

Anticipated acquisition by LN-Gaiety Holdings Limited of MCD Productions Unlimited Company

Decision on relevant merger situation and substantial lessening of competition

ME/6808/18

Please note that [✂] indicates figures or text which have been deleted or replaced in ranges for reasons of commercial confidentiality.

SUMMARY

1. LN-Gaiety Holdings Limited (**LN-Gaiety**) has agreed to acquire MCD Productions Unlimited Company (**MCD**) (the **Merger**). LN-Gaiety together with its parent company Live Nation Entertainment, Inc. (**Live Nation**) and MCD are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of LN-Gaiety and MCD is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties operate festivals on the island of Ireland and therefore operate at a “horizontal” level of the supply chain. They are also active on different levels of the supply chain in the provision of live music events to consumers, with interconnected activities in the sector, and therefore are in a number of “vertical” relationships with one another. 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 to host its live music events. Live Nation manages artists that perform on the island of Ireland some of which are promoted by MCD.

4. For the purposes of assessing the horizontal overlap, the CMA assessed the impact of the Merger in the frame of reference for the provision of festivals on the island of Ireland.
5. For the purposes of assessing vertical theories of harm, the CMA assessed the Merger by reference to the following frames of reference:
 - (a) The provision of ticketing services for live music events on the island of Ireland;
 - (b) The provision of ticketing services for festivals on the island of Ireland;
 - (c) The promotion of live music events with over 1,000 tickets capacity on the island of Ireland;
 - (d) The supply of indoor venue space to promoters for live music events on the island of Ireland; and
 - (e) The provision of artist management services on the basis of at least the island of Ireland.
6. The CMA assessed whether the Merger gives rise to competition concerns in relation to the provision of festivals on the island of Ireland. The CMA found that the Merged Entity has only modest market shares and increment as a result of the Merger. The CMA focused its assessment on the competitive impact of the Merger in relation to MCD's Vital festival, the only festival located in the UK. The CMA found that LN-Gaiety's festivals are not close competitors to Vital and that there are alternative festivals on the island of Ireland some of which the CMA considers to be closer substitutes to Vital. Festival operators that compete with the Parties did not raise Merger specific concerns. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal effects in the provision of festivals on the island of Ireland.
7. The CMA assessed six vertical theories of harm:
 - (a) Input foreclosure of rival festivals using Ticketmaster;
 - (b) Input foreclosure of rival promoters using Ticketmaster;
 - (c) Input foreclosure of rival promoters using Live Nation's venues;
 - (d) Input foreclosure of rival promoters using Live Nation's artist management business;

- (e) Customer foreclosure of rival providers of ticketing services (referred to as **ticketing agents**) using MCD as a promoter or MCD's festivals; and
- (f) Customer foreclosure of venues using MCD.

8. With regard to input foreclosure of rival promoters using Ticketmaster ((b) above), the CMA believes that the Merged Entity, specifically Live Nation, has the ability and may have the incentive to foreclose rival promoters using Ticketmaster and that the effect of the strategy would be to harm competition on the island of Ireland including in Northern Ireland.

- (a) The CMA believes that Live Nation has the ability to foreclose rival promoters to MCD. The CMA found that while ticketing is a low proportion of a promoter's cost, it is an important element of successfully promoting an event. In addition, Ticketmaster has a high share and significant market power in the provision of ticketing services for music events with a capacity of over 1,000 people on the island of Ireland and is the repeated choice for customers, both promoters and venues, that require ticketing services for these events. Ticketmaster is the preferred ticketing agent of the only other promoter on the island of Ireland of a comparable size and capability to MCD. The CMA found that, within the frame of reference, Ticketmaster's importance also generally increases in line with the capacity of the music event. The CMA found that alternative ticketing agents currently active on the island of Ireland were significantly smaller and third parties had raised concerns over their capability to handle large music events. The CMA found that the timeliness, likelihood and sufficiency of new entry by international ticketing companies into the island of Ireland was insufficient to remove the ability to foreclose rival promoters to MCD.
- (b) The CMA also believes that Live Nation may have an incentive to engage in the foreclosure strategy as, due to the limited availability of alternative ticketing agents to rival promoters, Live Nation's potential gains could outweigh its potential losses. The CMA found that, other than MCD, there is only one promoter active on the island of Ireland promoting events similar in size to those of MCD. The CMA considers that diversion of the promoter's customers to MCD in the event of a foreclosure strategy being pursued would be sufficiently likely to act as an incentive, even when accounting for the risks of such a strategy. The CMA considers this diversion to be likely because of the limited substitutability of ticketing agents currently active on the island of Ireland and the uncertainty over the timeliness, likelihood and

sufficiency of entry by ticketing agents not currently active on the island of Ireland.

(c) Finally, the CMA also believes that the foreclosure strategy would have the effect of reducing competition in the UK, as not being able to use a reliable ticketing agent would affect rival promoters across the whole of the island of Ireland, including Northern Ireland, and significantly weaken an important competitor to MCD. This could result in less competition in promotion services to artists, resulting in higher prices for concert goers, as well as a smaller variety of live music events to choose from.

9. The CMA therefore believes that the Merger gives rise to a realistic prospect of a SLC as a result of vertical effects in relation to the promotion of live music events with over 1,000 tickets capacity on the island of Ireland, including in Northern Ireland.
10. For all remaining theories of harm, (a) and (c) to (f) above, the CMA believes that the Merged Entity has either no ability and/or no incentive to engage in the specified foreclosure strategy and that the Merger, as a result, does not give rise to a realistic prospect of a SLC as a result of vertical effects in the relevant markets concerned.
11. The CMA does not believe that it is appropriate to exercise its discretion under the *de minimis* exception in section 33(2)(a) of the Enterprise Act (**the Act**) not to refer the Merger for an in-depth investigation.
12. The CMA is therefore considering whether to accept undertakings under section 73 of the Act. The Parties have until 18 July 2019 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

13. 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. LN-Gaiety is a UK-incorporated joint venture between Live Nation Entertainment, Inc. (**Live Nation**) and Gaiety Investments (**Gaiety**).

(a) Live Nation holds [~~8~~] % of the shares in LN-Gaiety through its subsidiary Live Nation (Music) UK Limited (**Live Nation UK**). Live

Nation UK is an indirect wholly-owned subsidiary of Live Nation. 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 [X] ([X] **Ticketmaster**). Live Nation is active on the island of Ireland through:

- (i) The Ticket Shop Unlimited Company (Ireland) (trading as Ticketmaster);
- (ii) Ownership and operation of the 3Arena in Dublin, and management of the Bord Gáis Energy Theatre (BGE), the Gaiety theatre and the Olympia theatre (all in Dublin) (**Live Nation's venues**); and
- (iii) The provision of artist management services.

(b) Gaiety holds the remaining [X]% of the shares in LN-Gaiety. Gaiety is ultimately owned and controlled by Denis Desmond and Caroline Downey. Gaiety owns the Gaiety and Olympia theatres and operates the Ambassador theatre in Dublin. Gaiety also has a [X]% interest in the entity which owns and manages The Academy. In Northern Ireland, Gaiety has a [X]% interest in the Limelight venue in Belfast.¹ Gaiety currently owns MCD.

14. MCD is primarily a promoter of live music events on the island of Ireland. It also owns and operates two music festivals: Longitude (in Dublin) and Vital (in Belfast). The turnover of MCD in 2018 was £[X] worldwide and £[X] in the UK.
15. LN-Gaiety, its parent company Live Nation, and MCD are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.

Transaction

16. The Merger relates to the acquisition by LN-Gaiety of MCD, thereby changing control over MCD from sole control by Gaiety to joint control by Live Nation and Gaiety.
17. The Parties informed the CMA that the Merger is also subject to review by the competition authority of the Republic of Ireland, the Competition and

¹ Gaiety also has an interest in a number of festivals on the island of Ireland ([X]) and owns a festival in Spain.

Consumer Protection Commission (**CCPC**). On 5 July 2019, the CCPC announced its decision in relation to its review.²

Procedure

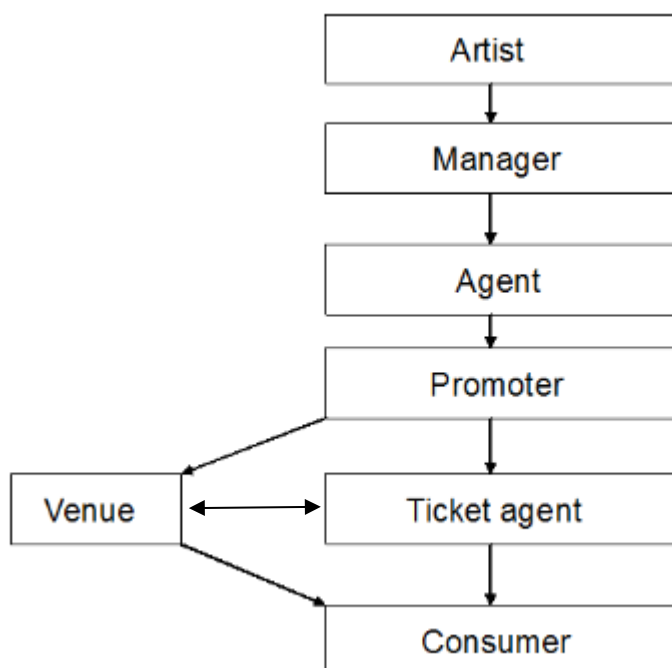
18. The CMA's mergers intelligence function identified this transaction as warranting an investigation.³
19. The Merger was considered at a Case Review Meeting.⁴

Background

The organisational supply chain for live music events

20. The supply chain for organising live music events consists of artists and their managers and agents, event promoters, ticketing agents and venue operators. Their respective roles are visualised in figure a and outlined below.

Figure a: Live music event supply chain



Source: CMA

21. Artists appoint a manager to look after their commercial and career interests. An artist's manager assists artists in developing and promoting their work. For

² Merger Notification No. M/18/067 – LN-Gaiety / MCD Productions.

³ *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

⁴ CMA2, from paragraph 7.34.

this purpose, they will, among other things, liaise with an artist's agent to organise an artist's tour.

22. An artist's agent invites and evaluates offers from promoters to handle an artist's tour (or part of a tour) and negotiates terms with a promoter on behalf of the artist, for which the agent will receive a proportion of the artist's income from the tour (typically in the order of [X]%).
23. Artists and their agents typically seek proposals from more than one promoter to maximise the revenue they can obtain from the relevant performances. The promoter's offer includes proposed venues, dates and anticipated revenue of the tour.
24. Once selected, a promoter is responsible for organising and promoting the event. This includes contracting with venues, organising advertising and marketing, and engaging ticketing agents. The promoter will estimate the cost of the tour (or leg of the tour) and suggest the appropriate ticket price to the artist's agent, who together with the artist and their manager will ultimately decide. The promoter either guarantees the artist a fee (which is typically around [X]) or agrees to pay a (high) proportion [X]. Therefore, the promoter takes the commercial risk of an event.
25. Suitable venues will be proposed to an artist by the promoter, based on the venue's availability, size, location, suitability to the genre of music and the artist's ability to sell out the venue. At the time of proposal, the promoter will 'pencil in' possible dates at the venue and confirm the date once the artist has made their choice of promoter and tour dates are confirmed. Venues typically have a rate card, setting out the usual terms, including price, for renting the venue, [X].
26. Venues generate income through the hiring fee they charge the promoter, [X].
27. Primary ticketing agents sell tickets to consumers on behalf of promoters and venues, and both promoters and venues can have long term agreements in place with primary ticketing agents for the sale of tickets. Ticketing services are an important link to the end customer, ie the concert goer, and the successful sale of tickets is crucial for the commercial success of the event.
28. The end customer's ticket price for a live music event is based on the net ticket price negotiated between the artist/agent and the promoter, along with a commission payable ("inside fee") by the promoter to the primary ticketing agent, a facility fee that goes to the venue operator and a service charge ("outside fee") applied by the ticketing agent.

The organisation of festivals

29. Festivals are temporary outdoor venues which vary, for example, in terms of size, duration (ie one or more days), genre, camping or non-camping, often with live music as their primary content.
30. Festival organisers generate income through ticket sales, sponsorship and concession sales. They are responsible for all aspects of the staging and promotion of the event. In contrast to a live music tour or event, promoters book artists for a flat fee.

Jurisdiction

31. Each of LN-Gaiety and MCD is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
32. The Parties overlap in the supply of live music festivals in the UK, with a combined share of supply by revenue of [30-40%] and an increment of [0-5%]. Also, the Parties overlap in the promotion of live music events in the UK, with a combined share of supply by number of events of [20-30%] with an increment of 0.6% [0-5%]. This is based on the Parties' estimates.
33. The Parties submitted that the share of supply test is not met as MCD's promotion and festival business is confined to Northern Ireland, where Live Nation does not have any promotion or festival business. The Parties submitted that an overlap in the UK would only arise if Live Nation's activities in Great Britain were included.
34. However, the CMA considers that the geographical aspect of the share of supply test in section 23(2)(b) refers to the whole of the UK (or a substantial part of it).⁵ Where an enterprise already supplies or acquires 25% of any particular goods or services, the test is satisfied so long as its share is increased as a result of the merger, regardless of the size of the increment.⁶
35. In addition, the Act expressly provides the CMA with a wide discretion in describing the relevant goods or services. The share of supply test is not an economic assessment of the type used in the CMA's substantive assessment and therefore the group of goods or services to which the jurisdictional test is applied may differ from the relevant economic market. The test may be satisfied on the basis of the share of supply or acquisition in a relatively wide

⁵ Section 23(3) of the Act and CMA2, paragraphs 4.57-4.60.

⁶ CMA2, paragraph 4.54.

geographic area (such as the UK, Great Britain, England, Scotland, Wales or Northern Ireland) even if the merger's competitive impact is more likely to be regional or local in nature.⁷

36. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
37. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
38. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 16 May 2019 and the statutory 40 working day deadline for a decision is therefore 11 July 2019.

Counterfactual

39. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing 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 evidence available to it, 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.⁸
40. In this case, the CMA has not found any evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.
41. More specifically, the CMA believes that the prevailing conditions of competition include a contractual relationship between MCD and Ticketmaster pursuant to which MCD uses Ticketmaster as its ticketing agent. However, noting that a contractual relationship may have a degree of inherent uncertainty, the CMA considered that MCD may consider other ticketing agent options, including switching to a different ticketing agent, or may use the threat of switching as part of its commercial dealings with Ticketmaster. In its competitive assessment, the CMA assessed the creation of a permanent

⁷ CMA2, paragraph 4.56.

⁸ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. (MAG). The MAG have been adopted by the CMA, CMA2, Annex D.

structural link between MCD and LN-Gaiety (and Ticketmaster), against this counterfactual.

Frame of reference

42. 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 merging 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.⁹
43. The Parties overlap in the supply of festivals on the island of Ireland. LN-Gaiety owns and operates the Electric Picnic arts and music festival (in County Laois, Republic of Ireland) and Kaleidoscope festival (based in Wicklow, Republic of Ireland). MCD also owns and operates two music festivals on the island of Ireland: Longitude (in Dublin) and Vital (in Belfast).
44. The Parties' activities are also vertically related as they are active on a number of levels of the supply chain for live music events on the island of Ireland. MCD is active as a promoter of live music events and Live Nation manages artists that perform at events promoted by MCD. Live Nation's ticketing business, Ticketmaster, is active on the island of Ireland in providing ticketing services to promoters of live music events, such as MCD and to festivals, such as MCD's Vital and Longitude festivals.¹⁰ Live Nation owns and operates the 3Arena in Dublin and manages the Bord Gáis Energy Theatre (**BGE**), the Gaiety theatre and the Olympia theatre (all in Dublin).¹¹ MCD promotes events that are hosted in those venues.

Festivals

Product scope

45. The Parties submitted that there are many different types of music festivals which may vary in terms of size, whether camping or non-camping, the genre of artists performing and the balance between music and non-music attractions. The Parties also submitted that individual festivals are

⁹ MAG, paragraph 5.2.2.

¹⁰ The CMA notes that Ticketmaster also provides ticketing services to venues.

¹¹ The Gaiety and Olympia theatres are owned by Gaiety.

differentiated both from the organiser's perspective as well as from the perspective of festival-goers.

46. The CMA previously considered in *LN-Gaiety/MAMA* and *LN-Gaiety/Isle of Wight Festival* that music festivals are highly differentiated but also that there is at least a proportion of customers who would switch between certain festivals.¹² In *LN-Gaiety/Isle of Wight Festival* the CMA considered whether festivals should be segmented based on a wide variety of factors (such as size, camping vs non camping, free festivals, non-music festivals) but ultimately left the market definition open.
47. In this case, the CMA found that there are differences between the Parties' festivals in terms of target audience and format. LN-Gaiety's festivals are music and arts festivals with activities which target adults and families with children, last three days and offer a camping option. MCD's festivals focus on live music performances (modern hip hop, rock bands and DJs), target young adults and teenagers, are shorter in duration (one to two days) and do not offer a camping option.
48. Festival operators that responded to the CMA's Merger investigation did not comment on whether they consider segmentation of festivals in separate categories as appropriate but ranked characteristics that differentiate festivals. As part of that ranking exercise, the format (ie whether the festival was camping or not) and the activities offered were ranked the highest in terms of importance.

Conclusion on product scope

49. For the reasons set out above, in order to assess the overlap between the Parties' festivals, the CMA has considered the impact of the Merger in the provision of festivals, while taking into account the significant differentiation of festivals in the competitive assessment.¹³ 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.

¹² CMA Decision: Completed acquisition by LN-Gaiety Holdings Limited of Isle of Wight Festival Limited, 14 September 2017 (**LN-Gaiety/Isle of Wight Festival**); CMA Decision: *Completed acquisition by LN-Gaiety Holdings Limited of MAMA & Company Limited*, 19 February 2016 (**Live Nation/MAMA**).

¹³ Some narrower frames of reference would lead to no overlap between the Parties.

Geographic scope

50. LN-Gaiety's festivals are both located in the Republic of Ireland (south and south west of Dublin respectively) while MCD's Longitude festival is located in Dublin and its Vital festival in Belfast.
51. The Parties submitted that the geographic frame of reference is the island of Ireland because, other than currency fluctuations, there are no substantial differences between the Republic of Ireland and Northern Ireland in terms of consumer preferences or the types of festivals offered.
52. In *LN-Gaiety/MAMA* and *LN-Gaiety/Isle of Wight Festival*, where the festivals were located in the UK, the CMA considered a UK-wide frame of reference.
53. In this case, LN-Gaiety provided the results of a customer survey which indicated that very few attendees travelled to the Electric Picnic festival from outside the island of Ireland ([0-10%] indicated travelling from England, [0-10%] indicated "other"). Other survey information provided by the Parties either: (i) indicated that there is some, albeit limited, travel by festival goers from Northern Ireland to the Republic of Ireland (the survey submitted for Electric Picnic indicated that [0-10%] of respondents came from Northern Ireland); or (ii) did not distinguish festival goers by country but rather focused on regions on the island of Ireland (the survey responses for Longitude festival capture [10-20%] of responding attendees from Connaught/Ulster).
54. Festival operators' responses to the CMA's information request indicated that proximity of festivals was a consideration. However, the CMA found that festivals which are similar in format appear to be competing across the island of Ireland.

Conclusion on geographic scope

55. For the reasons set out above, in order to assess the overlap between the Parties' festivals, the CMA has considered the impact of the Merger on the island of Ireland, while taking into account the different locations of the Parties' festivals in the competitive assessment. 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.

Ticketing

Product scope

56. Ticketing services can relate to either primary or secondary ticketing. Primary ticketing agents sell tickets on behalf of promoters or venues. Secondary ticketing agents provide platforms for the resale of tickets. In *Ticketmaster/Live Nation*, the Competition Commission (**CC**) concluded that the primary retailing of tickets comprised a separate market from the secondary retailing of tickets.¹⁴ In reaching its view, the CC considered there were three component parts to this service: (i) the provision of the technology, including ticketing software and hardware; (ii) selling to consumers, as driven by quality of service; and (iii) the fulfilment of ticket purchases.¹⁵ In this case, Live Nation's activities on the island of Ireland are focused on the provision of primary ticketing services. The relationships assessed by the CMA therefore concern primary ticketing only. Consequently, the CMA has focused on the provision of primary ticketing services only, which will hereinafter also be referred to as **ticketing services**.¹⁶

57. The CMA considered whether it would be appropriate to segment the provision of ticketing services by type of event and size of event.

Type of event

58. The Parties submitted that Ticketmaster is active in the provision of primary ticketing services for different types of events such as live music events, other entertainment events and sport. They submitted that the relevant frame of reference for the Merger is the provision of primary ticketing services, without further segmentation by the type of event.

59. The Parties further submitted that all ticketing agents are capable of supplying tickets for a wide range of events without distinction by reference to the type of event. The Parties also submitted that, when considering demand-side substitutability, the perspective of the promoter and event organisers should be taken into account rather than the consumers' perspective, because the promoter or event organiser decides which ticketing agent to use.

60. The UK competition authorities have previously considered the supply of primary ticketing services in *Ticketmaster/Live Nation*. In that case, the CC

¹⁴ *Ticketmaster and Live Nation: A report on the completed merger between Ticketmaster Entertainment, Inc and Live Nation, Inc.* 7 May 2010 (**Ticketmaster/Live Nation**) paragraph 5.22.

¹⁵ *Ticketmaster/Live Nation*, paragraph 5.15.

¹⁶ The Parties do not include secondary ticketing in their proposed frame of reference.

concluded that the relevant market was the primary retailing of live music tickets on the internet and by telephone, including self-ticketing but excluding in-person sales at venue box offices.¹⁷

61. An internal document of Ticketmaster shows that it considers “music”, “festivals”, “sports”, “arts”, “family” and “other events” separately in its analysis of its customers and competitors, and in its financial forecast. More specifically:
- (a) Besides an overall market share for primary ticketing services, market shares are further segmented by “music”, “festivals”, “sports”, “arts”, “family” and “other”;
 - (b) Ticketmaster categorises its competitors and its (prospective) clients by the segments “music”, “festivals”, “sports”, “arts”, “family” and “other events” when evaluating its business environment to its competitors and to its (prospective) clients; and
 - (c) Ticketmaster also produces financial forecasts split by the segments set out under (a) above.
62. Consistent with the Parties’ internal documents, a ticketing agent indicated that ticketing services for live music events differed from ticketing services for other types of events, such as sports. It considered, in particular, that for sports events a high number of season tickets were sold and the initial sale of tickets would not create a spike in demand comparable to that for large music events. This third party also indicated that ticketing services for festival tickets differed from ticketing services for live music events, as festivals required a greater variety of ticket types, such as multi-day passes or camping and non-camping tickets. Another ticketing agent told the CMA that the simultaneous demand for a larger number of tickets at the start of the sale for a live music event posed technological challenges which are different to the steadier demand for tickets for theatre events.
63. The Parties provided shares of supply in respect of ticketing agents on the island of Ireland split by main type of event. The CMA notes that the competitor set differs between each segment.¹⁸ This is consistent with there being differing requirements between types of event and with some suppliers specialising in particular events. The CMA therefore believes that it is appropriate to segment the frame of reference by type of event and to

¹⁷ Ticketmaster/Live Nation, Section 5.

¹⁸ For example, the ticketing agents listed for arts include Vivatickets (ENTA), Ticketsolve, Tessitura and Spektrix in addition to Ticketmaster, while the ticketing agents listed for music include Tickets.ie, Eventbrite and ENTA in addition to Ticketmaster.

consider the provision of ticketing services for live music events and the provision of ticketing services for festivals separately. The CMA considers it unnecessary to segment the frame of references further, according to type of festival (eg, live music, non-live music etc). The CMA has taken into account any further differentiation within these frames of reference within its competitive assessment where appropriate.

Size of event

64. The CMA considered whether a further segmentation by the size of event is appropriate for live music events, other than festivals. The Parties submitted that all of the active ticketing service providers on the island of Ireland are capable of receiving orders for tickets in large volumes. A promoter indicated that requirements differed between the provision of ticketing services for large events and smaller events stating that, to be capable of providing ticketing services for a large event, the ticketing agent would, for example, need to have the capacity to refund a high number of tickets quickly. This third party indicated that Tickets.ie was a possible alternative to Ticketmaster for smaller music events but did not have the capacity to deal with larger music events, indicating a potentially different competitor set for smaller events. On balance, based on the available evidence, the CMA does not consider it necessary to further segment the frame of reference by size of event but takes into account the different capabilities of ticketing agents in its competitive assessment.

Conclusion on product scope

65. On the basis of the evidence set out above, the CMA believes that the relevant frames of reference to assess the Merger are the provision of ticketing services for live music events and the provision of ticketing services for festivals. With regard to segmentation by size of event, the CMA did not consider it necessary to further segment the frame of reference. However, any differences in the competitor set resulting from the size of events are taken into account in the competitive assessment.

Geographic scope

66. Ticketmaster provides primary ticketing services throughout the island of Ireland. It provides these services to festivals and promoters of live music events on the island of Ireland and to venues on the island of Ireland hosting such events.
67. The Parties submitted that the geographic scope for the provision of primary ticketing services is at least the island of Ireland. They referred to the Irish Competition Authority's findings in relation to the Ticketmaster Ireland

investigation¹⁹ indicating that events with national or international appeal taking place in the Republic of Ireland attract interest from end-consumers in Northern Ireland and vice versa. The Parties submitted that a provider of ticketing services must possess the ability to sell and distribute tickets in both the Republic of Ireland and Northern Ireland.

68. The internal documents reviewed by the CMA also indicate that the appropriate geographic scope is the island of Ireland. Ticketmaster prepares a strategic plan separately for “Ireland” (covering the island of Ireland) and the “UK”²⁰. Ticketmaster’s documents also identify different competitor sets for the island of Ireland and for the UK. MCD’s internal documents also indicate the importance of local sales outlets indicating that having a physical presence on the island of Ireland is important and that the frame of reference therefore should not be wider than the island of Ireland.
69. Submissions received by the CMA from a promoter, a ticketing agent and a venue emphasised the need for a local presence on the island of Ireland. Local operational requirements include call and fulfilment centres and support to venues in case of any problems with ticketing during an event, for example if scanners malfunction. The ability to make sales through local outlets is also considered valuable, albeit third parties commented that the importance of these outlets is decreasing.
70. The CMA notes that the promoters or venues contracting with primary ticketing agents for live music events on the island of Ireland, are also located within the island of Ireland. There are a number of ticketing agents active on a global basis, such as Ticketmaster, AXS and CTS/Eventim. However, other than Ticketmaster, none of these are active on the island of Ireland. This suggests that the competitive environment of the island of Ireland differs from other territories.

Conclusion on geographic scope

71. For the reasons set out above, the CMA believes that the geographic frame of reference for the provision of primary ticketing services for festivals and the geographic frame of reference for the provision of primary ticketing services for live music events is the island of Ireland.

¹⁹ COM/107/02 Ticketmaster Ireland (2005), paragraph 2.27.

²⁰ While the document is titled “UK” it appears to deal with Great Britain only.

Promotion

Product scope

72. The CMA considered whether it would be appropriate to segment the provision of promotion services by reference to event type or event size.

Type of event

73. The Parties submitted that promoters on the island of Ireland promote a wide range of events which would support the relevant frame of reference being wider than live music events. However, the Parties submitted that the precise market definition could be left open.
74. The UK competition authorities have previously considered promotion in *Live Nation/Ticketmaster*, *AEG/Wembley* and *LN-Gaiety/Isle of Wight festival*. While the CC found in *Live Nation/Ticketmaster* that the relevant market was not wider than the promotion of live music events, including festivals, the CMA's investigation in *LN-Gaiety/Isle of Wight festival* considered the organisation of music festivals separately and assessed the effects of the merger in the frame of reference for promotion of live music events excluding festivals.²¹ In *AEG/Wembley*²² the CC found that the market for promotion of live entertainment events was not segmented by genres or by venues with differing capacities.
75. No third parties identified promoters who promoted other types of events (such as comedy or sports events) as alternatives to MCD in the promotion of live music events. The CMA also notes that the vast majority of MCD's revenues are associated with live music events, indicating that it is this category of events and the constraints MCD faces when promoting these events which are likely to be most relevant to the assessment of the effects of the Merger.

Size of event

76. The Parties also submitted that there is no clear basis for delineating the market based on the size of event. The Parties submitted that while some promoters such as POD, Legacy and Pat Egan promote mainly smaller-scale events, promoters that engage in much larger-scale promotion (for example,

²¹ It was not necessary for the CMA to reach a conclusion on the product frame of reference as no competition concerns arose on any plausible basis.

²² A report on the completed acquisition by AEG Facilities (UK) Limited, a subsidiary of Anschutz Entertainment Group Inc, of the contract to manage Wembley Arena, 2 September 2013 (**AEG/Wembley**), paragraph 7.74

arenas) also promote such smaller-scale events. For example, the Parties submitted that both Aiken Promotions (**Aiken**) and MCD, who promote full-capacity arena events have promoted events in smaller venues with a capacity of 3,000 people or less (such as Vicar Street, the BGE Theatre and the Olympia). They added that small promoters might initially promote only small events but would go on to promote larger events if the artist with whom they worked achieved success. The Parties acknowledged that there may be an asymmetry with small promoters generally promoting just small events and large promoters promoting both small and large events, but submitted that there was no basis on which to segment the promotion of live music events by reference to the size of the event.²³

77. Third parties who have responded to the CMA's Merger investigation referred to MCD and Aiken as the two big or biggest promoters. This was in contrast to a number of smaller promoters who are associated by third parties with smaller capacity shows. Artist agents mentioned as criteria they used when selecting promoters the prior relationship with the promoter or festivals operated by a promoter but did not specifically refer to size.
78. The CMA has considered the estimated shares of supply by event size for the provision of live music events provided by the Parties. These indicate that Aiken's and MCD's shares are consistently high over time in the largest event category, events with a capacity of 10,000 and more, and the shares are lower (albeit still high) for smaller events. The shares also indicate that events with a capacity of over 1,000 tickets are mainly being serviced by MCD and Aiken, while for artists attracting a smaller audience, a number of alternative promoters exist.

Conclusion on product scope

79. Based on the evidence outlined above above, the CMA believes that the effects of the Merger should be assessed in the frame of reference of promotion of live music events with over 1,000 tickets capacity.

Geographic scope

80. The Parties submitted that promoters operate on an island of Ireland basis and that they face increasing competition from outside the island of Ireland to convince artists and their agents to play dates in the island of Ireland.

²³ The parties also explain that venue capacity was no indication for event size as set-up and configuration of the venue could vary or an artist could play multiple nights at a venue.

81. A third party submitted that local knowledge of the market on the island of Ireland was important for the promotion of live music events, with differences in audience preferences, the need to understand how ticket allocation works and the need to have contacts with reliable suppliers being cited as important. Third parties told the CMA that local knowledge and expertise is a reason why promoters of global tours sub-license promotion rights to local promoters, such as MCD and Aiken.
82. The two largest promoters active on the Island of Ireland do not promote outside the island of Ireland,²⁴ and promoters not based on the island of Ireland rarely promote events on the island of Ireland.^{25,26}
83. The CMA did not find evidence to warrant a narrower geographic frame of reference.

Conclusion on geographic scope

84. On the basis of the evidence outlined above, the CMA believes that the market for the promotion of live music events with over 1,000 tickets capacity is no wider than the island of Ireland. However, the CMA recognises that promoters on the island of Ireland may need to compete to attract artists to the island of Ireland and the CMA has considered the implications of this where relevant in its competitive assessment.

Provision of venue space

Product scope

85. The CMA considered a possible segmentation between indoor and outdoor venues and by capacity of venue.

Indoor vs outdoor venues

86. In *AEG/Wembley*, the CC found that performing at indoor and outdoor venues required very different production design, and that it was generally prohibitively expensive to tour with two different productions. Based on the evidence, the CC found that switching a tour between indoor and outdoor

²⁴ This is based on the Parties' submission stating MCD is active as a promoter on the island of Ireland only and [redacted].

²⁵ A promoter not currently active on the island of Ireland submitted that they had in the past promoted an event on the island.

²⁶ This is reflected in the shares of supply provided by the Parties which identify promoters who are specific to the island of Ireland as the largest promoters on the island of Ireland.

venues was limited and concluded that indoor and outdoor live entertainment venues were in different markets.²⁷

87. The Parties submitted that outdoor venues are clear alternatives for larger indoor venues like the 3Arena. The Parties submitted data that showed that artists used a number of outdoor venues when the 3Arena was not available due to its refurbishment in 2007 and 2008. The Parties provided two examples to illustrate that substitutability of outdoor and indoor venues, stating that (i) Westlife decided to perform in Croke Park in Dublin in July 2019 as well as in the SSE Arena in May 2019; and (ii) [REDACTED].
88. While third parties who have responded to the CMA did not categorically exclude the possibility of using an outdoor venue instead of the 3Arena, promoters and artist managers/agents generally considered outdoor venues to be a limited alternative for a number of reasons:
- (a) Outdoor events can cause significant logistical problems if the rest of the tour is in indoor venues, for example due to the very different size of staging, or issues with the sound;
 - (b) Even if generally suitable, they are less suitable when the weather may be poor and due to the need to compete with the main tenants, ie sports teams, for availability; and
 - (c) The capacity of stadia can be too much of a step-up for some artists and some artists prefer playing in a more intimate setting.
89. The CMA found that the Parties' submissions refer to very limited instances in which indoor venues were substituted with outdoor venues, in particular considering that most instances relate to the period in which the 3Arena was closed and therefore not an option, and the third party responses to the CMA's Merger investigation indicated that there are important differences between both venue types. As a result, the CMA believes that, on a cautious basis, segmenting between indoor and outdoor venues is appropriate.

Venue capacity

90. The CMA considered further segmenting indoor venues by capacity.
91. The CMA found that venue capacity is a key consideration for promoters when choosing a venue. The Parties told the CMA that a promoter booking a venue will select the largest venue that an artist can fill to maximise revenues.

²⁷ AEG/Wembley, paragraph 7.17-7.18.

In *AEG/Wembley* capacity was highlighted as an important characteristic when choosing a venue.²⁸

92. The Parties also submitted that "if the venue is too small, the event will generate less revenue than would otherwise have been the case and the promoter would likely lose the business to a promoter that offered a larger venue. By contrast, if the venue is too large, then the promoter runs the risk of a serious financial loss, and the artist potentially risks reputational damage from failing to sell out the venue." This indicates that very large venues are unlikely to constrain very small venues and vice-versa. The Parties submitted that there are no clear dividing lines between venues of different capacity.
93. The CMA considered alternative venues, including those of different capacities (and the relative differences in the competitive constraints from venues of different sizes), to Live Nation's venues, in its competitive assessment and did not segment the frame of reference by venue size.

Conclusion on product scope

94. Based on the evidence outlined above, the CMA believes that the frame of reference in which the effects of the merger should be assessed is the supply of indoor venue space to promoters for live music events. However, the CMA takes into account the varying constraint exerted by venues of different capacities in the competitive assessment. Competitive constraints from venues outside of the frame of reference are taken into account in the competitive assessment where relevant.

Geographic scope

95. The Parties submitted that the geographic frame of reference is at least the island of Ireland. In support of this argument the Parties submitted that outside the basic criterion of whether demand in the venue's catchment area is sufficient to sell the required number of tickets, artists and promoters would generally not distinguish between venues in different parts of the country. They also submitted that venues in alternative locations that can meet that expected demand would be considered viable substitutes to a particular venue.
96. The Parties submitted that the primary audience catchment area of the 3Arena and the BGE is Dublin. They noted, however, that the relevant geographic scope of the venues is wider than the Dublin area. From a

²⁸ *AEG/Wembley*, paragraph 7.24.

consumer perspective, the Parties submitted that concert goers were prepared to travel to attend a concert, particularly a concert by an international artist.

97. A promoter and an artist agent indicated that the geographic catchment and conurbation associated with a venue can have a significant effect on venue substitutability. They told the CMA that the promoter considers the target audience and selects (within the parameters set out by the artist) the venue which they believe will attract that target audience. In this regard the CMA found mixed evidence in relation to the choice of venue within the island of Ireland and venue substitutability from an artist/promoter perspective. A promoter told the CMA that, for some artists, Dublin has an important appeal. The Parties submitted that it was not necessarily the case that Belfast was a secondary venue to Dublin and that the two cities were substitute destinations. The CMA was told by a third party that a Belfast venue may be chosen alongside a Dublin-based event. A promoter and artist agent also indicated that from an artists' perspective, the relevant geographic scope might be wider because they might consider substituting an event in Dublin with an event in another European city.

Conclusion on geographic scope

98. Based on the evidence outlined above, the CMA believes that the relevant geographic frame of reference for the provision of venue space for live music events is not wider than the island of Ireland.
99. As described further below, the CMA's assessment is focused on the possible effects of the Merger on competition between promoters. In this context, it is the alternatives that are available to the promoter, who leads the venue choice which are most relevant. Therefore, these are the venues in the island of Ireland. Other potential constraints, in particular those imposed by the artist not choosing to play in Dublin or on the island of Ireland, are taken into account as appropriate in the competitive assessment. The CMA also takes into account in its competitive assessment a potentially narrower geographic catchment for certain venues.

Artist management services

Product scope

100. Live Nation provides artist management services for a number of artists that perform on the island of Ireland.

101. The Parties submitted that artist managers are appointed by artists to assist them with developing and managing their business. They submitted that artist managers are distinct from artist agents. Artist agents are hired by the artist and their manager because of their good knowledge of the local markets and relationships with promoters in each market to select promoters. The Parties submitted that there was no vertical relationship between Live Nation's artist management business and MCD because the artist agents (and not the artist manager) negotiates the contracts and proposes the promoter to the artist.
102. An artist manager told the CMA that artist managers deal with all aspects of the artist's career covering both strategy and practical implementation. Other music industry professionals that work for the artist are specialists, eg agents deal with live performances while record companies deal with recorded music. This third party also noted that managers will decide with the artist which promoter to choose. An artist agent told the CMA that they chose the promoter in some instances, while in others the artist managers provided a steer.
103. Based on the evidence outlined above, the CMA believes that artist agents and artist managers perform two distinct roles and that artist agents do not form part of the frame of reference for the provision of artist management. However, the CMA believes that the third party responses provide sufficient indication that artist managers have the ability to influence the choice of promoter to consider a vertical overlap between Live Nation's artist management business and MCD.

Geographic scope

104. For some artists, artist managers work on a global level. Live Nation submitted that this includes Live Nations' artist management business. Third party artist managers also told the CMA that their artist management activities are not limited to the island of Ireland.
105. On this basis, the CMA believes that the geographic frame of reference for the supply of artist management services to be at least the island of Ireland. The CMA believes that the geographic frame of reference may be wider than the island of Ireland. However, it was not necessary for the CMA to reach a conclusion on this point, since, as set out below, no competition concerns arise on the narrower frame of reference of the island of Ireland.

Conclusion on frame of reference

106. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:

- the provision of festivals on the island of Ireland;
- the provision of ticketing services for live music events on the island of Ireland;
- the provision of ticketing services for festivals on the island of Ireland;
- the promotion of live music events with over 1,000 tickets capacity on the island of Ireland;
- the supply of indoor venue space to promoters for live music events on the island of Ireland; and
- the provision of artist management services on the basis of at least the island of Ireland.

Competitive assessment

Horizontal unilateral effects

107. 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 to degrade quality on its own and without needing to coordinate with its rivals.²⁹ Horizontal unilateral effects are more likely when the merging 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 horizontal unilateral effects in the provision of festivals on the island of Ireland.
108. The CMA considered whether the Merger removes a competitive constraint on one or both of the Parties such that post-Merger the Parties could charge higher ticket prices to consumers or worsen the quality and/or range of services offered at their festivals. In its assessment the CMA took into account the Parties' share of supply, the closeness of competition between the Parties' festivals and the competitive constraints the Parties face post-Merger.
109. The CMA's assessment is focused on the effect of the Merger on UK consumers. In the light of the evidence of limited travel from festival goers residing in Northern Ireland to the Republic of Ireland, the CMA primarily considered the effect of the Merger on the Vital festival that is owned by MCD and held in Northern Ireland.

²⁹ MAG, from paragraph 5.4.1.

Shares of supply

110. The Parties submitted that there are more than 230 festivals currently operating on the island of Ireland, covering all types of musical genres catering to a wide variety of customer preferences. They submitted that their festivals accounted for [0-5%] of the number of festivals operated on the island of Ireland in 2017. By capacity, the Parties' festivals in 2018 accounted for approximately [10-20%] of the total festival capacity on the island of Ireland, with a relatively small increment of around [5-10%] to MCD's existing position.
111. In *LN-Gaiety/Isle of Wight Festival*, the CMA found: (i) 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) that the presence of high-profile headliners is an important consideration for festival-goers. On this basis, while some smaller festivals were also able to attract top artists, the CMA believed that it was 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.³⁰
112. In its competitive assessment in this case, the CMA considered the Parties' combined share of total capacity when only including larger festivals and also considered different thresholds at which to exclude smaller festivals. In 2018, the Parties' combined share of supply by capacity on the island of Ireland varies between [10-20%] (increment of [5-10%]) when all festivals are considered and approximately [40-50%] (increment of [10-20%]) when just considering festivals with a capacity of 120,000 and above. The CMA notes that, while the Parties have a higher combined share of supply if just these larger festivals are considered (ie, those with capacity of at least 120,000), only including larger festivals excludes MCD's Vital festival, which has a capacity of [40,000 – 50,000] and is the Parties' only festival in Northern Ireland. When considering festivals with a capacity of 40,000 or more (ie including Vital festival but excluding smaller festivals) the Parties' share of supply is [20-30%] (increment of [5-10%]).

Closeness of competition

113. The Parties submitted that their festivals do not compete closely because they offer markedly different formats, experiences, range of activities, line-up, locations and they appeal to different audiences in terms of demographics.

³⁰ LN-Gaiety/Isle of Wight Festival, paragraph 50.

Other festival organisers who responded to the CMA's Merger investigation also referred to these characteristics as key differentiators.

114. Based on the festivals' characteristics and third party responses, the CMA found the following differences between the Parties' festivals:

- (a) Target audience: LN-Gaiety's festivals Electric Picnic and Kaleidoscope are targeted at families, with entrance being restricted to over 18-year olds or under 12-year olds with a guardian.³¹ Kaleidoscope is also marketed at families. In contrast, MCD's Vital and Longitude festivals are aimed at teenagers/young adults; the majority of attendees at Longitude are between [X] years old and [X]% of the Vital audience is between [X] years old.
- (b) Camping: LN-Gaiety's festivals are multi-day events that offer camping while MCD's festivals do not offer a camping option. In *LN-Gaiety/Isle of Wight Festival*, the CMA considered evidence supporting the proposition that camping events most closely compete with other camping events.³²
- (c) Activities and music genre: LN-Gaiety's festivals offer a wider range of activities including arts and craft (Electric Picnic) as well as sport, animals and storytelling (Kaleidoscope) and therefore have a scope that is not limited to music. MCD's festivals are focused on music only. Electric Picnic's music line-up includes a range of genres such as indie rock and pop, electronic music, hip hop and 80s/90s music. Kaleidoscope focuses on international and Irish music, Longitude on modern hip hop and Vital hosts rock bands and DJs.
- (d) Location: The festivals are also differentiated in terms of their location with LN-Gaiety's festivals being in the countryside (County Laois and County Wicklow respectively) while MCD's festivals take place in an urban setting (in Dublin and Belfast respectively). Vital is the only festival in Northern Ireland and takes place 140km from LN-Gaiety's closest festival. The Parties submitted analysis of festival-goers' post codes given when purchasing tickets which found that 94% of Longitude's and 96% of Electric Picnic's attendees were from within the Republic of Ireland. The Parties' surveys of customers of Longitude and Electric Picnic respectively also suggest that few of the customers come from Northern Ireland. This is broadly consistent with

³¹ The Parties submitted that the majority of the audience for Electric Picnic are between 25 and 44 years old.

³² LN-Gaiety/Isle of Wight Festival, paragraph 53-59.

LN-Gaiety/Isle of Wight Festival, where the CMA found that the location of a festival may be important in assessing the competitive constraints that certain festivals impose on each other.³³ All festival organisers that responded to the CMA highlighted location/proximity as a key factor for rivalry between festivals.

(e) Size: The festivals are also differentiated in terms of their size. LN-Gaiety's festivals Electric Picnic and Kaleidoscope have capacities of [140,000 – 160,000] and [10,000 – 20,000] respectively. MCD's Vital festival in Belfast has capacity of [30,000 – 40,000]. MCD's Longitude festival in Dublin has capacity of [110,000 – 130,000].

115. Taking these characteristics in the round, the CMA believes that the Parties' festivals are highly differentiated and that, in particular Vital, the Parties' only UK festival, does not compete closely with LN-Gaiety's festivals.
116. In submitting that the Parties' festivals do not compete closely, the Parties noted that Gaiety has a [X]% interest in LN-Gaiety, [X] means that it had a clear commercial rationale to differentiate Longitude and Vital and not to position them in the same space as Electric Picnic.

Competitive constraints

117. As submitted by the Parties, and consistent with previous decisions, the CMA has found that there are a large number of festivals on the island of Ireland which are highly differentiated.³⁴ For example, the largest third party festivals on the island of Ireland are the Galway International Arts Festival with a capacity of [240,000 – 260,000] over 14 days, Belsonic with a capacity of [150,000 – 170,000] over eight days, Spraoi Festival with a capacity of [90,000 – 110,000] over three days and Live at the Marquee with a capacity of [70,000 – 80,000] over 16 days. As set out in Table 1, these festivals are differentiated by their location and content.

³³ LN-Gaiety/Isle of Wight Festival, paragraphs 68 and 69.

³⁴ Live Nation/MAMA paragraph 82.

Table 1: Largest third party festivals on the island of Ireland

Festival	Location	Description
Galway International Arts Festival	Galway, west Ireland	A mix of live music, theatre, talks, opera, visual arts and comedy
Belsonic	Belfast	Rock, pop, indie and electronic music
Spraoi Festival	Waterford, south east Ireland	Free street arts festival with live music
Live at the Marquee	Cork, south Ireland	Live music and comedy

Source: CMA

118. Of these festivals, the CMA considers that Belsonic as a large music focused festival in Belfast, is most similar to MCD's Vital festival. Gaiety is a shareholder in the [X]. Another festival provider active in Northern Ireland stated in its response to the CMA's questionnaire that it competed closely with Vital. In the light of the current ownership of [X] and [X], the CMA believes that the Merger does not give rise to a reduction in rivalry between these two festivals.
119. None of the respondents to the CMA's third party investigation raised competition concerns regarding competition between festivals which were specific to the Merger. One rival festival organiser observed a high degree of competition between the festivals in Northern Ireland.

Conclusion on horizontal unilateral effects

120. For the reasons set out above, the CMA believes that, particularly in relation to festivals with a capacity of at least 40,000, which would include Vital, the Parties' festivals have a moderate combined share of supply, with a relatively small increment, are highly differentiated and are not close competitors. 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 provision of festivals on the island of Ireland.

Vertical effects

121. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between a firm and an upstream supplier or a downstream customer.
122. In certain circumstances vertical mergers 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.³⁵

123. As the Parties have inter-connected activities at different levels of the supply chain, the Merger has the potential to give rise to vertical effects. In particular, the Merged Entity, through Live Nation, may have the ability to use Ticketmaster's importance as a supplier of primary ticketing services, Live Nation's venues or its artist management business to harm the Merged Entity's competitors in the markets for festivals or live music promotion (input foreclosure). Alternatively, the Merged Entity may have the ability to use MCD's importance as a customer to harm the Merged Entity's ticketing competitors or rival venues (customer foreclosure).
124. In both cases, the harm to the Merged Entity's competitors could be achieved by refusing either to use the competitors' services or to supply competitors with the Merged Entity's services (total foreclosure), or by limiting the amount of trade with competitors, or worsening the terms of trade (partial foreclosure).
125. In the present case, the CMA has considered whether the Merger may result in:
 - (a) Input foreclosure of rival festivals using Ticketmaster;
 - (b) Input foreclosure of rival promoters using:
 - (i) Ticketmaster;
 - (ii) Live Nation's venues;
 - (iii) Live Nation's artist management business;
 - (c) Customer foreclosure of rival ticketing agents using MCD as a promoter or MCD's festivals;
 - (d) Customer foreclosure of venues using MCD.
126. The CMA's approach to assessing each vertical theory 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.³⁶ In practice, the analysis of these questions may overlap and many of the factors

³⁵ In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

³⁶ [MAG](#), paragraph 5.6.6.

may affect more than one question. Each theory of harm is discussed in turn below.

Input foreclosure of rival festivals using Ticketmaster

127. The CMA considered whether Live Nation would have the ability and incentive to use Ticketmaster to stop supplying ticketing services to rival festivals or supplying on worse terms, thereby weakening the competitive offering of these festivals and the constraint they impose on the Parties on the island of Ireland, including Northern Ireland.

Ability

128. In order to assess Live Nation's ability to foreclose rival festival providers, the CMA has sought to understand Ticketmaster's market position and the presence of alternative ticketing agents on the island of Ireland which could be used by rival festivals.
129. The Parties' submitted that Ticketmaster accounted for [40-50%] of the festival tickets sold on the island of Ireland in 2018, although an internal assessment suggests that their share of supply may be as high as [70-80%]. Therefore, the CMA found that Ticketmaster currently provides ticketing services to a significant proportion of competing festivals on the island of Ireland.
130. The CMA notes that there are a number of alternative ticketing agents currently active in the supply of ticketing services to festivals on the island of Ireland. In particular, a number of festivals currently use alternative ticketing agents. For example, Eventbrite is used for Fever Pitch ([10,000 – 20,000] capacity) and Tipp Classical ([20,000 – 30,000] capacity), Ticketbooth is used by Body & Soul festival ([40,000 – 50,000] capacity) and Tickets.ie is used by Independence Music & Arts festival ([40,000 – 50,000] capacity). However, each of these ticketing agents and festivals are relatively small and even by the Parties' estimates only Ticketsolve has a share of supply over 5%.
131. Therefore, given the strong position of Ticketmaster in ticketing for festivals, albeit lower than in ticketing for live music events, the CMA currently believes that the Parties may have the ability to use Ticketmaster to foreclose rival providers of festivals on the island of Ireland.

Incentive

132. The CMA assessed whether engaging in the above foreclosure strategy would be profitable for the Parties. The potential gains from the strategy would

be customers switching away from the foreclosed festivals to one of the Parties' festivals thereby increasing their profit (in the "downstream" market). The strategy would entail potential losses as it puts at risk the ticketing revenue (in the "upstream" market) from dealing with rival festivals. The higher the risk of diversion to a rival festival, rather than the Merged Entity's, the weaker the incentive to engage in this strategy.

133. The CMA notes that the Parties have a relatively modest share of supply in the provision of all festivals on the island of Ireland of [10-20%] by capacity (see paragraph 110). In addition, as set out above, the CMA has found that the Parties' festivals are not close competitors. The CMA considers that this modest combined market share, and high product differentiation, makes the Parties unlikely to be significant beneficiaries of foreclosing competing festivals.
134. Additionally, no festival raised any concern that Live Nation may use Ticketmaster to foreclose rival providers of festivals.
135. For the reasons set out above, the CMA believes that Live Nation would not have the incentive to use Ticketmaster to foreclose rival providers of festivals on the island of Ireland.

Conclusion on input foreclosure of rival festivals using Ticketmaster

136. Having found that Live Nation does not have the incentive to foreclose rival festivals using Ticketmaster, the CMA has not needed to assess the possible effect of such strategy. The CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to the provision of festivals on the island of Ireland.

Input foreclosure of rival promoters using Ticketmaster

137. The CMA has considered Live Nation's ability and incentive to foreclose MCD's rival promoters of live music events with over 1,000 tickets capacity on the island of Ireland, in particular Aiken, by not supplying ticketing services or supplying on worse terms or quality of service. This strategy could be in the form of refusal to supply (total foreclosure) or higher fees or worse service (partial foreclosure). The CMA further considered the effect of such a foreclosure strategy on competition on the island of Ireland, including Northern Ireland.

Ability

138. In order to assess Live Nation's ability to foreclose rival promoters, the CMA has sought to understand the following:
- (a) The importance of ticketing services to promoters and therefore the extent to which changes in ticketing services could lead to foreclosure of rival promoters;
 - (b) The role of existing ticketing contracts and whether these might prevent Live Nation from foreclosing rival promoters;
 - (c) Ticketmaster's market position and the presence of alternative ticketing services on the island of Ireland which could be used by rival promoters.
139. Live Nation's ability to foreclose rival promoters of live music events with over 1,000 tickets capacity also depends on potential entry of international ticketing agents not currently present on the island of Ireland. This issue is discussed in the incentive section below.
- *Importance of ticketing services*
140. In assessing the ability of the merged firm to engage in price-related partial input foreclosure, ie increasing the price of ticketing services (which may be a proportion of the ticket price), the CMA may consider evidence on the cost of the input relative to all costs of the final product.³⁷ The Parties submitted that ticketing only accounts for [X]% of promoters' costs. This means that Ticketmaster would have to put up the price it is charging a promoter by a considerable amount to impact the end price and competitiveness of that promoter. For example, to raise a rival promoter's costs by an amount equal to 5% of a promoter's revenue, Ticketmaster would have to increase its prices by [X]%. As a result, the Parties' submitted that partial foreclosure of competing promoters by increasing ticketing service prices would not be realistic.³⁸
141. However, the CMA believes that the share of promoters' costs related to ticketing does not reflect the importance of ticketing to promoters. While ticketing may not make up a large share of the cost of promotion, it is a critical input for the promotion of events. If a promoter is unable to find a ticketing agent, they will not be able to make ticket sales. A reduction in the quality of

³⁷ MAG, paragraph 5.6.10.

³⁸ It is this observation which drives analysis submitted by the Parties calculating a vertical gross upward pricing index (vGUPPI) in their submission "No foreclosure of rival promoters" of 8 May 2019, paragraph 37.

ticketing services could also have a significant impact on a promoter's ability to reliably make ticket sales and thus successfully promote events. A ticketing agent and a promoter told the CMA that a lower quality ticketing agent can result in lower ticket sales. A venue stated that losses, both financially and reputationally, can be immense if a ticketing system crashes. Therefore, given the importance of the use of quality ticketing services to promoters, but the relatively small share of costs that such services account for, the CMA's assessment has focussed on the possibility of total foreclosure and partial foreclosure through degradation in the quality of ticketing services.³⁹

- *Existing ticketing contracts*

142. The Parties submitted that Ticketmaster and Aiken already have in place a [X] contract which runs [X] and that this would ensure that Ticketmaster would not be in a position to reduce its competitive offer to Aiken for the next [X] at least. Based on the information available to it, the CMA cannot be confident that the contract guarantees Aiken's continued supply with ticketing services by Ticketmaster or that ongoing supply would be on no worse terms or quality of service following the Merger thereby adequately preventing Live Nation's ability to foreclose. The CMA also notes that Ticketmaster could opt not to extend the contract after its current term ends or could extend on materially different terms, in [X], and that there is no clear milestone for establishing the new contract before that point.

- *Ticketmaster's market position*

- Share of supply

143. Based on figures provided by the Parties, Ticketmaster accounts for [80%-90%] of live music tickets sold on the island of Ireland.⁴⁰ Ticketmaster's shares of supply have been high over time, with no large-scale entry. Furthermore, as the exclusive ticketing agent for [X], Ticketmaster's position is likely to be even stronger as events increase in capacity, such as those hosted by [X], and for which MCD and Aiken are the only promoters on the island of Ireland.

- Current alternative ticketing agents

³⁹ Hence the CMA focussed on the Parties' vertical arithmetic rather than the Parties' vGUPPI analysis (eg vGUPPI: [Scoring Unilateral Pricing Incentives in Vertical Mergers](#) pp32-33).

⁴⁰ Even on a wider frame of reference including all events Ticketmaster accounts for [50-60%] of tickets sold on the island of Ireland.

144. The Parties submitted that there are alternative ticketing agents to Ticketmaster currently operating on the island of Ireland. The Parties highlighted examples of rival ticketing firms competing for contracts on the island of Ireland, including examples [redacted] competition from rival ticketing agents. However, the CMA notes that the examples of competition from Irish-based ticketing agents provided by the Parties included no examples of one of these rivals winning a contract for live music events (other than festivals).⁴¹ Furthermore, the CMA notes that even if all events on the island of Ireland are considered, Ticketmaster's share of supply is still high with [50%-60%].
145. Additionally, a promoter and a venue told the CMA that there were few current alternative providers of ticketing services to Ticketmaster and that these alternatives are less suitable than Ticketmaster. In particular, promoters and other third parties highlighted the following aspects of Ticketmaster's offering as being superior to those of other ticketing agents:
- (a) Marketing capability including its reputation, customer database and physical outlets; and
 - (b) Operational support and reliability including its ticketing system and customer support.
146. One promoter and a venue operator expressed concerns about using any less established ticketing agent, due to the potential for a negative impact on ticket sales.⁴² The CMA was provided with an example of technical ticketing difficulties, leading to a likely cautious approach by promoters when considering alternatives. The CMA found that the importance of reliability and capacity to sell a large volume of tickets effectively is particularly relevant for a promoter, given the commercial risk that the promoter takes, as regards the commercial success of an event.
147. Consistent with this third party evidence and as illustrated by the shares of supply, the CMA found Ticketmaster has been the repeated choice of all the largest customers for ticketing for live music events on the island of Ireland, ie [redacted], Aiken and [redacted].
148. As a result of the evidence set out above, the CMA believes that the current alternatives to Ticketmaster would be unable to closely replicate

⁴¹ As noted in paragraph 62, ticketing for festivals appears to have important differences compared to ticketing for other live music events.

⁴² In *Live Nation/ Ticketmaster*, paragraph 5.33, the CC noted that Ticketmaster had several advantages over small ticketing agents, including: (a) higher consumer awareness; (b) an ability to market events to large numbers of potential consumers, using an extensive database of previous customers; and (c) a proven track record of operating reliably, even at significant scale, and trusted by both promoters and consumers. It also noted that Ticketmaster's large customer base made it attractive to promoters and venues.

Ticketmaster's service for large customers such as Aiken. The CMA believes that the advantages of Ticketmaster over other ticketing agents means it is unlikely they would be suitable alternatives.

- Entry of an alternative ticketing agent

149. The Parties named providers of ticketing services not active on the island of Ireland as potential competitors. The evidence on potential new entry is set out in the "Incentive" section at paragraph 166 below. As set out below, the CMA believes there is significant risk that the entry predicted may not occur. For the same reasons as set out in paragraph 179, the CMA believes that the timeliness, likelihood and sufficiency of new entry by international ticketing companies into the island of Ireland is insufficient to remove the ability to engage in the foreclosure in question.

- CCPC Commitments

150. The Parties provided binding commitments to the CCPC as a condition of the merger clearance. These include a commitment to conduct any contract or other negotiations relating to the supply of primary ticketing services by Ticketmaster to MCD on an "arm's length" basis. This means MCD and Ticketmaster must each act independently and in its own interest. However, since this relates to Ticketmaster's dealings with MCD, not other promoters, the CMA does not believe that this commitment prevents Live Nation from having the ability to engage in partial or total foreclosure of rival promoters, which may be in Live Nation's interest.

- *Conclusion on ability*

151. In light of the evidence set out above, the CMA believes that ticketing services are a critical input for promoters of live music events. MCD's competitors are currently supplied by Ticketmaster and the CMA believes that their current contracts with Ticketmaster do not adequately prevent Live Nation from having the ability to foreclose rival promoters. The CMA also believes that Ticketmaster currently has a strong market position in the provision of ticketing service on the island of Ireland, with the existing other ticketing agents currently unlikely to be suitable alternatives for promoters. For the reasons set out at paragraph 166 to 179 below, the CMA believes that the timeliness, likelihood and sufficiency of new entry by international ticketing companies into the island of Ireland is insufficient to remove the ability to engage in foreclosure. Therefore, the CMA believes that Live Nation has the ability to foreclose promoters of live music events with a capacity of over 1,000 tickets on the island of Ireland, in particular Aiken, by not supplying ticketing services or supplying on worse terms or quality of service.

Incentive

152. Live Nation's incentive to foreclose depends on the loss of profit in the ticketing market ("upstream") that would result from a foreclosure strategy, and on the gain in profit in the promotion market ("downstream") if a foreclosure strategy led artists to switch to MCD from other promoters.
153. To assess the extent to which Live Nation would profit by foreclosing promoters which compete with MCD, the CMA considered the following:
- (a) The relative profitability of ticketing and promotion services;
 - (b) The degree of switching away from rival promoters, particularly Aiken, to MCD which might occur;
 - (c) The potential for entry of an alternative ticketing agent which could be used by rival promoters; and
 - (d) The Parties' arguments about the wider strategic and commercial implications of any such foreclosure strategy.
154. These are discussed in turn below.
- *Relative profitability of ticketing and promotion*
155. To assess Live Nation's incentive to foreclose rival promoters, particularly Aiken, using Ticketmaster, the Parties provided an analysis which uses information on the margins for ticketing and promotion services to estimate the level of switching from rival promoters, particularly Aiken, to MCD required for foreclosure of rival promoters to be profitable.
156. More specifically, the Parties provided data on Ticketmaster's and MCD's variable margins showing that the average variable margin on a per ticket basis for ticketing is around [X] of the size of the variable margin for promoting [X]. The larger the size of the promotion margin the more likely Live Nation is to have the incentive to foreclose rival promoters. However, as the Parties have highlighted, the Merger will only result in Live Nation having a [X]% share interest in MCD. As a result, the profit per ticket that Ticketmaster receives from ticketing is approximately [X] greater than that Live Nation would receive from promotion [X]. The Parties submitted that these margins mean that for every 100 tickets for events promoted by rival promoters, particularly Aiken, that Ticketmaster lost its current ticketing margin, the Parties would need to sell [X] tickets more for events promoted by MCD for foreclosure to be profitable for Live Nation.

157. The CMA considers that this figure is helpful for considering the degree of business that the Parties would need to gain in order to make foreclosure profitable but notes that there is some uncertainty around this figure. For example, if foreclosure is successful and there is a reduction in competition in promotion, the margins in promotion would likely rise, thereby reducing the extent to which MCD would need to provide additional ticket sales to compensate for the loss of ticket sales for rival promoters, particularly Aiken's, events. Alternatively, if the foreclosure of rival promoters, particularly Aiken, leads an artist to switch to another promoter, then this could increase the use of Live Nation's venues⁴³ creating an additional benefit to any foreclosure which is not considered in the Parties' analysis. Since the venue margins are higher than the promotion and ticketing margins, this factor could significantly increase Live Nation's incentives to foreclose rival promoters using Ticketmaster.

158. Therefore, whilst the CMA considers that the Parties' analysis is informative when assessing the strength of Live Nation's incentives to foreclose rival promoters using Ticketmaster, there is uncertainty around this analysis and the CMA has accounted for this uncertainty in its assessment. The CMA believes that the impacts discussed in paragraph 157 may make foreclosure more profitable and may reduce the required amount of business that the Parties would need to gain for the strategy to break even, and this reduction could be material to the incentives in question.

- *Degree of switching*

159. The CMA considers that if Aiken is foreclosed, the level of switching to MCD is likely to be high, as MCD is the only significant alternative to Aiken. Excluding Aiken, events promoted by MCD currently account for [80%-90%] of tickets sold and [80%-90%] of ticket revenue in 2018 for events with a capacity of over 1,000 on the island of Ireland. Promoters, artist representatives and a venue confirmed that Aiken and MCD are the only major promoters on the island of Ireland. The CMA therefore considers that if artists were to switch promoter within the island of Ireland, it is likely they would choose MCD.

160. Promoters, artist representatives and a venue told the CMA that they considered Aiken to be a close alternative to MCD for large events, and Aiken was often cited as the only other suitable promoter apart from MCD.

⁴³ An example of when this might occur is where artists who would otherwise use Aiken and who would perform at venues which are not owned or managed by Live Nation switch to MCD as a result of the foreclosure and MCD then places the artist at a Live Nation owned or managed venue.

161. The CMA believes that both the high combined market share of Aiken and MCD and the third party views indicate that there would be a high degree of diversion of customers from Aiken to MCD should Live Nation engage in a foreclosure strategy and should Aiken be unable to find an alternative ticketing agent with an offer of sufficient quality.
162. The Parties submitted that many of the artists promoted by Aiken result from strong relationships that have been built with Aiken and/or Aiken's alignment with AEG⁴⁴, which the Parties estimate accounted for [X] of Aiken's revenues over the last three years. The CMA acknowledges that, based on views provided by the Parties and third party promoters, long-standing contacts, relationships and goodwill are an important feature of this sector. However, those relationships and associated promoter-loyalty are also based on the expectation of commercial success, including Aiken's current ability to promote events. The Parties, a third party promoter and artist representatives told the CMA that artist loyalty is predicated on a requisite level of delivery or quality of the promotion service. As a result, the CMA believes it is realistic to expect that artists and AEG would no longer use Aiken should it not be in a position to secure high quality ticketing, notwithstanding their past relationships. The CMA also notes that the proportion of Aiken's business that AEG accounts for varies considerably, for example it was [X] in 2018 [X] in 2017 and [X] in 2016. As such, even if AEG did not switch to MCD, Live Nation may still have an incentive to foreclose based on the proportion of Aiken's other customers who might switch.
163. The Parties submitted that even if Aiken were not able to rely on an alternative ticketing agent for all of its business, it would likely be able to do so for smaller shows which could very easily be ticketed by one of the existing ticketing agents on the island of Ireland. However, smaller events account for [X] of Aiken's revenue. Over the last three years, [X] of Aiken's revenue has come from events with over 1,000 tickets sold and [X] from events with over 5,000 tickets sold.
164. The Parties also submitted that artists or AEG may retaliate against a foreclosure strategy by avoiding playing in Live Nation festivals and venues and not using Live Nation as a promoter in other countries. However, it is unclear that artists would be motivated to retaliate, particularly as retaliation would likely be costly to artists and AEG.⁴⁵ Furthermore, the CMA believes that artists or AEG may not be able to infer the reasoning for any refusal to

⁴⁴ AEG is active on various levels of the live entertainment event supply chain, in this decision it is predominantly referred to in relation to its promotion business, **AEG Presents**. AEG Presents is active as a global promoter of artists and mainly uses Aiken for events to be promoted on the island of Ireland.

⁴⁵ There is a cost associated with artists or AEG no longer using their preferred option.

supply or worsening of terms by Ticketmaster; they may see the effect and the resulting foreclosure, but not Live Nation's reasons for their actions. The CMA also received no evidence to indicate that such retaliation would be likely or sufficient to prevent the incentive to foreclose rival promoters using Ticketmaster from arising.

165. Finally, the Parties submitted that, rather than switching from MCD to Aiken, an artist could choose not to play on the island of Ireland. The Parties provided a few examples of acts that had decided to not play on the island of Ireland or to not play additional dates on the island of Ireland. Artist managers and agents also told the CMA that they considered not playing on the island of Ireland to be a possibility should the Parties limit their choice of promoter. However, they also told the CMA that the island of Ireland was an attractive market where artists actively sought to play. While the CMA acknowledges this potential risk in principle, this evidence is: i) limited to a small number of examples; and ii) does not show how significant this constraint is and, importantly, whether the constraint would be sufficient to mean that it was not realistic that Live Nation would have the incentive to foreclose rival promoters using Ticketmaster. Furthermore, the CMA believes that these examples may not be representative of the events that Aiken currently promotes, where the artist's decision to use Aiken may indicate a specific decision to play on the island of Ireland. This suggests that the island of Ireland may be an attractive market for artists, and that they would be less likely to consider switching to a venue outside of the island of Ireland, relative to an alternative promoter of live music events in the island of Ireland.

- *Entry of an alternative ticketing agent*

166. The Parties submitted that the threat of entry by international ticketing companies into the island of Ireland would act as a disincentive to a foreclosure strategy.

167. As set out above, the CMA considers that the ticketing agents currently active on the island of Ireland would be unable to closely replicate Ticketmaster's service for large customers, such as Aiken, and the CMA does not believe that they would be suitable alternatives (see paragraphs 144 to 148). However, the entry of a large international ticketing agent, as an alternative to Ticketmaster, would limit the likely diversion of customers from other promoters to MCD, because this would reduce the impact to other promoters of losing Ticketmaster as a supplier. In assessing whether entry might limit the diversion the CMA considered whether such entry would be timely, likely and sufficient to prevent the incentive to foreclose rival promoters using Ticketmaster from arising. This incentive, and the relevance of entry to that

incentive analysis, is closely related to the degree of switching that may arise as a result of such a strategy, as discussed separately at paragraph 159 above.

– Timeliness

168. The CMA notes that the promotion of a live entertainment event has a lead in time, and tickets are marketed and go on sale months prior to the event taking place. A ticketing agent not currently active on the island of Ireland told the CMA that it would take three to six months for an international provider to set up local operations on the island of Ireland. Furthermore, the same ticketing agent told the CMA that five years was the likely timeframe to match Ticketmaster's reach on the island of Ireland in terms of marketing and reputation.
169. Aiken, the potential main target of a foreclosure strategy, has a contract with Ticketmaster until [REDACTED]. As outlined above, however, the CMA cannot be confident that the contract guarantees Aiken's continued supply with ticketing services by Ticketmaster on no worse terms following the Merger.
170. Therefore, the CMA believes that there may be a long delay before any entrant becomes sufficiently effective to prevent foreclosure and so there is some uncertainty over whether the entry of a third party ticketing agent would be sufficiently timely to prevent the incentive to foreclose rival promoters using Ticketmaster from arising.

– Likelihood

171. The evidence received by the CMA indicates that the cost of entry does not appear to be a large barrier to entry. The Parties estimated that entry would cost approximately [REDACTED] over five years. The CMA was told by a third party that to set up and run a business comparable to Ticketmaster would cost approximately [REDACTED]. Both the Parties and the third party considered that these costs would be mostly operating costs, suggesting the costs specifically related to entry were low. These costs are also relatively low compared to the likely potential revenue from entry; the Parties told the CMA that Ticketmaster's gross margin from Aiken's business was [REDACTED] in 2018.
172. The CMA acknowledges that Ticketmaster's strategic plan for [REDACTED] mentioned potential entry of ticketing agents active outside of the island of Ireland, such as [REDACTED], as a risk. However, the CMA notes that the statement is made without further detailed assessment of these third parties, nor the specific likelihood of their entry, in the document.

173. The Parties submitted that the potential of entry was credible enough [REDACTED].⁴⁶ The CMA considered that, absent evidence of competitors winning relevant contracts, the fact that [REDACTED] is of limited value for two reasons.
- (a) First, as in other settings, customers are generally incentivised to overstate the quality of their alternatives when negotiating with suppliers.
 - (b) [REDACTED]. The past behaviour of those customers needing ticketing services for large live music events, [REDACTED], supports the views of third parties that alternatives to Ticketmaster are limited.
174. The Parties submitted that AEG Presents has a commercial relationship with Aiken; with Aiken acting as AEG Present's local promoter on the island of Ireland in respect of wider tours. The Parties submitted that Aiken would most likely turn to AXS, which is owned by AEG. The CMA notes that the international ticketing agent AXS has not to date secured a contract with Aiken despite Aiken's relationship with AEG Presents and AEG's ownership of a stake in AXS. This presents the CMA with significant uncertainty about AXS' entry to the island of Ireland.
175. Two ticketing agents not currently active on the island of Ireland responded to the CMA. One considered the island of Ireland to potentially be an attractive market. It stated that the main reason it had not previously entered was the difficulty in getting allocations of tickets from promoters and venues, with the implication that scale and certainty of ticketing sales are critical factors in the likelihood of entry. It stated that the main reason it had not previously entered was [REDACTED] in the likelihood of entry. The other had also considered entry previously but did not move beyond initial conversations with potential ticketing service customers and further stated [REDACTED]. Neither ticketing agent appears to have recently actively pursued opportunities to enter the island of Ireland and neither described or provided evidence of well-developed plans for entry such that the evidentiary standard at phase 1 for the likelihood of entry would be met.
176. Taking the above in the round, the CMA considers entry of a ticketing agent to the island of Ireland to be possible. However, based on the evidence available, the CMA believes that there is a significant risk that the entry predicted by the Parties may not occur and therefore there is considerable

⁴⁶ The CMA also noted that some of the examples cited by the Parties with respect to international ticketing agents were not in relation to live music events.

uncertainty as to whether it would be sufficiently likely to prevent the incentive to foreclose rival promoters using Ticketmaster from arising.

– Sufficient

177. Finally, the entry of a ticketing agent would also need to be sufficient to prevent the incentive to foreclose rival promoters using Ticketmaster from arising. The CMA considers the alternative international providers to be credible providers with the technical capabilities and expertise (other than local expertise) to operate on the island of Ireland. However, two promoters, a venue and an international ticketing agent considered that Ticketmaster was likely to have advantages as the incumbent ticketing agent on the island of Ireland, in particular as a result of Ticketmaster's considerable marketing capabilities.
178. The CMA therefore believes that any entry may not match Ticketmaster's capability in the short-term. Therefore, even if entry were to occur, there is a risk that a rival promoter would be in a weakened competitive position and, therefore, there is considerable uncertainty as to whether the effect of any such entry would be sufficient to prevent the incentive to foreclose rival promoters using Ticketmaster from arising.

– Conclusion on entry

179. For all of the reasons set out above, the CMA does not believe that the timeliness, likelihood and sufficiency of new entry in the provision of ticketing services removes the incentive to engage in the foreclosure in question. However, the CMA considered the potential for entry alongside the other factors in this section when considering Live Nation's incentive to foreclose.

• *Wider strategic and commercial implications*

180. The Parties made a number of arguments relating to wider strategic and commercial considerations which they submitted would mean that they would have no incentive to engage in foreclosure.
181. The Parties submitted that the profit from promotion was more variable than the profit from ticketing, as the profit for promotion is more dependent on the success of the event and the promoter takes on a high degree of risk. As such, the Parties submitted that this foreclosure strategy would require Live Nation to sacrifice stable profits in order to win profits that are more variable. The CMA believes that, while this means foreclosure could increase Live Nation's total risk, this could nevertheless be justified provided the opportunities, profits or potential gains were also sufficiently high.

182. The Parties also submitted that foreclosure would go against Ticketmaster's wider strategy of assuring its customers about its neutrality and a degree of distance from Live Nation. The Parties submitted that the best evidence for this was that Live Nation is active in both promotions and ticketing in dozens of countries around the world and does not engage in any foreclosure with Ticketmaster, instead dealing with all promoters on an arm's length basis. However, the Parties did not provide evidence on how the incentives relating to this strategy may differ between countries and how they would apply to the island of Ireland in particular. As such, the CMA has treated this submission with a degree of caution. Further, even taking into account Live Nation's submissions as to its current strategy, the CMA is of the view that this may change on the island of Ireland as a result of the Merger.
183. The Parties submitted that the CMA should take into account the fact that, if there were no alternatives to Ticketmaster, a decision to no longer provide access to Aiken could invite allegations under competition law. The Parties submitted that this acts as a disincentive to engage in a foreclosure strategy. However, they neither provided detailed nor substantiated arguments in relation to this submission. As stated in CMA Guidelines, in certain situations, foreclosure may involve behaviour that is unlawful under competition law. In assessing how this might impact on the incentive to carry out the behaviour in question, the CMA may take into account whether the behaviour would be clearly, or highly probably, unlawful; whether the behaviour would be likely to be detected; and the potential consequences of such behaviour (eg enforcement action taken by the CMA).⁴⁷ Not every instance of foreclosure would be clearly, or highly probably, unlawful under competition law. In any event, for the purposes of the CMA's assessment under the Act it is not necessary for the CMA's assessment to conclude that the behaviour in question would be unlawful under competition law in order to conclude there is a realistic prospect of an SLC as a result of the Merger. In this case, the nature of the foreclosure concerns identified includes a reduction in quality of service or worsening of terms, as well as potential total foreclosure. In view of the above, the CMA believes that the circumstances described in the Parties' submissions are insufficient to remove the foreclosure incentives identified in this case.

- *Conclusion on incentive*

184. The CMA believes that should Live Nation engage in a foreclosure strategy there would be a high degree of diversion of customers from Aiken to MCD. The CMA does not believe that the evidence of potential entry by alternative

⁴⁷ MAG, paragraph 5.6.14.

ticketing agents demonstrates it is likely such that there would be no incentive to engage in a foreclosure strategy or that the Parties' wider strategic and commercial implications would remove the incentive to foreclose. The CMA therefore believes that the Merged Entity, through Live Nation, may have the incentive to foreclose promoters of live music events with a capacity of over 1,000 tickets on the island of Ireland, in particular, Aiken, by refusing to supply ticketing services or worsening terms or quality of supply.

Effect

185. For all the reasons set out above, the CMA believes that Live Nation has the ability and may have the incentive to foreclose promoters of live music events with a capacity of over 1,000 tickets on the island of Ireland, in particular Aiken, by refusing to supply ticketing services or worsening terms of supply. The CMA assessed whether the effect of the foreclosure would be to reduce the competitive constraint that rival promoters, including Aiken, would pose on the Merged Entity in the supply of promotion services for such events on the island of Ireland, including in Northern Ireland.
186. Aiken is an important competitor within promotion of live music events on the island of Ireland with an estimated [50%-60%] share of supply by revenue for events with a capacity over 1,000 on the island of Ireland in 2018. This share is particularly significant given that MCD's share of supply is [30%-40%] on the same basis. Additionally, promoters and artist managers/agents considered Aiken and MCD to be close alternatives for such events, and often the only two suitable promoters. Therefore, the CMA considers Aiken to be an important constraint on MCD and if they were foreclosed this would have an effect on competition.
187. The Parties submitted that, even if Live Nation were able to foreclose promoters, which are rivals to MCD and in particular Aiken, there would not be an anticompetitive effect in promotions because MCD would continue to need to offer artists attractive deals to convince them to play on the island of Ireland. Even accepting the existence of a constraint from outside the island of Ireland (although, as set out in paragraph 165, the size of such a constraint is not clear), this argument relies on Aiken currently offering only a weak constraint on the Parties, relative to that from the possibility of artists not going to the island of Ireland. The CMA considers that this proposition is unrealistic. Furthermore, the CMA considers that the possibility of some artists to choose to tour elsewhere would not protect other artists, for whom the island of Ireland is a preferred destination, from being affected by a loss of competition on the island of Ireland. This is especially the case since negotiations take place on an artist-by-artist basis.

188. The Parties also submitted that artists have negotiating power as evidenced by the high share of profits that artists typically secure. The CMA believes, however, that foreclosure of Aiken would change artists' alternative options and would therefore, weaken any bargaining position they may have.

- *Conclusion on effect*

189. Given the importance of Aiken, the CMA believes that the foreclosure strategy described above would have the effect of reducing the competitive constraint of Aiken on the Merged Entity. The CMA believes that this would lead to significant competition concerns as a result of a reduction in competition for promotion services for live music events with a capacity of over 1,000 tickets on the island of Ireland, including in Northern Ireland. This could result in higher prices for concert goers, as well as a smaller variety of live music events to choose from.

Conclusion on input foreclosure of rival promoters using Ticketmaster

190. For all the reasons set out above, the CMA believes that the Merger raises significant competition concerns as a result of vertical effects in relation to the promotion of live music events with a capacity of over 1,000 tickets on the island of Ireland, including in Northern Ireland, and therefore within a market or markets in the United Kingdom.

Input foreclosure of rival promoters using Live Nation's venues

191. The CMA considered whether post-Merger the Parties would have the ability to foreclose rival promoters to MCD, in particular Aiken as the closest competitor to MCD, by restricting their use of Live Nation's venues. By restricting use of Live Nation's venues, the ability of rival promoters to make attractive offers to artists may be reduced allowing the Parties to foreclose competing promoters.

192. In this context the CMA notes that Live Nation's venues are all located in the Republic of Ireland. Therefore, the CMA has considered the extent to a restriction in the use of Live Nation's venues in the Republic of Ireland might have an effect on competition in Northern Ireland. The CMA also notes that, of these venues, the 3Arena in Dublin appears to have the fewest apparent substitutes and to be of particular importance for Aiken (see discussion below). As such, the CMA focused its assessment on the 3Arena.

Ability

193. In order to assess Live Nation's ability to foreclose rival promoters, the CMA has sought to understand the following:
- (a) The importance of venues to promoters and therefore the extent to which changes in venues could lead to foreclosure of rival promoters.
 - (b) Potential alternatives to the Parties' venues and whether these might prevent Live Nation from foreclosing rival promoters.
 - (c) Whether limiting the use of Live Nation's venues in the Republic of Ireland would competitively weaken rivals in the market for promotion across the island of Ireland, and in particular on the ability of rival promoters to compete for events taking place in Northern Ireland.
- *The importance of venues to promoters*
194. In assessing the ability of the merged firm to engage in partial input foreclosure, the CMA may consider evidence on the cost of the input relative to all costs of the final product.⁴⁸ The Parties highlighted that venues only make up [X]% of promoters' costs. This means that the Parties would have to put up prices by a considerable amount to impact the end price and competitiveness of promoters. For example, to raise a rival promoter's costs by an amount equal to [X]% of a promoter's revenue, Live Nation would have to increase its venues' prices by [X]%. As a result, the Parties' submitted that partial foreclosure of competing promoters, achieved by increasing venue hire prices would not be realistic.⁴⁹
195. However, the CMA considers that the share of promoters' costs related to venues does not reflect the importance of venues to promoters. While venues may not account for a large share of the cost of promotion, it is a critical input for the promotion of events. Promoters require a venue in order to host an event and so having sub-optimal use of a venue could limit the profitability of an event and could significantly worsen the competitive position of promoter. Therefore, given the importance of venues to promoters, but the relatively small share of costs that such services account for, the CMA's assessment has focussed on the possibility of total foreclosure and partial foreclosure through limiting rival promoters' use of Live Nation's venues, in particular the 3Arena.

⁴⁸ MAG, paragraph 5.6.10.

⁴⁹ As above, the CMA notes that this observation is what drives the Parties' vGUPPI analysis in their submission RBB Economics, "No prospect of input foreclosure" of 8 May 2019, section 2.2.2.

- *Alternatives to the Parties' venues*

196. The Parties submitted that there are ready alternatives to the 3Arena. In particular, the Parties:

- (a) Highlighted that Aiken has promoted several shows at outdoor stadia;
- (b) Noted that [X] out of [X] of Aiken's events at the 3Arena in 2017 had attendances lower than the capacity at the RDS Simmonscourt and [X] out of [X] had attendances lower than the capacity at the SSE Arena; and
- (c) Provided an example of an act that chose the SSE Arena over the 3Arena in 2010.

197. The CMA notes that the 3Arena is the largest arena on the island of Ireland and has over double the maximum capacity of the next largest indoor venue in Dublin. Although the CMA received some mixed views from third parties, a number of promoters, artist managers/agents and a venue operator told the CMA that other venues on the island of Ireland are not good substitutes for the 3Arena, for the following reasons:⁵⁰

- (a) The SSE Arena is important for attracting a different audience than the 3Arena (ie those closer to Belfast rather than Dublin) and due to its smaller size was considered likely to be less profitable than hosting events at the 3Arena.
- (b) Other indoor venues in Dublin are smaller than the 3Arena and are likely to be less attractive to artists as they would have to play more nights to sell the same number of tickets. These venues were also considered to be lower quality, older venues.
- (c) Outdoor venues were considered a limited alternative by third parties (see above from paragraph 86).

- *The impact on rival promoters of limited use of Live Nation's venues*

198. In order to constitute foreclosure in the UK, limiting use of Live Nation's venues in the Republic of Ireland would have to competitively weaken rivals in the market for promotion of live music events with a capacity of over 1,000 tickets across the island of Ireland, including in Northern Ireland.

⁵⁰ The CMA currently also considers that entry is unlikely to be sufficiently likely and timely to prevent Live Nation having the ability to foreclose, because of the high capital costs and potential planning permission difficulties involved in building venues.

199. The Parties submitted that the 3Arena is not sufficiently important to rival promoters for any wider effects on a promoter's ability to compete to arise. The Parties submitted that the 3Arena only accounted for [X]% of Aiken's ticket sales between 2017 and the first half of 2018. More generally, all of Live Nation's venues accounted for [X]% of Aiken's ticket sales and [X]% of Aiken's ticket revenue between 2017 and the first half of 2018.
200. The CMA considered ways in which limiting the use of Live Nation's venues might have a wider impact on rival promoters, and in particular on the ability of rival promoters to compete for events taking place in Northern Ireland. The CMA further focussed on the impact on the ability of rival promoters to compete for events at the SSE Arena, because this is the largest indoor venue in Northern Ireland and therefore is more likely to compete with Live Nation's venues in Dublin.
201. The CMA considered the impact on rival promoters' ability to promote multi-venue tours within the island of Ireland. When an artist plays at multiple venues on the island of Ireland, often the same promoter will promote each show. Therefore, not being able to promote at the 3Arena may limit the ability of promoters to compete for wider tours that included the 3Arena.
202. However, the evidence received by the CMA indicates that only a limited number of events that are held in the 3Arena are also held in the SSE Arena in Belfast. The Parties submitted that of [X] MCD-promoted acts at the 3Arena in 2018, only [X] also played the SSE Arena within a six-month period. This is consistent with the vast majority of events at Live Nation's venues not being part of multi-venue tours including Northern Ireland. Therefore, the impact on rival promoters of not being able to compete for events at the 3Arena will have a limited effect on competition in the rest of the island of Ireland, including Northern Ireland.
203. For the remaining acts that do play Live Nation's venues and venues elsewhere on the island of Ireland, for example in Northern Ireland, even if a promoter were not able to promote at the 3Arena, they could still compete for promotion of the same artist elsewhere insofar as artists are willing to use different promoters for different venues. The CMA received evidence that artists and their representatives are willing to use a different promoter for different venues. [X] acts promoted by MCD at the 3Arena that also played the SSE Arena used a different promoter for the SSE Arena event. More generally, the CMA notes that artists regularly use multiple promoters across countries when organising international tours.⁵¹ The CMA considers that the

⁵¹ For example, this is the case for any artist touring the island of Ireland as part of an international tour.

incentive to split the promotion of multi-venue tours would increase if there was no choice of promoter at the 3Arena. Therefore, the evidence received by the CMA indicates that Aiken would be able to continue to compete to promote live music events with a capacity of over 1,000 tickets in the island of Ireland, in particular in Northern Ireland, even if Live Nation limited use of its venues.

204. The CMA also considered whether a loss of economies of scale would affect rival promoters' ability to effectively promote events on the island of Ireland, including their ability to promote events in Northern Ireland. Based on the nature of promoters' activities, which include contracting with venues, organising advertising and marketing, and engaging ticketing agents (as set out in paragraph 24), and that the CMA received no evidence to the contrary, the CMA does not believe that economies of scale are important in promotion.
205. Similarly, the CMA considered whether there may be some wider impact of not being able to book the 3Arena or other Live Nation venues, for example on the promotor's reputation. However, the CMA considered such effects would be limited given that no third party raised this potential impact and rival promoters could still promote large tours, such as Ed Sheeran's 2018 tour of outdoor venues promoted by Aiken.
206. Based on the evidence set out above, the CMA believes that, while the Parties will have the ability to limit the use of Live Nation's venues to rival promoters, this would not give the Parties the ability to foreclose rival promoters on the island of Ireland. The CMA does not believe that such a strategy would weaken their ability to compete more generally, and in particular for events in Northern Ireland.

Conclusion on input foreclosure of rival promoters using Live Nation's venues

207. Having found that Live Nation does not have the ability to foreclose, the CMA has not needed to assess the incentive to foreclose or effect of such a strategy. Accordingly, for the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC through input foreclosure of rival promoters of live music events with a capacity of over 1,000 tickets on the island of Ireland using Live Nation's venues.

Input foreclosure of rival promoters using Live Nation's artist management business

208. The CMA considered whether Live Nation through its artist management business could influence the choice of promoter such that rival promoters to MCD, particularly Aiken, could be foreclosed.

Ability

209. In order to assess Live Nation's ability to foreclose rival promoters, the CMA has sought to understand the following:
- (a) Whether artists' managers have influence over the choice of promoter.
 - (b) The extent of Live Nation's artist management business on the island of Ireland and therefore whether it could be used to competitively weaken rival promoters.
- *The ability of artists' managers to influence the choice of promoter*
210. The Parties submitted that artist managers do not influence the choice of promoters. They submitted that this was supported by the CC's decision in *Ticketmaster/Live Nation*.
211. Third parties told the CMA that artist managers have the ability to exercise some form of influence over the choice of promoters, although the final decision would be taken by the artist. Further, no third party expressed concern with regard to Live Nation's artist management business.
- *Extent of Live Nation's artist management business on the island of Ireland*
212. The Parties submitted that Live Nation manages only [X] acts representing only about [X]% of all artists that perform on the island of Ireland between 2017 and 2019. Of these acts, only [X] were promoted by Aiken, representing only [X]% of Aiken's revenue.
213. Based on the limited extent to which Aiken currently promotes Live Nation artists, the CMA does not believe that post-Merger the parties would have the ability to foreclose promoters of live music events with a capacity of over 1,000 tickets on the island of Ireland using Live Nation's artist management business.
- Conclusion on input foreclosure of rival promoters using Live Nation's artist management business*
214. For the reasons set out above, the CMA believes that Live Nation through its artist management business would not have the ability to foreclose rival promoters to MCD. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to

the promotion of live music events with a capacity of over 1,000 tickets on the island of Ireland using Live Nation's artist management business.

Customer foreclosure of rival ticketing agents using MCD as a promoter or MCD's festivals

215. The CMA considered whether the Merged Entity could have the ability to foreclose rival ticketing agents on the island of Ireland by reducing access to MCD as a promoter of live music events or as a festival organiser.
216. Given that MCD uses and has used Ticketmaster as its preferred service provider for the considerable period of [X], the concern in this theory of harm is that the Merger would make MCD less likely to switch from Ticketmaster to a rival ticketing agent, resulting in less competition in the provision of ticketing services than would be the case absent the Merger.
217. In relation to MCD's festivals, this would involve the potential loss for rival ticketing agents of providing ticketing services for MCD's festivals.

Ability

218. In order to assess Live Nation's ability to foreclose rival ticketing agents, the CMA has sought to understand the likely importance of MCD's festivals and of MCD as a promoter of live music events to rival ticketing agents wishing to enter the island of Ireland. This assessment takes into account the competitive importance of MCD currently, including in the context of its existing commercial arrangements with Ticketmaster, in relation to: (i) ticketing services for festivals on the island of Ireland; and (ii) ticketing services for live music events on the island of Ireland.

- *Competitive importance of MCD's festivals*

219. Based on evidence provided by the Parties and third parties, the CMA considers that the Parties' festivals are considerably less important than MCD's promotion of live music events for the entry of ticketing agents. In 2018, the Parties' festivals accounted for only around [X] ticket sales compared to [X] tickets for MCD's live music events.ⁱ The CMA also found that some alternative festivals do not use Ticketmaster for their ticketing services.

- *Competitive importance of MCD's promotion business*

220. Owing to its share of supply in the promotion of large live music events on the island of Ireland and the scale of its promotion business, MCD could present

an important opportunity for a ticketing agent entrant in relation to ticketing for live music events on the island of Ireland, alongside Aiken.

- *MCD's current commercial dealings with Ticketmaster*

221. MCD already uses Ticketmaster as its ticketing agent for its festivals and promotion business and has done so for the last [X] years. The Parties and third parties submitted that Ticketmaster had advantages over other providers as outlined above in paragraph 145. A close relationship has also evolved between Live Nation and MCD's current owner Gaiety through the creation of the LN-Gaiety joint venture. The CMA therefore considers it very unlikely that MCD would switch away from Ticketmaster absent the Merger.

222. In the light of the evidence set out above, the CMA believes that the Merger does not materially alter the competitive conditions for ticketing agent entry on the island of Ireland. The Merger therefore does not provide the Merged Entity with the ability to foreclose potential rival ticketing agents using MCD as either a promoter of live music events or MCD's festivals.

Conclusion on customer foreclosure of rival ticketing agents using MCD as a promoter or MCD's festivals

223. For the reasons set out above, the CMA believes that the Parties, through MCD's promotion business or MCD's festivals, would not have the ability to foreclose rival ticketing agents. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to the provision of ticketing services for live music events or the provision of ticketing services for festivals on the island of Ireland.

Customer foreclosure of rival providers of indoor venues for live music events using MCD

224. The CMA considered whether the Merged Entity would have the ability and incentive to foreclose rival providers of indoor venue space for live music events on the island of Ireland by the withdrawal of MCD's custom from, or limiting dealings with, rival venues. This could be achieved, for example, through reducing the facility fees that go to rival venues. The CMA focused its assessment on the potential effect on venues in Northern Ireland. In particular, the CMA focussed on the impact on the SSE Arena as this is the largest indoor venue in Northern Ireland and therefore is more likely to compete with Live Nation's venues in Dublin. In assessing this foreclosure strategy, the CMA has considered the market structure and competitive

importance of MCD, as well as the closeness of competition between Live Nation's venues and those potentially affected by the theory of harm.

Ability

225. In order to assess the Merged Entity's ability to foreclose rival providers of indoor venue space for live music events on the island of Ireland including in Northern Ireland, the CMA has sought to understand the importance of MCD as a customer for venues in Northern Ireland and in particular the SSE Arena.
226. As outlined above (see paragraph 186) MCD is one of only two large promoters of live music events on the island of Ireland. Over the last three years, MCD has had an average share of supply of [50-60%] in promotion on the island of Ireland as measured by the value of ticket sales. In Northern Ireland the only venue with the capacity to host large indoor events is the SSE Arena in Belfast. The CMA found that MCD is an important customer and one [X]. Therefore, the CMA considered that, should MCD withdraw from using the SSE Arena as a venue, the Merged Entity may have the ability to foreclose the SSE Arena. While the CMA considers that artists wanting to play at the SSE Arena could book the venue directly, this would not give them the other benefits of promotion, [X].
227. For the reasons set out above the CMA believes that the Merged Entity may have the ability to use MCD to foreclose rival providers of indoor venue space for live music events on the island of Ireland, including in Northern Ireland.

Incentive

228. The Merged Entity would have an incentive to engage in the foreclosure strategy if the potential gains from diversion to its venues from the SSE (in the "upstream" market) would outweigh the potential losses for MCD (in the ("downstream" market) from losing the revenue associated with dealing with the SSE Arena.
229. To assess the extent to which the Merged Entity would profit by foreclosing rival providers of venues, the CMA considered the following:
- (a) The effect of not using the SSE Arena on MCD's business; and
 - (b) The potential for Live Nation's venues to gain business as a result of foreclosing the SSE Arena.
230. The CMA considers that MCD would likely lose promotion revenue if its offer did not include the SSE Arena. As the SSE Arena is the only large indoor arena in Northern Ireland, any alternative venues offered by MCD would likely

be less attractive to artists, particularly those specifically seeking to perform in Northern Ireland. The CMA considered that this would make it more likely that those artists would consider other promoters. The Parties submitted that acts could choose an alternative promoter that was willing to use the SSE Arena or book the SSE Arena directly. The CMA found that Aiken would be a suitable alternative for artists wishing to play at the SSE Arena. Aiken currently promotes events at the SSE Arena and the CMA was told by third parties that MCD and Aiken were the main promoters on the island of Ireland. In assessing the risks associated with this foreclosure strategy, the CMA also considered the evidence set out above of artists and their agents using a different promoter for Northern Ireland (see paragraph 201).

231. The CMA also considered that the potential gain for Live Nation would be limited because, for many artists, Live Nation's venues in Dublin would not be an alternative to performing in Belfast. The CMA found that, while the 3Arena and the SSE Arena are the two largest venues on the island of Ireland, they are differentiated, particularly by location. The 3Arena is in Dublin and has a higher maximum capacity (14,600) and the SSE Arena is in Belfast and its maximum capacity is 10,800. Third party evidence indicated that artists performing at the SSE Arena have often actively elected to perform in Northern Ireland. As such, the [X] told the CMA [X]. [X], other third parties did not raise any concern about this potential foreclosure strategy.
232. The CMA therefore believes that the Merged Entity would not have the incentive to foreclose rival providers of venues on the island of Ireland, including in Northern Ireland by withdrawing or reducing MCD's commercial dealings with those venues.

Conclusion on customer foreclosure of rival venues using MCD

233. Having found that Live Nation does not have the incentive to engage in customer foreclosure, the CMA has not needed to assess the possible effect of such a strategy. Based on the evidence set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to the supply of indoor venue space to promoters for live music events on the island of Ireland, including in Northern Ireland.

Conclusion on vertical effects

234. For all the reasons set out above, the CMA believes that post-Merger Live Nation through Ticketmaster has the ability and may have the incentive to foreclose rival promoters to MCD on the island of Ireland, in particular Aiken. This would have the effect of reducing the competitive constraint of rival promoters, in particular Aiken, on the Merged Entity, resulting in significant

competition concerns. Accordingly, the CMA believes that the Merger raises significant competition concerns as a result of vertical effects in relation to the promotion of live music events with a capacity of over 1,000 tickets on the island of Ireland, including in Northern Ireland. The CMA therefore believes that the Merger gives rise to significant competition concerns within a market or markets in the United Kingdom.

235. The CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of other vertical effects, as discussed above.

Barriers to entry and expansion

236. 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.⁵² In relation to 'Input foreclosure of rival promoters using Ticketmaster' (in relation to foreclosure of rival promoters of live music events with a capacity of over 1,000 tickets on the island of Ireland, through Live Nation's Ticketmaster) the CMA has taken into account barriers to entry and expansion in its assessment of ability and incentive to foreclose, as set out above. For the same reasons as set out in the incentives analysis, the CMA does not consider that entry and expansion would be timely, likely or sufficient to prevent the SLC from arising.

Third party views

237. The CMA contacted festival operators, promoters, venues, artist managers and artist agents as well as ticketing agents. The CMA also received a submission from the Association of Independent Festivals.
238. Third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on substantial lessening of competition

239. For all of the reasons set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of vertical effects in relation to the promotion of live music events with a capacity of over 1,000 tickets on the island of Ireland, including in Northern Ireland.

⁵² [MAG](#), from paragraph 5.8.1.

The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC within a market or markets in the United Kingdom.

Exceptions to the duty to refer

240. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 33(2)(a) of the Act, decide not to refer the merger under investigation for a Phase 2 investigation on the basis that the market(s) concerned is/are not of sufficient importance to justify the making of a reference (the *de minimis* exception).⁵³
241. The market concerned in this case is the promotion of live music events with a capacity of over 1,000 tickets on the island of Ireland. Based on MCD's turnover and that of third parties in the UK in the market concerned,⁵⁴ the CMA believes that the size of the market concerned in the UK is in excess of £5 million.⁵⁵ £5 million is the threshold below which the CMA will generally not consider a reference justified unless a clear-cut undertaking in lieu of reference is in principle available.⁵⁶
242. The Parties did not make any representations to the CMA as to the potential applicability of the *de minimis* exception in this case and the CMA does not believe that it is appropriate to exercise its discretion under the *de minimis* exception not to refer the Merger for an in-depth investigation.

Decision

243. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
244. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act

⁵³ [Mergers: Exceptions to the duty to refer](#) (CMA64), 13 December 2018.

⁵⁴ CMA64, paragraph 37. For the purposes of applying the *de minimis* exception, the market concerned is the affected market. Turnover generated outside the UK in the affected market is not taken into account.

⁵⁵ The CMA has estimated the sum of the turnover in the UK of MCD, Aiken and other promoters active in the market concerned. In respect of MCD, the CMA relied on MCD's description in the Issues Meeting of MCD's revenue split as between Northern Ireland and the Republic of Ireland. In respect of Aiken, the CMA has relied on information [redacted]. For other promoters, the CMA has apportioned turnover to Northern Ireland based on the average proportion of MCD's and Aiken's relevant turnover attributable to Northern Ireland. The CMA made adjustments to exclude revenue attributable to promotion of events with a capacity of below 1,000 tickets.

⁵⁶ CMA64, paragraph 9.

instead of making such a reference.⁵⁷ The Parties have until 18 July 2019⁵⁸ to offer an undertaking to the CMA.⁵⁹ The CMA will refer the Merger for a phase 2 investigation⁶⁰ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides⁶¹ by 25 July 2019 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Joel Bamford
Senior Director, Mergers
Competition and Markets Authority
11 July 2019

END NOTES

ⁱ The CMA notes that it incorrectly stated that MCD's ticket sales for live music events in 2018 were [§<]. MCD's ticket sales for live music events in 2018 were [§<].

⁵⁷ Section 33(3)(b) of the Act.

⁵⁸ Section 73A(1) of the Act.

⁵⁹ Section 73(2) of the Act.

⁶⁰ Sections 33(1) and 34ZA(2) of the Act.

⁶¹ Section 73A(2) of the Act.