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THE “NEW ERA” OF ADR

Alexis Narotzky

On January 4, 2022, customers who purchased tickets via Ticketmaster since July 2021 sued Ticketmaster and its parent company Live Nation Entertainment, Inc. (“Live Nation”)¹ alleging “widespread monopolization” related to fees charged with all ticket purchases.² This litigation is a follow-up to a January 2021 complaint alleging the same.³ In response to the initial complaint, Ticketmaster changed its arbitration forum from JAMS to New Era ADR (“New Era”).⁴

New Era launched the first fully virtual arbitration and mediation platform on April 20, 2021.⁵ It promises to resolve all disputes in less than 100 days and “save[] businesses of all sizes up to 90% in time and expenses.”⁶ New Era’s co-founders were lawyers who saw how beneficial, but long, the process of ADR could be.⁷ They conceived New Era to function as “a wizardized platform” with more streamlined procedures, encouraging resolution quicker.⁸ Most notably, New Era has modernized the process by allowing the parties to communicate concisely through digitizing “the management of multiple cases, messages between all parties, document management, video-conferencing, multi-party calendaring, payments, and reports.”⁹

Plaintiff’s complaint raises important issues regarding New Era’s procedures.¹⁰ New Era offers standard arbitration, which promises to resolve disputes in 100 days or less.¹¹ In addition, they offer expedited arbitration—used by Ticketmaster—which promises to resolve disputes within 45 to 60 days.¹² To achieve this fast resolution, New Era limits the amount of evidence to “the lesser of 10 total files, 25 pages across all files or 25MB of aggregate uncompressed uploads

¹ Ticketmaster and Live Nation will be used interchangeably throughout this post.

² J. Edward Moreno, *Live Nation, Ticketmaster Hit with New Monopoly Suit*, LAW 360 (Jan. 5, 2022, 4:38 PM), <https://www.law360.com/articles/1452469/live-nation-ticketmaster-hit-with-new-monopoly-suit> [<https://perma.cc/PC5R-LMSS>].

³ Althea Legaspi & Nancy Dillon, *Live Nation, Ticketmaster Sued Again for ‘Predatory and Exclusionary Conduct’*, ROLLING STONE (Jan. 5, 2022), <https://www.rollingstone.com/music/music-news/live-nation-ticketmaster-sued-again-monopoly-1278598/> [<https://perma.cc/3KS4-2SZY>].

⁴ *Id.*; *Terms of Use*, Ticketmaster, https://help.ticketmaster.com/s/article/Terms-of-Use?language=en_US#section17 [<https://perma.cc/897M-A5Q4?type=image>] (last updated July 2, 2021).

⁵ *Tech Startup New Era ADR Aims to Disrupt Traditional Litigation and Dispute Resolution with New Technology Platform*, BUS. WIRE (Apr. 20, 2021, 8:44 AM), <https://www.businesswire.com/news/home/20210420005495/en/Tech-Startup-New-Era-ADR-Aims-to-Disrupt-Traditional-Litigation-and-Dispute-Resolution-with-New-Technology-Platform> [<https://perma.cc/BE3R-USZR>] [hereinafter *Tech Startup New Era ADR*]; NEW ERA ADR, <https://www.neweraadr.com> [<https://perma.cc/VR6K-VGLY>] (last visited Feb. 24, 2022).

⁶ *Tech Startup New Era ADR*, *supra* note 5.

⁷ Sara Merken, *New Tech Platform Launches with Promise of Quick, Cheap Dispute Resolution*, THOMSON REUTERS WESTLAW (Apr. 20, 2021, 5:51 PM), [https://today.westlaw.com/Document/I56b176f0a20111eb9b7694487a28bf30/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Default\)&firstPage=true](https://today.westlaw.com/Document/I56b176f0a20111eb9b7694487a28bf30/View/FullText.html?transitionType=SearchItem&contextData=(sc.Default)&firstPage=true) [<https://perma.cc/5D9T-FCC6>].

⁸ *Tech Startup New Era ADR*, *supra* note 5.

⁹ *Id.*

¹⁰ See Complaint, Skot Heckman et al. v. Live Nation Entertainment, Inc. et al., No. 2:22-cv-00047 (C.D. Cal. Jan. 04, 2022).

¹¹ *Rules and Procedures*, NEW ERA ADR, <https://www.neweraadr.com/rules-and-procedures/> [<https://perma.cc/2Z4R-KTMS>] (last visited Feb. 24, 2022) [hereinafter *New Era Rules*].

¹² *Id.*; *Terms of Use*, TICKETMASTER, https://help.ticketmaster.com/s/article/Terms-of-Use?language=en_US#section17 [<https://perma.cc/897M-A5Q4?type=image>] (last updated July 2, 2021).

for expedited arbitrations.”¹³ The evidence permissible is minimal compared to the traditional JAMS forum.¹⁴ Additionally, the arbiter can rule on documentary evidence without a virtual hearing if he/she chooses.¹⁵ While this platform saves companies’ time, one could argue that this process is too hasty.¹⁶ The thoroughness of a decision rendered is questionable when there is a finite time limit, minimal evidence allowed, and the possibility of no hearing at all. However, New Era’s platform will most certainly save the parties time through swift resolution.

The pricing model of New Era differs as well. The principal difference is that New Era allows companies to pay for a subscription in which New Era is “on retainer.”¹⁷ New Era enters an agreement with a company to determine the subscription pricing, dependent on factors such as prior litigation history.¹⁸ Ultimately, Ticketmaster ends up paying the simple retainer whether there is one suit or thousands.¹⁹

New Era promises important advances in ADR by reducing the time it takes to resolve a dispute. Nevertheless, no platform is a panacea, and the complaint against Ticketmaster raises notable concerns about the new platform.

¹³ New Era Rules, *supra* note 11.

¹⁴ JAMS provides its own limits on discovery, but not on the actual number of documents allowed to be submitted. For example, JAMS rules and procedures state that “E-discovery shall be limited . . . [to] the production of electronic documents only from sources used in the ordinary course of business,” rather than saying only a certain number of documents may be submitted. *Comprehensive Arbitration Rules & Procedures*, JAMS, <https://www.jamsadr.com/rules-comprehensive-arbitration/#Rule-20> [<https://perma.cc/W28S-Z85W>] (last updated June 1, 2021) [hereinafter JAMS Rules].

¹⁵ New Era Rules, *supra* note 11.

¹⁶ *New Era Expedited Arbitration Overview*, NEW ERA ADR, <https://www.neweraadr.com/new-era-adr-expedited-virtual-arbitration-rules-procedures/> (last visited Feb. 24, 2022); *Terms of Use*, *supra* note 12.

¹⁷ The cost to the consumer is similar between New Era and JAMS, \$300 and \$250 respectively. Complaint at 2, Skot Heckman et al. v. Live Nation Entertainment, Inc. et al., No. 2:22-cv-00047 (C.D. Cal. Jan. 04, 2022); JAMS Rules, *supra* note 14.

¹⁸ New Era Rules, *supra* note 11.

¹⁹ Complaint at 2, Skot Heckman et al. v. Live Nation Entertainment, Inc. et al., No. 2:22-cv-00047 (C.D. Cal. Jan. 04, 2022).