

Anti-Heroes of Antitrust? Antitrust Considerations with Ticketmaster

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Antitrust has long occupied a prominent position in legal discourse surrounding Big Tech,¹ but the term has also recently become a Twitter buzzword.² After Taylor Swift fans expressed exasperation following difficulty obtaining tickets for the singer's Eras Tour, calls for antitrust regulation of Ticketmaster and its parent company, Live Nation Entertainment, expounded.³ However, issues with the platform predate this latest development, which highlights what some view as shortcomings marking Ticketmaster's own attempt to combat ticket scalping, one that also led to them becoming the subject of antitrust scrutiny.⁴

While the Department of Justice's Antitrust Division heightened its investigation on Live Nation over this past summer,⁵ the ticketing company has been under investigation since 2010, when Ticketmaster merged with Live Nation.⁶ Pursuant to the merger, Live Nation also acquired Ticketmaster-owned companies Ticket Web, TicketNow, House of Blues, NFL Ticket Exchange, NBATickets.com, and NHL Ticket Exchange, inter alia.⁷ The Department of Justice conditioned the merger upon Ticketmaster and Live Nation relinquishing certain assets and agreeing not to enter into agreements with venues wherein venues may not sell tickets through vendors other

¹ Epic Games, Inc. v. Apple, Inc, 559 F.Supp.3d 898 (N.D. Cal. 2021); Bobby Allyn, *What the Ruling in the Epic Games v. Apple Lawsuit Means for iPhone Users*, NPR, Sept. 10, 2021, <https://www.npr.org/2021/09/10/1036043886/apple-fortnite-epic-games-ruling-explained>.

² Jillian Wilson, *The Funniest (And Saddest) Tweets About Trying To Get Taylor Swift Tickets*, HUFFPOST, Nov. 15, 2022, https://www.huffpost.com/entry/taylor-swift-ticketmaster-era-tour_1_6373d284e4b0283a8d15480b.

³ *Id.*

⁴ David McCabe & Ben Sisario, Justice Dept. Is Said to Investigate Ticketmaster's Parent Company, N.Y. TIMES, Nov. 18, 2022, <https://www.nytimes.com/2022/11/18/technology/live-nation-ticketmaster-investigation-taylor-swift.html>.

⁵ Josh Sisco, *DOJ Probing Live Nation and Ticketmaster for Antitrust Violations*, POLITICO, Nov. 18, 2022, <https://www.politico.com/news/2022/11/18/live-nation-ticketmaster-antitrust-violations-taylor-swift-00069564>.

⁶ *Id.*

⁷ Debra Parma, *At Ticketmaster, Scalpers Score and Fans Come Last*, 38 J.L. & COM. 463, 465 (2020).

than Ticketmaster/Live Nation.⁸ In the early 2010s, legal scholarship noted the inconsistent enforcement of antitrust regulations in the ticketing industry, particularly in the Eighth Circuit’s ruling that consumers who purchase tickets directly from Ticketmaster lack standing to bring suit because they are “indirect purchasers.”⁹ Thus, while this latest development with Taylor Swift tickets has brought antitrust to the forefront of the pulse of pop culture, the antitrust considerations the situation presents have been percolating well before the Eras Tour.¹⁰

These Department of Justice-imposed conditions expired in 2020, and the Eras Tour is one of the first major tours following the relaxation of COVID-19 restrictions.¹¹ For the Eras Tour, Ticketmaster sent presale codes to the 1.5 million of 3.5 million fans who registered for the Ticketmaster Verified Fan Presale, ultimately resulting in Ticketmaster’s cancellation of the general public sale.¹² While Ticketmaster’s statement following the sale points to the fact that fewer than 5 percent of the tickets sold are now available for resale on secondary markets,¹³ in response to the presale, the Tennessee and North Carolina Attorney Generals announced they would be launching antitrust investigations.¹⁴

⁸ *Id.*

⁹ Nathan B. Grzegorek, *The Price of Admission: How Inconsistent Enforcement of Antitrust Laws in America’s Live Entertainment Sector Hurts the Average Consumer*, 44 J. MARSHALL L. REV. 261, 278—81 (2010).

¹⁰ See Grzegorek, *supra* note 6, at 278.

¹¹ *Id.*; see Chris Willman, *Taylor Swift Adds 17 More Stadium Shows to ‘Eras Tour,’ Which Will Include a Five-Night Stand in L.A., Making It Her Biggest U.S. Tour to Date*, VARIETY, Nov. 11, 2022, <https://variety.com/2022/music/news/taylor-swift-adds-17-shows-eras-tour-five-nights-sofi-stadium-1235430260/>; Daniel Kreps, *Ticketmaster Adds to the Chaos, Cancels General On-Sale for Taylor Swift’s the Eras Tour*, ROLLING STONE, Nov. 17, 2022, <https://www.rollingstone.com/music/music-news/ticketmaster-cancels-general-on-sale-taylor-swift-the-eras-tour-1234632678/>.

¹² See Taylor Swift | The Eras Tour Explained, *Ticketmaster*, <https://business.ticketmaster.com/business-solutions/taylor-swift-the-eras-tour-onsale-explained/>. Ticketmaster’s Verified Fan Presales function by sending individualized codes to the owners of Ticketmaster accounts, which they use to access the presale. Ticketmaster then places these potential ticket purchasers into an online queue; when potential purchasers move to the front of queue, Ticketmaster then allows these potential purchasers to then complete a purchase.

¹³ *Id.*

¹⁴ Omose Ighodaro, *Tennessee, North Carolina AGs Investigating Taylor Swift Ticket Presale*, BLOOMBERG, Nov. 16, 2022, <https://www.bloomberg.com/news/articles/2022-11-16/ticketmaster-s-taylor-swift-presale-investigated-by-tennessee-ag>.

Moreover, while Ticketmaster claims its Verified Fan Presales are enacted to combat ticket scalping,¹⁵ Ticketmaster's own practices arguably replicate the same actions they purport to admonish.¹⁶ While unfortunate, the widespread disenchantment surrounding the Eras Tour situation may provide a valuable impetus for the law to enact a more stringent antitrust regime that can combat scalpers and monopolistic ticket selling enterprises alike. Perhaps this latest debacle will usher in a new antitrust "era" wherein Ticketmaster no longer dominates online ticket sales.

¹⁵ Everything You Need to Know about Ticketmaster Verified Fan, *Ticketmaster*, May 10, 2020, <https://blog.ticketmaster.com/verifiedfan-faq/>.

¹⁶ Debra Parma, *supra* note 5, at 465; *see* Robert Cribb & Marco Chown Oved, *We Went Undercover as Ticket Scalpers — and Ticketmaster Offered to Help Us Do Business*, TORONTO STAR, Sept. 19, 2018, <https://www.thestar.com/news/investigations/2018/09/19/we-went-undercover-as-ticket-scalpers-and-ticketmaster-offered-to-help-us-do-business.html> (discussing how Ticketmaster allegedly collaborates with platform Trade Desk to allow scalpers to sync their platforms with Ticketmaster to resell scalped tickets for a profit).