Statement of
Lawrence J. White
before the
Committee on Consumer Affairs
The New York City Council
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Chairman Garodnick and Members of the Committee:

My name is Lawrence J. White. I am a Professor of Economics at the NYU Stern School of Business. I am also on the Advisory Board of the American Antitrust Institute, which is a non-profit consumer advocacy group that is devoted to promoting marketplace competition and the strong enforcement of competition laws. I am appearing today on my own behalf, without compensation. I have attached a brief biographical summary at the end of this statement.

My testimony today primarily concerns the issue of "paperless ticketing" for sports events, concerts, and similar venues. Paperless ticketing represents a relatively new technological innovation for ticketing. It may carry some advantages for ticket buyers. But it also clearly carries inconveniences. And it also carries substantial risks of inhibiting beneficial competition in the secondary markets that have developed for tickets.

Consequently, the approach that is currently embodied in New York State's Arts and Cultural Affairs Law, Section 25.30 – essentially, to allow venues (or their ticketing agents) to sell non-transferable paperless tickets but only if buyers have the option of a transferable alternative – appears to be a sensible approach and should be continued, unless significant new developments arise in technology or other circumstances that surround ticket sales.

This is an area that is definitely worthy of continued monitoring at all levels of government – city, state, and federal – to ensure that competitive issues and consumer protection issues are adequately addressed. On the one hand, policy should not be discouraging worthwhile innovations in the ticketing area; but on the other hand, there are important competition and consumer protection issues that are potentially at stake.

The remainder of my statement will expand on these ideas.

Background on ticket sales

Tickets nowadays come in three basic versions:

-- The traditional paper ticket: These are still sold at box offices and available through telephone purchases. The paper (or really cardboard) ticket nowadays usually has a unique barcode, which is read by scanners at the entry to the venue.

-- The e-ticket: This is an innovation of the last decade or so, whereby the buyer orders tickets through the website of the venue or its agent and is sent by e-mail a pdf file that embodies the ticket (often with the pattern of a paper ticket) and the unique barcode. The buyer prints the pdf file and brings it to the venue, where it is read by scanners at the entry to the venue. A variant on the e-ticket is the "mobile ticket", whereby the venue or its agent sends a unique barcode to the buyer's cellphone, which is scanned at the entry to the venue.

-- Paperless tickets: This is the most recent innovation. For this format, there is no paper or e-mail ticket that is sent to the buyer. Instead the venue or its agent relies on the credit card or other identification of the buyer at the entrance to the venue, at which time (ironically) a paper seat locator slip is printed to guide the buyer to her seat.

Secondary markets for tickets

Secondary markets for tickets have existed for decades – perhaps for centuries – in the form of "scalpers", who buy tickets from box offices (or nowadays, online) or from first-instance buyers and resell the tickets, often shortly before the event at a physical location that is near to the event.

An important innovation of the past decade or so has been the development of more regularized secondary markets that occur online: through ticket brokers, ticket exchanges (such as StubHub and TicketsNow), localized "classified ads" listings (such as craigslist), or auction sites (such as eBay). By facilitating the secondary sales of tickets, these sites provide extra flexibility to a first-instance buyer (of paper tickets or e-tickets) whose plans have changed or who has bought a multi-event ticket package (e.g., season tickets) but cannot use all of the tickets in the package. The smoothly working secondary market, of course, also benefits the later-instance purchaser. We should be mindful of the substantial percentage of ticket resales that are priced at or below face-value, with professional sports tickets often sold at half-price or less by season-ticket holders who cannot possibly attend 41 hockey games or 81 baseball games.

However, the flexibility of easy-to-use transferability may also encourage speculation by buyers – including, of course, scalpers – who may hope to profit from an increase in the subsequent price of tickets to a "hot" event. This problem of speculation (and the role of scalpers) may be exacerbated by the desire of some artists to reward loyal fans by underpricing (relative to resale market value) their tickets to first-instance buyers – but also by the difficulty of the selling process to distinguish between loyal fans who have time to try to purchase at the moment tickets go on sale and intend to attend the event, loyal fans who are schedule-challenged and therefore prefer to buy on the resale market, and other ticket buyers, including scalpers and other speculators.

This relatively unrestricted resale market can readily involve paper tickets or e-tickets. But paperless tickets do not readily fit this process, since the ticket is (at least initially) linked to the first-instance buyer through the checking of the buyer's credit card or other identification at the entrance to the venue.

In practice, paperless tickets appear to come in two varieties: a) versions where the venue or its agent forbids all secondary transfers; or b) versions where the venue or its agent allows secondary transfers, but only if they are conducted through the original seller's reselling services. This second version clearly does allow some transferability; but it is also clear that this limited transferability is not the same as that of the relatively unrestricted resale market.

With this background, we can now address the pluses and the minuses of paperless tickets for consumers.

The advantages of paperless tickets

The advantages of paperless tickets appear to be twofold: First, they reduce the inconvenience of lost tickets (or the lost paper printouts of e-tickets) for first-instance buyers.

Second, they increase the ability of the venue or its agent to deal with the problem of mass purchases by scalpers (nowadays, through online bots) of underpriced tickets, thereby increasing the supply of these tickets to loyal fans. The wholly restrictive version of the paperless tickets clearly makes resale impossible and thereby eliminates the scalpers. The limited resale version similarly gives the venue a means of controlling scalpers' mass speculation, since the channeling of secondary transactions through the venue's reselling service would allow the venue to spot and restrict unusually large numbers of transactions where the seller was the same entity.

The disadvantages of paperless tickets

The wholly restrictive version of paperless tickets clearly reduces a first-instance buyer's flexibility in the subsequent disposal of a ticket in the event that the buyer's plans change or the buyer cannot use all of the tickets that have been bought as part of a series. This restriction would also apply to a first-instance buyer who wishes just to give away a ticket to a friend or to charity. This reduction in subsequent flexibility effectively degrades the product and reduces the value of the ticket to the first-instance buyer.

The limited resale version introduces some flexibility to the process of subsequent disposal by the first-instance buyer. But how much flexibility and at what cost to the first-instance buyer is entirely up to the benevolence of the venue or its ticketing agent. It seems unlikely that even the most benevolent venue could replicate the flexibility, innovation, and low cost that the current competitive resale market provides.

If the ticketing agent for the venue is a dominant entity in the primary ticket sales area – if, as appears to be the case for Ticketmaster, the same agent represents the majority of venues in an area or even nationwide – then the restricted resale version of paperless tickets may be a means for that dominant entity to restrict competition in the secondary market more generally, especially if the secondary ticket exchanges and other platforms need scale to remain viable as secondary market participants. Reduced competition would have all of the expected effects: higher processing fees and other higher costs for first-instance ticket buyers that wish to transact in secondary markets and less competitive pressure for beneficial innovation.

<u>An assessment of the pluses and minuses of paperless tickets</u>

The advantages to paperless tickets do not appear to be great. It is unlikely that the lost ticket problem is especially serious or widespread, and certainly in those instances the venue or its ticketing agent can utilize the consumer’s purchasing credit card and photo ID as proof of purchase before issuing replacement tickets.

As for the issue of how a venue deals with scalpers’ bots when the venue wishes to sell underpriced tickets to loyal fans, there appear to be alternative means – such as technologically inhibiting bot users, working with enforcement authorities to track bot users and promote law enforcement activity (as the music and music industry have done to deter online piracy of their products), and restricting the number of tickets that any entity or related entities can purchase – that would carry less of the potential downsides of paperless tickets.

Venues and their agents that want to reward loyal fans can surely continue to develop less restrictive technological means of foiling scalpers and other speculators. Additionally, venues and ticket agencies can easily enable system compatibility with legitimate resellers (e.g., those who are licensed and have high-quality consumer protection policies) to ensure that there remains a competitive – and consumer-protected – secondary market.

At the same time, there do appear to be serious downsides to paperless tickets. The reduced flexibility of subsequent disposal for first-instance buyers is clearly one such downside. The reduced value of such tickets to first-instance buyers should be reflected in their reduced willingness to pay for such tickets and thus lower prices that the venue could charge. But, at a minimum, adequate information to first-instance buyers as to the limitations of subsequent disposal must be present.

At least as important is the threat to competition in the secondary market that could arise from the use of paperless tickets, and their inherent restrictions, by a dominant entity in the primary ticket sales area, such as Ticketmaster.

Conclusion

The process of selling tickets to sports events, concerts, and similar venues is one of continuing innovation. Paperless ticketing appears to be the latest of such innovations.

Paperless tickets appear to carry both pluses and minuses for first-instance ticket buyers. However, the minuses do appear to outweigh the pluses. Consequently, the approach of New York State's Arts and Cultural Affairs Law, Section 25.30 – which allows paperless tickets but also requires that first-instance buyers have less restrictive alternatives available to them – appears to be a sensible approach.

This is definitely an area that is worthy of continued monitoring. Although policy should not be discouraging worthwhile innovation in this area, there nevertheless are important competition and consumer protection issues that are potentially at stake.

Lawrence J. White
Robert Kavesh Professor of Economics
44 West 4th Street
New York, NY 10012-1126
212-998-0880
Fax: 212-995-4218
Lwhite@stern.nyu.edu
http://www.stern.nyu.edu/~Lwhite

BIOGRAPHICAL SUMMARY

Lawrence J. White

Lawrence J. White is the Robert Kavesh Professor of Economics at New York University's Stern School of Business and Deputy Chair of the Economics Department at Stern. During 1986-1989 he was on leave to serve as Board Member, Federal Home Loan Bank Board, and during 1982-1983 he was on leave to serve as Director of the Economic Policy Office, Antitrust Division, U.S. Department of Justice. He is the General Editor of The Review of Industrial Organization and formerly Secretary-Treasurer of the Western Economic Association International.

Prof. White received the B.A. from Harvard University (1964), the M.Sc. from the London School of Economics (1965), and the Ph.D. from Harvard University (1969). He is the author of The Automobile Industry Since 1945 (1971); Industrial Concentration and Economic Power in Pakistan (1974); Reforming Regulation: Processes and Problems (1981); The Regulation of Air Pollutant Emissions from Motor Vehicles (1982); The Public Library in the 1980s: The Problems of Choice (1983); International Trade in Ocean Shipping Services: The U.S. and the World (1988); The S&L Debacle: Public Policy Lessons for Bank and Thrift Regulation (1991); and articles in leading economics and law journals. He is the co-author of Guaranteed to Fail: Fannie Mae, Freddie Mac, and the Debacle of Mortgage Finance, Princeton University Press, 2011 forthcoming (with V.V. Acharya, M. Richardson, and S. Van Nieuwerburgh).

He is editor or coeditor of eleven volumes: Deregulation of the Banking and Securities Industries (1979); Mergers and Acquisitions: Current Problems in Perspective (1982); Technology and the Regulation of Financial Markets: Securities, Futures, and Banking (1986); Private Antitrust Litigation: New Evidence, New Learning (1988); The Antitrust Revolution (1989); Bank Management and Regulation (1992); Structural Change in Banking (1993); The Antitrust Revolution: The Role of Economics, 2nd edn. (1994); The Antitrust Revolution: Economics, Competition, and Policy, 3rd edn. (1999); The Antitrust Revolution: Economics, Competition, and Policy, 4th edn. (2004); and The Antitrust Revolution: Economics, Competition, and Policy, 5th edn. (2009). He was the North American Editor of The Journal of Industrial Economics, 1984-1987 and 1990-1995.

Prof. White served on the Senior Staff of the President's Council of Economic Advisers during 1978-1979, and he was Chairman of the Stern School's Department of Economics, 1990-1995.

Prof. White’s webpage is found at http://pages.stern.nyu.edu/~lwhite/. His e-mail address is Lwhite@stern.nyu.edu.