the significant protections against scalping and counterfeiting currently available under Florida Law.

Thank you.

¹ In this regard, I understand that Ticketmaster is the primary ticket agent for many of the leading entertainment venues in the country and through its cross ownership with Live Nation Entertainment, the largest producer of live music concerts in the world, and Front Line Management, one of the world's leading artist management companies, Ticketmaster controls many aspects of the live entertainment business supply chain (artist management – music concert producer – ticket agency). Venues owned or controlled by Live Nation can hardly be expected to choose a ticket vendor other than Ticketmaster and independent venues that use Ticketmaster as their primary ticketing agent will also find it difficult to resist Ticketmaster given its extensive network of cross ownership and control.

² See James D. Hurwitz. Restrictive Paperless Tickets, A White Paper by the American Antitrust Institute, (75 pages), forthcoming January 20, 2012 at www.antitrustinstitute.org.