

The Federal Trade Commission's and the U.S. Department of Justice's Request for Information on Harmful Practices and on Potential Regulation or Legislation to Protect Consumers in the Concert and Entertainment Industry

ALDEN ABBOTT

Senior Research Fellow and Director, Competition Project, Mercatus Center at George Mason University

SATYA MARAR

Visiting Postgraduate Fellow, Mercatus Center at George Mason University

JOHN TROTTER

Antitrust Intern, Mercatus Center at George Mason University

Request for Public Comment on Anticompetitive Practices in Live Ticketing

Agency: Federal Trade Commission and U.S. Department of Justice

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We thank the Federal Trade Commission (FTC) and U.S. Department of Justice (DOJ) for the opportunity to comment on unfair and anticompetitive conduct and practices in the live concert and entertainment industry.¹ These comments, which focus on live ticketing practices, reflect the views of scholars affiliated with the Mercatus Center and are not intended to represent the views of any affected party or special interest.

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¹ U.S. Department of Justice, "Justice Department and Federal Trade Commission Seek Information on Unfair and Anticompetitive Practices in Live Ticketing" (May 7, 2025), <https://www.justice.gov/opa/pr/justice-department-and-federal-trade-commission-seek-information-unfair-and-anticompetitive>. 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/P859900AnticompetitiveRegulationsRFI.pdf.

the freedom to prosper and to find sustainable solutions that overcome barriers preventing individuals from living free, prosperous, and peaceful lives. This comment is intended to assist the FTC and DOJ in their decision-making.

Alden Abbott is a senior research fellow at the Mercatus Center.² His research focuses on competition policy, regulation, international trade, and intellectual property. He is a former general counsel of the FTC (2018–21) and an adjunct professor at the Scalia Law School at George Mason University.

Satya Marar is a visiting postgraduate fellow at the Mercatus Center,³ where he was formerly an MA Fellow. His research interests include antitrust and competition policy, intellectual property, trade, and technology policy.

John Trotter is a summer 2025 antitrust intern at the Mercatus Center.

We have two recommendations for the FTC and DOJ:

1. We recommend that the FTC and DOJ pursue evidence-based enforcement against specific anticompetitive conduct affecting live concert and entertainment ticketing, while preserving beneficial business practices and efficiencies.
2. We recommend that the FTC consider a targeted consumer protection rule rather than structural antitrust remedies as a potentially more promising path toward improving outcomes for fans, artists, and venues. Before adopting any particular rule, the FTC should consider whether the rule would have benefits that outweigh any likely costs.

Discussion

I. Evaluating Business Practices Through the Lens of Tradeoffs

Many common business practices in the live ticketing space—such as exclusive contracting, bundling, and tying of services—are not inherently anticompetitive. Rather, they often offer benefits such as improved coordination among venues, promoters, and artists, and cost savings that can be passed on to consumers. Particularly in the context of live music, large venues are profitable because of the economies of scale provided by large companies such as Live Nation.⁴ While these practices may in some instances be used to foreclose competition in an anticompetitive manner, the appropriate response is not to outlaw them wholesale, but to scrutinize their use in specific contexts where there is demonstrable harm to competition and consumer welfare. Antitrust enforcement should continue to rely on evidence-based analysis rather than additional per se rules that could restrict efficiency-enhancing conduct.

II. The Economics of Mergers: Live Nation and Ticketmaster

The 2010 merger between Live Nation and Ticketmaster has received renewed public scrutiny. It is important to assess the merged firm's actual effects on competition and innovation, rather than to rely on preconceived notions concerning the effects of its conduct. Vertical integration has the potential to generate significant efficiencies, even if it can lead to an increase in a single firm's market share. In the case of Live Nation and Ticketmaster, the merger allowed for the streamlining of operations,

² See Mercatus Center Scholars, Alden Abbott, last visited June 26, 2025, <https://www.mercatus.org/scholars/alden-abbott>.

³ See Mercatus Center Scholars, Satya Marar, last visited June 26, 2025, <https://www.mercatus.org/scholars/satya-marar>.

⁴ Peter Tschmuck, "From Record Selling to Cultural Entrepreneurship: The Music Economy in the Digital Paradigm Shift," in *Business Innovation and Disruption in the Music Industry* (Edward Elgar Publishing, 2016), <https://doi.org/10.4337/9781783478156.00007>.

integration of data systems, and enhanced promotional coordination that can benefit artists and consumers alike.⁵

While concerns have been raised about the firm's post-merger conduct, notably involving potential retaliation against venues using rival ticketers, such conduct is better addressed through targeted consent decrees and enforcement of behavioral remedies rather than structural breakups. Breaking up vertically integrated firms risks destroying these efficiencies and could lead to increased costs and fragmented services that harm consumers. Instead of sacrificing the procompetitive benefits of vertical integration by targeting market share alone, enforcement should focus on punishing truly anticompetitive behavior as the approach most likely to increase consumer welfare.⁶

III. Causes of Rising Ticket Prices

Critics frequently cite rising ticket prices as evidence of anticompetitive conduct. Economic analysis indicates, however, that supply-demand imbalances are the primary driver.⁷ Artists often limit the ticket supply to preserve the experience or to avoid accusations of gouging, despite high demand. Moreover, the revenue model of the music industry has shifted. Streaming has caused a drastic decrease in the physical sale of music, incentivizing artists to raise prices to sustain their livelihoods.⁸

The so-called "Ticketmaster tax" is largely misunderstood. Service fees are often set by venues or negotiated with artists, and only a fraction is retained by the ticketing platform.⁹ As such, policy remedies targeting fees must consider their ultimate origin and distribution to avoid unintended consequences.

IV. Enforcement for Demonstrable Anticompetitive Conduct

Robust enforcement actions may be appropriate when there is evidence of unlawful exclusionary conduct, such as threats to withhold concerts from venues choosing alternative ticketing services. Consent decrees are an appropriate tool for punishing such conduct while preserving procompetitive efficiencies. The DOJ's extension of the Live Nation consent decree in 2020 following alleged violations reflects this balanced approach.¹⁰

Conversely, structural remedies such as breaking up vertically integrated firms should be pursued only where behavioral remedies have demonstrably failed and where the breakup would clearly improve market conditions in such a way that would offset the loss of synergies.

V. Ticket Resale Markets and Scalping Restrictions

Efforts to regulate or prohibit ticket resales, including state-level bans on scalping or restrictions on transferability, may worsen consumer outcomes. Secondary markets, while imperfect, enable price

⁵ Tschmuck, "From Record Selling to Cultural Entrepreneurship."

⁶ Geoffrey A. Manne, Kristian Stout, and Ben Sperry, "The Fatal Economic Flaws of the Contemporary Campaign Against Vertical Integration," *The University of Kansas Law Review* 68, no. 5 (2020): 923.

⁷ Anne Hobson and Christopher Koopman, "Are Robot Scalpers Ripping You Off? Do We Need Government To Stop It?," *Techdirt*, Nov. 7, 2016, <https://www.techdirt.com/2016/11/07/are-robot-scalpers-ripping-you-off-do-we-need-government-to-stop-it>.

⁸ Tschmuck, "From Record Selling to Cultural Entrepreneurship."

⁹ Alden Abbott, "Will The Antitrust Lawsuit Against Live Nation Break Its Hold On Ticketmaster?," *Forbes*, May 28, 2024, <https://www.forbes.com/sites/aldenabbott/2024/05/28/will-the-justice-departments-monopolization-lawsuit-kill-live-nation/>.

¹⁰ Antitrust Division, "U.S. and Plaintiff States v. Ticketmaster Entertainment, Inc. and Live Nation Entertainment, Inc.: Amended Final Judgment," U.S. Department of Justice, Jan. 28, 2020, <https://www.justice.gov/atr/case/us-et-al-v-ticketmaster-entertainment-inc-et-al>.

discovery and allow tickets to reach those who value them most. Banning these practices risks exacerbating scarcity and incentivizing black markets. Economic research shows that price ceilings or bans on resale reduce allocative efficiency and can leave tickets underutilized.¹¹ The antipathy consumers experience toward scalping might not merit per se rules prohibiting the practice, which would risk reducing overall consumer welfare.

VI. Enhancing Transparency Through FTC Consumer Protection Rules

Instead of restrictive rules or breakup remedies, policymakers may wish to consider targeted consumer protection interventions to improve transparency in live event ticketing. For example, the FTC could consider promulgating a rule that requires the following:

- Clear disclosure of all fees upfront in the ticket selection process
- Prominent communication of transfer and resale restrictions
- Transparency regarding whether listed tickets are held in reserve or immediately available¹²

This approach could potentially empower consumers without constraining the market mechanisms that drive efficiency and innovation. Before adopting it, however, the FTC should (1) carefully weigh whether the benefits of the rule would outweigh its costs and (2) ideally, publish this analysis for the sake of transparency.

Conclusion

The live event ticketing industry presents complex challenges rooted in the economics of supply and demand, vertical integration, and dynamic markets. A nuanced policy approach is essential. We urge the FTC and DOJ to pursue evidence-based enforcement against specific anticompetitive conduct while preserving beneficial business practices and efficiencies. A carefully targeted, cost-beneficial consumer protection rule, rather than structural antitrust remedies, may offer a more promising path to improving outcomes for fans, artists, and venues.

¹¹ Craig Depken II, "Another Look at Anti-scalping Laws: Theory and Evidence," *Public Choice* 130, no. 1-2 (2007): 55-77.

¹² The FTC's new Junk Fees rule, which became effective May 7, 2025, would appear to cover clear disclosure of all fees. See FTC, "Trade Regulation Rule on Unfair or Deceptive Fees" (made final Dec. 17, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/r207011_udf_rule_2024_final_0.pdf. The communication of transfer and resale restrictions, and transparency regarding the availability of listed tickets, might require a new regulatory initiative by the FTC.