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I Think I've Seen This Film Before: How Taylor Swift's Eras Tour Has Exposed the Need to Investigate Ticketmaster's Market Dominance

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I THINK I’VE SEEN THIS FILM BEFORE¹: HOW TAYLOR SWIFT’S ERAS TOUR HAS EXPOSED THE NEED TO INVESTIGATE TICKETMASTER’S MARKET DOMINANCE

Grace Connelly

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INTRODUCTION

Pop sensation Taylor Swift brought Ticketmaster into the spotlight this past November when fans had a multitude of difficulties trying to purchase tickets for her 2023 tour.² Ticketmaster, a ticketing platform that merged with Live Nation to form Live Nation Entertainment in 2010³, is under scrutiny again for anticompetitive practices in the entertainment ticketing industry.⁴ Concern regarding

¹ Taylor Swift, *Exile*, on FOLKLORE (Republic 2020).

² Karli Bendlin, *Taylor Swift’s Eras Tour: A Timeline of the Ticketmaster Fiasco*, People (Jan. 25, 2023, 9:26 AM), <https://people.com/music/taylor-swift-eras-tour-ticketmaster-timeline/>.

³ *TicketMaster and Live Nation Agree to \$2.5 Billion Merger*, TECHCRUNCH (Feb. 10, 2009, 10:04 AM), <https://techcrunch.com/2009/02/10/ticketmaster-and-live-nation-conduct-25-billion-merger-create-live-nation-entertainment/>.

⁴ Bendlin, *supra* note 2 (explaining that fans are alleging anticompetitive behaviors in lawsuits and members of Congress are criticizing the company).

Ticketmaster's market power is not new, however, as the issue was raised in 1994 by Pearl Jam and again when Live Nation and Ticketmaster merged.⁵ The Department of Justice needs to take a more stern approach in scrutinizing the conduct of Live Nation Entertainment. First, this Note will examine the history of controversy surrounding Ticketmaster, including the Pearl Jam concerns and the 2010 merger to form Live Nation Entertainment. Next, it will discuss the current controversy that was brought to public attention after Taylor Swift's ticket sales, including current litigation and the Senate Judiciary Hearing. Finally, this Note will suggest that the current support from both Congress and the White House for more stringent antitrust enforcement gives the Department of Justice space to correct Live Nation Entertainment's conduct and push for fair competition in the ticketing industry.

I. BACKGROUND

A. 1990's Pearl Jam issue

In 1994, renowned rock band Pearl Jam asserted its antitrust concerns regarding Ticketmaster's practices in a memo to the Department of Justice (DOJ).⁶ The band alleged that Ticketmaster had monopolistic control over ticket distribution and used this power to charge excessive service fees.⁷ This came after Ticketmaster bought out Ticketron, its main competitor, in 1991.⁸ Although the DOJ investigated the matter, the result came in the form of a two-sentence press release indicating that the investigation was closed and the DOJ would "continue to monitor competitive developments in the ticketing

⁵ *Mad at Ticketmaster? Pearl Jam Has You Beat by 28 Years.*, SAVINGCOUNTRYMUSIC.COM (Nov. 19, 2022), <https://www.savingcountrymusic.com/mad-at-ticketmaster-pearl-jam-has-you-beat-by-28-years/> (discussing Pearl Jam's demand that the U.S. Department of Justice look into Ticketmaster's practices); *Live Nation and Ticketmaster Entertainment Complete Merger*, U.S. SEC. & EXCH. COMM'N (Jan. 25, 2010), <https://www.sec.gov/Archives/edgar/data/1335258/000119312510012287/dex991.htm>.

⁶ *Id.*

⁷ Charles Bilodeau, *Pearl Jam vs. Ticketmaster: A Holy War on Reality*, FOUND. FOR ECON. EDUC. (May 1, 1995), <https://fee.org/articles/pearl-jam-vs-ticketmaster-a-holy-war-on-reality/>.

⁸ *Mad at Ticketmaster?*, *supra* note 6.

industry.”⁹ Aside from a canceled Pearl Jam tour, not much else arose from the matter.¹⁰

B. 2010 Ticketmaster-Live Nation merger

In 2009, Live Nation and Ticketmaster announced plans to merge and form an entertainment industry powerhouse.¹¹ Prior to the merger, Live Nation primarily operated as a concert promoter, contracting with some of the world’s biggest stars, and began moving into the arena of venue operations and ticketing.¹² The merger of two of the most forceful companies in the entertainment industry was met with concerns.¹³ Fifteen years after the Pearl Jam debacle, the DOJ had its eyes on Ticketmaster again.¹⁴

In 2010, the DOJ ultimately allowed the merger between Ticketmaster and Live Nation to proceed.¹⁵ During the yearlong investigation, the DOJ examined the effects the proposed merger would have on competition in the industry and concluded that it would decrease competition in ticketing services.¹⁶ The final judgment was subject to public comments- many of which criticized the merger.¹⁷ Jam Productions, a Chicago-based concert promoter, argued that the merger would “suppress or eliminant competition” in multiple areas of the music industry.¹⁸ The DOJ responded by noting that the merger would not allow Live Nation Entertainment to exclude competitors in the

⁹ *Antitrust Division Statement Regarding Ticketmaster Inquiry*, DEP’T OF JUST. (July 5, 1995), https://www.justice.gov/archive/opa/pr/Pre_96/July95/374.txt.html.

¹⁰ *Mad at Ticketmaster?*, *supra* note 6 (explaining that Pearl Jam attempted to set up its own tour by using venues outside of Ticketmaster’s jurisdiction, but canceled the tour due to difficulties).

¹¹ *TicketMaster and Live Nation Agree to \$2.5 Billion Merger*, *supra* note 3.

¹² John E. Kwoka, Jr., *Rockonomics: The Ticketmaster-Live Nation Merger and the Rock Concert Business* in 6 *THE ANTITRUST REVOLUTION* 165 (2018).

¹³ *Id.* (noting that opponents of the merger included fan websites, concert promoters, and even performers).

¹⁴ *Id.* (stating that the DOJ investigation of Ticketmaster and Live Nation’s merger spanned from early 2009 through January 2010).

¹⁵ *Live Nation and Ticketmaster Entertainment Complete Merger*, *supra* note 5.

¹⁶ Christine A. Varney, Assistant Attorney General, U.S. Dep’t of Just., *The Ticketmaster/Live Nation Merger Review and Consent Decree in Perspective*, Remarks as Prepared for the South by Southwest (Mar. 18, 2010).

¹⁷ *United States et al. v. Ticketmaster Entertainment, Inc. et al.; Public Comments and Response on Proposed Final Judgment*, 75 Fed. Reg. 37651 (June 29, 2010).

¹⁸ *Id.* at 37658.

market and Live Nation Entertainment could be prevented from exercising market power in concert promotion by the artists themselves.¹⁹

Consent Decree Between the U.S. Department of Justice, Live Nation, & Ticketmaster

In response to public criticism, the DOJ, Live Nation, and Ticketmaster entered into a consent decree that included both structural safeguards and behavioral remedies.²⁰ The structural safeguards required Ticketmaster to license its ticketing platform to AEG, another major concert promoter, as well as divest its Paciolan line of business to Comcast-Spector.²¹ Paciolan is a ticketing platform that allows venues to have their own ticketing service on their website, rather than having a promoter-ticketing arrangement.²² The divestiture was meant to increase competition among different ticketing models.²³ The consent decree also prohibited various anticompetitive practices, such as requiring that the merged entity refrain from bundling Ticketmaster and Live Nation services, as well as prohibiting retaliation against venues that choose to work with other ticketing services.²⁴

The consent decree, which was set to expire after ten years, was amended in 2019 to extend an additional five and a half years.²⁵ This means that Ticketmaster and Live Nation are still subject to following the safeguards put in place as part of the 2010 decree.²⁶ The DOJ called the amendment the strongest antitrust enforcement in two decades.²⁷ The enforcement action resulted from findings that Live Nation had violated the existing consent decree by pressuring music venues into

¹⁹ *Id.*

²⁰ Christine A. Varney, *supra* note 16.

²¹ *Id.*

²² *Paciolan*, <https://www.paciolan.com/about-us> (last visited Mar. 5, 2023).

²³ Varney, *supra* note 20.

²⁴ *Id.* (explaining the behavioral remedies included in the consent decree).

²⁵ *Justice Department will Move to Significantly Modify and Extend Consent Decree with Live Nation/Ticketmaster*, DEP'T OF JUST. (Dec. 19, 2019), <https://www.justice.gov/opa/pr/justice-department-will-move-significantly-modify-and-extend-consent-decree-live>.

²⁶ *Id.*

²⁷ Ben Sisario & Cecilia Kang, *Citing Violations, U.S. to Toughen Live Nation Accord on Ticketing*, THE NEW YORK TIMES (Dec. 22, 2019), <https://www.nytimes.com/2019/12/19/arts/music/live-nation-ticketmaster-settlement-justice-department.html>.

signing contracts with Ticketmaster.²⁸ Live Nation is subject to penalties for violations of the decree.²⁹

The amendment was followed by the start of the COVID-19 pandemic which canceled live entertainment worldwide. Consequently, Ticketmaster's revenue suffered.³⁰ However, the pandemic did not stop Live Nation and Ticketmaster from dominating the industry. In 2020, Live Nation Entertainment acquired Rival, a company set up to compete with Ticketmaster.³¹ Live Nation also expanded internationally.³² Despite anticompetition concerns, Live Nation Entertainment has consistently acquired market power, even despite the lack of live entertainment during the pandemic.

II. TODAY'S CONTROVERSY

As the pandemic restrictions have subsided, artists are performing and touring again.³³ Taylor Swift is among those artists, announcing her Eras Tour set for 2023, marking the first time Swift has toured since her 2018 Reputation Tour.³⁴

²⁸ *Id.*

²⁹ *Justice Department will Move to Significantly Modify and Extend Consent Decree with Live Nation/Ticketmaster*, *supra* note 25 (stating that Live Nation is subject to an automatic penalty of \$1,000,000 for violations of the agreement).

³⁰ Murray Stassen, *Live Nation Has Already Lost Out On \$7B Of Revenue Due To COVID-19- And Will Slash Costs by \$900 Million Across Course of 2020*, MUSIC BUSINESS WORLDWIDE (Nov. 6, 2020), <https://www.musicbusinessworldwide.com/live-nation-has-already-lost-out-on-7bn-of-revenue-due-to-covid-19-and-will-slash-costs-by-900m-across-course-of-2020/>.

³¹ Kelly Earley, *Ticketmaster acquires Rival platform set up by former CEO*, SILICONREPUBLIC (Apr. 16, 2020), <https://www.siliconrepublic.com/business/ticketmaster-acquires-rival-ticket-industry> (explaining that former Ticketmaster CEO Nathan Hubbard set up Rival to compete with Ticketmaster, but ultimately sold it to Ticketmaster).

³² *Blumenthal & Klobuchar Urge DOJ Action to Restore Competition in the Concert & Live Entertainment Market*, SENATE.GOV (Mar. 15, 2022), https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-and-klobuchar-urge-doj-action-to-restore-competition-in-the-concert_live-entertainment-market.

³³ Michael Mesey, *Artist To Artist: Getting Back To "Normal" After COVID-19*, MUSIC CONNECTION (July 27, 2021), <https://www.musicconnection.com/artist-to-artist-getting-back-to-normal-after-covid-19/>.

³⁴ Matt Fortin, *Taylor Swift Announced She's Hitting the Road With 'The Eras Tour'*, NBC NEW YORK (Nov. 1, 2022), <https://www.nbcnewyork.com/entertainment/entertainment-news/taylor-swift-announces-shes-hitting-the-road-with-the-eras-tour/3932227/>.

When Swift announced the tour, demand was exceptionally high.³⁵ During pre-sale, which was only intended to include “Verified Fans” who received unique pre-sale codes, Ticketmaster had major issues with its website, causing fans to wait hours either to successfully purchase tickets or be denied the opportunity.³⁶ The mishaps led to intense backlash from Swifties and Ticketmaster choosing to cancel the general ticket sale.³⁷ In addition to upset fans, members of Congress and other artists in the music industry have expressed frustration with Ticketmaster and have called upon the DOJ to investigate Live Nation Entertainment for anticompetitive practices.³⁸

A. Senate Judiciary Hearing

On January 24, 2023, the Senate held a hearing where the President and Chief Financial Officer of Live Nation Entertainment and antitrust experts, among others, provided the Senate Judiciary Committee with testimony.³⁹ Senate judiciary hearings are meant to conduct oversight.⁴⁰ Senators from both political parties expressed their distaste for Live Nation’s business practices, calling for less

³⁵ @Ticketmaster, TWITTER (Nov. 15, 2022, 12:05 PM), https://twitter.com/Ticketmaster/status/1592579481449168898?ref_src=twsrc%5Etfw%7Ctw-camp%5Etweetembed%7Ctw-term%5E1592579481449168898%7Ctwgr%5E9141089c5da5b94a6c7be0f97f57c4e46d067759%7Ctw-con%5Es1_&ref_url=https%3A%2F%2Fwww.nme.com%2Fnews%2Fmusic%2Ftaylor-swift-eras-tour-ticketmaster-crash-3349775 (stating that there was “historically unprecedented demand” for tickets to the Eras Tour).

³⁶ Bendlin, *supra* note 2.

³⁷ *Id.* (noting that Ticketmaster canceled the general sale after “extraordinarily high demands”).

³⁸ Chairwoman Klobuchar, Ranking Member Lee Announce Hearing on Lack of Competition in Ticketing Markets, SENATE.GOV (Nov. 22, 2022), <https://www.klobuchar.senate.gov/public/index.cfm/news-releases?ID=761FFC1F-E897-41E0-88AE-D6431E619751>; Zach Bryan Drops ‘All My Homies Hate Ticketmaster’ Album, Bloomberg (Dec. 26, 2022, 11:15 AM), <https://www.bloomberg.com/news/articles/2022-12-26/zach-bryan-drops-all-my-homies-hate-ticketmaster-album?leadSource=verify%20wall> (explaining that country artist Zach Bryan titled an album after his disdain for Ticketmaster).

³⁹ Melissa Quinn, *Look what you made them do: All the Taylor Swift references from the Senate’s Ticketmaster hearing*, CBS NEWS (Jan. 24, 2023, 8:02 PM), <https://www.cbsnews.com/news/taylor-swift-ticketmaster-senate-judiciary-committee-eras-tour/>.

⁴⁰ *About the Committee*, U.S. SENATE COMMITTEE ON THE JUDICIARY, <https://www.judiciary.senate.gov/about/committee> (last visited Mar. 7, 2023).

consolidation and a focus on consumer welfare.⁴¹ The Eras Tour ticket sale exposed exorbitant fees, site crashes, and eventually, Ticketmaster's cancelation of general ticket sales for the tour.⁴²

B. Resulting Litigation

In addition to the Senate hearings, Swift fans brought a class action lawsuit against Live Nation Entertainment in California.⁴³ Among a long list of causes of action, the *Barfuss* complaint alleges antitrust violations by the company.⁴⁴ Specifically, the complaint alleges that Ticketmaster's conduct forces artists and fans into exclusive dealings with Ticketmaster.⁴⁵ Live Nation Entertainment enters into exclusive contracts with entertainment venues which then requires that performers use Ticketmaster as the ticket sales platform.⁴⁶ Through exclusive contracts and market control, Ticketmaster has power over about 70 percent of the ticketing market.⁴⁷

As alleged by the complaint, the market power and exclusive agreements allow Ticketmaster to jack up prices and tack on excessive service fees because the company does not face any real competition.⁴⁸ This would be a violation of California's Cartwright Act.⁴⁹ The Cartwright Act is California's main antitrust law which "prohibits agreements among competitors to restrain trade, fix prices or production, or reduce competition."⁵⁰ The Cartwright Act is a general reflection of the Sherman Antitrust Act and the Clayton Antitrust Act, both federal

⁴¹ *Look what you made them do*, *supra* note 39 (quoting Senator Mike Lee and Sal Nuzzo, senior vice president of The James Madison Institute).

⁴² Tracy Wright, *Taylor Swift Ticketmaster crisis sparks Senate Judiciary hearing, Live Nation and SeatGeek called as witnesses*, FOXBUSINESS (Jan. 24, 2023, 8:00 AM), <https://www.foxbusiness.com/entertainment/taylor-swift-ticketmaster-crisis-sparks-senate-judiciary-hearing-live-nation-seatgeek-called-witnesses>.

⁴³ *Barfuss et al., v. Live Nation Entertainment, Inc.*, 2022 CA Sup. Ct. Pleadings LEXIS 44393 (No. 22STCV37958).

⁴⁴ *Id.* at 16.

⁴⁵ *Id.* at 21.

⁴⁶ Emily Lynch, *Why Live Nation and Ticketmaster dominate the live entertainment industry*, CNBC (Jan. 25, 2023, 4:02 PM), <https://www.cnbc.com/2023/01/25/the-live-nation-and-ticketmaster-monopoly-of-live-entertainment.html>.

⁴⁷ *Id.*

⁴⁸ *See Barfuss et al.*, 2022 CA Sup. Ct. Pleadings LEXIS 44393 (No. 22STCV37958).

⁴⁹ *Id.* at 17.

⁵⁰ *California Cartwright Act*, GIBBS LAW GROUP, <https://www.classlawgroup.com/antitrust/state-laws/california-cartwright-act/> (last visited Mar. 7, 2023).

antitrust laws.⁵¹ Should the court find that Ticketmaster's conduct was in violation of the Cartwright Act, the company will be subject to a civil penalty of \$2,500 for each violation.⁵²

The class action will not likely succeed in the California court. In *Oberstein v. Live Nation Entertainment, Inc.*, Swift fans tried to bring suit against Live Nation and Ticketmaster for unfairly using their market power to charge excessive fees.⁵³ The class action was dismissed because Live Nation Entertainment has an arbitration clause, as well as a waiver of class actions, in its terms of use.⁵⁴ After the fans appealed, the Ninth Circuit U.S. Court of Appeals upheld the mandatory arbitration clause.⁵⁵ Based on this reasoning, the *Barfuss* class action will likely be dismissed and sent to arbitration.

III. LOOKING FORWARD

Consumers are clearly affected by Ticketmaster's business practices and its dominance over the ticketing industry. The class action filed in California is not likely to result in the justice that fans want, and while Taylor Swift's Eras Tour ticket sales brought Ticketmaster's dominant presence to the public's attention, the DOJ has been aware of the monopoly-like force.

The issue being brought to the public's attention, however, opens the floor to the DOJ to pursue enforcement action that was not taken when Pearl Jam shed light on the issue in 1995.⁵⁶ The issue was also glossed over when the Live Nation-Ticketmaster consent decree was first issued and subsequently amended.⁵⁷

Now, however, Live Nation Entertainment's dominance is at the center of attention. The market has changed since the consent

⁵¹ *Id.*

⁵² *Barfuss et al.*, 2022 CA Sup. Ct. Pleadings LEXIS 44393 (No. 22STCV37958).

⁵³ "You're on Your Own, Kid" - Swifties' Antitrust Class Action Against Ticketmaster Sent to Arbitration, THE NATIONAL LAW REVIEW (Mar. 8, 2023), <https://www.natlawreview.com/article/you-re-your-own-kid-swifties-antitrust-class-action-against-ticketmaster-sent-to/>.

⁵⁴ *Id.*; see also *Terms of Use*, TICKETMASTER (July 2, 2021), https://help.ticketmaster.com/s/article/Terms-of-Use?language=en_US. Ticketmaster's Terms of Use has a clear Notice Regarding Arbitration and Class Action Waiver.

⁵⁵ See "You're on Your Own, Kid" - Swifties' Antitrust Class Action Against Ticketmaster Sent to Arbitration, *supra* note 53 (explaining that the Federal Arbitration Act requires disputes to be arbitrated if a valid arbitration agreement exists).

⁵⁶ *Mad at Ticketmaster? Pearl Jam Has You Beat by 28 Years.*, *supra* note 6.

⁵⁷ *Justice Department will Move to Significantly Modify and Extend Consent Decree with Live Nation/Ticketmaster*, *supra* note 25.

decree was issued in 2010, with Live Nation Entertainment acquiring Front Gate Tickets and UPGRADED to further expand its power and eliminate competition.⁵⁸

Based on the landscapes that existed when the DOJ previously investigated Ticketmaster in 1995 and 2010, there is great variation when compared to 2023. Today's renewed focus on fair market competition by both the White House and Congress might make the outcome of the DOJ's investigation of Live Nation Entertainment different.

The Biden Administration has signaled its focus on antitrust enforcement.⁵⁹ President Biden issued an Executive Order in July 2021 addressing the increased consolidation over the past few decades and calling for antitrust enforcement to be prioritized.⁶⁰ Specifically, the Executive Order called for "greater scrutiny of mergers" in the technology sector.⁶¹ The Order further encourages agencies to use their authorities to scrutinize unfair practices, improve competition, and enforce antitrust laws "fairly and vigorously."⁶²

Congress has also pushed for heightened antitrust enforcement in recent years.⁶³ Even before the Eras Tour fiasco, Senators Richard Blumenthal and Amy Klobuchar urged the DOJ to take action in better promoting competition in the ticketing industry.⁶⁴ In 2023, Congress passed legislation to increase funding for antitrust agencies such as the Federal Trade Commission (FTC) and the Antitrust Division of the

⁵⁸ Adam Hayes, *Is Ticketmaster a Monopoly*, INVESTOPEDIA (Feb. 18, 2023), <https://www.investopedia.com/is-ticketmaster-a-monopoly-6834539> (discussing Live Nation Entertainment's acquisitions of Front Gate Tickets and UPGRADED).

⁵⁹ Ian R. Conner et al., *Biden Executive Order and Policy Shifts Herald Era of Expanded Antitrust Enforcement*, LATHAM & WATKINS (July 13, 2021), <https://www.lw.com/admin/upload/SiteAttachments/Alert%202887%20v6.pdf>.

⁶⁰ Exec. Order No. 14036, 86 Fed. Reg. 36987 (July 9, 2021).

⁶¹ See *Biden Executive Order and Policy Shifts Herald Era of Expanded Antitrust Enforcement*, *supra* note 59.

⁶² Exec. Order No. 14036, 86 Fed. Reg. 36987 (July 9, 2021).

⁶³ Lauren Feiner, 'Big Tech never loses a legislative fight- and they just did' as package of new bills passes, CNBC (Oct. 6, 2022, 2:04 PM), <https://www.cnbc.com/2022/10/06/tech-critics-see-hope-for-new-antitrust-laws-after-win-in-the-house.html>; see also *New Legislation Supports More Effective Antitrust Enforcement*, U.S. Dep't of Just. (Mar. 24, 2021), <https://www.justice.gov/atr/division-operations/division-update-spring-2021/new-legislation-supports-more-effective-antitrust-enforcement> (explaining that Congress reauthorized legislation to incentivize corporations to self-report, as well as passed new legislation to protect whistleblowers in criminal antitrust cases).

⁶⁴ *Blumenthal & Klobuchar Urge DOJ Action to Restore Competition in the Concert & Live Entertainment Market*, *supra* note 32.

DOJ with the goal of promoting more aggressive enforcement.⁶⁵ Congressional interest in antitrust enforcement became even clearer during the Judiciary Hearing following Ticketmaster's crash during the Eras Tour ticket sale. The hearing demonstrated bipartisan support for restoring competition in the concert and entertainment industry.⁶⁶

With bipartisan support across Congress and the White House, the DOJ should take aggressive enforcement measures to promote competition in the entertainment ticketing industry. When the Live Nation-Ticketmaster consent decree was amended in 2019, competition enforcement was not as forceful as in previous years.⁶⁷ The Trump Administration pushed a deregulation agenda and decreased antitrust enforcement.⁶⁸ Based on the deregulation and lax antitrust enforcement, the consent decree likely had more of an illusory effect.

Today's support for antitrust enforcement from both political parties, as well as from the general public, support sets up the DOJ perfectly to ramp up enforcement. The 2019 amendment to the Live Nation-Ticketmaster consent decree extended the 2010 consent decree and included additional provisions.⁶⁹ While Ticketmaster continues to remain under public scrutiny after tickets sales have gone awry, the DOJ should revisit the behavioral remedies and structural safeguards contained in the decree. Based on the decree, Live Nation cannot "retaliate" against venues who choose not to use Ticketmaster, nor can the company threaten venues into using Ticketmaster.⁷⁰ Live Nation engaged in this conduct despite the consent decree.⁷¹ The DOJ should use the amended decree to truly enforce fair competition, unlike it did between 2010 and 2019 when Live Nation violated the agreement without punishment.

⁶⁵ David R. Brenneman et al., *New Legislation Dramatically Increases Funding to US Antitrust Agencies Over Five Years, Ensuring Aggressive Enforcement*, MORGAN LEWIS (Jan. 10, 2023), <https://www.morganlewis.com/pubs/2023/01/new-legislation-dramatically-increases-funding-to-us-antitrust-agencies-over-five-years-ensuring-aggressive-enforcement>.

⁶⁶ See Quinn, *supra* note 39 (quoting both Republican and Democratic senators in support of restoring competition).

⁶⁷ Barry A. Pupkin, *Antitrust Enforcement Declines Under Trump, So Says AAI Report*, SQUIRE PATTON BOGGS (2020), https://www.squirepattonboggs.com/-/media/files/insights/publications/2020/04/antitrust-enforcement-declines-under-trump-so-says-aa-report/antitrust_enforcement_declines_under_trump.pdf.

⁶⁸ *Id.*

⁶⁹ Varney, *supra* note 16.

⁷⁰ *Id.*

⁷¹ *Id.* (explaining that Live Nation violated the consent decree by threatening concert venues and retaliating against venues that used other ticketing platforms).

Additionally, the structural safeguards in the 2010 agreement required Ticketmaster to license its ticketing platform to AEG, another concert promoter, and to divest in Paciolan, a venue-ticketing integration model.⁷² The DOJ recognized the harms of allowing Live Nation and Ticketmaster to consolidate, but stopped at the consent decree. Since, Live Nation Entertainment has continued to acquire entertainment companies and expand their dominant market power. The DOJ can reexamine opportunities for new safeguards to limit Live Nation Entertainment's market power and promote competition in the ticketing industry.

The DOJ has since increased its enforcement capabilities, establishing the Office of Decree Enforcement and Compliance as part of the Antitrust Division in August 2020.⁷³ The office is intended to exclusively monitor and enforce consent decrees to ensure companies are following through with their promises to consumers.⁷⁴ The DOJ also took measures to step up their enforcement power by altering the evidentiary standard required to hold a party in civil contempt for violation of a consent decree.⁷⁵ Previously, the DOJ had been required to satisfy the clear and convincing evidence standard, but has since moved to a lower burden- the preponderance of evidence standard.⁷⁶ The creation of the Office of Decree Enforcement and Compliance and a new evidentiary standard bolster the DOJ's power to ensure companies like Live Nation Entertainment are closely adhering to the terms of the consent decree.

The DOJ is in the ideal spot to crack down on Live Nation Entertainment's market dominance in the ticketing industry. With renewed focus on fair competition by the White House and bipartisan support, the DOJ is unlikely to face political backlash for taking action. Additionally, the landscape has changed since Live Nation and Ticketmaster merged with the DOJ gaining additional resources to conduct antitrust enforcement. The DOJ should use their enforcement authority to aggressively investigate Live Nation Entertainment's compliance

⁷² *Id.*

⁷³ Juan A. Arteaga, *Enforcement of Merger Consent Decrees*, GLOBAL COMPETITION REVIEW (Nov. 8, 2021), <https://globalcompetitionreview.com/guide/the-guide-merger-remedies/fourth-edition/article/enforcement-of-merger-consent-decrees#footnote-080>.

⁷⁴ *See id.* (discussing the DOJ Antitrust Division's statement regarding the creation of the Office of Decree Enforcement and Compliance).

⁷⁵ *Id.*

⁷⁶ *Id.* (explaining that the DOJ moved to a lower burden of proof to match the standard that would apply in a challenge to the underlying transaction resulting in a consent decree and to give the DOJ more enforcement capability).

with the 2019 amendment to the consent decree and carefully examine the company's practices in the ticketing industry to ensure consumers are being treated fairly.

CONCLUSION

Ticketmaster has maintained significant control of the entertainment ticketing industry for decades.⁷⁷ When Ticketmaster and Live Nation merged to form Live Nation Entertainment, competitors and artists expressed concern.⁷⁸ Consumers have since been hurt by the exclusive dealings and excessive fees charged by Ticketmaster.⁷⁹ As Taylor Swift fans brought Ticketmaster issues to the nation's attention,⁸⁰ Senate hearings and class actions have put Live Nation Entertainment under scrutiny.⁸¹ The DOJ was aware of the potential for Live Nation Entertainment to dominate the market, as evidenced by the 2010 consent decree and the subsequent amendment in 2019 that required the company to comply with specific remedies meant to maintain competition.⁸² Since, however, Live Nation Entertainment has only continued to maintain market power. In 2023, with the eyes of the public focused on the matter, as well as White House and congressional support, the DOJ is in the position to promote competition in the ticketing industry.⁸³ The DOJ should reexamine the consent decree and amendment agreed upon with Live Nation Entertainment and use its newly created Office of Decree Enforcement and Compliance to

⁷⁷ *Mad at Ticketmaster?*, *supra* note 5.

⁷⁸ *United States et al. v. Ticketmaster Entertainment, Inc. et al.*; Public Comments and Response on Proposed Final Judgment, 75 Fed. Reg. 37651 (June 29, 2010).

⁷⁹ *Barfuss et al. v. Live Nation Entertainment, Inc.*, 2022 CA Sup. Ct. Pleadings LEXIS 44393 (No. 22STCV37958) (describing alleged antitrust allegations in a class action filed in California).

⁸⁰ Bendlin, *supra* note 2.

⁸¹ Quinn, *supra* note 39; *see* Barfuss et al. v. Live Nation Entertainment, Inc., 2022 CA Sup. Ct. Pleadings LEXIS 44393 (No. 22STCV37958) (class action brought against Live Nation Entertainment alleging antitrust violations).

⁸² *See* Varney, *supra* note 16 (explaining the behavioral remedies and structural safeguards included in the consent decree); *see also* *Justice Department will Move to Significantly Modify and Extend Consent Decree with Live Nation/Ticketmaster*, *supra* note 25 (announcing extension of the consent decree and amendments to the agreement).

⁸³ *See* Exec. Order No. 14036, 86 Fed. Reg. 36987 (July 9, 2021) (explaining the Biden Administration's focus on fair competition); *see also* Brennaman et al., *supra* note 65 (discussing congressional action to support antitrust enforcement).

effectively execute the goal of the agreement and the DOJ's Antitrust Division's mission of promoting economic competition.⁸⁴

⁸⁴ *Mission*, U.S. DEP'T OF JUST. (Feb. 23, 2023), <https://www.justice.gov/atr/mission>.