JAMMING TICKETMASTER: DEFINING THE RELEVANT MARKET IN THE PEARL JAM - TICKETMASTER CONTROVERSY

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Over the past few years, concert patrons have found significantly less money in their pockets after attending their favorite performances. An average fan spends at least twenty dollars per ticket to attend some of the lowest-priced concerts. Some big acts, like Barbara Streisand and The Eagles, charge up to $350 per ticket. And if a fan wishes to bring something home to remember the experience, a souvenir such as a shirt costs approximately twenty dollars. In addition to these costs, fans must spend money on food and transportation.

While it may be more expensive to buy a concert ticket today, it was more convenient than it was ten years ago. Now, a person can simply pick up the phone, call Ticketmaster (one of the largest companies in the United States who, for a fee, distributes tickets over the phone to events at large venues throughout the country), charge the ticket to a credit card, and have the ticket mailed. Telephone charging was not available ten years ago. If a person wanted to see a popular concert, he or she might have tried camping out overnight in a line of people at the local record store to secure the opportunity to buy a ticket.

On May 6, 1994, the rock band Pearl Jam (“the Band”), one of the best selling bands in the country, filed a memorandum with the Antitrust Division of the United States Department of Justice (“D.O.J.”) arguing that Ticketmaster acted anticompetitively in violation of Sections 1 and 2 of the Sherman Act. In the complaining memorandum, the Band concluded that Ticketmaster was a monopoly and illegally controlled the price of tickets sold at most major venues. The D.O.J. investigated the allegations made by the Band from approximately May 1994 to July 1995. Before concluding that there was no antitrust violation, the D.O.J. conducted numerous interviews with members of the music and entertainment industries. The central focus of the D.O.J. investigation was “Ticketmaster’s practice of paying a portion of

1 “Tickets for most rock concerts range from around $22 to $55, plus phone service charges that often add about $6 to $8.” Chuck Philips, Whaddaya Want for $20? A Ticket to Pearl Jam?, L.A. TIMES, Apr. 10, 1994 (Calendar), at 59.
2 Id. Fans of the Eagles paid as much as $115 and Barbara Streisand concert tickets cost up to $350 per ticket. Id.
3 In the case of Ticketmaster, a customer can call a toll free number, pay for tickets with a credit card, then receive the tickets in the mail. Id. People are forced to buy tickets over the phone since very few tickets are available at the venue a few hours after the tickets are released. “Only about 100 tickets for the rock package starring the Red Hot Chili Peppers and Pearl Jam were still available at the amphitheater box office when it opened at noon — three hours after the tickets went on sale at Ticketmaster outlets throughout Southern California.” Chuck Philips, Breaking Down Those $4 to $7.75 Service Charges, L.A. TIMES, June 9, 1992, at F1.
6 The band argued that freedom of choice - a basic principal of competition in this country - does not effectively exist in the music industry today. Something is vastly wrong with a structure under which a ticket distribution service can dictate the markup on the price of a concert ticket, can prevent a band from using other, less expensive, methods of tickets [sic], and can effectively preclude a band from performing at a particular arena if it does not accede to using Ticketmaster.
8 Chuck Philips, Ticketmaster Cleared, WASH. POST, July 6, 1995, at C2. Talent managers, promoters, venue owners, and
the service fees it collects to the owners of major venues and promotion firms in exchange for exclusive contracts to ticket all events at those venues.”

By ultimately dropping the antitrust investigation, the D.O.J. may have placed a stamp of approval on the controversial contracts that Ticketmaster employs. One message is clear, consumers who think concert tickets are too expensive will not gain assistance from the D.O.J.

This comment evaluates the D.O.J.’s decision to drop Pearl Jam’s antitrust complaint against Ticketmaster and, in particular, how the D.O.J. defined Ticketmaster’s relevant market, a key component needed to determine Ticketmaster’s market share in the context of a claim of monopolization under Section 2 of the Sherman Antitrust Act. Part I summarizes the events involved in the dispute between Pearl Jam and Ticketmaster. Part II lays out a framework of the issues considered in a claim of monopolization under Section 2. Part III examines Pearl Jam’s claim that Ticketmaster monopolized the distribution of tickets to most major concert and entertainment events in the United States. Part IV analyzes Ticketmaster’s relevant product and geographic markets as they might be used to evaluate Ticketmaster’s alleged monopolistic position in the market. Part V concludes that the relevant market that should be used to evaluate Ticketmaster’s alleged monopolistic stance includes the distribution of tickets to rock concerts at “large” or “main line” venues in heavily populated metropolitan areas.

I. EVENTS LEADING UP TO PEARL JAM’S COMPLAINT

On May 6, 1994, Pearl Jam submitted a memorandum to the D.O.J. urging the “Antitrust Division [to] investigate recent anticompetitive actions by Ticketmaster directed against Pearl Jam in violation of Sections 1 and 2 of the Sherman Act.” In its brief, the Band stated that their efforts to cap service fees grew out of concern for their fans’ ability to pay the large ticket prices, now standard in the industry. In addition to the price of a ticket, service charges levied by Ticketmaster range from $1.50 for a movie ticket to $15 for a concert. Pearl Jam asserted that Ticketmaster typically charges anywhere from four to six dollars in service fees for their concerts.

After their summer tour in 1993, Pearl Jam requested that Ticketmaster list its service fee separately on the ticket so customers would know how much the Band was actually charging. Frustrated and ultimately unable to influence Ticketmaster’s practice, Pearl Jam tried to distribute tickets on their own through a lottery. That plan did not work. The promoter involved in the lottery scheme to distribute tickets was subsequently threatened “with a lawsuit for breaching its exclusive dealing agreement with Ticketmaster by allowing Pearl Jam to distribute tickets to the concert other than through Ticketmaster.” After some discussion with Pearl

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14 In the News, Fed. News Service, July 1, 1994. “As anyone who has read the papers this summer is undoubtedly aware, the Ticketmaster service charge has in at least one case been reported to have gone as high as $15 per ticket.” Id.
15 May Memorandum, supra note 5, at 3. Sources estimate that about $2 of the $4 convenience fee pays for operating expenses such as rent, payroll, facility phone lines, credit card fees, programming and maintenance of computers. Another $1 of the $4 fee is paid to Music Plus, May Co. and other stores for acting as Ticketmaster outlets. There are 180 outlets in Southern California. At least 15% (or 60 cents) of the $4 convenience fee is paid to venue owners to subsidize long-term, six-figure contracts with each facility guaranteeing Ticketmaster exclusive ticket distribution rights to the building.
16 Phillips, supra note 3.
17 Id. “Persons interested in purchasing tickets to the concert were asked to send in written requests, and the social security numbers of lottery winners were printed in Detroit newspapers along with instructions about where and when to pick up tickets.” Id.
18 Id. The following excerpt from a memorandum dated March 25, 1994, from the North American Concert Promoters
Jam and its agents, the ticket company agreed to limit their service charge to $1.80 per ticket, but only for Pearl Jam’s Boston show.

In preparation for a later concert in New York’s Madison Square Garden (“MSG”), the Band enticed eleven radio stations to give away the right to buy tickets for eighteen dollars, thus avoiding Ticketmaster’s services and charges. In response, Ticketmaster allegedly threatened to sue Paramount Communications, the owners of MSG, because of an exclusive distribution agreement between MSG and Ticketmaster. The use of creative ticket distribution mechanisms coupled with Pearl Jam’s efforts to undermine Ticketmaster’s exclusive contract agreements prompted Ticketmaster to warn Pearl Jam to “watch their backs.” Later, Ticketmaster threatened to sue Pearl Jam in tort for interfering with its exclusive dealing agreements with venues and promoters.

A. Pearl Jam’s Memorandum

In May 1994, Pearl Jam filed a memorandum soliciting the D.O.J. to investigate Ticketmaster.

Pearl Jam complained that Ticketmaster “dominated the ticket market since 1991” and that today it is “virtually impossible for a band to do a tour of large arenas or other significant venues in major cities and not deal with Ticketmaster.” The Band pointed to the “Exclusive Rights” section of one promoter’s contract which gave Ticketmaster the sole right to distribute tickets for any concert produced by the contracting party and hypothesized that most of Ticketmaster’s contracts included the “Exclusive Rights” clause to ensure market security for Ticketmaster.

B. Congressional Attention

On June 30, 1994, Pearl Jam and Ticketmaster representatives were invited to testify before the House Information, Justice, Transportation, and Agriculture Subcommittee of the House Committee on Government Operations. Pearl Jam’s Stone Gossard and Jeff Ament argued that Ticketmaster was unlawfully interfering with their freedom to determine the price and terms of ticket sales apiece to fans calling in during the forty-eight hours preceding the concert. The tickets could be picked up in advance at the Madison Square Garden box office.

Chuck Philips, Ticketmaster Documents Sought in Probe, L.A. TIMES, June 8, 1994, at D2. In 1991, the D.O.J. allowed Ticketmaster to buy certain assets from Ticketron, “which at the time was its only major competitor.”


May Memorandum, supra note 5, at 2; Pearl Jam explained that it was difficult to obtain a portion of the contract due to Ticketmaster’s strength in the industry. Id.

See id. The “Exclusive Rights” section:

Principal hereby grants to Ticketmaster and Ticketmaster accepts from Principal the exclusive right during the term of this agreement to sell as Principal’s agent at outlets and/or by telephone sales all tickets made available to the public for any attraction scheduled or presented by the Principal at the facility and sold at the facility box office.

Id. (quoting an “Exclusive Rights” section from a contract between Ticketmaster and a promoter).

See Testimony, supra note 26.

Stone Gossard is Pearl Jam’s lead guitarist. Philips, supra note 4.

Jeff Ament is Pearl Jam’s bassist. Hearing, supra note 6, at 6.
The bill, if passed, would be the first federal law
encompassing the ticket distribution industry. It would require ticket distributors to disclose the fees they add to the price of each ticket. The bill, if passed, would be the first federal law regulating ticket distribution.

C. ETM and the End of the D.O.J. Investigation

On April 4, 1995, the Band announced a thirteen date tour and its decision to use a new ticketing company, ETM. ETM, much like Ticketmaster, is able to process numerous ticket orders over the phone in a short period of time. However, ETM has proven to be more flexible in determining the service charge. The company agreed to add only a two dollar service fee and a forty five cent handling charge for Pearl Jam's tickets.

On July 5, 1995, the D.O.J., in a two sentence statement, announced the end of its year long Ticketmaster investigation as well as its decision to not take any formal action. The D.O.J.'s Antitrust Division said that it would "continue to monitor competitive developments in the ticketing industry." While one newspaper hypothesized that the investigation centered on Ticketmaster's practice of paying a portion of its fees to promoters and venue owners in exchange for exclusive contracts, Attorney General Janet Reno explained that "[h]er understanding is that the Division dropped its probe at this point because 'new enterprises' are entering the market." 44

II. A FRAMEWORK FOR MONOPOLIZATION UNDER SECTION 2 OF THE SHERMAN ACT

In its memorandum to the D.O.J., Pearl Jam argued that "because Ticketmaster is dominant in the distribution of tickets to concerts, its rigid enforcement of exclusive dealing agreements with virtually every promoter and venue in the United States is a blatant exercise of monopoly power in violation of Section 2 of the Sherman Act." 45

The D.O.J. apparently considered the charge in light of Section 2 of the Sherman Act which states that "[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony . . . ." 46 Section 2 was passed in reaction to the fear of the rapid growth of individual and corporate wealth from trade and industry. 47 Since it is couched in broad terms, it has been adaptable to the changes in commercial production and distribution that have evolved since its passage. 48

To prove monopolization in violation of Section 2,
the complainant must show that the firm possesses monopoly power in a relevant market and that it willfully holds that power. To measure a firm’s monopoly power, or market power, the firm’s market share must be calculated. To calculate market share in a relevant market, the market can be defined through an evaluation of the relevant product and geographic markets. Once a firm is shown to have what a court will consider to be sufficient market power, then it must find that the firm willfully acquired or attained its power.

“Monopoly power is the power to control prices or exclude competition.” It has also been described as “a high degree of market power.” When determining whether the firm in question has enough market power to be guilty of illegal monopolization, a court will generally hold that a ninety percent market share is enough to support the necessary inference of market power. However, in some instances courts have found a market share of approximately seventy-five percent to be sufficient. At least one court has determined that market share is not the sole factor used to determine monopoly power. Other factors considered might include: a decline in market share over time, testimony that the market was very competitive, a dominant firm’s decision to lower its price in an effort to hold its market share, a substantial number of competitors entering the market, and high technology and product research costs.

One antitrust scholar suggests that two factors should be used to determine a relevant product market. The first factor is the extent to which a product is “interchangeable in use” with alternatives, and the second is the degree of “cross-elasticity of demand” between the product at issue and close substitutes to it. Interchangeable products are identified by the willingness of consumers to substitute a particular product for the product in question. If purchasers are willing to use one product instead of another, then those products are probably in the same product market. Testing for cross-elasticity evaluates the change in demand for one product when the price of another is altered. When the products are substitutes, the increase in the price of one will result in a rise in the demand for the other. Products which react in this way are considered part of the same product market.

The geographic market is the area of effective competition where the defendant operates, and where purchasers can purchase substitute products or services. In determining the geographic market, a number of questions can be asked. Do the firms competing in the industry perceive it as separate and distinct? Do firms from outside the region make sales within it? Are prices responsive to economic activity from outside the region? Do transportation costs or lack of storage and distribution facilities block firms outside the region from competing? With reference to seller and buyer conduct - who are

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52 384 U.S. at 570-71. The Court notes that willful acquisition is not the same as the growth or development associated with a better product or smarter business planning. Id.
55 Hovenkamp, supra note 50 at 244.
56 Id.; see also Grinnell, 384 U.S. at 571 (stating that 87% is sufficient); United States v. Paramount Pictures Inc., 334 U.S. 131 (1948) (stating that 70% is sufficient).
58 Id. Hills refers to some factors laid out in a Federal District Court decision from 1980. Id.
59 WILLIAM C. HOLMES, ANTITRUST LAW HANDBOOK § 203[1], at 344 (1994 ed.).
60 Id.
61 See generally United States v. E.I. Du Pont De Nemours & Co., 351 U.S. 377, 393 (1956) (determining the relevant market depends upon differences between products and at what point buyers will substitute one product for another).
62 HOLMES, supra note 59, at 344.
63 See generally Du Pont, 351 U.S. at 400. “An element for consideration as to cross-elasticity of demand between products is the responsiveness of the sales of one product to price changes of the other.” Id. The Court concluded that cellophane is interchangeable with other flexible packaging material and, therefore, included as a part of the flexible packaging material market. Id.
64 Id. “If a slight decrease in the price of cellophane causes a considerable number of customers of other flexible wrappings to switch to cellophane, it would be an indication that a high cross-elasticity of demand exists between them; that the products compete in the same market.” Id.
65 Id.
the actual competitive forces.\footnote{Id.}

Generally, intent is not an essential element of monopolization.\footnote{HOVENCAMP, supra note 50, at 249 (explaining that most courts require only evidence of exclusionary practice by a firm with monopoly power).} However, a monopoly will not be found where firms find themselves in possession of monopoly power without having intended to quash competition.\footnote{See generally United States v. Aluminum Co. of Am., 148 F.2d 416, 429-30 (noting one instance where a monopoly may exist because of circumstances surrounding the industry rather than planning or desire on the part of a firm).} To prove an attempted monopoly, intent may be required.\footnote{HOVENCAMP, supra note 50, at 249.} On the other hand, "willful acquisition or maintenance of [monopoly] power" is required when showing an offense of monopoly under Section 2 of the Sherman Act.\footnote{United States v. Grinnell Corp., 384 U.S. 563, 570-71 (1966).} Testing whether or not conduct by a dominant party is willful should be based on "considerations of fairness and the need to preserve proper economic incentives . . . ." A party who finds itself innocently possessing monopoly power may be in violation of Section 2 by "maintaining or extending market control . . . ."\footnote{Id.}

III. PEARL JAM'S ARGUMENT THAT TICKETMASTER HOLDS MONOPOLY POWER IN VIOLATION OF SECTION 2

Pearl Jam argued that after Ticketmaster purchased Ticketron in 1991, it became "far and away the country's largest . . . distributor" of tickets to most major concerts and entertainment events in the United States.\footnote{Id.} The Band further argued that Ticketmaster's exclusive dealing agreements left major venues with no alternative means of distributing tickets.\footnote{Id.}

The Band relied upon the Supreme Court's finding in Luria Bros. & Co. v. F.T.C.\footnote{Luria Bros. & Co. v. United States, 910 F.2d 139 (4th Cir. 1990).} that certain agreements, although not on their face absolutely restrictive of competition, may in effect violate Section 2.\footnote{See May Memorandum, supra note 5, at 6.} This concept of de facto restraint on competition parallels the facts of this case because of the ambiguous nature of Ticketmaster's control over the large concert venue.\footnote{910 F.2d at 148.} Although Pearl Jam and other bands\footnote{Advanced Health-Care, 910 F.2d at 148.} have taken steps to circumvent Ticketmaster and still compete in the national music arena, the Band claimed it had to cancel its summer tour on account of their disagreement with Ticketmaster.\footnote{Id.}

Pearl Jam also argued that both Lorain Journal Co. v. United States\footnote{Advanced Health-Care, 910 F.2d at 148.} and Advanced Health-Care Serv. v. Radford Community Hosp.\footnote{Id.} are applicable to their complaint. In Lorain, the Court found that a publisher engaged in an attempt to monopolize by placing certain restrictions on the advertising space in its newspaper.\footnote{Id. at 153. The newspaper was seen as the most effective advertising medium because of the large percentage of the population who read it. Id.} Although the advertisers had a choice to use an alternative radio station, most "could not afford to discontinue their newspaper advertising in order to use the radio" because of the newspaper's large market share.\footnote{Id. at 153. The newspaper was seen as the most effective advertising medium because of the large percentage of the population who read it. Id.} The same is true in the Pearl Jam - Ticketmaster controversy because of Ticketmaster's dominance in the ticket distribution market.

In Advanced Health-Care, the Fourth Circuit held that, "if a plaintiff shows that a defendant has harmed consumers and competition by making a short-term sacrifice in order to further its exclusive, anti-competitive objectives, it has shown predation by that defendant."\footnote{May Memorandum, supra note 5, at 6.} Pearl Jam argued that Ticketmaster acted like a predator when it reduced its profits in the short term in order to limit the growth of alternative ticket distribution services.\footnote{Id.} Their memorandum referred to a memo written by the executive director of the North American Concert Pro-

\footnote{Id. at 860. "Although, it is true that these agreements were formally terminated within a short time, the Commission was justified in finding that in fact the relationship remained unchanged." Id. The court in Luria found that the agreements were restrictive of competition. Id.}\footnote{This ambiguity runs from the fact that Pearl Jam is seeking alternative venues. Bruce Haring, Pop Eye, L.A. TIMES, Aug. 7, 1994 (Calendar), at 64.}\footnote{"Representatives of [Neil] Young and Pearl Jam confirm that tentative plans are being made for shows to be held in fields and other alternative venues with low ticket prices — a nod to Pearl Jam's well-publicized battle with Ticketmaster." Id.}\footnote{May Memorandum, supra note 5, at 6.}\footnote{342 U.S. 143 (1951).}\footnote{910 F.2d 139 (4th Cir. 1990).}\footnote{The publisher did not allow advertisements from firms who also advertised on the competing radio station in the locality. Lorain Journal, 342 U.S. at 152.}\footnote{Id. at 153. The newspaper was seen as the most effective advertising medium because of the large percentage of the population who read it. Id.}
IV. AN ANALYSIS OF TICKETMASTER'S RELEVANT MARKET

Pearl Jam and its attorneys failed to adequately address the factors surrounding Ticketmaster's relevant market in their effort to lay out a clear case of monopolization in violation of Section 2 of the Sherman Act. The memorandum does not define the relevant product or geographic market. Pearl Jam's facts, as applied to the law pertaining to delineation of the relevant market in an alleged monopolization, lead to the conclusion that a small market should be defined to include only ticket distribution to concerts at "main line" venues at major cities in the United States.

A. Ticketmaster's Product Market

An evaluation of the relevant product market is essential to analyzing Ticketmaster's market share and proving monopoly status. On one hand, all tickets sold might be considered the relevant product market in which Ticketmaster participates. On the other hand, there are a number of persuasive factors which indicate that the relevant market to be considered is a very small one, including only tickets to major or "main line" venues for rock concerts. A larger product market (e.g., all tickets sold to entertainment events in the United States) makes it more difficult to show that Ticketmaster controls the requisite percentage of market share needed to violate Section 2. In contrast, a small market, including only those tickets to music performances at venues seating over 50,000 people, makes it easier to show that Ticketmaster's market share is large enough to violate Section 2.

B. The Industry Defines the Market

Pearl Jam could have relied on the 1959 Supreme Court case, *International Boxing Club of N.Y., Inc. v. United States*. In *International Boxing*, the Court upheld the lower court's holding that the promotion of championship boxing contests rather than all boxing events constituted the relevant market for evaluation of the industry under the antitrust laws. The Court supported its delineation by pointing to detailed findings in the record which showed that championship fights or bouts brought in over three times the revenue of non-championship bouts; television rights for championship fights brought more than two times the revenue compared with non-championship contests; several million more television viewers watched championship bouts according to Nielsen ratings; and no movie rights were sold for non-championship bouts, whereas movie rights for championship bouts were shown to be quite lucrative. The rationale is linked to the way the indus-

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91 Id. at 6.
92 Id. at 16.
93 Id. at 13.
94 See United States v. Grinnell, 384 U.S. 563, 571 (1966) (stating that a monopoly under § 2 must have monopoly power in the relevant market); Holmes, supra note 59, at 344 (holding that a relevant market includes a product and a geographic market).
95 Letter from Matthew Walker, Senior Research Analyst, Hotel Employees & Restaurant Employees International Union, to Jonathan Rich, U.S. Department of Justice (Mar. 21, 1991) [hereinafter Union Letter] (on file with the D.O.J.). The letter was in response to the D.O.J. investigation of Ticketmaster's proposed acquisition of significant assets of Ticketron. Id. Ticketron was founded in 1968 and became the dominant force in the ticketing industry. The firm began its down turn in the 1980's. Id. The letter predicts that the merging parties will want to include all tickets in the relevant market, including cinema, and minor league baseball. Id.
96 See generally Hovencamp, supra note 50, at 83-84 (noting, for example, that a market for automobiles is much larger than the market for Ford automobiles).
97 See International Boxing Club of N.Y., Inc. v. United States, 358 U.S. 242, 251 (1959) (upholding the lower court's finding that production of non-championship boxing fights are not reasonably interchangeable with championship contests).
99 Id. at 251.
100 Id. at 250-51.
try and the Boxing Club chose to define itself through its coordinated operation.

The relevant market for Ticketmaster can be analyzed in a similar way. Consider a letter written by the Hotel Employees & Restaurant Employees International Union ("Union") in response to the 1991 D.O.J. evaluation of Ticketmaster's proposed acquisition of Ticketron.101 The Union's letter included an exhibit entitled "Contract Status of Major Venues - 1990. By State, City and Seating Capacity."102 The list helped to define the relevant product market by including facilities that the Union, an actor in the industry, believed were relevant to Ticketmaster's business.103 The list included facilities that seat between approximately 400 to 95,000 people.104 A pie graph attached to the list indicated that in 1990 Ticketmaster held exclusive contracts for sixty-eight percent of the total number of seats in venues that seat over 50,000 people.105

At that time, the letter reported that Ticketron held twenty-one percent of the seating in similar venues where exclusive contracts existed.106 Shortly after the letter was written, Ticketmaster bought Ticketron.107 In addition, some news writers assert that Ticketmaster currently has exclusive contracts with facilities that seat two thirds of the nation's largest arenas; Linda Himmelstein, Stadium, Yankee Stadium, Carnegie Hall and Lincoln Center in New York City.111 Smaller venues such as the Beacon Theater and Radio City Music Hall are not mentioned.112 This implies that Ticketmaster considers these larger, well-known locations to be a part of a separate and distinct market, relevant to the issues raised by Pearl Jam. Reflecting on the data provided in the letter, the reports in the news, and Ticketmaster's own list, it appears that even Ticketmaster defines a relevant market by including large venues in heavily populated metropolitan areas.

C. Cross-elasticity

The Supreme Court in United States v. E.I. Du Pont De Nemours and Co.113 called for "an appraisal of the 'cross-elasticity' of demand" when identifying the relevant product market.114 As stated in Part II of this Comment, the cross-elasticity of demand measures the extent to which the change in price of one product will alter the demand for another.115 Two factors should be considered: the extent to which a product is interchangeable in use with alternatives; and the degree of cross-elasticity of demand between the product at issue and close substitutes to it.116

In the case of Ticketmaster, there are few substitutes to use in calculating the cross-elasticity.117 In July, 1995, Billboard magazine named four "challengers" to Ticketmaster: Dillard's, Tele-charge, ProTix, Select-A-Seat, and ETM.118 The article reported that these companies offer essentially the same services as Ticketmaster.119 However, the companies mentioned in the article control very small markets scattered throughout the United States.120

Pearl Jam, and at least one other band, have attempted to distribute tickets through "alternative

101 Union Letter, supra note 95.
102 Id.
103 Id.
104 Id.
105 Id.
106 Id.
107 See, e.g., Boehlert, supra note 38.
108 Ralph Blumenthal, Oddities Continue With Ticketmaster and Pearl Jam, N.Y. TIMES, Aug. 23, 1995, at C11 (estimating that Ticketmaster has exclusive contracts with two thirds of the nation's largest arenas); Linda Himmelstein, Will Ticketmaster Get Scalped?, BUS. WK., June 26, 1995, at 64.
109 Hearing, supra note 6, at 128-34.
110 Id. at 128.
111 Id.
112 Id.
114 Id. at 394.
115 Id. at 400.
116 HOLMES, supra note 59, at 344.
117 See generally Boehlert, supra note 38.
118 Id.
119 Id.
120 Id. Dillard's does most of its business in the southwest. Id. at 78. Tele-charge has money to help market itself nationwide, but insiders in the industry expect it to 'pick its spots,' rather than take on Ticketmaster nationally. Id. ProTix, out of Wisconsin, has a few large contracts scattered throughout the United States. It recently won a contract to provide ticketing for the summer Olympics in Atlanta. Id. Select-A-Seat concentrates its efforts in North and South Carolina. Id. at 79. ETM, Pearl Jam's ticketor of choice, has national aspirations. Id.
means. However, real substitutes for Ticketmaster appear to be few and far between. If this market were competitive, when the concept of cross-elasticity of demand is applied, the substitute firms would see a rise in demand for their tickets when Ticketmaster increased its price. In a market where a monopoly exists, the demand for tickets sold by substitutes to Ticketmaster would stay essentially unchanged when Ticketmaster increased its price. Here, the reported substitute firms could be excluded from the relevant market if it can be shown that Ticketmaster has been able to increase its price while demand for tickets sold by other firms remained constant.

Once again, the 1991 Union letter to the D.O.J. raises several interesting points. At that time, the relevant market needed was identified in the context of a merger. However, the method used to delineate the market does not change in a monopoly analysis. The Union also contended that a ticket to a rock concert should constitute a separate product from a ticket to a movie or a sporting event since a music fan would not choose to buy a movie ticket just because the price of concert tickets increased.

Finally, the Union suggested that the exclusive nature of the agreements in the industry function as a barrier to firms who would like to enter the ticketing market.

D. Ticketmaster's Geographic Market

One statement used by the Supreme Court to describe the geographic market is that the market chosen must "correspond to the commercial realities of the industry." In the case of Ticketmaster and the ticket distribution industry, there are some cities where a venue or a producer has more than one choice for ticketing services. There are some companies, aside from Ticketmaster, who participate in the industry on a regional level. There are even a few companies who might be able to offer services in a national market. In accordance with "commercial realities," there are different choices depending on the location in question. However, Ticketmaster appears to function in a national market even though it has little competition in some regions.

E. Applying the Grinnell Rational

The Supreme Court in United States v. Grinnell held that Grinnell's market was national even though its services were local in scope. The Court found that Grinnell had a national business plan, dealt with national companies, and made agreements involving activities in many States. Ticketmaster could be viewed in the same light. While it may provide services that are consumed in one definable location, Ticketmaster markets itself and pursues business opportunities in major cities all over the country.

Part II of this comment identified some questions that could be asked to determine the relevant geographic market. The first question asked whether or not the firms who compete perceive their specific market as separate and distinct. Here, it is clear that Ticketmaster views its market nationally. The list of venues, as submitted to the House Subcommittee, lists arenas and halls all around the country. Another question that appears relevant is whether transportation costs or the lack of storage and distribution facilities block firms outside a particular re-

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11 See generally Eric Boehlert, STP Eye Tix System, Bill-board, Mar. 4, 1995, at 1 (explaining a move by the rock group, Stone Temple Pilots, to create and implement its own ticketing system); see also Hearing, supra note 6, at 17-18 (recounts Pearl Jam's attempts at distributing tickets themselves in both Detroit and New York City).
12 See generally Holmes, supra note 59, at 345-46 (explaining the application of cross-elasticity of demand).
13 Id.
14 Union Letter, supra note 95.
15 Id.
16 See generally HOVENCAMP, supra note 50, at 83 (suggesting that both merger and monopoly analyses use the same approach to determine the relevant antitrust market).
17 See Union Letter, supra note 95.
18 Id.
19 Brown Shoe Co. v. United States, 370 U.S. 294, 336-37 (1962)(citation omitted)(suggesting that Congress intended a factual rather than legalistic approach to defining the relevant market); see also Holmes, supra note 59, at 351-52.
20 See generally Boehlert supra note 38, at 1.
21 Id.
22 Id. (sugge sting that ETM and Tele-charge in particular could have the ability to compete with Ticketmaster in the future).
23 In Utah there is just one ticket company to do business with Hearing, supra note 6, at 37.
24 See generally Himmelstein, supra note 108, at 65.
26 Id. at 575.
27 Id.
28 Id. (sugge sting that ETM and Tele-charge in particular could have the ability to compete with Ticketmaster in the future).
29 In Utah there is just one ticket company to do business with Hearing, supra note 6, at 37.
30 See generally Himmelstein, supra note 108, at 65.
31 Sullivan, supra note 67, at 68.
32 Hearing, supra note 6, at 128-34.
region from entering the market. The use of computers and communication technology in ticket distribution makes it adaptable to many locations throughout the country. Unlike the production of cement blocks, which would be heavy and costly to transport, ticket distribution firms appear to have relatively low costs associated with distributing their product throughout the country.

While some substitute firms operate only in one region of the country, Ticketmaster and others appear to be after contracts with certain venues all around the United States. Still, Ticketmaster, Pearl Jam, the Union, and at least one news writer appear to define the market nationally. If the commercial realities in the industry govern, the national market is the appropriate geographic market here.

V. CONCLUSION

In its memorandum to the D.O.J., Pearl Jam argued that “because Ticketmaster is dominant in the distribution of tickets to concerts, its rigid enforcement of exclusive dealing agreements with virtually every promoter and venue in the United States is a blatant exercise of monopoly power in violation of Section 2 of the Sherman Act.” To prove monopolization in violation of Section 2, one must show that the firm possesses monopoly power in a relevant market and that it willfully holds that power. As this Comment demonstrates, Ticketmaster’s relevant market includes the distribution of tickets to rock concerts at large venues, nationally. While the D.O.J. ended or paused its investigation of Ticketmaster, this analysis can serve as a starting point for a further evaluation of the ticketing industry.

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142 SULLIVAN, supra note 67, at 68.
143 See generally Boehlert, supra note 38 (tracking the use of computer and telecommunications technology in the industry).
144 Id. (tracing the regional or scattered markets Ticketmaster rivals participate in).
145 See Hearing, supra note 6, at 128-34 (listing venues where Ticketmaster says it does or does not have exclusive contracts); Union Letter, supra note 95; Boehlert, supra note 38 (suggesting that Ticketmaster faces little national competition).
146 See Brown Shoe Co. v. United States, 370 U.S. 294, 336-37 (1962) (suggesting that Congress intended a factual rather than legalistic approach to defining the relevant market); see also HOLMES, supra note 59, at 351-52.
147 See May Memorandum, supra note 5, at 7.
149 Philips, supra note 8.