



Fall 2023 Case Note

**Anti-Hero or Villain: Analyzing Varying Competition Laws
by Comparing Global Responses to Continued Competition
Concerns Surrounding Ticketmaster after The Eras Tour**

Ashley Watson

Anti-Hero or Villain: Analyzing Varying Competition Laws by Comparing Global Responses to Continued Competition Concerns Surrounding Ticketmaster after The Eras Tour

By: Ashley Watson¹

Antitrust laws in the United States regarding ticket sellers and re-sellers have failed to properly protect consumers and ensure sufficient competition. Ticket sales for Taylor Swift's The Eras Tour demonstrated how the current Ticketmaster and Live Nation monopoly creates a system where consumers have no choice but to deal with website failures, price-gouging, and hidden fees. The original approval of the Ticketmaster and Live Nation merger must be re-evaluated to protect consumer interests and ensure a lack of competition is not resulting in consumer harm. Scholars have written extensively about antitrust law in the United States and beyond, but The Eras Tour provides a unique lens for comparing the effect of competition laws on the public in various jurisdictions. By focusing on this one specific global concert event where the same platform is used to sell tickets across the world, it highlights that competition issues and consumer complaints primarily manifest where antitrust laws have been insufficient at ensuring a presence of significant competitors to keep prices and processes fair.

As the current Biden administration moves towards greater enforcement of antitrust laws in the US, they could learn from the U.K. and EU where Ticketmaster has competition preventing the concerns from reaching the same height that is evidenced in the States. Though the Ticketmaster-Live Nation merger was ultimately approved in the U.K., it was only approved after a determination was made there would be sufficient competition to prevent it from becoming a monopoly. Meanwhile, the U.S. has seen Ticketmaster become a complete monopoly, despite scholars warning about that potential from the early days of the merger proposal. The Eras Tour fiasco highlights Ticketmaster, as the monopoly it is, and either the monopoly needs to be broken up or fervent efforts must be made to introduce new competitors into the market. Through an analysis of the global response to ticket sales surrounding The Eras Tour, this paper will show how legions of private citizens are impacted by antitrust laws that fail to protect them, reaching far beyond the theoretical impact of a monopoly.

I. Introduction: "Nice to Meet You, Where You Been?"²

In November 2022, fans were left fuming after the pre-sale of tickets for the first United States (U.S.) leg of Taylor Swift's The Eras Tour descended into chaos on Ticketmaster's platform.³ Fans took to social media to express their outrage, resulting in numerous U.S. politicians speaking out and an investigation by the U.S. Department of Justice (DOJ) into Ticketmaster's parent company, Live Nation Entertainment, for potential violations of U.S. antitrust laws.⁴ Ticketmaster once again ran into issues when selling tickets for the European leg of the tour in France and the United Kingdom (U.K.), forcing them to pause the public sale in France.⁵ Despite Taylor Swift's global

¹ J.D. Candidate, SMU Dedman School of Law, 2025; Staff Editor for the International Law Review Association.

² TAYLOR SWIFT, *Blank Space (Taylor's Version)*, on 1989 (TAYLOR'S VERSION) (Republic Records 2019).

³ Karli Bendlin, *Taylor Swift's Eras Tour: A Timeline of the Ticketmaster Fiasco*, PEOPLE MAG. (Mar. 29, 2023) [<https://perma.cc/7C6Y-LK2U>] (last visited Oct. 26, 2023).

⁴ *Id.*

⁵ David Mouriquand, *Liberte, Egalite, Pas de TayTay: Taylor Swift concert ticket sales suspended by Ticketmaster France*, EURONEWS (July 11, 2023) [<https://perma.cc/2M7G-HWC4>] (last visited Oct. 26, 2023).

legion of passionate and vocal fans, Ticketmaster has not faced the same swarm of litigation and legislative pushback regarding competition concerns in other jurisdictions.

In this paper, I will first briefly describe select antitrust and competition laws in various Western jurisdictions globally, highlighting key differences. Next, I will explain the circumstances surrounding the 2010 Ticketmaster and Live Nation Entertainment merger in the U.S. and U.K. and the absence of a proposed merger in the European Union. From there, I will detail the rising antitrust concerns the merger created, along with Ticketmaster concerns that extend back decades. Then, I will focus on the response to the Eras Tour Ticketmaster sale meltdown and analyze how differing competition laws resulted in the disproportionate response in the U.S. compared to countries where similar issues arose. Lastly, I will discuss what the U.S. can learn from other countries whose competition laws prevented the same degree of governmental investigation and consumer litigation.

II. Antitrust/Competition Law Overview: “This Is Our Place, We Make the Rules”⁶

A. Brief History of Antitrust Law in the U.S., European Union, and U.K.

Competition laws globally have proliferated in recent years, from only twelve jurisdictions having competition laws in 1970 to over 125 by 2021.⁷ Modern competition laws arose in the 19th century, with the Sherman Antitrust Act of 1890 in the U.S. widely being hailed as the beginning of the modern anti-competition era.⁸ Laws centering around competition arose worldwide, including the European Union’s (EU) 2003 codification of competition laws under articles 101 through 109 in the Treaty of the Functioning European Union (TFEU)⁹ and the U.K. Competition Act of 1998 and Enterprise Act of 2002.¹⁰

The goal of the Sherman Act in the U.S. was to “preserve free and unfettered competition as a rule of trade” and prevent monopolistic business activities.¹¹ Over time, U.S. antitrust laws developed a core objective focused on competition that is highly cautious of market concentration,¹² and today, a focus on consumer welfare, with a more limited focus on price, is the standard, though not without contestation, particularly in relation to digital markets.¹³ The Federal Trade Commission (FTC) and Antitrust Division of the U.S. (DOJ) handle antitrust enforcement.¹⁴

⁶ TAYLOR SWIFT, *Lover, on LOVER* (Republic Records 2019).

⁷ Tom Romanoff, *Comparison of Competition Law and Policy in the US, EU, UK, China, and Canada*, BIPARTISAN POL’Y CENTER (Dec. 16, 2021), [<https://perma.cc/3LRW-7X9E>] (last visited Sept. 28, 2023).

⁸ *Id.*

⁹ Ronit Kreisberger KC, et al., *Competition Regime: EU Procedure, negotiation and enforcement*, PRACTICAL LAW UK: EUR. UNION 1, 2 (2023) [<https://perma.cc/HM37-QFRU>] (last visited Oct. 26, 2023).

¹⁰ Romanoff, *supra* note 6.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *The Federal Government, FED. TRADE COMM’N: GUIDE TO ANTITRUST LAW, THE ENFORCERS* [<https://perma.cc/S797-TXGY>] (last visited Oct. 26, 2023).

The EU's codification of competition laws established the European Commission (EC), which is responsible for functions such as fact-finding, enforcement, and imposing penalties.¹⁵ Competition law in the EU is applied by the Commission and EU courts, focusing on the consideration of integrating a single European market.¹⁶ Member states of the EU have also adopted their own competition laws, modeled after articles 101 and 102 of the TFEU, with domestic enforcement actions undertaken by national competition authorities.¹⁷ The objective of competition laws in the EU is to preserve the functioning of the internal market, thereby promoting effective competition, which enables businesses across Member States to compete on equal footing and incentivizes businesses to offer the best products and prices.¹⁸

Competition laws in the U.K. date as far back as the 14th century.¹⁹ The Enterprise and Regulatory Reform Act in 2013 amended the Enterprise Act of 2002 and created the Competition and Markets Authority (CMA) and Competition Commission (CC).²⁰ A key feature of the U.K.'s competition authority is concurrent powers held by different regulators of key sectors of industry, including the Financial Conduct Authority and the Office of Gas and Electricity Markets carrying competition mandates.²¹ Even before the U.K.'s exit from the EU, they had provisions in place that stipulated EU judgments based on a single market imperative would not necessarily apply.²²

B. Notable Competition Law Differences

While Western competition laws share one ideology centered around economic liberalism or economic neoliberalism, there are differing schools of thought.²³ The key similarities between U.S., U.K., and EU enforcement laws lie in their ultimate goals: to prevent behavior that hinders competition, such as anti-competitive agreements and anti-competitive mergers.²⁴ Unlike the U.S. and EU, which have mandatory merger control regimes, the U.K. is one of a few countries that maintains a voluntary framework.²⁵ Though there are numerous differences between the competition regimes in these jurisdictions, a few are particularly relevant to concerns surrounding Ticketmaster: methods and intensity of enforcement, predatory pricing, and vertical restraints.

It is generally accepted that the U.S.'s approach to competition is more hands-off than the EU's.²⁶ The European approach is more political and centralized.²⁷ The U.S. tends to emphasize consumer

¹⁵ Romanoff, *supra* note 6.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Radostina Parenti, *Competition Policy*, EUR. PARLIAMENT: FACT SHEETS ON THE EUR.UNION (Apr. 2023) [<https://perma.cc/A5SC-GCWZ>] (last visited Oct. 26, 2023).

¹⁹ Bahnidpa Roy, *A Comparative Review of Competition Law Between UK and US*, LAWBOOMI (Dec. 09, 2021) [<https://perma.cc/M5VG-9UCS>] (last visited Oct. 26, 2023).

²⁰ *See* Romanoff, *supra* note 6.

²¹ *Id.*

²² *Id.*

²³ Antonio E. Platsas, *Comparing and Contrasting the EU and US Approach in Competition Law: So Close but So Far*, EU ANTITRUST HOT TOPICS AND NEXT STEPS (2022).

²⁴ *See* Romanoff, *supra* note 6.

²⁵ *See id.*

²⁶ Platsas, *supra* note 22.

²⁷ *See* Sam Bowman et al., *How US and EU Competition Law Differ*, TRUTH ON THE MKT'S (Aug. 09, 2021) [<https://perma.cc/46CG-ZNTN>] (last visited Sept. 28, 2023).

outcomes more, contrasting with the EU’s focus on the nature and fairness of a particular practice.²⁸ In recent years, the EU has taken a more aggressive stance than authorities in other jurisdictions when reviewing comparable situations.²⁹ Likewise, the U.K.’s CMA has increasingly intervened despite not having the same mandatory merger control regimes as those found in the EU and U.S.³⁰ While U.K. and EU enforcement centers around fines, the U.S. imposes both civil and criminal penalties, though some EU Member States have begun to allow criminal penalties regarding certain anti-competition behaviors.³¹

The DOJ defines predatory pricing as “a price reduction that is profitable only because of the added market power the predator gains from elimination, disciplining or otherwise inhibiting the competitive conduct of a rival or potential rival.”³² The American approach to predatory pricing centers acknowledges certain pricing behaviors might improve the experience for the consumer as a result of the lower prices, while the EU’s focus is on the potential of powerful companies to create more concentrated markets, reflecting the differences in the broader focus of their respective anti-competition laws: consumer welfare versus structuralist considerations of the nature and fairness of the practices.³³ Accordingly, the standards in the U.S. limit enforcement authority over such cases, while the EU laws on competition have a much lower threshold.³⁴

Finally, vertical restraints, one of the two types of agreements in antitrust law along with horizontal agreements, highlight the different approaches of the EU, U.K., and U.S.³⁵ Vertical restraints are “agreement(s) undertaken at different levels of production, distribution, or supply.”³⁶ The U.S. approach prohibits only “unreasonable” restraints on competition, allowing the fact-finder to distinguish between restraints that have anti-competitive effects and are harmful to the consumer with those that benefit the consumer and invigorate competition.³⁷ Alternatively, competition laws in the EU and U.K. treat certain vertical constraints, particularly price-related vertical constraints, with significant seriousness, further emphasizing their precautionary approach to competition.³⁸ Understanding these key differences is vital to understanding the different outcomes and approaches of the U.S., EU, and U.K. surrounding the Ticketmaster controversy.

III. Ticketmaster Corporate History and Merger: “They’re Bringing Up My History but You Weren’t Even Listening”³⁹

²⁸ *See id.*

²⁹ Romanoff, *supra* note 6.

³⁰ *See id.*

³¹ *Id.*

³² Patrick Bolton, et al., *Predatory Pricing: Strategic Theory and Legal Policy*, U.S. DEP’T OF JUSTICE: ANTITRUST DIV. [<https://perma.cc/PEW9-9A2A>] (last visited Sept. 28, 2023).

³³ *See* Bowman, *supra* note 26.

³⁴ *Id.*

³⁵ Molly Donovan, *Vertical Constraints*, WINSTON & STRAWN (Dec. 10, 2019) [<https://perma.cc/FJJ9-V52S>] (last visited Oct. 19, 2023).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Bowman, *supra* note 26 and Robert Bell, *Where New UK and EU Vertical Agreements Rules Diverge*, LAW360 (July 29, 2022) [<https://perma.cc/CU56-PUNJ>] (last visited Oct. 26, 2023).

³⁹ TAYLOR SWIFT, *Lavender Haze*, on MIDNIGHTS (Republic Records 2019).

Ticketmaster was birthed out of the success of Ticketron, the first successful electronic box office in the U.S.⁴⁰ and though scandals surrounding Ticketmaster proliferated between the 1980s and 2010s, the U.S. approved a merger between Ticketmaster and the world's largest concert promoter, Live Nation, in 2010, despite significant opposition.⁴¹ Though there was some overlap, Live Nation's primary business centered on live entertainment promotion while Ticketmaster's was in ticket sales distribution, and as a result of differing primary businesses, the merger was mainly a vertical merger.⁴² While U.S. scholars and economists tend to view vertical mergers as rarely posing competitive risks, critics expressed fears prior to the merger that the merged entity would take advantage of its "power in one market for anticompetitive gain in the other."⁴³ Horizontal merger concerns also existed, with the merger eliminating a rival that could have challenged Ticketmaster's primary ticketing industry dominance had the merger never occurred.⁴⁴ U.S. consumer groups vocally opposed the merger, with several writing to the DOJ to express that the merger would create a "virtual monopoly" in the ticketing industry and create a single entertainment giant.⁴⁵ However, the DOJ ultimately approved the merger after Ticketmaster made concessions, including an agreement with antitrust officials in the U.S. to divest certain assets.⁴⁶

The journey to merge was more fraught in the U.K., with the CC initially finding that the proposed merger would substantially lower competition in the ticketing market.⁴⁷ Following their initial findings, the CC proposed remedies such as blocking the merger altogether or, similarly to the U.S., requiring Ticketmaster or Live Nation to sell some of their operations in the U.K.⁴⁸ However, in their final report released in December 2009, the CC concluded that the proposed merger would be unlikely to lessen competition in the market significantly and they granted unconditional clearance of the merger.⁴⁹ Though certain scholars at the time suggested the Ticketmaster Live Nation merger would likely attempt clearance by the EC in the EU⁵⁰, it does not appear the EC ever considered such a proposal.

⁴⁰ For more information on how Ticketmaster became a monopoly, see Slidebean, *How Ticketmaster became a monopoly*, MEDIUM (Jan. 30, 2023) [<https://perma.cc/8Z88-H3KX>] (last visited Oct. 26, 2023).

⁴¹ See Maureen Tkacik and Krista Brown, *Ticketmaster's Dark History*, THE AM. PROSPECT (Feb. 2023) [<https://perma.cc/EJT7-X6JB>] (last visited Oct. 26, 2023) and Jeremy Pelofsky and Yinka Adegoke, *Live Nation, Ticketmaster merge; agree to US terms*, REUTERS (Jan. 25, 2010) [<https://perma.cc/MYM6-JSWP>] (last visited Oct. 26, 2023).

⁴² Alan J. Meese and Barak D. Richman, *A Careful Examination of the Proposed Live Nation-Ticketmaster Merger* ii, 2 (WILLIAM & MARY LAW SCH. Research Paper No. 09-41, 2009), [<https://perma.cc/3LRW-7X9E>] (last visited Sept. 28, 2023).

⁴³ *Id.* at 6.

⁴⁴ Diana L. Moss, *Re: Amended Final Judgement: U.S. v. Ticketmaster Entertainment Inc., and Live Nation Entertainment, Inc.*, AM. ANTITRUST INST. (Feb. 4, 2020).

⁴⁵ *Consumer Groups Oppose Ticketmaster Live Nation Merger*, NAT'L CONSUMER LEAGUE (Sept. 28, 2009) [<https://perma.cc/Y8G8-PXEC>] (last visited Oct. 26, 2023).

⁴⁶ Pelofsky, *supra* note 40.

⁴⁷ See Clifford Chance LLP, *Live Nation/Ticketmaster: merger approval*, WESTLAW UK, PRAC. LAW (May 26, 2010) [<https://perma.cc/K7UH-R6FQ>] (last visited Oct. 26, 2023).

⁴⁸ See Steve McGrath, *U.K. Regulator Objects to Ticketmaster Deal*, WSJ (Oct. 9, 2009) [<https://perma.cc/MMJ5-MPPZ>] (last visited Oct. 26, 2023).

⁴⁹ *Ticketmaster and Live Nation: A report on the anticipated merger between Ticketmaster Entertainment, Inc and Live Nation, Inc.* COMPETITION COMM'N 1, 7 (Dec. 22, 2009).

⁵⁰ See Juliana Koranteng, et al., *LN/Ticketmaster likely to need EU approval*, THE HOLLYWOOD REP.: BUS. NEWS (Feb. 13, 2009) [<https://perma.cc/77YK-2A56>] (last visited Oct. 26, 2023).

IV. Emerging Ticketmaster Concerns: “It’s Been a Long Time Coming”⁵¹

The outcry in the U.S. following Ticketmaster’s disastrous sale and pre-sale of Eras Tour tickets is nothing new. Scandals in the 1990s resulted in legislators, consumer advocates, competitors, and attorneys trying and failing to expose, disband, or regulate Ticketmaster.⁵² During this period, Ticketmaster had ninety percent of the U.S. tour circuit in their grasp, allowing for practices that frustrated fans and artists alike.⁵³ Eddie Vedder and his bandmates in the well-known band “Pearl Jam” began a crusade against Ticketmaster that led to the band boycotting Ticketmaster during their 1994 tour, forcing them to ultimately cancel their tour as so few non-Ticketmaster venues were available.⁵⁴

In 1994, Pearl Jam brought suit against Ticketmaster, alleging that Ticketmaster had a “virtual absolute monopoly on the distribution of concert tickets.”⁵⁵ This prompted various lawsuits from concertgoers against Ticketmaster across the country, resulting in a single class action that the Eastern District of Missouri ultimately dismissed.⁵⁶ However, the courts never needed to evaluate the substantive antitrust issues alleged, as a qualified plaintiff did not exist as is necessary to bring suit under an antitrust injury claim.⁵⁷ Pearl Jam was not alone in their frustrations with Ticketmaster, and following the sale of tickets for Bruce Springsteen’s 2009 tour, Springsteen and his tour manager called out Ticketmaster, resulting in The New York Attorney General launching an investigation into Ticketmaster and the formation of a Senate Subcommittee on Antitrust, Competition, and Consumer Rights.⁵⁸ For decades preceding the merger, fans, artists, and legislators alike made their concerns with Ticketmaster well known.

Following the 2010 merger of Ticketmaster and Live Nation, litigation and public outcry increased globally. Suits emerged in the U.S. surrounding the merger, including *United States et al. v. Ticketmaster Entertainment, Inc.*⁵⁹ in the U.S. District Court for the District of Columbia, which failed to prevent or undo the merger. In the U.K., German Ticketing Company CTS Eventim AG challenged the CC’s approval of the merger, though the CC ultimately affirmed its position.⁶⁰ In 2018, the LA Times published an op-ed arguing Ticketmaster was exploiting the system, emphasizing the absence of any strong competitors in the U.S.⁶¹ 2019 marked another big year

⁵¹ TAYLOR SWIFT, *Miss Americana & the Heartbreak Prince*, on LOVER (Republic Records 2019).

⁵² Tkacik, *supra* note 40.

⁵³ See Ed Power, *How Pearl Jam took on the music industry and lost – but predicted the future*, THE INDEP. (July 06, 2019) [https://perma.cc/MUP2-NYEJ] (last visited Oct. 23, 2023).

⁵⁴ Heather K. McShain, *Still Alive: Antitrust Injury Remains a Part of the Standing Inquiry under Sections 4 and 16 of the Clayton Act Despite Three Recent Appellate Court Decisions*, 75 NOTRE DAME L. REV. 761, 764 (1999).

⁵⁵ Charles Bilodeau, *Pearl Jam v. Ticketmaster: A Holy War on Reality*, FOUND. FOR ECON. EDUC. (May 1, 1995) [https://perma.cc/49Z7-Y9RH] (last visited Oct. 23, 2023).

⁵⁶ See McShain, *supra* note 53.

⁵⁷ *Id.* at 765-66.

⁵⁸ See Mitchell Peters, *Ticketmaster Settles Springsteen-Sparked Attorney General Probe*, BILLBOARD (Feb. 23, 2009) [https://perma.cc/TA9X-SGJ9] (last visited Oct. 26, 2023) and John Street, *From Gigs to Giggs: politics, law, and live music*, SOC. SEMIOTICS, SCHOOL OF POL. SOC. AND INT’L STUDIES, UNIV. OF EAST ANGLIA 575, 583 (2012).

⁵⁹ *United States et al. v. Ticketmaster Entertainment, Inc. et al., Comments and Response on Proposed Final Judgment*, ANTITRUST DIV.: NOTICE (June 29, 2010) [https://perma.cc/A66V-MQ6W] (last visited Oct. 26, 2023).

⁶⁰ See Mitchell Peters, *CTS Eventim Challenges Live Nation-Ticketmaster U.K. Ruling*, BILLBOARD (Jan. 24, 2010) [https://perma.cc/B6A7-5CB9] (last visited Oct. 26, 2023).

⁶¹ See Bill Pascrell Jr., *Op-Ed: Everyone’s worst fears about the Live Nation-Ticketmaster merger have come true*, L.A. Times (May 17, 2018) [https://perma.cc/Z2RG-D7TK] (last visited Oct. 26, 2023).

for Ticketmaster’s dealing with the U.S. government with a prior fight between Ticketmaster and the DOJ resulting in an extension of a consent agreement from the deal’s approval, barring Ticketmaster from retaliating against concert venues from using other ticketing companies.⁶² However, the outcry following the merger peaked following the Eras Tour ticket sales in the U.S., with a curious and illuminating absence of similar uproar in the U.K. and EU.

V. Eras Tour Fiasco and Beyond: “Now We’ve Got Bad Blood”⁶³

A. Responses to the Eras Tour Ticket Sale Meltdown

Tickets for Taylor Swift’s long-awaited and highly anticipated Eras Tour first went on sale on November 15, 2022, for fans who had received “verified fan codes.”⁶⁴ Quickly, the pre-sale descended into chaos, with disappointed fans taking to social media to share their frustrations.⁶⁵ One fan reported attempting to check out over forty times and being charged thousands of dollars despite not receiving tickets.⁶⁶ Legislators on both sides of the aisle have voiced concerns about Ticketmaster, including Republican Senator Josh Hawley, who stated Ticketmaster “worries” him and that he fails to see “how consumers win out of this exchange,” and, shortly after the Eras sale uproar, Democratic Senator Amy Klobuchar, chair of the Senate antitrust panel, stated that she planned a hearing to address the matter.⁶⁷

Federal action ensued, with a DOJ investigation opening on November 18, 2022, and Congress announcing an antitrust hearing specifically relating to the Eras tour.⁶⁸ On December 6, 2022, a bipartisan group of lawmakers in the House called on Ticketmaster to provide additional information regarding concerns of unfair or deceptive practices, citing the “chaotic pre-sale of tickets for Taylor Swift’s upcoming concert tour.”⁶⁹ On January 24, 2023, just a little over two months from the debacle, the Senate Judiciary Committee held the Ticketmaster hearing.⁷⁰ April 2023 saw the announcement of a bill, the Unlock Ticketing Market Act, aimed at improving competition in live event ticket markets, which remains in committee.⁷¹

⁶² Diane Bartz, *Analysis-Taylor Swift Ticket Snafu Turns up Regulatory Heat on Ticketmaster*, US NEWS (Nov. 18, 2022) [<https://perma.cc/5SDM-7MAW>] (last visited Oct. 26, 2023).

⁶³ TAYLOR SWIFT, *Bad Blood (Taylor’s Version)*, on 1989 (TAYLOR’S VERSION) (Republic Records 2019).

⁶⁴ Bendlin, *supra* note 2.

⁶⁵ *See id.*

⁶⁶ *See* Rachel Treisman, *Dozens of Taylor Swift fans sue Ticketmaster in its ticket sale fiasco*, NPR (Dec. 6, 2022) [<https://perma.cc/X3XS-G3C4>] (last visited Oct. 26, 2023).

⁶⁷ Anais Lopez, *Ticketmaster, Taylor, and the Takedown of the Modern Monopoly?*, GEORGETOWN PUB. POL’Y REV. (Jan. 26, 2023) [<https://perma.cc/RSU5-5TGJ>] (last visited Oct. 26, 2023) and Bartz, *supra* note 61.

⁶⁸ *See* Bendlin, *supra* note 2.

⁶⁹ *See* *Lawmakers launch investigation of Ticketmaster’s ‘potential unfair or deceptive practices’ following Taylor Swift ticket sale debacle*, WEBSITE FOR CONGRESSWOMAN DIANA DEGETTE (Dec. 6, 2022) [<https://perma.cc/LUJ6-JH8Y>] (last visited Oct. 26, 2023).

⁷⁰ Bendlin, *supra* note 2.

⁷¹ *See* *May Antitrust Bulletin: Top of Mind Global Antitrust Issues*, SIDLEY AUSTIN LLP (May 30, 2023) [<https://perma.cc/88SU-JNBS>] (last visited Oct. 26, 2023).

Ultimately, the FTC proposed new regulations, including a rule that would regulate added fees.⁷² As a likely result of the forces of the FTC and the public campaign by “Swifties,” Ticketmaster, joined by SeatGeek and Live Nation, announced it would begin disclosing fees upfront in June 2023.⁷³ A former FTC official stated, “It’s all about Taylor Swift,” when discussing cracking down on Ticketmaster.⁷⁴ Recently, Politico has reported the potential of a DOJ lawsuit against Ticketmaster by the end of this year, claiming Ticketmaster is abusing its power, which if successful, could lead to a breakup of the company.⁷⁵

Fans have reacted aggressively as well, with a group of fans bringing suit against Ticketmaster in December of 2022 in California for anti-competitive practices that resulted in higher prices and complete domination of the ticketing industry.⁷⁶ The suit also claimed that due to Ticketmaster’s agreements with large stadiums, stadiums necessary for the Eras Tour, Taylor Swift had no choice but to work with Ticketmaster.⁷⁷ It is likely that if Swift attempted to tour without Ticketmaster, it could result in a situation similar to Pearl Jam’s forced tour cancellation in 1994. Similar suits have been brought across the U.S., including lawsuits in Michigan and Texas.⁷⁸ In fact, a law firm of self-professed “Swifties” has created a website solely dedicated to taking down Ticketmaster and providing fans with legal support to sue Ticketmaster in a range of jurisdictions.⁷⁹

The sale of tickets in the U.K. and EU for the Eras Tour was not immune to the issues that had plagued the U.S. In France, the website saw such significant structural issues when going live for the sale, that ticket sales were put on an indefinite pause.⁸⁰ Similarly, fans in the U.K. faced a crashing site, inflated resale prices, and a waiting room that malfunctioned.⁸¹ These problems matched many of the problems U.S. fans had faced previously.⁸² While one Welsh Member of Parliament demanded action against ticket resellers following the sale “as a father of a ‘Swiftie’,”⁸³ the EU and U.K. response has not reached even a fraction of the same hysteria that occurred in the U.S.

B. Analysis

⁷² See Owen Tucker-Smith, *How Biden and Taylor Swift beat Ticketmaster*, L.A. TIMES (June 15, 2023) [https://perma.cc/AZ25-L553] (last visited Oct. 9, 2023).

⁷³ See *id.*

⁷⁴ *Id.*

⁷⁵ See Josh Sisco, *Ticketmaster could face new legal threat this fall, sources say*, POLITICO: TECH. (July 28, 2023) [https://perma.cc/HPS9-E58X] (last visited Oct. 26, 2023).

⁷⁶ See Jennifer Korn et al., *Taylor Swift fans take Ticketmaster to court over ticketing chaos*, CNN BUS. (Mar. 27, 2023) [https://perma.cc/U2WJ-7MRE] (last visited Oct. 26, 2023).

⁷⁷ *Id.*

⁷⁸ See George McIntyre, *Michigan Taylor Swift Fans Join Lawsuit Against Ticketmaster After Eras Tour Debacle*, WCRZ (June 7, 2023) [https://perma.cc/ZK9T-2TE5] (last visited Oct. 15, 2023) and *About, TAKE DOWN TICKETMASTER* [https://perma.cc/Z97D-L7U4] (last visited Oct. 13, 2023).

⁷⁹ See *About, TAKE DOWN TICKETMASTER* [https://perma.cc/Z97D-L7U4] (last visited Oct. 13, 2023).

⁸⁰ Mouriquand, *supra* note 4.

⁸¹ Mary Whitfill Roeloffs, *Eras Tour Headaches Take U.K.: Taylor Swift Fans Complain About Website Malfunctions, Scalpers as Tickets Released*, FORBES (July 10, 2023) [https://perma.cc/PS35-F6R8] (last visited Oct. 26, 2023).

⁸² *Id.*

⁸³ See *Welsh MP demands action to protect ‘our daughters’ from Taylor Swift ticket resellers*, NATION CYMRU: CULTURE (July 14, 2023) [https://perma.cc/HV9L-FQW9] (last visited Oct. 26, 2023).

The comparatively minor reaction in the EU and U.K. is not to say that the EU and U.K. haven't called for investigations into Ticketmaster recently. Dutch politicians called for an unfair competition investigation into Ticketmaster in 2023, following the botched sale of tickets to the popular music festival, Lowlands.⁸⁴ However, the Dutch Authority for Consumers & Markets has not launched an investigation and their previous investigation in 2016 did not find illegal behavior by Ticketmaster.⁸⁵

A key distinction between the U.S. and the U.K. and EU is the wider range of ticket providers.⁸⁶ The CMA in the U.K. stated in a 2022 report that a “variety of channels” exist for tickets to live events.⁸⁷ Furthermore, additional steps have been taken to further protect competition, including the recent enactment of the Digital Services Act in the EU that allows for increased regulation of ticket resale sites.⁸⁸

While ticketing companies in the U.S. work to gain exclusive contracts with venues, essentially forcing the artists who want to use the venue into partnering with them, U.K. venues have exclusive ticketing platforms at a much lower frequency, resulting in lower charges to customers.⁸⁹ Additionally, prior to the Eras Tour, Ticketmaster in the U.S. was able to hide a number of fees, something that does not occur to the same degree in the U.K.⁹⁰ Furthermore, the U.K.'s CMA has been taking action well before the Eras Tour, including a 2018 wave of legal backlash across Europe that resulted in Ticketmaster shutting down two prominent resale websites in the U.K. and EU.⁹¹

Following the uproar in the U.S., American antitrust scholar Dr. Diana Moss explained the Live Nation-Ticketmaster merger was “presumptively illegal” from the beginning due to the vertical integration incentivizing Live Nation-Ticketmaster to keep all business within their systems.⁹² The Eras response in the U.S. served as a “catalyzing event,” bringing the advocacy against Live Nation-Ticketmaster from various antitrust organizations over the last decade to heightened prominence.⁹³ Though the 2010 merger may not have prevented all of the issues fans faced when attempting to buy tickets, it is reasonable to infer that selling tickets would have been more

⁸⁴ Itir Yidiz, *European Politicians Call For Investigation Of Ticketmaster*, TICKETNEWS: INDUSTRY (2023) [https://perma.cc/BJ2H-J4YJ] (last visited Oct. 26, 2023).

⁸⁵ See Saskia Bierling, *ACM sees no reason for further investigation into resale tickets*, AUTH. FOR CONSUMERS & MKT'NS: PUBL'NS (June 08, 2016) [https://perma.cc/Y92F-5KU9] (last visited Oct. 27, 2023).

⁸⁶ See Liam O'Dell, *Can Taylor Swift fans break the Ticketmaster monopoly? What happened with the 2023 Eras tour sale*, THE STANDARD: EVENING STANDARD REP. (Nov. 23, 2023) [https://perma.cc/V2YN-FSZV] (last visited Oct. 26, 2023).

⁸⁷ *Id.*

⁸⁸ See Genevieve Lewis, *Europe's live performance sector calls for tougher regulations*, TICKETING BUS. NEWS: FEATURED NEWS (Mar. 11, 2022) [https://perma.cc/9XUJ-JNP2] (last visited Oct. 26, 2023).

⁸⁹ Mark Dent, *The sneaky economics of Ticketmaster*, THE HUSTLE (Dec. 10, 2022) [https://perma.cc/9W8E-LCER] ((last visited Oct. 26, 2023).

⁹⁰ *Id.*

⁹¹ See Matthew Hughes, *Ticketmaster to close its loathed European resale sites*, THENEXTWEB.COM (Aug. 13, 2018) [https://perma.cc/E486-GSMJ] (last visited Oct. 26, 2023).

⁹² Justin Curto, *What would Breaking Up Ticketmaster-Live Nation Actually Do?*, VULTURE (Nov. 21, 2022) [https://perma.cc/BK3K-ZW9M] (last visited Oct. 26, 2023).

⁹³ *Id.*

competitive, and the increased competition would have incentivized companies to prevent blunders that would result in a loss of customers.⁹⁴

Though Europe and the U.K. have Ticketmaster, they don't have a Ticketmaster in an equivalent sense to the U.S., where one company completely dominates the market. Europe has competition, and as a result, ticket prices are lower.⁹⁵ In fact, as concert ticket prices skyrocket in the U.S., some fans choose to pay for airfare and a European concert ticket to see their favorite artists.⁹⁶ However, some European countries, while still noting Ticketmaster is but one of many options, still worry Ticketmaster is becoming the domineering player in the industry.⁹⁷ This raises concerns that current competition laws in Europe may have been able to fend off a Ticketmaster monopoly to the same extent seen in the United States for now, but they could soon face the same challenges.

These differing competition concerns in Western jurisdictions surrounding Ticketmaster after the Eras Tour, despite fans globally facing similar issues with the sale process, highlight the monopoly problem in the U.S. that scholars like Dr. Moss have been voicing for over a decade. The significant reactions from fans and lawmakers in the U.S. are indicative of already present fears surrounding the ticket monopoly and antitrust concerns generally, with the Eras Tour serving as a welcomed excuse to regulate with the support of the people. In contrast, the EU and the U.K. do not deal with a monopoly of the same extent, and though frustrated by Ticketmaster they may be, their competition laws have thus far more effectively served to achieve their designed end goals.

VI. The Future of Ticketmaster in Crisis: “We Are Never Ever, Ever, Ever Getting Back Together – Like, Ever”⁹⁸

Recently, there has been increased pushback against the consumer welfare goals in U.S. antitrust laws, including pushback from Lina Khan, the current Chair of the FTC.⁹⁹ Additionally, President Biden has prioritized antitrust reform and has appointed progressives to the DOJ and FTC.¹⁰⁰ However, despite the fact the FTC under Khan has aggressively gone after big tech, the courts have largely disagreed due to a persisting belief in the consumer welfare standard.¹⁰¹ While the swift pushback on Ticketmaster in the last year has resulted in some positive changes, such as a smoother ticket sale process for Beyonce's Renaissance Tour, many of the underlying problems remain.¹⁰² Positively, the present U.S. DOJ is different than when it approved the merger in 2010,

⁹⁴ See Marc Jarsulic, *3 Antitrust Lessons From the Taylor Swift Ticketmaster Debacle*, AM. PROGRESS (Nov. 22, 2022) [<https://perma.cc/9VM5-CE2S>] (last visited Oct. 27, 2023).

⁹⁵ *Id.*

⁹⁶ See Anna Fleck, *U.S. Music Lovers Fly to Europe for Cheaper Tickets*, STATISTA: LIVE MUSIC (July 7, 2023) [<https://perma.cc/4LZJ-JHRF>] (last visited Oct. 26, 2023).

⁹⁷ See Sofia Chesnokova, *Cities in Czech Republic benefiting from the monopoly, Ticketmaster*, 24HOUR J. (Feb. 1, 2023) [<https://perma.cc/U4U9-NWMB>] (last visited Oct. 26, 2023).

⁹⁸ TAYLOR SWIFT, *We Are Never Ever Getting Back Together (Taylor's Version)*, on RED (TAYLOR'S VERSION) (Republic Records 2019).

⁹⁹ See Nilay Patel, *Taylor Swift vs. Ronald Reagan: the Ticketmaster story*, THE VERGE (Mar. 21, 2021) [<https://perma.cc/7JUG-7H7E>] (last visited Oct. 26, 2023).

¹⁰⁰ *See id.*

¹⁰¹ *See id.*

¹⁰² *See id.*

demonstrated by its increased willingness to file antitrust lawsuits against large companies.¹⁰³ It remains to be seen if the DOJ will file a lawsuit against Ticketmaster this year.¹⁰⁴

It appears the U.S.'s approach to competition concerns, in prioritizing consumer welfare, when evaluated against the U.K. and EU, is likely harming the consumer in the end. Outside the ticketing industry, numerous sectors of the U.S. economy face significant problems regarding disproportionate market power.¹⁰⁵ Should U.S. "Swifties" continue their mobilization, Ticketmaster, and perhaps the failing consumer welfare approach to antitrust, could soon meet their end.

¹⁰³ Bartz, *supra* note 61.

¹⁰⁴ *See* Sisco, *supra* note 74.

¹⁰⁵ Jarsulic, *supra* note 93.