

PUBLIC SUBMISSION

As of: February 08, 2024 Received: February 07, 2024 Status: Posted Posted: February 08, 2024 Tracking No. lsc-glgo r9ze Comments Due: February 07, 2024 Submission Type: Web
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Docket: FTC-2023-0064
Trade Regulation Rule on Unfair or Deceptive Fees

Comment On: FTC-2023-0064-0001
Trade Regulation Rule on Unfair or Deceptive Fees

Document: FTC-2023-0064-3292
Comment from National Association of Theatre Owners

Submitter Information

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General Comment

See attached file(s)

Attachments

240207 NATO Comments-R207011



February 7, 2024

Via Regulations.gov

Federal Trade Commission
Office of the Secretary
Constitution Center
400 7th Street NW 5th Floor
Washington, DC 20024

Subject: Comments on FTC Proposed Rulemaking on Unfair or Deceptive Fees (Docket No. R207011)

Dear Secretary Tabor,

On behalf of the National Association of Theatre Owners (NATO), representing more than 34,000 movie screens across the United States and thousands more worldwide, we appreciate the opportunity to submit comments on the proposed rulemaking concerning unfair or deceptive fees.

INTRODUCTION

Cinemas are not just entertainment venues. From Main Street to urban centers, cinemas are cornerstones in communities across the country that (1) invigorate and revitalize neighborhoods, (2) drive foot traffic to local businesses, (3) foster cultural vibrancy, and (4) create employment opportunities in places where jobs can be few and far between.

The movie theatre industry faced unprecedented disruptions due to the pandemic, which have only been compounded by the 2023 writers' and actors' strikes. The impact of these strikes caused a notable downturn in movie releases during 2024—delaying the industry's return to pre-pandemic performance levels until at least next year. The good news is that the decline is not indicative of waning interest in moviegoing but a direct result of limited film availability.¹ As we approach 2025, there is optimism for a strong recovery in the global box office, however, the immediate future remains challenging.

NATO supports the Commission's effort to eliminate inescapable, unexpected, and unnecessary fees charged to consumers. However, NATO seeks to address the broad nature of the Commission's proposed rulemaking and how it could unintentionally impact the cinema industry, which does not engage in the activities which this rule is designed to address. NATO submits that any regulatory measures consider the distinct nature of movie theatre online ticket sales and the essential role they play in both economic and cultural spheres.

¹ CNBC, "To stream or not to stream: Hollywood studios could send more films to the big screen as Wall Street pushes for profits" (January 31, 2024) [\[Link\]](#)

THE COMMISSION SHOULD EXCLUDE MOVIE THEATRES FROM THE PROPOSED RULE

In Section X, the Commission seeks comment on Definitions in the NPRM, including whether the proposed definition for “Business” should exclude certain industries—particularly from the preventative requirements in § 464.2(b). NATO urges the Commission to avoid a one-size-fits-all approach to this rulemaking and instead to consider the distinct nature of convenience fees used in different industries, including in the movie theatre industry, where fees are clearly disclosed, provide a service separate from the value of the movie ticket, and are entirely avoidable.

Such fees do not fit the criteria outlined by the Commission for problematic fee practices and thus do not constitute unfair or deceptive practices. The lack of evidence demonstrating that unfair or deceptive practices are prevalent as applied to movie theatres demonstrates that the Commission’s proposed rule, as written, is overly broad which will result in arbitrary and capricious application against the theatre industry if finalized.

Therefore, NATO respectfully requests that the Commission consider these distinct aspects and exempt movie theatres from the purview of the proposed regulations.

MOVIE TICKET CONVENIENCE FEES ARE NOT HIDDEN FEES

The Commission's stated objective for the rulemaking is to “deter deceptive and unfair acts or practices involving fees, to promote a level playing field that enables comparison shopping and allows honest businesses to compete, and to expand the available remedies where such practices are uncovered.”² The Commission states that it identified two practices it believes are unfair or deceptive under Section 5 of the FTC Act: “(1) practices that misrepresent the total costs by omitting mandatory fees from advertised prices, and (2) practices that misrepresent the nature and purpose of fees or charges.”³

Movie theatre online ticket sales and, to the extent relevant, applicable voluntary convenience fees fundamentally differ from mandatory ticket fees in other entertainment industries. First and foremost, as stated, they are not “mandatory” because they can be avoided by purchasing tickets at the box office instead of online. Second, movie theatre online ticket fees are not misrepresented because the fees relate to the specific service available through online ticketing. These services allow moviegoers the convenience of advance ticket purchasing and seat selection from the comfort of their homes. This level of service requires ongoing support and management, entailing operational costs that are offset by convenience fees.

As mentioned, the Commission has produced no evidence that unfair or deceptive fees are prevalent in the film exhibition industry. To the contrary, the ANPR and NPRM focus solely on live entertainment events, which are characterized by a distinct set of issues, business relationships, and business practices. And while the Commission has received over 11,884 comments in response to the ANPR, only approximately 50 even mention movie theatre convenience fees. This notable disparity was reinforced by a recent NATO survey involving more than 100 movie theatres that

² NPRM, Sec. IV. [\[Link\]](#)

³ Ibid., Sec. III.

collectively operate approximately 3,600 screens across 830 locations, which found there have been no reported customer complaints regarding the fees charged for online convenience.

Furthermore, when customers select a ticket and proceed to the checkout page on a movie theatre's website or mobile app, the online convenience fee is transparently displayed. This fee is itemized separately from the ticket price, providing a clear breakdown of the total cost, which includes the ticket price, the convenience fee, and any applicable taxes. This detailed display occurs before the final payment confirmation, ensuring that customers are fully aware of all charges before completing their purchase. The transparency of this fee is maintained consistently across different booking platforms, whether it's the theatre's own website, a mobile app, or a third-party service. This straightforward approach helps in maintaining customer trust by avoiding surprise charges and providing a clear understanding of the fee's purpose.

CONVENIENCE FEES ARE REASONABLY AVOIDABLE

Online convenience fees in the movie theatre industry are reasonably avoidable, not mandatory or deceptive. The price displayed online serves as the advertised price of the ticket when purchased online or at the box office. However, when customers purchase tickets online, they typically incur a nominal convenience fee that helps offset the movie theatre's costs associated with facilitating online booking—such as website maintenance, secure payment processing, and customer service support. However, as noted, this fee is not mandatory as moviegoers can avoid convenience fees by purchasing tickets directly at the movie theatre's box office.

This optionality demonstrates the “reasonably avoidable” nature of the fee, a choice exercised by a majority of moviegoers who prefer traditional, in-person ticket purchases. In fact, the NATO membership survey found that the majority, more than 60 percent, of moviegoers purchase their tickets in person at the box office.

It is pertinent to highlight the flexibility inherent in movie theatre ticketing practices. In his announcement in October 2022 that the Commission had initiated work on a rule to “crack down” on unfair and deceptive fees across all industries, President Biden remarked, “And there was no way to avoid the fee, like processing fees for concert tickets or like resort fees...”⁴ In contrast to the fee practices that the President highlighted as unavoidable, the movie theatre industry offers consumers a clear choice. Again, they can either purchase tickets online, incurring a small convenience fee, or opt to buy them in-person at the box office, avoiding any additional charges.

IMPACT ON CONSUMERS

Moviegoing holds a unique place in American culture as an accessible form of entertainment that spans across economic classes. The cinema experience is more than just entertainment; it fosters a sense of community and connection among people from various backgrounds, which is increasingly valuable in today's world.

⁴ White House, “Remarks by President Biden on Protecting American Consumers from Junk Fees” (October 26, 2022). [\[Link\]](#).

This accessibility is partly due to the slow rise in ticket prices compared to other forms of entertainment. Historically, movie ticket prices have increased more slowly than the general rate of inflation—an essential point in understanding the market dynamics of movie ticket sales. In 2023, this affordability was highlighted when the average movie ticket price decreased from \$10.80 to \$10.32. This reduction goes against the broader trend of rising costs across the economy due to inflation—reaffirming the role of moviegoing as an egalitarian pastime, accessible to a wide range of socioeconomic groups.

The affordability of moviegoing, however, faces challenges from regulatory changes like the Commission’s proposed rule. Movie theatres would have no choice but to pass the additional costs imposed by the rule on to consumers, likely making it less accessible to the most vulnerable Americans. This underscores the delicate balance between regulatory intentions and their practical implications on everyday affordable activities like going to the movies.

The fact that a majority of moviegoers opt for box office purchases vividly illustrates that the industry’s convenience fees are reasonably avoidable. Maintaining the ability to list the box office price separately from online convenience fees will continue to provide those patrons who choose to purchase in person with accurate information when checking movie times and ticket prices before heading to the box office. Including these fees in the “total” advertised ticket price online would mislead consumers into thinking that tickets purchased in-person are more expensive than they are and disrupt the clarity currently provided.

As stated, application of the proposed rule to online movie ticket sales could inadvertently reduce this consumer autonomy by compelling movie theatres to implement pricing strategies that align box office prices with online marketed prices to ensure compliance with the rule, reduce marketing complexities, and avoid consumer price confusion. Such homogenization would likely lead to increased ticket prices across all channels—raising the cost for the majority of moviegoers who easily skip online convenience fees by purchasing tickets in-person at their local cinema. If this occurs, cash-paying moviegoers, often financially vulnerable individuals without access to credit cards, would be especially affected.

Put simply, the imposition of the proposed regulations on the movie theatre industry, while well-intentioned, would likely inadvertently lead to increased ticket prices and reduced transparency. By ensuring that convenience fees remain optional and transparently communicated, consumers retain the power to choose based on their preferences and convenience, thereby preserving the competitiveness and fairness in pricing within the industry.

IMPACT ON COMPETITION

The movie theatre industry is highly competitive, with a wide range of players from large national chains to independent and nonprofit cinemas vying for consumer attention through their quality of service, technological enhancements, movie selection, and other means. This diversity fosters vigorous competition that keeps movie ticket prices low and ensures that the costs of separate services, like reserved seating, reflect the value provided. Unlike industries where a few players

might dominate, the movie theatre sector does not operate under monopolistic or oligopolistic conditions market by market.

The White House stated that the fees it seeks to regulate are designed “to confuse or deceive consumers or to take advantage of lock-in or other forms of situational market power—implying a scenario where consumers have no choice but to accept certain terms due to a lack of alternatives.”⁵ This does not apply to movie theatres because consumers have different methods of purchasing tickets to see the same movies typically exhibited at multiple times each day and often have the choice of patronizing different theatres, even within limited geographic areas, which keeps the market competitive. It cannot be stressed enough that consumers retain the choice to avoid convenience fees by purchasing tickets directly at the box office. This choice is a testament to the market's flexibility and negates any notion of situational market power exploitation, where consumers would otherwise feel compelled to accept the fee to purchase a ticket due to a lack of alternatives.

To that end, the Commission's proposed regulation, intended to govern fee structures and target potentially unfair or deceptive fees, would inadvertently lead to adverse consequences for competition in the movie theatre industry. This impact would be particularly pronounced for independent theatres and would disproportionately affect low-income and working-class Americans—those segments of society the rule seeks to protect the most.

EFFECT ON INDEPENDENT AND NONPROFIT THEATRES

The proposed rule, potentially leading to increased ticket prices, may inadvertently amplify the competitive pressures already faced by independent and non-profit cinemas, which operate on the thinnest of margins and rely on competitive pricing to attract customers. The proposed rule would force a reevaluation of their pricing structures, potentially increasing ticket prices across the board and placing these smaller entities at a competitive disadvantage. NATO estimates that more than 750 out of its 805 movie theatre member companies in the United States meet the Small Business Administration's definition of a small business. Bluntly imposing an economy-wide rule could reduce market diversity by disproportionately affecting the independent cinemas that form the backbone of the movie theatre industry.

INCREASED OPERATIONAL COSTS FOR COMPLIANCE

Ensuring moviegoers a seamless, secure, and user-friendly online booking experience comes with increasing costs associated with the development, maintenance, and security enhancements of supporting systems.⁶ In addition, online transactions often attract higher processing fees from payment processors and credit card companies due to the nature of card-not-present transactions. Put simply, this fee is not just an arbitrary charge designed to exploit market power. It supports movie theatres to meet technological advancements and evolving customer expectations without

⁵ The White House, “The President's Initiative on Junk Fees and Related Pricing Practices” (October 26, 2022) [\[link\]](#)

⁶ For example, one independently owned cinema chain initially invested \$2.5 million in developing the website that hosts its online ticketing platform. Its annual expenses for maintenance and upgrades fall between \$2 million and \$3 million.

increasing the ticket pricing both online and at the physical box office. There is no doubt that theatres, especially independents, would face increased costs related to compliance with a new rule. These costs would include legal consultation, administrative changes, and system upgrades at a time when the industry is still recovering from the pandemic and strikes. For independent and non-profit cinemas with limited resources, these costs would be significant, likely impacting their ability to meet payroll, upgrade technologies and facilities, and compete with larger chains. Over time, increased regulatory and operational costs could lead to market consolidation, with smaller theatres either going out of business or being acquired by larger chains. This consolidation would reduce competition and limit consumer choices, particularly in underserved or rural areas where out-of-home entertainment options are limited and jobs for first-time workers, senior citizens, and those who identify as disabled are few and far between.

CONCLUSION

As should be clear, movie theatre online fees in no way reflect the offending characteristics of other mandatory fees which the White House and the Commission seek to remedy with this rule. Online fees associated with theatre goods and services are clearly disclosed, provide a service separate from the value of the movie ticket, and are entirely avoidable.

NATO appreciates the opportunity to submit these comments. Our members greatly respect the work of the Commission and share a common goal of safeguarding moviegoers against unfair or deceptive fees. We appreciate the Commission taking into account the perspectives of film exhibitors across the nation, especially those small independent cinemas that play a crucial role in revitalizing downtown areas and fostering community across the United States. However, it's important that the Commission recognizes the unique aspect of online movie ticket fees and excludes cinemas from the definition of covered businesses. This would ensure that regulations enhance consumer protection without diminishing the benefits that these fees provide to both consumers and movie theatres.

Sincerely,



Todd Halstead
Director of Government Relations