The American Antitrust Institute

Ticketmaster Acquisition of Live Nation: An Antitrust Summary

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The "merger of equals" between Ticketmaster (TM] and Live Nation [LN], to create Live Nation Entertainment, Inc., probably violates the Clayton Act. Our investigation is still at an early stage and of course we do not have access to proprietary information which could change the analysis. In any event, here are the specific anticompetitive issues that we have spotted to date.

A. Primary distribution of tickets

TM claims to be the "world's leading in entertainment ticketing and marketing company." Depending on market definitions, of course, it has a very large, probably monopoly share of the US market for distributing primary tickets, either selling tickets it owns or as agent for promoters and venues. LN had been TM's largest client during a ten year contractual relationship. It recently became a new entrant in this market. Soon after entering, it captured TM's second largest client, SMG, which manages venues. A third rival, Tickets.com, is small and apparently unimportant as a competitive force. Because of its vertical integration, LN has the potential to be a major competitor. This merger eliminates actual competition-- the only real alternative to TM—in a concentrated market with high entry barriers.

B. Management of Talent

Both TM and LN provide management services for artists and musicians. TM entered the market through its acquisition of Front Line. Although there is a lot of competition in this generally, when it comes to top-tier talent, these are two of the major competitors.

C. Control of Venues

You can't have a performance without a venue or arena. TM and LN both have long-term exclusive contracts with venues to handle their ticketing.

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D. Secondary Ticketing Market

Today much re-selling occurs over the Internet, some through auction processes like that offered by an eBay subsidiary, StubHub, the market leader. TM competes in this market through its acquisitions of TicketsNow and GetMeIn. LN is reported to have had intentions of entering this market. Whether entry is sufficiently difficult to permit a viable potential competition claim remains to be determined. The nub of the problem is the need for alternative first-tier performers and alternative first-tier venues, so that a ticket-buyer is not so locked into TM.

E. Buyer Power

Both TM and LN are buyers – combined they will have enormous buying power which will enable them to exercise disproportionate bargaining power and perhaps monopsony power as they deal with talent and with venues. Both have been concerned that talent is able to play one off against the other to demand higher prices. Artists, promoters, and venues will lose this leverage if they have only one very dominant system against which they must negotiate, yet the substantial dominance of the merged company may make it all the more important for artists and venues to be part of the system. While this could result in savings to the merged company, in the absence of real competition there will be no dynamic for passing such savings on to consumers.

F. Vertical Foreclosure

It would appear that the vertical aspects of joining of these two firms would be likely to foreclose substantial commerce. For example, If Tickets.com were to go to a venue with a proposal to distribute tickets for the venue, the merged company could say to the venue, “If you want top performers, which we control, you have to use our ticket distribution services.” The smaller non-integrated competitor would likely lose out. Investors would likely not want to invest in non-integrated players in the markets dominated by the merged company.

Another way to look at this is to see the TM/LN merger as the creation of a global system, as TM puts it: “An artist to fan distribution platform.” Like Google or Microsoft, or an international airline alliance, or a seed company that owns patents that can be used to create a closed integrated system, this global system would fill a space constructed of related firms so completely that the only realistic competition would have to come from a more or less comparable system. There is no competitive entertainment system on the horizon, much less a set of competitive systems that would create a level of competition comparable to what exists today.

G. Remedies

It is difficult to contemplate what type of remedy would result in the maintenance of competition at current levels, if this merger is approved. Take the most obvious problem of horizontal overlap in ticketing. If some ticketing services were ordered to be divested, this would create a company that might be compared to Tickets.com, which is not competitively comparable to LN. It would be the combined control over venues and performers together with the ticketing that would be required and for the government to try to patch together a new integrated company of this sort from parts of the merged company would likely fail and would probably kill the deal.

Some Additional Considerations

Efficiencies

The companies claim that there will be $40 million in synergistic efficiencies. These efficiencies have not been spelled out. It is not clear that there would be competitive forces to assure that such savings get passed on to consumers.

Effects

In the current down market, it is more likely that the merger will keep prices from going down as much as reduced demand might require, rather than that prices will go up. But the merger would facilitate super-competitive price increases as demand later picks up.

Consumers will likely lose choice as a result of the merger, if it leads to fewer independent promoters (and therefore, performers) being able to book at fewer venues. The absence of competition in ticket distribution will mean that a consumer who wants to boycott the merged company (and many consumers feel this way today about TM) will likely have to forego most major entertainment events.

Entry Conditions

The merger will likely raise entry barriers because of the practical need for entry at multiple levels, which will be more expensive and difficult to accomplish, in order to avoid the merged entity's new power and incentive to discriminate against non-integrated rivals.

Market Definition

Market definition can also be an issue, possibly requiring distinctions between primary and secondary distribution, between sale of tickets and distribution as agent, between first-tier and other talent and venues, etc. Some clustering of products and services (as in Philadelphia

National Bank, where "commercial banking" included home loans, car loans, and other separate products/services) will likely be necessary.

A Teaching Opportunity That Will Test the Obama Administration

This case represents a remarkable teaching opportunity because so many consumers have had experience in purchasing tickets to sporting events, musical concerts, theatre, and family events. TM sold 141 million tickets in 2007. LN sold 50 million in 2008. Many ticket purchasers have never thought of antitrust, but they can see the markup for convenience and delivery fees that often raises the face value of tickets by 30-50%, which seems excessive. If antitrust enforcement can demonstrate that a large part of this markup would be reduced by more competition, the popular support for antitrust will increase. On the contrary, if the Obama Administration approves this merger, it could indicate that companies will be free to merge during a recession. This would represent a victory for large producers over consumers and relatively small enterprises.