

# **Too Big To Fail?**

## **The Live Nation & Ticketmaster Merger, One Year Later**

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## Introduction

When the Department of Justice (DOJ) approved the merger between Ticketmaster — the largest ticketing platform in the country — and Live Nation — the largest concert promoter in the country — in January 2010, many in the music community expressed concern about the potential effects of having two huge companies with major stakes in touring, promotions, ticketing and live venue management become a single entity. The ability of such a large company to squeeze out competition in ticket sales, booking, and vendor contracts was a very real possibility, absent enforceable rules to prevent market abuses. There were also additional concerns about artist representation, as Ticketmaster had previously merged with Front Line Management, a company run by artist manager Irving Azoff, who had subsequently taken the top position at Ticketmaster.

In an effort to prevent adverse market repercussions, the Justice Department approved the merger with specific conditions. Formally approved in January 2010, DOJ's consent decree outlines the terms that would allow the two firms to merge with certain restrictions designed to limit monopolistic abuses, and create the opportunity for additional marketplace entrants.

The goal of this guide is to help the music community better understand the DOJ's merger conditions, and their impact. Future of Music Coalition and Fractured Atlas believe that artists, managers, concert promoters and other stakeholders should be informed of key details in the

settlement and how to proceed when terms of the consent decree are violated.

The live music space is highly complex and includes many issues outside the scope of this document. That being said, we hope it provides useful information about the merger and how conditions for live music might be improved.

## **Merger Background**

### **Front Line Management**

Founded by artist managers Irving Azoff and Howard Kaufman in 2004, Front Line is one of the most powerful management companies in the world, with nearly 200 clients and more than 80 executive managers. Front Line represents a wide range of major touring artists, including the Eagles, Jimmy Buffett, Neil Diamond, Van Halen, Fleetwood Mac, Christina Aguilera, Stevie Nicks, Aerosmith, Steely Dan, Chicago, Journey, and Guns N' Roses.

### **Ticketmaster**

Ticketmaster was the largest seller of tickets to concerts, sporting events and live entertainment in the country. The company had already bought up seven of its rivals, and controlled an estimated 83 percent of the ticketing market.

In 2008, Ticketmaster spun off from its former partner IAC and became its own publicly traded company. Later that year, Ticketmaster bought controlling equity interest in Front Line Management and became Ticketmaster Entertainment, with Irving Azoff as CEO. Additionally in 2008,

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Ticketmaster acquired Paciolan Inc. — a developer of ticketing platform applications and host of digital ticketing systems.

### **Live Nation**

Live Nation is the largest concert and live events promoter in the world. In 2005, Live Nation spun off from Clear Channel Communication, a large broadcasting company that also has a profitable billboard business. In 2006, Live Nation added the House of Blues performance outlets to its venue holdings, which also include a considerable number of outdoor amphitheaters. Live Nation promotes or produces over 22,000 events a year globally, including music concerts, with total attendance exceeding 50 million. It also produces the Super Bowl halftime show.

Pre-merger, Live Nation owned or operated 117 venues, consisting of 75 US and 42 international performance spaces. Since 2008, Live Nation has also signed multi-rights deals with Madonna, Shakira, U2, Nickelback and Jay Z, which include a range of live performance guarantees, promotional and branding rights, as well as recorded music product. In 2008, Live Nation refused to renew its ticketing contract with Ticketmaster and, instead, launched Live Nation Ticketing. This platform allowed Live Nation to manage all of their ticketing needs in-house. Although Live Nation's online ticketing site experienced a number of difficulties resulting from traffic, the experiment did demonstrate that Live Nation had the internal capacity to manage its own ticketing needs. This message was particularly salient for Ticketmaster, which lost its biggest ticketing client when Live Nation refused to renew its contract. These

were the conditions that precluded the February 2009 announcement that Live Nation and Ticketmaster intended to merge.

## **Common Criticisms**

In February 2009, Live Nation and Ticketmaster confirmed they were planning to merge. The deal would combine the world's largest live entertainment promoter with the nation's dominant ticketing agent, creating a vertically-integrated company that had influence over many aspects of the live concert industry, including relationships and multi-rights deals with some of the world's biggest stars.

The merger reports were accompanied by public pronouncements from Live Nation and Ticketmaster executives regarding improved efficiencies and cost savings for shareholders, management and consumers. In the midst of Congressional hearings on the issue, the newly appointed Obama Justice Department put the planned merger on hold in order to investigate details about the two music business giants and the possible impacts of a consolidated firm.

A range of observers expressed concern about the merger, including consumer advocates, smaller promotions companies, independent venues, musicians, managers, agents and even politicians. Senator Charles Schumer (D-NY) voiced some of these concerns at a February 24, 2009 hearing of the Senate Antitrust Subcommittee. "Live Nation has a lock on its side of the market," he said. "Think of what this merger would mean if they put both

these companies under the same roof. It would combine the largest ticket seller in the world with the largest event producer.”

Not all industry participants and observers took issue with the merger. In the lead-up to the DOJ’s conditional approval, Future of Music Coalition collected and published a selection of viewpoints on both sides of the issue. View them here: <http://bit.ly/bozXEp>

As the DOJ conducted its investigation, merger opponents became more vocal in their dissent. The following are a few examples of common criticisms about the deal.

**A combined company would be too powerful**

Many merger opponents expressed fears that a combined Live Nation/Ticketmaster would wield tremendous power over music promotions, ticketing and artist representation.

First, the reach of a single company with established market presence and exclusive ticketing contracts with venues across the country would make it difficult for potential new entrants in the ticketing industry, not to mention independent concert promoters.

Additionally, opponents were concerned that those doing business in specific areas of the industry — say, booking, promotions or management — could be forced to maintain relationships with LNE — even if it was not in their economic benefit — for fear of being shut out of the marketplace or otherwise retaliated against.

### **Concerns for artists, managers and agents**

Another worry was that artists under Front Line Management could be encouraged to sign multi-rights deals with the promotions wing of Live Nation (where the company would take a portion of artist revenue generated from merchandise, licensing, concert sales, music, video, etc), or that artists would be routed on package deals and promoted by LNE on a national basis, instead of each artist's booking agent collecting offers from competing concert promoters in each city. The question for artists would be whether LNE's purchase of an entire tour was the most advantageous for the touring artist.

### **Concerns for consumers**

The widest criticism was that a merged company would simply accelerate the trend of rising ticket prices regardless of the efficiencies touted by Ticketmaster's Azoff and Live Nation's Michael Rapino. Ticket prices are set by the touring artist and concert promoter. In the traditional relationship, Ticketmaster did not get a cut of the revenue generated by the price of the ticket; Ticketmaster's revenue came from the surcharges added on top of the face value price, including parking fees, convenience fees and building fees. Although there were promises made by Rapino and Azoff that a merged company would improve transparency in the additional fees tacked on to tickets, some expressed doubt that this would actually do anything to lower prices, especially if venue managers had fewer options about who would process their tickets.

With good seats at major shows already priced outside of many peoples' budgets, an increase in ticket surcharges

could make concert attendance less of a regular activity for even diehard music fans. With more expensive concerts, talent buyers would be more inclined to book “safe bets” into venues, reducing the diversity of offerings in the live music space.

### **Concerns for independent promoters**

One of the most vocal opponents of the merger, Seth Hurwitz, co-owner of I.M.P. Productions and the 9:30 Club in Washington, D.C., said at the Senate hearing that “If this merger is allowed to happen, my biggest competitor will have access to all my records ... and they can control which shows are promoted and much more.” Along similar lines, Mitchell Frank of Spaceland Productions in L.A., said in a pre-merger *L.A. Times* report<sup>1</sup> that a combined Live Nation/Ticketmaster could see him earning money for a competitor and also potentially losing control of key customer data. “First of all, who owns the data?” Frank asked. “It’s my show, so how will they use that data for their own uses? ... Ticketmaster could do studies using my data. Therefore, Live Nation would know what shows my crowd is going to, what the demographic is, what neighborhood, what the ZIP Codes are. TicketWeb could easily do a published study. It’s unfair competition. That becomes the killer.”

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<sup>1</sup> “Live Nation-Ticketmaster merger raises concern for Spaceland, indie promoters,” *L.A. Times*, January 29, 2010

## Department of Justice Response

Although the DOJ reviewed many aspects of the two businesses and the potential outcomes of a joined company, they were ultimately tasked only with determining the impact the merger would have on competition among ticketing services. This is in accordance with its duties under the Sherman Anti-Trust Act<sup>2</sup>, which is meant to prevent companies from effectively taking over an entire business sector. So-called “vertical” integrations — mergers between a company and its suppliers or its customers — are more difficult for government regulators to effectively block, particularly given the past 30 years of judicial review of such mergers.

Recognizing that a Ticketmaster/Live Nation merger could effectively create a monopoly in the large-venue ticketing business, the DOJ imposed conditions on the merged corporation Live Nation Entertainment (LNE) by consent decree. These conditions are designed to create more robust competition in the marketplace and prevent LNE from unfairly exploiting advantages made possible by the merger. Additionally, the DOJ created supplemental provisions meant to alleviate some of the concerns about the merger, as well as a way for those who have experienced marketplace harm as a result of the merger has occurred to register such incidents with DOJ in pursuit of resolution.

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<sup>2</sup> Sherman Anti-Trust Act, [OurDocuments.gov](http://OurDocuments.gov)

## Explanation of Merger Conditions

The consent decree serves an opportunity to bring needed oversight to a sector that affects large swaths of the music business, from artist to fan to the many roles in between. The merger conditions stated:

**1. LNE was required to license its ticketing platform software to AEG**, thus allowing the second largest concert promoter in the US to compete head-to-head against LNE.

The DOJ report stated: “With a copy of the Ticketmaster software, AEG will be able to market a ticketing system that is an attractive choice to venues. AEG will have incentives similar to Live Nation to provide better services at lower prices. Within five years, AEG can purchase the Ticketmaster ticketing software, decide to create its own software, or partner with a ticketing company other than Ticketmaster. The department said that this remedy enhances short and long term competition in the primary ticketing market.”

**2. Ticketmaster also had to divest itself of the ticketing software company Paciolan.** In March 2010, Ticketmaster sold Paciolan to Comcast-Spectacor, a company already involved in venue management, catering and ticketing through its own company, New Era. Paciolan, which specializes in ticketing services for college athletics programs, performing arts organizations, arenas, professional sports teams, and museums, will also be allowed to list its ticketing events on Ticketmaster’s website to gain

access to a broader audience.

The DOJ stated: “Paciolan is used by hundreds of venues to sell tickets including major concert venues around the country. Venues that contract with Paciolan have greater flexibility to lower the ticket service fees that are charged to consumers who buy tickets. The department said that divesting Paciolan to Comcast-Spectacor, or another suitable buyer, in conjunction with the AEG license, will replace the competitive pressure on Ticketmaster lost as a result of the merger.”

**3. LNE is not allowed to take retaliatory action against any venues, promoters, or artists** that choose to use another company’s ticketing services or another company’s promotional services. It is also restricted from imposing certain conditions and forcing clients who employ its promotion services to use its ticketing services.

**4. If a venue wants to switch ticketing platform providers, LNE has 45 days to provide their client with all venue related client ticketing and ticket buyer data** in a form reasonably usable by the venue. In addition, LNE must preserve ticketing data and ticket buyer data, for its clients for no less than 3 years.

**5. LNE must establish an internal firewall** so that the company does not share client ticketing data with the concert promotions and management side of the business.

Although it is too early to gauge the long-term impact of these conditions, they are an important step in establishing

necessary protections for the benefit of smaller companies, performers and consumers. Understanding the consent decree will also help artists, fans and the cultural sector measure the effectiveness of the DOJ's enforcement efforts if and where issues arise.

## **How to Report Concerns**

In order for the DOJ's consent decree to have any real teeth, there must be a way for it to hold the merged company, Live Nation Entertainment, accountable for violations of the agreed-upon conditions. Remember, these stipulations are meant to prevent LNE from abusing its power in the marketplace, and to protect other players from illegitimate or exploitative activity.

If you are part of the live music ecosystem and believe you have experienced genuine market harm from actions pertinent to the DOJ's merger conditions, here is how to file your grievance.

1. Email the Compliance Committee at [concert.industry@usdoj.gov](mailto:concert.industry@usdoj.gov); or
2. Contact the DOJ's Citizen Complaint Center (email, address, and phone number at [www.justice.gov/atr/contact/newcase.html](http://www.justice.gov/atr/contact/newcase.html)).

The DOJ has indicated that active involvement from all stakeholders in live entertainment — including musicians, managers, venue owners, promoters, and publicists — is essential to enforcement of the Decree. Those in the mu-

music community should feel empowered to contact the DOJ if they learn of facts that could show a Decree violation or other effects on competition in the industry.

## **Improving Conditions in the Live Music Space**

Whether you believe that the Live Nation/Ticketmaster merger is good or bad, it's clear that live music is facing tremendous challenges. A weak economy, combined with an emphasis on superstar touring acts has, for many, made concertgoing an occasional event as opposed to a regular activity. FMC and Fractured Atlas believe that re-energizing the live music space doesn't so much depend on giant corporate mergers, but rather increased investment in local arts and performance spaces, access to technology and other media infrastructure and greater competition in the ticketing marketplace. Without the ability for performers and arts entrepreneurs to reach audiences in their own backyards and create unique cultural experiences at a local level, there will be less opportunity for tomorrow's talent to scale their careers organically while satisfying people's desire for a diversity of creative expression.

We see three core areas in which the live music sector could be improved through a thoughtful approach to access and innovation in the arts.

### **1. More truly local live arts spaces**

The ability for music fans to experience live performances

in their own town or city is important to achieving sustainable local cultural communities. Where such opportunities exist, there is often a symbiosis that occurs between area businesses — from restaurants to retail. In some of these markets, it's not uncommon to see these businesses participating in unique cross-promotional activities, which serve to strengthen the fabric of community. Where live arts spaces don't exist, residents must often make the trek to larger, out-of-town venues to get their music fix. Although such outlets serve their purpose, they also consume resources and do little to cultivate local or regional culture. They also have no positive impact on local merchants, as many of the larger venues have their own on-site vendor arrangements. (Exceptions are cities in which an arena, stadium or amphitheater exists downtown, yet these venues also tend to deal exclusively with national brand vendors.)

## **2. Access to broadcast media**

Local artists, managers, agents, venues, promoters and others need to be able to leverage media tools to promote their creative efforts. A friendly area newspaper or weekly is helpful, but in too many towns and cities, there is a conspicuous lack of local programming on the public airwaves, especially the radio dial. The addition of more-noncommercial radio opportunities (such as Low Power FM stations) would improve conditions for many local arts communities. Even commercial stations could play a hand, provided there was greater local ownership and more programming autonomy.

For more information about efforts to improve radio, see

FMC's Low Power FM factsheet: <http://futureofmusic.org/article/fact-sheet/low-power-fm>

And FMC's research on the radio market, music and musicians:

"Same Old Song" playlist analysis

<http://futureofmusic.org/article/research/same-old-song>

"False Premises, False Promises" station ownership consolidation study

<http://futureofmusic.org/article/research/false-premises-false-promises>

### **3. Open technology and innovation**

Artists and arts advocates require access to high-quality, affordable broadband to create and maintain 21st-century cultural institutions that truly serve local communities.

Innovation on these networks must be open to all users, and not just large, well-funded enterprises. Preserving the open structure of the internet is crucial to establishing a resilient and collaborative arts community. In many instances, it is the creative sector that is helping to drive innovation, as individuals, organizations and collectives build (and share) solutions to specific needs. There is also the increased adoption of "social" technologies, which amplify the voices of not just individual artists, but entire creative networks. Without the ability to innovate on open internet platforms, the cultural sector would not be able to compete with commercial operators to any meaningful degree.

For more information about the open internet and creators,

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visit FMC's Rock the Net:

<http://futureofmusic.org/issues/campaigns/rock-net>

#### **4. Data Portability**

In the world of live music, it is quickly becoming apparent that data is crucial to success in a crowded information marketplace. Freedom in the digital age means owning your own data to do with as you please. But service providers who are afraid to compete on the quality of their product don't want you to be free. Instead, they hold your data hostage, making it harder for you to switch to a competing service. A healthy, dynamic live performance marketplace depends upon data portability. Participants in this ecosystem should have complete access to all of the data that relates to their business, and it should be available in a usable format. To that end, Fractured Atlas and FMC support the adoption of open standards — published guidelines for describing industry-specific data in a platform-agnostic way — as the best way to safeguard your informational mobility in the 21st century.

To learn more about data portability and other tech-oriented issues for the arts, have a look at “The Future of Digital Infrastructure for the Creative Economy,” published by FMC, Fractured Atlas and the National Association of Media Arts and Culture:

<http://futureofmusic.org/article/article/future-digital-infrastructure-creative-economy>

## Conclusion

Establishing a functional and dynamic live music marketplace is a major undertaking. Yet it is truly an important one if the music business is to recover from the struggles of recent years. Live performance remains one of the chief ways that artists are discovered and compensated. The relationships established between performer and fan creates the groundwork for long-term careers, so it is essential to nurture the environment in which those connections are made.

The live music space has always been complex, and there has always been a certain amount of friction between participants in this ecosystem. To some degree, the creation of Live Nation Entertainment could help resolve persistent tensions in a risk-based economy. On the other hand, there is little in the history of consolidation in the music industry to suggest that such large combinations produce any benefit for creators and consumers. In fact, there is considerable evidence to the contrary.

The merger of these two companies will almost certainly have an impact on the live entertainment space, but how it plays out for working musicians remains to be seen. In the meantime, there is an opportunity to examine what's missing from the music and performance sector and see if these gaps can be filled. Future of Music Coalition and Fractured Atlas believe that much of these efforts must occur at the local level, with direct involvement from those who create, produce, promote and perform the music itself.

There is also the need to collect as much information as possible about what your community would need to establish a functional music and arts ecosystem. Ask questions of those around you. What would work best for the creators you know? Be collaborative and resourceful. Perhaps you have more resources at your disposal than you'd imagined. Work on your story. Often those who hold the keys to improvements aren't aware of your perspective, as important as it is. How many people can you inspire to make that perspective known to those who could make a difference in your community?

Live music is but one aspect of the overall arts and culture universe, but it's a significant one. Where there are strong local performance and creative scenes, there is the possibility of community and economic fortification. The goal of a healthy and vibrant environment for live music should be pursued regardless of the existence of Live Nation Entertainment. It is a goal that Future of Music Coalition and Fractured Atlas are very much committed to.

