

Testimony of
Seth Hurwitz

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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.

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?

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 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.