

LIVE NATION / TICKETMASTER

JOINT SUBMISSION ON REMEDIES HEARING THEMES

1. INTRODUCTION AND SUMMARY

1.1 The parties have stressed, most recently at their respective Remedies Hearings, their firm belief that to the extent any remedy is called for, and given the provisional SLC identified by the CC, the behavioural remedy proposed by the parties would be the most effective and proportionate means of addressing the CC's concerns.

1.2 The provisional SLC rests on concerns about whether the merged company will perform on a single existing contract in order to provide a platform for CTS's entry into the UK ticketing market. This is an unusual SLC, if the CC holds to it. Regardless, a remedy that clarifies the respect in which the merged company will adhere to that contract is fitting and, by definition, proportionate and effective, and no more unusual than the SLC itself.

1.3 In these circumstances, the typical concerns about a 'behavioural' remedy do not exist:

- There is none of the uncertainty attendant upon establishing a new supply contract with a foreclosed third party.
- There is no need to create the contractual framework or complex pricing mechanisms, as all that already exists in the form of the LOI.
- The duration of the remedy (given the transitional nature of the so-called "virtuous circle") is not indefinite¹.
- Where the SLC is founded upon concerns (however misplaced) as to LN's future behaviour, the behavioural remedy provides a direct and focused response.
- There is no need for complex or indefinite monitoring provisions, as the behavioural remedy is expected to lead to a long-term structural effect.

1.4 Accordingly, the parties submit that the suggested remedy not only "qualifies" under the CC's guidelines, but is manifestly the most appropriate way to proceed:

- the proposed merger will undoubtedly lead to the creation of valuable **customer benefits** – see **section 2** below;
- a **structural/divestment** remedy would not only deprive customers of those benefits², but would also be ineffective in addressing the SLC³ - see **section 3** below;

¹ See paras 2.16(b) and 4.1 of the CC's Merger Remedies Guidelines (November 2008), which state that one of the circumstances in which a behavioural remedy is used as the primary source of remedial action is where the SLC is "expected to have a relatively short duration".

- it follows that to combine an (effective) behavioural remedy with an (ineffective) structural remedy must be wholly unnecessary - and therefore disproportionate - in addressing the SLC - see **section 3** below; and
- [X].

² See paras 2.16(c) and 4.12 of the CC's Merger Remedies Guidelines (November 2008).

³ See para 2.16(a) of the CC's Merger Remedies Guidelines (November 2008).

2. BENEFITS OF THE PROPOSED MERGER

Overview

2.1 Vertical mergers are presumed to generate efficiencies⁴. The proposed merger will generate significant customer-benefiting efficiencies - for **artists** and **fans** - in the UK (as well as the US), as a result of significant operational synergies and the widely recognised removal of the “double margin” that characterises vertical mergers⁵ (see below). These benefits are concrete, significant, made possible only from the merger and would be needlessly sacrificed by a disproportionate remedy.

2.2 In both the US and UK, a significant proportion of concert tickets go unsold⁶. Some fans have expressed frustration with the ticket-buying experience. At the same time, artists are looking for new ways to diversify their revenues (for instance, by attracting more substantial sponsorships) and to connect with their fans in more direct and dynamic ways to build loyal followings, sell more music and merchandise. The merger is the parties’ effort to address these challenges.

2.3 The fundamental economic driver behind the merger is the parties’ desire to create an artist-centric business that finds better and more efficient ways to distribute artists’ entertainment content (including tickets for live events) and ancillaries to fans, and thereby **grow the artists’ business, improve the fan experience and lower costs**. While this plays out differently across jurisdictions⁷, the issues are pervasive and the live entertainment business today – especially the music business – suffers from serious inefficiencies globally. By merging, the parties will better manage the “front door,” where consumers come to get information, tickets and products, and thereby offer a more robust storefront for artists and fans, and sponsorship opportunity to advertisers.

2.4 These benefits necessarily will be passed on to fans and artists. Efficiencies that take the form of innovation and higher quality, by definition, are passed on to customers who immediately benefit from those advancements. Moreover, the efficiencies that take the form of cost savings (e.g., the elimination of double-marginalization) are necessarily passed on to customers in competitive markets.

2.5 The proposed merger accordingly enables the parties to:

- (a) **relieve the upward pressure on concert ticket prices and fees for fans;**
 - (b) **diversify revenue opportunities for artists;** and
 - (c) otherwise **innovate, expand and improve** the live entertainment business.
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⁴ See European Commission, Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07), at II(12)-(14).

⁵ See para 1.20 of the CC’s Merger Remedies Guidelines (November 2008).

⁶ As the CC is aware, LN estimates that around [X] of its tickets remain unsold in the UK.

⁷ [X], and this merger is expected to result in lower fees and more access for fans, as well as alleviating the upward pressure on prices where ticket prices are the artists’ primary source of revenue; but the ever-increasing pressure on ticket prices is an issue the deal addresses in the UK as well.

2.6 Those effects are precisely **the relevant customer benefits** - “lower prices, higher quality or greater choice of goods or services,” and “greater innovation in relation to such goods or services,” among others - that the CC has itself stated a remedy should aim to preserve.⁸

The merger relieves upward pressure on ticket prices and service fees for fans

2.7 With the collapse of the recorded music industry, concerts have become one of the primary sources of revenue for artists. This has created upwards pressure on ticket prices (set by artists) and service fees, at the expense of fans. Traditionally, there was a high degree of complementarity between live and recorded music. This implied that artists would restrict the price of live tours to boost attendances so as to increase recorded music sales. Maximising live music attendances help to build and sustain a loyal fan base that allowed the artists to earn higher revenues through CD sales. Falling CD sales, particularly as a result of music piracy, has reduced the complementarity between live and recorded music (it is now less likely that someone who goes to the concert buys a CD rather than downloads for free) and so has reduced the incentive to keep live music ticket prices low.

2.8 By restoring the complementarity between live music attendances and ancillary revenue streams, the merger restores the artist’s incentive to keep live music ticket price low, and will alleviate the current upward pressure on live music ticket prices. Accordingly, the total cost to fans of attending a show will be lower (compared to the counterfactual). This will be achieved in the following ways.

2.9 *First*, as noted below, the proposed merger will enable the parties to provide artists with an **e-commerce platform** that will allow them to better connect with their fans and to diversify their sources of income (for example, increasing the sale of merchandise by selling concert t-shirts alongside concert tickets). This will make artists less reliant on ticket revenues, yet enable them to continue meeting their revenue targets by selling more tickets. As noted above, these revenue streams will benefit, in the same way as recorded music has traditionally done, from artists building a large and loyal fan base through attendance a live music events. This means that the merger will provide artists with a profit enhancing incentive to boost live music attendance by keeping their ticket prices low – to the benefit of the consumers of live music events.

2.10 *Second*, the merger allows for more **innovative pricing**, including dynamic pricing and discounting. Promoters (in conjunction with the artist) set the face value of a ticket given their expectation of the level of demand for an event. During the course of an on-sale, it may become apparent that the overall ticket price that consumers must pay is too high given the level of realized demand to deliver a sellout. In such instances, profits could be increased by lowering the overall price that consumers pay so as to increase sales.

2.11 At present, in the vast majority of cases where demand for an event is lower than expected, neither the face value of the ticket nor the convenience and processing

⁸ See the CC’s Merger Remedies Guidelines (November 2008), at paras 1.14, 1.20, (also referring to “improved coordination, for instance in **marketing and product design**, between firms at different stages of the supply chain, **lower transaction and inventory costs** and removal of possible ‘double marginalization’”).

charges are adjusted. The result is that tickets often go unsold. The inflexibility of pricing observed in the market today exists for a number of reasons, including:

- promoters/artists are reluctant to reduce the face value of the ticket as this may have negative implications for the reputation of the artist; and
- the ticket agent has only a limited incentive to change its convenience and processing charges to boost demand as it does not take into account the full opportunity cost of a foregone sale. This opportunity cost is borne by the promoter who stands to forfeit the full face value of a ticket in the event that the ticket is not sold.

2.12 The merger will allow for greater flexibility in pricing with respect to those tickets that are sold through ‘in-house’ channels post merger, thereby relieving the pressure on total ticket prices. This will be facilitated by the merged entity’s direct control over all components of the total ticket price. For example, in the event that the demand for an event is lower than expected, the merged entity will have the ability to react by lowering, or even removing altogether, the convenience and processing charge component of the ticket price. This would be much more difficult to achieve through an arm’s length contract between a ticket agent and a promoter because there would need to be a complex negotiation over how the promoter compensates the ticket agent for a reduction in the convenience and processing charge (e.g. by increasing inside fees paid by the promoter to the ticket agent or reducing rebates paid by the ticket agent to the promoter) in each particular instance in which a reduction in the total ticket price is deemed appropriate. As a combined firm, there would be no conflict over how the total “pie” is split, once it had been decided to cut charges to boost sales, and such decisions could be instantly taken.

2.13 These concepts are not merely theoretical. In recent months, LN has experimented with different pricing strategies in the US (where, LN has moved to a self-ticketing model, thereby effectively combining the promotions and ticket agent functions (in contrast to the UK position – see section 4 below)). At some of the US venues, LN has rolled out programmes like “No Service Fee Wednesdays”, all-in-one ticket pricing, discount ticket four-packs, and other promotions. While constrained by the relatively limited number of shows that LN tickets in the US, these efforts verified the real, substantial output expansion that would be available post-merger in terms of total tickets sold (thereby increasing overall concert attendance) and improved ticket-purchasing experience for fans. As fans respond to these changes and buy more tickets, artists will respond by demanding more innovations that expand output; promoters, ticket service companies, venues and other providers in the concert chain will respond in kind. Because LN is not licensed by CTS to self-ticket outside the US, it is the merger alone that makes these types of advancements possible.

2.14 General downward pressure on final ticket prices will flow from the internalisation by the merged entity of the full opportunity cost of any lost ticket sales (particularly in a business where the risk of the guarantee to the artist is so significant and will be shared between the combined ticketing and promotion businesses post merger). The CC’s and OFT’s joint merger assessment guidelines (April 2009) recognise this precise effect, stating (at para 4.209) that:

“Vertical mergers may allow the merged firm to **remove (“internalise”) any pre-existing double mark-ups**. These arise when, pre-merger, the upstream and downstream firms set their prices independently and both charge a mark-up, resulting in end prices to consumers being higher than suits the joint interests of both firms. A vertical merger may enable and provide incentives for the merged firm to internalise this double mark-up resulting in a decrease in the price of the output in the downstream market”.

2.15 The merged entity will be in a position with respect to any tickets sold by in-house channels to set the final price of the ticket (i.e. the price inclusive of convenience and processing charges) that maximizes the joint profit of the combined firm. That final price will typically be lower than the price that would result from the independent profit maximisation decisions of each firm with respect to the various components of the final price. This is because pre-merger neither party considers the benefits in terms of increased demand that would accrue to the other party from any decision to lower its price. Post-merger prices will be set having taken into account that a reduction in convenience and processing charges will increase ticket sales at the margin, and that an additional ticket sale will increase revenue by an amount equal to the face value plus the convenience and processing charge. As recognised by the CC, the effect of internalisation of this sort is to reduce the final prices that consumers pay.

2.16 *Third*, TM today depends on service fees for substantially all of its revenues, which it splits in substantial portion with the venues it tickets. TM has very little sponsorship revenues or other ancillary sales with which it could offset the service fees it collects from consumers. LN, on the other hand, has a very strong foundation of sponsorships and other ancillary revenue sources (e.g., venue concessions and parking). The combined firm will be able to take advantage of this expertise and shift its revenues away from a traditional service fee model and into a range of other sources, including sponsorships, ancillary services, and other opportunities.

The merger enables the parties to create an e-commerce platform through which they can provide higher quality services to fans and artists

2.17 The proposed merger creates new opportunities for the parties to create a more efficient, contemporary online retail experience for artists and fans. The parties envisage an online retail “storefront” that would benefit both artists and fans in the same way that other e-commerce retailers such as Amazon.com have been able to provide through innovative services that make **transactions easier, information more readily available, and product offerings and promotions tailored to customers’ preferences**.

2.18 Creating an artist-oriented, fan-friendly, e-commerce platform has been LN’s vision since the company spun off from Clear Channel Entertainment in late 2005. Around that time, LN’s CEO, Mr. Rapino, predicted that the long-term “winning strategy” for the music business would require “servicing / marketing / selling directly to the fan,” the creation of “vertical and horizontal revenue streams around live music,” and “partnering with the artist...”. LN’s strategy since then has been to look for ways to expand beyond its promotions business to give artists more creative and effective ways to reach their fans, including new ways to distribute tickets, better market concert promotions, and package live events with other concert-related services, such as recorded music or merchandise. **The merger enables the parties to**

pursue these benefits at a depth and breadth that neither could achieve independently (see below).

2.19 The e-commerce vision that the merger makes possible will create new, **more diverse revenue opportunities for artists**, separate from the traditional ticket price and service fee model. For the artists and fans, the merger makes it **easier to sell merchandise** such as a t-shirt along with a concert ticket, or to **target special ticket deals** towards the fans most likely to buy them. For the parties, it will allow the merged firm to take advantage of LN's expertise in sponsorship opportunities and thus diversify the merged firm's revenue sources and sever the industry's dependence on ticket service fees. All this leads to the relevant customer benefits of less upward pressure on ticket prices, more tickets sold and a better overall concert-going experience.

The merger creates better information flow to fans, allowing innovations in services and products and reducing transactions costs

2.20 More generally, the merger **improves the quality of service to fans** by creating better information flow (including via the e-commerce platform referred to above), which will allow for new innovations in services and products and a better and more exciting concert experience overall. By combining LN promotions with TM ticketing, the parties can **improve their marketing of concerts**. The merged firm can provide fans with more relevant and better information about upcoming events, create a fan-oriented online community as part of the ticket-shopping experience, and otherwise improving information flow to fans. Concert tickets are essentially perishable goods. Tickets go unsold and fans miss shows for a host of reasons, including ticket prices, service fees, lack of information about upcoming shows, concern or confusion about the secondary market, the lack of new or interesting acts breaking out, and many other factors.

2.21 By tackling these difficult issues head on, **more fans will be able to attend concerts**, and fewer tickets will remain unsold. Increased concert attendance also benefits artists - not only directly (through increased ticket revenues), but also by creating more sponsorship opportunities and new ways to generate revenue. And just as vertical integration will more fully align incentives across all levels of the organisation to allow for new pricing models (see above), it will improve information flow, creating more knowledgeable and interested fans.

2.22 The merger therefore also **improves service to LN's customers—artists—by better connecting them to their fans** so that they can build loyalty, sell additional products, advertise more efficiently and thus expand output. The e-commerce strategy, for example, will give artists more ways to build relationships with their fans by providing new ways for artists to distribute tickets, promote concerts, and so on. Indeed, LN is not unique in this aspiration to create closer links with artists and fans: the article attached at **Annex 1** shows that HMV, for example, has a similar strategy in the UK. But the proposed merger creates greater opportunity than either firm could hope to achieve on its own.

2.23 A significant source of consumer complaints that will be mitigated by the merger is the late or non-delivery of pre-paid tickets. Indeed, the 2005 OFT Report

noted that such delay was a major cause of consumer complaints⁹. This delay largely results from the late supply of ticket stock (i.e. the pre-printed paper on which the ticket agent prints the specifics for each ticket) by the promoter to the ticket agent, and leads to an unsatisfying consumer experience which is also costly to the ticket agent, as it is the primary source of calls to the call centre.¹⁰ The merger will result in **more prompt delivery of tickets to consumers**.

2.24 Currently, the promoter delivers the ticket stock late for a number of reasons.¹¹ The traditional reason has been to avoid those tickets going into the secondary market, but with tickets being resold on ebay and secondary ticketing websites months in advance of the delivery of the actual physical ticket itself, this reason is far less relevant now. The other reason is late decisions by the promoter regarding artwork and layout of the tickets.

2.25 The promoter's incentives with respect to this issue are not aligned with the incentives of the ticket agent, as it is the ticket agent who must bear the cost of the additional calls and the poor consumer experience this situation creates. However, post merger the promotion and ticketing sides of the business are both equally incentivised to ensure that the tickets are dispatched promptly and to reduce the costly complaints from consumers and potential extra delivery costs.

2.26 Accordingly, the companies have already announced their intention that, post-merger, the combined company will be in a position to offer consumers guaranteed delivery of their tickets within 72 hours of purchase for events which it promotes. This will lead to a dramatically better consumer experience and will also generate efficiencies. This will decrease the number of calls received in the call centre, and will lead the combined company to distribute tickets more frequently through print-at-home, digital and mobile distribution methods. These methods are far more efficient than physical tickets, and will lead to cost savings.

The parties cannot achieve these significant relevant customer benefits without the merger

2.27 Though the parties share a common vision, they cannot accomplish these efficiencies absent the merger. For instance, TM, in Mr. Azoff's words, is missing the "third leg of a three legged stool" and cannot remain a viable independent company without diversifying its revenue streams so that it can move beyond the service fee model. Moreover, as is clear from the description above, many of the benefits of the transaction rely on the expertise that the parties will be able to share.

2.28 *First*, as noted above, the merger will create significant operational synergies and eliminate double-marginalisation, the benefits of which will be enjoyed by consumers in the ways described above. Evidence of the operational synergies

⁹ *Ibid*, at paras 5.17 and 5.31.

¹⁰ In TM's experience, TM receives approximately [X] calls to its call centre for every ticket that is sold through the call centre.

¹¹ The theory is that the less time the consumer has the ticket in hand, the less time the ticket will be able to be exchanged in the secondary market.

expected in the UK (as part of LN's wider International (i.e. non-US) business) is appended at **Annex 2**¹².

2.29 *Second*, the parties' complementary areas of expertise are critical to ensuring that their e-commerce vision will succeed. Building an online community as a place where consumers can learn about artists, review content, share their concert experiences, buy a ticket to a show along with a recording of the concert they attended the previous weekend and a t-shirt from the band requires a level of momentum that neither party alone has the expertise (or resources) to develop fully. By combining forces and investing appropriately in such a platform, the parties can create a community that will draw further sponsorship revenues and help drive a greater online experience overall, to the benefit of fans and artists alike.

2.30 *Third*, the parties' efforts to accomplish many innovations necessarily have been forestalled while TM and LN remain independent companies. Absent the merger, each company (as in any arm's length commercial relationship) is necessarily focused on solutions that are best for its own bottom line – which may be at cross-purposes – and their respective interests are not aligned to create the move valuable combined offering for fans or artists.

2.31 The merger is therefore necessary to accomplish the consumer benefits that the parties are pursuing. The merger is the culmination of a long-running effort by both parties' CEOs to improve their respective parts of the live-event business. They have learned through sometimes difficult experiences that this combination is the best way to increase output, break new acts, sell more tickets, and lower concert ticket fees.

These benefits are very real, substantial and concretely identified

2.32 Efficiencies that take the form of increased incentives to compete on price, improved service and innovation are not often subject to the sort of numeric "quantification" applicable to cost-savings, but they nevertheless are among the most important benefits a merger can bring. In this case, the parties have been able to quantify some of the cost-savings, but the innovation and improved opportunities discussed above are no less proved. The fact that not all of the efficiencies generated by this deal are quantified cost-savings does not make them speculative. There are real, concrete benefits to clients, artists, and consumers from this merger when the parties can successfully find ways to sell more tickets and better connect artists and fans. For example, LN's ticket fee experiment in the US last summer is just one example showing on a small scale in the US what the parties hope to achieve on a large scale with the merger.

2.33 Though the benefits of improved service, greater sponsorship opportunities, new store-front offerings, greater information flows and a better overall fan experience are not precisely "quantified", the CC should not ignore them in considering an appropriate remedy. The efficiencies that the parties have described can only substantially enhance output and drive better marketing, better sponsorship revenues, and better artist revenues through stronger attendance at shows. Those benefits by their nature will directly benefit artists and fans. The fact that they are not

¹² As shown by the slides, the UK accounts for the largest national "headcount" in the International business, hence operational synergies will be greatest here.

subject to the sort of numeric calculation that can apply to cost-savings does not make them any less probable or tangible.

2.34 Indeed, in its final report in the merger of Macquarie / National Grid Wireless, the CC itself stated (March 2008, at para 41) that “*although many of the financial benefits of the merger are difficult to quantify, we believed that significant relevant customer benefits would result from the merger*”.

2.35 The benefits of this transaction are real, predictable, and will immediately benefit fans and artists, improving the concert industry overall, and therefore any remedy should seek to minimise the sacrifice of these benefits.

3. A DIVESTMENT REMEDY WOULD BE INEFFECTIVE AND DISPROPORTIONATE

3.1 A divestment remedy is neither proportionate nor effective in addressing the SLC that the CC has identified, nor would it add anything to the effective behavioural remedy that has been proposed. Moreover, in contrast to the proposed behavioural remedy, any divestment remedy would permanently deprive customers of the tangible merger benefits identified in Section 1 above.

3.2 On a proper consideration of the evidence, it is clear that:

- (a) The divestment of **LN's UK business** would not be effective in providing CTS with the sponsor that the CC believes is needed to secure its entry into the UK and allow CTS to become the third largest UK retail ticket agent, and in addition, would create new inefficiencies in its own right. Specifically:
 - (i) the divestment of LN UK from the global company can be expected substantially to weaken LN's position in UK promotions, and therefore its importance as a customer of ticket agents; and
 - (ii) a divested LN UK could be expected to have very different incentives than LN (Inc.) would have – so there can be no certainty that LN UK would provide the vehicle for CTS entry that the CC envisages in the counterfactual.
- (b) Neither would the divestment of **TM UK** be effective in creating conditions under which LN sponsors CTS' entry into the UK and subsequent growth. LN's incentives would not be materially different compared to the post-merger situation:
 - (i) LN would remain part of a global ticketing company with strategic incentives to support its own ticketing interests (which are highly unlikely to be consistent with strengthening of the second largest ticket agent globally); and
 - (ii) the remedy would not fundamentally change the ability or incentive for LN to use its own ticketing platform (provided by TM outside the UK post-merger) rather than using the CTS platform.
- (c) The proposed **behavioural** remedy, in contrast, provides certainty that LN UK will act as a sponsor of CTS' entry into the UK. The remedy guarantees that CTS will receive the ticket allocations and support that the CC hypothesises would have been available in the counterfactual. Such a guarantee is not achieved by either divestment remedy. The behavioural remedy is the only remedy, therefore, that is effective in addressing the SLC that the CC has identified.
- (d) In the light of this, any **package** of remedies that combined the behavioural remedy with a divestment (of either LN UK or TM UK) is entirely unnecessary to address the provisional SLC and radically disproportionate. Neither divestment remedy improves upon the effectiveness of the behavioural remedy: a TM UK divestment does not change the incentives facing LN (compared to the post-merger situation), and an LN UK divestment would

actively undermine its ability to provide CTS with an opportunity to enter the UK market. **Divestments would therefore cost consumers the benefits of the merger in the UK without delivering any offsetting benefit to competition.**

3.3 The compelling logic for these four conclusions is set out below.

Divestment of LN UK does not represent an effective remedy

A divested LN UK does not represent the large entry partner that the CC has provisionally found that CTS needs

3.4 As was discussed at LN’s hearing on 29 October, the divestment of LN UK would weaken the UK promotions business, with the result that a divested LN UK business would not represent the sort of large partner for CTS imagined by the CC in its counterfactual. As a result:

- (a) a stand-alone LN UK business may not be as attractive an asset to potential purchasers as would otherwise be the case (constituting significant “composition risk”¹³); and
- (b) the opportunity for CTS that the LOI with LN supposedly creates (and which the CC finds is critical to CTS’ decision to enter the UK market), would not be re-created by the divestment of LN UK.

3.5 First, breaking the tie between LN UK and the global company will mean that there are certain acts that LN UK has historically promoted (including Madonna and U2, for example) that it would not expect to promote post-divestment. This is because the relationship between these artists and LN is based in the US, not with LN UK. Post-divestment, LN can be expected to lose the preferred promoter status achieved through the global relationship, and these artists might well choose to use alternative promoters such as SJM and Metropolis for their UK tours. There could be no certainty that the divested LN UK business would win the contract to promote these artists.

3.6 As discussed at the hearing, while these artists are relatively few in number, they tend to stage large tours and consequently account for a disproportionate volume of LN’s controlled tickets. The table below shows the percentage of tickets to LN promoted events in 2006 to 2008 accounted for by artists promoted by LN UK as a result of a relationship based in the US. For example, in 2008 nine of LN’s US artists toured in the UK, and together they accounted for almost [redacted] of tickets sold for LN promoted shows.

	2006	2007	2008
Number of tickets to LN events where the	[redacted]	[redacted]	[redacted]

¹³ See CC’s Merger Remedies Guidelines (November 2008), at para 3.3(a).

artist relationship is held in the US ¹⁴			
Total tickets to LN promoted events (as per LN's response to Q19 of the MQ)	[REDACTED]	[REDACTED]	[REDACTED]
% of tickets to LN events accounted for by a US based relationship	[REDACTED]	[REDACTED]	[REDACTED]

3.7 The implication of losing these events would be a substantial reduction in the number of tickets controlled by LN UK. Even if LN UK lost the business of one or two of these artists, the impact could be material given the scale of the events that these artists typically stage.

3.8 Second, there is considerable “asset risk”¹⁵ in that the promotions business is built largely around the reputation of the [REDACTED] promoters that work for LN, and their individual relationships with artists and agents.¹⁶ There are no long term contracts between LN UK and these artists, who are free to move their business between promoters in the UK. As a result, the success of LN UK as a stand-alone entity, depends on its ability to retain these promoters, which would be uncertain if the company is sold.

3.9 In particular, the loss of the relationship with LN in the US could significantly reduce the scope for the individual promoters to continue to stage UK based events for the most high profile tours. The loss of LN UK’s wider interests (via LNG) might further reduce opportunities for the LN promoters (for example, through opportunities for co-promotions). A change in ownership and/or management is also likely to prompt promoters to look elsewhere (for example, seeking opportunities at SJM, Metropolis and AEG). By way of example, of the [REDACTED] promoters currently working for LN UK, only three remain from the original business (SFX) that Clear Channel purchased in 2001. Since promoters, as individuals, cannot be bound to continuing employment with the divested business, any attempt to mitigate this “asset risk” through the design of the remedy would clearly be highly impractical.

3.10 Thus, there is a very real prospect that individual promoters would choose to leave LN UK if it is divested. And since artists and agents tend to develop a relationship with their preferred promoter (as acknowledged by the CC in the PF and shown by the number of artists that Stuart Galbraith took with him when he left to found Kilimanjaro), the loss of staff could be expected to have direct implications for the number of artists represented by LN post-divestment, and consequently for the number of events promoted.

3.11 In combination, a reduction in US-led promotions, together with a weakening of UK promotions through staff losses, would mean that a divested LN in the UK

¹⁴ In 2008 the artists were Avril Lavigne, Celine Dion, Delirium, Jay-Z, Jonas Bros, Madonna, Neil Diamond, Nickelback and Stevie Wonder. In 2007 the artists were Dave Matthews, Delirium, Linkin Park, Ozzy Osbourne, Pearl Jam, Pussycat Dolls, Rod Stewart and The Who. In 2006 the artists were Dave Matthews, Depeche Mode, Guns ‘n’ Roses, Il Divo, Madonna, Pearl Jam, Pussycat Dolls, The Rolling Stones, and The Who.

¹⁵ See CC’s Merger Remedies Guidelines (November 2008) at para 3.3(c).

¹⁶ The only “assets” that could be conceivably be considered to be owned by LN are the three festivals produced by LN, namely: Download, Hard Rock Calling and Wireless.

would not provide the sort of vehicle for CTS entering the UK market that the CC found would exist in the counterfactual. In addition to the [×] tickets associated with US artists that might be lost, any individual promoter who left LN might trigger the loss of the [×] tickets they typically promote. Assuming two promoters left LN UK, and US artists used other promoters in the UK in preference to the divested LN UK, LN promotions could expect to lose in the region of at least 1 million tickets.

3.12 Nor would the divestment of LN's venue business alongside its promotions business offset the effect of a weakening of LN's promotions business. Ownership of a venues business does little to enhance success in promotions, given the ability of all promoters to secure bookings at venues on competitive terms, irrespective of the ownership of those venues. Moreover, since LN only owns three venues (Southampton Guildhall, Manchester Apollo and Cardiff International Arena), the impact of owning these venues would not significantly enhance the number of controlled tickets that the divested company could allocate to CTS (which in any event are included in the counterfactual).

3.13 In summary, while LN has explained in its prior submissions why its UK business is not in any way required to support CTS' entry, a divestment of LN UK poses a significant threat to the relationship that is alleged to be critical to that entry.

Divesting LN UK would not restore its incentives to their counterfactual position

3.14 As discussed above, a practicable divestment option does not exist for LN's UK businesses. Notwithstanding that fact (and even assuming LN UK could continue to operate as a viable divested business), **a divested LN UK would have very different incentives than would LN (Inc.) in the counterfactual.** As an entirely distinct entity, there is no basis upon which to assume that LN UK would provide the vehicle for CTS entry that the CC envisages in the counterfactual. In fact, the likelihood is that it would not, since:

- (a) first, it is unlikely that the divested business would, of its own volition, want to continue to contract with CTS for ticketing (either as a white label provider, or as a retail ticketer); and
- (b) second, even if the divested business were pre-committed to the LOI, it presumably would have the same ability to minimise its reliance on that contract that the CC believes LN would have post-merger.

3.15 As LN made clear at the Hearing, the CTS contract in the UK was part of a global deal negotiated by LN in the US. At that time, a contract with CTS would not necessarily have been the best option for the UK market, had LN UK negotiated its own ticketing arrangements with a free hand. Even in pursuing a white-label ticketing solution, LN UK may well have found a better deal elsewhere (for example, SJM and Metropolis have used See to power their gigsandtours.com website). There is also no reason to expect that the white-label strategy of LN as a global entity would necessarily continue to suit a UK-only divested business. The divested LN UK might well prefer to use a third party ticket agent as its main ticketing channel. In those circumstances, the obvious first choice would be the existing and established ticket agents such as TM, See, Ticketline and others. CTS is unlikely to be the preferred third party ticket agent for the divested LN UK business, since its terms [×] are relatively uncompetitive in the UK market.

3.16 If a divested LN UK was pre-committed to the equivalent of the existing LOI, whether as part of the remedy or otherwise, and assuming a suitable purchaser could be found (which, for the reasons above, is far from certain), the CC must expect the same fundamental economic incentives to drive its behaviour under the contract. Whilst the divested LN UK would effectively be compelled to use CTS, there is no reason to think this would be in its commercial interests. In these circumstances, LN UK could be expected to interpret the LOI as narrowly as possible (as the CC incorrectly alleges LN would do post-merger) in order to access as much other third-party ticketing as possible.

3.17 There is no reason to believe that CTS would be first choice for the divested LN UK as a third party ticketing agent since its terms are relatively uncompetitive – so regardless of whether a [X] system charge would be payable to CTS, the divested business may prefer to use a more competitive third party agents such as TM, See, Ticketline and others. Indeed, having a pre-commitment to use CTS as a condition of sale (whether under the remedy or otherwise) would make LN UK less attractive, reducing the likelihood of a sale, particularly if trade buyers have established ticketing relationships.

3.18 Moreover, LN Inc. continues to work with CTS towards ensuring it has a system fit for purpose in the UK (and in other jurisdictions). Under a divestment of LN UK, CTS in the UK would cease to benefit from the goodwill and latitude it currently enjoys as result of LN Inc.'s global relationship with CTS. There is no assurance that a divested LN UK would find a similar level of latitude worthwhile, given the availability of (superior) alternative third party ticketing solutions and the absence of any strategic need to pursue a white-label solution.

Divestment of TM UK does not represent an effective remedy¹⁷

3.19 Nor would a standalone TM UK divestment alter either the ability or the incentive that the CC supposes would exist for the post-merger firm to hamper CTS entry. To be effective, any TM UK divestment remedy would therefore have to be accompanied by behavioural conditions, and **it would fundamentally be the behavioural component alone of the package of remedies that addressed the SLC**. To add divestment to a behavioural remedy would therefore be manifestly disproportionate.

3.20 The CC is concerned that, post merger, LN would have the economic incentive to favour TM at the expense of CTS because LN allegedly would benefit from disadvantaging a competitor of the merged entity and because the merger allows LN to access TM's system at marginal cost. However, **LN's incentives if TM UK were divested would be no different than those that the CC supposes to exist post-merger**. This is for three reasons.

- (a) As part of the globally merged firm, LN would have global ticketing interests and would remain a global competitor to CTS. The incentives that the CC believes would exist to support CTS, contrary to the clear terms of the LOI and LN's goal of improving its own brand, would not be increased by divesting TM in the UK.

¹⁷ Please refer to TM's separate submission of the same date on divestment of TM UK.

- (b) Regardless of whether TM UK is spun off, the global merger of TM and LN will create a firm that controls ticketing technology and ticketing expertise. LN would therefore continue to benefit from access to a TM platform at marginal cost, and would continue to be indifferent between the CTS and TM (Global) platforms.
- (c) Neither does a TM UK divestment affect the incentives to allocate tickets to CTS' website, since TM UK would, in the majority of circumstances, continue to be an attractive alternative option when tickets failed to sell on LN's website. Indeed, we would argue that this also applies in the counterfactual (and CC accepts this, in projecting that TM would receive an allocation equivalent to See's current allocation¹⁸).

3.21 The success of any TM UK divestment would therefore rely on ensuring LN's performance under the LOI that tickets were retained on the CTS system. However, this is precisely the guarantee that is provided by the standalone behavioural remedy. The divestment of TM UK does not add to the efficacy of the behavioural remedy, and so it would be disproportionate to combine it with the divestment of TM UK.

A merged LN would have global ticketing interests

3.22 The success of a TM UK divestment would be predicated on restoring a counterfactual situation in which LN has a positive incentive to support CTS (and, according to the CC, to incur costs in providing that support). Since, post-divestment, LN UK would retain interests in a global ticketing business, it is entirely unclear why LN UK would have any incentive to go beyond the minimum requirements of the LOI in dealing with CTS.

3.23 Whilst a divestment would remove the immediate local competition in the UK ticketing market between CTS and the ticketing division of the merged firm, it is by no means clear that this would be sufficient to restore incentives that the CC believes would exist in the counterfactual. Rather, this would seem unlikely under a remedy where LN becomes part of a global ticketing and promotions business, given that CTS would remain a competitor to the merged firm at a global level.

3.24 This makes any TM UK divestment significantly weaker than a behavioural solution, which can guarantee CTS the support it would have received in the counterfactual.

LN would continue to have access to TM's platform at marginal cost

3.25 Regardless of whether TM UK is spun off, the global merger of TM and LN will create a UK firm with access to ticketing technology and ticketing expertise.

3.26 As set out above, the merger effect described by the CC results solely from the fact that LN no longer has to pay TM a margin for selling tickets on its platform. Effectively, LN is allowed access to TM's platform at marginal cost, rather than having to pay a contribution (in the form of TM's margin) to the fixed cost of

¹⁸ Provisional Findings, paragraph 6.37.

developing that platform¹⁹. Whilst a divestment of TM UK would mean that LN could no longer expect to have access to *TM UK*'s platform at marginal cost, LN would continue to have access to TM's platform globally at marginal cost – and would continue (on the CC's assumptions) to be financially indifferent between this and CTS' system.

3.27 This possibility remains even after the sale of TM UK (including any UK infrastructure) because the merged firm would still have access to TM's platform and there would be no significant barriers to allocating tickets onto that platform.

3.28 To illustrate the incentives facing LN in more detail, below we amend the CC's Table 6 from Provisional Findings to include the effect of a TM UK divestment. Assuming that the [X] system payment would be required under the LOI, we consider the CC's Assumption A. Following the assumptions set out by the CC in Table 3 of the PFs, LN earns an average booking fee of [X] less [X] for various fees (shipping, print at home fees, outlet commissions, payment charges, etc.), less the [X] charge to CTS, so LN retains [X] per ticket.

Amended Table 6 – incentives facing LN following a TM UK divestment

<i>Channel</i>	<i>£ per ticket approximate</i>	
	<i>LOI assumption A*</i>	
	<i>Counterfactual</i>	<i>Post-merger</i>
CTS website	[X]	[X]
LN website – CTS platform	[X]	[X]
LN website – TM platform	[X]	[X]
TM UK retail	[X]	[X]
Other agents	[X]	[X]

3.29 This means that LN's post-merger indifference between the CTS and TM systems remains. This result is driven by the fact that:

- CTS' [X] system charge primarily represents a contribution to **the fixed cost of developing a ticketing system suitable for the UK** – compared to the variable costs involved in actually *retailing* tickets, [X]; and
- since TM has already made the investment in developing such a system, [X].

3.30 A divestment of TM UK therefore has little effect on the fundamental economic incentives facing the merged firm. The incentive for LN to switch sales from CTS' platform to TM UK's retail business is simply replaced by a post-merger incentive to switch sales to a platform powered by TM (*Global*) technology and know-how. Nor would it change the incentives on LN to attempt to avoid the [X]

¹⁹ This is because, as part of the merged firm, LN shares in the profits earned by TM on its fees – so LN's economic incentives will be to behave as though TM's services are provided at cost.

charge for tickets taken off the CTS system – since avoiding this charge would amount to pure profit for the merged firm when switching to its own platform.

A divested TM UK would continue to be the most attractive second-best option when tickets failed to sell on LN's website

3.31 The CC also has concerns that the merger might reduce the incentives of LN to support the CTS website and retail brand (through ticket allocations or otherwise). However, it is not clear how a divestment remedy would be guaranteed to overturn any such merger effect. In relation to ticket allocations to the CTS website:

- (a) The divestment does little to change the economic incentives to use the CTS website as a retail channel – since this would always be a second-best alternative to retailing via the LN website when tickets are certain to sell via either route.
- (b) As the amended Table 6 above shows, the CC's assumptions imply that using the divested TM UK to retail tickets would only cost LN an extra [x] per ticket compared to the CTS website. This means that, on a £45 ticket, LN would favour TM UK over CTS whenever TM UK could increase the odds of selling the ticket by [x] or more.²⁰ Moreover, a divested TM UK would pay a licence fee to TM US, and that the current transfer of [x] would represent a conservative estimate of what this fee might be; as a result, this would further increase the attractiveness of using TM UK post-divestment.

3.32 Consistent with current practice, LN can be expected to use alternative ticket agents to maximise its potential reach when tickets are harder to sell. Different UK ticket agents have different characteristics (either in terms of regional focus, or a focus on specific types of events) that deliver this additional reach. If CTS fails to sell its tickets, a divestment of TM UK would not reduce LN's incentive to reallocate those tickets to a company who can sell them.

3.34 In summary, any TM UK divestment remedy would be ineffective in addressing the SLC. If the CC were to combine any divestment remedy with a restriction on allocations to a TM (*Global*) platform (for example by strengthening the LOI in some way), this simply illustrates that it is fundamentally a **behavioural solution** which addresses the SLC, and that a divestment of TM UK adds nothing to the effectiveness of any behavioural remedy.

The proposed (behavioural) remedy would reliably address all the perceived economic incentives affected by the merger: any structural add-on would be disproportionate

3.36 The uncertainties that surround divestment remedies in this case do not apply to the behavioural remedy we have proposed. It addresses all the effects on economic incentive issues raised by the CC, and in doing so **the behavioural remedy delivers a long term structural solution** that involves a time limited intervention in the market, without any need for permanent monitoring.

²⁰ An increase in the odds of selling a £45 ticket by [x] would be worth [x] to LN – greater than the cost difference between CTS and TM UK.

3.37 Each of the post-merger incentives causing the CC concern and giving rise to its SLC theory is fully and effectively addressed by the parties' proposed remedy:

- (i) The CC is concerned that the combined firm would move tickets off the CTS system (i.e. away from the LN website) and sell them via TM instead. However, the remedy would prevent LN controlled tickets from being allocated to TM's system, by guaranteeing that the counterfactual percentage of 65% of controlled tickets were allocated to the CTS system.
- (ii) The CC is concerned that the combined firm would limit the allocation of tickets to the CTS website by limiting allocations to the smallest events, or by denying CTS's website tickets for third party promotions at LN venues. However, by strengthening the LOI commitment to ensure its allocations were not drawn from the smallest LN events, the remedy would prevent LN from limiting the number of tickets allocated to the CTS website. It would further guard against any incentive to 'mark back' CTS' initial website allocations to LN or TM by ensuring that any reallocations went only to other third party ticket agents.
- (iii) The CC is concerned that the combined firm will not incur costs to help increase CTS' success as a ticket retailer (for example, having no references to CTS' website on LN promotional material). However, as explained at the LN Hearing and in LN's responses to the Provisional Findings, any CC counterfactual in which LN is assumed to give promotional support to CTS beyond what the parties agreed in their LOI is false and contrary to the evidence. Accordingly, the merger has no effect on the economic incentives to provide such support. Moreover, to base the provisional SLC theory on future behaviour that (as the CC itself admits in the PF Report²¹) is unspecified and speculative is legally insufficient²².

Nevertheless, without prejudice to these facts, LN would (if required by the CC) be prepared to go beyond the level of support that could be expected in the counterfactual: placing the CTS logo on LN promotional materials and/or on the webpage to which customers are routed to from the LN website in order to purchase tickets (see LN's response to the CC's follow-up questions).

- (iv) The CC is concerned the merged firm may limit CTS's revenues by refusing to pay a fee for controlled tickets not sold on the CTS system. However, the remedy would counteract the financial incentive to limit CTS' revenues by strengthening the LOI to guarantee CTS the [X] fee for all tickets not sold on the CTS system.

3.39 All of these solutions are reliable, effective, and they deliver considerably greater certainty to both the CC and CTS than would any divestment remedy. Moreover, in contrast to the proposed behavioural remedy, any structural remedy

²¹ Para 6.54 states: "...although it is uncertain how LN might have helped CTS, we believed that, in the absence of the merger, LN would have had the incentive to find ways to do so".

²² For instance, in the European Court of Justice's judgment in *Sony-Bertlesman*, the Court held that the mere presence of the "AirTours" criteria for coordination is an insufficient ground on which to find an adverse effect on competition; rather, the competition authority must also go on and lay out a **plausible and coherent story** of what the post-merger firms would do to coordinate.

would permanently deprive customers of the merger benefits explained in Section 1 above, and would be disproportionate.

4. [X]