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US Department of Justice Sues Live Nation and Ticketmaster

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In summer 2023, fans of Taylor Swift made international headlines when they took to social media to express their outrage at the ticket-buying experience for "The Eras Tour." Fans of many artists have expressed their strong disapproval of Ticketmaster's seemingly excessive fees; in fact, fans of Korean supergroup BTS even attempted to organize mass filings of consumer complaints to the Federal Trade Commission. Now, the US Department of Justice (DOJ) has reentered the picture with highly anticipated litigation.

Joined by 30 state and district attorneys general, the DOJ filed a lawsuit in May 2024 against Live Nation Entertainment and its wholly owned subsidiary, Ticketmaster (referred to collectively below as "LYV"). The DOJ's latest action seeks to enjoin what Assistant Attorney General Jonathan Kanter described as "a systemic and systematic pattern of anticompetitive conduct that addresses nearly every aspect of the live music supply chain." The complaint alleges violations of Sections 1 and 2 of the Sherman Act, along with various state antitrust laws.

Case history

Live Nation is a product of its 2010 acquisition of Ticketmaster. Against concerns that the combination would harm competition in an alleged market for "primary ticketing services to major concert venues," the DOJ and 17 states permitted the deal to close, subject to structural and behavioral remedies reflected in a consent decree.

The 2010 consent decree required Ticketmaster to license its core primary ticketing platform to AEG – at the time the second-largest concert promoter – with the goal of creating a new, vertically integrated ticketing competitor. It also required divestiture of Live Nation's nascent Paciolan ticketing business to establish another independent ticketing competitor. In addition, the decree contained "anti-retaliation" provisions intended to prevent Ticketmaster from retaliating against venues that turned to one of its rivals for primary ticketing.

In 2020, based on allegations that LYV had repeatedly violated the anti-retaliation provisions by "condition[ing] and threaten[ing] to condition Live Nation's provision of live concerts on a venue's purchase of Ticketmaster ticketing services," the DOJ and LYV agreed to modify and extend the consent decree. The modification extended the term for an additional five and a half years; clarified the types of retaliatory behavior prohibited under the decree; appointed an independent monitor; required LYV to provide notice about the new agreement to current and potential venue customers; and implemented an automatic $1 million penalty for each violation.

Key allegations of anticompetitive conduct

In May 2024, the DOJ and US states brought a wide-ranging complaint alleging multiple antitrust violations, in part reprising similar concerns to those raised in the DOJ's 2010 and 2020 actions, but also targeting business practices extending beyond the vertical integration of Live Nation and Ticketmaster.

LYV describes itself as the "largest live entertainment company in the world," the "largest producer of live music concerts in the world," and "the world's leading live entertainment ticketing sales and marketing company." According to the complaint, LYV controls approximately 60% of concert promotions at major concert venues, 265+ concert venues (including more than 60 of the top 100 amphitheaters), and approximately 80% of major concert venues' primary ticketing for concerts.

The DOJ alleges that LYV has created a "self-reinforcing flywheel" centered around its low-margin concert promotion business that serves to entrench LYV's position in ticketing, concert promotion and concert venues. According to the DOJ, for example, LYV relies on its extensive network of major venues and large upfront

payments – earned through fees, concert revenues, and sponsorships – to secure exclusive promotion deals with major artists. With these exclusive promotion agreements in hand, LYV allegedly wields its market power in promotion services to coerce venues to select Ticketmaster as their exclusive ticketing service provider. Below, we've outlined specific conduct targeted by the DOJ.

Exclusive contracts

Exclusive contracts between ticketing companies and venues have been a point of contention in the industry for decades. The DOJ's complaint takes this head on, alleging Ticketmaster maintains its monopoly in primary ticketing by coercing venues to sign multiyear exclusive contracts, using the "carrot" of upfront payments and the "stick" of losing access to Live Nation shows. The DOJ alleges Ticketmaster often no longer even needs to communicate this threat explicitly, because its "reputation and history of retaliation are so well known."

Exclusive contracts are not inherently unlawful and can incent higher-quality products and services, and indeed LYV has long argued that venues seek such arrangements due to the costs and complexity of integration, and to create competitive bidding dynamics. However, long-term exclusive agreements by a monopolist that foreclose a "substantial" share of the market can raise antitrust concerns.

Tying

The DOJ alleges LYV has for more than a decade prevented artists from playing at LYV's network of large amphitheaters unless they use Live Nation for promotion. LYV allegedly has maintained this policy even though it results in fewer shows at its venues, thus sacrificing profits, because it "has allowed Live Nation to attain a greater than 70% market share in large amphitheater promotions."

Tying may be unlawful if the seller holds market power in the tying product market (large amphitheaters), and the tie causes anticompetitive effects in the tied product market (promotion for large amphitheaters), such as foreclosure leading to higher prices. Here, however, LYV contends that such arrangements are ubiquitous and amount to nothing more than a refusal to deal with rivals, which under US antitrust law typically is lawful in the absence of cessation of a prior voluntary course of action.

Market allocation with Oak View Group

The DOJ alleges that Oak View Group (OVG), a "leading American venue development and management company," was "uniquely positioned" to challenge Live Nation's monopoly in concert promotion, but instead "effectively ceded the concert promotions space to Live Nation" in return for "Live Nation effectively ced[ing] its arena consulting business" to OVG.

While naked market allocations between competitors are per se unlawful, bona fide competitor collaborations, as well as agreements between adjacent suppliers, typically are subject to the rule of reason and often procompetitive. It remains to be seen whether the DOJ can show that OVG was in fact a potential entrant that instead agreed to cede the market, as LYV has characterized this as "farcical."

Strategic acquisitions

The DOJ further claims LYV has over time made strategic acquisitions to solidify its monopoly power and stymie new entrants, particularly acquisitions of smaller and regional promoters as well as of amphitheaters, other venues, and large festivals. Biden administration antitrust enforcers are closely examining serial acquisitions by incumbents of nascent competitors. LYV, however, has challenged the premise that any of the acquired entities were viable competitive threats, noting that one example highlighted by the DOJ was of a single promoter for $15 million.

What's next?

The case was filed in the US District Court for the Southern District of New York and drew Judge Arun Subramanian, who was nominated by President Joe Biden in 2023 and has a history of plaintiff-side antitrust work. Given this draw, and the long history at play, LYV may attempt to transfer to the District of Columbia, the court that entered the consent decree in 2010 and modifications in 2020. Notably, the plaintiffs requested a jury trial – as Kanter has done in other monopolization cases – which presumably is based on the state law damages

claims, as the DOJ seeks only equitable relief under federal antitrust law.

The DOJ's request that LYV be ordered to divest Ticketmaster has garnered significant attention. However, unwinding a deal that was settled with a consent decree, more a decade after the fact, would remain an exceptional remedy.

The DOJ also seeks additional relief including an order terminating Live Nation's alleged ticketing agreeing with OVG and enjoining Live Nation from engaging in other anticompetitive practices alleged in the complaint, such as long-term exclusive contracts with venues. Even short of a divestiture, injunctive relief preventing these practices – which have been prevalent for decades – likely would have transformative impacts on the industry.

Cooley's antitrust team will continue to follow the case. If you have any questions or concerns about the implications for your business, reach out to one of the Cooley lawyers below.

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