**<u>3/17/09</u>**

**<u>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?"</u>**

## 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."

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 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.

<u>Ticket Prices</u>

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.

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 |

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.

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 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.

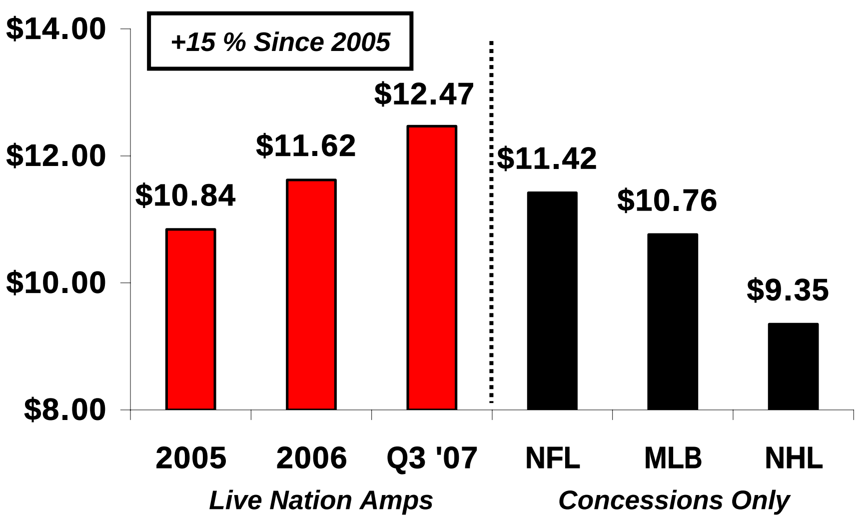
Thank you for taking the time to read my responses to your questions.

EXHIBIT A

# Lever 2: Improve F&B Profitability

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

**COMPARABLE F&B PER CAP**




LIVE NATION

**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% |

ARAMARK

**THE ARAMARK OPPORTUNITY**

34 Amphitheaters *

$49MM Annual Revenue / Adj. OIBDAN

**Opportunity to improve current ~50% split**

* 36 total venues

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**

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**

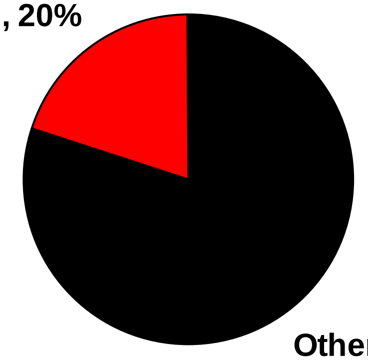
| Ticketing Related | Music Related | Event | Gift Card and CRM |
|---|---|---|---|
| ▪ Yield Management<br>▪ Premium Seating | ▪ Fan club<br>▪ Merchandise<br>▪ Concert streams<br>▪ Preorders | ▪ Travel package<br>▪ Off-venue dining<br>▪ Transportation<br>▪ Parking<br>▪ Food and Beverage | ▪ Gift cards |

# Secondary Market and Yield Management Opportunity

- 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

LIVE NATION TICKETS

**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: Per StubHub