

## Antitrust Law Blog

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### **Come Together: DOJ Approves Merger of Concert-Industry Giants**

The U.S. Department of Justice has approved the merger of the world's biggest concert promoter and the world's biggest ticket-seller.

The DOJ's review of the proposed merger between Live Nation Inc. and Ticketmaster Entertainment Inc. was closely watched as a potential bellwether of the Obama administration's antitrust enforcement policies. Antitrust watchers considered the case telling because it involved a vertical merger. Vertical mergers are generally challenged less often, because it is more difficult to show that competition would diminish when merging companies operate at different stages in the supply chain.

After nearly a year of scrutiny, the DOJ announced on January 25, 2010 that it would approve the merger, subject to several conditions designed to preserve competition in the relevant market: ticketing services for major concert venues. Christine Varney, the DOJ's antitrust division chief, said the government was prepared to litigate to stop the merger, but she expects the conditions imposed on the deal will foster competition among ticketing companies and lead to lower ticket prices for consumers.

"The proposed settlement allows for strong competitors to Ticketmaster, allowing concert venues to have more and better choices for their ticketing needs," Varney said in a statement.

The merger would create a new entity, Live Nation Entertainment Inc., that touches nearly every aspect of the music industry. Live Nation Entertainment would be able to manage artists, book them for performances at venues owned by the company, and sell tickets to those concerts.

Before the union, Ticketmaster and Live Nation were the biggest players in their respective markets. In 2008, according to the DOJ, Ticketmaster provided primary ticketing services to more than 80 percent of major concert venues. That same year, Live Nation captured 33 percent of the market for promoting concerts at major venues, the DOJ said. Live Nation also owned or operated venues representing about 15 percent of capacity all major concert venues in the United States, the DOJ said.

In recent years, both companies expanded the scope of their business. In 2008 Ticketmaster

acquired a controlling interest in the artist management firm Front Line Management Group Inc. And Live Nation entered the market for primary ticketing services in late December 2008. Live Nation quickly gained market share from Ticketmaster, according to documents filed by the Justice Department

The two companies announced the merger shortly thereafter, in February 2009. Last month the DOJ, along with 17 state attorneys general, filed a civil antitrust lawsuit in the U.S. District Court in Washington, D.C. to block the merger. *United States v. Ticketmaster Entertainment, Inc., et al.*, 1:10-cv-00139-RMC (D.D.C. filed Jan. 25, 2010). At the same time, the government filed a proposed settlement designed to alleviate the perceived anticompetitive effects of the merger.

The proposed settlement imposes a host of conditions on the merger. These include:

- Ticketmaster would be required to license its primary ticketing software to Anschutz Entertainment Group, the nation's second-largest concert promoter.
- Ticketmaster would divest certain ticketing assets. Specifically, Ticketmaster must divest Paciolan, a venue-managed platform for selling tickets through the venue's own website. DOJ expects that Paciolan will be acquired by Comcast-Spectacor, L.P., which sells ticketing services, owns 2 major U.S. concert venues and manages several others. DOJ expects that acquisition of the Paciolan business would create another vertically-integrated firm that would compete effectively with the newly merged firm.
- The merged entity would be subject to anti-retaliatory provisions. For example, it may not retaliate against venue owners who contract or consider contracting for ticketing services with its competitors.
- The merged entity would be prohibited from bundling its ticketing services with performances by artists that the entity manages.
- The merged entity must either refrain from using certain ticketing data in its non-ticketing business, or provide that data to other promoters and managers.

While Ticketmaster and Live Nation have accepted the government's terms, the settlement still requires approval from the District Court, which must determine if the proposed final judgment is in "the public interest." 15 U.S.C. § 16(e)(1). Antitrust commentators generally agreed that DOJ was able to wring major concessions from the parties, especially given the difficulties inherent in challenging a vertical merger.

Observers differed, however, in their predictions about the merger's likely competitive effects. The Wall Street Journal cited industry experts who were skeptical that the merger would benefit consumers, pointing out that ticketing companies compete for business with venues, not concert-goers. The Economist, however, predicted that the integration of ticket-selling, promotion and venue-ownership would allow the firm to more accurately discern the true market value of tickets. Tickets that are priced at market value would help eliminate secondary markets like scalpers and online ticket exchanges, the Economist predicted, to the benefit of both artists and

fans.

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