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THE TICKETMASTER/LIVE NATION MERGER: WHAT DOES IT MEAN FOR CONSUMERS AND THE FUTURE OF THE CONCERT BUSINESS?

HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY AND CONSUMER RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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THE TICKETMASTER/LIVE NATION MERGER: WHAT DOES IT MEAN FOR CONSUMERS AND THE FUTURE OF THE CONCERT BUSINESS?

TUESDAY, FEBRUARY 24, 2009

U.S. SENATE,
SUBCOMMITTEE ON ANTITRUST, COMPETITION
POLICY AND CONSUMER RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:29 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Herb Kohl, Chairman of the Subcommittee, presiding.

Present: Senators Kohl, Schumer, Feingold, Klobuchar, and Hatch.

OPENING STATEMENT OF HON. HERB KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Chairman KOHL. Good afternoon to one and all. We appreciate your being here today.

Today we will examine the recently announced merger between Ticketmaster and Live Nation. This merger will combine two entertainment powerhouses: Ticketmaster, the Nation's leading ticketing company, and Live Nation, the world's largest concert promoter, owner, or operator of hundreds of concert venues, and a recent entrant into the ticketing business. This merger will not only expand Ticketmaster's control of the ticketing market by eliminating a competitor, but it is also creating an entity that will control the entire chain of the concert business—from artist management to concert promotion and production to ticketing and ticket resale.

We are here today to focus on what this deal will mean for the millions of concert-goers across our country. Ticketmaster and Live Nation argue that this merger will create efficiencies which ultimately will serve consumers. But we have good reason to be skeptical as to whether music fans will truly realize these benefits. Critics of this merger allege the deal will combine two competitors in the evolving entertainment business by creating an enormous, vertically integrated entertainment giant that will dominate all aspects of the business. They argue that the strength of this combined company will make it impossible for new competitors in ticketing or concert promotion to emerge, and that consumers will pay higher prices as a result.

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Live Nation owns or has operating agreements with 140 amphitheaters, clubs, theaters, and small music venues, 30 music festivals, and 305 large arenas. It also has exclusive deals with marquee artists, including U2, Madonna, and the Jonas Brothers, to name just a few. The company recently launched Live Nation Ticketing which makes it a viable competitor to Ticketmaster. Ticketmaster is the Nation's dominant ticket seller, processing in 2007 more than 280 million tickets and $8.3 billion in sales for thousands of venues—including more than 77 of the 100 largest venues. By some accounts, Ticketmaster controls 70 to 80 percent of all concert ticket sales. Late last year, it acquired a management company that manages 200 artists, Front Line Management, and a leading ticket resale company.

The combination has the potential to create one company with a stranglehold on all segments of the concert business. It raises serious concerns for independent concert promoters who give a platform to new and less established artists. When these promoters book acts in the hundreds of venues under the Live Nation/Ticketmaster umbrella, they will have to use the merged company's ticketing services. What this means is that the independent promoters will have to reveal a treasure trove of competitive information about their ticket sales to the combined company—the very company with whom they will have to compete for concert promotion. At the same time, independent concert venues will be under enormous pressure to use Live Nation for ticketing if they wish to book the hundreds of key acts controlled by the company.

Our concerns are heightened by the fact that Live Nation recently entered into the ticketing business to compete with Ticketmaster. This needed competition will be lost if this merger is completed. What does Live Nation's decision to merge with its competitor rather than fight it in the market tell us about any company's ability to compete with Ticketmaster? If Live Nation cannot compete, after all, who can?

All of this comes at a time when consumers are justifiably wary of Ticketmaster's recent acquisition of a company that sells tickets on the secondary ticket market, TicketsNow.com. Just 3 weeks ago, the consumers attempting to purchase Bruce Springsteen tickets through Ticketmaster's website were diverted to TicketsNow's website. There, the tickets were priced two to three times higher than face value, as well as a hefty service fee. Ticketmaster blames technical glitches for this unfortunate incident, but the incident does raise a serious question: Will the combined company be tempted to divert tickets to the resale market at inflated prices because there are no competitors to keep this behavior in check?

In sum, this deal raises many serious questions regarding the future of competition in the concert business. The burden will be on Ticketmaster and Live Nation to demonstrate that consumers will, in fact, be better off. Those of us who are concerned with maintaining diversity and competition in the concert business should insist that these issues be closely examined before this deal is allowed to proceed.

At this time, I would like to turn to Senator Schumer, who has, if it possible, a brief statement.

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman. I will try my best, hard, though, as it may be. But, seriously, I want to thank you very much for holding this hearing and for just running the Antitrust Committee in such a professional, businesslike, and effective way. And I am glad you are still the Chairman.

Chairman KOHL. Thank you.

Senator SCHUMER. And I am glad I am No. 2 now on this Subcommittee.

Mr. Chairman, I have made no secret of my opposition to this merger. I have told that to the CEOs of both companies in my office this morning.

First, I want to say a word, though, about Ticketmaster's recent actions in the sale of tickets for Bruce Springsteen's concert tour. We all know the basic story. Many fans were told the shows were sold out when, in fact, they were not. The fans were then provided links to Ticketmaster's own ticket-reselling site, TicketsNow.com, where they were charged many times the face value of the tickets. Talk about a way to have your cake and eat it, too. Bruce Springsteen says Ticketmaster abused his fans, and I agree with the Boss.

Ticketmaster is the only major primary ticket seller in America with a wholly owned secondary seller, and it took advantage of that corporate structure which allowed Ticketmaster to charge much higher fees with customers paying hundreds or thousands of dollars for tickets in the secondary market. They have said that this clever arrangement was caused in part by a malfunction. Given what Ticketmaster stood to gain by directing consumers to its own resell site, the episode seems to be much more about money making than about malfunction.

Now, in fairness, Ticketmaster has apologized for the incident, but to my knowledge, it still has not provided any details as to how this happened. To simply say it was a malfunction is not good enough. We need answers, not apologies, and I hope in this hearing we can hear specific answers as to what happened here and why it will not happen again.

But as far as I am concerned, Ticketmaster never should have gotten into the secondary ticketing business by buying TicketsNow to begin with. Again, in fairness, that was before the new management came in. And I think it needs to get out of that business, especially in light of this merger proposal.

So I am going to ask you, Mr. Azoff, that question, and I hope you will tell me that you agree that you/Ticketmaster needs to sell TicketsNow and make them independent of you in every way.

Now, about the merger. As the Chairman outlined, we cannot forget what this merger will mean to the music industry. Consider that Ticketmaster in 2007 sold 141 million tickets worth $8.3 billion for its clients. It is estimated Ticketmaster has 80 percent of the concert ticket market in America cornered. But most troubling of all is what Ticketmaster has chosen to do to protect its market dominance. Once Live Nation started a rival ticket-selling service that threatened to take away 15 percent of Ticketmaster's business, Ticketmaster chose not to compete but to gobble it up.

This is not the American dream, as the company's witnesses might have you believe. It seems to be monopolistic behavior, plain and simple. The one competitor who had a chance to compete is taken out of the picture.

Live Nation also, of course, has a lock on its side of the market, as Chairman Kohl outlined. It is the largest concert promoter in the world, more than doubling its next competitor in the number of tickets sold worldwide. It owns over 100 venues in the United States to boot. So 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 promoter in the world. The result would be a behemoth that would operate the majority of concert venues in America, sell the tickets to the events at those venues, and manage many of the very top artists who perform there. In short, the new merged company would have a hand in every step of the process of going to see a concert.

Now, when I talked to the owners, they said that business is bad given the economic climate these days and the merger will make things more efficient. I would say two things.

First, taking away competition in the long run almost never makes things more efficient. That is why we have this Subcommittee.

And, second, I will not forget in the days of the Clinton administration, when oil prices were very low, that the Exxon-Mobil merger was allowed. And it was said, well, prices are so low, they cannot get by unless they merge. Look what happened: much less competition, and once the market changed, they had the consumer by the neck. And I worry about the same thing with this merger. We cannot look at just the moment and take a snapshot. We have to look at the long-term effects, and good old-fashioned American competition is the best way to protect consumers. That competition would be snuffed out, the way I look at it, with this merger.

So I look forward to seeing how the companies can explain how the proposed merger could possibly be good for consumers, and thank you for my hopefully not that long a statement. I cannot say it is short.

Chairman KOHL. Not that long, but very good.

Senator SCHUMER. Thank you, Mr. Chairman.

Chairman KOHL. Thank you so much.

Now I would like to introduce our distinguished panel of witnesses. Our first witness who will testify today is Michael Rapino. Mr. Rapino is the President and Chief Executive Officer of Live Nation. Before his position with Live Nation, Mr. Rapino was CEO and President of Global Music for the Clear Channel Music Group. Mr. Rapino began his career as a concert promoter and an entertainment marketer.

Next we will be hearing from Irving Azoff. Mr. Azoff is the CEO for Ticketmaster Entertainment. Mr. Azoff joined Ticketmaster when it acquired Front Line Management, the artist management company that he founded. He continues to serve as the Chairman and CEO for Front Line Management and serves as the personal manager for a number of artists.

Our next witness will be Jerry Mickelson. Mr. Mickelson is the Chairman and Executive Vice President of Jam Productions, which

he co-founded in 1971. Under Mr. Mickelson's leadership, Jam Productions has become one of the country's largest independent producers of live entertainment.

Our next witness will be Seth Hurwitz. Mr. Hurwitz is co-owner of I.M.P. Productions, a concert promotion company, and the 9:30 Club, a local music venue. Mr. Hurwitz has led I.M.P. Productions to produce almost 10,000 events over the past 30 years.

And our final witness will be David Balto. Mr. Balto is a senior fellow at the Center for American Progress, focusing on competition policy, intellectual property law, and health care. His testimony today is also being submitted on behalf of the Consumer Federation of America. He has over 20 years of experience as an antitrust attorney in the Antitrust Division of the Department of Justice, the Federal Trade Commission, as well as the private sector.

We thank you all for being here today, and before I swear you in prior to your testimony, I would like to call on the Ranking Member of this Committee, Senator Orrin Hatch.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Mr. Chairman. I am very happy that we will be working together again on the Antitrust Subcommittee during the 111th Congress. I have enjoyed working with you. I am also grateful that you have expressed a willingness to work with me on what I believe is the antitrust issue of our time. Of course, I am referring to the gross inequities and injustices that have arisen from the so-called Bowl Championship Series. I thought you would really enjoy getting into that with me. I know that working together in a bipartisan manner, we are going to return collegiate football to an honorable state, and true champions, such as those from the University of Utah, will indeed play in a national championship game. Alas, that is a hearing for another day.

Today's hearing is vital to one of our most creative industries—the live music concert business. With the continuing rise of illegally pirated music, more and more artists are turning to live concert events as their primary source of revenue. However, live concert events in large venues are increasingly being controlled by a small list of companies. Today two of those companies are seeking to merge in a transaction that has both horizontal and vertical implications.

From a horizontal perspective, both Live Nation and Ticketmaster sell tickets to live concert events at large venues. Therefore, understanding their respective market shares and those of their competitors will be of great import during this hearing.

However, more intriguing would be the vertical aspects of this transaction. True, history has often relegated vertical merger enforcement to secondary status, but as Sullivan and Grimes in their book "Law of Antitrust" correctly point out, "Vertical mergers are subject to the same statutory enforcement provisions as any other merger." Therefore, as with any such proposed merger, it should be examined closely.

Specifically, Live Nation is widely known as a corporation with ownership or exclusive rights to place music acts at many of our

Nation's largest venues. But this is only a portion of Live Nation's business model. According to Standard & Poor's, Live Nation is also implementing so-called 360-degree deals. Under a 360-degree deal, an artist is paid a certain amount for a certain period of time. In consideration, Live Nation controls the artist's music rights, tours, and merchandise. Therefore, Live Nation is more than just a leasing agent for venues. Live Nation offers a comprehensive package of services that includes the management of talent.

Live Nation's partner, Ticketmaster, is recognized as the leader in sales of live event tickets. According to the company, last year it sold 141 million tickets valued at approximately $8.3 billion. In addition, 77 out of 100 of the Nation's largest venues has exclusive relationships with Ticketmaster.

Yet the sale of tickets is not the only aspect of Ticketmaster's business. Recently, Ticketmaster purchased a leading artist management company, Front Line Management Group. Therefore, one could argue that the comprehensive package of services offered by Live Nation and Ticketmaster will grow to an all-in-one package if the mergers are confirmed. Now, the question then arises if the proposed transaction will run afoul of the Department of Justice's enforcement policy, as articulated in their 1984 guidelines.

Mr. Chairman, I look forward to exploring these issues with you in greater depth during the hearing. I welcome all of these very, very important people to our Committee. I have great respect for each one of you sitting at the table, and I look forward to hearing your testimony in this very serious hearing.

Thank you, Mr. Chairman.

Chairman KOHL. Thank you, Senator Hatch.

We also have with us Senator Amy Klobuchar. We would love to hear from you.

STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. Thank you very much, Chairman. Thank you for holding this important hearing.

The music industry, and live music in particular, is very important to my home State of Minnesota. We are home base to many artists, and we have made important contributions to music, including Prince and Bob Dylan. Minnesotans like their music, and they particularly like to listen to live music, whether at larger stadiums like the Xcel Center in St. Paul or small music venues like First Avenue, which was made famous in the movie "Purple Rain."

You should also know that my house—I live on 6th Street, which is two blocks from 4th Street, as in "Positively 4th Street." So I care very much about this issue.

I am particularly interested in the proposed merger of Ticketmaster and Live Nation. Like many consumers, I would like to know whether this merger will raise ticket prices and whether the proposed merger will make it harder for independent concert agents to market and promote lesser known artists at smaller venues.

I would also like to hear about the problems associated with ticket resellers, which were brought to my attention, actually, in 2007 when, within minutes of going on sale at Ticketmaster.com, ticket

brokers swooped up hundreds of tickets for the Hannah Montana concert at the Target Center in Minneapolis. In order to purchase these Hannah Montana tickets, fans or, most likely, the parents of Hannah Montana fans—and you can count me as one of those parents—were forced to go on the ticket reseller sites where they would have to pay brokers anywhere between $350 to $2,000 for a $63 concert ticket for Hannah Montana.

The outcry even led to the passage of a State law in my home State called "The Hannah Montana Law," which bans the use of automated software designed to quickly purchase numerous tickets in a matter of seconds and actually attaches criminal penalties to anyone that does it.

But the problem, as I can see, with ticket resellers continues. The recent issue with the Springsteen tickets in New York and New Jersey focused attention once again on the sale of tickets on these reseller sites for hundreds if not thousands of dollars more than they were on Ticketmaster.com.

And so I would like to hear from our witnesses whether the proposed merger will make it more or less likely that this and similar anti-consumer practices will go unchecked and unaddressed to the detriment of consumers, to concert-goers, and, of course, to those Hannah Montana parents like myself.

Thank you very much.

Chairman KOHL. Thank you, Senator Klobuchar.

Gentlemen, would you stand and raise your hand to be sworn in? Do you affirm that the testimony you are about to give today will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RAPINO. I do.

Mr. AZOFF. I do.

Mr. MICKELSON. I do.

Mr. HURWITZ. I do.

Mr. BALTO. I do.

Chairman KOHL. Thank you.

Mr. Rapino, we will hear from you first. And we hope you will hold your initial statements to 5 minutes. Mr. Rapino.

STATEMENT OF MICHAEL RAPINO, PRESIDENT AND CHIEF EXECUTIVE OFFICER, LIVE NATION, BEVERLY HILLS, CALIFORNIA

Mr. RAPINO. Thank you for the opportunity to speak today. I am glad we have a chance to explain some of the rationale behind this merger.

I got into this business because I love music and I love working with artists. We did not have concerts in my small town, but I took a 6-hour bus trip to Minneapolis to see Prince as one of my first concerts. I was hooked, and I knew I wanted to work in the business. I started by working with bar bands in college and worked my way up to CEO of Live Nation in 2005.

Live Nation is a decentralized business that offers live music through a collection of local entrepreneurs. We employ over 17,000 employees across the country, including more than 100 here in Washington.

The concerts we bring to cities and towns help sustain countless jobs, from the stagehands to the security guards to nearby hotels. An economic impact study of a 2-day Live Nation show at Alpine Valley in East Troy found that the multiplier effect from a single weekend generated over $5 million for the local economy.

Our biggest stars—artists like Madonna, U2, and the Jonas Brothers—get most of the attention, but Live Nation probably does more than anyone to promote young artists. We put on over 7,000 club shows and others across the venues last year. We are probably the largest artist development company in the business right now. We will continue to work with these independent venues, promoters, in search of the next Bruce Springsteen.

We have grown the company the old-fashioned way, by sticking to our basics. Our employees are hard-working and committed. We are not overleveraged. We spent 3 years rebuilding this company from the Clear Channel Entertainment days. We are focused on our core business. We have managed our balance sheet carefully. We have grown our business 3 years in a row through the old hard values. But, unfortunately, the economic times have taken its toll. Our stock has declined by two-thirds. Our real estate holdings are gutted. And our hard work is not producing the rewards it should.

I have two choices: I can hope the economy gets better, or I can seek a more proactive approach to protect our employees, reward our shareholders, and better service artists and fans. That is the motivation behind the merger.

The music industry that existed when I entered the business is broken. In the old model, the record label supports the artist. Record sales were the hub, and everything else—from concerts and merchandising—flowed from that. Tower Records, MTV, and local radio stations were the industry storefronts.

That model is as obsolete as an 8-track tape today. Tower Records went bankrupt, MTV does not play videos, and radio stations are in a downward spiral.

Album sales have fallen almost by half since 2000. Artists are subject to rampant piracy that steals their creativity and their livelihood. Ninety-five percent of the songs that are downloaded are downloaded illegally.

Forty percent of concert seats go unsold. Computer-driven bulk purchases suck tickets out of the primary market and deny fans a chance to see their favorite performers. Fans pay more, but the performers, the promoters, and the venues do not get a dime. And fans who never get a chance to buy a ticket at face value are rightfully angry. The scalpers of today are the pirates of yesterday.

Our business is bleeding, and the real victim is the artist. The artist makes music, and others steal and exploit it.

Clinging to the old ways and fighting change is not the answer. Together with artists, local promoters and venues, and my new partner Irving, we want to offer solutions. I am not claiming we have all the answers, but we can be on the leading edge of change in our industry.

We have an opportunity to create a truly modern business by putting these companies together—something that we cannot do alone, and certainly not quickly. Far from harming consumers or promoters or artists, this deal will benefit them as we spur com-

petition and innovation. A system that empowers artists benefits everyone because that is where the value change starts. Our business model rises or falls on the ability to service an artist. If others can do it better, then the artist will go elsewhere.

I am confident this plan will work, but it is an experiment. It is a new approach for an ailing American industry. All we want is a chance to try it.

And I know this: If we do not make significant changes to the business model and if we do not build new structures, we may be back in the future for another hearing on the death of the American music industry.

Thank you for allowing me to voice these concerns.

[The prepared statement of Mr. Rapino appears as a submission for the record.]

Chairman KOHL. Thank you, Mr. Rapino.

Mr. Azoff.

STATEMENT OF IRVING AZOFF, CHIEF EXECUTIVE OFFICER, TICKETMASTER ENTERTAINMENT, INC., WEST HOLLYWOOD, CALIFORNIA

Mr. AZOFF. First I would like to thank Chairman Kohl and the Subcommittee for the opportunity to speak about the Ticketmaster/Live Nation merger. Both companies are excited about our plans for Live Nation Entertainment. We believe the combination of our two companies will benefit artists, fans, theatergoers, sports teams, museums, and all of the other facilities, performers, and spectators who use our services.

As a kid growing up in Danville, Illinois, my first concert was The Beatles in Chicago's old Comiskey Park. I was bitten by the music bug, but I soon realized that I am no musician. I was rejected by the school choir, and the only bad grades I got in school were when I tried to master the saxophone and drums in music class. My instrument of choice is the telephone.

I have spent 43 years in the music business, but through it all, I have focused on one thing: serving artists and their fans. I put myself through college at the University of Illinois booking bar bands. Together with my late friend, the gifted singer-songwriter Dan Fogelberg, and the rock band REO Speedwagon, we quit school and headed west to pursue the American dream.

I launched Front Line Management about 35 years ago. When I started managing the Eagles, they were playing venues not much larger than this room. I am proud to say that they are still my clients.

I came to Ticketmaster 4 months ago when it acquired a majority interest in Front Line Management and I became CEO of Ticketmaster Entertainment. While I have spent my career serving artists, Ticketmaster has dedicated itself for 30 years to reaching fans of live entertainment. My job now is to use the resources of both companies to enhance the artist-to-fan experience.

We constantly strive to improve our online technology, but we continue to serve fans who do not have Internet access or credit cards. That is why Ticketmaster outlets still are often crowded on weekend mornings when tickets go on sale for bands that attract a teenage audience.

We employ roughly 6,700 people who have worked extremely hard to bring us the success we have seen as a company. All of them have a stake in this merger.

As hard as we try to serve clients and ticket buyers, technology is not perfect. For example, I fully understand the frustration and anger created by the problems we experienced in the recent sales for three Bruce Springsteen shows.

A computer malfunction temporarily affected sales on our main Ticketmaster website for these shows, and many fans were then frustrated by the very rapid sell-out of the shows combined with being given the opportunity to purchase tickets on the resale marketplace, TicketsNow.com.

I have personally apologized to Mr. Springsteen and his fans about what happened a couple weeks ago. I was angered and embarrassed by the incident. As the still-new CEO of Ticketmaster Entertainment, I have pledged, and I reiterate now, that we will never let something like this happen again.

The merger will let us fully integrate our complementary strengths and eliminate about $40 million in inefficiencies—money that could be invested in more innovation. It is designed to address the obvious inefficiencies in the entertainment supply chain—the large volume of unsold tickets to events, higher costs, surcharges, and especially the explosion of the resale market.

The message I want to leave you with today is that this business is in far worse shape than most people realize. The economic foundation that supported artists in the past is crumbling. Piracy is threatening their livelihood.

Secondary ticketing is driving up prices for the fans, with absolutely no benefit to the artist. For the sake of clarity, I want to distinguish between a first sale and what I refer to here as "secondary ticketing." An artist only benefits from a first sale, which is a ticket put on the sale for the first time, whether he or she is doing so by placing the ticket on sale via Ticketmaster's regular channels, or by offering it for sale as a higher Priced VIP or Platinum ticket or through a licensed broker. A secondary sale, which occurs after the initial generally does not benefit the artist even if the ticket is sold well above face value. We just cannot cling to old ways.

There is nothing more electrifying in the entertainment industry than watching a gifted artist perform in a sold-out house.

That is the magic that drew me to this business. That is why I still go to work every day. But the live performance is only part of the story. If we cannot figure out how to support artists and ensure that they reap the financial rewards for their creativity, the stage will go dark for many who deserve a career in music.

Thank you very much.

[The prepared statement of Mr. Azoff appears as a submission for the record.]

Chairman KOHL. Thank you, Mr. Azoff.

Mr. Mickelson.

STATEMENT OF JERRY MICKELSON, CHAIRMAN AND EXECUTIVE VICE PRESIDENT, JAM PRODUCTIONS, CHICAGO, ILLINOIS

Mr. MICKELSON. Thank you, Chairman Kohl, Ranking Member Hatch, and other members of the Senate Judiciary Subcommittee, for allowing me to appear before you to hear my testimony about the competitive harms that will arise if the proposed merger of Ticketmaster and Live Nation is allowed to go through. I am here today speaking on behalf of concert fans as well as many other interested and concerned stakeholders in the music industry.

Also here today are two giants in the music business. Both Mr. Azoff, representing Ticketmaster, and Mr. Rapino, representing Live Nation, are already the two most powerful people in contemporary music. Their companies are both Goliaths, so their unification will create a business with extraordinary market power and clout unlike any that I have ever seen in my lifetime. This causes me to have serious concerns about the business I work in and I love because this new company has the ability to continue to strengthen their hold on the entire music industry even farther than what currently exists today.

If this merger is allowed to proceed, the combined entity will have the ability to suppress or eliminate competition in many segments of the music industry, including rival concert promoters, primary and secondary ticketing companies; artist management firms; talent agencies; venue management companies; record companies; artist merchandise, music apparel and licensing companies; and sponsorship companies. It is my belief this merger is vertical integration on steroids.

The amalgamation of these two companies into one should make them the poster child illustrating why this country has and needs antitrust laws. The size and scope of this new company will be unmatched and pose a formidable challenge to anyone trying to compete in the music business.

Live Nation is the largest producer of live concerts. They control the summer season of outdoor concerts. They own, as you have said, many numbers, hundreds of venues. They purchase a majority of the national indoor arena tours. They pay some performers over 100 percent of the gross ticket sales. Live Nation owns the recording and touring rights to Madonna and Jay-Z and also owns the touring rights to U2, Shakira, Nickelback, and many others. Ticketmaster represents nearly 200 performers and has more than 80 executive managers working for them.

Live Nation and Ticketmaster already have substantial market power in their respective businesses, but this merger could enable them to have an even greater competitive advantage.

Let me be very clear. What we are discussing today will impact and affect every part of the entire music industry.

A few weeks ago, Bruce Springsteen posted a letter on his website after a ticketing problem occurred when tickets to some of his concerts went on sale at Ticketmaster. One point that Bruce made really hit home when he stated "the one thing that would make the current ticket situation even worse for the fan than it is now would be Ticketmaster and Live Nation coming up with a sin-

gle system, thereby returning us to a near monopoly situation in music ticketing."

As I have pointed out, this merger is much larger than just the ticketing business since both Live Nation and Ticketmaster could attempt to use their combined market dominance to monopolize the entire music industry. This is a very compelling reason to vigorously enforce antitrust legislation, but make no mistake about it, this can be very difficult because of the enormous political power these companies have attained. Just look at their board of directors to understand the resources they have available to support and lobby on behalf of their effort to proceed with this proposed anticompetitive merger.

The enforcement of antitrust laws over the years has been uneven depending on the party in power rather than preserving the interests of our free market economy to sustain and foster competition in order to protect consumers and companies from unfair and harmful business practices. I hope and pray that the issues I have raised today will lead policymakers and our enforcement agencies to conclude that a large part of the Nation's live entertainment industry would be seriously if not irreparably impaired by a Live Nation/Ticketmaster merger.

Thank you for your time.

[The prepared statement of Mr. Mickelson appears as a submission for the record.]

Chairman KOHL. Thank you, Mr. Mickelson.

Mr. Hurwitz.

STATEMENT OF SETH HURWITZ, CO-OWNER, I.M.P. PRODUCTIONS AND 9:30 CLUB, WASHINGTON, D.C.

Mr. HURWITZ. My name is Seth Hurwitz. I have been an independent promoter for the last 30 years. But the free market system that allowed me and other promoters to thrive and to offer the music fans of this country so many different choices for their entertainment is in trouble. So while I am honored to participate in these proceedings, I am deeply sorry that it has taken this long for everyone else to start figuring out what is going on here. Apparently, it took something as simple as not being able to get Bruce Springsteen tickets to finally wake the public up.

I am going to start with a short history of how we got here.

The market used to be healthy. Concert promoters had their own geographical areas and competed in the individual markets. The promoters that did the best jobs, with the best venues, and the lowest ticket prices, got the shows. The customers then got concerts in the best places with the lowest ticket prices.

But then a roll-up artist named Robert Sillerman showed up with a plan. He consolidated as many promoters and their venues as he could buy under one roof and touted his plan as what was best for the consumer and the industry. He paid whatever it took to sign up the acts for the tours, all to give the appearance of an undeniable juggernaut. He sold the conglomeration to a company called Clear Channel, under the veil of gaining control of the industry through vertical integration—in this case radio. They owned over a thousand radio stations.

It did not take too long for folks to figure out how rotten this new Clear Channel situation was. In fact, one of Mr. Azoff's own clients, Don Henley of the Eagles, even testified against it. There were accusations of being denied airplay for not playing radio-sponsored concerts—those were piling up—and a lawsuit from an independent promoter in Denver that could not buy airtime or get promotion for his independent concerts.

With antitrust allegations mounting, Clear Channel spun off the company and called it Live Nation. Same principles, same business model, but it was not dragging Clear Channel down anymore.

By now, overpricing on every level had become the order of the day. Even bigger offers were put in front of bands with the accompanying ticket prices that justified them. And the more money it took to lock these tours up, the higher those tickets went.

Yes, of course, the bands could have said no, just like my kids could say no if I put ice cream in front of them for dinner. But the idea of blaming the artist for ticket prices is completely out of context. The offers come from the promoters who are supposed to know their market, and in Live Nation's case, they are the self-proclaimed leader of the concert world who claim, then and now, to know what is best for everyone.

At this point, there are only a few competitors left. They finally landed on Boardwalk and bought the last remaining piece—House of Blues Concerts, which had clubs and amphitheaters that people preferred to play. With each purchase, they could squelch competition and confuse the investor about the company's lack of financial health by touting the added grosses as growth and actually heralding the mounting losses as investments.

And now their next step to completely dominate the industry is to control the ticketing. They announced their own ticket system and spent millions to develop it. It lasted about a month. One month.

So what is their next move? Same as it ever was: Buy the competition and ask everyone to trust them to serve the needs of the people.

I suppose it could happen. I am sure there was a dictator somewhere in history who honored that blind trust. I cannot think of one now.

So the question is: How much control is too much? When do they get told to stop? But why would they stop if they do not have to? You cannot blame Live Nation at this point any more than you can blame a shark for eating people.

As far as using another ticketing service, there are simply situations where it will not be possible to bring in a new ticketing system without a very steep, painful, expensive curve that no major act will be willing to endure. Live Nation themselves have admitted this, and that is why we are here today.

Now, for the record, I have never had a problem with Ticketmaster I could not work out, but that is because we have competition here in D.C. In fact, I use Tickets.com for the 9:30 Club and Ticketmaster for my amphitheater and arena shows. I feel it is very important to keep both entities in play for competition's sake, or I would be sleeping in that bed that I made—which leads me to some other beds about to be made here. If this merger

is allowed to happen, my biggest competitor will have access to all of my sales records, customer information, on-sale dates for tentative shows, my ticket counts, and they can control which shows are promoted and much more. This will put all independent promoters at an irreparable, competitive disadvantage. This would be like Pepsi forcing Coke to use its services as distributor.

So let's talk about the acts again. Yes, a couple of them who landed 70 million paychecks, or those who would like to get them, from Live Nation finally spoke up last night in support. But outside of those few, why have we not heard from anyone besides Springsteen? It is because they fear for their careers, and they do not dare cross the largest promoter and venue operator, especially if they end up being the Ticketmaster as well.

Someone famous recently said, Competition is a win-win situation because it is great for consumers. Antitrust," he continued, "helps to keep that system in force. It addresses the temptation that some businesses will sometimes experience, to merge with key rivals instead of outperforming them, to agree not to compete too hard, or to sabotage rivals' efforts to serve consumers instead of redoubling their own."

That someone was Barack Obama. I hope he backs it up, and I hope you do, too.

Thank you for letting me speak today.

[The prepared statement of Mr. Hurwitz appears as a submission for the record.]

Chairman KOHL. Thanks, Mr. Hurwitz.

Mr. Balto.

STATEMENT OF DAVID A. BALTO, SENIOR FELLOW, CENTER FOR AMERICAN PROGRESS, WASHINGTON, D.C.

Mr. BALTO. Thank you. Chairman Kohl and Ranking Member Hatch, I want to thank you on behalf of the consumers of the United States for the important mission of this Committee. Last year, you held hearings on the JBF/National merger, which involved beef processing, and the Highmark/IBC merger. In both cases, you advised the antitrust enforcers just to say no, and that is what they did. And in the past month, both of those mergers have been dropped. Because of that, millions of consumers of health insurance and beef in the United States will receive the benefits of competition.

I have a simple message for you today. Ticketmaster has perfected and preserved its monopoly power, not by creating better products and services, but through exclusionary arrangements to exclude its rivals. Now, faced with the first significant threat in a decade to that market dominance, it is trying to buy it out of the market. It is a cornerstone principle of the antitrust laws that a dominant firm cannot use acquisitions, such as this one, to preserve its monopoly power. Just as you did last year, you should say no, and the antitrust enforcers should do the same.

Consumers pay a lot for Ticketmaster's dominance. In a Boston Globe editorial called "Ticket to Gouge," they noted that Ticketmaster's charges can increase the prices of seats by 20 percent, and that does not include the additional $2.50 if you want to

print your tickets at home. I can print lots of tickets at home. Only Ticketmaster charges me for that honor.

Simply from a straightforward horizontal concern, this merger is anti-competitive. They may say that Live Nation would not have done much. Well, industry analysts said that they would take 22 million tickets. I brought to you a printout from a website that monitors hits on ticketing websites, and it shows you that Ticketmaster is now the—Live Nation is now the No. 2 website in terms of ticket hits on the Web. That shows you the type of innovation and competition that would arise if this merger is prevented, if Live Nation continues to compete and be in the marketplace.

But this merger, as Mr. Hurwitz and Mr. Mickelson both articulately pointed out, raises severe vertical concerns by combining the dominant concert promoter with the monopoly ticket firm. There are three anti-competitive effects, vertical anti-competitive effects.

First, it will diminish competition in primary ticket distribution. The only reason Live Nation can mount this challenge is because it has this control over concert venues. No one else is going to have that. That will prevent any entry for the future.

It will diminish competition in terms of independent concert promoters. These independent concert promoters offer an important source of innovation and creativity in the marketplace. That will be lost if you allow its rival to basically be able to ransack its files and control their ability to compete.

It will reduce competition among ticket resellers, such as StubHub, by putting Ticketmaster in a position where they can control access to ticket resellers.

The fundamental question here is one of efficiencies, and the parties have told you consumers will be better off. Let us be clear about this. Efficiency under the antitrust law means something that leads to lower prices or better products for consumers. Did their acquisition of TicketsNow lead to lower prices or better products for consumers? No. It led to market manipulation and higher prices to consumers.

It is Ticketmaster's burden to demonstrate that those efficiencies will outweigh the competitive harm. They say in their testimony today that the efficiencies are $40 million. Go back, look at past mergers where people have testified before you. You will see that figure is paltry compared to the amount of sales.

But the lesson is simple here: Vertical integration is a fertile medium for harm. Please look at the cases in Footnote 6 of my testimony that detail past examples where vertical integration has been harmful.

But the Committee should go further than recommending opposition to this deal. This is a competitively unhealthy market. I have three recommendations for this Committee.

First, advise the FTC's Bureau of Consumer Protection to investigate the Springsteen incident and determine whether Ticketmaster has violated Section 5 of the FTC Act.

Second, advise the Antitrust Division to look at past acquisitions by Ticketmaster. If those past acquisitions, like the TicketsNow acquisition, have led to competitive harm, those acquisitions should be undone.

Third, the key to Ticketmaster's monopoly power, the reason why this market is competitively unhealthy is Ticketmaster's exclusivity agreements. Unfortunately, 10 years ago, the Antitrust Division did not step up to the plate and challenge it. Fortunately, economic theory and the law has evolved, so we now realize how those arrangements can be anti-competitive. And 10 years of excessive prices also demonstrates how these agreements are anti-competitive. The Antitrust Division should investigate those agreements and challenge them if they determine they are anti-competitive.

Thank you very much.

[The prepared statement of Mr. Balto appears as a submission for the record.]

Chairman KOHL. Thank you very much. Gentlemen, we will have questioning rounds now of 5 to 7 minutes.

Mr. Rapino and Mr. Azoff, you are both operating very fine ongoing, profitable businesses. You have a history of making profits, and that is the American way, and we certainly commend you for that.

Just a few months ago, we were discussing the competitive aspects of a merger between satellite radio companies XM and Sirius, and their argument was—and eventually it prevailed—that separately they were going to go out of business because they just could not function unless they were allowed to merge. We challenged that, and they prevailed. And as things turned out, they probably were not totally incorrect. If you followed the history of their businesses over the past 6 months or a year, it really has indicated that they need to merge or they needed to have merged if they had any chance of succeeding, and that overcame the question of competition between the only two satellite radio companies, XM and Sirius. They were able to merge, and they still have a lot of problems because they just cannot seem to make it work.

By contrast, your two companies are doing just fine. You are two successful companies. So why shouldn't we say to you go on, competition is what spurs in our country efficiency and competitiveness and the best value for consumers, all the things that capitalism is supposed to bring to consumers by way of competing companies for their services? That is what you represent. So why should we say to you we will throw that out the window, we will not believe that competition is what brings out the best in companies in serving their customers, and believe a whole new doctrine on your part, which is to say let us merge, let us really be not only strong and dominant but the overwhelming company in that industry making it very difficult for anybody to compete with you and believe that that is going to bring—once you have that dominance and that monopoly, that is going to bring the best service to consumers at the best prices? Mr. Rapino, you strain our sense, you know, of common sense, Mr. Azoff. Now I am sure you feel differently but explain to us. Why should we let you merge? Mr. Rapino, then Mr. Azoff.

Mr. RAPINO. I will just start on the Live Nation front. There is lots of competition in the concert business right now. We have anywhere in the 35- to 38-percent market share, depending on how you want to look at the pie. AEG is a very big competitor of ours, and across the country there are strong local promoters in every city.

I think here in Washington, Seth would have a very strong market share. I think he does 17 percent of the shows; we do 14 percent. In Chicago, I think we do 16 percent of the shows, and Jam does 29 percent. So we have no market in America where we would not have a strong, at least three-party minimum-competition.

So competition in the concert business is healthy. The debate I am having as I talk to artists and fans is, so how are we going to change the model? How are we going to service them better? How are we going to provide a better place for artists to promote their music, to take advantage of the situation where the labels have let them down? How do we provide a new model for the artists of the future? Who will provide all those young artists the new business model? And who will provide the fan a better model? We do not have the model figured out. The model right now is broken for the fan. They are confused about ticket prices, and how they can get access to concert tickets.

So the change needs to be made in this business, whether it is us, whether it is others. Whoever has great ideas, we are open to them. But this industry is not going to exist in a profitable way or deliver any of these fan and customer needs in its current configuration. Vertical has happened in the record label. Most record labels now would be involved in all areas of the business, from record label to publishing to concerts to T-shirts to ring tones to websites.

So we looked at a model that said how can we service the fan and the artist of the future. The model needs to change, and we believe this is a good start.

Chairman KOHL. Mr. Azoff.

Mr. AZOFF. I agree with everything Michael said. I would also like to add that this is the first time in the history of the music business that it would give artists control to get their goods bundled and sold directly to the fan.

You can no longer break a new artist with radio. I think someone mentioned the lack of video airplay. We are not breaking any new artists. If you look at who is currently selling tickets, it is all the older established acts in most cases. And, you know, for the first, time there is a complete inefficiency, there is a complete lack of respect for the music side of the business from potential sponsors and advertisers that we think together these complementary businesses will get some of that, you know, those areas available to artists.

We really are complementary businesses. You know, as of 30 days ago or 45 days ago, we sold every Live Nation ticket. So, you know, we are not going to sell one more ticket than we did last year. To paint the ticketing side of the business as not competitive is just not accurate. Major League Baseball owns Tickets.com. There is a company called Veritix that has taken three of the big arenas with NBA teams, New Era Tickets in Philadelphia, and, you know—and then we have been told and we believe that if this merger were approved, many of our larger clients would opt out. The new ticketing company in Colorado called Ticket Horse, actually the owner of the Denver Nuggets, has formed the ticketing company. The technology entrance into ticketing these days is not as vast as one might think, and there is plenty of competition out there.

From all the comments that I hear, I think so many people would be upset about this merger that I am sure a lot of our clients would leave. And I do not really play the market share game. We do not care about our market share. What we care about is can we deliver for artists, deliver for our fans, deliver for our clients, whether they be teams or museums or, you know, whatever.

Ticketmaster has, as I am told, about 11,000 clients. We serve a lot of municipalities and nonprofits. The music business is not as healthy as you would think. I just came to ticketmaster recently, and I assure you that, you know, there are real possibilities, especially in this economy, that, you know, instead of sitting here talking about a merger, I might be at home thinking about how many people we have to fire and how many accounts we have to cut.

So, you know, I think on a number of grounds, especially from allowing rights-holders to pursue their dreams, that this merger makes sense.

Chairman KOHL. You both certainly do expect that your companies together will be bigger, better, and more profitable than ever before; otherwise, you wouldn't be doing this. You have not addressed that at all. And you are not serving your shareholders' interest unless you can make that claim. But in your statements, you do not make that claim at all. You would not be talking with each other unless the combination were bigger, better, and more profitable than the individual businesses. And you have every right to do that, and we have every right to challenge it.

But I am, I must say, disturbed by your unwillingness to discuss the main reason for the merger. Thank you so much.

Senator Hatch.

Senator HATCH. Thank you, Mr. Chairman.

Mr. Azoff, according to the Chicago Tribune, under Live Nation and Ticketmaster's existing business model, last year ticket prices for the top 100 tours averaged $67, more than double the 1998 average, as I understand it. Now, this is far higher than the rate of inflation. Now, these figures are especially disconcerting since Live Nation and Ticketmaster argue that their transaction—your transaction will create efficiencies in the marketplace. Granted that the merger will most likely result in the reduction of fees and costs associated with independent promoters and management. However, the businesses of these independents are already widely considered to be in decline.

For example, Jam Productions, whose Chairman Jerry Mickelson is here with us today, is testifying, has testified and stated in his written testimony that his company in 1996 "produced 130 arena concerts but in 2008 only produced 35. The single most profitable part of our business has been dramatically impacted and continues to decrease."

Therefore, the question I naturally have is: How can the Subcommittee believe that ticket prices will go down or hold steady as a result of this transaction if the independents are already struggling?

Mr. AZOFF. Thank you, Senator Hatch. First of all, the demand for arena shows is way down from 1996 until now. The industry has not been breaking acts. In the old days, where an act might play 4 days in a city, they might play 1 or 2 now. I think every

arena in America has suffered a reduction in the number of shows over the past 10 years—a great reduction—and there has been a narrow casting-out to smaller buildings because people just cannot draw that.

Every entertainer I manage would like to charge less for tickets. You know, you accurately stated that the amount of money they make from recorded music has been drastically reduced. Their publishing royalties, therefore, are drastically reduced. And the explosion of the secondary resale market, which artists in the most part do not share in, has drastically increased.

So if there is a model where you can sit down with an artist, they just want to make their nut and the profit that they want. Artists do not sit around and say, "Let's raise prices." You know, if we are successful in doing this, I for sure think that we will be able to show that ticket prices will go down because it will create a bigger pot of money for artists from other avenues in their careers.

Senator HATCH. Okay. Mr. Rapino, I understand that one of Live Nation's major arguments in favor of this transaction is that artists will have a greater say in setting concert ticket prices. However, at the same time, Live Nation has been implementing what has been referred to as 360-degree deals. You know, such transactions entail paying an artist a certain amount for a certain period of time. In consideration, Live Nation controls the artist's music rights, tours, and merchandise, at least as I understand it.

In addition, if the merger is ratified, the resulting company will continue to be dominant in concert ticket sales. Therefore, if you are able to control an artist's music rights, when and where they perform, and the means by which tickets are sold, why would you allow the artist to influence the ticket price?

Mr. RAPINO. Two points. On the 360-degree deals, which receive a lot of press, we have four of those arrangements. We do over 20,000 shows a year around the world and deal with 1,500 artists. So it is a very small—less than 1 percent of our strategy. There are some artists who have been looking to find new partners and new revenue sources as the labels have shifted their model.

So those four artists that we deal with, that is all we have in those 360's. We have not expanded that in the last year, and we are, again, experimenting with what is the right business model for the future.

As far as the competition on the competitive side, you mentioned independents. Again, I would just say we have a 38-percent market share. I do not believe our market share has increased in 8 years straight. So whatever market share that Jam or Seth has lost was probably a function of AEG, another large company that entered the market.

As far as the ticket price, again, it is a bit of—everything we learned in business school does not apply to the music business. I want the lowest ticket price possible. Forty percent of tickets are unsold. Every time a consumer walks in the door, I make about $12 to $14 per head on the ancillary business. I lost $80 million at the door. I do not make money on the ticket in general. An average promoter, if he is lucky, makes about $4 out of every $100 on the ticket price.

Our motivation is to keep the ticket price as low as possible and get everyone in the building. That is the business model of a promoter.

The artist, though, over the years has had an incredible new model. They have 18 trucks on the road, from the U2s to the Madonnas. They have become a very big spectacle. An artist's job then is to figure out how to maximize his revenue on the road. So his ticket price is a sole function of his operating costs, and the bigger the tour, the longer the tour, it tends to be the bigger the ticket price.

The ticket prices are set by the agent. The agent calls up Seth and I and says, "Here is what the guarantee is," or "Would you like to bid on the show?" And they have a number that they need to get to. We do not set the guarantee. We do not set the ticket price. We only decide as promoters' can we afford to promote that show and make any money? And over the last 2 years, Live Nation in all of our amphitheaters we have initiated $9 tickets, three for four's. We found all the promoting ways we can to try to grow attendance at our venues, and I think we are one of the leaders in that business across the Nation.

Senator HATCH. Well, for both of you, I appreciate the cooperation that your firms and your representatives have extended to us here on this Subcommittee. However, there still remains a level of ambiguity as to your company's respective market share and the horizontal aspects of this transaction. Therefore, I hope you will bear with me as—well, maybe I do not have time to ask any more questions, but I will submit these questions in writing, and maybe you can answer them for me that way.

I am very concerned because, you know, I know that this is a tough business. I know that most musicians are having some difficult times. And like you say, there are very few real headliners, but there are a lot of young, up-and-coming people who can really be headliners if we can keep a system going that will give them opportunities.

So I am very concerned about that as well, and we will just have to see. But I will submit the rest of my questions in writing so that I do not take any more of the Committee's time.

Thank you, Mr. Chairman.

Chairman KOHL. Thank you, Senator Hatch.

Senator Schumer.

Senator SCHUMER. Thank you, Senator Kohl.

So, Mr. Azoff, Mr. Rapino, we did have a good meeting earlier today, and I told you of some of the concerns I would be raising at this hearing to give you some time to give some answers. I want to thank both of you and all the witnesses for being here today.

First, as I said in my opening statement, we need to get to the bottom of what happened with the Springsteen debacle, and a debacle it was. At 10:01 on February 2nd, after the New Jersey concert was sold out, visitors to Ticketmaster were provided a link to another site, TicketsNow, which supposedly sold-out tickets to the very same concert were available at several times the price. So I have a series of questions I want to ask you, Mr. Azoff, and to help me get through it in the time allotted, just try to answer them yes or no if they do not need an elaboration.

First, Mr. Azoff, you suggested this was a computer glitch. I think we need a better explanation, a more detailed explanation than that. So, first, Ticketmaster owns TicketsNow. Isn't that correct?

Mr. AZOFF. Correct.

Senator SCHUMER. And Ticketmaster earns money through tickets sold in the secondary market through TicketsNow, right?

Mr. AZOFF. Not a lot.

Senator SCHUMER. But the answer is yes.

Mr. AZOFF. Yes.

Senator SCHUMER. In fact, am I correct that Ticketmaster is the only primary ticket seller that provides a link to a secondary seller that it also owns?

Mr. AZOFF. I believe that Veritix also has a secondary site, and it is pretty common in the business for primary sites to so-called—I do not know if the right word is "link," but allow buyers the option of going to the secondary site.

Senator SCHUMER. Well, let me ask you this, because that is not quite relevant, and we will——

Mr. AZOFF. Okay.

Senator SCHUMER. Okay. In fact, Ticketmaster stands to gain more in fees and markup from tickets sold on TicketsNow. Isn't that correct?

Mr. AZOFF. No, because a very—I believe—you know, it would depend show to show, but so many fewer tickets sell on the secondary site——

Senator SCHUMER. Talking about per ticket, you would rather sell a ticket on TicketsNow than Ticketmaster. Do you make more money in general?

Mr. AZOFF. I don't—not net, no, I don't think so. The costs of running a secondary site are extremely high.

Senator SCHUMER. Right, but the gross—the amount you get——

Mr. AZOFF. The gross amount is higher——

Senator SCHUMER [continuing]. Initially is considerably higher.

Mr. AZOFF [continuing]. But I don't think it is fair to characterize the net amount. I could——

Senator SCHUMER. Like $7 compared to $30. Is that right, on the gross?

Mr. AZOFF. Could be way more.

Senator SCHUMER. Okay. What were the Ticketmaster fees on the Springsteen concert? Your fees.

Mr. AZOFF. I don't remember—I don't know the exact gross fees. I can tell you that on average, in 2007, we were paid for printing 141 million tickets. We make an average of $2.

Senator SCHUMER. But I am talking about the gross fee that the concert-goers pays.

Mr. AZOFF. That varies——

Senator SCHUMER. But on the ticket on the Springsteen concert——

Mr. AZOFF. I don't know. I don't know the exact fee.

Senator SCHUMER. I will ask unanimous consent he be allowed a day to submit that in writing?

Chairman KOHL. Without objection.

Senator SCHUMER. Okay. And what were the ticket fees—do you know the fees for—the TicketsNow fees for the Springsteen concert?

Mr. AZOFF. I don't, but all ticket resellers are based on usually a percentage of the sales——

Senator SCHUMER. My understanding is you made about $7 on Ticketmaster gross—I don't know your—versus $30 on TicketsNow.

Mr. AZOFF. It is unfair to characterize——

Senator SCHUMER. I understand, but is that correct, what I said?

Mr. AZOFF. I am not sure.

Senator SCHUMER. It is not 7 and 30 or close to it.

Mr. AZOFF. I don't know. I don't know. No, I don't think those are——

Senator SCHUMER. It is not correct or is it that you don't know?

Mr. AZOFF. I don't know, and I don't think those are accurate numbers.

Senator SCHUMER. You can have a day to—that is easily verifiable.

Mr. AZOFF. Thank you.

Senator SCHUMER. So submit that in writing.

Mr. AZOFF. Okay.

Senator SCHUMER. Okay. Who was responsible for the so-called malfunction? Was anyone fired? Was anyone disciplined? Now, you did apologize for this so-called malfunction.

Mr. AZOFF. There have been some people reassigned. If you would like to know specifically what happened, I will get it exactly right. I have a few comments I could make to that if you would like to hear them.

Senator SCHUMER. Here is what I am going to do. Again, submit those in writing, OK? But the writings are under oath and all of that, so we know they will be accurate and all that.

These glitches have happened before. Isn't that right?

Mr. AZOFF. Glitches are—you know, it is technology. Sometimes it breaks.

Senator SCHUMER. But the same type of situation that we saw with Springsteen, this is not the first time it happened?

Mr. AZOFF. I think it is the first time this type of glitch happened.

Senator SCHUMER. That, in other words, immediately after a concert was sold out——

Mr. AZOFF. To my knowledge——

Senator SCHUMER. Ticketmaster did not refer—there is no other instance where Ticketmaster did not——

Mr. AZOFF. I don't know——

Senator SCHUMER [continuing]. Refer to TicketsNow?

Mr. AZOFF. We—listen, that is a practice that, as you know, we have ended. That is a practice that I was going to end prior to the Springsteen event.

Senator SCHUMER. But it didn't—but it happened before, right?

Mr. AZOFF. Yes.

Senator SCHUMER. Okay. It seems to me—your answers obviously do not satisfy me, so I want to ask you a $64,000 question, and you could help yourself with this, obviously. But maybe you do not want to do it.

First, didn't Ticketmaster make a mistake in getting into the secondary market to begin with? And isn't the only real solution now to get out of that business and have Ticketmaster sell TicketsNow?

Mr. AZOFF. First of all, I was not at the company when it purchased the——

Senator SCHUMER. I know. I am asking you your judgment.

Mr. AZOFF [continuing]. Purchased TicketsNow. Personally, I don't believe there should be a secondary market at all.

Senator SCHUMER. Okay.

Mr. AZOFF. Okay. I believe that scalping and resales should be illegal, but that is—you know, I am one man of——

Senator SCHUMER. Give us some inkling as to whether Ticketmaster is thinking of, would consider, will sell TicketsNow.

Mr. AZOFF. You know, I have spoken with senior executives at Ticketmaster and members of my board as to why Ticketmaster thought they needed to buy TicketsNow. It was for—they felt that this was a business that in the old days you would go stand out on the corner, and it led to complete chaos. They got into the business because a lot of teams and a lot of other clients asked them to get in the business and create a transparent model.

Senator SCHUMER. Okay. My time is limited. Is it your view—yours, not your board's, not the company, but Mr. Irving Azoff's—that Ticketmaster should sell TicketsNow?

Mr. AZOFF. My view is I never would have bought it. I don't have a view currently because I need to do some more investigation, because my answer has to represent the various teams and other people that we——

Senator SCHUMER. All right. At least you will say that you shouldn't—that Ticketmaster, you weren't the owner then—shouldn't have bought it.

Mr. AZOFF. I wouldn't have bought it, no.

Senator SCHUMER. Are you open to selling it?

Mr. AZOFF. Listen, we are a public company. If you would like to make an offer, Senator, we would love to hear it.

[Laughter.]

Senator SCHUMER. Well, I could not afford it. I can barely afford to buy one ticket on TicketsNow.

Mr. RAPINO. And, Senator, when all of those companies approached Live Nation over the last couple of years, from StubHub onward, to be bought, and we absolutely stayed out of that business.

Senator SCHUMER. Good for you. Maybe Mr. Azoff will come to your wisdom at that.

My time is up. I do have more questions if there will be a second round, Mr. Chairman.

Chairman KOHL. We will do that.

Senator SCHUMER. Thank you.

Chairman KOHL. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

To follow up on what Senator Schumer was asking, Mr. Azoff, if you are not going to sell TicketsNow, how do you plan to ensure that some of the Springsteen incident where I talked about what happened in Minnesota, that these very best seats, in fact, go to the fans that want them, that they are sold at face value, that they

are not sold at a marked-up price? How would you do this given what we have seen over and over again?

Mr. AZOFF. Well, first of all, you know, we have instituted a policy at TicketsNow where you will no longer have the option of going from the primary site at Ticketmaster to TicketsNow.

Secondly—and I believe we are the only major reseller to do this—we are no longer going to allow the pre-listing prior to on-sale for any of them. We have also come up with a plan to limit some of the search off of the search engines back to TicketsNow.

The whole secondary—one of the reasons for this merger is the whole secondary area is a mess. In a perfect world, I personally would hope that there would be a more transparent, accurate primary that would do away with the need for any secondary whatsoever.

You should also understand that Ticketmaster does not control what tickets go on sale and what tickets do not go on sale. There are tickets held by various parties throughout the business, and these tickets are the ones that generally end up on the secondary sites.

Senator KLOBUCHAR. So do you think the merger will bring the prices down for the tickets?

Mr. AZOFF. Yes, I do.

Senator KLOBUCHAR. Have past acquisitions that you have made brought tickets down?

Mr. AZOFF. I have not made any past acquisitions.

Senator KLOBUCHAR. Well, that Ticketmaster has made. Because the numbers I look at show that tickets have been going up.

Mr. AZOFF. Tickets have been going up.

Senator KLOBUCHAR. So you do not have any proof that any——

Mr. AZOFF. They are rising about 4 percent a year, I believe. I will also say—I would also like to get on the record that when people hear what Ticketmaster's service charge is, you know, Ticketmaster was set up as a system where they took the heat for everybody. Ticketmaster frequently gets a minority percentage of that service charge. In that service charge are the credit card fees, the rebates to the buildings, rebates sometimes to artists, sometimes rebates to promoters. So Ticketmaster has been the—we are like the IRS. We deliver bad news. You know, if you get a ticket to the concert, a few people get a good ticket; they are happy. The people who do not get great seats, they are unhappy. And there to a great event, there are untold thousands that get shut out. And we take the brunt of that. And we also take the brunt, you know, which is the other thing that we are trying to accomplish is to go to all-in ticketing. We are trying to talk as many rights-holders as we can into going to, you know, one-price, all-in ticketing so the public knows what the total cost of the ticket is when they get there.

Senator KLOBUCHAR. Okay. Mr. Hurwitz, do you want to talk about if you think this is going to bring prices down, this merger, and some of these other claims that were made early on about how it is going to result in eliminating inefficiencies, eliminating large volumes of unsold tickets, address the problems with the secondary market?

Mr. HURWITZ. Well, I am a little confused because today they are saying business is bad, and yet with all their quarterly reports, they say business is great. So I do not really know whether business is good or bad on their side of things. Whichever it is, I am not sure how combining improves either situation or helps either situation.

As far as the secondary ticketing business is concerned, I personally have never sold a ticket to a scalper. Not that I am claiming sainthood, but in that particular topic, I have never sold a ticket to a scalper. I think that what happened was people started looking at these scalpers and seeing other people making money on their acts, and our business is fraught with people counting other people's money and saying, "If they are making money, I should get a piece of it."

I think what happened was that people started looking at the secondary ticketing market and saying, "If they are making money on a product that we are controlling, we should be getting a piece of that," and they got into it. I think it is wrong. I would never do it. It will go on whether we do it or not, but that does not mean I have to participate in it.

Senator KLOBUCHAR. Mr. Balto, the question about if the prices will go down, and have you seen when you have studied this market they have gone down before with acquisitions?

Mr. BALTO. Well, first of all, you must recognize that what compels companies to reduce prices is competition, and both of these firms are dominant firms in the market. Nothing after this merger is going to force them to lower prices. It is only rivalry that does that.

Second, you have to look at the past experience of their acquisitions. The TicketsNow acquisition—which, by the way, the Justice Department cleared without issuing a second request—has not led to any benefits. In fact, Mr. Azoff has difficulty justifying why it ever occurred in the first place. There are only two reasons why acquisitions occur: either to go and bring benefits to the company, either to bring some kind of pro-competitive benefits, or for an anti-competitive reason. And if he cannot articulate a pro-competitive reason for the deal, I think we should seriously consider whether it is anti-competitive.

Senator KLOBUCHAR. You know, one of the issues that the antitrust regulators will need to consider is whether in the wake of the merger other competitors can emerge to provide a ticketing system that can effectively compete with this combined entity, as I understand, because it takes away the major competitor.

With Live Nation out of the picture, how hard will it be for any other business or entity to compete in the market?

Mr. BALTO. I think it would be extraordinarily difficult, and it is really intriguing. You know, the technology involved is not rocket science, but it is the tying arrangements, it is the exclusivity arrangements with venues, tying up the concert promoters. It is all of those arrangements that create the bottleneck that prevent entry into this market. That is why blocking this deal is a good first step, but it is not sufficient to restore the competitive health in the market.

Senator KLOBUCHAR. Do you want to respond, Mr. Rapino? You had gotten into this ticketing for a while, and then why did you get out?

Mr. RAPINO. If you do not mind, I just want to talk about ticket price for a second and then I will jump in. David refers to, you know, the ticket prices will go down because of competition, and, David, I wish that was the case. The true monopoly in our business, as you know, is the artist. There is only one Aerosmith. So Aerosmith's ticket price goes up because Aerosmith gets to call Seth, Jam, and I. The agent calls us and says, "Who is going to bid the most for my tour?" The one that bids the most then drives the ticket price. In a warped way, if Aerosmith could only call one person, then that person could actually set the ticket price. That is why we do not set the ticket price. Competition has gone up for 10 years, and the ticket price has gone up for 10 years, because there are enough competitors for Aerosmith to call every day to create a great race to the highest price. That is the bottom line to why ticket prices go up. So competition or not, the monopoly is the artist.

We believe the only way you can try to get output in the future is to do two things: make the artist more money other ways, so if the artist wants $700,000 a night for a guarantee, you have got to find it other ways than the primary ticket. That is the problem with the business. The primary ticket is not funding the 700. So——

Senator KLOBUCHAR. But did there used to be more competition in this market?

Mr. RAPINO. There has always been competition, and there has always been—that is why an artist used to get 50/50 of a deal, then 60/40, then 70/30, then 80/20, and now an artist gets 90/10 of a deal. So competition has always driven up——

Senator KLOBUCHAR. Okay. And we will get back to that in a second round. But, Mr. Mickelson, could you just respond to this idea that it is the artist that is driving the prices up?

Mr. MICKELSON. Yes, and I would also like to get a chance to comment about some other things that were said which need some clarification.

I have got to tell you, when he said Aerosmith called Seth or called me to compete with Live Nation's bid, Aerosmith did not call me; they did not call Seth. U2 did not call us. Shakira did not call us. Coldplay did not call us. And I can go on and on and on about the tours they bought that the independent promoters did not get a call on because they have paid so much money to buy that tour.

And let's not forget, as I said earlier, there are acts—and they will not deny this—that they pay more than 100 percent of the gross to. Well, no wonder why they are losing money. How can you possibly make money when you are paying more than 100 percent of the gross ticket sales to?

So, in answer to your question, we do not get to bid on some of these shows because the money is so big, the agents do not even call us.

Senator KLOBUCHAR. Thank you. I will get back on the second round, Mr. Rapino, with the other question I had. Thank you.

Chairman KOHL. Thank you, Senator Klobuchar.

Mr. Balto, consumers have long expressed dissatisfaction with Ticketmaster, focusing on things like their high service fees, which sometimes approach 40 to 50 percent of the face value of the ticket. In my opinion, the best way to address this is to have vigorous competition in the ticketing market, including entry of new competitors. Right now Ticketmaster is estimated to control between 60 to 80 percent of the concert ticketing business and provides ticketing services for about 2,300 venues in our country.

What is the likelihood of new entry into the ticketing business? Doesn't this deal make entry even harder as all venues owned or managed by Live Nation will automatically give their ticketing business to Ticketmaster? So how likely is it that a new company could enter the ticketing business when it does not have any hope of business from Live Nation venues?

Mr. BALTO. I think it would be extraordinarily unlikely if this merger occurs that we would ever see entry. First of all, we must pause and recognize for 10 years Ticketmaster has held a monopoly. No one has been able to effectively challenge them. So this is a tremendously serious issue. But if you allow it to acquire access to the concert promotion and venues, those are the essential inputs that are necessary to be able to provide a ticketing rival.

Now, please note this is not a situation where this is the only way—if this was efficient for them to vertically integrate, fine. Ticketmaster already knows how to do that. They acquired Front Line. They can acquire acts. They can compete with Live Nation head to head for those acts. But if vertical integration is efficient, fine. They can do it on their own. That is the purpose of the antitrust laws.

Chairman KOHL. All right. Mr. Hurwitz, it is my understanding that you often use Ticketmaster to sell tickets for concerts that you promote. Ticketmaster often has exclusive contracts to sell tickets at venues that you use. And I further understand that this arrangement has worked fairly well for you. What will change once Ticketmaster becomes part of the Live Nation family of companies? You have concerns about dealing with Ticketmaster as part of Live Nation because Live Nation will gain access to confidential information regarding the concerts that you promote. Is that a matter of concern to you?

Mr. HURWITZ. It is a big matter. You know, your sales history is what you base your next offers on for your bands, and having worked with those bands and having those relationships, you deserve to have that information. You have invested in that band, and you have built up a business there with that band. And if they have an inside to that, you do not have that over them anymore, and you are not getting their information.

A long time ago, when there was an independent promoters organization, we used to share ticket counts, and we used to trade each other's information. And Live Nation at the time was Clear Channel or SFX, I am not sure, famously would not share that information, so they themselves knew that that was sensitive information that could help a competitor.

Chairman KOHL. Mr. Mickelson, do you share that opinion?

Mr. MICKELSON. As far as selling tickets on Ticketmaster if the merger goes through? I absolutely share that opinion, and, you

know, they would have access to our ticket sales information; they would have access to our customer data bases; they would have access to the financial terms of our ticketing agreements. They would be receiving, our competitor would be receiving income from every ticket that we sell. That is not what I call something I relish.

They have revenue streams that they share in, being Ticketmaster, that they could offer the artist, and we cannot offer the artist those revenue streams from ticketing, from the convenience fees. So now they have another lever to use against us to get a date or get a tour because they can offer that artist ticket revenue that we cannot offer.

So it is a problem because we will lose more shows if this merger goes through just on that fact alone.

Chairman KOHL. Well, Mr. Rapino, once Ticketmaster and Live Nation merge, the combined company will gain access to an enormous amount of competitive information with respect to concerts promoted by independent promoters like Mr. Hurwitz and Mr. Mickelson, information like the demographics of the audience attending concerts, ticket sales, pricing, e-mail addresses, and things like that. This information will be gained whenever Ticketmaster sells tickets for their concerts. Live Nation can use this information to promote its own concerts in competition to these independent promoters. Yet the independent promoters will have no such information regarding the concerts that Live Nation promotes. Won't this place these independent concert promoters at yet an even greater competitive disadvantage to Live Nation?

Mr. RAPINO. I would absolutely agree that that is a concern on their part. I would understand their concern. We would absolutely have the concert division that would not have access to the ticketing division data. The ticketing division customer is the venue. So the venue is in business with these promoters every day. I could understand their concern, and we would absolutely make sure that both divisions are separately run. There would be no reason to share that data.

Chairman KOHL. Are you saying that you would support the concept of a firewall to protect the information Ticketmaster gains about concerts from being shared with Live Nation or anything like that?

Mr. RAPINO. In theory, yes, in terms of how the firewall would be defined. But on data and all those things, absolutely, the concert division should have no access to anything Seth or any other promoter does in any building or anything to do on the ticketing business, absolutely.

Chairman KOHL. Mr. Balto, both Ticketmaster and Live Nation argue that the merger will benefit consumers by eliminating inefficiencies and will lead to cost savings that will be passed on to consumers. What is the likelihood that any efficiencies gained by this merger will be passed on to consumers in the form of lower prices or lower service fees for concert tickets? Do you think that is a bogus claim that they are making?

Mr. BALTO. I think it is extremely unlikely that consumers are going to see that these convenience and service charges are going to go down because of this. As a monopolist, nothing is going to compel them to reduce those charges even if they have savings.

They are concerned about benefiting their stockholders. That is where it is going to go first. And, again, I want to emphasize I have done mergers for over 25 years. This $40 million efficiency figure is a fig leaf compared to the size of their businesses. This is not a significant amount of efficiency that they are proposing would exist in the first place.

Chairman KOHL. All right. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much.

Mr. Rapino, I wanted to go back to what we were talking about, and then we got off on prices again, but about this idea of if anyone else would enter the market and how you would respond to that, because some of the other witnesses talked about that they do not see this, that other people will enter the market when your combined company will have such a large share of the market.

Mr. RAPINO. And you are referring to the ticketing, right? I think you had asked——

Senator KLOBUCHAR. Yes.

Mr. RAPINO.—why we started and why would we——

Senator KLOBUCHAR. Yes, it was follow-up on my questions and Senator Kohl's that were asked of the other witnesses about other people getting into the market.

Mr. RAPINO. Right. You know, the ticketing business is more Irving's expertise, but I would say that we definitely have decided in the last few months that we needed to get into the ticketing business on pure vertical needs of the marketplace. So as a promoter, we thought it was important to start selling at the front door on our own basis. We tried to renew with Ticketmaster years ago, but management did not work. We believe that going forward—when we left Ticketmaster, and we fired Ticketmaster, so let me be clear, I understand the issues of Ticketmaster and what they can and cannot do for the customer. We had a line-up of companies around the world that wanted to be our ticketing company. We ended up with a German-based company, but we had got down to five different companies that were fully aware, fully equipped, in business, and were dying to be our ticketing company. We do not do it ourselves. We outsource ticketing to another company, and we use that company called CTS, and we found no——

Senator KLOBUCHAR. Didn't you say for a time you were going to be a competitor to Ticketmaster and many industry observers thought you could siphon off something like 15 percent of the market?

Mr. RAPINO. Absolutely. We do have 15 percent of the market.

Senator KLOBUCHAR. Okay. But then you decided to opt against competing in this market.

Mr. RAPINO. Yes.

Senator KLOBUCHAR. So why do you think other people would want to come in?

Mr. RAPINO. Well, I think our business decision was different. I mean, right now there are a lot of companies, brands ticketing themselves—a lot of football teams, baseball teams, hockey teams. Our needs just got to the point where—you know, a year ago it was a very different marketplace, as you know. Our stock price, access to capital to really build out around the world like we had hoped just dried up, and we just decided that if you look at our ticket

platform today, we are charging the same service fees as Ticketmaster. We had not really developed a new product for the consumer. And we believe the quickest way to try to bulk up and deliver a different product to the end was to enter into a bigger relationship with Ticketmaster, which could excel our strategy.

Senator KLOBUCHAR. You know, early on I talked about the small venues that we have and the history of Minnesota with First Avenue and other places. How do you think these small venues are going to continue to attract artists to their sites if the venue is not owned by or affiliated with your large combined company if the merger is approved?

Mr. RAPINO. You know, just for the record—I heard different numbers—we only own 18 venues. We manage or lease 88 in America. There are thousands of venues that are producing music every day, from the small clubs, as you have said, to the big arenas. All of those venues, right now we are only doing 38 percent of the shows, so they are finding lots of competitors, lots of suppliers like Seth to fill their venues in Minnesota and onward. So right now all those young bands are working. They are finding they can never work with me and do a very good job, as in 70 percent of the other bands. And the ticketing business has changed dramatically in 5 years. It is now a very low barrier entry business to enter, as we demonstrated and as the Cleveland Browns have demonstrated.

Senator KLOBUCHAR. Mr. Mickelson, do you want to reply?

Mr. MICKELSON. Well, I keep hearing this 38 percent, Live Nation has 38 percent of the market share. That is not true. I mean, I do not have all the figures with me, but I was reading Pollstar, and in 2000 Pollstar said SFX promoted 150 or the top 200 tours. In 2001, Clear Channel promoted 161 of the top 200 tours.

So if, in fact, he is talking about 38 percent, he may be including, you know, the smallest clubs that hold a hundred people. They dominate the arena level for ticket sales. They control and have all of the outdoor amphitheaters so that not one of us really can compete. Maybe Seth has one amphitheater, but they own 90 percent of the amphitheater market. So we cannot control that.

With House of Blues and their expansion into lower-level feeders, they are soon going to control that if they continue that, and that means that none of us that are competing will be able to stay in business if they are able to buy more House of Blues or build more small theaters.

Also, when you look at Ticketmaster, they, I believe, have contracts with 90 percent of the top 50 buildings, 50 arenas, and I believe it is over 80 percent for the top 100 buildings. They have contracts with every major arena—I mean, not every but 80, 90 percent of the major arenas, and they pretty much control most of the other important theaters around this country.

Now, your original question, can——

Senator KLOBUCHAR. It was about the small venues.

Mr. MICKELSON. Can other ticket companies enter the market? I don't think so, because what could happen is that Ticketmaster/Live Nation could go to any venue and say, "If you want my concerts, you have to use my ticketing. And if you don't use my ticketing, you won't get my concerts." That can happen and has

happened with others. And I think it is a real possibility that it could happen in this situation.

Senator KLOBUCHAR. So that is your core concern here?

Mr. MICKELSON. That is a huge concern.

Senator KLOBUCHAR. Mr. Balto, if I could just have one more question here. Do you think that is true?

Mr. BALTO. Absolutely. Look at Footnote 6 of my testimony.

Senator KLOBUCHAR. Oh, I cannot wait to see that.

[Laughter.]

Mr. BALTO. Yes. I think these are significant concerns that have been documented in past antitrust cases. And let me just say as an aside, as a Golden Gopher and a native Minnesotan, I am very pleased to see you on this Committee.

Senator KLOBUCHAR. Oh, well, that is very nice. Thank you, Mr. Balto.

Mr. Azoff, do you want to respond? I am at the end of my time here.

Mr. AZOFF. No.

Senator KLOBUCHAR. Okay. There you go. I will be left Footnote 6. Thank you very much.

Chairman KOHL. Senator Feingold.

Senator FEINGOLD. Thank you, Mr. Chairman, first, for your leadership of this Subcommittee. Your leadership is very important on this issue for our State that we share, as well as for the country, and I appreciate all that you have done in this general area. Thank you for having a hearing especially on the topic of the music industry. It is an industry that I have been concerned about for some time, about concentration and various anti-competitive practices.

About 7 years ago, I began hearing a lot from local businesses in Wisconsin about the harm being caused by concentration in radio ownership and its effect on concert promotion and control of venues. A special concern was the combined market power of Clear Channel. In fact, I first learned of this problem from the owners of a small independent concert promoter that was being pushed out of business because radio airplay and concert promotion were being tied together. This local business was happy to compete in the free marketplace, but was at a severe disadvantage when cross-ownership was used in an anti-competitive manner. Back in 2002, I therefore introduced the Competition in Radio and Concert Industries Act. That bill was not enacted, but we have made some progress, especially when Clear Channel spun off the promotion and venues part of its business into Live Nation and when the FCC and New York Attorney General brought action against some of the worst payola abuses.

Even though the concentration issues remain, the risk of leveraging by cross-ownership has lessened. But now two music industry giants—Live Nation and Ticketmaster—propose to merge and form an entity that would be the largest company in multiple segments of the music industry, raising similar concerns about cross-ownership leveraging. This combination has the potential to be even more harmful to consumer interests because Ticketmaster's market share in the ticketing market is even larger than Clear Channel's share was for radio.

To say the least, I come to this hearing with a healthy dose of skepticism about this proposal, especially because both of these companies have shown a willingness in the past to use cross-ownership power to the detriment of competition. So I just have a couple of questions.

Mr. Mickelson and Mr. Hurwitz, I know that this is not necessarily what you do, but based on your long history in the industry, even without the merger, could a big name act like Bruce Springsteen schedule a national tour without playing in Live Nation-owned or -controlled venues? And if so, would they have to perform in smaller venues or skip certain cities altogether? Also, just another way to look at it, could you schedule a national tour at venues that do not have a requirement that Ticketmaster sell the tickets, like Pearl Jam tried to do in the 1990s?

Mr. MICKELSON. If Bruce Springsteen was going to play amphitheaters, the answer would be no, you could not avoid Live Nation. They manage, own, operate, control almost all of them. So the answer in the summer in the outdoor amphitheaters is no.

In indoor arenas, they do not control indoor arenas the way they do the amphitheaters. So I suppose Bruce could play arenas that—well, they do not control, I do not think, very many arenas. But as far as Ticketmaster is concerned, Ticketmaster has most of the arenas, so you would have to use Ticketmaster's contract. You could not bring in someone else, because typically the arenas sign exclusive contracts for multi-year periods, typically 5 to 7 years.

Senator FEINGOLD. So that problem would exist in both contexts?

Mr. MICKELSON. Pardon.

Senator FEINGOLD. The Ticketmaster problem exists in both contexts that we are talking about here? We are talking about the amphitheaters and——

Mr. MICKELSON. Well, if Ticketmaster is not in the amphitheaters anymore, no. But, yes, if you are talking about the combined company, you cannot get around them at the amphitheaters, and you cannot get around Ticketmaster really into arenas, yes.

Senator FEINGOLD. All right. Mr. Hurwitz, do you have a comment?

Mr. HURWITZ. If you could clarify the exact question, because I am not sure——

Senator FEINGOLD. I just asked whether—he already answered—and I wonder if you would agree—whether Springsteen could schedule a national tour without playing in Live Nation-owned or -controlled venues?

Mr. HURWITZ. He answered it. You could in arenas, but as far as amphitheaters, no. I mean, they have owned virtually all of them, and that is by design.

Let me explain a fundamental problem in our business. Our suppliers—the fans, their agents, et cetera—this is kind of weird compared to other businesses as far as I can see. They have complete disregard for our financial health. They feel like they are there for the moment, we have got to get all we can, we do not care if this guy is in business tomorrow, we have got to make our money today.

And the only way to combat that is with leverage. There are two ways to get leverage. One is by doing a better job and compelling

them to play your venues because it is the best choice. And the other way is to remove that choice.

You know, I have played one game, which is to build better venues. They played another game, which is to control the system of touring. I do not blame them for playing that. You know, if I was making what they were making on shows, I would try to do that, too. But they are going to keep going until someone stops them, because why wouldn't they?

Senator FEINGOLD. Mr. Balto, your opinion on the current state of competition, even without the merger?

Mr. BALTO. I say this is a competitively unhealthy market.

Senator FEINGOLD. Unhealthy.

Mr. BALTO. Unhealthy market. And I think you have identified one of the key problems, that these vertical arrangements allow firms to engage in leveraging, which, you know, inhibits the ability of their rivals to compete. It was a godsend that Clear Channel spun off Live Nation, but this will restore the type of vertical arrangements that led to so many problems earlier this decade.

Senator FEINGOLD. And back to Mr. Mickelson and Mr. Hurwitz. This proposed merger, would it be in an order of magnitude worse than what was going on with Clear Channel in 2002? How would you compare it?

Mr. MICKELSON. Yes, as I said, this is vertical integration on steroids. The ticket company that is supposed to be—you know, we thought was neutral, was supposed to be not our competitor, is now our competitor. So the leverage that they would have in so many parts of the music industry, not just concerts, not just ticketing, is huge. And they would be able to control the music industry, not just ticketing, not just concerts—everything. Recorded music they could. They could go into so many things. If you read my written testimony, you will see that this is much worse than anything I had imagined and much worse than the Clear Channel 2000.

Senator FEINGOLD. Do you agree with that, Mr. Hurwitz.

Mr. HURWITZ. Yes, I mean, which is worse? You know, it is like which cancer do you want. I mean, it is—the whole play here is control. That is the point. The whole play here is leverage. And if they have the power to use that for the good of the industry, they also have the power to use it the other way. And I do not think anyone should have that power.

Senator FEINGOLD. I thank you.

Thank you, Mr. Chairman.

Chairman KOHL. Thank you, Senator Feingold.

I would just like to ask one question on paperless ticketing. Mr. Azoff, last year Ticketmaster announced that it would move toward implementing a paperless ticketing system. Under such a system, consumers would not get paper tickets but would have to show something like a credit card or a driver's license to get admitted to an arena for a concert. Last year, a senior Ticketmaster executive was quoted as saying, "Paperless ticket is the next key step for Ticketmaster along its innovation path."

Among other things, such a system would eliminate the ability of consumers to resell their tickets if they were unable to attend a concert at the last minute. And without paper tickets, there

would also be no ability for those seeking to purchase tickets at the last minute on the secondary market.

Do you intend to continue your efforts to implement a paperless ticketing system after this merger? What will this mean for consumers?

Mr. AZOFF. Yes, we do, both before and after the merger. I would also like to add that AC/DC recently took the front 3,000 seats to their concerts, and we did paperless ticketing, and it still did not solve the secondary problem. But the answer is yes, and we are making great strides, and it is the future.

Chairman KOHL. All right. Any other thing that we have not covered today, gentlemen, for or against? Any comments you would like to make? Mr. Balto.

Mr. BALTO. Can I just mention one thing? It goes back to the answer that Mr. Rapino gave to Senator Klobuchar where he suggested that competition was bad, that currently Live Nation and Ticketmaster both compete for the same people. First of all, it is a bedrock principle that competition is never bad, competition is always good. But that argument was posed in the Highmark/IBC merger when the insurance commissioner looked at a merger between two insurance companies, and the insurance companies said, oh, you know, let us create a monopoly, because right now we both compete to sign up doctors, and that is bad for consumers. And the insurance commissioner rightfully found that that argument was just inconsistent with the law and inconsistent with economics.

Competition is always better than having a monopolist, and conceivably, you know, a monopoly concert producer, which, you know, could actually harm competition by reducing the output of, you know, artists by reducing their level of compensation.

So it is always better to have competition.

Chairman KOHL. All right. We will shut it down at this point. We will leave the record open for 1 week, and we thank you all for appearing here today. We believe that this is an important issue. We urge the Justice Department to review it closely, and we will continue to examine this transaction along the way.

Thank you so much. This hearing is adjourned.

[Whereupon, at 4:08 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record.]

QUESTIONS AND ANSWERS

Follow Up Questions For Irving Azoff from Hearing Entitled "The Ticketmaster/Live Nation Merger: What Does It Mean for Consumers and the Future of The Concert Business?"

From Senator Kohl

REQUEST NO. 1:

1. Mr. Azoff, as you well know, thousands of consumers were outraged recently when they tried to buy tickets to the new Bruce Springsteen tour. Fans who tried to buy tickets to concerts in New York and New Jersey on the Ticketmaster web site were redirected to the web site of its subsidiary ticket resaler, TicketsNow.com, where tickets were sold at double or triple or even higher their face value, plus a hefty service charge. Angry fans accused Ticketmaster of diverting tickets to Ticketsnow-dot-com.

(a) On February 23, 2009, Ticketmaster reached a settlement with the New Jersey Attorney General's Office in which it pledged, among other things, "not to allow the sale or offer of any tickets on TicketsNow.com re-selling website until the initial sale begins on its primary website.' Yet since that date there have been questions about whether that promise has been carried out with respect to other concerts. On February 25, the Los Angeles Times reported that tickets for a No Doubt concert in Irvine, California were found on Tickets.now's website at mark-up prices well ahead of the date they were to be sold on Ticketmaster (March 7). Tickets were also allegedly available for a Leonard Cohen concert in Canada on TicketsNow.com in advance of their sale on Ticketmaster.

What assurance can you give us that your settlement with the New Jersey Attorney General's Office will be fully carried out by Ticketmaster? Why are these problems with advance sales on TicketsNow.com apparently continuing to occur?

(b) After the sale Springsteen incident you apologized, and stated that "we recognize we need to change our course". What did you mean? How will you change course?

RESPONSE TO REQUEST NO. 1:

(a) Ticketmaster did not redirect anyone from its clients' primary ticket inventory to the TicketsNow secondary marketplace during the February 2, 2009 Springsteen on-sales. Indeed, Ticketmaster has never "redirected" consumers from Ticketmaster's primary ticketing website to TicketsNow for any sales where we handle the primary ticketing. Rather, during the February 2, 2009 Springsteen on-sales that we ticketed, when consumers' specific ticket requests could not be fulfilled in the primary on-sale through Ticketmaster.com, they were given the option to: (1) search for tickets again on Ticketmaster's primary ticket website (with a recommendation that they broaden their search by requesting any seats available in the house, or request fewer tickets); (2) return to Ticketmaster's primary ticket website later; or (3) navigate to the TicketsNow website.

Moreover, even before Ticketmaster began discussions with the New Jersey Attorney General, we took voluntary action to address the issues that consumers experienced during the

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Springsteen on-sales. For example, even though we believe we did nothing wrong, we removed the links between Ticketmaster's No Tickets Found ("NTF") page and TicketsNow. Additionally, effective February 5, TicketsNow announced a policy that it would no longer accept ticket postings for events that had not yet gone on-sale on Ticketmaster.com. Ticketmaster has urged other ticket resellers to adopt the same consumer-friendly position. The No Doubt and Leonard Cohen pre-listings referred to above were instances of third party resellers who ignored our directive after we announced our policy but before we were able to fully implement protective measures on the TicketsNow website.

As you suggest, in addition to the voluntary action we had already taken, Ticketmaster also agreed to undertake further remedial action pursuant to our agreement with the New Jersey Attorney General's Office. For example, we have agreed:

- to use best efforts to ensure that all users of our TicketsNow website refrain from posting tickets for events that have not yet gone on-sale on Ticketmaster.com;
- that prior to providing any link from its NTF Internet page to its TicketsNow re-sale website (which will not take place for at least one year from the date of the AVC), Ticketmaster will first obtain the approval of the New Jersey Attorney General's office as to the exact disclosure language, architecture and functionality of a proposed linkage between Ticketmaster's website for primary ticketing and its TicketsNow resale website;
- to work cooperatively with the State of New Jersey to agree on appropriate disclosure language and a method of linkage that clearly and conspicuously discloses to consumers information sufficient to make an informed purchase of resale tickets;
- that we would not engage in paid Internet search advertising that would lead consumers searching for "Ticketmaster" on Internet search engines to its TicketsNow resale site (located at www.ticketsnow.com); and
- to use best efforts to ensure that the error message that was inadvertently presented to certain customers on February 2, 2009 is not generated in the future, unless such message accurately states the nature of the error.

Furthermore, Ticketmaster also represented to both the New Jersey Attorney General and to its consumers, that it has always made available for sale to the general public, and will continue to make available for sale to the general public, via its website for primary ticketing, all tickets that its clients provide it for such purpose. We have pledged that we will not present an option to go to TicketsNow from Ticketmaster.com without the consent of the artist and the venue, and we have promised to never again link to TicketsNow in a manner that could possibly create any confusion during a high-demand on-sale. We are committed and are doing everything within our power to prevent the listing of tickets on TicketsNow before those tickets are made available to the general public during an on-sale on Ticketmaster.com. We implemented this policy a few days after the Springsteen on-sale, and while that implementation did not result in the immediate system-wide elimination of ticket pre-listings due to the many third-party sellers who disregarded our policy (thus explaining why there remained some advance selling on TicketsNow after the policy was announced), we dedicated significant additional resources in the

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days after the policy was announced to manually strip out all advance selling on the TicketsNow web site. We are an industry leader in this regard, and we have invited our reseller competitors to meet this higher standard as well. To that end, we have successfully backed recent legislation in Arkansas (SB966) which prevents the listing of tickets on secondary websites before the date and time of the initial on-sale for the event, and we are currently supporting similar legislative measures in Minnesota and Florida. By contrast, eBay and other competitors have opposed this legislation.

Finally, as discussed below, with respect to the technology malfunction that occurred on February 2, 2009, affecting the three New York and New Jersey Springsteen shows, we are working hard to ensure that such a technology malfunction does not occur in the future. Specifically, our product and engineering team: (1) is reviewing all of its procedures; (2) promises to be more diligent in reviewing code and related requirements in the future; and (3) has pledged to improve internal communications concerning code requirements in the future. Our lifeblood as a company depends on our ability to deliver reliable and indeed, superior service to our clients and consumers. Thus, we intend to make good on these promises.

(b) In my "Open Letter of Apology to Bruce Springsteen," I explained that Ticketmaster was genuinely trying to do the right thing for fans by providing a link to TicketsNow in addition to the other options available when the specific tickets they requested during the primary on-sale were not available. However, fans' reaction to this effort reflected that Ticketmaster's efforts produced the opposite result of what we were trying to achieve. Accordingly, to prevent this type of issue from occurring in the future, I acknowledged that the company would need to "change . . . course." In other words, we would still pursue our mission of providing fans with the best selection of seats available to the general public, and the most user-friendly purchasing experience possible, but we would do so in a manner that ensures consumers have a great experience purchasing online through Ticketmaster.

REQUEST NO. 2:

2. At the hearing Mr. Rapino stated that independent concert promoters had a valid concern regarding the possibility that, after the merger, ticketing information collected by ticketing business of Live Nation (the former Ticketmaster)—information like the demographics of the audience attending concerts, ticket sales, pricing, e-mail addresses and the like—could be shared with the concert promotion business of Live Nation. He further stated it would desirable that this information not be shared in this manner. Do you agree with Mr. Rapino in this regard?

(a) Would you agree to some sort of "firewall" to protect the information Ticketmaster gains about concerts from being shared outside of the ticketing part of the combined Live Nation/Ticketmaster company? Would you agree to this "firewall" as part of a consent decree with the Justice Department as a condition of the merger being approved?

RESPONSE TO REQUEST NO. 2:

In the hearing, Mr. Rapino made the statement that, from his perspective, there "would be no reason [for the combined company] to share" ticketing division data for events promoted by companies in competition with Live Nation's promotions business. We agree that as a general matter, there would be no reason to share such data. In principle, we also are not opposed to a

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firewall; however, we believe that the decision to share client-specific confidential data concerning ticket sales is best left to each individual client. Accordingly, Ticketmaster's confidentiality obligations to its clients (and vice-versa) are delineated in each of its client contracts and will continue to be handled in that manner. As with all aspects of its client contracts, Ticketmaster will abide faithfully by those terms.

Additionally, I note that beyond Ticketmaster's client-specific obligations, we, as a company, require our employees to adhere to a very strict Code of Ethics. Specifically, Section 6 of our Code of Business Conduct and Ethics provides that employees:

> . . . must maintain the confidentiality of confidential information entrusted to them by the Company or its customers or suppliers, except when disclosure is authorized by the Legal Department of your business, required by laws or regulations or ordinary and necessary in the course of carrying out your responsibilities as an employee, officer or director of the Company. Confidential information includes all non-public information that might be of use to competitors, or harmful to the Company or its customers or suppliers, if disclosed. It also includes information that suppliers and customers have entrusted to us. The obligation to preserve confidential information continues even after employment ends.

We believe these existing protections are sufficient to protect our ticketing services clients' confidential information from disclosure to the future concert promotions arm of the combined company.

Finally, with respect to the question as to whether Ticketmaster would agree to a firewall as part of a consent decree with the Justice Department as a condition of the merger being approved, at this early stage of the merger review process, we believe it would be premature to comment on any potential proposals that the DOJ may or may not raise.

REQUEST NO. 3:

3. Chicago Tribune music critic Greg Kot recently wrote that the price of a ticket for the top 100 tours last year averaged $ 67. That's more than double the average of a decade ago and far outstrips the rate of inflation. This merger would combine the companies "most responsible" for that increase in price, he wrote. With this history in mind, how can we be sure that the combined Live Nation/Ticketmaster will pass on any cost savings it realizes as a result of the merger on to consumers?

RESPONSE TO REQUEST NO. 3:

Respectfully, Mr. Kot appears to be misinformed about how ticket prices are typically set for live entertainment events. As Mr. Rapino explained during the February 24, 2009 hearing, ticket prices generally are set by the performer and his or her agent. The agent then calls several promoters and tells them that the artist has to make a sum certain on a show or tour (the guarantee) in order to recoup his or her costs and to make a decent profit, and then asks the promoters if they would like to bid on the show or tour based on that number. Promoters generally do not set the guarantee or the ticket prices; nor does Ticketmaster. Indeed, in 99 percent of our ticketing business, the price of a ticket is not determined by Ticketmaster (though

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on occasion, we consult with and assist clients in efficiently pricing tickets for dynamic primary sales, such as in Ticketmaster's official platinum tickets offerings).

With respect to your question as to whether the combined Live Nation/Ticketmaster will pass on any cost savings it realizes as a result of the merger to consumers, the answer is that we will, because our clients—venues, artists, and other promoters and content providers—are counting on us to provide tangible benefits as a result of the merger. In the end, all of these participants in the entertainment value chain want to sell more tickets. For artists, selling more tickets means greater revenues from the face price of the ticket, but for venues and promoters, selling more tickets also presents additional opportunities to earn more ancillary revenue—*e.g.*, concessions, merchandise, etc. When tickets go unsold at a particular event (frequently because of inefficient pricing or lack of consumer knowledge about the event), everyone in the value chain is hurt. We think we can sell more tickets by capitalizing on the efficiencies created by the merger to enable greater innovation in the ticket selling process and provide better ticket options and pricing for consumers.

REQUEST NO. 4:

4. At the hearing, you stated that you would not have acquired secondary market ticket seller TicketsNow.com if you had been running Ticketmaster when it entered into that deal. Many questions, of course, have been raised about Ticketsnow.com and whether Ticketmaster has been diverting tickets to Ticketsnow.com to be sold to consumers at inflated prices, especially in light of the incident with the sale of Bruce Springsteen concerts in New York and New Jersey last month.

(a) What is your view of the Ticketsnow.com being owned by the combined company should this merger be completed? Do consumers have reason to be concerned that tickets could be diverted to Ticketsnow.com after the merger?

(b) Would you agree to divest the ownership of Ticketsnow.com by the combined Live Nation/Ticketmaster if the Justice Department requested it as a condition of approving the merger?

RESPONSE TO REQUEST NO. 4:

(a) As I mentioned in the February 24, 2009 hearing, I was not at the company when it purchased TicketsNow. It is my personal view that if the business is run efficiently and tickets are priced at market value, there shouldn't be a need for the secondary market at all. However, I have discussed secondary ticketing with various members of our board and other employees, and I understand that Ticketmaster got into the secondary ticketing business because many sports teams and other clients asked Ticketmaster for this functionality, in particular, to enable sports teams to offer their season ticket holders the ability to resell a portion of their tickets in a secure, team-sanctioned manner.

The question as to the future ownership of TicketsNow is a decision that likely will be left up to our combined board after the merger is completed. Regardless of the answer, however, consumers need not be concerned that tickets will be diverted from primary on-sales to TicketsNow—not in the past, not now, and not in the future. Ticketmaster has made available

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for sale to the general public and will continue to make available for sale to the general public, via its website for primary ticketing, all of the tickets that its clients provide it for that purpose. Consumers searching for tickets to an event on Ticketmaster.com are never, and have never been, offered the option of searching for available inventory on the TicketsNow secondary marketplace if the specific ticket request they submitted could be fulfilled in the primary on-sale through Ticketmaster.com.

(b) We do not believe the Bruce Springsteen/TicketsNow issue is at all relevant to the merger review process. Moreover, at this relatively early stage of the process, we do not believe it would be prudent to conjecture about issues or options that the DOJ may or may not raise. Thus, we cannot speculate as to whether Ticketmaster would agree to divest the ownership of TicketsNow if the Justice Department requested it as a condition of approving the merger.

REQUEST NO. 5:

5. At the hearing, you stated that you would continue Ticketmaster's efforts to move toward implementing a paperless ticketing system. Under such a system, consumers would not get paper tickets but would have to show a credit card or driver's license to get admitted to an arena for a concert. What will this mean for consumers who wish to resell their tickets, buy tickets at the last minute, or the secondary ticketing market as a whole? Without paper tickets, how could consumers resell their tickets if they are unable to attend a concert? Without paper tickets, how could consumers buy tickets on the secondary market at the last minute?

RESPONSE TO REQUEST NO. 5:

Ticketmaster's paperless ticketing system enables ticket buyers to gain entry to a live entertainment event by bringing the credit card they used to complete the transaction, along with a valid photo ID to the venue. Because paperless tickets do not require a separate delivery method, this technology enables consumers to buy tickets up to the time that an event starts, provided that the event has not sold out.

Currently, paperless ticketing is in its early stages of implementation and is not enabled for resale. Ticketmaster develops ticketing technology and sells tickets as an agent for its clients, who have varied and diverse needs. We expect that in some situations, clients may want Ticketmaster to develop resale functionality for its paperless ticketing system. For example, our sports teams clients—most of whom currently offer their season ticket holders the ability to manage, forward, and/or resell their season tickets online—may want to offer paperless ticketing to their season ticket holders in the future. Not only could the electronic transfer of tickets make it easier for season ticket holders to attend games, but if enabled for resale, it also could provide sports teams with an additional opportunity to market to more fans. In fact, this is one of the selling points that our competitor Veritix touts as a benefit of their "digital" ticketing system, a technology which, similar to Ticketmaster's paperless ticketing, allows ticket buyers to choose a form of electronic ID (*e.g.*, credit card, driver's license, etc.) as their method of entry to an event. *See* http://www.veritix.com/solutions/digital_ticketing.aspx.

Some artists have already embraced this technology because it enables ticket purchases (either in fan club pre-sales or initial public on-sales) by their core fan base—those who follow the artist most closely. This ensures that fan club members and other fans purchasing designated seats

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have fair access to good tickets at face value. Naturally, our future enhancement of this technology will thus take into account all of our clients' diverse needs, and where authorized by our clients, it could include resale functionality that is competitive with similar offerings in the marketplace.

REQUEST NO. 6:

6. Please identify all companies that have entered the concert ticketing business on the national level in the last five years. Please further state who you contend are your competitors now for ticketing on the national level.

RESPONSE TO REQUEST NO. 6:

Today, there are very low barriers to entry into the business of ticketing services, and Ticketmaster faces a whole host of competition from a number of relatively new and existing ticketing services businesses across the country. The Internet has largely done away with the traditional bricks and mortar distribution model of the ticket industry; the notion that a competitor must be physically located in a specific geographic area to provide ticketing services is not an issue that prevents potential clients from considering a specific ticketing services provider based in another part of the country. In fact, technology has enabled ticketing operations to cross international borders—allowing European companies like Galathea STS to ticket domestic venues such as the University of New Mexico.

There are many third-party providers of ticketing services competing head-to-head against Ticketmaster for all types of clients in multiple geographic areas. These competitors offer everything from a licensed software model (which enables a venue to self-ticket), to full service turn-key ticketing solutions (like Ticketmaster's traditional Host system), to everything in between. And today, it's also possible for any venue, team, promoter, college or performing arts organization to self-ticket, and many of them do. Indeed, most clients consider this option prior to renewing their contracts with existing ticketing service or technology providers.

Ticketmaster faces intense competition each time a contract comes up for bid—whether it be a new client or a renewal. Some of the top competitors that have entered or have had a significant competitive impact through expansion in the business of ticketing venues that host concert events in the past 5 years include (in alphabetical order):[1]

- **Audience View**: Established in 2002, AudienceView offers venues a fully integrated, customizable, web-based software solution combining ticketing, funds management, venue management, targeted marketing, and reporting tools. Some of Audience View's clients include the following: University of Minnesota; Churchill Downs (KY); Venetian Resort Hotel Casino; Mesa Arts Center (AZ); Broadway.com; IMG Tickets (FL); Sony Ericsson Open (FL); Acuff Theatre (TN); Opry Museum (TN); University of

[1] Competitor information is gathered from a variety of publicly available sources, including competitor websites and press releases.

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Massachusetts (Amherst) Fine Arts Center; Gaylord Entertainment (TN); and Tribeca Film Festival.

- **ComcastTix/New Era:** Through New Era ticketing, Comcast-Spectator launched ComcastTix, a full-service ticketing services provider for venues in 2004/2005. ComcastTix runs on Paciolan software (a company recently acquired by Ticketmaster). ComcastTix currently boasts a client list that includes the following venues/clients: Appel Farm Festival (NJ); Borgata Casino (NJ); Budweiser Events Center (CO); Philadelphia Phillies (at Citizens Bank Park); Colorado Eagles Hockey (CO); Comcast Center (MD); Dover International Speedway (DE); Helium Comedy Club (Phila.); Liacouras Center (Phila.); Penn Relays (Phila.); Pocono Raceway (PA); Portland Trail Blazers (Portland); Richard M. Borchard Regional Fairgrounds (TX); Rose Quarter (Portland); Society Hill Playhouse (Phila.); Sovereign Bank Arena (NJ); Tin Angel (Phila.); and Wachovia Complex (Phila.).

- **CTS/Eventim:** CTS Eventim is a leading ticketing services provider with activities in 16 countries. More than 60 million tickets for more than 100,000 events are marketed annually via EVENTIM group systems. In addition to more than 6,000 stationary box offices in Europe, EVENTIM distributes tickets via call centers and the Internet. CTS Eventim currently powers Live Nation's U.S. ticketing operations for its venues and events including amphitheaters, clubs, theaters and fairs/festivals nationwide, and will support ticketing operations for Live Nation venues across Europe.

- **eTix**: Founded in 1999, eTix offers a web-based ticketing system with a full box office solution, online ticketing, or a hybrid system adaptable to individual customer needs. eTix's web-based platform allows it to sell to a varied customer base from large venues to small twenty-person tours, including: arenas and multi-purpose facilities; theaters and performing arts centers; fairs and festivals; travel tours and attractions; sports teams and venues; movie theaters; promoters; rock clubs; and specialty venues. As of 2007, eTix claimed that its software managed the sale of more than 30 million tickets worldwide. The company currently boasts a client list of over 1,400 clients in 30 countries, including: Savannah Civic Center; Virginia Int'l Raceway; Dwyer Stadium (NY); Buccaneer Arena (IA); Ector County Coliseum (TX); Gotham Comedy Club; Valparaiso University (IN); the Citadel (SC); Georgia Southern University; North Carolina State Fair; and The Marquee (AZ).

- **MLBAM/Tickets.com**: Though Tickets.com has been in the industry for more than five years, it was acquired by MLB Advanced Media in 2005. This acquisition transformed MLBAM—a Ticketmaster client—into a full-fledged competitor. Today, Tickets.com provides both full-service (internet, retail outlets, and call centers) and enablement ticketing solutions to over 4,000 entertainment, sports, and arts venues, including: HSBC Arena/Buffalo Sabres (Buffalo, NY); Times-Union Center (NY); the Field Museum (Chicago); Roanoke Civic Center; Missouri State University; Milwaukee Brewers; Minnesota Twins; BOK Center (Tulsa, OK); Wells Fargo Center for the Arts (CA); St. Louis Cardinals; National Geographic Museum (DC); Kansas City Royals; Washington Nationals; Oakland A's; San Francisco Giants; Dallas Stars; Milwaukee Mile; Webster Theatre (CT); St. John's College; and the new Hartman Arena (Park City, KS).

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Ticketmaster also has encountered Tickets.com in numerous bidding competitions across the United States.

- **ShoWare:** ShoWare offers a licensed ticketing solution that gives clients in-house control, private labeling, and content management of their ticketing. The system itself was introduced in 2000. Today, ShoWare boasts over 300 customer installations, and its clients include arenas, sports teams, clubs, festivals, and theaters, such as Arlington Park (IL); Crossroads Arena (MS); Dubai Racing Club; ShoWare Center (Kent, WA); Seattle Thunderbirds; Bismark Bobcats (ND); Reading Phillies; and Luna Park (San Fran.).

- **Self-ticketing**: The following former Ticketmaster clients have recently begun self-ticketing: Bailwick Arts Center (Chicago); Anthology (San Diego); Caroline's Club (NY); and Kroenke Sports Enterprises (powered by Veritix).

- **StubHub**: In 2000, StubHub began operating an online secondary marketplace which allowed consumers to resell or purchase tickets to concerts, sporting, and other live entertainment events. In the last 2-3 years, StubHub began partnering with sports teams and performers to obtain blocks of primary tickets to sell as "premium," "VIP," or "exclusive" packages in direct competition with Ticketmaster's primary ticket offerings for numerous live entertainment and concert events across the United States. Currently, StubHub's "exclusive" offerings include tickets for Superfly at Jazzfest (New Orleans) and Phoenix International Raceway, and StubHub has partnerships with multiple professional and collegiate sports teams and artists.

- **Tessitura:** Developed in 1996, Tessitura's Arts Enterprise Software provides over 200 operas, symphonies, and performing arts organizations across the United States with a combined ticketing, fundraising, and marketing solution in one software system. Tessitura clients include such well-known venues and entities as the Metropolitan Opera; Lincoln Center; Los Angeles Opera; San Francisco Opera; Utah Symphony & Opera; Annenberg Center for the Performing Arts (PA); Brooklyn Academy of Music; City of Houston; Columbia College (Chicago); Dallas Center for the Performing Arts; Flynn Center For The Performing Arts (VT); Boston Symphony Hall, and Tampa Bay Performing Arts Center.

- **Veritix**: In 2007, Flash Seats, a secondary ticketing provider, acquired Vertical Alliance, a primary ticketing solutions provider, and formed Veritix. The combined company now licenses software to enable customers to manage their own ticket sales via the Internet, box office, telephone, and retail outlets, and offers both primary and secondary ticketing solutions. Veritix provides its ticketing solution to the Houston Rockets and all other events at the Houston Toyota Center, Texas A&M University; Kroenke Sports Enterprises (which owns several major league sports teams in Denver); Paramount Theatre (Denver); Boise State University; Oral Roberts University (Tulsa, OK); and the new Rio Tinto Stadium (Sandy, UT). Beginning in July 2009, the existing relationship between Kroenke Sports and Veritix will be expanded to include ticketing for the Pepsi Center, the Denver Nuggets, the Colorado Avalanche, the Colorado Crush, and the Colorado Mammoth.

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Ticketmaster recently lost bidding competitions to one of more of the above competitors for the following clients or potential clients: Big Apple Circus; Iowa Events Center Arena; Old Dominion University; City of Kansas City; Alaska State Fair; Lupo's Nightclubs (RI); Stages Music Hall (Chicago); SUNY-Courtland; Boston Red Sox; International Speedway Corp. (NASCAR); MassConcerts (MA, ME, NH, CT, RI, NJ); Pittsburgh Pirates; Cincinnati Reds; Detroit Tigers; Texas Rangers; City of Peoria (AZ); Baltimore Museum of Art; Paramount Theater (Seattle); Missouri State University; Welmont Theatre (NJ); Seattle Theatre Group; ShoWare Center (Kent, WA); Montana ExpoPark; Tennessee Performing Arts Center; Carnegie Hall; and Santa Cruz Civic Auditorium. In addition to the companies listed above, a more complete list of ticketing services providers is attached as Exhibit A.

REQUEST NO. 7:

7. In November, when Front Line merged with Ticketmaster, you said. "It's going to be a company that is about connecting artists and fans, about marketing, about using technology in creative ways to help fans learn more about music, to help artists reach more fans than they could otherwise reach." Given that statement and what you said in your testimony, it is unclear why this merger is required to do that. What improvements does this merger bring to Ticketmaster other than assuring ticketing control of Live Nation venues? Why was it necessary to merge with Live Nation to bring about the improvements you identify?

RESPONSE TO REQUEST NO. 7:

Ticketmaster's acquisition of a controlling interest in Front Line was the first step in redefining Ticketmaster's business at a time of great change in the industry, but in order to have a truly direct artist-to-fan connection that is able to touch the consumer at multiple points in the value chain, we felt that we would greatly benefit from a promoter being included in the solution. Our mission fits ideally with Live Nation's goal of becoming the industry's first artist-to-fan concert pipeline.

The entertainment industry has undergone a complete upheaval over the last several years, due in large part to the Internet. Among other things, there has been a rapid shift to online distribution and purchasing; record labels and other traditional business models have collapsed or are becoming outdated; new paths to connect artists and fans are being forged; and ticketing has become a technology business. And while in some cases, there has been a move toward vertical integration, there are still many participants in the value chain who are focused primarily on furthering their individual interests instead of those of the artist and the fan. This was one of the issues with Live Nation's and Ticketmaster's preexisting relationship, where, because the parties were arms-length contract partners, each was naturally more focused on promoting its own brand and obtaining its respective return on their contract. In contrast, the combined entity will be able to achieve a level of collaboration and efficiency (in terms of marketing events and designing and implementing consumer-friendly ticketing solutions) far beyond anything they were capable of in the past.

These industry conditions have resulted in a number of inefficiencies that are affecting not only the parties to this deal, but the industry as a whole, including: (1) significant volumes of unsold tickets; (2) information failures; and (3) unrealized opportunities for product development and

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innovation. We believe these inefficiencies can be reduced if there is a unified approach to innovation, information sharing and better marketing, selling more tickets, and strengthening the artist-to-fan connection, not just at the ticketing level, but at the promotions level as well.

Greater innovation and better marketing: With a better and more refined alignment of interests, the combined company will be able to achieve cost reduction at a level which simply could not be achieved before when Ticketmaster and Live Nation were arms-length contract partners. We believe this cost reduction and combination of assets will allow us to devote more resources to innovation and better marketing to provide consumers with useful information about events and merchandise, additional ticket options, and a sophisticated online entertainment storefront where they can fulfill all of their entertainment needs. This, in turn, will provide artists with greater and more diverse revenue streams so they are not so heavily dependant on ticket sales for their livelihood.

Information sharing and the artist-to-fan connection: With greater information sharing at every level of the value chain—including tour planning, promotions, merchandizing and ticketing—the parties can build more direct connections between the artist and fan. We think this type of coordination will allow us to bring more content to our venue partners and the public, including new acts, which currently do not have adequate platforms to market themselves and reach their fans. Because the new company will represent the interests of all parties in the value chain, we believe this combination will redefine how concerts are brought to market and take live entertainment services to the next level. And we think that the integration we can achieve here will reach far beyond the sphere of Ticketmaster and Live Nation's former contractual relationship to benefit other venues that do business at any level with the combined company.

Selling more tickets: To achieve the overarching industry goal of selling more tickets (thereby benefiting every entity that is a part of the value chain), we feel it is necessary to obtain greater promoter—as well as artist—participation in the process of selling tickets. Ticketmaster and Live Nation each have unique perspectives and strengths in marketing and selling tickets. The combined entity, by uniting operations, drawing on the best practices of both companies, and directly aligning priorities, will be able to offer artists, venues and fans more promotions and ticketing options than either company could do by itself.

From Senator Schumer

REQUEST NO. 1:

1. Ticketmaster has stated that a "glitch" or "malfunction" led to the now well-publicized problems involving the sale of tickets to Bruce Springsteen's upcoming "Working on a Dream" tour.

- Please explain, in detail, what caused the "malfunction," and what its effects were.
- Can Ticketmaster guarantee that no similar "glitch" or "malfunction" will arise in the future?
- How did Ticketsnow.com get so many tickets within minutes of the start of the sale?

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RESPONSE TO REQUEST NO. 1:

- *What caused the malfunction and what were its effects?* The malfunction was the result of miscommunication in Ticketmaster's product and engineering teams. On February 2, 2009, tickets for three Bruce Springsteen concerts went on sale at 9 a.m.—two of these shows were in New Jersey and one was in New York. Because of Mr. Springsteen's popularity in this area, there were many more fans trying to buy tickets through Ticketmaster.com than there were tickets available.

  As a result of extremely high demand for these shows, a software breakdown occurred in one of our credit card fraud prevention programs. The software code which implements this program was installed and operational in our European ticketing systems for over 12 months, and had been operating in our U.S. based ticketing systems since August 2008. While the code passed all of our internal tests, it ultimately proved incapable of handling the extreme conditions presented by the February 2 Bruce Springsteen on-sales in New Jersey and New York. This was the first time that on-sales of this magnitude were directed to a single regional Ticketmaster ticketing system since this code was installed, and in light of the months that the code had been installed and operational, Ticketmaster did not have any reason to anticipate that this type of issue would occur.[2]

  As a result, starting at approximately 9:09 a.m. EST, certain credit card transactions locked up during the payment process for an extended period or were aborted while processing payment. Additionally, and as a further result of the software problem, fans who were trying to buy tickets for the New York and New Jersey shows saw a routine maintenance error page on the website while attempting to reserve tickets. These issues caused certain consumers to be unable to complete their pending transactions. In both cases, the fans involved had to return to the Ticketmaster.com site to start another search.

  To be clear, no consumers were directed to TicketsNow or given the option to link to TicketsNow from the error page. Consistent with Ticketmaster's policy at the time to provide consumers with additional ticket purchasing options in the event their specific ticket request could not be fulfilled on Ticketmaster.com, fans who encountered the software issue and were unable to secure tickets responsive to their search were given three choices – either to search again using different parameters, come back later, or click on a link to see inventory available on TicketsNow. No consumers were presented with this set of options as a result of the software malfunction referenced above.

  Some consumers who chose to click through to TicketsNow and then complete a ticket purchase on that website, have complained that they believed they were instead purchasing tickets from the initial on-sale on Ticketmaster.com. While we believe the messaging on the site was clear when consumers chose to click through to the

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[2] In addition, Ticketmaster sent out a ticket alert e-mail to certain registered users that inadvertently and mistakenly listed the on-sale time as 10 a.m. rather than 9 a.m.

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TicketsNow web page, we chose to issue refunds (for the difference between the TicketsNow purchase price and the face value of the ticket) to ticket purchasers who told us they were genuinely confused by the process.

- *Can Ticketmaster guarantee that this will never happen again*? Because of the nature of technology, neither Ticketmaster, nor any other ticketing service provider, can offer an iron-clad guarantee that it will never experience a technology failure during an on-sale. However, I can tell you that our product and engineering team are meticulously reviewing its procedures, will be more diligent in reviewing code and related requirements in the future, and will improve how requirements are communicated internally. Moreover, I should note that technology performance is critical to Ticketmaster's livelihood and our ability to distinguish ourselves from our peers. Our reputation has been and will continue to be that we "set the standard" for reliability in the ticketing industry. Our clients hold us to very strict system performance criteria, and these obligations are set forth in our contracts. This is not an area in which we want to disappoint our clients, or the public.[3]

- *How did TicketsNow get so many tickets within minutes of the start of the sale*? We believe that brokers get their tickets a number of different ways. Brokers and others interested in reselling tickets often have season tickets at a particular venue and receive guaranteed access to non-sports events in the venue. Brokers may also join artist fan clubs or participate in other promotional offers with the specific aim of having a chance to participate in promotional "pre-sale" opportunities. Sometimes, brokers do not have actual tickets in-hand but nevertheless post listings on multiple resale websites. They then subsequently purchase tickets in the resale marketplace (often from other brokers) and then proceed to fulfill their orders. This is an unfortunately all-too common practice in the resale world, and one we are committed to curtailing at the TicketsNow site (although the practice will almost certainly continue unabated at other leading resale websites).

  Regrettably, some unscrupulous individuals also use illegal automated software programs to bypass Ticketmaster's sophisticated security systems and "cut to the front of the line." This causes immense harm to Ticketmaster and the purchasing public. Ticketmaster has been leading the fight to ensure tickets can be distributed to the public without the interference and corruption of automated purchasing devices. We enforce ticket purchase limits and have brought multiple lawsuits against brokers and software distributors - even putting one leading distributor of illegal software out of business. We continue to invest significant resources and cooperate with law enforcement to do everything possible to ensure that the illegal and unethical behavior of a few does not thwart fans' fair access to tickets.

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[3] As explained above in response to Senator Kohl's Question Nos. 1 and 4, we have made certain commitments regarding de-linking Ticketmaster.com's NTF page from TicketsNow, which I will not repeat here, in the interest of brevity.

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Ticket reselling (and scalping) have been in existence since the beginning of ticketing for live events. Many consumers have legitimate reasons for wanting to sell previously purchased tickets—*e.g.*, season ticket holders who can't make certain games at the last minute. To meet the needs of these consumers, we are doing our best to try and legitimize the process and minimize fraud in ticket resales. To that end, TicketsNow has instituted a policy whereby it will only allow postings on its marketplace after the initial on-sale for the event on Ticketmaster.com. By taking this action, TicketsNow is the first and only resale marketplace, to our knowledge, that has a policy against the posting of tickets before the on-sale.

REQUEST NO. 2:

2. In written answers provided to my office on February 26, 2008, Ticketmaster indicated that Ticketmaster fees for the New York and New Jersey Springsteen shows averaged $12.39 and $12.83, respectively. The answers further state that the TicketsNow service charges for the same shows were $45.07 and $45.16, but note that the TicketsNow fees are gross amounts paid before "very substantial acquisition costs and applicable fixed and variable costs are taken into account."

- Please identify and quantify the "substantial" acquisition costs and fixed and variable costs identified in Ticketmaster's response.
- Are there similar acquisition, fixed, and variable costs associated with primary tickets sold on Ticketmaster? If so, please identify and quantify such costs.
- What is Ticketmaster's profit margin from secondary tickets sold on Ticketsnow.com?

RESPONSE TO REQUEST NO. 2:

- In Ticketmaster's February 26, 2009 responses to Senator Schumer's February 24, 2009 questions, Ticketmaster explained that the TicketsNow fees it collected for Springsteen concerts (and identified in Response 2(b)) consisted of the gross amounts collected by TicketsNow and did not include the very substantial acquisition costs of TicketsNow and applicable fixed and variable costs of Ticketmaster's operations.[4] The substantial acquisition cost of TicketsNow referred to in that response includes the purchase price that Ticketmaster paid for the company—specifically, $279 million. Beyond this one-time cost, however, there are also very substantial operational costs associated with running the site and its related call center. In 2008, our ticketing business segment, primarily comprised of Ticketmaster and TicketsNow, had variable and fixed costs of approximately $1.096 billion.

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[4] Moreover, it should be noted that the fees charged on TicketsNow are consistent with those charged by such industry giants as StubHub. *See* https://www.stubhub.com/help-buy-buying-tickets/; https://www.stubhub.com/help-sell-completing-listing/.

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Variable operating costs consist primarily of credit card fees and chargebacks, ticket delivery fees, payroll, telecommunication and data communication costs associated with call centers and revenue share costs.

Fixed costs include selling and marketing expenses, primarily advertising and promotional expenditures and compensation and other employee-related costs (including stock-based compensation) for personnel engaged in customer service and sales functions. Advertising and promotional expenditures consist primarily of online marketing, including fees paid to search engines. Fixed costs also include general and administrative expenses, primarily compensation and other employee-related costs (including stock-based compensation) for personnel engaged in finance, human resources and executive management functions, facilities costs and fees for professional services.

- The fixed and variable costs associated with selling primary tickets on Ticketmaster are different from those required to operate TicketsNow. Ticketmaster's primary ticket sales online are connected to its Host (master) inventory system, which simultaneously services sales that occur online and through independent sales outlets, call centers and via mobile. As of December 31, 2008, Ticketmaster had approximately 2,100 independent sales outlets and operated two call centers in the United States. In addition to selling tickets, these call centers also assist in ticket fulfillment for orders placed online, and, some retail centers allow for pick-up of tickets sold online. Accordingly, costs associated with these other distribution channels should be taken into account when analyzing the costs of Ticketmaster's online primary ticket sales.

  Variable operating costs consist of royalties paid to clients as a share of convenience and processing fees, credit card fees and chargebacks, payroll, telecommunication and data communication costs associated with call centers, commissions paid on tickets distributed through independent sales outlets away from the box office and other expenses including ticket stock and postage.

  Fixed costs include selling and marketing expenses, primarily advertising and promotional expenditures and compensation and other employee-related costs (including stock-based compensation) for personnel engaged in customer service and sales functions. Advertising and promotional expenditures primarily include online marketing, including fees paid to search engines and distribution partners, as well as offline marketing, including sports sponsorship marketing and radio spending. Fixed costs also include general and administrative expenses, primarily compensation and other employee-related costs (including stock-based compensation) for personnel engaged in finance, legal, tax, human resources and executive management functions, facilities costs and fees for professional services.

- During 2008, Ticketmaster's ticketing business segment (which includes TicketsNow, among other businesses) recorded an operating loss of $872 million, including a goodwill impairment charge of $1.094 billion.

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REQUEST NO. 3:

3. What was the average difference in profit between a Ticketmaster ticket sold at 10:00 am and a TicketsNow ticket sold only minutes later for the very same Springsteen event?

RESPONSE TO REQUEST NO. 3:

Profit can be measured in many ways, and for purposes of our answer to this question, we will use adjusted operating income. The difference between Ticketmaster's average adjusted operating income per ticket sold on TicketsNow versus its average adjusted operating income per ticket sold on Ticketmaster.com for the one New York and two New Jersey Springsteen shows at issue was $42.93. This difference does not take into account refunds given to the consumers who requested them for ticket purchases made on TicketsNow. It bears mention that the very high demand for these particular shows (due to Mr. Springsteen's popularity in New Jersey and New York) resulted in unusually high ticket resale prices on TicketsNow and all other reseller web sites (*e.g.*, StubHub, Ticket Liquidator, etc.), and corresponding higher fees paid by consumers which per standard market practice are set as percentage of those higher ticket prices.

REQUEST NO. 4:

4. Who was responsible for the "malfunction"? Was anyone fired? Was anyone disciplined? If not, why not?

RESPONSE TO REQUEST NO. 4:

The malfunction was the result of a miscommunication in the product and engineering team. There is no single person who was responsible for it. The product and engineering team is currently reviewing its procedures, will be more diligent in reviewing code and related requirements in the future, and will improve how requirements are communicated internally. No one has been fired as a result of this issue, nor have we concluded that any disciplinary action is required.

REQUEST NO. 5:

5. Can Ticketmaster guarantee or pledge that service charges or fees imposed by the merged company will not be increased from Ticketmaster's current levels if the merger is approved?

RESPONSE TO REQUEST NO. 5:

Respectfully, we take issue with the notion that Ticketmaster has the responsibility and discretion to set service or convenience fees. In fact, the fees charged for an individual ticket consist of several components, the majority of which are heavily negotiated on a client-by-client basis.[5] Fee levels typically reflect not only Ticketmaster's costs for providing its services, but

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[5] For example, the convenience charge varies by ticket price and event and is determined by negotiations with venue operators, promoters and others, based on costs for each event.

[Footnote continued on next page]

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also the royalties its clients demand which Ticketmaster agrees to pay in order to remain competitive with the pricing offered by other ticketing services providers. These royalties are usually paid on a per-ticket basis as a portion of certain fees (*e.g.* convenience charges and order processing fees).[6] And in the case of some fees (such as facility fees), the entire amount is remitted to the venue. Post-merger, the combined entity will still have to negotiate many of these components with venues and promoters on a contract-by-contract (or even event-by-event) basis. Because we do not have sole responsibility for these fees, we could not guarantee that average fees will decrease overall post-merger. But we also do not believe that the merger itself will in any way lead to higher ticket fees or prices.

We do agree, however, that the industry needs a complete overhaul in how it prices and charges service fees. In fact, one of the first initiatives I instituted after coming to Ticketmaster was to convince my personal client, the Eagles, to use "all-in" ticket prices in virtually every concert date they played (except where a building would not allow it). This means that the stated ticket price a fan chooses when he or she selects her seats includes any applicable service charges. I truly believe this is a better way of presenting actual ticket prices to the public because it allows consumers to know right at the beginning of the purchase transaction what the total ticket price will be before they select their seats.

REQUEST NO. 6:

6. How many primary tickets did Live Nation sell in 2007? 2008?

RESPONSE TO REQUEST NO. 6:

Ticketmaster does not have access to reliable ticket sales data for tickets that are not sold on one of Ticketmaster's systems; therefore, we cannot accurately estimate Live Nation's ticket sales for these time periods.

REQUEST NO. 7:

7. How many primary tickets did Ticketmaster sell in 2007? 2008?

[Footnote continued from previous page]
Convenience charges typically include an embedded credit card fee (which averages about 2.9%), rebates to the venues, and sometimes rebates to artists and/or promoters. At the end of the day, Ticketmaster pays a very substantial portion of the average convenience charge back to clients pursuant to the revenue sharing agreement set forth in each client contract.

[6] Ticketmaster's own informal sampling of fees charged by competitors for live entertainment events on sale as of February 26, 2009 reveals that total fees as percentage of the total ticket price were as follows: Metrotix.com (16.5%); ShoWare (23.7%); Tickets.com (19.4%); TicketsUnlimited - KnoxvilleTickets.com (10.2%); TicketsWest.com (26.4%); and Veritix (12.3%).

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RESPONSE TO REQUEST NO. 7:

In 2007, Ticketmaster sold 140.9 million primary tickets world-wide. In 2008, Ticketmaster sold 138.6 million primary tickets world-wide. These figures do not include tickets processed on Ticketmaster's systems for which it does not collect a convenience fee (*e.g.* tickets sold through client box offices).

REQUEST NO. 8:

8. Has Ticketmaster prepared projections of how much of Ticketmaster's primary ticket sale business Live Nation might have threatened if it had remained a competitor of Ticketmaster?

- If so, please provide the substance of any such projection.

RESPONSE TO REQUEST NO. 8:

Ticketmaster is not aware of any official Ticketmaster projections specifically analyzing how much of Ticketmaster's primary ticket sale business Live Nation might have "threatened" if it had become a full-fledged competitor of Ticketmaster for the ticketing services business of third-party venues. Instead, Ticketmaster has forecasted that as a result of the parties' decision not to renew their prior contract, Ticketmaster would lose the opportunity to sell approximately 9.1 million tickets on behalf of Live Nation-owned or operated venues in the United States in 2009.

In contrast, if the merger is approved, the combined entity will almost certainly lose the opportunity to sell ticketing services to some new or existing clients. For example, AEG already has notified Ticketmaster by letter that it believes it has the right to terminate our agreement if the merger goes forward.

REQUEST NO. 9:

9. What was Ticketmaster's market share of primary ticket sales for major arenas and stadiums in 2007? In 2008? (Please answer this question both for concerts, and for other events.)

RESPONSE TO REQUEST NO. 9:

There is no well-defined "market" for primary ticketing and for this reason, Ticketmaster historically has not tracked "market share." Similarly, the term "major arenas and stadiums" is not generally understood to describe a specific set of venues in the industry. Nevertheless, based on publicly available estimates, we believe that the opportunity to sell primary tickets in the U.S. is between $20-30 billion tickets annually. For example, in 2008, Forrester Research estimated that primary ticket sales in the U.S. live music and sporting event industries amounted to approximately $22 billion.[7]

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[7] *Forrester*, The Future of Online Secondary Ticketing; A Forecast of US Online Secondary Ticket Sales, 2007 to 2012 (Feb. 6, 2008).

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Primary ticketing for sports and music events in the U.S.: Taking into account the Forrester Research figure above, and Ticketmaster's 2007 domestic primary ticket sales, Ticketmaster's estimated 2007 market share for live music and sporting events would be less 22%.[8]

Pollstar combined top 100 concert arenas, amphitheaters, stadiums (festivals) and theaters (U.S.): While Ticketmaster neither contributes to nor can attest to the accuracy of Pollstar's statistics, with respect to the Pollstar Top 100 concert arenas, amphitheaters, stadiums (festivals), theaters, and clubs in the U.S. (2008), Ticketmaster provided ticketing services to 87 of those venues in 2007, and 84 of those venues in 2008. In addition to these however, there are many thousands of other venues in the U.S. that host live entertainment events, and these range in size from a few hundred seats to stadiums of 60,000+ seats. It should be noted as well that while some of these venues host sporting events, others, which are utilized solely for sports purposes, would not be included in this list.

On average, 20% of Ticketmaster's ticketing service contracts up for bid every year. As these contracts come up for bid, Ticketmaster and other competitors submit proposals for the business going forward, so incumbency does not constitute a significant advantage in bidding for business (although Ticketmaster is proud of its success in retaining the vast majority of its clients as they renew because we have continued to deliver excellent service and the best technology available). Rather, because each competition for ticketing services is at the venue-level, every contract—whether it be a new client or renewal—is a "jump ball," which each competitor gets a fair shot at winning.

REQUEST NO. 10:

10. What was Live Nation's market share of primary ticket sales for major arenas and stadiums in 2007? In 2008? (Please answer this question both for concerts, and for other events.)

RESPONSE TO REQUEST NO. 10:

As noted above, there is no well-defined "market" for primary ticketing and for this reason, Ticketmaster historically has not tracked "market share." Further, because we do not have access to reliable ticket sales data for tickets that are not sold on one of Ticketmaster's systems, we cannot accurately estimate other companies' ticket sales.

REQUEST NO. 11:

11. If the merger is successful, to what extent would Ticketmaster eliminate direct competition from Live Nation's own recently-launched ticketing service?

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[8] Because Ticketmaster's total sales numbers include non-sports and non-music events (such as circuses and family shows), and the Forrester estimate includes only those types of events, Ticketmaster's share would be less than 22%.

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RESPONSE TO REQUEST NO. 11:

Currently, we understand that Live Nation for the most part is not engaged in head-to-head competition with Ticketmaster for the ticketing services of third-party venues. Rather, Live Nation is using third-party ticketing services technology from CTS Eventim, and is primarily focused on self-ticketing its own venues. To the extent that Live Nation goes forward to compete for third-party ticketing service business, the merger would eliminate competition between Ticketmaster and Live Nation because the merged entity would not compete against itself for ticketing service business. But as of today, given that Live Nation has really become the quintessential example of a major client that has decided to take ticketing in-house with available technology, the merger does not eliminate significant direct competition between Ticketmaster and Live Nation for the ticketing services business of third parties. Rather, the merger would simply restore the status quo of approximately three months ago, in which Ticketmaster was the ticketing service provider for Live Nation.

REQUEST NO. 12:

12. Are ticket sales for live events trending up or down in the past few years?

RESPONSE TO REQUEST NO. 12:

While Ticketmaster does not keep specific data tracking the ticket sales for all live entertainment events (including those ticketed by third-party ticketing service providers), we have seen public data to suggest that North American concert ticket sales increased by 7% in 2008 over the prior year.[9] Ticketmaster's domestic primary ticket sales have been basically flat over the last few years, and are down slightly world wide comparing 2008 against 2007.

REQUEST NO. 13:

13. Did Ticketmaster post operating profit gains in the third quarter of last year?

RESPONSE TO REQUEST NO. 13:

Ticketmaster worldwide operating income was $26.9 million in Q3 08 compared to $48.0 million in Q3 07, a decline of 44%. Full year worldwide operating income was ($954.1) million in 2008 compared to $216.3 million in 2007, a decline of (541%). The 2008 results include a goodwill impairment charge of $1,094 million.

REQUEST NO. 14:

14. Did Ticketmaster see revenues rise last year?

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[9] Pollstar 2008 Year End Business Analysis.

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RESPONSE TO REQUEST NO. 14:

Ticketmaster posted full-year worldwide revenue of $1,454.5 million in 2008, up 17%, or $214.0 million, from the prior year. Acquisitions, including Paciolan, TicketsNow and Front Line, contributed $178.4 million to full-year revenue.[10]

REQUEST NO. 15:

15. What is your position with respect to spinning off, or selling, TicketsNow.com?

RESPONSE TO REQUEST NO. 15:

Please see response to Senator Kohl's Question No. 4(b) above.

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[10] Press Release, *Ticketmaster Entertainment Reports Fourth Quarter and Fiscal Year 2008 Financial Results* (March 19, 2009).

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EXHIBIT A

Name, Location, and URL	Year Established	Services or Software
AGILE TICKETING SOLUTIONS, LLC Hermitage, TN www.agiletix.com	1999	Both
ARTS MANAGEMENT SYSTEMS Calgary, Canada www.artsman.com	1986	Software
AUDIENCEVIEW Toronto, Canada www.audienceview.com	Unknown	Services
BASELINE TICKETING Austin, TX www.baselineticketing.com	1996	Services
BOX OFFICE XPRESS Port Dover, Canada www.ccexpress.com	1993	Software
BROADWAY.COM New York, NY www.broadway.com	Unknown	Services
BROWN PAPER TICKETS Seattle, WA www.brownpapertickets.com	Unknown	Services
BLACKBAUD Charleston, SC www.blackbaud.com	1982	Software
CAPITOLTICKETS.COM Columbia, SC www.capitoltickets.com	2003	Services
CHOICE TICKETING SOFTWARE Boulder, CO www.choiceticketing.com	1999	Software
CITY BOX OFFICE San Francisco, CA www.cityboxoffice.com	2007	Services
CLICKNPRINT Houston, TX www.clicknprint.com	1999	Software

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Name, Location, and URL	Year Established	Services or Software
COMCASTTIX* Philadelphia, PA www.neweratickets.com	Unknown	Services
CTS EVENTIM, AG Denmark www.eventim.de	Unknown	Services
ETICKETS SOFTWARE, INC. Escondido, CA www.e-ticketsinc.com	Unknown	Software
ETIX Morrisville, NC www.etix.com	1999	Services
FIRST SPORTS TICKETS, INC. Oxford, MS www.ticketsxchange.com	2001	Software
FRONT GATE SOLUTIONS Austin, TX www.frontgatesolutions.com	2002	Both
GALATHEA STS Oxford, MS www.galatheasts.com	1998	Software
GATEMASTER SYSTEM Hercules, CA www.gatemaster.com	1993	Software
GATEWAY TICKETING SYSTEMS, INC. Boyertown, PA www.gatewayticketing.com	1999	Software
GLOBAL ENTERTAINMENT* Tempe, AZ www.globalentertainmentonline.com	2004	Services
GROOVETICKETS Los Angeles, CA	1999	Services

* Denotes a company that provides ticketing services through the use of Paciolan software, which is currently owned by Ticketmaster.

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Name, Location, and URL	Year Established	Services or Software
www.groovetickets.com		
INTERNATIONAL SPEEDWAY CORP. Daytona Beach, FL www.iscmotorsports.com	1957	Services
JUMPTV/XOS TECHNOLOGIES North Billerica, MA www.xostech.com	1999	Software
KTIX Tempe, AZ www.ktix.ticketforce.com	2007	Services
LIVE NATION TICKETING Los Angeles www.livenation.com	Unknown	Services
MARTECH SYSTEMS Wausau, WI www.martechsys.com	1999	Software
MAX WEB Lexington, KY www.maxweb.com	Unknown	Both
METROTIX* St. Louis, MO www.metrotix.com	1989	Services
MUSICTODAY Crozet, VA www.musictoday.com	1989	Services
MYTICKETOFFICE.COM Tulsa, OK www.myticketoffice.com	2006	Services
NEW CONCEPTS SOFTWARE, INC. Roseville, MI www.ncsoftware.com	1992	Software
NEW ERA TICKETS* Exton, PA www.neweratickets.com	Unknown	Software
OMNITICKET NETWORK Orlando, FL www.omniticket.com	1999	Software
OVATION TIX New York, NY	2000	Services

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Name, Location, and URL	Year Established	Services or Software
www.ovationtix.com		
REPEATSEAT Calgary, Canada www.repeatseat.com	2000	Software
SEATADVISOR, INC. San Diego, CA www.seatadvisor.com	1999	Software
SELECT-A-SEAT Valley Center, KS www.selectaseat.com	Unknown	Services
SHUBERT TICKETING New York, NY www.telecharge.com	Unknown	Services
SHOWARE Fresno, CA www.showare.com	2000	Both
SMITH'S TIX Utah www.SmithsTix.com	Unknown	Services
SOFTIX San Francisco, CA www.softix.com	1974	Software
STAR TICKETS PLUS Michigan www.starticketsplus.com	1994	Services
TESSITURA Dallas, TX www.tessiturasoftware.com	1996	Software
TEXAS BOX OFFICE* Austin, TX www.texasboxoffice.com	2005	Services
TICK IT BIZ www.tickitbiz.com	1998	Software
TICKET CENTRAL New York, NY www.ticketcentral.com	Unknown	Services
TICKETFORCE Gilbert, AZ www.starticketsplus.com	Unknown	Services
TICKETFUSION	Unknown	Both

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Name, Location, and URL	Year Established	Services or Software
Raleigh, NC www.ticketfusion.com		
TICKETHORSE Denver, CO www.tickethorse.com	2007	Services
TICKETPRO Norwalk, CT www.ticketpro.com	Unknown	Services
TICKETRETURN Charlotte, NC www.ticketreturn.com	2000	Software
TICKETS.COM Costa Mesa, CA www.tickets.com	1995	Both
TICKETSAGE Fayetville, AR www.ticketsage.com	1999	Software
TICKETSTARONLINE.COM (division of PMI Entertainment) www.ticketstaronline.com	Unknown	Services
TICKET TURTLE Portland, OR www.ticketturtle.com	2003	Software
TICKETSUNLIMITED (aka Knoxvilletickets.com) www.ticketsunlimited.com	Unknown	Services
TICKETSWEST Spokane, WA www.ticketswest.com	Unknown	Services
TICKETU Memphis, TN www.ticketu.com	1999	Software
TITAN TECHNOLOGY GROUP New York, NY www.titantechgroup.com	2000	Software
TIX.COM Long Beach, CA www.tix.com	2001	Both

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Name, Location, and URL	Year Established	Services or Software
UNIVERSITY TICKETS New York, NY www.universitytix.com	1999	Services
UNLV TICKETS* Las Vegas, NV www.unlvtickets.com	2006	Services
VALLITIX (powered by TicketsWest) Spokane, WA	Unknown	Services
VENDINI San Francisco, CA www.vendini.com	Unknown	Software
VERITIX Cleveland OH www.veritix.com	1999	Both
VISIONONE, INC. Fresno, CA www.visionone.com	1994	Software

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Follow Up Questions For David Balto from Hearing Entitled "The Ticketmaster/Live Nation Merger: What Does Mean for Consumers and the Future The Concert Business?"

From Senator Kohl

1. (a) What does the fact that a company as large and successful as Live Nation, after launching its ticketing business at the beginning of the year, decided not to compete with Ticketmaster but instead enter into this merger? If a company like Live Nation can't compete, what is the likelihood of another major national ticketing company entering the market?

(b) Doesn't this deal make new entry harder, as all venues owned or managed by Live Nation will automatically give their ticketing business to Ticketmaster? How likely is it that a new company could enter the ticketing business when it does not have any hope of business from Live Nation venues?

The Committee should be very concerned that Live Nation has decided to exit the market through acquisition, rather than competing. Ticketmaster has been the dominant firm in the ticketing market for over a decade and has reinforced that dominance through acquisitions. Entry into the ticketing market is particularly difficult because ticket rivals need access to both venues and artists. Live Nation was uniquely situated to enter the market because of its control and access to both artists and venues. Thus the acquisition of Live Nation by Ticketmaster would extinguish competition from the one company best situated to offer competition with Ticketmaster. If a company like Live Nation cannot compete in this market it is extraordinarily unlikely that any other firm would be able to effectively enter the market.

In addition this transaction would make new entry significantly harder for any other firm that attempts to enter. The combined firm would have a substantial control of both venues and artists and this would raise entry barriers in the ticketing market.

2. (a) Does Ticketmaster's acquisition of ticket re-seller TicketsNow.com give you any concern about Ticketmaster's ability to divert tickets to the secondary market at inflated prices? Does the recent incident with the Bruce Springsteen concerts in New York and New Jersey give us any additional reason for concern?

(b) Would the Ticketmaster/Live Nation merger give the combined company increased ability or incentive to divert tickets to the secondary market? How?

(c) In your view, should the Justice Department insist that Ticketmaster/Live Nation divest TicketsNow.com as a condition of the merger?

Ticketmaster's acquisition of TicketsNow.com raises significant concerns about the potential for Ticketmaster to diminish competition is the sale of tickets. The recent incident with Bruce Springsteen demonstrated the ability of Ticketmaster to divert tickets into the secondary market and significantly inflate prices. .This is not the only incident where such conduct has

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occurred and this type of acquisition raises substantial concerns. The Ticketsnow.com acquisition should be investigated by the DOJ.

The Live Nation/Ticketmaster gives the combined company a substantial increased ability to divert tickets into the secondary market. Both venues and artists are key sources of tickets for the secondary market. By combining Ticketmaster and Live Nation a single firm would have the ability to create a bottleneck to access to those tickets. Ultimately this would enable the firm to raise prices in the secondary market.

As I testified the DOJ should block the merger. If the DOJ chose to enter into a consent order it should require that as a condition of approving the merger Ticketmaster should divest TicketsNow.com.

3. At the hearing, the independent concert promoters witnesses stated that they were concerned that, after the merger, ticketing information collected by ticketing business of Live Nation (the former Ticketmaster) -- information like the demographics of the audience attending concerts, ticket sales, pricing, e-mail addresses and the like -- could be shared with the concert promotion business of Live Nation. Mr. Rapino of Live Nation stated that this was a valid concern?

Would some sort of "firewall" to protect the information Ticketmaster gains about concerts from being shared outside of the ticketing part of the combined Live Nation/Ticketmaster company be sufficient to alleviate this problem? How could such a firewall be enforced?

Some of the most significant concerns raised about the merger are the diminution of competition among independent concert promoters. Live Nation is the largest concert promoter with a significant share of the market. Having access to ticketing information would give the combined firm a significant ability to target its rivals. Through Ticketmaster, the combined firm would have information on the demographics on the audience attending concerts, ticket sales, pricing, and email addresses. All of this information can be used strategically by the merged firm to target individual independent concert promoters in an effort to drive them out of the market. Even if they are unsuccessful in completely extinguishing the ability of those independent concert promoters to compete, these actions can dampen the competitive effectiveness vigor of these promoters.

One can imagine that the parties will suggest that some kind of firewall could be used to protect the information Ticketmaster secures from being shared outside the ticketing part of the combined firm. As a general matter, antitrust enforcers and the courts believe that behavioral relief such as a firewall is a second best solution compared to structural relief (in this case simply blocking the merger). They should be concerned to an even greater extent in this merger. There is no evidence that suggests a firewall would be effective. In this case there are substantial concerns about the utility of a firewall since both Ticketmaster and Live Nation have used

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vertical relationships in the past to try to exclude their rivals. I believe a firewall would be insufficient to protect independent concert promoters.

4. Given all the venues owned and managed by Live Nation to be added to the ticketing business of Ticketmaster, will a combined Ticketmaster/Live Nation become so dominant in the concert business that the Justice Department should order the combined company to divest the concert arenas it owns as a condition of the merger, just as the movie studios were ordered to divest their movie theaters in the 1950s on antitrust grounds? Why or why not?

I generally believe the DOJ should block the merger and any other remedy is unlikely to fully protect competition. One type of relief that might alleviate some competitive problems would be to require the combined company to divest some of the concert arenas it owns as a condition of approving the merger. I doubt that such a remedy would be palatable to the firms. Even if it were palatable to the firms I don't believe it would resolve the most significant potential competitive problems posed by this merger. The combined firm would still be a significant firm in the independent concert promotion market and have access to competitively sensitive information through the Ticketmaster operation.

5. Both Ticketmaster and Live Nation argue that the merger will benefit consumers by eliminating inefficiencies and will lead to cost savings that will passed on to consumers. What is your response? What is the likelihood that any efficiencies gained by this merger will be passed on to consumers in form of lower ticket prices and lower services fees for concert tickets?

I have practiced antitrust law for over 25 years, both in the government and in private practice. I have defended several mergers before the agencies. I can never remember a proposed with such paltry proposed efficiencies. The proposed efficiencies are a very small amount considering the substantial size of the two firms.

Even if there were substantial claims, there are numerous reasons to doubt any efficiencies will ultimately benefit consumers in the form of lower ticket prices and lower service fees. First, "efficiency" has a special meaning under the antitrust law. It refers to cost savings that ultimately benefit consumers and not cost savings that benefit shareholders. Second, because the firm will be a monopolist it will have little incentive to past those efficiencies on to consumers in the form of lower prices. Finally, there is little evidence that past acquisitions by these firms led to either efficiencies or lower prices.

From Senator Schumer

1. By every account, Live Nation has only recently entered the market for primary ticket sales. Assuming they have not yet become a significant competitor to Ticketmaster in this area, how can it be said that the merger still presents competitive concerns?

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The fact that Live Nation only recently entered into the market for primary ticketing sales does not diminish the significant competitive concerns raised by this merger. Even though Live Nation only recently entered into the market it has already acquired a significant share of the market. As I noted in my testimony the Live Nation site is currently the second most visited ticketing site on the web.

Even if Live Nation had not entered the merger could still raise competitive concerns under the "potential competition doctrine." A merger can harm competition if it eliminates a potential competitor from the market. In this case even if Live Nation had not even entered the merger could be anticompetitive by eliminating a potential competitor.

2. If the merger occurs, Ticketmaster will likely have access to the information on independent concert promoters. What concerns does this raise?

As I noted earlier, access to competitively sensitive information about independent concert promoters is probably one of the most problematic aspects of this merger. By enabling Live Nation to have access to competitively sensitive information the merged firm will be able to strategically to target individual concert promoters or individual concerts in an effort to diminish their ability to effectively compete.

3. Were the newly merged company to engage in anticompetitive behavior after the merger, why couldn't consumers simply bring antitrust suits to protect themselves?

The reason Congress enacted the Clayton Act was to enable the government or private parties to stop a merger before it led to any anticompetitive effects. Congress recognized that unraveling a merger or bringing a later antitrust suit was an unsatisfactory alternative to simply challenging a potentially anticompetitive merger. In this industry that is particularly important. Private litigation against anticompetitive conduct against either Live Nation or Ticketmaster has been unsuccessful -- not because there were no legitimate antitrust concerns raised -- but because of the numerous obstacles of bringing a successful private antitrust suit (such as demonstrating standing or injury or proving the relevant market). It is because of the difficulty of bringing antitrust litigation to challenge anticompetitive conduct post-merger, that it is particularly important for the DOJ to block this merger.

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Follow Up Questions For Seth Hurwitz from Hearing Entitled "The Ticketmaster/Live Nation Merger: What Does Mean for Consumers and the Future The Concert Business?"

From Senator Kohl

1. Would your concerns regarding the sharing of confidential information gained from concerts you promote and sold via Ticketmaster inside the post-merger combined Ticketmaster/Live Nation company be alleviated if some sort of "firewall" was put in place at the combined company, so that the ticketing side of the company promised not share information with the concert promotion side of Ticketmaster/Live Nation? In your judgment could such a firewall be sufficient to eliminate the danger you have identified?

The fact is, the info will be there.

They could find a way to get it if they wanted to. At the very least, someone in one department could simply ask someone in the other department, conversationally, how business is for other promoters. While this sounds casual, it is not.

It really shouldn't be anything close to an issue.

If I had to use a Live Nation ticketing system, whenever someone bought one of my tickets would send them to the Live Nation site, which would try to sell them tickets to shows that competed with mine.

To use the Coke/Pepsi analogy I have used before, this would be like someone clicking on a link to buy Coke, and have them barraged with ads for Pepsi products

2. You testified at length about the dangers this merger presented to the business of independent concert promoters like I.M.P. But Ticketmaster and Live Nation argue that the merger will enable them to deliver concerts to consumers more efficiently and at lower cost. If the Live Nation/Ticketmaster combination can deliver concerts more efficiently to consumers, why should consumers care if it is more difficult for you to compete with it? What are the benefits to consumers of healthy and diverse independent concert promoters?

The way negotiations used to go, offers were compared between competing promoters, and lowest ticket prices were a determining factor. That only exists now where there is still competition, which has dwindled to only a few markets. In those few markets, that competition is now sometimes eliminated by deals in other monopolized markets, that are tied to the free markets.

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The intent of the merger is to eliminate remaining competition. If it was merely about gaining efficiencies, they could accomplish those same efficiencies by simply doing business together.

If they were to control the industry, they would control the prices. Their practices have proven, historically, that they cannot be trusted to do so.

Whatever efficiencies may result from the merger are offset by its anticompetitive results. This merger will vest in a single entity complete control of every aspect of promotion, production and staging of live music concerts, particularly among popular acts. This entity will have no reason to pass on any savings from cost efficiencies to the consumer. The Committee should also not lose sight of the fact that Ticketmaster owns Front Line Management, which manages several high profile artists. As such, the merger will further consolidate Live Nation's control of popular musical artists.

3. As the owner of the "9:30 Club" concert hall in Washington, D.C, how difficult do you foresee competing with a combined Ticketmaster/Live Nation? Do you think the combined company will able to use its market power to harm your ability to book acts you wish to have perform?

The 930 is currently not a factor in DC, as they do not have a club here. However...in Baltimore Live Nation has a booking deal with a club there, and they have used their monopoly power in other markets to force bands to play for them in Baltimore. If they are allowed to assemble the monopoly they are trying to, it is only a matter of time before they open a club here in DC and successfully use the same tactics, winning by control instead of doing a better job in this market per se.

There is already grave concern about their use of market power at the amphitheatre and arena level, which will be even more severe with the combination of TicketMaster's Front Line Management and Live Nation's stable of artists.

Live Nation and Ticketmaster have merged and acquired so many times; they are a combination of literally hundreds of companies. Yet with all those "efficiencies" the cost to the consumer has not gone down - it has doubled in the last 10 years - and the customer satisfaction appears to be at an all-time low. Live Nation and Ticketmaster have given absolutely no credible plan for how the consumer will benefit by having one monopoly combine with another monopoly to create a mega-monopoly. Competition will be snuffed out, and along with it customer choice, innovation, better service, and any hopes of sane pricing.

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3/17/09
Follow Up Questions For Jerry Mickelson from Hearing Entitled "The Ticketmaster/Live Nation Merger: What Does Mean for Consumers and the Future The Concert Business?"

From Senator Kohl

1. Would your concerns regarding the sharing of confidential information gained from concerts you promote and sold via Ticketmaster inside the post-merger combined Ticketmaster/Live Nation company be alleviated if some sort of "firewall" was put in place at the combined company, so that the ticketing side of the company promised not share information with the concert promotion side of Ticketmaster/Live Nation? In your judgment could such a firewall be sufficient to eliminate the danger you have identified?

Just to be clear, the information I consider to be sensitive and confidential are the lists of our customers, access to our ticket sales on a daily basis, the knowledge of when our concerts will be going on sale and the nature of the terms of Jam's Ticketmaster agreement along with the terms of many other essential facilities that have contracts with Ticketmaster.

But to answer your question let me start out by stating that you can't change the stripes on a zebra. Based on past experience it is impossible, unfeasible, hopeless and out of the question for me to believe that Live Nation's concert department would not access our sensitive and confidential information from Ticketmaster. I will point out just a few reasons that lead me to this conclusion.

1. Based on past history, Live Nation has not been friendly to their competitors. Please review the anti-trust lawsuit of Nobody In Particular Presents vs. Clear Channel Communications and also the anti-trust/business interference lawsuit of JamSports vs. Clear Channel where a jury awarded JamSports $90 M in 2005. These two lawsuits will provide a look at how Live Nation (then Clear Channel) unfairly competed.

   You should know that Randall Mays was an officer and/or on the Board of Clear Channel Communications at the time activities which brought about both lawsuits took place and Randall is currently the Vice Chairman of Live Nation. Randall's very own e-mails provide proof as to his actions in trying to harm his company's competitor in JamSports vs. Clear Channel.

2. How can we trust Ticketmaster when Barry Diller, its Chairman of the Board of Directors, was not exactly truthful about the Bruce Springsteen ticketing incident? On February 10th, during a Live Nation/Ticketmaster investors conference call he explained the ticketing problems were not due to faults in Ticketmaster's system but due to Visa. "It had to do with, I think, Visa that couldn't process the data," Diller said. "So it kind of froze the system for a bit."

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Visa responded by stating "Ticketmaster's characterization that an earlier technical 'glitch' impacting its online ticket sales was related to Visa's systems is inaccurate. Visa's processing network was fully functional on February 2 with no authorization issues. In fact, VisaNet has run with nearly 100 percent reliability for the past decade."

3. Lastly, while Michael Rapino would have you believe that a "firewall" would be honored I would like to point out some inconsistencies in his testimony in front of your Senate subcommittee which should give you additional reasons for my lack of trust in believing Live Nation. I have nothing against Mr. Rapino since he is just doing his job but the "firewall" concept is just as unbelievable as his two inaccurate statements he made on February 24th.

   First, Mr. Rapino claims that whatever market share Jam has lost in Chicago or Mr. Hurwitz has lost in Washington, D.C. is not the result of Live Nation, but of the far smaller national promoter AEG Entertainment. That comment is far from true since the facts show that AEG does not produce a significant amount of concerts in Chicago.

   Secondly, Mr. Rapino would have you believe there is competition for acts amongst promoters citing Aerosmith as an example. The fact is that Jam has not received any calls to produce Aerosmith, U2, Shakira, Coldplay, Fall Out Boy, Fleetwood Mac, Neil Young, Madonna, No Doubt, Rush, Def Leppard, Jonas Brothers, Janet Jackson and many others. Live Nation's control of the music business is why Jam only produced 35 arena level concerts in 2008, which is 95 less arena level concerts than the 130 concerts Jam produced in 1996, the year SFX began operating.

For the same reasons that Pepsi would not want Coke to distribute their product and Microsoft would not want to share any information with Apple, independent promoters can not afford to have our most powerful competitor access or share our important information. As you have just read, I have provided a few reasons (but there are many others) in my response as to why I believe there is no way any independent promoter can trust a 'firewall' to protect us based on past practices of these companies.

2. You testified at length about the dangers this merger presented to the business of independent concert promoters like JAM. But Ticketmaster and Live Nation argue that the merger will enable them to deliver concerts to consumers more efficiently and at lower cost. If the Live Nation/Ticketmaster combination can deliver concerts more efficiently to consumers, why should consumers care if it is more difficult for you to compete with it? What are the benefits to consumers of healthy and diverse independent concert promoters?

I am not exactly sure what Live Nation/Ticketmaster means by saying the merger will enable them to deliver concerts to consumers more efficiently. I could imagine they might be suggesting this new company will have vertically integrated the entire music industry, thus

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harming or eliminating competition, which might be more efficient from their perspective. My reason for saying this comes from Ticketmaster's Media Center that issued a news release on February 24, 2009 which states in part "There are too many parties between the artist and the fan, all working at cross-purposes, and creating enormous inefficiencies and additional costs."

Or I might surmise that Live Nation/Ticketmaster might be referring to another part of the above mentioned news release when Irving Azoff said this new company "is designed to address the obvious inefficiencies in the supply chain – the large volume of unsold tickets to events, higher costs, surcharges and the explosion of the resale market." It is my belief that an analysis of this statement will show that: (1) the large volume of unsold tickets might be due to the fact that ticket prices are too high; (2) higher costs might be due to the excessive tour offers made by Live Nation; (3) surcharges have never been lowered by Ticketmaster; (4) Live Nation's surcharges are higher than Ticketmaster's; and (5) both Ticketmaster and Live Nation have business models that include taking advantage of the secondary ticketing market.

But I must disagree with their argument that the merger will allow them to deliver concerts at a lower cost. Since both companies consolidated their respective industries (ticketing and concerts) there has never been a decrease in costs to the consumer but instead substantial increases.

I have no doubt that Ticketmaster and Live Nation will say anything to get this merger through but the facts are much different when looking at the actions of both companies. As a matter of fact, history shows us an entirely different story than the one being told today by Live Nation and Ticketmaster. Based on the past, there is nothing to suggest the consumer will realize lower prices when attending a concert if this merger is allowed to proceed, from ticket prices to service charges to facility fees to food & beverage prices and to the sale of t-shirts/merchandise.

Ticket Prices

In an article dated September 26, 2006 that appeared on Ticketrends.com Michael Rapino vowed to drive down concert ticket prices by stating "We can grow this industry by lowering prices." In 2005 the average ticket price for the Top 100 tours was $56.88 and in 2008 it soared to $67.33, so what happened to lowering prices?

As I previously stated in my written testimony, from 1996, when SFX (the predecessor to Clear Channel and then Live Nation) began, through 2008 the average price of a concert ticket for the Top 100 tours went from $25.81 to $67.33, a 160% increase. This company also instituted all kinds of new charges to the consumer, such as paying a fee for buying a ticket at their box offices, facility fees proliferated over these past thirteen years and Ticketmaster service charges increased.

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Artist Guaranteed Payments

There is a direct correlation between the amount a concert promoter guarantees to pay an artist to perform and the ticket price. Typically Live Nation pays large sums of money to an artist to purchase their entire tour, and the higher the guarantee to the artist the higher the ticket price. It's my belief this is the reason that ticket prices have risen 160% since 1996, the inception of Live Nation's predecessor SFX.

Also, Live Nation is the only company that I am aware of that pays certain artists more than 100% of the gross ticket sales to perform at their outdoor amphitheatres.

Food & Beverage Per Capitas at Live Nation Amphitheatres

Live Nation has some of the highest charges that consumers pay for food and beverages at their outdoor amphitheatres. Again, there is a direct correlation between these very high charges and the fact that Live Nation has the highest food and beverage per capitas, which means it cost consumers more to attend Live Nation concerts than professional sporting events. Please look at Exhbit A which is a page from a Live Nation presentation (dated 11/15/07) that shows Live Nation received $12.47 per person while the National Football League received $11.42 per person, Major League Baseball received $10.76 and the National Hockey League received $9.35.

Live Nation vs. Ticketmaster Ticketing Fees

On December 20, 2007 Live Nation issued a press release announcing that it had entered into a long term ticketing agreement with CTS Eventim which "will enable Live Nation to launch its own ticketing business utilizing the most technologically advanced ticketing platform in the world. Live Nation will exclusively license the Eventim platform in North America.....The new agreement will allow Live Nation to begin selling tickets on January 1st, 2009."

The chart below (a summary of Exhibit B attached to my 2/24/09 written testimony) compares ticket fees between Ticketmaster (TM) and Live Nation (LN) for concerts currently on sale. Live Nation's recent entry into the ticketing business has caused consumers to pay higher fees, which is surprising since typically a new entry into the market would decrease service fees, not increase them. Live Nation's fees are highlighted in yellow and as you can see are higher than Ticketmaster's (TM) fees.

Concert	Date	City	Ticket Price	Ticket Fee
Coldplay	7/18/09	Carson (CA)	$97.50	TM - $15.95
Coldplay	7/21/09	Dallas	$35.00	LN - $21.33
Coldplay	8/7/09	Charlotte	$97.50	LN - $20.15
Jimmy Buffett	5/16/09	Las Vegas	$211.00	TM - $12.80
Jimmy Buffett	4/21/09	Charlotte	$129.00	LN - $21.00
Fall Out Boy	5/17/09	St. Paul	$34.00	TM - $9.55
Fall Out Boy	4/4/09	Irvine (CA)	$47.50	LN - $13.00

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Live Nation's Ticketing Fees vs. an Independent Promoter/Venue (Metro in Chicago)

In 2008 Ticketmaster's contract with Metro, an independently owned and operated 1,000 capacity club in Chicago, expired and Metro decided to switch to a relatively minor ticketing company with the #1 goal of lowering the service charge to the consumer. But what Live Nation did earlier this year with their new ticketing company was raise the service charge to the consumer. The following chart summarizes the difference in fees with two of the same artists performing for both Metro and Live Nation.

Artist	Date	Venue	City	Ticket Price	Ticket Fee	Total Price	Ticket Company
Primal Scream	3/17/09	Fillmore	San Fran.	$30.00	$13.50	$43.50	Live Nation
Primal Scream	3/22/09	Metro	Chicago	$27.50	$6.64	$34.14	Metro
Fischerspooner	5/22/09	Fillmore	San Fran.	$29.50	$12.00	$41.50	Live Nation
Fischerspooner	5/30/09	Metro	Chicago	$25.00	$6.30	$31.30	Metro

As you can see, Live Nation's ticketing fees are basically twice as much as Metro's.

So after looking at this chart I ask you the following;

- Which company is truly benefitting the fans? Metro or Live Nation?
- Which company is operating more efficiently? Metro or Live Nation?

Secondary Market Ticket Sales

In the page entitled "Live Nation Objectives For Ticketing" (Exhibit B) from their investor presentation on November 15, 2007 the second point states "Leverage into new products – secondary, VIP and artist ticketing."

The next page entitled "Sponsorship, Secondary Ticketing and Other Revenue Opportunity" (Exhibit C) states the "Estimated size of 2007 North American Secondary Concert Market (GTV): $500 MM".

In the last page entitled "Secondary Market and Yield Management Opportunity" (Exhibit D) from their presentation "Live Nation Launches Global Ticketing Business" on January 11, 2008 states the secondary market fee revenue opportunity is $75 M to $125 M. The text states "Two ways for Live Nation to participate : (1) Collect service fees on secondary tickets (2) Price primary tickets at 'market value'".

In a Pollstar article dated January 15, 2008 CEO Michael Rapino said that by controlling its customer data, tickets and service fees, LN could bring in an additional $25 million per year, while service fees from secondary market ticketing could bring an additional $75 million to $125 million annually.

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In a Live Nation Q4 2007 Earnings Call on March 10, 2008 Michael Rapino stated "And the final piece of revenue that will be driven by our ticketing business is in secondary markets we currently do no participate in. We intend to build our presence in the secondary ticketing market and capture incremental revenue through the collection of service fees on secondary tickets which are often sold at a significant premium to face value and dynamic pricing structures aimed at helping sell previously unsold inventory."

And lastly, on March 6, 2009 a music blog written by Bob Lefsetz had the following revelation. "But what shocked me was a recent conversation with a manager. Who told me that Live Nation's offer for his act included pulling multiple hundreds of tickets to sell on the secondary market. I did not know that Live Nation did this. Do I believe this manager? Absolutely."

Closing

Live Nation and Ticketmaster are not going to deliver concerts more efficiently to the consumer. As their history shows, neither company has done this in their past and they have given us no indication they will do this in the future. As a matter of fact, Live Nation has continued to show us their business model is broken which is the only thing that needs to be fixed. Back in 1996 SFX began buying thriving concert promoters who operated independently of each other. But SFX changed these promoters formula for success by purchasing entire tours and ever since that time I do not believe they have shown a profit in any of the past thirteen years.

Have the acquisitions made by Ticketmaster in acquiring competing ticketing companies over the past 26 years benefitted consumers through lower prices? Have the acquisitions made by SFX/Clear Channel and now Live Nation benefitted consumers through lower prices? The answer to both those questions is no.

It is inconceivable to me to believe that any merger that effectively harms competition is really pro-competitive. By merging the ticketing company that is already a monopoly with the dominant concert promoter means this new entity will be able to substantially diminish and inhibit the ability of any company to compete in both ticketing and concert promoting which leads to less choices for the consumer and higher prices. Both Ticketmaster and Live Nation already possess market power in each of their businesses which will already harms competition and the consumer.

The merger of Ticketmaster and Live Nation provides it with so much leverage over artists, managers, talent agents, venues, promoters, ticketing companies, merchandise companies, music apparel companies, record companies, fan clubs and others that it will be able to harm competition in every part of the music industry. This merger raises barriers to entry and has already raised competitors' costs that make it very difficult to compete.

As Robert Doyle Jr. (who spent many years as an antitrust enforcer for the Federal Trade Commission) stated on February 26, 2009 in his testimony in front of the House "Ticket prices

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and convenience fees continue to increase and they will continue to increase further if the merger is consummated. The merging parties argue that they will be able to drive costs down, which in turn will mean ticket prices may decrease. That would be a first if a merger that eliminates competition results in lower prices for the ultimate consumer."

Live Nation has already raised their rivals costs and the combination of these two Goliaths would leave many in the music industry food chain with fewer competitive choices which has already translated into higher prices for consumers. The leverage this new company will have in every part of the music business provides them the ability to package their services to the artists that will make it virtually impossible for any company in the music industry, including independent promoters, to compete.

Competition amongst competitors is healthy and should be good for the consumer and all the stakeholders in our industry. Passionate, spirited independent concert promoters insure that prices will remain reasonable and more affordable to the fans. That independently owned and operated Chicago club called Metro, with its ticketing service fee that is half of what Live Nation charges, specifically illustrates why the consumer is being harmed by Live Nation and Ticketmaster and dramatically highlights why these two companies should not be allowed to unite.

Make no mistake about it, this merger is about greed and has nothing to do with the good of the consumer. Live Nation and Ticketmaster are concerned about their stock price along with the amount of money they can earn for their shareholders and themselves. The pressures of being publicly traded means the company and its executives are judged by quarterly results that have to show consistent growth, which in a business with thin profit margins, is not always in the best interests of the consumer, especially in regards to this proposed marriage of the two most powerful companies in the music industry.

Thank you for taking the time to read my responses to your questions.

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EXHIBIT A

Lever 2: Improve F&B Profitability

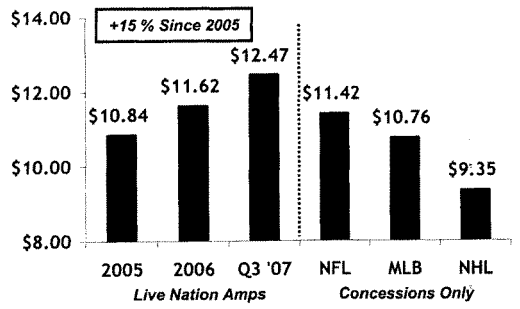
LIVE NATION

- Centralized venue management est. in 2006
- Key initiatives include:
  - Value and whole dollar pricing
  - Elimination of third party vendors
  - SKU reduction
  - Hawking

TOP SELLING F&B CATEGORIES (AT AMP)

Rank	F&B Item	% of Net Sales
1	Beer	57.1%
2	Cold Beverages	14.4%
3	Main Meals	10.3%
4	Frozen Drinks	7.5%
5	Liquor	5.9%

COMPARABLE F&B PER CAP



ARAMARK

THE ARAMARK OPPORTUNITY

34 Amphitheaters *

$49MM Annual Revenue / Adj. OIBDAN

Opportunity to improve current ~50% split

* 36 total venues

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EXHIBIT B

Live Nation Objectives for Ticketing

LIVE NATION TICKETS

- **Primary Ticketing Objective: Control Inventory**
  - Flexibility in distribution partners
  - Leverage into new products – secondary, VIP and artist ticketing
  - Own the "fan transaction" to capture data in order to market and up-sell fans

- **Current agreement for North America ticketing for bulk of NA venues expires December 2008**
- **Current agreement for most of Europe, Rest of World and remainder of NA venues expires in December 2009**

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EXHIBIT C

Sponsorship, Secondary Ticketing and Other Revenue Opportunity

LIVE NATION TICKETS

Sponsorship

North American Sponsorship Market: **$15BN**

Global Advertising Market: **$430BN**

Secondary Ticketing Market

Estimated Size of 2007 North American Secondary Concert Market (GTV) : **$500MM**

Other Ancillaries

Ticketing Related
- Yield Management
- Premium Seating

Music Related
- Fan club
- Merchandise
- Concert streams
- Preorders

Event
- Travel package
- Off-venue dining
- Transportation
- Parking
- Food and Beverage

Gift Card and CRM
- Gift cards

6

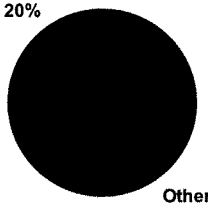
EXHIBIT D

Secondary Market and Yield Management Opportunity

LIVE NATION TICKETS

- Live Nation currently does not participate in the secondary market and has only experimented with yield management
- Two ways for Live Nation to participate:
  1. Collect service fees on secondary tickets
  2. Price primary tickets at "market value"
- Live Nation costs of these opportunities include:
  - Artist participation
  - Operating expenses

EST. NORTH AMERICA SECONDARY TICKET MARKET SIZE
(in millions)



$500MM Concert Ticket Sales
X
Service Fee of 15 – 25%
=
$75 - $125MM
Market Fee Revenue Opportunity

Source:
Live Nation estimates
Size of Secondary Ticket Market: Ticketmaster speech at 2007 CIC
Average Service Fee: Par StubHub

19

Responses from Michael Rapino to Written Questions from Hearing Entitled "The Ticketmaster/Live Nation Merger: What Does It Mean for Consumers and the Future The Concert Business?"

Reponses to Questions Posed By Senator Kohl

1. It is my understanding that, prior to this merger, Live Nation had a ten year contract with Ticketmaster for Ticketmaster to provide ticketing services for Live Nation venues. This contract expired at the end of 2008. At the beginning of this year, rather than renew the contract, Live Nation announced the launch of its own ticketing business, an effort that was widely viewed as a needed competition to Ticketmaster. Obviously, this competition will be lost should this merger go forward.

(a) Prior to the merger, were you planning to offer Live Nation's ticketing service to concert venues not owned or managed by Live Nation to compete with Ticketmaster? If your answer is in the affirmative, **shouldn't** we be concerned by this loss of competition in the ticketing business between Ticketmaster and Live Nation's new ticketing business? If you were not planning to compete with Ticketmaster, why did Live Nation invest millions of dollars in developing a ticketing product?

It is true that Live Nation very recently developed its own ticketing capability designed to serve Live Nation venues. To date, however, Live Nation has not been extensively bidding for the business of third party contracts because of its focus on self-ticketing. And in any event, we certainly do not believe that the proposed deal will harm competition in the ticketing industry.

Keep in mind that in today's environment, Ticketmaster must constantly compete for the privilege of serving venues, and every venue has a broad selection of competitive ticketing options — more so than ever before, as ticketing has moved overwhelmingly online. The availability of many web-based and e-commerce technologies that can be deployed in ticketing has made entry into the ticketing business far easier in recent years, as evidenced by the proliferation of Internet-based ticketing solutions. And Ticketmaster clients are increasingly moving to self-ticketing platforms rather than using Ticketmaster or another third party ticketing service. For example, Major League Baseball acquired Tickets.com, and many franchises have moved to that platform, which lets teams that have made that switch more directly control the relationship with their fans. In fact, as Peter Luukko of Comcast-Spectacor aptly observed in his testimony before the House Subcommittee on Courts and Competition Policy, this is "where the industry trend is clearly moving — in large part because content providers want to have more direct control of the connection to their fans." I could not agree more.

Live Nation's ticket service solution is but another example of the prevalence of self-ticketing options. It underscores the vibrancy of competition and entry in ticketing. When Live Nation set out to evaluate its own ticketing options, it identified more than ten vendors, of which three made it into final evaluation rounds. There was no shortage of credible alternatives 18 months ago, and that observation remains true today. The merger represents no loss in competition because the type of ticketing technology that Live Nation has employed is readily available from a number of sources to anyone interested in either self-ticketing or in entering the business as a third party ticket service provider.

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(b) Isn't the fact that a company as large and successful as yours couldn't compete with Ticketmaster in the ticketing business evidence of the difficulty of entering the ticketing marketplace?

Companies large and small can and do compete vigorously with Ticketmaster. Indeed, if any inferences are to be drawn from Live Nation's development of a self-ticketing capability, they are (i) that any content business or venue with some capital, determination, hustle and a good software engine can readily enter the ticketing marketplace, and (ii) that Ticketmaster has to remain competitive and relevant to its customers if it is going to retain them, or customers will do what Live Nation did, i.e., consider options to move the business away. In fact, a number of other venue operators have moved into self-ticketing, and a number of other ticketing service providers have entered the marketplace with ticketing solutions that are competing against Ticketmaster today.

2. At the hearing you stated that independent concert promoters had a valid concern regarding the possibility that, after the merger, ticketing information collected by ticketing business of Live Nation (the former Ticketmaster) -- information like the demographics of the audience attending concerts, ticket sales, pricing, e-mail addresses and the like -- could be shared with the concert promotion business of Live Nation. You further stated it would desirable that this information not be shared in this manner. So would you agree to some sort of "firewall" to protect the information Ticketmaster gains about concerts from being shared outside of the ticketing part of the combined Live Nation/Ticketmaster company? Would you agree to this "firewall" as part of a consent decree with the Justice Department as a condition of the merger being approved?

As I stated at the hearing, I am extremely sensitive to the confidentiality concerns of independent promoters, so let me reiterate: Live Nation (i) has a proven track record of respecting and protecting the confidentiality of third party information and (ii) will continue to do so after the merger.

3. Chicago Tribune music critic Greg Kot recently wrote that the price of a ticket for the top 100 tours last year averaged $ 67. That's more than double the average of a decade ago and far outstrips the rate of inflation. This merger would combine the companies "most responsible" for that increase in price, he wrote. With this history in mind, how can we be sure that the combined Live Nation/Ticketmaster will pass on any cost savings it realizes as a result of the merger on to consumers?

With respect Senator, Live Nation did not exist a decade ago and I respectfully disagree with Mr. Kot's opinion regarding what or who is "most responsible" for the upward pressure on ticket prices. I cannot speak to Mr. Kot's numbers, but what I do agree with is that our industry is broken. There are too many inefficiencies, too few novel solutions and little transparency in the way concerts and other live shows are brought to market. We can be sure the combined Live Nation/Ticketmaster will pass on cost savings because the entire premise of this transaction is to repair the artist-to-fan pipeline — by reducing costs, driving demand, filling more seats, and producing more events and shows. Getting fans to shows is the engine that drives this industry, and it is what will drive our combined company's business model.

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4. Prior to this deal being announced, Ticketmaster bought Front Line Management, a strong artist management company, with a stable of major acts. And, Live Nation was getting into the ticketing business. So we were on the verge of two large vertically integrated competitors in the concert business, both with innovative ideas for reforming the concert business. Now we will lose that competition – in fact, just a few days ago, the Wall Street Journal wrote about this deal that "Mr. Azoff's merger will concentrate power in the music industry like never before."

I respectfully disagree with the premise that there will be such a concentration of power in the music industry. I also worry that there is a fundamental misunderstanding of the parties and the industry encapsulated in this statement, so it may make sense to clear that up first.

Ticketmaster is not vertically integrated and only a relatively small part of Live Nation can be said to be vertically integrated. With respect to Ticketmaster, Front Line Management is an artist management company. It sells artist management services to artists. Artists are its customers in that business. Artists are by no means controlled by their managers, and they can and do switch at will. At the other end of the "pipe," Ticketmaster's ticketing business sells ticketing services to venues. Venues are its customers.

The most significant part of Live Nation's business is concert promotion. It sells promotion services to artists in the first instance, and somewhat indirectly, also to venues. Live Nation also has a venue management business to which, as a promoter, it often, but not nearly always, supplies concerts it is promoting.

(a) How can this be good for consumers? Should we be worried about one company having this much control over the concert business – from owning concert venues, to concert promotion, to managing artists, to selling tickets?

This transaction will be good for consumers because together, Live Nation and Ticketmaster will be able to bring together complementary products and expertise, and realize efficiencies that will reduce costs, improve quality, increase demand, and expand output.

Streamlining and improving the artist-to-fan pipeline, in my view, will make finding and purchasing concert tickets fun and compelling, as it should be. Concerts and other live events are entertainment — everything about them should be fun for the consumer. What we have now is something akin to a clogged artery, with too many inefficiencies and costs (including information costs) taxing the system, causing pain, and obstructing the flow of live entertainment to fans. Generally, it is inefficient and frustrating. We aim to fix that experience and bring innovative promotion and ticketing solutions that will drive demand, improve quality and increase output. We won't be alone in that. We expect these innovations to spur even more competition, and we relish that effect. There is, and there will remain, vigorous competition at every level of this marketplace. No one controls the live entertainment business.

(b) Would you agree to divest some your arenas and concert halls if the Justice Department requested it as a condition of approving the merger?

As I mentioned, it is premature to discuss specific competition concerns or remedies, but we are cooperating fully with the Department of Justice and will work hard to address any concerns, if any, that are raised.

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5. At the hearing, Mr. Azoff of Ticketmaster stated that he would not have acquired secondary market ticket seller, Ticketsnow.com, if he had been running Ticketmaster when it entered into that deal. Many questions, of course, have been raised about Ticketsnow.com and whether Ticketmaster has been diverting tickets to Ticketsnow.com to be sold to consumers at inflated prices, especially in light of the incident with the sale of Bruce Springsteen concerts in New York and New Jersey last month.

(a) What is your view of the Ticketsnow.com being owned by your company should this merger be completed? Do consumers have reason to be concerned that tickets could be diverted to Ticketsnow.com after the merger?

I don't have insight or knowledge into all of the reasons why Ticketmaster acquired TicketsNow, so it would thus be premature to comment on specific future operations of the combined company. When TicketsNow.com is an asset of the combined company, we will figure out how to deploy or dispose of that asset in the context of our overall vision of creating a full-service connection between artist and fan, which in part will involve remedying the current industry inefficiencies. As we pursue that vision, consumers do not need to fear diversion to any secondary ticketing site, because part of the reconfiguration of the industry we are talking about entails fundamentally altering, improving and promoting the integrity of primary ticketing.

(b) Would you agree to divest the ownership of Ticketsnow.com by the combined Live Nation/Ticketmaster if the Justice Department requested as a condition of approving the merger?

As I mentioned, it is premature to discuss specific competition concerns or remedies, but we are cooperating fully with the Department of Justice and will work hard to address any concerns, if any, that are raised.

6. Last year Ticketmaster announced that it would move toward implementing a paperless ticketing system. Under such a system, consumers would not get paper tickets but would have to show a credit card or driver's license to get admitted to an arena for a concert. Last year, a senior Ticketmaster executive was quoted as saying that "Paperless Ticket is a key next step for Ticketmaster along its innovation path."

Such a system would eliminate the ability of consumers to resell their tickets if they were unable to attend a concert at the last minute. And, without paper tickets, there would be no ability for those seeking to purchase tickets at the last minute on the secondary market.

(a) At our hearing, Mr. Azoff stated that he intended to continue implementing a paperless ticketing system in the future. As the CEO of the combined Live Nation/Ticketmaster, do you agree with Mr. Azoff? Do you intend continue to implement paperless ticketing after the merger is completed?

Again, at this point we feel it would be premature to comment on any specific future operations of the combined company. However, Live Nation Entertainment intends to develop ticketing solutions that will make it easier to get tickets into the hands of fans who purchase them, and that will make ticket use more efficient. Paperless ticketing is a convenience that we are confident that many fans who attend concerts want. We are going to provide it to them if we

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can. So this is something we will study very carefully once the transaction is completed. We would not be doing our jobs if we did not meet the demands of consumers.

(b) And, if you do intend to implement this system, what will this mean for consumers who wish to resell their tickets, buy tickets at the last minute, or the secondary ticketing market as a whole? Without paper tickets, how could consumers resell their tickets if they are unable to attend a concert? Without paper tickets, how could consumers buy tickets on the secondary market at the last minute?

We will study paperless ticketing closely with the objective of providing fans what they want. Naturally, we will not pursue offerings that consumers do not regard as valuable; instead, we will work hard to develop ticketing approaches that address the actual needs of consumers who want to resell tickets they cannot use or who want to buy tickets at the last minute. We will explore all technological solutions to these issues. As a ticket provider, our goal will be to serve both our existing clients' needs and those of live entertainment consumers — i.e., fans — as efficiently and effectively as possible.

7. You have argued that it is essential for you to merge with Ticketmaster in order to give the company the financial resources to continue to grow and develop your business. Yet your own statements in earnings calls to stock analysts demonstrate the financial strength of Live Nation. You stated "the concert industry continues to grow during the third quarter in spite of the economic downturn. . . . Our balance sheet is healthy . . . Our business model is producing tangible returns and our margins are improving. In addition, our pipeline is full, our share of artists is growing and we're on track to launch our ticketing business in January." Indeed, you reported operating income of $ 75.6 million on revenues of over $ 1.588 billion for the third quarter of 2008, an increase of 9.2% from the same period a year earlier. Live Nation reported similar strong financial performance for the first two quarters of 2008 and reported that 73% of its total North American music shows were completed by the end of September.

Doesn't this excellent financial performance, and your own statements during this earnings call, contradict the claim that Live Nation's merger with Ticketmaster is necessary to give you the financial strength to grow and improve your business?

I see no contradiction here. To be sure, I am deeply proud of what we have achieved at Live Nation. We are generating revenue the old-fashioned way. We have reduced costs and increased efficiency and service; we haven't paid out outrageous bonuses; and we have carefully managed our balance sheet. Our business is capital-intensive, seasonal and operates on a thin margin (~4%). We also have had to re-grow the business from scratch in the past few years. The result is that we carry substantial debt loads, publicly reported at $925.7 million as of December 31, 2008, including our outstanding redeemable preferred stock. None of us can ignore the historic economic turmoil our country and our world are experiencing today – and it is impossible for that turmoil not to affect our company.

As I have testified, our stock has declined by nearly 90 percent over the last year and a half; the value of our real estate holdings has dissipated substantially; and our existing debt levels mean that we have scant access to capital. As a result, we cannot invest to move forward the way we should – the way our artist customers want us to progress, the way fans want us to progress once they know what the live entertainment business should produce for them, or the

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way our employees and shareholders want us to progress. In short, our hard work is not producing the rewards that it should.

Given these facts, I am not content merely to sit back and react – this merger in the most fundamental sense is about using the most creative means we can to protect and create jobs and to grow our company into something even more profoundly special than it is today.

Responses to Questions Posed By Senator Schumer

1. Your testimony refers to "the death of the American music industry," and characterizes the industry as "bleeding."

   - Is it true that Live Nation was so recently bullish on the industry that it entered the primary ticketing business?

   As noted above in response to the first question posed by Senator Kohl, we have recently developed a self-ticketing capability that is primarily designed to serve our own venues.

   - Is it true that ticket sales for live events have gone up, rather than down, in recent years – even in spite of the deep recession facing the country?

   Yes.

   - Is it true that Live Nation posted operating profit gains in the third quarter of last year?

   Yes.

   - Isn't it true, however, that that most media companies are losing money in the current economy?

   I would agree with that assessment insofar as the current downturn has taken a heavy toll on all sectors of our economy, including media companies, and most recently — our own company. The media companies hardest hit are the ones who stand still and assume they can continue to do business as they have always done it. That's not us. This transaction is about pushing forward with a new, modernized way to deliver value to artists and to fans.

   - Given the conditions facing other media companies, and Live Nation's relative success, how is it fair to speak of the "death" of the industry, and the fact that the industry is "bleeding?"

   To be precise, I have never spoken of the "death" of media companies generally. What I have stated — and continue to believe — is that the present music industry

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model has fundamentally changed. It is now irreparably broken and the problems it faces are compounded by severe macroeconomic forces. As your question itself suggests, the fact that Live Nation has realized some relative success framed against a backdrop of media companies losing money in the current financial climate in no way undercuts the characterization of that sector of our economy as "bleeding."

- Can Live Nation guarantee or pledge that service charges or fees imposed by the merged company will not be increased from Ticketmaster's current levels if the merger is approved?

Mr. Azoff and I each believe that ticket prices will decline if we can successfully merge our respective companies and jumpstart the creation of a new ecosystem that will empower artists and better connect them to fans via innovations like paperless ticketing, all-inclusive ticket prices, bundled live performance options and interactive seating.

2. Your testimony suggests that the merger will create the combination of a "team of rivals." Moreover, the testimony states that through the merger, the companies hope to "build a holistic support structure" that combines discrete aspects of the music industry under one roof.

- Can you point to three instances in which two dominant players with market shares rivaling Ticketmaster's and Live Nation's were allowed to merge in a vertical agreement like the proposed one, and consumer prices of the relevant products went down?

I have not studied other markets or mergers, but I do know that mergers — particularly vertical mergers like this one — are routinely recognized as pro-competitive and pro-consumer when they bring together complementary products and services — which is what our merger does.

3. How many primary tickets did Live Nation sell in 2007? 2008?

Live Nation sold about 3.1 million tickets for the venues it manages for shows it promoted in both 2007 and 2008. [Live Nation did not sell any primary tickets for non-Live Nation venues or shows in those years.]

4. Has Live Nation prepared projections of how much of Ticketmaster's primary ticket sale business Live Nation might have threatened if it had remained a competitor of Ticketmaster? If so, please provide the substance of any such projection.

Live Nation has estimated that the primary impact on Ticketmaster would be the loss of its largest customer (Live Nation), representing around 10% of its ticketing revenue. Beyond that, Live Nation estimated incremental growth in its own third party ticketing business, without regard to where those sales come from (i.e., whether Ticketmaster or other accounts, or growth in the total number of tickets sold). Those growth estimates were about 400,000 tickets for third

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parties in 2009, 1.9 million third party tickets in 2010, and 4.4 million third party tickets for 2011.

5. What was Ticketmaster's market share of primary ticket sales for major arenas and stadiums in 2007? In 2008? (Please answer this question both for concerts, and for other events.)

Live Nation does not have access to Ticketmaster's share of ticket sales for major arenas and stadiums for concerts or for live entertainment generally in either 2007 or 2008.

6. What was Live Nation's market share of primary ticket sales for major arenas and stadiums in 2007? In 2008? (Please answer this question both for concerts, and for other events.)

Live Nation does not have a basis upon which to estimate is share of ticket sales for major arenas and stadiums in 2007 and 2008 (whether for concerts or other events).

7. If the merger is successful, to what extent would Ticketmaster eliminate direct competition from Live Nation's own recently-launched ticketing service?

As set forth in response to Senator Kohl's first question above, Live Nation's ticket service solution is emblematic of the trend towards vertically integrated self-ticketing solutions, and underscores the vibrancy of competition and entry in ticketing. The type of ticketing technology Live Nation has employed is readily available from a number of sources to anyone interested in either self-ticketing or becoming a third party ticket service provider.

8. What were Live Nation's projections for challenging Ticketmaster's market share over the 5 years? The next 10 years?

I am aware of no such projections.

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SUBMISSIONS FOR THE RECORD

TESTIMONY OF IRVING AZOFF
Chief Executive Officer
Ticketmaster Entertainment, Inc.
Before the Subcommittee on Antitrust, Competition Policy and Consumer Rights
of the
Senate Committee on the Judiciary
February 24, 2009

Dear Chairman Kohl, Senator Hatch, and Members of the Subcommittee:

First, I'd like to thank you for this opportunity to speak about the Ticketmaster/Live Nation merger. Both companies are excited about our plans for Live Nation Entertainment. We believe the combination of our two companies will benefit artists, fans, theatergoers, sports teams, museums and all of the other facilities, performers and spectators who use our services.

As a kid growing up in Danville, Illinois, my future path was set when I saw The Beatles in old Comiskey Park in Chicago. I was bitten by the music bug, but I soon realized I'm no musician. I was rejected by the school choir, and the only bad grades I got in school were when I tried to master the saxophone and drums in music class. My instrument of choice is the telephone.

I've spent 43 years in the music business, but through it all, I've focused on one thing — serving artists. I put myself through college at the University of Illinois booking bar bands, instead of waiting tables. Together with my late friend, the gifted singer-songwriter Dan Fogelberg, and the rock band REO Speedwagon, we quit school and headed west to pursue our American dream.

I launched Front Line Management about 35 years ago. When I started managing the Eagles, they were playing venues not much larger than this room. I am proud to say they are still my clients.

I've had many roles in the business. I've been an agent, a personal manager, a concert promoter, a movie producer, an independent record label owner, a merchandiser, a music

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publisher, a record company CEO and, at times, a babysitter and a bail bondsman. I'm a founding member of the Recording Artists' Coalition and staunch supporter of artists' rights.

In 2005, I returned to my first love — the management of artists, at Front Line Management. While I'm honored to be here, if I wasn't doing this right now, I'd be in the Rayburn Building with the musicFIRST coalition and all the artists who are seeking congressional support for the performance rights bill.

I came to Ticketmaster four months ago when it acquired a majority interest in Front Line Management and became CEO of Ticketmaster Entertainment. While I have spent my career serving artists, Ticketmaster has dedicated itself for 30 years to reaching fans of live entertainment. My job now is to use the resources of both companies to enhance the artist-to-fan experience.

I believe that the best interests of the artists, and indeed any performer — whether in music, sports, theater, or other events — will serve the best interests of the fans. It is truly a magical connection.

At Ticketmaster, we are always mindful that we have a central role in the fan or visitor experience. We are committed to getting it right, and making that experience as fast and efficient as possible.

This hearing is focused on the music industry, but our services go well beyond live music events.

We handle ticketing for museums, historic sites, community theaters and civic events. We serve the NFL, the NBA, NHL and college sports teams, as well as the Guggenheim Museum and the Ringling Brothers Circus. We also do a significant amount of work for

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charitable events and nonprofits. We open our phone banks for relief efforts during hurricanes and other natural disasters.

We constantly strive to improve our online technology, but we continue to serve fans who do not have Internet access or credit cards. That is why Ticketmaster outlets still are often crowded on weekend mornings when tickets go on sale for bands that attract a teenage audience.

Our phone operations continue to be an important information source for fans. Only about one out of every five phone calls to Ticketmaster results in a financial transaction. Rather than make a sale, Ticketmaster operators are asked about any number of questions — about the opening act, directions to venues and showtimes — even weather conditions. No other ticketing company supplies that level of service.

But these extra service operations and the jobs of the people who perform them could be in jeopardy without this merger. We have roughly 6,700 employees, including those in about 50 offices across this country, who have worked extremely hard to bring us the success that we have seen as a company. All of them have a stake in this merger.

As hard as we try to serve clients and ticket buyers, technology is not perfect. For example, I fully understand the frustration and anger created by the problems we experienced in recent sales for three Bruce Springsteen shows in New York and New Jersey.

A computer malfunction temporarily affected sales on our main Ticketmaster Web site for these three shows, and many fans were then frustrated by the very rapid sell-out of the shows combined with being given the opportunity to purchase tickets on our resale marketplace, TicketsNow.com.

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I have personally apologized to Mr. Springsteen and his fans about what happened a couple weeks ago. I was angered and embarrassed by the incident. As the still-new CEO of Ticketmaster, I have pledged and I reiterate now that something like this should never happen again and I am working hard to see that it doesn't. As you know, we have also offered to refund the difference between the face value price and price paid to TicketsNow to fans who believed in error that they were buying from the initial on-sale when they purchased their tickets. Going forward, we are also going to work to see that the very best seats go on sale directly to the fans.

In the broader picture, we are focused on structural changes that will help us better serve artists, fans, teams, museums and all of our other clients. This merger will let us fully integrate our complementary strengths and eliminate about $40 million in inefficiencies — money that could be invested in more innovation. It is designed to address the obvious inefficiencies in the entertainment supply chain — the large volume of unsold tickets to events, higher costs, surcharges and the explosion of the resale market.

It will give us greater flexibility in how we promote, market and sell tickets to events. It will give us a pathway to alternative pricing and fee structures. And we will be better able to develop new and innovative products and services that enhance the fan experience and make all forms of entertainment more accessible to everyone.

Here's one thing that will not happen as a result of this merger: The fierce competition we face in our businesses will continue to thrive.

We have already seen content providers in other areas make this move to bridge the gap and gain a more direct link to the fan experience. Major League Baseball purchased Tickets.com in 2005. Comcast-Spectacor started down the path of integration more than 10 years ago and now runs venues, owns sports teams, owns and operates a competing ticketing service company,

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as well as other related businesses. NASCAR now sells its event tickets through its own in-house ticketing system, which it built using advanced, web-based technology.

The list goes on, but the trends are clear. The entire entertainment industry is looking for ways to integrate ticketing and other related businesses with the rest of their supply chain.

And technology is making it easier for competitors to enter our business. In just eight years, the number of tickets that Ticketmaster sells online has increased dramatically. The wave of competition we are seeing in the ticketing services business is almost entirely in the form of web-based ticketing technology.

Competitors are constantly joining the field, and we are continuing to explore additional and better ways to serve our clients and the fan. We face competition at every point on the value chain. That competition will continue after the merger.

I'm glad you are having this hearing on the future of the music industry. I've spent most of my life in this business. My son, daughter and son-in-law work in this business. It is our family passion. I want it to thrive for generations to come. We all need it to survive.

I found an interesting quote the other day that applies to the situation we face:

"I pity the man who wants a coat so cheap that the man or woman who produces the cloth will starve in the process."

The statement came from President Benjamin Harrison, who signed the Sherman Act, the country's first antitrust law to prevent illegal business combinations and restraints of trade.

The message I want to leave you with today is that the music business is in far worse shape that most people realize. The economic foundation that supported artists in the past is crumbling. Piracy is threatening their livelihood. If you steal a loaf of bread, you get prosecuted. If you steal an artist's creativity, it's okay.

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Secondary ticketing is driving up prices for the fans, with absolutely no benefit to the artist. We cannot just cling to old ways. This merger will allow the live music industry to avoid repeating the mistakes of the record business.

There is nothing more electrifying in the entertainment industry than watching a gifted artist perform in a sold-out house.

That's the magic that drew me to this business. That's why I still go to work every day. But the live performance is only part of the story. If we can't figure out how to support artists and ensure that they reap the financial rewards for the creativity, the stage will go dark for many who could have had a career in music.

Thank you.

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Testimony of David A. Balto, Senior Fellow,
Center for American Progress Action Fund

To the Committee on the Judiciary,
Subcommittee on Antitrust, Competition
Policy and Consumer Rights
United States Senate
Regarding "The Ticketmaster/LiveNation Merger: What does it mean for Consumers and the Future of the Concert Business?"
Tuesday, February 24, 2009

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Testimony of David A. Balto, Senior Fellow,
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To the Committee on the Judiciary,
Subcommittee on Antitrust, Competition
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Regarding "The Ticketmaster/LiveNation Merger: What does it mean for Consumers and the Future of the Concert Business?"

Tuesday, February 24, 2009

Introduction

Mr. Chairman, Ranking Member Hatch, and other distinguished members of the Senate Judiciary Committee, I want to thank you for giving me the opportunity today to speak about the severe competitive problems that may arise from Ticketmaster's proposed acquisition of LiveNation. As detailed in my testimony, this merger of dominant firms raises serious competitive concerns and could potentially lead to significantly higher prices for the hundreds of thousands of consumers who purchase tickets every day. Moreover, by creating a monopolist in the promotion and ticket purchase markets, rivals in the concert promotion market and competition from secondary ticket services will be severely diminished. The Antitrust Division of the Justice Department should thoroughly investigate this merger and challenge it if it raises a significant threat to reduced competition.

I make the following points in my testimony:

- Ticketmaster holds a monopoly in the ticket sales market. It has faced no significant competition in that market until LiveNation's recent entry. Ticketmaster's control of the primary market alone warrants enjoining the merger;

[1] I am testifying today as a Senior Fellow at the Center for American Progress Action Fund. I am also testifying on behalf of the Consumer Federation of America. CFA is the nation's largest consumer advocacy group, composed of over 280 state and local affiliates representing consumer, senior citizen, low income, labor, farm, public power and cooperative organizations, with more than 50 million individual members. I do not represent any parties affected by the proposed merger.

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- The proposed merger raises serious vertical concerns. By combining a ticketing monopolist with a dominant firm in marquee concert promotion the merged firm will be able to foreclose competition in both markets, leading to less choice and higher prices;
- The proposed merger poses a significant threat to independent concert promotion;
- The proposed merger will diminish competition from secondary ticket services which offer the potential for greater rivalry in the ticketing market; and
- The DOJ should go beyond this merger and investigate anticompetitive conduct in the ticketing market. Similarly, the FTC should investigate deceptive conduct by Ticketmaster. Ticketmaster's monopoly power is preserved through a series of exclusionary arrangements that diminish the potential for rivals to arise and challenge the monopoly. In the 1990s those charged with antitrust enforcement failed to challenge Ticketmaster's conduct based on theoretical arguments that consumers were protected by ease of entry into the market or that exclusive arrangement were procompetitive. Because of that inaction, consumers have paid dearly in excessive prices for ticketing services. History has demonstrated that those theoretical arguments that the market would prevent consumer harm have been proven wrong and consumers have paid dearly in excessive prices for ticketing services. Further competition and consumer protection enforcement action is necessary to prevent the substantial ongoing harm in this market and this Committee should call on both the DOJ and Federal Trade Commission to act.

My testimony today is based on my experience of over a quarter century as an antitrust practitioner, the majority of which was spent as a trial attorney in the Antitrust Division of the Department of Justice, and in several senior management positions, including Policy Director at the Federal Trade Commission ("FTC"). I have litigated numerous merger cases both for the government and for private parties. I regularly practice before both the agencies, and frequently represent consumer groups raising concerns about mergers under investigation by the Antitrust Division or the FTC.

I am here with a simple message for this Committee. Although the parties may assert various efficiencies for this merger, this proposal raises

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very serious competitive concerns. 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. Now, faced with a significant rival - LiveNation- with the potential to undermine its monopoly that it cannot drive from the market through exclusionary tactics, it is trying to buy it out of the market. It is a cornerstone principle of the antitrust laws that a dominant firm cannot use acquisitions, such as this one, to preserve its monopoly power.

Background

Ticketmaster Entertainment consists of Ticketmaster and Front Line Management Group. Ticketmaster operates in 20 global markets, providing ticket sales, ticket resale services, marketing and distribution through www.ticketmaster.com, one of the largest e-commerce sites on the Internet; approximately 6,700 retail outlets; and 19 worldwide call centers. In 2007, the company sold more than 141 million tickets valued at over $8.3 billion on behalf of its clients. Ticketmaster controls the sales of tickets for over 80% of the venues in the United States. In 2008, Ticketmaster strengthened its hold on the ticket distribution market by acquiring Paciolan, a ticketing solutions service for over 190 North American clients from college athletics to arenas and museums. Ticketmaster also offers resale ticket services through its online subsidiary, TicketExchange, as well as through its acquisition of TicketsNow in 2008. Moreover, last year Ticketmaster entered into the entertainment promotion business by acquiring a controlling interest in the Front Line Management Group ("Front Line"). Front Line is the world's leading artist management company, with nearly 200 clients and more than 80 executive managers. Front Line represents a wide range of major 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.

Live Nation is the world's largest live music company: it is the world's No. 1 concert promoter. In 2007, over 64 million fans, including over 45 million live music fans, attended approximately 28,000 events in 18 countries managed by LiveNation around the world. Globally, it owns, operates, has booking rights for and/or has an equity interest in more than 155 venues, including *House of Blues* music venues and prestigious locations such as *The Fillmore* in San Francisco, Nikon at Jones Beach

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Theater in New York and London's Wembley Arena. In addition, LiveNation owns multiyear comprehensive rights deals covering the tours of Madonna, Jay-Z, U2, Nickelback and Shakira. In 2007, LiveNation acquired or secured and ownership interest in three artist merchandising companies, two concert promotion companies, two companies that own and run a number of venues, and a company that connects fans to artists via fan-clubs and fan-club ticketing. In 2008, ***Live Nation ended a long-term contract to sell its concert tickets through Ticketmaster, and launched its own ticketing service for its venues in January 2009.*** At this time, LiveNation entered into an agreement with SMG, one of the world's largest venue management companies and Ticketmaster's largest client, to provide exclusive ticketing services for SMG's venues. This deal threatened to siphon off at least 15% of Ticketmaster's revenue and set the two companies up for a head-to-head fight to win ticketing contracts.

If Ticketmaster is permitted to merge with LiveNation a single firm will: (1) sell most of the concert tickets in this country through its contracts with venues (11,000 venue clients across 20 countries); (2) manage a significant number of the marquee performers in the world or control their tours (e.g., Madonna, U2, Jay Z, Shakira, Nickelback, Eagles, Christina Aguilera, Aerosmith, Jimmy Buffett, Guns 'n Roses, Steely Dan and more than 200 others); (3) own most of the amphitheatres in the US and own more 'club' venues (including 11 House of Blues) as well as controlling, through owning/leasing, a large amount of other clubs and theatres; (4) own two of the major resellers of tickets: and (5) own various sources of competitively sensitive data. As described below, this will give the merged firm the incentive and ability to raise rivals costs and foreclose competition, in many segments of the concert promotion and ticket marketplace.

Competitive Effects – Horizontal Effects in Ticket Sales Distribution

The most straightforward competitive effects are in the market for initial ticket distribution for large venues. This market has been dominated by Ticketmaster ever since its acquisition of Ticketron in the early 1990s. Up until the recent entry of LiveNation there were only two competitors in this market, Ticketmaster and Tickets.com. Some industry observers estimate that Ticketmaster holds 80% of the market for concerts in large major venues. The only significant rival, Tickets.com focuses on sports

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events and provides ticketing services for 14 baseball teams and two hockey teams; Ticketmaster provides the ticketing service for nearly all of the rest of the major professional sports teams.

Let's be straightforward about one transparent fact: 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. This is not a situation where a monopolist is accused of reducing prices in a predatory fashion. Nor is this a market where price increases are justified by cost increases. Millions of consumers pay what seem like fairly astronomical surcharges to receive the very simple task of having a ticket dispensed. Although Ticketmaster labels their fees "convenience" and "service" fees, consumers pay a very high price for a basic level of convenience and service. As the Boston Globe observed in a recent editorial "Ticket to Gouge," due to Ticketmaster's charges the price of a "$50 seat can rise by 20 percent and that does not include the extra $2.50 per order if the customers want to print out tickets on their home computer."

Today consumers can purchase almost anything electronically. When consumers purchase an airline ticket, railroad ticket, movie ticket, or other goods there are few if any surcharges. Only in the market for entertainment tickets where Ticketmaster controls the bottleneck are there surcharges. Often these surcharges can exceed 20 percent of the value of the ticket, especially when Ticketmaster adds on additional charges for unused services.

The key to rivalry in the ticket service market is access to both venues and events. Concert promoters control access to the major concert events. Thus, to succeed in the ticket market, a rival needs access to both venues and concert promoters. Ticketmaster now controls the vast majority of entertainment venues through long term exclusivity arrangements (typically of duration of between 3-5 years). Ticketmaster also controls over 80% of the concert venues in these exclusivity arrangements.

The recent entry of LiveNation into ticketing posed a very substantial threat of unsettling Ticketmaster's monopoly hold on the market. Because it is the largest concert promoter and owns over 140 venues (including several marquee venues), it was in a unique position to succeed in attacking Ticketmaster's dominance. In 2008, LiveNation terminated its previous

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arrangement with Ticketmaster, under which Ticketmaster sold tickets for LiveNation concerts. LiveNation's entry threatened to siphon off a significant portion of Ticketmaster's revenue. Industry analysts suggested that LiveNation would control the ticketing of over 22 million tickets this year. With the beachhead established with its venue and artist base, LiveNation would have been able to engage in substantial head to head competition with Ticketmaster leading to lower prices and better services.

Eliminating a nascent competitor by acquisition raises the most serious antitrust concerns. As Justice Potter Stewart observed over a quarter of a century ago:

> The central message of the Sherman Act is that a business entity must find new customers and higher profits through internal expansion — that is, by competing successfully rather than by arranging treaties with its competitors.[2]

One can assume that Ticketmaster will contend that it is no monopolist. It will suggest the market consists of all sources of tickets including the venues themselves (or the sports teams) and dozens of firms that resell tickets. It will suggest that in this market of "all ticket sales" it has a paltry market share, certainly nothing that would make it a dominant firm. This Committee, the Courts and the antitrust enforcers should be highly skeptical of such arguments, because they are a diversion from the ultimate question of whether Ticketmaster is a monopolist. Market definition is not the ultimate inquiry; rather, it is a tool for determining competitive effect. In essence the purpose of defining a market is an indirect process of determining whether a firm has market power. Where there is "direct evidence" of a firm's ability to exercise market power, e.g., by raising prices, without losing business to make the price increase unprofitable, a complex determination of the relevant market is unnecessary.[3] In this case, Ticketmaster's ability to consistently raise prices demonstrates that it possesses market power.

In the market definition inquiry the critical question is whether alternative products or services ***constrain the ability of the merged firm to raise prices***. The fact that venues may sell tickets directly at the box office

[2] *United States v. Citizens & S. Nat'l Bank*, 422 U.S. 86, 116 (1975).
[3] *PepsiCo, Inc. v. Coca-Cola Co.*, 315 F.3d 101, 107 (2d Cir. 2002) (per curiam) (holding that "a relevant market definition is not a necessary component of a monopolization claim" where there is direct evidence of competitive effects); *Re/Max Int'l, Inc. v. Realty One, Inc.*, 173 F.3d 995, 1016 (6th Cir. 1999).

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or tickets are sold through resellers does not necessarily mean these other sources of tickets are in the relevant product market. The key question is whether the alternatives can constrain price increases or reductions in service. Neither of these alternatives is likely to constrain prices. Ticketmaster limits the ability of many venues to sell tickets directly to consumers. And ticket resellers have a limited ability to constrain Ticketmaster's fees because resellers only have the ability to sell tickets obtained from Ticketmaster at the value which Ticketmaster retails them for. Not surprisingly neither sales by venues or resellers have constrained Ticketmaster's ability to raise prices in the past. As explained *infra,* they will be even less likely to offer a restraint on Ticketmaster's prices if Ticketmaster acquires LiveNation.

Moreover, what Ticketmaster offers is different from other sources of tickets. Ticketmaster offers primary ticket sales through its website, call centers and throughout thousands of retail locations, as well as offering secondary resale services. Ticketmaster is the only U.S. company to have implemented a paperless ticketing system, in which consumers can simply print a receipt containing a bar code scanned for access into the venue. Ticketmaster, further, has an unmatched capability to handle a significant amount of sales volumes and ticket trafficking at one time, allowing them to sell more tickets at a much faster rate than any competitor.

The fact that there are other sources of ticket sales does not mean they are necessarily included in the relevant market. Let me compare this to the Staples/Office Depot merger, which the FTC successfully enjoined over a decade ago.[4] The FTC focused on a market of office supplies sold in office supply superstores. When the FTC announced the challenge to the merger, the parties and most commentators objected; observing that everything that could be purchased in a Staples or Office Depot could be purchased in another type of store or by mail order. In fact, less than 6% of all office supplies were purchased at a Staples or Office Depot. Thus, the parties strenuously argued that an office supply superstore market was far too narrow. But they did not prevail.

In enjoining the merger the Court observed "that it is difficult to overcome the first blush or initial gut reaction of many people to the definition of the relevant product market as the sale of consumable office supplies through office supply superstores. The products in question are

[4] *FTC v. Staples, Inc.*, 970 F. Supp. 1066 (D.D.C. 1997).

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undeniably the same no matter who sells them, and no one denies that many different types of retailers sell these products." But the court explained that "the mere fact that a firm may be termed a competitor in the overall marketplace does not necessarily require that it be included in the relevant product market for antitrust purposes." The Court then observed that the sale of consumable office supplies by office superstores was a relevant antitrust market, based on several factors including industry recognition of an office superstore category, evidence that pricing was far different at these office superstores, and that the stores had distinct formats and customers.

In this case there are numerous practical indicia that demonstrate a market for primary ticket sales for large venues. Ticketmaster offers distribution through a variety of services including online, retail sales outlets, call centers, and box offices. Venues demand this wide variety of services and are unwilling to sacrifice primary ticket distribution for other services.

Competitive Effects – Foreclosure in Concert Promotion and Ticket Sales Distribution

Mergers are not only anticompetitive because they eliminate competition between direct competitors. They may also be anticompetitive when they combine firms that are not direct competitors but are aligned in the distribution system or vertical mergers. A vertical merger involves firms that operate at different but complementary levels in the chain of production and/or distribution. The defining characteristic of a vertical merger is that the product or service produced by one firm can be used as an input to the product or service produced by the other firm. Common examples include a merger between a manufacturer and a distributor, or a merger between two manufacturers, one of which produces an end product and the other a component of that end product. In this case the two vertical segments are concert promotion and ticketing services.

It may be easy to forget that vertical mergers can be illegal – during the Bush II Administration the federal antitrust enforcers challenged only a **single merger** because of vertical anticompetitive effects, which placed vertical mergers into a world of *per se* legality. This approach to potentially anticompetitive acquisitions was unlike prior Administrations which took a prudent balanced approach to vertical merger enforcement. The

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Ticketmaster/LiveNation merger is the time to reverse this laissez-faire approach to vertical mergers.

Vertical merger policy is set out in the 1984 Merger Guidelines which describe several theories of possible competitive harm from a vertical merger. Broadly, there are three areas of concern identified in the 1984 Guidelines, the case law, and academic commentary. First, vertical integration will raise entry barriers or foreclose non-integrated firms from a market in which the merged firm would operate. Second, vertical integration may raise competitors' costs in an anticompetitive manner or reduce the incentives of either the merged firm or its rivals to compete. Finally, a monopolist in one market may acquire a rival in a complementary good market to raise entry barriers in the primary market (a "monopoly maintenance" theory).

The barrier-to-entry and foreclosure concerns are essentially two sides of the same coin. If the newly integrated firm forecloses unintegrated rivals from raw materials on the upstream side or a market on the downstream side, the rivals will have to integrate themselves or perish, and new entrants will have to enter at both market levels in order to succeed. As former FTC Chairman Bob Pitofsky has explained "[i]f . . . 'two level' entry is more risky, more difficult, or more time-consuming than entry into the entrant's primary market alone, a merger that increases vertical integration could create more barriers to entry."[5]

The potential reduction of incentives can also arise from access to competitively sensitive information. Because of its position at two levels of the market, the newly vertically integrated firm may relate to a rival both as a horizontal competitor and as a customer or supplier. In its position as customer or supplier, the merged firm may gain access to competitively sensitive information concerning its horizontal competitors. When a firm gains competitively sensitive information by participating in vertically related markets, it may be able to compete less aggressively. If, for example, through its participation in an upstream market the merged firm gains access to competitively sensitive information, thus enabling it to reduce its uncertainty about a competitor's bids in a downstream market, the merged firm may be able to bid less aggressively in the downstream market. This concern extends to situations in which the competitor gains access to

[5] *See* Robert Pitofsky, FTC Chairman, *Vertical Restraints and Vertical Aspects of Mergers--A U.S. Perspective*, Prepared Remarks Before the Fordham Corporate Law Institute (Oct. 16-17, 1997), *available in* http://ww.ftc.gov/speeches/pitofsky/fordham7.htm.

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information about costs or technology with which it could estimate its rival's likely bid and adjust its own bid accordingly.

Furthermore, integration may dampen the ability and incentives of the non-integrated firm to compete. If the integrated competitor gets access to a non-integrated competitor's costs or technical information, that competitor's incentives to innovate or engage in research and development may be reduced. Commentators have observed that where a firm knows that its competitors can "free-ride" on its innovations, the incentive to innovate may be seriously dampened. Similarly, if the non-integrated firm believes that it faces exclusion or discrimination from the integrated firm, it may choose to withdraw from the market or compete less aggressively.

An informative precedent from a decade ago was the FTC's challenge to the Time Warner/Turner merger. One of the most important aspects of the transaction was the degree to which it increased vertical integration in the cable television market. Prior to the acquisition, Time Warner and TCI, the two largest cable systems in the U.S., had some relatively significant cable programming holdings. But this acquisition dramatically increased those holdings, by putting several significant cable networks under Time Warner's control. Thus, the FTC challenged the merger because the merged firm would have the power to: (1) foreclose unaffiliated programming from their cable systems to protect their programming assets; and (2) disadvantage competing cable distribution systems, by denying programming, or providing programming only at discriminatory (i.e., disadvantageous) prices. For example, post-merger Time Warner would have had the incentive and ability to foreclose alternative cable networks from its distribution systems in order to give its own programming a competitive advantage.

The Time Warner/Turner merger offers an interesting analogy to the Ticketmaster/LiveNation merger. Producers in the upstream market (cable programming in the case of Time Warner and concert promotion in the case of Ticketmaster) faced an increasing threat of foreclosure because of the merger. Prior to the merger, Time Warner lacked the incentive and ability to engage in such foreclosure – the merger would have facilitated this strategy. The same is true for Ticketmaster, with an even greater potential for harm because Ticketmaster's downstream market power (an 80% market share) is far higher than Time Warner's (about 44%).

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The proposed Ticketmaster/LiveNation merger raises significant vertical concerns, each one of which will lead to higher prices and less service for consumers:

- ***Diminish competition in primary ticket distribution.*** By acquiring LiveNation, Ticketmaster will cut off the air supply for any future rival to challenge its monopoly in the ticket distribution market. The merged firm will control hundreds of venues, including the key venues and many of the crucial marquee artists that produce the most lucrative tours. Without access to these venues or artists, potential entry will become even less likely. With entry barriers strengthened, Ticketmaster will further exploit its monopoly power and raise prices;
- ***Diminish competition in independent concert promotion.*** Although LiveNation is the largest concert promoter there are numerous smaller rivals in the market. Many of these firms are 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 dampen rivalry in concert promotion. Ticketmaster will be able to force venues and artists to use LiveNation as a condition of using its ticketing services. Since Ticketmaster is the only game in town, it will be increasingly difficult for independent producers to provide rivalry in the market. These are very similar to the concerns of independent programmers that led to the FTC challenge of the Time Warner/Turner merger.
- ***Reduce competition among ticket resellers.*** Ticket resellers, sometimes known as the secondary market, 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 of ticket resellers to alternative sources of tickets, limiting the ability of consumers to secure tickets to the most highly sought concerts and events.

Let me focus on the last issue – the impact on ticket resellers. Everyone is familiar with the incident involving the Bruce Springsteen concert – that tickets almost instantaneously appeared to have been diverted from Ticketmaster to their higher priced ticket reselling site – TicketsNow. Ticketmaster claims this was an inadvertent mistake. However, both consumers and Bruce Springsteen, who believed that tickets were available at face value, may have been defrauded by Ticketmaster's actions. Before

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its acquisition of TicketsNow, Ticketmaster lacked the incentive or ability to artificially inflate ticket prices by diverting tickets to the resale market. If it acquires LiveNation it will have an even greater ability to manipulate the market in this fashion and harm both resellers and consumers. If this merger is permitted, the "Springsteen scheme" may become a regular part of Ticketmaster's anticompetitive playbook.

That leaves us with the question of whether the merger is procompetitive and the efficiencies from that consolidation exceed any potential anticompetitive effects. The legal standard for the efficiencies defense is straightforward. Ticketmaster must demonstrate that efficiencies are: (1) merger-specific; (2) cognizable and verifiable; and (3) sufficient in magnitude to reverse the anticompetitive effects of the merger. Merger specific means they must be "likely to be accomplished with the proposed merger and unlikely to be accomplished in absence of either the proposed merger or another means having comparable anticompetitive effect." *Merger Guidelines* § *4*. The claimed efficiencies cannot be efficiencies that could "be achieved by either company alone." *FTC v. Heinz*, 246 F.3d 708, 722 (D.C. Cir 2001). Moreover, because "information relating to the efficiencies is uniquely in the possession of the merging firms, the merging firms carry the burden of proof on efficiencies. *Merger Guidelines* § 4.

It is important to note that *"efficiency"* under the antitrust laws has a particular meaning: only efficiencies that lead to lower prices or improved services – that benefit consumers – count as efficiencies under the antitrust laws. The mere fact that a merger will lead to a more profitable company is not a reason to approve a potentially anticompetitive merger.

Ticketmaster has proclaimed that the LiveNation acquisition will benefit consumers by creating a new entity positioned to address the challenges of serving fans better at the point of the initial ticket sale with more options and better access. Ticketmaster claims the merger will enable more innovative and dynamic promotion arrangements that provide more choice and a more fan-friendly purchasing experience. Economic *theory suggests* that vertical integration can be procompetitive by uniting complementary products and services. It is Ticketmaster's burden to demonstrate these benefits will overcome any potential anticompetitive effects.

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But economic theory is inadequate as a basis to recognize these efficiencies. One must look at the past history of Ticketmaster's acquisitions. There is little evidence that those acquisitions benefitted consumers through lower prices. The claims of improved services in this merger are similar to the claims Ticketmaster it made when it acquired TicketsNow. Have consumers benefited from lower prices or better service? The jury is still out, but there is evidence of market manipulation, such as the alleged Springsteen incident. The lesson is simple – vertical integration in the hands of Ticketmaster can be a tool to stifle competition and deceive consumers.[6] The promises of a benevolent monopolist are a poor substitute for competition.

Further Antitrust and Consumer Protection Enforcement Action is Necessary to Protect Consumers

This Committee should make it clear that investigating this merger is only the start of the enforcers' job in making sure competition works in the ticket market. For too long consumers have paid excessive charges for basic services, enabled by Ticketmaster's exclusionary and deceptive conduct. Blocking this merger will only prevent a competitively unhealthy market from becoming terminally ill. Further enforcement is necessary to restore competition. Here are three important suggestions:

- ***The FTC's Bureau of Consumer Protection should investigate the Springsteen incident to determine whether Ticketmaster has violated Section 5 of the FTC Act.*** Section 5 gives the FTC broad powers to attack unfair or deceptive practices that may harm consumers. Ticketmaster's actions, whether intentional or inadvertent, that resulted in the mass diversion of Springsteen tickets to the higher priced TicketsNow site deceived consumers

[6] Concerns of vertical foreclosure in the ticket distribution and concert promotion markets are prevalent. This is a fertile medium to use market power to try to foreclose competition. *See Jamsports and Entertainment L.L.C. v. Paradama Productions, Inc.*, 2003 U.S. Dist. LEXIS 6100 (N.D. Ill. 2003) (defendant communications company used its market dominance to foreclose plaintiff entertainment company from utilizing certain event venues); *IN RE: LIVE CONCERT ANTITRUST LITIGATION*, 247 F.R.D. 98 (C.D. Cal. 2007)(Clear Channel foreclosed competition in the radio and concert promotion markets by leveraging its market power in the radio market to increase its market power in the concert promotion market); *Nobody In Particular Presents, Inc. v. Clear Channel*, 311 F. Supp. 2d 1048 (D. Col, 2004)(defendant entertainment company used its market power in the rock-format radio market to leverage its dominance and foreclose competition in the promotion of artists' live concerts).

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(or Mr. Springsteen) or were simply unfair acts perpetrated on a vulnerable set of consumers;

- ***The Antitrust Division should review past acquisitions of Ticketmaster to determine if they were anticompetitive.*** The Springsteen incident suggests that some of the past vertical acquisitions, such as the TicketsNow acquisition, may not be as benign as Ticketmaster may have suggested. Where there is evidence that these acquisitions have diminished competition or facilitated deceptive conduct, the DOJ should seek a remedy, including 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. Moreover, both the case law and economic theory have matured sufficiently to recognize in a far more sophisticated fashion how these practices can harm competition. The DOJ should reopen its investigation of these practices to determine how to restore competition to the ticket marketplace.

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February 20, 2009

The Honorable Herb Kohl

Chairman

U.S. Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy and Consumer Rights
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Orrin Hatch

Ranking Member

U.S. Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy and Consumer Rights
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick Leahy

Chairman

U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter

Ranking Member

U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairmen Kohl & Leahy and Ranking Members Hatch & Specter:

The merger as proposed before you on the surface may seem to be too much power in the hands of the few, and I can understand the need for Congress to review this matter. Here I would hope that my 20 years in the recording and touring business will allow me some candid authority on these issues, and would help shed some light for you on some of the nuances that perhaps could easily get missed.

The 'system' that was once the modern record business, essentially ushered in with the meteoric rise of the Beatles, is now helplessly broken. And by almost every account available cannot be repaired. Personally I would add to that a healthy 'good riddance', as the old system far too often took advantage of the

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artists as pawns while power brokers colluded behind the scenes to control the existing markets. This control often saw the sacrificing of great careers to maintain that control. Look no further than the major record labels intense fight to slow down the progress of Internet technologies that more readily brought music and video to the consumer because they couldn't completely control it. This disastrous decision on their part has destroyed the economic base of the recording industry. It is now a shadow of its former self.

Artists now find a heavy shift of emphasis to the live performance side, and this is where this merger finds its merit. The combination of these companies creates powerful tools for an independent artist to reach their fans in new and unprecedented ways, all the while restoring the power where it belongs. In today's ever changing world, the ability for artists to connect to their fans and stay connected is critical for the health of our industry. Without sustainable, consistent economic models upon which to make key decisions, it is both the music and the fans that suffer.

In short, we have a broken system. This is a new model that puts power into the hands of the artist, creating a dynamic synergy that will inspire great works and attract healthy competition. The proposed merger you have before you helps create those opportunities by boldly addressing the complexity of the existing musical and economic landscapes.

Sincerely,

Billy Corgan
The Smashing Pumpkins

2/20/2009

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SUMMARY OF DIRECTV TESTIMONY RE SHVERA REAUTHORIZATION

The SHVERA licenses constitute the basic legal infrastructure for delivery of television programming to millions of Americans. But, like all infrastructure, they must be maintained. Just as our roads and bridges need repair, SHVERA requires some updating to reflect the realities of a 21st century video market.

- ***The distant signal statutory license remains critical to millions.*** Without it, consumers would lose access to programming they love and on which they depend. Alternatives to the license are unrealistic. Congress should renew it.

- ***"Harmonizing" the satellite and cable licenses would be unworkable.*** Harmonization would require extraordinary effort for no gain. It would disrupt consumers and disturb engineering decisions made in reliance on the two licenses.

- ***Today's royalty rates and eligibility rules generally serve consumers.*** Raising freely negotiated royalty rates in this economy would harm consumers. So would allowing the DTV transition to change the distant signal eligibility rules.

- ***Simplification of the eligibility rules will serve consumers even better.*** The "Grade B signal" test is complicated and outdated. Where we offer local channels, it makes more sense to ask whether the customer can receive local signals *from satellite*. Also, where TV signals "bleed" into neighboring markets, subscribers in those markets should still be eligible for distant signals.

- ***Modernizing the antiquated DMA system will promote truly local service.*** Sometimes, counties from one state are placed in a DMA from another state. Consumers in such "orphan counties" should be able to get in-state channels.

- ***Fixing the FCC's implementation mistakes will make the "significantly viewed" rules work as intended.*** The "equivalent bandwidth" rule was never meant to apply on a moment-by-moment basis.

- ***Unfunded carriage mandates would burden satellite subscribers***. Satellite offers local channels to 98 percent of Americans. The FCC found that additional carriage obligations would require more satellite and ground resources and would jeopardize HD local service. Expanding broadcasters' reach may be a worthy goal, but it would be inequitable to place the entire burden on satellite subscribers.

- ***Retransmission consent should serve consumers.*** DIRECTV has always been willing to pay for content. But broadcasters have recently doubled or tripled their rate demands while offering *less* local programming. This harms consumers, especially in this economy. Retransmission consent should fairly compensate broadcasters for their investments while minimizing their ability to withhold their signal from consumers.

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Written Testimony of
Bob Gabrielli
Senior Vice President, Broadcasting Operations and Distribution,
DIRECTV, Inc.
Submitted to the Senate Judiciary Committee

February 25, 2009

Thank you for allowing DIRECTV the opportunity to offer our views on the future of the satellite statutory copyright licenses. DIRECTV now serves more than seventeen million of your constituents. They get hundreds of channels, amazing picture quality, state-of-the-art innovation, and industry-leading customer service. DIRECTV, DISH Network, and others present a real challenge to our cable competitors. The result is better television for everybody.

While DIRECTV can take some of the credit, much of the credit goes to Congress. In 1988, you passed the Satellite Home Viewer Act ("SHVA"), allowing satellite carriers to retransmit broadcast signals for the first time. In 1992, you passed the program access provisions of the Cable Act, giving satellite subscribers access to key cable-owned programming. And in 1999, you passed the Satellite Home Viewer Improvement Act ("SHVIA"), allowing satellite carriers to retransmit *local* broadcast signals for the first time. The result is today's vibrant competitive video marketplace, which provides consumers more choice and better service than ever before.

This year, you have the opportunity to continue Congress's commitment to consumers and competition as you consider reauthorization of the Satellite Home Viewer Extension and Reauthorization Act ("SHVERA"). SHVERA provides the basic legal infrastructure for delivery of television programming to millions of Americans. Their access to this programming depends on this infrastructure.

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But SHVERA, like all infrastructure, must be maintained. Just as our roads and bridges need repair and our aviation system demands modernization, SHVERA requires some updating to reflect the realities of a 21st century video market. DIRECTV offers the following suggestions:

- Congress should renew and improve the satellite distant signal license. It should *not* harm consumers by eliminating or rewriting the license.
- Congress should improve consumer access to and choice of local stations. It should *not* require satellite subscribers to bear the burden of nationwide mandatory carriage.
- Congress should modernize the retransmission consent system to reflect the new market structure brought about by competition. It should protect consumers from inflated prices and withheld signals.

Implementing these recommendations will help ensure both that your constituents continue to receive the channels on which they have come to depend and that the satellite licenses work efficiently, predictably, and in a consumer-friendly manner.

I. The Satellite Distant Signal License Serves Consumers Across the Nation.

A. Renewing the License Will Protect Consumers.

The satellite distant signal license lets consumers who can't receive over-the-air television receive out-of-market television stations from satellite. Since its inception, the license has brought network television to millions of Americans who otherwise wouldn't have access to it. For this reason, the distant signal license is a great success story that serves the public interest.

Today, most satellite subscribers receive network programming from their local stations. And the law now restricts satellite operators' ability to bring distant signals to those subscribers. Yet nearly a million satellite subscribers still rely on the distant signal license today. Others will rely on the license into the future, including those in markets

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where we don't yet offer local signals, those in markets missing one or more network affiliates, and those in places like parts of Alaska that are outside of any local market. To all of these people, the distant signal license is critical. Without it, they would be denied access to programming that they love and that virtually all other Americans get to see. Without this license, rural Americans would be cut out of the national conversation.

Copyright holders contend that there are other ways to serve these consumers. They hypothesize "market mechanisms," "voluntary licensing arrangements," "sublicensing" and the like. Yet nobody really thinks such alternatives will actually result in satellite carriers offering distant signals. Sublicensing, for example, depends on broadcasters amending all of their programming contracts to permit satellite distant signal retransmission. No one has explained why broadcasters, who oppose the very notion of distant signals in the first place, would undertake such an effort.

The satellite distant signal license, though far from perfect, is the only realistic way to bring network programming to millions. It should not be allowed to expire.

B. "Harmonizing" the Cable and Satellite Statutory Licenses Will Lead to Unacceptable Consumer Disruption.

Some have suggested that Congress should "harmonize" the cable and satellite distant signal licenses by creating one giant, omnibus license. This idea has theoretical appeal because it would apply the same rules to satellite and cable. Yet harmonization is better in theory than in practice. It would take an extraordinary amount of work to achieve results that, in a perfect world, would largely replicate the system already in place today.

In the *real* world, however, harmonization would almost certainly result in consumer disruption. The cable and satellite industries have built their contracts and

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delivery plans all around the country on the stability of their respective statutory licenses. DIRECTV, in particular, has spent billions of dollars to design its systems to comply with the satellite statutory licenses. Changing the rules now would disturb the settled expectations of viewers throughout the country and would cause compliance problems on all sides. Inevitably, both cable and satellite viewers would lose stations they now rely upon.

Harmonization would also ignore important differences between cable and satellite technologies and businesses. To take one example, the cable license ensures broadcast exclusivity through the network nonduplication and syndicated exclusivity rules, while the satellite license does so through the "unserved household" requirement. The cable exclusivity rules make sense for operators of localized cable systems, who can easily measure "zones of protection" for the handful of stations they carry and can manage blackouts where necessary. DIRECTV, which retransmits thousands of stations across the country from satellites above the equator, cannot do any of this.

Imposing cable rules on satellite is problematic. Imposing satellite rules on cable cannot be any better. Congress should resist the temptation to combine the cable and satellite licenses.

C. Congress Should Maintain the *Status Quo* on Royalty Rates and Eligibility Rules.

As an alternative to eliminating the distant signal license or combining it with the cable license, some parties have called on Congress to make drastic changes to the mechanisms of the license itself. Because we believe that such changes will undermine the consumer experience, we urge Congress to resist these calls.

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First of all, Congress should not drastically increase royalty rates. As a business that depends on content, DIRECTV recognizes the value of intellectual property. DIRECTV is thus willing to pay its fair share, and was able to negotiate reasonable rates at arm's length with copyright holders during the last reauthorization. These, however, are exceptionally difficult economic times for all Americans. In such circumstances, Congressional action that would directly lead to drastic price increase for consumers would be especially difficult.

Second, Congress should not let the digital television transition change the distant signal eligibility rules. Congress set a "hard deadline" for the DTV transition *after* it last renewed the distant signal license. This created several ambiguities in the law. Some of these could make it easier to sign up for distant signals, others could make it harder, but none were intended. Thus:

- The DTV transition should *not* mean that everybody is "unserved," as the broadcasters fear.
- The DTV transition should *not* mean that DIRECTV can no longer offer high-definition distant signals in markets where it offers local signals in standard definition.
- The DTV transition should *not* mean that viewers become ineligible for distant signals when a local station adds network programming to a multicast feed.

If, as we believe, Congress never intended to change these rules after the transition, it should now clarify the law accordingly.

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D. Simplifying the "Unserved Household" Provision Will Make The Law Fairer and More Understandable For Your Constituents.

While DIRECTV does not advocate wholesale revision of the distant signal license, Congress could help consumers by making modest changes to the distant signal license's "unserved household" restriction. This restriction limits satellite distant signals to those consumers who can't get local signals over-the-air. But the process for determining which households are "unserved" satisfies no one. Satellite carriers think it is far too complicated and expensive. Broadcasters think it allows satellite carriers to count too many households as "unserved." Most importantly, consumers despise the process of computer prediction, waiver, and on-site testing.

We have two suggestions to simplify the license. One concerns markets in which we offer local stations. The other concerns the "unserved household" definition more generally.

1. Over-the-Air Qualification Is Unnecessary in Local Markets Served by Satellite.

In markets where a satellite carrier offers local service, the criteria for "unserved household" should not be *over-the-air* reception. The test instead should be whether the viewer can get local service *from satellite*. More specifically, subscribers in such markets should be eligible for distant signals only if they are located outside the satellite spot beam on which local channels in a particular market are offered.

This approach has numerous advantages. It is logical because, in markets where subscribers receive local signals over the satellite, over-the-air reception is irrelevant. It is simple because spot-beam coverage is a known quantity. It is fair because spot-beam

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coverage can be published so everybody knows who's eligible. Most importantly, it ensures that all subscribers can receive network programming.

2. Congress Should Address the "Grade B Bleed" Problem More Generally.

Under today's rules, subscribers in markets lacking one or more network affiliates, or subscribers outside the satellite spot beam, are ineligible for distant signals if they are within the service contour of a neighboring, out-of-market station. This is known as the "Grade B bleed" problem, and it can prevent subscribers from getting any network service via satellite.

The spot-beam proposal described above would address the Grade B bleed issue in the majority of markets in which DIRECTV provides local service. Yet the problem caused by neighboring stations' over-the-air signals harms consumers in the remaining markets, as well.

This harm is most acute for consumers in markets missing one or more network affiliates. Lafayette, Indiana, for example, has a CBS affiliate but no other affiliates. So one might logically expect DIRECTV to be able to deliver NBC, ABC, and FOX distant signals to Lafayette subscribers. But some subscribers in the Lafayette market are predicted to get one or more faint over-the-air signals from Chicago, Indianapolis, or Champaign. We cannot deliver these subscribers local network programming (because there is none), nor can we deliver them distant network programming (because they are technically "served"). These antiquated rules deny subscribers access to network programming based on the transmissions of non-Lafayette stations.

There is a solution. The test should be whether a subscriber can receive a sufficiently strong signal *from an in-market station*. We see no reason why out-of-market

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stations, whatever their predicted signal contour, should deny consumers in other markets access to distant network signals.

II. Targeted Changes Would Greatly Improve the Satellite Local Signal Statutory License, But an Unfunded Carriage Mandate Would Harm Consumers.

A second statutory license permits satellite operators to deliver local stations within their own "local markets," generally defined in terms of "designated market areas" (or "DMAs"). This license has generated far less controversy than the distant signal license and, unlike the distant signal license, does not expire at the end of year. While it, too, needs updating and modernization, Congress should resist attempts by the broadcasters to rewrite it to impose onerous unfunded carriage mandates on consumers.

A. Addressing Inequities in the DMA System Will Give Viewers the Stations that Truly Serve their Communities.

Congress could begin by modernizing "local markets" and the decades-old DMA system. DMAs are part of a private subscription service offered by Nielsen Media Research, used primarily for advertising purposes. This system was never meant to determine which local signals are available to viewers. Using it for this purpose means that viewers throughout the country are barred from receiving local news, sports, and entertainment because they happen to live on the wrong side of a DMA border.

The problem is most acute in so-called "orphan counties" that are located in one state but placed in a DMA centered in another state. Fulton County, Pennsylvania, for example, is in the Washington, D.C. DMA. But Washington, D.C. newscasts do not run stories about Fulton County. Nor do they typically report emergencies, severe weather, or other public safety issues in Fulton County. Fulton County residents thus receive service that cannot really be described as "local."

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We understand Congressman Ross will soon introduce legislation, the Local Television Freedom Act that would begin to address these issues. It would allow viewers in counties like Fulton to receive stations from in-state "adjacent" markets that better serve their communities. DIRECTV urges members of the Committee to support this legislation.

B. Fixing the "Significantly Viewed Rules" will Rescue Congress's Good Idea from the FCC's Implementation Mistakes.

Cable operators have long been permitted to offer neighboring "significantly viewed" stations. (For example, certain New York stations are "significantly viewed" in New Haven, Connecticut.) In an explicit attempt to level the playing field with cable, Congress gave satellite carriers similar rights in 2004. Congress also, however, included an "equivalent bandwidth" provision that does not apply to cable. The FCC subsequently interpreted this rule so onerously that it effectively undid Congress's efforts.

Satellite operators (unlike cable operators) must offer local stations the "equivalent bandwidth" offered to significantly viewed stations. But the FCC has interpreted this to mean that DIRECTV must carry local stations in the same format as significantly viewed stations every moment of the day. This is infeasible. DIRECTV cannot monitor the format of hundreds of station pairs around the clock. Nor can DIRECTV black out signals when, for example, a high-definition ballgame runs late on one station while the other offers standard definition hourly fare. We think the FCC's decision conflicts with Congress's intent to promote cable-satellite parity. Unless Congress revisits this issue, satellite operators will remain unable to carry signals that cable operators have carried for years.

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C. Unfunded Carriage Mandates Unfairly Burden Satellite Subscribers.

This testimony suggests a few modest attempts to update the local signal license. Broadcasters, by contrast, seek to alter the very essence of the license with huge unfunded carriage mandates. These are technically infeasible, hugely expensive, and unfair to satellite subscribers.

DIRECTV today offers local television stations by satellite in 150 of the 210 local markets in the United States, serving 95 percent of American households. (Along with DISH Network, we offer local service to 98 percent of American households.) DIRECTV also offers HD local service in 119 markets, serving more than 88 percent of American households. By the FCC's calculations, over ***80*** percent of DIRECTV's satellite capacity is now devoted to local service – nearly triple the amount cable operators can be required by law to carry.[1] We have devoted several billions of dollars to this effort. And we are working every day to serve more markets. In the meantime, we have developed equipment that allows subscribers in the remaining markets to integrate digital terrestrial broadcast signals seamlessly into their DIRECTV service.

All of this does not satisfy the broadcasters. Last week, legislation was introduced that would require satellite carriers to serve all remaining local markets by satellite within a year. Very respectfully, while expanding the reach of broadcast service might be a worthy goal, H.R. 927 is the wrong approach.

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[1] *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, 23 FCC Rcd. 5351, ¶ 11 n.48 (2008) ("*Satellite HD Carriage Order*") (using hypothetical local and national programming carriage figures to estimate that a satellite operator would dedicate 91 percent of its capacity to local programming). With DIRECTV's actual figures, this number is closer to 80 percent.

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H.R. 927 would upset the delicate balance that has guided Congressional policy in this area for decades. In enacting SHVIA's statutory copyright license for local broadcast signal carriage, Congress specifically recognized that the capacity limitations faced by satellite operators were greater than those faced by cable operators.[2] In light of those limitations, Congress adopted a "carry-one, carry-all" regime in which satellite operators can choose whether to enter a market, and only then must carry all qualifying stations in that market.[3] This regime was carefully crafted to balance the interests of broadcasters and satellite carriers alike. Indeed, both Congress and the courts concluded that the carry-one, carry-all regime was constitutional largely because it gave satellite carriers the choice of whether not to serve a particular market.[4]

The same concerns that led Congress to limit satellite carriage requirements still apply today. Last year, the FCC "recognize[d] that satellite carriers face unique capacity, uplink, and ground facility construction issues" in connection with offering local service.[5] It concluded that, if faced with onerous carriage requirements, satellite carriers might be "forced to drop other programming, including broadcast stations now carried in HD pursuant to retransmission consent, in order to free capacity," or might be "inhibited from

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[2] 145 Cong. Rec. H11,769 (1999) (joint explanatory statement), 145 Cong Rec H 11769, at *H11792 (LEXIS) ("To that end, it is important that the satellite industry be afforded a statutory scheme for licensing television broadcast programming similar to that of the cable industry. At the same time, the practical differences between the two industries must be recognized and accounted for.") ("Conference Report").

[3] 47 U.S.C. § 338(a)(1).

[4] *See* Conference Report at *H11795 ("Rather than requiring carriage of stations in the manner of cable's mandated duty, this Act allows a satellite carrier to choose whether to incur the must-carry obligation in a particular market in exchange for the benefits of the local statutory license."); *SBCA v. FCC*, 275 F.3d 337, 354 (4th Cir. 2001) (holding that the carry-one, carry-all rule was content-neutral because "the burdens of the rule do not depend on a satellite carrier's choice of content, but on its decision to transmit that content by using one set of economic arrangements [*e.g.*, the statutory license] rather than another").

[5] *Satellite HD Carriage Order*, ¶ 7.

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adding new local-into-local markets."[6] In light of these findings, we respectfully urge Congress not to upset the balance it struck in 1999.

By imposing such burdens, H.R. 927 would unintentionally create real inequality. Broadcasters already make their signals available in every market over the air, for free. More people could surely receive those signals if offered over satellite. But more people could also receive those signals if broadcasters themselves invested in the infrastructure to increase their own footprint so everyone in the market could receive a free over the air signal. We suggest that it is inequitable, especially in this economy, to place the financial burden of expanding broadcast coverage on satellite subscribers alone.

III. Retransmission Consent is Broken.

Numerous parties have suggested that, in considering SHVERA reauthorization, Congress should examine the rules governing retransmission consent agreements. DIRECTV reluctantly agrees. I say "reluctantly" because DIRECTV has successfully negotiated thousands of programming agreements over the years – many hundreds of them with broadcasters. While these were often contentious, hard-fought battles, the marketplace generally worked to deliver consumers the programming they want. Because of recent changes in the market, however, many consumers now pay more than they should for broadcast programming and broadcasters withhold their signals far too often.

The retransmission consent marketplace worked, in part, because of the equilibrium that used to exist between broadcasters and cable operators. In 1992, Congress gave all full-power television stations the right to engage in private carriage

[6] *Id.*, ¶ 8 (citations omitted).

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negotiations with cable operators.[7] Back then, these negotiations pitted one monopoly against another. Each broadcaster had a monopoly over the distribution of content within its local market. Each cable operator had a monopoly over multichannel distribution within its franchise area. Because the value to broadcasters of expanded carriage roughly equaled the value to cable operators of network programming, most retransmission consent agreements did not involve cash payments.

In 1999, Congress allowed satellite operators to carry local stations. This was an overwhelmingly good thing for consumers. But it had the unintended effect of skewing retransmission consent negotiations. Cable and satellite operators still had to negotiate with monopoly broadcasters. But broadcasters could now play cable and satellite against one another. In this new market, broadcasters found their relative bargaining power dramatically increased.

Today, the market is tilted even more heavily in favor of broadcasters. Every broadcaster has at least three competitors with whom to negotiate. Some have five or more. All the while, they maintain government-protected exclusive control over their content, not to mention the public airwaves they enjoy for free. The result is predictable: higher retransmission consent fees (which get passed along to subscribers), more frequent threats to withhold stations (which confuse subscribers), and more withheld signals (which deprive subscribers, who have done nothing wrong, of critical network programming).

Exacerbating this imbalance is the recent influx of private equity investments in broadcast television. This has resulted in broadcasters demanding ever increasing rates,

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[7] This is not a copyright "exclusive right." Rather, retransmission consent is a right given to broadcasters separate and apart from copyright.

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in some instances two to three times what we were previously paying. One broadcaster reported a 23 percent rise in retransmission consent revenues between 2006 and 2007 alone.[8] Another broadcaster recently told the FCC that it could reasonably demand ***$20.00*** per-sub-per-month for a single station.[9]

It does not appear that this additional money is being used to provide more or better local programming. In fact, the opposite appears to be true. Many broadcasters are producing less local news, and others have replaced local programming with national infomercials.

As I said earlier, DIRECTV willingly pays for high-quality content that our subscribers value. All programming entities deserve fair and reasonable compensation for the product they produce. This includes value-added content we receive from broadcasters. But it does not serve the American public if broadcasters are allowed the unfettered ability to raise rates without any correlating benefit to consumers in the form of improved local content.

While I believe the retransmission consent regime is broken, I cannot sit here today and give you a specific solution. Rather, we would like to work with members of this committee to establish a construct that accomplishes the following policy goals:

- It should *fairly and reasonably compensate the broadcaster for its investment in high-quality content*. DIRECTV has always been willing to pay a fair price to

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[8] "Nexstar Expects $75M from Retrans Deals," TVNewsday, Feb. 19, 2009, *available at* http://www.tvnewsday.com/articles/2009/02/19/daily.12/.

[9] *See* Reply Comments of Hearst-Argyle Television, Inc., MB Docket No. 07-198, at 9-10 (filed Feb. 12, 2008) (arguing that the true market value of the average Hearst-Argyle station is $20.18 per subscriber per month and stating that, while it has not yet sought such fees, "the Commission could hardly conclude, on any basis of fairness of equity, that a negotiating request for such a fee was not based on marketplace considerations or was in any way inappropriate or unlawful").

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retransmit local signals. We are not looking at SHVERA reauthorization to change this.

- It should *protect consumers from withheld service*. Consumers caught in the middle of a retransmission consent dispute don't care about the particulars of the dispute. They simply want their programming. Congress should consider restricting, to all but the most limited circumstances, the ability of broadcasters to shut off signals.

DIRECTV hopes to work with this Committee and other stakeholders to develop specific proposals that would meet these criteria.

* * *

Mr. Chairman and members of the Committee, please allow me to end where I began. Consumers throughout America – whether they subscribe to satellite or not – are better off because of the legislation you and your Committee championed over the years. I ask you to keep those same consumers in mind as you consider SHVERA reauthorization this year.

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My name is Seth Hurwitz. I have been an independent promoter for the last 30 years. I own the 930 Club here in Washington, D.C., I operate an amphitheatre named Merriweather Post Pavilion in Columbia Maryland, my company I.M.P. promotes concerts in virtually all 3rd party venues in Washington and Baltimore from the smallest to the largest venues, and we created and promoted the Virgin Mobile Festival at Pimlico in Baltimore. Apparently I am a dying breed, as I have watched other promoters either get bought up or fold.

So, while I am excited and honored to participate in these proceedings, I am deeply sorry it has taken this long for everyone to start figuring out what is going on here. Apparently it took something as simple as not being able to get Bruce Springsteen tickets to finally wake the public up.

For the uninitiated, let me give you the short version of how we got here.

We concert promoters were a wily entrepreneurial bunch, each with our own geographical market. We had competition in the individual markets, and the agents who represent the artists were experts at pitting us against each other. While this never made for a particularly pleasant day, except when you won of course, it did serve the purpose for which free enterprise was created. The promoters that did the best jobs, with the best venues, and the lowest ticket prices, got the shows. The offers were often just short of sane, but nobody did shows unless they had a chance of making money. Rather than unthinkably let someone else get a show, they would work often under the now famous razor thin margins. But the idea was to make money.

A roll-up artist named Robert Sillerman got the idea that if he assembled all of these promoters under one company - - SFX - - he could find someone to buy SFX under the auspices of controlling the concert industry. He bought as many of these cowboys up as he could, by paying them whatever it took to abandon their independence. But he also needed a corner on the inventory. He paid whatever it took to sign up the acts for tours, all to give the appearance of an undeniable juggernaut. His scheme worked...he sold the aforementioned conglomeration to a company called Clear Channel, under the auspices of gaining control of the industry through vertical integration...in this case radio. They owned over a thousand radio stations.

Sillerman made his money and hasn't been heard from since, in our business. The thing to remember here is that during this whole period, Sillerman had always touted himself as doing what was best for the customer & the industry, finding ways to use this newfound power for the benefit of everyone. The word "synergy" became famous here. Synergy...synergistic...synergistic opportunities for synergy...it was all pitched, when the only synergy that was ever intended, in my opinion, was between Robert Sillerman and his bank account. Yes, I blame him for starting this. But he is no longer the one perpetrating it.

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Anyway, it didn't take folks too long to figure out how rotten this new Clear Channel situation was. In fact, one of Mr. Azoff's clients, Don Henley (of The Eagles), even testified about it. The problem was that folks were concerned that the potential for abuse of power was too great. Sure enough, accusations of being denied airplay for not playing radio-sponsored concerts were piling up, and there was a lawsuit from a non Clear Channel promoter in Denver that couldn't buy airtime or get promotion for his non Clear Channel concerts.

With antitrust allegations swarming, Clear Channel decided to spin off the company, albeit with many of the same principals on both boards, and the new entity was named Live Nation. Unfortunately...and, as it turns out, for all concerned here...the cycle had long since been ingrained to pay bands whatever it took to sign them up for tours under the Live Nation banner, and demand that the bands only appear at their amphitheatres and other concert venues it had locked up. Live Nation could ill afford the appearance of losing control of acts, as this would affect their stock price, which, at this point, was more important than the bottom line. Grosses became important. Net not important. Grosses were trumpeted in the quarterly earnings press releases. Net...not so much. Keeping those grosses up became tantamount while they continued their path to dominance. But just imagine if they could count all of the nation's grosses as their own...wouldn't that look good.

Offers were put in front of bands, with the accompanying ticket prices that justified them, and the bands said yes. The more money it took to lock these tours up, the higher the tickets went. As the offers were coming from the self-proclaimed leading promoter in the world, they must know what they were doing, right? I mean, they made these offers with these ticket prices, they knew they'd have to go out and sell those tickets if the bands accepted the offers. Of course, the bands could say no. Right. Just like my kids could say no if I served them ice cream for dinner. But if the act, promoter, venue, and ticket agency are all the same, then it doesn't really matter if any of them says no So this idea of blaming the artist for ticket prices is simply out of context.

Independent promoters began falling by the wayside. Venue deals were made or broken based on the threat of withholding content.

Ahh, but there were still a few annoying competitors out there, namely House Of Blues and their amphitheatres that people expressly preferred to play. The last big piece of the puzzle. Well, that's easy enough; let's just buy them. That'll end this continuing annoyance of bands wanting to play somewhere other than our venues. And, we'll be able to tout those new grosses as growth, and bury the losses under the name of investments in the future.

But when is that future?

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Well it's just beyond the next transaction. And the one after that. And the one after that. As long as there was one more deal to announce, it would buy them the time they needed to finally control the industry.

Which leads us to today.

The next step towards trying to control the industry is to control the ticketing. It won't work either but, in its wake, will leave yet another trail of broken competitors and bad economics.

Live Nation, by its very admission that has led us to this room today, figured out there is no replacement for TicketMaster in too many situations. After announcing their own ticket system over a year ago, and spending millions to develop it, they launched it the first of the year. It lasted about a month. One month. So now they would like to do what they have always done in these situations. They buy the competition.

Except now it is very clear to the rest of the world what that control would mean. And nobody is happy about it. Trust the dictator to serve the needs of the people? I suppose it could happen. But that same power that wields that ability could be used against them. And, as history teaches us, when it relates to business, this has never turned out well

One cannot blame Live Nation for trying to take over as much of the industry, from top to bottom, as they can, if they are allowed to do so. Why shouldn't they try? You can't blame them any more than you can blame a shark for eating people.

So the question is, how much control is too much...when do they get told to stop. They haven't been told yet, and they obviously will continue until they are.

For the record, I have never had a problem with TicketMaster I couldn't work out, as we have competition in our market here in DC. In fact, I use Tickets.Com for the 930 Club and Ticketmaster for my amphitheatre and arena shows. Although either entity would double their deal to get the other's business I give them, I feel it is very important to keep both entities in play, for competition's sake.

So my issue with all of this is that there are situations where I may be forced to use TicketMaster, either by a venue contract, or perhaps where TicketMaster would be the unquestionably better provider of ticket service.

And here is the big problem with that: If this merger is allowed to happen, my biggest competitor will have access to all of my sales records, customer information, on sale dates for tentative shows, my ticket counts, they can control which shows are promoted and much more. This will put ALL independent promoters at an irreparable competitive disadvantage. This would be like Pepsi forcing Coke to use

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its services as its distributor, and pretend that the intelligence Pepsi gathers won't harm Coke. It just can't happen and maintain a fair and level playing field.

As far as using another ticketing service, there are simply situations where it will not be possible to bring in a new ticketing system without a very steep, painful, expensive learning curve that no major act will be willing to endure. Again, Live Nation themselves have admitted this, now ready to abandon their own fledgling system after only one month.

The acts will just go with the easiest path of least resistance. Which is exactly what this whole thing is designed to do.

And, speaking of the acts, why have we not heard from anyone besides Springsteen? Perhaps afraid to speak out? Doesn't that say as much about the problem here as anything? Kind of like the shop-owners in mob era Chicago that were afraid to speak out about having to pay "protection".

In conclusion, I am going to quote someone famous here...

"When it works well, capitalism is great for consumers. Firms compete to cut prices and improve the customer experience, and consumers have plenty of alternatives, so they are not vulnerable to corporate greed or incompetence. Most of the time, American business enthusiastically participates in this win-win system.

Antitrust helps to keep that system in force. It addresses the temptation that some businesses will sometimes experience, to merge with key rivals instead of outperforming them, to agree not to compete too hard, or to sabotage rivals' efforts to serve consumers instead of redoubling their own. "

That was Barack Obama. I hope he backs it up.

American business should succeed by doing a better job, not by taking control. This is about control by eliminating competition – and that's not good for anyone except the willing participants.

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United States Senate
Committee on the Judiciary

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Statement of

The Honorable Herb Kohl

United States Senator
Wisconsin
February 24, 2009

STATEMENT OF U.S. SENATOR HERB KOHL
Chairman of the Antitrust, Competition Policy and Consumer Rights Subcommittee
"The Ticketmaster/Live Nation Merger: What Does it Mean for Consumers and the Future of the Concert Business?"
February 24, 2009

Today we examine the recently announced merger between Ticketmaster and Live Nation. This merger will combine two entertainment powerhouses – Ticketmaster, the nation's leading ticketing company and Live Nation, the world's largest concert promoter, owner or operator of hundreds of concert venues, and a recent entrant into the ticketing business. This merger will not only expand Ticketmaster's control of the ticketing market by eliminating a competitor, but it is also creating an entity that will control the entire chain of the concert business – from artist management to concert promotion and production to ticketing and ticket resale.

We are here today to focus on what this deal will mean for the millions of concert-goers across the country. Ticketmaster and Live Nation argue that this merger will create efficiencies which ultimately will serve consumers. But we have good reason to be skeptical as to whether music fans will truly realize these benefits. Critics of this merger allege the deal will combine two competitors in the evolving entertainment business by creating an enormous, vertically integrated entertainment giant that will dominate all aspects of the business. They argue that the strength of this combined company will make it impossible for new competitors in ticketing or concert promotion to emerge, and that consumers will pay higher prices as a result.

Live Nation owns or has operating agreements with 140 amphitheaters, clubs, theaters, and small music venues, 30 music festivals, and 305 large arenas. It also has exclusive deals with marquee artists, including U2, Madonna, and the Jonas Brothers, to name just a few. The company recently launched Live Nation Ticketing which makes it a viable competitor to Ticketmaster. Ticketmaster is the nation's dominant ticket seller, processing in 2007 more than 280 million tickets and $8.3 billion dollars in sales for thousands of venues – including more than 77 of the 100 largest venues. By some accounts, Ticketmaster controls 70 to 80 percent of all concert ticket sales. Late last year, it acquired a management company that manages 200 artists, Front Line Management, and a leading ticket resale company.

The combination has the potential to create one company with a stranglehold on all segments of the concert business. It raises serious concerns for independent concert promoters who give a platform to new and less established artists. When these promoters book acts in the hundreds of venues under the Live Nation/Ticketmaster umbrella, they will have to use the merged company's ticketing services. What this means is that the independent promoters will have to reveal a treasure trove of competitive information about their ticket sales to the combined company – the very company with whom they will have to compete for concert promotion. At the same time, independent concert venues will be under enormous pressure to use Live Nation for ticketing if they wish to book the hundreds of key acts controlled by the company.

Our concerns are heightened by the fact that Live Nation recently entered into the ticketing business to

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compete with Ticketmaster. This needed competition will be lost if this merger is completed. What does Live Nation's decision to merge with its competitor rather than fight it in the market tell us about any company's ability to compete with Ticketmaster? If Live Nation can't compete, who can?

All of this comes at a time when consumers are justifiably wary of Ticketmaster's recent acquisition of a company that sells tickets on the secondary ticket market, TicketsNow.com. Just three weeks ago, consumers attempting to purchase Bruce Springsteen tickets through Ticketmaster's web site were diverted to TicketsNow's web site. There, the tickets were priced two to three times higher than face value, plus a hefty service fee. Ticketmaster blames technical glitches for this unfortunate incident. But this incident raises a serious question – will the combined company be tempted to divert tickets to the resale market at inflated prices because there are no competitors to keep this behavior in check?

In sum, this deal raises many serious questions regarding the future of competition in the concert business. The burden will be on Ticketmaster and Live Nation to demonstrate that consumers will be better off. Those of us who are concerned with maintaining diversity and competition in the concert business should insist that these issues be closely examined before this deal is allowed to proceed.

# # #

Testimony of Jerry Mickelson
Chairman and Executive Vice President of Jam Productions, Ltd.

Before the United States Senate Judiciary Subcommittee
on Antitrust, Competition Policy and Consumer Rights entitled
"The Ticketmaster/Live Nation Merger: What Does It Mean
For Consumers and the Future of the Concert Business?"
Tuesday, February 24, 2009
Dirksen Senate Office Building Room 226

Introduction

Thank you Chairman Kohl, Ranking Member Hatch and other members of the Senate Judiciary Subcommittee for allowing me to appear before you to hear my testimony about the competitive harms that will arise if the proposed merger of Ticketmaster and Live Nation is allowed to go through. I am here today to speak on behalf of the concert fans as well as many other interested and concerned stakeholders in the live music industry.

Also here today are two giants in the music business. Both Mr. Azoff, representing Ticketmaster, and Mr. Rapino, representing Live Nation, are already the two most powerful people in the entire music industry. Their companies are both Goliaths, so their unification will create a business with extraordinary market power and clout unlike any that I have ever seen in my lifetime. This causes me to have serious concerns about the business I work in because this new company has the ability to continue to strengthen their hold on the entire music industry even farther than what currently exists today through their:

- control of ticketing contracts with thousands of venues
- access to concert competitors' data and information
- ability to capture a large portion of the secondary ticketing market
- control over the management and promotion of national tours that already includes many of the biggest names in live music
- ability to control every important type of venue including clubs, theatres, arenas, outdoor amphitheatres and stadiums
- ownership of artist merchandise, music apparel and licensing companies
- recorded music contracts with artists
- media and digital rights they have acquired
- fan clubs and their websites
- ownership of a company that provides marketing materials for many many performers
- ability to create sponsorship packages for thousands of events

If this merger is allowed to proceed the combined entity will have the ability to suppress or eliminate competition in many segments of the music industry including rival concert promoters, primary and secondary ticketing companies; artist management firms; talent agencies who route performers' tours; venue management companies; record companies; artist merchandise, music apparel and licensing companies; and sponsorship companies. **It is my belief this merger is vertical integration on steroids.**

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Background

My appearance before you today is based on my 37 years of experience in the live entertainment industry. For the record, my name is Jerry Mickelson, Chairman and Executive Vice President of Jam Productions. My partner, Arny Granat, and I have been producing and promoting concerts, theatrical productions and special events since 1971, when we co-founded one of the nation's largest self funded independent producers of live concert entertainment headquartered in Chicago. We were kids back then, I was 20 and Arny was 23, not really knowing what we were doing but we let our entrepreneurial spirit guide us to build a successful business that spans almost 4 decades.

The business of being a concert promoter means that we work with managers and agents to procure talent to perform at concert venues. A promoter typically guarantees musical artists large sums of money to perform against a very hefty percentage of the ticket sales. We market and advertise each show, produce it and Jam assumes all the financial obligations for each concert event.

As we have grown our business Jam has been fortunate to build an amazing team of dedicated people whose commitment to music and the fans are unwavering. This core group of 40 or 50 people are like family, showing up to work every day to fight the good fight in trying to earn a living in a business that has dramatically changed over the past 12 years since the consolidation of the concert promoters.

In 1996 Bob Sillerman created a company called SFX that began buying the best concert promotion companies around the country but for a variety of reasons we decided not to sell Jam Productions. Mr. Sillerman acquired many of the largest promoters in the United States who all had very successful businesses but he decided to create a new model for live entertainment, one whose whole was greater than the sum of its parts that was supposed to package entertainment to make it more accessible to fans, marketers and talent.

As history shows, this new company was the beginning of an unprecedented increase in concert ticket prices. Their new business model entailed buying entire tours across the country rather than individual shows on a market by market basis. This meant that in order to promote every concert for a particular artist SFX had to substantially escalate the typical guaranteed payment to that artist so

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they could obtain control of the tour. And as you will see in Exhibit A, this increase was passed along to the public.

- Between 1996, the year SFX began, and 2000, the year SFX was sold to Clear Channel, the average ticket price for the country's top 100 musical tours went from $25.81 to $40.74, a 58% increase over those five years.

- Between 2000 and 2005, the year Clear Channel spun off Live Nation into its own publicly traded company, the average ticket price for the country's top 100 musical tours went from $40.74 to $56.88, a 39% increase.

- In 2008 the average ticket price for the top 100 tours jumped to $67.35. Since the consolidation of the concert industry began some 11 years ago the average ticket price has increased 160%.

- In addition, SFX/Clear Channel/Live Nation created new fees and increased old ones to raise the price of box office service charges, facility fees, Ticketmaster convenience charges and food & beverages concessions that have made it even more expensive for concert fans across our nation.

Anti-Competitive Effects of the Merger

The size and scope of this new company will be unmatched and pose a formidable challenge to anyone trying to compete in the music business.

- Live Nation is the largest producer of live concerts in the world, annually producing over 16,000 concerts for 1,500 artists in 57 countries.
- The company sells over 45 million concert tickets each year and expects to drive over 60 million unique visitors to LiveNation.com in 2008.
- Live Nation owns just about all of the major amphitheatres --47 in number -- which means no other company can effectively compete for outdoor shows during the summer months.
    - In addition to controlling the amphitheatres we are unable to be competitive when Live Nation pays performers over 100% of the gross ticket sales.

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- Live Nation purchases more than a majority of the indoor arena tours which has substantially eroded what used to be a core part of independent promoters income.
    - For example, in 1996 Jam produced 130 arena concerts but in 2008 we only produced 35. The single most profitable part of our business has been dramatically impacted and continues to decrease each year.
- Live Nation currently owns 46 clubs and theatres and 11 House of Blues.
    - Live Nation intends to continue its acquisition of more venues each year.
    - If that trend continues it won't be long before Live Nation controls this remaining portion of the live concert business which could cause the further elimination of additional competitors since this has become the only segment of our business that keeps our doors open.
- Live Nation Artists serves more than 1,000 artists through its array of services including:
    - Global touring (Madonna, U2, Jay-Z, etc.)
    - Merchandise and licensing (Signatures Network, Anthill, TRUNK Ltd.)
    - Sponsorship and strategic alliances
    - Recorded music
    - Studios
    - Media rights
    - Digital rights
    - Fan club/websites (UltraStar, Music Today)
    - Marketing and creative services (Tour Design) to facilitate direct artist-to-fan connection
- Ticketmaster operates in 20 global markets, providing ticket sales, ticket resale services, marketing and distribution through www.ticketmaster.com, one of the largest e-commerce sites on the Internet; approximately 6,700 retail outlets; and 19 worldwide call centers.
- Established in 1976, Ticketmaster serves more than 10,000 clients worldwide across multiple event categories, providing exclusive ticketing services for leading arenas, stadiums, professional sports franchises and leagues, college sports teams, performing arts venues, museums, and theaters.
- In 2007, the company sold more than 141 million tickets valued at over $8.3 billion on behalf of its clients.
- Ticketmaster Entertainment acquired a controlling interest in Front Line Management Group in October 2008.

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- Founded by Irving Azoff and Howard Kaufman, Front Line is the world's leading artist management company, with nearly 200 clients and more than 80 executive managers. Front Line represents a wide range of major artists, including but not limited to the Eagles, Jimmy Buffett, Neil Diamond, Van Halen, Fleetwood Mac, Christina Aguilera, Stevie Nicks, Aerosmith, Steely Dan, Chicago, Journey, Jennifer Hudson, Alan Jackson and Guns N' Roses.

Live Nation and Ticketmaster already have substantial market power in their respective businesses but this merger could enable them to have an even greater competitive advantage over a much broader range of stakeholders in the live music industry.

- If the downward trend of diminishing returns continues as it has there might not be enough competing promoters able to remain in business.
    - Our major competitor will have access to our ticket sales information, customer data bases and the financial terms of our ticketing agreements.
    - Live Nation/Ticketmaster might want to decrease the financial terms of our ticketing agreement when they come up for renewal or increase their overall share.
    - Live Nation/Ticketmaster will be receiving income from every ticket sold to our concerts which could be used to compete against us.
    - Live Nation/Ticketmaster will have additional revenue streams we do not currently share in, such as revenues from the sale of tickets on Ticketsnow, which means they will be able to pay an artist more money to perform.
    - Fans who want to see Jam shows will have to go to our competitor's website to purchase tickets.
- Other primary and secondary ticketing companies might not be able to build enough critical mass to effectively compete due to Live Nation/Ticketmaster's long term contracts with venues and promoters.
- Talent managers might not be able to offer their clients the same or similar services and revenue streams as Live Nation/Ticketmaster.
- Record companies might not be able to offer their artists the same or similar services and revenue stremas as this new company since Live Nation/Ticketmaster will be able to more effectively sell recorded music when purchasing a ticket on-line or at the venue.

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- Talent agents' services might be diminished since the performers might not need their services to route tours across the country.
- Venues might be pressured to sign a ticketing agreement and give up parts of their revenue streams due to the market power of Live Nation/Ticketmaster.
- Competing merchandise companies might not be able to effectively compete against Live Nation/Ticketmaster's owned and operated merchandise company.
- Competing sponsorship companies might not have access to relevant data and venues to successfully compete in the music industry.
- Live Nation/Ticketmaster might choose to continue their vertical integration even farther and may seek to provide additional services and products to create an even larger anti-competitive business model.

Live Nation vs. Ticketmaster Ticketing Fees

On December 20, 2007 Live Nation issued a press release announcing that it had entered into a long term ticketing agreement with CTS Eventim which "will enable Live Nation to launch its own ticketing business utilizing the most technologically advanced ticketing platform in the world. Live Nation will exclusively license the Eventim platform in North America.....The new agreement will allow Live Nation to begin selling tickets on January 1st, 2009."

The chart below (a summary of Exhibit B) compares ticket fees between Ticketmaster (TM) and Live Nation (LN) for concerts currently on sale. Live Nation's recent entry into the ticketing business has caused the consumer to pay higher fees than Ticketmaster charges for now, but that might all change if these two companies are allowed to merge.

Concert	Date	City	Ticket Price	Ticket Fee
Coldplay	7/18/09	Carson (CA)	$97.50	TM - $15.95
Coldplay	7/21/09	Dallas	$35.00	LN - $21.33
Coldplay	8/7/09	Charlotte	$97.50	LN - $20.15
Jimmy Buffett	5/16/09	Las Vegas	$211.00	TM - $12.80
Jimmy Buffett	4/21/09	Charlotte	$129.00	LN - $21.00
Fall Out Boy	5/17/09	St. Paul	$34.00	TM - $9.55
Fall Out Boy	4/4/09	Irvine (CA)	$47.50	LN - $13.00

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Closing Comments

Bruce Springsteen posted a letter on his website a couple of weeks ago after a ticketing problem occurred when tickets to some of his concerts went on sale at Ticketmaster. One point that Bruce made really hit home when he stated "…..the one thing that would make the current ticket situation even worse for the fan than it is now would be Ticketmaster and Live Nation coming up with a single system, thereby returning us to a near monopoly situation in music ticketing."

As I have pointed out, this merger is much larger than just the ticketing business since both Live Nation and Ticketmaster could attempt to use their combined market dominance to monopolize the entire music industry. This is a very compelling reason to vigorously enforce antitrust legislation, but make no mistake about it, this can be very difficult because of the enormous political power these companies have attained. Just look at their Board of Directors to understand the resources they have available to support and lobby on behalf of their effort to proceed with this proposed anti-competitive merger.

The enforcement of antitrust laws over the years has been uneven depending on the party in power rather than preserving the interests of our free market economy to sustain and foster competition in order to protect consumers and companies from unfair and harmful business practices. I hope and pray that the issues I have raised today will lead policy makers and our enforcement agencies to conclude that a large of the nation's live entertainment industry would be seriously if not irreparably impaired by a Live Nation/Ticketmaster merger.

Thank you for your time.

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EXHIBIT A

POLLSTAR

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Ticketmaster Shipping

EXHIBIT B

ticketmaster®

1. SHIPPING | 2. BILLING | 3. CONFIRMATION

We're holding these tickets just for you. Please complete this page within 2:15 minutes
After 2:15 minutes, the tickets we're holding will be released for others to Buy.

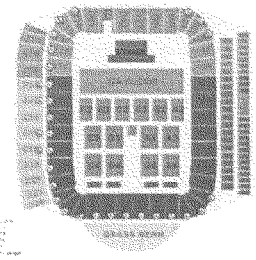
Event

Coldplay
The Home Depot Center, Carson, CA
Sat, Jul 18, 2009 07:30 PM

Your Ticket(s)

Section	112
Row	U
Seats	17
Description	Price Level 1 LOWER LEVEL
Type	1 ADULT
Ticket Price	US $97.50
Convenience Charge	US $15.95
Building Facility Charge	US $7.90

Coldplay



Seating charts reflect the general layout for the venue at this time. For some events, the layout and specific seat locations may vary without notice

If you don't want these tickets, give them up and search again ».

Select Delivery Method

A processing fee per order is applied in addition to the delivery price per order listed below.

Deliver My Tickets	Price Per Order	Please Note
US Customers		

LIVE NATION

LIVE NATION Concert Search: Enter Artist, Venue, or City

Select More Seats | View Shopping Cart

Invoice

		Section	Row	Seat	Price	Fee	Total
7/21/09 7:30 PM DALLAS	COLDPLAY	LAWN	GA8	154	$35.00	Convenience Fee $21.33	$56.33
						Delivery Fee	$0.00
						Order Fee	$3.50
							$59.83

Grand Total: $59.83

Card Number * (No spaces or dashes)

Credit Card * Visa

Expiration Date * Month Year

Billing Address

Title

First Name *

Last Name *

Middle Name

Street Address *

Street Address 2

City *

State/Province TX (leave blank if country other than US or Canada)

Country/Territory United States

Zip *

Daytime Phone * Area Code Number (No spaces or dashes)

Evening Phone Area Code Number (No spaces or dashes)

Company/Group

Email *

Verify Email *

Shipping Address

☑ same as above.

https://secure.livenationtickets.com/...neSale?action=displayPrice&performance_id=171344&cobrand=livenation&language=en&country=US[2/22/2009 4:02:43 PM]

Live Nation - Shopping Cart

LIVE NATION

Live Nation Ticketing
Sign In | Join
Why is this different?

[redacted]

10:22 This is the time you have to complete this transaction. After that, these tickets will be released.

[redacted]

Event Information

← Buy More Tickets for this Event

Coldplay
Friday 08/07/09
Show: 7:30 p.m.
Verizon Wireless Amphitheatre -
Charlotte
CHARLOTTE

Ticket Info	Ticket Type	Price	Quantity	Subtotal	
Reserved 1					
Section G, Row K, Seat # 15	Adult	$97.50			
Parking Fee		$6.00			
Ticket Fee		$20.15			
Ticket Tax		$3.02			
TICKET TOTAL		$126.67			
			1	$126.67	X Remove From Cart

Ticket Shipping Options

All mail options are for U.S./Canada only. If you are a customer from a different country please select Print at Home or Will Call only.

- U.S. Mail - (No Charge) Orders are shipped approximately 7-10 days in plain white envelopes from Crozet, VA. Fo... more
- Print at Home - (No Charge) You can print your tickets immediately after your purchase. Link to printable tickets fr... more
- U.S. Express Delivery - ($18.00 US) Orders are shipped within approximately 2 days after processing, not ordering. You will... more
- Will Call - (No Charge) Orders are available for pick up at the venue box office on night of the event. Photo I... more
- Canada Mail - (No Charge) Orders will be received via Canadian Post shipped from Crozet, VA via US Mail. For miss... more
- Canada Express Delivery - ($18.00 US) Orders are shipped within approximately 2 days after processing, not ordering via UPS Gl... more

Subtotal	$126.67
Ticket Shipping:	$0.00
Transaction Fee:	$0.00
TOTAL:	**$126.67**

Returning Customers

User Name

Enter a user name that is at most six characters long and includes at least one number or special character

Password

Password is Case-Sensitive

Forgot Password

[redacted]

New Customers

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[redacted]

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https://ticketmaster.livenation.com/?_=1215340311727&rid=menee_11888-1&error=true&cao=1235340329-c89133e39ae24196bce1e5cabd053970_32af626dce774518451c8aa269055312[2/22/2009 4:06:05 PM]

Ticketmaster Shipping

ticketmaster®

1. SHIPPING 2. BILLING 3. CONFIRMATION

We're holding these tickets just for you. Please complete this page within 2:15 minutes
After 2:15 minutes, the tickets we're holding will be released for others to buy.

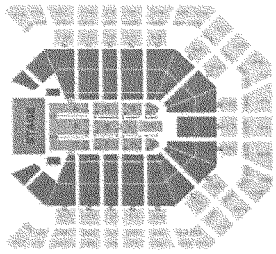
Event

Jimmy Buffett and the Coral Reefer Band
MGM Grand Hotel, Las Vegas, NV
Sat, May 16, 2009 08:00 PM

Your Ticket(s)

Section	L14
Row	L
Seats	17
Description	PRICE LEVEL 1 LOWER LEVEL/1ST LEVEL OFF THE FLOOR
Type	1 ADULT
Ticket Price	US $211.60
Convenience Charge	US $12.80

Jimmy Buffett



Seating charts reflect the general layout for the venue at this time. For some events, the layout and specific seat locations may vary without notice.

If you don't want these tickets, give them up and search again ».

Select Delivery Method

A processing fee per order is applied in addition to the delivery price per order listed below.

Deliver My Tickets	Price Per Order	Please Note
US Customers		

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LIVE NATION

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YOUR CART

10:13 This is the time you have to complete this transaction. After that, these tickets will be released.

Event Information

+ Buy More Tickets for this Event

Jimmy Buffett
Tuesday 04/21/09
Show: 8:00 p.m.
Verizon Wireless Amphitheatre -
Charlotte
CHARLOTTE

Ticket Info	Ticket Type	Price	Quantity	Subtotal	
Reserved 1					
Section 3, Row O, Seat # 26	Adult	$129.00			
Parking Fee		$6.00			
Ticket Fee		$21.00			
Charity Fee		$1.00			
TICKET TOTAL		**$157.00**	1	$157.00	X Remove From Cart

Ticket Shipping Options

All mail options are for U.S./Canada only. If you are a customer from a different country please select Print at Home or Will Call only.

- U.S. Mail - (No Charge) Orders are shipped approximately 7-10 days in plain white envelopes from Crozet, VA. Fo... more
- Print at Home - (No Charge) You can print your tickets immediately after your purchase. Link to printable tickets fr... more
- U.S. Express Delivery - ($18.00 US) Orders are shipped within approximately 2 days after processing, not ordering. You will... more
- Will Call - (No Charge) Orders are available for pick up at the venue box office on night of the event. Photo I... more
- Canada Mail - (No Charge) Orders will be received via Canadian Post shipped from Crozet, VA via US Mail. For miss... more
- Canada Express Delivery - ($18.00 US) Orders are shipped within approximately 2 days after processing, not ordering via UPS Gl... more

Subtotal	$157.00
Ticket Shipping:	$0.00
Transaction Fee:	$0.00
TOTAL:	**$157.00**

Returning Customers

User Name

Enter a new name that is at least six characters long and includes at least one number or special character

Password

Alphanumeric Case-Sensitive

Forgot Password

New Customers

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Ticketmaster Shipping

ticketmaster

1. SHIPPING | 2. BILLING | 3. CONFIRMATION

We're holding these tickets just for you. Please complete this page within 2:15 minutes
After 2:15 minutes, the tickets we're holding will be released for others to buy.

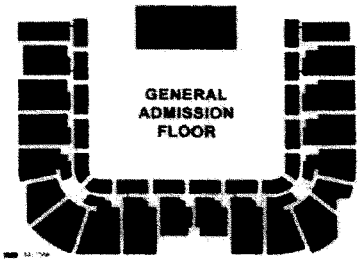
Event

Fall Out Boy with All Time Low, Cobra Starship, Metro Station
Roy Wilkins Auditorium at St. Paul RiverCentre, St Paul, MN
Sun, May 17 2009 07:00 PM

Your Ticket(s)

Section	210
Row	P
Seats	13
Description	Price Level 1 Reserved balcony seating End of auditorium Rows E-R of balcony
Type	1 Full price tickets
Ticket Price	US $34.00
Convenience Charge	US $9.55
Building Facility Charge	US $2.00

End Stage with GA Floor



Seating charts reflect the general layout for the venue at this time. For some events, the layout and specific seat locations may vary without notice.

If you don't want these tickets, give them up and search again ».

Select Delivery Method

A processing fee per order is applied in addition to the delivery price per order listed below.

Deliver By Tickets	**Price Per Order**	**Please Note**
US Customers		

Live Nation - Shopping Cart

LIVE NATION

Live Nation Ticketing
Sign In | Join
Why is this different?

10:20 This is the time you have to complete this transaction. After that, these tickets will be released.

Event Information

+ Buy More Tickets for this Event

Wonka Presents The Bamboozle Left
2009
Saturday 04/04/09
Show: 2:00 p.m.
Verizon Wireless Amphitheatre - Irvine
IRVINE

Ticket Info	Ticket Type	Price	Quantity	Subtotal	
General Admission Section GA, Row 630, Seat # 90	Adult	$47.50			
Ticket Fee		$13.00			
TICKET TOTAL		$60.50	1	$60.50	X Remove From Cart

Ticket Shipping Options

All mail options are for U.S./Canada only. If you are a customer from a different country please select Print at Home or Will Call only.

- U.S. Mail - (No Charge) Orders are shipped approximately 7-10 days in plain white envelopes from Crozet, VA. Fo... more
- Print at Home - (No Charge) You can print your tickets immediately after your purchase. Link to printable tickets fr... more
- U.S. Express Delivery - ($18.00 US) Orders are shipped within approximately 2 days after processing, not ordering. You will... more
- Will Call - (No Charge) Orders are available for pick up at the venue box office on night of the event. Photo I... more
- Canada Mail - (No Charge) Orders will be received via Canadian Post shipped from Crozet, VA via US Mail. For mess... more
- Canada Express Delivery - ($18.00 US) Orders are shipped within approximately 2 days after processing, not ordering via UPS Gl... more

Subtotal	$60.50
Ticket Shipping:	$0.00
Transaction Fee:	$0.00
TOTAL:	$60.50

Returning Customers

User Name

Enter a user name that is at least 6 characters long and includes at least one number or special character

Password

Password is case-sensitive

Forgot Password

New Customers

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Testimony
National Programming Service

Submitted by
Mike Mountford
CEO

Submitted to the Senate Committee on the Judiciary
February 25, 2009

"Ensuring Television Carriage in the Digital Age"

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National Programming Service (NPS) submits this testimony for inclusion in the record as part of the Subcommittee on Communications, Technology, and the Internet's oversight hearing entitled "Reauthorization of the Satellite Home Viewer Extension and Reauthorization Act."

Introduction

NPS is a small business located in Indianapolis, IN that has been serving the direct-to-home satellite industry for the past two decades by offering satellite reception equipment, consumer electronics and programming to customers through its website. Since 2006 NPS has been offering DISH subscribers that qualify as unserved households distant network signals. The company has approximately 108,000 subscribers nationwide. That is the part of NPS' business that is the subject of this hearing.

The Satellite Home Viewer Act and its subsequent reauthorizations have been very successful in creating an alternative way for consumers to receive multi-channel video programming. Initially, the Act's focus was on rural and exurban households that utilized the big C-band satellite dishes to receive multiple channels of television programming. As technology has evolved the Act has been revised to keep pace with the latest developments in satellite technology. The dish sizes have gotten smaller, the technology has improved and all of these benefits have been passed on to the satellite consumer.

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Throughout the 20-plus year history of the Satellite Home Viewer Act, however, one category of satellite subscriber has seen little change. Satellite households that cannot receive a viewable picture of their local network station continue to face barriers and limited choices. Even in markets where local signals are available via satellite, many households are unable to get their local signals because of the limitations of the technology. As the nation converts to all digital television programming there is a concern that the number of households unable to receive a local network signal over-the-air may actually increase. An examination of the Satellite Home Viewer Act should include a discussion about changes to the law that could benefit the unserved household.

Satellite Home Viewer Act: The Need for Change

Many of the changes to the Satellite Home Viewer Act over the last 20 years have benefited the broadcaster at the expense of the consumer. As Congress considers legislation to reauthorize the Act it should be mindful that there will continue to be households that must rely upon distant network signals to access network programming.

Picture Quality Standard – Unserved households are disserved by the law's current methodology for determining an acceptable television signal. The Committee should take the opportunity to revise this methodology to ensure that all consumers have access to a viewable television picture. This is particularly important as the nation moves to all digital television.

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The law currently defines an acceptable television signal as 90% of the time the consumer receives 60% of the picture. Understandably most consumers are unhappy watching a signal with such low quality transmission but at least with an analog signal it is possible to follow the content being presented and to hear the audio accompanying the pictures. Digital television will operate quite differently. Applying this methodology for determining a viewable picture to digital transmissions doesn't make sense. With a digital picture the signal is either 100% on or the consumer sees nothing. A standard that accepts only 60% of a picture as viewable will not be acceptable to most television viewers. Nor will consumers stand for a picture that goes out 10% of the time. With digital transmissions even very short interruptions in the signal make it impossible to follow the content or to hear the action. Congress should ensure that a viewable digital picture is 100% of the signal 100% of the time with exceptions for periodic interference.

Revise the Predictive Model – The predictive model now in use to qualify subscribers for distant network signals is based on the analog signal contour of each television station. To be relevant for digital transmissions, the predictive model must be based on the new digital contours of broadcast stations. The model should also take into account all of the anomalies and differences that occur between the two different types of transmissions. While the predictive model has been extremely helpful in ensuring that only those consumers who are truly unserved receive access to distant network signals, the current fails to recognize that by its nature the model is only a *prediction* of whether a particular household should be able to receive an over-the-air signal. It is not 100%

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accurate. When the predictive model is wrong, the current law provides consumers with a difficult path to overcome the presumption that the consumer gets a viewable picture.

Signal Testing Requirement – The requirement that consumers get a signal strength test at their home has not worked in the past and should be eliminated. While it makes sense in theory, the reality is that this provision is never used. The high costs of the tests and the difficulty in finding someone to perform the tests have resulted in the consumers not using this provision.

The Waiver Process – The current system of consumers' obtaining waivers from their local broadcasters if they want to receive a distant network signal has not worked. NPS hears from frustrated subscribers every day who have attempted to get a waiver from their local broadcaster with no success. While some broadcasters are diligent in evaluating waiver requests, hundreds of broadcasters either reject them outright or worse – they don't even respond to the customer. Waivers haven't worked in the past and they won't work in the future if they are structured as they have been under the present Act.

The waiver provisions of the Act are in need of revamping. The burden under the current law is on the *consumer* to prove that they are unable to receive a viewable picture. NPS's experience shows that consumers want access to their local broadcast stations. They view distant network signals as a last resort to obtain access to network programming. Unserved households, eligible to receive distant network signals make up a small percentage of the total satellite television households. For this reason NPS

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believes the burden should be shift to the broadcaster to prove that the consumer *is* receiving a viewable signal. The broadcaster is in a better position to know the where the signal goes and where it doesn't.

NPS supports changing the law so that a consumer can sign a legal affidavit that declares the inability to receive a network signal. This affidavit would be sent to the satellite carrier. The consumer would be authorized to receive the signal. The affidavit would be filed and forwarded to the broadcaster. The broadcaster would have the option of challenging the affidavit and if successful there could be a fine and legal costs could be recovered by the broadcaster from the consumer. This is essentially the current process that is used to qualify owners of recreational vehicles to receive distant network signals. NPS is unaware of any abuse of process or unaware of any charges that consumers have falsified data on the affidavits.

Distant Signal Limitations

The world today is much different than it was when the Satellite Home Viewer Act was first enacted. Consumers have more access to content than before from a variety of sources. Today consumers can access television programming remotely through a Sling Box. You can be at any place in the world and watch local television with a broadband connection and the Sling Box. Networks are streaming much of their content over the Internet. With a computer and an Internet connection consumers can access local news programming as well as network programming from a variety of free and subscription sources. The digital video recorder allows consumers the flexibility and convenience to

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watch television programming when they want rather and studies show consumers are watching *more* television as a result.

Americans expect to have access to information and do not understand when that access is denied them. If you live in Washington, DC you can subscribe to the New York Times or the Chicago Tribune but you can't watch a Chicago or New York local network station. Our democratic society depends upon an informed electorate. Government policies have been designed to create *more* access to information not less. Rights holders should be compensated for the increased distribution of their works and as we have seen in other industries, such as radio and music licensing, there are schemes that facilitate payment and ensure adequate compensation.

Lifting the distant signal limitations would afford consumers' the same opportunity to access television programming that they currently enjoy for other sources of news and information like newspapers and radio. Opening the skies to consumers is an important improvement for consumers, especially consumers on a limited budget, that is justified given the way that technology is changing the way consumers access information. While some may resist that change, as we have learned from the past, technology ultimately will win. Congress should use the reauthorization of the Satellite Home Viewer Act to make fundamental changes to law to benefit the consumer.

Conclusion

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The Satellite Home Viewer Act's provisions authorizing the retransmission of network signals to households otherwise unable to obtain access to a local broadcast network signal have ensured that hundreds of thousands of homes can watch network television programming. The need for this provision continues today despite the many technological advances that have given most consumers more choices in how they receive television programming. Congress should use the reauthorization process to make needed pro-consumer improvements in the Act such as eliminating the signal testing requirement, creating an accurate digital predictive model and shifting the burden of proof in the waiver process. Satellite households that cannot receive local over-the-air television signals should not be penalized but rather the government should assist these consumers by making the process of obtaining distant network signals less burdensome.

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TESTIMONY OF MICHAEL RAPINO
President & Chief Executive Officer
Live Nation
Before the Subcommittee on Antitrust, Competition Policy and Consumer Rights
of the
Senate Committee on the Judiciary
February 24, 2009

Dear Chairman Kohl and Members of the Subcommittee:

Thank you for the opportunity to speak with you today. I'm glad to have a chance to explain the rationale behind the merger of Live Nation and Ticketmaster, and the creation of Live Nation Entertainment.

I got into this business because I love music and I love working with artists. Growing up in a small town, I had to take a six-hour bus trip to Minneapolis to see a concert. I vividly remember one of my first trips, to a Prince concert. I stood in line in the freezing cold to get a ticket, but after that show, I was hooked. I knew then I wanted to work in the music industry.

I got my start as a beer company promoter when I was still in college. My job, which paid $200 a month, involved staging and promoting concerts, mostly with local bar bands. After learning the ropes, I formed my own concert company, which I eventually sold to SFX Entertainment/Clear Channel.

I worked my way up to president of the concert division. Along the way, it became clear to me that we had to change the way we did business. Clear Channel Entertainment was focused on one task — staging concerts. It was a struggling business with one of the worst reputations in the live music industry. I wanted to shed that image and create an artist-driven company that offered a direct, full-service pipeline connecting artists and fans.

That was the vision behind Live Nation when I spun it off from Clear Channel in 2005. That is the vision I'm here to discuss today. We've made significant progress. We've reported steady growth quarter after quarter, even during the current financial downturn. We have about 17,500 employees, spread out in offices in every major U.S. city. We are a decentralized

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business that offers live music through a collection of local concert entrepreneurs. We have 113 employees here in the Washington area.

The concerts we bring to city and towns across the country help sustain countless jobs, from the stagehands at the venue to the workers at nearby hotels. An economic impact study of a two-day Grateful Dead reunion show produced by Live Nation at the Alpine Valley Music Theater in East Troy, Wisconsin, a few years ago found that the multiplier effect from that single weekend event generated $4.5 million for the local economy.

Our biggest stars — artists like Madonna, Bono, the Jonas Brothers — get most of the attention, but Live Nation probably does more than anyone else today to promote talented, emerging artists. We put on about 8,000 club shows every year. And by the way, those venues include Live Nation clubs as well as independently owned clubs. We will continue to work with independent venues — large and small — after the merger.

We also recognize that we have a responsibility to give back to society. We are strengthening our ties to the communities where our employees live and work through our Green Nation program. We are working to establish community service initiatives in each of our approximately 50 offices across the country. At the corporate level, we support benefit concerts by offering our services for free or at a greatly reduced cost.

We've grown this company the old-fashioned American way, by sticking to the basics. Our employees are hard working and committed. As CEO, I am acutely aware of my responsibilities to them and to our shareholders. We haven't over-leveraged or loaded up on debt. We haven't doled out outrageous bonuses. We've focused on our core business. We've managed our balanced sheet very carefully. We've delivered what we've promised — three years in a row.

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We've grown the right way, but the current economic environment has still taken its toll. Our stock has declined by nearly two-thirds. Our real estate holdings have been gutted. Our hard work is not producing the rewards it should. We face the very real possibility that if we don't find a solution, we could ultimately be bought by a foreign-owned entertainment conglomerate like the majority of the major record labels.

I have two choices — I can hope the economy gets better, or I can seek a more proactive approach to protect our employees, reward our shareholders and grow our company. That is the motivation behind this merger.

Unlike so many other businesses, we are not here today to seek a bailout or a tax credit or any other favor. Instead we've come with our own self-funded renewal plan. All we ask is the freedom to innovate in an American industry that is in deep trouble.

The music industry model that existed when I entered the business is irreparably broken. In the old model, the record label supported the artist. Record sales were the hub, and everything else — concerts, promotion and merchandizing — flowed from that. American companies and American creativity set the global standard. Tower Records, MTV and local radio stations were the industry's storefront.

That model is as obsolete as the eight-track tape. Tower Records went bankrupt, MTV doesn't play music videos, and most radio stations are in a downward spiral.

Album sales — which used to be the foundation for the business — have fallen almost by half since 2000. Artists are subjected to rampant piracy that steals their creativity and their livelihood. 95 percent of all the songs that are downloaded are downloaded illegally.

In the concert business, 40 percent of concert seats go unsold. Others sell for far more than they should because of scalpers. I stood in line in the cold for my first concert because I

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knew that if I was the two hundred and third person in line, I would get the two hundred and third best seat. It doesn't work that way anymore.

Computer-driven bulk purchases suck tickets out of the primary market and deny fans a chance to see their favorite performers at a reasonable price. That benefits scalpers, but it doesn't help stakeholders in the value chain. Fans pay more, but the performers, the promoters and the venues don't get a dime. And fans who never get a chance to buy a ticket at a face value are rightfully angry about it.

As for the record companies, most of those once-dominant American labels are now owned by companies based in Europe and Asia.

The music industry is undergoing profound change, and the economic downturn compounds our difficulties. Our business is bleeding — and the real victim is the artist. The artist makes music, and others steal it and exploit it.

So what are we to do? Who will develop an economically viable model way to connect artists and fans? Who will create a support structure for artists? Who will figure out how to fill empty concerts seats? Who will develop a system to thwart scalpers? Who will end music piracy? Can anyone do it, or will we still be talking about piracy, scalping and the decline of the music industry 10 years from now?

I'm not claiming we have all the answers. We can't solve it all, but we can be on the leading edge of change in our industry. While others have shied away from or actively fought technology, we have embraced it. Now we want to harness its power for artists and fans.

Collective problems require collective solutions. Clinging to old ways and fighting change is not the answer. We need to build a team of rivals. Together with artists, local promoters and venues, and my future partner Irving, we want to offer some solutions.

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We have an opportunity to create a truly modern business by putting these companies together — something that we can't do alone, and certainly not quickly. Far from harming consumers, or promoters or artists, this deal will benefit them and spur competition and innovation, which we welcome.

Everyone in the music industry has a responsibility to seek better ways to serve artists and fans. We want to create a new kind of company that will give artists a trusted business partner so they can have control over their work, and freedom to unleash their creativity. We want to build a holistic support structure that consolidates the fragmented pieces of the business — marketing, promotion, concerts and ticketing — to create a full-service connection between artists and fans.

Doing so will help plug the holes in the current system and eliminate the inefficiencies. It will not eliminate competition. Our business model rises or falls on our ability to serve the artists. If others can do it better, the artists will go elsewhere.

Every service we offer today faces aggressive competition, and that competition will continue — and undoubtedly increase — long after this merger is complete.

Our goal is to build something better. So what would it look like?

This merger can help bring about the reconfiguration we urgently need. We will develop an easy-access, one-stop platform that can deliver music, videos, merchandise, tickets — as well as information about artists and upcoming shows. Artists would be able to communicate directly with fans, and have the flexibility to experiment with new approaches to deliver music.

A system that empowers artists benefits *everyone* because that's where the value chain starts.

Here are some of the things we have in mind:

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We will make it easier for artists to deliver information about upcoming events and activities.

We will make it easier for artists to draw fans with innovations like paperless ticketing, all-inclusive ticket prices, bundled live performance options and interactive seating.

We will fervently protect the integrity of the primary ticket market from those who seek to exploit it using computer-automated ticket purchasing programs.

Many of our innovations would also benefit others in the music industry.

We envision a world in which a fan doesn't have to go to Ticketmaster or any other single source or portal to purchase tickets. Instead, they can buy them anywhere the artist wants to make them available — a proprietary fan site, a social networking site, a TV show tie-in site, a grocery store, wherever.

If we are successful, the scalpers and pirates will suffer and our competitors will look more like Amazon, eBay and Orbitz than a retail record store.

We welcome your interest in this issue and the Department of Justice review of this deal. We are confident that any potential issues can be addressed. The interests that feed off inefficiencies in the current system don't like this merger. It is not surprising that some of the strongest opposition comes from scalpers.

I'm confident this plan will work, but it is an experiment. It is a new approach for an ailing American industry. All we want is a chance to try it.

And I know this: If we don't make significant changes to the business model and if we don't build new structures, we may be back in the future for another congressional hearing on the death of the American music industry.

Thank you for this opportunity. I look forward to your questions.

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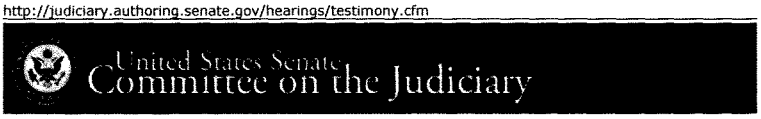

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Statement of

The Honorable Charles E. Schumer

United States Senator
New York
February 24, 2009

Statement of Senator Chuck Schumer
Ticketmaster/Live Nation Merger Hearing
February 24, 2009

Thank you, Mr. Chairman, for holding today's hearing.

I have made no secret of my opposition to this merger, but first I want to say a word about Ticketmaster's recent actions in the sale of tickets for Bruce Springsteen's concert tour.

We all know the basic story now – many fans were told the shows were sold out, when they in fact were not. The fans were then provided links to Ticketmaster's own ticket reselling site, TicketsNow.com, where they were charged many times the face value of the tickets.

Talk about a way to have your cake and eat it too. Bruce Springsteen says Ticketmaster abused his fans, and I agree with the Boss.

Ticketmaster is the only major "primary" ticket seller in America with a wholly owned "secondary" seller; and it took advantage of that corporate structure, which allowed Ticketmaster to charge much higher fees, with customers paying hundreds, or thousands, of dollars for tickets, in the secondary market.

They've said that this clever arrangement was caused, in part, by a "malfunction." Given what Ticketmaster stood to gain by directing consumers to its own resell site, the episode seems to be much more about money-making than about "malfunction."

Ticketmaster has apologized for the incident, but to my knowledge still hasn't provided any detail as to how this happened. We need answers not apologies.

As far as I am concerned, Ticketmaster never should have gotten into the secondary ticketing business by buying TicketsNow to begin with. And I think it needs to get out of that business, especially in light of this merger proposal.

I am going to ask you that question, Mr. Azoff, and I hope you will tell me that you agree that you need to sell TicketsNow.

We also can't forget what this merger will mean to the music industry. Consider that:

• Ticketmaster in 2007 sold 141 million tickets worth approximately 8.3 billion dollars for its clients. It is estimated that Ticketmaster has 80% of the concert ticket market in America cornered.

• But most troubling of all is what Ticketmaster has chosen to do to protect its market dominance. Once Live Nation started a rival ticket-selling service that threatened to take away 15% of Ticketmaster's business, Ticketmaster chose not to compete, but to gobble it up.

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This is not the American dream, as the companies' witnesses might have you believe. This is monopolistic behavior, plain and simple.

Live Nation also has a lock on its side of the market. It is the largest concert promoter in the world, more than doubling its next competitor in the number of tickets sold worldwide. And it owns well over a hundred venues in the United States, to boot.

Think of what this merger would put under one roof. It would combine the largest ticket seller in the world with the largest event promoter in the world.

The result would be a behemoth that would operate the majority of concert venues in America, sell the tickets to the events at those venues, and manage many of the very top artists who perform there.

In short, this new company would have a hand in every step of the process of going to see a concert.

I look forward to seeing how these companies can explain how the proposed merger could possibly be good for consumers.

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