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Ticketmaster merger inquiry
Competition Commission.

By E-mail

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Dear David,

Live Nation / Ticketmaster

Provisional findings

Which? welcomes the Competition Commission's provisional findings of a substantial lessening of competition (SLC) arising from the proposed merger between Live Nation and Ticketmaster.

In addition to the concerns about market entry - the focus of the CC's SLC - we re-iterate the points made in our original submission. The prospects for consumer detriment, arising from significantly weakened competition, should the merger proceed are considerable and include:

- > Pricing - Live Nation / Ticketmaster would be in a strong position to reduce the distinction or transparency of the face-value of ticket prices and the additional fees paid to complete the purchase of a ticket. Alternatively, the level of fees paid by consumers, in the form of ticket administration or handling fees, would increase. Ticketmaster is, at present, a required trading partner for other promoters / venues. This position would be open to abuse post-merger, for example with discriminatory terms charged to promoters competing against Live Nation.
- > Weaknesses of rival brands - consumers are exposed too often to fraudulent ticket sales. A strong brand gives consumers comfort that tickets are legitimate. Ticketmaster's brand is well recognised by consumers. Strengthening this brand further, with Live Nation's portfolio of performances / venues, would raise entry barriers for rival ticket agents struggling to overcome consumers' concern over fraudulent ticket sales.

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for all consumers

Remedies

Consumer benefits

Which? can foresee no benefit to consumers arising from the proposed merger: price, choice and quality would suffer. Where ticket sales are channelled through a single distributor consumer demand may exceed the online system capability of Ticketmaster, causing it to fail. This would likely divert consumers to secondary ticket sites, where prices often exceed face value, and which may also be operated by Ticketmaster. Given the nature of the harm arising due to the merger, Which? does not consider any relevant customer benefits will arise that would compensate consumers for the risks to competition from the merger.

Prohibition

Which? considers that the only effective and proportionate remedy in this case is the prohibition of the merger. This would:

- > Directly address the SLC identified by the CC
- > Prevent the other competitive harms and consumer detriment outlined above
- > Be the least costly to implement
- > Impose no costs on third parties
- > Require no ongoing monitoring
- > Provide certainty for existing and new entrant firms

Furthermore, a prohibition would have the considerable advantage of being pro-competitive, by enabling a sizeable new entry and significantly shaking up the current market structure for the benefit of consumers. Which? anticipates that entry by CTS would significantly strengthen price competition for non-exclusive ticket sales.

Divestment

Which? considers that only Ticketmaster would be an appropriate target for a divestment remedy, as this is where the most significant market power resides. Divestment would be an insufficient remedy because of:

- > Inefficiency
- > Loss of a recognised brand

- > Few suitable purchasers
- > Increased costs to consumers

As Which? understands it the structure of the businesses concerned does not lend itself to divestment - there are no separate business units that, on divestment, would address the SLC, for example, enabling another firm to enter at scale. Divestment would therefore be a costly remedy, requiring considerable resource to implement. This would apply even where all of Ticketmaster's UK business operations were divested as the US parent company would need considerable involvement in determining allocation of intellectual property.

As noted above, Ticketmaster has strong brand recognition. Consumers benefit from this when attempting to avoid fraudulent ticket sales.¹ Any divestment would presumably result in the loss of the Ticketmaster brand. This would leave consumers (and purchaser) with the added expense and difficulty of learning about new brands and re-building trust.

More generally, it does not appear likely that there are many suitable purchasers. The strength of Ticketmaster's brand, its expertise with ticket sales and the financial resources necessary to purchase its UK ticket operations are likely to be difficult to overcome for prospective purchasers. It seems unlikely that CTS would be attracted to purchasing Ticketmaster's UK operation given the extent of replication and incompatibility with its existing business systems and processes. Also, there would be no net increase in the number of ticket agents (with CTS in effect replacing Ticketmaster's market position).

Any possible purchasers should meet certain standards of conduct. This includes membership of a reputable trade body that requires clear terms and conditions for display of prices and fair refund policies in the event of cancellation of a performance. At present, STAR offers these standards as part of its code of practice. We note that See Tickets is not a member of STAR, so should not qualify as a potential purchaser.

Finally, the costs of creating a practicable divestment would inevitably fall onto consumers. Effective competition is not expected to manifest immediately. Therefore, the 'frictional' costs of re-structure (alongside any additional costs incurred by Live Nation for its world-wide merger and appointment of CTS or some other UK ticketing agent) would in the first instance fall onto consumers. Only

¹ Ideally, consumers would have confidence when purchasing tickets from any legitimate business, however, Which? has found this is not the case, with consumers' relying on brand names as a proxy of legitimacy / quality.

should effective competition be restored, or in fact strengthened given Ticketmaster's current dominance, would consumers perhaps see benefits.

Behavioural remedies

As Which? understands it the purpose of the behavioural remedies in this case would be to create artificial conditions of sponsored entry - to enable a sufficient volume of business for a ticket agent to enter and maintain sufficient scale to appeal to other promoters / venues. This would be achieved by obliging Live Nation to deal with a third party ticket agent. Ultimately, should the entrant successfully grow its business, the remedies could fall away.

Which? considers that similar problems to divestment apply, specifically:

- > Inefficiency
- > Not sufficiently comprehensive, even with divestment

The behavioural remedies do not address the SLC as effectively as a prohibition of the merger. The cost of establishing these as a remedy would be excessive; a monitoring regime would be required, which may be required to resolve disputes between the new entrant and Live Nation. Disputes would need to be resolved quickly to ensure regulatory certainty and make entry commercially attractive. Live Nation's conduct would need to be kept under review to ensure that it abided by its behavioural conditions. As a result, new entrant ticket agents would demand considerable regulatory certainty in order to commit investment. Consumers suffer if investment is half-hearted. The remedy would therefore need to be of a lengthy duration.

Second, the behavioural remedies are aimed at requiring Live Nation to alter its behaviour post-merger. Given that the principle harm appears to arise in the ticketing market Ticketmaster should be the target of remedy measures. The behavioural remedy would not address the significant brand advantage that Ticketmaster currently enjoys, especially given consumers' concerns over fraudulent tickets. The choice of third party could also distort competition. Live Nation would need to be directed as to which third party to deal with; this choice would be a regulatory decision rather than a commercial decision. In these circumstances Live Nation may have less interest in monitoring the performance of the third party (especially if it competes via Ticketmaster), leading to lower quality outcomes.

Behavioural remedies should ensure that proper standards are enforced for potential new entrants, such that they abide by a robust industry code. Finally, the remedy would not be certain of securing an abiding change to competitiveness or market structure for ticketing to address the SLC - successful new entry on the basis of behavioural undertakings is uncertain and depends upon the success of the entrant at securing wider sales in order to ultimately operate without need for Live Nation tickets.

In conclusion, Which? considers a full prohibition of the proposed merger is the only effective and proportionate remedy. Please contact me if you have any questions.

Yours sincerely

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Which?