



Statement of

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Before the

JOINT COMMITTEE ON CONSUMER PROTECTION AND PROFESSIONAL LICENSURE

GENERAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

On the

REGULATION OF THE ISSUANCE AND SALE OF SPORTS AND ENTERTAINMENT TICKETS

September 20, 2011

Chairman Kennedy, Chairman Spellotis, and Members of the Committee:

My name is Richard Brunell. I am the Director of Legal Advocacy for the American Antitrust Institute (AAI), which is a non-profit consumer advocacy group devoted to promoting marketplace competition and the strong enforcement of competition laws in the United States and around the world. We believe that competition benefits consumers and the economy by lowering prices, promoting innovation, boosting customer service, and enhancing the choices available to consumers.

I am a long-time resident and native of Massachusetts, having worked in the attorney general's office and at a private law firm. I also teach antitrust law. And like many people in the Boston area, I am an avid sports fan and attend concerts and other shows.

I understand that the bills before you have many provisions and goals, but I am here to speak about only one issue: the consumer protection and competition concerns raised by the misuse of restrictive paperless ticketing.

Paperless ticketing technology can offer benefits to consumers. A consumer with a paperless ticket never has to worry about forgetting or losing the ticket, or having it stolen. But we are concerned when the technology is used: (a) to completely ban consumer transfers of purchased tickets, (b) to set minimum or "floor prices" on ticket transfers, or (c) to require that all ticket resales or transfers be executed by a single ticket reseller. When implemented in these ways, paperless tickets unfairly and unnecessarily restrict consumer choices that are otherwise available under the law for non-paperless tickets. Consumers expect, and should be able, to give their tickets away to family, friends, business associates, and charities; or, if they are unable to attend an event, to resell their tickets at or below face value.¹

In addition to limiting consumer options, the misuse of paperless ticketing could deny Massachusetts consumers the benefits of competition in the ticket resale market. Competition between ticket resellers — for example, between StubHub and Ace Tickets — ensures that transaction fees for reselling tickets are as low as possible for buyers and sellers. Also, consumers

¹ AAI takes no position on whether the Massachusetts anti-scalping law should be repealed, or whether sports teams or other live entertainment providers in Massachusetts should be able to restrict the *maximum* prices at which tickets to their events are resold. AAI is preparing a white paper on paperless ticketing that will elaborate on the issues discussed here.

benefit when ticket resellers compete to develop and offer the most attractive features and services, such as ticket guarantees, return policies, ticket sales via smart phones and efficient delivery options.

If a team or venue offered *only* paperless tickets and permitted just one company to process all ticket resales, then consumers would be denied the benefits of competition and choice with respect to buying and reselling tickets for that particular team or venue, and competition in the ticket resale market as a whole may be impaired as competitors might not have access to a sufficient inventory of tickets to be viable.

It is true that exclusive dealing arrangements are not always harmful to consumers. For example, a manufacturer may choose to use just one retailer because it is efficient to do so. And in some markets consumers are not harmed by exclusive distribution arrangements because there are good substitutes for the manufacturer's product available from other retailers. But neither of these scenarios seems applicable to exclusives in the ticket resale market. Frequently there are no good substitutes for tickets to popular sporting or entertainment events. Moreover, there is no technical reason that paperless tickets must be processed by only one company; I understand that technical systems are feasible for allowing multiple platforms to resell paperless tickets.

My concern about paperless tickets being used to put into place a *de facto* exclusive dealing arrangement is heightened if the firm with the exclusive on ticket resales is also the exclusive primary ticket agent for many of the leading venues in the country, as Ticketmaster is. And my concern about anticompetitive effects is even higher if the firm with exclusives for both primary ticket sales and resales controls many other aspects of the live entertainment business, as Ticketmaster does 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.

Venues owned or controlled by Live Nation, such as the Comcast Center in Mansfield, can hardly be expected to choose a ticket vendor other than Ticketmaster. But even independent venues that use Ticketmaster as their exclusive primary ticketing agent will find it hard to resist if Ticketmaster seeks an exclusive ticket resale arrangement or to ensure that its transaction and service fees are as low as possible.

In sum, when paperless tickets are merely offered as a transparent option to consumers, there is little to be concerned about. However, if they are the only option, then we urge the committee to ensure that sports teams, venues and artists do not completely ban ticket transfers, set minimum resale prices, or give a single company an exclusive on ticket resales unless it is clearly demonstrated that the exclusive will not impair competition in the ticket resale market.

Thank you.