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United States et al. v. Ticketmaster Entertainment, Inc. et al.; Public Comments and Response on Proposed Final Judgment; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. Ticketmaster Entertainment, Inc. et al.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comments (without attachments) received on the proposed Final Judgment in *United States et al.* v. *Ticketmaster Entertainment, Inc. et al.,* Civil Action No. 1:10–CV–00139–RMC, which were filed in the United States District Court for the District of Columbia on June 17, 2010, together with the response of the United States to the comments.

Complete copies of the comments with attachments, and the United States' response, are available for inspection at the Department of Justice Antitrust Division, 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/cases/ticket.htm,* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

J. Robert Kramer II,

Director of Operations and Civil Enforcement.

United States District Court for the District of Columbia

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

Case: 1:10–cv–00139.
Assigned to: Collyer, Rosemary M.
Assign. Date: 1/25/2010.
Description: Antitrust.

Plaintiff United States' Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) ("APPA" or "Tunney Act"), the United States hereby files the public comments concerning the proposed Final Judgment in this case and the United States' response to those comments. After careful consideration of the comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Amended Complaint. The United States will move the Court, pursuant to 15 U.S.C. 16(b)–(h), for entry of the proposed Final Judgment after the public comments and this Response have been published.[1]

I. Procedural History

On January 25, 2010, 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 (the "States") filed the Complaint in this matter, alleging that the merger of Ticketmaster Entertainment, Inc. ("Ticketmaster") and Live Nation, Inc. ("Live Nation"), if permitted to proceed, would substantially lessen competition in the market for primary ticketing services to major concert venues in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.[2] Simultaneously, the United States filed a Competitive Impact Statement ("CIS"), a proposed Final Judgment, and a Hold Separate Stipulation and Order signed by the United States, the States, and the defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the APPA.

The proposed Final Judgment and CIS were published in the **Federal Register** on February 10, 2010. *See* 75 FR 6,709 (2010). A summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, were published for seven days in The Washington Post from February 26, 2010, through March 4, 2010. The Defendants filed the statement required by 15 U.S.C. 16(g) on February 12, 2010. The 60-day period for public comments ended on May 3, 2010, and twelve comments were received as described below and attached hereto.

II. The Investigation and Proposed Resolution

A. Investigation

On February 10, 2009, Ticketmaster and Live Nation entered into a definitive merger agreement. Over the following eleven and a half months, the United States Department of Justice ("Department") conducted an extensive, detailed investigation into the potential competitive effects of the proposed merger. As part of the investigation, the Department issued Second Requests and twelve Civil Investigative Demands ("CIDs") to the merging parties, as well as more than fifty CIDs to third parties. The Department considered more than 2.5 million documents received in response to the Second Requests and CIDs. More than 250 interviews were conducted with customers, competitors, and other individuals with knowledge of the industry, including two commenters here—Jam Productions, Ltd. and the group led by It's My Party, Inc.—which are competitors and complainants about the proposed transaction. The investigative team analyzed their concerns, as well as the views and data presented by hundreds of others. While the Department was reviewing this transaction, a group of state Attorneys General and the Canadian competition authorities conducted their own antitrust investigations. Nineteen states joined the United States' Amended Complaint and the proposed Final Judgment resolving the Amended Complaint; no state has filed a separate lawsuit to block the merger or has opposed the proposed Final Judgment before this Court. At the conclusion of its investigation, Canada imposed parallel relief that is substantively identical to that contained in the proposed Final Judgment.[3]

As part of its investigation, the Department considered the potential competitive effects of the merger on numerous products and services, customer groups, and geographic areas. For the vast majority of these, including the provision of services to promote live entertainment events, the Department determined that the proposed merger was unlikely to reduce competition substantially. Because Ticketmaster and Live Nation were the two largest providers of primary ticketing services, the Department appropriately devoted significant time and resources to analyzing whether the combination of the parties' primary ticketing services would likely reduce competition. The United States concluded that the combination of Ticketmaster and Live Nation likely would lessen competition in the provision and sale of primary ticketing services for major concert venues in the United States.

[1] As approved by the Court in a Minute Order dated June 15, 2010, the United States will publish the Response and the comments without attachments or exhibits in the **Federal Register**. The United States will post complete versions of the comments with attachments and exhibits on the Antitrust Division's Web site at: *http://www.justice.gov/atr/cases/ticket.htm.*

[2] An Amended Complaint was filed on January 28, 2010, solely to add the States of New Jersey and Washington as plaintiffs.

[3] Competition authorities in the United Kingdom also reviewed the transaction and ultimately cleared the merger without imposing any conditions; market conditions in the United Kingdom, however, differ substantially from those prevailing in the United States and Canada.

Primary ticketing is the initial distribution of tickets to an event. Ticketing companies 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 primary ticketing company provides the technology infrastructure for ticket 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. 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. The primary ticketing provider, however, does not set the face value of the ticket. It is set by the promoter and artist.

The complexity and demands of selling tickets to major concert venues requires sophisticated primary ticketing services. A major concert venue's primary ticketing provider must be able to withstand the heavy transaction volume associated with the first hours when tickets to popular concerts become available to concert-goers, offer integrated marketing capabilities, and otherwise have a proven track record of high quality service. As such, major concert venues have had few choices for primary ticketing providers. Ticketmaster had a long-standing track record of filling these needs. When Ticketmaster and Live Nation announced their merger, Live Nation had recently begun engaging in primary ticketing services, primarily selling tickets to concerts at its own venues as a way to demonstrate to other venues that its primary ticketing platform performed well. No primary ticketing company other than Ticketmaster and Live Nation had amassed or likely could have amassed in the near term sufficient scale to develop a reputation for successfully delivering similarly sophisticated primary ticketing services.

Primary ticketing services are sold pursuant to contracts individually negotiated with venues. Because primary ticketing companies can price discriminate among different venues, the Department determined that the proposed transaction could affect different classes of venues differently. Specifically, the Department found that major concert venues, because of their need for the most sophisticated ticketing services, have few ticketing options. These venues can be readily identified, and market power can be selectively exercised against them. Furthermore, the Department determined that 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, and thus it was appropriate to include only major concert venues located in the United States within the relevant market.

After its investigation, the United States determined that the proposed merger would likely substantially lessen competition for primary ticketing services to major concert venues in the United States. As explained more fully in the Amended Complaint and CIS, this loss of competition would eliminate financial benefits that venues enjoyed during the period when Live Nation exerted competitive pressure against Ticketmaster, and would reduce incentives to innovate and improve primary ticketing services.[1] As alleged in the Amended Complaint, the proposed merger of Ticketmaster and Live Nation would remove Live Nation's competitive presence from an already highly concentrated and difficult-to-enter market.[2] The resulting increase in concentration, loss of competition, and absence of any reasonable prospect of significant new entry or expansion by market incumbents likely would result in higher prices for major concert venues and reduce innovation in primary ticketing services.[3]

B. Proposed Final Judgment

The proposed Final Judgment is designed to preserve competition in the market for primary ticketing services to major concert venues in the United States by requiring divestitures of assets and mandating certain conduct remedies. First, the proposed Final Judgment creates a new, vertically integrated primary ticketing company and bolsters another company to compete against Live Nation Entertainment.[4] Second, the conduct restraints in the proposed Final Judgment supplement these divestitures to ensure that competitive ticketing firms will not be improperly foreclosed from the market by the merged firm's conduct.

The proposed Final Judgment establishes Anschutz Entertainment Group, Inc. ("AEG") as an entrant into primary ticketing services. AEG is the second largest promoter in the United States (behind Live Nation). AEG also owns, operates, or manages more than 30 major concert venues in the United States, owns part of an artist management firm, and owns the Los Angeles Kings hockey franchise. Entry will occur via a two-stage process. In the first part of the process, the merged firm must provide AEG with an AEG-branded ticketing website based on the Ticketmaster Host platform, Ticketmaster's primary platform for selling tickets.[5] AEG has the right to use the AEG-branded ticketing website to sell tickets at venues it owns, operates, or manages as well as to events at any other venues from which AEG secures the right to provide primary ticketing services. AEG has the freedom to compete with Ticketmaster on the prices it charges to venues for ticketing services and on the service fees that are added to a ticket's price.[6] In the second part of the process, AEG may exercise an already negotiated right to acquire a perpetual, fully paid-up license to the then-current version of the Ticketmaster Host platform, including a copy of the source code, which the merged firm must install.[7] The agreement between AEG and the merged firm contains financial incentives for AEG to exercise the right. Finally, the proposed Final Judgment prohibits the merged firm from providing primary ticketing services to AEG's venues after AEG's right to use the AEG-branded ticketing website expires, which will take place five years after execution of the license.[8] This provision is critical to preserving competition in the primary ticketing services market, because it guarantees that within five years, AEG will have to either remain a full fledged primary ticketing services competitor or bolster another primary ticketing competitor by using them to meet its ticketing needs.

The proposed Final Judgment also requires the merged firm to divest Ticketmaster's entire Paciolan line of business[9] to an independent and economically viable competitor in the market for primary ticketing services to

[1] Amended Complaint ¶ 40 *et seq.;* CIS § II(D).

[2] Amended Complaint ¶¶ 38, 40, 43, 44; CIS § II(D).

[3] Amended Complaint ¶ 40 *et seq.;* CIS § II(D).

[4] Live Nation Entertainment is the name of the newly merged entity. Throughout this Response, the historical Ticketmaster ticketing operation is referred to as "Ticketmaster," the artist management business is referred to as "Front Line," and the promotions and venue management business is referred to as "Live Nation."

[5] Proposed Final Judgment § IV.A.2.

[6] *Id.*

[7] *Id.* § IV.A.1.

[8] *Id.* § XIII.B.

[9] In 2008, Paciolan directly handled the sale for more than 9 million concert and sporting tickets. It also provided in-house ticketing solutions for more than 250 clients, including Tickets West, Comcast-Spectacor's ticketing solution New Era, and numerous colleges, universities and performing arts centers throughout the U.S.

major concert venues.[10] The merged firm has already divested this business to Comcast-Spectacor, LP ("Comcast-Spectacor"), a vertically-integrated company whose subsidiary New Era Tickets ("New Era") was one of many licensees of the Paciolan platform prior to the divestiture. In addition to its interest in New Era, Comcast-Spectacor owns two major U.S. concert venues, a venue management firm that manages fifteen other major concert venues, the Philadelphia Flyers, the Philadelphia 76ers, a venue/sports marketing company, and a food services company whose clients include major concert venues. Comcast-Spectacor's ticketing business model is different from Ticketmaster's in that venue clients, rather than Comcast-Spectacor, independently set service fees and venue clients maintain ownership of their ticketing data.

The proposed Final Judgment also prohibits the merged firm from engaging in certain conduct that could, in theory, prevent equally efficient firms from competing effectively.[11] The proposed Final Judgment proscribes retaliation against venue owners who contract or consider contracting for primary ticketing services with the merged firm's competitors.[12] The proposed Final Judgment also prohibits the merged firm from explicitly or practically requiring venues, or threatening to require venues, to take their primary ticketing services in order to be allowed to present concerts Live Nation promotes or concerts by artists Front Line manages. It likewise prohibits the merged firm from explicitly or practically requiring venues, or threatening to require venues, to take concerts the merged firm promotes or concerts by artists it manages in order to be allowed to purchase the merged firm's primary ticketing services.[13] Further, the Final Judgment prohibits the merged firm from using certain ticketing data in its non-ticketing business and from providing that data to internal promoters and artist managers.[14] Finally, the proposed Final Judgment mandates that the merged firm 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.[15]

In sum, the perpetual license of the Ticketmaster Host platform, the divestiture of Paciolan, and the conduct remedies will ensure that major concert venues will continue to receive the benefits of competition in the primary ticketing services market that otherwise would be lost as a result of the merger.

III. Standard of Judicial Review

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 in accordance with the statute, the court 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 (DC 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.,* 2009–2 Trade Cas. (CCH) ¶76,736, No. 08–1965 (JR), 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 mechanisms to enforce the Final Judgment are clear and manageable").

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).[16] In determining whether a proposed settlement is in the public interest, the 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

[10] *Id.* §§ IV.E., IV.K.

[11] *Id.* § IX.

[12] *Id.* § IX.A.1.

[13] *Id.* §§ IX.A.2, IX.A.3.

[14] *Id.* § IX.B.

[15] *Id.* § IX.C.

[16] *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* vs. *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' ".

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). As this Court has previously recognized, to meet this standard "[t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms, it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *United States* v. *Abitibi-Consolidated Inc.,* 584 F. Supp. 2d 162, 165 (D.D.C. 2008) (citing SBC Commc'ns, 489 F. Supp. 2d at 17). Therefore, 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, rather than to "construct [its] own hypothetical case and then evaluate the decree against that case." Microsoft, 56 F.3d at 1459. 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. Id. 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 to the Tunney Act,[17] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating "[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 clause reflects 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.

IV. Summary and Response to Public Comments

During the 60-day public comment period, the United States received comments from the following firms or individuals: It's My Party, Inc.,[18] Jam Productions, Ltd., Jack Orbin, Middle East Restaurant, Inc., LIVE–FI Technologies, Inc., Kenneth de Anda, Chris Cantz, Joe Carlson, Don Crepeau, Jason Keenan, Tom Kuhr, and Gary T. Johnson. Upon review, the United States believes that nothing in the comments demonstrates that the proposed Final Judgment is not in the public interest. What follows is a summary of the comments, and the United States' responses to the concerns raised in those comments.

A. It's My Party ("IMP")

IMP, through its leader, Seth Hurwitz, and various affiliated companies, is the operator of the 9:30 Club in Washington, DC and the promoter at Merriwether Post Pavilion, an amphitheater in Columbia, Maryland. IMP is a competitor of Live Nation Entertainment in both the concert promotion and venue operation businesses. IMP has also filed an antitrust lawsuit against Live Nation, Inc. alleging that Live Nation's pre-merger conduct harmed IMP.

IMP contends that the proposed Final Judgment will not effectively protect competition in the primary ticketing services market because the remedy does not address Live Nation Entertainment's "domination of the promotion of popular music concerts by major artists and control of venues capable of hosting concerts by major artists."[19] IMP argues that Live Nation's vertical integration, culminating in its merger with Ticketmaster, has resulted in a firm that controls all aspects of the relationship between artists and their fans.[20] IMP argues that to cement its competitive position, Live Nation has improperly expanded its promotion business by purchasing the rights to artists' entire tours (or even several tours) in one deal, shutting out regional promoters such as IMP from the opportunity to bid on individual dates.[21] IMP asserts that Live Nation's share of the promotion market for "popular music concerts by major artists" is actually 70% and that Live Nation Entertainment's dominance in promotions will therefore enable it to prevent effective competition in the primary ticketing services market, because ticketing competitors cannot promise to supply venues with the same breadth of concerts available to Live Nation Entertainment.[22] IMP also argues that primary ticketing competitors cannot succeed if they cannot provide ticketing services to venues owned by Live Nation Entertainment itself.[23] IMP argues that if the merger is to be allowed at all, additional remedies must be imposed to ameliorate the effect of Live Nation Entertainment's dominance of the concert business.[24]

IMP's allegations are not new. It articulated these concerns to the United States on several occasions during the investigation of the defendants' merger. The United States believes that the proposed Final Judgment will remedy any loss of competition in primary ticketing services that would result from the merger. The United States did not find that, based on the evidence uncovered in the Department's investigation, the merger would result in harm to any other relevant market, such as concert promotion, venue services, or venue management, and therefore does not believe that remedies in such markets are appropriate.

[17] The 2004 amendments substituted the word "shall" for "may" when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and 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).

[18] It's My Party, Inc.'s ("IMP") comment is attached as Exhibit A. The comment was filed on behalf of a number of firms, namely IMP, It's My Amphitheatre, Inc., Seth Hurwitz (both of which are affiliated with IMP), Frank Productions, Inc., Sue McLean and Associates, and Metropolitan Talent, Inc. The National Consumers League joined IMP's comment. *See* IMP Comment at 1 n.1.

[19] *Id.,* at 2.

[20] *See id.,* at 8–9.

[21] *See id.,* at 9.

[22] *See e.g., id.,* at 14, 19–20.

[23] *See id.,* at 24.

[24] *See id.,* at 26–27.

1. Effect of Vertical Integration on Primary Ticketing Services Market

Contrary to IMP's assertion, the United States is well aware of the potential competitive impact of vertical integration on the primary ticketing services market and designed its remedy with that potential effect in mind. It is well recognized that vertical integration can produce procompetitive benefits.[25] In the present case, vertical integration of complementary businesses in the live entertainment industry reduces the number of firms that must be compensated for a concert. This creates incentives for the vertically integrated entity to reduce primary ticketing services prices and service fees. The United States, however, was well aware of the concern that it may become more important for ticketing service companies to also provide live entertainment content in order to compete in primary ticketing for major concert venues. Accordingly, the proposed Final Judgment establishes AEG—Live Nation's largest competitor in the concert promotion business—as a credible, vertically integrated competitor in the primary ticketing services market.[26] Therefore, to the extent it becomes important over the next several years for ticketing companies to provide access to content in order to compete in primary ticketing, AEG's established concert promotion business will make it well-positioned to provide a viable competitive alternative to the merged firm. AEG will also benefit from its long-standing relationships with venues developed through its concert promotion business and through its venue management operations. Its venues and its concert promotion business will also provide scale to AEG's own ticketing business or to another ticketing rival to Live Nation Entertainment. The availability of AEG's concerts to its own primary ticketing business or to another primary ticketer undermines IMP's argument[27] that the merged firm will control so much content that venues will be forced to use Ticketmaster's ticketing services.

The United States was also well aware that there are other avenues venues may pursue for ticketing services. Venues may increasingly look to venue management companies to provide a range of services, including primary ticketing. The sale of the Paciolan ticketing business to Comcast-Spectacor creates significant additional competitive stimulus to the ticketing market that will, in combination with the AEG licensing agreement, ensure that the proposed Final Judgment restores the competition that may otherwise have been lost as a result of the merger. Comcast-Spectacor is well-placed to capitalize on the venue relationships it developed as an existing provider of venue management, concessions, and fan marketing services. Paciolan and New Era have historically pursued a differentiated ticketing strategy under which their venue customers control all ticketing fees. New Era plans to continue competing using this business model. With its vertically integrated operation and venue-friendly business model, Comcast-Spectacor is well-placed to compete against Live Nation Entertainment following the merger. Comcast-Spectacor already participates in many aspects of the live entertainment business. Its willingness to invest in the ticketing business by purchasing Paciolan, and its commitment to providing a competitive alternative to Ticketmaster, again suggests that IMP's analysis of the ticketing services market is flawed. If IMP were correct, Comcast-Spectacor as a venue owner and manager of venues for third parties, would have no choice but to acquire primary ticketing services from the merged entity, as it would risk the loss of all acts promoted by Live Nation by not selecting Live Nation Entertainment as its ticketer.[28] Like AEG, Comcast-Spectacor has fundamentally pursued a competitive strategy at odds with IMP's predictions of the future of the primary ticketing business.

As described above in Part II.B, the conduct provisions in the decree will bolster the structural relief that establishes Comcast-Spectacor and AEG as primary ticketing services competitors. In particular, Section IX.A of the proposed Final Judgment ensures that the merged firm cannot retaliate against or refuse to provide concerts to venues that choose an alternative to Ticketmaster for primary ticketing services. This and other provisions underscore the carefully constructed nature of the remedy contained in the proposed Final Judgment and further belie the argument presented by IMP[29] that the United States failed to account for the importance of content or vertical integration to the primary ticketing services market.

2. Effect of Vertical Integration on Concert Promotion

Much of IMP's concerns with Live Nation have nothing to do with the merger. Ticketmaster was not in the concert promotion business. As the United States discusses in more detail below in its response to Jam's comment,[30] the United States thoroughly investigated the effect of the vertical merger of Live Nation's promotion business with Ticketmaster's ticketing and artist management businesses. Based on the evidence uncovered in the Department's investigation, the United States did not find that the merger would significantly harm competition in the concert promotion business.

3. The Effect of Live Nation's Concert Promotion Business on Primary Ticketing

IMP contends that Live Nation dominates concert promotion (and thus can leverage that dominance into primary ticketing), based on the allegation that Live Nation has a 70% market share in the market for the promotion of "popular music concerts" by "major artists."[31] In the United States' investigation of this merger, the government looked into Live Nation's share of concert promotion. The United States used data from Pollstar, an aggregator of live entertainment data widely used by those in the industry. This data showed Live Nation with a 33% market share of concert revenue at major concert venues. The United States finds that IMP's market share calculation is not helpful because it is based on a market definition that is not well-suited to analyzing how the merger of Ticketmaster and Live Nation would affect the ticketing business.[32]

First, IMP argues that the market should be restricted to "popular music" as distinct from gospel, jazz, blues, and

[25] *See Fruehauf Corp.* v. *FTC,* 603 F.2d 345, 351–52 (2d Cir. 1979) ("A vertical merger * * * does not * * * automatically have an anticompetitive effect * * * or reduce competition * * * " and "may even operate to increase competition"); *see also,* Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law; An Analysis of Antitrust Principles and Their Application ¶ 1020 (3d ed. 2009) ("Antitrust Law") ("Most instances of vertical integration, including those that result from mergers, are economically beneficial.'')"; Michael Riordan & Steven C. Salop, *Evaluating Vertical Mergers; A Post-Chicago Approach,* 63 Antitrust L.J. 513, 522–27 (1995) (discussing a variety efficiency benefits from vertical mergers, and summarizing that "[a] variety of efficiency benefits that can reduce costs, improve product quality, and reduce prices may ensue from vertical mergers").

[26] IMP itself acknowledges that AEG is Live Nation's most significant competitor in the concert promotion business. *Id.* at 21.

[27] *See id.,* at 14–15, 17–26.

[28] *See id.,* at 24–25.

[29] *See id.,* at 14–15.

[30] *See infra* § IV.B.1.

[31] *Id.* at 17–21.

[32] The United States expresses no view on whether the provision of promotional services to "major artists" for "popular music concerts" could be considered a proper antitrust market in other contexts.

other musical and entertainment genres that are reported to Pollstar as "concert revenues." [33] To support this distinction, IMP refers to the cross-elasticity of demand for consumers of different types of concerts.[34] However, this is entirely the wrong approach for analyzing a merger in the market for the provision of primary tickets services to major concert venues. While consumers may have strong preferences for particular types of concerts—and for specific artists within a particular genre—venues purchase primary ticketing services for the distribution of tickets to concerts. From the perspective of a venue, the relevant consideration is how much revenue and profit it can earn from an event, not the genre of music the artist performs. A gospel show and rock show that earn the same revenues for a venue are in fact potential substitutes. For example, Merriweather Post Pavilion, IMP's own venue, hosted a jazz festival the weekend of June 4 and is hosting a rock festival on June 19. Therefore, it is entirely appropriate to look at the entire set of entertainment options for venues in assessing whether Live Nation so dominates concert promotion that it will restrain competition in the market for primary ticketing services.

Second, while Live Nation is clearly the largest promoter in the country, Pollstar figures include Live Nation promotions within its own venues. Live Nation is essentially the exclusive promoter within its own amphitheaters and clubs, which account for a substantial portion of the overall concert sales reported by Live Nation in Pollstar. The concerts Live Nation promotes internally have never been available to third party venues. Thus, the more relevant figures are likely to be Live Nation's share of concert promotion outside of its own venues, as that share is a better measure of Live Nation's significance as provider of content to independent venues, and thus of Live Nation's ability to "force" venues to use Ticketmaster after the merger. According to 2008 Pollstar data, Live Nation in fact only accounts for 23% of the concerts promoted at major concert venues it does not own, measured by revenue.[35] Live Nation's leading position in the promotion market is driven to a large degree by its ownership of a number of key venues. While the relationship between Live Nation's venues and its promotion business is relevant to a Live Nation competitor such as IMP, independent venues are not beholden to Live Nation for content to nearly the degree that IMP would suggest.[36]

Third, IMP contends that only tickets to "concerts by major artists (with an average attendance of between 8,000 to 30,000 fans)" should be counted in calculations of Live Nation's share of the promotions market.[37] According to IMP, it is appropriate to focus exclusively on these "major artists" because they are the ones most likely to appear in amphitheaters. This market share calculation, however, exacerbates the flaw identified in the previous paragraph by focusing in on a set of concerts where Live Nation's market share is exceptionally high due to its ownership of venues, rather than due to its significance as a promoter for independent venues. This calculation does not shed any light on the importance of Live Nation's promotion business to the market for providing ticketing services to non-Live Nation amphitheaters or to the many other types of concert venues such as clubs, theatres, arenas, and stadiums that also employ primary ticketing companies to sell concert tickets. Though IMP excludes tickets sold at those venues from its calculation of Live Nation's market share, that choice obscures the relationship between Live Nation's position as a leading concert promoter and the likely effects of its merger with Ticketmaster on buyers of primary ticketing services.

In the United States' view, IMP not only overstates the strength of Live Nation's promotion position, but may also overstate the significance of concert promotion to the overall market for primary ticketing services. IMP provides no evidence that decisions by venues in choosing a primary ticketing company will be driven solely or primarily or even significantly by the number of concerts promoted by the merged entity.

Before the merger, Live Nation based its entry strategy into the ticketing business on its ability to promise content to venues. The United States' Amended Complaint does not argue, however, that this was or is the only possible strategy for competing in the ticketing business. For example, the ticketing needs of a venue that hosts sporting events will be likely driven as much by the needs of the teams they host as they are by their interest in filling dates between sporting events with major concerts. A major arena with a professional basketball and/or hockey team will need its ticketer to handle season ticket sales of sports tickets and provide marketing support for sports ticketing sales. Indeed, this is a significant segment of the market, as sixty-six major concert venues host major league professional sports teams and many of the remaining major concert venues house other sports teams (such as minor league hockey franchises or college sports teams) which demand robust season ticketing abilities.

AEG and Comcast-Spectacor own, operate, and manage professional sports teams and venues in which professional sports teams play. Given that, as noted above, many of the major concert venues also host sports teams, both AEG and Comcast-Spectacor will be well-positioned to capitalize on their expertise in sports and venue management to compete for ticketing contracts in these venues. Paciolan's historical strength is also in providing ticketing for sports franchises; when combined with Comcast-Spectacor's strength in providing venue management, concession, and marketing services to arenas and other buildings, the United States believes the result is a viable competitor that, in combination with the entry of AEG into primary ticketing, will restore any competition in primary ticketing that may be lost as a result of the merger.

The United States respectfully suggests that IMP's analysis of the market is too focused on IMP's own issues in competing with Live Nation in the amphitheater business to inform analysis of the merger's likely effects. IMP exaggerates Live Nation's position in the concert promotion market by ignoring many venues that purchase primary ticketing services and many artists that play at those venues. A view of Live Nation's market position more tailored to assessing the competitive effects of the proposed merger reveals that AEG and Comcast-Spectacor can fully compete with Live Nation in the primary ticketing services market. IMP's comment therefore casts little light on competition in the actual product market alleged in the United States' complaint—the provision of primary ticketing services to major concert venues.

4. Ability To Provide Ticketing Services to Live Nation Venues

IMP contends that Ticketmaster's competitors, including AEG and Comcast-Spectacor, will be unable to compete in the primary ticketing market if they are unable to provide primary ticketing services to venues that are owned or operated by the merged

[33] IMP Comment at 19.

[34] *Id.* at 18–21.

[35] Measured by number of tickets sold, which IMP claims is the superior measure, Live Nation accounts for just 18% of the concerts promoted at major concert venues not owned or operated by Live Nation.

[36] *See* IMP Comment at 24–25.

[37] *Id.* at 20.

firm.[38] IMP provides no support for this statement other than a general assertion that without access to Live Nation's venues, competitors will be unable to penetrate the market and will not be able to prevent Live Nation from charging "supra competitive ticket service fees."[39] The United States concluded that ticketing companies do not need access to Live Nation's own ticketing volume in order to accumulate sufficient scale in the ticketing business to provide competitive pricing to venues. AEG's and Comcast-Spectacor's purchases of the divestiture assets supports this conclusion. Venues not owned or operated by Live Nation—including over 400 of the 500 major concert venues—account for a substantial majority of major concert venues and revenues and provide a substantial base of business for competing ticketing companies to target.

5. IMP's Own Choice of Primary Ticketing Service Provider

IMP's own choice of ticketing provider—and its ability to choose—underscores the degree to which IMP's concerns are overstated. Shortly after the Amended Complaint and proposed Final Judgment in this matter were filed, Seth Hurwitz, the main proprietor of IMP and its affiliates, announced that he was terminating Merriweather Post Pavilion's ticketing contract with the local Ticketmaster affiliate and entering a contract with TicketFly, a recent entrant into the primary ticketing services market.[40] At the same time that Mr. Hurwitz alleges that the merger eliminated competition for primary ticketing services, IMP left Ticketmaster for a competing ticket company: " 'Hopefully this move will demonstrate to people it's possible to have a choice,' he said. 'We wanted to make that choice' "[41] It is precisely this choice that the Final Judgment seeks to facilitate, whether that choice is exercised to select AEG, Comcast-Spectacor, another ticketing company such as TicketFly, or even Ticketmaster.

6. Need for Additional Remedial Measures

IMP asserts that additional remedial measures are required to protect competition in the primary ticketing market if the merger of Live Nation and Ticketmaster is permitted. IMP proposes that: (1) The merged firm be prevented from either offering any inducement to artists it manages or promotes to appear at venues it controls or punishing an artist who works with a competing promoter or venue; (2) the merged firm be prevented from insisting that rival promoters and venue owners share profits with Live Nation; and (3) the merged firm be prohibited from promoting or hosting more than 75% of any artist's tour.[42] None of these proposals relate to the primary ticketing services market. Rather, all of them are designed to dramatically alter competition in the concert promotion and venue operation businesses, markets where the proposed merger was not challenged by the Department in its Amended Complaint in this case. Moreover, some of these proposals, such as the limitations on exclusive promotion contracts, would likely inhibit efficient competition in the concert promotion and venue operation markets more than enhance competition. The proposals would prohibit Live Nation from engaging in potentially efficient vertical integration or bundling without analysis of whether such conduct has an adverse effect on competition either in general or in particular circumstances.

IMP also argues that the merged firm should be required "to return at the request of any promoter all data relating to concerts for which Ticketmaster provided the ticketing and to delete any such information from its electronically stored data and files."[43] The United States recognizes the value of information about the price and volume of past ticket sales for making decisions about future concerts, and took this into consideration in fashioning remedies in this matter. Section IX.C of the proposed Final Judgment requires that Ticketmaster provide a copy of ticketing data to ticketing clients if they choose to leave Ticketmaster, but does not require Ticketmaster to take the additional step suggested by IMP[44] and to purge the data from its files.[45] Aside from the affirmative obligation imposed by Section IX.C, each party's rights and obligations regarding the ticketing data will be governed by the contract between Ticketmaster and the venue. The United States does not believe that IMP's proposal[46] is necessary to ensure that venues are able to leave Ticketmaster for alternative ticketing providers. So long as venues have access to their data, they will be free to switch ticketing providers.

B. Jam Productions

Jam Productions ("Jam") is a concert promoter based in Chicago, Illinois, and a competitor of Live Nation. Jam's comment contends that the merger is "vertical integration on steroids" and will "suppress or eliminate competition in many segments of the music industry including rival concert promoters; primary and secondary ticketing companies; artist management firms; talent agencies; venue management companies; record companies; artist merchandise, apparel and licensing companies; artist fan clubs and sponsorship/marketing companies."

1. The Vertical Integration Concern

While Jam's comment provides more in the way of a list of alleged past Live Nation misconduct than a cogent analysis of the merger in light of the antitrust theory and precedent applicable to vertical mergers, the core argument advanced by Jam is nonetheless clear: instead of alleging a competitive problem from the combination of two competing ticketing companies (that is, challenging the deal as an unlawful horizontal merger), the Department should have brought a case alleging that competition in non-ticketing markets would be reduced by the combination of lines of business that do not compete, but where one line supplies an input for the other (that is, challenging the deal as an unlawful vertical merger).

This argument, however, is not a valid basis for rejecting a proposed remedy during Tunney Act review. As explained above, in a Tunney Act proceeding the Court must evaluate the adequacy of the remedy only for the antitrust violations alleged in the complaint. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1459 (DC Cir. 1995). The Tunney Act does not usurp the Department's prosecutorial discretion to choose what type of case to bring; courts "cannot look beyond the complaint * * * unless the complaint is drafted so narrowly as to make a mockery of judicial power." SBC Commc'ns, 489 F. Supp. 2d at 15. Jam, however, seeks to "construct [its] own hypothetical case and then evaluate the decree against that case"—precisely the approach specifically forbidden in Tunney Act proceedings by the DC Circuit. Microsoft, 56 F.3d at 1459.

During its investigation, however, the United States did carefully consider

[38] IMP Comment at 14, 24.

[39] *Id.* at 24.

[40] *See Merriweather drops Ticketmaster, signs with Ticketfly,* Feb. 18, 2010, available at *http://www.ticketfly.com/merriweather-post-pavilion-comes-to-ticketfly.*

[41] *Id.*

[42] IMP Comment at 26–27.

[43] *Id.* at 27.

[44] *Id.* at 27.

[45] Instead, Section IX.B of the proposed Final Judgment protects venue owners who are also independent promoters by prohibiting the sharing of competitively sensitive client ticketing data with Live Nation promoters and Front Line artist managers.

[46] IMP Comment at 27.

Jam's allegations[47] and determined that it could not prove that the vertical integration resulting from the merger would significantly harm competition in the concert promotion market or any market other than primary ticketing services. To be sure, vertical mergers can reduce competition under certain circumstances, for example by foreclosing rivals from access to an input critical to the ability to compete, raising the costs of rivals by preventing them from achieving efficient scale, or raising entry barriers. Vertical mergers can, however, also be procompetitive by bringing together complementary businesses and making the merged firm a more efficient competitor.[48]

The United States analyzed whether the addition of Ticketmaster's ticketing business and Front Line artist management business to Live Nation's concert promotion business would adversely effect competition in the concert promotion market. The United States concluded this was unlikely for two primary reasons.

First, although the merged firm will remain an important player in the artist management business, it will not have the ability to exclude promotion competitors from the market. Even if, in theory, all artists managed by Front Line refused to work with promoters other than Live Nation, a substantial majority of the artists are not affiliated with the merged firm and will be fully available for competing concert promoters to present.[49] Moreover, Front Line is unlikely to withhold all of the artists it manages from competing promoters. Front Line has no legal right to dictate to its artists which promoters they can use. In fact, Front Line has a fiduciary obligation to obtain the best deals for its artists, regardless of the interests of other Front Line-affiliated companies. In addition, artist management services are typically provided pursuant to agreements that can be terminated by the artist at will. If the merged firm acted or threatened to act contrary to the interests of its managed artists, the artists could simply sign with another artist manager. There are countless managers capable of handling acts of all sizes; indeed, some of the largest artist management firms represent only one artist. In light of these factors, the United States concluded it was unlikely that the combination of Front Line with Live Nation restrict competition in the concert promotion business.

Second, artists would have the ability and incentive to prevent the merged firm from exercising market power in concert promotion. There are two primary ways that the merged firm could attempt to exercise such market power: (1) Reducing compensation paid to artists (or otherwise adversely altering the terms on which promotional services are provided to artists); or (2) restricting output—*i.e.,* the number of concerts—in an effort to raise prices to consumers. In both cases, artists would have the incentive to prevent the merged firm from harming their own economic interests. Artists would also have the ability to turn to a large number of competing concert promoters, including AEG and many regional promoters, who would gladly seize on the opportunity to expand their promotion business at the expense of the merged firm.

In addition to considering the impact of the merger on the concert promotion market, the United States also analyzed the possibility that the merger would reduce competition in the market for operating venues. The United States did not rule out the possibility that Live Nation's ownership of many key venues throughout the country could give the merged firm some market power. However, Ticketmaster owned no venues and therefore the merger does not result in any increase in the number of venues owned or operated by Live Nation. In other words, whatever market power Live Nation had in concert promotion or venues before the merger would not be enhanced by its merger with Ticketmaster. Therefore, the addition of Front Line and the Ticketmaster ticketing business to Live Nation seems unlikely to alter the competitive dynamics in the venue market. As noted above, Front Line artists account for a fairly modest share of the concert business, and the merged firm does not "control" the Front Line artists to the degree that it can prevent them from performing at competing venues.

Contrary to Jam's contention, the Supreme Court's 1948 Paramount decision does not compel the United States to challenge this merger under stare decisis.[50] In Paramount, the Supreme Court was not determining the effects of a vertical merger. Rather it was fashioning a remedy for a long-running price fixing agreement among competing movie studios that had a vertical aspect in that the movie studies used their ownership of movie theaters to facilitate their price fix. In that context, the Supreme Court instructed that the court-ordered remedy should be tailored to the anticompetitive conduct at issue and, under the facts in that case, determined that the defendant studios had to divest themselves of their movie theaters in order to "uproot" the long-running price fixing agreement. In this case, consistent with Paramount, the United States fashioned a remedy that was tailored to the anticompetitive conduct alleged in the Amended Complaint.[51]

2. Adequacy of Consent Decree Provisions

Jam contends that the anti-retaliation provision of the proposed Final Judgment, Section IX.A, will be difficult to enforce.[52] The United States does not agree. Section XI of the proposed Final Judgment contains robust mechanisms enabling the United States to investigate any potential violations of the proposed Final Judgment's terms. The United States also has significant experience in enforcing a similar anti-retaliation provision in the Final Judgment in *United States* v. *Microsoft.*[53]

Jam contends that AEG and Comcast-Spectacor may not succeed due to Ticketmaster's "superior technology" and the vertical integration of Ticketmaster and Live Nation.[54] However, Ticketmaster's software will power the AEG-branded website in the first stage of the divestiture,[55] and AEG has the right to obtain a perpetual license to Ticketmaster's software in the second stage.[56] Consequently, AEG will

[47] *See id.* at 6 (acknowledging that during the investigation JAM raised the same issues with the United States that it provides in its comments).

[48] Jam may have been concerned that the merger would make LiveNation a more efficient competitor to it when it says: "The critical mass created by the complete vertical integration of the live music industry by Live Nation and Ticketmaster puts all its competitors at a distinct competitive disadvantage." *Id.* at 19. Of course, having companies become more efficient at providing their goods or services is generally procompetitive, not anticompetitive.

[49] According to Pollstar data, Front Line artists accounted for just under 25% of gross sales for the top 50 tours in 2008 in North America. Including artists subject to long-term "360-degree" promotional agreements with Live Nation raises the merged firms' share to approximately 30%.

[50] Jam Comment at 22 ("So the lawyers who work for the US government are consciously choosing the [sic] forget about the Stare Decisis doctrine they are all taught in law school.") (citing *United States* v. *Paramount Pictures, Inc.,* 334 U.S. 131 (1948)).

[51] Jam's citations to *Eastman Kodak* v. *Image Technical Servs.,* 504 U.S. 451 (1992) and Complaint, *United States* v. *MCA,* Civ. No. 62–942–WM (filed July 13, 1962) are similarly not instructive. *Eastman Kodak* is not a merger case and MCA was a consent decree designed to address a long-running anticompetitive conspiracy, only one part of which involved a vertical merger.

[52] Jam Comment at 20.

[53] Final Judgment, *United States* v. *Microsoft,* Civ. No. 1:98-cv-01232 (D.D.C.) (entered Nov. 12, 2002). The *Microsoft* Final Judgment prohibits the company from retaliating against any computer software or hardware company that works with a competitor to Microsoft's Windows operating system or its related platforms. *Id.* §§ III.A, III.F.1. The United States has effectively enforced these provisions of the *Microsoft* Final Judgment with minimal difficulty and controversy.

[54] Jam Comment at 21.

[55] Proposed Final Judgment § IV.A.2.

[56] *Id.* § IV.A.1.

be well-positioned to provide a technologically competitive alternative to Ticketmaster. AEG is also a competitor in the concert promotion business with access to content, as the United States explains above in response to IMP's comments. Comcast-Spectacor, which owns and operates a number of major concert venues, will also be a vertically integrated primary ticketing competitor. For these reasons, that the proposed Final Judgment will ensure that AEG and Comcast-Spectacor will be robust competitors in the ticketing business.

C. Jack Orbin

Jack Orbin is the founder and President of Stone City Attractions, a regional concert promoter in the Southwestern United States that competes with Live Nation. Orbin contends that the proposed Final Judgment will "drive independent concert promoters out of business" and will reduce competition in the "live entertainment industry." [57] Orbin argues the proposed Final Judgment suffers from three faults: (1) "It fails to secure relief for the consumer by eliminating competition of independent concert promoters"; (2) "The relief fails to ensure adequate competition for primary ticket sales and for concert promotion, and is insufficient to allow entry into these markets"; and (3) "It fails to adequately prevent [the merged firm] from acquiring customer data from independent concert promoters." [58] As noted above, these arguments are not a proper subject for Tunney Act review because they assert that the United States should have challenged the merger on different grounds than those alleged in the Amended Complaint.[59]

To the extent the comment relates to the market for primary ticketing services, it does not raise issues that suggest that entry of the proposed Final Judgment would not be in the public interest.[60] Orbin assumes, without support, that Comcast-Spectacor will be unable to expand the use by venues of the Paciolan platform beyond the venues in which it is currently used.[61] However, Paciolan is an existing successful ticketing platform that will now be independent of Ticketmaster and able to compete with Ticketmaster for primary ticketing services contracts. Paciolan has a large client base that includes major concert venues (and numerous other venues) and offers a completely different pricing model from Ticketmaster, enabling the venue to control all service fees, which will put it in a strong position to provide a competitive alternative to Ticketmaster.

Orbin is also "very skeptical" that AEG will be able to succeed as a primary ticketer.[62] Orbin contends that because the proposed Final Judgment requires Ticketmaster to license its Host platform to AEG, that AEG will be "fully beholden and dependent on Ticketmaster." [63] This is not accurate. AEG has the right to obtain a copy of the Ticketmaster Host Platform and run it on its own systems.[64] During the transition period when Ticketmaster operates a private label ticketing service on behalf of AEG, the proposed Final Judgment prohibits Ticketmaster from impeding AEG's ability to compete. Specifically, Section IV.A.2 requires Ticketmaster to provide an operational system within six months with a website that has an AEG-determined branding, look, and feel; compels Ticketmaster at the request of AEG to post links on its website to events sold on the private label ticketing service; and explicitly prohibits Ticketmaster from having any right or ability to set the ticketing fees charged by AEG. If Ticketmaster does not comply, the United States can and will move the Court to enforce the provisions of Section IX.A through civil and criminal contempt proceedings, as appropriate.

Orbin argues that the proposed Final Judgment itself facilitates additional vertical integration and will make it more difficult for non-vertically integrated firms to compete.[65] Vertical integration, however, is merely one strategy for successful competition in the primary ticketing business. The proposed Final Judgment ensures there will be two significant competitors to Ticketmaster that offer different value propositions through their respective areas of expertise. So long as competition is restored to the primary ticketing market, ticketing companies will be able to compete along a wide range of attributes. For example, some competitors may focus on the additional products they can offer in conjunction with primary ticketing, while others may specialize in innovative ticketing software that, standing alone, provides significant value to venues.

Finally, Orbin contends that the firewall established by Section IX.B is too limited to protect the data of independent concert promoters, especially in comparison to a firewall adopted in a recent FTC decree involving PepsiCo, Inc., and that it lacks "any mechanism [for] policing the firewall." [66] As an initial matter, the firewall set forth in Section IX.B prohibits the sharing of information between Live Nation Entertainment's ticketing business and its promotions and artist management businesses. Live Nation has technical safeguards in place to prevent the disclosure of sensitive information to those not appropriately authorized to access it. Live Nation also has created a corporate policy governing access to this information, disseminated that policy to all employees, and instituted a training program to ensure that those with access to sensitive data understand and uphold their obligations. Since the entry of the temporary order requiring the merged entity to comply with the proposed Final Judgment, the Department has been closely monitoring the merged entity and its ongoing efforts to develop methods to audit compliance and to submit to the Department detailed annual reports about such compliance.

Orbin wrongly contends that the proposed Final Judgment lacks "any mechanism of policing the firewall." Section XI of the proposed Final Judgment provides the United States with a full panoply of tools to ensure compliance with the firewall, including the ability to demand documents and interview or depose any employee. The United States may also require the merged firm to provide written reports, including an independent audit or analysis, on any matters relating to the proposed Final Judgment. As discussed above, the United States has already engaged with the parties on the exact mechanisms in place to ensure compliance with the firewall, and the United States is confident that the proposed Final Judgment provides it with all the tools it needs to enforce the firewall provision.

A comparison of the firewall in this settlement to that in the FTC PepsiCo case is not particularly instructive. Unlike in PepsiCo, the firewall in this case is not the central relief contained in the proposed Final Judgment. The two divestitures are the core relief and the behavioral remedies are designed to supplement that relief in the proposed Final Judgment. This is a result of the fact that, unlike in PepsiCo, the United States did not allege as a theory of harm in its Amended Complaint that a

[57] Orbin Comment at 3 (attached as Exhibit C).

[58] *Id.* at 4.

[59] *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1459 (DC Cir. 1995).

[60] Orbin Comment at 5–6.

[61] *Id.*

[62] *Id.* at 6.

[63] *Id.* at 6.

[64] Proposed Final Judgment § IV.A.1.

[65] Orbin Comment at 6.

[66] *Id.* at 7 (citing *In the Matter of PepsiCo., Inc.,* FTC File No. 091 0133 (Feb. 26, 2010) (attached to Orbin Comment)).

vertical merger would result in an anti-competitive information exchange. The Department instead alleged that the merger would eliminate direct, horizontal competition between Ticketmaster and Live Nation in the provision of primary ticketing services to major concert venues.

D. Middle East Restaurant, Inc.

Middle East Restaurant, Inc. ("Middle East Restaurant") operates a restaurant and night club in Cambridge, Massachusetts, and competes against Live Nation in the Boston area.[67] Ticketmaster provides primary ticketing services to the company.[68] Middle East Restaurant requests that the proposed Final Judgment be modified to allow Ticketmaster's existing ticketing clients to terminate their contract and sign with a competing ticketing company.[69] Middle East Restaurant is concerned that it will be at a competitive disadvantage with its promotions/venue competitor in the concert business providing its ticketing services and therefore profiting from its concerts and potentially having access to its data.[70]

Middle East Restaurant does not allege that its proposal is related to competition in the ticketing market. Moreover, it is not necessary to allow existing Ticketmaster clients to terminate their contracts in order to restore competition in the primary ticketing market. Since the average ticketing contract is three to five years in length, every year there is a substantial volume of contracts up for bid and available to be pursued by AEG, Comcast-Spectacor, and other ticketing competitors. Finally, while Middle East Restaurant contends there are "no systems or penalties in place to protect The Middle East's customer's data,"[71] the firewall provision set forth in Section IX.B will prevent its ticketing data from being shared with promotions personnel within the merged entity.

E. Additional Comments

Finally, the United States received comments from LIVE–FI Technologies, Inc. and the following individuals: Kenneth de Anda, Chris Cantz, Joe Carlson, Don Crepeau, Jason Keenan, Tom Kuhr, and Gary T. Johnson (collectively "citizen complainants").[72] LIVE–FI's comment argues that the proposed Final Judgment: (1) "Omit[s] all discussion of the negative anticompetitive impact the merger will have upon live event and recording distribution particularly electronic broadcasts and transmissions;"[73] (2) hurts small companies because the divestiture assets were divested to large companies;[74] and (3) that through it this Court has "failed to adopt explicit protocols and safeguards to ensure that private litigants and smaller entities maintain equal and fair access to the Courts to protect their rights and remedies against the individual defendants and the merged entity."[75] The citizen complainants generally argue that they paid high service fees, paid hidden service fees, that the merged entity does not make all seats at concerts available for purchase, that the merged entity is a monopoly, and/or that the Department of Justice generally failed to protect consumers. None of these comments raise any substantive issues regarding the efficacy of the relief contained in the proposed Final Judgment to remedy the competitive harm to the primary ticketing services market alleged in the Amended Complaint.

V. Conclusion

After careful consideration of the public comments, the United States concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Amended Complaint and is therefore in the public interest. Accordingly, after the comments and this Response are published, the United States will move this Court to enter the proposed Final Judgment.

Dated: June 21, 2010.

Respectfully submitted for plaintiff United States.

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In the 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.

John R. Read, Esquire,
Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 2000, Washington, DC 20530.

It's My Party, Inc. ("I.M.P."), It's My Amphitheatre, Inc. ("I.M.A."), Seth Hurwitz, Frank Productions, Inc., Sue McLean and Associates, Metropolitan Talent, Inc., each of which promotes, and/or operates or books venues for, popular music concerts, and the National Consumers League[1] (collectively, the "Objectors") herewith object to the Proposed Consent Judgment between the plaintiffs in the above-captioned action and Live Nation, Inc. ("Live Nation") and Ticketmaster Entertainment, Inc. ("Ticketmaster").

Preliminary Statement

The Department of Justice ("DOJ") and several state Attorneys General (collectively, the "Government") have challenged the merger of Live Nation and Ticketmaster to form Live Nation Entertainment, Inc. ("LNE") on the grounds that this merger would substantially lessen competition in the market for the provision of primary, remote ticketing services in the United States. The Government has resolved this challenge by agreeing to a Proposed Consent Judgment (the "Consent Judgment") whose principal terms require Ticketmaster to grant a perpetual license to its ticketing software and divest its entire Paciolan

[67] Middle East Restaurant Comment at 1 (attached as Exhibit D).

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] These comments are attached Exhibits E through L.

[73] LIVE–FI Comment at 1.

[74] *Id.* at 2.

[75] *Id.*

[1] The National Consumers League (NCL) is part of the coalition of consumer groups, independent promoters, ticket sellers and 50 members of Congress opposing the merger between Ticketmaster and Live Nation. Despite our coalition's efforts, the Department of Justice went forward in approving the merger. While it joins in these objections, the NCL also notes that, as a consumer organization, it believes the merger should not have been approved and that further concentration of the live performance ticketing industry will ultimately prove harmful to consumers, who will see a steady rise in the cost of concerts and other live events, an increase in vaguely defined fees and charges, which have dramatically pushed up the price of tickets over the past decade. Indeed, the average price of a ticket to one of the top 100 tours soared to $62.57 in 2009 from $25.81 in 1996, according to Pollstar, far outpacing inflation. (David Segal, *Calling Almost Everyone's Tune,* N.Y. Times, April 23, 2010.)

Indeed, since the merger's approval in late January of 2010, Live Nation Entertainment, Inc. flexed its dominance. It bid on virtually every artist touring in 2010 and the booking agents for popular artists, such as Rascal Flatts, Brad Paisley, Iron Maiden, 311 and Jimmy Buffett, did not even solicit competitive offers for this 2010 summer concern season. This conduct has already impacted ticket prices and ticket servicing fees. For instance, the top ticket price for the Lady Gaga tour has increased by approximately 133% in the last three months.

NCL supports efforts to stop this merger because of its contribution to the increased concentration of the live event industry in the hands of a few powerful forces and the resulting decrease in customer services and increase in prices to consumers.

business to independent companies. The stated purpose of these divestitures is to create two independent firms capable of competing with LNE, particularly in the market for the remote, primary sale of tickets to what the Government characterizes as major concert venues.

The Objectors challenge the Consent Judgment because the proposed remedial relief will not achieve the stated goal of facilitating effective competition with LNE in the primary, remote sale of tickets to popular music concerts at major concert venues. The Consent Judgment does not take into account LNE's domination of the promotion of popular music concerts by major artists and control of venues capable of hosting concerts by major artists. The vast majority of all popular music concerts by major artists will be promoted by LNE and held at LNE controlled venues at which its remote, primary ticketing services will be utilized without violating the Consent Judgment. The companies to which Ticketmaster's ticketing software and Paciolan business are divested will be unable to compete effectively to provide remote, primary ticketing services for popular music concerts and LNE will remain the dominant competitor in the market. LNE is already exercising this market domination to eviscerate the remedial relief imposed under the Consent Judgment. The continuation of the merged company's dominant position in the market will have significant anticompetitive consequences, including continued supra-competitive ticketing services fees and charges.

If the Government remains unwilling to challenge the merger, additional remedial measures are necessary. To create meaningful competition in the market for remote, primary sales of tickets to popular music concerts, LNE should be precluded from: (i) Promoting more than seventy-five percent (75%) of major popular music artists' tours; (ii) tying or bundling its promotional services and venue services; (iii) tying or bundling the appearance of major popular music artists at one LNE controlled venue to the artist's appearance in LNE controlled venues in different geographic markets; and (iv) retaliating against or penalizing any artist who elects to utilize a rival promoter or venue during the course of a LNE sponsored national or multi-appearance tour. LNE should also be required to return at the request of any promoter or venue any customer or other competitive information Ticketmaster maintained from concerts for which it provided ticketing services for the promoter or venue. These remedial measures will facilitate the ability of independently owned and operated venues, which will likely utilize rival ticketing companies, to compete for the artists who drive the live music industry.

Supplemental Market Analysis

A. The Popular Music Concert Industry

While the Government's Complaint and Competitive Impact Statement analyze the live entertainment industry, they focus upon the specific market for the remote, primary sale of tickets to music concerts. However, the implementation of effective remedial action for the anticompetitive effects the Government has recognized will result from the Live Nation—Ticketmaster merger requires a deeper analysis of the promotional and venue services markets. This analysis establishes that Live Nation had far greater pre-merger power in those markets than the Government recognizes and that the merger has enhanced LNE's dominance in these markets. This market domination will strangle nascent competition in the market for remote primary ticketing services.

The popular music concert industry has its roots in the technical innovations that led to the growth of the radio and television industry and a consumer mass market for quality recorded music. To drive record sales, record companies sponsored concert tours across the country. Radio airplay, exposure on nationally broadcast television shows, such as *American Bandstand* and *The Ed Sullivan Show,* and record sales led to nationwide notoriety for highly talented artists performing the genre of music in vogue at the time. As artists' popularity grew, they began to attract substantial audiences for their live performances.

The style of music in vogue has evolved over time. In the 1950s, popular music was evolving into "rock n' roll" (or just "rock"), a blend of rhythm and blues and country music. This musical genre became widely popular among teens and young adults in the 1950s. Rock artists became so popular that they attracted substantial audiences for their live performances and touring provided them with a significant source of revenue. As a result, artists began to tour independently of their recording companies. For several decades, only rock or folk (as this style of music gained wide popularity in the 1960s) qualified as popular music when measured by record sales, concert attendance or the amount and breath of radio play. Recently, rock music has splintered into different genres, including classic (of the style from the 1960s through 1970s), "hard" (less melodic) and alternative rock, and into a general category of "pop" (electric guitar and organ and drum dominated music). Additionally, country music has spread from its roots in the south and southwest of the United States to gain mainstream acceptance throughout the country (*see,* CNNMoney.com, *Cashville USA* [2] (Ex. "A" hereto)), and the hip-hop and rap styles of music developed and became popular among teens and preteens. Other styles or genres of music, including jazz, blues and gospel, while capable of drawing significant numbers of fans, are popular only in one region of the country or among a segment of the population, so that they draw mass audiences, at most, only in limited areas or for only a few performances a year. Similarly, symphony orchestra performances and opera appeal to a small segment of the population, require unique venues,[3] and promoters are not usually involved with these events.

As the Government recognizes (Complaint, ¶¶ 15–19), a separate defined market developed for what are referred to hereinafter as "popular music concerts by major artists" with "popular music" defined as that genre of music of broad popularity and "major artists" defined as those artists performing in a popular music genre with sufficient talent to generate a mass audience. Local entrepreneurs began to promote concerts, which entailed advertising and marketing the concert in their region or city and often assuming the financial risk of the concert. As the industry developed, artists engaged a booking agent to schedule and route a tour. Booking agents would contact local promoters in each city or region in which the artist was considering appearing and solicit bids to promote the concert in their area. Initially, concerts were held in theatres utilized for plays or other such facilities and, as rock and folk artists grew in popularity, expanded to indoor sports arenas with seating for up to 30,000 fans and, in some instances, in outdoor sports stadiums with seating capacities in excess of 60,000 fans. Independent

[2] Found at *http://money.cnn.com/magazines/fortune/fortune_archive/2007/01/22/8397980/index.htm.*

[3] As symphonies are generally performed with no or minimal amplification, they are generally only conducted at concert halls with highly tuned acoustics. Symphony orchestras may perform summer concerts at general music venues, usually amphitheatres, but do not have a sufficient breath of appeal to draw mass audiences to multiple performances and do not appeal to most popular music fans.

companies were formed to provide remote (at locations other than the venue hosting the concert) ticket sales.

As the popular music concert market developed, facilities designed and intended for use solely as venues for live popular music concerts were constructed throughout the country, primarily in large urban areas. The most prevalent type of venue constructed for live popular music concerts are outdoor amphitheatres, with a seating capacity generally between 8,000 and 25,000 fans spread over designated seating areas (usually under cover) and large lawn areas. These facilities have become the dominant venues for popular music concerts because, as they are constructed to host music concerts, they have good sight lines, acoustics (although not to the level of a symphony hall) and staging. Conversely, arenas and stadiums are primarily constructed for sporting events and are generally not desirable venues in which to view a concert.[4] Amphitheatres also enjoy the advantages that: (a) Fans enjoy attending concerts outdoors and mingling in the lawn section before and during the concert; (ii) they are more flexible than arenas and certainly stadiums in the size of the shows they can handle because they are less costly to operate, lawn seating allows amphitheatres to approach the seating capacity of indoor sports arenas while fans at less popular shows spread out in the lawn areas making the show seem to have a larger attendance; and (iii) attendance at amphitheatres tends to be higher because fans of limited means can purchase a lawn ticket at a reduced price and still obtain a good vantage by arriving early and are not locked into undesirable seats.

The artist is the bedrock of the popular music concert industry as it is the artist that draws the fans. It is commonly recognized that there are less than one hundred artists who can attract an average of 8,000 to 30,000 fans during a national concert tour. In its World Industry Report, *Promoters of Performing Arts, Sports and Similar Events with Facilities in the U.S.,* IBISWorld states that, in 2005, the top 100 tours comprised 67% of the total domestic concert revenues. LNE recognizes the limited number of major artists and has centered its entire business model around controlling them. As its Brad Wavra, Senior Vice-President of Live Nation's Touring Division, stated: "[t]here are only a handful of great artists out there that can do 10,000; 12,000; 15,000 tickets in 40 cities across the country. Everybody knows who they are, they're historic artists, legendary artists. So, when they're on a touring cycle, you know, we all want to get them to come play for us." (Transcript of Artist House Music's Interview of Brad Wavra, Ex. "B" hereto.)

B. Live Nation Conquerors Popular Music Concerts By Major Artists

In approximately 1997, SFX Entertainment, Inc. ("SFX") began acquiring local concert promoters to develop a promotional company of national scope. For example, SFX acquired Bill Graham Presents, Electric Factory Concerts, Fey Concerts, Pace Concerts, Cellar Door and the promotional companies of Jules Belkin and Don Law. As it expanded nationally, SFX introduced a fundamental change in the market for concert promotion by promoting multi-appearance concert tours. Local promoters struggled to compete against SFX because it submitted offers for the entire tour, which promoters operating in only one city or region found difficult to match. At a competitive disadvantage, local promoters were unable to survive and became ripe for acquisition.

In 2000, Clear Channel Communications, Inc. acquired SFX and changed the name of the Company to Clear Channel Entertainment. Clear Channel Entertainment continued to acquire promoters on the way to building a promotional company of national scale and expanded to the point that it could promote artists' entire national tours. Clear Channel Entertainment also acquired control of concert venues either by purchasing them, entering into long term lease relationships or executing management and/or exclusive booking agreements. Clear Channel Entertainment directed artists that it promoted to appear at venues it owned, leased, managed or exclusively booked.

This business practice placed promoters at an ever increasing competitive disadvantage because it was impossible for local promoters to bid against national tour offers. As Clear Channel Entertainment generally would not allow artists promoted by its competitors to appear at its venues, promoters were also denied access to venues at which to produce concerts. Independent venue owners and operators were placed at a competitive disadvantage as well because they were denied the ability to compete to provide venue services to artists Clear Channel Entertainment promoted. Facing an insurmountable competitive disadvantage, many more promoters and venue owners became ripe for acquisition by Clear Channel Entertainment.

Several antitrust actions were filed against Clear Channel Communications and Clear Channel Entertainment claiming that they had unlawfully acquired monopoly power in the market for the promotion of popular music concerts and engaged in numerous anticompetitive actions to maintain and exploit this power. *Nobody In Particular Presents Inc* v. *Clear Channel Communications Inc.,* 311 F. Supp. 2d 1048 (D. Colo. 2004); *In Re Live Concert Litigation,* 247 F.R.D. 98 (C.D. Cal. 2007); *JamSports & Entm't, LLC* v. *Paradama Prods.,* 382 F. Supp. 2d 1056 (N.D. Ill. 2005). In *Nobody in Particular Presents,* the Court held that plaintiffs had established a genuine issue of material fact in support of their claims that Clear Channel had used its monopoly power in the market for the broadcast of rock music to force artists to utilize Clear Channel Entertainment's promotional services. The Court found that plaintiffs had established, at least, a *prima facie* case that Clear Channel refused to advertise concerts promoted by anyone other than Clear Channel Entertainment and to provide crucial radio play to artists who utilized rival promoters.

In the wake of these claims, Clear Channel spun Live Nation off into a separate, publicly traded company in 2005. At that time, Live Nation was the largest promoter of live popular music concerts in the United States. Recognizing the central importance of control of the artist, Live Nation soon developed a business plan of controlling the entire interface between popular music artists and their fans by integrating concert promotion, the operation of music concert venues, merchandising, sponsorships and ancillary rights. This plan is openly discussed in Live Nation internal documents, such as the attached flow chart in which Live Nation touts its "model transformation" as "Branded Vertically Integrated Live." (Ex. "C" hereto.) In a separate document, Live Nation refers to its vertical integration of the concert industry as "Creating the Artist-to-Fan Platform." (Ex. "D" hereto.)

In furtherance of this business plan, Live Nation expanded the number of national tours it promotes, offering national tour deals to all or substantially all of the highest grossing artists touring in any one year. To induce artist participation in these tours, Live Nation offered supra competitive shares of the

[4] An artist might prefer an indoor venue if the performance includes a light show or has special stage requirements. This may occur only a few times a year.

concert revenues, at times paying artists more than 100% of the ticket sales. It insisted on control of the entire tour and that the artist appear only in venues that Live Nation controlled through ownership, lease, management or exclusive booking contracts. It was crucial for the artists to appear at Live Nation controlled venues not only to implement its plan to control the "artist-to-fan" platform, but also because Live Nation profits only upon concession sales, parking fees and merchandising fees. Live Nation's Chief Executive Officer admitted while testifying before the Antitrust Sub-Committee of the Senate Judiciary Committee that Live Nation loses money on concert promotion and profits only through sales at its venues. *House Judiciary Subcommittee on Courts and Competition Policy Holds Hearing on the Proposed Merger Between Ticketmaster and Live Nation,* Cong. p. 60 (Feb. 26, 2009) (statement of Michael Rapino, President and CEO of Live Nation Worldwide).[5]

To obtain further control over major artists, Live Nation has entered into multi-year agreements to manage every aspect of an artist's career, capture all revenue streams associated therewith and control every market comprising or ancillary to the live music concert industry. Acknowledging this strategy, Live Nation Chief Executive Officer Michael Rapino stated that Live Nation was "acquiring more rights for a longer time period with locked-in pricing, cross-collateralized for risk reduction." (Live Nation Q1 2008 Earnings Call Transcript.) Live Nation has entered into these "360° degree management contracts" with Madonna, U2, Jay-Z, Nickelback and Shakira. As part of these agreements, Live Nation assumes the management of artists' careers and controls whatever revenues they generate, locking up the artist for a number of years.

Live Nation continued Clear Channel's acquisition spree, acquiring promoters and venues and entering into management and exclusive booking arrangements with venues. Notably, when HOB Entertainment, Inc. threatened Live Nation's primacy by expanding its *House of Blues* themed dinner and music clubs nationwide and purchasing amphitheatres, Live Nation acquired it. It was reported that this acquisition closed many of the gaps in Live Nation's national tour routing. Live Nation also acquired, entered into long term leases and executed management or exclusive booking agreements at numerous amphitheatres, concert halls, music theatres and other such venues. (*See,* MSN.com, PR Newswire, *Live Nation Continues Top 20 Market Expansion with Agreement to Operate Bayfront Amphitheater in Miami, Florida—16th Largest Market in United States* (Ex. "E" hereto).)[6] LNE presently owns, leases, manages or exclusively books 111 venues in the United States, including some of the most prestigious, such as *The Fillmore* in San Francisco and the *Hollywood Palladium.* (*See* Live Nation 2009 10K.)

Live Nation also expanded its reach internationally by acquiring promoters and venues in Europe. On August 21, 2008, Live Nation formed a partnership with Corporación Interamericana de Entretenimiento SAB de C.V. ("CIE"), the largest concert promoter in Latin America. CIE owns nearly all the major concert halls and arenas in Mexico, and a large percentage of those in Brazil and other large South American markets. The *Wall Street Journal Online* reported that this partnership gives Live Nation the exclusive right to book world tours into CIE venues. *See* Ethan Smith, *Live Nation Reaches Deal with Big Concert Promoter,* Wall St. J., Aug. 21, 2008, available at *http://online.wsj.com.* Live Nation's international expansion, particularly its relationship with CIE, enhanced its control by affording it the ability to promote artists' world tours or using the ability to play CIE venues as leverage in negotiating national tours or appearances at Live Nation venues in the United States.

Live Nation now dominates the markets for promoting and providing venue services for popular music concerts by major artists. Based upon data from Pollstar, which the Government recognizes as a "leading source of concert industry information" (Competitive Impact Statement, p. 4 n.2), Live Nation promoted at least 70% of the live popular music concert tickets sold by major artists in the United States in 2008.[7] Based on Live Nation's public disclosures and an analysis of Pollstar data, Live Nation controls 40 of the 48 in excess of 15,000 fan capacity amphitheatres and has a monopoly of or the only amphitheatre in 18 of the largest 25 designated market areas[8] in the United States. There are several areas of the country in which there are no popular music promoters other than Live Nation or appropriately sized venues other than those controlled by Live Nation.

As the Government recognizes, in approximately 2007, Live Nation licensed technology to enable it to conduct the remote sale of concert and other event tickets. This action threatened Ticketmaster's existing dominance in the market for the remote sale of event tickets because, as the Government also recognizes, Live Nation had a captive market for its remote ticketing services (the venues it controlled) and was better positioned to overcome the significant existing barriers to entry into this market. Realizing that Live Nation would compete against it in the remote sale of event tickets, Ticketmaster laid the foundation to compete against Live Nation in the market for the promotion of concerts. The obvious plan was to put Ticketmaster in position to protect its remote ticketing business by offering integrated services (at least artists, historical concert information and ticketing services) to artists and venues.

A significant step in developing this capability was Ticketmaster's acquisition of majority control of Front Line Management ("Front Line"), one of the largest artist management companies in the country, which boasts a staple of marquee artists, ranging in age from Miley Cyrus to Willie Nelson. Front Line managed artists also include Van Halen, Neil Diamond, Christina Aguilera, Kid Rock, Maroon 5, the Kings of Leon, Jimmy Buffett, Aerosmith and Guns-n-Roses. (David Siegel, *Calling Almost Everyone's Tune,* N.Y. Times Reprints, April 23, 2010.) Front Line's Chief Executive Officer is Irving Azoff, who is recognized as one of the most influential recording artist managers in the world. (*Id.*) Ticketmaster's control of Front Line's artists threatened Live Nation because it could deny Live Nation access to a substantial number of the less than a hundred artists who could command an audience large enough to sell out or fill its amphitheatres and other larger capacity venues.

Within just a few months of this acquisition, Live Nation and Ticketmaster agreed to merge. While the Government characterizes this merger as a move by Ticketmaster "to eliminate Live Nation entirely as a competitor"

[5] "We [Live Nation] do 1,000 concerts at our 50 amphitheaters. We will lose $70 million at the door. That means the price of the talent versus the ticket price. That's 10 million tickets being sold. So in theory, if I had any control on those ticket prices, you would assume I would charge seven more dollars a ticket to cover my $70 million loss. The artist takes the door and we end up making the money on the peanut, popcorn, parking and ticket rebates."

[6] Available at *http://news.moneycentral.msn.com/printarticle.aspx?feed=PR&date=2008-812&id=9017679*).

[7] This analysis is based upon current information and represents Live Nation's minimum share of this market.

[8] A designated market area, or DMA, as designated by Nielsen Media Research, Inc.

(Competitive Impact Statement, p. 11), Live Nation, in fact, was the dominant party in the merger and it acted to eliminate Ticketmaster (as it has eliminated so many previous competitors) as a threat to its control of the interface between popular music artists and their fans. At the very least, while the merger eliminated a competitor in the market for remote ticketing services, it also eliminated a competitor in the market for promoting popular music concerts and a potential competitor in the market for providing venue services.

Proposed Final Judgment

On January 25, 2010, the Government filed a civil antitrust Complaint seeking to enjoin the proposed merger between Live Nation and Ticketmaster because its primary effect would be to "lessen competition substantially for primary ticketing services to major concert venues located in the United States." (Competitive Impact Statement, pp. 1–2.) In support of this claim for relief, the Government alleged that Ticketmaster "dominated primary ticketing, including primary ticketing for major concert venues, for over two decades." (Amended Complaint, ¶ 21.) The Government contended that, as a result of this dominance, Ticketmaster was able to charge consumers supra competitive ticketing fees which did not decrease even though Ticketmaster's costs were declining as a result of the introduction of selling tickets over the Internet. (*Id.,* ¶ 22.)

The Government defined the market as the "provision of primary ticketing services to major concert venues" even though Ticketmaster provided remote ticketing services to events other than music concerts because the "set of customers most likely to be affected by the merger of Ticketmaster and Live Nation are major concert venues." (Amended Complaint, ¶ 37.) It noted that 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." (*Id.,* ¶ 43.)

The Government simultaneously filed the Consent Judgment which would preclude Live Nation and Ticketmaster from completing their merger until they complied with the remedial action specified therein. As a general matter, Ticketmaster was required to license the Ticketmaster operational software to Anschutz Entertainment Group, Inc. ("AEG") (or another acceptable licensee) and divest Ticketmaster's entire Paciolan business to Comcast Spectacor, LP (or another acceptable acquirer). The stated purpose of this remedial action is to create viable competitors to LNE in the market for providing primary remote ticketing services, particularly in providing these services to major music venues. The Proposed Consent Judgment also imposes remedial measures intended to assist these entities in competing against the merged entity. These measures include prohibiting the merged entity from retaliating against any venue, such as by refusing to host concerts at any venue, that selects another primary remote ticketing service.

However, the Consent Judgment does not address Live Nation's ability, as recognized in the Amended Complaint, to drive the use of its primary, remote ticketing business through the control of other markets. The prohibition of LNE retaliating against concert venues utilizing other ticketing services provides no meaningful protection because, with the exception of stadiums and arenas that are not primarily used as concert venues, Live Nation already directs the artists it promotes, and now manages, to the music venues it owns, leases, manages or exclusively books. LNE does not have to retaliate against anyone to induce those venues to utilize its (Ticketmaster's) primary, remote ticketing service. It either controls or already has substantial influence over this decision. As Live Nation dominated, and LNE has even greater control over, the promotion of popular music concerts and venues used for popular music concerts by major artists, LNE will dominate the primary remote ticketing services market as well. LNE will have no reason to reduce the excessive service fees Ticketmaster charged. Indeed, it would appear that LNE will use supra competitive ticketing service fees as another source to off-set the supra competitive payments it makes to artists.

The Proposed Consent Judgment does nothing to prohibit this conduct. To the contrary, it facilitates this action by expressly permitting LNE to bundle its services. For this reason, the remedial action the Government has negotiated will not prevent the competitive harm it sought to address. In fact, the merged entity has continued to direct artists to the venues it controls for the upcoming 2010 season. For these reasons, if the Live Nation/Ticketmaster merger is to be permitted, additional remedial action must be required.

Argument

A. A Consent Order That Provides for Ineffective Remedial Action Should Not Be Approved

The determination of whether the Consent Judgment should be approved will be based on whether it is in the "public interest." 15 U.S.C. 16(e)(1). In making this assessment, a court may not substitute its judgment for the Government's as to the nature or scope of the claims brought in the first instance. *United States* v. *Microsoft Corp.,* 56 F.3d 1448 (DC Cir. 1995). For this reason, while the Objectors believe that the Live Nation and Ticketmaster merger will substantially reduce competition in the market for providing promotional and venue services to popular music artists, and contend that Live Nation's conduct is independently actionable,[9] they have not addressed these issues.

Conversely, the court is not merely a "judicial rubber stamp[ ]"; it is required to make "an independent determination as to whether or not entry of a proposed consent decree is in the public interest." *Id.,* at 1458 (quoting H.R.REP. NO. 1463, 93d Cong., 2d Sess. 8 (1974), and S.REP. NO. 298, 93d Cong. 1st Sess. 5 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538, 6539.) The independent nature of judicial review of a consent judgment is further evidenced in the Senate debate of the Tunney Act: "[The Act] will make our courts an independent force rather than a *rubber stamp* in reviewing consent decrees, and it will assure that the courtroom rather than the backroom becomes the final arbiter in antitrust enforcement." (The Antitrust Procedures and Penalties Act of 1974: Hearings on S. 782 and S. 1088 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary, 93d Cong. 1 (1973) (opening remarks of Senator Tunney).) *See also, United States* v. *GTE,* 603 F. Supp. 730, 740 n.42 (D. D.C. 1984) ("([I]n light of the history and purpose of the Tunney Act, it is abundantly clear that the courts were not to be mere rubber stamps, accepting whatever the parties might present").

In making this determination, the Tunney Act provides that the Court "may consider," *inter alia:*

"(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration

[9] I.M.P. and I.M.A. have filed a Complaint against Live Nation asserting antitrust and State law unfair competition claims. *It's My Party, Inc.* v. *Live Nation, Inc.,* United States District Court for the District of Maryland, Northern Division, Civil Action No. 1:09 Civ. 00547 JFM.

or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment * * * ”

15 U.S.C. 16(e). A court should “hesitate” in the face of specific objections from directly affected third parties before concluding that a proposed final judgment is in the public interest. *United States* v. *Microsoft Corp., supra,* 56 F.3d at 1462. Additionally,

“The court should pay “special attention” to the clarity of the proposed consent decree and to the adequacy of its compliance mechanisms in order to assure that the decree is sufficiently precise and the compliance mechanisms sufficiently effective to enable the court to manage the implementation of the consent decree and resolve any subsequent disputes.”

United States v. *Thompson Corp.,* 949 F.Supp. 907, 914 (D. D.C. 1996).

In *Thompson,* in response to objections by competitors, the Court refused to approve a consent judgment permitting the merger of Thompson Corporation and West Publishing unless additional remedial action was implemented with respect to West’s claim of copyright protection for its star pagination system. In so ruling, the Court held the remedial actions specified in the proposed consent judgment did not adequately address the anticompetitive concerns the government raised in its complaint with West’s assertion of copyright protection for the star pagination system.

The Court should give serious consideration to the position of the Objectors—competitors of Live Nation in both concert promotion and venue operation—that the government plaintiffs’ proposed remedial relief will not address the substantial reduction in competition in the market for providing primary ticketing services they have concluded will result from the merger of Live Nation and Ticketmaster. Indeed, as the Government is still permitted to demand additional remedial action, it should give serious consideration to Objections filed by entities with substantial knowledge of the relevant markets and in unique positions to assess whether anyone will be able to compete effectively against Live Nation in the primary remote ticketing market before finalizing the Proposed Consent Judgment. A consent judgment that is ineffective in remediating the competitive harm the Government sought to address is not in the public interest.

B. LNE’s Dominance over the Market for Concert Promotion and Venue Services Will Strangle Competition in the Market for Primary Remote Ticket Sales at Major Music Venues

Even though it affirmatively alleges that the customers most directly affected by the merger are major concert venues, and that LNE’s promotion and artist management business poses an additional challenge that rival ticketing companies will have to overcome, the Government provides an, at best, perfunctory analysis of Live Nation’s pre-merger share of the market for concert promotion and venue services. It claims that Live Nation owns or operates 70 major concert facilities throughout the United States (Competitive Impact Statement, p. 5) and does not examine the extent to which Live Nation’s controls the available venues in the geographic markets in which it competes. It further claims that Live Nation promoted shows represent 33% of the concert revenues at major concert venues in 2008.

However, Live Nation’s public disclosures establish that it owns, leases, manages or exclusively books at least [10] 111 music concert venues. As is set forth previously, prior to the merger, Live Nation had monopoly control of amphitheatres with a more than 15,000 seating capacity in the United States and controls the only venue or a monopoly of the music venues in 18 of the largest 25 designated market areas. Given this dominance of the market, as is recognized by Trent Reznor, the lead singer for Nine Inch Nails, artists must deal with Live Nation on concert tours:

“NIN [Nine Inch Nails] decides to tour this summer. We arrive at the conclusion outdoor amphitheaters are the right venue for this outing, for a variety of reasons we’ve throughly [sic] considered. In the past, NIN would sell the shows in each market to local promoters, who then ‘buy’ the show from us to sell to you. Live Nation happens to own all the amphitheaters and bought most of the local promoters—so if you want to play those venues, you’re being promoted by Live Nation.”

The footnote provides:

“I fully realize by playing those venues we are getting into bed with all these guys. I’ve learned to choose my fights and at this point in time it would be logistically too difficult to attempt to circumvent the venues/promoter/ticketing infrastructure already in place for this type of tour.”

Moreover, measuring Live Nation’s market power in concert promotion based on revenue generated from ticket sales from what the Government terms major concert venues is inherently flawed as market power should be measured in the number of tickets sold. Promoters are typically ranked in the industry, as is reflected in Pollstar’s rankings, based on the number of tickets sold for concerts they promote. Furthermore, as with many service providers in this industry, ticketing companies are not paid by the entity that engages them (in this case, venues owners or operators), but rather they charge concert goers service fees per ticket. It accordingly was the consumer that bore the burden of Ticketmaster’s dominance of the primary remote sale of concert tickets through the payment of supra competitive service fees per ticket. As the competitive harm is reflected in service fees per ticket, the measure of Live Nation’s market power should be the percentage of the total number of tickets sold.

Even if the calculation of market power were based on revenues, the Government’s analysis substantially minimizes Live Nation’s pre-merger share of the market. Live Nation is in the business of promoting music concerts and, once again, the Government recognized that the merger will most acutely affect major concert venues. Nevertheless, the Government appears to have calculated Live Nation’s share of the promotional market by comparing the revenues it earned promoting concerts to the total revenues of the top 500 highest grossing venues. (Competitive Impact Statement, p. 4, n.2.) While the Government does not list what it considered to be the top 500 grossing venues, Pollstar data establishes that facilities clearly within the top 500 grossing venues have reported significant revenue for events that were not music concerts. Those events include circuses (both traditional [Ringling Brothers and Barnum & Bailey] and Cirque de Soleil style performances), plays, ice shows, ballet, opera and performances by comedians, magicians, symphony orchestras and the Blue Man Group. (A list of some of the events reported in Pollstar is attached hereto and marked Ex. “F”.) These events are plainly not music concerts and are not substitutes for fans of major popular music artists.

The events included within the Pollstar data also include performances by gospel, jazz, blues and other musicians, which are not fairly characterized as popular music and are also not adequate substitutes for fans of major popular music artists. The vast majority of fans only enjoy specific genres of music as is evidenced, for instance, by the segregation of radio stations among music genres. Further,

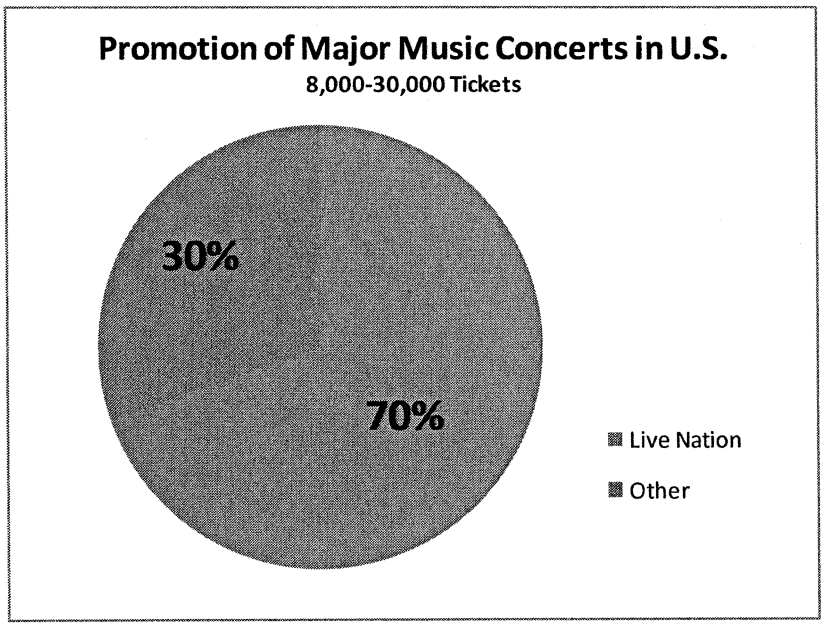
[10] It is unknown whether Live Nation’s public disclosures identify all venues it exclusively books.

Billboard magazine ranks songs according to their genre. (*See,* Ex. "G" hereto.) Fans will generally not attend a concert featuring a genre they do not enjoy. For this reason, in *Nobody in Particular Presents, supra,* the court held that the plaintiffs had established a triable issue of fact as to whether there was a distinct market for rock music and concerts. 311 F.Supp.2d at 1082–83. There is not a cross-elasticity of demand between popular music and jazz, blues and particularly gospel (that are usually attended only by fans with strong religious beliefs), and the option of attending these types of concerts will not impede LNE's ability to maintain supra competitive ticketing service fees in popular music concerts.

Moreover, as the Government recognizes (Competitive Impact Statement, p. 4 n.2), the top 500 grossing venues include clubs and music theatres. These facilities have limited seating capacities. In its Annual Report on Form 10K for the year ending December 31, 2008, Live Nation recognizes that music theatres typically have a seating capacity of between 1,000 and 6,500 and clubs have a seating capacity of less than 1,000 fans. With rare exceptions, artists appear at these kinds of venues because they do not have sufficient popularity, due either to their being a developing act or the genre of music they perform, to draw an audience for a larger amphitheatre, arena or stadium. Fans not only focus on the style or genre of music, but they also have favorite artists within a genre, and will generally not attend a concert by an artist they do not enjoy. By definition, artists appearing at music theatres and clubs do not have sufficient popularity to compete effectively against the substantially more popular artists appearing at amphitheatres, arenas and stadiums.

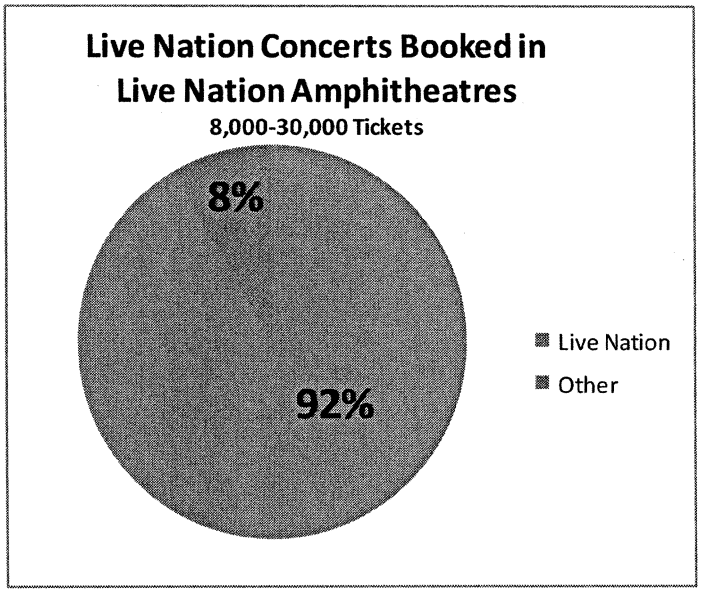
On the other end of the spectrum, owners of modern arenas and stadiums prefer artists whose fan base is sufficiently affluent to pay for the expensive tickets to luxury suites. There are only a few select performers with sufficient popularity among affluent fans to draw an audience large enough for a 25,000 seating capacity arena, let alone a 60,000 seating capacity stadium, and most well recognized popular music artists appear at amphitheatres and other venues specifically designed for music concerts with seating capacities of between 8,000 and 30,000 fans. Based on Pollstar data, there were only five artists that appeared in an amphitheatre or other venue used primarily for music concerts who also appeared at a typical sports arena during the same tour (other than in a festival or multi-artist concert) in 2008.

Based on this analysis, the proper measure of Live Nation's market power in the promotion of music concerts is determined by calculating its percentage share of the tickets sold for promoting popular music concerts by major artists (with an average attendance of between 8,000 to 30,000 fans). Based upon Pollstar data, Live Nation was the promoter for 70% of the tickets sold within this market in 2008:



Additionally, Live Nation dwarfs other promoters. Its most significant competitor is AEG Live, which promoted only 43% of the total amount of tickets to the events tracked by Pollstar worldwide that Live Nation promoted in 2008 and focuses primarily on arena shows. Live Nation's next largest competitor is MSG Entertainment which promoted just 7% of the tickets for events tracked by Pollstar worldwide that Live Nation promoted in 2008 and is believed to promote only at New York's Madison Square Gardens. Simply stated, Live Nation dominates the promotion of popular music concerts by major acts, particularly those appearing in amphitheatres.

The evidence is overwhelming that Live Nation funnels the acts it promotes to the venues it controls. As set forth previously, Live Nation's business model is to control the entire interface between the artist and their fans. Live Nation pays artists more than the entire amount of the ticket sales, loses money on concert promotion and profits only on concession, parking and merchandise sales and, therefore, requires artists it promotes to appear at its venues. Once again based upon Pollstar data and Live Nation's publicly disclosed information, 92% of the concerts it promoted at amphitheatres were held at venues owned, leased or managed by Live Nation or at which it has exclusive booking arrangements:



In defending Live Nation's then exclusive booking arrangement with the New York State Fair, James Koplik, Chairman of Live Nation's Northeast Region, stated that artists on Live Nation promoted national tours, who appeared at the New York State Fair, would not have done so if Live Nation did not have exclusive booking rights there. (*See* Jim Koplik, *Live Nation is Committed to Successful State Fair,* available at *http://blog.syracuse.com* (posted August 26, 2008).)

There are numerous examples of this conduct. In discussing whether No Doubt would play Merriweather Post Pavillion during its 2009 Summer tour, the act's agent, Mitch Okmin, of M.O.B. Agency, stated that No Doubt could not play Merriweather because "if [it is a] L[ive] N[ation] deal, it will be at the bad traffic place." (later identified as Nissan Pavilion, a Live Nation venue). (Ex. "H".) He similarly said in discussing the 2010 summer tour that No Doubt cannot play any other venue where there is a Live Nation amphitheatre, stating "if [there is a] LN shed we play it." (Ex. "I".) Marty Diamond of Paradigm, expressed similar sentiment, responding that to the extent Coldplay enters into a Live Nation tour for the summer of 2009, there was no chance "whatsoever" that they would be able to play Merriweather. (Ex. "J".) Rob Beckham, from the William Morris Agency, represents Rascal Flatts and Brad Paisley, and similarly advised that with respect to "any hard ticket date, [Live Nation] has the right of first refusal. They have never not taken a date." As to whether he was permitted to book in non-Live Nation venues, Mr. Beckham stated that the Live Nation contract is "exclusive" and he is only permitted to book non-Live Nation venues in "non competitive markets." (Ex. "K".) Mitch Okmin echoed this response, stating that, as a result of Live Nation tours, his "involvement now is markets where there are no Live nation sheds." (Ex. "L".) Even though artists would often prefer to appear at independent venues, Live Nation makes it next to impossible for them to do so. Indeed, Steve Kaul, of the Agency Group, who promotes Nickelback, stated that, although he wanted to book the band at Merriweather, he was precluded from doing so by the terms of Nickelback's 360 deal with Live Nation. (Ex. "M".) Mr. Kaul went on to acknowledge that Live Nation behaves like this in order to "cross [collateralize] the dates and protect their profits against some weak markets." (Ex. "N".)

Live Nation also utilizes its control of the market for venue services in one geographic region to compel artists to appear at a Live Nation controlled venue in an area where it faces competition. For instance, in response to solicitations for 311 to appear at Merriweather Post Pavilion during the 2008 concert season, the band's booking agent advised that refusing to play Nissan would put the band's Virginia Beach appearance at a Live Nation venue at risk. (Ex. "O".)

In those few instances in which an artist nevertheless insists upon playing a competing venue, Live Nation requires the competing promoter and/or venue operator to pay a tribute in terms of sharing a percentage of the profits from this concert with Live Nation. I.M.P. was required to pay Live Nation 25% of the entire concert gross in order to promote the Warped Tour from 2006 through 2009, Iron Maiden in 2008 and John Mayer in 2008. (Exs. "P" and "Q".) In order for The Fray to play Merriweather in 2009, I.M.P. was required to pay Live Nation $3 per ticket, because 25% of the concert proceeds were no longer deemed sufficient. (Ex. "R".) Live Nation also imposes a penalty upon artists for playing another venue.

It cannot reasonably be contended that Live Nation will utilize any ticketing service other than its own at the 111 music concert venues it controls. This does not violate the Consent Judgment as drafted because Live Nation is controlling or has influence over this decision at the venues it controls. It does not have to retaliate in order to implement its ticketing services for the venues it controls.

Without access to Live Nation controlled venues, rival ticketing companies will not be able to penetrate the market for remote, primary ticket sales to music concert venues. As LNE controls the only or a monopoly of the venues in numerous markets, including 18 of the 25 largest designated marketing areas in the country, rival ticketing companies will not have access to venues in those markets. Whatever minimal market penetration rival ticketing companies achieve will not inhibit Live Nation's ability to charge supra competitive ticketing service fees. Even where there is a comparable music venue in a geographic region in which Live Nation controls a venue, LNE's control of the artists will deny a competing facility access to artists of sufficient popularity

to provide a meaningful alternative to artists appearing at the Live Nation venue. Fans have a limited amount to spend on concerts, generally wish to purchase tickets only to concerts featuring their favorite artists and will not usually purchase tickets for concerts by artists whose music they do not enjoy. Unless a rival venue can offer a slate of concerts by artists of sufficient popularity that fans wish to attend as much as the artists appearing at a Live Nation venue, the rival cannot provide meaningful competition.

The impact of Live Nation's market dominance on rival venues' ability to attract artists is illustrated by comparing the difference in the nature of artists appearing at the Mann Music Center ("Mann") in Philadelphia before and after Live Nation obtained exclusive booking rights at the Susquehanna Bank Center, a competing venue located in Camden, New Jersey. As illustrated by the attached concert schedule (Ex. "S"), the Mann went from booking highly popular artists, such as James Taylor, who generally sold out the facility, to booking acts of limited or niche popularity. Further, Metropolitan Talent abandoned its booking arrangement at the Marvin Sands-Constellation Brands Performing Arts Center ("CMAC") in upstate New York because it could not attract artists in competition with the Darien Lake Performing Arts Center that is booked exclusively by Live Nation.

LNE will be even more dominant than Live Nation. Control of Front Line's stable of artists gives LNE the ability to feed those artists to its promotional business. As LNE will continue to insist that the artists it promotes appear at the venues it controls, uniting Live Nation's promotional and Front Line's artist management businesses will deny rival venues a meaningful opportunity to compete for an even greater percentage of popular artists, and consequently further limit rival ticketing services' ability to inhibit the merged entity's ability to charge supra competitive service fees. Additionally, Ticketmaster has long maintained an extensive customer database that is effectively utilized to solicit fans for concerts at venues to which it provides ticketing services. As no other ticketing service has such an extensive database, the promise of access to it will be a powerful inducement for rival venues to utilize the merged entity's ticketing services.

As soon as the Proposed Consent Judgment was filed, LNE flexed its muscle. It bid on virtually every artist touring in 2010 and the booking agents for popular artists, such as Rascal Flatts, Brad Paisley, Iron Maiden, 311 and Jimmy Buffett, did not even solicit competitive offers for the upcoming 2010 summer concert season. This conduct has already impacted ticket prices and ticket servicing fees. For instance, the top ticket price for the Lady Gaga tour has increased by approximately 133% in the last three months.

C. The Consent Judgment Should Not Be Adopted without Further Remedial Relief

Competition in the market for the primary remote ticketing of music concerts will not be restored to levels where LNE will be unable to charge supra competitive service fees unless Live Nation's ability to funnel the concerts it promotes to the venues it controls is curtailed. While the Objectors believe that Live Nation's tying promotional services to artists appearing at Live Nation's venues constitute independent violations of the antitrust laws, it is well-established that antitrust remedies may prohibit conduct beyond what would necessarily violate the antitrust law. *United States* v. *Loew's,* 371 U.S. 38, 53 (1962); X Areeda, Elhauge & Hovenkamp, Antitrust Law 1758, at 349 (1996). All that is necessary is that the relief ordered be reasonably necessary "to cure the ill effects of the illegal conduct, and assure the public freedom from its continuance, and it necessarily must fit the exigencies of the particular case." *Ford Motor Co.* v. *United States,* 405 U.S. 562, 575 (1972).

The DOJ's Policy Guide to Merger Remedies provides that conduct remedies are appropriate where the merged firm must modify its behavior for any structural relief that has been ordered to be effective. (*Antitrust Division Policy Guide to Merger Remedies,* p. 18, U.S. Department of Justice, Antitrust Division, October 2004.) To render the divestiture remedies required by the Consent Order effective, LNE should be enjoined from in any manner requiring or inducing artists it manages or promotes to appear at venues it controls, insisting (other than in circumstances where the merged entity has entered into a legitimate co-promotional arrangement) that rival promoters or venue owners share any part of the revenue or profits they earn on concerts with LNE and/or from in any manner penalizing an artist for using a rival promoter or appearing at a competing venue. This remedy will assist those remaining venues still competing with LNE to obtain artists of the same level of popularity as the artists appearing at Live Nation venues, giving consumers in those areas a meaningful choice between concert venues—a choice that will limit LNE's ability to charge supra competitive service charges because fans will have the ability to attend equally desirable concerts in competing venues with lower service charges.

The additional remedial measure of prohibiting the merged entity from promoting or hosting more than seventy-five percent of an artist's tour should be adopted. This additional remedy is necessary because of the subtle, often undetectable, efforts LNE may utilize to persuade or pressure Front Line's artists and other artists it promotes to appear at the venues it controls. This is a particular concern given Irving Azoff's power in the concert industry. Conversely, an objective standard is easily policed.

LNE should also be required to return at the request of any promoter or venue owner all data relating to concerts for which Ticketmaster provided the ticketing and to delete any such information from its electronically stored data and files. This remedy will reduce the competitive advantage LNE would otherwise enjoy over rival ticketing service companies as a result of its possession of an extensive customer database. It will also deny LNE access to information provided in confidence to Ticketmaster and with the reasonable expectation that a direct competitor would not be given access to this information.

Conclusion

In sum, establishing additional ticketing services capabilities is meaningless unless there is someone to whom these services can be provided. This will not occur unless LNE's control over the management and promotion of major popular music artists, and where they appear, is addressed. Otherwise, the vast majority of major popular music artists will be promoted by LNE and appear at LNE controlled venues and rival remote ticketing providers, much less, rival promoters and venue owners or operators, will not be able to compete. Fans will have to pay supra competitive ticket prices, service fees, concessions prices, parking charges and merchandising fees to attend concerts by their favorite artists at LNE venues. A wholly ineffective consent judgment is simply not in the public interest. To that end, we suggest the aforementioned remedies in order to render the consent judgment effective in the manner in which it was intended.

Dated: May 3, 2010.

Cozen O'Connor,
Robert W. Hayes,
Rachel H. Robbins,

Abby L. Sacunas,
Attorneys for It's My Amphitheatre, Inc., d/b/a Merriweather Post Pavilion and on behalf of Frank Productions, Inc., Sue McLean and Associates, Metropolitan Talent, Inc. and the National Consumers League.

Note: The attachments to this comment are available on the Antitrust Division's Web site at *http://www.justice.gov/atr/cases/ticket.htm.*

BILLING CODE C

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

OPPOSITION TO THE [PROPOSED] FINAL JUDGMENT

Jam Productions, Ltd., a rival independent concert promoter based in Chicago, opposes this Proposed Final Judgment on the basis that it does not remedy the loss of competition in the live entertainment industry but rather sustains and strengthens the injury and harm to the consumer and competition. The merger of these two companies is vertical integration on steroids. There is no other company in any industry (other than public utilities and professional sports) in the United States who will have the dominance and power of this new merged entity of Live Nation and Ticketmaster.

This merger creates an incredibly powerful company by combining the leading global concert ticket selling company with the leading global live artist management company with the leading global concert promoter with the owner of most of the contemporary outdoor amphitheatres in the US. If this merger is allowed to proceed the combined entity will have the ability to suppress or eliminate competition in many segments of the music industry including rival concert promoters; primary and secondary ticketing companies; artist management firms; talent agencies; venue management companies; record companies; artist merchandise, apparel and licensing companies; artist fan clubs and sponsorship/marketing companies.

Live Nation Entertainment is the largest live entertainment company in the world, consisting of five businesses: concert promotion and venue operations, artist management, sponsorship, ticketing solution and e-commerce that includes Live Nation, Ticketmaster and Frontline Management Group. Live Nation is the largest producer of live concerts in the world, annually producing more than 22,000 concerts on behalf of 1,500 artists in 57 countries. In 2009 Live Nation sold 140 million tickets, promoted 21,000 concerts, partnered with 850 sponsors and averaged 25 million unique monthly users of its e-commerce sites. Ticketmaster serves more than 10,000 clients worldwide in multiple event categories and sold more than 141 million tickets valued at over $8.8 billion on behalf of its clients in 2008. Frontline Management is the world's largest artist management firm representing 200+ of the most popular performers in the music industry.

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,*** who provide the entertainment that makes the concert possible hire ***Managers*** to represent them in negotiating the commercial terms of their recording contracts, publishing royalties, live concert tours, merchandise and sponsorship arrangements. A***gents*** are hired by the Managers to 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 websites, call centers, and retail networks from which tickets may be purchased.

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 website and other sales channels; and (2) Paciolan, a venue-managed platform for selling tickets through the venue's own website and other sales channels. In 2008, Ticketmaster provided primary ticketing services to venues representing more than 80% of major concert venues.

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, Aerosmith, Van Halen, Christina Aguilera, John Mayer plus hundreds of others.

Live Nation is comprised of the following 24 promoters from across the country whose businesses were purchased beginning in 1996; Contemporary Productions, Sunshine Promotions, Cellar Door, Pace, Nederlander, Delsener/Slater, the Don Law Company, Oakdale Concerts, A. H. Enterprises, Bill Graham Presents, Avalon, DiCesare-Engler, Evening Star, Universal Concerts/House of Blues, Belkin Productions, Electric Factory Concerts, Magicworks, Fantasma, Concert Productions International, Concerts/Southern Promotions, the Entertainment Group, New Era Promotions, Feyline Concerts and Cardenas Fernandez Associates.

Through their acquisitions of the above mentioned companies, Live Nation controls the best and most of the contemporary outdoor amphitheatres (47) across the country where performances by the top artists in the world are staged. Live Nation currently owns 46 clubs and theatres and 11 House of Blues and continues obtain more.

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 46% of the concert tickets sold at major concert venues in 2009. Live Nation has entered long-term partnerships with several popular artists including but not limited to Madonna, U2, Rolling Stones, Nickelback 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. Live Nation entered the market for primary ticketing services in late December 2008.

As per Pollstar, the publication that tracks concert ticket sales, in 2009 Live Nation sold 25,007,416 tickets (46.06% of the total tickets sold) in the United States while their second largest competitor sold 10,742,104 tickets (19.78% of the total tickets sold). The third largest concert promoter was C3 Presents with 1,386,106 tickets, MSG Entertainment was fourth with 1,332,266 tickets and Jam was fifth with 1,291,556 tickets. Excluding Live Nation and AEG, the other 48 of the top 50 concert promoters produced the remaining 34.16% of the US concerts.

2009 Top 50 U.S. Concert Promoters

1	25,007,416	Live Nation *
2	10,742,104	AEG Live **
3	1,386,106	C3 Presents
4	1,332,266	MSG Entertainment
5	1,291,556	Jam Productions
6	1,078,703	Palace Sports & Entertainment
7	863,854	Outback Concerts
8	819,007	The Bowery Presents
9	817,659	Magic Arts & Ent'ment / NewSpace Ent'ment
10	739,451	Nederlander Concerts
11	691,388	I.M.P. / Seth Hurwitz
12	616,874	Premier Productions
13	571,962	Another Planet Entertainment
14	539,706	Tate Entertainment
15	510,353	Knitting Factory Entertainment
16	504,962	Frank Productions
17	487,566	Icon Entertainment Group
18	401,082	Rush Concerts
19	395,661	Red Mountain Entertainment
20	297,004	A.C. Entertainment
21	293,370	Beaver Productions
22	273,843	Metropolitan Talent Presents
23	270,229	Blue Deuce Entertainment
24	252,300	The Andrew Hewitt Company
25	246,619	Harrah's Entertainment
26	214,208	Lucky Man Concerts
27	211,813	Bill Silva Presents
28	208,979	True West / Mark Adler
29	201,309	Mike Thrasher Presents
30	181,090	Jade Presents
31	178,247	PromoWest Productions
32	176,838	Mammoth Live
33	174,374	Seattle Theatre Group
34	164,150	Rams Head Promotions
35	156,614	Fox Associates
36	154,553	Olympia Entertainment
37	153,477	Monqui Presents
38	148,573	Stan Levinstone Presents
39	146,983	First Avenue Productions
40	144,879	Atlanta Symphony Orchestra
41	137,898	Higher Ground Productions
42	131,681	Bill Blumenreich Presents
43	130,819	Hennepin Theatre Trust
44	130,603	PFM
45	126,296	Cardenas Marketing Network
46	125,860	NAC Entertainment
47	123,565	DCF Concerts
48	120,846	Stone City Attractions
49	111,726	Hauser Entertainment
50	110,572	Vincent Longo

* represents the combined totals of Live Nation, House of Blues and Live Nation Global Touring
** represents the combined totals of AEG Live, Concerts West, TMG, Goldenvoice and Moore Entertainment
All figures are for tickets sold in the U.S. as reported to POLLSTAR for shows played in 2009.

2009 US Top Promoters

COMPANY	TICKETS SOLD	% AGE OF TICKETS SOLD
Live Nation *	25,007,416	46.06%
AEG Live **	10,742,104	19.78%
C3 Presents	1,386,106	2.55%
MSG Entertainment	1,332,266	2.45%
Jam Productions	1,291,556	2.38%
Palace Sports & Entertainment	1,078,703	1.99%
Outback Concerts	863,854	1.59%
The Bowery Presents	819,007	1.51%
Magic Arts & Ent'ment / NewSpace Ent'ment	817,659	1.51%
Nederlander Concerts	739,451	1.36%
I.M.P. / Seth Hurwitz	691,388	1.27%
Premier Productions	616,874	1.14%
Another Planet Entertainment	571,962	1.05%
Tate Entertainment	539,706	0.99%
Knitting Factory Entertainment	510,353	0.94%
Frank Productions	504,962	0.93%
Icon Entertainment Group	487,566	0.90%
Rush Concerts	401,082	0.74%
Red Mountain Entertainment	395,661	0.73%
A.C. Entertainment	297,004	0.55%
Beaver Productions	293,370	0.54%
Metropolitan Talent Presents	273,843	0.50%
Blue Deuce Entertainment	270,229	0.50%
The Andrew Hewitt Company	252,300	0.46%
Harrah's Entertainment	246,619	0.45%
Lucky Man Concerts	214,208	0.39%
Bill Silva Presents	211,813	0.39%
True West / Mark Adler	208,979	0.38%
Mike Thrasher Presents	201,309	0.37%
Jade Presents	181,090	0.33%
PromoWest Productions	178,247	0.33%
Mammoth Live	176,838	0.33%
Seattle Theatre Group	174,374	0.32%
Rams Head Promotions	164,150	0.30%
Fox Associates	156,614	0.29%
Olympia Entertainment	154,553	0.28%
Monqui Presents	153,477	0.28%
Stan Levinstone Presents	148,573	0.27%
First Avenue Productions	146,983	0.27%
Atlanta Symphony Orchestra	144,879	0.27%
Higher Ground Productions	137,898	0.25%
Bill Blumenreich Presents	131,681	0.24%
Hennepin Theatre Trust	130,819	0.24%
PFM	130,603	0.24%
Cardenas Marketing Network	126,296	0.23%
NAC Entertainment	125,860	0.23%
DCF Concerts	123,565	0.23%
Stone City Attractions	120,846	0.22%
Hauser Entertainment	111,726	0.21%
Vincent Longo	110,572	0.20%
TOTAL TICKETS SOLD	**54,296,994**	

* represents the combined totals of Live Nation, House of Blues and Live Nation Global Touring

** represents the combined totals of AEG Live, Concerts West, TMG, Goldenvoice and Moore Entertainment

All figures are for tickets sold in the U.S. as reported to POLLSTAR for shows played in 2009.

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.

III. STATEMENT OF OPPOSITION

With no disrespect to the Department of Justice, the Proposed Final Judgment only concerns itself with the least important aspect of this merger, namely ticketing, while completely avoiding and ignoring the unreasonable restraint of trade and commerce violations in the presentation of live concerts and the attempt to monopolize such trade and commerce. It should be noted that the topics I raise in this opposition statement are not new to the DOJ since they have been raised from the very beginning of their investigation. This merger if allowed to happen will affect the entire live music entertainment industry.

Live Nation and Ticketmaster are both Goliaths, so their unification will create a business with extraordinary market power, leverage and clout. With the merger of Live Nation and Ticketmaster you have a company that: (1) sells most of the concert tickets in this county through its contracts with venues (11,000 venue clients across 20 countries); (2) manages or controls the tours of the largest, most popular top performers in the world (Madonna, U2, Rolling Stones, Jay-Z, Shakira, Nickelback, Eagles, Christina Aguilera, Aerosmth, Jimmy Buffett, Guns 'n Roses, Alan Jackson, Steely Dan, Stevie Nicks, Chicago, Journey and 200 + others ; (3) owns most of the amphitheatres in the US and also owns more club venues (11 HOBs) as well as controlling, thru owning/leasing a large amount of other clubs and theatres; (4) purchases tours for its own amphitheatres and venues as well as other buildings they don't own or control; (5) owns touring, recording, merchandise, fan clubs, etc. rights to many relevant performers; (6) owns a merchandise company that sells the performers' shirts, hats, etc.; (7) owns a company that provides 'fan club' services to performers; (8) owns all the data to track ticket sales to provides a huge competitive advantage; (9) owns the data to all competing promoters fan bases; (10) and owns all data through the sale of tickets to provide their company the best and largest Internet ability to offer their fan base more services and products beyond live performances such as the bundling performers' products for sale on-line as well as sponsorship opportunities.

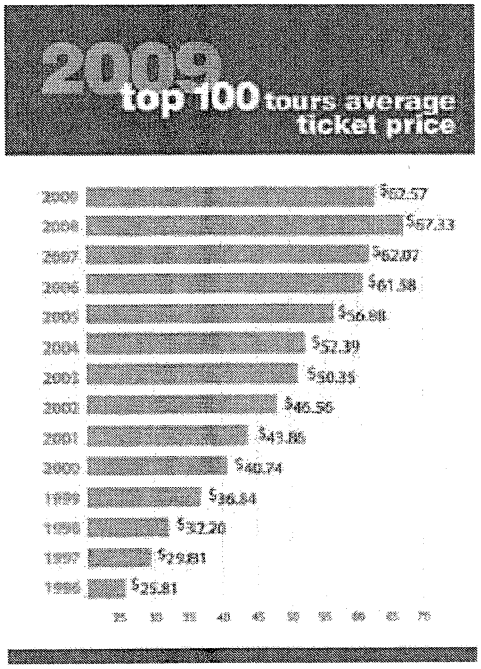
IV. HARM TO THE CONSUMER

This merger will affect first and foremost the fan. The business model of Live Nation has not been beneficial to the consumer but rather harmed them by increasing the cost of attending a concert.

A. INCREASE IN TICKET PRICES

As history shows, this new company was the beginning of an unprecedented increase in concert ticket prices. Their new business model entailed buying entire tours across the country rather than individual shows on a market by market basis. This meant that in order to promote every concert for a particular artist SFX/Clear Channel/Live Nation had to substantially escalate the typical guaranteed payment to that artist so they could obtain control of the tour. And as you will see below, this increase was passed along to the public.

- Between 1996, the year SFX began, and 2000, the year SFX was sold to Clear Channel, the average ticket price for the country's top 100 musical tours went from $25.81 to $40.74, a 58% increase over those five years.
- Between 2000 and 2005, the year Clear Channel spun off Live Nation into its own publicly traded company, the average ticket price for the country's top 100 musical tours went from $40.74 to $56.88, a 39% increase.
- In 2008 the average ticket price for the top 100 tours jumped to $67.35. Since the consolidation of the concert industry began some 12 years ago the average ticket price has increased 160%.
- Due to the recession the average ticket price for the top 100 tours dropped to $62.57 in 2009 which still represents a 142% increase since 1996.
- The increase in ticket prices can be attributed to the block booking of an entire national tour of a performer where it is in Live Nation's best interest to keep the ticket prices high.



LADY GAGA

Below is a list of Lady GaGa performances produced by various promoters with ticket prices before the tour was sold to Live Nation:

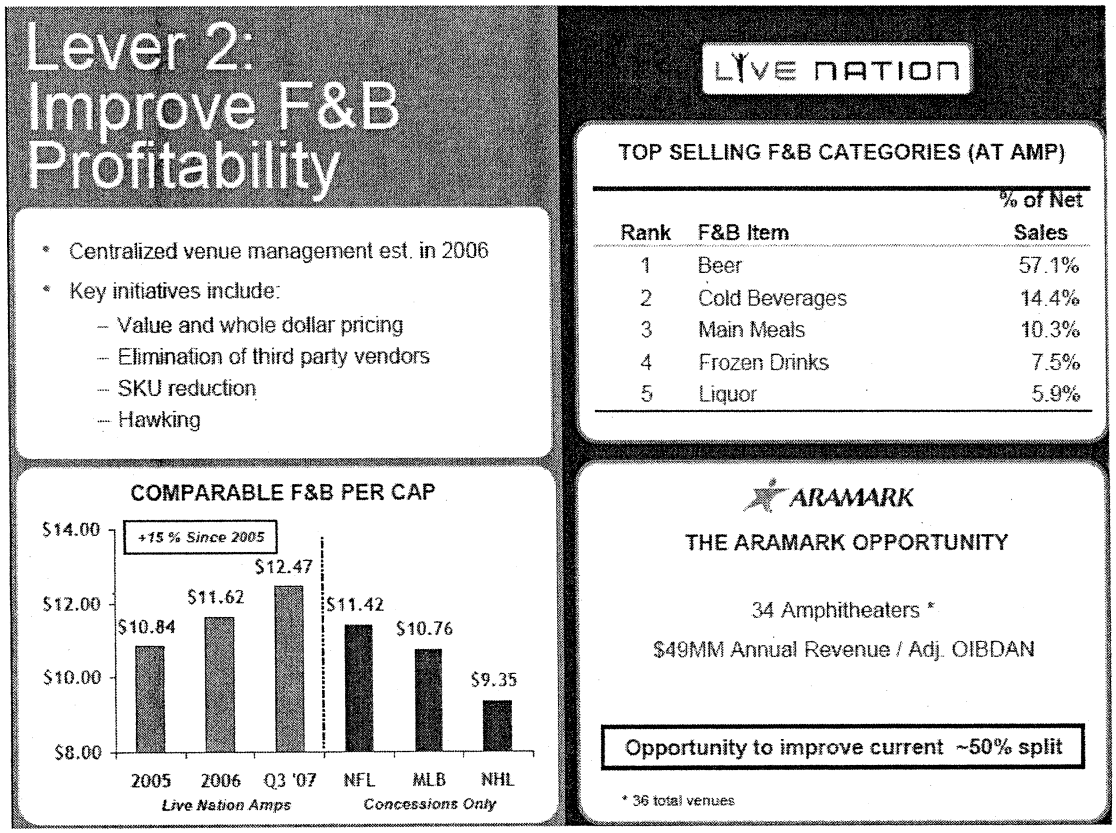
DATE	VENUE	CITY	ST	TICKET PRICES
03/12/09	House of Blues	San Diego	CA	$18.5/20
03/13/09	The Wiltern	Los Angeles	CA	$23
03/14/09	Mezzanine	San Franciso	CA	$21
03/16/09	Showbox at The Market	Seattle	WA	$22/24
03/17/09	Wonder Ballroom	Portland	OR	$18/20
03/21/09	Gothic Theatre	Englewood	CA	$20
03/24/09	House of Blues	Chicago	IL	$24/26
03/28/09	Royal Oak Music Theatre	Royal Oak	MI	$20
04/06/09	House of Blues	Lake Buena Vista	FL	$20/23
04/07/09	The Ritz	Tampa	FL	$20.99/25
04/08/09	Revolution	Fort Launderdale	FL	$19/21
04/09/09	Center Stage	Atlanta	GA	$20
05/01/09	Electric Factory	Philadelphia	PA	$15/20
05/02/09	Terminal 5	New York	NY	$20/25
12/01/09	Wang Theatre	Boston	MA	$43/63
12/01/09	DAR Constitution Hall	Washington	DC	$23.5/43.5
12/02/09	Wang Theatre	Boston	MA	$43/63
12/03/09	Susquehanna Bank Center	Camden	NJ	$35/45
12/13/09	Bill Graham Civic Auditorium	San Franciso	CA	$48/50
12/14/09	Bill Graham Civic Auditorium	San Franciso	CA	$48/50
12/19/09	Sports Arena	San Diego	CA	$45
12/21/09	Nokia Theatre	Los Angeles	CA	$59.75/79.75
12/22/09	Nokia Theatre	Los Angeles	CA	$59.75/79.75
12/23/09	Nokia Theatre	Los Angeles	CA	$59.75/79.75
12/27/09	Lakefront Arena	New Orleans	LA	$35/45
12/28/09	Fox Theatre	Atlanta	GA	$36.5/75
12/29/09	Fox Theatre	Atlanta	GA	$36.5/75
12/31/09	James L Knight Center	Miami	FL	$23/63
01/02/10	James L Knight Center	Miami	FL	$23/63
01/03/10	UCF Arena	Orlando	FL	$43
01/08/10	Rosemont Theatre	Rosemont	IL	$35.5/73
01/09/10	Rosemont Theatre	Rosemont	IL	$35.5/73
01/10/10	Rosemont Theatre	Rosemont	IL	$35.5/73
01/12/10	Joe Louis Arena	Detroit	MI	$35/45
01/13/10	Joe Louis Arena	Detroit	MI	$35/45
01/20/10	Radio City Music Hall	New York	NY	$45/65
01/21/10	Radio City Music Hall	New York	NY	$45/65
01/22/10	Radio City Music Hall	New York	NY	$45/65
01/24/10	Radio City Music Hall	New York	NY	$45/65
01/26/10	Elliott Hall of Music	W. Lafayette, IN	IN	$34.5

The chart below is a list of Lady GaGa performances for her upcoming summer tour in 2010 that indicates a substantial increase in ticket prices when Live Nation purchased the tour. ***The top ticket price of $75 from just three months ago has increased to $175, a jump of 133%.***

07/01/10	TD Garden	Boston	MA	$175/85/49.5
07/02/10	TD Garden	Boston	MA	$175/85/49.5
07/04/10	Boardwalk Hall	Atlantic City	NJ	$192.5/93.5/54.5
07/06/10	Madison Square Garden Arena	New York	NY	$179.5/89.5/79.5/54
07/07/10	Madison Square Garden Arena	New York	NY	$179.5/89.5/79.5/54
07/09/10	Madison Square Garden Arena	New York	NY	$179.5/89.5/79.5/54
07/14/10	Quicken Loans Arena	Cleveland	OH	$175/85/49.5
07/15/10	Conseco Fieldhouse	Indianapolis	IN	$175/85/49.5
07/17/10	Scottrade Center	St. Louis	MO	$175/49.5
07/20/10	Ford Center	Oklahoma City	OK	$175/85/49.5
07/22/10	American Airlines Center	Dallas	TX	$175/49.5
07/23/10	American Airlines Center	Dallas	TX	$175/49.5
07/25/10	Toyota Center	Houston	TX	$175/85/49.5
07/26/10	Toyota Center	Houston	TX	$175/85/49.5
07/28/10	Pepsi Center	Denver	CA	$175/85/49.5
07/31/10	US Airways Center	Phoenix	AZ	$175/85/49.5
08/03/10	Sprint Center	St. Louis	MO	$175/85/49.5
08/11/10	Staples Center	Los Angeles	CA	$181.5/88.25/51.25
08/12/10	Staples Center	Los Angeles	CA	$181.5/88.25/51.25
08/13/10	MGM Grand Hotel	Las Vegas	NV	$183.75/89.25/52
08/16/10	HP Pavilion	San Jose	CA	$175/85/49.5
08/17/10	HP Pavilion	San Jose	CA	$175/85/49.5
08/19/10	Rose Quarter	Portland	OR	$175/85/49.5
08/21/10	Tacoma Dome	Tacoma	WA	$175-49.50
08/30/10	Xcel Energy Center	St. Paul	MN	$175/85/49.5
08/31/10	Xcel Energy Center	St. Paul	MN	$175/85/49.5
09/02/10	Bradley Center	Milwaukee	WI	190.35/61.95
09/04/10	The Palace of Auburn Halls	Auburn Hills	MI	$191.6/99.55/63.2
09/05/10	Consol Energy center	Pittsburgh	PA	$175/85/49.5
09/07/10	Verizon Center	Washington	DC	$178/88/52.5
09/08/10	John Paul Jones Arena	Charlottesville	VA'	$175/85/49.5
09/14/10	Wachovia Center	Philadelphia	PA	$175/85/49.5
09/15/10	Wachovia Center	Philadelphia	PA	$175/85/49.5
09/16/10	XL Center	Hartford	CT	$175/85/49.5
09/18/10	Time Warner Cable Arena	Charlotte	NC	$177/87/51.5
09/19/10	RBC Center	Raleigh	VA	$175/85/49.5

B. HIGHEST FOOD & BEVERAGE PRICES

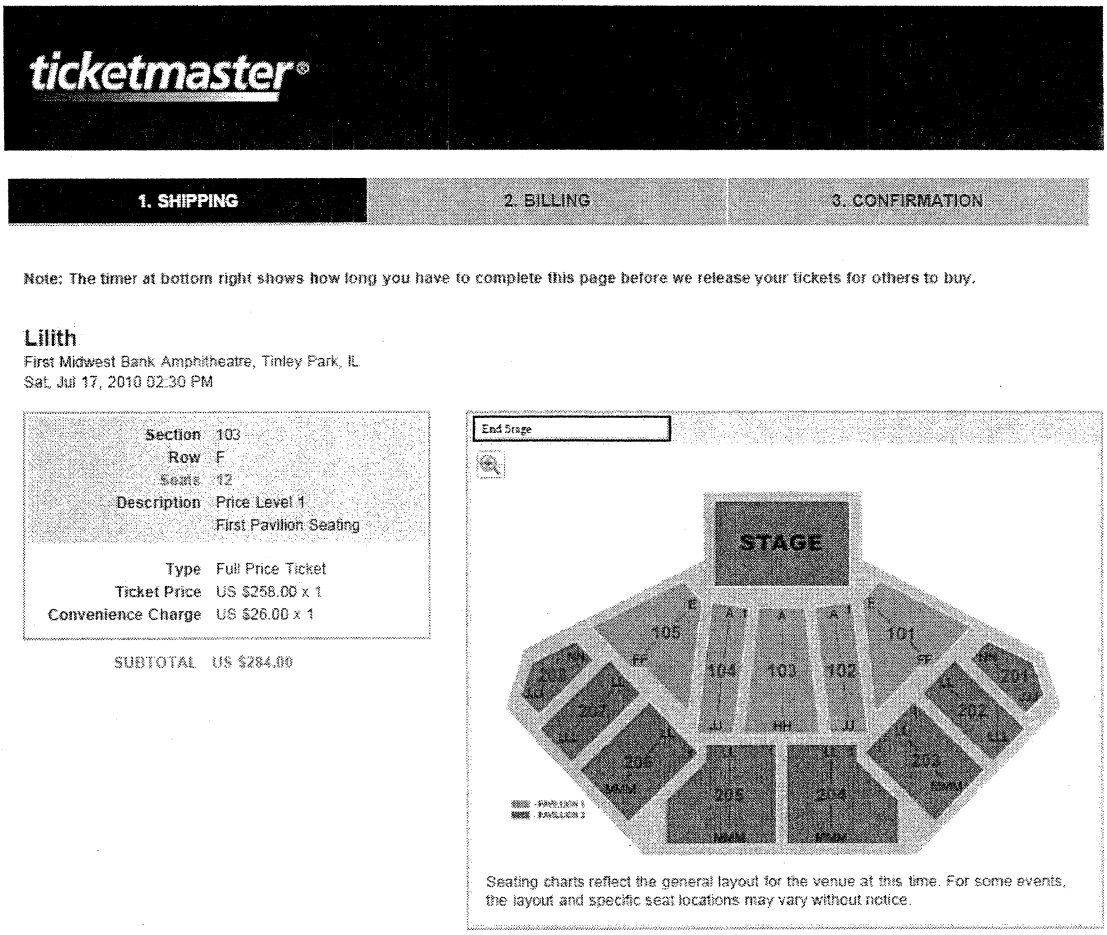
At Live Nation amphitheatres in 2007 the food & beverage per cap was $12.47, higher than the National Football League ($11.42), Major League Baseball ($10.76) and the National Hockey League (9.35). See the chart below from a Live Nation presentation dated 11/15/07.



C. HIGH FEES CHARGED TO THE CONSUMER

SFX/Clear Channel/Live Nation created new fees and increased old ones to raise the price of box office service charges, facility fees, convenience charges, etc. which has made it even more expensive for concert fans across our nation. Some examples include the following:

- The Lilith tour is stopping in the Chicagoland area on July 17th at the First Midwest Bank Amphitheatre. Please note the following highlighted fees:
    1. The ticket price of $258 per ticket with a $26 Convenience Charge.
    2. The VIP Upgrade charge of $50 per ticket.
    3. The VIP Fast Lane to gain access to the venue for $10 in addition to the ticket price.
    4. VIP Parking fee of $30 per car.
    5. VIP Plus Parking fee of $40 per car.
    6. Oversized vehicles & RVs fee of $75 per vehicle.
    7. Limousine parking charge of $50 per limo.



Add To My Order

Additional fees, when applicable, will appear on subsequent pages. You may remove any optional items before completing your order.

Item	Price	Quantity
VIP PARTY BOX: LILITH		
VIP Party Box	US $277.00	0
FIRST MIDWEST BANK AMPHITHEATRE VIP UPGRADE - LILITH		
VIP Upgrade: 1 per person	US $50.00	0
VIP FAST LANE: LILITH FAIR		
VIP Fast Lane Pass: 1 per person	US $10.00	0
FIRST MIDWEST BANK AMPITHEATRE VIP CLUB: LILITH FAIR		
VIP Club Pass: 1 per person	US $30.00	0
FIRST MIDWEST BANK AMPITHEATRE VIP PARKING: LILITH FAIR		
VIP Parking: 1 per Car	US $30.00	0
Oversized Vehicles & RV's: 1 per Vehicle	US $75.00	0
VIP Plus Parking: 1 per Car	US $40.00	0
Limo Parking: 1 per Limo	US $50.00	0

- Rush is performing in Chicago on July 5th at the Charter One Pavilion. Please note:
    1. The $9.50 per ticket Facility Fee
    2. The $18.50 Convenience Charge.
    3. VIP Parking of $30 per car.
    4. VIP Fast Lane to gain access to the venue for $10 in addition to the ticket price.

ticketmaster®

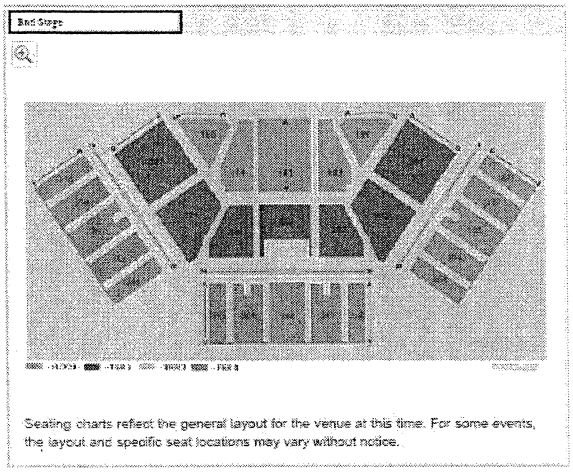
1. SHIPPING | 2. BILLING | 3. CONFIRMATION

Note: The timer at bottom right shows how long you have to complete this page before we release your tickets for others to buy.

RUSH Time Machine Tour 2010
Charter One Pavilion at Northerly Island, Chicago, IL
Mon, Jul 5, 2010 07:30 PM

Section	309
Row	R
Seats	4
Description	PRICE LEVEL 1 300 LEVEL - GRAND STAND RESERVED SEATING CENTER SECTION $9.50 PRK PD/RAIN OR SHINE
Type	Full Price Ticket
Ticket Price	US $125.00 x 1
Facility Charge	US $9.50 x 1
Convenience Charge	US $18.50 x 1
Additional Taxes	US $0.93 x 1

SUBTOTAL US $153.93



Seating charts reflect the general layout for the venue at this time. For some events, the layout and specific seat locations may vary without notice.

Add To My Order

Additional fees, when applicable, will appear on subsequent pages. You may remove any optional items before completing your order.

Item	Price	Quantity
CHARTER ONE PAVILION VIP PARKING - RUSH		
Parking at Adler Planetarium	US $30.00	0
CHARTER ONE PAVILION VIP CLUB PASS - RUSH		
VIP Club Pass: 1 per person	US $30.00	0
CHARTER ONE PAVILION VIP UPGRADE - RUSH		
VIP Upgrade: 1 per person	US $50.00	0
CHARTER ONE PAVILION VIP FAST LANE - RUSH		
VIP Fast Lane Pass: 1 per person	US $10.00	0

- Live Nation Concert Club

Not only does the consumer have to pay for their tickets, convenience charges, facility fees, access fees and so on and so forth, Live Nation charges the consumer an additional fee to "move to the front of the line for tickets" to "avoid the hassles of the public on-sale frenzy."

As per the Live Nation website:

> You'll be first to know – and first in line – for the tickets you want to the concerts you most want to see. Starting at $295, Concert Club membership allows you to move to the front of the line for tickets to events in your city before they go on sale to the public. Live Nation's Concert Club is like having a friend in the business. Us.

Concert Club Benefits:

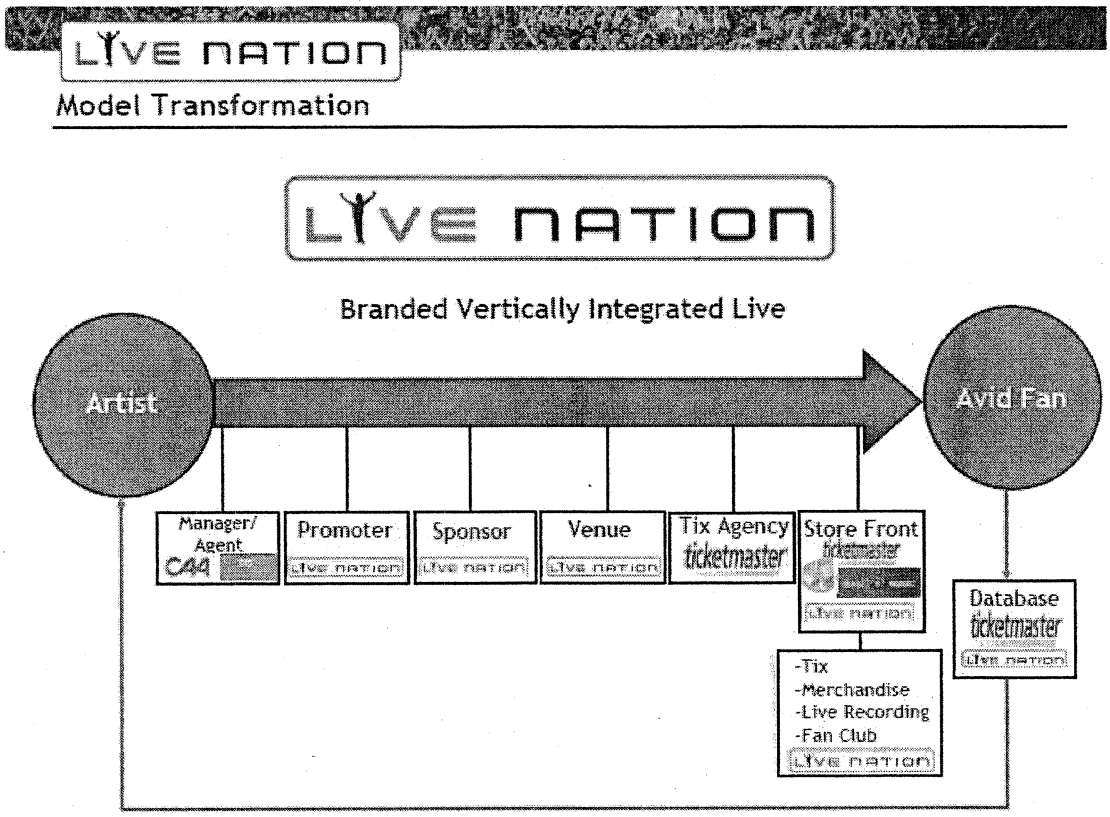
1. You'll get the tickets you want – first
2. You'll avoid the hassles of the public on-sale frenzy
3. You'll be among the first to know about upcoming shows

Jam, along with other independent promoters, do not charge the consumer to be "among the first to know about upcoming shows."
Our information is provided for free.

V. HARM TO COMPETITORS

This merger will negatively affect every facet of the live music industry and harm competition from rival promoters, venues, managers, merchandise companies, ticketing companies, secondary ticketing companies, fan club companies, record companies and even companies that provide sponsorship opportunities. Live Nation/Ticketmaster will have a competitive advantage that already yields monopoly power over major portions of the live music entertainment industry.

In a Live Nation presentation dated September 26, 2006 they set out the plan to transform their business model to vertically integrate the entire live music industry from the artists to the fans. In just a few short years Live Nation has succeeded in their efforts.



A. HARM TO COMPETING PROMOTERS

- ***Live Nation engages in block booking***, in other words buying an entire tour, a system which prevents competitors from bidding for single performers on their individual merits by entering into an exclusive master agreement with one promoter for all the performances across the country or around the world.
- ***Master agreements with performers allows Live Nation to allocate the guarantee payment to the performers as it sees fit which unreasonably restrains trade.***
- ***Live Nation uses the monopoly power gained from owning 47 outdoor of the most important outdoor amphitheatres to purchase summer tours of artists performing outdoors and leverages these 'sheds' into purchasing the entire indoor tour of many of those same performers.*** Some of the performers include Aerosmith, Tim McGraw, Fleetwood Mac, Nickelback, Maroon Five and many others. Two examples this year include the following:
  - In the upcoming summer of 2010 Tom Petty and the Heartbreakers are performing exclusively for Live Nation in most of their outdoor amphitheatres except in Chicago the band is playing indoors at the United Center. Tom Petty's manager intended for Jam Productions to be the promoter for the indoor show in Chicago and he also attempted to include other non Live Nation promoters in a couple of other cities. Jam, along with the other promoters, were excluded from promoting Tom Petty's indoor shows because Live Nation used their monopoly and market power by threatening to lower their monetary offer to Tom Petty if he did not perform all his concerts exclusively for Live Nation.
  - Jam was excluded from producing John Mayer's indoor concert this past April at the United Center in Chicago even though the manager wanted to have Jam co-promote this concert due to the leverage Live Nation used with their amphitheatres. John Mayer is coming back to the Chicagoland area for another Live Nation concert in August.
- Live Nation's artist agreements at times contain various provisions by which contract discriminations against small independent promoters and in favor of Live Nation were accomplished. The competitive advantages of these provisions are so great that their inclusion in contracts with Live Nation constitutes unreasonable discrimination against small independent competitors. Some of these advantages include:
  - Large upfront 'loan' for the tour.
  - Stock options in the company.
  - If Live Nation does not produce all the performers' concerts the payment to the performer decreases.
  - Artist VIP packages included in the gross ticket sales.
- ***Live Nations pays certain performers such as Jimmy Buffett more than 100 percent of the gross ticket sales.***
- ***Live Nation submits offers to artists where Live Nation loses money even when selling every ticket to that venue in order to prevent various performers from contracting with competing promoters and venues.***
  - See Live Nation offer with certain redacted information on the next page where at sell out Live Nation loses $2,387.48.

LIVE NATION

[redacted]

233 North Michigan Ave., Suite 2700 Chicago,IL 60601

Phone: 312-540-2120

Fax: 312-938-2154

[redacted]

Phone: [redacted]

Fax: [redacted]

	Show Day	Show Date	Show Time	Door Time	Curfew Time	On Sale Date	On Sale Time
Event Name: [redacted] **Venue:House of Blues (Chicago)** **City:Chicago, Illinois** Number of Shows: 1	[redacted]		[redacted]	[redacted]			

Offer Wording

Guarantee versus 85.00 % of the gross box office receipts after deduction of approved fees, taxes (NBOR) ,expenses and Support.

Offer contingent on:

1) **Approval of Concert Series & Venue Sponsor inclusion in event advertising (print and electronic), including participation in the CITI Card Pre-Sale Program**
2) **Approval of Secondary Market Ticketing to be included in Show Gross**
3) **Approval of 4-Pack with price point included in Advertising**
4) **Approval of venue notes on offer sheet**
5) **In the event that each show does not sell 75% of the stated capacity, the following shall apply:**
   i. **Dressing Room Hospitality capped at $75 per artist**
   ii. **50% of lift from Artist VIP Packages to be included in Show Gross**

Ticket Scale	# of Seats	Price	Gross
Day of Show		$18.00	$0.00
General Admission	1,260	$16.00	$20,160.00
4 pack general admission	40	$12.00	$480.00
Comps	100	$0.00	$0.00
Gross Potential (1)	**1,400**		**$20,640.00**
City Tax		5.00%	$982.86
County Tax		1.00%	$194.63
Adjusted Gross Potential			**$19,462.52**
Facility Maintenance Fee		$2.00/tkt	$2,600.00
Net Gross Potential			**$16,862.52**

Talent	
Cornmeal	$7,500.00
TBA Support	$250.00
Total Talent	**$7,750.00**

Expenses	Rate	Total	Notes
Advertising		$2,000.00	print+radio+jambase
House Costs		$9,500.00	
Total Expenses		**$11,500.00**	

Summary		Earnings Potential	
Net Gross Potential	$16,862.52	Artist Earnings	$7,500.00
		Promoter Earnings	($2,387.48)
Total Fixed Expenses	$11,500.00		
Total Variable Expenses @ sellout	$0.00		
Total Talent and Artist Supplied S & L	$7,750.00		
To Be Shared	$5,112.52		
		Artist Earning Potential BreakOut	
		[redacted]	$7,500.00
		TBA Support	$250.00

- ***Live Nation annually purchases many indoor arena tours which has substantially eroded what used to be a core part of independent promoters income.***
  - ***For example, in 1996 Jam produced 130 arena concerts but in 2009 we only produced 33. The single most profitable part of our business has been dramatically impacted and continues to decrease each year.***
- ***Live Nation produces most of today's stadium tours that has eliminated another important segment of independent promoters income.***
  - ***From 1990 to 2003 Jam produced 25 stadium concerts (in excess of 35,000 capacity) but has not produced one since 2003.***
- ***Jam's contract with Ticketmaster expires on December 11, 2011 but contains language with the intent to terminate the agreement in the event Ticketmaster becomes a company that is engaged in the day-to-day business of promoting live entertainment events or engaged in the day-to-day business of artist management.***
  - ***The financial terms contained in this agreement puts Jam at a competitive disadvantage to Live Nation.***
  - ***Jam recently informally requested to terminate their Ticketmaster agreement but was denied by Michael Rapino and Irving Azoff, Jam's rival competitor.***
- If the downward trend of diminishing returns continues as it has there might not be enough competing promoters able to remain in business.
  - Our major competitor will have access to our ticket sales information, customer data bases and the financial terms of our ticketing agreements.
  - Live Nation/Ticketmaster might decrease the financial terms of our ticketing agreement when they come up for renewal and/or increase their overall share.
  - Live Nation/Ticketmaster will be receiving income from every ticket sold to our concerts which could be used to compete against us.
  - Live Nation/Ticketmaster will have additional revenue streams we do not currently share in, such as revenues from the sale of tickets at every venue or on Ticketsnow, which means they will be able to pay an artist more money to perform.
  - Fans who want to see Jam shows will have to go to our main competitor's website to purchase tickets.

B. HARM TO RIVAL MANAGERS, MERCHANDISE COMPANIES, TICKETING COMPANIES, SECONDARY TICKETING COMPANIES, RECORD COMPANIES, FAN CLUBS AND SPONSORSHIP COMPANIES.

The critical mass created by the complete vertical integration of the live music industry by Live Nation and Ticketmaster puts all its competitors at a distinct competitive disadvantage. Live Nation serves more than 1,000 artists through its array of services including; global touring (Madonna, U2, Jay-Z, Lady GaGa, etc.); merchandise and licensing (Signatures Network, Anthill, TRUNK Ltd.); sponsorship and strategic alliances; recorded music; studios; media rights; digital rights; fan club/websites (UltraStar, Music Today); marketing and creative services (Tour Design).

All of these services combined together in one company could unreasonably restrain trade and commerce across the entire spectrum of the music industry.

An excerpt from the 1992 U.S. Supreme Court decision in the Eastman Kodak case states ***The Court has held many times that power gained through some natural and legal advantage such as a patent, copyright, or business acumen can give rise to liability if "a seller exploits his dominant position in one market to expand his empire into the next."*** Times-Picayune Publishing Co. v. United States, 345 U.S. 594, 611 (1953), see, e.g., Northern Pacific R. Co. v. United States, 356 U.S. 1 (1958); ***United States v. Paramount Pictures, Inc., 334 U.S. 131 (1948);*** Leitch Mfg. Co. v. Barber Co., 302 U.S. 458, 463 (1938).

One example of the power this new merged entity wields is in the fan club business where Live Nation and Ticketmaster are exploiting their dominant position to expand their empire. There are bands who are not managed by Front Line, who do not work with a Ticketmaster owned fan club company and do not sell their fan club tickets through Ticketmaster. If that band wants to do a presale for their fan club at a Ticketmaster controlled venue then the band is allowed to put as many tickets towards that presale as the band wants only if those fan club tickets are sold through Ticketmaster. However if the band wants to sell their fan club tickets through a different or competing ticketing company outside of the venue's primary ticketing agreement with Ticketmaster then Ticketmaster will limit the amount of tickets to 8% of the sellable capacity. But if the band uses Ticketmaster then they have the ability to sell more tickets directly to their fans through their fan club.

VI. RAISING THE BARRIERS TO ENTRY

Today, before the merger of Live Nation and Ticketmaster is approved, a start up concert promoter still has a chance to succeed. But this new merged company will raise the barrier to entry to an almost unobtainable height for all the reasons cited above.

Prior to the merger all of the following components of the live music industry have a chance to succeed; artists' managers, venue owners and operators, merchandising and licensing, recorded music, fan clubs/websites, fan clubs, marketing and creative services, sponsorship and creative alliances. But if this merger is allowed all of these businesses will face enormously high barriers to entry making it exceedingly difficult to compete.

VII. ANTI-RETALIATION PROVISION AND OTHER PROVISIONS DESIGNED TO PROMOTE COMPETITION MIGHT NOT WORK

A. PROPOSED FINAL JUDGMENT

The Proposed Final Judgment contains an anti-retaliation provision and other provisions designed to promote competition but they will be extremely difficult and virtually impossible to enforce in order to maintain compliance. In addition, these provisions might not produce the intended results of promoting competition.

The Proposed Final Judgment states Ticketmaster and Live Nation shall not:

- retaliate against a venue owner because that venue is contemplating contracting with another ticketing company
- condition or threaten to condition the provision of live entertainment events to a venue owner if that venue owner signs a contract with Ticketmaster
- condition or threaten to condition the provision of ticketing services to a venue owner based on that venue owner refraining from contracting with another ticketing company for the provision of live entertainment events
- disclose to any employee any ticketing data from any competing promoters, venues or artist managers except to an exempted employee who requires the information as part of their job function.

Every venue owner or manager knows the leverage that Live Nation and Ticketmaster has in regards to providing content/talent to their buildings. None of them can afford to miss their budgets so there will be very few that sign with another ticketing company. ***The implied threat of leaving Ticketmaster is clear to every person who owns or operates a venue since they all know the possible consequences with the reality that any violations of these provisions will be extremely difficult to prove and enforce.***

B. CAN THE AEG LICENSE WITH TICKETMASTER AND DIVESTITURE OF PACIOLAN TO COMCAST-SPECTACOR SUCCEED?

AEG

The Proposed Final Judgment assumes that it 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 20% of all the concert tickets sold at major concert venues in 2009. No company other than AEG or Live Nation promotes concerts representing more than 3% of the concert tickets of major concert performers. 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. The Department of Justice believes that 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.

COMCAST-SPECTACOR

The Proposed Final Judgment requires that Defendants divest Ticketmaster's entire Paciolan business that 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 Department of Justice believes 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.

It should be noted that the Paciolan system has been inferior to the Ticketmaster system that has, in the past, had problems which might not have been eliminated.

C. WHAT IF AEG AND COMCAST-SPECTACOR DO NOT SUCCEED?

Nothing in this Proposed Final Judgment prevents Live Nation and Ticketmaster 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 they do so in a manner that is not inconsistent with the provisions of the Judgment.

The bottom line is that Ticketmaster's ticketing system is vastly superior to any system on the market. Their superior technology along with their software and hardware is going to make it exceedingly difficult for any other company to increase their market share. Combine that with the merged company's ability to provide content from Live Nation's concerts and Front Line's management roster and you can understand why major arenas are signing on with Ticketmaster.

That being said, the Proposed Final Judgment does not address nor contemplate what happens to the consumers and industry if Ticketmaster retains their enormous market share due to the critical mass and sheer market power they have obtained. To rely on just the ticketing segment of the industry to challenge the monopoly power of Live Nation and Ticketmaster gets to the essence of the shortcomings of this Proposed Final Order.

VIII. STARE DECISIS

The Department of Justice has chosen to ignore the precedent set by the United States v. Paramount saying it is 'old' law. The DOJ has also ignored Eastman Kodak v. Image Technical Services as well as United States v. MCA. So the lawyers who work for the US government are consciously choosing the forget about the Stare Decisis doctrine they are all taught in law school

Stare Decisis is Latin for "to stand by that which is decided." It is the principal that the precedent decisions are to be followed by the courts.

Although the doctrine of stare decisis does not prevent reexamining and, if need be, overruling prior decisions, "It is.....a fundamental jurisprudential policy that prior applicable precedent usually must be followed even though the case, if considered anew, might be decided differently by the current justices. This policy....."is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system; i.e., that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law." (Moradi-Shalal v. Fireman's Fund Ins. Companies (1988) 46 Cal.3d 287, 296.)

A. UNITED STATES V. PARAMOUNT PICTURES, INC. et al

It was ordered, adjudged and decreed as follows:

From granting any licenses in which minimum process for admission to a theatre are fixed by the parties, either in writing through a committee, or through arbitration, or upon the happening of any event or in any manner or by any means.

From making or further performing any formula deal or master agreement to which it is a party. The term 'formula deal' as used herein means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross. The term 'master agreement' means a licensing agreement, also know as a 'blanket deal' covering the exhibition of features in a number of theatres usually comprising a circuit.

From licensing in the future any feature for exhibition in any theatre, not its own, in any manner except the following:

- A license to exhibit each feature released for public exhibition in any competitive area shall be offered to the operator of each theatre in such area who desires to exhibit it on some run selected by such operator and upon uniform terms.
- Each license shall be granted solely upon the merits and without discrimination in favor of affiliates, old customers or others
- Each license shall be offered and taken theatre by theatre and picture by picture rather than block booking each feature. In other words, block booking, a system which prevents competitors from bidding for single performers on their individual merits by entering into an exclusive maser agreement with one promoter for all the performances across the country or around the world, was no longer permissible.

From continuing to own or acquire any beneficial interest in any theatre, whether in fee or shares of stock or otherwise, in conjunction with another defendant, and from continuing to own or acquire such an interest in conjunction with an independent where such interest shall be greater than 5% unless such interest shall be 95% or more. The existing relationships which violate this provision shall be terminated within two years.

From expanding its present theatre holdings in any manner whatsoever except as permitted in the preceding paragraph.

From operating, booking, or buying features for any of its theatres through any agent who is know by it to be also acting in such manner for any other exhibitor, independent or affiliate.

B. EASTMAN KODAK V. IMAGE TECHINCAL SERVICES

The DOJ has also chosen to ignore the 1992 Supreme Court decision in Eastman Kodak v. Image Technical Services that cites the US vs. Paramount decision. An excerpt of this cases states that *e**ven assuming, despite the absence of any proof from the dissent, that all manufacturers possess some inherent market power in the parts market, it is not clear why that should immunize them from the antitrust laws in another market. The Court has held many times that power gained through some natural and legal advantage such as a patent, copyright, or business acumen can give rise to liability if "a seller exploits his dominant position in one market to expand his empire into the next."*** Times-Picayune Publishing Co. v. United States, 345 U.S. 594, 611 (1953), see, e.g., Northern Pacific R. Co. v. United States, 356 U.S. 1 (1958*);* ***United States v. Paramount Pictures, Inc., 334 U.S. 131 (1948);*** Leitch Mfg. Co. v. Barber Co., 302 U.S. 458, 463 (1938). Moreover, on the occasions when the Court has considered tying in derivative aftermarkets by manufacturers, it has not adopted any exception to the usual antitrust analysis, treating derivative aftermarkets as it has every other separate market. See International Salt Co. v. United States, 332 U.S. 392 (1947); International Business Machines Corp. v. United States, 298 U.S. 131 (1936); United Shoe Machinery Corp. v. United States, 258 U.S. 451 (1922). Our past decisions are reason enough to reject the dissent's proposal. See Patterson v. McLean Credit Union, 491 U.S. 164, 172 -173 (1989) ("Considerations of stare decisis have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done").

It is interesting to note that in 1992, just 18 years ago, the Supreme Court did not believe the United States v. Paramount was old law since it was cited in this decision.

C. UNITED STATES V. MCA INC.

The Department of Justice has seemingly not given any consideration to the United States v. MCA Inc., filed in the US District Court for the Southern California District of California, Central Division. The merits of this decision should be applicable to the merger at hand.

In 1962 the Court entered a final consent judgment in the United States' action against MCA, which alleged violations of the Clayton Act and the Sherman Act. The Court restrained MCA from vertically integrating certain types of entertainment businesses and from making any acquisitions or mergers with any major television production companies, theatrical motion picture production companies or major phonograph record companies.

IX. CLOSING

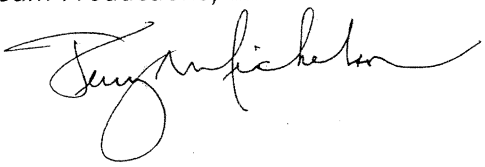
The merger of Live Nation and Ticketmaster harms the consumer and every competitor in the live entertainment industry. This merger is not about the benefits to the consumer but rather the pursuit of obtaining monopoly power. The people who are rewarded include one high level executive who received over $30,000,000 for putting this deal together while other executives are receiving extremely large annual salaries and stock options. I think that says a lot about the motivation in seeking to marry Live Nation and Ticketmaster.

This merger is the poster child of why there are anti-trust laws in this country. The Department of Justice seems to be taking the position that if 24 separate promoters were operating the way Live Nation does today then they would be in violation of the anti-trust laws. But when put under one roof these 24 promoters are not in violation of these same laws. This makes no sense and runs contrary to protecting the consumer, regardless of whether it is 1 company or 24.

The fact is that movie studios still believe that US vs. Paramount is the law of the land since none of them have violated that decision. It's interesting to note that since the inception of SFX/Clear Channel/Live Nation in 1996 concert ticket prices for the Top 100 tours have risen 142% through 2009 (from $25.81 to $62.57) but movie prices during the same time span have only risen 70% (from $4.42 to $7.50). The fact that movies are reasonably priced is a major factor in the success of the movie industry since it is still affordable to the consumer.

If this merger is allowed it sets a disastrous precedent for large companies to leverage their dominant power in other industries to the detriment of the consumer and competition. The bottom line is that content providers (management of artists/buying a tour/360 deals) must be separate and not part of the same company that also has the distributors (promoters and ticketing) and owns the venues.

Jam Productions, Ltd.



Jerry Mickelson, Chairman and Exec. V.P.

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In the United States District Court for the District of Columbia

United States of America et al, Plaintiff 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.
Assigned to: Collyer, Rosemary M.
Assign. Date: 1/25/2010.
Description: Antitrust.
Date filed: 1/28/2010.

Tunney Act Comments of Jack Orbin, President, Stone City Attractions, Inc. on the Proposed Final Judgment in the Ticketmaster/Live Nation Merger Matter

On January 24, 2010 the Antitrust Division of the Department of Justice ("DOJ") filed a complaint and proposed final judgment ("PFJ") with the United States District Court for the District of Columbia regarding the merger of Ticketmaster Entertainment, Inc. ("Ticketmaster") and Live Nation, Inc. ("Live Nation"), to create the merged company Live Nation Entertainment, Inc. ("LNE"). Without a reasonable doubt, the merger of Ticketmaster, the nation's largest ticketing company, and Live Nation, by far the nation's largest concert promoter, will further damage an already fragile live concert industry and should be disallowed. We are submitting these comments on behalf of Jack Orbin, founder and president of Stone City Attractions, one of the largest and innovative independent concert promoters in the country, to document how the PFJ fails to adequately protect competition in the live entertainment industry, specifically in the primary ticketing market for major concert venues, and to suggest more significant remedies that can be used to strengthen the PFJ.[11]

Any assessment of whether the PFJ adequately restores competition must begin with these simple facts:

• This proposed merger faced unprecedented opposition from consumer groups, Members of the United States Congress, ticket sellers, artists, managers, independent concert promoters, and actual consumers of live entertainment. The DOJ received over 25,000 direct consumer complaints urging the DOJ to block the merger.[12]

• Attached to these comments is a letter from 50 members of Congress to AAG Varney opposing the merger. The letter expresses concerns that the merger will eliminate the minimal competition in the ticketing market, leading to higher prices and less service. "Permitting Ticketmaster to merge with its most significant competitor effectively abandons any hope for the development of competition in the foreseeable future, and it would subject consumers to any exploitation, including higher ticket prices and fees, that the newly merged firm might wish to make of its monopoly power." [13]

• Congressman Bill Pascrell framed concerns of the merger in a December 16, 2009 press conference launching the merger opposition Web site, Ticketdisaster.org, that featured four members of Congress and a coalition of consumer groups, ticket sellers and concert promoters: "This merger represents the greatest and most urgent threat to music fans across the country, and if approved will have far-reaching, long-lasting negative consequences for concert goers and nearly everyone involved in the live music business." [14]

• The Justice Department decision to accept the PFJ was roundly criticized by the leading newspapers. The editorial board of the New York Times declared that "this kind of consolidation embodied by Live Nation Entertainment is tremendously worrisome." The Times raised significant concerns over the vertical aspects of the merger noting this merger has created "Live Nation Entertainment, a juggernaut that has it all. It will be tough for a band to tour without doing business with the new firm." [15]

• The Washington Post called the PFJ "a terrible precedent" observing that "the gradual retreat from antitrust enforcement over the past 30 years has led corporate executives and their lawyers to believe that there is no merger that cannot win approval if you're willing to make some relatively minor fixes." Permitting the vertical integration of the two dominant live entertainment companies leaves no doubt that "a ticket monopolist seeking to buy the dominant concert promoter and venue operator * * * [will certainly] bundle its services and force more focused competitors out of the market.[16]

• Further, the DOJ's own Competitive Impact Statement ("CIS") provides that "[t]he proposed transaction would extinguish competition between Ticketmaster and Live Nation and thereby eliminate the financial benefits* * *enjoyed during the brief period when Live Nation was poised to challenge Ticketmaster's dominance;" diminish innovation in primary ticketing services; and "result in even higher barriers to entry and expansion in the market for primary ticketing services." [17]

The theory that the PFJ here, by allowing the largest concert promoter (who operates at a major financial loss, to the tune of $800 million at the announcement of this merger) to combine with what is commonly known as the most despised of corporations by the ticket buying public, will restore competition in the primary ticket sales and concert promotion markets is nonsensical. The reality is that this merger further enforces the monopolistic hold of Ticketmaster on the live entertainment industry; and this merger will continue to increase ticket prices to consumers and continue to drive independent concert promoters out of business. AAG Varney stated, after the filing of the Complaint, that "we were prepared to litigate the case, and I told the parties that." [18] Yet, the DOJ did not litigate, and instead chose to identify a very limited set of competitive concerns in ticketing and proposed a limited set of remedies. The prohibitions proposed by the DOJ "will prove difficult to enforce. And there is nothing to stop anticompetitive bundling of tour management, concert promotions and venues." [19]

This merger results in LNE dominating the live entertainment

[11] Jack Orbin is the founder and President of Stone City Attractions, Inc., a well-respected, family-owned independent regional concert promoter. Jack Orbin has promoted and produced events in the Southwest for the past 38 years. Over the past 38 years, Stone City Attractions has promoted nearly every major concert act, from pop and rock-n-roll to country and jazz in venues of all sizes.

Jack prides himself in the extent of his community involvement. Jack was named one of San Antonio's "Most Influential Top 100 Leaders" in Arts & Entertainment. Additionally, Jack is an active member of the San Antonio Alamodome Advisory Sub-Committee, and has been awarded their prestigious Humanitarian Award multiple times.

[12] Jason Schreurs, *25,000 Concertgoers Urge U.S. Justice Department to Block Ticketmaster/Live Nation Merger,* Exclaim News (January 20, 2010), available at *http://www.exclaim.ca/articles/generalarticlesynopsfullart.aspx?csid2=844&fid1=43772.*

[13] Letter to Assistant Attorney General Christine Varney from 50 members of the U.S. House of Representatives (July 27, 2009). Attached hereto as "Attachment A."

[14] Remarks of Congressman Bill Pascrell, Press Conference on Ticketmaster and Live Nation merger (December 16, 2009).

[15] Editorial, Music Gets Bigger, N.Y. Times (February 9, 2010). Attached hereto as "Attachment B."

[16] Steven Pearlstein, *Ticketmaster and Live Nation Merger is a Raw Deal,* The Washington Post (January 29, 2010), available at *http://www.washingtonpost.com/wp-dyn/content/article/2010/01/28/AR2010012803710.html.*

[17] CIS at 11.

[18] Aruna Viswanatha, *Justice OKs Ticketmaster Live Nation—With Conditions,* Main Justice (January 25, 2010).

[19] Editorial, Music Gets Bigger, N.Y. Times (February 9, 2010).

industry with over an 80% market share for primary ticketing among major concert venues, and controlling 127 major concert venues in the United States, including amphitheaters and clubs. In spite of the substantial level of concentration resulting from this merger, the DOJ chose not to challenge the merger to remedy the impact on the independent concert promoters whose businesses will undoubtedly suffer as a result, nor to consider the impact to skyrocketing costs to consumers. The DOJ's enforcement action is inadequate in several respects:

- It fails to secure relief for the consumer by eliminating competition of independent concert promoters;
- The relief fails to ensure adequate competition for primary ticket sales and for concert promotion, and is insufficient to allow entry into these markets;
- It fails to adequately prevent LNE from acquiring customer data from independent concert promoters.

As described herein, the DOJ enforcement action is insufficient to address the competitive concerns of the live entertainment industry highlighted by the widespread opposition. Because of the enormous effects on consumers and competitors that this merger will have, combined with the inadequate relief proposed in the PFJ, the DOJ should reconsider their position, amend the PFJ as suggested below, reopen the matter to fully address the competitive concerns raised by this merger, and ultimately block the merger.

No Relief in for Consumers due to the Elimination of Independent Concert Promoters

The fact here is simple: ticket prices have skyrocketed since the roll up of concert promoters into Live Nation's predecessors and ultimately Live Nation, and the ticketing monopoly created currently by Ticketmaster. The consumer has been taken advantage of by these two conglomerates. To believe for a moment that the combination of the two huge corporations will benefit consumers in better services or lower prices is fantasy, at best. Both Ticketmaster and Live Nation are beholden to their stockholders and those stockholders demand profits. It is safe to assume any savings from the actual integration will be swiftly swallowed by the drive for profit by these mega-conglomerates, leaving the consumer helpless. The PFJ provides no form of relief in terms of lower costs to consumers. In fact, AAG, Christine Varney, has said that the hope of the DOJ here is to provide competitive choice for venues, but "whether that'll mean lower prices for fans, we'll see." [20]

The promoter principally sets ticket prices and costs have not increased relative to the ticket price increases.[21] This is substantially a result of Live Nation overpaying for Artists to ensure that other promoters do not have a chance to compete with those Artists. Live Nation has "reinvented" itself numerous times to try to compensate for their disastrous financials. None of these reincarnations have been profitable, leading to this desperate act. Live Nation is currently being sued in various courtrooms, most of which allege anti-competitive practices and/or the inflation of ticket prices. Concerts have been used as loss leaders, not only to keep other promoters from competing, but requiring Live Nation then to try to make up some of those losses through other ancillary revenue streams, resulting in falsely inflating prices of merchandise, concessions, and parking. This merger then becomes simply Ticketmaster and Live Nation trying to complete their respective monopolies, vertically as well as horizontally. The rollup of Artist management, ticketing, venues, and concert promotion into a powerful monopoly precludes the consumer choices, as well as terminating permanently the potential of any significant entries, desperately needed, into the live concert industry.

As has been commonplace for decades, the strongest protection the consumer has had has been the power to say "no" to a ticket purchase. The only other protective force has been the fact that a handful of independent promoters could provide an alternative—ensuring ticket prices and service charges be competitive and reasonable. However, this merger, by combining the vertical powers of the industry predominantly into the hands of this combined mega-conglomerate, destroys any sense of competitive balance provided by the existence of independent promoters. The majority of independent promoters will be squeezed from being able to compete with the already predatory practices commonplace by these two dominant corporations, who post-merger will have even greater powers—anticompetitive bundling of Artists, fan clubs, venues, ticketing, *etc.*—incumbent in this merger. Thus, relatively soon after the completion of this merger, if permitted, the protection of the consumer by the independent promoters will disappear. It is small businesses that create the real alternative to the consumer through diversity and innovation and this merger dooms that option. Unfortunately, the PFJ does little here to protect the important role of the independent promoters. The DOJ must consider additional remedies to the PFJ to ensure competitive, non predatory pricing, designed to protect the consumer.

The PFJ Fails To Ensure Adequate Competition and Actually Enhances Barriers to Entry

The PFJ provides for extremely limited relief that supposedly will provide competition to the primary ticket sale and concert promotion markets. The limited relief here is insufficient to overcome the significant barriers to entry into both primary ticketing sales and concert promotion markets. LNE will control over 80% of the primary ticketing sales in the United States, yet the PFJ provides only for the divestment of Paciolan, a small ticketing platform that has been sublicensed to other primary ticket sellers barely representing 4% of the market; and for a 5-year ticket technology license to Anchutz Entertainment Group, Inc. ("AEG"), who represents about 8% of the capacity of U.S. concert venues. As the Washington Post observed troublesome here is that "in order to provide sufficient competition to a bigger and more vertically integrated Ticketmaster, the government has put itself in the position of playing midwife to two other vertical mergers—one involving Anschutz, the other Comcast—making it even more difficult for small venues and independent promoters to survive." [22] While Comcast may theoretically provide for broader competition and the DOJ believes that AEG may be the "company best positioned" to compete for the sale of primary ticketing,[23] these remedies are wholly inadequate.

First, the divestment of Paciolan to Comcast fails to secure any relief in the primary ticket sales market. Paciolan now is only sub-licensed by Ticketmaster to roughly 4% of the market for primary ticketing. Assuming that the 4% benchmark is maintained under Comcast ownership, Paciolan will only be used in another 2% of concert

[20] David Segal, *Calling Almost Everyone's Tune,* N.Y. Times (April 23, 2010).

[21] The average price of a ticket to one of the top 100 tours jumped to $62.57 in 2009 from $25.81 in 1996, far outpacing inflation. *Id.*

[22] Steven Pearlstein, *Ticketmaster and Live Nation Merger is a Raw Deal,* The Washington Post (January 29, 2010), available at *http://www.washingtonpost.com/wp-dyn/content/article/2010/01/28/AR2010012803710.html.*

[23] CIS at 13.

venues which Comcast provides ticketing to.

Second, the merger and the PFJ transform the structure of the ticketing and promotion marketplace to effectively require vertical integration in order for any firm to effectively participate in the market in the future. The merger combines the largest ticketing firm with the largest concert promoter. Although the parties may assert that vertical integration is efficient, the DOJ appropriately rejected those claims.[24] Yet the DOJ then relied on AEG to attempt to restore competition, significantly increasing the level of vertical integration in the market. Post-merger if any firm would seek to enter the ticketing market in the future, it now will effectively be forced to simultaneously enter into concert promotion. Typically the antitrust enforcement agencies challenge vertical mergers because they may require two-level entry for future entrants; [25] in this case the PFJ causes the anticompetitive effect the DOJ is supposed to try to prevent. In this case the PFJ enhances barriers to entry rather than reducing them.

Third, we are very skeptical that AEG can fully restore competition through the complex limited licensing arrangement with Ticketmaster. AEG will be fully beholden and dependent on Ticketmaster. Licensing of Ticketmaster's ticketing platform to AEG would be insufficient to prevent the destruction of any remaining consumer protections, and any competitors, in its wake as well. AEG with 30 concert venues, trails far behind with the control of LNE's 127 venues. Moreover, the licensing of the ticketing platform still provides LNE with royalties based on each ticket sold by AEG, meaning Ticketmaster will have its hand in AEG's pot.

Fourth, even with the relief offered by the PFJ, LNE will still control over 80% of the primary ticketing and control most of the major concert venues in the United States, resulting in significant barriers to entry into these markets. Independent promoters will have to compete to book shows in LNE owned venues. And Independent promoters will most likely be forced to continue to utilize Ticketmaster for the majority of their shows (allowing Ticketmaster to keep its hands inside the promoters' pockets.) Moreover, with LNE possessing majority control of venues, coupled with Ticketmaster's ownership of Front Line Management, the barriers to entry are significant, and will become more significant post-merger. Moreover, the fact that the next largest competitors to Ticketmaster and Live Nation only represent roughly 4% of primary ticket sales and 8% of major concert venues is telling of the dominance LNE will have, and of the considerable barriers that will exist post-merger.

This merger dooms any real diversity in the live concert industry. As the Editorial Board of the New York Times warned: "Live Nation could easily shut out independent promoters—who don't have their own venues and ticket services. This could reduce diversity in the music market. The cost savings that are supposed to flow from these mergers never seem to accrue to consumers because the mergers leave so little competition." [26] That is why the PFJ should be rejected.

D. The PFJ Fails To Provide an Adequate Firewall

The PFJ attempts to limit the anticompetitive effects of the merger by imposing certain behavioral restrictions on LNE. Even though both Ticketmaster and LiveNation have been the subject of several antitrust and consumer protection lawsuits, the PFJ imposes extremely modest restrictions at best. Ticketmaster, after all, is no model corporate citizen—during the pendency of this merger it settled Federal Trade Commission charges that it engaged in fraud and deception in the sales of tickets for Bruce Springsteen concerts.[27] If Ticketmaster would engage in such brazen law violations during the pendency of a government merger investigation, certainly the most significant and iron-clad behavioral restrictions must be imposed to prevent any violations of the PFJ.

Yet the PFJ does not do that. It recognizes the importance of the confidential information of independent concert promoters, but imposes an extremely limited two-paragraph firewall—one far less significant than that used by the other federal antitrust enforcer—the Federal Trade Commission.

Customer data is the lifeblood of the concert promotion business. Concert promoters attract customers by producing more innovative and creative shows, promoting new artists, offering reasonable ticket prices, and knowing the tastes and interests of their community. Each independent concert promoter's list of customers is one of its most crucial assets. When an independent concert promoter puts on a show, he is able to collect customer information, including e-mail addresses, through ticket sales. This information is important for the purposes of advertising and gaining repeat customers.

By permitting this merger, the independent promoters are forced to contract for primary ticketing services via its largest concert promotion rival, LNE. LNE will have the incentive and ability to quickly exploit the information to dampen competition in both promotion and ticketing. LiveNation has used information in this fashion in the past. Vertical mergers of this sort often raise the concerns that by the merging parties having access to competitors' data, there is the potential for discrimination against competitors, or worse, exclusion of competitors from the market.

The PFJ attempts to create a firewall provision to prevent LNE from obtaining the ticketing data of its competitors and using this data in its non-ticketing businesses (concert promotion and ancillary services). As the Competitive Impact Statement notes, the PFJ seeks to protect 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." [28] Yet, the PFJ seeks to limit misuse through a bare bones, two-paragraph firewall provision. To the detriment of independent concert promoters, this PFJ provision still permits a broad sharing of information among higher-level employees, including "any senior corporate officer, director or manager." [29] Additionally, the provision seems to lack any mechanism of policing this firewall. Moreover, the firewall does not adequately protect the independent concert promoters. These firewall provisions will not work as planned, especially for a firm like Ticketmaster that has such overwhelming vertical control and such a poor record of corporate compliance.

[24] In the Competitive Impact Statement the DOJ noted that 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." CIS at 12. We respectfully suggest that a vertically integrated duopoly is far less likely to spur innovation than several nonintegrated firms.

[25] Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law ¶ 1011, at 196 (rev. ed. 1998) (citing the 1984 Merger Guidelines, § 4.211).

[26] Editorial, Music Gets Bigger, N.Y. Times (February 9, 2010).

[27] *See* Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief, *Federal Trade Comm'n* v. *Ticketmaster et al,* Case No. 1:10-cv-01093 (N.D. Ill. February 18, 2010).

[28] CIS at 17.

[29] Proposed Final Judgment at 4, 20.

The inadequacy of the PFJ is clear when it is compared to the approach of the Federal Trade Commission ("FTC") in implementing a much stronger firewall in a vertical merger (*see* In the Matter of PepsiCo, Inc. (FTC File No. 091 0133, February 26, 2010)).[30] Pepsi acquired its two largest bottlers Pepsi Bottling Group and Pepsi Americas. Pepsi bottlers also distribute for PepsiCo's competitor, Dr. Pepper and Snapple Group (DPSG). This is a merger with similar vertical concerns to the Ticketmaster/Live Nation merger, in which the sharing of competitive information could be detrimental to competition. In a 14-page Consent Order the FTC lays out specific firewall provisions designed to prevent acquisition and misuse of confidential information and monitor, when necessary, the use of competitive information by the merged firm.

- The FTC Order imposes a Monitor Trustee to monitor compliance with the order and the order is explicit that the Trustee is a fiduciary of the Commission.
- Additionally, The Monitor has full audit rights and is paid for by Pepsi. The Monitor is effectively an employee of the FTC.
- The Order designates a very limited set of Pepsi employees (the parent company) who can have access to the bottling information.
- The Order narrowly defines the type of information that Pepsi (the parent company) can have access to and narrowly defines the permissible use of the information it is allowed access to.
- The Order requires reorganization of personnel in both Pepsi and the bottling companies to comply with the Order.
- The Order requires Pepsi, within a certain time frame, to develop internal procedures to comply with the Order.

Of course, anyone can recognize that Dr. Pepper and Snapple Group has far more power and resources to protect itself from anticompetitive conduct than the small independent concert promoters or venue owners the PFJ seeks to protect.

The DOJ should reconsider the PFJ, and short of blocking the merger, should adopt additional mechanisms to strengthen the firewall provisions, similar to the FTC. For example, a Monitor Trustee, being a neutral third-party or a fiduciary of the Division, should be required to monitor compliance with the order; and to ensure compliance, provide the Monitor Trustee with full audit rights. Additionally, the DOJ should narrowly define the type of information that the non-ticketing businesses of LNE can have access to, and narrowly define the permissible use of the information. Finally, the DOJ should require LNE to develop internal procedures to comply with the order. The addition of such enforcement mechanisms will help strengthen what is an otherwise inadequate PFJ.

1. Conclusion

After an 11-month investigation of a merger which creates a dominant firm in the broken ticketing market, posing an unprecedented level of concern by consumers and competitors, the DOJ chose insufficient remedies to protect consumers and independent concert promoters. The remedies are inadequate to resolve the competitive concerns and the PFJ actually enhances barriers to entry. Moreover, the PFJ fails to adequately provide an effective firewall provision, which is the only provision to protect independent concert promoters and their customer base from the predatory practices of Ticketmaster and Live Nation.

It is a favorite phrasing of Live Nation and Ticketmaster executives to say the music industry is "broke." There is no doubt about that; however, it is these companies that have broken it. To solidify their market power makes no sense. As Congressman Pascrell declared "[t]here is little doubt that the result of this merger will be higher ticket prices, higher fees and chilling effects on consumers, business managers, artists, music fans, promoters in every state around the country."[31]

The PFJ should be rejected and the merger blocked. In the alternative, we strongly urge the DOJ to amend the PFJ with additional remedies to address these competitive concerns.

Date: May 3, 2010.

Respectfully submitted.

David A. Balto, Law Offices of David A. Balto, 1350 I Street, NW., Suite 850, Washington, DC 20005. *Tel:* 202–789–5424. *Fax:* 202–589–1819.

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[30] FTC Consent Order attached hereto as "Attachment C."

[31] Remarks of Congressman Bill Pascrell, Press Conference on Ticketmaster and Live Nation merger (December 16, 2009).

March 5, 2010

John R. Read
Chief, Litigation III Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW, Suite 4000
Washington, DC 20530

RECEIVED
MAR 1 0 2010
LITIGATION III, ANTITRUST DIV.
U.S. DEPT. OF JUSTICE

RE: Middle East Restaurant, Inc. – Ticketmaster/Live Nation Merger

Dear Mr. Read:

I represent the Middle East Restaurant, Inc. ("The Middle East") which operates a restaurant and entertainment venue at 472-480 Massachusetts Avenue, Cambridge, Massachusetts. The Middle East entered into a Licensed User Agreement with Ticketmaster, LLC in January, 1999. Ticketmaster provides ticketing services for attractions at The Middle East.

Under the Licensed User Agreement, as amended there is a two (2) year term that automatically renews unless either party gives written notice of termination at least 90 days before the renewal date. Prior to the merger the Licensed User Agreement renewed again. It should be noted that due to the Ticketmaster monopoly (80% of the market) The Middle East had no alternative but to renew its Agreement. What The Middle East is requesting the Justice Department to do as part of the settlement of the merger is to allow small venues like The Middle East early termination of its ticketing agreement with Ticketmaster. The reasons in support of this request are as follows.

Live Nation has indicated that The Middle East is one of their competitors for live music in the greater Boston Market. The merger puts The Middle East in the position of helping to fund its major competitor.

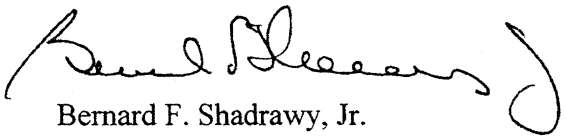
Although Ticketmaster has assured The Middle East of the protection of its data post-merger, there are no systems or penalties in place to protect The Middle East's customer's data. Furthermore, while this data may not be shared with Live Nation, Ticketmaster may certainly use the data to promote Live Nation shows, some of which may end up in direct competition with shows at The Middle East. It is not a far reach to

imagine that when the merger is completed, Live Nation Entertainment shows will be the emphasis for promotions and marketing.

The proposed Final Judgment lists a number of anti-retaliatory provisions as well as provisions to promote competition. We are requesting that the Justice Department interpret these anti-retaliatory provisions (or add a new provision as necessary) that allows smaller venues, including The Middle East, to terminate existing ticketing services contracts early in accordance with the provisions about not retaliating against venues that seek alternate ticketing arrangements.

If you have any questions regarding this matter or require additional documentation please contact me.

Very truly yours,
Middle East Restaurant, Inc.
By its attorney,



Bernard F. Shadrawy, Jr.

BFSJR/bc
cc: Joseph Sater
Kevin Hoskins

March 18, 2010

FEDERAL EXPRESS
Hon. Rosemary M. Collyer
US District Court
District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001

cc: John R. Read, Chief
US Dept. of Justice
Litigation III Section
450 Fifth Street, NW Suite 4000
Washington, DC 20540

cc: Cong. Rick Baucher
Chair, Telecommunications Committee
US House of Representatives

cc: Steve Waldman, FCC Deputy Commissioner

cc: Cong. Ed Markey
Former Chair, Telecommunications Committee

Re: Comments to Competitive Impact Statement of January 25, 2010
Ticketmaster and Live Nation, Inc. Merger USDC Dist. of Col. No. 1:10-CV-00139

Dear Judge Collyer:

In accordance with the Justice Dept.'s January 25, 2010 Competitive Impact Statement ("CIS") inviting comments within sixty (60) days to the Court's revised order re the prospective merger between defendants Ticketmaster and Live Nation, Inc., as Inventor and President of an early stage live event digital distribution company, LIVE-FI™ Technologies, LLC with its first US patents issued on October 13, 2009 (US Patent No. 7,603, 321) (**Exhibit 1**), I respectfully submit on behalf of LIVE-FI™, the public and other entities similarly situated, "inadequacy" and material omission objections to the order. It is contended that if the CIS is adopted in its present form without further revision, it will have a significant anti-competitive impact on the future of all live industries including music, sports, gaming and education contrary to the public interest in violation of the Tunney Act, 15 USC §§ 16(b)-(h).

Most respectfully, LIVE-FI™ has three primary concerns with the CIS as published:

(1) The Court has omitted all discussion of the negative anticompetitive impact the merger will have upon live event and recording distribution particularly electronic broadcasts and transmissions that are the future of the converging TV and mobile markets. As *admitted* in Live Nation's own papers and press releases, monopolization of the domestic and international concert market has been one of the company's primary objectives since it was formed in 2005. (See **Exhibit 2** and pp. 3 *infra*). There exists an inherent danger from a merged entity that will be, all at the same time, a promoter, majority venue owner for concerts and sports, label for performing artists, and the owner of ticketing and mobile ticketing systems, venue contracts and

ticketholder lists from 80% of US venues going back 25 years. As this Court correctly found, Live Nation already owns some 80-100 US venues and 30 in foreign territories. Ticketmaster's lists will now give the merged entity the added unfair advantage to promote and fulfill consumer electronic requests for live concerts and sports merchandise throughout the world even for artists and celebrities not represented by Live Nation but who are appearing at venues that deploy Ticketmaster systems;

(2) The Court wrongly assumes at pp. 7 that the merged entity will have no significant impact on small companies. As such, it speaks only to the ticket pricing interests of large promoters and venues such as AEG and Comcast Spectator. This is contended prejudicial error. The Court's most recent revised solution that mandates giving AEG access to Ticketmaster's systems and divests Ticketmaster of its Paciolan venue software in favor of Comcast-Spectator, presents a source of even greater concern for small entities. This is because the result will be a larger number of public concert and sports venues with access to the same basic ticketing, mobile ticketing operating systems including interfaces without equal access given to small companies, making the field even harder for smaller technology firms to penetrate; and

(3) The Court has failed to adopt explicit protocols and safeguards to ensure that private litigants and smaller entities maintain equal and fair access to the Courts to protect their rights and remedies against the individual defendants and the merged entity. This is the Court's stated objective in Section IV.

In fact, Live Nation and its former parent Clear Channel Entertainment, Inc., a division of Clear Channel Communications, Inc. have a long history of defrauding private litigants before the Courts that must not be overlooked and most respectfully, should be investigated by this Court prior to adoption of a final plan. Live Nation's practice for years has been to *falsely deny under oath all contacts with individual States* to avoid jurisdiction to answer for anticompetitive misconduct.

In particular, I draw this Court's attention to the appended untruthful papers sworn to under oath in 2006 and 2008 by defendant Live Nation and their Baker Botts attorneys in an antitrust case before Southern District of New York [Case No. 06-CV-1202 (BSJ) (SDNY)]. Live Nation, Clear Channel, and their attorneys falsely *deny under oath all contacts with New York State* (**Exhibit 3**).

As this Court correctly found and contrary to these sworn papers, Live Nation owns many New York venues including House of Blues, Jones Beach Amphitheatre, Blue Note, and at times relevant, 24 major radio stations in the tri-state area including WLTW-Lite 106.7 FM. Live Nation filed similar untruthful papers before other tribunals in lawsuits brought by private litigants. (**Exhibit 4**)

In addition, just prior to Live Nation's acquisition of Clear Channel's new affiliate Instant Live Concerts in 2005, Live Nation, *admittedly* sought to monopolize live concert distribution. In 2004, Live Nation acquired a third party inventor's patent called "Griner" (US Patent No. 6,614,729). Griner discloses only a single operating system that affixes tracks on a master

recording as individual selections are being performed during a concert as but one method to expedite distribution of onsite concert CD's.

Yet, immediately after acquiring Griner, Live Nation issued a series of false press releases throughout the US and the world that it owned a *monopoly* on distributing live concert recordings. (**Exhibit 5**). Live Nation's clear intent and ensuing practice was to prevent smaller recording companies from accompanying artists into its venues to achieve unfair market penetration of its recording distribution systems even at venues owned by others. This is, in part, how Live Nation attracted major artists such as Madonna, Jay-Z, Bono and Shakira, to leave their respective labels and sign with Live Nation in all fields during a time that the recording industry was vulnerable and experiencing plummeting CD sales from digital piracy of shared MP3 files over the Internet.

In 2005, LIVE-FI™ was itself denied access to Live Nation's venues. This was after LIVE-FI™'s USPTO unpublished provisional patent applications were believed to have been misappropriated to Live Nation through a New York intellectual property law firm representing LIVE-FI™ and Clear Channel simultaneously without disclosure. The misappropriation resulted in the formation Clear Channel's affiliate, Instant Live Concerts, LLC in 2003 by principals of Clear Channel Entertainment ("CCE"). Instant Live Concerts was subsequently acquired by Live Nation in 2005 after it was spun off from CCE and both remain headquartered at 9348 Civic Center Drive, Beverly Hills, CA.

Relevant here is that the New York Times article of May 5, 2003 that introduced Instant Live Concerts (**Exhibit 6**), also included sound bites from Irving Azoff, President of Front Line Management and now CEO of defendant Ticketmaster.

Now that live recording distribution has evolved into a digital rather than a hand-out business, Live Nation has continued to preclude LIVE-FI™ and other recording companies from its venues. If defendants' merger is approved without further revision, penetration of other company's technologies will be significantly impeded. This is because Ticketmaster's lists will afford Live Nation the ultimate advantages of controlling all of live concert promotion, venue entry access and event content distribution to the detriment of the public and all other entertainment companies.

In 2006, the press confirmed LIVE-FI™'s premise when it reported that Live Nation was in fact precluding smaller recording companies from accompanying artists to record concerts at its venues. <u>At that time, Live Nation did not represent any artists or their recording rights</u>.

In response, certain recording companies including DiscLive and Hyburn filed complaints against Live Nation and Clear Channel with the Electronic Frontier Foundation in San Francisco and were found to have meritorious claims. (**Exhibit 7**) Shortly thereafter, EFF invalided the Griner patent before the USPTO on other grounds, <u>leaving Live Nation without a patent</u>. This paved the way, as this Court correctly found, for Live Nation's 2006 alliance with German technology giant CTS Eventim and Clear Channel's other new subsidiary, Next Ticketing (**Exhibit 8**). This venture failed leading to Live Nation's more recent partnership with Ticketmaster (**Exhibit 9**).

Live Nation's history of unfair and anticompetitive practices should now raise a red flag to this Court on *the* most pressing antitrust issues potentially affecting the future of the entire music and sports industries.

Without speaking directly to the issues of live event and recording distribution, the Court, most respectfully, is doing the public a disservice.

The CIS as it stands does nothing to protect the interests of small recording and technology firms that have invested huge monies in development and may be able to compete with Live Nation and online subdistributors such as iTunes and Google to reverse the last ten years of industry losses emanating from digital piracy of MP3 files.

In summary, unless the Court mandates further revisions and sharing of assets with small companies, the pooling of the portfolio of powerful assets already controlled by Ticketmaster and Live Nation will enable the merged entity to unduly monopolize all of public access to concerts and events, majority lists of ticketholders and in turn, live recording distribution to those most likely to buy event recordings and podcasts. The end result will make it virtually impossible for new technology companies that have no equal access to Ticketmaster's operating systems to have a fair chance to compete.

Respectfully submitted,

Amy R. Gurvey
Inventor and President
LIVE-FI™ Technologies

Note: The attachments to this comment are available on the Antitrust Division's website at http://www.justice.gov/atr/cases/ticket.htm.

<FNP>

From: Gary T.

To: ATR–Antitrust—Internet

Cc:

Subject: For Ms. Christine Varney

Sent: Tue 4/13/2010 12:52 PM

Ms. Varney:

As you are quoted in the below article—"Generally when you see robust competition, you see prices coming down," Varney told reporters. "This is the right result.", I am writing you.

On April 1st, 2010 I drive 40 miles to downtown Houston, TX where the box office of Houston's House of Blues is located in order to purchase tickets for a concert. While I had business in downtown Houston, I specifically drove to the aforementioned House of Blues to purchase the tickets so that I would NOT have to pay all the surcharges that Ticketmaster/Live Nation charge.

Since the Justice Department allowed the Ticketmaster and Live Nation merger to occur, as it pertains to House of Blues venues (and about another 120 venues): they own the venue, produce the concert and ARE THE ONLY WAY to purchase tickets directly (*I.E.* Not having to go through a ticket reseller [which is just another name for legalized scalping]).

What occurred:

The tickets were purchased at the box office. To my surprise, and AFTER my credit card was charged, I saw that I was charged a $3 "convenience charge" for EACH $18 ticket (and NOT told there was such a charge until AFTER the tickets were purchased). The $3 per

ticket convenience charge was approximately an additional 17% charge to the cost of the ticket. I was then advised that since the tickets had already been charged to my credit card and printed, there was nothing that the sales person could do at the box office and that I was stuck with the tickets. Had I known in ADVANCE OF MY CREDIT CARD BEING CHARGED that I was going to get charged a convenience charge for each ticket, I never would have made the purchase.

I contacted Ticketmaster about the charges and their response was—(and the entire email is at the bottom of this email)

From: Ticketmaster Customer Support <*customer_support@ticketmaster.com*>

Reply-To: Ticketmaster Customer Support <*ticketmasterus@mailca.custhelp.com*>

Date: Sat, 10 Apr 2010 08:31:32–0400 (EDT)

To: "Gary T.

* * * "There is typically no convenience charge when you drive to a box office to purchase tickets."

Yet, did Ticketmaster credit my credit card for the convenience charges since I purchased the tickets at the box office? No.

To sum the situation up:

1. Prior to the Ticketmaster and Live Nation merger—there were no convenience charges for purchasing the tickets at the box office where the event was occurring.

2. Post-merger: Customers are charged convenience charges on tickets purchased at the box office where the event is occurring.

I see the aforementioned charges as a blatant abuse of monopolistic power.

Gary T. Johnson

Houston, TX

Ticketmaster, Live Nation Merger Approved: Will It Lead To Lower Ticket Prices?

RYAN NAKASHIMA | 01/25/10 08:03 PM | AP

LOS ANGELES —Concert promoter Live Nation and ticket-seller Ticketmaster consummated their merger on Monday after the U.S. Justice Department approved it with conditions meant to lower ticket prices for consumers.

Shares in both companies rallied by about 15 percent in trading Monday, showing that investors approved of how the Obama administration handled its first big merger with its appointee Christine Varney as assistant attorney general.

Regulators required Ticketmaster to license its ticketing software to a competitor and sell a subsidiary that handles tens of millions of tickets a year.

That is meant to strengthen the companies that will compete for ticketing contracts and concert promotion work with Live Nation Entertainment Inc., the new company formed by the merger of Live Nation Inc. and Ticketmaster Entertainment Inc.

"Generally when you see robust competition, you see prices coming down," Varney told reporters. "This is the right result."

Consumer groups, ticket resellers and some politicians had expressed concerns that the combined company would control too much of the concert experience. Varney said the original proposal for the merger would have been "anticompetitive."

Both companies agreed to the conditions, but a federal court in Washington still has to approve it. Canadian regulators and 17 state attorneys general also signed on to the deal.

The combined company will handle all aspects of the concert business, including promoting them, selling tickets, beer and parking, putting out albums and managing an artist roster that includes U2, Madonna, Jay-Z and the Eagles. Its operations span more than 30 countries. The companies said music fans will benefit through lower ticket prices because the merged company can earn money in ways that separate companies could not.

Michael Rapino, CEO of Live Nation and the merged company, said the merger creates "a more diversified company with a great selling platform for artists and a stronger financial profile that will drive improved shareholder value over the long term."

Story continues below

Under the Justice Department rules, Ticketmaster must license its software for five years to Anschutz Entertainment Group Inc., which owns the Staples Center and other venues. It was also directed to sell subsidiary Paciolan to Comcast-Spectator, a subsidiary of Comcast Corp.

But consumers might not notice the difference right away, partly because the merger agreement preserves long-term exclusive ticketing contracts with venues.

AEG and Comcast-Spectacor could take years to effectively take ticketing deals away from Ticketmaster, Gabelli & Co. analyst Brett Harriss said. Only then would ticket fees start to come down, Harriss said.

Varney said about 20 percent of Ticketmaster's deals with venues will expire in 2010. Previously the vast majority of Ticketmaster clients renewed their deals upon expiration.

Some vocal opponents continued their attack. Rep. Bill Pascrell Jr., D–N.J., said the ruling did not address the resale market that led to consumers paying inflated prices for a Bruce Springsteen concert last February.

It also did not affect the vertical integration the companies proposed—although Varney said her department would monitor the companies for 10 years to prevent anticompetitive bundling of services.

Don Vaccaro, chief executive of ticket resale site TicketNetwork, said having three strong players was better than just one, but it still left small ticket retailers at a disadvantage, especially for VIP seating packages that artists sometimes release through their concert promoters.

"They created a lot of little monopolies on tickets at venues," Vaccaro said. "It could have gone further."

Under the deal, the merged entity will be under a 10-year court order prohibiting it from retaliating against venues that choose to sign ticket-selling contracts with competitors. It also must allow venues that sign deals elsewhere to take consumer ticketing data with them.

Live Nation, which is based in Los Angeles, and Ticketmaster, which has headquarters nearby in West Hollywood, have said the merger will streamline their operations, allowing them to save $40 million a year. It reversed a schism that happened in 2009, when Live Nation let its ticketing deal with Ticketmaster expire and instead sold tickets to its own venues with the help of German company CTS Eventim AG.

The merger closed on Monday, with Ticketmaster stockholders receiving about 1.474 Live Nation shares for every Ticketmaster share they own. Ticketmaster shares stopped trading at the end of the day.

Ticketmaster shares rose $2.10, or 15.8 percent, to close at $15.40 while Live Nation shares closed up $1.35, or 14.7 percent, at $10.51. The merged company now has a market capitalization of about $889 million.

Both Comcast-Spectacor and AEG hailed the ruling as an opportunity to expand their businesses.

Comcast-Spectacor, which owns the Philadelphia Flyers, Philadelphia 76ers and two arenas, said it would add Paciolan's 200 ticketing accounts and complement its capabilities as a venue manager, food and beverage seller and seller of venue-naming rights.

AEG Chief Executive Timothy Leiweke said his company has a

commitment from Ticketmaster to run ticket-selling operations under the brands of AEG and its clients starting immediately if AEG wants, and running for five years. He said AEG will "aggressively explore" alternative ticketing platforms in the coming years. AEG can choose to keep Ticketmaster's technology or develop a separate system by itself or with partners.

From: Ticketmaster Customer Support <*customer_support@ticketmaster.com*>

Reply-To: Ticketmaster Customer Support <*ticketmasterus@mailca.custhelp.com*>

Date: Sat, 10 Apr 2010 08:31:32–0400 (EDT)

To: "Gary T.

Subject: To Irving Azoff and the Ticketmaster/Live Nation management: I purchased tick * * *

[Incident: 100410–000351]

Thank you for allowing us to be of service to you.

Subject

To Irving Azoff and the Ticketmaster/Live Nation management: I purchased tick* * *

Discussion Thread

(Somer_ZYS774)04/10/2010 08:31 AM EDT

Dear Gary,

Thank you for your e-mail. The convenience charge covers costs that allow Ticketmaster to provide the widest range of available tickets while giving you multiple ways to purchase. Tickets are available in many neighborhoods via local ticket outlet locations, our local charge-by-phone network and online at Ticketmaster.com. Tickets can be purchased through at least one distribution channel virtually 24 hours a day. The convenience charge varies by event and is determined by negotiations with arena operators, promoters and others based on costs for each event.

Also, the convenience charge will vary depending upon where you purchase the tickets. There is typically no convenience charge when you drive to a box office to purchase tickets. A convenience charge is applied when you purchase from the Internet, phone or ticket outlet (*e.g.,* at your local department store) and this charge may vary depending upon Ticketmaster's local agreements with the venues, promoters and outlet partners.

Thank you for using Ticketmaster, where we continually strive to provide World Class Service to every customer, every day! We really appreciate your business, and hope we were able to resolve any problems or answer any questions you had. Please reply to this email if we may be of further assistance. Sincerely,

Somer_ZYS774

From: Tom Kuhr

To: ATR-Antitrust—Internet; Varney, Christine

Cc:

Subject: Ticketmaster

Sent: Tue 1/26/2010 3:31 PM

Dear Ms. Varney,

It's absolutely unconscionable of you to let an already monopolistic Ticketmaster acquire even more power to shut out competition. I don't know what kind of nonsense they told you about how they play or will play nice with others during your investigation, but it's clear that they dominate their market by a huge margin and will continue to shut out any competition with lockups on more venues.

This is the worst decision for consumers in years. The ticket fees that are already too high will continue to rise, and the new combined monster of an organization with a stranglehold on both artists and venues will make cable companies look like charities in comparison.

You made a bad decision this week in the name of corporate growth.

—Tom

Tom Kuhr

Hermosa Beach, California

From: Don Crepeau

To: ATR-Antitrust—Internet

Cc:

Subject: Ticketmaster Live Nation decision.

Sent: Tue 1/26/2010 3:07 PM

I want to thank you for making it near imposable for me to be able to afford tickets to the concerts of my favorite musicians.

Now that you have insured that the ticket prices will be too high for me to afford I can concentrate on other things important to me. Like helping the Republican Party remove the Democrats from office and maybe causing you to loose your jobs.

Don Crepeau

From: Jason Keenan

To: ATR–OPS Citizen Complaint Center

Cc:

Subject: ticketmaster/live nation merger

Sent: Tue 2/9/2010 8:30 AM

Please reconsider your decision, as a professional musician and lifelong fan of live music, I urge you to reverse this decision. As an American, and a believer in the Constitution and Equality of Opportunity, I simply cannot fathom how you could allow this to happen. Thank you, Jason Keenan

From: Chris Cantz

To: ATR–ISSG—Web Master

Cc:

Subject: Ticketmaster/Live Nation Merger

Sent: Tue 1/26/2010 12:47 AM

Attention Mr. Webmaster. Could you please ask Ms. Varney what she was smoking when she said that this merger would be beneficial and innovative to the public as I would like to order some of it. I'm not sure how someone in her position isn't aware of the definition of a monopoly and it's damage to the people our government is meant to represent. Does she really believe the already exorbitant service charges will go down now that there is no competition? Once again we the people get the shaft from the government and the rich corporations with deep pockets will continue to get richer. Thanks for nothing Ms. Varney (Other than increased service charges)

From: joseph carlson

To: Hoag, Aaron

Cc:

Subject: TUNNEY ACT COMMENTS RE: case 1:10-cv-00139 usa vs Tmaster

Sent: Tue 1/26/2010 11:47 AM

Mr. Hoag,

I believe the Justice Department made a huge mistake by allowing the LN TM merger as indicated by the seats made available for their first big onsale since the merger was approved. This week James Taylor went onsale for many US cities and Livenation-Ticketmaster OFFERED NO SEATS ON THE FLOOR FOR ANY OF THE SHOWS!!!!! Furthermore the entire lower bowl for each venue had less then 40 seats available for the public onsale. This means they kept well over 4 thousand of the best seats to scalp for themselves for all of the shows. By allowing this merger you have made it impossible for the average fan to get good seats for most concerts that go onsale in America. As government officials I believe that it is important for you to look out for the average American not BIG CORPORATIONS!!! You should have never allowed this merger without mandating TM–LV to offer at least 5% of the seats for ALL sections of a given venue at the time of an onsale.

The conditions set forth by the merger offered NOTHING to protect the consumers! Please call me at ***-***-**** for suggestions on conditions that the DOJ should've made when approving this merger.

Sincerely,

Joe Carlson

From: Kenneth de Anda

To: ATR–OPS Citizen Complaint Center

Cc:

Subject: YOU have FAILED to protect us yet again

Sent: Mon 1/25/2010 5:23 PM

To Whom It May Concern:

By allowing the Live Nation/Ticketmater merger to go ahead, you have failed to protect the American consumer. The very people with whom you are in charge of the task of protecting from large corporations. It is a very sad day for concert goers and consumers. Once again corporations have succeeded in blinding politicians with money and false hope for consumers. I am very saddened that this merger has occurred and hope for the day when the American consumer will once again be protected by the very government.agencies that were set up to protect them.

Sincerely,

Kenneth de Anda

[FR Doc. 2010–15686 Filed 6–28–10; 8:45 am]

BILLING CODE P