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Olivia Nacionales

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Ticketmaster and Live Nation Know Antitrust Laws All Too Well

BY OLIVIA NACIONALES / ON MARCH 1, 2023



Photo by Author, Olivia Nacionales

Almost anyone who has been to a concert, sports match, or any type of live event in recent years has likely had to deal with Ticketmaster, which commands a large majority of the ticketing industry.¹ In November 2022, Ticketmaster faced public scrutiny after its website crashed during the pre-sale for Taylor Swift's Eras tour.² Frustrated fans logged off empty handed after hours of waiting and enduring the website's glitches and eventual crash.³ Fans that did secure tickets were required to pay various fees, which Ticketmaster notoriously uses to drive up prices and "extract more money from consumers."⁴ The Chairman of Live Nation Entertainment ("Live Nation"), Ticketmaster's parent company,⁵ pointed to Swift's immense popularity as the source of the crash, taking no accountability for its website's failure.⁶ Swift's fans, also known as "Swifties," voiced their disdain for Live Nation's handling of the pre-sale, and even filed a lawsuit against the company in the state of California in December 2022.⁷ The lawsuit alleges that

Live Nation's ongoing engagement in anticompetitive behavior harms the ticketing industry and consumers.⁸

United States Senators held a hearing regarding competition in the ticketing industry in early January 2023, at which they renewed calls for stronger antitrust laws and enforcement.⁹ The White House even took an interest in prohibiting excess fees for concert tickets, among other things, in the Junk Fee Protection Act ("JFPA").¹⁰ In a statement, the White House, clearly speaking about Live Nation, said, "[o]ne company has exclusive partnerships with a reported 80 of the top 100 arenas in the United States, allowing it to charge fees to attend events at those leading venues without fear of competition."¹¹ The JFPA seems to incorporate a direct response to the Eras ticketing disaster that resulted from Live Nation's widespread venue ownership. These calls for action echo the sentiments of the American Economic Liberties Project ("AELP"), which began advocating to shrink Live Nation's influence in October 2022.¹²

Live Nation Entertainment controls "most of the US's ticketing, and is among the largest promoters, venue owners and artist managers."¹³ Additionally, the company reportedly wields its power nefariously, "us[ing] its leverage to force companies to work with it" when it does not control one of the parts of the entertainment process.¹⁴ The AELP called for a reversal of the merger between Live Nation and Ticketmaster, which would create two separate entities in place of the current parent/subsidiary relationship.¹⁵ This reversal would divide the control of the industry between two entities. This solution would be more effective if the two entities were prohibited from price-fixing once separated.¹⁶ Price-fixing is an anticompetitive practice that constitutes a per se violation of the Sherman Antitrust Act.¹⁷

Live Nation's problematic behavior reaches around the globe. In December 2022, over a thousand fans were denied entry to a Bad Bunny concert in Mexico due to a glitch in Ticketmaster Mexico's systems.¹⁸ The company claimed that the tickets were counterfeit, but an investigation determined those allegations to be false.¹⁹ The incident even caught the attention of Andrés Manuel López Obrador, the President of Mexico.²⁰ The Mexican government secured refunds for fans and fined Ticketmaster Mexico for this ticketing catastrophe.²¹ The company announced a new CEO a month later, demonstrating its "determination to improve the experience for fans, event promoters, venues, and business partners, as well as ensure the quality of their service."²²

Most recently, members of the BeyHive, Beyoncé's fan base, were at risk of falling victim to Live Nation's antics. The U.S. government made it clear that it planned to watch Live Nation's handling of the sale closely. After Beyoncé announced her

Renaissance tour, the Senate Judiciary Committee's official Twitter account fired a warning shot, tweeting, "We're watching, @Ticketmaster."²³ However, for Queen Bey's tour, Live Nation employed a new pre-sale strategy to handle the demand of yet another enormous fan base. This time, it "divid[ed] cities into three groups, . . . [and] staggered registration deadlines and pre-sale dates."²⁴ Fans who purchased tickets reportedly felt stressed, but relieved that the process was not as chaotic as they had anticipated.²⁵ But this one improvement does not absolve Live Nation of its past wrongdoing.

America Has a Problem with Live Nation's Practices

Months prior to the Eras crash, the Department of Justice (DOJ) had already opened an investigation into Live Nation.²⁶ The DOJ reported collected information from venues and other ticketing companies to determine whether Live Nation is engaging in anticompetitive behavior.²⁷ Examples of anticompetitive behavior are "practices that restrain trade, such as price-fixing conspiracies, corporate mergers likely to reduce the competitive vigor of particular markets, and predatory acts designed to achieve or maintain monopoly power."²⁸ However, the investigation is ongoing, and no legal action has been taken at this point.²⁹

Over the past couple of decades, the music industry has been restructured so that artists now gain most of their revenue from touring.³⁰ Live Nation controls a majority of concert ticket sales, concert promotion, and a large number of venues.³¹ Live Nation "owns or otherwise controls" over 300 venues worldwide, surpassing any control exercised by its competitors by a wide margin.³² In 2019, Live Nation "put on more than 40,000 events around the world and sold 485 million tickets."³³ This shift has given Live Nation a massive amount of power over the music industry, leaving artists at its mercy.³⁴ Live Nation, both a concert promoter and ticketing platform, is "without equal."³⁵ How did Live Nation gain its seemingly endless power in the live entertainment business? With the DOJ's blessing.³⁶

Live Nation Secures its Power Through a Merger

In 2009, Bruce Springsteen fans were unable to buy concert tickets through Ticketmaster (not yet owned by Live Nation), which sold out in minutes.³⁷ When frustrated fans called Ticketmaster, it advised them to check the website of one of their subsidiaries, which happened to have plenty of tickets available for resale for a much higher price.³⁸ A week later, news broke that Live Nation, a concert promoter who sold three times as many tickets as its next largest competitor, intended to purchase Ticketmaster.³⁹ This announcement raised eyebrows, and

prompted congressmembers to voice their opposition to the sale.⁴⁰ The DOJ and several states filed suit to stop the merger, arguing that the merger would “eliminate competition between the companies in the . . . primary ticketing [industry] . . . in violation of Section 7 of the Clayton Act, as amended.”⁴¹ The DOJ ultimately approved the merger under a consent decree in 2010.⁴² A consent decree memorializes the settlement reached between a company and the DOJ in a civil antitrust case.⁴³ Consent decrees set forth rules that the company must follow to comply with antitrust laws.⁴⁴ In this case, the consent decree imposed restrictions on Live Nation to “remedy[] the loss of competition” the DOJ alleged in its complaint.⁴⁵

Since the consent decree was issued in 2010, Live Nation has violated it on multiple occasions.⁴⁶ The DOJ described these violations in its motion to modify the final judgment from 2010.⁴⁷ The DOJ found that Live Nation had “repeatedly conditioned and threatened to condition Live Nation’s provision of live concerts on a venue’s purchase of Live Nation ticketing services, and they have retaliated against venues that opted to use competing ticketing services,” a violating the terms of the consent decree.⁴⁸

The United States District Court for the District of Columbia entered an amended final judgment in 2020, emphasizing the prohibition of the company’s retaliation tactics against venues that choose not to contract with them.⁴⁹ The amended judgment also added a \$1,000,000 penalty for each violation of the consent decree.⁵⁰ The judgment restricts Live Nation’s operations under Section 7 of the Clayton Act in an attempt to stymie any anticompetitive effects from the merger’s continued existence.⁵¹

Ticketmaster’s antitrust woes even predate the merger. In 1994, the DOJ investigated Ticketmaster’s practices after receiving complaints about service fees making tickets unaffordable, along with claims that Ticketmaster held a monopoly in the concert industry.⁵² The DOJ announced in July 1995 that it would close the antitrust investigation into Ticketmaster but would “continue to monitor competitive developments in the ticketing industry.”⁵³ Pearl Jam, the band that originally brought the issue to President Clinton’s attention and testified on the matter at a Congressional hearing, faced retaliation from Ticketmaster.⁵⁴ An entire Pearl Jam tour was cancelled after the investigation, and the band had great difficulties booking shows after that.⁵⁵ Ticketmaster reportedly threatened venues with legal action if they worked with the band in the future.⁵⁶ The dismissal of the antitrust investigation has been criticized as a product of political corruption rather than a merit-based dismissal.⁵⁷ Live Nation spent \$1.3 million in lobbying in 2021, which, for some, makes past rulings that seemed to tip in their favor rather suspicious.⁵⁸

Can Live Nation be Stopped?

The DOJ has the power to file civil lawsuits against companies that violate antitrust laws.⁵⁹ Previous lawsuits cite violations of 15 U.S.C. § 18 as a trigger for filing a lawsuit.⁶⁰ One of the remedies the DOJ can request is the “divest[ment of] tangible and intangible assets . . . sufficient to create a separate, distinct, and viable competing business that can replace [the company’s] competitive significance in the market.”⁶¹ In other words, the DOJ can request the court to order Live Nation Entertainment to break into two or more smaller entities. If such an order is granted, it would effectively reverse the merger and perhaps even put a stop to the anticompetitive behavior Ticketmaster displayed in the 1990s.

The DOJ’s last crucial antitrust victory resulting in divestment was the AT&T case in 1982. The DOJ sued AT&T in 1974, and successfully broke AT&T up into smaller companies via settlement agreement.⁶² The DOJ has tried to replicate this result in other circumstances, mostly to no avail. It tried to split Microsoft into two or more companies in the late 1990s, but ultimately “abandoned” that remedy and imposed restrictions on Microsoft’s procedures instead.⁶³ Other cases have ended up in litigation limbo, with no resolution in sight.⁶⁴ However, courts have lately been trending towards stronger enforcement of antitrust laws,⁶⁵ which could combat Live Nation Entertainment’s lobbying practices. Additionally, Assistant Attorney General Jonathan Kanter of the DOJ’s Antitrust Division has “repeatedly [stated] that he prefers to litigate rather than settle enforcement actions, and has indicated a preference for so-called structural remedies, such as separating lines of business, rather than behavioral fixes.”⁶⁶ The confluence of these factors favors a glimpse of optimism into the DOJ’s antitrust enforcement future.

Looking Ahead

Since Live Nation is still merely under DOJ investigation and the DOJ has not yet filed a lawsuit, fans, venues, artists, and other performers will continue to operate under Live Nation’s regime. Artists will continue to do so virtually powerlessly, for fear of falling to the same fate as Pearl Jam.⁶⁷ Fans will continue to do so, enduring pre-sale sign-ups, online waiting rooms, website crashes, and various fees—assuming the tickets they seek are not sold out by the time they are allowed into the virtual arena that mirrors the cut-throat nature of the Hunger Games.

Olivia Nacionales is a Second Year Law Student at the Benjamin N. Cardozo School of Law and a Staff Editor at the Cardozo Arts & Entertainment Law Journal. Olivia is interested in civil rights, data privacy, and antitrust.



Photo by Author, Olivia Nacionales

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2. Arin E. Berkson, *Why is Ticketmaster Under Investigation?*, FindLaw (Dec. 13, 2022), <https://www.findlaw.com/legalblogs/courtside/why-is-ticketmaster-under-investigation/> [<https://perma.cc/9MGW-FTJA>].
3. *Id.*

4. Ederer, *supra* note 1.
5. Live Nation Entertainment is the name of Ticketmaster's parent company, which formed after Live Nation and Ticketmaster merged in 2010. Marc Jarsulic, 3 Antitrust Lessons from the Taylor Swift Ticketmaster Debacle, *American Progress* (Nov. 22, 2022), <https://www.americanprogress.org/article/3-antitrust-lessons-from-the-taylor-swift-ticketmaster-debacle/> [<https://perma.cc/N9X9-2L8E>]. This article will refer to these entities collectively as "Live Nation" when speaking about the U.S. entity post-merger to avoid confusion.
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12. Diane Bartz, *Analysis: Taylor Swift Ticket Snafu Turns Up Regulatory Heat on Ticketmaster*, *Reuters* (Nov. 18, 2022, 4:25 PM), <https://www.reuters.com/world/us/taylor-swift-ticket-snafu-turns-up-regulatory-heat-ticketmaster-2022-11-18/> [<https://perma.cc/4JT8-SA4B>].
13. Tom Perkins, *Antitrust Target Ticketmaster Spends Big on Lobbying Amid Woeful 2022*, *Guardian* (Jan. 3, 2023, 3:00 AM), <https://www.theguardian.com/business/2023/jan/03/ticketmaster-live-nation-lobbying-taylor-swift-bad-bunny> [<https://perma.cc/WFS4-YCKJ>].
14. *Id.*
15. *Break Up Ticketmaster*, <https://www.breakupticketmaster.com/> [<https://perma.cc/XBW9-LV45>] (last visited Feb. 25, 2023).
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17. *Id.*

18. Rachel Treisman, *After a Ticketmaster Snafu, Mexico's President Asks Bad Bunny to Hold a Free Concert*, NPR (Dec. 16, 2022, 10:47 AM), <https://www.npr.org/2022/12/16/1143367651/bad-bunny-mexico-free-concert-ticketmaster> [<https://perma.cc/A2YA-WVW4>].
19. Id.
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21. Jeanette Hernandez, *Ticketmaster Mexico Announces Changes Following Bad Bunny Ticketing Fiasco*, Remezcla (Jan. 18, 2023, 3:25 PM), <https://remezcla.com/music/ticketmaster-mexico-announces-changes-following-bad-bunny-ticketing-fiasco/> [<https://perma.cc/XW5H-ETT3>].
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23. Senate Judiciary Committee (@JudiciaryDems), Twitter (date, time) <https://twitter.com/JudiciaryDems/status/1621191756531236866> [<https://perma.cc/FD5J-3THT>].
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32. Ben Sisario & Matt Stevens, *Ticketmaster Cast as a Powerful 'Monopoly' at Senate Hearing*, N.Y. Times (Jan. 24, 2023), <https://web.archive.org/web/20230224132619/https://www.nytimes.com/2023/01/24/arts/music/ticketmaster-taylor-swift-senate-hearing.html>.
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34. Tkacik & Brown, *supra* note 30.

35. Sisario & Stevens, *supra* note 32.
36. *United States v. Ticketmaster Ent., Inc.*, No. 1:10-cv-00139, 2010 WL 5699134 (D.D.C. July 30, 2010).
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[<https://perma.cc/M2R9-C7SH>].
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40. *Id.*
41. Complaint at 4, *United States v. Ticketmaster Ent., Inc.*, No. 1:10-cv-00139 (D.D.C. Jan. 25, 2010).
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45. *United States v. Ticketmaster Ent., Inc.*, No. 1:10-cv-00139, 2010 WL 5699134, at *1 (D.D.C. July 30, 2010).
46. Plaintiff United States' Memorandum in Support of Motion to Modify Final Judgment and Enter Amended Judgment at 1, *United States v. Ticketmaster Ent., Inc.*, No. 1:10-cv-00139-RMC (D.D.C. Jan. 08, 2020).
47. *Id.*
48. *Id.*
49. *United States v. Ticketmaster Ent., Inc.*, No. 1:10-cv-00139-RMC, 2010 WL 5699134, at *9-10 (D.D.C. Jan. 28, 2020).
50. *Id.* at *17.
51. *Id.* at *1.
52. 22 No. 4 NAAG Antitrust Rep. 10 (1995).
53. Press Release, Dep't. of Just., Antitrust Div. Statement Regarding Ticketmaster Inquiry (July 5, 1995) (can be found at:
https://www.justice.gov/archive/atr/public/press_releases/1995/0264.htm).
54. Tkacik & Brown, *supra* note 30.
55. *Id.*
56. *Id.*
57. *Id.*
58. Perkins, *supra* note 13.

59. Mission, *supra* note 28.
60. Complaint at 14, *United States v. Parker-Hannifin Corp.*, No. 1:99-mc-009999 (D. Del., Sept. 26, 2017).
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67. See Tkacik & Brown, *supra* note 30 (contains an in depth re-telling of Pearl Jams’ concert cancellation woes after speaking out against Ticketmaster).