

DOJ's "Bad Blood" with Live Nation-Ticketmaster

[TRANSCRIPT & SHOW NOTES]

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[Intro Music]

Sophia Navedo (00:04)

Welcome back to *A Hard Look*, a podcast by the Administrative Law Review. Your hosts today are Sophia Navedo and Victoria Paul, third year law students at American University, Washington College of Law. On today's episode, we're unpacking a headline grabbing case that somehow blends the worlds of administrative law and Swifties: the Department of Justice's antitrust lawsuit against Live Nation and Ticketmaster.

Victoria Paul (00:25)

This case isn't just about outrageously high, ticket prices or botched online sales. It's a high stakes test of the DOJ's enforcement power under administrative law principles. On today's episode, we'll take a closer look at the legal framework that grants DOJ's enforcement power and what this case could mean for the future of federal market regulation. But before we begin, please note that the positions, views, and ideas advanced by speakers on this podcast are representative of themselves alone and cannot be fairly attributed to the Administrative Law Review, Washington College of Law, the American Bar Association, nor any of the organizations that the speakers may be affiliated with. And finally, if you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us via the contact information on our website: AdministrativeLawReview.org.

[Transition Music]

Sophia Navedo (01:23)

All right, everyone, get ready because joining us today is a powerhouse both in the courtroom and online. Reb Masel is a practicing attorney, but chances are you might know her from somewhere else. Outside of legal briefs in courtrooms, Reb has built a massive following on TikTok where she breaks down the legal world with sharp insight and a solid dose of humor. Whether she's reading public depositions or tackling hot legal topics, her

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content has racked up over 1.9 million followers and a staggering 93 million likes making her a major name in legal social media.

She's also the host of Rebuttal where she dives into fascinating legal pulling back the curtain on the legal system in a way that's both entertaining and informative. Lucky for us, Reb's here to help us unpack a key component of admin law: agency enforcement power. Specifically how it's playing out in the high profile against Live Nation and Ticketmaster. Let's get into!

[Transition Music]

Sophia Navedo (02:20)

Welcome, Reb. We're so happy to have you here today. Everybody in our journal is excited to hear this podcast and actually the entire law school. So, thank you for making us very popular.

Reb Masel (02:30)

Of course, are you kidding? Anytime! I'm happy to be here and chat, not only Taylor Swift, but the DOJ. Fun, fun topics.

Sophia Navedo (02:37)

Great!

Sophia Navedo (02:39)

So, I'd love to start with the Taylor Swift ticket sale fiasco we all know about, but this will make so much more sense if we start from the beginning. In February 2009, Ticketmaster (the dominant ticketing service in the United States) and Live Nation (the largest concert promoter in the US) proposed a merger. By January 2010, the DOJ's Antitrust Division filed a complaint in court seeking to enjoin the merger.

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Victoria Paul (03:01)

The Federal Trade Commission, or FTC, also enforces antitrust violations. It seems like there's a lot of overlap between these two agencies. Reb, why did the DOJ take point on this action rather than the FTC?

Reb Masel (03:14)

The DOJ Antitrust Division typically handles monopolization cases involving live entertainment, media, and telecommunications industries. And the DOJ essentially, as noted in the FTC's own guidelines, it has sole jurisdiction in certain industries, such as telecommunications, in this space with specifically this issue of monopolization. And further, the DOJ already took point. in approving the 2010 Live Nation-Ticketmaster merger and then later overseeing the merger and then implementing the subsequent 2020-2019-2020 amendments to the consent decree that was signed out of that complaint that the DOJ had about this merger. And so, it just makes the most sense for the DOJ to continue its jurisdiction and take point on this. And the FTC could totally still file a separate complaint if it finds that Live Nation and Ticketmaster engaged in unfair business practices under the FTC Act. But until that happens, the DOJ remains the lead agency taking point in this very high profile suit.

Sophia Navedo (04:21)

That makes a lot more sense. I guess kind of looking back then, what does an agency's enforcement power actually entail? And do all agencies have this?

Reb Masel (04:30)

Yeah, so agency enforcement power in its scope is derived by statute. Congress outlines what they can and can't do, and in the case of the Department of Justice, their enforcement power grants it the ability to conduct oversight and investigations, issue subpoenas, do site inspections, do interviews and depositions, and prosecute parties ultimately, which is what we're seeing here via civil enforcement actions, criminal prosecutions or administrative adjudication. And not every agency has the same type of enforcement power. There has been a lot of controversy and legal debate over how much each agency should or should not have. Anything from the EPA to NASA to the DOJ to the SEC. Most recently last year with the Supreme Court handing down an opinion in relation to the SEC's enforcement

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actions and what many people have said kind of gutted a lot of their ability to, to enforce. And of course, since the DOJ is a part of the executive branch, their primary authority is to indeed enforce the federal statutes that apply to a lot of companies, including in this case, their antitrust division, which is the one that enforces federal law in relation to what people most notably know as the Sherman Act, the Clayton Act, to make sure that consumers are protected, that the markets are protected, that no one is monopolizing and doing things that ultimately hurt consumers and hurt our economy in general.

Sophia Navedo (06:02)

So, you mentioned the Sherman Act and the Clayton Act, and so that is essentially the source of DOJ's enforcement power, right?

Reb Masel (06:08)

Yes, it is. And the Sherman Act relates more to monopolies and the Clayton Act relates more to anti-competitive behavior. So, it's up to them. It's their discretion what section under either act they want to prosecute a company for, which, you know, leaves a lot to interpretation. A lot of people can argue, you know, this one would have been better. This, you know, they shouldn't have done this. They should have done that. But in this case, at least in the what 2024 filing they're prosecuting or attempting to seek remedies out of this suit against Live Nation and Ticketmaster based on the Sherman Act. But previously it was in relation to the Clayton Act, which is interesting.

Sophia Navedo (06:52)

Thank for making that distinction actually because I think that's very important but yeah...

Reb Masel (06:57)

It's more technical, but if you want to, you know, if you, if you don't need to argue about it in a court of law right now, that is the easiest way to explain it to someone and start from there. Honestly, even if you're just a law student or, a practitioner, that's, that's the general line that we, that we draw.

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Victoria Paul (07:16)

So, understanding that DOJ's enforcement power was exercised by them filing a complaint seeking to enjoin the merger and the court responded by issuing a consent decree also referred to as a settlement. What exactly is a consent decree? What did it do and how does it fit into their enforcement strategy?

Reb Masel (07:36)

In lieu of prosecuting and seeking remedies through a court order that way immediately, a resolution of the, I guess, monopolistic and anti-competitive behavior that the DOJ is alleging a company is engaging in, they will basically ask the company to, instead of us going through this entire prosecution that will probably be horrible for PR for your company, please voluntarily sign this consent decree, which is exactly what you said. It's essentially a settlement and a negotiated resolution that is entered as a court order ultimately and is enforceable through a motion for contempt. So, it's not just a handshake, I pinky promise, I won't engage in these behaviors anymore. The DOJ can go to court to enforce it if it finds that the company violated one or more provisions of the consent decree.

It does this with companies all the time, but the one in 2010 was notable just because this was such a big issue you know, it has been a big issue for years. You know, concert sales and ticket sales and everything, you know, transpiring through such online platforms now. And they were attempting in signing this consent decree—or entering into this consent decree—with Ticketmaster and Live Nation, to enable them to merge without it becoming something so anti-competitive and something so monopolistic that it would ultimately hurt consumers. But ultimately, as we know now—hindsight's 2020—it didn't work because allegedly what the DOJ is claiming is that Ticketmaster and Live Nation violated a bunch of provisions of this consent decree and that's why they sought in 2019 to have it extended and to have more provisions added to it. That still didn't work. And so the slaps on the wrists, I guess, just run out. They were run out of them. And so that's what I think led to this ultimate filing in 2024 that has caused such a buzz because it is such a massive movement by the DOJ to basically include in its complaint that one of the remedies they may be seeking if it turns out to be the best case—or the best remedy that the court decides is appropriate—it would a dissolution, a breaking up of Ticketmaster and Live Nation, which is of course drastic, drastic remedy. But if you look back at everything that they had tried to do previously, it doesn't come as a huge surprise because this wasn't out of nowhere. Taylor Swift wasn't the first stop on this journey. It just ended up being one of the last straws, I think.

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Sophia Navedo (10:13)

Yeah, it definitely has been building up for quite some time. Even I think the first time they issued the consent decree, it seemed like the industry was already kind of like, "this is a horrible idea don't let this happen." So, it's interesting to see, especially when they came kind of closer to the expiration date of the first consent decree, how they were very much just like, we have to get this extended. And so, I think they were already like fined \$3 million at that point as well for saying, hey, they have already violated this.

Reb Masel (10:37)

Umhmm [Agreeing].

Sophia Navedo (10:38)

Let's try this again. But like you said, take three, I guess.

Reb Masel (10:42)

With respect to them having to pay out \$3 million for violating it in addition to having to agree to a lot more terms, the main issues and the main terms of the consent decree that they were violating were those behavioral remedies, the ones that the DOJ was hoping they please pinky swear don't do anymore, which included Ticketmaster retaliating against venues, which was the most relevant remedy to their 2019 claim where they [DOJ] said, "hi, you violated our 2010 consent decree again, you are retaliating against venues." They also said that Ticketmaster couldn't bundle its services and make them mandatory. They couldn't use its ticketing data in promotional efforts or management of its business. There were a lot of terms that they were trying to help or have help the ability for Ticketmaster slash Live Nation to cut out all competitors by basically requiring every artist and every venue they worked with to do a bundle to say, you can't have this person, can't essentially use our venue unless you use Ticketmaster, you can't use Ticketmaster unless you use this. That was the hope that it would help that, but according to the DOJ, they were doing that stuff anyway... allegedly.

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Victoria Paul (11:56)

So, you mentioned some of the provisions of the consent decree being behavioral remedies. Could you share more about what behavioral remedies are—and also structural remedies?

Reb Masel (12:08)

Yeah, behavioral remedies are those that focus on prohibiting a defendant from engaging in specific anti-competitive acts in the future. So prohibitory provisions are used frequently to remedy a variety of unlawful exclusionary conduct, including exclusive dealing, which is something that Ticketmaster slash Live Nation was engaged in, right? They were basically forcing out everyone else because in order for anyone to use Live Nation, they had to use Ticketmaster and vice versa.

Alright—a behavioral remedy can also include injunctive provisions that in effect regulate the merged firms, post-merger. So, in this case, Ticketmaster and live nations business conduct or pricing authority. In contrast, structural remedies are those that generally involve the sale of businesses or assets by the merging firms. They typically dissolve the defendant, split it into two or more entities or require divestiture of assets to a new owner, which structural remedies are obviously considered the more drastic. Behavioral remedies are usually the ones that these companies try to argue in court for over just structural remedies. A few examples of the structural remedies that Ticketmaster slash Live Nation voluntarily agreed to in that initial consent decree in 2010 included that Ticketmaster was required to license its ticketing software to a competitor, AEG. They were also not allowed to service AEG venues. So, you know, let AEG have, have its flowers for a second. And then also it was required to divest. I cannot pronounce it, but it's a ticketing software to Comcast Spectator. It's P-A-C-I-O-L-A-N.

Sophia Navedo (13:45)

I thought the same thing. I was like, what??

Reb Masel (13:47)

That's what I always do. Even in court, sometimes I'm like—I just start spelling, listen.

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Sophia Navedo (13:53)

No, safe—safe bet. So, just to point out in the press release, DOJ said, quote: this is the most significant enforcement action of an existing antitrust decree by the department in 20 years (end quote). And I thought that was pretty interesting, especially since this 2024 claim is essentially a lot more intense than just an extension of a consent decree.

Victoria Paul (14:12)

So, building up to the most suspenseful part, it's November 1st, 2022, and Taylor Swift has announced her Eras Tour. Presale for verified fans took place on November 15th, and it was absolute chaos—between the website crashing, long queues and sky high ticket prices; 3.5 million people registered for the presale. So, there was a public sale that was scheduled for November 18th, but by November 16th, the day after the presale, Ticketmaster figured out that they would have to cancel the public sale, citing insufficient ticket inventory. While simultaneously, scalpers started reselling tickets for tens of thousands of dollars, and even Congress got involved with senators calling for investigations and leading to hearings, but I digress. So, by November 21st, 2022, DOJ opened its enforcement investigation.

Sophia Navedo (15:05)

So, within months of that ticket sale fiasco, fans filed multiple class actions. Reb, what's the difference between a complaint by a fan and one filed by the DOJ?

Reb Masel (15:14)

Well, for anyone who's gone through law school or at least taken some kind of civil procedure type of class or is aware of this or is practicing, you know that a class action is intended to compensate the people who were harmed by an agency or a company's actions. In the case of a DOJ complaint, it is really targeting and looking for systemic change.

So, when you file a class action, you are looking to remedy the individual harms that were done by the company, in this case, Live Nation and Ticketmaster. They ultimately and most likely had compensated those people for monetary damages, right? It's money. It's, here, we will make you whole again. We're so sorry, XOXO. But in the case of the DOJ, they could very well look for fines and monetary damages like they did kind of with the violation of the

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consent decrees with the \$3 million that Ticketmaster and Live Nation had to pay up; but here, they're really—their goal here is to really remedy the issues with the monopoly and use their enforcement power to make a more thorough investigation happen. Because also with class actions, discovery doesn't get you as far as a Department of Justice investigation can. And so ultimately, right, a monopoly in the United States itself isn't unlawful. Just because you have a monopoly, doesn't necessarily mean you're automatically violating the law. It becomes unlawful when that monopoly is using anti-competitive means to exclude competition. And obviously in a class action lawsuit, what discovery you can get relating to how you are harmed is probably going to be a lot different than what the DOJ could get through its investigation of an actual illegal monopoly that they are alleging is illegal or that they're at least trying to look and see whether it's illegal or not. So obviously it doesn't mean that one should exist without the other. They can both happen at the same time, but ultimately, if we wanted real change in the industry, especially in the ticket sales and concert venue industry, the way you're going to get it is through a Department of Justice agency action like this.

Sophia Navedo (17:20)

I feel like it's also a little bit more intimidating to be like, DOJ is after me. I can't imagine being, I guess, in Ticketmaster Live Nation seat right now.

Reb Masel (17:28)

Right? It's not a great phone call to get.

Sophia Navedo (17:32)

Yeah!

Reb Masel (17:32)

It's not a great warrant to have to grab out of their hand while they're walking through your facilities, I'm sure.

Sophia Navedo (17:37)

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Right! It took almost two years for DOJ to file its suit against Live Nation--Ticketmaster. For context, why do antitrust cases take so long to adjudicate?

Reb Masel (17:46)

How long an investigation takes... Honestly, you can imagine the thousands upon thousands of pages of data, of internal emails, of contracts, of pricing models, market share reports, and also just communications between not only just Live Nation and Ticketmaster among themselves, but also with third parties. And then they could look to third parties to get more information about what dealings they might have had with Live Nation and Ticketmaster in order to prove up their claims and allegations that they were engaging in anti-competitive behavior. It can take years, even if you have every attorney possible or every staff, you know, staff person possible to be looking through these files and looking through these pages, it could take years. And of course, as many of us know, the federal government is not the most staffed that they could be—most efficiently to be able to handle something like this. So, of course, it's going to take a long time but not just that even if they are perfectly staffed and they have enough people to take on an investigation like this It's complex. Of course, it's complex. Most people who go through law school hear about anti-trust law or learn a little bit about it and go and immediately say “I don't want anything to do with that—that sounds hard and difficult and confusing,” and it is.

Some people love it, but it does involve intricate economic theories, graphs and studies and experts that both sides are going to present to talk about market dominance and price fixing and what's anti-competitive behavior and what really wasn't. And you know, they have experts debating whether this actually led to a significant market impact. And this, of course, leads to prolonged legal battles, which keeps attorneys employed—amazing for us—but not so great for the companies and obviously the consumers who are involved and impacted by this. So that's why it takes so long. And I don't think there's ever gonna be a day where it doesn't take in a long time because I think that the only way that you can meaningfully get the remedies that the nation, the market, the consumers deserve, and that's the proper remedy, is if you take your time with it.

In this case, the DOJ making sure that they have everything that they need in order to either prosecute or not prosecute, right? We don't want happy trigger fingers in any police department. And this is one form of it. So they definitely, I think had already had years to look into Live Nation and Ticketmaster's practices all the way back to 2010. So, I think they

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were prepared for something like this already prior to the Taylor Swift debacle, this probably just pushed them to it and gave them more fuel for the fire.

Victoria Paul (20:19)

In light of all of the obstacles discussed and identified by May, 2024, DOJ persevered and was able to file a civil antitrust lawsuit for monopolization along with 30 states as co-plaintiffs. By August, they filed an amended complaint with an additional 10 states joining the suit. So, what are the claims asserted and what are the remedies that DOJ may be seeking?

Reb Masel (20:42)

So, the core legal claims include issues involving pre-sale, pre-sale exclusive agreements and secondary ticket market. With respect to pre-sale, many fans were unable to purchase tickets for the shows after Ticketmaster's website crashed during the artist pre-sale. And for any victims, my heart goes out to you. I'm so sorry. Exclusive agreements, they violated—they're [DOJ] alleging—of course, this is all alleged... they're alleging that Ticketmaster and Live Nation violated antitrust laws through exclusive agreements with the stadiums in the tour. So, such as their agreements with Oak View Group, which is an entity that is mentioned several times in the hundred-page complaint we have here, resulting in Taylor Swift having no choice but to work with Ticketmaster. And not just Swift, but obviously other artists having no choice but to work with Ticketmaster.

And lastly, a lot of claims related to secondary ticketing market, which is where Ticketmaster has agreements with venues that not only give them exclusivity over the primary ticketing, but also the secondary ticketing through their SafeTix Technology. SafeTix requires that all resales are made only through the Ticketmaster platform, which excludes competing secondary ticketing platforms and does not allow for competition from other companies. And in combination of all of those three main issues, topics, categories of claims, the DOJ is seeking several remedies that, of course, ultimately is going to be up to the court and the disposition of this lawsuit. All of these claims are alleged and it looks like Live Nation and Ticketmaster are defending them rigorously. They're denying all of these claims and basically telling the DOJ that they had to stuff it, essentially to stuff it. But if the DOJ prevails on every claim, they're asking for [One] a decree from the court that Live Nation and Ticketmaster has been acting like a monopoly. [Two] For the court to order a divestiture of Ticketmaster, which would be that structural remedy we spoke about. Three,

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in order for the termination of Live Nation's ticketing agreement with Oakview Group, a competitor the DOJ claims is in cahoots with Live Nation. Four, for the court to enjoin Live Nation from continuing to engage in anti-competitive practices, which I'm sure is going to get very technical and list a whole lot of things that they don't want them to be doing. And then five, for the court to award the plaintiffs monetary damages. So, this could come in the form of fines, just like that \$3 million that they had to pay out for violating, but it could be a much larger monetary damage than it was last time, I'm sure, especially because they're not asking for an extension of the consent decree here. They are over it in more ways than one. And when you piss off the DOJ, they're probably going to seek the highest limit of what they can.

Victoria Paul (23:16)

Some may say that the Swifties have some "bad blood" for Ticketmaster and Live Nation right now [chuckles].

Reb Masel (23:21)

Absolutely [chuckles].

Sophia Navedo (23:22)

We're really trying to play up the puns [also chuckles].

Reb Masel (23:24)

I love that. Why not? [Laughs]

Sophia Navedo (23:27)

What should people pay attention to as the case unfolds in court?

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Reb Masel (23:31)

Well, of course, as we discussed, does take years for these things to really follow through—an actual case going from start to finish. There's also settlement talks that we, the public, are not going to be privy to. They are going to be talking to Live Nation actively (they meaning the DOJ) and Ticketmaster about what possible remedies they could voluntarily agree to that would avoid a very long jury trial sometime in distant future. But I think that what people should be looking out for is not just that, hey, we're probably not going to get answers for the next few years, but the DOJ is ramping up its enforcement of not just Ticketmaster and Live Nation, but other big companies accused of engaging in illegal monopolies that box out competitors and drive-up prices.

In March of last year, the Justice Department sued Apple, accusing the tech giant of engineering an illegal monopoly in the smartphone market. And also last year, closing arguments were made in a lawsuit against Google that dates from the Trump—the previous Trump administration. Federal prosecutors had accused that tech giant of maintaining a monopoly status as a search engine. And in September of 2024, the FTC—Federal Trade Commission, which works closely with the DOJ, of course—sued Amazon alleging the e-commerce behemoth abuses its position in the marketplace to inflate prices on and off its platform, overcharge sellers and stifle competition. Amazon asked for the lawsuit to be dismissed in December, but a judge did set a trial date for October of 2026. So, I think ultimately this does show that the DOJ and the FTC are ramping up its enforcement efforts to attack price gouging monopolies like the ones that Taylor Swift fans have such “bad blood” with now and it could very well mean a positive for consumers. I hope that it is. I hope that the outcomes of all of these enforcement efforts are something that results in lower ticket prices and ease of access to be able to just see your favorite artist on the stage without needing to go through 85 hoops and do a backflip before you can get there.

[Transition Music]

Sophia Navedo (25:39)

Reb, thank you so much for joining us today and helping us explain enforcement action in the most creative way we knew how. As you know, we're a student-run podcast trying to communicate how important and relevant administrative law is.

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Reb Masel (25:51)

Of course, are you kidding? I was so happy to see your request that I come on and I am fully supportive of everything you guys talk about and promote, especially in the space of admin law. There's always going to be things that require administrative regulation and oversight and that ultimately will protect us, not just as Taylor Swift concert or any type of concert consumers and attendees, but also as people who are interested in being healthy and being able to fly from place to place safely and being able to go to school and have some type of authority ensure that we are getting what we need to live and thrive. And so, I love that you guys are bringing attention to this space and hopefully more lawyers and law students will take an interest.

Sophia Navedo (26:36)

Oh, thank you—for sure, especially again, we're very popular now [laughs].

Victoria Paul (26:47)

The DOJ's lawsuit against Live Nation and Ticketmaster is more than just a legal battle. It's a test of how administrative law empowers federal agencies to safeguard competition. Whether the DOJ wins or loses, this case will shape the future of antitrust enforcement and federal oversight in years to come.

We'd to thank ALR staffers Linda Cullen, Maddie Haggard, and Peyton Crasher for their assistance in research for this episode.

If you enjoyed the episode, please take a second to leave a review and rating on your favorite listening app and be sure to subscribe and check out our show notes for links to relevant resources. We'd love to answer your questions on administrative law, so let us know what you'd like us to cover this season.

Stay informed, stay engaged, and as always, thanks for tuning into A Hard Look.

[Outro Music]

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[SHOW NOTES]

Special thanks to ALR Staffers [Linda Cullen](#), [Peyton Kreuzscher](#), and [Maddie Haggard](#) for their assistance with research and preparation for this episode!

Read more about DOJ's case against Live Nation-Ticketmaster and agency enforcement power here:

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- [Guide to Antitrust Law: The Enforces](#), The Federal Trade Commission's Official Website
- [U.S. and Plaintiff States v. Ticketmaster Entertainment, Inc. and Live Nation Entertainment, Inc. \(2010-2020\)](#)
- [U.S. and Plaintiff States v. Live Nation Entertainment, Inc and Ticketmaster L.L.C. \(2024\)](#)
- Sam McCann, [Everything You Need to Know About Consent Decrees](#), Vera (Aug. 30, 2023).