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The New DOJ: Lessons Learned from the Ticketmaster Live Nation Decision

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By Alan Meese and Barak D. Richman

The Obama administration's announcement yesterday to approve, with some modifications, the merger between Live Nation and Ticketmaster marked a fittingly undramatic end to what many hoped would be the watershed to a new economic policy. The administration's decision instead reflected a commitment to principle over politics and pragmatism over populism.

Many hoped that the Live Nation-Ticketmaster merger would fall prey to a new economic populism. When the companies announced their plans to merge, some characterized the merger as a consolidation of "entertainment powerhouses" designed to inflate ticket prices and squeeze consumers. Public figures, including none other than Bruce Springsteen, condemned the combination. Members of Congress piled on, characterizing the transaction as a naked combination of industrial titans and demanding action from antitrust enforcers.

The history of antitrust policy is replete with such populist anger towards supposed industrial power, and the Sherman Act itself was largely created in response to a screaming public. Typical demands for rigorous enforcement come from small and technologically obsolete companies resisting the onslaught of new competitive forces. Typical demands for restrained enforcement come from politically-connected professional establishments that disdain competition and decry enforcement as unwanted government interference. This politicization of antitrust, from all ideological corners, rarely results in sound economic policy and has led both to overzealous enforcement, protecting inefficient firms from more efficient rivals, and to permissive restraints, giving sanction to destructive cartels and monopolies.

The Live Nation-Ticketmaster merger would have been another procompetitive victim to an angry public. Our careful analysis of the proposed merger reveals that it is much more a response to Schumpeterian technological change than an effort to concentrate market power. In other words, the companies are combining forces to pursue an innovative business model, one that pursues new consumer demands and responds to the rise of electronic music. It is not an attempt to acquire a stranglehold over an industry that technological change has made increasingly resistant to strangleholds.

The populist anger directed at the proposed merger -- which was in no small part fueled by the companies' smaller competitors who feared having difficulty competing effectively against the new company-- characteristically did not discern the complexities of the industry and evaluate the merger's likely competitive impact. Of course, few in Washington brake for complexity. Which is why it is a relief the Obama administration did.

Despite being ridiculed as "the dismal science," economics is a necessary ingredient to policies that enhance consumer welfare and disperse the plentiful benefits of market competition. Even while the Obama Administration might engage in antitrust saber rattling, its approval the Live Nation-Ticketmaster and the associated consent decree shows the triumph of economic reasoning that is often counterintuitive to policy advocates. Its settlement further extracts concessions that further enhances competition, promotes innovation, and protects consumers. It is the commendable product of careful analysis reflects a deliberate navigation across the minefield of antitrust politicization.

While reasonable minds might differ with both our own analysis of the merger and the administration's conclusion, such differences should focus on the merits the transaction and not rhetoric from politicos. Bruce Springsteen himself admonished all of us to avoid leaping to compulsive conclusions when he observed, *"God have mercy on the man who doubts what he's sure of."* Effective antitrust requires nothing less.

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