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September 3, 2026

David Teslicko,
Acting Chief Financial Services
Fintech and Banking Section
Antitrust Division
U.S. Department of Justice
450 Fifth Street NW
Suite 4000
Washington, DC 20530

Re: Tunney Act Comments in U.S., et al. v. Live Nation Entertainment, Inc. and Ticketmaster L.L.C.

Dear Mr. Teslicko:

Attached please find comments of the Progressive Policy Institute in U.S., et al. v. Live Nation Entertainment, Inc., and Ticketmaster L.L.C., pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §16 (Tunney Act).

Sincerely,

Diana L. Moss
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, et al., ***Plaintiffs,*** **v.** **LIVE NATION ENTERTAINMENT, INC. and TICKETMASTER L.L.C.,** ***Defendants***	**Case: 1:24-cv-3973-A**

Comments of the Progressive Policy Institute
On the Proposed Final Judgment
Under the Antitrust Procedures And Penalties Act

The Progressive Policy Institute (PPI) [1] submits these comments pursuant to the Antitrust Procedures and Penalties Act ("Tunney Act") on the U.S. Department of Justice (DOJ) Proposed Final Judgment (PFJ). Congress has made this Court the final arbiter of whether a proposed remedy, described in the PFJ and Competitive Impact Statement (CIS), is in the "public interest."[2]

PPI has an interest in this proceeding because the Court's decision will determine if the proposed remedy restores competition in the market for primary ticketing services and primary ticketing services to large concert venues (referred henceforth to as "primary ticketing services"). Live Nation-Ticketmaster (LNTM) has abused its monopoly power in this market for years, inflicting harm on independent venues and millions of live concert fans. This anticompetitive conduct has reduced choice, lowered quality and slowed innovation in digital ticketing services, and, of course, increased ticket fees.

Antitrust cases brought under Section 2 of the Sherman Act[3] are relatively rare and the Court's decision will set important precedent for future antitrust remedies. If the Court finds that the remedies contained in the PFJ do not restore competition in primary ticketing services, then the entire PFJ should be deemed to have failed the public interest test under the Tunney Act. This includes the relief sought to protect artists based on the DOJ's successful claims regarding concert promotion and use of large amphitheaters.

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[1] PPI is a catalyst for policy innovation based in Washington, D.C. It is home to a center on competition advocacy that produces legal, economic, and policy analysis and commentary. For more information, please see progressivepolicy.org.
[2] 15 U.S. Code § 16
[3] 15 U.S. Code § 2.

I. The Court Should Reject a PFJ That is the Product of Political Interference and Does Not Restore Competition

The remedies contained in the PFJ suffer from two fatal flaws. First, the PFJ is the product of political interference. As such, it violates the spirit and purpose of the Tunney Act, which serves the dual purpose of "deterrence and mediation."[4] The Tunney Act was designed to prevent the type of "sweetheart" [5] deal the DOJ has cobbled together under the direction of the current political administration.[6]

Second, the "behavioral" or "conduct" remedies contained in the PFJ do nothing to reduce or eliminate LNTM's incentives to exercise monopoly power and restrict competition from rival primary ticketing services. They are simply prescriptions and proscriptions for how LNTM is required to operate moving forward. These include the "contract compliance regime" and "Open Distribution and Ticket Authentication" system. Together, these behavioral remedies constitute a type of "access" regime that is on the scale of what is typically administered by a dedicated sector regulator, not a court.

The remedies attempt to penetrate LNTM's exclusive ticketing contracts with venues and control of primary ticket inventory to pry open the monopoly and allow venues to access competing third-party primary ticketing services. PPI's analysis indicates, however, that the complex, opaque, circumventable, and hard-to-enforce remedies have little to no "nexus" with the anticompetitive harm outlined in the amended Complaint. Independent venues will still fear retaliation by LNTM if they try to use rival primary ticketing services. Enforcement and compliance problems will be a burden on the courts as judges interpret murky rules and adjudicate inevitable disputes.

In light of these failures, the remedies in the PFJ are unlikely to restore competition in the market for primary ticketing services. PPI urges the Court, therefore, to find that the PFJ is not in the public interest. In rejecting it, the Court should instead require what the government asked for initially in the Complaint, namely, a structural remedy to break up LNTM.[7] PPI's comments cover the following arguments:

- ***Live Nation-Ticketmaster's history of violating behavioral remedies virtually guarantees that it will violate the behavioral remedies in the PFJ.***

- ***An effective remedy that fully restores competition must be based on the underlying economic rationale for LNTM's ability and incentive to exercise monopoly power.***

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[4] Subtitle B—Tunney Act Reform, SEC. 221. Public Interest Determination, Congressional Record, Apr. 2, 2024, p. S3617.
[5] *Id.*
[6] *See, e.g.*, Rebecca Ballhaus, Joe Palazzolo, Dana Mattioli, Josh Dawsey, and Dave Michaels, *The Trump Intervention That Got the DOJ Off Live Nation's Back*, Wall Street Journal, Aug. 23, 2026, https://www.wsj.com/business/media/trump-live-nation-antitrust-doj-f82b2c55?eafs_enabled=false.
[7] *United States v. Live Nation Entertainment, Inc.,* Amended Complaint, No. 1:24-cv-03973-AS (S.D.N.Y. Aug. 30, 2024).

- ***The contract compliance regime and "Open Distribution and Ticket Authentication" system are complex, opaque, risk circumvention by LNTM, and will be difficult to enforce.***

- ***Only a structural remedy that breaks Ticketmaster "off" from Live Nation and then breaks it "up" into smaller companies can fully restore competition.***

II. LNTM's History of Violating Behavioral Remedies Virtually Guarantees That it Will Violate the Behavioral Remedies in the PFJ

Live Nation-Ticketmaster's history of violating past behavioral remedies should take center stage in the Court's assessment of whether the PFJ fails the public interest test. The company has a long antitrust rap sheet, rife with proven allegations of exclusionary conduct designed to maintain its monopoly in primary ticketing services. In 2020, the DOJ moved to amend the consent decree filed with the court in the 2010 merger that vertically integrated Live Nation and Ticketmaster.[8]

As part of an investigation ten years later in 2020, the DOJ collected affidavits from six anonymous independent concert venues that testified to how Live Nation had "repeatedly conditioned and threatened to condition its provision of live entertainment content on a venue's using Ticketmaster's primary ticketing service."[9] Even with this evidence, the first Trump administration simply extended the demonstrably ineffective non-discrimination and anti-retaliation conditions for another five years.[10]

It was not until 2024, when the DOJ brought this monopolization case against LNTM, that the government explicitly recognized that earlier behavioral remedies had repeatedly failed and that the scope of Live Nation's anticompetitive conduct had expanded far beyond that which arose from the original merger agreement.[11] Arguably, LNTM's violations of previous behavioral remedies are the *raison d'etre* for the DOJ's monopolization case *and* prayer for stronger, structural relief in the amended Complaint.

Pursuing yet more behavioral remedies, especially those as complex, opaque, and subject to circumvention as those in the PFJ, will only perpetuate LNTM's long history of similar remedy violations. No amount of employee "firewalls," anti-retaliation, anti-conditioning, or anti-content steering provisions will change this reality.[12] The impact of past failed behavioral antitrust remedies, and the imminent failure of those in the PFJ, will have a significant impact on venues. But it will also adversely affect millions of live concert fans, who will bear the burden of a failed remedy through less choice, higher prices, lower quality, and slower innovation.

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[8] *United States v. Ticketmaster Entertainment, Inc. and Live Nation Entertainment, Inc.,* Motion To Modify Final Judgment and Enter Amended Final Judgment, 1:10-cv-00139 (D.D.C. Jan. 8, 2020).
[9] *United States v. Live Nation Entertainment, Inc.,* Competitive Impact Statement, No. 1:24-cv-03973, Doc. 1037 (S.D.N.Y. Feb. 18, 2026), at 4.
[10] Motion To Modify Final Judgment and Enter Amended Final Judgment, *supra* note 8.
[11] Amended Complaint, *supra* note 7.
[12] *United States v. Live Nation Entertainment, Inc.,* Proposed Final Judgment, No. 1:24-cv-03973, Doc. 1037 (S.D.N.Y. Feb. 18, 2026), at §VI.

Indeed, this Court dismissed LNTM's claim that there is no connection between anticompetitive violation and injury to ticket-buying fans. Citing the Supreme Court in *Blue Shield of Va. v. McCready*, this Court noted, "*A plaintiff doesn't need to be a direct participant in a market to have an antitrust injury, as long as they are 'within that area of the economy endangered by that breakdown of competitive conditions' resulting from upstream anticompetitive conduct."*[13]

U.S. consumers spend around $20 billion on tickets for live concert events every year, the prices of which have long been inflated by LNTM's monopoly ticket fees.[14] This has choked off consumers' access to live events and forced them to make tough decisions about paying the utility bills versus going to a concert. At a time when U.S. consumers are struggling with an affordability crisis of epic proportions, they need a strong and effective antitrust remedy more than ever.

III. *An Effective Remedy That Fully Restores Competition Must Be Based On the Underlying Economic Rationale For LNTM's Ability and Incentive To Exercise Monopoly Power*

Whether the PFJ is in the public interest starts with a basic question: Do the behavioral remedies have a strong nexus with the competitive harm outlined in the amended Complaint? Remedies with a weak, or nonexistent, nexus will not restore competition. Those with a strong nexus will be more successful at restoring competition. The Supreme Court has emphasized that restoring competition is the paramount purpose of an antitrust remedy.[15]

The answer here is that the remedies in the PFJ will not restore competition in the market for primary ticketing services. The economics of LNTM's anticompetitive conduct backs up this logic. Live Nation-Ticketmaster's anticompetitive incentives are a direct result of the company's vertically-integrated dominance.[16] For example, LNTM has locked up the events supply chain with a tight grip on concert promotion, exclusive contracts with large venues, and primary ticketing services. Control of these critical assets and economic decision-making gives LNTM the *ability* to engage in anticompetitive conduct.

Ticketmaster also holds an 80% plus share of the primary ticketing services market.[17] This dominance creates a strong *incentive* for the company to maintain its monopoly by forcing independent venues into using Ticketmaster's ticketing services, thereby locking out smaller primary ticketing services rivals. Because venues have little to no choice in primary ticketing services, any revenues lost by LNTM (if a venues rejects an exclusive contract) are more than made up for by the monopoly ticket fees it collects on ticket sales from venues that do.

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[13] *United States v. Live Nation Entertainment, Inc.,* Opinion and Order, No. 1:24-cv-03973-AS (S.D.N.Y. Feb. 18, 2026), at 42 [citing *Blue Shield of Va. v. McCready, 457 U.S. 465 (1982)*].
[14] *See, e.g., United States Live Music - Market Share Analysis, Industry Trends & Statistics, Growth Forecasts (2026-2031)*, Research and Markets, Jun. 2026, https://www.researchandmarkets.com/report/united-states-live-performances-market?srsltid=AfmBOor46r27rBfCV8yNbxCFzxn_cdI9mzSXD9KJS_EfD4B-TRa-CdVW.
[15] *United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 326 (1961).
[16] See, e.g., John E. Kwoka and Diana L. Moss, *Behavioral merger remedies: Evaluation and implications for antitrust enforcement,* 57 The Antitrust Bulletin (2012).
[17] Amended Complaint, *supra* note 7, at p. 3.

The contract compliance regime and Open Distribution and Ticket Authentication system in the PFJ allow LNTM to remain vertically-integrated and dominant. As a result, the behavioral remedies do nothing to reduce or eliminate LNTM's ability and incentive to exercise its monopoly power to stifle competition in primary ticketing services.

Venues will continue to be intimidated by LNTM, and because they fear retaliation, they will be hesitant to use competing primary ticketing services. Moreover, the remedies are complex, opaque, and, as explained later, strongly at risk of being circumvented by LNTM. The DOJ's 2004 Policy Guide to Merger Remedies explicitly recognizes this last concern: "*A conduct remedy…typically is more difficult to craft, more cumbersome and costly to administer, and easier than a structural remedy to circumvent."*[18]

IV. The Contract Compliance Regime and "Open Distribution and Ticket Authentication" System Are Complex, Opaque, Risk Circumvention By LNTM, and Are Hard To Enforce

A. The Contract Compliance Regime

The PFJ contains provisions for modifying exclusive ticketing agreements with venues to provide greater flexibility to partner with third-party ticketing services. To be clear, after years of threats and retaliation against venues for not agreeing to exclusivity, the DOJ saw fit to preserve some degree of exclusivity moving forward.[19] The contract compliance regime creates three different regimes for providing venues with the flexibility to use competing primary ticketing services. These include: (1) existing contracts between LNTM and venues with a sufficient remaining term; (2) new venue contracts, and (3) special rules for Live Nation-controlled amphitheaters.[20]

All three compliance regimes are structured differently, with multiple categories of contracts. For example, there are subcategories for both new and existing contracts. Existing contracts are bifurcated based on whether they contain fewer than 4.0, or 4.0 or more, years left on the contract term. Likewise, there are three subcategories of new contracts based on whether they are non-exclusive, fully exclusive, or partially exclusive. For partially exclusive contracts, the PFJ again bifurcates based on the percentage of ticket inventory that must be allocated to competing ticketing services, i.e., less than 20%, or equal to or greater than 20%.

The contract regimes, therefore, contain requirements covering multiple factors. These range from the status of a contract, remaining term on a contract, degree of exclusivity, duration of right to utilize third-party ticketing, pro-rata adjustments, treatment of ticket fees, and the 50% threshold for ticket inventory that artists can sell and distribute through a rival primary ticketing service at Live Nation-controlled venues. The allocation of ticket inventory to third-party ticketing services is particularly complex, with three different metrics governing allocations: "event-level," "percent" (i.e., 20% threshold), and "section v. tier" of a venue.

[18] *Id.*, at p. 8.
[19] Amended Complaint, *supra* note 7, at p. 38.
[20] Proposed Final Judgment, *supra* note 12, at § IV.G - § IV.L.

This complexity vastly increases the risk of two major adverse outcomes. One is that venues will find that the contract compliance system does not provide the flexibility to plan events into the future, thereby jeopardizing their viability, or provide sufficient certainty that they will benefit from using competing primary ticketing services. A second outcome is the risk that there will be violations of the decree over the period it is in force, resulting in contracts with venues that create *de facto* exclusivity. This defeats the goal of injecting competition into the market for primary ticketing services.

A simple illustration of the process governing any of the contract configurations drives home the foregoing concerns. For example, for existing contracts, Ticketmaster would determine if there are 4.0 or more years remaining on the contract term; consider waived renewal or extension provisions; and determine the (2) applicable fee-bearing primary ticket inventory; (2) 20% ticket inventory allocation for third parties, and (3) whether allocation is by section v. tier.

All of these decisions are subject to miscalculations, disputes, and potential gaming of terms and conditions that could turn on any number of factors. These issues must be decided, and any disputes resolved, before Ticketmaster makes the ticket inventory allocation available to competing third-party ticketing services. Ticketmaster would repeat this cumbersome and opaque process annually until there are less than 4.0 years remaining on a contract. All told, the complex and cumbersome contract compliance regime outlined in the PFJ will virtually guarantee violations. It flies in the face of the DOJ's astute guidance in the 2004 Policy Guide to Merger Remedies: "*...decree provisions [must] always [focus] on how a judge not privy to the settlement negotiations is likely to construe those provisions at a later time.*"[21]

B. The Open Distribution and Ticket Authentication System

The PFJ contains a second major behavioral remedy for addressing anticompetitive harm in the primary ticketing services market. The Open Distribution and Ticket Authentication system requires Ticketmaster to develop and provide a system that "*...enables any Major Concert Venue using Ticketmaster Back-End to distribute primary tickets using any Eligible Primary Ticketing Services Provider(s) chosen by such Major Concert Venue*."[22] Ticketmaster "Back-End" is the software, technology, and/or platform services used by, or on behalf of, venues.[23]

Much like under the contract compliance regime, because LNTM is allowed to retain its vertically-integrated dominance, it will retain its ability and incentive to engage in anticompetitive conduct. It will appear to technically comply with the Open Distribution and Ticket Authentication requirements. But because it controls Ticketmaster Back-End, it can quietly undermine the ability of competing third-party ticketing services to serve venues that want to switch away from Ticketmaster. The PFJ rattles off a list of requirements that cover virtually every aspect of the primary ticketing process. These include: (1) event and inventory management; (2) third-party ticketing integration; (3) ticket generation and security; (4) venue

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[21] *See, e.g.,* United States Department of Justice, Antitrust Division, Antitrust Division Policy Guide To Merger Remedies (Oct. 2004), at 2, http://www.justice.gov/atr/public/guidelines/205108.pdf, at p. 6.
[22] Proposed Final Judgment, *supra* note 12, at § IV.A - § IV.F.
[23] *Id.*, at pp. 9-10. Ticketmaster Back-End and Ticketmaster Marketplace together make up Ticketmaster's Primary Ticketing Services business.

entry and scanning; and (5) operational records and reporting.

To be clear, competing primary ticketing services will be entirely reliant on Ticketmaster to authenticate tickets and issue barcodes. These are the very processes that Ticketmaster has used historically to suppress competition from resale ticket marketplaces by impeding the transfer of tickets from the primary to the resale market.[24] On other fronts, Ticketmaster could program APIs that delay the ticket authentication and barcode generation process, and create strategic data bottlenecks.

Such tampering would be extraordinarily difficult for third-party ticketing service rivals to detect and impose significant burdens on enforcers and the courts. LNTM's inevitable workarounds would create friction and frustration for venues and, ultimately, for ticket buyers, driving them back to Ticketmaster's primary ticketing platform. The net effect would be to impede the ability of competitors to enter or expand in the primary ticketing services market.

V. Only a Structural Breakup Remedy Can Address the Harms Identified in the DOJ's Complaint and Restore Competition

PPI's analysis illustrates how the contract compliance regime and Open Distribution and Ticket Authentication remedies will likely fail because they are complex, opaque, subject to circumvention, and hard to enforce. The PFJ leaves competition in primary ticketing under the thumb of LNTM, with powerful incentives to continue to exercise monopoly power and an extraordinary degree of control over how rivalry develops, if at all.

PPI urges the Court to instead require a structural remedy. The DOJ 2004 Policy Guide to remedies states that: *"A carefully crafted divestiture decree is simple, relatively easy to administer, and sure to preserve competition."*[25] Structural remedies permanently reduce or eliminate the ability and incentive for antitrust defendants found liable of violations to exercise market power.[26] Well-designed structural remedies are one-time fixes, require little ongoing oversight by the courts, and once implemented, are not subject to the gaming and workarounds that behavioral remedies are.

A preferred structural remedy would be far different than the so-called "divestiture" of 13 venues required in the PFJ.[27] The term "divestiture" is patently misleading. Live Nation is only required to divest exclusive booking agreements. Moreover, the number of so-called "divestitures" represents less than 10% of the total venues with which LNTM has exclusive contracts. This is token, at best, and should be rejected on its face. Addressing LNTM's anticompetitive incentives head-on requires something much different.

As a first step, the Court should consider forcing Live Nation and Ticketmaster to de-integrate. This divestiture would "break off," or separate, Ticketmaster from Live Nation, eliminating the

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[24] *See, e.g.,* Diana L. Moss, Fans Last? *How the Fans First Act Hands Live Nation-Ticketmaster More Market Power*, ProMarket.org, Jan 14, 2024, https://www.promarket.org/2024/02/14/fans-last-how-the-fans-first-act-hands-live-nation-ticketmaster-more-market-power/.
[25] *Id.*, at 7.
[26] Kwoka and Moss, *supra* note 17.
[27] Proposed Final Judgment, *supra* note 11, at § V.

ability and incentive to exclude primary ticketing services rivals by forcing venues to deal exclusively with Ticketmaster. But that is not enough. A divested standalone Ticketmaster with 80% of the primary ticketing services market still gives venues and fans little to no choice in primary ticketing services. It also preserves Ticketmaster's incentives to lock out competition *directly* by engaging, for example, in predatory fee practices or tying sales of resale tickets to primary tickets.

As a result, PPI urges the Court to also consider breaking Ticketmaster into several smaller primary ticketing service companies to reduce its market dominance. Smaller ticketing rivals that bought a piece of Ticketmaster would compete head-to-head, on the merits, through competitive ticketing fees, high-quality service to venues (and ultimately, fans), and investment in digital ticketing technology. There would be any number of viable buyers for the remnants of Ticketmaster, including those with primary ticketing services experience and resale marketplaces that could enter the market.

PPI appreciates the opportunity to provide these comments in the Tunney Act proceeding.

Respectfully,

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