COMPETITION COMMISSION

# Ticketmaster and Live Nation

A report on the anticipated merger between Ticketmaster Entertainment, Inc and Live Nation, Inc

**22 December 2009**

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The Competition Commission has excluded from this published version of the final report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂].

# Anticipated merger between Ticketmaster and Live Nation

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# Summary

The following summary should be read in conjunction with the rest of this report, from which it is derived.

1. On 10 June 2009, the Office of Fair Trading (OFT) referred the anticipated merger of Ticketmaster Entertainment, Inc (Ticketmaster) and Live Nation, Inc (Live Nation) to the Competition Commission (CC) for investigation and report. The reference was made under section 33 of the Enterprise Act 2002 (the Act). We were required to publish our final report by 24 November 2009, which was subsequently extended to 19 January 2010.

## Background

2. Live Nation is principally a promoter of live music events and an owner/operator of live music venues. Ticketmaster is principally a ticket agent, and sells many tickets on behalf of live music promoters and venue operators. Both companies are head-quartered in the USA but have significant operations in the UK.

3. The merger between Ticketmaster and Live Nation is a US-led transaction but has implications for the activities of both companies in many geographic markets around the world, including the UK. The US Department of Justice (DoJ) is investigating the implications of the merger in the USA.

4. For many years, Ticketmaster and Live Nation had a contractual relationship, whereby Ticketmaster was Live Nation's preferred global ticket agent. This relationship expired in the USA at the end of 2008 and is due to expire in the UK at the end of 2009. In replacement of this contract, Live Nation signed a global agreement with CTS Eventim AG (Eventim), which is both a provider of ticketing services and a ticket agent, and a promoter of live music events, headquartered in Germany. Under this agreement, in the USA, Eventim would supply Live Nation with ticketing software, enabling Live Nation to sell its own tickets and become a ticket agent for other promoters and venue operators; and, in the UK, Eventim would supply Live Nation with a managed ticketing service, enabling Live Nation to sell its own tickets, or for Live Nation's tickets to be sold by Eventim or any other ticket agent. Live Nation and Eventim have implemented this agreement in the USA and are in the process of preparing for its implementation in the UK, due to begin on 1 January 2010. We noted that both Live Nation and Eventim accepted that the agreement was binding. Following the announcement of the proposed merger between Ticketmaster and Live Nation, both Live Nation and Eventim stated publicly their commitment to honour their obligations under their agreement, whether the merger proceeded or not.

## The relevant markets

### *Ticketing*

5. We found that there was a separate market for the primary retailing of live music tickets, excluding sales made in-person at the box office. We found that the retailing of tickets directly to consumers by promoters or venues, ie not using a ticket agent, was also part of this market. However, we found that the retailing of tickets for other live events (eg theatre tickets), the secondary retailing of live music tickets, and sales of live music tickets in-person at the box office did not constrain this market.

6. We found that several retailers of tickets offered a managed ticketing service, providing venues, and some promoters, with a ticketing system, and managing it on

an ongoing basis. We found that the provision of these services was relevant to our assessment of the live music ticket retailing market as several ticket retailers (including Ticketmaster) gained access to tickets to sell by providing live music venues and promoters with a managed ticketing service. We noted that, though some ticketing services providers relied on their own proprietary software (eg Ticketmaster), many ticketing services providers licensed ticketing software from another provider. We found that the provision of ticketing software was in a separate market.

7. We found that the geographic market for the primary retailing of live music tickets was not wider than the UK.

8. We found that Ticketmaster had a large share of the UK market for the primary retailing of live music tickets, which it had maintained for many years. We estimated that Ticketmaster's market share in 2008 was between 40 and 50 per cent, and the next largest supplier, See Group Limited, which trades as See Tickets, had a market share of about half this size, or slightly less. All the other suppliers in this market were relatively small (none with more than 5 per cent market share). We found that, although promoters and venue operators could switch between suppliers, in particular between Ticketmaster and See Tickets, the options were limited and, in order to maximize ticket sales, most promoters had to sell some tickets through Ticketmaster.

9. We noted that none of the small suppliers in the market had grown their market shares significantly in recent years, which suggested that there were barriers to becoming a large-scale retailer of live music tickets. These barriers restricted the opportunities for new entrants or existing small suppliers to compete effectively with Ticketmaster and See Tickets. In particular, we found that, in order to sell large volumes of tickets, retailers needed to attract large numbers of customers, which required significant investment in marketing and brand development. We concluded that this requirement represented a significant barrier to becoming a large-scale retailer of live music tickets. We also noted that the need to invest in technology and the difficulty of accessing large volumes of tickets, due to the presence of long-term preferred relationships between incumbent ticket agents and promoters/venues, made becoming a large-scale retailer of live music tickets even harder. We noted that there were some recent examples of new entry, but we concluded that we could not be confident that these new entrants would grow to become effective competitors to Ticketmaster and See Tickets in the near future, given these material barriers.

10. Overall, we found that there was competition in the market for the primary retailing of live music tickets, in particular between Ticketmaster and See Tickets, but we found that the extent of the competitive constraint on these two large suppliers was limited. We noted that the market structure had not changed for a long period of time, with one provider (Ticketmaster) continuing to sell almost half of all the live music tickets in the UK, and being at least twice the size of its nearest competitor (See Tickets). We concluded that, with only two large primary retailers of live music tickets, and little likelihood of one of the small retailers expanding to become a large retailer in the near future, competition in the market was less than fully effective.

### *Promotion*

11. We found that there was a separate market for the promotion of live music events in the UK. We found that Live Nation was one of the largest suppliers in this market, with a market share of between 15 and 20 per cent, but there were other large and well-established promoters in the market, and many small promoters. We also found

that artists' agents had significant bargaining power when negotiating with promoters. We concluded that Live Nation was unlikely to have substantial power in this market.

### *Venues*

12. We found that, even if Live Nation had substantial market power as a venue operator, the merger was unlikely to give rise to any significant lessening of competition between live music venues. Therefore, we did not form a precise definition of the market for live music venues or assess the extent of Live Nation's market power.

## Eventim's position in the market in the absence of the merger

13. In order to assess the expected effects of the merger, we compared what was likely to happen following the merger with the situation which we believed would have occurred in the absence of the merger. This inquiry was unusual as, prior to the proposed merger, one of the parties to it had signed a long-term agreement with the largest global competitor of the other party to the merger (see paragraph 4) and, on the basis of this agreement, the competitor (Eventim) was preparing to enter the UK.

14. In the absence of the merger, we believed that Eventim would have entered the UK market for the primary retailing of live music tickets. We noted that Eventim was the second-largest ticket agent in the world (after Ticketmaster) and had been studying the opportunities in the UK for many years, with a view to becoming a provider of ticketing services and a retailer of tickets in the UK. We found that Eventim's agreement with Live Nation provided it with a basis upon which to enter the UK, 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.

15. In our provisional findings, we stated that the agreement between Live Nation and Eventim indicated a mutual intent to work in partnership with each other. We noted that, in terms of the rebate or net fee which Live Nation would earn from the sale of each of its tickets, Live Nation's financial incentive was to sell as many tickets as possible through its own website (and call centre) but, where it needed to sell through a ticket agent, Live Nation had a greater financial incentive to sell through Eventim than through any other ticket agent. As a result, in our provisional findings we said that Eventim was likely to sell far more than the minimum volume of Live Nation tickets guaranteed under the agreement, and that Live Nation had the incentive to encourage Eventim's growth as a retailer of live music tickets.

16. However, following the publication of our provisional findings, Live Nation and Eventim both submitted significant new evidence explaining how the agreement between them was reached in 2007, and their intentions under it. Live Nation provided us with documents from the time the agreement was negotiated, which demonstrated that its intention was always to sell as many of its controlled tickets as possible through its own website (and call centre), and it had never intended to offer Eventim any marketing or other support in selling its tickets. Live Nation told us that promoting Eventim's website (and call centre) would have harmed Live Nation's own ticket sales. On the basis of this evidence, we concluded that Live Nation's ambition had been to use the managed ticketing services provided by Eventim to enable it to sell as many as possible of its own tickets and it was unlikely that it would have offered Eventim any support to become a successful ticket retailer.

17. Eventim also provided us with board minutes and a board presentation from the time when its agreement with Live Nation was negotiated, which showed that it perceived

its key opportunity under the agreement to be to provide Live Nation with a managed ticketing service. Eventim's projections from the period showed that the revenue from providing Live Nation with this service would have ensured that its fixed costs and entry costs were covered in the near future.

18. Nevertheless, in the agreement, Eventim ensured that Live Nation was obliged to allocate to Eventim a minimum proportion of its controlled tickets. This minimum allocation would ensure that Eventim could offer for sale tickets for the majority of Live Nation's events (both those events promoted by Live Nation and those events promoted by another promoter in a Live Nation venue), and so gain a foothold in the UK market for the primary retailing of live music tickets.

19. We recognized that this minimum allocation of tickets was important to Eventim's entry into the UK as a ticket retailer. However, we saw no evidence that, in the absence of the merger, Live Nation would have allocated to Eventim any more than the minimum. Furthermore, we noted that, if the merger were to proceed, this obligation would remain (see paragraph 24). We recognized that Eventim might be successful in selling Live Nation's tickets and, if so, it might receive subsequently a greater allocation of tickets (if Live Nation was not able to sell them itself), but we found that this success depended principally on Eventim's own abilities.

20. We concluded that, although Eventim's intention was clearly to offer both ticketing services and the retailing of tickets in the UK, its entry decision was focused on the provision to Live Nation of a managed ticketing service. We concluded that, although the agreement with Live Nation gave it a starting point in the UK, in order to grow and become successful as a retailer of live music tickets Eventim would need to gain initial allocations of tickets from other live music promoters and venue operators, attract consumers and demonstrate an ability to sell tickets.

21. We did not form a view on how successful Eventim was likely to be in the UK market for the primary retailing of live music tickets but, rather, we focused on the extent to which the merger affected Eventim's success and, thereby, the degree to which the merger affected the level of competition in the market.

## Expected effects of the merger

### *Effects on the UK market for the primary retailing of live music tickets due to effects on the entry of Eventim*

22. In our provisional findings we said that we expected the merger and the likely actions of the merged entity following the merger to affect significantly the position of Eventim in the UK market for the primary retailing of live music tickets. However, following our provisional findings we received further submissions and new evidence which caused us to revisit this conclusion.

23. Following the publication of our provisional findings, Live Nation clarified that, were the merger to proceed, it would pay Eventim the full fee due to Eventim for every Live Nation controlled ticket sold (excluding sales made in-person at the box office and sales by Eventim), whether the ticket was sold from the Eventim system or not. This clarification removed our concern that Live Nation might be able to affect significantly Eventim's revenues from the provision of its managed ticketing services to Live Nation.

24. Also following our provisional findings, we received evidence which suggested that, although Live Nation's financial incentives would be changed as a result of the merger (ie it would become more profitable for Live Nation to sell its tickets through

Ticketmaster than through Eventim), the extent to which this change would affect Eventim's success as a retailer of live music tickets was limited. Whether the merger proceeded or not, Live Nation's primary financial incentive was to sell as many as possible of its tickets through its own retail channel (see paragraph 16), and we found that its corporate objective was to do so. We also found that Live Nation would not have provided Eventim with any significant support as a retailer of its tickets beyond the obligations in its agreement with Eventim (see paragraph 18), and these minimum obligations remained in place whether the merger proceeded or not.

25. In our provisional findings, we stated that the effect of Eventim receiving fewer tickets from Live Nation as a result of the merger would be for it to attract fewer consumers and, hence, fewer ticket allocations from other promoters and venues. However, subsequently, we found that the ability to gain access to tickets for a range of events was not a significant barrier to entry. Therefore, we concluded that the merger was unlikely to affect significantly Eventim's ability to attract consumers or further allocations of tickets from other promoters and venue operators.

26. In the light of all the evidence we received during the course of our inquiry, we concluded that Eventim's success in the UK market for the primary retailing of live music tickets depended largely on Eventim's ability to attract consumers, sell tickets and gain further allocations of tickets, and was not affected significantly by the merger. We noted that the agreement with Live Nation was in place whether the merger proceeded or not and, although there was some scope for Live Nation to limit its allocation of tickets to Eventim, we did not expect this action to affect significantly the extent to which Eventim became a competitor to Ticketmaster and See Tickets in the UK. We concluded that it was unlikely that the effects of the merger on Eventim would result in a substantial lessening of competition in the UK market for the primary retailing of live music tickets.

### *Effects on the UK market for the primary retailing of live music tickets due to effects on existing ticket agents*

27. We found that, due to Live Nation's global contract with Ticketmaster, Live Nation sold few live music tickets through the other existing UK ticket agents, and, due to its new contract with Eventim, there was little prospect of it selling more tickets through these agents in the future. For this reason, we found that the merged entity was unlikely to have the ability to harm the competitiveness of existing ticket agents as, even if these agents were deprived totally of Live Nation tickets, they would not be constrained significantly in their ability to operate profitably in the market. We also found that, both as a promoter and as a venue operator, the merged entity would incur costs if it tried to harm other ticket agents, which it would be unlikely to recover elsewhere in its business. We concluded that it was unlikely that the effects of the merger on existing ticket agents would result in a substantial lessening of competition in the UK market for the primary retailing of live music tickets.

### *Effects on live music promotion and venues*

28. We found that the merged entity might have the ability to harm the competitiveness of other live music promoters and venue operators, either by Ticketmaster selling fewer tickets for other promoters and venue operators or by worsening the terms of its trade with them (eg by reducing its rebate, increasing its booking fees to their consumers, reducing its marketing for their events or delaying the payment of cash from their ticket sales). We also found that the merged entity might have the ability to harm the competitiveness of other promoters and venue operators by transferring customer data which it gained from selling tickets for them to Live Nation.

29. However, we found that the merged entity would not have the incentive to foreclose other promoters and venue operators in any of these ways, as it would suffer reduced revenues from forgone ticket sales, with very uncertain prospects for any benefit from increased business as a promoter or venue operator. We considered if the merged entity might be able to target any specific competitors but we found that the benefit from doing so would be limited.

30. We also noted that some forms of foreclosure, for example restricting the access of other promoters to Live Nation's venues, were possible prior to the merger and the incentives of the merged entity to engage in these practices would not change significantly as a result of the merger.

31. We concluded that, on balance, we did not expect the merged entity to try to harm other promoters and venue operators and, therefore, the merger was unlikely to result in any adverse effects on competition in these markets.

## Conclusion

32. We concluded that the merger of Ticketmaster and Live Nation was unlikely to result in a substantial lessening of competition in any UK market.

# Findings

## 1. The reference

1.1 On 10 June 2009, the OFT referred the anticipated merger of Ticketmaster and Live Nation to the CC for investigation and report. The reference was made under section 33 of the Act. We are required to publish our final report by 24 November 2009, which was subsequently extended to 19 January 2010. Our terms of reference are set out in Appendix A.

1.2 This document, together with the appendices, constitutes our final report. Further information, including non-commercially-sensitive versions of main-party and third-party submissions, and summaries of evidence, can be found on our website.[1]

## 2. The industry and the companies

2.1 This section provides a brief overview of the live music industry and a description of the UK activities of Live Nation and Ticketmaster.

2.2 A more detailed overview of the live music industry is at Appendix B and a more detailed description of the recent financial performance of Live Nation and Ticketmaster is at Appendix C.

### *Live music industry*

2.3 In recent years, the live music[2] industry has grown rapidly, with both growing attendances at live music events and higher ticket prices. One of the drivers to growth has been an increasing incentive for artists to tour as the income they receive from recorded music has fallen.

2.4 PRS for Music estimated that total live music ticket sales in 2008, for all genres of music, were worth about £0.9 billion (including booking fees, assumed at 10 per cent of the total), and that ancillary revenues, including merchandising at events, generated a further £0.3 billion.[3] PRS for Music estimated that advertising and sponsorship of UK live music events in 2008 was worth £89 million.[4]

2.5 The number of live music venues and the number of festivals in the UK have both increased in recent years. For example, the O2 Arena in London, which, with a capacity of 20,000, is now the UK's largest indoor live music venue, opened in 2007 and in its first year sold almost 2 million tickets (many of the events held at the O2 Arena might otherwise have been held at Wembley Arena or other UK arenas).

### *Supply chain*

2.6 Figure 1 illustrates the supply chain for the live music industry.

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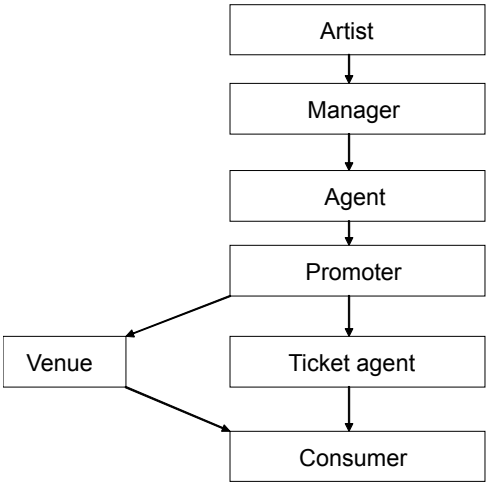
[1] www.competition-commission.org.uk/inquiries/ref2009/ticketmaster/index.htm.
[2] In this report, 'live music' refers to live rock and pop music, unless stated otherwise.
[3] Adding up the music industry for 2008, *Economic Insight* Issue 15, PRS for Music, 20 July 2009.

FIGURE 1

**The live music supply chain**




*Source:* CC analysis.

*Artists/managers*

2.7 Artists employ managers to negotiate all their commercial arrangements, for example with record companies, advertising agencies, and, when an artist wishes to tour, with an agent. A manager receives a proportion of the artist's total net revenue.

*Artists' agents*

2.8 An artist's agent seeks to maximize an artist's income from a tour, and will usually secure for the artist an upfront guaranteed payment, typically representing approximately 85 per cent of net tour revenues,[4] and a share of merchandising revenues. Alternatively, the artist will receive a flat fee for performing at a one-off event (eg a festival). Agents usually run a bidding process to decide on the promoter for each territory of the tour, and evaluate the bids received based on their experience of venue costs, ticket prices, etc. Agents receive a proportion of the artist's income from the tour, typically around 10 to 20 per cent.

*Promoters*

2.9 Promoters organize and market an artist's tour, negotiating with venues, and deciding on the tour route. Some of the tickets for each event will be sold by the venue (typically between 50 and 75 per cent) but most of the remaining tickets for an event will be sold by ticket agents on behalf of the promoter (though a few tickets may also be sold through the artist's own website[5] or by sponsors). The promoter will estimate the cost of the tour and will propose a ticket price for each event to the artist's agent. Due to the guaranteed fee which is paid by the promoter to the artist, the promoter bears most of the risk of an event not selling out. Some promoters also promote festivals.

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[4]This fee will be calculated on the basis of an assumed level of ticket sales and will be guaranteed even if ticket sales are lower. Net revenue is ticket sales less venue and marketing costs.

[5]Increasingly, artists are requiring an allocation of tickets, which are then sold to the artist's fan club or as premium tickets, through the artist's own ticket agent. Premium tickets are sold at a higher price than the majority of tickets, either because they are for the best seats or because they have been held back from sale until all other tickets have been sold.

2.10 There are many small promoters in the UK, which usually focus on a specific region of the UK and mainly promote small events in pubs and clubs. There are several large promoters, which are able to promote large events for established well-known artists, but also promote small events as a way of building relationships with new artists. The largest promoters in the UK (both in terms of the number of events promoted and the number of tickets sold) are Live Nation and SJM Concerts Ltd (SJM), each of which represents over 15 per cent of the market. The next largest promoters are Scriptograph Limited (which trades as Metropolis Music (Metropolis)), AEG Live (UK) Limited (AEG Live) and 3A Entertainment Ltd (3A), each of which, according to our estimates, represent around [✂] per cent of the market (see Appendix F). Promoters sometimes work together to co-promote a tour, making use of their expertise in different parts of the UK. Several promoters (including Live Nation, SJM, Metropolis and AEG) have interests in the operation and management of venues.

*Venue operators*

2.11 The largest live music venues are outdoor stadiums (eg Wembley Stadium, with a capacity of 80,000). Arenas are the largest indoor venues, normally with a capacity over 5,000 (eg the O2 Arena and Wembley Arena). There are many other indoor venues, including concert halls, ballrooms, theatres, clubs and pubs. Festivals take place at temporary outdoor venues.

2.12 Venue operators are responsible for the physical operation of a venue and provide services such as security and the box office. The venue earns income from a rental fee for the hire of the venue, a proportion of any merchandising revenue (typically around 25 per cent), food and beverage sales, and sponsorship. In addition, the venue will retain a proportion of the tickets for sale (typically between 50 and 75 per cent). For most large venues, only a small proportion of the venue's ticket sales will be made in-person at the box office and the majority of tickets will be sold either by telephone or on the Internet. The venue may use a ticket agent for its sales by telephone (sometimes just the overflow sales not handled by the box office) and for sales on the Internet and, if so, the venue will receive part of the booking fee generated on the sale of these tickets. Alternatively, the venue might self-ticket by licensing a ticketing software package (and, if necessary, contracting services from a call centre) which will enable it to make all sales directly, without using a ticket agent, and will allow the venue to retain the full booking fee. Most sales in-person at the box office do not incur a booking fee.

*Ticket agents*

2.13 Primary ticket agents sell tickets for live music events on behalf of a promoter or a venue. These ticket agents sell tickets at their face value and charge a booking fee (also known as a convenience fee or service fee) and a transaction charge (also known as a processing charge). The booking fee (and, exceptionally, the transaction charge) represents the ticket agent's principal income, though it is usually shared with the client (ie the promoter or venue) and sometimes with the artist. Ticket agents told us that the transaction charge is usually set to cover the costs of processing the customer's transaction, including the cost of sending the tickets.

2.14 Secondary ticket agents enable the resale of tickets and usually charge a fee from both the buyer and the seller.

2.15 The largest ticket agent in the UK is Ticketmaster, which sold [✂] million tickets in 2008, of which [✂] million tickets were for live music events. Ticketmaster's largest

rival is See Tickets, which sold [✂] million tickets in 2008, of which [✂] million tickets were for live music events. Other ticket agents are much smaller and some have tended to specialize in particular geographical regions or types of events.

2.16 Many promoters and venues have preferred arrangements with ticket agents. Live Nation and the Anschutz Entertainment Group (AEG), which includes AEG Live, both have preferred arrangements with Ticketmaster (for promotion and venues), while SJM and Metropolis have preferred arrangements with See Tickets. Most promoters sell the majority of their tickets through their preferred ticket agent, but they use other ticket agents to some extent in order to maximize ticket sales. Live Nation has contracted to change its preferred ticket agent from Ticketmaster to Eventim, with effect from 1 January 2010 in the UK. In terms of tickets sold, Eventim is the world's second-largest ticket agent, after Ticketmaster, operating in 18 European countries.

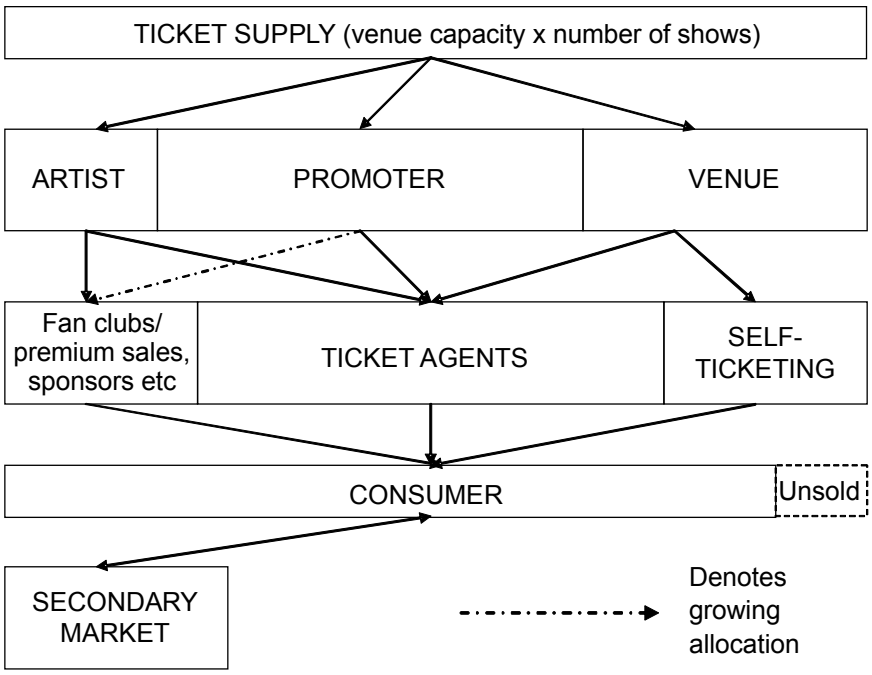
2.17 Venues usually use one ticket agent (due to the difficulty of operating the box office on more than one ticketing system), while promoters allocate tickets to several ticket agents in order to ensure that the maximum number of tickets are sold. Several promoters told us that the allocation of tickets is dynamic and promoters will re-allocate tickets between their tickets agents and, occasionally, between the venue's agent and the promoter's agents, if they perceive that one ticket agent is failing to sell tickets while another agent is selling well.

2.18 Venues do not have to use ticket agents and may choose to self-ticket (see paragraph 2.12). Recently, some self-ticketing venues have become primary ticket agents, offering to sell tickets on behalf of promoters or other venues (eg the Scottish Exhibition and Conference Centre Ltd (SECC) in Glasgow has set up Ticketsoup and the National Exhibition Centre Ltd (NEC) in Birmingham has set up Ticketfactory).

2.19 Figure 2 summarizes the principal ways in which tickets can reach the consumer.

FIGURE 2

**Route of tickets to the consumer**




*Source:* CC analysis.

2.20 The process of selling tickets has changed in recent years, as most tickets for live music events are now sold on the Internet, rather than in-person at the box office or through a call centre. Large ticket agents must be able to process sales quickly (on one day in 2008 Ticketmaster sold almost [✂] tickets). In addition, a promoter or venue operator will select the ticket agent which is most likely to be able to sell tickets, which includes being able to market tickets to previous customers on the basis of their previous purchasing behaviour.

### *Live Nation*

2.21 Live Nation was formed in August 2005 when Clear Channel Communications Inc split into three companies.[6] Live Nation operates live music and theatrical venues in the USA and Europe, and promotes and produces live entertainment events around the world. It is the largest global producer of live music events, annually producing over 22,000 events for 1,600 artists in 33 countries. During 2008, the company sold over 50 million tickets to its live music events. Live Nation is headquartered in Los Angeles, California and is listed on the New York Stock Exchange.

2.22 In the UK, Live Nation:

*(a)* owns and/or operates live music and theatrical venues (see Section 5 and Appendix G for a description of this market and Live Nation's activities);

*(b)* promotes live music events in Live Nation owned and/or operated venues and in rented third-party venues, including festivals (see Section 5 and Appendix F for a description of this market and Live Nation's activities); and

*(c)* provides agency services to music artists.

2.23 Table 1 presents a summary of the significant events in the history of Live Nation in the UK.

TABLE 1 **History of Live Nation's UK business**

| *Date* | *Event* |
|---|---|
| 1977 | Apollo Leisure founded |
| 1999 | Apollo Leisure sold to SFX Entertainment |
| 1999 | Acquisition of Midland Concert Promotions, BCC, ITB and Solo |
| 2001 | SFX Entertainment assets sold to Clear Channel Communications |
| 2005 | Acquisition (with Gaiety Holdings) of 50.1 per cent of Mean Fiddler Music Group |
| 2005 | Clear Channel Entertainment spun off and floated on NYSE as Live Nation Inc. |
| 2007 | Acquisition (with Gaiety Holdings) of 56 per cent of Academy Music Group |
| 2007 | Sale of the Hammersmith Apollo, the Forum and Mean Fiddler venues to the Mama Group |
| 2008 | Acquisition (with Gaiety Holdings) of 78 per cent of DF Concerts |
| 2008 | Exit from UK theatre production |

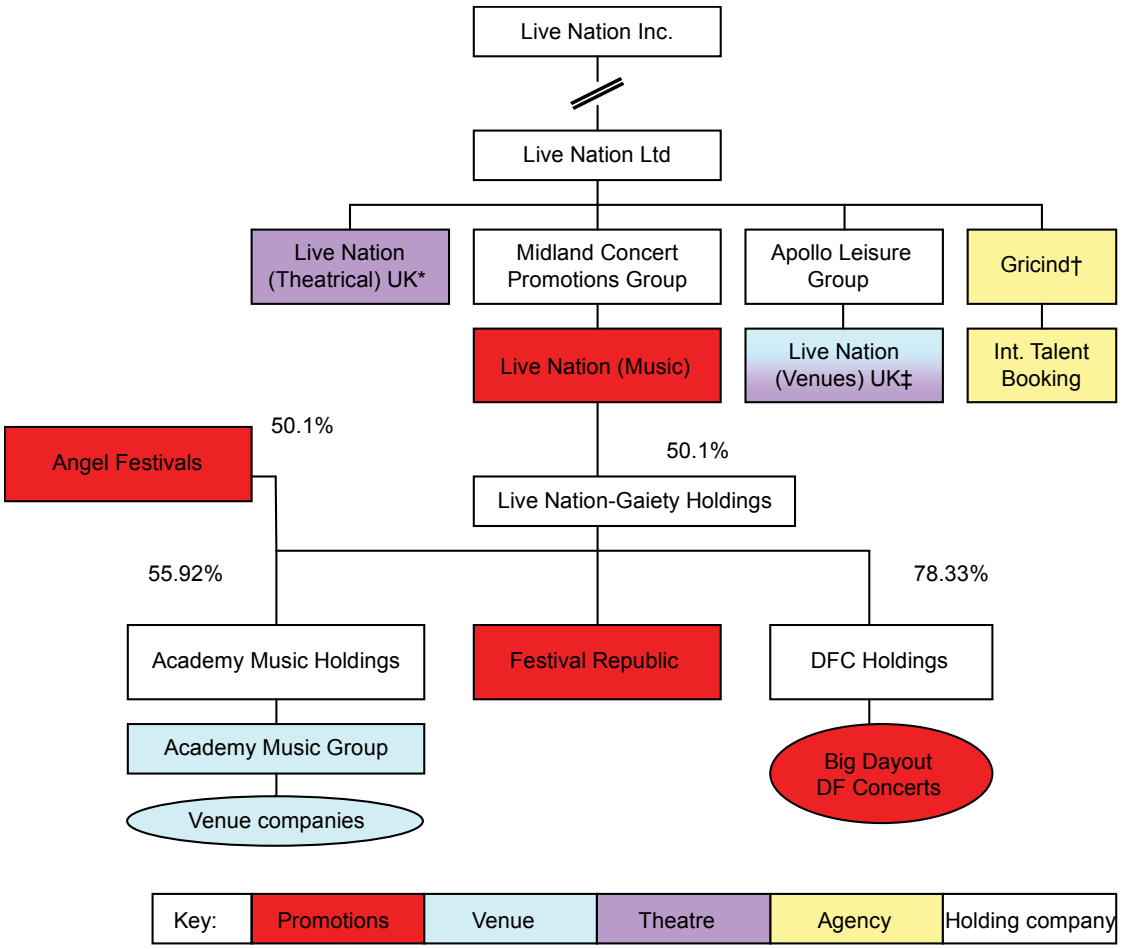
*Source:* Live Nation.

2.24 The Live Nation UK group includes both 100 per cent owned subsidiaries and joint ventures, as shown in Figure 3.

[6]The other two companies were Clear Channel Communications, which focused on radio broadcasting, and Clear Channel Outdoor, which focused on out-of-home advertising.

FIGURE 3

**Live Nation UK summary organization chart**




*Source:* Live Nation.
*Previously operated Live Nation's theatrical productions—ceased trading May 2008.
†Gricind activities include both promotions and agency.
‡Includes theatre and music venues.
*Notes:*
1. The above group structure includes the main Group companies within the Live Nation UK group. A number of smaller companies and intermediary holding companies have been omitted.
2. All ownership is 100 per cent unless stated otherwise.

2.25 We discuss the extent of Live Nation's influence in Live Nation-Gaiety and its subsidiaries in Appendix D. We found that, although Live Nation has a majority shareholding in Live Nation-Gaiety, Live Nation does not, in practice, control this business or any of its subsidiaries in respect of the issues relevant to this inquiry. Nevertheless, we found that Live Nation does have material influence in Live Nation-Gaiety and some of its subsidiaries, which includes some influence in deciding the ticket agent(s) used by these businesses.

2.26 In the year ended 31 December 2008, Live Nation generated worldwide revenues of $4,167 million (£2,256 million), of which £[✂] million was generated in the UK (approximately [✂] per cent). In the same year, Live Nation reported a worldwide

earnings before interest and tax (EBIT) loss of $14 million (£8 million), not including a significant goodwill write-off,[7] while its UK businesses reported [✂].[8]

2.27 In 2008, Live Nation's promotions and venues businesses were responsible for around [✂] per cent of Live Nation's UK revenue and [✂] per cent of its UK EBIT. Live Nation's promotions business generated £[✂] million of EBIT, [✂] per cent of total UK EBIT at a margin of [✂] per cent, while its venues business generated £[✂] million of EBIT, [✂] per cent of total UK EBIT at a margin of [✂] per cent (Live Nation's venues business employs significantly more capital than its promotions business). Around [✂] per cent of Live Nation's UK revenue and [✂] per cent of its UK EBIT was generated through part-owned subsidiaries.

### *Ticketmaster*

2.28 Ticketmaster was founded in 1976. In 2002, the business was acquired by InterActive Corporation (IAC)[9] and, in August 2008, it was listed as a separate entity on NASDAQ. Ticketmaster is headquartered in West Hollywood, California, but operates in 20 countries, providing ticket sales, ticket resale services, marketing and fulfilment. In 2007, Ticketmaster sold approximately 141 million tickets worldwide.

2.29 In the UK, Ticketmaster is:

*(a)* a primary ticket agent, acting for promoters and venues, through Ticketmaster UK Limited (Ticketmaster UK), Ticketweb Limited (Ticketweb);[10] and Ticket Shop (NI) Limited (see Section 5 and Appendix E for a description of this market and Ticketmaster's activities);

*(b)* a secondary ticket agent, through GetMeIn Limited[11] (GetMeIn); and

*(c)* a ticketing systems provider, through Ticketmaster Systems Limited (Ticketmaster Systems).[12]

2.30 In October 2008, Ticketmaster acquired a majority interest in Frontline Management Group, Inc (Frontline), one of the world's largest artist management companies. Frontline, based in the USA, provides management services to approximately 200 music artists. Frontline does not operate in the UK, though some of the artists managed by Frontline do occasionally perform in the UK.

2.31 Figure 4 shows a simplified group structure, highlighting Ticketmaster's principal UK trading companies.

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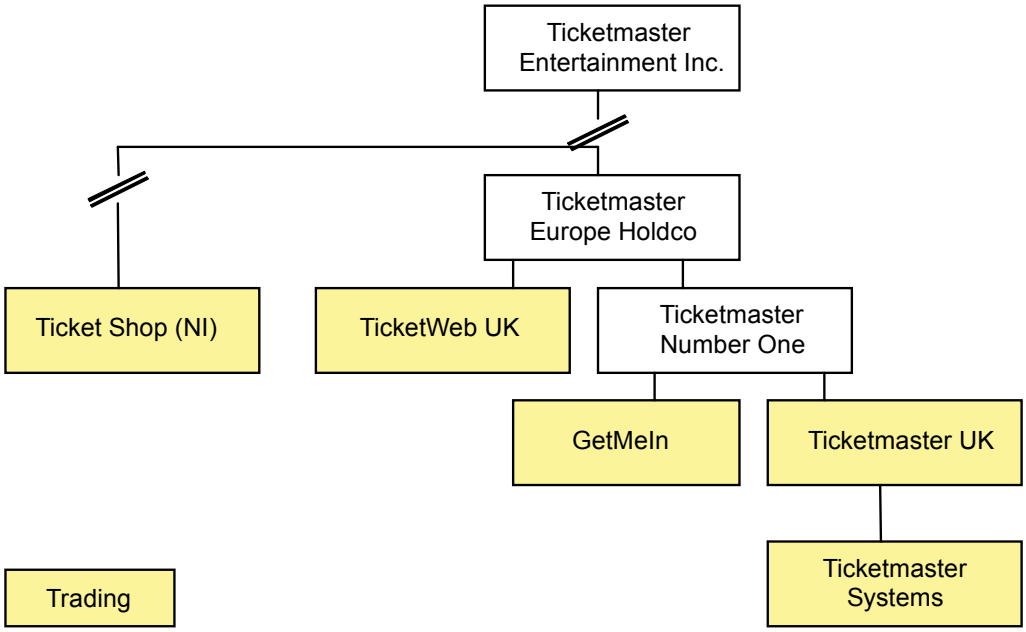
[7]In 2008, Live Nation wrote off goodwill relating to US acquisitions of £154 million ($284 million) in the year ended 31 December 2008.
[8]Live Nation has made a worldwide EBIT loss in three of the last five years, and has made a loss before tax in each of the last five years. The performance of Live Nation's worldwide business is shown in more detail in Appendix C.
[9]IAC acquired 50 per cent of Ticketmaster in 1998 and the remaining 50 per cent in 2002.
[10]Ticketmaster acquired 100 per cent of Ticketweb in May 2000.
[11]Ticketmaster acquired GetMeIn in January 2008.
[12]Ticketmaster Systems was formerly known as Synchro Systems Limited. Ticketmaster acquired 50 per cent of the business in 1993 and the remaining 50 per cent in 1997.

FIGURE 4

**Simplified Ticketmaster UK group structure**




*Source:* Ticketmaster.
*Note:* The above group structure includes the main Group companies within the Ticketmaster UK group. A number of smaller companies and intermediary holding companies have been omitted.

2.32 In the year ended 31 December 2008, Ticketmaster generated revenues of £[✂] million in the UK, which represented approximately [✂] per cent of Ticketmaster's worldwide revenues. In the same year, Ticketmaster achieved an EBIT of £[✂] million in the UK, which represented approximately [✂] per cent of its worldwide EBIT before goodwill write-offs.[13]

2.33 In 2008, Ticketmaster's primary ticketing services in the UK (through Ticketmaster UK and Ticketweb) were responsible for [✂] per cent of Ticketmaster's UK revenue, and [✂] per cent of its EBIT.[14]

## 3. The proposed merger

### *Outline of the proposed merger*

3.1 Ticketmaster and Live Nation announced the proposed merger on 10 February 2009. Ticketmaster began reviewing its strategic options in October 2008, following the appointment of Irving Azoff (the former CEO of Frontline) as the CEO of Ticketmaster. The boards of both companies met for the first time in December 2008. Ticketmaster's proposal, which was ultimately agreed by the board of Live Nation, was a merger of equals. The proposed structure of the transaction was that Ticketmaster would become a subsidiary of Live Nation and, following the merger, the former shareholders of Ticketmaster would own 50.1 per cent of Live Nation's shares through a 1.384:1 share swap. The board of the new parent company would be made up of representatives from both Ticketmaster and Live Nation.

[13]In the year ended 31 December 2008, Ticketmaster wrote off goodwill of $1,094 million (£575 million).
[14]This percentage is based on Ticketmaster's profitable businesses and does not include the EBIT loss from GetMeIn.

### *Rationale for the proposed merger*

3.2 On 31 December 2008, Live Nation's ten-year contract with Ticketmaster, under which Ticketmaster was Live Nation's preferred supplier of ticketing services (see paragraph 2.16), came to an end. Although the contract expired in the USA on 31 December 2008 (subject to some exceptions), it is not due to expire in the UK (and in some other European countries) until 31 December 2009. Also during 2008, both Live Nation and Ticketmaster indicated their intent to offer artists a one-stop shop for their live music needs, each of them with the ambition of linking, through one company, the artist with the fan. In accordance with this intent, in October 2008, Ticketmaster acquired Frontline, one of the world's largest artist management companies, and, in replacement of the agreement with Ticketmaster, Live Nation developed its own ticketing system in the USA using ticketing software licensed from Eventim.

3.3 Live Nation and Ticketmaster told us that the proposed merger was designed to create a company that could provide more and better services than either company could on its own and that, by combining the companies' complementary services, the integrated company would be better able to connect artists with their fans. They said that the merger would enable investment in innovation and would streamline the live entertainment supply chain, providing live music customers with a one-stop shopping opportunity. They told us that the merger would:

*(a)* align incentives between artist management, promotions, venues and ticketing, with the combined objectives of selling more tickets, generating increased revenue for artists, and helping artists to connect more directly with fans;

*(b)* enable different and simplified fee structures to fans;

*(c)* create a broader business base over which to spread the costs and risks of new products and business development; and

*(d)* enhance marketing and promotional opportunities.

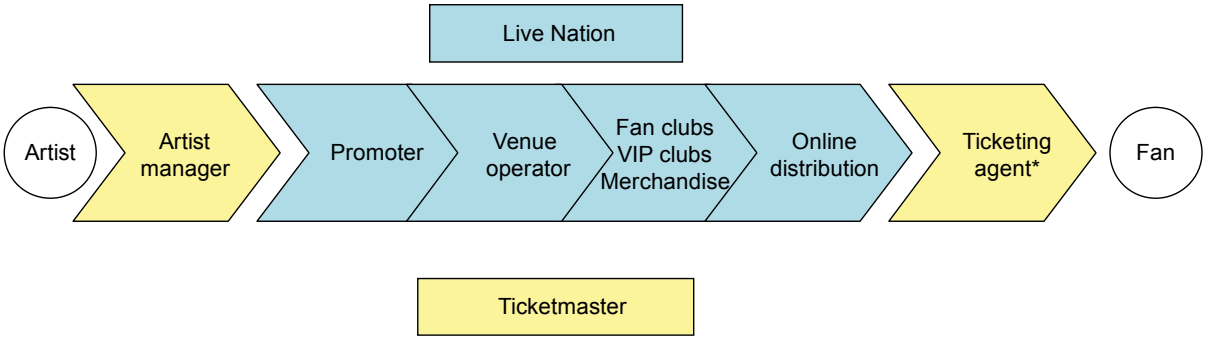
3.4 In presentations to their shareholders, Live Nation and Ticketmaster estimated world-wide synergies from the merger of around $[✂] million in earnings before interest, tax, depreciation and amortization (EBITDA) a year. The majority of these savings would be in operational efficiencies, in particular by Live Nation discontinuing its US ticketing operations, though they anticipated some revenue synergies as well. Live Nation and Ticketmaster anticipated some loss of business due to the merger, in particular as some clients of Ticketmaster might choose to switch to other ticketing suppliers (see paragraph 7.49).

### *Live Nation's rationale for the merger*

3.5 Live Nation told us that its strategy was to create a live entertainment company which enabled artists to connect with their fans. This strategy has been demonstrated in Live Nation's merger and acquisition activity prior to the proposed merger, which has resulted in the sale of non-core activities, including businesses involved in motor sports, theatre and sports representation, and the acquisition of live music businesses involved in promotions, venue management, fan-based media, digital distribution and merchandising. Live Nation told us that, in the UK, it had recently sold its theatre business [✂]. Live Nation said that the merger provided it with the opportunity to offer artists a full-service proposition, by adding Ticketmaster's artist management services and ticketing services, as illustrated in Figure 5.

FIGURE 5

**Live Nation and Ticketmaster post-merger supply chain**




*Source:* Live Nation and CC.

3.6 A presentation to Live Nation's board in January 2009 stated that [✂].

3.7 Furthermore, in December 2008, the Live Nation board noted that Ticketmaster 'had expressed its intention to consider a similar transaction with [✂], should [Live Nation] decline [the transaction]'. A US broker observed that if Live Nation thought its principal competitor for ticketing and new competitor for artists (Ticketmaster) was about to combine with [✂], Live Nation might want to do something with Ticketmaster first.[15]

*Ticketmaster's rationale for the merger*

3.8 Ticketmaster told us that growth in the retailing of tickets over the Internet, away from retailing through stores, had resulted in the commoditization of ticketing. Ticketmaster said that it had become increasingly easy for venues and promoters to develop their own ticketing solutions. Therefore, Ticketmaster believed that it needed to diversify away from ticketing into other areas of the live entertainment supply chain.

3.9 Ticketmaster considered transactions with Live Nation and [✂]. However, Live Nation, which was Ticketmaster's largest international client, had recently signed an agreement with Eventim, under which Live Nation would provide its own ticketing services in the USA, using Eventim software, and Eventim would replace Ticketmaster as Live Nation's principal provider of ticketing services elsewhere around the world. Ticketmaster was aware that the loss of the contract with Live Nation would have a significant effect on Ticketmaster's business. In addition, following Live Nation's agreement with Eventim and the establishment of its own ticketing services, Live Nation had won a five-year contract from SMG,[16] another large venue operator and manager, and previously another significant Ticketmaster client, to sell tickets for some of SMG's owned venues in North America.

3.10 We noted that the merger enabled Ticketmaster to internalize its relationship with Live Nation (though Live Nation's contract with Eventim remains in place) and, by

[15]Miller Tabak + Co, LLC, 4 February 2009.
[16]SMG is a subsidiary of American capital, Ltd. A company listed on NASDAQ.

merging with Live Nation, Ticketmaster removed a new competitor for ticketing services in the US market.[17]

3.11 Ticketmaster believed that a merger with Live Nation would also have the following positive benefits:

*(a)* a combination with an innovative and fast-growing 'consumer marketing company', with good prospects for future growth;

*(b)* opportunities for access to greater volumes of tickets for sale;

*(c)* a slowdown in the 'commoditization' of ticketing, possibly facilitating higher margins through premium tickets, and rational pricing;

*(d)* significant synergies (see paragraph 3.4); and

*(e)* short-term opportunities to raise cash through the sale of non-core businesses.

*Significance of the companies' UK activities in the merger*

3.12 Live Nation and Ticketmaster told us that there was little focus on the UK operations of either company in the merger discussions and documentation. They said that the merger was predominantly a US-led deal, and the activities of both companies outside the USA had not significantly affected the negotiations, if at all. Live Nation's management in the UK told us that they were not involved in the discussions leading up to the proposed merger, [✂].

## 4. Jurisdiction

4.1 Under section 36 of the Act, and pursuant to our terms of reference (see Appendix A), we are required to decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation. A relevant merger situation is created where two or more enterprises cease to be distinct,[18] and either the turnover test or the share of supply test is satisfied.[19] We were satisfied that both Live Nation and Ticketmaster were 'enterprises' for the purposes of the Act.[20]

4.2 The merger agreement between Ticketmaster and Live Nation contemplates Ticketmaster becoming a subsidiary of Live Nation and the former shareholders of Ticketmaster being given ownership of 50.1 per cent of Live Nation (see paragraph 3.1). The effect of this transaction would be that Ticketmaster and Live Nation would become interconnected bodies corporate,[21] and the UK businesses of Ticketmaster and Live Nation would come under common ownership and control.

4.3 The turnover test is met if the value of the annual turnover in the UK of the enterprise being taken over exceeds £70 million.[22] Ticketmaster's turnover in the UK in the year ended 31 December 2008 exceeded £70 million (see paragraph 2.32), so the turnover test was satisfied.

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[17][✂] estimated that Live Nation could capture [✂] per cent of the US ticketing market by 2011, principally through selling its own tickets and tickets for SMG ([✂]).
[18]Enterprises cease to be distinct if they are brought under common ownership or control (Section 26 of the Act).
[19]Section 23 of the Act.
[20]Section 129(1) of the Act.
[21]Section 26(2) of the Act.
[22]Section 23(1)(b) of the Act.

4.4 Therefore, we concluded that arrangements were in progress or contemplation which, if carried into effect, would result in the creation of a relevant merger situation in the UK within the meaning of the Act.

## 5. The markets

5.1 This section provides a description of the markets relevant to our analysis of the competitive effects of the merger.

### *Primary retailing of tickets for live music events*

5.2 A detailed description of the markets relevant to the retailing of tickets in the UK is at Appendix E.

5.3 Tickets may be sold to consumers through a ticket agent or sold by a promoter or venue directly. We describe the company interacting with consumers (which may be a ticket agent, promoter or venue), and to which consumers usually make their payments, as the retailer; and we describe the process of selling tickets (whether by a principal or agent) as retailing.

#### *Consumer preferences*

5.4 We commissioned a consumer survey[23] (hereafter referred to as 'the consumer survey'), which found that 77 per cent of live music tickets were sold over the Internet and 16 per cent by telephone, with 5 per cent of tickets purchased in-person at the venue's box office. Nearly all respondents to the survey said that, when they last purchased live music tickets, they searched specifically for tickets for their chosen event, rather than browsing generally. Over 90 per cent of consumers[24] purchased tickets for their chosen event from the first place they tried.

5.5 The survey also found that nearly 90 per cent of consumers had used a ticket agent to purchase live music tickets at some point in the past and, among these respondents, familiarity with the ticket agent and convenience, together with the reputation of the agent, including their trustworthiness and security, were key reasons for preferring their chosen ticket agent. The amount of the booking fee was not a significant reason.

5.6 Among consumers who had made their most recent ticket purchase through an agent, and could recall the level of booking fee they had paid, 84 per cent said that they would still have bought the ticket from the same place if the booking fee were 10 per cent higher, while 90 per cent would have continued with the purchase if the fee had increased by 5 per cent.

5.7 Based on the evidence from the consumer survey, we concluded that most consumers for live music tickets did not shop around and were insensitive to the level of the booking fee.

5.8 The consumer survey also found that the most common ways by which live music consumers learned about their chosen events were from family and friends, and articles in newspapers and magazines. Emails from ticket agents played a limited role.

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[23]See: www.competition-commission.org.uk/inquiries/ref2009/ticketmaster/consumer_research.htm.
[24]In this report, 'consumers' refers to purchasers of tickets for live music events, unless stated otherwise.

5.9 When consumers bought tickets over the Internet, the consumer survey found that around 70 per cent bought from a ticket agent and 30 per cent bought from the website of the promoter, artist or venue. Of those who bought through a ticket agent, 57 per cent went directly to the agent's website, while 43 per cent accessed the agent's website through a search engine.

5.10 The consumer survey found that Ticketmaster was by far the most well-known ticket agent, with 75 per cent of respondents mentioning Ticketmaster spontaneously as a company which sold live music tickets. The next most well-known ticket agent was See Tickets, which was mentioned by just 18 per cent of respondents. The consumer survey also found that Ticketmaster was the ticket agent used most often by purchasers of tickets for live music events.

### *Competition between ticket agents*

5.11 We noted that promoters did not usually require ticket agents to charge the same booking fee, even for the same event. However, promoters and venues did agree the maximum booking fees which their ticket agents could charge (sometimes also capped by the artist),[25] which suggested that, although consumers were insensitive to the level of fees (see paragraphs 5.5 to 5.7), consumers might be sensitive over the long term to the total cost of attending live music events.

5.12 We noted that the key features of competition between ticket agents, as they sought to gain allocations of tickets from promoters and venues, were the level of rebate offered and the quality of service, in particular the ability of the ticket agent to sell tickets to consumers.

5.13 Ticketmaster told us that, over the last few years, it had increased significantly the rebates it paid to promoters and venue operators, which reflected its need to compete aggressively for ticket allocations. [✂] Ticketmaster's gross margin had remained approximately constant in real terms.

### *Geographic market definition*

5.14 Given that most live music tickets were now bought on the Internet (see paragraph 5.4), and most of the large ticket agents sold tickets for events across the UK, we concluded that the relevant geographic market was at least as wide as the UK. We noted that some international promoters and venue operators engaged with ticket agents on a global basis but we found that, in most of these agreements, the terms differed between countries, and promoters and venue operators in the UK worked with ticket agents in the UK, whether they were part of international companies or not. Therefore, we concluded that the relevant geographic market was the UK.

### *Product market definition*

5.15 We observed that there were three main activities associated with the ticketing of live music events:

*(a)* the provision of technology, including ticketing software and hardware (sometimes developed in-house, sometimes licensed from a software provider and sometimes provided as a managed service);

[25] Live Nation estimated that artists capped booking fees in about 5 per cent of cases.

*(b)* selling to consumers (usually through a website, but also through call centres and in-person either through a box office or ticket shop); and

*(c)* the fulfilment of ticketing purchases (ie the printing and distribution of tickets).

We considered how to define the market or markets in which these activities took place.

5.16 Where tickets were sold through an agent, the agent was usually responsible for all three functions. Where promoters or venue operators sold their tickets directly to consumers, ie as a self-ticketer, they usually purchased ticketing software from a specialist company and, in some cases, also contracted out operational activities such as fulfilment (see paragraph 5.15*(c)*).

5.17 We did not see evidence of a lack of competition in the provision of technology (including specialist ticketing software) or in fulfilment and other operational activities. We found that, while specialist software is needed for venue ticketing systems, such software is available from a number of companies in addition to the main ticket agents, including Seatem (which supplies the Enta ticketing system), Audienceview, tickets.com and Tessitura. Therefore, we did not consider further the market for the provision of software, or other input markets relevant to ticket retailing.

5.18 In response to our provisional findings, Eventim said that we had not distinguished between the roles of a ticket service provider and a ticket agent. According to Eventim, a ticket service provider provides the IT and logistics system infrastructure that allows tickets to be distributed to consumers. Eventim told us that this service was more than the provision of ticketing software, hardware and other operational activities, as the ticketing services provider continued to manage the ticketing system on an ongoing basis. Eventim told us that, under its agreement with Live Nation (see paragraph 2.16), Eventim would be operating as a ticketing service provider, managing a ticketing system for Live Nation. Eventim said that both Live Nation and Eventim, and possibly other ticket agents, would then act as ticket retailers, selling Live Nation's tickets off this system.

5.19 We accepted Eventim's description of the market and the distinctions between the various roles which it highlighted. However, we found that the distinction between a ticket service provider and a provider of ticketing software and hardware, both of which enabled a promoter or venue operator to self-ticket, was small. We also found that, where a ticket agent acted for a promoter or venue operator, allowing them to outsource the whole of their ticketing function, the agent provided a managed ticketing service. Therefore, we did not see a need to consider a third market (ticket service provision) in addition to the provision of specialist ticketing software and hardware (see paragraph 5.17) and ticket retailing (see paragraphs 5.20 to 5.26).

5.20 With regard to ticket retailing, we identified four questions to help us define the relevant product market more precisely:

*(a)* Is the primary ticket market separate to the secondary ticket market?

*(b)* Is self-ticketing (ie by venues and, occasionally, by promoters) in the same market as the primary retailing of tickets by ticket agents?

*(c)* Is there a separate market for the retailing of tickets for live music events (ie separate from the retailing of tickets for other live entertainment events)?

*(d)* Is the retailing of live music tickets on the Internet and by telephone in a separate market to the retailing of tickets in-person at a venue box office?

Our analysis of these issues is in Appendix E and is summarized in paragraphs 5.21 to 5.26.

5.21 In making our assessment of the relevant market we judged that the 'net price' of ticket retailing should be considered as the ticket retailer's net revenue (ie the total fees charged to the consumer less any rebates or other payments offered to the promoter/venue operator).

5.22 With regard to secondary ticket retailing (see paragraph 5.20*(a)*), we noted that some secondary ticket agents, which facilitated the exchange of tickets between consumers, had started to sell primary tickets (ie tickets sold directly to consumers on behalf of promoters and venues). However, so far, the only primary tickets which these agents had sold were premium tickets, eg for front row seats. We found that secondary ticket agents were not equipped to sell high volumes of primary tickets in the near future, as to do so would represent a different business model and require significant investment. We concluded that the primary retailing of tickets was in a separate market from the secondary retailing of tickets.

5.23 With regard to self-ticketing (see paragraph 5.20*(b)*), 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 (under the names Ticketsoup and Ticketfactory respectively). We concluded that the market for the primary retailing of tickets should include self-ticketing.

5.24 With regard to the retailing of other live entertainment events (see paragraph 5.20*(c)*), we found that these events were not a demand-side substitute for live music events. We considered the potential for supply-side substitution, and we found that most of the retailers of tickets for other events had some presence retailing tickets for live music events. Therefore, these firms were already included in our assessment of competition. We found that there were no other firms which needed to be included because there were no other retailers which we could expect to start retailing live music tickets in response to an increase in net prices. In response to our provisional findings, Ticketmaster submitted that no ticket agent operating in the UK market presented itself as a 'live music' agent and Ticketmaster told us that its market share would be different if we defined the market to include other events. We noted that the shares of Ticketmaster and See Tickets were higher for live music ticketing than for the ticketing of other events but we judged that this evidence supported our market definition as, if supply-side substitution were easy, we might have expected other ticket retailers to have expanded their live music activities already. We concluded that we did not need to consider a wider market definition and, for the purposes of our inquiry, we could focus on the market for the primary retailing of tickets for live music events.

5.25 With regard to the final question, whether the retailing of live music tickets on the Internet and by telephone is in a separate market to the retailing of tickets in-person at a venue box office (see paragraph 5.20*(d)*), we found that, although consumers could purchase live music tickets in-person from the box office, and avoid paying booking fees, few did so. Furthermore, the consumer survey found that, if the price of booking fees on the Internet or by telephone increased by a small but significant

amount, few consumers would switch to purchasing their tickets in-person at the box office. Therefore, we concluded that in-person sales at the venue box office did not constrain the price of tickets sold over the Internet and by telephone and should not be included in the relevant market.

5.26 For these reasons, we concluded that the relevant market for our purposes was the primary retailing of live music tickets on the Internet and by telephone, including self-ticketing but excluding in-person sales at venue box offices.

### *Market shares*

5.27 We found that Ticketmaster's share of the UK market for the primary retailing of live music tickets in 2008 was between 40 and 50 per cent and See Tickets' share of this market was around half this amount, or slightly less. We noted that both shares, especially See Tickets' market share, would be lower if we excluded 'white-labelled' or co-branded sales, ie sales where the consumer seeks to purchase the ticket through another channel (eg the promoter's or venue's website) but is passed through to transact with a ticket agent.[26] We found that no other provider had a share of the UK market for the primary retailing of live music tickets above 5 per cent.

5.28 We found that, although there was some volatility in market shares, the current market structure had persisted for some time, with the two largest ticket retailers, Ticketmaster and See Tickets, consistently maintaining their market shares despite some new entry into the market. We found that, over the last five years, Ticketmaster appeared to have gained some market share and See Tickets' market share appeared to have declined slightly. However, we found that, for several years, these two large incumbent ticket retailers had not been challenged significantly, either by large-scale entry or by the expansion of any of the existing suppliers in the market.

### *Competition between existing primary retailers of live music tickets*

5.29 Promoters sell tickets for their live music events through ticket agents (usually including one preferred ticket agent) and sometimes through their own websites, where consumers transact with a ticket agent on a white-labelled or co-branded basis. A venue sells tickets for events in-person through its box office (which is outside the relevant market (see paragraph 5.25); by telephone through its box office (usually routed out of hours and as an overflow to the call centre of its preferred ticket agent); through its own website (where the consumer transacts with a ticket agent on a white-labelled or co-branded basis); and through the website of its preferred ticket agent. If a venue self-tickets, the consumer transacts directly with the venue rather than with a ticket agent.

5.30 Metropolis told us that Ticketmaster and See Tickets were the strongest ticket agents in the UK and received its largest ticket allocations. Regular Music told us that Ticketmaster and See Tickets were the only two credible ticket agents of any real scale in the UK. See Tickets told us that there were only three other significant retailers of live music tickets: Ticketmaster, Ticketline and Stargreen.

5.31 Ticketmaster told us that, in its negotiations with promoters, it was always aware that the promoter had a choice between Ticketmaster and numerous other ticket agents.

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[26] 'White-labelled branding refers to the situation where the only branding visible to the customer is that of the initial sales channel (eg the promoter's or venue's branding). Co-branding refers to the situation where, prior to completing the transaction, the consumer is made aware of the ticket agent's branding as well as the branding of the initial sales channel.

However, in the examples Ticketmaster provided, we noted that the principal alternative was almost always See Tickets.

5.32 We noted that Ticketmaster had several advantages over small ticket agents, including:

*(a)* higher consumer awareness;

*(b)* an ability to market events to large numbers of potential consumers, using an extensive database of previous customers; and

*(c)* a proven track record of operating reliably, even at significant scale, and trusted by both promoters and consumers.

We also noted that Ticketmaster's large customer base made it attractive to promoters and venues.

5.33 See Tickets told us that its main relationships were with promoters rather than venues. AEG told us that, due to Ticketmaster's scale and position in the market, it was effectively an unavoidable trading partner for large venue operators. AEG said that venues chose Ticketmaster because of its scale, ancillary services, interoperability and reputation.

5.34 We did not find any evidence indicating that self-ticketing venues were any less effective in selling tickets than venues which used ticket retailers. Nevertheless, we found that there was very little switching by venues between using a ticket agent and self-ticketing, which we would have expected to observe if the threat of self-ticketing was an active constraint on ticket retailers, including Ticketmaster. We noted that there were examples of self-ticketing venues changing their ticketing software, and examples of self-ticketing venues becoming small-scale ticketing retailers (eg Ticketsoup and Ticketfactory), but we found that very few venues had switched from using a ticket retailer to self-ticketing. Ticketmaster told us that the threat of self-ticketing was effective as a competitive constraint even if there were an absence of many examples of actual switching, and the option for a venue to self-ticket was a typical feature in many of its negotiations. While we accepted that venues did threaten to switch to self-ticketing, we judged that self-ticketing (either actual or threatened) imposed a limited competitive constraint on the large incumbent ticket agents.

### *Barriers to entry and expansion in the primary retailing of live music tickets*

5.35 Barriers to entry and expansion are features of a market that may prevent or restrict entrants and smaller incumbent firms from exploiting profitable opportunities, and hence enable existing suppliers to raise prices above costs persistently without significant loss of market share.[27]

5.36 Ticketmaster told us that the principal requirements in order to enter the market were to develop or license a ticketing system, build a reputation for reliability and trust, establish effective sales points (eg websites and call centres), form relationships with promoters and venues, and create consumer awareness. Ticketmaster submitted that the costs for each of these components of entry were not exceptional or substantial, and all of them could be achieved on a scalable basis, allowing initial small-scale entry with the possibility of expansion over time.

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[27] *Market Investigation References: Competition Commission Guidelines, June 2003, CC3*, paragraph 3.22.

5.37 Ticketmaster submitted a model of large-scale entry, which it said was based on realistic assumptions and would be achievable by a reasonably well-funded new entrant. This model suggested that entry as a ticket retailer should be highly profitable. Ticketmaster told us that its modelling showed that entrants did not need to make upfront large investments in order to operate at scale but, rather, they could build their businesses in line with growth in demand. However, we noted that there were many small ticket agents which had not grown significantly over many years and the market shares of these agents had remained low, while Ticketmaster's market share had remained much higher. We noted that a situation where expansion has not occurred, but should be highly profitable, was consistent with there being barriers to expansion.

5.38 AEG told us that existing ticket retailers had significant incumbency advantages as the costs of switching ticketing supplier, particularly for a large venue operator, were substantial. These costs included the technology upheaval and the need to run two systems in parallel for the period of transfer (which could last several months).

5.39 Eventim told us that, in order to enter a new geographic market, it needed a significant guaranteed base of ticket inventory, as having tickets for sale attracted ticket buyers and, once an agent had relationships with ticket buyers, it could attract further tickets for sale from other promoters and venues. Eventim told us that a small allocation of tickets was not sufficient to attract consumers. Eventim said that, in order to become one of the leading ticket retailers in the UK, it either needed to acquire one of the two largest existing retailers (ie Ticketmaster or See Tickets), or to become Live Nation's preferred ticket agent. Eventim said that an acquisition of any of the smaller ticket retailers in the UK would not have given it a sufficient foothold in the market from which to grow and no other promoter or venue operator could have offered Eventim the volume and breadth of ticket stock which it would need.

*Two-sided activity*

5.40 In our provisional findings, we accepted Eventim's submission that the retailing of live music tickets was a two-sided activity, and a ticket agent needed to offer tickets to a wide range of events in order to attract consumers. In our provisional findings, we accepted that this requirement represented a significant barrier to entry.[28] However, in response to our provisional findings we received detailed submissions from Ticketmaster and Live Nation which refuted this view.

5.41 Ticketmaster submitted that it was not difficult for an entrant to obtain tickets to a wide range of events because promoters allocated tickets to multiple ticket agents. This practice offered an entrant the opportunity to demonstrate its ability to sell tickets and, if successful, it would then obtain larger ticket allocations.

5.42 We noted that Ticketmaster's argument was supported by evidence from promoters. For example, Metropolis told us that it allocated tickets across a number of ticket retailers and it would be willing to provide a small number of tickets to a new retailer. Metropolis said that, if the new ticket retailer were able to sell tickets more successfully than other ticket retailers, it would be re-allocated more tickets.

5.43 Live Nation highlighted the example of Gigantic, which was a small new entrant but which had been successful in obtaining ticket allocations to a wide range of events, both from Live Nation and other promoters.

[28] In our provisional findings, we referred to this requirement as a 'chicken-and-egg' problem.

5.44 We found these submissions, and the evidence to which they referred, persuasive. We concluded that gaining access as a ticket agent to a small volume of tickets across a wide range of events did not appear to be a significant barrier to entry.

*Other barriers to entry and expansion*

5.45 We noted that the fact there had been no new large-scale entry in the UK market for the primary retailing of live music tickets for many years, and no examples of significant growth by small ticket retailers, suggested that there might be other barriers to entry and expansion.

5.46 We judged that the more significant challenge in becoming a large-scale retailer of live music tickets was to sell tickets more quickly than other ticket agents, which meant gaining access to more consumers than other ticket agents and gaining access to larger allocations of tickets from promoters and venue operators than other ticket agents.

5.47 We noted that the consumer survey found that a significant proportion of consumers went directly to their chosen ticket agent's website or call centre (see paragraph 5.9), which suggested that there was a degree of incumbency advantage. We found that, based on the responses in the survey, this advantage was likely to derive from consumers' perception that their chosen ticket agent was reliable and secure, and because it was more convenient for consumers to go directly to the place where they believed tickets for their desired event were most likely to be available.

5.48 We found, on the basis of the consumer survey, that one of the principal differences between the large incumbent ticket retailers and the small retailers was the extent of their access to consumers. We noted that, in Ticketmaster's model of entry (see paragraph 5.37), it projected that, in the first year of entry, a large-scale new entrant would need to spend on average £1 on marketing and brand development for every ticket sale it achieved. For comparison, we noted that Ticketmaster achieved an average gross margin of £[✂] per ticket on ticket sales for its ten largest live music clients (see Appendix E, Table 9). Given that a new entrant, operating on a much smaller scale than Ticketmaster, was likely to achieve a much smaller gross margin per ticket, the proportion of the new entrant's income spent on marketing and brand development was likely to be substantial. We concluded that a large-scale entrant or a small ticket retailer seeking to expand would need to invest significantly in marketing and brand development in order to obtain a level of consumer awareness similar to that enjoyed by the large incumbent ticket retailers, and it was likely to need access to significant financial resources to fund this investment. We noted that the need for this investment increased the risks associated with large-scale entry and expansion.

5.49 In addition, we noted that there were other factors which made it difficult to become a large-scale retailer of live music tickets. First, we noted that the presence of long-term relationships between the large incumbent ticket agents and promoters/venues made it difficult for other ticket agents to gain access to large ticket allocations. For example, over the last ten years, UK ticket agents other than Ticketmaster have been able to obtain very few tickets from Live Nation (see paragraph 7.69). Second, we noted that, in order to become a large-scale retailer of live music tickets, it was necessary to be able to offer a reliable ticketing service, which was able to operate at scale. Although we recognized that scaleable ticketing software could be licensed relatively easily, we noted that, in many cases, ticket retailers had customized their ticketing software, and the large ticket retailers (eg Ticketmaster and Eventim) had developed their own bespoke systems.

*Recent examples of entry*

5.50 We observed two recent examples of entry (HMV and Gigantic), both of which currently had a low market share. We found that both of these entrants were seeking to offer a distinctive proposition. For HMV, we noted that the retailing of tickets was complementary to its existing business, and its network of stores, in addition to its established website, might offer promoters and/or venue operators access to new consumers. For Gigantic, we noted that it was seeking to position itself as an ethical ticket retailer, donating a proportion of its profits to charity. However, we also found that for both new entrants there were some uncertainties about their likely success. For HMV, we noted that it had little previous experience of retailing live music tickets, and few consumers were used to buying their live music tickets in-person in a store. For Gigantic, we noted that it was a small start-up business, which was competing for live music ticket sales on the Internet among many other Internet retailers, and it had not yet gained a large customer base (see paragraph 5.39). Therefore, we concluded that we could not be confident that these new entrants would grow to become effective competitors to Ticketmaster and See Tickets in the near future, particularly in the presence of material barriers to expansion (see paragraphs 5.45 to 5.49).

### *Assessment of competition in the market for the primary retailing of live music tickets in the UK*

5.51 We found that promoters allocated tickets to many ticket agents, but Ticketmaster and See Tickets received the largest allocations from most promoters. We noted that, where one of the large promoters had a preferred relationship with a ticket agent, it was always with either Ticketmaster or See Tickets (see paragraph 2.16). We found that some venues self-ticketed but, for those venues which used a ticket agent, most used Ticketmaster and only two large venues used See Tickets. We found that, although promoters and venue operators could switch between suppliers, in particular between Ticketmaster and See Tickets, the options were limited and most promoters told us that, in order to maximize ticket sales, they had to sell some tickets through Ticketmaster.

5.52 We concluded that there was competition in the market for the primary retailing of live music tickets, in particular between Ticketmaster and See Tickets (and between self-ticketing large venues), but we found that the extent of the competitive constraint imposed on these large retailers by the small retailers of live music tickets was limited. We noted that the market structure had not changed for a long period of time, with one provider (Ticketmaster) selling almost half of all the live music tickets in the UK, at least twice the size of its nearest competitor (See Tickets). We concluded that, with only two large primary retailers of live music tickets, and little likelihood of one of the small retailers (none with more than 5 per cent of the market) expanding to become a large retailer in the near future, competition in the market was less than fully effective.

## ***Promotion of live music events***

5.53 A detailed description of the supply of live music promotion in the UK is at Appendix F.

### *Market definition*

5.54 We found that the relevant market was not wider than the promotion of live music events, including festivals (hereafter referred to as live music promotion). We also

found that, although there might be an asymmetry, with small promoters generally promoting just small events and large promoters promoting both small and large events, there was no clear basis for delineating the market on the basis of the size of event.

5.55 We found that, since UK promoters did not promote outside the UK, and non-UK-based promoters rarely promoted in the UK, the market for live music promotion was not wider than the UK. We found that, for some types of events, the relevant geographic market might be smaller, but we found no evidence to suggest that Live Nation's position in any smaller market was significantly stronger than in the UK as a whole, and hence we did not believe that defining smaller markets would affect significantly our analysis of the competitive effects of the merger.

### *Market shares*

5.56 Live Nation submitted that its share of the market for live music promotion in the UK was no more than 20 per cent and, on some measures, was considerably less (see paragraphs 20 to 21 of Appendix F). Live Nation added that its share of this market had decreased over the last two years.

5.57 We attempted to estimate Live Nation's market share based on ticket sales data from Live Nation and other promoters, and Ticketmaster's estimate of the market size. We found that Live Nation's share of the market for live music promotion in the UK in 2008 (according to the number of tickets sold) was between 15 and 20 per cent.

5.58 We also estimated Live Nation's market share by ticket revenue, using data from PRS for Music.[29] In 2008, the total face value of ticket sales for live music events was approximately £776 million. We used this value to calculate Live Nation's share of the market for live music promotion in the UK in 2008 (according to ticket revenues) and the results confirmed our previous estimate of between 15 and 20 per cent (see paragraph 5.57).

5.59 We noted that Live Nation had a stronger position in the promotion of live music festivals, primarily due to its co-ownership of Live Nation-Gaiety.

### *Barriers to entry and expansion*

5.60 We found that the presence of established incumbent relationships and the need for significant resources in order to finance events and to build relationships with a portfolio of artists inhibited, to some extent, the entry and expansion of new live music promoters. However, we found that these requirements for entry were not insurmountable. We noted that recent new entry had occurred, in particular by promoters leaving existing firms to start their own businesses (and taking some of their artists with them) and by non-UK promoters entering the UK.

### *Bargaining power of promoters*

5.61 We found that artists and their agents possessed a significant degree of bargaining power in their negotiations with promoters, which constrained promoters' activities and their profitability. The position of artists' agents relative to promoters differed from that of promoters and venue operators relative to ticket agents (see paragraphs

[29]For most ticketed live music events, 3 per cent of ticket receipts (not including booking fees or commissions) are paid to PRS for Music.

5.51 to 5.52), because artists' agents could threaten credibly to switch between a number of promoters whereas promoters and venue operators could only threaten credibly to switch between two large ticket agents (Ticketmaster and See Tickets). We found that most venues did not have much bargaining power with promoters, although some high-profile venues did.

*Market power of Live Nation as a promoter*

5.62 We noted that the presence of incumbent relationships and, at least in some circumstances, the lack of an active bidding process between promoters for a new tour, did not signal a lack of competition, as artists' agents were aware of promoters' costs and had the credible threat of switching. We found that artists' agents did not need a bidding process in all circumstances to ensure that they achieved the best price.

5.63 We compared the booking fee rebate paid by Ticketmaster to Live Nation with the rebate paid by Ticketmaster to other promoters, and concluded that the differences were not significant, so there was no indication that Live Nation had substantial market power.

5.64 We noted that the ability of Live Nation to use any power it had in the market for live music venues to advantage its position in the market for live music promotion did not change as a result of the merger.

5.65 We concluded that, due to the presence of other large and well-established promoters, and many smaller promoters, and the significant bargaining power held by artists and their agents, Live Nation did not appear to have power in the UK market for live music promotion.

***Venues used for live music events***

5.66 A detailed description of the supply of live music venues in the UK is at Appendix G.

5.67 We found that, for the purposes of our analysis of the competitive effects of the merger, we did not need to form a precise view on the definition of a relevant market for live music venues, or assess the extent of Live Nation's power in the market. Nevertheless, our high-level findings are set out below (see paragraphs 5.68 to 5.73).

5.68 Live Nation owns two live music venues: the Manchester Apollo and Cardiff International Arena. Live Nation also has an exclusive contract to manage Southampton Guildhall and a non-controlling management interest in the Sheffield Arena. Live Nation-Gaiety owns 56 per cent of AMG, which owns 12 live music venues, and manages Wembley Arena. We estimated that, overall, these venues (excluding Sheffield Arena, where Live Nation manages the venue but does not receive a ticket allocation) accounted for between 15 and 20 per cent of all UK live music tickets sold in 2008.

5.69 We found that, in 2006 and 2008, about 20 per cent of Live Nation's ticket sales as a promoter were for events in Live Nation venues, though, in 2007, this proportion was 30 per cent (principally due to a higher number of events at Wembley Arena).

5.70 We found that there were other venues in the same local area as each of Live Nation's wholly-owned or managed venues. However, in most cases, we noted that there were significant differences between the Live Nation venue and the competing venue, either in terms of the capacity, the suitability for indoor live music events, or the location. We found that the only Live Nation wholly-owned or managed venue

which appeared to have a similar local substitute was Wembley Arena, where the O2 Arena was a close competitor.

5.71 Some promoters told us that Live Nation's position as a venue owner and manager gave Live Nation power in the market for live music promotion.

5.72 However, we found that each venue's market power was limited to some extent by a promoter's ability to switch events between towns and by Live Nation's primary need to fill its venues. We found that events promoted by Live Nation represented a small proportion of the total number of live music events at each of its venues, demonstrating Live Nation's need to attract events from other promoters.

5.73 We concluded that entry required substantial financial investment and took a long time to achieve but we noted that there had been several recent examples where entry had occurred, showing that these barriers were not insurmountable.

## 6. The counterfactual

6.1 In order to assess the effects of the merger on competition in the relevant markets, we sought to identify the nature and extent of competition which would be expected to arise in the relevant markets in the absence of the merger (the 'counterfactual').[30]

6.2 We found that there were no reasons to believe that, in the absence of the merger, the nature and extent of competition in the markets for live music promotion or live music venues would have been different to the pre-merger situation (described in Section 5 and Appendices F and G).

6.3 However, we found that there was a significant reason why the market for the primary retailing of live music tickets in the UK might be different to the pre-merger situation as, prior to Live Nation planning its merger with Ticketmaster, Live Nation had entered into an agreement with Eventim, whereby Eventim would provide Live Nation with various ticketing software and ticketing services in the UK and worldwide (see paragraphs 6.5 to 6.7). Therefore, in the light of this agreement, we assessed how this market was likely to develop so as to identify the counterfactual against which to compare the effects of the merger. We reviewed Live Nation's agreement with Eventim and considered Live Nation's financial incentives. We also reviewed Eventim's projections for its activities in the UK, prepared at the time of negotiating its agreement with Live Nation, and considered the effect on competition of Eventim's entry into the UK market for the primary retailing of live music tickets.

### *Live Nation agreement with Eventim*

6.4 The terms of Live Nation's global contract with Ticketmaster relevant to the USA expired at the end of 2008 (subject to some exceptions), while the terms relevant to the UK are due to expire at the end of 2009. Live Nation told us that, in 2007, it began to explore its ticketing options, including negotiating a new contract with Ticketmaster, self-ticketing (through licensing appropriate ticketing software), and contracting with a new ticketing provider. Live Nation told us that its senior management in the USA had [✂].

6.5 On 20 December 2007 Live Nation signed a Letter of Intent (LOI) with Eventim. The LOI specified that, in the USA, from 1 January 2009, Live Nation would license

[30] *Merger References: Competition Commission Guidelines, June 2003, CC2*, paragraph 1.22.

Eventim's technology and become both a retailer of its own tickets and a supplier of ticketing services to other parties. The LOI stated that, in the UK, from 1 January 2010, Eventim would provide Live Nation with a managed ticketing service (see paragraphs 6.9 to 6.14). The LOI was expressed as a binding agreement between Live Nation and Eventim, though it included terms providing for [✂].

6.6 Live Nation told us that, in the USA, it had [✂] controlled tickets which, with the software provided to it by Eventim under the LOI, it would be able to sell directly to consumers, increasing its margins. Under the terms of the LOI, Live Nation was also able to offer its ticketing services in the USA to other promoters and venue operators, providing opportunities for additional revenue streams. Following the announcement of Live Nation's agreement with Eventim, Live Nation won a contract from SMG to provide its wholly-owned venues with a ticketing service (see paragraph 3.9).[31]

6.7 We observed that, after signing the LOI and prior to the announcement of the merger, both Live Nation and Eventim demonstrated their commitment to the LOI by investing significantly in its implementation. For example, in the USA, Live Nation incurred significant upheaval in transferring its venues' systems from Ticketmaster to Eventim, while Eventim incurred significant cost in tailoring its ticketing software for use in the USA.

6.8 Given the binding nature of the LOI and the fact that its terms have been in effect in the USA since the start of 2009, we concluded that, in the absence of the merger, both Live Nation and Eventim would have complied with the terms of the LOI relevant to the UK, and Eventim would have entered the UK market for the primary retailing of tickets for live music events.

### *Terms of the LOI relevant to the UK*

6.9 The LOI requires Eventim to implement, operate and manage a ticketing system for Live Nation in the UK. This system will enable Live Nation and other retailers (including Eventim) to sell Live Nation's controlled tickets (see paragraphs 6.15 to 6.24). Eventim is required [✂], including making its ticketing system suitable for operation in the UK. Live Nation is required to place all the live music tickets it controls in the UK and the Republic of Ireland on to the Eventim ticketing system. [✂]

6.10 The LOI specifies that Live Nation will pay to Eventim £[✂] for every ticket controlled by Live Nation sold from the Eventim ticketing system (except for tickets sold through the box office and tickets allocated to sponsors or the artist, where [✂].[32]

6.11 Under the LOI, Live Nation is free to determine which retail channels to use to sell its tickets, including via Live Nation's own website,[33] artists' websites or sponsors' web-sites. However, Live Nation is obliged to allow Eventim to sell over its website a minimum of [✂] per cent of the sellable ticket inventory to no less than [✂] per cent of Live Nation's events in the UK in any given year. For these tickets, Eventim will [✂].

6.12 The LOI states that Live Nation can request Eventim to provide it with [✂] services and [✂] services (ie [✂]), giving suitable notice, [✂].

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[31]Live Nation told us that the implementation of this agreement has been postponed, by agreement between Live Nation and SMG, and, in the meantime, SMG has extended its contract with Ticketmaster.
[32][✂]
[33]Live Nation operates several websites in the UK. We refer to these websites collectively as the Live Nation website.

6.13 [✂]

6.14 We noted that the services to be provided in the UK to Live Nation by Eventim under the LOI were not the same as the services currently provided to Live Nation by Ticketmaster. Currently, Ticketmaster has the exclusive right to sell Live Nation's live music (and theatre) tickets, subject to some exclusions, such as sales in-person at the box office. (We noted that, in practice, Live Nation sells about [✂] per cent of its tickets through Ticketmaster and pays Ticketmaster about £[✂] per ticket for all sales made through other agents.) Under the agreement between Live Nation and Ticketmaster, Ticketmaster charges booking fees which have been agreed with Live Nation, and pays Live Nation a rebate (in 2008, the average rebate from Ticketmaster for Live Nation's live music tickets was £[✂] per ticket, equivalent to approximately [✂] per cent of Ticketmaster's average booking fee on Live Nation's tickets). Live Nation told us that approximately [✂] per cent of its ticket sales originated through its own website but, in these cases, the consumer still transacted with Ticketmaster (on a co-branded basis) [✂]. Ticketmaster also provides the ticketing system (hardware and software) for Live Nation's venues.

### *Live Nation controlled tickets under the LOI*

6.15 In order to evaluate the significance of the LOI to Eventim, we considered the number of tickets controlled by Live Nation.

6.16 The LOI defines tickets 'controlled' by Live Nation as tickets which Live Nation has the right to distribute for:

*(a)* events at venues which are owned or leased by Live Nation;

*(b)* events which Live Nation promotes; and

*(c)* events for which Live Nation has acquired the ticket distribution rights from other promoters or venues.

We refer to these tickets as Live Nation-controlled tickets. Tickets covered by agreements with third parties which pre-date the LOI are excluded from the definition.

6.17 Under the LOI, Live Nation is also required to use its commercially reasonable efforts to influence those of its subsidiaries which are not wholly owned, and which are excluded from the LOI (eg AMG, Festival Republic and DF Concerts), to sell their tickets using the Eventim system (see paragraphs 6.22 and 6.23).

6.18 Table 2 shows the number of tickets sold on behalf of Live Nation and its subsidiaries in 2008 (excluding box office sales).[34]

[34]In-person box office sales are outside the live music ticket retailing market (see Section 5) and, under the LOI, Eventim is unlikely to receive any revenue from box office sales.

TABLE 2 **Live Nation UK music and theatre tickets in 2008**

*million*

| | *Preferred ticket agent* | | *Other ticket agents* | |
|---|---|---|---|---|
| | *Name of preferred ticket agent* | *Tickets sold through preferred ticket agent* | *Tickets sold through other ticket agents* | *Total tickets* |
| *Live music tickets* | | | | |
| Promotions | Ticketmaster | [✂] | [✂] | [✂] |
| Venues | Ticketmaster | [✂] | [✂] | [✂] |
| **Live Nation-controlled tickets** | | [✂] | [✂] | [✂] |
| *Live Nation's principal subsidiaries' live music tickets* | | | | |
| Festival Republic | See Tickets | [✂] | [✂] | [✂] |
| Angel Festivals | Ticketmaster* | [✂] | [✂] | [✂] |
| DFC | Ticketmaster | [✂] | [✂] | [✂] |
| AMG | Ticketmaster† | [✂] | [✂] | [✂] |
| Wembley | Ticketmaster | [✂] | [✂] | [✂] |
| **Tickets controlled by Live Nation's principal subsidiaries** | | [✂] | [✂] | [✂] |
| *Other Live Nation tickets* | | | | |
| Theatres | Ticketmaster | [✂] | [✂] | [✂] |
| **Total tickets under Live Nation's control or influence** | | | | [✂] |

*Source:* Live Nation.

*In 2008, Angel Festival's main agent was Trinity Street, which went into administration in February 2009. Angel Festival's main agent is now Ticketmaster.
†AMG contract is with Ticketweb, which is a subsidiary of Ticketmaster.
*Note:* Excludes purchases from box offices, tickets sold for Astoria venues (now closed) and Live Nation's theatre touring productions (Live Nation has ceased this activity).

6.19 Table 2 shows that, in 2008, Live Nation sold about [✂] controlled live music tickets in the UK through its various retail channels (excluding box office sales). About [✂] tickets were sold by Ticketmaster and [✂] tickets were sold by other agents. In addition, about [✂] tickets were sold on behalf of Live Nation by the box offices in its venues.

6.20 Live Nation told us that, using these 2008 numbers, under the LOI [✂] tickets would be sold on the Eventim system (ie the same proportion as currently sold by Ticketmaster), and [✂] tickets would be allocated and sold through other ticket agents on their own systems. Prior to our provisional findings, Live Nation told us that, under its interpretation of the LOI, Eventim was not entitled to any fee for sales of Live Nation tickets which were not made on the Eventim system, though, [✂]. In contrast, Eventim told us that the LOI stated that all of Live Nation's controlled tickets would be placed on its system. However, following our provisional findings, Live Nation told us that it was committed to paying Eventim £[✂] for each controlled ticket sold (excluding box office sales (see paragraph 6.10) and sales through Eventim's website), whether or not the ticket was sold off the Eventim system. (For sales through Eventim's website, Eventim would [✂] (see paragraph 6.11)) Therefore, even if Eventim sold no Live Nation tickets as a ticket retailer, so long as these tickets were sold either by Live Nation or another party, Eventim would receive £[✂] per ticket, equal to around £[✂] a year.

6.21 Eventim told us that its system offered Live Nation the ability to offer for sale the same ticket simultaneously through multiple retail channels, with all channels (eg Live Nation's own website and call centre, Eventim's website, and other ticket agents) linking directly to the Eventim system. Eventim said that this functionality removed the need for promoters continually to reallocate tickets between ticket agents. However, Live Nation told us that it did not intend to use this functionality in the UK as it was incompatible with the long-established practice in the UK of

allocating specific sets of tickets to different agents. Live Nation said that Eventim's model would be resisted by most, if not all, ticket agents operating in the UK. We did not receive evidence to be able to assess whether Eventim would be successful or not in introducing its alternative model for the retailing of tickets.

*Other tickets influenced by Live Nation*

6.22 Live Nation told us that the live music tickets shown in Table 2 which were not controlled by Live Nation ([✂] tickets) were controlled by its subsidiaries and were not governed by the terms of the LOI. (Live Nation noted that within the total tickets for Live Nation theatres were around [✂] tickets for live music events promoted by Live Nation at Live Nation theatres.)

6.23 Live Nation also told us that, although the LOI obliged it to use its commercially reasonable efforts to influence its subsidiaries in their choice of ticketing provider, it did not, in practice, have a controlling interest over any of the Live Nation-Gaiety businesses, including AMG, and it could not dictate the ticket agent which these businesses used. Live Nation added that the ticketing arrangements for each subsidiary were negotiated separately and the other shareholders in each subsidiary would ensure that the best arrangements for that subsidiary were achieved. We considered the extent of Live Nation's influence over Live Nation-Gaiety and its subsidiaries (see paragraph 2.25 and Appendix D) and found that, although Live Nation had material influence[35] over some of these businesses, it did not, in practice, control them. We concluded that, in the counterfactual, Eventim was likely to have sought to become the ticket agent for these businesses when their existing arrangements expired, and Live Nation was likely to have provided some supporting influence, but Eventim's success was not guaranteed.

6.24 [✂][36] Therefore, we did not include these tickets in the counterfactual.

### *Live Nation's use of different retail channels*

6.25 In order to assess how Eventim's entry into the UK might affect competition in the market for the primary retailing of live music tickets, we considered what success Eventim was likely to have in this market and, as a starting point, we considered the significance of its LOI with Live Nation. First, we considered how Live Nation's objectives as a promoter and venue operator influenced its choice of retail channel. Then we sought to evaluate Live Nation's financial incentives to use Eventim as a ticket retailer compared with its incentives to use other retail channels. We also considered Live Nation's corporate objectives in its use of retail channels.

*Live Nation's objectives as a promoter and venue operator*

6.26 We noted that Live Nation's principal objective, both as a promoter and as a venue operator, was to sell as many tickets as possible. As a promoter, Live Nation had the financial incentive to maximize ticket sales as, given that many of the costs of putting on an event were sunk (ie because of the high fees guaranteed by promoters to artists in advance of an event), most of the face-value ticket price from every additional ticket sold went directly to Live Nation's own profitability (see paragraph 2.9). As a venue operator, Live Nation had the financial incentive to maximize attendances in its venues as every additional ticket sale generated more income in other areas,

[35] Within the meaning of section 26 of the Act.
[36] [✂]

such as from food and beverage sales (see paragraph 8.112). We found that, both as a promoter and as a venue operator, Live Nation's rebate income from each ticket sale was small in comparison with the other income which each ticket sale generated. We also noted that, prior to the merger, Live Nation sold about [✂] per cent of its tickets through ticket agents other than Ticketmaster, despite the net rebate to Live Nation from these other agents being significantly lower than the rebate from Ticketmaster (see Table 3). Therefore, we concluded that, although the difference in the amount of rebate Live Nation received from each ticket agent meant that, by preference, it would use some ticket agents over others, this preference was secondary to its overriding incentive to ensure that as many tickets as possible were sold.

6.27 Nevertheless, given that the amount of the rebate from each ticket agent was significant to Live Nation's overall income, we considered it necessary to assess Live Nation's incentives to use each of the different retail channels available to it. We focused on sales over the Internet as the majority of Live Nation's live music tickets are now sold in this way, but we noted that many of the same arguments applied to sales through call centres. We did not focus on sales in-person at the box office as these sales were outside the relevant market (see paragraph 5.25).

### *Live Nation's financial incentives to sell through different retail channels*

6.28 Table 3 shows Live Nation's financial incentives to use each of the possible retail channels available to it in the UK, both prior to the proposed merger (which was also prior to the LOI) and under the LOI.

TABLE 3 **Live Nation's approximate rebate (from sales through ticket agents) and margin (from sales through its own website) for Internet sales**

*£ per ticket*

| *Channel* | *Prior to the merger* | *Under the LOI** |
|---|---|---|
| Eventim | [✂] | [✂]† |
| Live Nation | [✂]‡ | [✂]§ |
| Ticketmaster | [✂]‡ | [✂]¶ |
| Other agents | [✂]# | [✂]~ |

*Source:* CC calculations.

*Under the LOI, Live Nation pays £[✂] per ticket to Eventim for sales through Live Nation and other ticket agents.
†Assumes current average booking fee of £[✂] per live music ticket less £[✂] assumed for premium and regular shipping fees and print-at-home fees, less £[✂] assumed for fees payable to other parties (eg outlet commissions, payment charges). Under the LOI, the resulting £[✂].
‡Under the contract between Live Nation and Ticketmaster, Live Nation [✂]. In 2008, Ticketmaster paid Live Nation an average rebate of £[✂]. (Under the contract, the booking fee is split as follows: Ticketmaster retains the first £[✂] per ticket with any revenue above this base amount [✂]. Therefore, using an average booking fee per ticket of £[✂], Live Nation receives £[✂].)
§Assumes current average booking fee of £[✂] per live music ticket less £[✂] system payment to Eventim, less £[✂] assumed fulfilment fee, less £[✂] assumed payment costs.
¶Under the LOI, we assume that Live Nation receives a similar rebate from Ticketmaster as from other agents.
#Live Nation told us it received rebates from other agents between £[✂] and £[✂] per ticket. We estimated that the average rebate from the other ticket agents which Live Nation used most regularly was about £[✂]. [✂]
~We assume that Live Nation continues to receive from other agents an average rebate of £[✂] per ticket, giving it a net rebate of £[✂] per ticket under LOI after the deduction of the £[✂] per ticket fee to Eventim.

6.29 Table 3 shows that, under the LOI, Live Nation has a clear financial incentive to use its own website to sell as many tickets as possible,[37] with sales through Eventim

[37]The margin on sales via Live Nation's call centre would be lower than on Internet sales (we estimate around £[✂] per ticket based on additional call centre costs of £[✂] per ticket). Assuming [✂] per cent of sales are via telephone, the average margin for Live Nation sales would be about £[✂] instead of £[✂].

being the next most profitable. Live Nation has the incentive to use other ticket agents only to the extent that tickets cannot be sold through either Live Nation or Eventim.

*Live Nation's corporate objectives to sell through its own retail channel*

6.30 We found that, in addition to Live Nation's financial incentive to maximize sales through its own retail channel, the following evidence indicated that it was Live Nation's corporate objective and intention in the UK to sell as many of its controlled tickets as possible through its own website (and call centre):

*(a)* Live Nation has declared its corporate objective to be to provide an end-to-end service to artists and fans (see paragraph 3.5). Live Nation told us that, in the USA, it was already selling millions of tickets through its website and call centres (since 1 January 2009, using software provided by Eventim).

*(b)* Live Nation told us that it had invested significantly in developing its website in the UK.[38] Live Nation's UK management told us that they had hoped to move to self-ticketing when Live Nation's existing contract with Ticketmaster expired. Eventim told us that, from its discussions with Live Nation, it believed that Live Nation had ambitions to become a significant sales channel for its own tickets.

*(c)* Following our provisional findings, Live Nation provided us with documentation from the time when the LOI with Eventim was negotiated, showing that Live Nation intended to promote its own sales channel exclusively and to encourage all consumers for its events to purchase tickets through its website (and call centre).

*(d)* Live Nation told us that, by controlling the sale of most of its tickets for its own events, Live Nation would have more timely control over the sale of its tickets and more direct control over its customers' data.

*Live Nation's use of Eventim as a retail channel*

6.31 We noted that, under the LOI, Live Nation was obliged to allocate to Eventim at least [✂] per cent of the sellable ticket inventory to no less than [✂] per cent of its events in any calendar year (see paragraph 6.11). However, given Live Nation's incentives to sell through Eventim in preference to any other ticket retailer, we concluded that this allocation would be higher if Eventim were able to sell tickets which Live Nation was unable to sell. We also noted that, given the way in which promoters allocate and reallocate tickets between agents in the UK (see paragraph 2.17), if Eventim were unable to sell its minimum allocation of Live Nation tickets, these tickets would be reallocated to another ticket agent. Therefore, we concluded that, in the absence of the merger, the actual volume of tickets Live Nation would have sold through Eventim would have depended on Eventim's ability to generate sales, and it could have been more or less than Eventim's initial allocation.

[38] Live Nation's third quarter 2009 results (published 9 November 2009) stated that, in the first nine months of 2009, Live Nation sold 10.6 million tickets globally through the Livenation.com network (including 1.7 million tickets sold outside of North America).

*Summary of our assessment of Live Nation's use of different retail channels*

6.32 We noted that, prior to the LOI, Live Nation was able to sell [✂] per cent of its controlled tickets through Ticketmaster, its preferred ticket agent (see paragraph 6.14), which was the retail channel it promoted. We also noted that most self-ticketing venues were able to sell tickets effectively (see paragraph 5.34). On the basis of this evidence, and Live Nation's corporate intent (see paragraph 6.30), we judged that, in the absence of the merger, Live Nation would have sold at least half of its controlled tickets through its own retail channel (see paragraph 7.2). We concluded that the proportion of Live Nation's controlled tickets sold through Eventim would have depended on Eventim's ability to generate sales but, in order to maximize ticket sales (see paragraph 6.26), we expected that Live Nation would have continued to use the established ticket agents in the UK to some extent, even if selling through these agents generated less rebate income. We recognized that the more tickets Live Nation sold through its own website (and call centre), and through Eventim's website (and call centre), the fewer tickets it would have allocated to other ticket agents.

## *Eventim's projections*

6.33 Eventim told us that, at the time of entering into the LOI, its expectation was that Live Nation would work with Eventim in partnership and would allocate to Eventim a greater proportion of tickets for sale than the minimum required by the LOI. Eventim forecast that it would sell [✂] per cent of Live Nation's controlled tickets, though Eventim told us that this forecast was a conservative estimate and it had actually hoped to sell between [✂] and [✂] per cent of Live Nation's controlled tickets.[39]

6.34 Eventim' projections for its entry into the UK, made at the time of the LOI, are shown in Table 4.

TABLE 4 **Eventim's projections for the sale of tickets in the UK**

*million*

| | *2010* | *2011* | *2012* | *2013* | *2014* | *2015* |
|---|---|---|---|---|---|---|
| Live Nation website/call centre | [✂] | [✂] | [✂] | [✂] | [✂] | [✂] |
| Eventim website | [✂] | [✂] | [✂] | [✂] | [✂] | [✂] |
| Total Live Nation volume | [✂] | [✂] | [✂] | [✂] | [✂] | [✂] |
| Other clients' volume | [✂] | [✂] | [✂] | [✂] | [✂] | [✂] |
| Total volume | [✂] | [✂] | [✂] | [✂] | [✂] | [✂] |

*Source:* CC calculations based on Eventim forecasts at the time the LOI was executed.

*Notes:*
1. 'Total volume' in 2011 to 2015 is calculated using Eventim's forecast growth rates.
2. 'Other clients' volume' in 2011 to 2015 is calculated as the difference between total volume and total Live Nation volume.
3. Figures do not sum due to rounding.

6.35 Eventim told us that, on the basis of its agreement with Live Nation, it understood that Ticketmaster would receive no tickets from Live Nation, either on its system or for sale as a ticket retailer. We noted that the LOI did oblige Live Nation to put all of

[39]Under the LOI, Live Nation is obliged to allocate to Eventim [✂] per cent of the sellable ticket inventory to [✂] per cent of its events (see paragraph 6.11), and to allocate an even quality distribution out of the full sellable ticket inventory for each event. Eventim's interpretation of this obligation was that, within the the relevant [✂] per cent of events, Eventim would always be guaranteed a minimum of [✂] per cent of the "full" (ie total) sellable ticket inventory for the event, not [✂] per cent of the Live Nation-controlled sellable inventory. Therefore, if Live Nation controlled 50 per cent of the tickets for an event, it would have to allocate [✂] of these tickets to Eventim, so representing [✂] per cent of the total sellable ticket inventory for the event (but [✂] per cent of Live Nation's total sellable inventory). However, we noted that Live Nation did not share this interpretation, believing instead that the [✂] per cent applied only to the number of its controlled tickets. We noted that Live Nation's interpretation was consistent with its interest in retaining control of as many of its controlled tickets as possible, so as to be able to sell them directly to consumers.

its controlled tickets on Eventim's system (see paragraph 6.9) but it allowed Live Nation to control through which retail channels to sell its tickets (see paragraph 6.11), and there was no explicit exclusion in the contract from using Ticketmaster. Given Live Nation's principal objective of maximizing ticket sales (see paragraph 6.26), we concluded that it was likely that, in the absence of the merger, Live Nation would have continued to sell some proportion of its tickets through Ticketmaster, as it is the largest live music ticket retailer in the UK and has access to more consumers than any other ticket agent (see paragraph 6.32).

6.36 Eventim told us that, on the basis of information provided to it by Live Nation in the USA with reference to the UK, it believed that there were [✂] Live Nation-controlled tickets sold in the UK in 2006. Eventim assumed a growth rate of [✂] per cent a year, which resulted in a forecast of [✂] tickets in 2010. Live Nation told us that, in 2008, it sold [✂] controlled tickets (including box office sales). Live Nation explained that its sales of controlled tickets had fallen between 2006 and 2008, partly because of the sale of the Hammersmith Apollo venue but also because it had scaled back its promotions activity to focus on its more profitable events.

6.37 Eventim assumed that it would sell [✂] tickets on behalf of clients other than Live Nation in 2010, increasing rapidly to [✂] tickets by 2015 (these are tickets for all events, not just live music). However, Eventim was not able to provide us with any evidence to support these projections. Eventim told us that, due to the LOI being negotiated on a global basis, it had not [✂].

6.38 Based on its projections of ticket sales, as shown in Table 4, and estimated start-up costs of around £ [✂] million, Eventim projected a positive free cash flow of £ [✂] million in 2010, rising to £ [✂] million in 2015, with a payback period of around 18 months. We noted that most of Eventim's income in the early years of its entry into the UK was projected to come from the system fee payable by Live Nation—ie the £[✂] per ticket payable for all Live Nation-controlled tickets sold by Live Nation and its other retail channels (see paragraphs 6.10 and 6.20). We noted that, according to Eventim's projections, its entry into the UK would be profitable on the basis of this income alone.

6.39 Very shortly before the publication of our provisional findings, we received more detailed projections from Eventim, made at the time of the negotiation of the LOI. Our subsequent analysis of this information showed that the net prices which Eventim anticipated charging in the UK, both for Live Nation's controlled tickets and for other parties, were very high in comparison with existing rates. In particular, we found that the level of rebate which it expected to pay promoters and venue operators was low compared with existing market rates, and the amount of the per-order transaction fee which it expected to be able to charge was high. Although Eventim showed us the evidence on which it had based some of its assumptions (eg the average service fee charged by Ticketmaster for sales of Live Nation's tickets), it was unable to provide supporting documentation for its other assumptions. We concluded that, due to the inaccuracy of Eventim's assumptions about the prices it would charge in the UK, we could not put much weight on Eventim's forecasts for the volumes it expected to achieve.

### *Effect of Eventim's entry on the UK market for the primary retailing of live music tickets*

6.40 We found that, in the absence of the merger, Eventim would have entered the UK, offering both managed ticketing services (as under the LOI for Live Nation) and primary ticket retailing. However, assessing the effect of Eventim's entry was not

easy, as it depended both on the success of Eventim's offering and the response to Eventim's entry from the incumbent retailers of live music tickets.

*Live Nation's views*

6.41 Live Nation submitted that Eventim's entry into the UK market for the primary retailing of live music tickets would not have had a material impact on the extent of competition. Live Nation told us that, if there were barriers restricting the entry and expansion of other competitors (which it disputed), these same barriers would have constrained Eventim.[40] Live Nation submitted that:

*(a)* Whilst Eventim might have a high profile in Continental Europe, it was not a recognized brand in the UK.

*(b)* Eventim would not, upon entry, have its own database of UK customers (and Live Nation was not obliged by the LOI to provide Eventim with access to its customer database).

*(c)* The terms of the LOI would give Eventim access to tickets for a limited portfolio of events (ie just Live Nation's promoted events or events in Live Nation's venues), which would not assist Eventim significantly, either in building a base of live music consumers or in attracting further allocations of tickets from other promoters and venue operators.

6.42 For these reasons, Live Nation told us that, in the absence of the merger, it had not anticipated selling many tickets through Eventim's website (and call centre) and most of its tickets not sold through Live Nation's own website (and call centre) would be sold by other ticket agents, including Ticketmaster. Live Nation added that, although Eventim was guaranteed a minimum allocation of Live Nation's controlled tickets under the LOI, if Eventim struggled to sell these tickets, they would be reallocated promptly to other ticket agents, as per usual UK market practice (see paragraph 2.17).

6.43 Live Nation submitted that, given the volume of tickets which Eventim was likely to sell on behalf of Live Nation, the agreement between Live Nation and Eventim was not critical to Eventim's success in the UK.

6.44 Live Nation added that Eventim's ticketing system did not offer any significant new technological capabilities suitable for the UK, and Eventim's entry into the UK was unlikely to have any significant impact on the rate of innovation in the market. Furthermore, Live Nation said that, although Eventim's system might be established and proven in other countries, this system could not be imported successfully without modification into the UK. [✂]

*Opportunities in the market*

6.45 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 5.52). 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 overcome the significant barriers to large-scale entry and expansion in the market (see paragraphs 5.45 to 5.49).

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[40]See paragraphs 93 to 109 of Appendix E for a discussion of barriers to entry and expansion.

6.46 We considered whether the market was a 'natural duopoly', ie whether there was only room in the market for two large suppliers. However, we did not receive any evidence to support this hypothesis and we noted that in some European markets there were at least three large suppliers.

6.47 Eventim told us that it had studied the opportunities in the UK for a long time and believed it to be an attractive geographic market to enter, due to the number of tickets sold in the UK and the profitability of the incumbent ticket retailers. Eventim said that it had sought previously to enter the market through acquisition but it had not been successful.

6.48 Ticketmaster also told us that a high proportion of live music ticketing agreements between promoters and/or venues and ticket agents were due to expire within the next few years, [✂]. Ticketmaster said that the renewal of these contracts would provide many opportunities for new entrants to contest ticketing inventory. Ticketmaster added that many promoters and venues worked with ticket agents without contractual agreements so a large volume of tickets were always contestable.

*Partnership with Live Nation*

6.49 In our provisional findings, we said that, in the absence of the merger, Live Nation and Eventim had the incentive to work together on a global basis as long-term partners. In our provisional findings, we recognized the financial incentive for Live Nation to sell through Eventim, in preference to any other ticket agent whatever tickets it could not sell itself (see Table 3 and paragraph 6.29), and we concluded that Live Nation had an incentive to assist Eventim in becoming successful, so that Eventim would become an effective retailer of its tickets in the UK. We noted that this assistance could take many forms, for example, placing Eventim's website details on the promotional material for Live Nation's events or sharing its customer data with Eventim, but we did not conclude precisely how it would occur.

6.50 Following our provisional findings, Live Nation provided us with documentation from the time when the LOI was being negotiated with Eventim, which demonstrated that its intention was to sell as many tickets as possible itself (see paragraphs 6.28 to 6.30). Furthermore, Live Nation showed us that it had no intention of supporting Eventim's own sales efforts, whether through marketing or the provision of customer data. Live Nation told us that the LOI was negotiated specifically to exclude the sharing of Live Nation's customer data and, intentionally, did not include any requirement for Live Nation to support Eventim's marketing efforts. We noted that, under the LOI, Live Nation was required to include the reference 'powered by Eventim', incorporating the Eventim logo (in a size to be determined), on its website, but we did not believe that this requirement would provide Eventim with any material marketing support for its own sales efforts. Live Nation submitted that, given its intention to sell as many tickets as possible through its own website (and call centre), any support which it offered to Eventim would reduce its own sales, and so be contrary to its own commercial interests. We did not see any evidence from Eventim which challenged or contradicted Live Nation's submissions in this regard.

6.51 We concluded from this evidence that, notwithstanding Live Nation's financial incentive to sell through Eventim in preference to any other ticket agent, Live Nation would not have assisted Eventim's retail efforts beyond its obligations in the LOI. We accepted that, if Live Nation were faced with a choice between two equally successful ticket agents, it would choose Eventim on the basis of a greater rebate (see Table 3), but we concluded that this financial incentive alone was not sufficient for Live Nation to incur significant costs in assisting Eventim to become a successful retailer of live music tickets in the UK. We concluded that, if Eventim were to become

successful as a ticket retailer, for Live Nation or for other parties, it would be on the basis of its own efforts.

*Eventim as a distinctive new entrant*

6.52 We noted that Eventim is a large, multinational provider of primary ticketing services, with a proven technological solution and substantial expertise which it has built over many years. Eventim is the second-largest ticket agent in the world (after Ticketmaster) and operates on a completely different scale from the smaller operators which have tried to compete against Ticketmaster and See Tickets in the UK. Eventim also told us that it only entered markets where it believed it could become one of the largest ticketing providers (supplying both managed ticketing services and ticket retailing) within a reasonable period, which it was able to evidence from its history in other Western European markets.

6.53 Eventim told us that its website would offer greater functionality than the websites of most other ticket agents operating in the UK and it would win customers in the UK by investing significantly in marketing its website and by utilizing search engine optimization, with which it had proven success. Following our provisional findings, Eventim also provided us with evidence showing its ability to generate ticket sales, both for Live Nation and for other events, in European markets where the LOI had already been implemented (see paragraph 6.61).

6.54 We recognized that there might be some challenges for Eventim in entering the UK, in particular in modifying its system, but we noted that Eventim had overcome these challenges in other geographic markets and that many of the technical problems it was currently experiencing in the UK were likely to stem from the uncertainty on both sides due to the proposed merger. We observed that Eventim was not like any other recent new supplier of live music ticketing in the UK, most of which did not have their own proprietary ticketing system or significant prior experience of retailing live music tickets, and many of which were very small (see paragraph 5.50).

6.55 Eventim told us that its agreement with Live Nation was sufficient to give it a foothold in the UK, from which, over time, it would build a significant position. Eventim said that its partnership with Live Nation was critical to its decision to enter the UK as it offered Eventim the opportunity to gain a secure revenue stream from the supply of a managed system over which Live Nation, and other retail channels of Live Nation's choice, could sell Live Nation's tickets (for which Eventim received £[✂] per ticket), and it offered Eventim access to significant ticket inventory from Live Nation which Eventim could offer for sale to consumers. Eventim told us that, due to this access to Live Nation's tickets, Eventim would be able to attract consumers to its website and, as a result, be able to attract further ticket inventory from other promoters and venues (and organizers of non-live music events).[41]

6.56 We accepted that Eventim would have decided to enter the UK only if it believed that it could be successful and if it had the intention of becoming so. We also accepted that the LOI with Live Nation was critical to Eventim's decision to enter the UK, as it provided Eventim with both a substantial revenue stream and significant ticket inventory for sale. Eventim told us that it had studied the opportunities in the UK for many years previously but, in the absence of an acquisition opportunity or a partnership with a significant source of tickets, it had decided not to enter.

[41]Eventim described this process of growth as a 'virtuous circle'.

6.57 Following our provisional findings, Eventim provided us with internal board minutes and presentations from the time when the LOI was being negotiated, which supported its stated rationale for entering the UK (see paragraph 6.55). However, we noted that these documents indicated that the focus of its decision to enter was on the provision of a managed ticketing service to Live Nation, which would earn Eventim £[✂] for every Live Nation-controlled ticket sold (except for sales made in-person at the box office). We found that this part of the LOI would provide Eventim with a secure revenue stream and, on its own, offered a profitable entry opportunity (see paragraph 6.38).

6.58 Eventim told us that, in addition, it had insisted on a minimum allocation of tickets from Live Nation for sale through Eventim's own website (and call centre) and, in particular, it had insisted that these tickets should cover the majority of Live Nation's events ([✂] per cent). Live Nation told us that it had not wanted to accept this obligation, given its intent to sell as many tickets as possible through its own website (and call centre) (see paragraph 6.50), but it had done so at Eventim's insistence and as part of the negotiation of a global deal, in which the terms in the USA comprised the most important part.

6.59 Nevertheless, we found that there were barriers to large-scale entry and expansion in the UK market for the primary retailing of live music tickets (see paragraphs 5.45 to 5.49), so although the LOI with Live Nation assured Eventim of a minimum allocation of tickets, we concluded that this agreement was not sufficient to ensure Eventim's success as a retailer of live music tickets in the UK.

6.60 We concluded that, although Eventim's intention was clearly to offer both ticketing services and the retailing of tickets in the UK, its entry decision was focused on the provision to Live Nation of a managed ticketing service on terms which assured Eventim of a profitable entry opportunity. The evidence suggested that, although it was important to Eventim to be able to offer for sale tickets to Live Nation's events, its success in the live music ticket retailing market would depend on many other factors, including its willingness to invest in developing its UK brand in order to attract consumers. We concluded that, although the LOI with Live Nation gave Eventim a starting point, in order to grow and become successful in the UK market for the primary retailing of live music tickets, it would need to attract consumers, demonstrate an ability to sell tickets, and gain substantial further allocations of tickets from Live Nation or other promoters.

### *Eventim's success under the LOI in other geographic markets*

6.61 Following our provisional findings, Eventim provided us with its sales figures, showing how it had been able to enter or increase its presence in other European markets on the basis of the LOI with Live Nation. For example, Eventim told us that, in the Netherlands, in the first 10.5 months of establishing a new retail presence, it had managed to sell about [✂] of Live Nation's controlled tickets. Eventim added that, on the basis of its services to Live Nation, both as a ticketing services provider and as a ticket agent, it had won contracts to sell about [✂] tickets for other parties off its system (compared with [✂] tickets sold off its system for Live Nation). Eventim said that this success demonstrated its ability to succeed under similar circumstances in the UK. Eventim also told us that in Sweden, where it had not operated previously, it had sold [✂ tickets during the first 10.5 months of 2009, of

which [✂] per cent were Live Nation tickets[42] and [✂] per cent were tickets for other clients. However, Eventim told us that Live Nation's Swedish business [✂].[43]

6.62 We found that it was difficult to draw many conclusions from Eventim's experience in other European countries for several reasons. First, we noted that there were significant differences between how the UK ticket retailing market operates and how the markets in the Netherlands and Sweden operate. In the UK, promoters allocated tickets to a number of different ticket retailers, but in the Netherlands and Sweden tickets were sold off a single system. Second, we noted that the terms of the LOI differed between the UK and other European countries. In the UK, Live Nation had a greater financial incentive under the LOI to sell its tickets through its own website, in comparison with sales through Eventim's website; whereas, in the Netherlands and Sweden, the financial incentives were the same. Third, we noted that the significance of Live Nation as a promoter and venue operator differed in each geographic market.

6.63 Nevertheless, we noted that this evidence from Eventim supported our previous observation that Eventim was a distinctive new entrant which could be expected to succeed in circumstances where other new entrants might struggle.

*Eventim's future market share*

6.64 In our provisional findings we sought to estimate the market share which, in the absence of the merger, Eventim was likely to have been able to achieve in the UK market for the primary retailing of live music tickets. At the time, we recognized that there were many uncertainties associated with this analysis but, in order to assess how the merger might affect the degree to which Eventim might pose a competitive constraint, we decided that it was necessary to form a view on Eventim's likely success both in the absence of the merger and if the merger were to proceed.

6.65 Following our provisional findings, we decided that forming a precise view of Eventim's likely success in both the absence of the merger and if the merger were to proceed was not necessary. Rather, we decided that, in order to assess the effect of the merger, it was necessary only to focus on the difference made by the merger to Eventim's likely success in the market (we consider this effect in Section 7).

### *Conclusions on the counterfactual*

6.66 We concluded that the LOI with Live Nation provided Eventim with a way to enter the UK with a secure revenue stream from the provision to Live Nation of a managed ticketing service, which would cover its fixed costs and entry costs in the near future, and with access to a guaranteed minimum volume of tickets from Live Nation for sale. From this foothold, we expected that Eventim would offer similar services to other live music promoters and venue operators (and organizers and venues for other events) in order to grow.

6.67 We found that the extent of Eventim's success in the UK as a retailer of live music tickets would be dependent on its ability to generate sales to consumers and gain further live music ticket allocations, as well as on its ability to gain contracts to provide managed ticketing services to other venues and promoters. We concluded that, although its agreement with Live Nation was critical to its decision to enter the UK, Eventim's success as a retailer of live music tickets was likely to be largely

[42]In the Swedish case, about [✂] of tickets were sold via the Live Nation website and the remainder via the Eventim website.
[43]The LOI also started in 2009 in Finland, Hungary and Poland but, in these countries, Eventim was already either the largest or second largest ticket retailer.

dependent on its own abilities rather than on any support from Live Nation beyond the requirements of the LOI.

6.68 We did not form a view on how successful Eventim was likely to be in the UK market for the primary retailing of live music tickets in the absence of the merger but, rather, we focused on the extent to which the merger affected Eventim's success and, thereby, the degree to which the merger affected the level of competition in the market, which we discuss in Section 7.

## 7. Competitive effects of the merger in the market for the primary retailing of tickets for live music events

### *Horizontal effects of the merger*[44]

7.1 The merger of Ticketmaster and Live Nation could be expected to remove, or at least reduce the significance of, Live Nation as a retailer of live music tickets. We considered the effect of this change on competition.

7.2 Given Live Nation's hierarchy of incentives (see Table 3) and its stated intention to sell tickets through its own website (and call centre) (see paragraph 6.30), we judged that it was likely that at least half of Live Nation's controlled tickets would be sold by Live Nation, using the Eventim system (see paragraph 6.32). We noted that Live Nation had been able to sell tickets successfully in the USA (see paragraph 6.30) and in some of the European markets in which the LOI had already been implemented, and we observed that most self-ticketing venues in the UK were able to sell most of the tickets in their control (see paragraph 5.34).

7.3 Given that Live Nation controls about [✂] per cent of all the live music tickets in the UK (not including tickets controlled by its subsidiaries which were excluded from the LOI), the implication of Live Nation selling at least half of its own tickets would be for it to capture at least [✂] per cent of the market for the primary retailing of live music tickets.

7.4 Following our provisional findings, Eventim submitted to us that the merger would have substantial horizontal effects arising from the loss of competition between Live Nation and Ticketmaster in the primary retailing of live music tickets. Eventim noted that most of the events promoted by Live Nation took place in non-Live Nation venues, many of which were ticketed by Ticketmaster, and many of the events in Live Nation's venues were promoted by promoters which used Ticketmaster. Eventim submitted that, therefore, in the absence of the merger, for any event either promoted by Live Nation or hosted by a Live Nation venue, consumers had a choice between purchasing their ticket from Live Nation or Ticketmaster (and, possibly, other ticket agents). Eventim submitted that, were the merger to proceed, this choice would disappear.

7.5 We recognized that, in the absence of the merger, Live Nation and Ticketmaster would compete to reach potential consumers for tickets to certain events, ie events promoted by Live Nation's wholly-owned live music business (these events are responsible for about [✂] per cent of the total number of live music tickets) and other events at Live Nation's venues (responsible for about [✂] per cent of the total number of live music tickets). We accepted that rivalry between Live Nation and Ticketmaster could result in more consumers being reached and more tickets being

[44]We use the term 'horizontal' to refer to activities in the same market. We use the term 'vertical' to refer to activities in different markets but within the same supply chain.

sold for these events than if there was no such competition between them. However, we found that these benefits of competition between Live Nation and Ticketmaster would accrue principally to the promoters of the events concerned, ie, in most cases, Live Nation (see paragraph 6.26). We found that it was unlikely that competition between Live Nation and Ticketmaster over tickets for a limited range of events would result in any significant benefits for consumers or other industry participants. In other words, we found that, although the merger might result in a loss of competition between Live Nation and Ticketmaster for some events, as Live Nation would be the promoter for the majority of the events affected, the merger was unlikely to have any significant detrimental effect on consumers or on any other party.

7.6 We also noted that competition in the market for the primary retailing of live music tickets occurs through ticket agents competing with each other to supply services to promoters and venues, as well as through competition to sell tickets to consumers (see paragraphs 5.11 to 5.12). However, [✂]. We concluded that this restriction would limit significantly Live Nation's overall impact on competition in this market.

7.7 We concluded that the merger was unlikely to lead to a substantial lessening of competition in the market for the primary retailing of live music tickets due to the loss of Live Nation as a ticketing retailer.

7.8 Apart from Live Nation's presence in the market as a supplier of live music tickets, Live Nation and Ticketmaster do not both operate in any other markets. Therefore, we found that there were no other horizontal effects of the merger.

### *Vertical effects of the merger*[45]

7.9 As Live Nation and Ticketmaster are active at different levels of the supply chain (see paragraph 3.5 and Figure 5), the merger has the potential to give rise to vertical effects. In particular, the merged entity may have the ability to use Ticketmaster's position in the market for the primary retailing of live music tickets to harm Live Nation's competitors in the markets for live music promotion or live music venues (we consider this possibility in Section 8). Alternatively, the merged entity may have the ability to use Live Nation's position in the markets for live music promotion and/or live music venues to harm Ticketmaster's competitors in the market for the primary retailing of live music tickets (we consider this possibility in this section). In both cases, the harm to the merged entity's competitors could be achieved by refusing either to use the competitors' services or to allow competitors access to the merged entity's services (total foreclosure), or by limiting the amount of trade with competitors, or worsening the terms of trade (partial foreclosure).

7.10 In order for the merged entity to foreclose its competitors, either partially or totally, it must have the ability and incentive to do so. For each possible method of foreclosure we assessed these two criteria. Where we found that the merged entity might have both the ability and the incentive to foreclose its competitors, we then assessed the effect on competition of this foreclosure by comparing it with the counterfactual.

### *Efficiencies*

7.11 We noted that the merger could give rise to efficiencies, which could result in the merged entity having the ability to compete more effectively against its competitors. Such efficiencies would represent a positive effect of the merger, possibly benefiting

[45]See previous footnote.

consumers, even if they had a negative effect on the merged entity's competitors, and should be distinguished from the adverse effects on competition caused by foreclosure.

7.12 Following our provisional findings, Live Nation and Ticketmaster submitted to us that the merger would give rise to efficiencies in the UK market for the primary retailing of live music tickets. However, we found that the features of live music ticketing in the UK, including the split of tickets between promoters and venues and the allocation of promoters' tickets to a number of ticket agents, were unlikely to change. Also, we were not persuaded that any of the efficiencies cited by Live Nation and Ticketmaster could not also be achieved through the efficient working of long-term contracts. We recognized that the merger aligned some of the incentives of Live Nation and Ticketmaster which were not aligned during their ten-year agreement, but we were not convinced that, in the absence of the merger, Live Nation's incentives could not have become aligned with those of Eventim under its new ten-year agreement. Rather, we noted that part of Live Nation's rationale for changing the supplier of its ticketing services was to achieve this alignment, both in the USA and elsewhere in the world (see paragraph 3.3).

### *Effects on other ticket agents due to Live Nation's position in the markets for live music promotion and live music venues*

7.13 The CC's guidelines state that 'generally, a vertical merger will only raise competition concerns when the firms involved are able to exercise a substantial level of market power in one or more markets along the supply chain'.[46] We recognized that, in this case, we did not find evidence that Live Nation had substantial market power either as a promoter or as a venue operator and, therefore, on the basis of our guidance, it might appear unlikely that the merged entity would have the ability and incentive to foreclose any other ticket agent. However, we noted that there were aspects of this case which, in some ways, made foreclosure more possible, in particular the potential to foreclose a new entrant, Eventim.

7.14 Both as a promoter of live music events and as an operator of venues which host live music events, Live Nation controls a large number of live music tickets (see Table 2). The merged entity could use Live Nation's position in the markets for live music promotion and live music venues to foreclose competing ticket agents by ceasing to supply (or reducing the extent to which it supplies) these ticket agents with its tickets. The merged entity would have the incentive to do so if the lost profits from reduced ticket sales for the events it promotes and hosts in its venues were outweighed by the additional profits in its ticketing business.

7.15 We first considered the potential for the merged entity to foreclose Eventim because of Eventim's unique position as a significant new entrant, due to its agreement with Live Nation. We then considered the potential for the merged entity to foreclose other competing ticket agents.

### *Foreclosure of Eventim*

7.16 Following the announcement of the proposed merger, both Live Nation and Eventim stated publicly that they were committed to honouring their obligations under the LOI. We also noted that the terms of the LOI were binding (see paragraph 6.8).

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[46] *CC2*, paragraph 3.64.

7.17 We noted that, under the LOI, Eventim was guaranteed a fee of £[✂] per ticket for each Live Nation-controlled ticket sold on the Internet or by telephone by Live Nation or any retail channel other than Eventim. Due to the LOI, we found that there was little scope for Live Nation to frustrate Eventim's profitable entry into the UK (see paragraph 6.38). Nevertheless, we noted that the LOI with Live Nation was critical to Eventim's decision to enter the UK (see paragraph 6.56). Therefore, we considered to what extent the merged entity would have the ability and incentive to foreclose Eventim in the market for the primary retailing of live music tickets, and we sought to assess the effect on competition in this market if it did so.

7.18 We found that there were four ways in which the merged entity might be able to foreclose Eventim, ie by:

*(a)* limiting the total number of Live Nation-controlled tickets (see definition in paragraph 6.16), so reducing the number of tickets allocated to Eventim under the LOI (see paragraph 6.11);

*(b)* limiting Eventim's allocation of Live Nation-controlled tickets for sale;

*(c)* inhibiting Eventim's growth in other ways; and

*(d)* limiting Eventim's revenues from Live Nation.

We considered each possible method of foreclosure in turn.

### *Limiting the total number of Live Nation-controlled tickets*

*Ability*

7.19 We found three ways in which Live Nation might be able to limit the number of its controlled tickets by:

*(a)* transferring tickets from its venues to the promoters using its venues (assuming that Live Nation is not the promoter);

*(b)* transferring tickets from its promotions business to the venues it uses (assuming that they are not Live Nation venues); and

*(c)* increasing the proportion of in-person sales at venue box offices, for which Live Nation will not usually pay a fee to Eventim.

We considered each method of limiting Live Nation's controlled tickets in turn.

7.20 We found that, respectively:

*(a)* Live Nation would have the ability to limit its number of controlled tickets as a venue operator, as the venue determines what proportion of tickets it retains (see paragraph 2.12), and there would be nothing stopping Live Nation from reducing this proportion for all its venues (and, possibly, increasing its rental charges a corresponding amount so that both Live Nation and the promoters using its venues are financially neutral); however,

*(b)* it would be difficult for Live Nation to limit its ticket allocation as a promoter as most venues retain a set proportion of tickets, leaving the promoter with the remaining proportion of tickets (see paragraph 2.9), and this proportion is not usually negotiated with individual promoters; and

*(c)* it would be very difficult for Live Nation to influence the proportion of consumers purchasing tickets in-person from the venue.

7.21 Eventim told us that, under the wording of the LOI, Live Nation was, in principle, able to use a different interpretation of 'controlled tickets' than was intended initially between the parties. Eventim said that, thereby, Live Nation could adjust the number of controlled tickets under the LOI, eg by:

*(a)* applying new interpretations of 'controlled'; or

*(b)* transferring the 'control' of its tickets to other Live Nation-related entities not covered by the LOI.

Eventim told us that, following the announcement of the merger, Live Nation had sought to use both of these strategies in other European markets where the LOI was applicable.

7.22 We concluded that Live Nation would have the ability, to some extent, to limit the total number of tickets in its control, and so reduce the number of tickets allocated to Eventim under the LOI.

*Incentive*

7.23 We found that, if Live Nation transferred tickets from its venues to other promoters, Live Nation would lose its rebate or retail margin from the ticket sale, which would cost Live Nation around £[✂] to £[✂] per ticket, although the extent of this loss would be limited if the promoter sold some of its tickets through Ticketmaster. We calculated that, if about 45 per cent of the tickets surrendered by Live Nation were still sold through Ticketmaster on behalf of the promoter (ie based on our estimate of Ticketmaster's market share—see paragraph 5.27) and if Ticketmaster achieved a gross margin of about £[✂] per ticket (see Appendix E, Table 9), the merged entity could expect to retain about £[✂] per ticket. Under these assumptions, the cost of this strategy would be to leave the merged entity at least £[✂] per ticket worse off. We concluded that the merged entity would incur a significant cost if it transferred tickets from its venues to other promoters.

7.24 We concluded that there was no significant benefit to the merged entity from foreclosure in this way so we concluded that Live Nation had no incentive to limit the number of Live Nation-controlled tickets.

### *Limiting Eventim's allocation of Live Nation controlled tickets for sale*

*Ability*

7.25 We noted that Live Nation's ability to limit Eventim's allocation of its tickets was constrained by the LOI, which specified that Live Nation must allocate to Eventim at least [✂] per cent of the sellable ticket inventory to no less than [✂] per cent of its events in any calendar year. Furthermore, under the LOI, Live Nation was required to use its best efforts to provide Eventim with an even distribution of quality of tickets (eg quality of seats) for each event.

7.26 We considered how Live Nation might limit the allocation of its tickets to Eventim, compared with the counterfactual, while fulfilling its obligations under the LOI.

7.27 First, we estimated Live Nation's sellable ticket inventory, using Live Nation's 2008 numbers for actual tickets sold. We noted that the sellable ticket inventory includes sales through all channels, including in-person sales at the box office. In 2008, Live Nation sold about [✂] of its controlled tickets through the box office and [✂] tickets through all other channels (see Table 2 and paragraph 6.19), giving total sales of [✂] tickets. We also noted that the sellable ticket inventory includes tickets which ultimately remained unsold. In 2008, Live Nation's proportion of unsold tickets in the UK was about [✂] per cent (in the USA, it was about 40 per cent). Using this data, we estimated that Live Nation's sellable ticket inventory in the UK in 2008, relating to all Live Nation's controlled tickets, was [✂] tickets (ie [✂]).

7.28 Second, we considered to which Live Nation events the obligations of the LOI might refer. In this regard, we found that there was scope for Live Nation and Eventim to interpret the minimum requirements under the LOI very differently. We identified two key areas of potential disagreement:

*(a)* The number of events for which Live Nation must allocate tickets to Eventim. Eventim told us that 'Live Nation's events' included both (i) all Live Nation's promoted events (at Live Nation venues and other venues) and (ii) events at Live Nation venues promoted by other promoters. However, Live Nation told us that 'Live Nation's events' included just Live Nation's promoted events (ie those in (i) above). We estimated that excluding all Live Nation-controlled tickets for events at Live Nation's venues promoted by other promoters (ie those in (ii) above) would reduce Live Nation's total sellable inventory by [✂] tickets, to [✂] tickets.

*(b)* The range of events for which Live Nation must allocate tickets to Eventim. Live Nation is obliged under the LOI to allocate to Eventim tickets for [✂] per cent of Live Nation's events, and to use its best efforts to provide Eventim with an even distribution of quality of tickets out of the full sellable ticket inventory for each event. Live Nation told us that the range of events to be included in the '[✂] per cent' was entirely at Live Nation's discretion. We calculated that, if Live Nation chose to focus the allocation of its tickets to Eventim on its smallest events, up to [✂] per cent of its events in total, the volume of tickets allocated to Eventim would fall significantly. We estimated that Live Nation's largest [✂] per cent of events were responsible for [✂] per cent of its sellable ticket inventory. Therefore, if Live Nation chose to allocate to Eventim tickets for just its smallest events, Eventim would receive [✂] per cent of the tickets from, in effect, [✂] per cent of Live Nation's total sellable ticket inventory, ie about [✂] tickets ([✂] per cent of [✂] per cent of [✂] tickets).

7.29 We noted that, taking these two areas of potential dispute together, whereas Eventim could argue that, under the LOI, Live Nation must allocate to Eventim at least [✂] tickets (ie [✂] per cent of [✂] per cent of [✂]), Live Nation might argue that, under the LOI, it is not obliged to allocate to Eventim more than [✂]tickets (ie [✂] per cent of [✂] per cent of [✂]). The difference between these two interpretations is about [✂] tickets a year, or around [✂] per cent of the minimum number of tickets under Eventim's interpretation of the LOI. We also could not be sure that these two issues were the only areas of potential dispute between Live Nation and Eventim with regard to the minimum requirements under the LOI.

7.30 We noted that the different interpretations of the LOI could result in a significant difference in the number of tickets which Live Nation would be obliged to allocate to Eventim. We did not form a view on these different interpretations of the LOI but we noted that they demonstrated some considerable scope for dispute and the possibility, if the merger were to proceed, that Eventim would be allocated relatively few tickets from Live Nation.

7.31 Live Nation told us that, in the absence of the merger, the volume of tickets which it would have allocated to Eventim would have been very small, and would not have been determinative of Eventim's success in the UK (see paragraphs 6.42 to 6.43). Live Nation said that, if the merger were to proceed, the volume of tickets which it would allocate to Eventim would not be significantly different. Furthermore, Live Nation told us that, whatever volume of tickets Live Nation allocated to Eventim initially, these tickets could be reallocated to other ticket agents at any time (see paragraph 6.42). Live Nation, and other promoters, told us that it was accepted industry practice for promoters to reallocate tickets between its ticket agents depending on the effectiveness of each ticket agent in generating sales for a particular event, and we noted that promoters had total discretion in this regard (see paragraph 2.17).

7.32 Notwithstanding Live Nation's submission, we concluded that there was sufficient scope for differing interpretations of the LOI for Live Nation to have the ability to limit, to some extent, Eventim's allocation of Live Nation tickets compared with the counterfactual.

*Incentive*

7.33 We considered whether the merged entity would have the incentive to limit the allocation of Live Nation tickets to Eventim.

7.34 We compared the rebate or retail margin which the merged entity might expect to achieve from sales of Live Nation's tickets through each of its possible retail channels, as shown in Table 6.

TABLE 6 **Live Nation rebate/retail margin for Internet sales**

| | *£ per ticket approximate* | |
|---|---|---|
| *Channel* | *Counterfactual** | *Post-merger** |
| Eventim | [✂] | [✂] |
| Live Nation | [✂] | [✂] |
| Ticketmaster | [✂] | [✂]† |
| Other agents | [✂] | [✂] |

*Source:* CC calculations.

*Under the LOI, Live Nation pays £[✂] per ticket to Eventim for sales through Live Nation and other ticket agents.
†Calculated as Ticketmaster's 2008 gross margin on Live Nation Internet sales, plus the rebate to Live Nation, less £[✂] payment to Eventim. Gross margin reflects fees less variable costs and does not reflect medium- and longer-term costs.

7.35 In the counterfactual (see paragraph 6.29), we found that Live Nation's incentive was to maximize ticket sales but, where possible, to sell primarily through its own website (and call centre), then to sell through Eventim and only then to sell through other ticket agents, including Ticketmaster. Table 6 shows that, if the merger were to proceed, the merged entity would be indifferent between selling through Live Nation or Ticketmaster but would still prefer to sell through Eventim rather than through other ticket agents. The significant change as a result of the merger is that the merged entity would have a significant financial incentive to sell through Ticketmaster rather than Eventim (assuming an equal ability to sell the tickets).

7.36 We recognized that, prior to the merger, Live Nation sold about [✂] per cent of its controlled tickets through other ticket agents (ie not Ticketmaster) in order to maximize ticket sales (see paragraph 6.26). In the same way, post-merger, even if Live Nation increased the percentage of its sales through Ticketmaster (due to a greater financial incentive arising from the merged entity gaining Ticketmaster's profit

from each ticket sale), we expected that some proportion of Live Nation's tickets would be sold through other ticket agents, including Eventim.

7.37 In the absence of the merger, we expected Live Nation to sell at least half of its controlled tickets, and we expected it to continue using its existing ticket agents in order to maximize ticket sales, which would include some proportion through Ticketmaster (see paragraph 6.32). Therefore, the extent to which the merged entity could increase its ticket sales through its own retail channels, compared with the counterfactual, was limited.

7.38 We concluded that the merged entity would have a financial incentive to limit the allocation of Live Nation tickets to Eventim and we expected that, to some extent, it would sell a higher proportion of its tickets through Live Nation and Ticketmaster compared with the counterfactual. However, we found that there were limits to how much the allocation of tickets to Eventim could be reduced (see paragraphs 7.25 to 7.36) and there were also limits to how much the sale of tickets through Live Nation and Ticketmaster could be increased (see paragraph 7.37).

### *Inhibiting Eventim's growth in other ways*

#### *Ability*

7.39 In our provisional findings, we stated our expectation that, in the absence of the merger, Live Nation would work with Eventim as a long-term partner, and it would, where possible, support Eventim to develop as a ticket retailer in the UK. Compared with this counterfactual, we found that Live Nation would be able, in various ways, to inhibit Eventim's growth in the UK.

7.40 Following our provisional findings, Live Nation provided us with documentation from the time when the LOI was being negotiated with Eventim, which demonstrated that, in the absence of the merger, its intention was to sell as many tickets as possible itself, and that it had no intention of supporting Eventim's sales efforts, whether through marketing support or the provision of customer data (see paragraph 6.50). We found that, although Live Nation had a financial incentive to sell tickets through Eventim in preference to any other ticket agent, its focus was on selling tickets through its own website (and call centre) and any support it offered to Eventim would have weakened the penetration of its own retail offering (see paragraph 6.50). Compared with this counterfactual, we found that there was no further way (besides the ways considered above) in which Live Nation was able to inhibit Eventim's growth as a ticket retailer in the UK.

### *Limiting Eventim's revenues from Live Nation*

#### *Ability*

7.41 We considered whether, as a result of the merger, Live Nation would be able to limit the revenues which Eventim was able to earn, affecting Eventim's viability in the market. We noted that, in the long term, Eventim's projections relied on growth in its ticket sales on behalf of other promoters and venues, as well as non-live music events, but, in the short term, its revenues from Live Nation's ticket sales going through the Eventim system were important for the viability of its entry, ensuring that its costs of entry were recovered relatively quickly (see paragraph 6.38).

7.42 At the time of our provisional findings, Live Nation and Eventim held different views about whether Eventim was entitled to a fee of £[✂] per ticket for all Live Nation

tickets sold by other ticket agents (see paragraph 6.20). However, following our provisional findings, Live Nation clarified its position and confirmed that, under the LOI, it is obliged to pay Eventim £[✂] for all its controlled tickets sold off the Eventim system (except for box office sales and sales by Eventim which have different arrangements) and, if Live Nation chose not to put its tickets on the Eventim system and sold them off a different system, it would still pay Eventim £[✂] per ticket sold (see paragraph 6.20).

7.43 We noted that, if the merger were to proceed, Live Nation might choose to put the majority of its controlled tickets on Ticketmaster's system and not on Eventim's system. However, following the clarification from Live Nation of its obligations under the LOI, we expected that Eventim would still receive £[✂] from Live Nation for each controlled ticket sold.

7.44 We concluded that, given Live Nation's obligations under the LOI, there was no way in which Live Nation was able to limit significantly Eventim's revenues compared with the counterfactual.

*Additional incentives for the merged entity to foreclose Eventim if it results in Eventim exiting the market*[47]

7.45 We noted that, if foreclosure by the merged entity induced Eventim to exit the UK (ie to cancel its entry into the UK), the extent of competition in the market would be reduced significantly, compared with the counterfactual. In particular, any ticket allocations which Eventim had managed to gain would become contestable and the competitive pressure on the merged entity (eg from lower prices, better service and/or new innovation) would be removed. Therefore, although we considered this outcome unlikely (see paragraph 7.17), we noted that, if the merged entity's foreclosure of Eventim were to induce Eventim to leave the UK, the benefits to the merged entity from foreclosure would increase substantially.

*Conclusions on Live Nation's ability and incentive to foreclose Eventim*

7.46 We concluded that, if the merger were to proceed, Live Nation would have both the ability and the incentive to limit, to some extent, the number of tickets which it allocated to Eventim, by interpreting its obligations under the LOI as narrowly as possible (see paragraph 7.38). We noted that the merged entity's incentive to foreclose Eventim would be significantly greater if it believed its actions were to lead to Eventim exiting the UK entirely.

*Effects of foreclosure of Eventim on competition in the market*

7.47 Although we found that the ability and incentive for the merged entity to foreclose Eventim was limited, we still considered how, if Eventim were foreclosed, competition in the market for the primary retailing of live music tickets might be affected.

*Effects on Eventim from the merger and foreclosure by the merged entity*

7.48 We considered both the positive and negative effects on Eventim which might arise as a result of the merger and the foreclosure of Eventim by the merged entity.

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[47]The term 'exiting the market' is used here and elsewhere in this report for simplicity but, in the context of Eventim's response to the merger (see paragraph 7.52), it would be more accurate to say 'abandoning its process of entry into the market'.

- *Possible positive effects of the merger for Eventim*

7.49 We recognized that, while Eventim might be disadvantaged as a result of the merger (see paragraphs 7.51 to 7.58), the merger could create opportunities for Eventim. Some promoters and venue operators expressed to us considerable concern about allocating their tickets to Ticketmaster if it were merged with one of their principal competitors, ie Live Nation. For example, AEG told us that it would have serious concerns about remaining with Ticketmaster and was in the process of considering its ticketing options. [✂]

7.50 We concluded that, if the merger were to proceed, Eventim could receive more tickets from promoters and venues which were previously clients of Ticketmaster. However, we believed that Eventim would only win significant new ticket allocations from these switching clients if it was able to demonstrate to them an ability to sell tickets. Given Eventim's position as a new entrant in the market, without an established brand or a customer base, we believed it was likely that the incumbent ticket agents in the market, in particular See Tickets, would be the principal beneficiaries of promoters and venue operators switching away from Ticketmaster.

- *Possible negative effects of the merger for Eventim*

7.51 Eventim told us that, if Live Nation were to limit the number of tickets it allocated to Eventim, the effect would be to limit Eventim's ability to attract consumers and, as a result, to limit Eventim's ability to gain ticket allocations from other promoters and venues (see paragraphs 5.39 and 6.55).

7.52 Eventim told us that, if the merger went ahead, it did not believe that it could become profitable in the UK for a considerable period and, subject to negotiations with Live Nation with regard to the LOI, it was prepared to cancel its entry into the UK. Due to this uncertainty, and pending the outcomes of both our inquiry and the DoJ's investigation, Eventim said that, essentially, it had put its process of entering the UK on hold. Eventim told us that, although it had made some investment in the UK in order to fulfil its obligations under the LOI with Live Nation, it had limited the extent of this investment. Eventim added that, against the background of the prospective merger, it had held discussions with other promoters and venues, and other sources of tickets for non-live music events, but it had been keen to ensure that it did not make any long-term commitments at this stage, while the viability of its entry into the UK was uncertain. We noted that Eventim had hired several personnel in the UK, not just to deliver its obligations under the LOI but also to seek to win other business. Eventim said that its actions in the UK so far were within the context of ensuring that it could withdraw from the UK quickly and easily without incurring much further cost.

7.53 AEG told us that the volume of tickets Live Nation allocated to Eventim made a difference to Eventim's ability to sell tickets and its ability to win allocations of tickets from other promoters and venues.

7.54 However, Live Nation told us that the difference in the volume of tickets which Eventim would have received from Live Nation in the absence of the merger compared with the volume of tickets which Eventim would have received from Live Nation if the merger were to proceed was immaterial. Live Nation said that Eventim might have made the decision to enter on the basis of the LOI but, whether the merger proceeded or not, Eventim's success as a retailer of live music tickets in the UK depended on its ability to sell tickets.

7.55 Live Nation also pointed to the example of Gigantic, which had been able to gain access to tickets for a wide range of events, without having a significant sponsor

guaranteeing access to tickets (see paragraph 5.43). Promoters supported this evidence by telling us that, if a new ticket agent offered its services, they would allocate the agent a small volume of tickets and, if the agent were successful in selling the tickets, they would allocate more (see paragraph 5.42).

7.56 We found that there were significant barriers to large-scale entry and expansion in the UK market for the primary retailing of live music tickets (see paragraphs 5.48 to 5.49) and we found that these barriers had allowed the large incumbent providers, in particular Ticketmaster and, to some extent, See Tickets, to face a limited competitive constraint from other ticket retailers for some time (see paragraphs 5.51 to 5.52). However, following the responses we received to our provisional findings, we did not believe that gaining access to tickets to sell was one of these barriers (see paragraph 5.44). We found that gaining access to a small volume of tickets across a wide range of events was possible, even if gaining access to a large volume of tickets across a wide range of events was much harder. We found that the principal barrier to becoming a large-scale retailer of live music tickets was the need to invest significantly in marketing and a brand in order to attract consumers (see paragraph 5.48).

7.57 In our provisional findings we said that the effect on Eventim of gaining access to fewer tickets from Live Nation as a result of the merger could be significant, partly due to lower revenues from selling fewer Live Nation tickets but, more importantly, due to being able to attract fewer consumers and so being able to gain access to fewer tickets from other promoters and venue operators. Given our revised view that gaining access to a small volume of tickets for a wide range of events was not a significant barrier to entry (see paragraph 5.44), we concluded that gaining fewer tickets from Live Nation, compared with the counterfactual, would not have this magnifying effect upon Eventim's entry into the UK live music ticket retailing market.

7.58 We recognized that the merger would change significantly the relationship between Live Nation and Eventim as, in the counterfactual, Eventim would be Live Nation's global ticketing partner and, if the merger were to proceed, the merged entity and Eventim would become direct competitors. We recognized that, following the merger, Live Nation would have the incentive to frustrate Eventim's position in the UK as much as possible, so long as it did not damage its own business. However, we found that the extent to which Live Nation could, in practice, affect Eventim's position in the UK market for the primary retailing of live music tickets was limited. We found that Live Nation was constrained by contractual commitments in the LOI, which meant that Eventim was guaranteed a revenue stream from Live Nation for each Live Nation ticket sold, and it was guaranteed access to a minimum volume of tickets across a minimum range of Live Nation's events. We did not believe that Live Nation had much scope to reduce the fee payable to Eventim as a systems provider and, though we accepted that there was some scope for Live Nation to limit the number of tickets it allocated to Eventim (see paragraph 7.38), we found that this action would not have much effect on Eventim's ability either to attract consumers or to attract further ticket allocations from other promoters and venue operators (see paragraph 7.57). Furthermore, Live Nation's evidence submitted to us following our provisional findings indicated that, whether the merger proceeded or not, Live Nation would not have supported Eventim's entry into the UK as a live music ticket retailer (eg through marketing support, sharing of customer data, etc (see paragraph 6.50)), so any success which Eventim had in selling Live Nation's tickets, or tickets for any other party, would have been largely the result of its own actions. For these reasons, we concluded that Eventim's success in the UK market for the primary retailing of live music tickets might be affected adversely by the merger to some extent, but the effect was not likely to be significant.

*Conclusion on the foreclosure of Eventim*

7.59 We found that, if the merger were to proceed and given the change in incentives which would result, it was likely that Live Nation would seek to limit its use of Eventim's services as much as possible and to use Ticketmaster's alternative services instead. However, we concluded that the extent to which it could do so was limited, in particular because it was constrained by its existing obligations in the LOI. We found that Live Nation could, to some extent, limit the volume of tickets it allocated to Eventim but we found that this action was not likely to affect significantly Eventim's ability to attract consumers or to gain access to tickets from other promoters and venue operators. We found that Eventim's success in the live music ticket retailing market depended more on Eventim's own efforts than on access to tickets from Live Nation.

7.60 We concluded that the merger was unlikely to have a significant effect on the prospects for Eventim succeeding as a primary retailer of live music tickets in the UK. We found that, due to both the pre-existing LOI, which provided Eventim with a secure revenue stream and a minimum allocation of tickets, and the way in which, in the UK, tickets can be allocated and reallocated easily, the merger made a limited difference to Eventim's ability to compete as a retailer of live music tickets in the UK.

### *Foreclosure of other competing ticket agents*

7.61 We also considered whether the merged entity had the ability and incentive to foreclose (either totally or partially) other competing ticket agents which were already active in the UK (eg See Tickets, Stargreen and Ticketline), and what the effect of such foreclosure would be on competition in the relevant market. We noted that we did not have evidence that Live Nation had substantial market power as a promoter or venue operator and that, in such circumstances, foreclosure was unlikely (see paragraph 7.13) but we were concerned that some of the special circumstances which made this case different from a general case of vertical foreclosure could apply equally to the foreclosure of other existing ticket agents as to the foreclosure of Eventim.

*Ability*

7.62 The merged entity would be able to foreclose competing ticket agents if it could stop selling (ie totally foreclose), or limit the degree to which it sells (ie partially foreclose), tickets through other ticket agents. We considered whether the merged entity would have this ability, and we also considered how such foreclosure might affect the competitiveness of the competing ticket agents.

*Ability to stop or limit sales through other ticket agents*

7.63 We noted that the ability of the merged entity to stop or limit sales through other ticket agents depended, in part, on Live Nation's contractual obligations with other ticket agents. Live Nation told us that, besides the LOI with Eventim, it had few contractual commitments to other ticket agents. Live Nation said that its only existing long-term preferred ticketing relationship was with Ticketmaster (see paragraph 2.16). We found that, for its general allocation of tickets to other ticket agents, Live Nation could reduce or cease using any particular ticket agent at any time.

7.64 We considered whether the ability of the merged entity to foreclose competing ticket agents depended on the merged entity's ability to sell sufficient tickets for its events without using these other ticket agents. We found that, although, pre-merger, Live

Nation had an incentive to use Ticketmaster to sell as many of its controlled tickets as possible, Live Nation still sold approximately [✂] per cent of its tickets through other ticket agents, suggesting that this practice was necessary in order to maximize ticket sales for its events (see paragraph 6.26). We concluded that the extent to which sales for Live Nation's events reduced as a result of ceasing to allocate tickets to a competing ticket agent could be considered as a cost of foreclosure (see the discussion of incentives in paragraphs 7.87 to 7.104), and did not affect the ability of the merged entity to foreclose other ticket agents.

7.65 We concluded that Live Nation had the ability to stop or limit the allocation of its tickets to other ticket agents.

*Ability to affect the competitiveness of other ticket agents*

7.66 We considered whether a reduction in the number of tickets allocated from Live Nation to other ticket agents would harm the other ticket agents' ability to compete with the merged entity. We first considered the effect of the loss of Live Nation tickets compared with the situation prior to the LOI, before considering the effect compared with the counterfactual.

- *Comparison with the situation prior to the LOI*

7.67 We assessed what effect the loss of tickets from Live Nation would have on the ten largest ticket agents (excluding Ticketmaster) operating in the UK.

7.68 In 2008, Live Nation controlled approximately [✂] tickets for live music events, of which around [✂] tickets were sold through the box office (see paragraph 6.19). We noted that Live Nation also had significant influence over tickets controlled by its subsidiaries, in particular Live Nation-Gaiety and its subsidiaries, but we found that Live Nation could not exercise control over these tickets (see paragraphs 6.22 to 6.24).

7.69 In 2008, approximately [✂] per cent of Live Nation's controlled tickets were sold by Ticketmaster (including sales which came through Live Nation's own websites). Almost all of Live Nation's tickets as a venue operator (about [✂] per cent) and most of its tickets as a promoter (about [✂] per cent) were sold through Ticketmaster. The total volume of Live Nation-controlled tickets sold through other ticket agents in 2008 was about [✂] tickets (representing about [✂] per cent of Live Nation's total controlled tickets). Of these sales, about [✂] tickets ([✂] per cent) were sold by See Tickets and about [✂] tickets were sold by Ticketline ([✂] per cent), with the remaining tickets ([✂] per cent) sold by the other ticket agents in the market, as shown in Table 8.

TABLE 8 **Allocations of Live Nation controlled tickets to other ticket agents**

| | *Number of tickets sold ('000 tickets)* | | |
|---|---|---|---|
| | *2006* | *2007* | *2008* |
| Bristol Ticket Shop | [✂] | [✂] | [✂] |
| Gigantic | [✂] | [✂] | [✂] |
| lastminute.com | [✂] | [✂] | [✂] |
| Seatem | [✂] | [✂] | [✂] |
| See Tickets | [✂] | [✂] | [✂] |
| Stargreen | [✂] | [✂] | [✂] |
| Ticketfactory | [✂] | [✂] | [✂] |
| Ticketline | [✂] | [✂] | [✂] |
| Ticketsoup (SECC) | [✂] | [✂] | [✂] |
| We Got Tickets | [✂] | [✂] | [✂] |
| Others | [✂] | [✂] | [✂] |
| Total | [✂] | [✂] | [✂] |

*Source:* Live Nation.

7.70 We considered what proportion of each ticket agent's business was represented by its sales of Live Nation tickets. For each ticket agent we estimated the volume of Live Nation tickets the ticket agent might sell in 2009 on the basis of sales over the past three years (shown in Table 8). Our findings are presented in Table 9.

TABLE 9 **Sales of Live Nation tickets as a proportion of total sales**

| *Ticket agent* | *Sales of Live Nation tickets '000* | *Proportion Live Nation tickets in live music portfolio %* |
|---|---|---|
| Bristol Ticket Shop | [✂] | [✂] |
| lastminute.com | [✂] | [✂] |
| Seatem | [✂] | [✂] |
| See Tickets | [✂] | [✂] |
| Stargreen | [✂] | [✂] |
| Ticket Factory (NEC) | [✂] | [✂] |
| Ticketline | [✂] | [✂] |
| Ticketsoup (SECC) | [✂] | [✂] |

*Source:* Live Nation and CC analysis.

7.71 Table 9 shows that, for most ticket agents, tickets from Live Nation account for a small proportion of their total live music ticket business. Live Nation's tickets represent about [✂] per cent of See Tickets' live music business and about [✂] per cent of Ticketline's live music business. However, for Stargreen, lastminute.com and Ticketsoup, over [✂] per cent of their live music business comes from Live Nation ticket sales.

- *Comparison with the counterfactual*

7.72 In the counterfactual, we found that Live Nation had the incentive to sell tickets first through its own website and call centre, second through Eventim and only then through other ticket agents (including Ticketmaster). Given that, prior to the LOI, Live Nation was able to sell [✂] per cent of its tickets through its own website and Ticketmaster, we concluded that the maximum proportion of Live Nation tickets which would be allocated to other ticket agents (ie not Eventim or Ticketmaster) in the counterfactual would be [✂] per cent.

7.73 Therefore, we concluded that the maximum effect of Live Nation ceasing to allocate tickets to other ticket agents compared with the counterfactual would not be greater

than the effect compared with the situation prior to the LOI (see paragraphs 7.67 to 7.71), and would probably be less.

- *Effect of fewer Live Nation tickets on the competitiveness of other ticket agents*

7.74 We considered what effect the loss of Live Nation tickets might have on the ability of the other ticket agents to compete.

7.75 We considered if the other ticket agents had high fixed costs, which meant that operating at a lower volume could cause them to struggle to remain profitable. However, we found that, for most ticket agents, their fixed costs were not especially high and, therefore, a loss of contribution from sales of Live Nation's tickets would be unlikely to cause their prices to rise.

7.76 We also considered whether the loss of range from not being able to offer Live Nation's tickets might cause the customers of the other ticket agents to shop elsewhere (ie with Ticketmaster) and, over time, might affect the ability of the other ticket agents to gain ticket allocations from other promoters and venues.

7.77 We found that, although other ticket agents sold a small proportion of Live Nation's total controlled tickets (see Table 8), they were able to offer for sale a much larger proportion of Live Nation's total range of events. Table 10 shows, for each ticket agent, the proportion of Live Nation tours for which it was able to offer tickets.

TABLE 10 **Proportion of Live Nation promoted tours (2006 to 2008) for which some tickets were offered for sale by each ticket agent**

| | *Proportion of tours where agent is used* |
|---|---|
| | *%* |
| Gigantic | [✂] |
| lastminute.com | [✂] |
| See Tickets | [✂] |
| Stargreen | [✂] |
| Ticketline | [✂] |
| Other ticket agents | [✂] |

*Source:* CC analysis of data from Live Nation.

7.78 Table 10 shows that See Tickets and Stargreen sold tickets for the majority of Live Nation's promoted tours in 2006 to 2008. However, Ticketline only received tickets for [✂] per cent of Live Nation's tours.

7.79 We recognized that the merged entity could employ a foreclosure strategy limiting the access of other ticket agents to Live Nation's tickets over the long term. We noted that Live Nation could, over time, reduce its allocations to other ticket agents or might only use other ticket agents for events which were difficult to sell. We noted that Live Nation could seek to sell all tickets for an event through its own sales channel initially and only use other ticket agents if sales were slow. As a result of these actions, we believed that some customers might, over time, become discontented with their preferred ticket agent and switch to Ticketmaster in order to gain access to Live Nation's tickets on a more reliable basis.

7.80 Our consumer survey found that 90 per cent of consumers purchased tickets from the first place they tried (see paragraph 5.4). However, the consumer survey also found that if tickets for the desired event were not available from the first place tried, 82 per cent of consumers that used ticket agents would try somewhere else (see Appendix E, paragraph 22). These results suggested that, if consumers were unable to find a ticket from their chosen ticket agent, they were likely to switch. We con-

cluded that, over time, if tickets for Live Nation's most popular events were only available from Ticketmaster (or only available initially from Ticketmaster), it was likely that some consumers would make Ticketmaster their first choice ticket agent.

7.81 See Tickets told us that access to tickets for Live Nation's events was important for its business, as it needed to offer tickets for all the large live music events. HMV also told us that access to high-profile events was important for its business, many of which were promoted by Live Nation. Two other ticket agents expressed concern about the merged entity restricting their access to tickets for Live Nation's events.

7.82 However, we noted that, as a result of the merger, other promoters and venue operators might switch tickets away from Ticketmaster to other ticket agents, in order to avoid using their competitor for the sale of their tickets (see paragraph 7.49). AEG told us that it had serious concerns about using Ticketmaster if the merger were to proceed and was exploring what other ticketing options might be available. We noted that, if the merged entity were to seek to foreclose other ticket agents and harm their ability to compete, other promoters and venue operators would have a particular interest in switching tickets away from Ticketmaster to these agents. We concluded that, to some extent, other promoters and venue operators could mitigate the ability of the merged entity to harm other ticket agents through foreclosure.

*Conclusion on ability*

7.83 We concluded that the ability of the merged entity to foreclose most live music ticket agents was limited due to the small proportion of these agents' sales represented by Live Nation tickets. We concluded that, even if these agents were deprived of Live Nation tickets, they could still operate profitably and compete effectively.

7.84 However, we concluded that the effect on a small number of ticket agents might be more pronounced. In particular, we noted that, over the last three years, [✂] was able to offer tickets for [✂] per cent of Live Nation's tours and [✂] sales of Live Nation's tickets represented over [✂] per cent of its total live music sales.

7.85 We found that it would take a long time for Live Nation to erode the customer base of [✂] or another ticket agent, and to limit the ability of the ticket agent to gain allocations of tickets from other promoters and venues, but we concluded that this effect was possible over time.

7.86 We noted that any effect on [✂] or other ticket agents from foreclosure by Live Nation might be countered by other promoters and venues switching tickets away from Ticketmaster.

## *Incentive*

7.87 We considered whether, if the merger were to proceed, Live Nation would have the incentive to foreclose other ticket agents.

7.88 We found that there were three factors affecting whether the merged entity would have an incentive to cease using or to reduce its use of other ticket agents, which were:

*(a)* the relative margins from ticket sales as a ticket agent and as a promoter;

*(b)* the impact of foreclosure on the profitability of the merged entity in the short term; and

*(c)* the impact of foreclosure on the profitability of the merged entity in the long term.

*Relative margins from ticket sales as a ticket agent and as a promoter*

7.89 If the merged entity were to limit the allocation of its tickets to other ticket agents and seek to sell more of its tickets itself, it would gain income as a ticket agent on all the extra tickets it managed to sell but would lose income as a promoter on any tickets which it did not sell and which would have been sold by the other ticket agent.

7.90 We found that the merged entity would earn £[✂] from selling a Live Nation ticket through Ticketmaster rather than through another ticket agent (see Table 6). However, for all unsold tickets, the merged entity would lose the face value of the ticket, which on average is £[✂]. Although some costs might be avoidable for a promoter if an event sells fewer tickets than planned (eg some dates might be cancelled), we noted that most of the costs for an event are fixed, in particular the artist's guaranteed fee (see paragraph 2.9). We estimated that, on average, the merged entity would lose £[✂] for every unsold ticket.[48]

*Impact of foreclosure on the profitability of the merged entity in the short term*

7.91 We considered what effect ceasing to sell tickets through another ticket agent might have on the profitability of the merged entity in the short term.

- *Critical reduction in ticket volumes*

7.92 Using our estimates of the relative margins from ticket sales for the merged entity, both as a promoter and as a ticket agent, we calculated the critical reduction in ticket sales beyond which foreclosure would not be profitable (considering only the effects of foreclosure on the profits of the merged entity in relation to Live Nation promoted events). We found that, if more than 9 per cent of the tickets which would otherwise have been sold by the competing ticket agent remained unsold, foreclosure was not profitable.[49] In other words, the merged entity would have an incentive to cease selling through another ticket agent only if the merged entity were able to capture 91 per cent of the ticket sales which would have been made by the other ticket agent.

- *Actual reduction in ticket volumes*

7.93 Live Nation told us that, pre-merger, it sold [✂] per cent of its tickets through other agents (ie not Ticketmaster) in order to reach as many potential consumers as possible (see paragraph 6.26). Metropolis also told us that it sold through a variety of ticket agents in order to maximize ticket sales.

7.94 We noted that Live Nation paid a fixed penalty to Ticketmaster for each ticket sold through another agent (see paragraph 6.14). Assuming that Live Nation was acting optimally in deciding the proportion of its tickets to sell through agents other than Ticketmaster, we expected that, if there were no penalty, Live Nation would have sold more tickets through other agents. We concluded that Live Nation could have increased its ticket sales by selling more through other ticket agents, even if it would

[48]This estimate does not take into account the loss incurred by Live Nation due to damage to its reputation should an event be cancelled or fail to sell well. While this loss would increase the average loss to Live Nation for each unsold ticket, we did not include it as we could not identify a reliable basis on which it could be quantified. By omitting this extra cost, we believe that our estimate of the loss to Live Nation for each unsold ticket is conservative.

[49]This calculation is based on the increase in income for the merged entity as ticket agent being £[✂]. If we use the lower figure of £[✂], the critical reduction falls to 6 per cent.

not have been optimal to do so due to the additional penalty it would have had to pay.

7.95 Our consumer survey found that, if tickets for an event were not available from the first place tried, 14 per cent of consumers who bought their last ticket through a ticket agent would not buy the ticket at all (23 per cent of all consumers) (see Appendix E, paragraph 22). This evidence suggested that, in the short term, if the merged entity did not allocate tickets to a ticket agent which, for some consumers, would have been the first ticket agent they tried, approximately 14 per cent of these consumers would be lost for that event. We noted that this percentage was significantly above the 9 per cent critical loss.

- *Conclusion on impact on profitability in the short term*

7.96 We concluded that, in the short term, it was unlikely that the merged entity would be able to sell enough of the tickets which would have been sold by other ticket agents for it to have an incentive to cease allocating tickets to those other ticket agents.

*Impact of foreclosure on the profitability of the merged entity in the long term*

7.97 We considered whether the foreclosure of another ticket agent would be profitable for the merged entity in the long term, in particular if it led to the exit of the other ticket agent from the market.

7.98 Live Nation told us that, pre-merger, it allocated tickets to other ticket agents for both its most popular events and its less popular events, even though it was able to sell tickets for its popular events more profitably through Ticketmaster. Live Nation explained that it wanted to ensure that other ticket agents were strong and able to serve their customer bases with a broad range of tickets, recognizing that Live Nation and Ticketmaster were unable to reach many of these customers. However, we noted that Live Nation's incentives post-merger would be very different. We noted that although, pre-merger, Live Nation had an incentive to sell as many tickets as possible through Ticketmaster, it did not, at this time, have an incentive to foreclose other ticket agents.

7.99 We noted that, if the merged entity were able to force another ticket agent to exit the market, it might be able to win many of the ticket agent's customers (and so be able to sell tickets for its events to these customers as effectively as the other ticket agent (see paragraph 7.98)), and might be able to reduce the degree of competitiveness in the market (eg enabling the merged entity to increase its prices as a ticket agent to other promoters and venues, or to reduce its service quality or innovation). In other words, a short-term loss for the merged entity for the period of foreclosure could result in an increase in its market power in the long term.

7.100 We found that the potential long-term gain to the merged entity from reduced competition in the UK market for the primary retailing of live music tickets was uncertain and difficult to quantify. We recognized that the extent of the increase in the merged entity's market power would depend on which other ticket agent was foreclosed. [✂]

7.101 Since we found that the ability of the merged entity to foreclose all other ticket agents was limited (see paragraph 7.83), we found that, if the merged entity tried to foreclose a ticket agent, it was likely to incur a short-term cost in return for a very uncertain long-term gain.

- *Conclusion on impact on profitability in the long term*

7.102 We concluded that the foreclosure of one of the other existing ticket agents might be a profitable strategy for the merged entity in the long term but, given the high likelihood of short-term loss and the uncertainty of any long-term gain, it would be a highly risky strategy for the merged entity to adopt.

*Conclusion on incentive*

7.103 We concluded that the merged entity was unlikely to have the incentive to foreclose other existing ticket agents.

7.104 Given this finding and our finding that the merged entity was unlikely to have the ability to foreclose other ticket agents, we did not consider the effect on competition of this foreclosure.

### *Combining the effect of Live Nation's position as a promoter and venue operator*

7.105 We considered whether, post-merger, Live Nation would have the ability and the incentive to foreclose competing ticket agents by combining the effect of its positions as both a promoter and a venue operator.

*Foreclosure of other ticket agents using Live Nation's position as a venue operator*

7.106 We considered whether, post-merger, Live Nation, as a venue operator, could increase the proportion of tickets sold by Ticketmaster, either by increasing the proportion of tickets retained by its venues or by requiring users of its venues to sell more tickets through Ticketmaster.

- *Incentive*

7.107 The benefits for the merged entity from foreclosing other ticket agents using Live Nation's position as a venue operator would be the same as the benefits from foreclosing other ticket agents using Live Nation's position as a promoter, ie greater revenue for Ticketmaster in the short term from all extra tickets sold and increased market power for Ticketmaster in the long term (see paragraphs 7.87 to 7.103).

7.108 However, the costs for the merged entity from this action would be different. If Live Nation were to stipulate that any promoter using its venues must sell all of its tickets for events at those venues through Ticketmaster, there could be two effects: first, overall ticket sales might fall, meaning that the venue earns less income from food and beverage sales, car parking, merchandise sales, etc; and, second, the attractiveness of the venue for other promoters would reduce, meaning that fewer events take place there. Alternatively, Live Nation could simply increase the proportion of tickets which it retains (so reducing the promoter's share of the tickets) but the same two effects would result.

7.109 We noted that Live Nation already retained [✂] per cent of the ticket allocation for all the venues for which it determined the ticketing arrangements (ie Cardiff International Arena, Manchester Apollo and Southampton Guildhall). Given our earlier finding that Live Nation needed to sell some tickets through other ticket agents in order to maximize sales (see paragraphs 6.26 and 7.72), we concluded that ticket sales would fall if Live Nation were to increase the proportion of tickets retained by its venues.

7.110 We also noted that, even if Live Nation's venues had some degree of market power (see Appendix G), if the attractiveness of these venues reduced, some promoters would find an alternative venue to use (ie another arena in a different large urban area).

7.111 We noted that Live Nation had significant influence over other venues, in particular the venues owned by AMG and Wembley Arena. However, we found that Live Nation did not control the ticketing arrangements for these venues and we noted that any financial compensation which the merged entity would have to pay the owners of these venues in order to amend the ticketing arrangements in its favour would increase the cost of foreclosure.

7.112 We concluded that, just as for Live Nation as a promoter, the incentives for Live Nation as a venue operator to foreclose other competing ticket agents involved some likely short-term costs and only very uncertain long-term gains.

- *Conclusion on foreclosure of other ticket agents using Live Nation's position as a venue operator*

7.113 We concluded that Live Nation did not have the incentive to foreclose other ticket agents using its position as a venue operator. Therefore, we concluded that Live Nation would not foreclose other ticket agents as a venue operator and we did not consider its ability to do so or the effect on competition which might arise if it did so.

*Conclusion on the combined effect of Live Nation's position as a promoter and venue operator*

7.114 Given our conclusions that Live Nation did not have the incentive either as a promoter or a venue operator to foreclose other ticket agents, we concluded that Live Nation would not combine its position as a promoter and venue operator to foreclose other ticket agents.

### *Conclusion on the foreclosure of other competing ticket agents*

7.115 We concluded that, if the merged entity sought to foreclose other ticket agents, using its position as a promoter or venue operator, or both, it was likely to incur short-term costs, in particular by reducing the total number of tickets sold. We concluded that a strategy of foreclosure might result in an increase in Ticketmaster's market power in the UK market for the primary retailing of live music tickets, but this benefit was very uncertain.

7.116 We concluded that we did not expect the merger to result in the foreclosure of other competing ticket agents.

## 8. Competitive effects of the merger in the markets for live music promotion and live music venues

8.1 We considered whether the merged entity would have the ability and incentive to foreclose other UK live music promoters or live music venues, using Ticketmaster's position as a ticket retailer in the UK.

### *Foreclosure of other live music promoters*

8.2 We considered the consequences for other live music promoters both from Ticketmaster ceasing to sell tickets on their behalf (total foreclosure) and from Ticketmaster selling fewer tickets on their behalf or worsening the terms under which it sold their tickets (partial foreclosure).

8.3 We noted that, in both cases, Ticketmaster could incur a loss as a result of selling fewer tickets on behalf of other promoters. However, if selling fewer tickets through Ticketmaster affected other promoters' ability to compete, Live Nation might be able to win artists from other promoters and Live Nation's market share as a promoter might increase, allowing it to set higher prices, reduce its service quality or cut back on its innovation. If Live Nation was more successful as a promoter, there might also be a feedback benefit to Ticketmaster, as Ticketmaster could gain access to a greater proportion of the tickets in the market. We noted that the merged entity would have an incentive to seek to foreclose other promoters if these benefits from doing so outweighed the costs.

#### *Ceasing to sell tickets on behalf of other promoters*

8.4 We considered Ticketmaster's ability and incentives to foreclose other promoters by ceasing to sell tickets on their behalf.

*Ability*

8.5 We considered how promoters might respond if they were not able to sell their tickets through Ticketmaster. We recognized that, if their overall ticket sales fell, affecting their profitability, some promoters would have to increase their prices to artists and their agents, causing some artists and agents to switch to Live Nation. In the extreme, some promoters could be forced to exit the market. However, if promoters were able to sell the tickets previously sold through Ticketmaster through other channels, there would be no ability for the merged entity to foreclose them. We considered the significance of Ticketmaster to promoters and the other channels for selling tickets which might be available to them.

- *Other promoters' use of Ticketmaster pre-merger*

8.6 We found that most of the large UK promoters used Ticketmaster's services to some extent for most of the events they promoted. We found that four of the largest promoters in the UK (Live Nation, SJM, Metropolis and AEG Live) all sold more than [✂] per cent of the tickets they controlled through Ticketmaster, even when Ticketmaster was not their preferred ticket agent. Metropolis told us that the number of large events for which it would not give any allocation of tickets to Ticketmaster was very small (principally events held at a Live Nation venue, for which Ticketmaster would be selling tickets on behalf of the venue).

8.7 Ticketmaster provided us with figures, from which we calculated that it sold no tickets for live music events accounting for about [✂] per cent of the live music market, and less than [✂] per cent of tickets for live music events accounting for about [✂] per

cent of the live music market (see Appendix E, paragraph 84).[50] Ticketmaster submitted that it was not a necessary sales channel for live music events.

- *Evidence from the consumer survey re importance to promoters of Ticketmaster*

8.8 The consumer survey found that, of all ticket agents, Ticketmaster has by far the highest level of consumer awareness (75 per cent of consumers were aware of Ticketmaster, whereas only 18 per cent were aware of the next highest ticket agent, See Tickets (see Appendix E, paragraph 32)).

8.9 However, Ticketmaster told us that, if promoters could not access its services, they would not sell fewer tickets to an event or have to increase their marketing spend. Ticketmaster submitted that the consumer survey showed that its customer database and brand recognition were not important in generating consumer awareness for an event or ticket sales.

8.10 We noted that the consumer survey found that some consumers are difficult to reach other than through their preferred ticket agent.[51] We also noted that, just as Live Nation sold [✂] per cent of its tickets through ticket agents other than Ticketmaster in order to maximize sales (see paragraph 6.26), it was likely that other promoters needed to allocate a proportion of tickets to Ticketmaster in order to maximize their sales. We noted that the consumer survey found that Ticketmaster is more likely to be a consumer's preferred ticket agent than any other ticket agent.[52]

8.11 We concluded that, if a promoter did not sell any tickets through Ticketmaster, some ticket sales were likely to be lost, in particular sales to consumers for whom Ticketmaster was their preferred ticket agent and who were reluctant to switch elsewhere.

- *Evidence from promoters and artists' agents re importance of Ticketmaster*

8.12 AEG Live told us that, in the UK, Ticketmaster was a 'must have' ticket agent. AEG Live said that Ticketmaster's customer database was far superior to all other ticket agents and AEG Live would not be able to market its shows effectively without access to this database.

8.13 AEG Live said that, historically, the promoter's choice of ticket agent had not been a key feature of its negotiations with artists and their agents. However, if it was denied access to Ticketmaster, AEG Live believed that its ability to sell tickets would fall significantly, and it would become much harder for AEG Live to win the right to promote an artist's tour.

8.14 Regular Music told us that the extent of consumer awareness of the ticket agents through which it sold its tickets was important, as some consumers found out about events from their preferred ticket agent rather than from the promoter's advertising material. Regular Music told us that, when it switched its principal ticketing supplier from Ticketmaster to See Tickets, it was concerned that ticket sales might fall, and its

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[50]These figures are calculated as percentages of the total capacity of live music events, not as percentages of total events by number. They effectively weight live music events according to their size.

[51]The consumer survey found that 14 per cent of consumers who bought their last ticket through a ticket agent (23 per cent of all consumers) would not have looked to buy tickets for their chosen event from elsewhere if their first choice supplier had not been able to supply them (see Appendix E, paragraph 22). The survey also found that 7 per cent of consumers found out about an event by an email from a ticket agent (see Appendix E, Table 2).

[52]The consumer survey found that 54 per cent of all consumers who had ever bought tickets through a ticket agent preferred Ticketmaster, compared with 10 per cent who preferred See Tickets, and smaller percentages for the other ticket agents (see Appendix E, paragraph 33).

cost of advertising would have to increase to compensate. However, following the switch, Regular Music said that it found it was able to sell the same volume of tickets, mainly through See Tickets, without increasing its advertising costs, though it did continue to sell some tickets through Ticketmaster.

8.15 Regular Music said that no artist (or artist's agent) with which it had ever worked had stipulated the principal ticket agent through which tickets must be sold.

8.16 Live Nation also told us that the ticket agent used by a promoter did not affect an artist's choice of promoter.

8.17 Metropolis told us that different ticket agents were good at selling tickets for different types of events, eg Ticketmaster was good at selling tickets for mainstream pop events, while See Tickets was good for rock and indie events.

8.18 Metropolis said that, if it was not able to sell tickets through Ticketmaster, its business would suffer in the short term but it would be able to overcome the problem in time. However, Metropolis thought that it would not be in Ticketmaster's interests to foreclose promoters, as selling tickets for other promoters was essential to Ticketmaster's proposition to consumers, ie to be able to offer tickets for as many live music events as possible.

8.19 An artists' agent told us that consumers were not faithful to any ticket agent so it was not important what channels a promoter used to sell its tickets. The agent believed that consumers would buy the tickets from whichever ticket agent offered them.

8.20 We concluded that, while promoters were able to use other ticket agents for most ticket sales (in particular, See Tickets), for most events promoters needed to be able to sell some tickets through Ticketmaster in order to maximize ticket sales. Therefore, being denied access to Ticketmaster would be likely to harm other promoters, at least in the short term.

- *Conclusion on ability*

8.21 We concluded that Ticketmaster did have the ability to foreclose other live music promoters by ceasing to supply them with its ticketing services.

*Incentive*

8.22 We evaluated the costs and benefits to the merged entity from seeking to foreclose other live music promoters.

- *Costs*

8.23 The principal cost for the merged entity from adopting a foreclosure strategy would be the loss in profits for Ticketmaster from those tickets which it refused to sell on behalf of other promoters (which would now be sold by other ticket agents or remain unsold). A further cost, in the longer term, would be the detriment to Ticketmaster's market position as a result of offering for sale tickets to fewer events and, consequently, losing its relationship with some consumers. We also noted that there was a possible cost if the merged entity foreclosed SJM and Metropolis, due to their shared interest in AMG (see Appendix D, paragraphs 6 to 9).

- *Loss in profit from lost ticket sales*

8.24 Table 11 shows the number of live music tickets sold by Ticketmaster on behalf of its largest promoter clients (other than Live Nation and its subsidiaries).

TABLE 11 **Ticketmaster sales of live music tickets per promoter (other than Live Nation)**

| | *Total ticket sales at face value £ million* | *Total number of tickets sold million* | *Total revenue from booking/ transaction fees £ million* |
|---|---|---|---|
| [✂] | [✂] | [✂] | [✂] |
| [✂] | [✂] | [✂] | [✂] |
| [✂] | [✂] | [✂] | [✂] |
| [✂] | [✂] | [✂] | [✂] |
| [✂] | [✂] | [✂] | [✂] |
| [✂] | [✂] | [✂] | [✂] |
| [✂] | [✂] | [✂] | [✂] |
| Total sales on behalf of other promoters* | [✂] | [✂] | [✂] |
| Total live music ticket sales | [✂] | [✂] | [✂] |
| Other promoters as % of total live music ticket sales | | [✂] | [✂] |

*Source:* Ticketmaster and AEG Live.

*The numbers do not sum due to rounding.

8.25 Table 11 shows that Ticketmaster sold about [✂] tickets on behalf of other promoters in 2008, representing about [✂] per cent of its overall live music ticket sales.

8.26 We recognized that the costs to Ticketmaster of foreclosing competing promoters would depend on which promoters were foreclosed. We estimated that, if Ticketmaster ceased to supply all of Live Nation's largest competitors (ie SJM, Metropolis and AEG Live) with ticket retailing services, Ticketmaster's gross profit would fall by about £[✂] million a year (calculated using an average gross margin of £[✂] per ticket sold).[53]

- *Loss due to harm to Ticketmaster's market position*

8.27 We found that it was difficult to quantify the cost to Ticketmaster from a weaker market position as a result of offering for sale tickets to fewer events. We noted that this cost would be limited if the merged entity were able quickly to force other promoters to exit the market. However, if other promoters were able to continue selling sufficient tickets for their events through other ticket agents, the range of events offered by Ticketmaster would reduce and some consumers would gradually switch to those other ticket agents. At the same time, other ticket agents would be strengthened through increased ticket sales and, possibly, through being able to offer tickets for a wider range of events. We noted that the consumer survey found that being able to offer tickets for a wide range of events is important for ticket agents as most consumers buying from a ticket agent (82 per cent) will try to find tickets for their chosen event elsewhere if the first place they tried could not supply them (see Appendix E, paragraph 22). The consumer survey also found that most consumers are repeat purchasers of live music tickets (see Appendix E, paragraph 19) so, if a

[53]This average gross margin per ticket was calculated on the basis of the tickets sold by Ticketmaster on behalf of its top 10 live music clients (see Appendix E, Table 9). Ticketmaster submitted that its average gross margin per ticket sold for all of its live music clients would be lower.

ticket agent loses a customer for one purchase, the customer might be lost for all future purchases as well.

- *Loss from foreclosure of SJM or Metropolis due to shared interest in AMG*

8.28 We noted that Live Nation was a joint shareholder with two of the largest promoters in the UK (SJM and Metropolis) in AMG and, due to this common shareholding, Live Nation's profits were correlated, to some extent, with the profits of SJM and Metropolis. All three promoters had an incentive to use AMG's venues so, if SJM and Metropolis were foreclosed by the merged entity and, as a result, promoted fewer events, the profitability of AMG, and hence the profitability of the merged entity, could suffer.

- *Benefits*

8.29 The principal benefit of foreclosure would be an increase in Live Nation's market share as a promoter, due to its competitors being weakened, or forced to exit the market, as a result of not being able to sell their tickets through Ticketmaster. Live Nation's profits would increase through promoting more events. A secondary benefit would be an increase in Ticketmaster's ticket sales as a result of Live Nation controlling a greater proportion of the tickets in the market.

8.30 [✂] told us that there would be further benefits to the merged entity from foreclosing promoters. [✂] said that, if Live Nation promoted more events, it would be able to increase its use of its own venues. However, promoters told us that artists and their agents had some considerable influence over which venues were used for a tour (see paragraph 2.8). Therefore, in order not to be outbid by other promoters, Live Nation would have to continue offering the most suitable venues for each artist. We concluded that the significance of this additional benefit to the merged entity from the foreclosure of promoters was likely to be small.

8.31 We estimated that Live Nation had a market share in the live music promotions market of between 15 and 20 per cent (see Appendix F), with the rest of the market spread between many promoters. We found that there were a few large and many small promoters, with no one promoter significantly larger than all the others (see Appendix F). We did not receive any evidence with regard to diversion ratios between promoters so we assumed that, if a promoter were forced to exit the market, its business would divert to its competitors in proportion to their market shares. Therefore, even if one of the large promoters exited the market, the gain in market share for Live Nation would be small. We concluded that, only if several promoters were forced to exit the market, would Live Nation's market share increase significantly.

8.32 We noted that, if the increase in Live Nation's market share resulted in Live Nation having market power, a further benefit from foreclosure could arise if Live Nation were able to increase its prices (or reduce its service levels or amount of innovation). However, we concluded in Section 5 that Live Nation did not appear currently to have market power due to the presence of other large and well-established promoters, and many small promoters, and the significant bargaining power held by artists' agents. Given that Live Nation's market share would only increase significantly if several promoters were forced to exit the market (see paragraph 8.31), we found that it was unlikely that Live Nation would gain market power as a result of the foreclosure of other promoters by the merged entity.

- *Assessment of costs (in the short term) and benefits*

8.33 We calculated that the merged entity's average gross profit from the sale of a Live Nation-controlled live music ticket would be about £[✂] (calculated using Live Nation's average retail margin or rebate (see Table 6) and Live Nation's average gross profit per ticket in its promotions business (see Appendix C), excluding ticket rebates). Taking into account that around 60 per cent of the tickets to events promoted by Live Nation are sold by the venue (see Appendix E, paragraph 9), we calculated that the merged entity would achieve a gross profit of about £[✂] from each additional ticket for an event promoted by Live Nation. We compared this gross profit to the gross profit earned by Ticketmaster from the sale of a live music ticket, which was about £[✂] per ticket (see Appendix E, Table 9).

8.34 By comparing the margins per ticket sold for Live Nation and Ticketmaster, we calculated the critical proportion of promotions business which would need to switch to Live Nation in order for the foreclosure of other promoters to be profitable in the short term (ie not taking into account the possible long-term cost to Ticketmaster from only being able to offer a reduced range of tickets). We found that, for every 100 tickets which Ticketmaster ceased selling for other promoters, Live Nation needed to increase the size of its promotions business by 60 tickets.[54] For example, if Ticketmaster ceased selling tickets on behalf of Live Nation's three main competitors (SJM, Metropolis and AEG Live), for whom Ticketmaster sold about [✂] live music tickets in 2008, Live Nation would need to increase its promotions business by [✂] tickets a year (ie about [✂] per cent of these promoters' total business).

8.35 Given Live Nation's market share (see paragraph 8.31), we concluded that this strategy was only likely to be profitable if foreclosure by the merged entity resulted in a couple of large promoters or several small promoters exiting the market. For each promoter which exited the market, Live Nation would increase its market share, and so increase the extent to which it was able to capture the market share of the next foreclosed promoter.

8.36 We noted that the principal benefits and costs to the merged entity from foreclosure arose in different markets (promotions and ticketing). We also noted that these markets were characterized by differing degrees of risk: the margins in the promotions market are highly variable, while ticketing generates a more reliable revenue stream. Therefore, we found that a strategy to transfer market power from the market for live music ticketing to the market for live music promotions would involve some increase in the merged entity's total risk.

- *Timing of costs and benefits*

8.37 We considered how long it might take Ticketmaster to force other promoters to exit the market.

8.38 Metropolis and Regular Music told us that artists did not change promoters very often, and an artists' agent told us that it tended to work with the same promoters for the same artists, unless there was any particular reason to change.

8.39 We concluded that, so long as other promoters could continue to sell tickets for their events, albeit with some lost sales due to not being able to sell through Ticketmaster, they were unlikely to lose their client base immediately. Therefore, the foreclosure of

[54]These calculations are based on average margins for Live Nation's promotions business. In reality there is a lot of variability in the profitability of Live Nation's promotions business.

promoters was unlikely to lead to much benefit for the merged entity in the short term.

8.40 We also noted that the UK live music industry is a closely connected community. Both promoters and artists' agents told us that agreements were often determined by personal relationships rather than on the optimal commercial terms. We noted that artists' agents had the ability to sponsor promoters' expansion such that, if Live Nation was increasing its market power as a promoter significantly, some artists' agents might increase their use of competing promoters in order to retain a choice for the long term. We noted that no promoter expressed any concern to us about Ticketmaster ceasing to supply it with ticketing services.

- *Conclusion on incentive*

8.41 We concluded that, if Ticketmaster refused to supply other promoters with its ticketing services, there was some prospect of Live Nation increasing its market share as a promoter in the long term, in particular if a large promoter, or a couple of small promoters, were forced to exit the market. However, artists and their agents did not switch promoters quickly, so any benefits to the merged entity from foreclosure would probably take some time to materialize. In the short term, Ticketmaster would suffer costs, both from reduced revenues (from tickets it refused to sell) and from a reduced range harming its market position.

8.42 We concluded that a strategy of foreclosure based on Ticketmaster ceasing to supply other promoters with ticket retailing services would be highly risky for the merged entity. We concluded that, on balance, the merged entity was unlikely to have the incentive to foreclose other promoters in this way.

8.43 Given this conclusion, we did not consider the effects on competition from the merged entity foreclosing other promoters in this way.

8.44 In its response to our provisional findings, [✂] told us that this analysis underestimated the potential benefits of foreclosure to Live Nation. [✂] said that Live Nation would know which promoters were its closest competitors and it would be rational for Live Nation to foreclose selectively these competitors. [✂] argued that, as a result of this foreclosure, Live Nation could expect to gain a greater proportion of the foreclosed promoter's business than would be suggested by Live Nation's market share. We recognized that the merged entity would have the ability to foreclose selectively its closest competing promoter, and its incentive to do so was likely to be greater than its incentive to foreclose other promoters. However, we concluded that the foreclosure of a single promoter, even Live Nation's principal competitor, was unlikely to result in adverse effects on competition, because Live Nation did not appear to have market power and, even if it gained most of the market share of another promoter, it was unlikely that it would gain market power as a result (see paragraph 8.32). For the reasons in paragraphs 8.41 and 8.42, we did not believe that Live Nation would have the incentive to foreclose multiple promoters, even selectively.

### *Worsening the terms under which Ticketmaster sells tickets for other promoters*

8.45 We also considered whether the merged entity would have the ability and the incentive to partially foreclose other promoters by worsening the terms by which it provided ticket retailing services. We considered five ways in which Ticketmaster could worsen the terms of its offer to other promoters:

*(a)* reducing the rebate it paid to other promoters;

*(b)* increasing the booking fees it charged to consumers of other promoters' tickets;

*(c)* reducing its marketing of other promoters' events;

*(d)* delaying the payment of cash from ticket sales to other promoters; and

*(e)* using other promoters' operational or customer data to the advantage of Live Nation.

8.46 We considered the ability of the merged entity to engage in each of these partial foreclosure strategies and, where necessary, we also considered the incentive to do so.

*(a) Partial foreclosure by reducing rebates paid to other promoters*

8.47 We considered the size of the rebate received by promoters from their ticket agents. Table 12 shows the rebates received by six promoters in 2008, and the proportion of the promoter's total income represented by rebates.

TABLE 12 **Promoters' rebate income**

| | *Revenue from sales of tickets at face value £'000* | *Revenue from rebates £'000* | *Total revenue £'000* | *Rebates as % of total revenue* |
|---|---|---|---|---|
| AEG Live | [✂] | [✂] | [✂] | [✂] |
| Aiken Promotions | [✂] | [✂] | [✂] | [✂] |
| Kilimanjaro | [✂] | [✂] | [✂] | [✂] |
| Live Nation | [✂] | [✂] | [✂] | [✂] |
| Marshall Arts | [✂] | [✂] | [✂] | [✂] |
| Regular Music | [✂] | [✂] | [✂] | [✂] |

*Source:* CC analysis of data submitted by these promoters.

*Note:* Figures do not sum due to rounding.

8.48 We found that rebates from ticket agents were a small part of promoters' overall income.

8.49 We also noted that, even if promoters wished to use Ticketmaster for some ticket sales (in order to reach consumers for whom Ticketmaster is their preferred ticket agent and who would not switch elsewhere), promoters could harm Ticketmaster by switching some volume of tickets to other ticket agents. The evidence we received from promoters showed that, while most promoters used Ticketmaster for a significant part of their ticket sales, all the promoters which used Ticketmaster also used other ticket agents to some extent. The evidence suggested that, for a large proportion of promoters' ticket sales, it was not necessary to use Ticketmaster in order to reach consumers. We noted that this evidence was consistent with the fact that most self-ticketing venues were also able to sell tickets effectively (see paragraph 5.34), suggesting that Ticketmaster's advantages (eg its customer database and technology) were not required to sell tickets to many consumers. Therefore, we concluded that, if Ticketmaster worsened the terms it offered to promoters, many of them would be able to switch some proportion of their tickets away from Ticketmaster to other ticket agents. [✂] confirmed this view by telling us that, when Ticketmaster worsened the terms of its offer to [✂], it switched most of its ticket volumes to See Tickets (see paragraph 8.71).

8.50 We concluded that, if Ticketmaster sought to worsen the terms of its offer to other promoters by reducing the rebate they received, many promoters would switch some ticket volumes away from Ticketmaster, eg to See Tickets. We found that this response would reduce significantly the incentive for the merged entity to foreclose other promoters in this way. We concluded that, due to this likely response, the merged entity would not have the incentive to partially foreclose other ticket agents by reducing the level of ticket rebates which it paid.

*(b) Partial foreclosure by increasing the booking fees charged to the consumers of other promoters' tickets*

8.51 We considered whether the merged entity had the ability to partially foreclose other promoters by increasing the booking fees which it charged the consumers of their tickets.

8.52 By selectively increasing its booking fees, Ticketmaster could reduce the sales of tickets for other promoters' events. As a result, Ticketmaster would lose profit from foregone ticket sales (about £[✂] per ticket), though this loss would be compensated partially by increased booking fees on Ticketmaster's remaining sales. However, the effect on other promoters could be significant if the tickets for their events remained unsold (around 80 per cent of the face value for each unsold ticket, ie about £[✂] per ticket on average). The merged entity would benefit if other promoters were so harmed by this action that artists and their agents switched to Live Nation, with an additional benefit to Ticketmaster as Live Nation's ticket agent.

8.53 However, booking fees are not usually set unilaterally by the ticket agent (see paragraph 5.11). Promoters, and occasionally artists and artists' agents, discuss and agree the level of booking fee which the ticket agent is allowed to charge. If Ticketmaster were to increase the booking fee which it charged consumers for the tickets of other promoters, many of these promoters would either demand a higher rebate or switch some of their ticket volumes to alternative ticket agents, eg See Tickets (see paragraph 8.49).

8.54 We noted that, if promoters switched away from Ticketmaster entirely, Ticketmaster's actions would have the same effect as ceasing to supply other ticket agents, with the same results on the income of the merged entity. Given that we found that the merged entity was unlikely to have the incentive to cease supplying other promoters, we concluded that the merged entity was also unlikely to have the incentive to increase its booking fees to the customers of other promoters if it resulted in those promoters switching to other ticket agents.

8.55 We also noted that the consumer survey found that, if booking fees rose by 5 to 10 per cent, the effect on ticket sales would be small (see Appendix E, paragraph 23).

8.56 We concluded that, if Ticketmaster increased its booking fees for the tickets of other promoters by a small amount (assuming it was allowed to do so by the promoters), there would be little effect on Ticketmaster's ticket sales for other promoters. If Ticketmaster increased booking fees for the tickets of other promoters substantially, then at least some promoters would switch some ticket volumes to other ticket agents (see paragraph 8.49) and the merged entity would probably result worse off.

8.57 We concluded that the merged entity would not have the ability to partially foreclose other ticket agents by increasing the booking fees charged to the consumers of other promoters' tickets by a small amount, and it would not have the incentive to do so by a large amount.

*(c) Partial foreclosure by reducing the marketing of other promoters' events*

8.58 We considered whether the merged entity had the ability to partially foreclose other promoters by reducing the extent to which it marketed other promoters' events.

8.59 As discussed in Section 5, we found that marketing and brand awareness were important for ticket agents, as a significant proportion of consumers go directly to a ticket agent's website or call centre to purchase tickets (see paragraph 5.9). However, the consumer survey results did not suggest that event-specific marketing by ticket agents (emails to consumers) was an important driver of consumers' ticket purchases. Only 7 per cent of respondents to the consumer survey found out about their chosen event from a ticket agent's email and, in some of these cases, the respondent also found out about the event from another source. Only 5 per cent of Internet purchasers mentioned a ticket agent's email first as their source of awareness for the event.[55] A higher percentage of respondents (18 per cent, see Appendix E Table 2) mentioned emails from ticket companies as a usual method of finding out about live music events but we judged that it was difficult to interpret this result when consumers find out about events from multiple sources.

8.60 Since event-specific marketing by ticket agents did not appear to be an important driver of consumers' ticket purchases, we thought it unlikely that Ticketmaster could affect materially the sales of other promoters by reducing the extent to which it marketed their events.

8.61 Nevertheless, we considered the effects that could arise if Ticketmaster were to cease marketing the events of other promoters. We found that ticket sales for other promoters would fall, and Ticketmaster would experience the same set of costs and benefits as if it raised its booking fees to promoters (see paragraphs 8.51 to 8.57). The difference between this strategy of foreclosure and the strategy of raising its booking fees to promoters would be that, under this strategy, Ticketmaster would not gain any additional income on remaining sales, and its cost saving would probably be small. However, Ticketmaster's objective through this foreclosure strategy would be the same, ie for other promoters to be so harmed by its reduced marketing that artists and their agents would switch to Live Nation, with an additional benefit to Ticketmaster as Live Nation's ticket agent.

8.62 However, if Ticketmaster stopped serving its promoter clients with the services they expected, including utilizing Ticketmaster's customer database to market an event to potential customers, it is likely that some promoters would switch some volume of tickets away from Ticketmaster to other ticket agents, just as they would if Ticketmaster increased its booking fees or reduced its rebates to promoters (see paragraph 8.49).

8.63 We concluded that, if reducing Ticketmaster's marketing activity for other promoters had any effect on the ticket sales of other promoters, the result for the merged entity was most likely to be a short-term cost with an uncertain long-term gain.

8.64 We concluded that, even if the merged entity had the ability to partially foreclose other promoters by reducing the extent to which it marketed their events (which was unclear), it would not have the incentive to do so.

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[55]Excluding the 20 per cent of Internet purchasers who mentioned someone they knew first as their source of awareness, would increase this proportion to 6 per cent (see Appendix E, Annex 1).

*(d) Partial foreclosure by delaying the payment of cash from ticket sales to other promoters*

8.65 We considered whether the merged entity had the ability to partially foreclose other promoters by delaying the payment of cash from ticket sales.

8.66 Three promoters (Metropolis, Regular Music and PCL) told us that Ticketmaster might be able to cause other promoters significant harm by withholding cash from ticket sales. They told us that a promoter's ticket agents collect large amounts of cash from consumers on the promoter's behalf, which is essential for funding the promoter's operations. Metropolis and Regular Music told us that withholding cash payments could seriously threaten a promoter's financial viability.

8.67 We considered the extent to which promoters are cash constrained and rely on regular payments from ticket sales to finance an event. We found that promoters incurred significant costs for an event prior to the event, in particular the artist's guaranteed fee. Therefore, for small promoters which organized few events, cash from ticket sales in advance of an event was essential in order to finance the event. For large promoters, organizing many events, cash flow was also critical, but cash from one event could be used to finance another event on a rolling basis.

8.68 We also considered the significance for a promoter of being forced to cancel an event, or to delay payment to other parties, eg artists, due to insufficient funds. We noted that a promoter was dependent on a reputation for reliability in order to win further business from artists and their agents, so any failure to fulfil payment obligations could have a significant detrimental effect on the promoter's business.

8.69 Ticketmaster told us that its arrangements for paying cash to promoters depended on its assessment of each promoter's financial strength. Ticketmaster said that, if an event was cancelled, or if the promoter closed down, customers would expect Ticketmaster to refund ticket sales, even though the promoter would be liable. Therefore, Ticketmaster only paid cash from ticket sales to a promoter in advance of an event either if it had sufficient assurance that the promoter was financially reliable or if the promoter could provide sufficient bank guarantees. Ticketmaster said that it would not withhold cash other than in accordance with its contractual arrangements with any promoter as doing so would constitute breach of contract and, furthermore, would harm significantly Ticketmaster's reputation.

8.70 Regular Music told us that, although Ticketmaster might be contractually obliged to pay cash to promoters on certain terms, even just a temporary delay could be sufficient to force a small promoter into insolvency.

8.71 Both [✂] and Metropolis told us that Ticketmaster had recently attempted to lengthen the period when it paid them the proceeds from their ticket sales.[56] In response, [✂], which was not under contract with Ticketmaster, switched most of its ticket volumes to See Tickets and Metropolis threatened to switch away from Ticketmaster (though Ticketmaster then returned to its former terms with Metropolis). This response suggested that, while promoters might need to sell some tickets through Ticketmaster in order to maximize ticket sales, they were able to harm Ticketmaster by switching some volume of tickets to other ticket agents (see paragraph 8.49). This action, or the credible threat of this action, appears to have been sufficient to constrain Ticketmaster's behaviour pre-merger and should remain a sufficient constraint post-merger.

[56]The CC has not verified this evidence with Ticketmaster.

8.72 Therefore, we concluded that the balance of costs and benefits from foreclosing other promoters by delaying the payment of cash from ticket sales would be similar to the previous cases of partial foreclosure, involving both a likely short-term cost and an uncertain long-term gain. In the short term, Ticketmaster would lose income as some promoters would switch some volume of tickets to other ticket agents but, in the long term, Live Nation could increase its market power as a result of some of these other promoters either losing business from artists and their agents or exiting the market altogether.

8.73 We concluded that, though the merged entity might have the ability to partially foreclose other promoters by delaying the payment of cash from ticket sales, it would not have the incentive to do so.

*(e) Partial foreclosure through using other promoters' operational or customer data to the advantage of Live Nation*

8.74 We considered whether the merged entity had the ability to partially foreclose other promoters by using the operational or customer data of other promoters, to which Ticketmaster has access as their ticket agent, to the advantage of Live Nation.

8.75 Three promoters (AEG Live, Kilimanjaro and Regular Music) told us that the merger would enable Live Nation to access sensitive data from its competitors. In particular, they highlighted two types of sensitive data to which Ticketmaster has access on behalf of other promoters:

*(a)* operational data (eg data on planned events such as artists, venues, event dates, ticket prices, ticket sales processes, etc; and data on past events, such as rates of ticket sales, marketing effectiveness, etc); and

*(b)* customer data (eg for each customer, their name, events attended, purchasing behaviour, music preferences, postal address, email address, credit card information, etc).

8.76 We considered whether the merged entity's access to each type of data would provide it with the ability to partially foreclose other promoters.

- *Access to operational data*

8.77 Promoters told us that, in advance of their tickets going on sale with Ticketmaster, they would provide Ticketmaster with all the relevant operational data about the event or tour.

8.78 AEG Live, Kilimanjaro and Regular Music identified two broad concerns with Live Nation having access to this data:

*(a)* Live Nation could use the information on planned events to estimate other promoters' bids with artists and their agents, providing it with an asymmetrical advantage which would allow it to force other promoters from the market. In addition, Live Nation could use information about other promoters' past events to inform its own future strategies, with regard to planning tours, marketing events, running its ticket sales process, bidding to artists and their agents, etc.

*(b)* Live Nation could frustrate other promoters' ticket sales processes by making available tickets for its own events shortly in advance of tickets for the events of other promoters, in particular for events which might attract the same consumers.

- *Squeezing out other promoters by using information on their likely bids*

8.79 Live Nation told us that, once tickets for an event were on sale, most of the information regarding a tour (eg event dates, venues, ticket prices, etc) was publicly known. Other promoters told us that the costs of promotion (eg venue costs, security costs, etc) were generally well known in the industry.

8.80 Live Nation also told us that there was no need for promoters to give Ticketmaster any information relating to the promoters' bids to artists and their agents. The only information which Ticketmaster needed was the information which, typically, [✂] later (see paragraph 8.85) was in the public domain.

8.81 Live Nation added that, when competing promoters were bidding to artists and their agents for the right to promote an event or tour, the promoters usually knew the principal terms of each other's bids, eg the proposed venues and dates. Live Nation said that artists' agents often shared this information between bidders in order to gain the optimal terms for their artist, and sometimes the information was disclosed by venues when the promoter tried to reserve dates for an event.

8.82 We concluded that the extent to which the merger would allow Live Nation to increase its knowledge of other promoters' costs and bids was limited. We noted that Live Nation could gain more information on promoters' marketing strategies, in particular the number of tickets sold by a promoter through Ticketmaster, but we did not receive any evidence to suggest that such information would provide Live Nation with a significant competitive advantage.

- *Squeezing out other promoters by using information on their ticket sales*

8.83 AEG Live told us that, post-merger, Live Nation would know the date on which tickets for another promoter's event would be going on sale and could quickly put the tickets for its own events on sale first, so frustrating the other promoter's sales process.

8.84 AEG Live and Kilimanjaro told us that the exact timing of tickets being released on sale was usually agreed between the artist's agent and the promoter, with the relevant ticket agents only being informed subsequently.

8.85 Ticketmaster told us that, increasingly, it received very little notice from promoters and venues about when tickets for an event would go on sale. Ticketmaster said that most of its agreements with promoters and venues stated that they must provide Ticketmaster with at least [✂] notice, so that Ticketmaster could prepare its systems for the sale and release its own outbound marketing material.[57] [✂]

8.86 [✂] told us that it gave Ticketmaster as little notice as possible regarding the timing of its ticket sales processes, because of the risk of this information being shared with Live Nation or any other promoter.

8.87 We concluded that, in [✂] (or less), it was unlikely that Live Nation would be able to adjust its own plans in order to market and release tickets for its own events so as to frustrate the sales process of other promoters and venues. We also concluded that, if the merged entity did manage to frustrate another promoter's sales process in this way, many clients of Ticketmaster would begin to give Ticketmaster much less time

[57] We reviewed the contracts between Ticketmaster and its largest live music clients (both promoters and venues) and confirmed that, in most cases, the contract specified a requirement for the promoter or venue to inform Ticketmaster of the details of an event (ie ticket price, artist, venue and event date) at least [✂] before tickets for the event were intended to be released on sale.

to organize a sales process or would switch some volume of tickets away from Ticketmaster. Therefore, it was unlikely that the merged entity would be able to harm other promoters significantly by using Ticketmaster's information on other promoters' planned ticket sales.

- *Conclusion from foreclosure using Ticketmaster's access to operational data*

8.88 We concluded that Ticketmaster's access to other promoters' operational data would not provide the merged entity with the ability to partially foreclose other promoters.

- *Access to customer data*

8.89 As the largest live music ticket agent in the UK, Ticketmaster collects substantial volumes of data about customers purchasing live music tickets. In most cases, this customer data is co-owned by Ticketmaster and the promoter or venue for which it is acting. In some cases, the ways in which Ticketmaster may use this data are restricted by contractual agreement with the promoter or venue but, in most cases, Ticketmaster is able to use the data as it wishes.

8.90 AEG Live and Regular Music both told us that, post-merger, Live Nation would gain access to other promoters' customer data, enabling Live Nation to market its events to the customers of other promoters. AEG Live told us that Ticketmaster had an extensive database of customer information, which was unparalleled in the industry. AEG Live also said that this information could be used by Live Nation to inform the planning of its future events. AEG Live added that the importance of this data meant that, if Live Nation had access to it, other promoters could be willing to pay Ticketmaster for access to it.

8.91 Ticketmaster told us that it would usually use the data gathered from ticket sales for one promoter or venue when it marketed events for other promoters or venues. [✂]

8.92 Therefore, we concluded that the merger would not affect significantly the degree to which Live Nation benefited from Ticketmaster marketing its events using customer data from other promoters and venues because Live Nation benefited already from this data, albeit indirectly, by using Ticketmaster to sell its tickets.

8.93 Nevertheless, we recognized that the merger would enable Live Nation to access this customer data directly, which could provide the merged entity with some benefits. We noted that, according to Live Nation, it was better at utilizing its customer data (eg to market events selectively to customers) than Ticketmaster. Live Nation told us that it sought to build a relationship with its customers and understand their live music tastes and concert-going preferences.

8.94 AEG Live also told us that, with direct access to Ticketmaster's full customer database, Live Nation would be able to market its events more effectively. AEG Live added that Live Nation would also be able to prepare better bids for artists and their agents on the basis of a more informed understanding of consumer demand. AEG Live submitted that, in both ways, Live Nation would have a significant advantage over other promoters.

8.95 We noted that, in addition to enabling Live Nation to access Ticketmaster's customer data, the merger also allowed Ticketmaster to access Live Nation's customer data, which would include ticket sales made on behalf of Live Nation by other ticket agents. However, Live Nation only sells about [✂] per cent of its tickets through other ticket

agents (see paragraph 6.26) so the additional information to which Ticketmaster would have access would be limited.

8.96 Ticketmaster told us that it recognized the concerns of some of its clients that, as a result of the merger, Live Nation could gain access to their customer data. Ticketmaster said that, because of this concern, some clients had threatened to switch ticket volumes away from Ticketmaster to other ticket agents. Ticketmaster told us that it recognized that it would need to address these concerns in order to retain ticket volumes.[58] We judged that the fact Ticketmaster acknowledged these concerns suggested that they had some merit.

8.97 We concluded that the merged entity could have some ability to partially foreclose other promoters as a result of Live Nation's access to Ticketmaster's customer database, which included customer data gathered by Ticketmaster from sales for other promoters.

- *Incentive to partially foreclose other promoters through access to customer data*

8.98 We considered whether the merged entity had the incentive to partially foreclose other promoters through allowing Live Nation access to Ticketmaster's data.

8.99 AEG Live and Regular Music both told us that, if they perceived a risk that Ticketmaster might share their customer data with Live Nation, they would reduce the volume of tickets they sold through Ticketmaster, in order to mitigate this risk. This response would not restrict Ticketmaster from sharing the promoters' historical data with Live Nation, which could cause them some harm, but it would limit the extent to which they could be harmed by this action in the future. This response would also impose some cost on Ticketmaster (see paragraph 8.49).

8.100 Nevertheless, [✂] told us that, although it would like to work with another ticket agent in the UK so as to avoid offering Live Nation access to its customer data, there was no viable alternative to Ticketmaster. [✂]

8.101 We found that the merged entity would benefit from this foreclosure strategy if Live Nation were able to sell a greater proportion of tickets for its events or if it were able to win a greater proportion of business as a promoter from artists and their agents and so increase its market share. However, we concluded that access to other promoters' data was unlikely to increase Live Nation's ticket sales significantly as Live Nation already benefited from this data indirectly by selling through Ticketmaster (see paragraph 8.92). We also concluded that, given the long-term relationships between artists (and their agents) and promoters, and the low levels of switching (see paragraph 8.41), it was unlikely that access to other promoters' customer data would enable Live Nation to win much extra new business.

8.102 We concluded that the foreclosure of other promoters through providing Live Nation with access to Ticketmaster's customer data was likely to result in the merged entity suffering a significant short-term cost from Ticketmaster losing clients, and was unlikely to result in a significant gain, at least for a very long time.

8.103 In response to our provisional findings, [✂] told us that this analysis over-estimated the ability of promoters to threaten credibly to switch away from Ticketmaster. [✂] said that it would not find it easy to switch its ticket volumes to any other ticket agent in the UK (see paragraph 8.100). We recognized that some promoters faced

[58]We note that Ticketmaster offered undertakings to the OFT to address these concerns.

particular challenges in changing their preferred ticket retailer. However, we found that our conclusions did not rely on all promoters being able to switch away from Ticketmaster, or on promoters switching all of their ticket volumes away from Ticketmaster. We judged that, even if Ticketmaster were to share with Live Nation only the customer data of those promoters that were least likely to switch away from Ticketmaster, the reputation of Ticketmaster would be so damaged that many other promoters would be likely to switch their ticket volumes to other ticket retailers. We also noted that, in order for Live Nation to gain substantial market share as a result of this foreclosure strategy, at least two other large promoters would need to be affected significantly, which we judged was unlikely (see paragraphs 8.32 and 8.44).

8.104 We concluded that, although the merged entity might have the ability to foreclose other promoters by providing Live Nation with access to Ticketmaster's customer data, it would not have the incentive to do so.

*Conclusion on partial foreclosure*

8.105 Having considered several ways in which the merged entity might contemplate foreclosing other promoters, we found that, for every way, either it would not have the ability to do so or it would not have the incentive to do so. In particular, we found that, were the merged entity to seek to foreclose other promoters, they would be able to respond with the credible threat of switching ticket volumes away from Ticketmaster (mostly to See Tickets), which would harm Ticketmaster significantly.[59] In most cases, any corresponding benefit to Live Nation was very uncertain.

8.106 We concluded that it was unlikely that the merged entity would foreclose other live music promoters and we did not consider the effects on competition which might result from this foreclosure.

### *Foreclosure of other live music venues*

8.107 We considered whether the merged entity would have the ability and incentive to foreclose live music venues which competed with Live Nation, using Ticketmaster's position in the market for ticket retailing.[60]

*Ability and incentive*

8.108 The merged entity could foreclose other live music venues by Ticketmaster either refusing to sell their tickets (total foreclosure) or by selling their tickets on worse terms (partial foreclosure).[61] As a result, Ticketmaster would suffer a loss from reduced ticket sales. However, other venues would also be likely to sell fewer tickets (depending on whether they were able to sell tickets through other channels) and would probably be less able to attract promoters to use them for live music events. If

[59]We did not consider the effect on competition in the market from the potential increase in See Tickets market share as the significance of this threat was its ability to constrain Ticketmaster's behaviour and we did not expect the threat to be followed through in most cases.

[60]We also considered whether the merged entity would have the ability and incentive to foreclose other live music venue operators using Live Nation's position in the market for live music promotion. However, we found that it was unlikely that either Live Nation's ability or its incentive to engage in this strategy would be changed by the merger.

[61]We did not believe that Ticketmaster would have the ability to cause any harm to venues by foreclosing other venues from access to Ticketmaster's ticketing system as Ticketmaster does not appear to have substantial market power as a provider of ticketing systems (see paragraph 5.17). Rather, we found that the market for ticketing systems appeared to operate competitively with many suppliers. We believed that, if Ticketmaster ceased providing ticketing systems to non-Live Nation venues, these venues would switch to another ticketing system. We concluded that it was unlikely that this foreclosure strategy would affect other venues' ability to sell tickets, or affect their ability to win business from promoters. We also noted that Ticketmaster's ability to deny venues with access to its ticketing system might be limited by long-term contracts with venues.

so, Live Nation would increase its market share as a venue operator, with some feedback benefit to Ticketmaster as Live Nation's ticket agent.

8.109 We noted that the market for live music venues was likely to be local (see Appendix G, paragraph 9). Therefore, the merged entity would only have an incentive to foreclose other venues in areas where Live Nation had a competing venue (ie one of similar size and suitable for similar events), and the incentive would be limited if there were many competing venues in the area.

8.110 We also noted that, for most venues, the venue's ticket allocation was sold almost exclusively by the ticket agent which provided the venue's ticketing system. Live Nation told us that almost all the tickets for its controlled venues were sold by Ticketmaster, and AEG told us that Ticketmaster sold almost all the tickets for the O2 Arena.[62] Live Nation told us that venues used one ticket agent for operational reasons (ie it was easier to use one ticketing system) and because maximizing ticket sales was not as important for venues as for promoters, as a smaller proportion of the venue's income was dependent on ticket sales.

8.111 We concluded that, if Ticketmaster were to cease selling tickets for other venues, or worsened its terms, either the venue would seek to use another ticket agent or the promoters of the events at the venue would reallocate the venue's tickets to other ticket agents. Therefore, we concluded that a strategy to foreclose other venues from access to Ticketmaster was unlikely to lead to a reduction in total ticket sales at these venues.

8.112 The main harm to other venues from foreclosure would be a decrease in the income which these venues received from rebates on booking fees (assuming the venues were not able to switch sales to another ticket agent). However, this income is a very small proportion of a venue's overall income. Live Nation told us that, in 2008, AMG's venues generated a total income of £[✂] million, of which ticket rebates represented £[✂] million (ie about [✂] per cent of the total). We found that the majority of a venue's income came from rental fees, food and beverage and merchandise sales. We concluded that, even if other venues lost all their income from ticket rebates (which was unlikely as they could switch to another ticket agent or self-ticketing), the small loss in income which would result would be unlikely to have a significant impact on the venues' profitability or competitiveness.

8.113 Following our provisional findings, [✂]. However, we noted that many of the potential harms which [✂] might suffer [✂] existed prior to the merger and were not affected by the merger. [✂] We also noted that [✂] large live music venues had switched or were in the process of switching their ticketing systems, including Wembley Arena (from See Tickets to Ticketmaster), the SECC and the NEC (both of which self-ticketed but had changed the supplier of their ticketing system), and the three venues for which Live Nation controlled the ticketing (from Ticketmaster to Eventim).

8.114 [✂] However, we found that, if Ticketmaster were to foreclose [✂] including events promoted by Live Nation, then, in order to maximize the sale of its tickets, which is its overriding objective (see paragraph 6.26), Live Nation (as with all other promoters affected) would have to reallocate tickets from [✂] to its own ticket agents (whether Ticketmaster or others). As a result, [✂] might lose some revenue from ticket rebates, but it would continue to enjoy high attendances at its events, enabling it to maintain its principal revenues, eg food and beverage sales (see paragraph 8.112). We also found that [✂]. We concluded that it was unlikely that, by reducing its

[62]AEG has signed an agreement with lastminute.com which gives lastminute.com access to a small allocation of tickets for the O2 Arena.

effectiveness in selling tickets or in reducing service quality or innovation, Ticketmaster could cause [✂] any significant harm.

8.115 We concluded that, if the merged entity foreclosed other live music venues by refusing access to Ticketmaster, or by worsening the terms of Ticketmaster's supply of ticketing services, it was very unlikely that the other venues would be harmed significantly or that Live Nation's venues would benefit. We concluded that the merged entity would not have the ability and incentive to foreclose other live music venues.

## 9. Findings

9.1 We found that the anticipated merger of Ticketmaster and Live Nation constituted an arrangement which, if carried into effect, would result in the creation of a relevant merger situation within the meaning of the Act (see paragraph 4.3).

9.2 However, we found that the merger of Ticketmaster and Live Nation was unlikely to result in a substantial lessening of competition in any UK market (see paragraphs 7.60, 7.116, 8.106 and 8.115).