

REFERENCE RELATING TO THE ANTICIPATED MERGER BETWEEN TICKETMASTER ENTERTAINMENT, INC AND LIVE NATION, INC

Notice of possible remedies under Rule 11 of the Competition Commission Rules of Procedure

Introduction

1. On 10 June 2009, the Office of Fair Trading (OFT), in exercise of its duty under [section 33\(1\)](#) of the Enterprise Act 2002 (the Act), referred to the Competition Commission (CC) for investigation and report the anticipated merger between Ticketmaster Entertainment, Inc (Ticketmaster) and Live Nation, Inc (Live Nation) (the merger).
2. In its provisional findings on the reference notified to Ticketmaster and Live Nation (the main parties) on 8 October 2009, the CC inquiry group (the Group) concluded provisionally that the merger would result in the creation of a relevant merger situation in the UK; and that the creation of that situation may be expected to result in a substantial lessening of competition (SLC) in the UK market for the primary retailing of live music tickets. The Group expects that the merger will lead to higher net prices from ticket retailers (eg due to lower rebates to promoters and venues) and/or lower service levels (to consumers and/or promoters and venue operators) and/or lower levels of innovation than would otherwise be the case in that market.
3. This Notice sets out the actions which the Group considers might be taken alone or in combination by the CC for the purpose of remedying the SLC and any resulting adverse effects, and invites comments on possible remedies (see [note](#)).

Criteria

4. In choosing appropriate remedial action, the Group shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.¹ When deciding on an appropriate remedy, the Group will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principles of proportionality. If there are two or more remedies that the Group considers equally effective, it will choose that remedy which imposes the least cost or restriction. The Group will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.

Possible remedies on which views are sought

Context

5. The remedial action that the CC will decide should be taken will depend on the facts and circumstances of the case.
6. This anticipated merger is of two US enterprises which have business operations in a number of jurisdictions, including the UK. As a result, the CC will need to consider

¹[Section 36\(3\)](#) of the Act.

the extent of its jurisdiction and its choice of remedies may be limited significantly by the constraints of extra-territorial enforcement.²

7. The CC will consult with the relevant competition authorities in the USA, where the merger is also being investigated, to understand the timescales to which they are working and to seek consistency and effectiveness in the approach to remedies.³
8. The Group wishes to address the impact on competition of the combination and joint operation of the UK business operations of Ticketmaster and Live Nation following the anticipated merger. The Group invites comments on the following possible remedies, which could be applied either in isolation or in combination, and, in particular, whether each option would be effective in addressing the SLC and its adverse effects and whether each option would be proportionate bearing in mind the costs that might arise.

Structural remedies

Prohibition of the merger

9. One option is the prohibition of the anticipated merger. In this case, the global nature of the merger makes it likely that prohibition of the merger in its entirety by the CC would prove impractical and disproportionate but the Group invites views on this option.
10. The Group also invites views about prohibition of the merger of the UK business operations of Ticketmaster and Live Nation.

Divestment of UK business operations

Divestment options

11. The Group invites views about divestment of all or part of the UK business operations of Ticketmaster or Live Nation, as a condition of approving the anticipated merger. The CC will normally prefer divestiture of an existing business that can compete on a stand-alone basis independently.⁴ The CC will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis⁵ and has in mind the following options:
 - (a) the divestment of all of the UK business operations of Ticketmaster;
 - (b) the divestment of part of the UK business operations of Ticketmaster and, in particular, the divestment of the business relating only to live music tickets;
 - (c) the divestment of all of the UK business operations of Live Nation; and
 - (d) the divestment of part of the UK business operations of Live Nation and, in particular, the divestment of the business relating to live music promotions and/or live music venues.

² *Merger Remedies, Competition Commission Guidelines, CC8, November 2008, paragraph 2.24.*

³ *CC8, paragraph 2.23.*

⁴ *CC8, paragraph 3.9.*

⁵ *CC8, paragraph 3.7.*

Divestment scope and considerations

12. The Group would be interested to hear views on:
- (a) The scope of the business which would need to be divested to remedy the SLC, ie whether it would be necessary to divest the entire UK operations of Ticketmaster or Live Nation, or whether a partial divestiture could be effective.
 - (b) How to ensure that the divested business would have sufficient assets, capabilities and incentives to compete effectively in the relevant market on a stand-alone basis or in combination with another business. In particular:
 - (i) what restructuring would be required—this will depend to an extent on the identity of any potential purchaser and the scope of assets acquired, for example: intellectual property, brand, sales and marketing functions, customer support services, facilities, etc;
 - (ii) what would be required to establish an independent business following the divestment with the appropriate management and staffing, as well as the necessary sales and marketing, customer support and product development capability;
 - (iii) how any facilities and/or customer support services could be provided; and
 - (iv) how any necessary intellectual property (eg software code), database management, product development capability and other know-how could be separated and provided to the divested business.
 - (c) How any practical difficulties in separating the business for divestment from Ticketmaster or Live Nation could be successfully overcome, particularly in the case of a partial divestiture.
 - (d) Whether the divestment would result in any adverse effects.

Divestment—possible purchasers

13. The Group also invites views on the identity of possible suitable purchasers for the divestiture packages described above. In general, as described in the CC's guidance,⁶ the CC takes the view that a suitable purchaser should have no significant connection to the merging parties, which may compromise the purchaser's incentives to compete; have access to appropriate financial resources, expertise and assets; have an appropriate business plan; and be free from competition concern.
14. The Group, in particular, invites views about whether a purchaser already active, or which has been planning to become active, in any of the markets in which Live Nation or Ticketmaster operate in the UK would be appropriate in order for this remedy to be effective. This option could include a scenario where an existing or potential retailer of live music tickets in the UK purchases part or all of the UK business operations of Live Nation in the UK. It could also include a scenario where an existing or potential retailer of live music tickets in the UK purchases all or part of the UK business operations of Ticketmaster.

⁶CC8, paragraph 3.15.

Divestiture trustee

15. The Group also notes that a divestiture trustee may be appointed to ensure divestment to a suitable purchaser if the merging parties are unable to secure divestment within an initial period.⁷ Given the potential complexities of identifying a partial divestment package, if this remedy is sought the Group may need to consider whether to appoint a divestiture trustee at an early stage in the process.

Behavioural remedies

16. The Group is considering a requirement that Live Nation use CTS Eventim AG (CTS) or another third-party ticket agent (independent of Ticketmaster and Live Nation) to act as the retailer of all or a proportion of the UK live music tickets under Live Nation's direct control.
17. The Group considers that this outcome might be achieved in one of two ways:
 - (a) Live Nation could be required to reach a contractual agreement with a third-party ticket agent to act as the retailer of all or a proportion of the UK live music tickets under Live Nation's direct control. The Group would need to be satisfied that the terms of this agreement were sufficient to ensure this remedy would be effective.
 - (b) Live Nation could be required to allocate all or a proportion of the UK live music tickets under its direct control to a third-party ticket agent, which will act as the retailer of these tickets. The Group would need to be satisfied that the key terms and conditions relating to this allocation were sufficient to ensure this remedy would be effective.
18. The Group invites views on whether this remedy would be effective and, in particular, on the following areas:
 - (a) With reference to the options set out in paragraph 17(a) and (b), what are the pros and cons of each option, and which option would be the most effective way to implement this remedy?
 - (b) Under the option set out in paragraph 17(a), how long should Live Nation be given to reach an acceptable contractual agreement? If an acceptable agreement is not reached within the defined time period, what other remedy option should be implemented?
 - (c) What are the minimum terms and conditions which should be included in this remedy and how could the difficulties in specifying these terms and conditions be overcome? In particular:
 - (i) whether and in what ways it is possible adequately to define and monitor the live music tickets under the direct control of Live Nation and whether such definitions can be sufficiently robust and effective on an ongoing basis;
 - (ii) what is the minimum number of tickets which should be allocated for sale by a third-party ticket agent, and what criteria should be set to determine the quality of these tickets, the range of events involved and any other factors relating to the tickets;

⁷CC8, paragraph 3.26.

- (iii) on what basis would the commercial terms for the supply of these tickets be set, such that these terms are fair, reasonable and non-discriminatory;
 - (iv) over what duration should this remedy operate and how should the number of tickets supplied be varied over time; and
 - (v) how long should the third-party ticket agent be given to sell the allocated tickets, and what should happen if the third-party ticket agent is not able to sell the tickets which it has been allocated?
- (d) What is the likely impact on the market for the retail of live music tickets as a result of this remedy option, including any adverse effects and/or unintended distortions or consequences?
19. The Group is not currently minded to consider other behavioural remedies, such as a control on prices, as it does not believe that these options are likely to be effective in remedying the SLC and would create significant distortions. Nevertheless, the Group invites suggestions on other possible behavioural remedies, including whether these alternative remedies would create any adverse effects and/or unintended distortions or consequences.

A package of remedies

20. In addition, the Group invites views on whether a package of remedies would be effective in addressing the SLC which it expects to result from the merger. This package of remedies could include any of the remedies already described and could combine both a divestment and a behavioural remedy.

Other measures

21. The Group will consider any other practicable remedies, whether structural or behavioural, or involving recommendations to others, which the main parties or any third parties propose in order to address the expected SLC and any resulting adverse effects.

Relevant customer benefits

22. The Group will have regard to the effects of remedial action on any relevant customer benefits, within the meaning of [section 30](#) of the Act, arising from the merger. Such benefits might comprise lower prices, higher quality or greater choice of goods or services in any market in the UK, or greater innovation in relation to such goods or services.⁸ A benefit is only a relevant customer benefit if the CC believes that: (a) the benefit has resulted from the creation of the relevant merger situation, or may be expected to do so within a reasonable period; and (b) the benefit was, or is, unlikely to arise without the merger or a similar lessening of competition.⁹
23. The Group welcomes views on whether any relevant customer benefits exist, and, if so, invites evidence on the nature, scale and likelihood of such benefits.

⁸CC8, paragraphs 1.14–1.20.

⁹CC8, paragraphs 1.14–1.20.

Next steps

24. A copy of this Notice will be posted on the CC [website](#).
25. Ticketmaster and Live Nation, and any other interested parties, are requested to provide views in writing in response to this Notice, including any other practical remedies they wish the Group to consider, by 22 October 2009.

(signed) CHRISTOPHER CLARKE
Group Chairman
8 October 2009

Note

This Notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the provisional findings announced on 8 October 2009. Parties have until 29 October 2009 to respond to the provisional findings.

The Group's findings may alter in response to comments it receives on its provisional findings, in which case the Group may consider other possible remedies, if appropriate.