

FTC Workshop Takes Aim at Online Ticket Sales Market

The Bottom Line

- *The FTC Workshop highlighted the issues facing consumers attempting to purchase event tickets online, where conflicting viewpoints emerged between preventing seller abuse and protecting buyers' freedom to dispose of their tickets as they choose.*
- *Given the cutthroat competition in the ticketing industry, the expectations for self-regulation are low. As a result, the market should expect enforcement activity by the FTC to focus on clear pricing disclosures with industry-wide impact, as well as targeted enforcement activity aimed at enforcement of the BOTS Act and the deceptive practices in the speculative ticketing market.*

Signaling its intent to rein in a vast and intricate market with many challenges and no easy solutions, the Federal Trade Commission (FTC) held a workshop in June on online ticket sales to discuss ticket accessibility, ticket cost transparency and speculative ticketing.

Ticket Accessibility

In her opening remarks, FTC Commissioner Rebecca K. Slaughter emphasized the critical step forward that the Better Online Ticket Sales Act (BOTS Act) represents in combating the use of computer scripts to sweep up tickets on primary markets. The BOTS Act, signed into law in 2016, prohibits using bots to “circumvent” limits on the number of tickets a consumer can purchase. It also places restrictions on the sale of tickets obtained through bot use.

Yet, many of the panelists believed that the BOTS Act has not had the desired impact on bot activity. Bot operators often use proxy IP addresses to shield their identity, a practice that makes it difficult for industry players to unmask them without governmental assistance. Several speakers noted that winning this “cat-and-mouse game” requires advanced and costly technological sophistication simply to keep pace with bot activity. According to the New York Attorney General’s Office, less than 50% of total tickets for top events are made available directly to consumers, with the remainder held for artists, performers and key sponsors (such as credit card companies). This reduced supply magnifies the impact of bot activity on ticket availability. While there were calls for more serious — potentially criminal — penalties for violating the BOTS Act, the theme that emerged from the discussion was that the FTC was not doing enough to enforce the existing legislation.

Ticket Cost Transparency

FTC representatives and members of the academic community pointed out that ticketing platforms’ delayed and confusing disclosure of substantial fees capitalizes on consumers’ focus on originally-displayed prices and reduces the potential for comparison shopping. While many sellers touted that their fee disclosures were “two clicks away,” there was a clear reluctance by ticket sellers to be more upfront on disclosures.

Despite claims that consumers understand fees will be charged and don't change their behavior as a result, Stubhub noted that when it had previously adopted an all-in fees display, it lost business to competitors. When challenged on the rationale for fees, which have been dubbed by some as "exorbitant," ticket sellers turned the discussion back to bots and the substantial costs of managing secure and convenient ticketing systems.

However, when questioned about whether total prices were being manipulated by reducing the stated ticket cost and increasing the associated fees, a curious silence fell across the room. Given this inertia, commissioner Slaughter emphasized that, if the industry was unable to regulate itself, governmental regulation and enforcement would be necessary. "Consider yourselves on notice," she told industry players.

Speculative Ticketing

The FTC's attention also focused on the widespread practice of selling tickets that sellers do not have and may not exist. Unscrupulous sellers create websites that mimic those of primary vendors and "sell" consumers the opportunity to receive tickets (which the seller will then attempt to purchase from another party), rather than selling consumers tickets already in the seller's possession. High-demand events frequently generate this form of speculative ticketing.

Due to strong evidence of actual consumer confusion, calls to ban speculative ticketing have emerged. The U.K. Competition and Markets Authority's order prohibiting Viagogo from facilitating sales of options on tickets provides a possible template for regulatory action. But a ban on speculative ticketing could hamper industry innovation and consumers' freedom to resell tickets, especially if the line between tickets purchased in the future and tickets for events that may not happen remains unclear.

Panelists noted that sports teams often "pre-sell" postseason tickets before the teams have officially qualified for postseason play. Proposed restrictions on ticket transferability — such as linking tickets to buyer identity — faced similar objections.

Ultimately, the discussion turned to specific deceptive marketing practices, such as sites that replicate the look and feel of official venue or ticketing sites, as well as confusing disclosures about the nature of the sale and the risk that tickets may not be available. While the FTC can take action against deceptive practices, blanket prohibitions on selling options on tickets risk reducing the secondary market's friendliness to casual resellers and savvy buyers.

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