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Brandon Simon

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Inspiration For How The DOJ Can Handle Its Antitrust Investigation Against Ticketmaster

By: Brandon Simon



“It’s me, hi, I’m the problem, it’s me”[1] is not something Ticketmaster would have anticipated Congress would mandate it to admit about itself, but that all changed after its botched sale of tickets for Taylor Swift’s upcoming U.S. stadium tour.[2]

In November of 2022, tickets for Swift’s highly anticipated “Eras” tour went on sale, and, while fans were initially ecstatic, their frustration quickly followed. Fans complained of long wait times, site crashes, and, once getting through these wait times and site crashes, either limited or zero ticket availability.[3] As a result, the U.S. Justice Department (“DOJ”) has opened an antitrust investigation into Ticketmaster, and its parent company Live Nation, for antitrust violations.[4]

While the incident behind Swift’s “Eras” tour was their most recent catastrophe, Live Nation and Ticketmaster have previously been under scrutiny ever since they merged in 2010.[5] The current probe focuses on “whether and how the company use its heft to muscle out competing ticket services, concert promoters and other parts of the multibillion-dollar live music industry.”[6] In determining how to handle this probe and both Ticketmaster and Live Nation’s market positioning, the DOJ can “take a page” from recently enacted European legislation.

In the fall of 2022, the European Parliament enacted the Digital Services Act (“DSA”) and the Digital Markets Act (“DMA”), and both pieces of legislation will determine how large online platforms operate to ensure fair competition and increased consumer choices.[7] Certain companies fall under the scope of these pieces of legislation if they: (1) have a size that impacts the internal market (e.g., they provide a core platform service in at least three EU Member States); (2) control an important gateway for business users towards final consumers (e.g., they operate a core platform service with more than 45

million active end users located in the EU); and (3) have an entrenched and durable market position.[8] If a company meets either of these criteria, then it is subject to scrutiny under both the DMA and the DSA. Given its size, influence, and market reach throughout the EU, Ticketmaster will likely fall under such scrutiny.

Under the scrutiny of both the DMA and the DSA, certain companies are prohibited from engaging in certain practices or else they will face major penalties. Specifically, certain companies are prohibited from ranking their own products or services in a more favorable manner compared to other vendors and from requiring users to use certain platform services.[9] If companies regulated under the DMA and the DSA fail to adhere to such prohibitions, then they risk fines of as much as 20% of the company's worldwide annual revenue.[10]

In its ongoing probe against Ticketmaster and Live Nation, the DOJ can seek to impose a similar regime against the DSA and DMA, and, in doing so, create a more competitive market for consumers and other event ticketing platforms. Specifically, the DOJ can mandate that Ticketmaster and Live Nation is forbidden from ranking its services in a more favorable manner or is forbidden from mandating that certain artists and venues use its services, especially because it controls 80% of the ticket market in the U.S.[11] These mandates could slowly begin to reduce Ticketmaster and Live Nation's market share and influence in the live music industry.

While the current probe against Ticketmaster and Live Nation is expected to go on for some time, the DOJ can use both the DSA and DMA as a model to impose more stringent antitrust laws and regulations, and, by doing so, Ticketmaster can finally look itself in the mirror and say “. . .I'm the problem, it's me.”[12]

Brandon Simon is a Staff Editor at CICLR.

[1] Taylor Swift, *Anti-Hero* (Republic Records 2022).

[2] Jim Saksa, *After Taylor Swift Ticket Fiasco, Senate Panel Calls Ticketmaster a Monopolistic Anti-Hero*, Roll Call (Jan. 24, 2023), <https://rollcall.com/2023/01/24/taylor-swift-ticketmaster-fiasco-judiciary-hearing/> [<https://perma.cc/ZN3Y-5KCQ>].

[3] Rob Wile & Morgan Sung, *Ticket Sales for Taylor Swift Tour Reignite Fan Frustration Over Ticketmaster*, NBC News (Nov. 15, 2022), <https://www.nbcnews.com/business/ticket-sales-taylor-swift-tour-reignite-fan-frustration-ticketmaster-rna57164> [<https://perma.cc/EG4W-SW76>].

[4] Josh Sisco, *DOJ Probing Live Nation and Ticketmaster for Antitrust Violations*, Politico (Nov. 18, 2022), <https://www.politico.com/news/2022/11/18/live-nation-ticketmaster-antitrust-violations-taylor-swift-00069564> [<https://perma.cc/4RY9-YFQ2>].

[5] *Id.*

[6] *Id.*

[7] *EU Digital Markets Act: Next Steps and Long-Term Outlook*, Dentons (Dec. 7, 2022), <https://www.dentons.com/en/insights/articles/2022/december/7/eu-digital-markets-act-next-steps-and-long-term-outlook> [<https://perma.cc/A6KQ-LCXD>].

[8] *Questions and Answers: Digital Markets Act: Ensuring Fair and Open Digital Markets**, Eur. Comm'n (Oct. 31, 2022), https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2349 [<https://perma.cc/R56K-N67R>].

[9] *Id.*

[10] *Id.*

[11] Saksa, *supra* note 2.

[12] Taylor Swift, *supra* note 1.