

ALERT

Executive Order on Ticket Resale Market Calls for Greater FTC Enforcement

April 3, 2025

On March 31, 2025, the Trump Administration issued a new Executive Order (EO), "Combating Unfair Practices in the Live Entertainment Market," taking aim at certain practices in the live entertainment ticket resale market. The EO directs the Federal Trade Commission (FTC or Commission) to renew its efforts under the Better Online Ticket Sales (BOTS) Act and other existing authorities to address practices in the secondary ticketing market.

The EO calls for the Attorney General (AG), FTC, and Secretary of the Treasury to address ticket reselling through a variety of means. In particular, it directs the FTC to (1) "ensure that competition laws are appropriately enforced in the concert and entertainment industry"; (2) "rigorously enforce" the BOTS Act, including through collaboration with state AGs or other state consumer protection officers, and enforce against unfair and deceptive conduct; and (3) take appropriate action, including through proposing regulations, to "ensure price transparency at all stages of the ticket-purchase process" including the resale ticketing market.

BOTS Act Enforcement. Enacted in 2016, the BOTS Act targets the practice of automated ticket purchasing and reselling using "bots" or other automated ticket purchasing practices. The BOTS Act includes prohibitions on circumvention on certain kinds of "security measure, access control system, or other technological control measure used online by a ticket issuer," and selling event tickets knowingly obtained through such measures.

The FTC brought its first BOTS Act enforcement actions against three companies in 2021, obtaining monetary judgments in connection with allegations that they used automated software to purchase live event

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tickets in violation of the Act. Violations of the Act are punishable by civil penalties up to \$53,088 per violation.

The EO's directive to "rigorously enforce" the BOTS Act, in collaboration with state AGs and state consumer protection offices, reflects that the FTC often partners with state AGs, including in multistate actions involving all 50 states. The FTC often shares information with its enforcement partners, including information it obtains through investigative demands.

Focus on Unfair and Deceptive Conduct. The FTC's efforts on ticket resales may lean on its "Junk Fees Rule," released in December 2024. Wiley has previously covered the rule here. The Commission's final Trade Regulation Rule on Unfair or Deceptive Fees (also called the "Junk Fees Rule" by the Commission) covers companies involved in offering ticketing services for live events or short-term lodging and requires the disclosure of a "Total Price" that includes mandatory fees, requires disclosure of any additional fees before payment, and prohibits misrepresentations about fees or charges. Specifically, the rule makes it an "unfair or deceptive practice" to display the price of a Covered Good (i.e., a live event ticket) without clearly and conspicuously disclosing the Total Price, and to misrepresent any fee or charge and the identity of the good or service for which the fee or charge is imposed. Like the BOTS Act, the Junk Fees Rule carries civil penalties up to \$53,088 per violation.

In addition, other conduct that is not covered by the Junk Fees Rule may still be actionable under the FTC's general prohibition on unfair acts and practices under Section 5 of the FTC Act. The EO also directs the FTC to consider further rulemaking if necessary to "ensure price transparency at all stages of the ticket-purchase process," raising the possibility of supplemental rulemaking that could address pricing practices in the live entertainment ticketing market.

Enhanced Competition Enforcement. The EO's directive to the AG and FTC to ensure that competition laws are appropriately enforced suggests greater emphasis on this issue for antitrust enforcers at the FTC and the DOJ's Antitrust Division. In particular, the EO identifies instances "where venues, ticketing agents, or combinations thereof operate to the detriment of artists and fans" for competition law enforcement.

Finally, the EO directs the Secretary of the Treasury, AG, and FTC Chairman to jointly submit a report to the Assistant to the President for Economic Policy and Director of the Office of Management and Budget describing the actions taken to implement the order. The report, due September 27, 2025, shall also provide recommendations for regulations or legislation necessary to "protect consumers with respect to the live concert and entertainment industry," according to the EO.

For more information, please contact one of the authors listed on this alert. Wiley's FTC Regulation team has a deep bench of attorneys with experience serving a wide array of companies and business groups who deal with FTC and consumer regulatory issues across industries.

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