



## **Busting the Live Nation-Ticketmaster Monopoly: What Would a Break-Up Remedy Look Like?**

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### **Monopolies and More Monopolies**

Monopolies have gotten a lot of attention under the Biden administration. But that attention seems focused almost exclusively on digital platforms. At the same time, there is an urgent need for enforcement of monopolization law against anticompetitive practices by dominant firms in other sectors. Take [Monsanto's dominance](#) in agricultural biotechnology, which has produced high fees for patented genetic crop technology—raising farmer's costs and cutting their already slim margins. Also consider Autodesk, the mammoth purveyor of software for the building industry, which prompted [architects to complain](#) of the mismatch between price increases and stagnant product development. Yet Autodesk continues on an acquisition spree that seems to have gone undetected by antitrust enforcers.

Then there is Live Nation-Ticketmaster. In 2010, the U.S. Department of Justice (DOJ) gave the companies a “pass” to vertically integrate. This created a behemoth with a wingspan covering artist management, concert promotion, venue management, and primary ticketing—virtually the entire live events supply chain. At the time, Ticketmaster's market share in primary ticketing was a whopping 80 percent. Instead of moving to block a patently illegal merger, the government [settled for conditions](#) that simply prohibited Live Nation from engaging in practices designed to stifle competition.

In 2020, a DOJ investigation revealed evidence of Live Nation practices that were in violation of [“the plain language”](#) of the 2010 merger consent decree. DOJ offered evidence that Live Nation had repeatedly conditioned, and threatened to condition, the provision of live concerts on a venue's purchase of Ticketmaster ticketing services. Moreover, the evidence showed that Live Nation retaliated against venues that used competing ticketing services. DOJ's solution to this problem was simply to [extend the ineffective remedies](#) in the original consent decree. This was a deal that Live Nation was compelled to agree to, since the likely alternative was a more thorough DOJ investigation that might uncover additional anticompetitive conduct.

### **Correcting the Legacy of Failed Antitrust Enforcement Against Live Nation**

Allowing the Live Nation-Ticketmaster merger in 2010, and extending the consent decree in 2020, are leading examples of failed antitrust enforcement. However, public reports indicate that [DOJ is again investigating](#) Live Nation's practices, which presumably builds on existing evidence of illegal

conduct. Perhaps the third time will be the charm, if an investigation culminates in a monopolization case against Live Nation. But time is running out. Any monopolization case under Section 2 of the Sherman Act could take years to litigate to resolution, and could be snagged in a transition to a different administration. This would be reminiscent of the government's 2001 case against Microsoft when, in the hand-off from the Clinton to Bush II administrations, DOJ caved on the remedy and agreed to a handful of ineffective concessions.

Based on recent developments, a new monopolization case against Live Nation could open the door to antitrust enforcement of harmful conduct that goes beyond the focus of the 2010 consent decree and 2020 amended consent decree. For example, Live Nation's "durable" monopoly in primary ticketing—which is the wellspring of its incentive to exercise market power—remains unchecked. The company also controls an estimated 60% of the concert promotion market and is estimated to have exclusive contracts with about 70% of venues.

Moreover, since 2010, Ticketmaster has set up shop in the resale market, where it has amassed market share and risen to dominance. With [\\$4.5 billion in revenue from resale in 2022](#), more than double what it earned in 2019, Ticketmaster has eclipsed many of its rivals. This array of dominant market positions means that Live Nation has incentives to limit competition in markets beyond the sale of ticketing services to independent venues. A hypothetical monopolization case against Live Nation could, therefore, refocus the lens on the unsolved problem of throttling independent venues. But it could also target Ticketmaster's practices that restrain competition in the resale market.

## **Harms From Live Nation's "Durable" Monopoly**

Ticketmaster's monopoly in primary ticketing drives the company's incentive to exercise its market power, across the live events supply chain. For example, Live Nation prioritizes the venues they own and operate, at the expense of Independent venues. These venues, which have little to no choice in primary ticketing and are threatened with the loss of events, are forced to comply with Ticketmaster's restrictive contracts. This includes requirements to bundle sports and concert tickets. Moreover, Ticketmaster's practices that limit competition in the resale market are a form of "self-preferencing." Fans are frustrated and discouraged from shopping in the resale market and, therefore, forced back to Ticketmaster's dominant primary and secondary ticketing platforms to buy their tickets.

These restrictive practices harm artists, teams, venues, and fans. Independent venues are compelled to pass on monopoly service fees to fans, resulting in inflated ticket prices. Fans face high, and often duplicative ticket fees when they are driven back to Ticketmaster's ticketing platforms. There, they are subjected to poor service and the scraping and harvesting of their personal data on concert attendance and other preferences. Artists lack bargaining power vis-à-vis Live Nation, which forces them into lopsided revenue-sharing agreements with venues. They also face exorbitant fees and commissions imposed by Live Nation, significantly diminishing their earnings from ticket and merchandising sales.

Artists' lack of bargaining power garnered significant attention at the recent [Senate Judiciary Committee hearing](#) where singer-songwriter Clyde Lawrence testified, "Due to Live Nation's control across the industry, we have practically no leverage in negotiating." Even blockbuster artists like Taylor Swift, who is managed by AEG, must deal with Live Nation. Live Nation's control of the

venues on Swift's Eras Tour meant AEG, which has its own ticketing service, had no choice but to ticket through Ticketmaster.

Aside from adverse effects on ticket prices and fees, Live Nation's practices hamper quality and innovation in the live events markets. As is evident from the many crashes and glitches on Ticketmaster's platform, [monopolies have little to no incentive to innovate](#) to produce high quality service or better distribution technology. Moreover, the specter of dealing with a monopolistic provider of services in the live events market can chill incentives for innovation in the creative arts.

## **New Concerns Around Ticketmaster's Incursion Into the Resale Market**

Regardless of individual opinion on the merits of the secondary ticket market, the reality is that it is the only source of competition for fans when they wish to "shop" for tickets. Indeed, a well-functioning secondary market produces efficiency benefits because it brings together artists and fans that would not otherwise be able to connect after a sale has been made on the primary market. There is ample evidence of Ticketmaster's harmful practices for limiting competition in the resale market, which the company continues to [pretextually justify](#) as necessary to prevent alleged scalping and to protect fans.

For example, take ticket holdbacks and slow ticketing—the policies of releasing limited ticket inventory or releasing it slowly. This creates artificial scarcity and drives up ticket prices. How about restricted paperless ticketing, or Ticketmaster's "SafeTix" service? This means tickets are only available on Ticketmaster's smartphone app where the QR code changes frequently, making it harder for fans to use tickets purchased from other fans or from resellers who use competing marketplaces. Needless to say, rendering invalid a ticket that was initially sold by Ticketmaster and later resold by a marketplace is an abusive practice.

Then there is delayed ticket delivery, where fans do not receive their tickets until hours before an event, discouraging them from using competing resale services. Many fans have expressed frustration that their orders through a ticket reseller were ["busted," or cancelled](#), because Ticketmaster made the process of transferring tickets within the company's proprietary app excessively difficult.

Finally, Ticketmaster requires resale ticket customers to disclose personal information to use tickets originally purchased from Ticketmaster. This expands Ticketmaster's vast trove of consumer data, which the company can leverage via data analytics technology to steer fans to Ticketmaster services. All these restrictive policies have the effect of limiting competition in resale and driving fans back to Ticketmaster's primary and secondary ticketing platforms. As fans lose confidence, they will eventually stop comparison shopping in the resale market and shop only with Ticketmaster.

## **Break Up What? Why Effective Remedies Target Incentives to Wield Market Power**

If and when DOJ files a monopolization case, we will know what Live Nation practices the government alleges to be illegal. Only then can a serious discussion about specific remedies begin. But we do know a few things right now. First, more conduct remedies are unlikely. Rules that constrain how a monopoly runs its business [do nothing to eliminate powerful economic incentives](#)

to exercise market power. Moreover, smaller competitors and customers, who are often the best source of intel about potential violations of the consent decree, fear retaliation. So, they keep quiet. Ticketmaster's historical conduct shows why behavioral remedies do not work. Indeed, as DOJ's 2020 investigation revealed, Live Nation proved its willingness to breach its commitments and found ways to work around the rules.

Most important, Live Nation may not even have to violate the restrictions in the consent decree to exercise its market power. It is so dominant that smaller rivals simply "fall in line." This silent threat is perhaps the most pernicious result of Live Nation's monopolization, and was thoroughly explored by lawmakers and witnesses at the [Senate Judiciary Committee hearing on Ticketmaster](#).

Second, we know enough about Live Nation's practices and policies to suggest what types of antitrust remedies would be most effective in restoring competition in the live events markets. There have been amorphous calls for breaking up Live Nation, but no specifics. Specifics are important in antitrust enforcement because remedies directly target a firm's incentive to exercise market power. To answer this critical question, we look again to the major source of Live Nation's market power—Ticketmaster's dominance in the primary ticketing market.

### **Break-Up Remedy #1: Taking Another Run at Live Nation's Efforts to Throttle Independent Venues**

For example, Ticketmaster's control of primary ticketing creates the ability and strong incentive for Live Nation to disadvantage independent venues. Forcing independent venues into purchasing Ticketmaster's ticketing services is easy because venues have few alternatives. Threatening independent venues is also profitable because any revenue Live Nation loses by denying independent venues events is more than regained by [monopoly markups on service and ticket fees](#).

Only a complete divestiture of Ticketmaster would eliminate Live Nation's ability and incentive to throttle independent venues. Post-divestiture, independent venues could choose a ticketing platform that meets their needs, without the [threats of retaliation](#) that DOJ's most recent investigation exposed. Entry into the ticketing market by competitors would also be easier and new entrants that offer better ticketing platforms could become viable challengers.

### **Break-Up Remedy #2: Dismantling Ticketmaster's Efforts to Stifle Resale**

What about antitrust remedies to restore competition in the resale market? With almost complete control of the primary ticketing market and now also a dominant position in resale, Ticketmaster has powerful incentives to frustrate competition from resellers and drive fans back to its own ticketing platforms. Squeezing out rival resellers is profitable, as demonstrated Ticketmaster's myriad practices for shutting down competition.

For example, Ticketmaster has little to lose from cutting off resellers that buy primary tickets from Ticketmaster. Any losses would be more than made up on higher fees on primary tickets purchased directly by fans, who have few alternatives to Ticketmaster. For tickets that are sold by fans on resale platforms, Ticketmaster's efforts to stifle competition are essentially costless because the original ticket has already been sold. So, forcing fans back to Ticketmaster's primary and secondary ticketing platforms, with high and often duplicative fees, is lucrative indeed.

Ticketmaster's strategy to leverage its primary market dominance into the secondary market has been a success. And while some have suggested a prohibition on Ticketmaster engaging in resale, this would do nothing to eliminate its incentive to use its dominance in primary ticketing to restrain competition in resale. A remedy that would fully restore competition is breaking up Ticketmaster into a number of smaller entities, just as AT&T was [broken up into "baby Bells"](#) in the 1984 consent decree.

Breaking up Ticketmaster would loosen its monopoly grip on primary ticketing and reduce the market share held by any one entity to competitive levels. Without the power of a monopoly, post-breakup competitors in primary ticketing would lack the ability to force use of their own ticketing platforms because they would risk losing substantial sales to other primary ticketing options that do not impose such restrictions. As a result, a larger number of smaller competitors would have incentives to compete, on the merits, in both primary and secondary ticketing.

## **Bootstrapping Antitrust with Good Legislation**

To recap, a hypothetical antitrust remedy that fully restores competition lost because of Live Nation's known anticompetitive practices would require two major divestments. One is to break off, or separate, Ticketmaster from Live Nation and the second is to reduce Ticketmaster's dominance by breaking it up into smaller, standalone companies. A major part of any such structural remedy would be identifying viable buyers for divested Ticketmaster assets. Looking to existing resellers or other live events market participants as potential buyers would be a critical part of this process.

What do these developments mean for tackling the Live Nation monopoly? An immediate implication is that effective antitrust remedies should be the first stop on the pathway to restoring competition lost by Live Nation's restrictive practices. Legislative proposals to limit ticket transferability or regulate resale prices are no substitute for restructuring Live Nation. And they could have detrimental effects on the operation of resale markets that are designed to increase accessibility by fans, artists, and teams.

While structural antitrust remedies should be the tip of the spear in re-injecting competition in the live events markets that have been debilitated by Live Nation, some legislative proposals could serve to bootstrap them. For example, [California SB829](#) would prohibit the ticketing provider's use of exclusive contracts with venues, a favored tactic of Live Nation's. The bill would allow, though not require, venues to contract with more than one ticketing company.

A test case for this type of policy is the Los Angeles venue, Crypto.com Arena—home to both the Lakers, ticketed by Ticketmaster, and the Clippers, ticketed by AXS. A [recent survey](#) revealed that Ticketmaster's fees on primary tickets for NBA Lakers games are higher than AXS's fees on Clippers tickets. But they are not as high as Ticketmaster's average fees for other NBA tickets—supporting the idea that non-exclusive contracting can help discipline competition.

Other bills that have been proposed, like Colorado's [SB23-060](#), would have had the opposite effect. Under current law, Colorado protects ticket transferability and, therefore, competition in resale markets. In its original form, SB23-060 would have largely granted primary ticketing companies the power to enforce whatever terms and conditions they applied to tickets, including prohibiting transferability. Prohibitions on ticket transferability, of course, would effectively shut down the

resale markets and the benefits it offers to artists and fans alike. The bill was rightly [vetoed by Colorado's governor](#) at the urging of consumer advocacy organizations, citing potential competitive harms.

There are also several proposals at the federal level. Some would be helpful to competition while other would be harmful. Take the Better Oversight of Stub Sales (BOSS) and Strengthening Well Informed and Fair Transactions for Audiences of Concert Ticketing (SWIFT) Act ([H.R. 3360](#)), and the Unlock Ticketing Markets Act ([S. 1321](#)). Among other things, BOSS and SWIFT would protect ticket transferability and, therefore, the viability of the secondary market. These bills also rein in practices such as opaque pricing and ticket inventory strategies that harm consumers. S. 1321 seeks to eliminate exclusive contracts, albeit through different means than the California proposals. Other [federal proposals](#) seek to enshrine terms and conditions into law that give artists, venues, or the ticketer the ability to limit competition through transferability restrictions, price controls, or other means. Such proposals would ultimately further consolidate market power in the supply chain, to the detriment of fans.

## **Revitalizing Structural Remedies for Monopolies**

A breakup remedy in a successful government monopolization case against Live Nation would revitalize the use of structural remedies to prevent dominant firms from using their market power to limit competition. Structural remedies in Section 2 cases have rarely been used. But their success in restoring competition in the wake of cases like *U.S. v. AT&T* demonstrate their value. In an era of intense non-bipartisanship, it will be important to generate unified political support for a monopolization case against Live Nation and a carefully crafted structural remedy that re-injects competition into the live events markets. A successful structural remedy here would also pave the way in the courts for similar remedies, when needed, in future Section 2 cases.

The good news is that, unlike other antitrust cases, breaking up Live Nation has overwhelming bipartisan support. This was abundantly clear at the Senate Judiciary Committee's recent hearing. Bipartisan support was also evident in [letters to DOJ](#) from the Subcommittee on Competition Policy, Antitrust, & Consumer Rights leadership, Chairwoman Senator Amy Klobuchar and Ranking Member Senator Mike Lee. To borrow a sports metaphor, DOJ has a slam dunk of a case to break up Live Nation and Ticketmaster, and the fans are on their side.

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