September 4, 2026

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Re: Public Comment of the Break Up Ticketmaster Coalition in Response to Published Document 2026-13623 (91 FT 41330), *United States et al. v. Live Nation Enterprise, Inc.*

The Break Up Ticketmaster Coalition[1] hereby submits this public comment pursuant to the Antitrust Procedures and Penalties Act (the "APPA" or "Tunney Act") and the procedures set forth in the Federal Register.[2]

I. INTRODUCTION

There is nothing ordinary about these proceedings. They derive from a surprise mid-trial settlement that seemed designed to inflict maximum disruption on the parties, the court, the jury, and the Department of Justice's ("DOJ") own trial counsel.

In the months preceding the United States' surprise settlement with Defendant Live Nation, and in the months since, allegations of corrupt interference in the DOJ's handling of this case have fueled broader concern that the rule of lobbyists has overwhelmed the rule of law.[3]

The current proceedings are inseparable from dysfunction within the DOJ. A month before the start of trial in this case, Assistant Attorney General Gail Slater formally resigned from her role as head of the DOJ's Antitrust Division amid reports of turbulence between Slater and White House officials regarding the disposition of this case. The announcement of Slater's

[1] The Break Up Ticketmaster Coalition was launched in October 2022 for the purposes of advocating for enforcement of the antitrust laws against Live Nation and, specifically, for a structural breakup of Live Nation and its ticketing service, Ticketmaster. As of April 2025, the Break Up Ticketmaster Coalition had facilitated over 100,000 letters on behalf of fans, artists, and industry professionals urging the federal government to file and diligently pursue this case.

[2] 15 U.S.C. §16(b)–(h); 91 Fed. Reg. 41,330 (July 6, 2026)

[3] Roger Alford, "The Rule of Law versus The Rule of Lobbyists," Speech at the Tech Policy Institute (August 18, 2025). Available at SSRN: https://ssrn.com/abstract=5396537.

departure caused Live Nation's stock to surge.[4] Live Nation's chief lobbyist, hailed by the media as "MAGA's top antitrust fixer" for his role in facilitating the 11th-hour settlement of another merger challenge by the DOJ, responded to Slater's resignation with two words: "Good riddance."[5]

The Court must grapple with yet more problems in the record, including that both the United States and Live Nation appear to have violated their respective obligations under the Tunney Act. If recent reporting by the Wall Street Journal is to be believed, the United States has failed to disclose the full scope of its alternative considered remedies – including its own proposal to require a divestiture of Ticketmaster.[6] For its part, Live Nation appears to have failed to disclose the scope of its communications with the White House, including a meeting one week prior to trial where President Trump asked Live Nation CEO Michael Rapino why the company hadn't reached a settlement.[7] These are not negligible omissions. They are violations of a law specifically designed to create public transparency, and the fact that they have been reported elsewhere cannot excuse the parties' obligations under the Tunney Act.

Even if not for the swirling allegations of political interference, these Tunney Act proceedings present a scenario not often encountered in antitrust enforcement actions: the settlement at issue does not involve "the untested allegations of a complaint."[8] It involves a unanimous Jury Verdict, arrived at via a special verdict form after a full trial of witness testimony and other evidence, which found that Live Nation "willfully acquired or maintained monopoly power" in the relevant markets.[9] The proposed settlement must be evaluated against those findings and the remainder of the jury verdict. And this Court's evaluation of the Proposed Final Judgment should ensure that it does not undermine the Court's ability to fulfill its duty in the separate remedies proceedings—following the liability and damages phase of the States Plaintiffs' case—to terminate Live Nation's illegal monopoly, deprive it of its ill-gotten gains, and prevent its re-emergence.[10]

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[4] *See* Chris May, Alex Wilts, Claude Marx, Khushita Vasant, Ilana Kowarski and Clayton Vickers, "Live Nation antitrust trial becomes flashpoint amid Slater's DOJ departure," MLex (Feb. 12, 2026) ("The Live Nation stock rose more than 4 percent in 11 minutes after the news hit."), https://www.mlex.com/mlex/articles/2441530/live-nation-antitrust-trial-becomes-flashpoint-amid-slater-s-doj-departure.

[5] Khushita Vasant and Claude Marx, "Trump administration's antitrust agenda becomes clearer with Slater's exit," MLex (Feb. 13, 2026), https://www.mlex.com/mlex/articles/2441533/trump-administration-s-antitrust-agenda-becomes-clearer-with-slater-s-exit.

[6] Rebecca Ballhaus, Joe Palazzolo, Dana Mattiolli Josh Dawsey, and Dave Michaels, "The Trump Intervention That Got the DOJ Off Live Nation's Back," The Wall Street Journal (Aug. 23, 2026), https://www.wsj.com/business/media/trump-live-nation-antitrust-doj-f82b2c55.

[7] *Id.*

[8] *Massachusetts v. Microsoft Corp.*, 373 F.3d 1199, 1237 (D.C. Cir. 2004).

[9] *United States v. Live Nation*, No. 1:24-cv-03973, Jury Verdict (Dkt. 1417), at 1–3 (Apr. 15, 2026).

[10] *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 250 (1968); United States v. Microsoft Corp., 253 F.3d 34, 103 (D.C. Cir. 2001).

The Proposed Final Judgment, judged against the Jury Verdict, falls short on both substantive and procedural grounds. Nominal relief to the marketplace, which will not restore competition to the affected marketplace, is no veil for a settlement process tainted by corruption. Further, because this settlement is not being evaluated against an untested complaint, the Court need not defer to the DOJ's judgment of the Complaint's strength. Instead, it should defer to the jury's unanimous judgment that Live Nation has acquired or maintained a monopoly in multiple markets in violation of multiple state and federal antitrust laws.

At bottom, this Court's discretion to enter the United States' Proposed Final Judgment is uniquely constrained by its primary obligation, triggered by the Jury Verdict, to "unfetter [the] market from anticompetitive conduct and pry open to competition a market that has been closed" by Live Nation's illegal monopoly.[11] To the extent portions of the Proposed Final Judgment may provide immediate relief pending entry of a fulsome remedy, entering any portion of the Proposed Final Judgment cannot support any argument by either the United States or Live Nation that doing so meets the high bar for the ultimate remedy this Court is tasked with crafting the State Plaintiffs' case.

II. FACTUAL BACKGROUND

Facts relevant to this comment are as follows: A jury trial against Live Nation commenced on March 2, 2026. On March 9, 2026, just one week into trial, the United States filed a notice with the court that it had reached a settlement agreement with Live Nation.

The timing and secrecy of the settlement seemed to be designed to create maximum disruption for the trial proceedings. Not only was the settlement reached without knowledge of the Plaintiff States, it was reached without knowledge of the United States' deputy trial counsel, a fact this Court correctly identified as "mindboggling."[12]

Despite the surprise settlement, a bipartisan group of more than 30 State attorneys general pressed ahead with the case. On April 15, 2026, following a multi-week trial, a jury unanimously concluded that Live Nation had illegally maintained a monopoly in the following relevant markets: (1) Primary ticketing services to "major concert venues," (2) primary *concert* ticketing services to "major concert venues," and (3) the use of "large amphitheaters" by artists – in addition to the laws of nine states. The jury found that Live Nation's anticompetitive conduct harmed artists, venues, and millions of American music and live event fans.

On June 22, 2026, Defendant Live Nation submitted a description of its written and oral communications with officers and employees of the United States concerning or relevant to the PFJ, excluding communications made by its counsel of record alone with the Attorney General or employees of the DOJ. In their disclosures, Defendant references "in-person meetings, videoconferences, telephone calls, and written communications with members of the White

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[11] *Ford Motor Co. v. United States,* 405 U.S. 562, 577-78 (1972).

[12] Kara Scannell, "Judge scolds Live Nation and Justice Department for secret settlement talks," CNN (Mar. 10, 2026), https://www.cnn.com/2026/03/10/politics/live-nation-ticketmaster-justice-department-settlement-controversy.

House relating to the PFJ. The Office of the White House Counsel was actively engaged in communications regarding the negotiation of a potential settlement as early as February 2025, over a year prior to the start of trial. Defendant states that they made an initial settlement proposal to the Antitrust Division in September 2025, which was countered in January 2026. Settlement discussions continued in February and March of 2026, resulting in a March 5, 2026 Term Sheet and ultimately the PFJ.

In a June 22, 2026 filing with the Court, the United States disclosed that Live Nation CEO Michael Rapino discussed the case with President Donald J. Trump in February 2026, a month prior to the mid-trial settlement.

In its Competitive Impact Statement, entered on the Federal Register on July 6, 2026, the United States disclosed that it only considered a single alternative to the PFJ, which was completing the liability trial on the merits against Defendant. Competitive Impact Statement, at 17.

On April 24, 2026, the United States told the Court that it intended to file the PFJ and accompanying documents "by late May." ECF 1446, at 2. The United States instead waited until July 6, 2026, to file the PFJ on the Federal Register.

III. ARGUMENT

A. The "public interest" is not guided solely by deference to the United States and must consider the elements of the alleged antitrust violation.

The Tunney Act, formally known as the Administrative Procedures and Penalties Act of 1974, requires a federal court to determine that any consent decree proposed by the DOJ is "in the public interest" before entering it.[13] Before addressing the substance of the DOJ's Proposed Final Judgment, this Court must first acknowledge the "unusual posture" of this case.[14] Here, as in *Massachusetts v. Microsoft Corp.*, the Court must make its public interest determination "not against the untested allegations of a complaint but rather against" a jury verdict finding that Live Nation violated federal and state antitrust laws in multiple markets.[15]

Before any analysis of whether the PFJ is in the public interest, this Court must address the elephant in the room: The PFJ between the United States and Live Nation, reached without the State Plaintiffs' knowledge – *or that of the United States' own litigation counsel* – and first communicated to the State Plaintiffs and this Court multiple days into the presentation of evidence to a jury, appears designed to inflict maximum chaos and disruption in the trial proceedings.

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[13] 15 U.S.C. § 16(e).

[14] *Massachusetts v. Microsoft Corp.*, 373 F.3d 1199, 1237 (D.C. Cir. 2004)

[15] *Id*. The district court was evaluating the settlement against its own findings of facts and conclusions of law that led to a similar ruling of liability against Microsoft for unlawfully monopolizing technology markets. *Id*.

While we acknowledge the deferential standard of review adopted by other courts of appeals, including where a proposed consent decree is being considered while co-plaintiffs are pursuing a post-judgment remedy of their own, this Court is not bound by the same deferential standard here. The nearest analogue is this Court's approval of a proposed decree in *United States v. Apple*, which resolved the case as to certain defendants, while the case proceeded against other defendants who did not join the proposed decree.[16] In that case, the district court stated that it "must 'give due respect to the government's perception of its case.'"[17] But unlike this Court, the district court in *Apple* was not weighing the government's perception of its case against a jury verdict wholly against the settling defendant. It was merely weighing it against an untested complaint.[18] Faced with a jury verdict, the respect or deference owed to the government's perception is surely less. And what "falls within the range of acceptability or is within the reaches of public interest"[19] is surely guided more by this Court's separate duty in the the State Plaintiffs' ongoing case to terminate Live Nation's monopoly following the Jury Verdict against it.

The alternative approach here, applying the deferential standard of the D.C. Circuit and Ninth Circuit Courts of Appeal, would enfeeble an otherwise critical tool to protect the public's interest in the just and orderly enforcement of the antitrust laws.[20] Instead, this Court's review of the "public interest" should involve an "examin[ation] [of] the elements of the relevant species of antitrust violation … ."[21] And that examination must be informed by the Jury Verdict against Live Nation, via a special verdict form with specific findings about Live Nation's conduct.

Where deference to the DOJ is justified by consideration of the only alternative remedy proposed by the DOJ – proceeding to trial – such deference can hardly be reconciled with the current circumstances, where the State Plaintiffs picked up the prosecutorial torch and carried the case to verdict.

B. The Proposed Final Judgment is not in the public interest.

The Tunney Act requires a federal court to determine that any consent decree proposed by the DOJ is "in the public interest" before entering it.[22] In the context of the Tunney Act, the public interest is "more than a broad and undefined criterion such as promotion of the public

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[16] *United States v. Apple, Inc., et al.*, 889 F. Supp. 2d 623, 630 (S.D.N.Y. 2012).

[17] *Id*. at 632 (quoting United States v. Keyspan Corp., 763 F. Supp. 2d 633, 638 (S.D.N.Y. 2011)).

[18] "[T]he Government filed the Complaint on April 11, 2012 and submitted the proposed Final Judgment and CIS, which invited public comment on the proposed Final Judgment, that same day." *Id*. at 630.

[19] *Id*. at 637 (citing United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 151 (D.D.C. 1982))

[20] Darren Bush, "The Death of the Tunney Act at the Hands of an Activist D.C. Circuit," The Antitrust Bulletin, 63(1), 113-136 (2018).

[21] *United States v. Int'l Bus. Machines Corp.*, 163 F.3d 737, 741 (2d Cir. 1998).

[22] 15 U.S.C. § 16(e).

welfare."[23] Rather, "judicial approval should be based upon specific criteria to ensure that the settlement terms would serve the public interest."[24]

The Tunney Act was "designed to expose consent decree proceedings to public scrutiny in order to enhance the likelihood that antitrust decrees would serve the public interest in *eliminating* anticompetitive behavior,"[25], and "the words take meaning from the purposes of the regulatory legislation"[26] – here, the Sherman Act.

Review of a consent decree "would be meaningless if the court were to serve merely as a rubber stamp," and, "[c]onsequently, it is appropriate for the court to look beyond the words of the decree itself.[27] Even where this Court has historically adhered to a policy of deference to prosecutorial discretion, it has also subjected approval of a consent decree to a more exacting standard—namely, that it would "return [the market] to a competitive state," "quickly restore retail price competition to consumers," and "return to the pre-conspiracy status quo."[28]

The specific remedies contained in the PFJ fall short of resolving the competitive harms alleged in the Complaint, and, for multiple reasons, fail to meet even a deferential standard of review. Even if the Court were to evaluate the PFJ without regard to the irregularities and potential political interference, the terms of the PFJ would largely preserve the status quo. Superficial behavioral remedies do not address the structural incentives to further entrench Live Nation's monopoly grip on the relevant markets.

i. The PFJ preserves the vertical integration of Live Nation and its primary ticketing service, Ticketmaster.

The PFJ would allow Live Nation to remain vertically integrated with Ticketmaster, relying primarily on targeted behavioral restrictions and limited divestitures. By contrast, the remedies sought by the coalition of 27 states and the District of Columbia are substantially broader than those adopted in the PFJ. Most significantly, the states seek a structural remedy requiring Live Nation to divest Ticketmaster entirely, thereby separating the company's dominant concert promotion and venue business from its ticketing platform.

Preserving Live Nation's vertically integrated structure fails to eliminate the incentives that enabled it to illegally foreclose competition by exerting control over venues, promotions, and primary ticketing. Behavioral remedies have historically failed to rein in Live Nation's illegal conduct because they left in place the underlying economic incentives that led to the

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[23] *United States v. Am. Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

[24] *Id.* (quoting *In re Int'l Business Machines Corp.,* 687 F.2d 591, 600 (2d Cir. 1982)).

[25] *United States v. Alex. Brown & Sons*, 169 F.R.D. 532, 537 (S.D.N.Y. 1996) (emphasis added).

[26] *Am. Cyanamid Co.*, 719 F.2d at 565 (quoting NAACP v. FPC*,* 425 U.S. 662, 669 (1976)).

[27] *Id*.

[28] *Apple*, 889 F. Supp. 2d at 632–633.

illegal conduct.[29] The May 2024 Complaint filed by the DOJ and 27 plaintiff states identified Live Nation's vertical integration as the mechanism through which it exercised its enormous market power.[30] Judged against the elements of the underlying antitrust violation, maintaining the integration cannot meaningfully open the market to competition, much less restore competition, and therefore does not meet the public interest standard of the Tunney Act.[31]

ii. The proposed venue "divestitures" affect fewer than *five* percent of implicated venues and are unlikely to invite competition even to the 13 named Divestiture Venues.

The PFJ would also require Live Nation to "divest" 13 amphitheaters while retaining ownership or control of more than 265 venues across North America. There is no rationale provided for why the PFJ isolates these 13 venues, which represent just five percent of the venues implicated in this trial. Nor do the parties describe the exact nature of Live Nation's control over the venue, which does not appear to be an ownership interest, but an exclusive contractual arrangement. In this context, "divestiture" may indeed be a misnomer for a behavioral remedy that ultimately puts the burden on the venue itself to identify and enter into contractual agreements with alternative service providers, with the assumption that those providers will magically manifest.

Ultimately, the PFJ's limited divestiture is unlikely to reduce Live Nation's market power. Even assuming that competition will flow to the 13 Divestiture Venues listed in the PFJ, the PFJ would leave the overwhelming majority of the company's venue portfolio intact. By contrast, the plaintiff states seek broader structural divestitures designed to reduce Live Nation's ability to leverage venue ownership into their ticketing and promotion markets. Given the small percentage of the company's venue holdings affected by the PFJ, the remedy does not substantially alter the market structure that gave rise to Live Nation's anticompetitive conduct.

iii. Reliance on shortened contract terms repeats ineffective behavioral restrictions that Live Nation has historically violated.

The PFJ relies primarily on behavioral restrictions by shortening existing exclusive ticketing contracts and limiting the duration of future agreements. These provisions repeat an approach that has proven ineffective in the past. The 2010 consent decree prohibited retaliation

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[29] Katherine Van Dyck & Lee Hepner, The Case Against Live Nation-Ticketmaster, Am. Econ. Liberties Project (Jan. 4, 2024), https://www.economicliberties.us/wp-content/uploads/2024/01/20240104-AELP-Livenation-Brief.pdf; Kathleen Bradish, "That's the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment," Testimony Before the S. Comm. on the Judiciary (Jan. 24, 2023), https://www.judiciary.senate.gov/download/testimony-bradish-2023-01-24.

[30] Complaint, *United States v. Live Nation Ent., Inc. & Ticketmaster*, No. 1:24-cv-03973 (S.D.N.Y. May 23, 2024), https://www.justice.gov/atr/media/1353101/dl.

[31] 15 U.S.C. § 16(e)(1).

and imposed similar behavioral constraints.[32] Despite this, the DOJ in 2019 concluded that Live Nation violated those obligations by threatening venues that considered using rival ticketing services and moved to modify the existing consent decree.[33]

To state the obvious, the DOJ's 2019 enforcement action and extension of a modified consent decree did not restore competition to the affected markets. There is no reasonable argument that this time will be any different. Given Live Nation's history of continued violations of the 2010 behavioral conditions, merely shortening contract terms is unlikely to eliminate the incentives that produced the violations in the first place.

iv. The proposed mandatory platform licensing repeats a previously failed remedy that cannot overcome Live Nation's market power.

The requirement that Ticketmaster license portions of its ticketing platform to competitors also resembles remedies imposed during the 2010 merger. The earlier licensing provisions did not produce a significant competitive alternative in the primary ticketing market, in part because competing platforms still lacked access to Live Nation's exclusive concerts and venues. Technology licensing cannot overcome the competitive advantages created by Live Nation's integrated control over artists, promotions, venues, and ticketing.[34] As a result, the PFJ repeats a remedy that has previously failed to produce meaningful market entry by primary ticketing competitors.

v. The $280 Million Settlement Fund represents a fraction of Live Nation's annual revenue and fails to deter anticompetitive conduct.

Although the PFJ establishes a $280 million settlement fund, the monetary relief is modest when viewed in the context of Live Nation's financial position. Live Nation reported approximately $25.2 billion in revenue during 2025, meaning the settlement fund represents around 1% of annual revenue (approximately four days of revenue at the company's 2025 pace).[35] This comparatively small payment is unlikely to deter future anticompetitive conduct or

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[32] Plf. Mtn. to Modify Final Judgment and Enter Am. Final Judgment, United States v. Ticketmaster Ent., Inc. & Live Nation, Inc., No. 1:10-cv-00139-RMC (D.D.C. Dec. 19, 2019), https://business.cch.com/ald/USvTICKETMASTERMotion20191219.pdf.

[33] Press Release, "Justice Department Will Move to Significantly Modify and Extend Consent Decree with Live Nation/Ticketmaster," U.S. Dep't of Justice (Dec. 19, 2019), https://www.justice.gov/archives/opa/pr/justice-department-will-move-significantly-modify-and-extend-consent-decree-live.

[34] Aaron Silvenis, "Live Aid? Assessing the Ability of the Ticketmaster–Live Nation Consent Decree to Restore Competition Levels in the Primary Ticketing Market," Am. Antitrust Inst. Working Paper No. 11-02 (Apr. 14, 2011), https://www.antitrustinstitute.org/wp-content/uploads/2018/10/AAI-Working-Paper11_02.pdf; Bradish Testimony, *supra* note 29, at 9.

[35] Live Nation Ent., Inc., Annual Report (Form 10-K) 49 (Feb. 19, 2026), https://investors.livenationentertainment.com/sec-filings/all-sec-filings/content/0001335258-26-000009/0001335258-26-000009.pdf.

compensate consumers for the alleged harm, particularly because the settlement leaves the company's integrated structure intact.

vi. Taken in sum, the PFJ preserves Live Nation's illegal monopoly and fail the Tunney Act's public interest standard.

Even if considered as a comprehensive package, the proposed remedies in the PFJ largely preserve the market structure and incentives that enabled Live Nation's unlawful conduct. Rather than fully eliminating the source of the alleged monopoly through structural separation, the settlement relies primarily on behavioral obligations like those imposed in prior consent decrees that proved ineffective. The PFJ does not adequately remedy the competitive harms alleged in the complaint and does not satisfy the Tunney Act's requirements that the proposed judgment be in the public interest.

C. Corruption in the settlement process provides a separate basis for disapproving the PFJ.

In assessing the adequacy of a proposed settlement under the Tunney Act, the court "may, and perhaps should, look beyond the strict relationship between complaint and remedy in evaluating the public interest."[36] Indeed, the Tunney Act's passage was motivated by concerns about the effect of corruption and improper lobbying on antitrust enforcement.[37] Whether the PFJ in this case "is tainted by improper collusion or corruption of some kind" is as relevant to judicial oversight under the Tunney Act as to other contexts providing for judicial review of consent decrees.[38]

The commentary surrounding the United States' handling of this case unquestionably suggests that something is amiss, and where there is this much smoke, there is usually fire. On May 18, 2026, the House Judiciary Committee held a hearing titled "Corruption Takes Center Stage: How the Live Nation-Ticketmaster Settlement Threatens Antitrust Enforcement," where several witnesses testified to the perception, at minimum, of corrupt political interference in this case.

At that hearing, former second-in-command at the DOJ's Antitrust Division Roger Alford testified, "If there is one instance of the abuse of prosecutorial discretion over antitrust enforcement that will harm the DOJ's reputation and injure the average American, it is the Live Nation–Ticketmaster settlement." The remarks echoed his earlier speech, "The Rule of Law Versus the Rule of Lobbyists," in which he had alluded to Live Nation and Ticketmaster having "paid a bevy of cozy MAGA friends to roam the halls of the [Antitrust Division] in defense of their monopoly abuses."[39]

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[36] *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981).

[37] *United States v. BNS Inc.,* 858 F.2d 456, 459 (9th Cir. 1988).

[38] *See, e.g., S.E.C. v. Citigroup Glob. Markets, Inc.*, 752 F.3d 285, 295 (2d Cir. 2014) (considering proposed S.E.C. consent decrees).

[39] Alford, *supra* n.1, at 5.

Among those lobbyists was Mike Davis, who had allegedly threatened to "destroy" Assistant Attorney General of the Antitrust Division Gail Slater if she failed to settle the United States' challenge to the HPE-Juniper merger, and in sworn testimony admitted to urging Ms. Slater's firing "to anyone who would listen."[40] When Ms. Slater was ultimately ousted from her position on February 12, just weeks prior to the start of trial in this case, Mike Davis tweeted, "Good riddance."[41]

A recent report in the Wall Street Journal implicates a broader cast of characters who Live Nation hired to facilitate the PFJ, ostensibly for their close ties to President Trump, including Kellyanne Conway, the President's one-time campaign manager.[42] Richard Grenell, a longtime ally of the President, was appointed by the President executive director of the Kennedy Center around the same time President Trump installed himself as chairman. Amid talks by officials at the Kennedy Center to move its ticketing system to Ticketmaster, Live Nation added Grenell to its board in May 2025. Grenell, now an appointee of the President *and* Live Nation board member, would ultimately join settlement discussions in this case. Whether he participated as a Live Nation Director or lobbyist, or on behalf of his appointing authority at the Kennedy Center, President Trump, is a riddle answered only by the obvious conflict of interest.

It is not unusual for lobbyists to be hired for their close relationships to the authority they are seeking to influence. But the facts surrounding the PFJ in this case – at least those which have been brought to light, and certainly only scratch the surface – suggest a much more complex ecosystem of conflicts, corruption, and interference. In the weeks leading up to the settlement, Live Nation hired a new legal team to engage in settlement talks – from the same firm providing personal legal representation to the President himself.[43] Even the President's private legal coordinator, Boris Epshteyn, had taken a "keen interest in resolving the case," causing various officials to wonder whether he was "working for Trump or Live Nation, or both."[44]

On February 27, just days before the start of trial in this case, Live Nation CEO Michael Rapino met with President Trump in the Oval Office. The Wall Street Journal reports that President Trump had called the meeting for two reasons: First, to know what Live Nation could do to improve bookings at the Kennedy Center. And second, to know why the company hadn't reached a deal over this case. The quid pro quo is not between the lines, but out in the open.

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[40] Dana Mattioli, Rebecca Ballhaus & Josh Dawsey, "The Threats and Bare-Knuckle Tactics of MAGA's Top Antitrust Fixer," Wall Street Journal (Mar. 20, 2026).

[41] Khushita Vasant and Claude Marx, "Trump administration's antitrust agenda becomes clearer with Slater's exit," MLex (Feb. 13, 2026).

[42] Ballhaus, *supra* note 6.

[43] *Id.*

[44] *Id.*

As the DOJ was preparing to begin a jury trial in a case that had dogged the federal government, fans, artists, venues, and concert promoters for decades, the President called a senior DOJ official to order a settlement.

The effect of this corruption on the terms of the PFJ is a matter for the Court to discern in these Tunney Act proceedings. We suggest that it fully explains their inadequacy, as described above.

D. The DOJ's failure to disclose key information required by the Tunney Act should result in sanctions and a renewed opportunity for public comment.

When presenting the Tunney Act, Senator Tunney articulated the purpose of the law to "give the public information and a voice in the mergers and other actions that so directly affect the quality and cost of what we buy."[45] The public disclosures required by the Tunney Act – and, critically, the ability for the public to have a "voice" via the ability to comment on those disclosures – are not a secondary purpose of the law, but core to the meaning of the law.

Based on recent reporting, the DOJ appears to have failed to comply with the Tunney Act in at least two ways. First, the DOJ has failed to disclose a complete description of communications between Live Nation and the United States "concerning or relevant to" the PFJ, 15 U.S.C. § 16(g), and second, the DOJ has failed to provide a complete "description and evaluation of alternatives" to the PFJ "actually considered by the United States."[46]

i. The DOJ failed to disclose all communications "concerning or relevant" to the PFJ.

The Tunney Act requires Defendants to disclose all communications "concerning or relevant to such proposal," not simply those *about* the settlement.[47] That obligation cannot be deemed satisfied by Defendants' extraordinarily thin disclosure, which purports to summarize well over a year's worth of communications and meetings in under three full pages.[48] Instead, the disclosures cast the vaguest possible net of "numerous in-person meetings, videoconferences, telephone calls, and written communications" between just 11 named Live Nation representatives. Defendants fail to name a single officer or employee of the United States who joined any of these meetings, with the exception of the President himself, who joined one meeting with Live Nation CEO Michael Rapino on an unspecified date in February 2026.

The public should not learn more about the nature of and participants in these communications from journalists, intrepid as they are. Yet that's exactly what is occurring here.

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[45] The Antitrust Procedures and Penalties Act: Hearings Before the Subcomm. on Antitrust & Monopoly of the S. Comm. On the Judiciary, 93d Cong. 1 (1973).

[46] 15 U.S.C. § 16(b)(6).

[47] *Id*. § 16(g); United States v. Hewlett Packard Enterp. Co., 2026 WL 2349970, at *14 (N.D. Cal. Aug. 12, 2026).

[48] Defs. Description of Communications and Certification of Compliance Pursuant to 15 U.S.C. §16(g), ECF 1534 (June 22, 2026).

The public only learned from the Wall Street Journal that the date of the meeting between Mr. Rapino and the President occurred just days before the start of trial in this case. Otherwise, Defendants fail to disclose any participants in, or the date of, any meeting involving Mr. Grennell, even though that information is highly relevant to the parallel timeline of his respective appointments by the President to lead the Kennedy Center, and by Live Nation to its board of directors.

ii. The DOJ failed to disclose all alternative settlement terms considered by the United States.

The Tunney Act requires the DOJ to provide the public with a competitive impact statement that includes "a description and evaluation of alternatives to such proposal actually considered by the United States."[49] A plain text reading of the statute does not limit this disclosure requirement to alternatives that were actually *proposed* – or to those alternatives that the defendant was prepared to accept – but includes all remedies that the United States so much as considered.[50]

In its Competitive Impact Statement, the United States discloses that it only ever considered one alternative to the PFJ: completing the liability trial on the merits. It defies common sense that this is the only alternative settlement term considered by the United States – *because it wasn't*. The Wall Street Journal reports that DOJ lawyers had in fact drafted a response to Live Nation's opening settlement offer demanding that Live Nation spin off Ticketmaster.[51] The proposal ultimately sent to Live Nation would have required Ticketmaster to make its ticketing software "open source," and would have required Live Nation to give up about three-quarters of its amphitheaters, eclipsing the thirteen amphitheaters identified in the PFJ.[52]

iii. Failure to comply with the Tunney Act must result in sanctions and should re-start the Tunney Act process.

When violations of the law are allowed to occur without consequence, those violations risk becoming the pattern and practice of the violating party. Recent history suggests this is already the case, and that the DOJ is withholding key information from the public with the anticipation of impunity.

The noncompliance in these proceedings is similar but distinguishable from the DOJ's failure to comply with the disclosure provisions of the Tunney Act in *United States v. Hewlett Packard Enterprise Co.*, No. 25-CV-00951-PCP. In *Hewlett Packard*, the court unequivocally found that the United States and defendants had failed to comply with the Tunney Act's requirement to disclose both communications and alternative settlements considered by the

[49] 15 U.S.C. § 16(b)(6).

[50] *Hewlett Packard Enterpr. Co.*, 2026 WL 2349970, at *14.

[51] Ballhaus, *supra* note 6.

[52] *Id.*

United States.[53] Despite finding that these nondisclosures "created a greater risk of prejudice," the court nevertheless determined that the failure was resolved by the states' intervention, which brought the non-disclosed information into the light.[54]

Non-compliance has not been resolved in the instant case, and the public and this Court can only speculate as to the extent of noncompliance. That speculation is aroused by recent reporting in the Wall Street Journal, but public reporting cannot resolve the government's failure to meet its disclosure argument, any more than it should be the role of public comment to prove an omission.

The court's refusal to impose any consequence on the United States in *Hewlett Packard* should not be persuasive. First, it misinterprets the nature of the prejudice contemplated by the Tunney Act, which inures not only to the nondisclosure of required information, but to the public's "voice" and ability to comment on that information. Second, it creates a perverse incentive for the DOJ to withhold information that is most harmful to its argument that a consent decree is in the public interest, subject only to the risk that unfavorable evidence bearing on the process by which a consent decree was reached might come to light through adversarial proceedings. If anything makes a "mockery of the judicial function," it is the United States' wanton failure to disclose information in the context of judicial oversight that can only be given meaning by such disclosure.[55]

The Tunney Act cannot be interpreted to require the court and the public to put blind faith in the very parties whose settlement they are charged with overseeing. For the law to have any force and effect, the DOJ's failure to disclose information must have consequence. At minimum, any omissions must re-start the Tunney Act process, and the United States should be required to cure its violation and allow for public review and comment. Further, the Court should exercise its equitable discretion to impose sanctions, including an adverse inference that non-disclosed information would support denial of the PFJ.

IV. CONCLUSION

More than thirty years ago, Stone Gossard and Jeff Ament—the guitarist and bassist for Pearl Jam, a future Rock-and-Roll Hall of Fame inductee and one of the biggest bands in the world—played to a capacity crowd at an unusual venue for the band. It was the Rayburn House Office Building, and the band members were there to testify at a hearing before the House Committee on Government Operations, appropriately titled, "Pearl Jam's Antitrust Complaint: Questions About Concert, Sports, and Theater Ticket Handling Charges and Other Practices."

Today, the questions raised at that hearing have been resoundingly answered by a unanimous Jury Verdict, following a trial that artists, their managers, their fans, promoters, merchandisers and independent venue owners have been waiting for. On its own, the DOJ's response is wholly inadequate. It will fail to provide any meaningful relief – but will certainly be

[53] *Hewlett Packard*, 2026 WL 2349970, at *14.

[54] *Id*. at *15.

[55] *United States v. Microsoft Corp.*, 56 F.2d 1448, 1462 (D.C. Cir. 1995).

leveraged by the United States and Live Nation to represent that this Court's job is done. Market participants, who have been subject to persistent retaliation despite prior decrees, will again be put in the untenable position of quietly succumbing to Live Nation's monopoly grip.

These Tunney Act proceedings occur at a moment in history where corruption, both actual and perceived, is becoming entrenched in our politics under the veil of helplessness to do anything about it. This Court's obligation is not to address that larger problem, but to uphold the rule of law as it applies to the Tunney Act and to this case.

The PFJ should be disapproved for any number of the reasons outlined herein. It cannot be approved solely under the auspices of immediate relief that it will not provide. Moreover, it cannot in any way disturb this Court's obligation to issue an ultimate remedy that terminates Live Nation's illegal monopoly, deprives Live Nation of its ill-gotten gains, and prevents the re-emergence of monopoly.