MEMORANDUM IN OPPOSITION TO COLORADO SB 060 – PREAMENDED VERSION

February 25, 2023

Last month, at a hearing titled "That's the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment," there appeared to be bi-partisan consensus that Live Nation Entertainment ("LNE"), the parent company of Ticketmaster, is a monopoly and one of the most significant problems facing ticket purchasers today.[1] In particular, LNE, which also operates one of the largest ticket resellers in the United States, was alleged to be leveraging its dominant position in the primary market to gain market power in the resale market as well.[2]

LNE heavily influences live event ticketing in Colorado. LNE disputes this by pointing out that Ticketmaster only tickets 13 out of the 67 Colorado venues that use outside ticketing services. They conveniently ignore that several of those venues are the largest in the state. Ticketmaster is the primary ticket seller and resale partner for all four major sports teams in Colorado. They ticket the athletic events as well as all concerts in those facilities. It is also the case that many venues, regardless of which company provides their ticketing services, rely upon LNE to book artists at their facilities. They are increasing their market share in the state from one year to the next, recently winning the ticketing contract for Ball Arena (home of the Nuggets and Avalanche). That said, it is more difficult for LNE to exert market power over competitors in Colorado because the State Legislature has safeguarded competition by protecting the ability to transfer tickets and by prohibiting ticket sellers, like Ticketmaster, from discriminating against ticket resale.[3]

Through Senate Bill 060, LNE is attempting to neuter these key pro-competition protections by vastly expanding an operator's right to revoke so-called "fraudulent tickets." The current law provides that "[a]n operator may revoke or restrict season tickets for reasons relating to a violation of venue policies and to the extent the operator may deem necessary for the protection of the safety of patrons or to address fraud or misconduct." See Colo. Rev. Stat. Ann. § 6-1-718 (5). This narrow exception, along with ticket transfer protections, was passed into law

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[1] *See* Callie Holterman, *A Ticketmaster Hearing, Taylor Swift Lyrics Were the Headliner*, N.Y. Times (Jan. 25, 2023), https://www.nytimes.com/2023/01/24/arts/music/ticketmaster-taylor-swift-senate-hearing.html.

[2] *Id*.

[3] *See* Colo. Rev. Stat. Ann. § 6-1-718 (3)(a) ("It is void as against public policy to apply a term or condition to the original sale to the purchaser to limit the terms or conditions of resale…") and Colo. Rev. Stat. Ann. § 6-1-718 (4) ("A person or entity, including an operator, that regulates admission to an event shall not deny access to the event to a person in possession of a valid ticket to the event, regardless of whether the ticket is subject to a subscription or season ticket package agreement, based solely on the ground that such ticket was resold through a reseller that was not approved by the operator").

on March 19, 2008. Given the statutory context (the preceding sentence in section (5) discusses an operator's right to maintain and enforce "policies regarding conduct or behavior at or in connection with the operator's venue"), this provision likely was intended to pertain to an "on premises" concern, the operator's right to revoke a perceived fraudulent ticket presented at the entry of a venue.[4]

LNE seeks to expand this limited right by expanding the original language permitting revocation "to address fraud." It does so by revising section 6-1-718 to read that an operator may revoke a ticket "to address fraud or misconduct, including misconduct that constitutes a deceptive trade practice as described in section 6-1-720."[5] Section 6-1-720 has been expanded to include a laundry list of fraudulent activities that, in some cases, are highly subjective. For example, a venue owner could revoke tickets from a resale competitor whose website is "substantially similar" to the venue' s website or it could revoke tickets if a competitor "presents subtotals, fees, charges or other components of the total price of the ticket less prominently or in a font size that is smaller than the font size used to present the total price of the ticket."[6] Whether "deception" is present is purely in the eye of the beholder (the venue) and not a third-party arbiter.

The impact: LNE/Ticketmaster (or its venue clients) would have the right to review a competitor's resale site, claim that the site's practices are "deceptive" in some respect and then revoke the tickets on the competitor's site and post those for sale on its own site. There is no standard of proof, and no appeal, just one market participant elevated to regulator and granted the right to remove inventory from a competitor. This massive loophole would destroy the ticket transfer rights set forth in subsection 6-1-718 (3)(a) and (4) and would penalize fans who choose to use a ticket resale site other than that offered by Ticketmaster. We can identify no example in the United States where one market participant has been granted sovereignty over its competitors. Such a law would be unprecedented.

LNE claims that venues already have these broad rights under current law, but that belief is not supported by the statute. The proposed amendments go far beyond the original purpose of the language permitting revocation to address fraud. As noted above, the current law was passed in 2008. In 2008, tickets were physical, either hard-stock or printed pdfs (smart phones were in their infancy, there were no electronic tickets). Counterfeit tickets presented at the gate were a concern and the relatively narrow exception in Section 6-1-718(5) likely was intended to deal with that limited, on-premises, issue. Now that most tickets are in a digital format, LNE is proposing that venues have the right to conduct mass revocation of inventory.

To be clear, we object to any venue operator having the expanded powers described in SB 060 for several reasons. First, as noted above, as the ticketing partner for the largest venues

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[4] We note that LNE's bill obscures this intended connection to on-premises occurrences by splitting the original text into subsections (a), (b) and (c), a format not used in the current statute. This has the effect of making the operator's ability "to address fraud or misconduct" appear to be a stand-alone right, rather than an extension of its ability to maintain order and safety at a venue.

[5] *See* SB 23-060 § 6-1-718 (5).

[6] *See* SB 23-060 § 6-1-720 (1)(e) and (h) respectively.

in Colorado and as the dominant ticketing provider in the nation, it has massive influence. As Senator Klobuchar noted in the Senate Hearing last month, "Live Nation is so powerful that it doesn't even need to exert pressure. It doesn't need to threaten. Because people just fall in line."[7] LNE would only need to indicate a revocation desire and affiliated venues would carry it out at their request. It is worth noting that the original version of this bill expanded the definition of "Operator" to include "a person that has been authorized by an operator … to sell a ticket to an event for original sale."[8] In other words, LNE's subsidiary, Ticketmaster, would have been an "Operator" under the Statute and would have had the right to revoke a ticket that it deemed to be fraudulent. This original language underscores the true intent behind the bill. LNE wants greater control so it can preference its own business and squeeze out competition.

Second, the expanded deceptive trade practices definitions in revised section 6-1-720 either describe sophisticated, coordinated activities, such as the use of ticket bots or activities that would apply to large quantities of tickets (presumably, if a website design is deemed to be "deceptive" by the operator, all tickets would be forfeited). Investigations concerning such activities, that impact a significant number of ticket buyers, are now, and should remain, the exclusive purview of the Attorney General for the State of Colorado. This is especially true in instances where the outcome would be to deprive a competitor or fan of property. There needs to be due process before property rights are lost.

While the proposed enforcement structure of SB 060 is ripe for abuse, and we cannot support it, we do support many of the pro-consumer concepts discussed in SB 060 if they are divorced from the anticompetitive provisions discussed previously and enforcement of these provisions remains with the Attorney General.

For the foregoing reasons, we respectfully request that your office oppose SB 060.

Sincerely,

Ryan Fitts
V.P., Deputy General Counsel
Vivid Seats, LLC

[7] Holterman, *supra* note 1.
[8] *See* SB 23-060 § 6-1-718 (1)(a)(II) (original bill text).