

**Testimony of Bill Pascrell, Jr.  
Member of Congress  
Eighth District of New Jersey**

**To the Committee on the Judiciary  
Subcommittee on Courts and Competition Policy  
United States House of Representatives  
Regarding "Competition in the Ticketing and Promotion Industry"**

**Thursday, February 26, 2009**

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**Introduction**

I want to thank Subcommittee Chairman Johnson and Ranking Member Coble for inviting me here today to testify about the proposed merger between Ticketmaster, the country’s largest primary ticketing company, and Live Nation, our country’s largest concert promoter and operator of over 150 venues. I have grave concerns that this merger will have far reaching negative consequences for artists, fans, promoters, and the music industry as a whole. I believe that it violates both horizontal and vertical anti-trust principles, and will undoubtedly lead to higher ticket prices for the average consumer. I applaud the Subcommittee for taking a careful look at this merger. I fear that if this merger is approved we will lose any semblance of competition in the live music industry.

**Testimony**

As a Member of Congress, my number one priority is to represent my constituents and to defend their interests. I was troubled when I was contacted by many constituents and read press reports regarding the initial sale of tickets to two Bruce Springsteen shows in New Jersey, in which fans trying to buy tickets on Ticketmaster.com were met with error messages and links to purchase the tickets on TicketsNow.com, a Ticketmaster subsidiary, for two, three, or four times the original price. Something was not right, and I’m glad that Ticketmaster has since acknowledged that. I am pleased with many of the concessions they were forced to make, although they still maintain cause of the problems so many fans had was simply the glitch with their technology. I’ve written to the FTC to request a full investigation of what occurred on February 2<sup>nd</sup> to make sure we get to the bottom of this.

However, the problems with Ticketmaster’s business practices go far beyond a simple one time glitch. The fact is that without this glitch, we would never have uncovered the insidious relationship between Ticketmaster and TicketsNow to begin with. It has brought to light the many consumer complaints and problems with Ticketmaster that for years we have shut our eyes to, but the fans have known about all along. For years they have been dealing with unjustified and arbitrary “service” and “convenience” fees, including a fee to print your tickets in your own home, and rising base ticket prices that have far outpaced the rate of inflation. And they have finally had enough. I was moved to act by the thousands of messages my office has received regarding not only the botched Bruce Springsteen sale, but issues with Ticketmaster going back years. Yes, Ticketmaster has apologized for their recent actions, but how sincere is this? Is it just a coincidence that these apologies and concessions occur at the

moment they are seeking this merger? I urge this committee to consider how this proposed corporate conglomerate will behave when they are not under our watchful gaze. Do we really believe they will have the best interest of the consumer in mind? The nature of the complaints my office has received and their actions suggest that once this merger has been approved and we aren't looking, it will be back to business as usual at Ticketmaster/Live Nation.

As we saw with the initial ticket on sale to the Bruce Springsteen concerts at the beginning of this month, Ticketmaster's current monopolization of the primary ticket market and questionable business practices often lead to the consumer being taken for a ride. Now Ticketmaster wants us to believe that by merging with Live Nation it will be able to offer lower priced tickets to consumers. Now, I don't have a PhD in economics, but I'm not stupid either, and neither are the American people. They see this for what it is: a naked attempt to dominate the concert marketplace.

This merger will combine Ticketmaster, which owns the ticketing rights to 80 percent of the major venues in this country, with Live Nation, which in addition to being the biggest concert promoter in the world, also controls over 150 venues. This combined company would be a juggernaut. It would have control over every aspect of the live music business: artist management, record sales, promotion, licensing, venue control, parking, ticket sales and resales, all the way down to the hot dogs and beer. Pretty soon, you won't be able to wash your hands at a concert without this new company making a profit. This level of vertical control will be unprecedented in the music industry and recalls the trusts of the gilded age that controlled every step along the production process for oil or steel. Independent promoters, who don't get squeezed out of business, artists and fans will have no choice but to do business with this behemoth and pay whatever they charge. It will be the only game in town—and that, I must say, is the epitome of a monopoly.

It didn't have to be like this. Live Nation, which until recently had sold tickets through Ticketmaster, was poised to enter the primary ticket sales market and finally provide some much needed competition in the ticketing industry. Competition, after all, is what capitalism is all about. This new and significant challenge to Ticketmaster's dominance was sure to cause ticket prices to fall. But what happened? After only one month of real competition in the ticketing industry, this merger between the country's two largest primary ticket agents was announced. Now, the combined company will maintain its stranglehold on the primary ticket market and the ability to raise prices at will not because they offer a better service, but because they were able to buy out their only competition. This is anti-competitive behavior distilled to its purest form, and must be rejected by this committee and the Department of Justice.

Combining Live Nation and Ticketmaster would obviously significantly dilute competition in the live music industry and violates both vertical and horizontal models of anti-trust law. It would create no benefit for the consumer, and as history, economic theory, and common sense dictate, would not lower the cost of tickets. Ticketmaster already has a monopoly on primary ticket sales in this country. Live Nation has a

monopoly on this country's amphitheaters and many other venues in addition to promoting a vast majority of the top concerts in this country each year. Two wrongs don't make a right and combining two monopolies cannot possibly be a good deal for consumers.

While rejecting this merger is imperative, I would urge this committee to further consider federal review of consolidation within the music industry as a whole. I believe that both Ticketmaster and Live Nation may already be violating federal anti-trust laws. The Department of Justice has let these companies get too big, and I urge this committee and the new Administration to take a fresh look at their business practices.

Precedent is on the side of the people. In the 1960s, MCA (the Music Corporation of America) entered a merger with New York-based Decca Records. MCA at the time included in its business portfolio a successful talent agency, while Decca at the time owned a controlling stake in Universal Pictures. In order to acquire Universal, the Department of Justice led by Attorney General Robert F. Kennedy, forced MCA to dissolve its talent agency. The Department of Justice felt that one company owning both the movie studio and a talent agency would violate anti-trust laws.<sup>1</sup> The Ticketmaster-Live Nation merger before us today would violate the same anti-trust principles by putting control of top talent as well as the production of their shows under one company's roof.

If this merger is allowed to proceed, problems like those that fans experienced trying to buy Bruce Springsteen tickets will become more and more commonplace. The issue of a primary ticket reseller owning a secondary ticket market raises many significant questions in of itself. Ticketmaster's business practice in this arena appears to contradict its tough public rhetoric on ticket scalpers. In reality, Ticketmaster has little financial incentive to reign in brokers and hackers who may be using computer software to either cut the line or purchase mass quantities of tickets. After all, Ticketmaster has admitted it earns a larger gross profit on a ticket sold on their secondary market site than on their primary market one. Everyone, from scalpers and hackers to brokers and Ticketmaster itself, makes a little extra cash under this perverse system of incentives, and the fans are left sitting outside in the cold. I agree with what Senator Schumer said at Tuesday's hearing in the Senate Judiciary Committee. Ticketmaster should immediately sell TicketsNow and end this obvious conflict of interest.

Additionally, I will soon be proposing federal legislation to ban the use of these automated ticket purchasing programs and take additional steps to reign in the secondary ticket market, and I hope to work with this committee on this important initiative. The real fans deserve the right to see their favorite bands without a greedy middleman cutting the line and exploiting their passion for profit.

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<sup>1</sup> See McDougal, Dennis. The Last Mogul: Lew Wasserman, MCA, and the Hidden History of Hollywood. Da Capo Press, 2001. 299-302.

We are all well aware of the tough economic times this country and its citizens are faced with. This economy is scary. For many Americans, going to sleep every night means wondering if they will have a job to wake up to in the morning. Will I be able to afford a trip to the hospital bill if something happens? Will my house be foreclosed on tomorrow? For many, live music and entertainment is a way to escape all of this, if at least for a few hours.

However, over the past several decades, anti-competitive behaviors by companies such as Ticketmaster and Live Nation have priced so many of these average fans out of the market. The last thing that the American people deserve in these tough economic times is to be continually price gouged by a corporate conglomerate more concerned with profits and the price of its stock than the experience of the fans.

Live Nation and Ticketmaster has assembled a strong team of expensive lobbyists, law firms and publicists to push for their goal of merger. There is no comparable group on the other side of the issue to pay for lobbyists, to pay for attorneys, no one to fight for the average Joe. My friends, it is the job of those of us in the Congress to represent the people and fight for what is in their best interest. It is time for the Congress to ensure that the concert industry returns to a business model that puts the fans, artists and music first. Rejecting this merger will be a significant first step in that direction.

Thank you.