(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* State, Local, or Tribal Government. *Other:* None. The information collected on the survey will provide ATF with data on how the training participants have transferred the knowledge and skills learned to their jobs. The Kirkpatrick 4–Level Model is used to evaluate ATF training programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 354 respondents will complete a 12 minute survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 71 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 4, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–2880 Filed 2–9–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States, et al. v. Ticketmaster Entertainment Inc. and Live Nation Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America, et al.* v. *Ticketmaster Entertainment, Inc.* and *Live Nation, Inc.,* Civil Action No. 1:10-cv-00139. On January 25, 2010, the United States, along with 17 state attorneys general, filed a Complaint alleging that the proposed merger of Ticketmaster Entertainment, Inc. and Live Nation, Inc. would substantially lessen competition in primary ticketing in the United States and violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires the merged firm to license a copy of the Ticketmaster host platform software to Anschutz Entertainment Group, Inc., to divest Paciolan, Inc. to Comcast-Spectacor, L.P. or another acceptable buyer, and to abide by certain behavioral restrictions.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John Read, Chief, Litigation III, Antitrust Division, Department of Justice, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530, (telephone: 202–514–7308).

J. Robert Kramer II,

Director of Operations.

United States District Court for the District of Columbia

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State of Texas, Office of the Attorney General, 300 W. 15th Street, Austin, TX 78701; and
State of Wisconsin, Wisconsin Department of Justice, 17 West Main Street, Madison, WI 53707, Plaintiffs, v.
Ticketmaster Entertainment, Inc., 8800 West Sunset Boulevard, West Hollywood, CA 90069, and Live Nation, Inc., 9348 Civic Center Drive, Beverly Hills, CA 90210, Defendants.

Case: 1:10-cv-00139.
Date Filed: January 25, 2010.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, and the States of Arizona, Arkansas, California, Florida, Illinois, Iowa, Louisiana, Nebraska, Nevada, Ohio, Oregon, Rhode Island, Tennessee, Texas, and Wisconsin, and the Commonwealths of Massachusetts and Pennsylvania, acting under the direction of their respective Attorneys General or other authorized officials ("Plaintiff States") (collectively, "Plaintiffs"), bring this civil action pursuant to the antitrust laws of the United States to enjoin the proposed merger of Ticketmaster Entertainment, Inc. ("Ticketmaster") and Live Nation, Inc. ("Live Nation") and to obtain such other equitable relief as the Court deems appropriate. The United States and the Plaintiff States allege as follows:

I. Introduction

1. This lawsuit challenges a proposed merger between Ticketmaster and Live Nation. If not enjoined, the merger will eliminate competition between the companies in the line of commerce of the provision of primary ticketing services ("primary ticketing") to major concert venues in the United States, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

2. For over two decades, Ticketmaster has been the dominant primary ticketing service provider in the United States to, among others, major concert venues. Primary ticketing, the initial distribution of tickets, has been highly profitable for Ticketmaster. Ticketmaster charges a variety of service

fees, which are added to the face value of the ticket. Ticketmaster typically shares a percentage of the money from some of these fees with venues. In 2008, Ticketmaster's share among major concert venues exceeded eighty percent and its revenues from primary ticketing were much greater than that of its nearest competitor. Ticketmaster's contract renewal rate with venues typically exceeds eighty-five percent.

3. Live Nation is the country's largest concert promoter. It also controls over seventy-five concert venues in the United States, including many major amphitheaters. Live Nation had been Ticketmaster's largest primary ticketing client for a number of years. In 2007, however, Live Nation announced that it would not renew its contract with Ticketmaster. Instead, Live Nation would become Ticketmaster's direct competitor in primary ticketing when its Ticketmaster contract expired on December 31, 2008. After spending nearly two years evaluating, licensing, and developing a ticketing platform, in late December 2008, Live Nation launched its ticketing service for its own venues and potential third-party major concert venue clients.

4. Live Nation presented a new and different source of competition in primary ticketing. As a concert promoter, Live Nation could offer venues access to concert tours as an inducement to use Live Nation's ticketing service. Ticketmaster had no concert promotion business. In contrast, as both a venue owner and a concert promoter, Live Nation had economic incentives to reduce service fees on tickets in order to fill more seats and earn the associated ancillary revenue from doing so.

5. Entrants face substantial hurdles in the form of Ticketmaster's economies of scale, long-term contracts, and brand recognition as well as the technological hurdles necessary to compete in primary ticketing. Live Nation had overcome many of these by virtue of its position in promotion and venue operation and the two years it had devoted to building a ticketing platform.

6. On February 10, 2009, Ticketmaster and Live Nation announced their plans to merge. The merger would eliminate head-to-head competition between Ticketmaster and Live Nation in the provision of primary ticketing services. Unless remedied, the merger between Ticketmaster and Live Nation would substantially lessen competition for the provision of primary ticketing services in the United States in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

7. Thus, the United States and the Plaintiff States ask this Court to enjoin this proposed merger.

II. Jurisdiction and Venue

8. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Ticketmaster and Live Nation from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

9. The Plaintiff States, by and through their respective Attorneys General and other authorized officials, bring this action under Section 16 of the Clayton Act, 15 U.S.C. 26, to prevent and restrain Ticketmaster and Live Nation from violating Section 7 of the Clayton Act, 15 U.S.C. 18. The Plaintiff States bring this action in their sovereign capacities and as *parens patriae* on behalf of the citizens, general welfare, and economy of each of their States.

10. Ticketmaster and Live Nation provide and sell primary ticketing services to major concert venues in the flow of interstate commerce. Ticketmaster's and Live Nation's activities in providing and selling primary ticketing services to major concert venues substantially affect interstate commerce as well as commerce in each of the Plaintiff States. This Court has subject matter jurisdiction over this action and these defendants pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

11. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(b)(1), (c). Defendants Ticketmaster and Live Nation transact business and are found within this District.

III. Parties and the Proposed Merger

12. Ticketmaster is a Delaware corporation headquartered in West Hollywood, California. It is the largest provider of primary ticketing to major concert venues and others in the United States and the world. In 2008, Ticketmaster sold more than 141 million tickets valued at over $8.9 billion on behalf of more than 10,000 clients worldwide and earned approximately $1.4 billion in gross revenues. Ticketmaster also owns a majority interest in Front Line Management Group, Inc., the largest artist management group in the country.

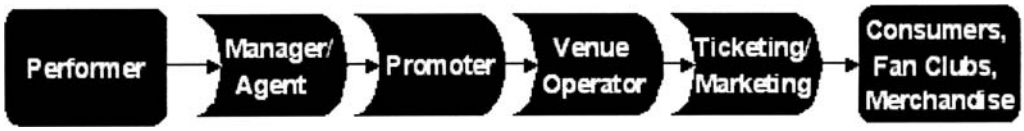
13. Live Nation is a Delaware corporation headquartered in Beverly Hills, California. It is the world's largest promoter of live concerts, with 2008 worldwide gross revenues of over $4 billion. Live Nation's North American Music business principally involves the promotion of live music events at Live Nation owned and/or operated venues and in rented third-party venues primarily in the United States and Canada. Live Nation also owns or operates over seventy-five live entertainment venues of various sizes in the United States. This includes eleven House of Blues ("HOB") venues around the country.

14. On February 10, 2009, Live Nation and Ticketmaster entered into a definitive merger agreement providing for an all-stock "merger of equals" transaction with a combined estimated enterprise value of $2.5 billion.

IV. Background

A. The Live Music Entertainment Industry

15. The components of the live music entertainment industry pertinent to this case are:



16. An artist manager serves as the "CEO" of a performer's business activities, advising in some or all phases of the performer's professional life (tours, appearances, recording deals, movies, advertising, etc.). Managers often are compensated based on a share of the performer's revenues or profits.

17. The artist manager often hires booking agents to assist in arranging a concert event or tour. The manager or booking agent contracts with promoters, such as Live Nation. Under such contracts, the promoter typically receives the proceeds from gross ticket receipts and then pays the performer, venue, and other expenses associated with the event. For example, the

promoter generally contracts with the venue (or uses its own venues), arranges for local production services, and advertises and markets the concert. The promoter bears the downside risk of an event if tickets sell poorly and reaps the upside benefit if tickets sell well.

18. Venue operators provide the facilities where the events will be held and often many of the associated services, such as concessions, parking, and security. Venues traditionally receive a fixed fee for hosting an event as well as proceeds from concessions, parking, and a share of merchandise sales (which may be controlled by the performer or promoter).

19. Ticketing companies such as Ticketmaster arrange with venues—and at times promoters—to provide primary ticketing services. They are responsible for distributing primary ticket inventory through channels such as the Internet, call centers, and retail outlets and for enabling the venue to sell tickets at its box office. The ticketing company provides the technology infrastructure for distribution. Primary ticketing firms also may provide technology and hardware that allow venues to manage fan entry at the event, including everything from handheld scanners that ushers use to check fans' tickets to the bar codes on the tickets themselves. In some cases, primary ticketing services are provided by the venue itself.

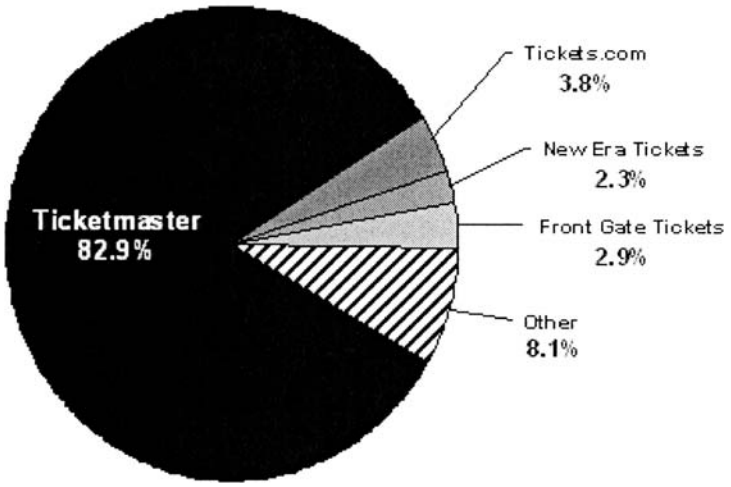
20. The overall price a consumer pays for a ticket generally includes the face value of the ticket and a variety of service fees above the face value of the ticket. Such fees are most often charged by the provider of primary ticketing services. Venues generally receive a split of the money from ticket service fees. Often described as "convenience," "processing," and "delivery" fees, these service fees can constitute a substantial portion of the overall cost of the ticket to the consumer.

B. Ticketmaster Dominates Primary Ticketing

21. Ticketmaster has dominated primary ticketing, including primary ticketing for major concert venues, for over two decades. It derives substantial revenues from ticketing for venues that host major concerts. Other companies seek to compete against Ticketmaster for primary ticketing to major concert venues, but none has been particularly successful. In fact, no other competitor (other than Live Nation) has more than a four percent share, while in 2008 Ticketmaster's share exceeded eighty percent among major concert venues. Plaintiffs have focused on the top 500 revenue generating venues in the United States as reported by Pollstar (referred to in this Complaint as "major concert venues"). Pollstar is a widely used third-party service that collects information on ticket sales. The pie chart below shows primary ticketers' shares of major concert venues, based on seating capacity:

Pre-Live Nation Entry

Share of Venue Capacity



22. High shares are not the only indicators of Ticketmaster's dominance. Ticketmaster's revenues are much greater than those of the next several largest primary ticketing service competitors (other than Live Nation). Moreover, while other primary ticketing competitors do compete against Ticketmaster for primary ticketing rights at venues, Ticketmaster has had very high renewal rates.

23. Ticketmaster's costs for distributing a ticket have been decreasing as consumers increasingly purchase tickets through the Internet. The cost-per-ticket to Ticketmaster for tickets sold through its Web site is significantly lower than the cost-per-ticket to Ticketmaster for tickets sold over the telephone or at a retail outlet. However, ticketing fees retained by Ticketmaster have not fallen as its distribution costs have declined.

C. Live Nation Decides To Enter Primary Ticketing

24. Prior to entering into primary ticketing, Live Nation had been using Ticketmaster as its primary ticketing provider for its venues and was Ticketmaster's largest customer. In late 2006, Live Nation concluded that it was unlikely to renew the Ticketmaster contract. Live Nation began considering other options for its primary ticketing needs, including operating its own

primary ticketing business to ticket its own venues and to expand the service to third-party venues.

25. On Dec. 20, 2007, Live Nation announced an agreement with CTS Eventim ("CTS"), the leading German primary ticketing provider. Under the agreement, Live Nation would use CTS technology to provide primary ticketing services to Live Nation's venues as well as third-party venues in the United States.

D. Live Nation Was a Competitive Threat to Ticketmaster

26. As a promoter, Live Nation's relationships with many third-party venues gave it the ability to offer third-party venues access to content. Live Nation believed that its prominence in promotions would give it immediate credibility in primary ticketing.

27. Live Nation was in a position to challenge Ticketmaster's dominance in primary ticketing due to its control of venues. Live Nation selects the primary ticketing provider for over seventy-five live entertainment venues in the United States and had been Ticketmaster's largest customer.

28. Live Nation also expected to compete on price with Ticketmaster. According to Live Nation, its concert promotion business operated on small margins, while Ticketmaster's margins from ticketing were substantially higher. Thus, entry into primary ticketing created an opportunity for Live Nation to increase its overall profit margin and disrupt Ticketmaster's business model by lowering service fees.

E. Live Nation Enters Primary Ticketing

29. Live Nation's strategy was to launch Live Nation ticketing for its own venues in 2008, and then in late 2009 and early 2010 seek to compete for third-party ticketing contracts.

30. Even before launching its ticketing platform, however, Live Nation began competing with Ticketmaster to win primary ticketing contracts for third-party venues. In September 2008, Live Nation signed a multi-year ticketing agreement with SMG, the world's largest venue management company, whereby it would have certain rights to ticket SMG-managed venues as each venue's Ticketmaster contract ended.

31. Using its promotion business as a stepping stone, Live Nation also began competing with Ticketmaster for the primary ticketing contracts for other venues. This was met with some early successes. For example, in October 2008, Live Nation won the ticketing contract at the Roseland Ballroom in New York City.

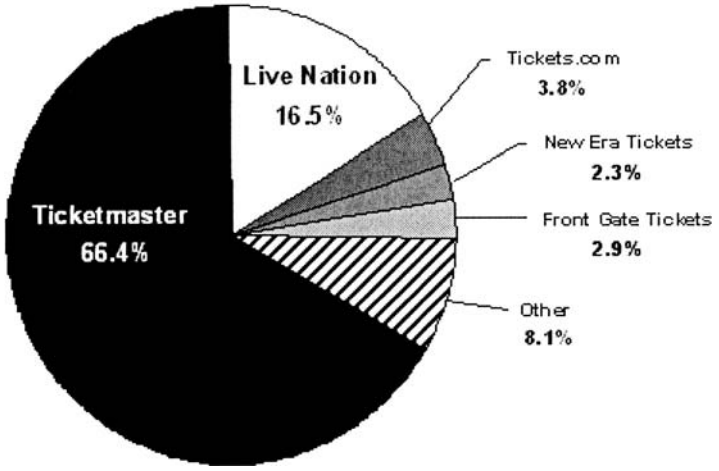
32. Live Nation began selling tickets for its own and third-party venues on December 22, 2008. Almost overnight, Live Nation became the second-largest provider of primary ticketing in the United States.

33. On February 10, 2009, Live Nation and Ticketmaster entered into a definitive merger agreement.

34. Live Nation has sold millions of tickets using the CTS system. The pie chart below shows primary ticketers' shares of major concert venues, based on seating capacity, following Live Nation's entry into primary ticketing.

Post-Live Nation Entry

Share of Venue Capacity



V. Relevant Market

35. Primary ticketing services are sold pursuant to terms individually negotiated with customers. The customers most directly and adversely affected by the merger are major concert venues, which generate substantial income from live music events. Major concert venues that generate substantial income from live music events can be readily identified, and market power can be selectively exercised against them, because there is no reasonable substitute service to which the customers could turn. Nor can these customers engage in arbitrage. The provision of primary ticketing services to major concert venues is a relevant price discrimination market and "line of commerce" within the meaning of Section 7 of the Clayton Act. *See* U.S. Dep't of Justice, Horizontal Merger Guidelines § 1.12 (1997).

36. The United States is the relevant geographic scope of the market. Major concert venues purchasing primary ticketing services are located throughout the United States.

VI. Anticompetitive Effects

37. A combination of Ticketmaster and Live Nation would lead to a high share among providers of primary ticketing for major concert venues. The set of customers most likely to be affected by the merger of Ticketmaster and Live Nation are major concert venues. Ticketmaster has the vast share

of this primary ticketing business. As described in the pie chart in ¶ 21, before Live Nation entered primary ticketing, Ticketmaster had an eighty-two percent share. The next largest share was Tickets.com at less than four percent. As depicted in the pie chart in ¶ 34, with Live Nation ticketing its own venues and some third-party venues, Ticketmaster's share in this same group is reduced to sixty-six percent and Live Nation becomes the second largest ticketer with a sixteen percent share more than four times larger than Tickets.com.

38. The market for primary ticketing for major concert venues is highly concentrated. The proposed merger will further increase the degree of concentration to levels raising serious antitrust concerns as described in the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *Id.* § 1.51.

39. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), defined and explained in Appendix A, the post-acquisition HHIs increase by over 2,190 points, resulting in a post-acquisition HHI of over 6,900.

40. The merger of Ticketmaster and Live Nation would eliminate Live Nation's competitive presence in the market for the provision of primary ticketing services for major concert venues, resulting in less aggressive competition, less pressure on the fees earned by Ticketmaster, and less innovation for venues and fans than would exist absent the merger. The proposed merger came at a time when Live Nation was just starting to make a competitive impact. Live Nation's ability to begin to attract third-party venues and stated intentions to compete on price likely would have resulted in increasingly competitive pricing and better services to major concert venues and consumers in the future. The proposed merger is likely to lessen competition for primary ticketing services for major concert venues.

41. The proposed merger will also reduce the merged firm's incentive to innovate and improve their respective primary ticketing services. Ticketing innovations are less likely to occur in a post-merger world in which Ticketmaster's dominance will continue and Live Nation's ticketing service has been shuttered. Notably, the benefits of quality enhancements and product variety that flow from experimentation would be far less likely to take place.

VII. Absence of Countervailing Factors

42. Supply responses from competitors or potential competitors will not prevent likely anticompetitive effects of the proposed merger. The merged firm would possess significant advantages that any new or existing competitor would have to overcome to successfully compete with the merged firm.

43. Ticketmaster has historically possessed competitive advantages. As a result, small ticketing firms have been limited in their ability to compete. With the merger, additional entry barriers are emerging. The merged firm's promotion and artist management businesses provide an additional challenge that small ticketing companies will now have to overcome. The ability to use its content as an inducement was the point that Live Nation touted as the basis on which Live Nation could challenge Ticketmaster in ticketing.

44. No existing ticketing company or likely entrant possesses the combination of attributes to prevent the selective exercise of market power over the major concert venues by the merged firm. New entry into the provision and sale of primary ticketing services is costly and time-consuming. Major concert venues require primary ticketing services to be provided in the United States by service personnel located in the United States. It would take a new entrant a substantial investment of money and over two years to develop the combination of comparable characteristics necessary to compete with the merged firm in primary ticketing. New entry is not likely to occur in a timely or sufficient basis to prevent the anticompetitive effects that would otherwise result from the merger of Ticketmaster and Live Nation.

VIII. Violation Alleged

(Violation of Section 7 of the Clayton Act)

45. The United States and the Plaintiff States incorporate the allegations of paragraphs 1 through 44 above.

46. The proposed merger of Ticketmaster and Live Nation would likely substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act in the provision and sale of primary ticketing services for major concert venues. 15 U.S.C. 18.

47. The proposed merger threatens to reduce competition in a number of ways, including, among others:

a. Eliminating the head-to-head competition between the merging parties;

b. reducing the incentives of the merging parties to innovate and improve their primary ticketing services, including the loss of the increased opportunity for innovation from a firm engaged in experimentation in primary ticketing;

c. impairing the ability of venue customers to benefit from competition between these firms, including competition based on price, terms, quality, service, and innovation; and

d. impairing the ability of consumers to benefit from competition between these firms, including competition based on price, terms, quality, service, and innovation.

48. The proposed merger of Ticketmaster and Live Nation likely will have the following effects:

a. actual and potential competition between Ticketmaster and Live Nation in the provision and sale of primary ticketing services for major concert venues will be eliminated; and

b. competition generally in the market for primary ticketing for major concert venues would be substantially lessened.

Requested Relief

49. The United States and the Plaintiff States request that:

a. The proposed merger of Ticketmaster and Live Nation be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Ticketmaster and Live Nation be enjoined from carrying out the proposed merger or carrying out any other agreement, understanding, or plan by which Ticketmaster and Live Nation would acquire, be acquired by, or merge with each other;

c. the United States and Plaintiff States be awarded their costs of this action;

d. the Plaintiff States be awarded their reasonable attorneys' fees; and

e. the United States and Plaintiff States receive such other and further relief as the case requires and the Court deems just and proper.

Dated: January 25, 2010.

Respectfully submitted,

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Appendix A

Definition of HHI

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

Certificate of Service

I, Aaron Hoag, hereby certify that on January 25, 2010, I caused a copy of the Complaint and attached Exhibits to be served on defendants Ticketmaster Entertainment, Inc., and Live Nation, Inc., by mailing the documents via E-mail to the duly authorized legal representatives of the defendants, as follows:

For Ticketmaster Entertainment, Inc. M., Sean Royall, Esq., Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036, Tel: (202) 955–8546, Fax: (202) 467–0539, E-mail: *SRoyall@gibsondunn.com.*

For Live Nation, Inc., Michael Egge, Esq., Latham & Watkins LLP 555 Eleventh Street, NW., Washington, DC 20004, Tel: (202) 637–2200, Fax: (202) 637–2201 E–Mail: *michael.egge@LW.com.*

Aaron D. Hoag, Esq., *Attorney,* U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530, Telephone: (202) 514–5038, Fax: (202) 514–7308, E-Mail: *aaron.hoag@usdoj.gov.*

United States District Court for the District of Columbia

United States of America, *et al., Plaintiffs,* v. Ticketmaster Entertainment, Inc. and Live Nation, Inc., *Defendants.*

Case: 1–10–cv–00139.

Date Filed: January 25, 2010.

[Proposed] Final Judgment

Whereas, plaintiffs, United States of America, and the States of Arizona, Arkansas, California, Florida, Illinois, Iowa, Louisiana, Nebraska, Nevada, Ohio, Oregon, Rhode Island, Tennessee, Texas, and Wisconsin, and the Commonwealths of Massachusetts and Pennsylvania ("Plaintiff States") filed their Complaint on January 25, 2010, the United States, Plaintiff States, and defendants, Ticketmaster Entertainment, Inc. and Live Nation, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants and the imposition of certain conduct restrictions on defendants, to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged* and *decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "AEG" means Anschutz Entertainment Group, Inc., a company with its headquarters in Los Angeles, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Acquirer" or "Acquirers" means the entity or entities to whom defendants divest the Divestiture Assets.

C. "Client Ticketing Data" means financial data relating to a ticketing client's events including on-sale dates for a client's events, the number of tickets sold for the specific event, the proceeds from those sales for a specific event, ticket inventory that is made available on the Ticketmaster system, the number and location of tickets that are sold, the amount for which the tickets are sold, pricing, marketing and promotions run for the event, the sales as a result of the marketing or promotions, and the status of the ticket inventory. "Client ticketing data" does not include data that Defendants collect through other means (*e.g.,* Web site tracking, user group surveys, public sources). Client Ticketing Data does not include data that is made public by a client or third party.

D. "Comcast-Spectacor" means Comcast-Spectacor, L.P., a company with its headquarters in Philadelphia, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Condition" means to explicitly or practically require buyers to take one product or set of services if they want to obtain a second product or set of services. In the absence of explicit conditioning, providing the buyer with an opportunity to buy the two products or sets of services separately is only conditioning if no reasonable buyer would be expected to accept the terms of the separate offers.

F. "Covered Employee" means any employee of Defendants whose principal job responsibility involves the operation or day-to-day management of Defendants' venues, concert promotions, or artist management services.

G. "Defendants" means either defendant acting individually or both defendants acting collectively, as appropriate. Where the Final Judgment imposes an obligation to engage in or refrain from engaging in certain conduct, that obligation shall apply as broadly as reasonable to each defendant

individually, both defendants acting together, and the merged firm.

H. "Divestiture Assets" means the Ticketmaster Host Platform (via the binding agreement to license and to provide private label ticketing services to the Ticketmaster Host Platform Acquirer as required in Section IV.A) and Paciolan.

I. "Exempted Employee" means any employee of Defendants who is not a Covered Employee, including: (a) Any senior corporate officer, director or manager with responsibilities that include oversight of Defendants' provision of Primary Ticketing Services; and (b) any employee whose primary responsibilities solely include accounting, human resources, legal, information systems, and/or finance.

J. "Live Entertainment Event" means a live music concert for which tickets are sold to the public.

K. "Live Nation" means defendant Live Nation, Inc., a Delaware corporation with its headquarters in Beverly Hills, California, its successors and assigns, and its subsidiaries (whether partially or wholly owned), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

L. "Merger" means the merger of Ticketmaster and Live Nation.

M. "Paciolan" means Paciolan, Inc., a Delaware corporation which is engaged in the provision of ticketing services to venues or other organizations under the Paciolan or Ticketmaster Irvine names, and which includes:

1. All tangible assets that comprise the Paciolan line of business, including servers and other computer hardware; research and development activities; all fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used exclusively in connection with Paciolan; all licenses, permits and authorizations issued by any governmental organization relating to Paciolan; all contracts, teaming arrangements, agreements, leases (including the lease to the Paciolan headquarters in Irvine, California), commitments, certifications, and understandings, relating to Paciolan, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to Paciolan;

2. All intangible assets used in the development, distribution, production, servicing and sale of Paciolan, including, but not limited to, all patents, contractual rights (including contractual rights to provide ticketing services and employment contracts), licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development relating to Paciolan, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to Paciolan, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments. Preexisting commitments to transfer contractual rights from Paciolan to another entity that are specifically identified in the Paciolan sales agreement are excluded from this definition.

N. "Paciolan Acquirer" means the entity to whom defendants divest Paciolan.

O. "Primary Ticketing Services" means a collection of services provided to venues or other customers to enable the initial sale of tickets for live entertainment events directly to customers and enable the validation of tickets at the venue to control access to the event.

P. "Provide Live Entertainment Events" and "Provision of Live Entertainment Events" mean services reasonably necessary to plan, promote, market and settle a Live Entertainment Event, including but not limited to concert promotion services provided by firms such as Live Nation and the provision of artists managed by firms such as Front Line. The Promotion of Live Entertainment Events specifically does not include the provision of primary ticketing services, venue management services and/or tour design and construction services.

Q. "Retaliate" means refusing to Provide Live Entertainment Events to a Venue Owner, or Providing Live Entertainment Events to a Venue Owner on less favorable terms, for the purpose of punishing or disciplining a Venue Owner because the Venue Owner has contracted or is contemplating contracting with a company other than Defendants for Primary Ticketing Services. The term "Retaliate" does not mean pursuing a more advantageous deal with a competing Venue Owner.

R. "Ticket Buyer Data" means non-public identifying information for ticket buyers for a specific event (including, if provided, the buyer's name, phone number, e-mail address, and mailing address) that Defendants collect in the course of providing a ticketing client's Primary Ticketing Services. Ticket Buyer Data does not include data that Defendants collect solely through other means (*e.g.,* Web site tracking, user group surveys, public sources).

S. "Ticketmaster" means defendant Ticketmaster Entertainment, Inc., a Delaware corporation with its headquarters in West Hollywood, California, its successors and assigns, and its subsidiaries (whether partially or wholly owned), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

T. "Ticketmaster Host Platform" means the primary Ticketmaster software used by Ticketmaster to sell primary tickets in the United States. The Ticketmaster Host Platform includes the following software: Ticketmaster Classic Ticketing System (also called Ticketmaster Host); Ticketmaster.com full Web site package; Access Management; payment processing and settlements; and PCI point of sale system (for phone and outlets).

U. "Ticketmaster Host Platform Acquirer" means AEG, the entity with whom defendants will enter into a binding agreement to license the Ticketmaster Host Platform.

V. "Venue Owner" means a person or company that owns, operates, or manages one or more venues that host Live Entertainment Events.

III. Applicability

A. This Final Judgment applies to Ticketmaster and Live Nation, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestiture

A. Defendants are ordered and directed not to consummate the Merger

until they have entered into a binding agreement to license the Ticketmaster Host Platform to the Ticketmaster Host Platform Acquirer and to provide private label ticketing services to the Ticketmaster Host Platform Acquirer in a manner consistent with this Final Judgment and with the following terms and conditions:

1. The agreement shall include the option, exercisable at the discretion of the Ticketmaster Host Platform Acquirer, to acquire a non-exclusive, perpetual, fully paid-up license to the Ticketmaster Host Platform. The license shall include a copy of the source code of the Ticketmaster Host Platform and shall permit the Ticketmaster Host Platform Acquirer to modify the software in any manner without limitation and without any requirement to license back any improvements to Defendants. If the option is exercised, Defendants shall promptly begin the installation of a fully functional ticketing system and Web site in the facilities of the Ticketmaster Host Platform Acquirer and shall complete the installation within a reasonable time pursuant to a schedule subject to approval by the United States, after consultation with Plaintiff States. Defendants shall warrant that the system is current as of the time of installation and operational for use in providing Primary Ticketing Services. Defendants shall provide reasonable training and support to enable the Ticketmaster Host Platform Acquirer to operate the software and to understand the source code so that it can make independent changes to the code. The license shall permit the Ticketmaster Host Platform Acquirer to transfer the license following the complete installation of the Ticketmaster Host Platform. The scope of use of the license shall be at least the United States.

2. The agreement shall include a private label ticketing agreement pursuant to which Ticketmaster shall provide private label ticketing services to the Ticketmaster Host Platform Acquirer for a period of no more than five years from the date of execution of the license. The private label ticketing agreement shall be on such reasonable terms and conditions that will enable the Ticketmaster Host Platform Acquirer to compete effectively against Ticketmaster to secure contracts for the provision of Primary Ticketing Services. The private label ticketing agreement shall give the Ticketmaster Host Platform Acquirer all control over the ticketing fees charged individual consumers or clients of the Ticketmaster Host Platform Acquirer for tickets sold pursuant to the agreement and Defendants shall have no right or ability to set these ticketing fees. Ticketmaster shall, at the request of the Ticketmaster Host Platform Acquirer, post on the main Ticketmaster public Web site links to events sold under the private label ticketing agreement, subject to reasonable, non-discriminatory, and customary terms and conditions. Ticketmaster shall customize a separate Web site for the Ticketmaster Host Platform Acquirer with branding, look, and feel to be determined by the Ticketmaster Host Platform Acquirer. The private label ticketing services as described in this Section shall be operational within six months from the date that the binding agreement to license Ticketmaster Host Platform becomes effective.

B. Defendants shall implement the Ticketmaster Host Platform binding agreement required by Section IV.A and any resulting Ticketmaster Host Platform license in a manner consistent with the terms of Section IV.A. Defendants shall comply with the terms of the Ticketmaster Host Platform binding agreement required by Section IV.A and any resulting Ticketmaster Host Platform license, provided that nothing in the Ticketmaster Host Platform binding agreement or resulting Ticketmaster Host Platform license can relieve Defendants of any obligations imposed by this Final Judgment.

C. Defendants shall, as soon as possible, but within one business day after completion of the relevant event, notify the United States and Plaintiff States of: (1) The effective date of the Merger and (2) the effective date of the binding agreement to license to the Ticketmaster Host Platform Acquirer.

D. If the Ticketmaster Host Platform Acquirer exercises its option to license the Ticketmaster Host Platform, Defendants shall waive any non-compete agreements that would prevent any employee of Defendants whose primary responsibility is the development or operation of the Ticketmaster Host Platform from joining the Ticketmaster Host Platform Acquirer.

E. Defendants are ordered and directed, concurrently with the closing of the Merger, to enter into a Letter of Intent to divest Paciolan to Comcast-Spectacor in a manner consistent with this Final Judgment. Within sixty (60) calendar days of closing the Merger, Defendants shall complete the divestiture of Paciolan in a manner consistent with this Final Judgment to Comcast-Spectacor or an alternative Acquirer acceptable to the United States, in its sole discretion, after consultation with Plaintiff States. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

F. Defendants shall provide the United States and the Paciolan Acquirer information relating to the personnel involved in the production, operation, development and sale of Paciolan at any time since Ticketmaster acquired Paciolan to enable the Paciolan Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Paciolan Acquirer to employ any defendant employee whose primary responsibility is the production, operation, development, and sale of Paciolan, and shall waive any non-compete agreements that would prevent any such employee from joining the Paciolan Acquirer. Nothing in this Section shall prohibit defendants from making offers of continued employment to, continuing to employ, or continuing to use the services of any of their employees, including personnel involved in the production, operation, development and marketing of Paciolan and its ticketing system, subject to the overarching limitation that the agreement to sell Paciolan to the Paciolan Acquirer must ensure that the Paciolan Acquirer will be able to adequately staff Paciolan in a manner that enables the Paciolan Acquirer to successfully compete as a provider of Primary Ticketing Services, as determined by United States in its sole discretion. In addition, nothing in this Section shall prohibit defendants from maintaining any reasonable restrictions on the disclosure by an employee who accepts an offer of employment with the Paciolan Acquirer of the defendants' proprietary non-public information that is (1) not otherwise required to be disclosed by this Final Judgment, (2) related solely to the defendants' businesses and clients, and (3) not related to the production, operation, development, and marketing of Paciolan and its ticketing system.

G. Defendants shall permit the Paciolan Acquirer to have reasonable access to personnel and to make inspections of the physical facilities of Paciolan; access to any and all environmental, zoning, and other permit documents and information; access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

H. Defendants shall warrant to the Paciolan Acquirer that each asset it acquires will be operational on the date of sale.

I. Defendants shall warrant to the Paciolan Acquirer that there are no material defects in the environmental,

zoning, or other permits pertaining to the operation of Paciolan, and that following the sale of Paciolan, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of Paciolan.

J. Defendants shall not take any action that will impede in any way the permitting, operation, use, or divestiture of the Divestiture Assets.

K. Unless the United States otherwise consents in writing, after consultation with Plaintiff States, the divestitures pursuant to Section IV of this Final Judgment shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with Plaintiff States, that the Divestiture Assets can and will be used by the Acquirer(s) as part of a viable, ongoing business, engaged in providing Primary Ticketing Services. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States, after consultation with Plaintiff States, that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

1. shall be made to an Acquirer(s) that, in the United States's sole judgment, after consultation with Plaintiff States, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of providing Primary Ticketing Services; and

2. shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with Plaintiff States, that none of the terms of any agreement between an Acquirer(s) and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee To Effect Divestiture

A. If Defendants have not divested Paciolan as specified in Section IV.E, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to divest Paciolan in a manner consistent with this Final Judgment. Defendants consent to appointment of a trustee prior to entry of this Final Judgment if Paciolan has not been divested within the time periods provided in Section IV.E.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Paciolan. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, after consultation with Plaintiff States, at such cash price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate.

C. Subject to Section V.E of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

D. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

E. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of Paciolan and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

F. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, including any information provided to the United States during its investigation of the merger related to the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

G. After its appointment, the trustee shall file monthly reports with the United States, Plaintiff States, and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Paciolan, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest Paciolan.

H. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants shall notify the United States and Plaintiff States of any proposed divestiture required by Section IV of this Final Judgment. Within two (2) business days following execution of a definitive divestiture agreement, the trustee shall notify the United States and Plaintiff

States of any proposed divestiture required by Section V of this Final Judgment. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in Paciolan, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States and Plaintiff States of such notice, the United States may request from defendants, the proposed Acquirer(s), any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States and Plaintiff States has been provided the additional information requested from defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States, after consultation with Plaintiff States, provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V.C of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V.D, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Anti-Retaliation Provision and Other Provisions Designed To Promote Competition

A. Defendants shall not:

1. Retaliate against a Venue Owner because it is known to Defendants that the Venue Owner is or is contemplating contracting with a company other than Defendants for Primary Ticketing Services;

2. Condition or threaten to Condition the Provision of Live Entertainment Events to a Venue Owner based on that Venue Owner refraining from contracting with a company other than Defendants for Primary Ticketing Services; or

3. Condition or threaten to Condition the provision of Primary Ticketing Services to a Venue Owner based on that Venue Owner refraining from contracting with a company other than Defendants for the Provision of Live Entertainment Events.

Nothing in this Section prevents Defendants from bundling their services and products in any combination or from exercising their own business judgment in whether and how to pursue, develop, expand, or compete for any ticketing, venue, promotions, artist management, or any other business, so long as Defendants do so in a manner that is not inconsistent with the provisions of this Section.

Evidence that Defendants do or do not (a) bid for, contract with, win, or retain a venue, artist, or promoter as a client, and/or (b) promote a show or shows in particular buildings or group of buildings (even where similar shows historically have been promoted in those buildings) is not alone sufficient to establish, or create a presumption of, a violation of this Section.

B. Defendants shall not disclose to any Covered Employee any Client Ticketing Data. Defendants however: (1) May disclose Client Ticketing Data concerning a specific event to any Covered Employee involved in the promotion of that event or the management of the artist who performed at that event, if it does so on the same terms it generally provides such information to other promoters or artist managers not affiliated with Defendants; (2) may disclose Client Ticketing Data to an Exempted Employee who requires the information in order to perform his or her job function(s); provided however, that such Exempted Employee may not use Client Ticketing Data to perform any job function(s) that primarily involve(s) the day-to-day operation or management of Defendants' venues, concert promotions, or artist management services; and (3) may disclose Client Ticketing Data to any Defendant employee where so required by law, government regulation, legal process, or court order, so long as such disclosure is limited to fulfillment of that purpose.

C. If any client of Defendants' primary ticketing services chooses not to renew a contract for Primary Ticketing Services with Defendants for some or all of its venues, upon the expiration of that contract and the written request of the client, Defendants shall within forty-five (45) days provide the client with a complete copy of all Client Ticketing Data and all Ticket Buyer Data historically maintained by Defendants for such venue(s) in the ordinary course of business, in a form that is reasonably usable by the client. Nothing in this provision shall be read to: (1) Alter any rights Defendants would otherwise have to Client Ticketing Data or Ticket Buyer Data pursuant to the Primary Ticketing Services contract with the client, and/or its historical custom, practice, and course of dealing with the client; or (2) limit any rights the client would otherwise have to its Client Ticketing Data or Ticket Buyer Data pursuant to the Primary Ticketing Services contract with Defendants and/or its historical custom, practice, and course of dealing with Defendants. Defendants shall maintain Client Ticketing Data and Ticket Buyer Data on behalf of its clients for no less than three (3) years. This provision only applies to contracts for Primary Ticketing Services in effect prior to the entry of this Final Judgment.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or Section V, defendants shall deliver to the United States and Plaintiff States an affidavit as to the fact and manner of its compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide

required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States, after consultation with Plaintiff States, to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Every two (2) months prior to the private label ticketing agreement described in Section IV.A.2 becoming operational, and every six (6) months thereafter, defendants shall deliver to the United States and Plaintiff States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IV.A and the terms of Ticketmaster Host Platform binding agreement.

C. Defendants shall, in addition, deliver to the United States and Plaintiff States an affidavit describing any revised or amended agreements with the Ticketmaster Host Platform Acquirer relating to the agreement required by Section IV.A. Such notice shall be delivered to the United States and Plaintiff States at least fifteen (15) calendar days prior to the effective date of the revised or amended agreement and Defendants shall not implement any amended agreement if the United States, after consultation with Plaintiff States, objects during the fifteen (15) day notice period.

D. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States and Plaintiff States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States and Plaintiff States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change if implemented.

E. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested. Written reports authorized under this paragraph may, at the sole discretion of the United States, require Defendants to conduct, at Defendants' cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, or the Attorney General's Office of any other plaintiff, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. Notification

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), defendants, without providing advance notification to the United States and Plaintiff States, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in the United States in providing Primary Ticketing Services during the term of this Final Judgment.

Such notification shall be provided to the United States and Plaintiff States in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the United States make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XIII. No Reacquisition

A. Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

B. Following the expiration of the private label ticketing agreement with the Ticketmaster Host Platform Acquirer required by Section IV.A.2: (1)

Defendants shall not provide Primary Ticketing Services to any venues in North America for which, by virtue of an ownership interest, the Ticketmaster Host Platform Acquirer controls the rights to select the Primary Ticketing Services provider; and (2) for all other venues in North America, Defendants shall not provide Primary Ticketing Services on behalf of or pursuant to a ticketing contract with the Ticketmaster Host Platform Acquirer. Nothing in this Section shall prevent Defendants from: (1) Competing to provide Primary Ticketing Services to venues (including such venues managed by the Ticketmaster Host Platform Acquirer) other than those for which, by virtue of an ownership interest, the Ticketmaster Host Platform Acquirer controls the rights to select the Primary Ticketing Services provider; and (2) providing Primary Ticketing Services to artist fan clubs in venues owned, operated, or managed by the Ticketmaster Host Platform Acquirer.

XIV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XVI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16:
United States District Judge

United States District Court for the District of Columbia

United States of America, et al., Plaintiffs, v. Ticketmaster Entertainment, Inc. and Live Nation, Inc., Defendants.

Case: 1:10–cv–00139

Assigned to: Collyer, Rosemary M.

Assign. Date: 1/25/2010

Description: Antitrust

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendant Ticketmaster Entertainment, Inc. ("Ticketmaster") and Defendant Live Nation, Inc. ("Live Nation") entered into an agreement, dated February 10, 2009, pursuant to which they would merge into a new entity to be known as Live Nation Entertainment. The United States, and the States of Arizona, Arkansas, California, Florida, Illinois, Iowa, Louisiana, Nebraska, Nevada, Ohio, Oregon, Rhode Island, Tennessee, Texas, and Wisconsin, and the Commonwealths of Massachusetts and Pennsylvania filed a civil antitrust Complaint on January 25, 2010, seeking to enjoin the proposed transaction because its likely effect would be to lessen competition substantially for primary ticketing services to major concert venues located in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in higher prices for and less innovation in primary ticketing services. At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to grant a perpetual license to their Host platform and to divest their entire Paciolan business in order to establish two independent ticketing companies capable of competing effectively with the merged entity. The Final Judgment also prohibits Defendants from engaging in certain conduct that would prevent equally efficient firms from competing effectively. Under the terms of the Hold Separate, Ticketmaster will take certain steps to ensure that the Paciolan business is operated as a competitively independent, economically viable and ongoing business concern that will remain independent and uninfluenced by the consummation of the transaction and to ensure that competition is maintained during the pendency of the ordered divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish and remedy violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Concert Industry

Staging concerts traditionally has required the participation of several parties. *Artists* provide the entertainment that makes the concert possible. *Managers* and/or *agents* represent artists in negotiations to establish the commercial terms on which artists will perform. *Promoters* contract with artists to perform at particular concerts, assume the financial risk of staging the concerts, make the arrangements for the concerts to occur at certain times and places, and market the concerts. *Venues* are the physical locations where concerts occur, and venues' owners, operators, or managers usually arrange for the sale of tickets to concerts at their venues. *Primary ticketing companies* provide services such as Web sites, call centers, and retail networks from which tickets may be purchased that facilitate the initial sale of tickets to concertgoers.[1] Contracts between venues and primary ticketing companies are individually negotiated. In a typical contract, a venue agrees to use one primary ticketing company as its exclusive service provider for several years. In exchange, the primary ticketing company often agrees to pay to the venue a portion of the fees that the primary ticketing company charges to concertgoers who purchase tickets to events at the venue. The primary ticketing company also may agree to pay an up-front bonus or advance upon execution of the contract. Primary ticketing contracts typically prohibit venues from reselling the primary ticketing services they receive.

B. The Defendants and the Proposed Transaction

Ticketmaster is the largest primary ticketing company in the United States. In 2008, Ticketmaster earned gross

revenues of about $800 million from its U.S. primary ticketing business. Ticketmaster offers two principal primary ticketing products to venues: (1) Host, a Ticketmaster-managed platform for selling tickets through Ticketmaster's Web site and other sales channels; and (2) Paciolan, a venue-managed platform for selling tickets through the venue's own Web site and other sales channels. In 2008, Ticketmaster provided primary ticketing services to venues representing more than 80% of major concert venues.[2] In addition to its primary ticketing operations, Ticketmaster expanded into the artist management business in 2008 by acquiring a controlling interest in Front Line Management Group Inc. ("Front Line"), an important artist management firm with clients such as the Eagles, Neil Diamond, Jimmy Buffett, Christina Aguilera and John Mayer.

Live Nation is the largest concert promoter in the United States, earning more than $1.3 billion in revenue from its U.S. promotions business in 2008 and promoting shows representing 33% of the concert revenues at major concert venues in 2008. Live Nation has entered long-term partnerships with several popular artists including Madonna and Jay-Z to exclusively promote their concerts, sell recordings of their music, and market artist-branded merchandise such as T-shirts. Live Nation also owns or operates about 70 major concert venues throughout the United States. And as explained further below, Live Nation entered the market for primary ticketing services in late December 2008.

On February 10, 2009, less than two months after its entry into primary ticketing, Live Nation agreed to merge with Ticketmaster. That proposed transaction would substantially lessen competition and is the subject of the Complaint and proposed Final Judgment filed by the United States in this matter.

C. The Market for Primary Ticketing Services to Major Concert Venues in the United States

Antitrust law, including Section 7 of the Clayton Act, protects consumers from anticompetitive conduct, such as firms' acquisition of the ability to raise prices above levels that would prevail in a competitive market. Market definition assists antitrust analysis by focusing attention on the relevant portions of the economy where competitive effects are likely to be felt. Well-defined markets encompass the economic actors including both sellers and buyers whose conduct most strongly influences the nature and magnitude of competitive effects. To ensure that antitrust analysis takes account of a broad enough set of products to evaluate whether a transaction is likely to lead to a substantial lessening of competition, defining relevant markets in horizontal merger cases frequently begins by identifying a collection of products or set of services over which a hypothetical monopolist profitably could impose a small but significant and non-transitory increase in price. Here, the United States investigation revealed that major concert venues would have no alternatives to primary ticketing services if prices were to rise significantly above the levels that would have prevailed but for the proposed transaction, so the hypothetical-monopolist test would exclude all other products or services from the relevant market. But that is not the end of the market-definition exercise.

When sellers are unable to set different terms of sale for different buyers, all buyers will face similar competitive effects, and a relevant product market properly (if implicitly) encompasses not only all sellers of the relevant product, but all buyers as well. But when different buyers may experience different competitive effects, a well-defined product market encompassing fewer than all buyers can focus antitrust analysis appropriately on those buyers most vulnerable to suffering probable and significant competitive harm. It also avoids conflating in that analysis those buyers whose prices are likely to be significantly affected with others who are unlikely to be harmed substantially.

One situation in which different buyers experience different effects involves price discrimination, such as when sellers are able to charge different prices to different buyers for equivalent products. Sellers can price discriminate when they are able to identify and target vulnerable buyers for price increases and when buyers facing low prices cannot resell to those facing higher prices. Both conditions are present here. Venues and primary ticketing companies individually negotiate their contracts, and the terms of those contracts typically make it impossible for venues to resell (arbitrage) primary ticketing services.

Because primary ticketing companies can price discriminate among different venues, the proposed transaction could affect different classes of venues differently, and antitrust analysis requires attention to those venues with few alternative primary ticketing providers to Ticketmaster and Live Nation because, if the proposed transaction were consummated, their real-world choices would be reduced differently than would be other venues' options. Major concert venues require more sophisticated primary ticketing services than other venues, so each tends to select a primary ticketing company with an established reputation for providing good service to similar venues. Ticketmaster has shown that its primary ticketing platform is able to withstand the heavy transaction volume associated with the first hours when tickets to popular concerts become available to concertgoers ("high-volume on-sales"), offers integrated marketing capabilities, and otherwise provides proven, high-quality service to venues. When the proposed transaction was announced, Live Nation was building experience selling tickets to concerts at its own venues as a way to demonstrate to other venues that its primary ticketing platform also performed well. No primary ticketing company other than Ticketmaster and Live Nation has amassed or likely could have amassed in the near term sufficient scale to develop a reputation for successfully delivering similarly sophisticated primary ticketing services. Additionally, Live Nation planned to compete for primary ticketing contracts with major concert venues, but had less interest in serving non-concert venues outside its historically core concert expertise. Because they would have no equally attractive alternative primary ticketing provider to the merged firm, and because they would have benefited more from competition between Ticketmaster and Live Nation, major concert venues are more vulnerable than smaller venues to anticompetitive harms caused by the proposed transaction, and a well-defined relevant market should not encompass customers other than major concert venues. For example, a high school that hires a student to sell tickets to one of its musical productions could be said to be buying "primary ticketing services," but the relevant market can exclude such other venues because there is no significant risk that sales to them would affect Defendants' ability to exercise market power over major concert venues.

Antitrust analysis also must consider the geographic dimensions of competition. Section 7 protects against harm to competition "in any section of the country." 15 U.S.C. 18. Here, domestic anticompetitive harms would be experienced by major concert venues located throughout the United States. Because the merged firm could price discriminate, any effects of the proposed transaction on foreign venues would be

distinct from any effects on domestic venues. Thus, including only major concert venues located in the United States within the relevant market poses no risk of omitting buyers whose inclusion would significantly alter the antitrust analysis.[3]

In short, the sale of primary ticketing services to major concert venues in the United States is a well-defined relevant market for the purpose of analyzing the effects of the proposed transaction.

D. The Competitive Effects of the Proposed Transaction

Until 2009, Ticketmaster dominated the market for primary ticketing services to major concert venues in the United States with greater than 80% market share. The only other primary ticketing companies with greater than a 1% share in 2008 were Tickets.com (4%), Front Gate Tickets (3%), New Era Tickets (2%), Live Nation (2%),[4] and Tessitura (1%). Ticketmaster's largest customer for primary ticketing services was Live Nation, the owner or operator of venues representing about 15% of capacity at all major concert venues in the United States in 2008. Ticketmaster renews its primary ticketing contracts at a very high rate. Even though Ticketmaster's distribution costs have declined dramatically as concertgoers have shifted their purchases toward the Internet and away from traditional sales channels, the ticketing fees retained by Ticketmaster have not fallen, and Ticketmaster has continued to enjoy large profit margins on its primary ticketing business for many years.

These margins have persisted because they are protected by high barriers to other companies successfully, substantially, and profitably entering or attempting to expand in the market for primary ticketing services to major concert venues. First, the platforms required to provide primary ticketing services to major concert venues are technologically complicated and expensive to develop and deploy. Second, major concert venues are reluctant to enter long-term exclusive contracts with new primary ticketing companies because they lack Ticketmaster's established reputation for capably handling high-volume on-sales and providing high-quality service to venues. Third, the costs of installing and training employees to use new equipment make it expensive for venues to switch between primary ticketing companies. Fourth, because there are high fixed costs to develop and maintain a primary ticketing platform, entrants struggle to obtain sufficient scale to compete successfully with Ticketmaster on price. Fifth, Ticketmaster's scale provides another important incumbent advantage over other firms extensive data about individual concertgoers collected over many years. Ticketmaster can use that data as a powerful marketing tool to secure venue contracts for primary ticketing services. Sixth, Ticketmaster's practice of signing long-term exclusive contracts with venues limits how quickly other firms can amass sufficient scale to compete effectively with Ticketmaster on any of these dimensions.

By 2008, Ticketmaster's longstanding dominance faced a major threat. Live Nation was better positioned to overcome the entry barriers discussed above than any other existing or potential competitor because it could achieve sufficient scale to compete effectively with Ticketmaster simply by ticketing its own venues. Live Nation also possessed a unique competitive advantage in that it could bundle access to important concerts with its ticketing service. Recognizing Live Nation's potential to disrupt its dominant position in the market for primary ticketing services, Ticketmaster attempted to renew Live Nation's primary ticketing contract before its December 31, 2008 expiration. But Live Nation instead chose to license technology from CTS Eventim AG ("CTS") that would enable it to sell concert tickets to its own venues beginning in 2009 and to compete with Ticketmaster for other venues' primary ticketing contracts in the future.

This competition began even before Live Nation's contract with Ticketmaster expired. On September 11, 2008, Live Nation announced that SMG the largest venue management company in the United States, with the ability to control or influence the selection of primary ticketing companies at more than 40 major concert venues had agreed to use Live Nation's primary ticketing services, if Live Nation could provide a primary ticketing platform comparable to other leading primary ticketing companies. SMG was Ticketmaster's third largest customer (behind only Live Nation and Anschutz Entertainment Group, Inc.), but it switched to Live Nation because SMG expected that, if it used Live Nation's primary ticketing services, Live Nation would use its strength in promotions to bring more concerts to SMG-managed venues. On October 14, 2008, Live Nation announced that it would provide primary ticketing services to New York City's Roseland Ballroom, another former Ticketmaster client. By 2009, Live Nation provided primary ticketing services to more than 15% of the capacity at major concert venues in the United States.

Ticketmaster responded to competition from Live Nation in several ways. First, it offered more attractive renewal terms to customers with expiring contracts than it had customarily offered in order to lock customers into long-term deals before Live Nation could sign them. Second, Ticketmaster acquired a controlling interest in Front Line on October 23, 2008. Front Line's strength in artist management enabled Ticketmaster for the first time to offer venues a package of primary ticketing services and concert content that could rival Live Nation's ticketing-and-content package. Finally, Ticketmaster moved to eliminate Live Nation entirely as a competitor by agreeing to the proposed transaction less than two months after Live Nation began ticketing with the CTS platform.

The proposed transaction would extinguish competition between Ticketmaster and Live Nation and thereby eliminate the financial benefits that venues enjoyed during the brief period when Live Nation was poised to challenge Ticketmaster's dominance. The proposed transaction would also diminish innovation in primary ticketing services because the merged firm would have reduced incentives to develop new features. Further, the proposed transaction would result in even higher barriers to entry and expansion in the market for primary ticketing services. In addition to the long-standing entry barriers discussed above, the merged firm's ability to bundle primary ticketing services (implicitly or explicitly) with access to artists managed by Front Line and/or promoted by Live Nation would require competitors to offer venues both primary ticketing services and access to content in order to compete most effectively.

Defendants have asserted that the proposed transaction will generate efficiencies sufficient to counteract any anticompetitive effects. More specifically, they have contended that the vertical integration of Ticketmaster and Live Nation's complementary businesses will reduce the number of industry participants who currently must be compensated for a concert to be produced and, thus, will allow the merged entity to reduce the prices paid by venues for primary ticketing services and by concertgoers for tickets. While appreciating that vertical integration may benefit consumers in some situations, the United States does not fully credit Defendants' efficiency claims because they each could realize

many of the asserted efficiencies without consummating the proposed transaction. Ticketmaster and Live Nation each already had expanded vertically before they agreed to the proposed transaction, and but for the proposed transaction, venues and concertgoers would have continued to enjoy the benefits of competition between two vertically integrated competitors. A vertically integrated monopoly is less likely to spur innovation and efficiency than competition between vertically integrated firms, and a vertically integrated monopoly is unlikely to pass the benefits of innovation and efficiency onto consumers.

Defendants also contended that Live Nation's impact on ticketing would be minimal because of shortcomings in Live Nation's ticketing platform, including the absence of a season ticketing component, which is important for a number of venues. Though the CTS platform was originally designed for use in Europe, Live Nation and CTS have invested heavily to adapt it for use in the United States. In the first six months of 2009, Live Nation used the CTS platform to sell more than 6 million tickets to concerts at its U.S. venues. Before entering the proposed transaction, Live Nation had planned to continue improving the CTS platform, including developing a season ticketing component, to make it more attractive to potential third-party venue clients in the United States.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will eliminate the anticompetitive effects of the proposed transaction in the market for primary ticketing services to major concert venues in four principal ways.

First, the Final Judgment will enable Anschutz Entertainment Group, Inc. ("AEG") to become a new, independent, economically viable, and vertically integrated competitor in the market for primary ticketing services to major concert venues. AEG is the second largest promoter in the United States (behind Live Nation), promoting shows representing about 14% of concert revenues at major concert venues in 2008. No company other than AEG or Live Nation promotes concerts representing more than 4% of the concert revenues from major concert venues. AEG also owns, operates, or manages more than 30 major concert venues, representing about 8% of the capacity at major U.S. concert venues, and it can select (or influence the selection of) the primary ticketing company for those venues. In addition, AEG owns one-half of an important artist management firm with several popular clients, including Justin Timberlake and the Jonas Brothers. Due to its significant presence in promotions, venues, and artist management, AEG is the company best positioned to achieve the necessary scale, overcome the other entry barriers discussed above, and compete successfully with the merged firm in the market for primary ticketing services to major concert venues.

The Final Judgment facilitates AEG's entry through a two-stage process that gives it access to Ticketmaster's core primary ticketing platform, which AEG can then use to service its own venues and to sell primary ticketing services to third-party venues. In the first stage, which must begin within six months of the proposed transaction's consummation and may continue for up to five years, the Final Judgment requires Defendants to provide AEG with its own branded Web site based on Ticketmaster's Host platform, including any upgrades and enhancements (the "AEG Site"). AEG has the right to use the AEG Site to sell tickets to events at specified venues it currently owns, operates, and manages as well as to events at any other venues from which AEG secures the right to provide primary ticketing services. Though AEG must pay Defendants royalties for each ticket sold through the AEG Site, those royalties are below the average rate Ticketmaster currently charges, and Defendants have no control over AEG's final prices. These provisions immediately provide AEG incentives to compete with Defendants and diminish the risk that AEG would be unable to compete successfully had it attempted to deploy a less established primary ticketing platform.

The Final Judgment also requires Defendants to provide AEG with an option to acquire a perpetual, fully paid-up license to the then-current version of Ticketmaster's Host platform, including a copy of the source code, which Defendants must install and then support during the first six months after its installation. AEG is permitted to exercise this option within four years of the proposed transaction's consummation, which will allow AEG to assume full responsibility for operating its own primary ticketing business, independently of Defendants.

The Final Judgment gives AEG incentives to exercise its option to acquire a copy of Host (or to develop or acquire a competing primary ticketing platform) by prohibiting Defendants from providing primary ticketing services to AEG's venues after AEG's right to use the AEG Site expires. That provision is critical to preserving competition in the primary ticketing services market because it guarantees that, within five years, AEG will have to either supply its own primary ticketing services or obtain them from some company other than the merged firm. Because AEG cannot rely indefinitely on the AEG Site, it will have incentives to plan for the future. Even if AEG's plans do not involve exercising its option to acquire a copy of Host, the Final Judgment will preserve competition because AEG will have to contract for primary ticketing services with one of Defendants' rivals. AEG's ticket volume would give that primary ticketing company sufficient scale and credibility to compete effectively with the merged firm.

Second, the Final Judgment's requirement that Defendants divest Ticketmaster's entire Paciolan business will establish another independent and economically viable competitor in the market for primary ticketing services to major concert venues. Ticketmaster currently licenses its Paciolan platform both directly to venues representing 3% of major U.S. concert venue capacity and to other primary ticketing companies that sublicense the Paciolan platform to venues representing an additional 4% of the relevant market. Before consummating the proposed transaction, Defendants must enter a letter of intent to divest to Comcast-Spectacor, L.P. ("Comcast-Spectacor") the entire Paciolan business, including all intellectual property in the Paciolan platform and all contracts with venue and primary ticketing company licensees of that platform. Through its New Era Tickets ("New Era") subsidiary, which currently licenses the Paciolan platform from Ticketmaster, Comcast-Spectacor already provides primary ticketing services to venues representing 2% of major concert venue capacity. In addition to its interest in New Era, Comcast-Spectacor owns 2 major U.S. concert venues and manages 15 others. When combined with New Era's ticketing business and Comcast-Spectacor's venue presence, the Paciolan business that the Final Judgment requires Defendants to divest would provide Comcast-Spectacor sufficient scale to compete effectively and independently with the merged firm in the market for primary ticketing services to major concert venues. Comcast-Spectacor and others have contended that the movement in primary ticketing services will be towards "self-enablement" models, such

as Paciolan, which allow a venue to manage its own ticketing platform.

Within 60 days of signing the letter of intent, the Paciolan business must be divested in such a way as to satisfy the United States in its sole discretion, and in consultation with the Plaintiff states, that the operations can and will be operated by Comcast-Spectacor or an alternative purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with any prospective purchaser. In the event that Defendants do not accomplish the Paciolan divestiture in a timely fashion, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Third, the Final Judgment prohibits Defendants from engaging in certain conduct that would impede effective competition from equally efficient rivals that may or may not be not vertically integrated. Thus, the Final Judgment proscribes retaliation against venue owners who contract or consider contracting for primary ticketing services with Defendants' competitors. The Final Judgment also prohibits Defendants from explicitly or practically requiring venues to take their primary ticketing services if the venues only want to obtain concerts the Defendants promote or concerts by artists the Defendants manage, and it likewise prohibits Defendants from explicitly or practically requiring venues to take concerts they promote or concerts by artists they manage if those venues only want to obtain the Defendants' primary ticketing services. These provisions preserve the ability of primary ticketing companies that do not also have access to content (and promoters and artist managers that do not also provide primary ticketing services) to continue competing with Defendants. Elsewhere, the Final Judgment prevents Defendants from abusing their position in the primary ticketing market to impede competition among promoters and artist managers by requiring that Defendants either refrain from using certain ticketing data in their non-ticketing businesses or provide that data to other promoters and artist managers. Finally, the Final Judgment mandates that Defendants provide any current primary ticketing client with that client's ticketing data promptly upon request, if the client chooses not to renew its primary ticketing contract. That provision reduces venues' switching costs and lowers barriers to other companies competing for Defendants' primary ticketing clients because it ensures that those venue clients will not be forced to relinquish valuable data if they decide to switch primary ticketing service providers.

Fourth, the Final Judgment requires Defendants to notify the United States at least thirty days before acquiring any assets of or any interest in any firm engaged in providing primary ticketing services in the United States, regardless of whether the acquisition would otherwise be subject to reporting pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a. If the United States requests additional information within thirty days of the Defendants notifying it of an acquisition, the Final Judgment prohibits Defendants from consummating the acquisition until twenty days after providing the requested information. These provisions facilitate the vigilant and effective oversight that will be necessary to guard against the potential for Defendants to frustrate the purposes of the Final Judgment.

In short, the Final Judgment will eliminate the anticompetitive effects of the proposed transaction in the provision of primary ticketing services to major concert venues in the United States while preserving the possibility of efficiency-enhancing vertical integration in the concert industry and also preserving competition from Defendants' non-vertically integrated rivals.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register,** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: John R. Read, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a settlement that would have required Defendants to divest the current set of divestiture assets to Comcast-Spectacor. The United States

rejected that settlement because it would not have been as effective as the remedy embodied in the proposed Final Judgment at replicating the competitive dynamics that would have prevailed in the market for primary ticketing services had the proposed transaction not occurred.

As another alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Defendants' merger. The United States is satisfied, however, that the divestiture of assets and prohibitions of anticompetitive practices described in the proposed Final Judgment will preserve competition for the provision of primary ticketing services to major concert venues in the United States. Thus, the proposed Final Judgment would protect competition as effectively as would any remedy available through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. 15 U.S.C. 16(e)(1)(A) & (B).

In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[5]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[6] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' " *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged."). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the

public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[7]

VIII. Determinative Documents

In formulating the proposed Final Judgment, the United States considered the AEG/TM Technology Agreement, dated January 11, 2010 and attached hereto as Exhibit A,[8] to be a determinative document within the meaning of the APPA.

Dated: January 25, 2010.

Respectfully submitted,

Aaron D. Hoag, *Attorney,* U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530, Telephone: (202) 514–5038, Fax: (202) 514–7308, E-mail: *aaron.hoag@usdoj.gov.*

Certificate of Service

I, Aaron Hoag, hereby certify that on January 25, 2010, I caused a copy of the Competitive Impact Statement and attached Exhibit to be served on defendants Ticketmaster Entertainment, Inc., and Live Nation, Inc., and the plaintiff States of Arizona, Arkansas, California, Connecticut, Florida, Illinois, Iowa, Nebraska, Nevada, Ohio, Oregon, Rhode Island, Tennessee, Texas, and Wisconsin, and Commonwealths of Massachusetts, and Pennsylvania by mailing the documents via E-MAIL to the duly authorized legal representatives of the parties, as follows:

For Ticketmaster Entertainment, Inc., M. Sean Royall, Esq., Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036, Tel: (202) 955–8546, Fax: (202) 467–0539, E-mail: *SRoyall@gibsondunn.com,*

For Live Nation, Inc., Michael Egge, Esq., Latham & Watkins LLP, 555 Eleventh Street, NW., Washington, DC 20004, Tel: (202) 637–2200, Fax: (202) 637–2201, E–mail: *michael.egge@LW.com.*

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Footnotes

1. After their initial sale, concert tickets may be resold on the secondary ticketing market. *Ticket brokers* purchase tickets with the intention of reselling them to concertgoers. *Secondary ticketing companies* provide services that facilitate the resale of tickets to concertgoers by ticket brokers and others.

2. While the conclusions reached in the antitrust analysis described below are not sensitive to the precise number of venues included within this class, for purposes of this Competitive Impact Statement, "major concert venues" are the 500 U.S. venues generating the greatest concert revenues in 2008, as reported in Pollstar, a leading source of concert industry information. Concert ticket revenues from events at these venues represent more than 90% of the concert ticket revenues at all venues reported in Pollstar. Major concert venues are a diverse group, which includes large stadiums and arenas with relatively few concerts (*e.g.,* the Verizon Center in Washington, DC), mid-sized amphitheaters that host concerts regularly during certain seasons (*e.g.,* Nissan Pavilion in Bristow, VA), and smaller clubs and theaters with frequent concerts throughout the year (*e.g.,* Warner Theatre in Washington, DC and Live Nation's House of Blues clubs). To account for this diversity, venues are weighted by their capacity in calculating shares of the market for primary ticketing services to major concert venues. Only public sources of information were used to calculate the market shares described in this Competitive Impact Statement.

3. In this case, there are not significant transportation costs associated with the relevant services, so sellers' locations do little to inform the market-definition inquiry, though they are not irrelevant to antitrust analysis. To the contrary, only sellers capable of serving major concert venues located in the United States can compete with Defendants in the relevant market. Many of those sellers are located within the United States, but some are foreign firms, as suggested by Live Nation's adaptation of a European primary ticketing platform for use in the United States, which is discussed below. Foreign sellers historically have not competed effectively in the United States because of the significant investments required to enter the domestic market. Still, Live Nation's example suggests that, with a significant investment of time and money, foreign primary ticketing companies might be capable of adapting their products for U.S. customers.

4. Before 2009, by virtue as its position as a promoter, Live Nation received roughly 10% of the tickets to concerts it promoted, and it sold those tickets to concertgoers through its MusicToday subsidiary and a platform licensed from eTix. Live Nation also used the MusicToday platform to provide primary ticketing services to a few small venues.

5. The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

6. *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

7. *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

8. The United States redacted competitively sensitive information and information unrelated to U.S. markets from the version of the AEG/TM Technology Agreement attached as Exhibit A.

[FR Doc. 2010–2754 Filed 2–9–10; 8:45 am]

BILLING CODE 4410–11–P

MERIT SYSTEMS PROTECTION BOARD

The Merit Systems Protection Board (MSPB) is Providing Notice of the Opportunity to File Amicus Briefs in the Matters of Conyers v. Department of Defense, Docket No. CH–0752–09–0925–I–1, and Northover v. Department of Defense, Docket No. AT–0752–10–0184–I–1

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: On January 25, 2010, the MSPB published in the **Federal Register** (*see* 75 FR 3939) a Notice of the opportunity to file amicus briefs in the matter of *Crumpler* v. *Department of Defense,* MSPB Docket Number DC–0752–09–0033–R–1, 2009 MSPB 233. Although the *Crumpler* case is now settled, the legal issue raised in that matter and noted in the January 25 **Federal Register** notice remains unresolved. The cases of *Conyers* v. *Department of Defense,* Docket No. CH–0752–09–0925–I–1, and *Northover* v. *Department of Defense,* Docket No. AT–0752–10–0184–I–1, involve the same legal issue.

Conyers and *Northover* raise the question of whether, pursuant to 5 CFR Part 732, National Security Position, the rule in *Department of the Navy* v. *Egan,* 484 U.S. 518, 530–31 (1988), limiting the scope of MSPB review of an adverse action based on the revocation of a security clearance also applies to an adverse action involving an employee in a "non-critical sensitive" position due to the employee having been denied continued eligibility for employment in a sensitive position.

Interested parties may submit amicus briefs or other comments on this issue no later than March 1, 2010. Amicus briefs must be filed with the Clerk of the Board. Briefs shall not exceed 15 pages in length. The text shall be double-spaced, except for quotations and footnotes, and the briefs shall be on 8½; by 11 inch paper with one inch margins on all four sides.