

Testimony of Jack Groetzinger
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Senate Judiciary Committee Hearing
That's the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment

January 24, 2023

Good Morning, Chairman Durbin, Ranking Member Graham, Senators Klobuchar and Lee, and Members of the Committee. My name is Jack Groetzinger. I am a co-founder and CEO of SeatGeek, a technology company that focuses on improving the experience of purchasing tickets to live events. Thank you for the opportunity to testify today and for the work of this committee to address and remediate anticompetitive and monopolistic practices. Our economy functions better when there is robust competition that fosters innovation and protects consumers.

**SeatGeek Offers an Innovative, Procompetitive Product
That is Popular with Venues and Fans**

My co-founders and I started SeatGeek because we believe in the power of live events but felt the experience of purchasing tickets was antiquated and ripe for innovation. Since 2009, we have been on a mission to build the most advanced ticketing platform on earth, one that empowers fans with the best possible user experience. We have invested over one hundred million dollars in product and engineering to bring modern technology and a best-in-class mobile experience to the ticketing industry. Founded as a ticket aggregator, SeatGeek evolved into a consumer ticketing marketplace by 2014 and entered the primary ticketing market in 2016. One of the main reasons we entered primary ticketing was we realized that the primary ticketer (in

most cases, Ticketmaster) controls so much of what happens throughout the entire ticketing ecosystem.

Throughout our evolution—from aggregator to marketplace to primary ticketing platform—we have maintained our focus on the consumer. We were the first to ascribe “value” to a ticket by considering seating location and price to generate a “Deal Score” that allows consumers to easily compare hundreds of tickets and find the best deals. We provide a toggle that allows consumers to see the all-in price of a ticket as well as a breakdown of fees early in the purchase process.

SeatGeek also created interactive maps with 3D views from available seats to give fans a better understanding of what they are buying. With “SeatGeek Swaps,” an industry-first among major ticketers, we created a platform that gives fans the flexibility to return their ticket for 100% credit on a future purchase. And through our “Rally” product, we provide a fully personalized event experience platform that allows fans to check the weather, find driving directions to the stadium, order food from their seats, buy merchandise, and book a ride-hailing service back home.

We use an open infrastructure that makes a team’s primary tickets available not only through SeatGeek but also through any number of third parties. This approach allows fans greater choice in ticketing options and stands in sharp contrast to the Ticketmaster model.

Our efforts have resonated with fans. In each year from 2016-2021 (except COVID-impacted 2020), SeatGeek surveyed its users for their opinions about SeatGeek and competing ticketing services. Each year, the survey results have indicated that SeatGeek’s Net

Promoter Score (“NPS”) is the highest of any major ticketing provider.¹ Significantly, SeatGeek’s NPS scores are at their highest when SeatGeek is the primary ticketer.

Since entering primary ticketing in 2016, some of the world’s premier sports teams and venues have moved to SeatGeek thanks to the strength of our technology. We have entered into partnerships with leading venues and franchises, including approximately one-half of English Premier League teams; a handful of NBA, NHL, and NFL teams, including the Dallas Cowboys, New Orleans Saints, Utah Jazz and (my hometown) Cleveland Cavaliers; and Jujamcyn Theaters, which owns five major Broadway theaters.

To Fix Ticketing for Live Events in the United States, We Must Restore Competition

I’m proud of the work we have done at SeatGeek over the past twelve years, but I also recognize the ongoing challenges facing our industry, some of which have recently become front page news headlines. At a time when most other industries are rapidly innovating to meet consumer needs, much of our industry is moving in the opposite direction. These challenges include:

- Restrictions on the transferability of tickets
- Restrictions on where tickets can be purchased
- Difficult and deceptive user experiences
- Legacy systems that do not meet consumer expectations
- The display of fees at the very end of the purchase process, sometimes even after a consumer has entered their credit card information
- Consumer perceptions that fees are too high
- A lack of innovation to create new features that improve the fan experience

¹ NPS refers to a percentage, expressed as a value from -100 to 100, to gauge consumer satisfaction.

Every industry has its challenges. In most industries, however, robust competition and an open market bring capital, fresh thinking and innovation, quickly attacking antiquated services and taking market share. New entrants develop better, faster, more stable solutions; consumers seek out the most consumer-friendly products and services; businesses choose the best products based on the merits of those products; industry incumbents must react to these innovations or risk being left behind. This does not happen in the live event ticketing industry.

Innovation in live event ticketing has been stunted because Live Nation Entertainment, Inc. (“LYV”) controls the most popular entertainers in the world, the ticketing systems, and even many of the venues. This power over the entire live entertainment industry allows Live Nation to maintain its monopolistic influence over the primary ticketing market. As long as Live Nation remains both the dominant concert promoter and ticketer of major venues in the United States, our industry will continue to struggle with the challenges that face it today.

The Formation of Live Nation Entertainment and the Department of Justice’s (“DOJ”) Concerns

LYV is the product of the 2010 merger of Ticketmaster Entertainment LLC (“Ticketmaster”) and Live Nation Entertainment, Inc. (“LYV”). Live Nation is the largest promoter of major concerts, promoting (and thus controlling the placement of) more than 73 percent of the top 25 concert tours in the United States by gross revenue.² Live Nation’s grip on concert content gives LYV substantial power over major venues, including professional sports venues that host major concerts. Major sports venues rely on being able to host such concerts,

² Pollstar, *2021 Year End Top 200 North American Tours*, (Dec. 13, 2021), https://data.pollstar.com/chart/2021/12/Top200NorthAmericanTours_984.pdf.

not only for the substantial direct revenue from the concerts themselves, but also for their attractiveness to sponsors and buyers of suites and season ticket packages.

At the time of the merger, the DOJ recognized that until Live Nation's entry into primary ticketing the previous year, Ticketmaster had "dominated the market for primary ticketing services to major concert venues in the United States." The DOJ found that despite a dramatic decline in ticket distribution costs as consumers increasingly used the internet for ticket purchases, "the ticketing fees retained by Ticketmaster ha[d] not fallen, and Ticketmaster ha[d] continued to enjoy large profit margins." The DOJ also noted significant entry barriers to the ticketing market, including "Ticketmaster's practice of signing long-term exclusive contracts with venues."³

The DOJ believed that Live Nation posed a "major threat" to Ticketmaster's dominance.⁴ The DOJ concluded that Live Nation, which owned, operated, or selected the primary ticketing provider for more than 75 live entertainment concert venues,⁵ was better positioned to overcome the market's entry barriers than any other existing or potential competitor "because it could achieve sufficient scale to compete effectively with Ticketmaster simply by ticketing its own venues."⁶ The DOJ further noted that Live Nation, the country's largest concert promoter, "possessed a unique competitive advantage in that it could bundle access to important concerts

³ Competitive Impact Statement at 4, *U.S. v. Ticketmaster Entertainment, Inc.*, Case No. 1:10-cv-00139 (D.D.C.) (Jan. 25, 2010) (hereinafter "CIS").

⁴ *Id.* at 10.

⁵ Amended Complaint at 12, *U.S. v. Ticketmaster Entertainment, Inc.*, Case No. 1:10-cv-00139 (D.D.C.) (Jan. 25, 2010) ("hereinafter "Amended Complaint").

⁶ CIS at 4.

with its ticketing service.”⁷ By 2009, Live Nation was already providing primary ticketing services to more than 15 percent of the capacity of major U.S. concert venues.⁸

Accordingly, the DOJ viewed the merger as a threat to competition in the U.S. primary ticketing market. The DOJ concluded that the merger would (i) “eliminate the financial benefits that venues enjoyed during the brief period when Live Nation was poised to challenge Ticketmaster’s dominance”; (ii) diminish innovation in primary ticketing services; and (iii) increase barriers to entry and expansion, including “requir[ing] competitors to offer venues both primary ticketing services and access to content” in order to compete effectively.⁹ The DOJ was also concerned that the “loss of competition would likely result in higher prices for and less innovation in primary ticketing services.”¹⁰

Live Nation’s Continued Market Domination is the Result of Threats and Retaliation, Leaving Venues Fearful of Change

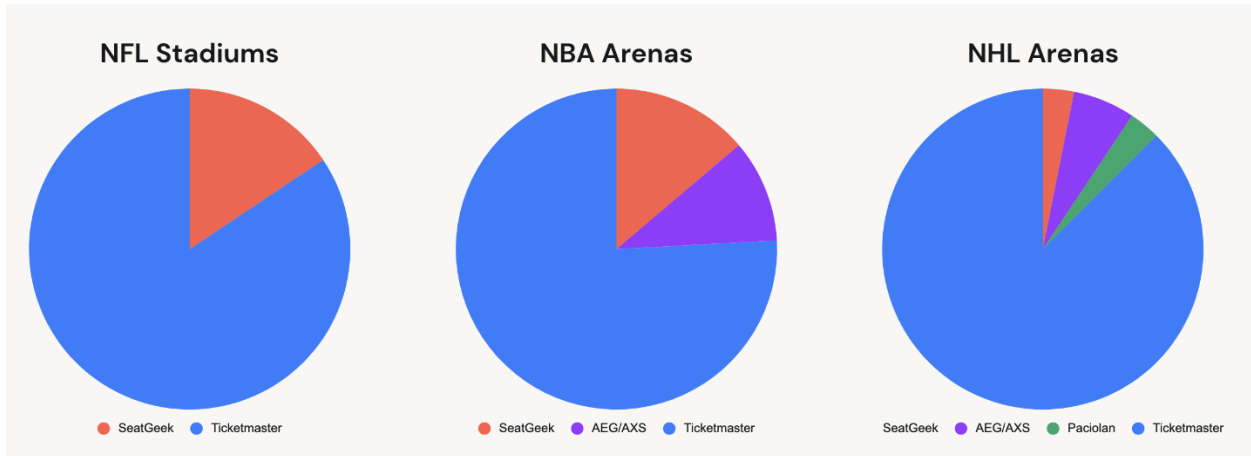
The DOJ’s concerns have proven well-founded. Twelve years after the merger, Ticketmaster’s stranglehold on the primary ticketing market endures, insulated from meaningful competition despite a highly unpopular product offering whose failings have become front page headlines. Ticketmaster has an estimated market share in excess of 70 percent of the U.S. primary ticketing market and dominates ticketing for major professional sports teams and venues, serving as the primary ticketing provider for more than 80 percent of NBA, NHL, and NFL teams and venues.

⁷ *Id.*

⁸ Amended Complaint at 14.

⁹ CIS at 11.

¹⁰ *Id.* at 2.



Based on internal SeatGeek Data.

Ticketmaster continues to control the primary ticketing market despite the DOJ’s efforts, through provisions in a negotiated consent decree (“Final Judgment”) that was entered against LYV by a federal court, to facilitate the entry and expansion of additional competitors.

The recent Taylor Swift concert on sale provides yet another window into Ticketmaster’s market dominance of major sports venues. Taylor Swift’s recently announced concert tour includes 52 shows across 18 venues. Forty-seven of those shows—approximately ninety percent—are at a Ticketmaster venue. Without action by the DOJ, this is unlikely to change anytime soon. Major sports venues typically enter into multi-year exclusive agreements with a ticketing platform. In response to the first signs of competition, Ticketmaster has moved to even longer exclusive agreements with venues, sometimes as long as ten years.

It is no mystery why Ticketmaster’s competitors have not gained greater market share in the primary ticketing market. Major venues in the United States know that if they move their primary ticketing business from Ticketmaster to a competitor, they risk losing the substantial revenue they earn from Live Nation concerts. They know this because LYV has told them so, directly and indirectly—through its public pronouncements, private communications, and subsequent retaliation against venues that have defied Ticketmaster and signed deals with a

preferred competitor. LYV has engaged in this behavior despite twice being ordered—and agreeing—not to do so: in the 2010 Final Judgment, and in a 2020 Amended Final Judgment that modified and extended the Final Judgment.

The DOJ’s 2019 investigation confirmed that LYV had violated the Final Judgment directly and repeatedly, almost from its inception. Even in an apparently abbreviated investigation,¹¹ the DOJ was able to identify six distinct examples of LYV threatening to pull live shows from venues that did not contract with Ticketmaster and/or retaliating against venues that did not contract with Ticketmaster by withholding Live Nation concerts, including:

- A Ticketmaster executive telling one venue, “if you move in that direction (i.e., not renew with Ticketmaster), you won’t see any Live Nation shows.”
- Ticketmaster’s President warning the executive of another venue that if the venue selected a competing primary ticketer, Ticketmaster’s response “would be ‘nuclear’” and “though he would deny it if I repeated it, Live Nation would never do a show in our building . . .”
- Ceasing to contact a venue about booking Live Nation concerts after that venue selected a Ticketmaster competitor as its primary provider, only to re-start discussions with the venue after the venue switched back to Ticketmaster and saying the venue was “back in the family.”¹²

The DOJ found that as a consequence of LYV’s conduct, “venues throughout the United States have come to expect that refusing to contract with Ticketmaster will result in the venue receiving fewer Live Nation concerts or none at all.”¹³

¹¹ Only three months elapsed between the DOJ’s public confirmation of its investigation and the announcement of a resolution.

¹² Motion to Modify Final Judgment and Enter Amended Final Judgment at 8,9, *United States v. Ticketmaster*, No. 10-cv-00139, (D.D.C. Jan. 8, 2020).

¹³ *Id.*

DOJ Action is Required to Bring Necessary Changes to Ticketing in the U.S.

Neither consent decree has deterred LYV's anticompetitive behavior. To the contrary, LYV's Chief Executive Officer has asserted publicly that regardless of the language of the consent decree, LYV can and will "do what's right for our business" and place concerts "where we make the most economics," and that a non-Ticketmaster venue "won't be the best economic place anymore because we don't hold the revenue."¹⁴

Entertainment industry analysts also recognize that Ticketmaster's dominance in primary ticketing arises in part from Live Nation's control of concert revenue. For example, a 2016 J.P. Morgan report explains:

We see Ticketmaster retaining its primary tickets dominance. Live Nation has over 12,500 ticket clients (venues) and has seen a renewal rate over 100% for the past six years. Such continued dominance can be perplexing at first, but is explained by realizing that venue owners' desire to sign with Ticketmaster is less about hardware or software, and *more about filling seats with Live Nation produced concerts. For any venue, moving to an alternative ticketing platform essentially incentivizes LYV to book shows at alternative locales.*¹⁵

And a 2020 report published in Barron's states:

Ticketmaster typically has an upper hand in negotiating with venues, as it also controls access to the talent. *If the firm declines to use Ticketmaster, then LYV can elect to take its talent to an alternative venue.* This contractual moat is compounded by Live Nation's frequent practice of installing its own hardware at the venue, using proprietary software to process tickets.¹⁶

¹⁴ Jem Aswad, *Live Nation-Ticketmaster Chief Michael Rapino Talks Dept. of Justice Inquiries*, Variety (Sep. 18, 2019), available at <https://variety.com/2019/biz/news/live-nation-ticketmaster-michael-rapino-dept-of-justice-inquiries-1203341144/#> (hereinafter "Rapino Interview").

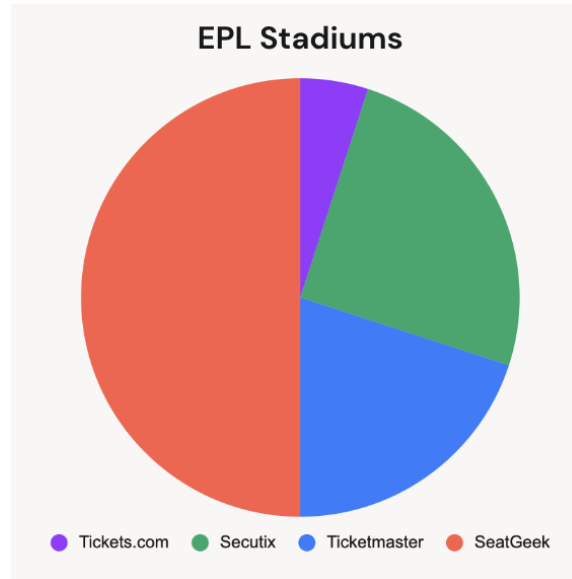
¹⁵ J.P. Morgan, *Behind the Music: A Free Cash Flow Growth Story With High Barriers to Entry; Initiating at Overweight*, Aug. 18, 2016 at 23 (emphasis added), cited in Exhibit 2 to 2019 White Paper (Farrell Report) ¶ 198.

¹⁶ Christine Jurzenski and Avenir Capital, *Live Nation Stock Can More Than Double in 3 Years, Analyst Says*, Barron's (April 8, 2020) (emphasis added), available at

LYV's ongoing behavior has chilled competition in the U.S. primary ticketing market and prevents innovative entrants, including SeatGeek, from competing on the merits. Competition will continue to be suppressed even if LYV never makes another threat, because venues understand the consequences they risk should they switch ticketing providers. The barriers to competition are exacerbated by the long-term contracts prevalent in the industry, such that opportunities for competitors to make inroads on LYV's dominance are limited.

Live Nation may say that there's never been more competition in ticketing. We at SeatGeek appreciate that compliment, but it is a far cry from the competition that should exist in an open market where companies can compete fairly on the merits of their offering. The United Kingdom's English Premier League provides a view of what such a market might look like. The venues that host English Premier League teams—which include major franchises such as Liverpool, Manchester United and Chelsea—do not rely on concerts for revenue. Thus, they do not rely on Live Nation. As a result, venues choose a ticketing platform based on the merits of the technology. In contrast to its eighty percent plus market share of major sports venues in the United States, Ticketmaster tickets only twenty percent of the teams in the English Premier League.

<https://www.barrons.com/articles/live-nation-stock-can-more-than-double-in-three-years-analyst-51586380765>.



Based on internal SeatGeek Data.

Our industry provides a cautionary tale about how behavioral remedies—even when well-intentioned and enforced appropriately—cannot solve the problems inherent in an anticompetitive merger. If it’s clear that a merger will harm competition and no divestitures can solve the problem, I respectfully suggest that the right response is to *block* it—not to permit it with promises of good behavior from the merging parties under a supervisory process. It has become clear that no available behavioral remedy will assure venues that they are free to choose their ticketing providers on the merits. Therefore, the only effective remedy now available is a structural one: dissolution of the common ownership of Live Nation and Ticketmaster. SeatGeek deeply cares about this industry and it’s time to give fans, teams, artists and venues the choice they deserve. It is encouraging to hear that the DOJ is actively investigating this matter once again.

It is a privilege to be included in this discussion. Thank you for your time and attention.