

U.S. moves to modify, extend antitrust consent decree with Live Nation/Ticketmaster

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Jeffrey May (Wolters Kluwer)

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Consent decree reform has been a hallmark of the Makan Delrahim Antitrust Division. For two years, the head of the Department of Justice Antitrust Division has undertaken efforts to terminate legacy consent decrees and to streamline consent decree enforcement procedures. The agency has retired hundreds of legacy antitrust judgments. Currently, the agency is seeking to terminate the *Paramount* consent decrees involving movie distribution. The agency also has changed the standard language in new settlements to improve the ability to enforce their terms. Now the Antitrust Division has undertaken what it calls the most significant enforcement action of an existing antitrust decree by the Justice Department in 20 years.

The Antitrust Division has filed an unopposed motion with the federal district court in Washington, D.C. to extend by five and a half years a Final Judgment entered in 2010 that was intended to resolve federal and state competition concerns over the combination of Ticketmaster Entertainment Inc. and Live Nation Inc. The government also is moving to modify the consent decree to clarify certain provisions. The case is *U.S. v. Ticketmaster Entertainment, Inc.*, Civil Action No. 1:10-cv-00139.

According to the Justice Department announcement, Live Nation repeatedly violated the 2010 Final Judgment, which prohibited the company from retaliating against concert venues for using another ticketing company, threatening concert venues, or undertaking other specified actions against concert venues for ten years.

“To put a stop to this conduct and to remove any doubt about defendants’ obligations under the Final Judgment going forward, the Department and Live Nation have agreed to modify the Final Judgment to make clear that such conduct is prohibited,” the government said.

These modifications are intended to help deter additional violations and allow for easier detection and enforcement if future violations occur. Further, extending the term of the decree, the government contends, will “allow concert venues and American consumers to get the benefit of the relief the Department bargained for in the original settlement.”

Proposed modifications. The clarifications to the Final Judgment the parties will seek include provisions that:

- Live Nation may not threaten to withhold concerts from a venue if the venue chooses a ticketer other than Ticketmaster;
- A threat by Live Nation to withhold any concerts because a venue chooses another ticketer is a violation of the Final Judgment;
- Withholding any concerts in response to a venue choosing a ticketer other than Ticketmaster is a violation by Live Nation of the Final Judgment;
- The Antitrust Division will appoint an independent monitor to investigate and report on Live Nation’s compliance with the Final Judgment;
- Live Nation will appoint an internal antitrust compliance officer and conduct regular internal training to ensure its employees fully comply with the Final Judgment;
- Live Nation will provide notice to current or potential venue customers of its ticketing services of the clarified and extended Final Judgment; and
- Live Nation is subject to an automatic penalty of \$1,000,000 for each violation of the Final Judgment.
- Live Nation will pay costs and fees for the Department’s investigation and enforcement.

The Justice Department called its move “the most significant enforcement action of an existing antitrust decree by the Department in 20 years.”

Lawmakers’ concerns. Live Nation Entertainment Inc. has come under fire recently for its conduct in the ticketing marketplace, particularly on Capitol Hill.

In August, Senator Amy Klobuchar (D., Minn.), Ranking Member of the Senate Judiciary’s antitrust subcommittee, and Senator Richard Blumenthal (D., Conn.) were among those urging the Justice Department to investigate the state of competition in the market and suggesting that Live Nation was ignoring the 2010 consent decree. For instance, the senators expressed concern about reports that Ticketmaster was violating the behavioral conditions of the consent decree by retaliating against venues that use a competing ticket platform. Earlier this week, the senators commented positively on reports that the Department of Justice was preparing to take action to ensure compliance with the Ticketmaster/Live Nation consent decree.

Members of the House Energy and Commerce Committee and the House Judiciary Committee also called for action, focusing on high ticket prices. In November, the Commerce Committee sent a letter to Live Nation, questioning ticket fees. Four members of the Judiciary Committee reportedly followed up with a letter earlier this month.