

30 October 2009

[X]

Mr. Christopher Clarke
Competition Commission
Victoria House
Southampton Row
London WC1B 4AD

Dear Mr. Clarke,

Live Nation/ Ticketmaster: Provisional Findings

[X] welcomes the Competition Commission's finding in its 8 October Provisional Findings that the proposed merger of Live Nation and Ticketmaster would lead to a substantial lessening of competition.

However, this finding relates solely to competition concerns of a *horizontal* nature, namely that the merger will eliminate an important new competitor, CTS, from the UK ticket market. [X] does not agree that the only mechanism through which the merger would reduce competition is by impeding the entry of CTS into the UK ticketing market.

[X] believes that the Competition Commission has not sufficiently taken into account the wide-ranging vertical effects of the merger and their impact on competition. It has not adequately considered the integrated nature of the merged entity, enabling it to become the strongest or dominant force at virtually every level of the live music supply chain (i.e. artist management, concert promotion, venue ownership/ control and ticketing). [X] believes that combining all such levels and activities across the supply chain into the one overwhelmingly powerful industry player will have wide-ranging and serious effects on competition in live music in the UK. The merged entity would exert this vertical power through foreclosure of, exclusion from and less preferential access to, the relevant markets by independent promoters, venues and ticket agents.

Vertical foreclosure concerns

[X] has commissioned economics consultants, [X], to assess the Competition Commission's Provisional Findings. Specifically, [X] were asked to examine the theoretical and empirical basis for the Competition Commission's conclusions in relation to vertical foreclosure. The report prepared by [X] is attached to this letter at **Annex 1**.

In particular, the [X] analysis finds that the Competition Commission's treatment of vertical foreclosure is based on a number of flaws in the methodology adopted to conduct the assessment:

- *'Compartmentalised' analysis*: The assessment of foreclosure is generally confined to considering the vertical links between particular stages in the value chain. As a result, the analysis does not take into account the integrated nature of the merged entity across the value chain and the impact of this on its ability and incentives to foreclose competitors.

- *Analytical defects:* There are a number of flaws in the Competition Commission's detailed analysis on which the Provisional Findings are based. These weaknesses call into question the Competition Commission's conclusion that the merged entity would not have the ability and/ or incentives to foreclose rivals in live music promotion, venues or ticketing. In particular, the finding that promoters and venues are unlikely to be foreclosed rests on limited evidence and a number of crucial assumptions.
 - The analysis of *full foreclosure* does not take account of the strategic nature of foreclosure or the fact that foreclosure could be targeted at particular rivals, [§].
 - The analysis of *partial foreclosure* relies on the finding that rival promoters will switch or threaten to switch away from Ticketmaster. This again is based on limited anecdotal evidence.
 - The analysis that *venues* in particular will not be foreclosed, in full or in part, is uncorroborated and contradicts the evidence [§].

In [§] view, perhaps the most serious harm will come from the merged group's *access to customer and other commercially sensitive data of competitors*. [§]. The merged group will be able to exploit its privileged and proprietary access to data that are controlled by it. Indeed, the Competition Commission itself found that, as a result of the merger, Live Nation would have more direct control over data than pre-merger.¹ It will be able to use its unrivalled access to those data in order to protect and extend its power in promotions. This is the path that owners of critical information in an industry have often followed to exclude rivals. Live Nation and Ticketmaster will be poised to exert similar control in the live music market. The US Federal Trade Commissioner, Pamela Jones Harbour, has suggested that regulators should consider input data as a separate market.² This definition would have implications for assessment of transactions such as the present.

[§]³[§]

[§]

[§].

Yours sincerely,

[§]

¹ See, further, Provisional Findings paragraphs 6.26, 8.89, 8.90 and 8.94.

² See, for example, comments regarding "Whose Data is it? Competition, Privacy and Consumer Protection Perspectives in Electronic Data Markets", ABA Antitrust Section, 56th Antitrust Law Spring Meeting, 27 March 2008 (cited in Ticketmaster – Live Nation, an AAI White Paper, 13 April 2009).

³ [§].

Annex 1

**Live Nation/ Ticketmaster
Assessment of the Competition Commission's Provisional Findings on vertical foreclosure**

Prepared on behalf of [REDACTED]

Annex 2

Key conclusions from the Provisional Findings

A number of conclusions in the Provisional Findings, summarised below, serve to illustrate the serious concerns that will arise from the proposed merger as a result of horizontal concentration in the UK ticket market, which will be exacerbated by the removal of CTS.

- There are considerable barriers to entry and expansion in the ticketing market which prevent small suppliers, or new entrants, to compete effectively with Ticketmaster and See Tickets.⁴
- A new entrant would need to finance a period of initial investment, which could last a long period of time.⁵ The Competition Commission observes two recent examples of entry, namely HMV and Gigantic, but acknowledges their low market share, as well as uncertainties regarding their success.⁶ Most of the existing small providers in the market have failed to expand significantly.⁷
- Although promoters and venue operators could switch between suppliers, the options are limited and most promoters and venue operators have to sell tickets through Ticketmaster to maximise ticket sales.⁸
- The agreement between Live Nation and CTS was critical to CTS's initial decision to enter the market. CTS told the Competition Commission that to enter a new geographic market, it needed a significant guaranteed base of ticket inventory.⁹
- CTS's scale, technology and expertise, its stated intent of becoming a large supplier in the market and its proven success in achieving this aim in other geographic markets meant that its entry into the UK market was likely to affect the degree of competition in the market significantly.¹⁰ CTS is not likely to find an alternative partner which would sponsor its entry into the UK market.¹¹
- Live Nation could limit the number of tickets which it allocated to CTS by interpreting its obligations under the LOI as narrowly as possible, but also by limiting the number of its controlled tickets.¹²
- If the merger proceeds, Live Nation would have the incentive to limit its use of CTS's services and inhibit CTS's growth in the UK market in other ways. Live Nation was in a position to assist CTS in many ways such as receiving an allocation of tickets for all of Live Nation's events. If the merger proceeds, the majority of the merged entity's ticket sales would be sold on Ticketmaster's system, not on CTS's system.¹³
- CTS would exit the market if it found that the merged entity's actions would make it impracticable for CTS to achieve its objectives in the market.¹⁴

⁴ Provisional Findings Summary, paragraph 7.

⁵ Provisional Findings, paragraph 5.34.

⁶ Provisional Findings, paragraph 5.36.

⁷ Provisional Findings, paragraph 5.37.

⁸ Provisional Findings Summary, paragraph 6.

⁹ Provisional Findings, paragraphs 5.30 and 5.32.

¹⁰ Provisional Findings, paragraph 6.59.

¹¹ Provisional Findings, paragraph 7.33.

¹² Provisional Findings, paragraph 7.31.

¹³ Provisional Findings, paragraphs 7.29, 7.48 and 7.57.

¹⁴ Provisional Findings, paragraph 7.83.

- There are no countervailing customer benefits. Neither Live Nation nor Ticketmaster submitted evidence showing that the merger would give rise to significant efficiencies in the UK market.¹⁵
- In the absence of the merger, CTS's entry would have had a significant beneficial impact on the extent of competition in the market for the primary retailing of live music tickets in the UK.¹⁶
- The merger would lead to higher net prices from ticket retailers and/ or lower service levels and/ or lower levels of innovation in the market than would otherwise be the case.¹⁷

¹⁵ Provisional Findings, paragraph 7.4.

¹⁶ Provisional Findings Summary, paragraph 13 and paragraph 6.62.

¹⁷ Provisional Findings Summary, paragraph 17 and paragraph 7.87.