

**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.**

## **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

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.

- 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](http://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.

- 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 streams 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.

- 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 1<sup>st</sup>, 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.

<u>Concert</u>	<u>Date</u>	<u>City</u>	<u>Ticket Price</u>	<u>Ticket Fee</u>
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

## **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.



EXHIBIT A



POLLSTAR



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		

[Select More Seats](#) | [View Shopping Cart](#)

### Invoice

	Section	Row	Seat	Price	Fee	Total
7/21/09 7:30 PM <i>DALLAS</i>	COLDPLAY	LAWN	GA8	154	\$35.00	Convenience Fee \$21.33
						Delivery Fee \$0.00
						Order Fee \$3.50
						<b>\$59.83</b>

**Grand Total: \$59.83**

Card Number \*  (No spaces or dashes)

Credit Card \*

Expiration Date \*  Month  Year

### Billing Address

Title

First Name \*

Last Name \*

Middle Name

Street Address \*

Street Address 2

City \*

State/Province  (leave blank if country other than US or Canada)

Country/Territory

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.



[FIND TICKETS](#)

**YOUR CART**

[VIEW MY TICKETS](#)

[MY INFORMATION](#)

**10:22**

This is the time you have to complete this transaction. After that, these tickets will be released.

[Empty Cart and Find New Tickets](#)

**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	
<b>Reserved 1</b> Section 6, Row X, Seat # 15	<b>Adult</b>	<b>\$97.50</b>			
Parking Fee		\$6.00			
Ticket Fee		\$20.15			
Ticket Tax		\$3.02			
<b>TICKET TOTAL</b>		<b>\$126.67</b>			
			1	\$126.67	<a href="#">X Remove From Cart</a>

**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
<b>TOTAL:</b>	<b>\$126.67</b>

**Returning Customers**

User Name

*Enter a user name that is at least six characters long and includes at least one number or special character*

Password

*Password is CaSe-SeNSitive*

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2. BILLING

3. CONFIRMATION

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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 \$211.00  
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		



FIND TICKETS

**YOUR CART**

REVIEW TICKETS

CONFIRMATION

**10:13**

This is the time you have to complete this transaction. After that, these tickets will be released.

[Empty Cart and Find New Tickets](#)

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	
<b>Reserved 1</b> Section 3, Row O, Seat # 26	<b>Adult</b>	<b>\$129.00</b>			
Parking Fee		\$6.00			
Ticket Fee		\$21.00			
Charity Fee		\$1.00			
<b>TICKET TOTAL</b>		<b>\$157.00</b>	1	\$157.00	<a href="#">X Remove From Cart</a>

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
<b>TOTAL:</b>	<b>\$157.00</b>

Returning Customers

User Name

Enter a user name that is at least six characters long and includes at least one number or special character

Password

Password is CaSe-SeNSiTiVe

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2. BILLING

3. CONFIRMATION

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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 My Tickets	Price Per Order	Please Note
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US Customers



4040 TICKETS

YOUR CART

10:20

This is the time you have to complete this transaction. After that, these tickets will be released.

Empty Cart and Find New Tickets

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	
<b>General Admission</b> Section GA, Row G30, Seat # 98 Ticket Fee	<b>Adult</b>	\$47.50 \$13.00	1	\$60.50	X Remove From Cart
<b>TICKET TOTAL</b>		<b>\$60.50</b>			

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](#)
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- Will Call - (No Charge) Orders are available for pick up at the venue box office on night of the event. Photo I... [more](#)
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- 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
<b>TOTAL:</b>	<b>\$60.50</b>

Returning Customers

User Name

Enter a user name that is at least six characters long and includes at least one number or special character

Password

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