

## **Live Nation/Ticketmaster Inquiry**

### **Ticketmaster's further submission to the Competition Commission's regarding the Commission's Provisional Findings of 8 October 2009**

**30 November 2009**

**Updated on 3 December 2009**

#### **Introduction:**

Further to Ticketmaster's submission of 21 October 2009 in relation to the Competition Commission's Provisional Findings published on 8 October 2009, this submission provides further evidence (in particular in relation to points raised by the Competition Commission in its Provisional Findings which had not been put to the parties prior to those findings) and further responses from Ticketmaster to particular points in the Provisional Findings.

*Ticketmaster remains concerned that on the basis of what has been published in the Provisional Findings and discussions with the Competition Commission since their publication, the Competition Commission still does not appear to have understood the UK ticketing market, despite extensive evidence supplied by the parties. This concern is broader for Ticketmaster than purely being in of the context of this particular Inquiry (and its specific outcome).*

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## 1. Innovation and Customer Satisfaction

1.1 In its Provisional Findings dated as of 8 October, 2009, the Competition Commission found that competition in the UK market for the primary retailing of live music tickets was not “fully” effective and would be more effective in the counterfactual.<sup>1</sup>

1.2 The Competition Commission’s conclusion that the market is not “fully” effective, however, was flawed on the facts (as well as analysis). In coming to that conclusion, the Competition Commission noted only that innovation had been “limited” and an unquantified percentage of consumers were not satisfied with the services offered by ticket agents. In particular, in Section 6.49 of the Provisional Findings, the Competition Commission stated:

*“We found that, prior to the anticipated merger, competition in the UK market for the primary retailing of live music tickets was not fully effective (see paragraph 5.41). In particular, we found that innovation had been limited and many consumers and clients were dissatisfied with the services offered by ticket agents (see Appendix E). Therefore, we found that there was an opportunity for a new ticket agent to offer a distinctive service and to build market share, so long as it had the capability to over-come the significant barriers to expansion in the market (see paragraphs 5.28 to 5.39).”*

1.3 Given the importance that the Competition Commission placed on innovation and client and consumer satisfaction in reaching one of its key conclusions in the Provisional Findings, Ticketmaster was concerned not only by the conclusion that the Competition Commission reached on those points, but also that the Competition Commission had not put those points to Ticketmaster for comment or feedback at any point in the process. Ticketmaster also disagrees with the conclusion as it is contrary to the true facts concerning the evolution of the ticketing services business. Accordingly, Ticketmaster responds now to points about innovation and client and consumer satisfaction in greater detail.

### *Innovation*

1.4 In this case, the finding that the ticketing market had suffered from insufficient innovation was particularly surprising to Ticketmaster. On a global basis, Ticketmaster projects that it will spend approximately US\$[X] this year alone developing, improving and maintaining its ticketing on technology. Ticketmaster has estimated that it has spent in excess of US\$[X] on its core “host” technology that powers its main ticketing services operations world-wide. Ticketmaster believes that it is the most innovative ticketing company in the world, and it constantly invests in new and improved ticketing technologies to provide better solutions for its clients and consumers. Ticketmaster has been a global leader in introducing such new ticketing technologies as:

- wireless scanner access control systems,

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<sup>1</sup> The parties previously explained why these findings are an insufficient basis to prohibit a merger under the Enterprise Act, which does not prohibit mergers unless they create or enhance market power, a finding that was not and cannot be made in this case.

- print-at-home tickets,
- online ticket auctions,
- the launch of the UK's first real time ticketing website (in 1998),
- delivery of tickets through mobile phones,
- development of interfaces to allow ticket purchases through mobile phones,
- verification of secondary tickets, and
- paperless ticketing.

1.5 The above innovations are far from an exhaustive list. A more complete list of some of the innovations introduced by Ticketmaster is attached as *Appendix A*.

1.6 In addition to the features described above, Ticketmaster has also been a leader in developing technologies that further consumer protection in the live entertainment industry. To that end, Ticketmaster has developed the following technological features:

- access control systems that prevent forged or fraudulently obtained tickets from entering venues or events;
- credit loss and fraud prevention software that identifies unusual purchase activity and potential fraudulent use of consumers' credit or debit cards;
- systems that track and expose the use of "bots" by brokers who try to cheat the system and purchase large blocks of tickets in violation of Ticketmaster's Terms of Use and thereby deprive the general public of the opportunity to secure good tickets for live events;
- paperless ticketing; and
- secondary market solutions. The explosion of secondary market sites has led to many high profile and extensive instances of consumers buying tickets through sites that have not delivered the tickets, in many cases to the financial detriment of the consumers. Ticketmaster has proactively responded to these developments through its safe fan-to-fan TicketExchange facility, auctions and dynamic pricing, through its secondary site, GetMeIn.com, and by developing ticket validation and verification solutions for tickets to be re-sold.

1.7 In addition to the above, Ticketmaster is currently working on many new innovations to offer a better consumer experience for those using its website. These include, among many others, a system for users to rate events and venues, videos from live performances, and personalized recommendations of events based on purchaser behaviour.

1.8 Ticketmaster also notes that while a number of its clients met with the Competition Commission staff, based on the summaries of those meetings available to

Ticketmaster via the Competition Commission's website, we do not see a single reference to a lack of innovation (or product development) from any of these clients.

- 1.9 In the Provisional Findings, Ticketmaster sees only one reference to any conclusions about innovation. Appendix E of the Provisional Findings contains the following statement: "*We noted that Ticketmaster did not offer consumers the ability to choose their seats from a seating plan or to purchase other merchandise at the same time as their live music tickets, both of which were offered on competing systems.*" The Competition Commission does not indicate where this statement originated, but in fact, ***it happens to be untrue***. In both instances, Ticketmaster actually offers this functionality. Ticketmaster could have easily addressed this key finding had it been put to Ticketmaster.
- 1.10 If this is not sufficient evidence to establish that the Competition Commission's finding of a lack of innovation is manifestly incorrect, Ticketmaster would welcome the opportunity to discuss this issue with the Competition Commission.
- 1.11 The focus of this paper is on factual evidence. However, Ticketmaster also notes that it is notoriously difficult, if not impossible, to determine what is the "correct" or "optimal" level of innovation in any given industry. Merger analysis therefore assumes that, whatever is the correct level of innovation, a competitive market will bring it about. It is thus inappropriate, and indeed backwards, to attempt to infer from innovation levels that a market is not fully competitive.

#### *Client and Customer Satisfaction*

- 1.12 It is equally puzzling to Ticketmaster as to how the Competition Commission concluded that many customers and clients are dissatisfied with the service provided by ticket agents in the UK. Ticketmaster sees nothing in the materials submitted by third parties indicating such dissatisfaction, and the evidence submitted by the parties should have led the Competition Commission to a different conclusion. In addition, in Section 5.25(c) of the Provisional Findings, the Competition Commission itself found that Ticketmaster had a proven track record of operating reliably, even at significant scale, and is trusted by both promoters and consumers. Given the importance that the Competition Commission gave to the level of dissatisfaction of clients and customers in coming to one of its key findings, Ticketmaster is troubled by the failure of the Competition Commission to engage with Ticketmaster on this issue.
- 1.13 In the earliest stages of this merger Inquiry, at the request of the Competition Commission, Ticketmaster provided a copy of its latest consumer research, a report completed by fhios in 2008. In that report, fhios found that 92.3% of consumers were either satisfied or very satisfied with Ticketmaster's services. This is an extremely high satisfaction rating. As part of the current Inquiry, the Competition Commission commissioned its own consumer survey. It is quite surprising, however, that given the great weight that the Competition Commission has placed on consumer satisfaction in one of its key findings, the Competition Commission did not even ask a question in its own consumer research about customer satisfaction with the services of ticket agents.
- 1.14 Ticketmaster's own experience is that its clients and consumers are and have been satisfied with the services they receive. Accordingly, Ticketmaster does not

understand (a) how the Competition Commission came to its conclusion, (b) on what evidence the Competition Commission relied in coming to this conclusion, and (c) why this issue was never put to Ticketmaster.

## 2. Constraints imposed by Self-Ticketing

- 2.1 The Provisional Findings correctly found that the ticketing market is competitive and that Ticketmaster faces particularly intense competition from See Tickets, along with competition from a large number of other third party agents and from self-ticketing. Ticketmaster has explained in its previous submission that all of the evidence confirms that this competition to be robust and effective. However, in its Provisional Findings, the Competition Commission found that the threat of venues switching to self-ticketing does not act to constrain the behaviour of Ticketmaster. Specifically, the Competition Commission found, in Section 5.27 of the Report, that:

*“While we did not find evidence that self-ticketing venues were less effective in selling tickets than venues using ticket retailers, we also did not find much evidence of venues switching between using a ticket agent and self-ticketing, which we would expect to observe if the threat of self-ticketing was an active constraint on ticket retailers, including Ticketmaster. We concluded that we could not rely on the threat of venues switching to self-ticketing to constrain the behaviour of Ticketmaster.”*

This finding is entirely contradictory to the Competition Commission’s conclusion that the market for primary retailing of tickets includes self-ticketing. The Competition Commission states at paragraph 5.16

*“We noted that venues which self-ticketed provided the same essential ticketing service to the consumer as a primary ticket agent acting for a venue. We noted that, particularly, for large venues, **the option of self-ticketing was credible, and many venues had adopted it.** We also noted that a couple of self-ticketing venues (the SECC and the NEC) were now using the technology they used for self-ticketing to sell tickets for promoters and other venues, so acting as primary ticket agents (Ticketsoup and Ticketfactory respectively). **We concluded that the market for the primary retailing of tickets should include self-supply**”. (Emphasis added.)*

Given the logic of the Competition Commission’s adopted test for market definition (the SSNIP test), this finding implies that even a hypothetical monopolist of primary ticket retailing could not profitably increase its price by a small but significant amount above the competitive level due to the fact that clients can **credibly threaten** to switch to self-ticketing. This is equivalent to the statement that the hypothetical monopolist would be **competitively constrained** from increasing price due to the option of self ticketing.

- 2.2 Not only is the Competition Commission’s conclusion regarding the constraint imposed by self ticketing internally inconsistent, Ticketmaster finds this conclusion to be divorced from the business reality that it faces in negotiating with its clients. Clients actively pursue their own self-ticketing options, and a multitude of system providers in the UK market (including, among many others, AudienceView, Tessitura, Tickets.com and Enta/Galathea) provide ready-made solutions that allow venues to switch easily from outsourcing ticketing services to a self-ticketing solution. The primary business activity of these competitors is to enable self-ticketing. These companies simply would not exist in the UK market were self-ticketing not a viable

alternative for clients. It is particularly surprising that the Competition Commission has formed its view on this issue, apparently without actually speaking to anyone in the market that self-tickets, and despite obvious evidence that Ticketmaster's two largest UK clients have seriously considered, or have adopted, a self-ticketing solution (as well as other clients which have left to pursue self ticketing solutions).<sup>2</sup>

- 2.3 In addition, given that the UK ticketing market is allocational in nature, the switch to self-ticketing in the UK does not require the venue operator to assume an unacceptable level of risk. If tickets do not sell through the self-ticketing solution, the venue can simply allocate tickets to any number of ticket retailers to sell available inventory, thus reducing the venue's risk in making the move to self-ticketing.
- 2.4 Ticketmaster also fails to understand how the Competition Commission could have concluded that it found little evidence of venues switching to self-ticketing, given that Ticketmaster provided evidence showing that 9 of the 19 arenas in the UK use a self-ticketing solution, more than any other solution. A recent case in point is the Ricoh Arena, which left Ticketmaster to pursue a self-ticketing solution.
- 2.5 Finally, the Competition Commission would appear to have discounted altogether the *threat* of self-ticketing as a competitive constraint on Ticketmaster. [REDACTED] This threat is more credible today than ever before due the increasing percentage of tickets being sold on the internet. Two recent examples, set out below, illustrate how such negotiations occur.

*Example 1:* [REDACTED]

2.6 [REDACTED]

2.7 [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

2.8 [REDACTED]

2.9 [REDACTED]

- [REDACTED]

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<sup>2</sup> The Competition Commission has apparently failed to recognise that Live Nation, Ticketmaster's largest client, considered a self-ticketing solution and actually left Ticketmaster globally for a combination of a self-ticketing and white label solution (in the relevant jurisdictions) [REDACTED]. In addition, the Competition Commission has seen evidence to the effect that AEG has been in negotiations with Tickets.com in the UK, which is a self-ticketing enabling solution. Please see the attached recent business and industry reports regarding AEG's negotiations with other parties for ticketing services to replace Ticketmaster's services from Bloomberg (2 November 2009) and PollStarPro.com (4 November 2009).

- [REDACTED]
- [REDACTED]
- [REDACTED]

2.10 [REDACTED]

2.11 [REDACTED].<sup>3</sup>

*Example 2: [REDACTED]*

2.12 [REDACTED]

2.13 [REDACTED]

2.14 [REDACTED]

2.15 [REDACTED]

2.16 [REDACTED]

2.17 [REDACTED]

2.18 The two examples above are simply recent examples of clients that have threatened to pursue, and have pursued, self-ticketing as a substitute for Ticketmaster's ticketing service. In Ticketmaster's experience, self-ticketing today is a very common feature of contractual negotiations, and it is a viable threat that Ticketmaster must continually respond to and negotiate against. Just as in the examples above, many venues will explore their self-ticketing options [REDACTED]. As Ticketmaster has previously submitted, 9 of the 19 arenas in the UK use self-ticketing, which is more than any other single ticketing option. In addition, of a list of 175 live music venues put to Ticketmaster by the Competition Commission, Ticketmaster was able to identify at least 54 that chose self-ticketing. Venues of all sizes have chosen self-ticketing as an option. The list of venues that have chosen self-ticketing shows definitively that there is no certain type of venue that is likely to pursue self-ticketing. Even third party commentators have noted the significant constraints that self-ticketing has placed on Ticketmaster's business. Please see the report of Thomas Weisel Partners attached hereto as Exhibit A, which discusses how self-ticketing has affected Ticketmaster's business in recent years.

2.19 Self-ticketing is a major competitive constraint on Ticketmaster, and the Competition Commission's conclusion that it could not rely on the threat of self-ticketing to provide a competitive constraint on Ticketmaster does not correspond to the business or economic reality of the market. It is also surprising that the Competition Commission apparently came to its conclusions on the effect of self-ticketing without speaking to any venues that have pursued self-ticketing. Ticketmaster is confident that if the Competition Commission did investigate this issue with ticketing clients that have chosen self ticketing, it would confirm its finding that self ticketing is a

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<sup>3</sup> Ticketmaster further notes that it has also provided examples of recent switching to self-ticketing at arena level, as well as for smaller venues.

“credible” option for many venues and thus it does, in fact, serve as a competitive constraint on Ticketmaster.

### 3. Ticketmaster's View on Live Nation's Incentives

- 3.1 As a preliminary note on this issue, Ticketmaster cannot understand how a client that the Competition Commission believes holds a 15-20% share of live music promotion in the UK (and is not even the largest live music promoter) can be considered to represent a unique opportunity for entry for a new ticket agent in the UK. As such, Ticketmaster does not see why there is any reason for the Competition Commission to depart from its merger guidelines in this case.
- 3.2 The Provisional Findings on this point are equally flawed, factually and logically. However, this paper focuses on the factual aspects.
- 3.3 In its Provisional Findings, the Competition Commission found that Live Nation in the absence of the merger, would have had significant incentives to work in partnership with CTS and that Live Nation had significant incentives to support the growth of CTS in the UK ticketing market. In particular, in Paragraph 11 of the Provisional Findings, the Competition Commission stated:

*“We found that, in the absence of the merger (the ‘counterfactual’), CTS would have entered the UK market for the primary ticketing of live music events. We noted that CTS’s agreement with Live Nation provided it with a way to enter the UK market with a secure revenue stream to cover its fixed costs and entry costs in the near future, and with access to a guaranteed minimum volume of tickets for sale. **More importantly, we believed that the agreement indicated the mutual intent of Live Nation and CTS to work in partnership with each other, which meant that CTS was likely to sell far more than the minimum volume of Live Nation tickets guaranteed under the agreement, and Live Nation had the incentive to encourage CTS’s growth in the UK market.** We found that CTS’s partnership with Live Nation provided CTS with a way of overcoming the principal barrier to becoming a large ticket agent, which is access to a substantial volume and range of tickets. Moreover, we judged that, by gaining this allocation of tickets from Live Nation, CTS would establish a virtuous circle, whereby these tickets would attract consumers, which would then enable CTS to attract further ticket allocations from Live Nation and other promoters and venues, which would attract more consumers.”*

- 3.4 Ticketmaster has had a long commercial relationship with Live Nation, and its experience with Live Nation indicates that Live Nation did not, and does not, have the types of motivations and incentives that the Competition Commission speculatively attributes to Live Nation (as described in the paragraph quoted above). Ticketmaster's experience is that Live Nation is motivated to promote its own brand and to control its own tickets and customer data, and indeed that motive has been the source of certain tension in the parties' relationship over the years. [X] In Ticketmaster's experience, Live Nation's strategy is not, and has not been, in any way to support the development of a third party ticket agent (any third party agent), and accordingly, Ticketmaster submits that this conclusion in the Provisional Findings has no basis in fact.

### *The 2006-2007 Negotiations*

- 3.5 In 1998, Ticketmaster entered into its preferential ticketing agreement with the predecessor of Live Nation<sup>4</sup>. In December 2005, Live Nation was spun off from Clear Channel and Michael Rapino became CEO of Live Nation. Live Nation then began shifting its strategy from a business-to-business promoter of concerts that provided services to artists to a business-to-consumer company that serves artists but that connects more directly with fans.
- 3.6 In 2006, representatives of Live Nation and Ticketmaster began discussing the terms on which they might renew their ticketing agreement when it expired at the end of 2008.<sup>5</sup> While the relationship worked well historically, it soon became clear to Ticketmaster that Live Nation believed certain aspects of the contract model did not fit with Live Nation's new corporate vision, and the parties debated whether and how to change their contractual relationship to address those issues.
- 3.7 In these extensive negotiations, a significant point of difference between the parties concerned which company would function as the consumer's "touch point" for buying tickets to a concert event. For example, under the parties' long-standing ticketing services agreement, Ticketmaster was generally the primary distribution outlet and brand for Live Nation tickets. Live Nation made it clear in the contract extension discussions that to support its broader corporate strategy, it needed to secure more flexibility to sell its own tickets under its own brand (or through artist fan clubs) and not necessarily through Ticketmaster's brand.
- 3.8 [REDACTED]. In the end Ticketmaster was unwilling to accede to Live Nation's key condition for renewal—essentially, Ticketmaster's agreement to function as a back-office ticketing system without any significant contact with, or brand presence with, consumers or artists. Live Nation believed that gaining more control over tickets for the events it promoted and a more direct link to the ticket-buying public was essential to achieving its broader e-commerce strategy and client service initiatives. Because Ticketmaster did not appear to fit in with this strategic vision, Live Nation began to evaluate alternatives that would allow it to pursue its new strategic goals. In short Live Nation wanted to pursue a self-ticketing or white label solution and Ticketmaster was not prepared to offer that solution. Ticketmaster's experience as a ticketing service provider for Live Nation clearly indicates that Live Nation's incentive is to control its own brand, and not to promote Ticketmaster or other ticketing service providers' brands as "partners".
- 3.9 With the benefit of this background, Ticketmaster finds it very surprising that the Competition Commission found that Live Nation would have an incentive to work in partnership with CTS or to promote the CTS brand or website. All aspects of Ticketmaster's business relationship and contract negotiations with Live Nation indicated that Live Nation's motivations were to support the development of Live Nation's own brand, and to make the Live Nation brand the primary touch point for consumers. The suggestion that Live Nation had incentives to support the development of a third party ticketing brand has no basis in fact.

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<sup>4</sup> The global ticketing agreement was signed in 1998, but the UK ticketing agreement was signed in 2001 (per previous submissions). The UK agreement is due to expire at the end of 2009.

<sup>5</sup> The agreement in the UK expires at the end of 2009.

- 3.10 Live Nation’s incentives were a critical element of the Competition Commission’s counterfactual analysis put forward in its Provisional Findings. However, Ticketmaster’s long history with Live Nation indicates that those findings are fundamentally flawed. Ticketmaster is surprised that, given how critical Live Nation’s incentives were to the counterfactual analysis, the question about incentives was never put to the parties prior to the publication of the Provisional Findings. Had this theory been put to the parties, the parties could have quite easily addressed these findings, given their extensive real-world experience with these very topics. The Competition Commission should revise its Provisional Findings to take into account proper evidence on this critical point.

*Existing Live Nation / Ticketmaster ticketing contract – absence of “partnership”*

- 3.11 Based on Ticketmaster’s experience during the ten year period of this global preferential ticketing agreement and Ticketmaster’s experience with its other clients, Ticketmaster cannot understand the Competition Commission’s characterisation of the CTS / Live Nation relationship in the counterfactual as a “partnership”, or the incentives which the Competition Commission attributes to Live Nation in that scenario. Ticketmaster’s relationship with Live Nation and with other clients is that of a service provider to a client – an arms length relationship, not a “partnership” in the way that the Competition Commission has treated it in the Provisional Findings. Ticketmaster has set out some details below and would be happy to answer any further questions the Competition Commission might have on this issue.
- 3.12 Under its contract with Live Nation, Ticketmaster was not allocated all Live Nation ticketing or above contractual levels (i.e. there was no attempt to bolster Ticketmaster as Live Nation’s preferred ticket agent). Instead Ticketmaster was remunerated under the contract for its contractual entitlement and Live Nation (in order to sell its tickets as quickly and efficiently as possible) shifted allocations of tickets around to maximise sales. Live Nation (in common with all other UK promoters) has always sought to maximise its sales by putting tickets through whatever ticket agents it thinks best. This has been the case during the Live Nation / Ticketmaster contract despite Live Nation’s economic incentive to put as much ticketing as possible through Ticketmaster. This is further evidence upon which Ticketmaster bases its view that Live Nation would have had no incentive to create the “partnership” with CTS which the Competition Commission foresaw in its Provisional Findings and that the counterfactual set out in those Provisional Findings is not correct.
- 3.13 Instead, Ticketmaster would have expected Live Nation’s commitment to its own control over its tickets, brand and website to have increased in the counterfactual. Ticketmaster cannot see any evidence in Live Nation’s behaviour (in Ticketmaster’s extensive experience) that Live Nation views its relationships with ticket agents as “partnerships” under which it will support the development of its “partner” ticket agents, since Live Nation (as other clients of ticket agents do) regards ticket agents as mere conduits (service providers) to the promoter and/or venue.

*Ticketmaster’s experience of CTS as a competitor*

- 3.14 Ticketmaster was asked by the Competition Commission about the CTS / Live Nation contract, which Ticketmaster has not seen (as it has previously told the Competition Commission). However, the Competition Commission has not asked Ticketmaster

what the impact of CTS entering the UK market is and what Ticketmaster's knowledge and views are of CTS's offering and system (despite Ticketmaster and CTS being in competition around the world and the Competition Commission reaching its Provisional Findings on what it perceives as CTS's unique attributes).

- 3.15 Ticketmaster has explained above (and in its submission of 21 October 2009) that it sees no functionality or technology in CTS's system which would result in any innovation or technical development in the UK market which is not already occurring. Where Ticketmaster and CTS compete in a number of jurisdictions the benefits of such competition, to the extent that it encourages innovation, result in technology developed to meet client needs in one jurisdiction (initially by either company), being rolled out across others. In fact, Ticketmaster believes that CTS will have to develop its technology to ensure it has all the requisite functions which UK clients and consumers expect, and that this development process may actually result in CTS taking those functions back to Germany.
- 3.16 Ticketmaster understands from Live Nation that the Competition Commission has been interested in CTS importing the system it uses in Germany, which other ticket agents in the German market use (which works in a similar fashion to the old UK stock market system). Ticketmaster understands that Live Nation has already explained that such a system would not work in the UK context and that the introduction of such a system would not be helpful in the UK. [REDACTED].

*Additional evidence and developments relating to CTS [REDACTED] since the Competition Commission published its provisional findings.*

- 3.17 This month Ticketmaster UK has received the resignation of one of its key client account managers who handled mainly live music ticketing. This individual has resigned to join CTS in the UK. This follows the departure of another senior member of Ticketmaster's UK sales team for CTS earlier this year and CTS's hire of a previous senior member of Ticketmaster's sales team, also earlier this year (as previously submitted to the Competition Commission by Ticketmaster). This hiring of key sales personnel is not consistent with the Competition Commission's provisional finding that CTS is uncertain of its UK entry and may withdraw if the proposed merger proceeds.<sup>6</sup>
- 3.18 This section has been updated since its initial submission on 30 November 2009 to reflect subsequent developments. [REDACTED] and since the Competition Commission's Provisional Findings, which must assure the Competition Commission that CTS is entering ticketing in the UK (across the genres), regardless of what happens in this Inquiry and in this proposed merger.
- 3.19 [REDACTED].

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<sup>6</sup> This process of head hunting key personnel is common in ticketing in the UK as in other industries.

#### 4. Market Definition

4.1 Ticketmaster does not understand the basis for, and disagrees with, the Competition Commission's provisional conclusion that there is a properly defined relevant market that is limited to "live music ticket sales" or "primary retailing of live music tickets".<sup>7</sup> The Competition Commission has not provided the evidence needed to support such a narrow view of market definition in this case, since the Provisional Findings do not address supply side substitution between ticket agents operating in different genres. On a proper consideration of the evidence, the Competition Commission should reach the view that the potential for supply side substitution means that ticketing markets are likely to be wider than any individual genre.

4.2 Ticketmaster has made previous submissions during the course of this Inquiry and, in particular, in response to the Provisional Findings on 21 October 2009, regarding the facts that:

- there is undisputed substitution/substitutability between live music ticketing and ticketing for other live events (for example, theatre performances, sports events, family entertainment and historical and cultural events);
- Ticketmaster is not aware of any other competition or antitrust authority or court which has defined the ticketing services market so narrowly;
- ticket agents do not look at their businesses as limited to only one genre of live entertainment. To a ticket agent, a ticket is a ticket and they will sell it. In entering the UK market, Ticketmaster is aware that CTS has approached potential clients from multiple genres of live events and has hired people from the theatre and music industry; and
- theatres have always been a major part of Ticketmaster's business in the UK and Ticketmaster sold more Live Nation tickets for theatre events last year than for live music events. Until this month theatre tickets were also a major part of Live Nation's inventory. Ticketmaster also has vitally important clients and revenue streams in the other genres of events.

4.3 Ticketmaster notes that, at the Competition Commission's site visit to Ticketmaster's Leicester Square offices on 6 July 2009, the Inquiry's Chairman, Christopher Clarke, interjected while Chris Edmonds of Ticketmaster was speaking about theatre ticketing and said that the Commission was "only interested in live music" ticketing. Ticketmaster was surprised that the Competition Commission Panel had already reached a view on market definition (a) less than a month after the Office of Fair Trading's reference to the Competition Commission and (b) before it had even received (let alone had the time to consider) responses from the parties to the Market Questionnaires<sup>8</sup>.

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<sup>7</sup> Ticketmaster notes that the Competition Commission correctly declined to find that Ticketmaster has unilateral or collective market power even in the more narrowly defined market (a conclusion which also has the consequence of making CTS's entry irrelevant under the Merger Guidelines). Therefore the market definition finding should not ultimately affect the outcome of this case.

<sup>8</sup> Also before the Competition Commission's deadline for those responses to the Market Questionnaires.

4.4 Ticketmaster agrees with the Competition Commission that the hypothetical monopolist (“HM”) test represents the “generally accepted conceptual approach to defining markets”.<sup>9</sup> How that conceptual approach should be applied in the current case is perhaps best articulated by the Competition Commission itself in the Ticketing Working Paper (“TWP”) at paragraph 34:

*“The hypothetical monopolist (HM) test implies that the market should be widened beyond tickets for live music events to include some or all other tickets if a SSNIP by all live music ticketers would be rendered unprofitable because of increased competition from ticketers currently concentrating on selling tickets for other types of events.”*

4.5 This approach (“TWP approach”) explicitly recognises the importance of supply side substitution as a determinant of the boundaries of the relevant market in this case.

4.6 Despite the recognition of the central role played by supply side substitution in defining the relevant market in the TWP, the Provisional Findings mention supply side substitution only in paragraph 58 of Annex E. In that paragraph, the Competition Commission dismissed the need to consider the relevance of supply side substitution in any detail with the statement:

*“We found that many of the companies active in ticketing other events had some presence in ticketing live music and, therefore, were already included in our assessment of competition. We found that there were no other companies which needed to be included.”*

4.7 Conceptually, the approach adopted by the Competition Commission in the Provisional Findings (the “PF approach”) suggests incorrectly that it is *not* necessary to consider whether the ease of supply side substitution of ticketing of other events might make a price increase by a hypothetical monopolist of live music ticketing unprofitable. In this case, the Competition Commission has chosen not to investigate further whether or not supply side substitution should be considered on the question whether a properly defined market is broader than live music ticketing. Rather, the Competition Commission rejects the case for adopting a broader, all-genres, ticketing services market because of the fact that most ticketers actually operate across multiple genres. This approach is illogical to the parties. The tendency for multi-genre operation itself arises specifically *because* there are no significant obstacles to operating in this fashion, and *because* the skills and assets required for successful operation are overwhelmingly common across the different ticketing genres.

4.8 Had the Competition Commission given appropriate consideration to the ease of supply side substitution between ticketing of different genres of events, it would have found that there is no basis whatsoever for defining a separate relevant market for live music ticketing. It would have found such a segmentation to be arbitrary given the logic of the HM test, which the Competition Commission appropriately endorsed at paragraph 34 of the TWP.

4.9 This is further demonstrated by the fact that many ticketing companies that primarily compete in the business of ticketing sports events, or theatre events, are positioned to

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<sup>9</sup> See Provisional Findings, paragraph 38.

easily redirect their efforts to ticketing for live music events. (Please also refer to paragraph 3.18 above regarding CTS's approach.)

- 4.10 It is therefore clear that the Competition Commission has not given appropriate consideration to supply side substitution, a material determinant of market definition, in reaching, the parties respectfully submit, an incorrect view that live music ticketing represents a relevant market for the purposes of assessing the competitive effects of the proposed transaction.