

## **AGs' Win Over Live Nation Leaves DOJ Watching From The Side**

By **Bryan Koenig**

*Law360 (April 16, 2026, 8:35 PM EDT)* -- Live Nation Entertainment Inc.'s across-the-board trial rout by 34 state attorneys general underscores the ascendancy of state antitrust enforcers looking to fill perceived enforcement gaps left by the U.S. Department of Justice during President Donald Trump's second term.

Antitrust observers said a New York federal jury's Wednesday verdict finding the company liable for monopolizing ticketing services to major concert venues makes clear that state attorneys general have become increasingly independent in the face of a Trump-era DOJ that has shown a heavy predilection to negotiate antitrust settlements rather than pursue enforcement actions through trial.

The verdict also casts the DOJ's settlement with Live Nation, only a week into trial, into a harsh light. The state attorneys general that continued the case deemed the settlement insufficient and rejected an offer to set aside \$280 million for state claims.

The outcome also provides fuel for Democrats who have cast the DOJ's Antitrust Division as corrupt for allegedly choosing to ignore their own staff's recommendation in favor of lobbyists who have curried favor with the White House.

"It is heartening to see the states carry forth the important task of enforcing the antitrust laws. It is simultaneously sad to see the Department of Justice relegated to the role of congratulating the victorious states as a quitter right before the finish line. I hope that the remedies will be serious and meaningful, unlike the DOJ's surrender and settlement," Darren Bush, a University of Houston Law Center professor and former Antitrust Division trial attorney, said in a statement.

After roughly six weeks of trial, the jury sided with the state enforcers on every question presented to them on allegations that Live Nation harmed competition in the live entertainment sector by willfully monopolizing ticketing services to major concert venues and unlawfully tying artists' use of large amphitheaters to Live Nation's promotional services. Jurors also found that Live Nation and its Ticketmaster subsidiary violated several state laws and engaged in unlawful conduct that harmed competition in 33 states and Washington, D.C., saying residents in a subset of those jurisdictions were overcharged by \$1.72 per ticket.

The win confirms that both federal enforcers and corporate defendants should view state attorneys general as just as important for antitrust law as their peers at the DOJ and Federal Trade Commission, according to James A. Keyte, director of the Fordham Competition Law Institute and a partner at Boies

Schiller Flexner LLP.

"It emboldens those state AGs that really want to establish themselves as co-equal enforcers. This is confirmation that it is quite doable," Keyte said.

How many millions of tickets the \$1.72 overcharge applies to will now be up to U.S. District Judge Arun Subramanian. The judge has multiple questions he still must answer, including on Live Nation's motion for judgment in its favor and an upcoming remedies phase where the state enforcers are expected to seek the divestiture of Ticketmaster or some other structural relief.

"I would expect they're going to go for the full jugular and try to get a breakup," Abiel Garcia, a Los Angeles-based partner at Kesselman Brantly Stockinger LLP and a former antitrust attorney in the California attorney general's office, said in an interview.

Live Nation has vowed to fight on and appeal any final loss, which could further stretch out the case by years, depending on the process at the Second Circuit and any potential bid for U.S. Supreme Court intervention.

In the short-term, it's likely to resist any bid for a breakup by pointing to the DOJ settlement calling for Live Nation to offer a stand-alone version of Ticketmaster's ticketing technology system that online ticketing rivals can use. It's unclear how much weight that settlement will carry with a judge who reacted with anger to his last minute notice of the deal, which still requires his separate approval after a public comment period.

"In the normal course, you would expect the DOJ to get a lot of deference," said Christopher Renner, a partner at Dhillon Law Group and former FTC attorney. "But here you might get a different outcome."

Kenneth Dintzer, a Crowell & Moring LLP partner who joined the firm in 2024 after more than 30 years with the Antitrust Division, said that the settlement in some ways could be a boon to the states, at least as they seek damages.

The offer to set aside \$280 million for state claims "effectively created a floor that whatever happened in the trial, they had already committed to what's in the term sheet," Dintzer said, meaning that the states are now "playing with house money," and simply seeking more, at least in terms of damages.

Despite criticisms of the DOJ deal, Carl Hittinger, a partner with BakerHostetler's antitrust and competition practice, argued there's reason to believe the DOJ was earnest in its willingness to strike a deal with Live Nation.

The department, he said, was likely seeking immediate relief for consumers instead of taking its chances and seeking a more extensive remedy that would still be years away. The state enforcers, he said, are "lucky they won."

"They could have lost that at trial," Hittinger said. "And that would have put everything in jeopardy."

Also weighing on the DOJ settlement is the fact that it twice before cut deals over the Ticketmaster property, in 2010 when the department first cleared the purchase of the company and then in 2019 when it imposed new conditions based on allegations that Live Nation had shirked those original obligations.

The DOJ's midtrial deal requires the divestiture of exclusive, long-term booking agreements that Live Nation controls for at least 13 amphitheaters and implements a cap on certain ticketing service fees, among other provisions.

As for the envisioned settlement fund of more than \$280 million to be used for state claims, DOJ officials had hoped that at least 10 state enforcers from the coalition of 40 attorneys general would sign onto the deal. But only a handful did, leaving a bipartisan coalition of 33 states and Washington, D.C., to push forward with a tacit rebuke to the DOJ settlement they considered insufficient.

"No corporation should be allowed to illegally monopolize an industry, but that is exactly what Live Nation has done with its anticompetitive scheme to control concert prices and take advantage of fans, venues, and music artists," Texas Attorney General Ken Paxton said in a statement following Wednesday's verdict. "Today, we successfully secured a verdict against Live Nation holding it liable for its unlawful actions. We will continue to pursue every possible remedy under the law to hold the company accountable, secure civil penalties, and restore fairness in the live entertainment industry."

Paxton's statement left the DOJ and its settlement entirely unmentioned. While the states and the DOJ had sued together in 2024, the statement referred only to the state coalition.

Observers note that the DOJ's settlement left state enforcers scrambling to adjust and take the reins themselves. They turned to outside counsel, bringing on Jeffrey Kessler of Winston & Strawn LLP to take the lead in what may be a reflection both of the challenges of pursuing high stakes antitrust litigation against well-heeled corporate defendants, and of their increasing willingness to strike out on their own when dissatisfied with federal enforcers, who've traditionally played the lead in antitrust enforcement.

"It appears that states on both ends of the political spectrum are willing to step in and bear the costs to litigate big cases to verdict, including by hiring outside counsel," said Yetter Coleman LLP partner Tyler Young.

The DOJ, which had defended the settlement in part by arguing that a divestiture was unlikely, for its part has cheered on the state enforcers.

"This is a fantastic outcome for the American people. DOJ and some states settled their case and got instant relief. The remaining states received a liability finding and will now move on to the next phase of a remedies trial. Everyone but Live Nation wins with this scenario," Omeed Assefi, the acting Assistant Attorney General for Antitrust, said in a statement Wednesday.

Assefi has been back leading the Antitrust Division since February after the abrupt termination of its U.S. Senate-confirmed head, Gail Slater. Slater's ouster has heightened scrutiny of the DOJ's antitrust enforcement, which, in addition to the Live Nation deal, has drawn fire for its controversial settlement clearing a Hewlett Packard Enterprise settlement and its clearance of Nexstar Media Group Inc.'s purchase of Tegna Inc. and drawn accusations of corruption.

"Congrats to the mighty state AG coalition that stood behind this case. You made antitrust history today. You fought the good fight, you finished the race, and you kept the faith," Slater said in a Wednesday post on X celebrating the Live Nation verdict.

Others have offered more direct criticism of the DOJ. That's included Roger Alford, a Notre Dame Law

School professor who served as Slater's top deputy until he was fired over the summer, a termination the DOJ claims was for insubordination but that he has said came amid his criticism of the HPE settlement as borne of improper lobbying influence.

"This was a massive win for the state AGs and an historic miss for the DOJ. The DOJ had the talent, the material, and the audience. It just lacked leadership with the courage to step on stage," Alford said in a statement.

In an interview with Law360, Alford said the outcome here may give the DOJ pause on striking deals favorable to the defendant in future conduct cases, where the potential for millions or even billions of dollars in damages could incentivize state attorneys general to otherwise strike out on their own and perhaps hire outside counsel. The calculus may be different, he said, for merger cases that typically offer less financial incentives for state enforcers.

Alford noted that the Democratic state enforcers challenging the Nexstar-Tegna deal have been bolstered by a consolidated parallel challenge from DirecTV. But he said the willingness to be independent and aggressive is not wholly dependent on hiring outside counsel, especially as enforcers are likely to turn to their state legislatures for more resources to further ramp up their antitrust capabilities. And he argued the Live Nation verdict will be a game changer for that aggressive streak.

"I think the talent will start wanting to work with them," Alford said.

"This demonstrates the merit in continuing to fight these tough battles. I think it vindicates the states who really picked up the ball in this case and ran with it," said Lee Hepner, senior legal counsel at the left-leaning American Economic Liberties Project. "States are stepping up in various ways to enforce the antitrust laws where the Justice Department has shown a reluctance to do so."

The case is U.S. et al. v. Live Nation et al., case number 1:24-cv-03973, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Stewart Bishop. Editing by Jay Jackson Jr.