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Antitrust Ticketing Case Fails to Solve Pricing Problems

AMERICAN CONSUMER INSTITUTE



Executive Summary

Ticketmaster is the focus of ire from both upset fans and the Department of Justice, which recently brought a case against the ticketing giant. Unfortunately, consumers shouldn't rely on the lawsuit to lower ticket costs, as high demand, which isn't addressed in the lawsuit, drives up prices.

However, the often-villainized ticket resale market offers some potential relief from high prices. New data from Automatiq suggests that resold tickets can provide consumer savings.

Key Takeaways include:

- From the roughly 80,000 events sampled, 55 percent offered tickets below face value.
- In 2023, American consumers saved over \$440 million on the resale market.



Introduction

In 2022, Taylor Swift made headlines not for her electric performances but for the difficulty in attaining tour tickets and the high resale ticket prices. The Taylor Swift Eras Tour ticket fiasco thrust Ticketmaster and Live Nation into the hot seat, culminating in the Department of Justice (DOJ) bringing a complaint against the company.

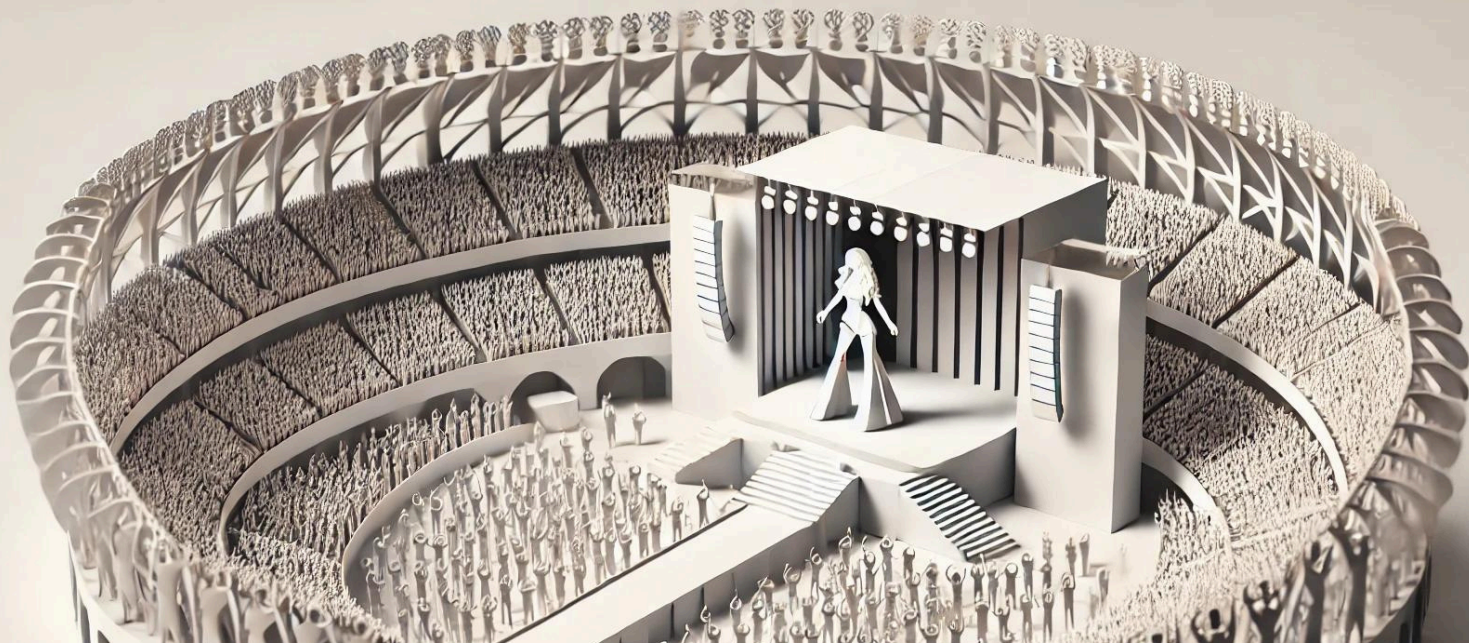
While consumer ease and affordability are laudable goals, ticketing policy is a complicated economic ecosystem that can't be completely resolved in the courtroom. The more nuanced reality is that high demand for select shows raises prices and keeps them high. The other reality is that many live events don't experience outsized demand; therefore, prices usually fluctuate over time in the months leading up to the show.

Without understanding the underlying mechanisms of the ticketing industry, efforts to protect consumers could backfire by undermining the often-villainized ticket resale industry— whose presence could offer some relief through competitive prices and choice. The potential for lower prices in the ticket resale market must be preserved to protect competition and deliver price savings to consumers for live entertainment.

Live Nation and Ticketmaster Merger—A Background

Before 2006, Live Nation was Ticketmaster's largest customer for its ticketing services. In 2007, Live Nation announced it would not renew the Ticketmaster contract and launched a short-lived ticketing platform in 2008, before both companies announced plans to merge in 2009.

The deal drew a complaint from the Department of Justice (DOJ) in 2010 where the agency alleged that the “proposed merger is likely to lessen competition for primary ticketing services for major concert venues” and reduce incentives for innovation. Ultimately, the deal went through, but not before the company entered into a consent decree stipulating that Ticketmaster is barred from retaliation against venues for selecting other ticketing or promotional companies. In 2020, this agreement was extended to 2025 in the face of repeat violations.





The Law and Economics of Tickets and Tying

The 2010 DOJ complaint emphasized the potential harms of horizontal integration through the combination of Ticketmaster and Live Nation which had a 66.4 percent and 16.5 percent market share for major concert venues by seating capacity, respectively. The DOJ focused on the elimination of competition between the two companies for their consumers, which were primarily concert venues.

Currently, the DOJ's complaint alleges that Ticketmaster has roughly 70 percent of ticket market shares, with exact shares fluctuating depending on venue and event type. The complaint also claims market shares of roughly 60 percent for concert promotion and ownership of large amphitheaters in the United States.

This dominance across different points of entertainment is what allegedly erodes choice by enabling Ticketmaster to tie distinct offerings such as promotion, venue ownership, and ticketing. But Ticketmaster is not alone. Ozzy Osbourne has previously sued the Anschutz Entertainment Group Inc. (AEG) – Ticketmaster's biggest competitor – on similar grounds.

These "tying" agreements between distinct services and retaliatory measures are at the core of the DOJ's current case against Ticketmaster. That is why the DOJ's lawsuit relies on the "restraint of trade" and "monopolization" in Sections 1 and 2 of the Sherman Act.

The history of tying legality is convoluted with precedent changing as new economic research emerges. In light of this changing context, the DOJ will likely need to demonstrate that Ticketmaster engages in unreasonable restraint of trade through coercive "forcing" and that the company lacks sufficient business justifications. The reason these requirements have evolved through case law is that research finds that the bundled pricing of services often offers savings and improved experiences to consumers.

Consumer benefits appear to be lacking in the case against Ticketmaster, as shown by repeated frustrations with the platform and complaints by concert venues, who are often the consumers of these services. However, such frustrations and the current DOJ complaint are focused largely on a lack of consumer options. Remedying such complaints may not fully address the high demand driving up ticket prices.

Changes in Ticket Prices

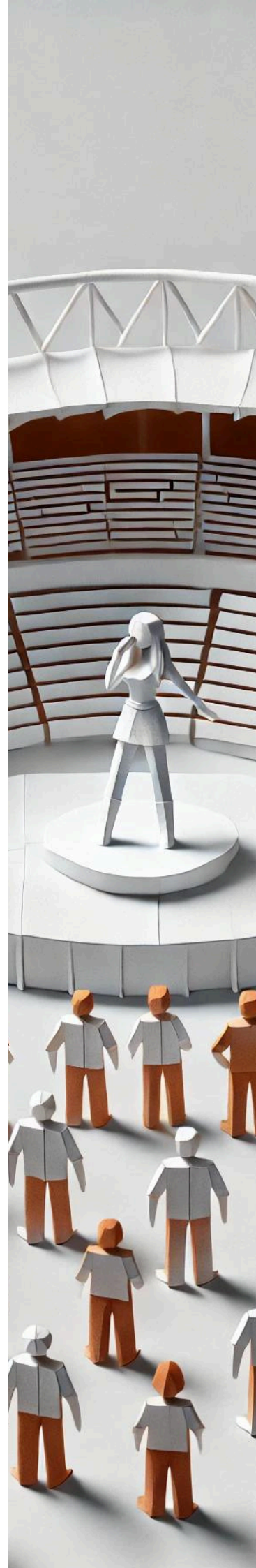
The prices of tickets on average have increased. The Apollo Academy finds that the average concert ticket price increased 34 percent between 2018 and 2023. Sporting event tickets have also risen more than 25 percent between October 2022 and 2023.

Research by Princeton University scholar and professor Alan B. Krueger found that among other factors, initial ticket pricing may not reflect demand. Based on ticketing from the early 2000s, initial sale prices were often too low, especially for prime seating. Applied to today, high prices might accurately represent consumer demand. Prices are high and consumers are understandably upset, but that anger has not fueled a willingness to stop buying tickets, so prices continue to rise.

High ticket prices for Taylor Swift's Eras tour likely catalyzed the investigation into Ticketmaster and their ticket sales practices—but those prices are primarily high because of Taylor Swift's popularity, not because of market concentration. Legions of Swifties, the term coined for hardcore Taylor Swift fans, contribute to these rising ticket prices when they seek to attend Swift's concerts at seemingly any dollar amount.

Since rising prices do not deter consumers from purchasing tickets as much as they would with other goods and services, a concept known as inelastic demand, Taylor Swift has been able to benefit from the practice of "slow ticketing." This business strategy leverages dynamic pricing and mirrors Krueger's findings by starting ticket prices at a considerably high price and only lowering those prices over time if tickets don't sell. But Taylor Swift's popularity and inelastic demand have created a market outcome where tickets are bought up at high prices and before they are lowered.

When it comes to live entertainment in the 2020s, Taylor Swift fans display the most obvious example of inelastic consumer demand but it's not the only occurrence. Professional sporting events, for example, often drive similar consumer market behavior. Since consumers value live entertainment so highly—and because they are not deterred by rising prices for those experiences—the demand side of the economy will not help consumers' wallets by lowering prices. Instead, they must rely on the supply side of the economy to lower prices.



Resale Marketplace

The DOJ’s current lawsuit against Ticketmaster analyzes primary ticketing—but elevated demand and consumer price insensitivity means prices will stay high until market competition can drive down the price of tickets. While outside the scope of the DOJ’s tying complaints, the resale marketplace has increased competition to the benefit of the consumer.

However, some policymakers are endorsing pricing prescriptions that misplace the blame on the secondary market. The Fans First Act, which was endorsed by Ticketmaster, places limits on the advertisement of resale ticketing—where market activity is not exclusively dominated by the ticketing conglomerate. Even the proposal’s requested study seems tilted against Ticketmaster’s competitors with phrasing that assumes the illegal use of bots and prevalent fraud.

Critique of the resale marketplace is widespread. A report from the Government Accountability Office, using a nongeneralizable sample of events, found that secondary sales use higher fees than primary markets. The New York Attorney General reports that resold tickets have an estimated average markup of 49 percent. A study by the National Independent Talent Organization (NITO) took a random sample of 65 shows and found that tickets were on average sold for over 200 percent of face value.

Concerns about fraud and bots that sweep up tickets and create artificial scarcity warrant concern—but policymakers should avoid restricting access to the secondary ticket market, especially as the American Consumer Institute’s (ACI) review of resale data shows strong consumer benefits.

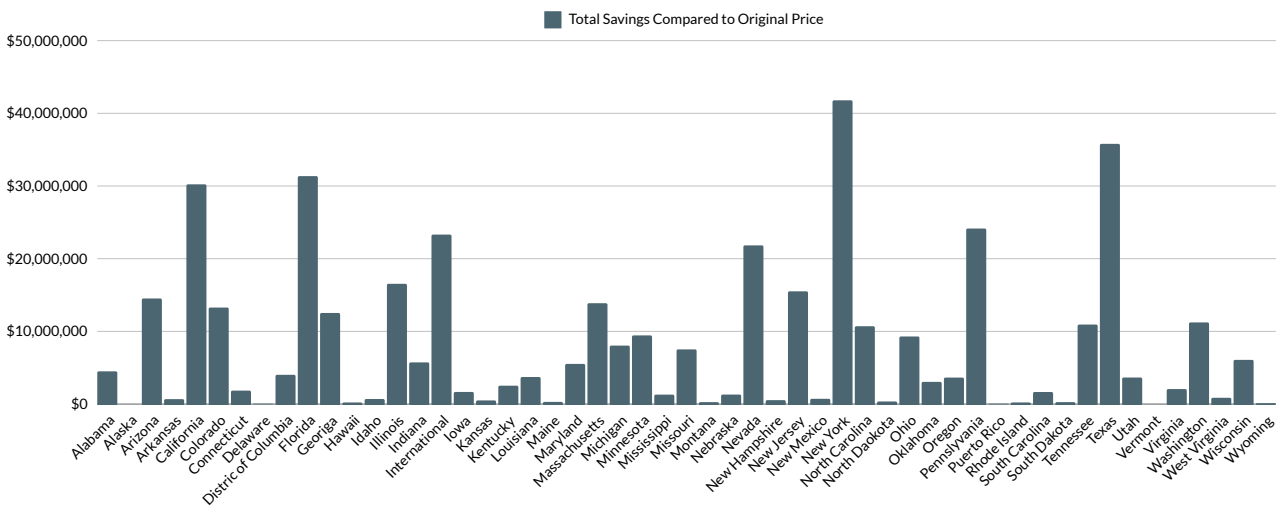
Specifically, analyzing data from Automatiq, a leading data analytics company in the ticketing industry, confirms the resale market often provides savings for consumers. The large data sample includes approximately 80,000 live entertainment events and covers domestic sales from January 1, 2023, through December 31, 2023.[1] The data set does not cover every ticket sold or resold in the U.S., and serves as a sample of the market.



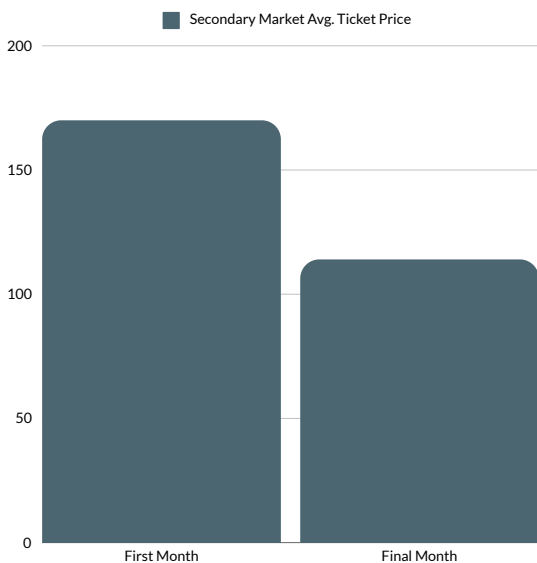
[1] The sales take place in the United States but some of the events could have been in foreign countries.

Of the sample of events, 55 percent offer tickets below the original total cost, including the base price and fees. This percentage equals over 7 million tickets and more than \$440 million in savings for an average savings of roughly \$60 per ticket. The potential discount varies depending on when the ticket is purchased with prices tending to decrease as the event gets close. With more than half of events offering lower prices tickets, this contradicts previous findings that suggest resold tickets always cost more.

The Resale Market Helped Consumers Save Over \$440 million in 2023



On the secondary market, the average ticket price in the first month of the sale was \$170 which decreased to \$114 in the final month. This represents an average decrease of one-third.



Resale Ticket Pricing Fluctuates with Demand

When analyzing ticket resale, it is important not to draw conclusions from the price listed by a ticketholder reselling his or her tickets, but rather from the sale price. Some ticketholders may list their tickets at an unreasonable price that the market will not bear. The data ACI analyzed considers the actual sales price to create a more accurate picture of the consumer experience. This data also compares the resold price of tickets to their total original price, inclusive of fees and taxes, versus the face value of the tickets. Therefore, this analysis stands as a more thorough and complete picture of the original price compared to the resold price, than other publicly available studies.

Conclusion

The DOJ is within its mandate to examine potential violations of the Sherman Act, but no court remedy will lower ticket prices enough to meaningfully matter. Policy solutions have proven elusive and have encouraged lawmakers to use inflated prices from in-demand shows to wrongly target the secondary market. Policymakers should resist this costly impulse.

Consumer welfare in the form of price and choice is best served by allowing the resale market to continue as a competitive force. Policymakers should seek solutions that empower consumers to make the choices that best serve their needs and desires.

