

Justice Department approves Live Nation buy
by Cecile Kohrs Lindell In Washington
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The Department of **Justice Monday** announced antitrust approval of **Ticketmaster Entertainment Inc.**'s proposed \$720 million purchase of **Live Nation Inc.** with some conditions, as The Daily Deal previously reported it would Jan. 5.

The concessions DOJ wrested from the companies allow the deal to close. They include selling one of Ticketmaster's subsidiaries and licensing its ticketing software, as well as "conduct remedies," or legally binding promises, that the new company won't retaliate against venues that switch ticketing services or unfairly bundle batches of tickets. Those conditions will remain in place for a decade.

Assistant Attorney General **Christine Varney** called her decision "a comprehensive enforcement action that is going to benefit competition and consumers. In its entirety, it is a wide-ranging remedy."

The Ticketmaster merger proposal was announced last year within weeks of what company officials said was a software glitch that prevented consumers interested in attending a Bruce Springsteen concert from buying tickets at face value. Instead, fans on the Ticketmaster Web site were told that a show was sold out, and they were routed to a subsidiary ticket reseller, where tickets were available at much higher prices.

That snafu caused consumers to complain to legislators, who held hearings about the deal on Capitol Hill, where the lawmakers lambasted the CEOs.

The settlement requires Ticketmaster to license its primary ticketing software to **Anschutz Corp.** subsidiary AEG, the nation's second-largest concert promoter in the country, as well as owner of several venues. Ticketmaster must divest its Paciolan Inc. ticketing company within 60 days to either **Comcast-Spectacor LP**, which has already signed a letter of intent to purchase the assets, or some other acceptable buyer.

According to the DOJ, divesting Paciolan in conjunction with the AEG license will replace the competitive pressure on Ticketmaster lost as a result of the merger.

According to Hill Wellford, a partner at **Bingham McCutchen LLP**, and a former chief of staff to Varney's Republican predecessor, the decision was undoubtedly a tough one for the DOJ, particularly given the scrutiny devoted to the first major merger ruling issued by the agency during the Obama administration. "Given the highly public criticism of Ticketmaster, the proposed deal was easily vilified," Wellford said. He praised Varney "for basing this approval on a traditional economic analysis rather than a pop culture market definition."

Because the merging parties are in complementary businesses — tickets and concert promotion — and not direct competitors, traditional antitrust analysis would suggest that their combination would not harm consumers. Critics, however, said combining the dominant firms in both sectors could further solidify Ticketmaster's grip on the concert business and enable it to raise prices.

Whatever the impact on competition, the decision to insist on a conduct remedy, like the one forbidding Ticketmaster from retaliating against venues that switch ticketing services, "is unusual and **may** not add much to the more traditional licenses and divestitures in the order," Wellford said. "The order prohibits 'retaliation' but permits any product bundling that makes business sense, which gives wide freedom to the merged firm."

When asked who would decide what an anti-competitive bundle of tickets would be, rather than one that was pro-consumer and aimed at lowering price or increasing efficiency, Varney said: "I will." She later added that her staff is well informed and would be actively monitoring the company.

The crux of the settlement is focused on "how Ticketmaster is going to behave and how the DOJ is going to monitor this going forward over a decade," said Richard Donovan, a partner at Kelley Drye LLP. "DOJ asserts the consent amounts to the same level of relief for consumers as if this case had gone to trial," he said. "But if the antitrust division had won at trial, they would have stopped the merger."

Kevin Sullivan, a former DOJ official and partner at King & Spalding LLP, said he thought the decision to use a conduct remedy is arguably "a change in how enforcement has occurred." He said structural remedies without the need for ongoing government oversight "tend to work better and allow competition to develop better in both the short and long terms."

After The Deal's article of [Jan. 5](#), various public interest groups complained that the deal would hurt consumers. That fact was highlighted by Bert Foer, who heads the consumer-focused American Antitrust Institute. "America's consumers are very familiar with these companies, especially Ticketmaster, and they see this as a test case for the Obama administration's commitment to use of antitrust as a consumer protection tool," Foer said. Foer was reviewing details of the consent decree [Monday](#) and declined to comment.

News that the government would not seek to block the deal was "surprising," said former Federal Trade Commission general counsel and Wayne State University law professor Steve Calkins. Initially, the deal caused such outrage for pairing two concert industry giants that many had predicted conditions draconian enough to minimize the value of the deal.

Calkins said he was interested in the way the DOJ described the efficiencies raised by combining two companies at various points in the distribution chain — in this case, the ticket seller and the concert promoter. "Most interesting to me is the way the Competitive Impact Statement is very dismissive of the claimed vertical integration efficiencies, but then points to them as to why the settlement is beneficial," Calkins said, stating that permitting the deal to be consummated "preserve[s] the possibility of efficiency-enhancing vertical integration in the concert industry."