

# Completed acquisition by LN-Gaiety Holdings Limited of Isle of Wight Festival Limited

## Decision on relevant merger situation and substantial lessening of competition

**ME/6693/17**

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 14 September 2017. Full text of the decision published on 3 October 2017.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

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### SUMMARY

1. On 15 March 2017, LN-Gaiety Holdings Limited (**Live Nation**) acquired 75% of the issued share capital of Isle of Wight Festival Limited (the **IoW festival**) (the **Merger**). Live Nation and IoW festival are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties' enterprises have ceased to be distinct and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the supply of music festivals, specifically large camping music festivals. The CMA has therefore assessed the impact of the Merger in the supply of large camping music festivals, excluding free events, non-music festivals, and smaller/non-camping festivals from the frame of reference. However, the CMA has taken account of the constraint from these events where the evidence supports this.
4. The CMA assessed the impact of the Merger on the supply of large camping music festivals in the UK. However, the CMA has considered the relevance of the location of different festivals within the UK in assessing the competitive constraints that festivals impose on each other.
5. The CMA found that while the Parties' combined position in the supply of festivals, and in particular large camping festivals, in the UK is significant, the Merger does not bring about a significant change in market structure and the Parties are not particularly close competitors. The CMA found that other music festivals (such as Bestival, Victorious and, to some extent, Glastonbury) will continue to constrain the merged entity. The CMA believes that these constraints, in conjunction with out-of-market constraints from other activities, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
6. In considering whether the transaction could give rise to non-horizontal effects (in particular, dynamic foreclosure concerns), the CMA has also considered the effect of the transaction on UK concert promotion. The evidence available to the CMA does not indicate that the Merger will materially increase the Parties' ability to reduce the access of other festivals and concert promoters to a sufficient range and quality of artists such that competitors are foreclosed. The CMA therefore found that the Merger does not give rise to a realistic prospect of an SLC as a result of non-horizontal effects.
7. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties

8. Live Nation owns and operates live music venues and festivals in the UK. Live Nation is a joint venture between Live Nation (Music) UK Limited and Gaiety Investments Limited. Live Nation's turnover in the calendar year 2015 was approximately £165 million. Live Nation (Music) UK Limited is a subsidiary of Live Nation Entertainment Inc., an entertainment company which provides concert promotion, venue operations, ticketing, and artist management services. Live Nation Entertainment Inc. is publicly listed on NYSE, and its turnover was US\$8.335 billion for the 12 months to September 2016. Gaiety Investments Limited is an Irish entertainment company, which provides promotion services and operates festivals and entertainment venues.
9. The loW festival is an annual music festival held on the Isle of Wight. The turnover of the loW festival in the 2016 calendar year was £[REDACTED].

### Transaction

10. Pursuant to a Business Sale Agreement dated 15 March 2017, Live Nation agreed to acquire 75% of the shares in the loW festival. The purchase price for the 75% stake was [REDACTED]. The remaining 25% of the loW festival's shares are owned by Solo Promoters Limited (**Solo**), which is owned by John Giddings.

### Procedure

11. The CMA's mergers intelligence function identified this transaction as warranting an investigation.<sup>1</sup>
12. The Merger was considered at a Case Review Meeting.<sup>2</sup>

### Jurisdiction

13. As a result of the Merger, the enterprises of Live Nation and the loW festival have ceased to be distinct.
14. The Parties overlap in the supply of large camping music festivals in the UK. The Parties' combined share of supply exceeds 25% on a number of bases.

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<sup>1</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

<sup>2</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

For example, on the basis of large camping festivals with over 30,000 capacity, the Parties' combined share of supply is [40-50]% (with a [0-5]% increment) (see Table 1 below). The CMA therefore believes that the share of supply test in section 23 of the Act is met.

15. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
16. The Merger completed on 15 March 2017 and was first made public on 17 March 2017. The four-month deadline for a decision under section 24 of the Act is 16 September 2017, following extensions under section 25(2) of the Act.
17. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 5 July 2017, but was extended pursuant to section 34ZB(1) of the Act and the statutory 40 working day deadline for a decision is 14 September 2017.

## Background

18. Festivals are temporary outdoor venues, with a wide range of capacities, taking place over one or more days, often with live music events as their primary content.<sup>3</sup>
19. The majority of festivals (including the IoW festival) are independently owned, with a small number of larger festival operators running multiple festivals in the UK. Such operators include Live Nation, which owns 20 festivals in the UK, and Global Festivals Limited (**Global**), which owns 13 festivals in the UK. In addition, AEG Presents Limited (**AEG**), a subsidiary of Anschutz Entertainment Group Inc, owns the British Summer Time festival in the UK.
20. Some festival operators may also provide:
  - (a) artist management services – management and promotion to the artists' professional activities, search for the right opportunities for the artist, and liaising with booking agents;
  - (b) booking agent services – artist marketing services to event organisers, receiving requests for performances, and taking responsibility for making a booking; and/or

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<sup>3</sup> CC decision: *Completed acquisition by AEG Facilities (UK) Limited of the contract to manage Wembley Arena (AEG / Wembley Arena)*, 2 September 2013.

- (c) non-festival/concert promotion services – organisation (ie making practical arrangements for the event and undertaking marketing) services to non-festival/concert events, including using ticketing agencies to sell tickets to public.

## Counterfactual

21. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the available evidence, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>4</sup>
22. [REDACTED].<sup>5</sup>
23. [REDACTED]:<sup>6</sup>
- (a) [REDACTED];
- (b) [REDACTED]; and
- (c) [REDACTED].
24. [REDACTED].<sup>7</sup>
25. [REDACTED].
26. [REDACTED].<sup>8</sup> [REDACTED].
27. [REDACTED].
28. [REDACTED].
29. [REDACTED]:

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<sup>4</sup> *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

<sup>5</sup> [REDACTED].

<sup>6</sup> [REDACTED].

<sup>7</sup> [REDACTED].

<sup>8</sup> [REDACTED].

(a) [REDACTED]; and

(b) [REDACTED].

30. [REDACTED].

31. [REDACTED].

32. [REDACTED].

33. [REDACTED].

34. [REDACTED].

35. [REDACTED].

36. [REDACTED].

### ***Conclusion on the appropriate counterfactual by which to assess the Merger***

37. [REDACTED].<sup>9</sup> In the present case, [REDACTED], the CMA assessed the Merger against the pre-Merger situation, [REDACTED]. The CMA notes that this involved considering the constraint of the loW festival as it was prior to ownership by Live Nation or any other acquirer.

### **Frame of reference**

38. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>10</sup>

### ***Product scope***

#### *Music festivals*

39. The Parties overlap in the supply of music festivals.

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<sup>9</sup> [REDACTED].

<sup>10</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

40. The Parties did not make specific submissions on the appropriate product scope. The Parties submitted, however, that they compete with over 200 other events which run annually throughout the UK. The Parties submitted that their competitors include not only paid-ticket music festivals, but also free events and non-music based festivals, including local folk festivals and events such as Pride.
41. As the CMA has noted in previous cases,<sup>11</sup> music festivals differ along multiple dimensions including, for example, by whether they are camping festivals or day festivals, by the genre of the artists at the festival, by the size of the festival, and/or by the balance of music versus non-music attractions. The CMA's investigation in this case has confirmed, consistent with previous decisions, that individual music festivals are highly differentiated, but that there is likely to be at least a proportion of customers who would switch between certain festivals. The CMA has therefore taken all music festivals as the starting point for its analysis but considered whether the product scope should be segmented or expanded further.
42. The CMA considered, in particular, whether the product scope could be further broadened or segmented according to specific features of festivals, including:
- (a) whether free events and non-music based festivals should be included within the frame of reference;
  - (b) the size of the festival; and
  - (c) whether the festival is a camping festival.

*Free events and non-music festivals*

43. As noted above, the Parties submitted that they compete with over 200 other events, including free events and non-music based festivals.
44. The evidence available to the CMA did not, however, support the Parties' submission that they compete with free and non-music based events. In particular, a survey of the loW festival attendees carried out by the CMA<sup>12</sup> did not indicate that customers considered non-music festivals or free events as

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<sup>11</sup> CMA Decision: *Completed acquisition by LN-Gaiety Holdings Limited of MAMA & Company Limited*, 19 February 2016 (*Live Nation / MAMA*).

<sup>12</sup> In total, 1,347 customers completed the survey, giving a response rate of 19%. Further details on the survey are provided below at paragraphs 85-87.

close alternatives to the loW festival.<sup>13</sup> The CMA has therefore not included free events or non-music events within its product frame of reference. However, the CMA has taken into account the constraint from free events and non-music festivals, to the extent relevant, within its competitive assessment.

### *Size of festival*

45. The Parties submitted that they compete with all festivals regardless of their size.
46. Some third party feedback has suggested to the CMA that it should consider a narrower frame of reference for large festivals only, because large festivals are not constrained by smaller festivals. This is on the basis that: (i) large festivals tend to attract more top artists, particularly the very top artists; (ii) seeing a particular artist is a key driver of customer choice; and (iii) tickets to larger festivals are typically more expensive.
47. As the CMA has observed in its previous cases in this sector, the presence of high-profile headliners appears to be an important parameter on which festivals compete. The CMA's survey asked the loW festival attendees why they had chosen to go to the loW festival, rather than another festival, and the results showed that the presence of 'high-profile headliners' was rated as 'essential' or 'very important' to their choice by 77% of respondents (the second highest driver of choice after 'atmosphere').
48. The CMA has received evidence relating to the UK festival performances of 'Top 100' artists (based on total global touring income) between 2013 and 2016.<sup>14</sup> This showed that the proportion of 'Top 100' artists at a festival increased as the festival size increased and that significant distinctions could be drawn when comparing festivals of certain sizes. For example, in 2016 only 13% of UK music festivals with a capacity under 30,000 had at least one Top 100 artist performing,<sup>15</sup> whereas 47% of UK music festivals with a capacity of 30,000 or greater had at least one Top 100 artist performing.<sup>16</sup>

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<sup>13</sup> By exception, one free festival – Radio 1's Big Weekend – was also attended by a substantial number of attendees of Live Nation's V Festival, and a significant number of top artists play there. The CMA notes, however, that certain features of this event – ie the location of the festival changing each year and 95% of tickets being reserved for individuals living in the area surrounding the festival location (<http://www.bbc.co.uk/mediacentre/latestnews/2017/radio-1-big-weekend-hull-tickets>) – mean that it cannot be considered as an alternative for festival-goers on an ongoing basis.

<sup>14</sup> The data was sourced from [www.pollstar.com](http://www.pollstar.com).

<sup>15</sup> This figure was even lower in 2015, when only 6% of music festivals with a capacity under 30,000 had a Top 100 artist performing.

<sup>16</sup> As explained in paragraph 51, the evidence available to the CMA does not support any specific capacity figure above which a festival would typically be considered to be 'large' for these purposes.



Moreover, 83% of performances at UK music festivals by Top 100 artists were at festivals with capacity over 30,000.

49. The data supplied by the Parties also suggests a robust positive correlation between ticket price and festival size.<sup>17</sup> In particular, the CMA considers that the fact that larger festivals typically command higher ticket prices than smaller festivals is consistent with the findings of the CMA's survey (as described in paragraph 47 above) that the presence of high-profile headliners is an important consideration for potential festival-goers.
50. The CMA therefore believes that (i) there is evidence that larger festivals are able to attract a higher number of top artists, while smaller festivals typically have very few, if any, top artists performing; and (ii) the presence of high-profile headliners is an important consideration for festival-goers. On this basis, the CMA believes that it is likely that large festivals are more closely constrained by other large festivals than by smaller festivals and therefore considered the impact of the Merger in particular in relation to large festivals.
51. While the CMA notes the distinctions in terms of the proportion of 'Top 100' artist performances noted above, the evidence available to the CMA does not clearly support a specific capacity figure above which a festival can be considered to be 'large' for the purposes of a frame of reference. The Parties told the CMA that the daily capacity of the IoW festival was [X].<sup>18</sup> Third party feedback indicated that the IoW festival would be considered to be a large festival. However, the CMA also notes that some festivals with much smaller capacity have attracted top artists (eg Kendal Calling, which has a capacity of only 25,000) and therefore also possess certain characteristics of a 'large' festival.
52. Therefore, on a cautious basis, the CMA has assessed the impact of the Merger within the frame of reference for large festivals (and large camping festivals) on the basis of a number of different capacity figures. However, as no competition concerns arise on any plausible definition of 'large' festival, it was not necessary for the CMA to conclude on a precise cut-off point for 'large' festivals.

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<sup>17</sup> Correlations were between size measures of (i) daily capacity and (ii) total capacity. Price measures were of (i) general admission, (ii) general admission including camping when this was not automatically included but available, and (iii) price per day, measured as total price over number of days. Analysis excluded free festivals and multiday festivals where tickets could only be purchased for individual days.

<sup>18</sup> One third party told the CMA that the IoW festival's maximum licenced capacity is 89,999, and that this figure should be used in the CMA's analysis. The CMA, however, considered that a capacity which more closely reflects the upper bound of attendance in recent years (ie in 2015-2017), such that the figure supplied by the Parties, is more appropriate.

### *Camping versus non-camping festivals*

53. The Parties submitted that a wide frame of reference, including both camping and day festivals, is appropriate.
54. Camping or 'destination' music festivals are the more traditional music festival model. These music festivals typically take place in a rural location for multiple days, finishing on a final weekend. Such events may involve significant investment in travel time and camping equipment for many attendees, although some attendees may stay in nearby rented accommodation and travel to the site each day.
55. More recently, there has been a growth in music festivals held in urban centres. This model of festival provides a range of acts and attractions in convenient city-centre locations, but is open only during the day and does not include camping or other accommodation. These events can be single day (eg Citadel, Field Day festival) or multi-day (eg Wireless, TRNSMT). Tickets are sold either for the full run of days or for individual days.
56. The loW festival is a camping festival, held in a relatively rural setting in Seaclose Park on the outskirts of Newport on the Isle of Wight.
57. The CMA considered various pieces of evidence in its assessment of whether it is appropriate to include camping and day festivals within a single frame of reference. For example, feedback from one competitor indicated that it considers that camping festivals compete most closely with other camping festivals, but that there remains some diversion between camping and non-camping festivals. Similarly, the CMA's customer survey also supported the proposition that the loW festival may compete more closely with other camping festivals – only around [5-10]% of those survey respondents who would divert to another festival if the loW festival was not taking place in 2017 (see footnote 31) would divert to a day festival, with the other [90-100]% going to other camping festivals. Survey respondents were significantly more likely to attend camping than non-camping festivals if they could not attend the loW festival.<sup>19</sup>
58. Finally, the CMA notes that, during a meeting with the CMA, Mr Giddings expressed the view that a day festival is 'not a festival', which the CMA understands to mean that day festivals are a more remote competitive constraint on camping festivals (including the loW festival).

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<sup>19</sup> Only one non-camping festival mentioned in the top 10 responses to the diversion question (Victorious Festival in Portsmouth, [0-5]% diversion).

59. Accordingly, on a cautious basis, the CMA has assessed the impact of the Merger in relation to camping festivals only. The CMA has taken into account the constraint from non-camping music festivals in its competitive assessment where the evidence supports the existence of such a constraint.
60. However, as no competition concerns could arise on the basis of this cautious approach, it was not necessary for the CMA to conclude whether camping festivals constitute a separate frame of reference.

#### *Conclusion on the product scope for music festivals*

61. The CMA assessed the impact of the Merger on the supply of large camping music festivals, but has taken into account the constraint from other events and smaller/non-camping festivals where sufficient evidence of this constraint exists. However, it was not necessary for the CMA to reach a conclusion on the product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.
62. The CMA notes that music festivals are highly differentiated and that a wide variety of factors (including the points of differentiation described above) will be relevant to how closely particular festivals compete with one another. As described below, the CMA has taken these factors into account in its assessment of closeness of competition.

#### *Concert promotion*

63. Live Nation is also active in the promotion of live music events other than festivals, including tours and individual performances. Promotion of live music events was considered by the CMA in *Live Nation / Ticketmaster*.<sup>20</sup> In that case, the CMA found that the relevant market was not wider than the promotion of live music events, including festivals.<sup>21</sup>
64. The CMA's investigation in this case has considered the organisation of music festivals separately, as outlined above. Therefore, for the purpose of assessing the non-horizontal theories of harm only, the CMA has considered a frame of reference for promotion of live music events excluding festivals (ie concert promotion). However, it was not necessary for the CMA to reach a conclusion on the product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

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<sup>20</sup> Competition Commission Decision: A report on the completed merger between Ticketmaster Entertainment, Inc and Live Nation Inc, 7 May 2010 (*Live Nation / Ticketmaster*).

<sup>21</sup> *Live Nation / Ticketmaster*, paragraph 5.67.

## **Geographic scope**

### *Music festivals*

65. The Parties submitted that the relevant geographic frame of reference should be at least UK-wide and potentially broader.
66. The CMA has previously considered a UK-wide frame of reference for the supply of music festivals.<sup>22</sup>
67. The CMA considered whether the geographic scope should be wider than the UK in this case. The results of the CMA's survey showed that, even though FIB Benicassim Festival in Spain accounted for some diversion ([0-5]%), the majority of respondents indicated a UK-held festival in their responses to the diversion question (see footnote 31). Based on this evidence, the CMA does not believe that a wider geographic frame of reference is appropriate.
68. The CMA's market testing in this case indicated that the location of a festival within the UK can have a material impact on competitive dynamics in relation to the supply of festivals. In particular:
  - (a) evidence from the CMA's survey of loW festival attendees showed that more than 80% of respondents travelled five hours or less to the festival (suggesting that, in practice, most attendees come from the southern part of the UK);
  - (b) Live Nation's surveys of its festival attendees provided information on their home postcodes. This tends to show a degree of clustering towards the location of individual festivals, with attendees most concentrated in the areas nearby the festivals. The same surveys show that distributions of journey durations are typically skewed towards shorter travel distances, suggesting that attendees are more likely to travel to festivals from nearby, rather than travelling across the country; and
  - (c) the scope of exclusivity agreements entered into between artists and the loW festival, which is likely to be indicative of the area over which a festival operator considers that it is competing, is [X].
69. For the reasons set out above, the CMA assessed the impact of the Merger on the supply of music festivals in the UK, while taking into account in its competitive assessment that the location of a festival within the UK may be important in assessing the competitive constraints that certain festivals

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<sup>22</sup> *Live Nation / MAMA*, paragraph 56.

impose on each other. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

### *Concert promotion*

70. In *Live Nation / Ticketmaster*, the CMA 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.<sup>23</sup>
71. The CMA's investigation in this case has suggested this remains an appropriate approach and therefore the CMA has considered the impact of the merger in concert promotion in the UK only. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

### **Conclusion on frame of reference**

72. For the reasons set out above, the CMA assessed the impact of the Merger in the following frames of reference: (i) the supply of large camping music festivals in the UK; and (ii) the promotion of live music events excluding festivals in the UK.

## **Competitive assessment**

### ***Horizontal unilateral effects***

73. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.<sup>24</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to unilateral horizontal effects in the supply of music festivals in the UK, segmented as indicated in paragraph 72 above.
74. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA considered:

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<sup>23</sup> *Live Nation / Ticketmaster*, paragraph 5.68.

<sup>24</sup> *Merger Assessment Guidelines*, from paragraph 5.4.1.

- (a) shares of supply;
- (b) the closeness of competition between the Parties; and
- (c) the competitive constraints.

### *Shares of supply*

75. Shares of supply typically have limited weight in a differentiated market, as firms will compete against each other to different degrees. Share data may, nevertheless, provide evidence of the significance of the merging parties (relative to the size of the relevant market as a whole) and of the change in market power that would be brought about by the Merger.
76. The Parties submitted that they have low shares of supply within a frame of reference comprised of all UK festivals. On this basis, the Parties suggested their combined share of supply post-Merger would be [5-10]% (based on the number of festivals) or [20-30]% (based on capacity in terms of person-days).<sup>25</sup> These figures are consistent with third party estimates provided to the CMA.
77. The CMA would usually consider shares of supply based on revenue data to provide the best indicator of competitive significance. In this case, revenue data for the supply of festivals is not available. Based on the available data, the CMA believes that share data based on person-days is likely to provide the closest proxy to revenue-based data. The CMA notes, however, that the evidence available suggests that larger festivals are generally more expensive, and that Live Nation's festivals are among the largest festivals in the UK. The CMA therefore considers that share data based on person-days may understate the competitive significance of the Parties, as the Parties' shares based on revenue would likely be higher.
78. The Parties' shares of supply are set out in Table 1 below. Consistent with the approach adopted to the relevant frame of reference, the CMA assessed whether the Parties' shares of supply would be materially higher within narrower sub-segments for the supply of: (i) large festivals; (ii) camping festivals; and (iii) large camping festivals.

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<sup>25</sup> Categorisation of large festivals is by peak day capacity, as this was how third parties most frequently referred to them, while shares of supply are measured in person-days, as these are most likely to correlate with revenue. Person-days refer to the daily capacity of the festival in terms of numbers of people, multiplied by the length of the festival in days. The Parties provided 'a selection of live music events that feature a range of artists'. This included free music festivals, and events such as Brighton Pride which might not always be conceived of as a music festival. However, it should also be noted that the CMA's survey of IoW festival attendees found a number of festivals which were not included in the Parties data submission.

**Table 1 Shares of supply – person-days<sup>26</sup>**

	Live Nation	loW festival	Global	Others <sup>27</sup>
All festivals excluding free events and non-music festivals	[20-30]%	[0-5]%	[10-20]%	[60-70]%
Camping festivals	[20-30]%	[0-5]%	[10-20]%	[60-70]%
Large festivals (20,000+)	[30-40]%	[0-5]%	[10-20]%	[40-50]%
Large festivals (30,000+)	[40-50]%	[0-5]%	[10-20]%	[40-50]%
Large festivals (40,000+)	[40-50]%	[0-5]%	[10-20]%	[40-50]%
Large (20,000+) camping festivals	[30-40]%	[0-5]%	[10-20]%	[40-50]%
Large (30,000+) camping festivals	[40-50]%	[0-5]%	[10-20]%	[40-50]%
Large (40,000+) camping festivals	[40-50]%	[5-10]%	[10-20]%	[30-40]%

Source: CMA's analysis of the Parties' data

79. The share data set out in Table 1 shows that the Parties' combined share of supply is significant on a number of bases but that the Merger does not bring about a large increment. For example:
- (a) in the supply of large festivals (ie with 20,000-40,000+ capacity), the Parties' combined share of supply ranges from [30-40]% to [40-50]%, with an increment brought about by the Merger ranging from [0-5]% to [0-5]%; and
  - (b) in the supply of large (ie with 20,000-40,000+ capacity) camping festivals,<sup>28</sup> the Parties' combined share of supply ranges from [40-50]% to [50-60]%, with an increment brought about by the Merger ranging from [0-5]% to [5-10]%.
80. One third party provided estimates of shares of supply based on revenues rather than capacity. These estimates suggest that in the supply of large festivals with a capacity of 30,000 plus, the Parties' combined share of supply would be 55%, with an increment of 4% brought about by the Merger.<sup>29</sup> The estimates suggest, consistent with the observation in paragraph 77 above, that the Parties' shares may be more significant based on revenues (but again that the Merger does not bring about a large increment in share).

<sup>26</sup> Adjustments have been made to exclude a number of festivals which were not principally music festivals: Freedom Festival, Bug Jam and Brighton Pride. The number of people days was also reduced for Glastonbury, Boardmasters and Boomtown Fair to reflect the number of days at which mainstage music performances take place.

<sup>27</sup> This includes AEG's British Summer Time festival and other independent festivals.

<sup>28</sup> Applying both of the narrower frames of reference described in the frame of reference section above cumulatively.

<sup>29</sup> Revenue was calculated by multiplying average daily ticket prices by total capacity. Results were provided only for large festivals. The CMA adapted this analysis to be consistent with its view that an appropriate capacity for the loW festival is [30], as noted above.

### *Closeness of competition between the Parties*

81. The Parties submitted that the loW festival does not compete more closely with Live Nation's existing festivals than it competes with the many other music festivals in the UK. The Parties submitted that they are not each other's closest competitors in relation to genre, target audience or location, and that they do not share any other competitively significant characteristic that could make them each other's closest competitors.
82. The Parties submitted that festivals attract different types of fans depending on the music genre and atmosphere of the festival. In this regard, the Parties submitted that the loW festival offers largely 'heritage' acts, mixed with some current acts, and therefore appeals largely to an older audience. On this basis, the Parties consider that the loW festival competes primarily with other festivals with a 'heritage' focus, such as Glastonbury and British Summer Time, which are similar in terms of music genre, atmosphere, and target audience.
83. The Parties submitted that Live Nation does not have any festival that focuses on 'heritage' acts. In particular, the Parties submitted that Live Nation's Reading and Leeds festivals are considered to be 'coming of age' festivals and the V festival is a popular festival focussed on mainstream top 40 artists. The Parties also submitted that other Live Nation festivals focus on specific music genres that are very different from the music genre at the loW festival: Download focuses on heavy metal music; Creamfields on electronic dance music (**EDM**); BluesFest on blues music; and Wireless on urban music. The Parties submitted that the audiences that attend these festivals are therefore generally different from that for the loW festival.
84. For the purposes of the assessment of the closeness of competition between the Parties, the CMA considered the following evidence:
  - (a) results from the CMA's survey;
  - (b) evidence provided by the Parties, comprising:
    - (i) Live Nation's surveys of its own festivals (intended to provide evidence on what festivals attendees at Live Nation festivals may divert to);
    - (ii) an analysis of Ticketmaster data (intended to provide evidence of actual switching by consumers); and
    - (iii) Live Nation internal documents (intended to provide evidence of how much mention is made of the loW festival).



(c) third party views; and

(d) the location of performances of top artists at UK festivals.

### *The CMA's survey*

85. The CMA surveyed 7,594 ticket buyers at the loW festival 2017 who bought tickets using Ticketmaster (which represented [X] % of tickets sold).<sup>30</sup> In total, 1,347 customers completed the survey, giving a response rate of 19%.<sup>31</sup> The CMA's survey results in relation to diversion from the loW festival to other festivals are summarised in Table 2 below.<sup>32</sup>

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<sup>30</sup> [X] general access tickets were sold. Multiple tickets were bought per transaction, however, making the total number of ticket buyers significantly below this.

<sup>31</sup> Respondents were asked:

*"Please imagine that when you decided to book for this year's Isle of Wight Festival you had discovered it was not taking place in 2017. What would you have done instead? Would you have ... ?*

- 1 *Gone to another festival*
- 2 *Not gone to a festival at all*
- 3 *Don't know"*

Respondents who chose option 1 were then invited to name the festival(s).

<sup>32</sup> The available evidence suggests that certain factors may result in the diversion ratios identified in the survey being overstated or understated (which would therefore affect the extent to which they could provide an indication of relative competitive constraint). For example, the CMA's survey covered [X] % of the loW festival tickets sold, and the Parties submitted that the second largest proportion of tickets ([X] %) was sold via The Price is Wight ticketing platform. The Price is Wight is a local outlet that runs special offers to the Isle of Wight residents. The CMA therefore believes that the Isle of Wight residents purchasing tickets via The Price is Wight are less likely to divert to another festival, given the special offers provided to them by this platform and the convenient location of the loW festival. Given that festival-goers who purchased their tickets via The Price is Wight were not covered by the survey, the CMA believes that the survey diversion ratios from the loW festival to any other festival (including Live Nation's festivals) may be overstated. On the other hand, the CMA considers that diversion to Glastonbury may also be overstated (see paragraph 113), with the effect that there could be higher diversion to Live Nation's festivals than that indicated by the results of the CMA's survey. In the round, the CMA considers that the impact of these factors is likely to be relatively modest and therefore that the diversion ratios are sufficiently reflective of the relative constraint for the purposes of the CMA's assessment.

**Table 2 Diversion from loW festival to individual festivals<sup>33</sup>**

	<b>Festival</b>	<b>Diversion Ratio</b>	<b>Live Nation festival?</b>	<b>Daily capacity</b>	<b>Camping festival?</b>
1	Glastonbury	[5-10]%	No	[✂]	Yes
2	Reading	[0-5]%	Yes	[✂]	Yes
3	Download	[0-5]%	Yes	[✂]	Yes
4	Latitude	[0-5]%	Yes	[✂]	Yes
5	Bestival	[0-5]%	No	[✂]	Yes
6	V Festival (venue not stated)	[0-5]%	Yes	[✂]	Yes
7	Kendal Calling	[0-5]%	No	[✂]	Yes
8	Victorious (Portsmouth)	[0-5]%	No	[✂]	No
9	FIB Benicassim Festival (Spain)	[0-5]%	No	[✂]	Yes
10	Leeds	[0-5]%	Yes	[✂]	Yes
	<b>Live Nation's festivals cumulatively</b>	<b>[10-20]%</b>			
	<b>Third party festivals cumulatively</b>	<b>[20-30]%</b>			
	<b>Would not go to another festival</b>	<b>[60-70]%</b>			

Source: the CMA's survey results and the Parties' data

86. The CMA's survey results showed that the majority of respondents ([60-70]%) would not go to another festival if the loW festival was not taking place, indicating that other activities, eg non-festival entertainment, may be a significant constraint. Glastonbury was found to be the most popular destination for festival-goers in the absence of the loW festival (with [5-10]% diversion). Cumulative diversion to Live Nation's festivals was found to be [10-20]%, with no individual Live Nation festival accounting for more than [0-5]% diversion. Cumulative diversion to third party festivals was [20-30]%.
87. The CMA considers that the [10-20]% diversion from the loW festival to Live Nation festivals is not insignificant, but that the much more significant number of attendees stating they would not attend another festival at all (at [60-70]%) suggests that the Parties' festivals do not compete particularly closely with each other. This suggests that marginal customers may be more likely to spend their money on alternative entertainment rather than going to another Live Nation festival if the merged entity were to attempt to worsen the offering at the loW festival.

<sup>33</sup> The results are shown for the top 10 festivals. A further 39 festivals attracted diversion. 8 of these were owned by Live Nation.

88. Furthermore, while Live Nation festivals make up 3 of the top 5 festivals to which customers said they would divert, the diversion to individual Live Nation festivals is small, up to a maximum of [0-5]% for Reading or Download. Assuming that diversion is symmetrical (at least for the surveyed customers, who purchased tickets through Ticketmaster), the CMA believes that this implies that diversion from Live Nation festivals may be too low for the loW festival to impose a significant constraint on any Live Nation festival. Therefore, it is unlikely that Live Nation would be incentivised to worsen the offering of any of the Live Nation festivals as result of acquiring the loW festival, as the number of customers who would be diverted from Live Nation festivals and would ultimately choose to attend the loW festival would be limited.<sup>34</sup>

*Evidence submitted by the Parties*

89. As set out in paragraph 84, the Parties submitted three main pieces of evidence to support their position that they are not close competitors:

- (a) Live Nation's surveys of its own festivals;
- (b) an analysis of Ticketmaster data; and
- (c) Live Nation's internal documents.

90. Each of these pieces of evidence are considered in turn below.

- *Live Nation's surveys*

91. The Parties submitted 42 surveys of Live Nation's festivals, primarily covering the years 2015 and 2016. The Parties submitted that these surveys showed that Live Nation festival attendees exhibit low attendance at the loW festival (relative to other festivals), in particular because very few respondents in these surveys indicated that they had (or would) also attend the loW festival in the same year.

92. The CMA notes that these surveys provide only limited insight into the closeness of competition between the Parties' festivals. In particular, only a small proportion of customers attend more than one festival each year.<sup>35</sup> Accordingly, the narrow focus of the survey (on festival attendance within a

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<sup>34</sup> In most cases the Live Nation's festivals are larger than the loW festival, so that adjusting for relative size would imply that diversion from the Live Nation festival to the loW festival would be lower than diversion from the loW festival to a Live Nation festival. In one case, adjusting for relative size would increase the diversion ratio to [5-10]%

<sup>35</sup> Typically around [3-4]% of respondents to Live Nation's surveys of festivals attendees only go to one festival in a year.

single year) is likely to provide only limited insight into customer decision-making. More generally, the CMA has not been provided with any evidence to suggest that attendance at two or more festivals in a given year indicates that attendees regarded these festivals as substitutes. Finally, Live Nation's survey evidence is not available for a number of Live Nation's festivals: TRNSMT, The Great Escape, Lytham festival, Lovebox and Citadel.

93. Given these limitations, the CMA has placed only limited weight on the evidence based on Live Nation's surveys. The CMA notes, however, that this evidence is broadly consistent with the results of the CMA's survey, as described above.

- *Ticketmaster data*

94. The Parties submitted an analysis of buying choices over time from Ticketmaster data. The analysis provided was intended to show actual customer switching between Live Nation festivals and loW festival (on the basis that festival purchases are, as noted above, likely to take place once each year in most cases).<sup>36</sup> The Parties submitted that the Ticketmaster data shows that:

(a) switching between the loW festival and any Live Nation festival across different years is very low – at most [0-5]% of ticket buyers who bought tickets for the loW festival bought tickets for a Live Nation festival in the following year (or in another version of the analysis, the preceding year);<sup>37</sup> and

(b) only a small percentage of customers buy a ticket for any festival in the other year (eg [80-90]% of 2015 loW festival Ticketmaster ticket buyers did not buy a ticket for another recorded festival in 2016), indicating that competition between festivals is likely to be just one of many influences on consumer choices.

95. The CMA notes that the Ticketmaster data is subject to a number of limitations that serve to undermine the extent to which it is possible to put significant weight on it. In particular:

(a) for many of the festivals for which results are provided, tickets sold through Ticketmaster account for only [X] of all tickets sold (eg only

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<sup>36</sup> Ticket purchasers were matched using email addresses or alternatively the name and home address.

<sup>37</sup> The most significant overlap being between the V Festival.

[X]%, [X]%, and [X]% of tickets sold for Leeds, Reading and Latitude festivals respectively in 2016 were sold through Ticketmaster);

- (b) the results of the analysis are based on customers using the same Ticketmaster account between years, or in some cases matching a Ticketmaster account to a TicketWeb account by the matching of email addresses and names and addresses. Given that customers may have used different Ticketmaster accounts between different years, or individuals who bought a ticket in one year may have attended a festival but not themselves bought a ticket in the other year (particularly because multiple tickets were frequently bought per transaction), this may not provide a reliable record of customer decision-making; and
- (c) the other evidence available to the CMA suggests that the Ticketmaster data may be systematically understating festival attendance at the festivals for which the Parties supplied data (eg the overall level of repeat loW festival purchasing in the Ticketmaster data from 2015 to 2016, at [X]%, is much lower than repeat attendance reported by the CMA's customer survey, at 44%, between 2016 and 2017).<sup>38</sup>

96. Given these limitations, the CMA has placed only limited weight on the evidence based on the Ticketmaster data. The CMA notes, however, that this evidence is broadly consistent with the results of the CMA's survey, as described above.

- *Live Nation's internal documents*

97. The Parties submitted an analysis of Live Nation's internal marketing plans for a number of Live Nation festivals in 2016 and 2017, highlighting where the plans included marketing (eg flyering) at another festival. The Parties submitted that this showed that the loW festival attendees are not frequently targeted or marketed to by Live Nation.

98. The CMA considers, however, that only limited weight can be placed on this evidence because:

- (a) the analysis only covers seven of Live Nation's 20 festivals (although the CMA understands this is because the other Live Nation festivals did not market themselves at another festival); and

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<sup>38</sup> While it is possible the level of repeat attendance varied between these years, such variation seems unlikely to account for a difference of this magnitude.

(b) the majority of festivals at which Live Nation plans to market its events are already owned by Live Nation (and therefore this activity is not necessarily indicative of competition).

99. The CMA considers this indicates that marketing the festival at another festival may not be a particularly important channel for marketing. This is also demonstrated by the relatively low spend on festival-based marketing compared to other marketing channels.
100. For these reasons, the CMA does not consider the omission of the loW festival from the list of events at which Live Nation markets its festivals to be particularly probative as regards closeness of competition.

#### *Third party views*

101. Third party views were mixed, but, on the whole, suggested that the loW festival is only a limited constraint on Live Nation. Some third parties viewed the loW festival as one of the major festivals in the UK, considering that it competes directly with Live Nation's festivals. However, the majority of third party views suggested that the loW festival is a less significant and differentiated festival, indicating that it exercises only a limited constraint on Live Nation.

#### *The location of performances of top artists at UK festivals*

102. As explained in paragraphs 47-48 above, artists are a particularly important factor for competitive differentiation, with the appearance of top artists being an important factor in selling festival tickets.
103. The CMA's survey results confirmed that the opportunity to see a good range of artists at a festival is one of the main reasons customers buy tickets – it was rated as 'essential' or 'very important' by 78% of survey respondents. Moreover, the presence of 'top' artists was also a very significant factor, with 77% of survey respondents describing this as 'essential' or 'very important'. The CMA examined evidence supplied by the Parties regarding UK performances in 2016 by the top 100 artists by global touring revenue for the years 2013-2016, as measured using data from Pollstar. The Parties submitted that 24 of the top 100 artists played in the UK in 2016, with 12 appearing at UK festivals, and 6 appearing at Live Nation festivals.
104. The CMA cross-checked this information using publicly available data, which indicated that 17 top 100 artist performances took place at UK festivals in 2016, of which 9, or 53%, were at Live Nation festivals. A further two top 100 artists were found to have performed at the loW festival, making up 12% of

such performances. Glastonbury accounted for three performances by top 100 artists, with Bestival accounting for one performance, and British Summer Time at Hyde Park accounting for two performances. This information is summarised in Table 3 below.

**Table 3 Performances by top 100 artists at UK festivals in 2016**

<b>Artist</b>	<b>Festival</b>	<b>Owner</b>
Justin Bieber	V Festival South	Live Nation
Justin Bieber	V Festival North	Live Nation
Rihanna	V Festival South	Live Nation
Rihanna	V Festival North	Live Nation
Black Sabbath	Download	Live Nation
Iron Maiden	Download	Live Nation
Bryan Adams	Lytham Festival	Live Nation
Red Hot Chilli Peppers	Reading Festival	Live Nation
Red Hot Chilli Peppers	Leeds Festival	Live Nation
The Who	loW festival	loW festival
Queen and Adam Lambert	loW festival	loW festival
Coldplay	Glastonbury	Glastonbury
Muse	Glastonbury	Glastonbury
Adele	Glastonbury	Glastonbury
The Cure	Bestival	Bestival
Mumford and Sons	British Summer Time Hyde Park	AEG
Take That	British Summer Time Hyde Park	AEG

*Source:* Parties' submissions on appearances of top 100 artists based on sum of touring revenue between 2013 and 2016 using data from Pollstar, supplemented with CMA research from publicly available sources.

105. On the basis of attracting performances by top artists, it appears that the pre-Merger position of Live Nation was already particularly strong, and that the loW festival is one of the few festivals that is able to attract top artists.
106. A third party provided data based on performances by a slightly broader set of top artists. The CMA's analysis of this data suggests that the Parties' position in securing top artists may be slightly less significant than shown in the data submitted by the Parties (as cross-checked by the CMA). In particular, where top 100 status was measured by global touring revenue from either 2015 or 2016, this analysis indicated that 50% (or 23 out of 46) of top 100 artist performances in the UK in 2016 took place at Live Nation festivals and 4% of such performances took place at the loW festival.<sup>39</sup>
107. In general, the CMA notes that it is difficult to precisely define and measure the 'top' artists who are likely to be a significant driver of customer decision-making in relation to music festivals.<sup>40i</sup> Accordingly, while the data described above suggests that Parties' festivals attract a material proportion of top artists, at least by one measure, the CMA considers that this evidence should be given relatively little weight as a factor of competitive differentiation.
108. In any case, notwithstanding the loW festival's ability to attract top artists, the CMA notes that the available evidence shows that there are a number of other festivals (eg Glastonbury, Bestival, British Summer Time) that are able to do the same. Accordingly, to the extent that any weight can be placed on this evidence, it shows that the loW festival is not a uniquely close competitor to Live Nation.

*Conclusion on closeness of competition*

109. For the reasons set out above, in particular the results of the CMA's survey, the CMA believes that the Parties are not particularly close competitors. While the CMA placed limited weight on the evidence submitted by the Parties, given the limitations of this evidence, the CMA notes that the evidence was broadly consistent with the results of its own survey. Evidence of closeness based on artist performances and third party comments also indicated that, while the loW festival is one of the main festivals in the UK, and able to attract top artists, it is not competing particularly closely with the Live Nation festivals.

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<sup>39</sup> This data excludes performances at free festivals including BBC Radio 1's Big Weekend and Radio 2 Live (for the reasons outlined above). The CMA made one correction to the third party's data, based on publicly available sources.

<sup>40</sup> For example, the rankings used by the Parties are based on global rather than UK touring revenue and therefore may not be fully consistent with the preferences of UK consumers.



### *Competitive constraints*

110. Unilateral effects are more likely where customers have little choice of alternative supplier. The CMA assessed whether there are alternative suppliers which would provide a competitive constraint on the merged entity. The CMA assessed whether there would remain sufficient competitive constraints post-Merger such that the Parties would not be able to profitably increase price or reduce quality, range or service. The CMA assessed the constraints on the loW festival which could come from other music festivals, or from outside the market.
111. The Parties submitted that:
- (a) Glastonbury and British Summer Time Hyde Park are similar festivals to the loW festival in terms of characteristics such as music genre, atmosphere and target audience;
  - (b) there are many other festivals which are geographically closer to the loW festival than Live Nation's festivals; and
  - (c) there are many other festivals that are like Live Nation's in terms of characteristics such as music genre, capacity, and the inclusion (or not) of camping.
112. The CMA has used its survey results (as show in Table 2 above) as a starting point for considering the alternative festival constraints on the loW festival.

### *Glastonbury*

113. As shown in Table 2, Glastonbury was the highest single second preference festival (with [5-10]% diversion). A number of third parties suggested, however, that: (i) the Glastonbury festival is unique in selling out in advance of the line-up being announced; (ii) the prestige, press coverage and charitable nature of the festival mean that it books artists at much lower cost than other festivals; (iii) its capacity is approximately 50% larger than the next biggest UK festival; and (iv) it sells out significantly in advance of other festivals. The CMA also notes that the Glastonbury festival does not run every year (as every fifth year it has a 'fallow year'), meaning that it may not provide a consistent competitive constraint.
114. On the other hand, the CMA notes that a significant proportion of respondents to the CMA's customer survey indicated that they would like to divert to Glastonbury, suggesting that there is a level of substitutability between Glastonbury and other festivals (and, in particular, the loW festival). The CMA further notes that festivals do not typically price in excess of Glastonbury,

supporting the Parties' submission that Glastonbury sets a ticket price ceiling which other festivals are unwilling to exceed.

115. The CMA therefore believes that the available evidence indicates that Glastonbury, notwithstanding the factors described in paragraph 113 above, imposes a material competitive constraint on the Parties' ticket prices. Nevertheless, given its uniqueness and the fact that Glastonbury sells out particularly quickly and is always at capacity (reducing the likelihood of Glastonbury being a realistic alternative for many respondents), the CMA believes that the level of diversion to Glastonbury suggested by the results of the CMA's survey may be overstated. In any case, the presence of Glastonbury in the market is not sufficient in itself to ensure that there are no adverse effects arising from the Merger.

#### *Other music festivals*

116. The evidence available to the CMA also indicates that several of the non-Live Nation festivals which generated material diversion rates (albeit lower than those for Live Nation festivals) impose a competitive constraint on the Parties, in particular, Bestival (with [0-5]% diversion), Kendal Calling (with [0-5]% diversion) and Victorious (with [0-5]% diversion) (see Table 2).
117. Kendal Calling is a festival in the Lake District, Bestival recently moved from the Isle of Wight to the mainland nearby (Lulworth Estate in Dorset), whereas Victorious takes place in Southsea, Portsmouth. The CMA notes that the geographic proximity of Bestival and Victorious to the loW festival is likely to strengthen the competitive constraint imposed by these festivals on the loW festival.
118. The Parties have suggested that British Summer Time is a particularly strong competitor to the loW festival because it is also a 'heritage' festival. The CMA notes, however, that British Summer Time was a long way down the list of second preference alternatives in its survey, at number [X] and recorded low diversion (at [0-5]%). Accordingly, notwithstanding the similarities suggested by the Parties, the available evidence suggests that the constraint imposed on the Parties by British Summer Time is likely to be more remote than the Parties have suggested.

#### *Other activities*

119. The Parties submitted that music festivals should be seen in the context within which consumers spend their disposable income. The Parties cited evidence from Live Nation's consumer surveys which they considered to show that a

substantial number of customers who do not buy festival tickets year on year choose, for example, a holiday or a concert as an alternative to the festival.

120. The CMA notes that the evidence upon which the Parties' submission relies is limited (and therefore may not be representative of customer decision-making in practice).<sup>41</sup> The CMA recognises, however, that a substantial proportion of respondents to the diversion question in its survey ([60-70]%) said they would not go to a festival at all, or would go only to the other festival(s) they were already going to that year and would not substitute another festival for the IoW festival.<sup>42</sup> This is consistent with a material out-of-market constraint.
121. The extent of this out-of-market constraint should not, however, be overstated. The CMA's survey indicated that [40-50]% of IoW festival attendees would divert to another festival (with [10-20]% of respondents diverting to Live Nation festivals). The CMA therefore believes that, even though out-of-market constraint is material, it would not be sufficient in itself to ensure that there are no adverse effects arising from the Merger.

#### *Conclusion on competitive constraints*

122. Based on the evidence set out above, the CMA believes that Glastonbury, other music festivals such as Bestival and Victorious, and the constraint from other activities, taken together, will impose sufficient competitive constraint on the merged entity post-Merger.

#### *Conclusion on horizontal unilateral effects*

123. As set out above, the CMA believes that the Parties' combined position in the supply of large camping music festivals in the UK is significant, but that the Merger does not represent a substantial change in market structure and the Parties are not particularly close competitors. Other music festivals (such as Bestival, Victorious and, to some extent, Glastonbury) will continue to impose competitive constraints on the merged entity post-Merger. The CMA believes that these constraints, in conjunction with the out-of-market constraint from other activities, are sufficient to ensure that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.

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<sup>41</sup> Only three of the large number of surveys submitted by the Parties identified a significant non-festival alternative (specifically, going on a holiday) as a reason for not going to a festival: Latitude 2015, saw [X%] of respondents saying they were going on holiday instead; for Reading 2015 this was [X%]; and for Leeds 2015 it was [X%].

<sup>42</sup> This is excluding 'don't knows'.

124. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of large camping music festivals in the UK.

### ***Non-horizontal effects – dynamic foreclosure of UK music festivals and UK concert promoters***

125. Non-horizontal effects may arise when a merger brings together products that do not compete but may be related.

126. Mergers involving such effects may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.<sup>43</sup>

127. Following detailed submissions from third parties, the CMA has considered whether the combination of the Parties' upstream activities in relation to the supply of artists, in conjunction with the downstream consolidation in the UK festival sector brought about by the Merger, could (through the use of exclusivity arrangements or the 'bundling' or 'tying' of a portfolio of festival and concert performances) provide the merged entity with the ability and incentive to substantially restrict the range and quality of artists available to non-Live Nation UK music festivals and concerts, thereby leading to an SLC in the supply of UK festivals and UK concert promotion.<sup>44</sup>

128. The CMA's approach to assessing non-horizontal theories of harm is to analyse: (i) the ability of the merged entity to foreclose competitors; (ii) the incentive of it to do so; and (iii) the overall effect of the strategy on competition.<sup>45</sup>

### ***Ability***

129. Consistent with the CMA's Merger Assessment Guidelines,<sup>46</sup> any change in the ability to foreclose downstream rivals brought about by a merger will depend on the significance of the input in question to the product or service offered by those downstream rivals, and on the extent to which the

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<sup>43</sup> In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or substantial competitive weakening of a rival.

<sup>44</sup> The CMA refers to this as dynamic foreclosure since the theory relies on Live Nation's market power in the festival market, giving it ability to influence at which events artists perform and hence to reduce competition further in the festival market (and also to reduce competition in concert promotion).

<sup>45</sup> [Merger Assessment Guidelines](#), paragraph 5.6.6.

<sup>46</sup> [Merger Assessment Guidelines](#), paragraph 5.6.10.

downstream rivals will continue to be able to obtain that input from alternative sources. Accordingly, within the context of the current case, the CMA has considered the importance of the artists to which the merged entity could feasibly limit access by rival festival or concert promoters in the UK and the extent to which downstream rivals would continue to be able to access a sufficient range and quality of artists post-Merger.

*Importance of artists as an input in the supply of UK festivals and UK concert promotion*

130. The evidence available to the CMA indicates that the key input into all live music entertainment is ‘content’ – ie the artists who perform at music festivals and concerts. The vast majority (78%) of respondents to the CMA’s survey indicated that the opportunity to see a good range of artists at a festival is one of the main reasons customers buy tickets. The survey also suggests that there is a smaller sub-set of ‘top’ artists who are a particularly important input for festivals, with 77% of survey respondents describing the presence of ‘top’ artists as being ‘essential’ or ‘very important.’
131. This is consistent with the evidence submitted by third parties, who told the CMA that the ability to sign artists of sufficient popularity is a key challenge. Third parties submitted that, despite the availability of a very large number of artists, only a smaller sub-set of those artists likely to be available at a given time (due to touring schedules) will have sufficient popularity to drive the sale of a large number of tickets.
132. One third party described the popularity of artists as *‘like an iceberg or pyramid,’* noting that *‘if you have a 1-2000 capacity festival there are a large number of acts to book. As the festival grows you find fewer and fewer artists and due to that their fee goes up out of proportion... an artist that can sell 60,000 tickets won’t cost 60x the price of an act that sells 1,000 tickets, they’ll likely cost 90x because there are only a handful of acts who can sell 60,000 tickets touring the world at any particular time.’*
133. The CMA therefore believes that artists – and particularly top artists – are a very important input for organisers of music festivals and concerts. Without sufficient access to suitably attractive artists, a concert promoter or festival operator may not be able to provide a competitive offering.

*Parties’ ability to influence and restrict access that downstream rivals have to artists*

134. Third parties submitted that the Parties have a wide variety of activities and arrangements relevant to the supply of festivals. Some third parties

suggested, in particular, that the Parties have significant complementary capabilities that are relevant to influencing access to artists such that the Merger will increase Live Nation's ability to substantially restrict the range and quality of artists available to non-Live Nation UK music festivals and concerts.

135. To this end, third parties submitted that:

- (a) Live Nation is already in a stronger position than its rivals to sign up artists because of the number of large festivals that it operates, which allows it to establish and build relationships with artists (which places it in an increasingly advantageous position in attracting artists over time). Third parties considered that Live Nation's position in this regard would be improved as a result of the Merger;
- (b) the availability of artists to rival operators can be limited by the use of exclusivity arrangements in the supply of UK festivals (or by tying or bundling concert and festival appearances). The breadth of opportunities that larger festival operators (such as Live Nation) can offer provides them with an in-built advantage in securing access to artists. Third parties suggested that Live Nation's exclusivity arrangements are particularly onerous (and are therefore particularly liable to restrict rivals' access to artists);
- (c) Live Nation has a significant presence in the provision of management services to artists (being estimated by some third parties to currently manage over 500 artists). Third parties said that Live Nation can use this position to influence artists' decisions about which festivals and concerts these artists would play at (and had a track record of doing so in practice); and
- (d) the loW festival is one of the most prestigious and important festivals in the UK and therefore is a more significant performance opportunity for artists than an analysis of shares of supply for UK festivals would suggest. Similarly, third parties also submitted that the involvement of Mr Giddings with the loW festival results in it being a more significant constraint on larger festivals (particularly in terms of securing access to artists) than any single festival might otherwise be, because of his status as a high profile and respected figure in the music industry who has acted as a booking agent for many high-profile international artists (eg The Rolling Stones, Madonna, Celine Dion, Iggy Pop, U2 and David Bowie).

136. Reflecting these submissions, the CMA has considered, and describes below, the available evidence in relation to: (i) the proportions of available artists that currently perform at the Parties' festivals; (ii) the significance of exclusivity

arrangements; (iii) the significance of Live Nation's artist management activities; and (iv) the significance of the loW festival and its management in terms of securing access to artists.

- *The proportion of available artists that currently perform at the Parties' festivals*

137. The Parties submitted they would not have the ability to foreclose their rivals' access to artists, as only a relatively limited proportion of the available artists could be considered to be under their potential control (whether through management arrangements and/or through contractual arrangements with large festivals).
138. The Parties submitted evidence that 6,973 artists played at UK festivals with at least 30,000 capacity (in person-days) in 2016.<sup>47</sup> Of those, [X] artists played at a Live Nation festival of that size (amounting to [10-20]% of all artists that played such festivals), and 329 played at the loW festival (4.7% of all artists that played such festivals). The Parties' combined share of artists that played at UK festivals above 30,000 capacity in that year therefore amounted to only [20-30]% of all artists that played at such events.
139. The CMA notes that this evidence focuses on all artists and that the available evidence indicates that there may be a smaller sub-set of 'top' artists who are a particularly important input for festivals (ie not all of the 6,973 artists are likely to be considered by festival providers and concert promoters as good substitutes for each other).
140. In this regard, as noted in paragraph 104 above, Live Nation festivals accounted for 53% (9 out of 17) of festival performances (using the measure used by the Parties)<sup>48</sup> or 50% (23 out of 46) of festival performances in the UK in 2016 (using the slightly broader measure supplied by a third party) in the UK in 2016 by top 100 artists.<sup>49</sup> In 2016, the loW festival accounted for 12% (2 out of 17) of festival performances (using the Parties' measure) or 4% (2 out of 46) of festival performances (using the third party measure) in the UK by top 100 artists.

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<sup>47</sup> The data in this paragraph is based on the metric of 30,000 person-day capacity, which differs from the metric of 30,000 peak day capacity used elsewhere in this decision. The number of artists that played the Parties' festivals under each metric therefore do not correspond exactly (although any differences are not material).

<sup>48</sup> Top 100 artists by global touring revenue for the years 2013-2016, based on data from [www.pollstar.com](http://www.pollstar.com).

<sup>49</sup> Top 100 measured by touring revenue from any year of 2015 or 2016, based on data from [www.pollstar.com](http://www.pollstar.com). This data also excludes performances at BBC Radio 1's Big Weekend and Radio 2 Live, for the reasons outlined above.

141. The CMA also notes that Live Nation's festivals made up a high proportion of the festivals at which top artists played in the UK in 2016. Live Nation's festivals accounted for 60% (6 out of 10 festivals) at which top artists played in the UK in this year, using one measure of the top 100 artists,<sup>50</sup> or 41% using a slightly broader measure (7 out of 15 festivals).<sup>51</sup> Including the loW festival, this would account for 70% (7 out of 10 festivals) or 53% (8 out of 15 festivals), respectively, of the festivals at which top artists played in the UK in 2016.
142. The evidence set out above indicates that, at least on some measures, Live Nation festivals currently draw a significant proportion of 'top' artists. The CMA notes, however, that the change brought about by the Merger will be limited, as the loW festival currently accounts for only a limited proportion of 'top' artists appearing at large UK festivals (eg accounting for only 2 such festival performances in the UK in 2016). The CMA therefore believes that the Merger will not materially change Live Nation's ability to attract a significant proportion of 'top artists' to perform at UK festivals.
143. Moreover, even if the merged entity would have the ability to restrict the artists performing at its events from performing at other events (which the available evidence, as described in paragraphs 144 to 150 below, suggests is not the case for the majority of artists that perform at the Parties' festivals), the CMA notes that a significant proportion of top artists (eg around half of those currently performing at UK festivals by some measures) would continue to be available to the Parties' downstream rivals. As noted above, large numbers of smaller artists would also remain available.

- *Significance of exclusivity arrangements*

144. The available evidence indicates that it is common practice among festival organisers to seek exclusivity from headliners and, in some cases, from artists further down the bill. The CMA understands the rationale behind such exclusivity clauses is that headliners play an important role in generating ticket sales and therefore a more 'scarce' live performance by a desirable artist can increase the demand for tickets.
145. The form and scope of exclusivity arrangements can vary. While some agreements may be specific to a small area around the event for a limited period, others may be more extensive, requiring no other performances in, for

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<sup>50</sup> Top 100 artists by global touring revenue for the years 2013-2016.

<sup>51</sup> Top 100 measured by touring revenue from any year of 2015-2016. This data also excludes performances at BBC Radio 1's Big Weekend and Radio 2 Live, for the reasons outlined above.



example, all of the UK for a given period. The CMA understands that large operators, such as Live Nation and AEG, can also enter into arrangements covering the full touring schedule of an artist, which could include festivals and concerts.<sup>52</sup> The CMA understands that the duration of exclusivity can differ, but will typically last from the time the contract is signed (typically the autumn preceding the festival year) until the end of the summer ‘season’. Finally, the CMA understands that artists, particularly higher profile artists, will have significant scope to resist or limit a festival provider’s desire to enter into exclusivity arrangements, for example by limiting the scope of such arrangements.

146. The Parties submitted that any potential foreclosure concern based on exclusivity arrangements would depend on the proportion of the market covered by such arrangements. The Parties submitted that the proportion of artists affected by exclusivity arrangements would be too small to raise foreclosure concerns pre-Merger, and that the small increment arising from the Merger does not give rise to foreclosure concerns post-Merger.
147. Specifically, the Parties’ submitted evidence that:
- (a) The number of artists playing in a Live Nation festival of 30,000 or more daily capacity in 2016 under some form of exclusivity for Live Nation amounted to [10-20]% of artists playing all festivals of this size. At the loW festival, [X] artists, or [0-5]% of artists playing festivals of over 30,000 capacity, were subject to exclusivity arrangements. On this basis, the proportion of artists playing festivals of 30,000 or more daily capacity subject to exclusivity arrangements with the merged entity would be modest, at [10-20]%, with the increment in Live Nation’s position brought about by the Merger being immaterial, at [0-5]%; and
  - (b) The proportion of artists performing at all Live Nation festivals in 2016 under exclusivity arrangements – at [60-70]% – overstates the number of artists that could only perform at Live Nation’s festivals or events.<sup>53</sup> The Parties provided evidence showing that a substantial proportion of artists

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<sup>52</sup> In this regard, third parties submitted that in the absence of formal exclusivity arrangements, a similar market outcome might be achieved by bundling or tying festivals and concert appearances so that the organiser de facto takes up all of an artist’s desired number of performances. The CMA’s analysis focusses on whether the merged entity would have the ability to pursue a strategy of limiting access by rival festival or concert promoters in the UK to a sufficient range and quality of artists through exclusivity arrangements. The CMA notes that this analysis, which is based on whether the Merger would give rise to whether any material change in Live Nation’s ability to reduce its downstream rivals’ access to a sufficient range and quality of artists, therefore also addresses whether such a strategy could be pursued through other mechanisms (including through tying or bundling festival performances). This is because an analysis of the Parties’ current use of exclusivity arrangements can be considered to evidence the extent to which the merged entity could also use its influence in other ways to restrict a sufficiently material number of artists available to other UK festivals or promoters post-Merger.

<sup>53</sup> This is [X] out of a total of [X] artists playing at Live Nation festivals, irrespective of festival size.

playing at Live Nation festivals under exclusivity arrangements also performed at other non-Live Nation festivals.<sup>54</sup>

148. The fact that artists played at least one non-Live Nation festival does not exclude the possibility that the access of other festivals or events to these artists was limited to some extent by Live Nation's exclusivity arrangements. On the other hand, this evidence does show that not all artists under exclusivity arrangements with Live Nation are removed from the market completely.
149. Accordingly, the number of exclusive arrangements entered into by the Parties, in conjunction with evidence showing that many of these arrangements are not fully exclusive,<sup>55</sup> suggests that Live Nation has limited ability to restrict a material number of artists to Live Nation festivals or events. The CMA notes, in this regard, that the large majority of artists performing at Live Nation festivals are able to perform at non-Live Nation events. Moreover, even where an artist has entered into an exclusive arrangement, such arrangements last for only a limited period of time (eg until the end of the summer 'season' or until that festival is sold out), and therefore the artist would be available for events in future years.
150. In addition, leaving aside Live Nation's current ability to secure access to artists, the CMA believes that the Merger brings about no material change to the existing position. Exclusivity arrangements entered into by the IoW festival account for only [0-5]% of artists playing festivals of over 30,000 capacity. Given the limited increment arising from the Merger, the CMA considers that it is unlikely that the merged entity would have the ability to enter into significantly more restrictive arrangements as a result of the Merger.
- *Significance of artist management*
151. The Parties submitted that Live Nation managed [X] artists and earned \$[X] from artist management, representing [10-20]% of worldwide revenue from artist management.
152. The available evidence therefore indicates that Live Nation's presence in artist management is relatively modest, and would therefore not have a material impact on the merged entity's ability to foreclose downstream rivals. The CMA

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<sup>54</sup> The Parties submitted that of the [X] artists playing at Live Nation's festivals above 30,000 daily capacity under a form of exclusivity, [X] ([50-60]%) played at only Live Nation's festivals that year. The remaining [X] ([40-50]%) also played at non-Live Nation's UK festivals with a capacity of at least 30,000 in 2016. Assuming the proportion of artists not fully constrained by exclusivity at festivals above and below 30,000 attendees is the same, only approximately [30-40]% of artists performing at Live Nation's festivals would be limited to only playing Live Nation's events and therefore unavailable to any rival operators.

<sup>55</sup> See figures in footnote 54.

notes, in addition, that the Merger will not augment Live Nation's existing position in artist management (and that Mr Giddings' activities as a booking agent will remain independent from Live Nation post-Merger).

153. The CMA also notes that the evidence in relation to the role of management agents in influencing artists' performance schedules was, in any case, mixed. The Parties and some third parties submitted that the role of booking agent was more important than artist management for determining which festivals artists would play at. The Parties further submitted that it was in the interests of managers to maximise the number of artist performances and therefore it would not be in Live Nation's interests when performing as an artist's manager to encourage its artists to play only at Live Nation's events.

- *Significance of loW*

154. As noted above (see paragraphs 85-87), the evidence available indicates that the loW festival is a relatively limited constraint on Live Nation festivals and accounts for a small proportion of top 100 artist performances (see paragraph 140). The CMA therefore considers that the acquisition of the loW festival by Live Nation is unlikely materially to increase the ability of the merged entity to draw and restrict artist performances.
155. While the CMA notes that the acquisition of the loW festival brings with it the considerable experience of Mr Giddings, the CMA believes that, given Mr Giddings' booking agent activities are independent of Live Nation (and will remain so post-Merger), the significance of his input and experience is already captured in the CMA's assessment of the relevance of the constraint of the loW festival.

### *Conclusion*

156. For the reasons set out above, the CMA considers that the Merger will not bring about any material change in Live Nation's ability to reduce its downstream rivals' access to a sufficient range and quality of artists such that they are foreclosed. In particular, the available evidence indicates that:
- (a) the loW festival currently accounts for only a limited proportion of top 100 artists appearing at large UK festivals; the Merger will therefore not materially change the proportion of top 100 artists that Live Nation can attract to perform at UK festivals, with a significant proportion of top 100 artists (including around half those currently performing at UK festivals) continuing to be available to the Parties' downstream rivals;

- (b) an analysis of the artists subject to exclusivity arrangements indicates that Live Nation has limited ability to restrict a material number of artists from performing at other events. In addition, the Merger brings about no substantial change to Live Nation's existing position (eg exclusivity arrangements entered into by the loW festival accounted for only [0-5]% of artists playing festivals of over 30,000 capacity);
- (c) The Merger does not augment Live Nation's relatively modest presence in artist management, and would therefore not have a material impact on the merged entity's ability to foreclose downstream rivals; and
- (d) the loW festival is a relatively limited constraint on Live Nation's festivals, indicating that the acquisition of the loW festival is unlikely materially to increase the ability of the merged entity to draw and restrict artist performances.

157. As the CMA believes that there is no realistic prospect that the merged entity would have the ability to implement such a foreclosure strategy, the CMA has not found it necessary to further consider the merged entity's incentive to engage in such a strategy or its possible effect on competition in the supply of UK festivals and UK concert promotion.

#### *Conclusion on non-horizontal effects*

158. As set out above, the CMA believes that post-Merger, the Parties will not have the ability to restrict access to a sufficient number of either top or smaller artists. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of non-horizontal effects in relation to the supply of festivals or concert promotion in the UK.

#### ***Barriers to entry and expansion***

159. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>56</sup>

160. The CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis. However, the CMA notes that the evidence collected during the market testing indicates that entry and expansion would not be easy, especially for large festivals. In

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<sup>56</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

particular, the Parties explained to the CMA that any entry is likely to be on a relatively small scale, after which a new festival operator may choose to increase capacity gradually.<sup>ii</sup> Moreover, Mr Giddings explained that it is getting more expensive to run a large festival, considering the significant security and other costs involved. The majority of rival festival operators the CMA spoke with said that expansion would be difficult for a range of reasons, including the need to change venues, licensing restrictions, and difficulty in booking artists of sufficient popularity to sell a higher number of tickets. Furthermore, a number of third parties also cited the strong market position of Live Nation as a reason for not expanding their offering. The CMA has therefore not received sufficient evidence to suggest expansion by other festival operators would be feasible or likely.

## Decision

161. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
162. The Merger will therefore **not be referred** under section 22(1) of the Act.

**Rachel Merelie**  
**Executive Director, Markets and Mergers**  
**Competition and Markets Authority**  
**14 September 2017**

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<sup>i</sup> The Parties explained that they provided rankings based on global touring revenue at the CMA's request. The Parties explained in their submissions that these rankings may not be fully consistent with the preferences of UK consumers.

<sup>ii</sup> The Parties clarified that they believed that entry on a small scale followed by expansion was one of the possible means of entry, and provided examples which they considered illustrated that entry on a large scale was also possible.