

Antitrust Complaints Filed Against Ticketmaster and Live Nation in California: An Overview and Analysis

Scott Andrzejewski

I. INTRODUCTION

In November, the Taylor Swift “Eras” tour Ticketmaster fiasco resulted in increased public interest in antitrust law. The website was unable to handle what it referred to as “unprecedented” demand for Swift’s tickets,¹ leaving many fans frustrated at their inability to acquire tickets, despite being approved for “presale” access.² Public backlash over the company’s failure to meet demand sparked a public debate over Ticketmaster’s dominance in the ticket sales industry and whether its conduct, along with the conduct of subsidiary Live Nation, which was acquired by Ticketmaster in 2010, implicated antitrust laws. Politicians have openly called for the Department of Justice to take action against Ticketmaster online.³

The fruits of this discussion came to bear in two complaints filed in California in December 2022.⁴ The first, filed on December 6th in the Superior Court of California County of Los Angeles, lists 26 plaintiffs from 13 states.⁵ The second, filed on December 20 in the Central District of California was brought individually by the lead plaintiff and on behalf of a Nationwide Class of similarly situated plaintiffs, as well as a subclass of persons who purchased tickets in the state of Washington.⁶ Both complaints allege violations of California antitrust law, as well as other claims.⁷

¹ Ticketmaster (@Ticketmaster) (Nov. 15, 2022 1:05 PM), <https://perma.cc/2BE9-E27N>.

² David McCabe and Ben Sisario, *Justice Dept. Is Said to Investigate Ticketmaster’s Parent Company*, N.Y. Times, Nov. 18, 2022, <https://perma.cc/4E8E-UC4N>.

³ See, e.g., Alexandria Ocasio-Cortez (@AOC) (Nov. 15 2022 11:35 AM), <https://perma.cc/KDS3-ZDVE>.

⁴ Compl. 1, Barfuss et al. v. Live Nation Entertainment Inc., Cal. Super., Los Angeles Co.; Compl. 1, Sterioff v. Live Nation Entertainment Inc., Cal. Dist. Ct. W.D. (No. 2:22-cv-9230).

⁵ Compl. 9-10, Barfuss, *supra* note 4.

⁶ Compl. 5, 10, Sterioff, *supra* note 4.

⁷ Compl. 23-33, Barfuss, *supra* note 4; Compl. 12-30, Sterioff, *supra* note 4.

II. A BRIEF HISTORY OF TICKETMASTER'S ANTITRUST PROCEEDINGS

Ticketmaster is no stranger to allegations of antitrust misconduct. In 1994, the rock band Pearl Jam challenged Ticketmaster's dominance in the ticketing industry via a lawsuit, asserting that Ticketmaster has a "virtually absolute monopoly on the distribution of tickets to concerts."⁸ Ticketmaster continued to excel and expand in the ticketing industry, eventually merging with Live Nation in 2010. The Department of Justice approved the merger on the condition that the company not retaliate against concert venues for using other ticketing companies, threatening concert venues, or undertaking similar actions for ten years following the merger.⁹ Just two years ago, the consent decree issued as a result of the companies' 2010 merger was "extensively" modified to better clarify the standards surrounding Live Nation's ability to withhold concerts from a venue if the venue chooses a ticketer other than Ticketmaster.¹⁰ These modifications came after the Department of Justice found that Live Nation "repeatedly" violated the terms of its decree.¹¹ This modified settlement extended the term of the decree for five and a half years, lasting until 2025.¹²

III. ALLEGATIONS OF THE COMPLAINTS

The first complaint filed in December in LA County lists 26 plaintiffs from 13 states.¹³ The complaint asserts numerous claims for relief under California law. A notable aspect of the complaint is its focus on Ticketmaster's monopolistic control of the primary and secondary ticket markets. According to the complaint, Ticketmaster is able to artificially inflate the prices of tickets in primary sales through "dynamic pricing."¹⁴ As more tickets to a concert sell, Ticketmaster raises ticket prices. The complaint argues this is more than mere supply and demand—rather than increasing prices when a large number of persons "queue" for a ticket,

⁸ Charles Bilodeau, *Pearl Jam vs. Ticketmaster: A Holy War on Reality*, Foundation for Economic Education, May 1, 1995.

⁹ Press Release 19-1,424, Department of Justice, Justice Department Will Move to Significantly Modify and Extend Consent Decree with Live Nation/Ticketmaster, (Dec. 19, 2019)<https://perma.cc/L7AC-N7WP>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Compl. 9-10, Barfuss, *supra* note 4.

¹⁴ *Id.* at 23.

Ticketmaster instead increases prices when the number of tickets gets low.¹⁵ Accordingly, Ticketmaster punishes persons for being unable to “get to the front of the line.”¹⁶ Furthermore, the complaint argues that Ticketmaster deliberately and intentionally allows “scalpers” access to the tickets, which results in increased prices for people wanting to attend the concert.¹⁷ Such an action theoretically constitutes price discrimination, an antitrust violation under California law.¹⁸

The complaint also takes issue with Ticketmaster’s influence over the secondary market for ticket sales. According to the complaint, Ticketmaster forces users of its primary services to use only Ticketmaster’s secondary exchange platform for the resale of tickets.¹⁹ On this platform, Ticketmaster is able to control the price at which a buyer can resell their ticket.²⁰ This, in turn, prevents competition in the secondary market from offsetting Ticketmaster’s dynamic prices, allowing Ticketmaster to charge at elevated monopolistic rates.²¹ The complaint further argues that the primary and secondary ticket markets are separate markets; by contractually foreclosing competition in the secondary market as a condition to using Ticketmaster’s primary exchange platform, Ticketmaster is engaged in unlawful tying—an antitrust violation under the California Business and Professional Code.²²

Next, the complaint asserts that Ticketmaster violates California antitrust laws through “exclusive dealings.”²³ The idea behind this assertion is that Ticketmaster has monopolistic control over the market and uses this control to charge above-market prices for an inferior service. The claim references Ticketmaster’s control of over 70% of the ticketing market, claiming that this gives credence to the idea that without a “singular, monopolistic company,” Ticketmaster’s excessive fees and rates would be impossible.²⁴ This argument is bolstered by the company’s recent failure in handling the “Eras” tour ticket sales, which, according to the complaint, demonstrates that these fees are not resulting in superior service.²⁵

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 22.

¹⁹ Compl. 9-10, Barfuss, *supra* note 4, at 24.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 17.

²³ *Id.* at 20.

²⁴ *Id.* at 21.

²⁵ Compl. 9-10, Barfuss, *supra* note 4.

The final significant antitrust assertion of the complaint is that of horizontal and vertical price fixing. Horizontal price fixing involves competitors “allying to set one price for any product, commodity, or service through any agreement to raise, stabilize or otherwise affect prices.”²⁶ According to the complaint, by virtue of the industry’s fees and prices, horizontal price fixing is a given since the only way Ticketmaster and its competitors, such as Seat Geek, could continue to charge their rates “is through an agreement between them in violation of California antitrust laws.”²⁷ Furthermore, the complaint asserts that Ticketmaster is engaged in vertical price fixing—that is, controlling the price at which the buyer of a product can sell it.²⁸ Such an action would be a per se violation of California’s antitrust laws.²⁹ The complaint asserts that Ticketmaster both forces sellers to sell through its secondary exchange platform and controls the price at which a seller can resell tickets.³⁰ This, in turn, artificially inflates prices and harms consumers.

The second complaint was filed on December 20th in the Central District of California and asserted practically identical antitrust violations.³¹ The complaint asserts that Ticketmaster is in violation of the Cartwright Act, California’s antitrust statute, through its (1) unlawful tying, (2) exclusive dealings, and (3) vertically arranged boycotting.³² The first two points echo the statements of the first complaint, but the third is slightly unique. According to the complaint, by using technological limitations on primary ticket transferability, Ticketmaster has coerced ticket brokers and resellers to boycott Ticketmaster’s competitors for secondary ticket services.³³ Since this action is not intended to enhance overall efficiency or to make the markets more efficient, it would be a violation of California’s antitrust statute.

IV. CONCLUSION

The complaint’s emphasis on the link between primary and secondary ticketing services is significant because it presents a critical point missing from prior antitrust disputes regarding Ticketmaster. When antitrust allegations were levied against

²⁶ *Id.* at 24.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* (citing *Mailand v. Burckle*, 20 Cal. 3d 376 (Cal. 1978)).

³⁰ *Id.*

³¹ Compl. 12-30, Sterioff, *supra* note 4.

³² *Id.* at 21-26.

³³ *Id.* at 25.

Ticketmaster by Pearl Jam in 1994, much was made about Ticketmaster's dominant market position and lack of competition.³⁴ However, the counterargument to this was that Ticketmaster's market dominance was a result of its efficiency, and the means to foster competition would likely be for Ticketmaster itself to charge higher prices—a potential violation of antitrust statutes by nature of price fixing. The California complaints, however, connect the dots between two markets that Ticketmaster seemingly has a strong hold over, which goes beyond the “efficiency” counterargument and asserts consumer harm as a result of Ticketmaster's market dominance.

Furthermore, the case presents a unique scenario in which an entertainment scenario has culminated in a public interest in antitrust law. There is strong public pressure mounting in a field generally considered somewhat complex and inaccessible. The development of these actions, along with the pending Department of Justice investigation and the resulting public response, may have a lasting impact on how the public views antitrust law. Consequently, it would not be surprising to see this issue have a lasting impact on the field in the years to come.

³⁴ See Biloeau, *supra* note 4.