

IS LIVE NATION “. . . READY FOR IT?”: THE DOJ’S LAWSUIT AGAINST LIVE NATION AND TICKETMASTER

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Ticketmaster, a subsidiary of Live Nation Entertainment, has been the global leader in ticket promotion and sales for decades.² In 2010, Live Nation and Ticketmaster merged with the intent to “create an artist-driven company that provided fans with the highest quality live experience.”³ However, this merger has only facilitated a monopolization of the ticket-purchasing market and caused hundreds of thousands of fans of sports teams, musicians, and other live entertainment to reap the consequences.⁴ Ticketmaster and Live Nation Entertainment have been sued in multiple civil actions due to their anti-competitive marketing tactics and alleged violations of antitrust laws since their merger.⁵ These suits have been filed by concert-goers, other ticket sale websites, and most recently, the United States of America.⁶ Live Nation’s greed has continued to throw them into the line of litigation by continuously not complying with laws.⁷ The Department of Justice (“DOJ”) filed a 128-page complaint on May 23, 2024, that provided a background of their industry and how their business practices and alleged violations have created a monopoly on

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² *Ticketmaster*, LIVE NATION, <https://www.livenation.com/ticketmaster/> (last visited Sept. 4, 2024).

³ *Id.*

⁴ Luke Goldstein, *How Live Nation’s Monopoly Works*, THE AM. PROSPECT (May 24, 2024), <https://prospect.org/power/2024-05-24-how-live-nations-monopoly-works/>.

⁵ Ethan Millman, *‘It Is Time to Break It Up’: Inside the DOJ’s Blockbuster Lawsuit Against Live Nation*, ROLLING STONE (Sept. 30, 2024), <https://www.rollingstone.com/music/music-features/live-nation-ticketmaster-monopoly-lawsuit-doj-justice-department-1235114969/>.

⁶ AP News Wire, *Ticketmaster Timeline: A running list of clashes from Pearl Jam to Taylor Swift*, INDEPENDENT (May 23, 2024), <https://www.the-independent.com/news/ticketmaster-live-nation-lawsuit-doj-taylor-swift-b2550527.html>

⁷ *Id.*

the live entertainment ticket sale business.⁸ This blog post will analyze past decisions from lawsuits against Live Nation Entertainment and Ticketmaster to predict what is to come of the lawsuit filed by the DOJ.

I. THE SHERMAN ACT

The Sherman Act was enacted by Congress in 1890 and declared every restraint on commerce illegal.⁹ Its purpose was to promote a fair, open, and competitive marketplace because, without it, Americans would be denied the benefits of an open economy leading to inequality, decreased wages, decreased work conditions, and inability to find jobs.¹⁰ This continues to not seem like a problem for Live Nation as their “exclusionary practices fortify and protect what [the DOJ] refers to as its ‘flywheel’.”¹¹ Live Nation-Ticketmaster’s business practices have been deemed enough for the DOJ allowing them to sue them for violating the Sherman Act.

II. LEGAL (PEARL) JAM: *CAMPOS V. TICKETMASTER CORP.*

Ticketmaster’s legal issues began in 1994 when their first antitrust suit was brought against them to the DOJ by the band Pearl Jam¹² which prompted a federal investigation.¹³ This suit was consolidated with four other cases against Ticketmaster.¹⁴ This came after the District Court

⁸ Complaint & Demand for Jury Trial, *United States v. Live Nation Ent., Inc.*, No. 1:24-cv-3973 (S.D.N.Y. May 5, 2024).

⁹ 15 U.S.C. § 1 (“Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”)

¹⁰ Exec. Order No. 14036, 86 Fed. Reg. 36987 (July 9, 2021).

¹¹ Press Release, Office of Public Affairs, Just. Dep’t. Sues Live Nation-Ticketmaster for Monopolizing Markets Across the Live Concert Industry, U.S. DEPT. OF JUST. (May 23, 2024), [https://www.justice.gov/opa/pr/justice-department-sues-live-nation-ticketmaster-monopolizing-markets-across-live-concert#:~:text=%E2%80%9CThe%20result%20is%20that%20fans,up%20Live%20Nation%2DTicketmaster.%E2%80%9D.\[hereinafter 2024 DOJ Press Release I\]](https://www.justice.gov/opa/pr/justice-department-sues-live-nation-ticketmaster-monopolizing-markets-across-live-concert#:~:text=%E2%80%9CThe%20result%20is%20that%20fans,up%20Live%20Nation%2DTicketmaster.%E2%80%9D.[hereinafter%202024%20DOJ%20Press%20Release%20I]) (“The flywheel is Live Nation-Ticketmaster’s self-reinforcing business model that captures fees and revenue from concert fans and sponsorship, uses that revenue to lock up artists to exclusive promotion deals, and then uses its powerful cache of live content to sign venues into long term exclusive ticketing deals, thereby starting the cycle all over again.”).

¹² Pearl Jam is a Rock & Roll Hall of Fame inducted band that has sold 85 million albums across the world. Established in 1990, the band boasts more than thirty years of live performances, twelve studio albums, and continuous commercial success. PEARL JAM, <https://pearljam.com/band> (last visited Oct. 27, 2024).

¹³ Eric Boehlert, *Pearl Jam: Taking on Ticketmaster*, ROLLING STONE (Dec. 28, 1995), <https://www.rollingstone.com/music/music-news/pearl-jam-taking-on-ticketmaster-67440/>.

¹⁴ *Campos v. Ticketmaster Corp.*, 140 F.3d 1166, 1168 (8th Cir. 1998).

dismissed the suit for lack of standing.¹⁵ It alleged a violation of “§ 1 of the Sherman Act by engaging in price fixing with various concert venues and promoters and by boycotting the band Pearl Jam” along with violations by “monopolizing or attempting to monopolize, the market for ticket distribution services” and a violation of the Clayton Act by acquiring competitors to eliminate competition.¹⁶

The Eighth Circuit Court of Appeals affirmed the district court’s decision that the plaintiffs lacked standing because the Clayton Act provides that direct purchasers may only sue a monopoly for damages.¹⁷ The circuit court reversed the district court’s holding that the plaintiffs lacked standing to seek injunctive relief under § 16.¹⁸ The U.S. Supreme Court denied the writ of certiorari; consequently, Ticketmaster was left to continue their harmful business practice.¹⁹

III. THE DOJ’S HAND IN CREATING A “MONOPOLY”

As time went on, Ticketmaster grew in power and size, and in 2007, they “controll[ed] more than 70% of the market for major concerts.”²⁰ On January 25, 2010, Live Nation and Ticketmaster announced their merger effective upon the close of the stock market after clearing regulations and gaining governmental approval in a press release.²¹ The DOJ’s Antitrust Division and seventeen state attorneys general filed a civil lawsuit in an attempt to block the merger.²² However, a ten-

¹⁵ *Campos*, 140 F.3d at 1168.

¹⁶ 15 U.S.C. §§ 12–27 (The Clayton Act outlaws mergers that reduce competition in the market to prohibit monopolistic conduct.); *Campos*, 140 F.3d at 1168.

¹⁷ *Campos*, 140 F.3d at 1169, 1174.

¹⁸ *Id.* at 1174.

¹⁹ *Campos v. Ticketmaster Corp.*, 140 F.3d 1166, 1168 (8th Cir. 1998), *cert. denied*, 525 U.S. 1102 (1999).

²⁰ Kate Pickert, *Ticketmaster*, TIME (Feb. 11, 2009), <https://time.com/archive/6905328/ticketmaster/>.

²¹ Press Release, Live Nation & Ticketmaster, Live Nation & Ticketmaster Ent. Complete Merger (Jan. 25, 2010), <https://www.sec.gov/Archives/edgar/data/1335258/000119312510012287/dex991.htm>. [hereinafter *2010 Live Nation Press Release*]

²² Press Release, Office of Public Affairs, Just. Dep’t. Requires Ticketmaster Ent. Inc. to Make Significant Changes to its Merger with Live Nation Inc., U.S. DEPT. OF JUST. (Jan. 25, 2010), <https://www.justice.gov/opa/pr/justice-department-requires-ticketmaster-entertainment-inc-make-significant-changes-its>. [hereinafter *2024 DOJ Press Release 2*]

year settlement was proposed, which forced new mandatory guidelines on Ticketmaster and Live Nation, such as licensing ticket software and divesting ticketing assets to other companies.²³

The newly combined companies were also forbidden from suing any venue that chose a different company's ticketing or promotional services.²⁴ This settlement's objective was to preserve the competition that Ticketmaster and Live Nation previously had.²⁵ The CEO of Ticketmaster at the time, Irving Azoff, called the settlement a "great win for the fans."²⁶ Michael Rapino, CEO of Live Nation, echoed his excitement for the settlement and expressed his belief that it would make "the playing field [more] competitive and broader as a result of this transaction."²⁷ However, fans only felt the loss of their cash to added service fees and price gouging scalpers.²⁸

Ever since the merger, the company has been accused of illegal, anticompetitive business practices in the live music supply chain.²⁹ The ordinary consumer does not need an extensive lesson on antitrust laws to see the impact this merger has had on the average consumer. Ticketmaster and Live Nation are normally the only primary ticket sale websites for admission, so consumers have no choice but to succumb to excessive fees, dynamic pricing,³⁰ and price gouging

²³ See 2024 DOJ Press Release 2, *supra* note 22.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Kenneth Jones, *Department of Justice Clears Way for Live Nation and Ticketmaster Merger*, PLAYBILL (Jan. 25, 2010), <https://playbill.com/article/departments-of-justice-clears-way-for-live-nation-and-ticketmaster-merger-com-165270>

²⁷ *Id.*

²⁸ See 2024 DOJ Press Release 1, *supra* note 11.

²⁹ Bryan Koenig, *DOJ Sues Live Nation 14 Years After Ticketmaster Deal*, LAW360 (May 23, 2024), <https://plus.lexis.com/api/permalink/aba6c07d-28d3-407e-8e41-96ce85cce5b3/?context=1530671>.

³⁰ Kate Gibson, *Dynamic Pricing: What It Is & Why It's Important*, HARV. BUS. SCH. ONLINE (May 10, 2024), <https://online.hbs.edu/blog/post/what-is-dynamic-pricing> (defining dynamic pricing as "a strategy that bases products or services' prices on evolving market trends, such as supply and demand, competitor pricing, and inventory levels," can increase a digital platform's profitability, and boosts sales).

in order to see their favorite entertainers.³¹ The conditions³² of the settlement were set to expire in 2020, but the DOJ extended them five more years.³³ The groundbreaking lawsuit, *United States v. Live Nation*, was filed just before its expiration.³⁴

IV. *U.S. v. LIVE NATION*

This all leads to the newest, biggest issue on Live Nation's plate: thirty states joined the DOJ in a federal lawsuit against Live Nation Entertainment and Ticketmaster.³⁵ The 128-page complaint boasts attacks on their anticompetitive conduct and violation of orders that have affected every aspect of the supply of live music.³⁶ Attorney General Merrick Garland stated that it is time to break up Ticketmaster and Live Nation.³⁷ In August, ten more states joined as plaintiffs in an amended complaint which also included more details about the company's efforts to circumvent competition from its well-known rivals StubHub and SeatGeek.³⁸ The lawsuit ultimately seeks to unravel the merger itself and stop Live Nation from conducting its monopolization.³⁹

The catalyst of this lawsuit was none other than the mega-popstar herself, Taylor Swift, after her fans were faced with the wrath of the monopoly during the Eras Tour presale in November of

³¹ Isaias Jaramillio Rojas, *Ticketmaster's Dynamic Pricing: What it is and How it Works*, PRICEFX (Aug. 2, 2023, updated July 7, 2024), <https://www.pricefx.com/learning-center/ticketmasters-dynamic-pricing-what-it-is-and-how-it-works>.

³² Agreeing to divest some assets, be barred from retaliating against venue owners who use a competing ticket service, sell off one ticketing unit, and license its primary ticketing software to a competitor. Jeremy Pelofsky & Yinka Adegoke, *Live Nation, Ticketmaster Merge; Agree to U.S. Terms*, REUTERS (Jan. 25, 2010), <https://www.reuters.com/article/business/live-nation-ticketmaster-merge-agree-to-us-terms-idUSTRE6004E5/>.

³³ *Breaking Down The DOJ's Lawsuit Against Live Nation*, UNIV. OF WASH. SCH. OF L. (July 12, 2024), <https://www.law.uw.edu/news-events/news/2024/live-nation>.

³⁴ *Id.*

³⁵ Anastasia Tsioulcas, *'It is Time to Break Up Live Nation-Ticketmaster': Justice Department sues concert ticket behemoth*, NPR (May 23, 2024), <https://www.npr.org/2024/05/23/nx-s1-4977330/live-nation-ticketmaster-sued>.

³⁶ See Jones, *supra* note 26.

³⁷ *Id.*

³⁸ Matthew Perlman, *10 States Join DOJ's Antitrust Case Against Live Nation*, LAW360 (Aug. 19, 2024), <https://plus.lexis.com/document/index?crd=edec8e12-b72b-46b1-9940-7bddad2626ed&pdpermalink=db7624fb-fb64-4eb5-ba5a-c1b861041129&pdmfid=1530671&pdisurlapi=true&aci=lp&cbc=0&lnsi=f63ea8b6-d67b-4ead-974b-e91466c9a2bd&rmflag=0&sit=1722089361046.572#/document/0d90004d-3380-49d4-b508-e4a07927e4a2>.

³⁹ *Id.*

2022.⁴⁰ Ticketmaster ignored Swift’s wishes to opt out of dynamic pricing⁴¹ for the presale and did so anyway.⁴² The website crashed while thousands of fans waited patiently to get a coveted ticket to the Eras Tour.⁴³ When fans were finally able to get back onto the site, they were met with insane prices and losing seats to scalpers and bots.⁴⁴ Swift felt terrible about the way Ticketmaster handled the presale and offered a public apology on her Instagram story.⁴⁵ The tour still sold over 2 million tickets on Ticketmaster and fans all over the country paid their dues.⁴⁶ Consumers ultimately run the market.⁴⁷ If they were unwilling to pay Ticketmaster prices, then Ticketmaster would not have the amount of power they have.⁴⁸

V. CONCLUSION

The DOJ has demanded a jury trial for their lawsuit, aiming for Live Nation to finally pay for their anticompetitive behavior.⁴⁹ Live Nation has since responded to the DOJ’s filed lawsuit, breaking down the suit for their customers.⁵⁰ Live Nation claims that this lawsuit will in fact not “reduce ticket prices” and “distracts from real solutions that would decrease prices and protect fans”⁵¹ Live Nation called it “absurd” that the DOJ is claiming that they and Ticketmaster use

⁴⁰ The Penn Editorial Board, *Ticketmaster continues trend of price gouging, unfair competition*, THE PENN (Oct. 3, 2023), https://www.thepenn.org/opinion/ticketmaster-continues-trend-of-price-gouging-unfair-competition/article_0bf00782-620f-11ee-80e4-03286244756f.html.

⁴¹ See 2010 Live Nation Press Release, *supra* note 21.

⁴² See Gibson *supra* note 30.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See Gibson *supra* note 30; see also Emerson Malone, *Ticketmaster Apologized to Taylor Swift Fans Who Couldn’t Buy Eras Tour Tickets but Swifties aren’t Having it*, BUZZFEED NEWS (Nov. 19, 2022), <https://www.buzzfeednews.com/article/emersonmalone/ticketmaster-taylor-swift-apology>.

⁴⁶ Press Release, Ticketmaster Business, Taylor Swift | The Era’s Tour Onsale Explained (Nov. 19, 2022) <https://business.ticketmaster.com/press-release/taylor-swift-the-eras-tour-onsale-explained/>.

⁴⁷ Joycelyn Stevenson, *Changes in the Ticket Distribution Industry: Is This The Beginning Of The End For Ticketmaster?*, 3 VAND. J. ENT. L. & PRAC. 53 (2001).

⁴⁸ *Id.*

⁴⁹ Sarah Faust, *Examining the Effectivity of the 2023 Merger Through the Live Nation/Ticketmaster Merger*, 18 OHIO ST. BUS. L.J. 293 (2024).

⁵⁰ Dan Wall, *Update: Breaking Down The DOJ Lawsuit*, LIVE NATION, <https://www.livenationentertainment.com/2024/05/update-breaking-down-the-doj-lawsuit/> (last visited Sept. 23, 2024).

⁵¹ *Id.*

monopoly power.⁵² Live Nation further called the lawsuit “anti-business” and an “attempt to portray Live Nation and Ticketmaster as the cause of fan frustration with the live entertainment industry.”⁵³

Looking at the past decisions by the courts in cases against Ticketmaster, it is not easy to say how this lawsuit will turn out. Courts have been more favorable to these companies in the past, but have they pushed their limits too far this time? The DOJ’s Antitrust Division may truly be ready to destroy what they created. On the other hand, they may settle, as they have done before, and provide more provisions for the companies to follow to limit their power over the live entertainment industry. Either way, this case will hopefully provide consumers with some of the relief they have been asking for. The case will be a landmark antitrust case and help shape the way merging companies do business in the future. Hopefully, it will allow live entertainment fans across the country to see their favorite artists for less money.

⁵² *Id.*

⁵³ *Id.*