

Congress of the United States  
Washington, DC 20515

July 27, 2009

The Honorable Christine A. Varney  
Assistant Attorney General for Antitrust  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Assistant Attorney General Varney:

As Members of Congress, we wish to express our concern regarding the proposed merger between Ticketmaster Entertainment, Inc., and Live Nation, Inc. We urge the Justice Department to analyze this proposed transaction closely and with great skepticism. Such scrutiny is critical to ensure that consumers are not harmed by the creation, entrenchment, extension, or undue exploitation of market power in an industry that affects every state, and virtually every congressional district, in the country.

Ticketmaster Entertainment is the industry's overwhelmingly dominant ticket seller, its largest provider of talent management services, and its second largest reseller of tickets. Live Nation is the industry's largest promoter of live entertainment events, the second largest ticket seller, and the second largest owner/manager of entertainment venues. The transaction therefore would create an entity, Live Nation Entertainment, which would enjoy a virtual stranglehold over the live entertainment industry. Together, the two parties sold more than 100 million tickets domestically in 2008, and there are few artists, promoters, venue owners, or concertgoers that would not feel the impact of this merger. In our view, the merger should be prohibited.

From an antitrust perspective, the proposed merger is problematic in three ways. First, the merger would reduce horizontal competition by combining the two leading firms in the market for primary ticket sales. According to the May 30, 2009 rankings by TicketNews.com, the transacting parties, if merged, would be over five times more powerful than their next eight rivals combined. Additionally, some of these rivals are operated by Ticketmaster or rely on software provided a Ticketmaster subsidiary, Paciolan. Tellingly, the parties announced this merger less than three months after Live Nation entered the ticket sales market, suggesting they would prefer to combine rather than compete. This is the essence of anticompetitive behavior.

The transaction would also exacerbate the already significant barriers to entering the ticket sales market. Today, Ticketmaster enjoys long-term, exclusive contracts with most of its clients, typically the venues where the events occur. Permitting Ticketmaster to merge with its most significant competitor effectively abandons any hope for the development of competition in the foreseeable future, and it would subject consumers to any exploitation, including higher ticket prices and fees, that the newly merged firm might wish to make of its monopoly power.

Second, the proposed merger would eliminate the possibility for one of the parties to enter the industry markets in which they don't presently compete. Fear of entry is often sufficient to curb the exploitation of existing market power. Both are large enough to enter related markets and have a clear history of doing so. For example, Live Nation recently entered the primary sales market on its own. Entry is healthy as it often leads to market deconcentration and heightened rivalry. Although the parties' future expansion plans are uncertain if the transaction is prohibited, it is certain that the merger, if permitted, will preclude each party from expanding into the industry markets where it currently does not compete.

Third, the proposed merger would create a vertically integrated entity whose power would extend across five of the industry's six main markets. An entrant or competitor in any of these markets would face the merged firm not only as a market rival, but also as a power in other critically related markets. A new promoter, for example, needs artists willing to perform and venues appropriate for staging the event. A new venue needs artists and promoters willing to book the facility. The vertically integrated firm can withhold these critical inputs, and its rival will suffer. To avoid such problems, an entrant would need to enter the industry on several levels at once, a burden that makes entry far more daunting and costly. The combined entity could therefore use its five-market vertical integration to restrain trade both by chilling entry and disciplining rivals.

We see little to commend this transaction. Ticketmaster Entertainment and Live Nation have offered no plausible efficiency justifications for the merger. To justify an anticompetitive merger such as this one, efficiency benefits must, according to DoJ/FTC Horizontal Merger Guidelines: arise specifically from the merger and not be attainable in other reasonable ways, be verifiable rather than merely speculative, and outweigh the transaction's competitive injury in every adversely-affected market. Ticketmaster Entertainment and Live Nation can achieve all the benefits they claim without the merger. Regardless, these benefits promise only speculative advantages, at best, and are almost surely insufficient to outweigh the merger's competitive harm in the ticketing and other industry markets.

Restructuring will not cure this transaction's competitive flaws. Live Nation could sell its primary ticketing business, but this enterprise is far less likely to be viable in other hands. The merged company could also be prohibited from using its vertical integration to discriminate against entrants or rivals in the marketplace. However, such strictures will be hard to enforce, as the prohibited conduct can easily be accomplished from within corporate walls or through veiled, well-placed hints.

Consumers, business managers, artists, independent promoters, and music fans in every state are likely to suffer if the merger is allowed to occur. We urge you to give this transaction the closest possible scrutiny and provide citizens the antitrust protection they deserve.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Fawcett", written over a horizontal line.

Todd R. Platts

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cc: The Honorable Eric H. Holder Jr., Attorney General of the United States