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COMMITTEE ON WAYS AND MEANS
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DEMOCRATIC STEERING AND POLICY COMMITTEE

Congress of the United States
House of Representatives

March 21, 2022

The Honorable Lina Khan
Chairwoman, Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

The Honorable Jonathan Kanter
Assistant Attorney General for Antitrust
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Chairwoman Khan and Assistant Attorney General Kanter:

I welcome your invitation to offer public comment to the Federal Trade Commission (FTC) and Department of Justice (DOJ) to modernize merger guidelines to better protect against anticompetitive deals. I write to suggest you streamline and simplify the ability of the FTC and DOJ to undo mergers that ultimately harm competitiveness and contribute to market concentration. Furthermore, I urge you to closely assess one such disastrous merger, the 2010 marriage of Live Nation and Ticketmaster, and overturn it for the good of consumers and America.

Competition may be the central keystone of a vibrant and fair economy. By promulgating freedom of choice, true competition encourages innovation by businesses while lowering prices for consumers. When competition exists, an industry thrives for all Americans. As you correctly note, while mergers between businesses can improve competition, often mergers “reduce choices for consumers, workers, and other businesses, leaving them increasingly dependent on larger and more powerful firms that have purchased greater power to dictate the terms of their deals.”¹ This is not an issue of capitalism, it is about competition. As the President said during this year’s State of the Union address, “Capitalism without competition isn’t capitalism. It’s exploitation – and it drives up prices.”²

¹ <https://www.ftc.gov/news-events/news/press-releases/2022/01/federal-trade-commission-justice-department-look-to-strengthen-enforcement-against-illegal-mergers>

² <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/01/remarks-of-president-joe-biden-state-of-the-union-address-as-delivered/>

With powers entrusted by the Congress, the FTC and DOJ hold the ultimate responsibility of approving or rejecting mergers that could negatively impact that balance of competition in favor of big business. Existing merger regulations are the main tool in the agencies' toolbox and so must be sharpened to be most effective.

First written in 1968, today's current merger guidelines and their authors could not have predicted the size and growth of our modern economy. Nor could they have anticipated the tidal wave of consolidation across virtually all industries that has overwhelmed the United States in recent decades.³

A merger between companies is not written in stone. Consolidation cannot be accepted as a law of nature, immutable and unchangeable. Rather, where a merger has harmed industry competition, stifled freedom of choice, and hurt workers, it should be undone. In strengthening merger rules, I urge you to update guidelines for reversing mergers where necessary in line with our modern national economy and capable of being implemented reactively.

The union of Live Nation and Ticketmaster is a posterchild of consolidation gone bad. When Live Nation, the nation's biggest concert promoter, and Ticketmaster, the largest ticket provider sought to combine, they assured regulators that their fusion would promote competition in the live events marketplace. Several Members of Congress, including myself, vocally disagreed. We practically begged President Obama's administration to stop the deal. But President Obama's top antitrust regulator at the time said, "there will be enough air and sunlight in the space for strong competitors to take root, grow, and thrive."⁴ Consequently, the merger was waved through in 2010.

Twelve years later, there are no strong competitors taking root, growing or thriving, in the primary ticket market and live events market. In 2008, the two companies held more than 80% of the market share and today that figure is even larger. The online ticketing market, a \$9-billion business shortly before the pandemic began, is dominated absolutely by Live Nation-Ticketmaster. Live Nation Entertainment controls "nearly every aspect" of the ticket business, from recording to record sales to licensing, talent management, venue ownership, ticketing, concessions, down to the guy who sells the hot dogs and pretzels.⁵

In 2017, I requested an evaluation of the ticket market from the Government Accountability Office (GAO), whose findings confirmed the sprawling Live Nation Entertainment system is squeezing consumers like an octopus. The GAO cited a market rife with practices that are "not fully transparent," and that Live Nation Entertainment, which claims more than half of ticket sales in the United States, engages in questionable gimmicks to conceal its extra costs.⁶ These include the ubiquitous service fees, processing fees, facility fees, and promoting fees that have become the bane of customers. Because Live Nation Entertainment controls a significant portion of both the primary and secondary ticketing markets, the extra fees give the company an enormous competitive edge. Ordinary Americans just trying to enjoy a little entertainment pay the price.

³ See <https://academic.oup.com/rof/article/23/4/697/5477414?login=false>

⁴ <https://www.nytimes.com/2018/04/01/arts/music/live-nation-ticketmaster.html>

⁵ Ibid

⁶ <https://www.gao.gov/products/gao-18-347>

Live Nation Entertainment's dominance over the live events industry is reminiscent of the old Hollywood of Jack Warner and Louis B. Mayer where studios bosses exerted near dictatorial power by writing and producing all their movies, holding exclusive contracts with actors, colluding to control how films were distributed, and owning the theaters in which they were shown. That system of vertical integration stifled independent producers until the U.S. Supreme Court forced studios to sell their theaters. The live events ticket marketplace of today is similar: mammoth, nontransparent, and wildly speculative. To protect consumers in the market, I ask the FTC and DOJ to investigate the Live Nation Entertainment-Ticketmaster monopoly.

President Biden has recognized the urgent need for deep reforms to merger guidance and our approach to anticompetitive behavior. The President's landmark executive order of July 9, 2021, set out an all-of-government response to fight the negative market consolidation across American industries that "threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers."⁷ I consider the FTC and DOJ's work here part of that fundamental effort. The FTC and DOJ's joint efforts have the potential to remake our country for the better and are a breath of fresh air after decades of inaction and neglect by our executive branch. Thank you for consideration to make it easier to undo bad mergers and to finally fix the live events market.

Sincerely,



Bill Pascrell, Jr.
Member of Congress

⁷ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>