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Comment from Vivid Seats

Submitter Information

Email: jfitch@cov.com
Organization: Vivid Seats

General Comment

See attached file(s)

Attachments

FTC - Vivid Seats Comment on Ticketing Fees (2.6.24)



February 6, 2024

Ms. April Tabor

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Mail Stop H-144 (Annex J)
Washington, DC 20580

**Re: Comment in Response to Unfair or Deceptive Fees NPRM, 16 CFR Part 464,
Matter No. R207011**

Dear Secretary Tabor:

Vivid Seats appreciates the opportunity to comment on the Federal Trade Commission's ("FTC") Notice of Proposed Rulemaking ("NPRM") to address certain deceptive or unfair practices relating to fees under Section 18 of the FTC Act.¹ Vivid Seats is a publicly traded, leading online ticket resale marketplace committed to becoming the ultimate partner for connecting fans to the live events, artists, and teams they love. Utilizing our technology platform, we connect millions of buyers with thousands of ticket sellers across hundreds of thousands of events each year. Four out of the past five years, including 2024, we have been named to Newsweek's "Best Customer Service" list for the ticketing category.

While contemplating the NPRM, it is important to understand how prices are generated on ticket resale marketplaces ("TRM"). The base price of the ticket is controlled and set by the ticketholder (the owner of those tickets), not by the TRM, and is often influenced by supply and demand. As a result, tickets are priced and sold both higher and lower than the original cost. In addition to a delivery fee, which covers costs associated with delivering a ticket, the TRM assesses a service fee. Typically, these fees are the TRM's sole source of revenue and provide the capital necessary to operate the TRM.

At Vivid Seats, we charge delivery and service fees for each transaction. Our service fees cover a variety of important services provided by our marketplace, including:

- Access to millions of tickets to thousands of events at any given time;
- Safe, secure payment and transaction services;
- Anti-fraud measures and protection;

¹ Federal Trade Commission, *Unfair or Deceptive Fees Trade Regulation Rule*, Notice of Proposed Rulemaking, 16 C.F.R. (Nov. 9, 2023), available at <https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees>.

- Customer service (to assist in any ticket transfer issues, support at the event, and to resolve any other issues that may arise); and
- For ticket sellers, access to potential ticket buyers interested in purchasing tickets a ticketholder cannot use and wishes to resell.

Our service fees are firmly grounded in benefits that we provide to the consumer and to our costs of operation and they are clearly disclosed prior to checkout. Among other things, we reinvest fees into “Vivid Seats Rewards,” the industry’s leading customer loyalty program where fans who buy ten tickets receive a reward credit equal to the average price of the tickets purchased. We object to characterizing our fees as “hidden” or “junk,” they are neither. However, as one of the lower cost providers in our industry, we do support greater pricing transparency in our industry subject to the resolution of certain concerns with the NPRM.

The FTC’s objective to provide consumers with clear disclosure regarding mandatory fees for tickets is laudable. Vivid Seats supports additional consumer disclosures, including all-in pricing. However, it is vital that such a rule, if finalized, apply equally across all parts of the live-events ticketing industry. As many of the comments on the FTC’s Announced Notice of Proposed Rulemaking (“ANPR”) on this topic underscored, if a total price requirement does not apply to all ticket sellers, consumers and competition will be harmed.² First, consumers will not receive the benefit of being able to compare the total prices of tickets across the marketplace which will undermine the benefits of potential time and cost savings to consumer that the FTC estimates will flow from a final rule. Second, without equal application of the rule, businesses that display total prices of tickets will be at a competitive disadvantage to those that do not disclose mandatory fees. As noted in the NPRM, when industry participants unilaterally tried to implement disclosure of the total price of tickets in the past, they have rapidly lost market share and were forced to abandon the practice. It is, therefore, vitally important that the FTC ensures equal application of any final rule across the industry.

The FTC should also consider how its proposed rule interacts with the increasingly complex patchwork of state ticketing laws. Some of these laws include different requirements regarding fee disclosures. If the FTC moves forward with finalizing a rule requiring total price display, it should preempt state laws to provide uniform price disclosure that consumers can count on in all 50 states and the District of Columbia. Failure to do so will not only lead to variable application that may confuse consumers and undermine the purported goal of the FTC’s proposed rule, it will also lead to higher implementation burdens and costs for industry participants.

Finally, while we appreciate the FTC’s effort to calculate compliance costs of the proposed rule on the live-events industry, we believe the FTC is deeply underestimating the complexity associated with the transition to all-in pricing in the industry, especially for market participants that deal in large volumes of ticket sales. To date, we have experience building compliance for three different states that have required some version of all-in pricing similar to the proposed rule. In each case, we assigned a dedicated team of developers to implement the new rule. This project necessarily would be larger and would require even more time from our

² *Id.*

Legal, Data Analytics, Engineering and Product Teams. We believe that the FTC is underestimating the amount of employee time required by at least a factor of five.

Thank you for the opportunity to comment. We look forward to engaging with the FTC further on this matter.

Vivid Seats