Monopoly Building

Why the Justice Department Must Block the Ticketmaster/LiveNation Deal

By David Balto | April 20, 2009
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The purpose of antitrust laws is to protect consumers from the type of unbridled power that leads to higher prices, less service and reduced competition.

Those laws were enacted almost 120 years ago to stop the conduct of latter-day robber barons, who controlled the railroads or created trusts to drive rivals from the market. Often these barons would squash new rivals by cutting off the supply of essential inputs, or—if intimidation did not work—they would simply buy them out.

This exclusionary conduct forced consumers to pay a high price for all types of goods, and eventually led Congress to pass the antitrust laws preventing firms from becoming dominant either through exclusion or acquisition.

Now antitrust laws face a 21st Century test to demonstrate if they matter. Ticketmaster, the dominant ticket seller, seeks to acquire Live Nation, a dominant concert promoter. In doing so, it is taking a page from the monopoly primer of John D. Rockefeller. Rockefeller built his Standard Oil trust the old fashioned way—by driving rivals from the market who needed essential inputs (such as access to crude supplies and the railroads). And when those rivals would not capitulate or seemed ready to compete head-to-head, he simply bought them out.

That appears to be Ticketmaster's plan. Although Ticketmaster may suggest this matter is very complex and requires the analysis of countless government economists, the facts are very simple. Ticketmaster is a monopolist and exercises that power to exploit consumers. It has a substantial market share by any meaningful measure.

Moreover, it has regularly increased prices in a market where those price increases are not justified by cost increases.

Live Nation's recent entry into ticketing posed a real threat to Ticketmaster's monopoly. Live Nation, the largest concert promoter and controller of over 140 venues including several marquee spots like House of Blues and San Francisco's The Fillmore, was in a unique position to succeed in attacking Ticketmaster's dominance. This would have been head-to-head competition—the type that leads to lower prices and better services. Indeed,

within a short time the Live Nation ticketing website was the second most visited website on the web. Industry analysts suggested that Live Nation would quickly secure over 22 million tickets annually.

For the first time in over a decade Ticketmaster faced real competition.

Did it decide to compete by lowering prices and improving service? Did it take the battle to the marketplace?

No. Faced with a significant rival that it cannot drive from the market through exclusionary tactics, Ticketmaster is trying to buy it out. It is a cornerstone principle of the antitrust laws that a dominant firm cannot use acquisitions to preserve its monopoly power. By combining a ticketing monopolist with a dominant firm in marquee concert promotion, Ticketmaster aims to do just that.

If they succeed, the resulting company will be an entertainment juggernaut able to foreclose competition in both ticketing and promotions, leading to higher prices and less service for fans while cutting off the air supply for potential new entrants and smaller rivals.

And the end to head-to-head competition is not just in ticketing. In the future there may be a variety of services in the entertainment business that new firms may offer. An example is fan management services. Ticketmaster, Live Nation and others compete in that market. If Ticketmaster and Live Nation join forces they can prevent other firms from entering into or surviving in new product spaces that need services from Ticketmaster or Live Nation.

But that is only the start of the story. By combining, Ticketmaster and Live Nation will create an entertainment giant that:

- Sells most of the concert tickets in this country through its contracts with venues
- Manages a significant number of the marquee performers in the world or controls their tours
- Owns most of the amphitheatres in the US and owns more 'club' venues, as well as controlling (through owning/leasing) a large amount of other clubs and theatres
- Owns two of the major resellers of tickets
- Owns various sources of competitively sensitive data

Ticketmaster claims that this deal is pro-competitive for everyone: artists, venues and consumers. It claims by putting everything under one roof—artists, concert promotion, venues, and ticketing—everyone will do better. Certainly one can conceive how that might

be true. But at the Senate hearings when asked about the alleged efficiencies, Ticketmaster could present claims of only $40 million in savings, a truly paltry amount for a merger combining two companies with billions in revenues. What, then, is the real incentive for the merger? Moreover, why should we assume any of those costs savings would benefit consumers? It is rivalry that leads to the incentive to cut costs and become more efficient. It is rivalry that forces competitors to pass on cost savings by reducing prices.

Without rivalry, what incentive will Ticketmaster have to achieve these savings or pass them on to consumers? There will be no incentive. That is why the DOJ has never permitted a merger-to-monopoly based on alleged efficiencies.Even if there were no direct overlaps, the merger would raise significant competitive concerns. Ticketmaster and Live Nation offer complementary services, and permitting this combination will therefore dampen competition in both ticketing and concert promotion.

The two essential inputs to create a ticketing alternative are access to artists and access to venues—Live Nation, critically, possesses both. Concert promoters depend heavily on the ticketing operation. By controlling both, Ticketmaster/Live Nation can diminish competition in either segment. It can raise entry barriers, making it harder for new companies to enter. It may also raise competitors' costs in an anticompetitive manner or reduce the incentives to compete in the industry. Perhaps most importantly, the merged firm will have access to the most competitively sensitive information of its rivals.

By combining Ticketmaster and Live Nation the merger will:

- Diminish competition in independent concert promotion, shutting out smaller rivals who are often particularly innovative in sponsoring a wide variety of entertainment, offering consumers greater choice and enabling artistic creativity. By controlling the dominant form of ticketing, Ticketmaster will be able to force venues and artists to use Live Nation as a condition of using its ticketing services.
- Reduce competition among ticket resellers, who provide a valuable service to consumers by providing convenient access to a significant number of tickets. By controlling LiveNation, Ticketmaster will further diminish the access to alternative sources of tickets, limiting the ability of consumers to secure tickets to the most highly sought concerts and events.

Ticketmaster's strategy is one Rockefeller would be proud of. The importance of securing relationships with suppliers was essential to the development of the Standard Oil monopoly. Rockefeller acquired control of dozens of essential inputs from oil barrels to railroads, to

crude supply. Eventually he was able to dry up these crucial veins for his rivals—and eliminate them.

Further Action

The two companies assert that the merger will, besides creating business efficiencies, revitalize the industry by connecting fans with artists and developing new streams of revenue for musicians. But this proposal raises very serious competitive concerns that must not be overshadowed by claims of potential innovation. Ticketmaster has perfected and preserved its monopoly power, not by creating better products and services for consumers, but through exclusionary arrangements to exclude its rivals.

Indeed, blocking this merger will only prevent a competitively unhealthy market from becoming terminally ill. For too long, consumers have paid excessive charges for basic services, enabled by Ticketmaster's exclusionary and deceptive conduct. Enforcers must take a number of steps to rehabilitate the market.

- The Federal Trade Commission should investigate the Springsteen incident (in which Ticketmaster's website covertly directed fans to a higher priced ticket site that the company also owns) to determine whether Ticketmaster engaged in unfair or deceptive practices.
- The Antitrust Division of the Department of Justice should review past acquisitions of Ticketmaster to determine if they were anticompetitive, and seek a remedy like divestiture to stop the competitive harm.
- The Antitrust Division should review Ticketmaster's exclusionary conduct, including long term contracts with venues, to determine whether they are anticompetitive. A decade ago, the DOJ chose not to challenge a wide variety of exclusionary conduct by Ticketmaster based on theoretical arguments that entry was easy or that consumers benefitted from exclusivity arrangements. History has proven that was a mistake, and the DOJ should reopen its investigation of these practices to determine how to restore competition to the ticket marketplace.

Eliminating a nascent competitor by acquisition raises the most serious antitrust concerns, and a look at the past history of Ticketmaster's acquisitions does little to ease those concerns. The claims of improved services in this merger are similar to the claims Ticketmaster made when it acquired TicketsNow, and there is little evidence that acquisition (or those that preceded it) benefitted consumers.

The lesson is simple—vertical integration in the hands of Ticketmaster can be a tool to stifle competition. The promises of a benevolent monopolist are a poor substitute for a healthy market.

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