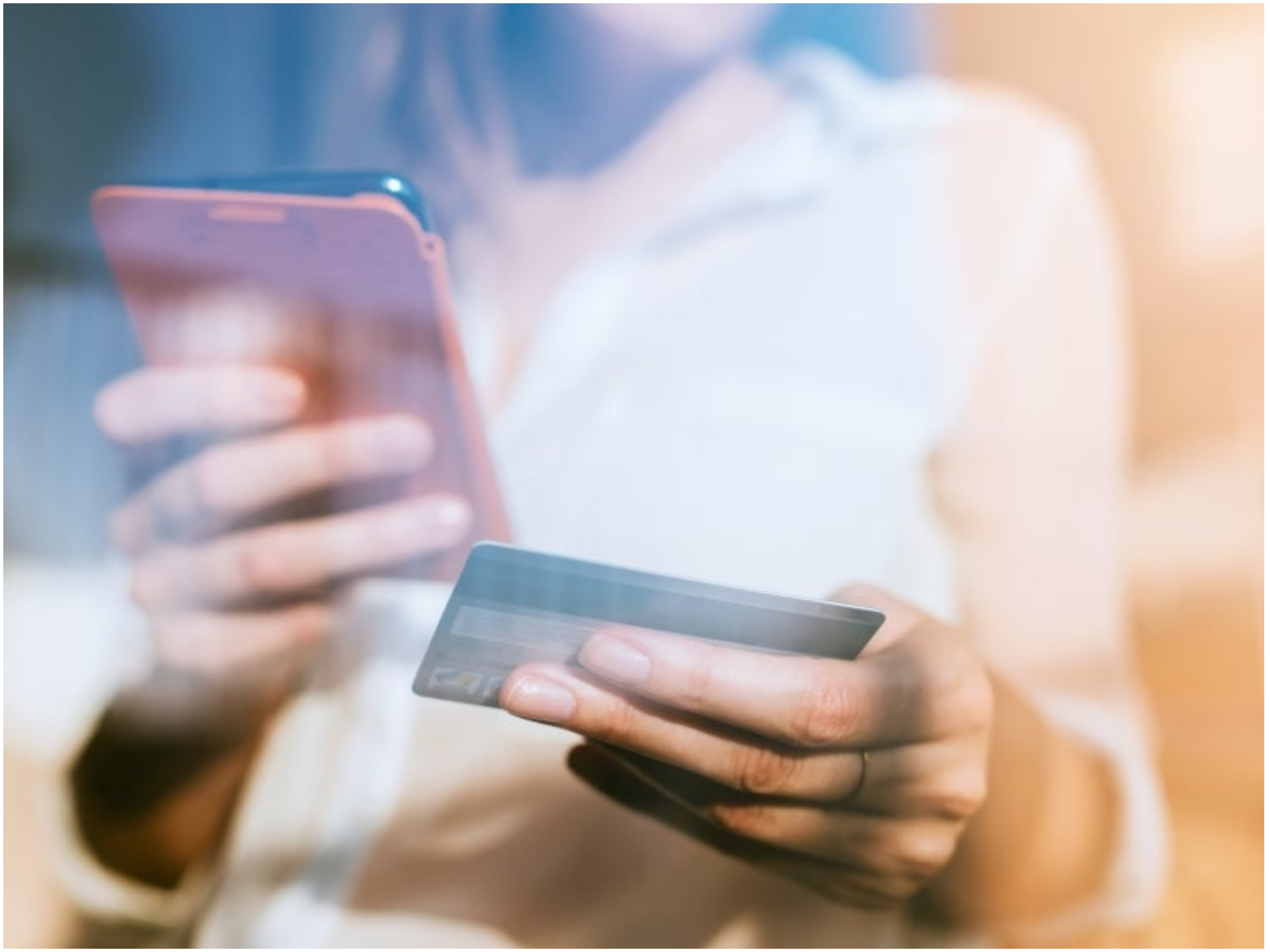

Anyone trying to score tickets to Taylor Swift's "Eras" tour is familiar with the political backlash following Ticketmaster's inability to handle "unprecedented" demand for the concert series. The U.S. Department of Justice (DOJ) swiftly opened an investigation, and 18 months later, Live Nation and Ticketmaster are finally facing the music.

To understand the government's case and what is at stake, it is important to trace the history between the Antitrust Division, Live Nation, Ticketmaster, artists, venues, promoters, and fans across the last three presidential administrations.

The DOJ Antitrust Division and 30 state attorneys general filed sprawling antitrust charges against Live Nation and its subsidiary, Ticketmaster, in the U.S. District Court for the Southern District of New York on May 23, 2024. The lawsuit alleges more than 25 violations of federal and state antitrust laws through a multidecade

scheme to monopolize and unreasonably restrain trade in three interlinked markets: (1) large venues, (2) concert promotion, and (3) ticketing services. Headlining the government's case is its request for a court order to break up the entertainment giant. In a rare move, the suit also demands a "trial by jury" on as many issues as possible.

Obama's Opening Act

In 2010, the Antitrust Division sued to prevent Ticketmaster and Live Nation from merging. According to the complaint, Ticketmaster had been the "dominant ticketing service provider" in the United States for two decades. Live Nation was the "largest concert promoter" in the country and owned "many major amphitheaters." Live Nation stood between the artist and the venue, and Ticketmaster between the concert and the fan.

After investigating the merger, the Antitrust Division filed a complaint alleging the combination "would lead to a high share among providers of primary ticketing for major concert venues." The focus was Live Nation's attempt to enter the ticketing market. The Antitrust Division argued that the merger between the two would result in "less aggressive competition, less pressure on the fees earned by Ticketmaster, and less innovation for venues and fans."

But the government opted not to take the case to trial. Instead, it settled for a hodgepodge of promises to divest Ticketmaster's software platform to a competitor, not retaliate against a venue for using a service other than Ticketmaster, and not threaten to withhold live entertainment events from venues that wanted to use a service other than Ticketmaster.

Unfortunately, the second and third commitments were difficult to enforce, and fans, artists, and venues suffered.

Trump's Intermission

In the second clash between antitrust enforcers and Ticketmaster-Live Nation, federal enforcers highlighted threats and retaliation against venues that wanted to use Ticketmaster's competitors. The defendants were allegedly doing exactly what they promised never to do in exchange for settling the government's merger challenge 10 years earlier.

In one instance, when a music venue decided to use a Ticketmaster competitor that offered a better deal for artists and fans, Live Nation apparently threatened to stop booking shows at that venue. Ticketmaster also informed a different venue that it would no longer "see any Live Nation shows" if it partnered with Ticketmaster's competitors. According to yet another venue, Ticketmaster promised a "nuclear" response if the venue used a competing ticketing service.

However, once again, the Antitrust Division decided not to seek a structural breakup of Ticketmaster and Live Nation, instead doubling down on the "behavioral" solutions that failed the first time around. These remedies included extending the commitment not to retaliate against venues and "monitoring, notice and reporting" obligations.

Biden's Headliner

The government's case features several flavors of anticompetitive conduct: acquiring actual and potential competitors, leveraging control over concert promotion to monopolize the ticketing market, leveraging control over key venues to coerce artists into using Live Nation's promotion service, and exclusive dealing.

Each of these legal theories is firmly grounded in antitrust precedent. First, Supreme Court case law allows the federal government to challenge acquisitions of current or nascent rivals as illegal monopolization under Section 2 of the Sherman Act. These cases can be brought years and even decades after the underlying deals were consummated. Therefore, the Antitrust Division's 2010 failure to pursue an injunction blocking the merger and subsequent 2020 decision not to seek to unwind the merger are not dispositive.

Regarding the second and third theories of harm, threatening and retaliating against third parties that do business with a dominant company's competitors has historically triggered antitrust violations in media markets such as newspapers. The allegations here are that Live Nation weaponized its control over large venues to force artists to use Live Nation as their concert tour promoter. Then, Live Nation leveraged its control over these tours to force venues to sign with Ticketmaster.

If artists opted not to use Live Nation as their concert promoter, they would lose access to large venues needed to support their tours. If venues wanted to use anyone other than Ticketmaster, Live Nation would cut off their access to the premier artists needed to draw fans and fill seats. The result, according to the government, was the enduring monopolies of Live Nation and Ticketmaster in multiple markets despite declining service, sluggish innovation, and astronomical fees.

Fourth, turning to the exclusive-dealing conduct, courts have condemned such arrangements where they "deprive[] rivals … of distribution sufficient to achieve efficient scale, thereby raising costs and slowing or preventing effective entry." Relevant here, the pending lawsuit alleges that Ticketmaster's "long-term exclusive agreements" with terms "ranging from three to 14 years" block rivals from "the only significant channel of distribution" to major venues.

Curtain Call

As with most antitrust actions, this case will not wrap up in a matter of months. Rather, the litigation will unfold over the next several years, which could put management of the pretrial and trial strategy in the hands of new antitrust enforcement leadership, depending on the results of the November 2024 election.

However, this may not make much of a difference. Several cases brought during the Trump administration, including an Antitrust Division lawsuit against Google and a Federal Trade Commission case against Facebook, carried over from Republican to Democratic administrations without losing steam.

The breakup of Live Nation and Ticketmaster is very much on the table. The complaint tells a compelling story of long-standing anticompetitive conduct and illustrates the nexus between that conduct and the need to break up

Live Nation and Ticketmaster.

In its response, Live Nation dismisses the allegation that it wields monopoly power as "absurd" in part because "the company's overall net profit margin is at the low end of profitable S&P 500 companies" compared to companies like Apple. However, this argument ignores that the power to "exclude competition" is another hallmark of monopoly power, and the government spends dozens of pages describing how Live Nation and Ticketmaster have excluded competition in multiple markets for many years. Comparisons to the profitability of large tech companies are unlikely to persuade a jury that Live Nation and Ticketmaster aren't monopolists.

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