THE LIVE NATION/TICKETMASTER MERGER: A CITIZENS GUIDE

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 — many in the music community expressed concern about the potential effects of having two huge music companies with major stakes in touring, promotions and live venue management become a singe entity. The ability of such a large company to squeeze out competition in ticket sales, booking, vendor contracts etc., 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 Irving Azoff, who had subsequently taken on the top position at Ticketmaster.

In an effort to prevent adverse market impact, 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 the monopolistic abuses and create the opportunity for additional marketplace entrants.

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

Ticketmaster
In 2008, Ticketmaster spun off from its former partner IAC and became its own publicly traded company. Later that year, Ticketmaster acquired Front Line management and became Ticketmaster Entertainment. Additionally in 2008, Ticketmaster acquired Paciolan Inc. — a developer of ticketing platform applications and host of digital ticketing systems.

Live Nation
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 ampitheaters. Live Nation promotes or produces over 22,000 events, 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 signed contractual deals with Madonna, Shakira, U2, Nickelback and Jay Z which include a range of promotional and branding rights, as well as recorded music product. In 2009 Live Nation launched Live Nation Ticketing. This platform experienced a number of difficulties resulting from traffic and was not considered a success for the company, which paved the way for the proposed merger.

Common criticisms of the merger

Prior to the merger, 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. As of 2009, Live Nation — a smaller player in the ticketing business but still the largest concert promoter in the country and the owner of major venues — had made inroads into the ticketing market via direct sales at its venues and by bundling its promotion and ticketing services.

Live Nation ticketing business may have eventually posed a threat to Ticketmaster's dominance in the market and produced consumer benefits due to increased competition. Whether this would have been the case will remain unknown, as the two companies announced their intention to merge, thereby ending Live Nation's ticketing experiment. The announcement was accompanied by public pronouncements about 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 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. The reach of a single company with established market presence in each of these areas would make it difficult for potential new entrants, and potentially force those doing business in specific areas of the industry — say, booking, promotions or management — to stay under contract with the merged company for fear of being foreclosed from the marketplace or otherwise retaliated against. Another worry was that artists under Front Line Management could be encouraged to sign agreements with the promotions wing of Live Nation (who had previously experimented with so-called "360-degree deals" where the company would take a portion of artist revenue generated from merchandise, licensing, concert sales, music, video, etc) in order to benefit from the power and reach of Azoff's management firm.

The merger would be bad 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. Without competition in the marketplace, there would be no reason to offer lower prices, and nothing preventing the increase of per-ticket costs. With good seats at major shows already priced outside of many peoples' budgets, an increase in ticket expenses could make concert attendance less of a regular activity for even diehard music fans. 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. 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.

The merger would be bad for small and independent businesses
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 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."

Concerns for artists, agents and mangers
[KRISTIN OR JEAN WILL SUPPLY ANONYMOUS/ANECDOTAL INFO FROM STAKEHOLDERS]

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 [FOOTNOTE OR LINK], 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 additional provisions meant to alleviate some of the concerns around 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 Justice in pursuit of resolution.

Consent decree conditions in plain English

Future of Music Coalition and Fractured Atlas have collaborated on a review of the consent decree conditions that we feel are the most relevant to the music community. We took pains to make the lawyerly language more comprehensible while still preserving the meaning and intent of the provisions.

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.

The consent decree also 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.

Restrictions on Live Nation Entertainment under the Merger

1) Live Nation Entertainment must help former clients make the switch to a competitor.

If any LNE client chooses not to renew a ticketing contract with LNE for some or all its venues, LNE has 45 days to provide the client with a complete copy of all venue-related client ticketing data and ticket buyer data in a form that is *reasonably* usable by the client. This provision would not:

- Alter any rights LNE would otherwise have to client ticketing data or ticket buyer data with regards to its contract with the client.

- Limit any rights the client would otherwise have to its client ticketing data or ticket buyer with regards to its contract with LNE.

Additionally, LNE is required to maintain ticketing data and ticket buyer data on behalf of its clients for no less than three years. (This provision only applies to contracts for primary ticketing services that were in effect prior to the merger approval.)

2) Live Nation Entertainment will be prohibited from bullying former partners.

LNE will not be allowed to take retaliatory action against any venues, promoters, artists, etc. that are known to be considering contracts with competitors. It will also be restricted from imposing certain conditions and forcing clients who employ its promotion services to use its ticketing services.

Nothing in this section prevents LNE from bundling their services and products in any combination to attract clients. Nor does it prohibit the company from exercising their own judgment in business matters. It merely requires LNE to not intimidate those clients it has from considering alternatives.

It also should be noted that whether LNE enters (or wins) a bid for contract with a venue, artist, or promoter or promotes shows in particular buildings is not alone sufficient to establish a presumption of violation.

3) The Firewall: LNE will not be able to share data from its ticketing clients with the promotions and management side of its business.

LNE shall not disclose client ticketing data to any employee in its promotions and management divisions. There are, however, exceptions to the firewall. In certain instances, LNE may:

- Disclose client ticketing data for a specific event to employees involved in promotion of that event as well as artist management, so long as it does so on the same general terms as offered to promoters or artist managers not affiliated with LNE.

- Disclose client ticketing data to employees who requires this information to perform functions within the day-to-day operations of LNE venues, concert promotions or artist management services.
- Disclose client ticketing data to any LNE employee where so required by law, government regulation, legal process or court order, so long as such disclosure is limited to the fulfillment of that purpose.

4) Live Nation Entertainment must open Ticketmaster's ticketing platform to competitors.

One of the greatest barriers to entry into the primary ticketing market is the development and maintenance of high-volume software platforms for ticket sales. To open up this market, the DOJ requires LNE to license a competitor to use the sophisticated backend ticketing software created by Ticketmaster. It is expected that Anschutz Entertainment Group (AEG) — the second largest concert promoter in the United States — will be the recipient of the software license.

LN/TM must enter into a binding agreement to license the Ticketmaster Hosting Platform to AEG.

- The license will include a copy of the source code and allow AEG to make limitless modifications without having to license back any improvements.
- If the option to license the host platform is exercised, LNE will create and install a functional ticketing system and website for AEG within a *reasonable* time frame according to a schedule subject to approval by U.S. federal and state governments.
- LNE will give reasonable training and support to enable AEG to operate the software and understand the source code so that it can make independent changes.

The agreement includes a private label ticketing agreement where Ticketmaster will provide label ticketing services to AEG for a period of no more than five years from the execution of the license.

- The private label ticketing agreement will be on *reasonable* terms that will allow AEG to compete effectively against Ticketmaster to secure contracts for Primary Ticketing Services.
- The private agreement shall give AEG complete control over ticketing fees charged
- AEG can ask Ticketmaster to post links to events sold under the agreement subject to reasonable, nondiscriminatory, and customary terms and conditions, on Ticketmaster's website.

5) Live Nation Entertainment will also be required to sell its subsidiary Paciolan.

Paciolan, a service that third parties use to sell tickets through their own web sites, is expected to become a significant competitor to Live Nation Entertainment. In March 2010, Paciolan was purchased by Comcast-Spectacor, shortly after LNE put the company up for sale. As a wholly owned subsidiary of Comcast-Spectator, Paciolan will operate as a separate entity for the company's New Era Tickets division. Paciolan's niche in the ticketing business includes college athletic programs, performing arts organizations, arenas, professional sports teams and museums. Paciolan will also have the rights to list the events it services on Ticketmaster.com to help its clients potentially reach more consumers. LNE must provide Comcast Spectator with all of Pachiolan's personnel information regarding production operationa and development, LNE must not interfere with employee negotiation LNE must divest Paciolan within 60 days of the closing of the merger.

How to report potential marketplace abuses

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.

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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 recreation 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 corporations combining (or not), 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 ampitheater 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, visit FMC's Rock the Net: http://futureofmusic.org/issues/campaigns/rock-net

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, check out the "The Future of Digital Infrastructure for the Creative Economy," published by FMC, Fractured Atlas and the National Association of Media Arts and Culture:

1. http://futureofmusic.org/article/article/future-digital-infrastructure-creative-economy
2.

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. The relationships established between performer and fan lays 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 had many historic problems, and there has always been a certain degree 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.