

ANTICIPATED ACQUISITION BY LN-GAIETY HOLDINGS LIMITED OF MCD PRODUCTIONS UNLIMITED COMPANY

Issues Statement

9 August 2019

The reference

1. On 25 July 2019, the Competition and Markets Authority (CMA), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred the anticipated acquisition by Live Nation-Gaiety Holdings Limited (LN-Gaiety) of MCD Productions Unlimited Company (MCD) (the Proposed Merger) for further investigation and report by a group of CMA panel members.
2. In exercise of its duty under section 36(1) of the Act, the CMA must decide:
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
3. The CMA sets out the main issues that it is likely to consider in reaching its decision in this statement. This does not preclude the consideration of any other issues which may be identified during its inquiry into the Proposed Merger.

Background

4. LN-Gaiety owns and operates live music venues in the UK. It also operates music festivals in Great Britain and on the island of Ireland.

5. LN-Gaiety is a UK-incorporated joint venture between Live Nation Entertainment, Inc. (Live Nation) and Gaiety Investments (Gaiety).
 - (a) Live Nation holds [X]% of the shares in LN-Gaiety through its subsidiary Live Nation (Music) UK Limited (Live Nation UK) which is an indirect, wholly-owned subsidiary of Live Nation.
 - (b) Gaiety holds [X]% of the shares in LN-Gaiety.
6. LN-Gaiety is jointly controlled by Gaiety and Live Nation UK with equal board representation and no casting vote.
7. Live Nation is a global live music entertainment company which owns and operates venues, promotes live music events, provides artist management services and ticketing services. Live Nation supplies ticketing services through its subsidiary Ticketmaster Canada Holdings ULC (Ticketmaster Canada Holdings ULC and its subsidiaries are collectively referred to as Ticketmaster).
8. Live Nation is active on the island of Ireland through:
 - (a) The Ticket Shop Unlimited Company (Ireland) (trading as Ticketmaster);
 - (b) Ownership and operation of a venue for live music in the Republic of Ireland, and management of three theatres (all in the Republic of Ireland); and
 - (c) The provision of artist management services.
9. Gaiety owns two theatres and operates another in the Republic of Ireland. Gaiety also has a [X]% interest in the entity which owns and manages another venue. In Northern Ireland, Gaiety has a [X]% interest in the entity which owns and manages a venue.
10. Gaiety is ultimately owned and controlled by Denis Desmond and Caroline Downey.
11. MCD is primarily a promoter of live music events on the island of Ireland. It also owns and operates a music festival in the Republic of Ireland and another in Northern Ireland.
12. The turnover of MCD in 2018 was £[X] worldwide and £[X] in the UK.
13. Gaiety currently owns MCD, and LN-Gaiety has agreed to acquire MCD. The Proposed Merger will change control of MCD from control by Gaiety to control by Live Nation and Gaiety (via LN-Gaiety).

14. In this document and in this inquiry the CMA will refer to LN-Gaiety, its parent companies Live Nation and Gaiety, and MCD together as the Parties and, for statements referring to the future as the Merged Entity.
15. The Parties are active on different levels of the supply chain in the provision of live music events to consumers, with interconnected activities, and therefore are in a number of 'vertical' relationships with one another:
 - (a) Live Nation manages artists that perform on the island of Ireland, some of which are promoted by MCD.
 - (b) MCD promotes live music events on the island of Ireland. It uses Live Nation's ticketing business, Ticketmaster, to sell tickets to its events and festivals, and it books venue space owned and/or operated by Live Nation and Gaiety to host its live music events.
16. The Parties also both operate at a 'horizontal' level of the supply chain in the supply of festivals on the island of Ireland.
17. The Proposed Merger is not yet complete and is conditional upon clearance by the CMA. It has also been the subject of review by the Competition and Consumer Protection Commission (CCPC) in the Republic of Ireland. The CCPC announced its decision on the Proposed Merger on 5 July 2019.¹

The markets in which the Parties operate

18. The purpose of market definition is to provide a framework for the analysis of the competitive effects of a merger. The relevant market contains the most significant competitive alternatives available to the customers of the merging firms and includes the most relevant constraints on the behaviour of the merging firms.²
19. However, the boundaries of the market do not determine the outcome of the CMA's analysis of the competitive effects of the merger in any mechanistic way. In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.³

¹ Link to [CCPC announcement](#).

² [Merger Assessment Guidelines](#), paragraph 5.2.1.

³ [Merger Assessment Guidelines](#), paragraph 5.2.2.

20. In general, the CMA notes that market definition and the analysis of competitive effects largely overlap⁴ since both are driven by considerations relating to the ‘closeness’ of substitution between the Parties’ offers and those of alternatives.
21. On the basis of the information obtained to date (including during the CMA’s initial Phase 1 investigation), the CMA’s preliminary view is that the market definition descriptions below are useful starting points for the competitive effects assessment.⁵

Ticketing

22. Ticketmaster is active in the provision of ticketing services for different types of events, including live music events on the island of Ireland. The CMA’s preliminary view is that the relevant frames of reference to assess the Proposed Merger are the provision of ticketing services for live music events of all sizes, with any differences in the competitor set resulting from the size of event taken into account in the competitive assessment.

Promotion

23. MCD and Live Nation are both involved in the promotion of live music events on the island of Ireland. Taking into account the conditions of competition considered in phase 1 of this inquiry, the CMA’s preliminary view is that the effects of the Proposed Merger should be assessed by reference to the promotion of larger live music events (that is, those with over 1,000 ticket capacity).

Venues

24. Live Nation and Gaiety are both involved in the ownership or operation of venues on the island of Ireland. The CMA’s preliminary view is that the supply of indoor venues to the promoters of live music events should be the overall frame of reference, although there may be varying constraints from venues of different sizes in the competitive assessment.
25. The CMA will consider whether there are narrower or broader segmentations where the Parties’ offerings may compete in its examination of the closeness of competition. **The CMA welcomes comments on this.**

⁴ [Merger Assessment Guidelines](#), paragraph 5.1.1.

⁵ This only includes market definitions that relate to the theories of harm covered in the Issues Statement.

Geographic market

26. The statutory test for this inquiry is whether the Proposed Merger may be expected to result in an SLC within any market(s) in the UK for goods or services. The CMA will, therefore, focus on competitive effects in the UK and on the effects on customers in the UK.
27. In doing so, the CMA will take account of non-UK matters to the extent that they have competitive effects in the UK. The CMA will collect data on both activity in the UK (in Northern Ireland) and in the Republic of Ireland.

Assessment of the competitive effects of the Proposed Merger

Counterfactual

28. The CMA will consider the possible effects of the Proposed Merger on competition compared with the degree of competition in the counterfactual situation (that is, the situation that would have arisen in the short to medium term absent the Proposed Merger).
29. For anticipated mergers, such as the Proposed Merger, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. The CMA may examine several possible scenarios, one of which may be the continuation of the pre-merger situation but ultimately only the most likely scenario will be selected as the counterfactual.⁶
30. The CMA will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of available facts and its ability to foresee future developments. The CMA seeks to avoid assessment of any spurious claims to accurate prediction or foresight.⁷
31. On the basis of the information obtained to date (including during the CMA's initial Phase 1 investigation), the CMA's preliminary view is that the most likely counterfactual to the Proposed Merger is the prevailing conditions of competition. **The CMA welcomes views on this.**

Theories of harm to be investigated by the CMA

32. Theories of harm describe the possible ways in which an SLC may be expected to result from a merger and provide the framework for analysis of

⁶ [Merger Assessment Guidelines](#), paragraph 4.3.6.

⁷ *Ibid.*

the competitive effects of a merger. The CMA sets out below the theories of harm that it is currently planning to investigate.

33. The CMA may revise its theories of harm as the inquiry progresses. The identification of a theory of harm does not preclude an SLC being identified on another basis following further work by the CMA, or its receipt of additional evidence.
34. The CMA is currently considering a vertical theory of harm. The concern under this is that bringing together the merging parties creates or increases the ability or incentive of the Merged Entity to harm competition at one level of the supply chain through its behaviour at another level of the supply chain.

Theory of harm: vertical effects. The Merged Entity will foreclose MCD's rival promoters of live music events on the island of Ireland with capacity above 1,000 using Ticketmaster.

35. The CMA will examine whether the Proposed Merger may be expected to result in an SLC as a result of vertical input foreclosure using Ticketmaster.
36. This could be through total foreclosure, whereby the Merged Entity stops supplying any ticketing services to promoters who compete with MCD, or through partial foreclosure whereby the Merged Entity increases prices, reduces quality or otherwise restricts access by MCD's rivals to its ticketing services. On the basis of the information obtained to date (including during the CMA's initial Phase 1 investigation), our preliminary view is that partial foreclosure through reduced quality or restricted access, possibly in combination with an increase in prices, may be more likely than either total foreclosure (refusal to supply) or partial foreclosure through pricing alone.
37. The Phase 1 investigation found that Live Nation (through Ticketmaster) is by far the largest supplier of ticketing services for live music events on the island of Ireland with a share of supply of [80-90]%. It currently supplies these services to MCD as well as to MCD's rivals.
38. Three conditions need to be met for this vertical theory of harm to hold:
 - (a) **Ability** – will the Merged Entity have the ability to harm competitors? To answer this question, the CMA will consider among other matters:
 - (i) whether the Parties have market power. For example, the alternatives available to competitors to the ticketing services supplied by the Merged Entity and the costs of switching to such alternatives;
 - (ii) the importance of ticketing services to promoters;

- (iii) the mechanisms through which the Merged Entity could harm competitors, e.g. a price increase, a worsening of the quality of service or other means including refusing to supply these services; and
 - (iv) the extent to which any supply agreements protect competing promoters from any foreclosure strategy.
- (b) **Incentive** – will the Merged Entity find it profitable to harm competitors? To answer this question, the CMA will consider among other matters:
- (i) the Parties’ revenues and margins, their key drivers and relative size in order to understand the profits that the Merged Entity would gain and lose from foreclosing rival promoters;
 - (ii) the extent to which the Merged Entity could divert a sufficient volume of rival promoters’ customers to its own promotion service to make a foreclosure strategy profitable.
- (c) **Effect** – will any resulting harm to competitors result in harm to competition? To answer this question, the CMA will consider among other matters:
- (i) whether the Merged Entity will have the ability to foreclose a sufficient number, or scale of, promoters in order for such a strategy to have a substantial effect on competition; and
 - (ii) Whether the Parties may be constrained from exercising market power, by artists and/or agents having the option for events in locations other than on the island of Ireland.
39. **The CMA welcomes views on the theory of harm set out above, as well as suggestions as to any additional theories of harm that it might consider.**

Countervailing factors

40. The CMA will consider whether there are countervailing factors which are likely to prevent or mitigate any SLC that it may find.

Entry and expansion

41. The CMA will consider whether entry or expansion by effective competitors in ticketing would be timely, likely and sufficient to prevent any SLC that it may find. To do this, the CMA will:

- (a) look at any history of entry, expansion including acquisition, and exit by the Parties and their competitors and review any future plans and projections of market growth;
- (b) consider the costs, time and other requirements (such as technological or other capabilities) necessary to enter and/or expand for competitors or new entrants;
- (c) examine other factors that might inhibit entry or the expansion of existing competitors, such as the importance of reputation and any impediments to switching amongst customers.

Buyer power

42. As part of our assessment of the competitive effects, the CMA will examine whether customers of promoters individually or collectively, have countervailing buyer power, and whether this buyer power, post-merger, would be sufficient to prevent, or address any effects of, any SLC that it may find.

Efficiencies

43. The CMA will examine any evidence put to it in relation to merger-specific, rivalry-enhancing efficiencies arising from the Proposed Merger such that the it may not be expected to result in an SLC.

Possible remedies and relevant customer benefits

44. Should the CMA provisionally conclude that the Proposed Merger may be expected to result in an SLC in one or more markets, it will consider whether, and if so what, remedies might be appropriate, and it will issue a further statement.
45. In any consideration of possible remedies, the CMA may have regard to their effect on any relevant customer benefits that are put to it, that may be expected to arise as a result of the Proposed Merger and, if so, what those benefits are likely to be, and which customers would benefit.

Responses to the issues statement

46. Any party wishing to respond to this issues statement should do so in writing by no later than **10:00 BST on Tuesday 27 August 2019**.

Please email LN-Gaiety.MCD@cma.gov.uk, or write to:

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