

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

Final report

19 December 2019

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The Competition and Markets Authority has excluded from this published version of the final report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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## 1. The reference

- 1.1 On 25 July 2019, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (**the Act**), referred the anticipated acquisition by Live Nation-Gaiety Holdings Limited (**LN-Gaiety**) of MCD Productions Unlimited Company (**MCD**) (**the Proposed Merger**) for further investigation and report by a group of CMA panel members.
- 1.2 Throughout this document, LN-Gaiety, together with its parent companies Live Nation Entertainment, Inc. (**Live Nation**) and Gaiety Investments Unlimited Company (**Gaiety**), and MCD are referred to collectively as '**the Parties**', and for statements referring to the future post-Proposed Merger they are referred to collectively as 'the Merged Entity'.
- 1.3 In exercise of its duty under section 36(1) of the Act, the CMA must decide:
  - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
  - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the UK for goods or services.
- 1.4 Our terms of reference, along with information on the conduct of the inquiry, are set out in the appendices to this report.
- 1.5 This document, together with its appendices, constitutes the CMA's final report. Further information can be found on the CMA case webpage.<sup>1</sup>

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<sup>1</sup> <https://www.gov.uk/cma-cases/ln-gaiety-holdings-mcd-productions-merger-inquiry>.

## 2. The parties and transaction

### The Parties

#### *Acquirer: LN-Gaiety Holdings Limited*

##### *Nature of business*

- 2.1 The acquirer, LN-Gaiety, is a company incorporated in England.<sup>2</sup> LN-Gaiety is a joint venture between Live Nation (Music) UK Limited (**Live Nation UK**) and Gaiety, with ownership split 50.1% and 49.9% respectively.<sup>3</sup>
- 2.2 The LN-Gaiety joint venture shareholders were [REDACTED]. Live Nation UK told us that each party invested £[REDACTED] in the joint venture so that it could purchase a concert promoter and producer.<sup>4,5</sup>
- 2.3 Table 1 shows LN-Gaiety's turnover, operating profit and net assets for the financial years ending 31 December 2015, 2016 and 2017.

**Table 1: Key Financial Metrics of LN-Gaiety Holdings Limited<sup>6,7</sup>**

	Financial year ending 31 December in			€'000
	2015	2016	2017	
Turnover	[REDACTED]	[REDACTED]	[REDACTED]	
Operating Profit	[REDACTED]	[REDACTED]	[REDACTED]	
Net Assets	[REDACTED]	[REDACTED]	[REDACTED]	

Source: LN-Gaiety Holdings Limited audited statutory financial statements for the years ended 31 December 2016 and 31 December 2017.

##### *Ultimate parent of Live Nation (Music) UK Limited*

- 2.4 The ultimate parent of Live Nation UK is Live Nation.<sup>8</sup> Its principal business is promoting live events and operating venues. It has publicly stated that it is the

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<sup>2</sup> LN-Gaiety Holdings Limited Certificate of Incorporation dated 30 December 2004.

<sup>3</sup> The Confirmation Statement filed at Companies House on 09 January 2018 states that as at 30 December 2017, Live Nation (Music) UK Limited had 120,741,501 Ordinary A shares and Gaiety Investments Unlimited Company had 120,259,499 Ordinary B shares. This equates to 50.1% and 49.9% equity ownership.

<sup>4</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex 3A.

<sup>5</sup> Financial Statements for Festival Republic Limited (formerly trading as the Mean Fiddler Group) for the year ended 31 December 2004.

<sup>6</sup> LN-Gaiety Holdings Limited audited statutory financial statements for the year ended 31 December 2016.

<sup>7</sup> LN-Gaiety Holdings Limited audited statutory financial statements for the year ended 31 December 2017.

<sup>8</sup> Financial Statements for LN-Gaiety Holdings Limited for the year ended 31 December 2017, disclosure note #26 Parent Undertakings.

largest live entertainment company in the world and operates in approximately 44 countries.<sup>9</sup>

### *Gaiety Investments Unlimited Company*

- 2.5 Gaiety is ultimately controlled by Denis Desmond and Caroline Downey.
- 2.6 Gaiety indirectly owns 100% of the target company, MCD through its subsidiary, Gaiety Investments Holding Limited, and in turn the latter company's [X].<sup>10</sup>
- 2.7 Gaiety manages three venues in Dublin which it either owns or leases: the Gaiety Theatre, the Olympia and the Ambassador. It also has a one-half share in an entity which owns and manages the Academy in Dublin.<sup>11</sup>
- 2.8 In Northern Ireland, Gaiety has a [X] in the Limelight venue in Belfast.<sup>12</sup>
- 2.9 Gaiety has an interest in several music festivals.<sup>13</sup>

### ***Acquirer's associate company: Ticketmaster***

#### *Principal business & operations in Ireland*<sup>14</sup>

- 2.10 Live Nation merged with Ticketmaster Entertainment, Inc (**Ticketmaster**) on 25 January 2010.<sup>15</sup>
- 2.11 Ticketmaster's principal business is selling tickets for events. It is headquartered in the USA and, either directly or indirectly through its subsidiaries, operates in approximately 29 countries.<sup>16</sup>
- 2.12 Ticketmaster trades in the UK using two subsidiaries, Ticket Shop (NI) Limited, incorporated in Northern Ireland,<sup>17</sup> and Ticketmaster UK Limited, incorporated in England.<sup>18</sup>

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<sup>9</sup> Live Nation Entertainment, Inc Form 10-K Annual Report for the year ended 31 December 2018.

<sup>10</sup> The Parties' response to s109 Notice dated 25 July 2019, Annex 3A.

<sup>11</sup> The Parties' response to s109 Notice dated 25 July 2019, Annex 3A.

<sup>12</sup> The Parties' response to s109 Notice dated 25 July 2019, Annex 3A.

<sup>13</sup> Financial Statements for LN-Gaiety Holdings Limited for the year ended 31 December 2017, disclosure note #26 Parent Undertakings.

<sup>14</sup> In this document, we use 'Ireland' to mean the Island of Ireland: the Republic of Ireland and Northern Ireland.

<sup>15</sup> Live Nation Entertainment, Inc Form 10-K Annual Report for the year ended 31 December 2011.

<sup>16</sup> <https://getstarted.ticketmaster.co.uk/> Ticketmaster International Country Guide.

<sup>17</sup> Ticket Shop (NI) Limited, Companies House.

<sup>18</sup> Ticketmaster UK Limited Certificate of Incorporation dated 7 November 1991.



- 2.13 Ticketmaster trades in the Republic of Ireland using its subsidiary, Ticketline Unlimited Company, incorporated in the Republic of Ireland.<sup>19</sup>
- 2.14 The ultimate owner of Ticketmaster's subsidiaries in Northern Ireland and the Republic of Ireland is Live Nation.
- 2.15 Between 2015 and 2017, the compound annual growth rate of the operating profits of Ticket Shop (NI) Limited and Ticketmaster UK Limited was [X]% and [X]% respectively.<sup>20</sup>
- 2.16 Live Nation UK has submitted that more than [X] people purchased tickets from Ticketmaster for a music event in the Republic of Ireland between March 2015 and February 2016, with the figure rising to nearly [X] when Northern Ireland is included.<sup>21</sup>
- 2.17 Live Nation UK has submitted that it estimates that Ticketmaster holds between [60 – 70]% and [80 – 90]% share of live music ticketing (**Ticketing Services**) in Ireland.<sup>22,23</sup> It estimates that the live music market in Ireland comprises the sale of around [X] tickets each year.<sup>24</sup>
- 2.18 Ticketmaster's internal Strategic Plan dated June 2019 stated that it sold [X] tickets per annum on behalf of the two biggest promoters, MCD and Aiken.<sup>25,26</sup>
- 2.19 Ticketmaster submitted that it has around [X] full time staff in Ireland.<sup>27</sup>

***Target: MCD Productions Unlimited Company***

***Principal business & operations in Ireland***

- 2.20 MCD told us that it focuses on promoting music events in Ireland and that, in recent years, it has begun promoting other types of events, such as comedy shows, exhibitions, and other cultural events.<sup>28</sup>

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<sup>19</sup> Ticketline Unlimited Company, Companies Registration Office.

<sup>20</sup> Bureau van Dijk database, Orbis, extract on 13 August 2019.

<sup>21</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex 3A.

<sup>22</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex Q26: Ireland Strategic Plan dated June 2019.

<sup>23</sup> Live Nation UK response to Request for Information dated 21 March 2019.

<sup>24</sup> Live Nation UK response to Request for Information dated 21 March 2019.

<sup>25</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex Q26: Ireland Strategic Plan dated June 2019.

<sup>26</sup> MCD: [X] tickets; Aiken Promotions: [X] tickets.

<sup>27</sup> Ticketmaster response to information request dated 28 August 2019, Annex Q5.

<sup>28</sup> MCD response to s109 Notice dated 25 July 2010, page 2.

Table 2 shows MCD's turnover, operating profit, and net assets for the financial years ending 30 December in 2015, 2016 and 2017.

**Table 2: Key financial metrics of MCD Productions Unlimited Company**<sup>29,30</sup>

	Financial year ending 30 December in		
	2015	2016	2017
Turnover	[REDACTED]	[REDACTED]	[REDACTED]
Operating Profit	[REDACTED]	[REDACTED]	[REDACTED]
Net Assets	[REDACTED]	[REDACTED]	[REDACTED]

€'000

Source: MCD Productions Unlimited Company audited non-statutory financial statements for the years ended 30 December 2016 and 30 December 2017.

- 2.21 Live Nation UK has submitted that MCD promotes between [REDACTED] and [REDACTED] shows each year, including major artists such as [REDACTED].<sup>31</sup>
- 2.22 Pollstar, a trade publication for the concert industry, has estimated that MCD events sold 1.9 million tickets in 2018 and has had a compound annual growth rate between 2016 and 2018 of around 19%. In its assessment, MCD was the ninth biggest live music promoter in the world in 2018.<sup>32</sup>
- 2.23 MCD told us that it has around [REDACTED] employees, including [REDACTED] directors.<sup>33</sup>

## Other promoters in Ireland

### *Aiken Promotions Limited (Aiken)*

- 2.24 Live Nation UK has submitted its internal investment appraisal for its acquisition of MCD which stated that, after MCD, Aiken is the next largest live music promoter in Ireland.<sup>34</sup>
- 2.25 MCD has submitted that Aiken has promoted concerts by major artists including [REDACTED] in 2018.<sup>35</sup>

<sup>29</sup> MCD Productions Unlimited Company audited non-statutory financial statements for the year ended 30 December 2016.

<sup>30</sup> MCD Productions Unlimited Company audited non-statutory financial statements for the year ended 30 December 2017.

<sup>31</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex 7.3.

<sup>32</sup> [www.pollstar.com](http://www.pollstar.com).

<sup>33</sup> MCD response to s109 Notice dated 25 July 2010, Annex Q13.

<sup>34</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex 7.3.

<sup>35</sup> MCD response to s109 Notice dated 25 July 2010, page 8.

- 2.26 Live Nation UK has submitted that Aiken, has acted as a local promoter in Ireland for AEG, a global live music promoter and Live Nation's biggest global competitor.<sup>36</sup>

*POD Concerts Limited (POD)*

- 2.27 Live Nation UK has submitted that POD has promoted live music for major artists such as [REDACTED], and many others, although its focus in recent years has shifted towards festivals.<sup>37</sup>
- 2.28 An artists' agent has told us that its artists have worked with MCD, Aiken and POD in Ireland.<sup>38</sup>

*Pat Egan Management (Pat Egan)*

- 2.29 Live Nation UK told us that, since the 1970s, Pat Egan has promoted live music for a range of Irish and international artists, including [REDACTED].<sup>39</sup>

### **3. The Proposed Merger**

***Transaction overview***

*Connection between acquirer and the target*

- 3.1 The Proposed Merger concerns the acquisition by LN-Gaiety of the entire issued share capital of MCD. The Parties submitted that the Proposed Merger would change control of MCD from sole control by Gaiety to joint control by Live Nation UK and Gaiety through their respective 50.1% and 49.9% shareholdings in LN-Gaiety.<sup>40</sup>
- 3.2 Figure 1 shows the acquisition by LN-Gaiety of MCD from Gaiety.

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<sup>36</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex 3A, Page 18.

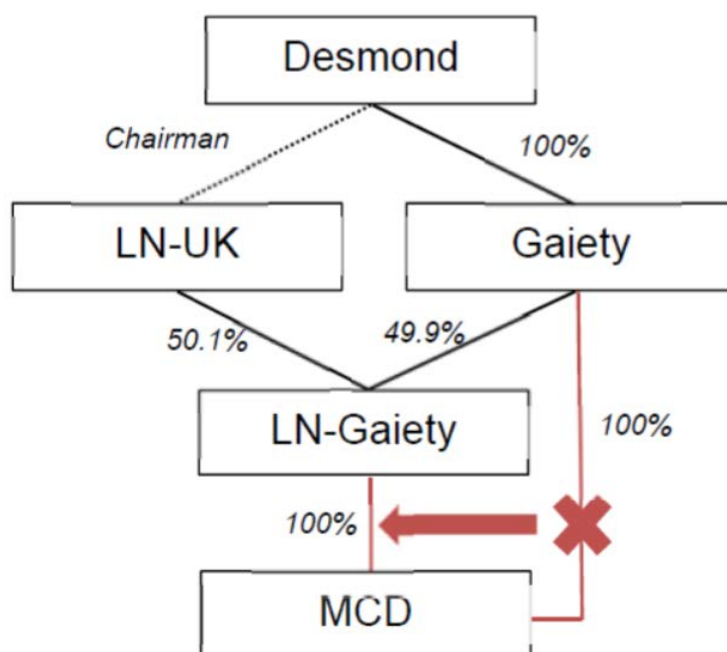
<sup>37</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex 3A, page 30.

<sup>38</sup> CMA file note, call with [REDACTED] on 20 September 2019, paragraph 4.

<sup>39</sup> Live Nation response to s109 Notice dated 25 July 2019, Annex 3A.

<sup>40</sup> The Parties' Merger Notice.

**Figure 1: Transaction Outline Summary**



Source: Live Nation slides presented at initial administrative meeting on 1 August 2019

- 3.3 Live Nation (through its controlling interest in Live Nation UK) and Gaiety each has the ability to exercise at least a material influence on LN-Gaiety [X].
- 3.4 Upon completion of the Proposed Merger, LN-Gaiety will have a controlling interest in MCD and therefore Live Nation and Gaiety will each have the ability to exercise at least material influence on MCD.
- 3.5 We consider Denis Desmond to be a key person in the acquisition because he is:
  - (a) A director of the target, MCD;
  - (b) A director of the acquirer, LN-Gaiety;
  - (c) Owner of [X]% of the shares of the ultimate parent of the seller;
  - (d) Effective owner of [X]% of the shares of the acquirer;<sup>41</sup>
  - (e) Chairman of Live Nation UK (which owns of 50.1% of the shares of LN-Gaiety);

<sup>41</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex 3A, Sub-Annex 2.3(B).

## ***The transaction***

- 3.6 Live Nation UK has submitted an internal investment appraisal for its acquisition of MCD which shows that the total consideration is around [X]<sup>42</sup> based on a multiple of earnings of [X].<sup>43</sup>
- 3.7 LN-Gaiety told us that discussions between LN-Gaiety and Gaiety regarding the acquisition began in 2016 and the transaction was presented to Live Nation's board in March 2017.<sup>44</sup>
- 3.8 LN-Gaiety told us that it agreed heads of terms with Gaiety on 6 July 2017 and the share purchase agreement was concluded on 20 October 2017.<sup>45</sup>

## **4. The Proposed Merger rationale**

### ***Live Nation and LN-Gaiety's rationale***

- 4.1 LN-Gaiety gave two main reasons for acquiring MCD: to help strengthen the relationship between Live Nation UK and Gaiety and to expand its range of services in Ireland.
- 4.2 Live Nation UK stated that the Proposed Merger is principally intended to consolidate the existing relationship between Live Nation UK and Gaiety by:
- (a) adding additional music festivals in Ireland to Live Nation's portfolio; and
  - (b) expanding the range of services provided by Live Nation in Ireland to include events promotion.<sup>46</sup>
- 4.3 Live Nation UK also stated that an important purpose of the Proposed Merger was to [X].<sup>47,48</sup>
- 4.4 Live Nation UK submitted its internal investment appraisal for the acquisition of MCD which stated that the investment will have an internal rate of return of [X]%.<sup>49</sup>

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<sup>42</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex 7.3. The amount payable by Live Nation (Music) UK Limited for a 50.1% share was €[X]. Therefore, the consideration for 100% equals €[X].

<sup>43</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex 7.3.

<sup>44</sup> LN-Gaiety response to s109 Notice dated 25 July 2019, Q.8.

<sup>45</sup> LN-Gaiety response to s109 Notice dated 25 July 2019, Q.8.

<sup>46</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex 3A, Page 13.

<sup>47</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex 3A, Page 3.

<sup>48</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex 3A, Page 3.

<sup>49</sup> Live Nation UK response to s109 Notice dated 25 July 2019, Annex 7.3.

## ***Gaiety rationale***

4.5 MCD told us that [REDACTED].<sup>50</sup>

4.6 MCD told us that [REDACTED].<sup>51</sup>

4.7 MCD told us that [REDACTED].<sup>52</sup>

4.8 MCD told us that [REDACTED].<sup>53</sup>

4.9 MCD told us that [REDACTED].<sup>54</sup>

## **5. The industry**

### **Introduction**

- 5.1 In recent years, the revenues generated by the live music industry have grown rapidly, as a result of both growing attendances and higher ticket prices. One of the drivers of this growth has been an increasing incentive for artists to tour as the income they receive from recorded music has fallen. Whereas in the past, an artist may have toured every few years as a means of promoting a new album, the converse is now typically the case with the artist spending more time on tour and the album intended to support the live tour.
- 5.2 In this chapter, we first describe the organisational supply chain for live music events<sup>55</sup> (**Live Music Events**) (in other words, who the various parties involved are and the relationships between them) before going on to look briefly at the major venues, providers of Ticketing Services (shown as ticket agents in Figure 2) and promoters in Ireland. Finally, as an illustration, we estimate how much each of the parties in the supply chain earned from an historic Live Music Event.

### **The organisational supply chain for Live Music Events**

- 5.3 The supply chain for Live Music Events is illustrated in Figure 2 below:

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<sup>50</sup> MCD response to our Request for Information, dated 28 August 2019.

<sup>51</sup> MCD response to our Request for Information, dated 28 August 2019.

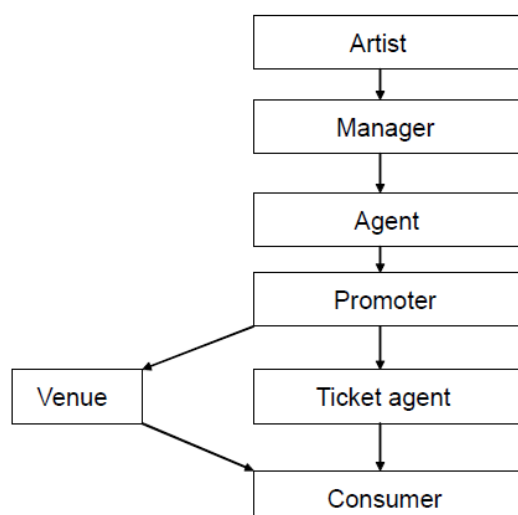
<sup>52</sup> MCD response to our Request for Information, dated 28 August 2019.

<sup>53</sup> MCD response to our Request for Information, dated 28 August 2019.

<sup>54</sup> Main party hearing attended by MCD on 11 October 2019.

<sup>55</sup> We refer to live music events above 1,000 capacity on the island of Ireland as Live Music Events.

**Figure 2: Live Music Event supply chain**



Source: CMA analysis

## **Artists**

5.4 For a Live Music Event, an artist will typically receive the higher of either a guaranteed fee (typically around [X]% of net event profits<sup>56</sup> (**Net Event Profits**) assuming the event sells out and payable regardless of the actual revenue generated) or a high proportion of actual Net Event Profits (typically [X]%).<sup>57</sup>

5.5 In recent years, the trend has been towards an increase of these percentages, reflecting the bargaining position of artists (and their agents) relative to promoters.

5.6 In addition, [X].<sup>58</sup>

## **Managers**

5.7 Artists are generally self-employed and will therefore typically appoint a manager to look after their commercial and career interests. The manager assists in developing and promoting artists' work. These services will include liaising with publicists, organising sponsorship, handling media appearances, dealing with financial matters and liaising with an artists' agent to organise the tour.

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<sup>56</sup> The profits to be split between a promoter and artist, representing the revenues that would be earned from a sold out Live Music Event at ticket face value, minus the costs of organising the event

<sup>57</sup> Live Nation UK response to FDL, question 62.

<sup>58</sup> The Parties' Merger Notice, page 20.

## **Agents**

- 5.8 The agent is primarily responsible for maximising artists' income from a tour. Artists use agents because agents have the requisite knowledge of the costs in different regions and countries where the artist may be considering performing and have established relationships with promoters in each of these countries.
- 5.9 An agent will invite and evaluate bids from promoters to handle an artist's tour (or part of a tour) and will negotiate 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]%).<sup>59</sup>
- 5.10 Some agents are large companies, operating globally and representing many artists. This may give them a degree of bargaining power when negotiating with promoters.

## **Promoters**

- 5.11 Having been selected by the artist and/or his agent, a promoter is responsible for organising and promoting the Live Music Event, including contracting with venues, organising advertising and marketing and engaging providers of Ticketing Services.
- 5.12 While some artists have established relationships with preferred promoters on an international basis, the contracts for a tour or concert (as the case may be) in each country are negotiated individually and artists and their agents may seek proposals (bids) from more than one promoter in each country to maximise the revenue they can obtain from the relevant performances.
- 5.13 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 ultimately has the final say in determining the price and other specifications of the event (including, for example, the number of tickets to be reserved for the artist or sold through a particular platform).
- 5.14 When the artist receives a guaranteed fee for performing, the promoter takes all of the commercial risk of an event being unsuccessful. A promoter is not entitled to cancel a concert due to poor ticket sales and could therefore lose a substantial amount of money on a particular event or tour if ticket sales do not cover the artist's guaranteed fee.

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<sup>59</sup> The Parties' Merger Notice, page 20.



- 5.15 A feature of large global tours is that they are increasingly coordinated and promoted by a single large entertainment group, such as Live Nation or AEG, with affiliated promoters in individual countries providing additional support as necessary. The Parties have told us that MCD has forged a close alliance with Live Nation over the last 14 years, while Aiken has a close affiliation with AEG.<sup>60</sup>

### ***Venue operators***

- 5.16 A promoter will propose to an artist what venues to use for a tour or event, on the basis of the venue's availability, size, location, suitability to the genre of music and the artist's reputation and likely ability to sell out the venue.
- 5.17 Venues generate income through the hiring fee they charge the promoter (typically on the basis of a rate card setting out the terms for renting the venue), facilities fees that are added to the ticket price and paid by the provider of Ticketing Services agent to the venue, a share of merchandise revenues, as well as food and beverage sales to event goers, sponsorship contracts with third parties and the sale of hospitality packages. These ancillary revenues typically amount to more than the venue hiring fee. In order to maximise audiences (and hence revenues), venues seek to host a large number of events annually.

### ***Providers of Ticketing Services***

- 5.18 Providers of Ticketing Services sell tickets to consumers on behalf of promoters and venues, and both promoters and venues can have long-term agreements in place with these providers for the sale of tickets.
- 5.19 Ticketing Services are an important link to the end-customer, that is the consumer, and successful sale of tickets is crucial for the commercial success of an event. A large majority of ticket sales are now made via the internet, while the remaining sales are made through telephone call centres, retail outlets and the physical box office.
- 5.20 The face value price of a ticket to the consumer comprises the net ticket price negotiated between the artists' agent and the promoter, along with a commission payable ('inside fee') by the promoter to the provider of Ticketing Services and a facility fee that goes to the venue operator. The provider of Ticketing Services will also apply a service charge ('outside fee') to the price paid by the consumer, which is typically capped at between [X]% of the value

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<sup>60</sup> The Parties' Merger Notice, pages 20 – 21.

of the ticket. Depending on what is negotiated between the provider of Ticketing Services and the promoter, [X].

- 5.21 In Ireland, most tickets for Live Music Events will be sold through the main provider of Ticketing Services, with perhaps up to [X]% being allocated to the promoter.

## Major venues in Ireland

- 5.22 Table 3 below lists some of the main indoor venues for Live Music Events in Ireland.

**Table 3: Main indoor venues in Ireland**

Venue type	Description	Examples	Approx. capacity	Venue operator
Arenas	Large permanent indoor venues, with a capacity of between 3,000 and 20,000, with Live Music Events as primary purpose	3Arena	14,600	Live Nation
		SSE Arena Belfast	10,800	AEG/SMG
		RDS Simmonscourt	6,500	Royal Dublin Society
		Cork Marquee	5,000	Aiken Promotions
		Gleneagle Hotel	3,000 – 4,000	Gleneagle Group
Theatres etc	Theatres, concert halls, ballrooms and large clubs are among the mix of other venues used for Live Music Events and range in capacity from 1,000 to 3,000.	BGE Theatre	2,111	Live Nation
		Gaiety Theatre	2,000	Gaiety Investments
		Vicar Street	1,500	Aiken Promotions
		The Helix	1,860	UAC Management
		Olympia Theatre	1,240	Gaiety Investments
		National Concert Hall	1,200	Publicly owned
		Ambassador Theatre	1,200	Gaiety
		Cork Opera House	1,000	Charitable status
		University Concert Hall	1,000	University of Limerick
		Wexford Opera House	855	Publicly owned

Source: The Parties' Merger Notice, page 24 (columns 1 – 4); CMA research (column 5).

- 5.23 Some Live Music Events may also take place in large, outdoor venues such as Croke Park in Dublin (capacity approx. 80,000).

## Primary ticketing agents in Ireland

- 5.24 Ticketmaster is by far the largest provider of Ticketing Services in Ireland. Both of the two large live music promoters (MCD and Aiken) have contracts with Ticketmaster, as do many of the major venues so, in the case of many Live Music Events, almost all the tickets end up being sold through Ticketmaster.
- 5.25 Besides Ticketmaster, there are a number of other providers of Ticketing Services operating in Ireland, including ENTA (trading as Vivaticket), Future Ticketing, Eventbrite and others.

- 5.26 Table 4 below sets out Ticketmaster's estimates of the number of tickets supplied in Ireland by various providers of Ticketing Services. The table covers categories actively pursued by Ticketmaster, including Live Music Events, but excluding other entertainment events and sports.

**Table 4: Estimated supply of Ticketing Services in Ireland, 2017**

Ticketing service provider	2017	
	Tickets (000s)	Share of tickets (%)
Ticketmaster Ireland	[X]	[X]
ENTA (Vivaticket)	[X]	[X]
Future Ticketing	[X]	[X]
Eventbrite	[X]	[X]
Ticketsolve	[X]	[X]
Tickets.com	[X]	[X]
Tickets.ie	[X]	[X]
Others	[X]	[X]
<b>TOTAL</b>	[X]	[X]

Source: Ticketmaster estimates, the Parties' Merger Notice, page 39

- 5.27 The data in Table 4 excludes tickets processed by providers of Ticketing Services through club or internal organisation structures and thus understates the position of Ticketing Service providers such as tickets.ie, which has stated publicly that it processes approximately 2.7 million tickets annually,<sup>61</sup> predominantly as part of its arrangements to provide Ticketing Services to the Gaelic Athletic Association.
- 5.28 Internationally, there are other large primary providers of Ticketing Services such as AXS Europe Limited (AXS) (part-owned by AEG) and CTS Eventim AG & Co (CTS Eventim), but these are not currently active on an ongoing basis in Ireland. They have, in some cases, provided Ticketing Services for individual Live Music Events in Ireland in the recent past.

## Promoters in Ireland

- 5.29 MCD and Aiken are the two largest promoters of Live Music Events in Ireland.<sup>62</sup>
- 5.30 We were told that their success is heavily based on personal relationships with established artists and through forming relationships with new artists whose popularity is growing. Some artist relationships with promoters are very long-standing.

<sup>61</sup> <https://www.tickets.ie/about-us/>

<sup>62</sup> The Parties' Merger Notice dated 10 May 2019, page 38.

## Estimated earnings of each party in the supply chain

- 5.31 We asked Ticketmaster and MCD for some data relating to an historic large Live Music Event<sup>63</sup> so that we could estimate, on a per ticket basis, how much each party in the supply chain earned.
- 5.32 This exercise has inevitably involved us making some estimates, in particular with respect to the share of net profits earned by the artist and their agent (which we have estimated at [%] of net profits), so the figures below should only be taken as a broad indication of who earned how much from the concert. The revenue distribution for each concert will be different, but Figure 3 nonetheless provides an approximate indication of how revenues are distributed along the supply chain in a large Live Music Event.

**Figure 3:** [%]

[%]

Source: [%].

## 6. Relevant merger situation

- 6.1 In accordance with [section 36](#) of the Act and pursuant to our terms of reference (see Appendix A) we are required to investigate and report on two statutory questions:
- (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
  - (b) if so, whether the creation of that situation may be expected to result in a SLC within any market or markets in the United Kingdom (UK) for goods or services.
- 6.2 We address the first of the statutory questions in this chapter.

### Enterprises ceasing to be distinct

- 6.3 A relevant merger situation will be created if, as a result of the Proposed Merger, two or more enterprises cease to be distinct within the statutory

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<sup>63</sup> The event was a concert for a major artist held at 3Arena in Dublin in summer 2018.

period for reference<sup>64</sup> and the turnover test and/or the share of supply test is satisfied.<sup>65</sup>

- 6.4 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’.<sup>66</sup> A ‘business’ is defined as including ‘a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.<sup>67</sup>
- 6.5 LN-Gaiety and MCD are both active in the supply of live music festivals and the promotion of Live Music Events in the UK. We are therefore satisfied that LN-Gaiety and MCD are businesses and their activities are ‘enterprises’ for the purposes of the Act.
- 6.6 The Act provides that two enterprises cease to be distinct if they are brought under common ownership or common control.<sup>68</sup> The Proposed Merger concerns the acquisition by LN-Gaiety of the entire issued share capital of MCD. Gaiety currently holds 49.9% of the shares in LN-Gaiety, and Live Nation holds the remaining 50.1%. Each of Live Nation (through its controlling interest in Live Nation UK) and Gaiety has the ability to exercise at least material influence in LN-Gaiety, [X]. On completion of the Proposed Merger, LN-Gaiety will have a controlling interest in MCD and therefore Live Nation and Gaiety will each have the ability to exercise indirectly (through LN-Gaiety) at least material influence in MCD.
- 6.7 Accordingly, we are satisfied that arrangements are in progress or in contemplation which, if carried into effect, would result in LN-Gaiety and MCD ceasing to be distinct enterprises for the purposes of the Act.
- 6.8 The Proposed Merger has not yet completed, so LN-Gaiety and MCD remain independent enterprises. Therefore, we are satisfied that the four-month time limit for a relevant merger situation under the Act is not engaged in the present circumstances.<sup>69</sup>

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<sup>64</sup> Section 23 and section 24 of the Act.

<sup>65</sup> Section 23 of the Act.

<sup>66</sup> Section 129(1) of the Act.

<sup>67</sup> Section 129(1) and (3) of the Act.

<sup>68</sup> Section 26 of the Act.

<sup>69</sup> Section 24 of the Act. In summary, the four-month time limit applies only where the enterprises *have ceased* to be distinct.

## Jurisdiction test

- 6.9 The second element of the relevant merger situation test seeks to establish a sufficient nexus with the UK on a turnover and/or share of supply basis to give us jurisdiction to investigate.
- 6.10 The turnover test, which is that the value of the turnover in the UK of the enterprise being taken over exceeds £70 million, is not met in the present case: the turnover of MCD in the UK in its last financial year for which it had audited accounts (2018) was approximately [REDACTED] million.<sup>70</sup>
- 6.11 The share of supply test is satisfied where, as a result of enterprises ceasing to be distinct, the following condition prevails or prevails to a greater extent: at least one quarter of goods or services of any description which are supplied in the UK, or in a substantial part of the UK, are supplied either by or to one and the same person.<sup>71</sup>
- 6.12 The Parties overlap (i) 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]%; and (ii) in the promotion of Live Music Events in the UK, with a combined share of supply by number of events of [20 - 30]% and an increment of [0 - 5]%.<sup>72</sup>
- 6.13 The Parties raised the issue that the share of supply test may not be met in this case. According to the Parties, MCD's promotion and festival businesses in the UK are confined to Northern Ireland, where Live Nation does not have any promotion or festival activity.<sup>73</sup> The Parties consider that an overlap in the UK only arises if Live Nation's activities in Great Britain are included.<sup>74</sup>
- 6.14 However, the geographical aspect of the share of supply test in section 23(2)(b) of the Act refers to the whole of the UK (or a substantial part of it).<sup>75</sup> This is also reflected in CMA guidance, which states that: *'The test may be satisfied on the basis of the share of supply or acquisition in a relatively wide geographic area (such as the UK, Great Britain, England, Scotland, Wales or*

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<sup>70</sup> The Parties' Merger Notice, Table 2.

<sup>71</sup> Section 23(2), (3) and (4) of the Act. The reference to supply 'by' or 'to' one and the same person catches aggregations with regard to the supply or purchase of goods or services. The test is also met where at least one quarter of the goods or services is supplied by the persons by whom the enterprises concerned are carried on, or are supplied to or for those persons.

<sup>72</sup> The Parties' Merger Notice.

<sup>73</sup> According to the Parties, Live Nation is only active in Ticketing Services in Northern Ireland through Ticketmaster Ireland.

<sup>74</sup> The Parties' Merger Notice, paragraph 50.

<sup>75</sup> Section 23(3) and (4) of the Act.

*Northern Ireland) even if the transaction's competitive impact is more likely to be regional or local in nature.*<sup>76</sup>

- 6.15 Moreover, 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.<sup>77</sup>
- 6.16 We are therefore satisfied that the share of supply test in section 23 of the Act is met.

## **Conclusion on the relevant merger situation**

- 6.17 In the light of the above, we have concluded that the Proposed Merger, if carried into effect, will result in the creation of a relevant merger situation.
- 6.18 As a result, we must consider whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services.

## **7. The counterfactual**

### **Introduction**

- 7.1 We first set out briefly the framework for the assessment of the counterfactual in a merger inquiry before summarising the parties' views on the counterfactual and then setting out our conclusion on the appropriate counterfactual to be used in assessing the competitive effects of the Proposed Merger.

### **Framework for assessment of the counterfactual**

- 7.2 The counterfactual is an analytical tool used in answering the question of whether a merger gives rise to an SLC. It does this by providing the basis for a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the 'counterfactual'.<sup>78</sup>
- 7.3 We will typically incorporate into the counterfactual only those aspects of scenarios that appear likely based on the facts available to us and the extent

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<sup>76</sup> [Mergers - The CMA's Jurisdiction and Procedure: CMA2](#), paragraph 4.56.

<sup>77</sup> [Mergers - The CMA's Jurisdiction and Procedure: CMA2](#), paragraph 4.54.

<sup>78</sup> [Merger Assessment Guidelines: CC2](#), paragraph 4.3.1.

of our ability to foresee future developments.<sup>79</sup> The foreseeable period can sometimes be relatively short.<sup>80</sup> However, even if an event or its circumstance is not sufficiently certain to include in the counterfactual they may be considered in the context of the competitive assessment.<sup>81</sup>

- 7.4 In a Phase 2 merger inquiry, in order to help make an overall judgement on the likely future situation in the absence of the merger, we may examine several possible scenarios, one of which may be the continuation of the pre-merger situation; but ultimately only the most likely scenario will be selected as the counterfactual.<sup>82</sup>
- 7.5 When we consider that the choice between two or more scenarios will make a material difference to the competitive assessment, we will carry out additional detailed investigation before reaching a conclusion on the appropriate counterfactual.<sup>83</sup>
- 7.6 However, we seek to avoid importing into the assessment of the appropriate counterfactual any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those elements of scenarios that are foreseeable, it will not in general be necessary to make finely balanced judgements about what is and what is not the counterfactual.<sup>84</sup>
- 7.7 Depending on the evidence, the choice of the counterfactual could be a situation either more or less competitive than the prevailing conditions of competition. Therefore, the selection of the appropriate counterfactual may increase or reduce the prospects of an SLC finding.<sup>85</sup>

## **Parties' submissions on the appropriate counterfactual**

### ***Summary of main parties' views***

- 7.8 In their Merger Notice, the Parties did not submit an alternative counterfactual to the current competitive situation.<sup>86</sup> The Parties also did not make any submission on the counterfactual in response to the Issues Statement.<sup>87</sup>

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<sup>79</sup> [Merger Assessment Guidelines: CC2](#), paragraph 4.3.6.

<sup>80</sup> [Merger Assessment Guidelines: CC2](#), paragraph 4.3.2.

<sup>81</sup> [Merger Assessment Guidelines: CC2](#), paragraph 4.3.2.

<sup>82</sup> [Merger Assessment Guidelines: CC2](#), paragraph 4.3.6.

<sup>83</sup> [Merger Assessment Guidelines: CC2](#), paragraph 4.3.6.

<sup>84</sup> [Merger Assessment Guidelines: CC2](#), paragraph 4.3.6.

<sup>85</sup> [Merger Assessment Guidelines: CC2](#), paragraph 4.3.4.

<sup>86</sup> The Parties' Merger Notice, paragraph 59 (in response to question 11).

<sup>87</sup> [Issues Statement](#) at paragraph 31 (which invited views on the prevailing conditions of competition as the potential most likely counterfactual).



### ***Third party views***

- 7.9 No third parties have proposed that we should use an alternative counterfactual to the prevailing conditions of competition.

### **CMA assessment**

- 7.10 We found no evidence that, absent the Proposed Merger, either LN-Gaiety or MCD would have exited their respective markets (and neither party has indicated that it might do so).
- 7.11 Given that we are examining an anticipated merger and neither company has acquired shares in the other,<sup>88</sup> LN-Gaiety and MCD are currently independent of each other although we note that Gaiety, the current owner of MCD and 49.9% owner of LN-Gaiety, is ultimately owned and controlled by Denis Desmond and Caroline Downey, and Mr Desmond is chairman of both Live Nation UK and LN-Gaiety.
- 7.12 Absent the Proposed Merger, we consider that LN-Gaiety and MCD would likely remain independent companies, although we note that MCD has a long-standing (customer-supplier) contractual arrangement with Ticketmaster, which is owned by Live Nation. We further note that such a contractual arrangement typically has at least some degree of inherent uncertainty, in that an independent MCD may consider other providers of Ticketing Services, including switching to another provider, or may use the threat of switching as part of its commercial dealings with Ticketmaster.
- 7.13 As such, our view is that the Proposed Merger should be assessed against the prevailing conditions of competition as the appropriate counterfactual and, in our competitive assessment, this will include an assessment of the creation of a permanent structural link between MCD and LN-Gaiety (and, through Live Nation, Ticketmaster) against the present inherent uncertainty referred to above.

### **Conclusion on the counterfactual**

- 7.14 Our conclusion is that the appropriate counterfactual against which to assess the Proposed Merger is the prevailing conditions of competition.

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<sup>88</sup> Although the Share Purchase Agreement was signed on 20 October 2017 (and amended on 31 July 2018) and was conditional on approval from the Competition and Consumer Protection Commission, Ireland (CCPC) (which has been received), the Parties have told us that they do not plan to complete the transaction until all required regulatory approvals have been obtained.

## 8. Market definition and market shares

### Introduction

- 8.1 This chapter first sets out our framework for assessing market definitions, then summarises our initial view on market definitions. It then summarises the Parties' submissions and, our conclusion on market definitions, and sets out market shares based on the markets we have defined.

### Framework

- 8.2 Market definition is an analytical tool used to develop an appropriate frame of reference for the relevant market(s) within which the CMA conducts its assessment of the competitive effects of a merger. Our aim when defining the relevant market is to include the most relevant constraints on behaviour of the merging firms. The relevant market contains the most significant competitive alternatives available to customers of the merging firms that are the immediate determinants of the competitive effect of the merger.<sup>89</sup>
- 8.3 Identifying the relevant market requires an element of judgement. Our analysis of whether a merger may give rise to an SLC may consider constraints outside the relevant market, segments within the relevant market or any other significant constraints that may give rise to an SLC.<sup>90</sup>
- 8.4 Generally, the CMA's market definition and competitive assessment should not be considered as separate analysis; in practice, the analysis of these two issues will overlap. Many factors affecting market definition are relevant to the assessment of competitive effects and vice versa.<sup>91</sup>
- 8.5 There are normally two dimensions to the definition of the relevant market: a product dimension and a geographic dimension.
- (a) The relevant product market is a set of products that customers consider to be close substitutes, for example in terms of utility, brand or quality.
  - (b) The relevant geographic market: may be local, regional, national or wider. Imports may be considered as well as UK products.<sup>92</sup>

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<sup>89</sup> [Merger Assessment Guidelines: CC2](#), paragraph 5.2.1.

<sup>90</sup> [Merger Assessment Guidelines: CC2](#), paragraph 5.2.2.

<sup>91</sup> [Merger Assessment Guidelines: CC2](#), paragraph 5.1.1.

<sup>92</sup> [Merger Assessment Guidelines: CC2](#), chapter 5.2.5.

## Assessment

- 8.6 Based on the information provided in Phase 1, we set out in the Issues statement that our initial view on the appropriate frame of reference within which to assess the impact of the Proposed Merger was as follows:
- (a) the provision of primary ticketing services for live music events on the island of Ireland;<sup>93</sup> and
  - (b) the promotion of live music events above 1,000 capacity on the island of Ireland.
- 8.7 We summarise below the evidence relied on in Phase 1, and the Parties' submissions, before concluding on market definitions.

### ***The provision of primary Ticketing Services for Live Music Events in Ireland***

- 8.8 Live Nation's activities in Ireland are focused on primary Ticketing Services. In *Ticketmaster/Live Nation*, the Competition Commission concluded that primary and secondary retailing of tickets were separate markets. Therefore, our assessment focusses on primary Ticketing Services only.
- 8.9 Regarding whether there should be a separate market for Live Music Events, we considered the following evidence:
- (a) Some Ticketmaster internal documents [REDACTED].<sup>94</sup>
  - (b) The Parties provided shares of supply for providers of Ticketing Services in Ireland, segmented by type of event. The competitor set differed across segments, implying that there are different requirements between types of events, with some providers of Ticketing Services specialising in a certain type of event.<sup>95</sup>
  - (c) A provider of Ticketing Services told us that Live Music Events often exhibit spikes in demand over short periods of time, which are not present when servicing other types of event.<sup>96</sup>
- 8.10 A promoter submitted that the requirements for the provision of Ticketing Services between large and small events differed, stating that a supplier for

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<sup>93</sup> We refer to the island of Ireland as Ireland in this chapter and report.

<sup>94</sup> The Parties' Merger Notice, Annex 5, [REDACTED], at page 9 and 12.

<sup>95</sup> Parties' response to CMA's request for information 10 April 2019, question 17.

<sup>96</sup> CMA file note, call with AXS on 7 May 2019, paragraph 10.

large events would need the capacity to refund a high volume of tickets quickly.<sup>97</sup>

- 8.11 On balance, based on the available evidence, we consider that it is not necessary to segment the frame of reference by size of event, but will take into account different capabilities of providers of Ticketing Services in our competitive assessment.
- 8.12 Regarding geographic scope, Ticketmaster internal documents support the position that the relevant geographic market is Ireland: [REDACTED].<sup>98</sup>
- 8.13 Furthermore, out of the providers of Ticketing Services active globally such as Ticketmaster, CTS Eventim and AXS, only Ticketmaster is active in Ireland. This implies that the competitive environment in Ireland differs from that in other territories.
- 8.14 A promoter, a provider of Ticketing Services and a venue submitted to us that the need for a local presence in Ireland was important.<sup>99</sup> Call centres, on-site support during an event and the ability to make sales through retail outlets were all seen as valuable attributes for a provider of Ticketing Services in Ireland.
- 8.15 We note that promoters and venues who are contracting with providers of Ticketing Services for Live Music Events in Ireland, are also located in Ireland.

### ***The promotion of Live Music Events in Ireland.***

- 8.16 The majority of MCD revenues stem from Live Music Events,<sup>100</sup> and no other promoters which primarily promoted other types of events (such as comedy or sports events) were named by third parties as alternatives to MCD in the promotion of Live Music Events.
- 8.17 A range of third parties to whom we spoke referred to MCD and Aiken as the two main promoters of Live Music Events. This was in contrast to several smaller promoters who are associated by third parties with smaller capacity shows.

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<sup>97</sup> CMA file note, call with Aiken on 23 May 2019, paragraph 7 and 11.

<sup>98</sup> The Parties' Merger Notice, Annex 5, [REDACTED], at page 13 and 14.

<sup>99</sup> CMA file notes, call with Aiken on 23 May 2019, paragraph 7, call with AXS, 6 June 2019, paragraphs 4-5 and call with OML Belfast Ltd, 1 May 2019, paragraph 12.

<sup>100</sup> Parties' response to CMA's request for information 10 April 2019, question 14.

- 8.18 Shares of supply submitted by Ticketmaster show that Live Music Events are mainly being promoted by Aiken or MCD, whereas for events of a smaller size, a range of alternative promoters exist.<sup>101</sup>
- 8.19 A third party submitted that knowledge of the local market was important for promoters of Live Music Events, citing differences in audience preferences, understanding ticket allocations and having contracts in place with local suppliers as key factors.<sup>102</sup> Third parties told us that local knowledge and expertise is the reason why global promoters sub-license promotion rights in Ireland to local promoters, such as MCD or Aiken.<sup>103</sup>
- 8.20 Neither of the two largest promoters in Ireland promote outside of Ireland.

## Submissions on relevant market definitions

### *Main parties' views*

- 8.21 In their reply to the Phase 1 Decision, the Parties stated that:

*'The Decision's definition of the ticketing market is also overly narrow. The Decision defines a ticketing market limited to live music events based on the fact that the initial sale of live music events may create a spike in demand that would not be present for other types of events such as sport events (para. 62). In fact, many sport events also involve a spike in demand. For example, there has been significant demand for the British Open Golf Tournament that took place in Portrush in Northern Ireland in July 2019. The event sold out completely with over 237,000 attendees.'*<sup>104</sup>

- 8.22 In our Provisional Findings, we noted that:

- (a) A market of Ticketing Services for Live Music Events is supported by, and is generally consistent with, the position set out in the Parties' own internal documents.
- (b) The Parties had referred to a single event as evidence against the market definition set out in the Issues Statement and have not provided evidence as to the period over which the volume of tickets was sold, so the extent to which there was a spike in demand for this event cannot be deduced.

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<sup>101</sup> Parties' response to CMA's request for information 10 April 2019, question 6.

<sup>102</sup> CMA file note, call with Freetrade Agency on 7 June 2019.

<sup>103</sup> CMA file note, call with AEG Presents on 10 June 2019.

<sup>104</sup> The Parties' Reply to Phase 1 Decision, footnote 6.

- (c) The British Open Golf Tournament has only been held in Ireland once in the last 50 years and may not be representative of Ticketing Services for sports in Ireland as a whole.
- 8.23 In response to our Provisional Findings, the Parties submitted that *‘the frame of reference used by the CMA is overly narrow and does not reflect the competitive pressure exerted by players that do not currently have a large [✂] in the live music segment, but that represent a credible alternative to Ticketmaster for customers in that segment.’*
- 8.24 The Parties also submitted that internal documents could not be used to indicate separate markets, and that market share estimates indicate that Ticketmaster’s main competitors are active across different segments. The Parties further submitted that only a small number of Live Music Events exhibit significant spikes in demand, and that such spikes in demand are not exclusive to Live Music Events. The Parties provided examples of other sporting and entertainment events which had seen spikes in demand.
- 8.25 Taking these points in turn:
- (a) We consider that a focus on Ticketing Services for Live Music Events is appropriate, particularly in the context of the Proposed Merger and of the theories of harm we have considered. In our market power assessment, we consider the potential of other providers of Ticketing Services to compete against Ticketmaster, whether or not the firms in question are currently active in the provision of Ticketing Services for Live Music Events in Ireland.
  - (b) The fact that Ticketmaster’s internal documents consider live music as a distinct segment indicates that our market definition is consistent with Ticketmaster’s perception of the commercial environment in which it operates. To that extent, these internal documents are consistent with our market definition.
  - (c) While high-demand Live Music Events may be relatively limited in number, they can account for a large proportion of a promoter’s revenues in some years, and promoters need to be able to trust their provider of Ticketing Services to be able to manage ticketing for these events. The Parties have not provided, in support of their submissions, details of their additional examples of high-demand sports and entertainment events, such as the level of demand, their importance in terms of revenues, or of rivals to Ticketmaster effectively managing ticketing for such events.

### ***Third party views***

- 8.26 No third party has proposed that we should use alternative market definitions than those set out in the Issues Statement.

### **Conclusion on market definitions**

- 8.27 Based on the information obtained to date (including during the CMA's initial Phase 1 investigation) and considering submissions from the Parties, we conclude that the appropriate market definitions upon which to assess the impact of the Proposed Merger are as follows:

- (a) The provision of primary ticketing services (Ticketing Services) for live music events on the island of Ireland (Ireland).
- (b) The promotion of live music events above 1,000 capacity on the island of Ireland (Live Music Events).

### **Market shares**

- 8.28 The Parties' internal documents indicate that Ticketmaster held between a [60-70]% and [80-90]% share of the volume of tickets sold in the market for the provision of Ticketing Services for live music events in Ireland over [REDACTED].<sup>105, 106</sup>
- 8.29 The Parties submitted their best estimates of the following market shares by revenue and volume between [REDACTED] in the market for the promotion of Live Music Events in Ireland:

**Table 5: Market shares based on volume in the market for the promotion of Live Music Events above 1,000 capacity in Ireland.**<sup>107</sup>

<i>Promoter (volume)</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
MCD	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Aiken	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Ticketmaster estimates

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<sup>105</sup> Live Nation UK response to FDL, Annex 26A, [REDACTED], Annex 26C, [REDACTED].

<sup>106</sup> Ticketmaster was unable to provide estimates based on revenue.

<sup>107</sup> Parties' response to CMA's request for information 10 April 2019, question 6.

**Table 6: Market shares based on revenue in the market for the promotion of Live Music Events above 1,000 capacity in Ireland.**<sup>108</sup>

<i>Promoter (revenue)</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
MCD	[X]	[X]	[X]	[X]
Aiken	[X]	[X]	[X]	[X]
Total	[X]	[X]	[X]	[X]

Source: Ticketmaster estimates

## 9. Competitive assessment – vertical effects

### Introduction

- 9.1 In this section, we set out the reasoning for our view that Live Nation / Ticketmaster would be able to foreclose Aiken from the promotion of Live Music Events, but that it would not have the incentive to do so.
- 9.2 The Proposed Merger would be a vertical merger in that, through Live Nation's interest in LN-Gaiety, it would bring together two firms operating at different levels of the supply chain. In certain circumstances vertical mergers can weaken rivalry, by creating or increasing the ability and/or incentive of the merged entity to harm competition at one level of the supply chain through its behaviour at another level of the supply chain.
- 9.3 In its Phase 1 inquiry, the CMA considered whether the Proposed Merger might result in:
- (a) Input foreclosure of rival festivals using Ticketmaster;
  - (b) Input foreclosure of rival promoters using:
    - (i) Ticketmaster;
    - (ii) Live Nation's venues;<sup>109</sup>
    - (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.

<sup>108</sup> Parties' response to CMA's request for information 10 April 2019, question 6.

<sup>109</sup> These are the 3Arena (ownership and operation), Bord Gáis Energy Theatre (management), the Gaiety theatre (management), and the Olympia theatre (management)



- 9.4 At Phase 1, the CMA concluded that post-merger Live Nation, through Ticketmaster, had the ability and might have the incentive to foreclose rival promoters to MCD in Ireland, and that this would have the effect of reducing the competitive constraint on MCD, resulting in significant competition concerns.<sup>110</sup> The CMA did not identify competition concerns arising from the Proposed Merger in relation to the other vertical effects set out above.
- 9.5 In the Phase 2 inquiry, we have focused on the vertical theory of harm that Live Nation will foreclose MCD's rival promoters of Live Music Events using Ticketmaster. This chapter sets out our findings on that theory of harm. We also comment on two other theories of harm raised by a third party following the publication of our Issues Statement.
- 9.6 Several third parties expressed concerns to us about Live Nation's strength in the live music sector in Ireland. Live Nation has a leading<sup>111</sup> global position in live entertainment. It owns or manages most of the leading music venues in Dublin and elsewhere in Ireland. It also has a leading position in the Ticketing Services market in Ireland through Ticketmaster, based in part on Ticketmaster's [X] contracts with venues and promoters.
- 9.7 While our focus in the present inquiry is on the theory of harm relating to foreclosure of MCD's rivals, we consider that the above context is relevant in considering the potential effects of the Proposed Merger by reference to our theory of harm.
- 9.8 The chapter is split into the following sections:
- (f) An overview of the assessment framework;
  - (g) Our assessment of the ability of Live Nation (via Ticketmaster) to foreclose rival promoters;
  - (h) Our assessment of Live Nation's incentive to foreclose MCD's rival promoters of Live Music Events using Ticketmaster;
  - (i) Our assessment of the potential effects of foreclosure.
  - (j) Our view on other vertical theories of harm which have been raised by a third party.

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<sup>110</sup> [Phase 1 Decision](#), paragraph 234.

<sup>111</sup> See paragraph 2.4

## Assessment framework

- 9.9 As noted above, vertical effects may arise when a merger involves firms active at different levels of the supply chain. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances they can weaken rivalry. Where a merged firm is in a strong position at one level of the supply chain, the question is whether it would use this strong position to foreclose its competitors at other levels in the supply chain.<sup>112</sup> The CMA regards such foreclosure to be anticompetitive only where it has resulted, or may be expected to result, in an SLC in the affected market, not merely where it disadvantages one or more competitors.
- 9.10 In the present case, we have assessed vertical concerns stemming from Live Nation's strong position in Ticketing Services (through Ticketmaster) and in the promotion of Live Music Events (through MCD).
- 9.11 Our foreclosure analysis focuses on Aiken, which is MCD's only major competitor in the promotion of Live Music Events. Competition in the promotion of Live Music Events could be reduced if Aiken is less effective. Similar vertical concerns could also arise in relation to other existing or future potential competitors to MCD.
- 9.12 We have considered the possibility of two types of vertical input foreclosure of Aiken using Ticketmaster. The first is total foreclosure, whereby Ticketmaster would stop supplying Ticketing Services to Aiken. The second is partial foreclosure, whereby Ticketmaster would increase prices, reduce service quality, or otherwise restrict Aiken's access to Ticketmaster's Ticketing Services.
- 9.13 Our approach to assessing these vertical issues is to analyse:<sup>113</sup>
- (a) The ability of Live Nation (via Ticketmaster) to foreclose Aiken, including the extent to which Aiken can use good alternative inputs to Ticketmaster's products/services.
  - (b) Live Nation's incentive to foreclose Aiken. An input foreclosure strategy implies a loss of profits in the input market upstream (from the lost sales of Ticketing Services to Aiken), but a gain in the market downstream (from customers switching to MCD's services). Whether foreclosure is likely to be profitable depends in part on the margins on sales in the upstream market relative to the downstream market. In this case, post-merger, Live

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<sup>112</sup> In relation to this theory of harm, 'foreclosure' means weakening the ability of rivals to compete post-merger.

<sup>113</sup> [CMA's Merger Assessment Guidelines: CC2](#), section 5.6.

Nation will have approximately 50% of the shares in MCD via LN-Gaiety, so only half of the gain in the downstream market would accrue to Live Nation.

- (c) The overall effect of the foreclosure strategy on competition at the applicable horizontal level in the affected market. For instance, the extent to which an input foreclosure strategy using Ticketmaster may reduce the ability of rival promoters to compete post-merger and increase further MCD's already very strong position in the promotion of Live Music Events.

9.14 We have built on the body of evidence on these different factors from the Phase 1 investigation as part of our assessment.

### **Assessment of the ability to foreclose Aiken**

9.15 In assessing whether Live Nation (via Ticketmaster) will have the ability to harm Aiken, we have considered:<sup>114</sup>

- (a) Whether Live Nation / Ticketmaster has market power in Ticketing Services for Live Music Events, including the alternatives available from competitors to the Ticketing Services supplied by Ticketmaster, and the costs of switching to such alternatives;
- (b) The importance of Ticketing Services to promoters;
- (c) The mechanisms through which Live Nation / Ticketmaster could harm Aiken, eg a price increase, a worsening of the quality of service or other means, including refusing to supply these services; and
- (d) The extent to which Aiken's supply agreement with Ticketmaster protects it from any foreclosure strategy.

9.16 In the following, we consider each of these points in turn.

#### ***Whether Live Nation / Ticketmaster has market power in Ticketing Services for Live Music Events***

9.17 As with any input foreclosure concern, we begin by examining whether Live Nation / Ticketmaster possesses market power in the provision of Ticketing Services or whether, in response to attempted foreclosure, Aiken could easily switch to alternatives. This will enable us to understand whether Live Nation / Ticketmaster can have a significant influence on the conditions of competition

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<sup>114</sup> [Issues Statement](#), Paragraph 38(a).

in the supply of Ticketing Services, and therefore the terms of supply available to Aiken.

- 9.18 Ticketmaster held between a [60-70]% and [80-90]%<sup>115</sup> share of primary ticket sales for Live Music Events in Ireland over [REDACTED].<sup>116</sup> Other providers in Ireland include Tickets.ie, Eventbrite and Future Ticketing. However, these providers tend to focus on events other than Live Music Events. [REDACTED]<sup>117</sup> [REDACTED].

*Restrictions on Aiken switching to another Ticketing Services provider*

- 9.19 One restriction on Aiken switching to an alternative provider of Ticketing Services is that it has [REDACTED] contract with Ticketmaster [REDACTED] for the provision of Ticketing Services. If Ticketmaster was to partially foreclose Aiken over this time period, such as by reducing the quality of its services (in a manner that would not constitute a breach of contract), Aiken [REDACTED]. We consider below whether this contract protects Aiken from partial foreclosure by Ticketmaster.
- 9.20 Another potential restriction on Aiken switching is Ticketmaster's [REDACTED] contracts with venues. Live Nation / Ticketmaster has a close relationship with many live music venues in Ireland, including through its ownership of 3Arena and its management of the Gaiety venues, and it has [REDACTED] Ticketing Services contracts with [REDACTED]. The existence of these contracts would limit Aiken's ability to switch away from Ticketmaster whenever Aiken uses these venues, irrespective of its own [REDACTED] contract with Ticketmaster.<sup>118</sup> In 2017, [REDACTED] of Aiken's Live Music Events business (by value) was at these venues.<sup>119</sup> We have had conflicting accounts of how the terms of these contracts would be interpreted in the event of a dispute:
- (a) Aiken told us that [REDACTED],<sup>120</sup> [REDACTED] SSE Arena said [REDACTED].<sup>121</sup>
- (b) The Parties told us that Ticketmaster provides Ticketing Services on [REDACTED].<sup>122</sup> At the Main Party Hearing we asked whether Aiken could get an allocation of tickets for a third-party provider of Ticketing Services at venues, or whether Ticketmaster would [REDACTED]. The Parties told us that [REDACTED].<sup>123</sup>

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<sup>115</sup> See paragraph 8.27.

<sup>116</sup> [REDACTED].

<sup>117</sup> [REDACTED].

<sup>118</sup> [REDACTED].

<sup>119</sup> LN-UK Response to s109 request, 14 October 2019, questions 4-9.

<sup>120</sup> CMA file note, Aiken call, 10 September 2019.

<sup>121</sup> CMA file note, SSE Arena call, 13 September 2019.

<sup>122</sup> Live Nation UK Response to FDL S.109, Q63(g).

<sup>123</sup> Transcript of Main Party Hearing, page 93.

(c) Internal documents from the Parties include examples of [REDACTED].<sup>124,125</sup> The Parties have identified three occasions when [REDACTED].<sup>126</sup> [REDACTED]. The Parties also told us that in 2015, [REDACTED].<sup>127</sup>

9.21 In our view the existence of [REDACTED] would be likely to limit the extent to which Aiken could switch its Live Music Events away from Ticketmaster in the event of foreclosure.

#### *Ticketmaster's position compared to competitors*

9.22 Aiken described Ticketmaster as the best ticketing system in Ireland on a range of factors: wide brand recognition; innovative technology; resources to handle high volumes of sales; and high quality of operational support at venues of all sizes.<sup>128</sup>

9.23 Ticketmaster's Brand Tracker survey<sup>129</sup> puts brand awareness of Ticketmaster at [REDACTED]%, well above the nearest competitors (Tickets.ie [REDACTED]% and Eventbrite [REDACTED]%).

9.24 Some internal documents of Ticketmaster Ireland [REDACTED],

(a) [REDACTED].

(b) [REDACTED].<sup>130,131,132</sup>

(c) A 2017 Ticketmaster strategy document<sup>133</sup> comments that '*TM IE [i.e. Ticketmaster] continues to be the major player in Ireland. [REDACTED]. The introduction of TicketWeb should underpin this and [REDACTED].*

(d) The same document, [REDACTED]. On the other hand, it notes that [REDACTED].<sup>134</sup>

9.25 If any of the Ticketing Services providers currently present in Ireland were to seek to expand their activities in Live Music Events, we expect that a lack of experience and reputation as providers of Ticketing Services for Live Music

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<sup>124</sup> LN UK reply to Section 109, 16 August 2019, Annex 43B, Document 14.

<sup>125</sup> LN UK reply to Section 109, 16 August 2019, Annex 43B, Document 19.

<sup>126</sup> LN UK reply to Section 109, 16 August 2019, Annex 43B, Document 134, page 2.

<sup>127</sup> Main parties' response to the CMA's Section 109 Notice of 8 October 2019, question 12.

<sup>128</sup> CMA file note, Aiken call, 10 September 2019.

<sup>129</sup> Live Nation UK response to FDL: [REDACTED].

<sup>130</sup> Live Nation UK response to FDL, [REDACTED].

<sup>131</sup> [REDACTED].

<sup>132</sup> CMA file note, Tickets.ie call, 11 September 2019.

<sup>133</sup> Ticketmaster Response to Section 109 Notice of 8 October 2019, [REDACTED].

<sup>134</sup> [REDACTED].

Events could present a material challenge to such expansion plans, along with Live Nation UK's control of [REDACTED] described above.

- 9.26 A number of full-service providers of Ticketing Services, with experience in serving larger Live Music Events, operate in the UK and internationally but are not present to a material extent in Ireland – in particular AXS, CTS Eventim and See Tickets. As with providers of Ticketing Services who are already present in Ireland, we note that some internal documents by Live Nation / Ticketmaster [REDACTED].<sup>135</sup> However, if one of these firms wished to enter the market, they would face additional challenges (to those faced by a current market participant wishing to expand), including the lack of a local presence, knowledge of the local market, brand awareness among concertgoers, and a lack of retail outlets.
- 9.27 The Parties have submitted that Ticketmaster is constrained pre-merger by the presence of large international providers of Ticketing Services.<sup>136</sup> The Parties comment that:

*'...several major international ticketing companies have previously competed for contracts on the island of Ireland and would do so again if the opportunity arose, including [REDACTED]. This is particularly true for [REDACTED]. [REDACTED], does not mean it would be foreclosed from the market if it had to use one of the other highly capable and successful international ticketing firms.'*<sup>137</sup>

- 9.28 Our view is that the Parties have materially overstated the strength of this constraint. There are significant inconsistencies in the Parties' accounts of these events and the accounts of other relevant parties. In particular:

(a) The Parties stated that Ticketmaster [REDACTED].<sup>138</sup> However, in our view the available evidence does not support the position that Ticketmaster made concessions in response to [REDACTED]. In particular:

- (i) Internal documents from Live Nation and Ticketmaster [REDACTED]<sup>139</sup> [REDACTED].<sup>140, 141</sup>

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<sup>135</sup> [REDACTED].

<sup>136</sup> *Additional assessment of input foreclosure theory of harm in promotions*, RBB Economics, 20 September 2019, page 6.

<sup>137</sup> Main parties' reply to Phase 1 Decision, paragraph 10.

<sup>138</sup> Main parties' reply to Phase 1 RFI, 10 April 2019, question 22. [REDACTED]. However, the supporting documents provided by the Parties to this response [REDACTED]. MCD confirmed to us that it [REDACTED] (Transcript of Main Party Hearing, page 88).

<sup>139</sup> [REDACTED].

<sup>140</sup> Live Nation UK response to FDL, Annex 51F, 'Aiken negotiation documents', page 16.

<sup>141</sup> [REDACTED]. Source: Ticketmaster response to the information request dated 28 August 2019, Annex Q19a

(ii) AXS told us it has [redacted] had no involvement in the Irish market in recent years apart from a small allocation for a single show four years ago.<sup>142</sup>

(iii) Aiken told us [redacted].<sup>143</sup>

(b) The Parties submitted that CTS Eventim was a strong contender to provide Ticketing Services to [redacted] against Ticketmaster.<sup>144</sup> However, the Parties have not provided any evidence to substantiate this claim. In addition, CTS Eventim told us that, while it spoke to [redacted] around this time, it did not quote for [redacted] Ticketing Services business because [redacted] made it clear that it would maintain its relationship with Ticketmaster.<sup>145</sup>

9.29 Moreover, Live Nation / Ticketmaster's provision of Ticketing Services to major music venues in Ireland, discussed above, would be a significant obstacle to another provider of Ticketing Services becoming the main supplier to Aiken's Live Music Events.

9.30 In response to our Provisional Findings, the Parties submitted that the above evidence does not support a finding of market power because:

(a) *'The provisional findings are largely based on subjective impressions of Ticketmaster's perceived qualities, none of which amount to an indication of market power.'* They submitted that Ticketmaster was providing a high quality service to Aiken in response to competitive pressure.

(b) The Brand Tracker survey measures awareness among ticket buyers, not customers, of Ticketing Services, who are aware of alternative providers.

(c) Market share estimates *'overstate Ticketmaster's position in the provision of ticketing services and understate the competitive relevance of rival ticketing services providers like Tickets.ie, Eventbrite, Ticketbooth or Future Ticketing, whose primary focus currently is on events other than live music.'*

(d) The frame of reference is overly narrow and based on insufficient evidence.

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<sup>142</sup> CMA file note, AXS call, 16 August 2019.

<sup>143</sup> CMA file note, Aiken call, 10 September 2019.

<sup>144</sup> Main parties' reply to Phase 1 Issues Letter dated 18 June 2019, paragraph 14.

<sup>145</sup> CMA file note, CTS Eventim (UK) call note, 12 September 2019, paragraph 13.

- 9.31 The Parties further submitted that ‘a significant body of evidence’ available to the CMA went against a finding that Ticketmaster has market power, including:
- (a) Internal documents showing that Ticketmaster views rivals as a competitive threat;
  - (b) Evidence that other providers of Ticketing Services view themselves as a credible alternative to Ticketmaster;
  - (c) Our recognition of the risk that Aiken could switch to a different provider in response to foreclosure.
- 9.32 As noted in paragraph 9.17, the question we are considering is whether Live Nation / Ticketmaster possesses market power in the provision of Ticketing Services for Live Music Events or whether, in response to attempted foreclosure, Aiken could easily switch to alternatives. As discussed above:
- (a) Live Nation / Ticketmaster’s provision of Ticketing Services to major music venues in Ireland would be a significant obstacle to another provider of Ticketing Services becoming the main supplier to Aiken’s Live Music Events;
  - (b) Ticketing Services providers currently present in Ireland would face a material challenge in seeking to expand their activities in Live Music Events, from their lack of experience and reputation as providers of Ticketing Services for Live Music Events.
  - (c) UK and international full-service providers of Ticketing Services, with experience in serving larger Live Music Events, would face challenges to entering the market, and therefore in our view the Parties have overstated the constraint they face from these providers.
- 9.33 Taking the points raised by the Parties in turn, as regards the submission that the above evidence does not support a finding of market power:
- (a) The finding of market power is supported by a range of factors including those summarised in the previous paragraph, in addition to Ticketmaster’s sustained high market share, [X], and its [X]. It is not based on a subjective assessment that Ticketmaster provides a better service than its rivals. We recognise that Ticketmaster seeks to ensure it retains its key customers, but this is not evidence against it having market power (see also paragraph 9.34(a) below).



- (b) While the Brand Tracker measures awareness among ticket buyers, Ticketmaster's prominence relative to rival operators supports our view of its market position. As noted in paragraph 9.22, Aiken identified wide brand recognition as one of Ticketmaster's strengths.
- (c) To the extent that the 'primary focus' of other providers of Ticketing Services is on events other than Live Music Events, our view is that this reflects the challenges discussed above in competing against Ticketmaster in Live Music Events. Tickets.ie told us that it no longer provides Ticketing Services for Live Music Events because of Ticketmaster's competitive strength.
- (d) We consider the Parties' submissions relating to the frame of reference in Chapter 8.

9.34 Turning to the Parties' submissions that other evidence goes against a finding of market power:

- (a) That Ticketmaster sees rivals as a competitive threat is in no way inconsistent with its having market power. We would expect a profit-maximising firm with market power to set prices up to a level that is beyond the level at which rivals would seek to compete for its business. The internal document noted in 9.24(c) indicates Ticketmaster's concern that [REDACTED].
- (b) Other providers have said they have the technical capability to offer a similar service to Ticketmaster. However, Aiken does not consider these other providers to be close substitutes for Ticketmaster, there has been little if any communication between Aiken and other providers in recent years, and Ticketmaster considers that it has [REDACTED].
- (c) As discussed in paragraphs 9.152 to 9.154, if Ticketmaster was seeking to foreclose Aiken, then Aiken would face the difficult choice of continuing to use Ticketmaster for large Live Music Events, or using an untested provider in circumstances where any problems with the ticketing system or service could have serious commercial consequences for Aiken. In addition, Aiken would still be dependent on Ticketmaster for events at venues which have [REDACTED] contracts with Ticketmaster. We consider that, while it is possible that Aiken would switch provider for some of its business in these circumstances, this is not the same as saying that Aiken could easily switch to alternatives in response to attempted foreclosure.

9.35 Our view is that Live Nation / Ticketmaster has market power in the provision of Ticketing Services for Live Music Events and that Aiken could not easily switch all of its demand to alternative Ticketing Services providers in response

to foreclosure. As discussed in paragraphs 9.142 to 9.154 below, the Parties have submitted that Aiken could switch at least some of its business from Ticketmaster in response to foreclosure, and we consider whether the threat of such switching affects Live Nation / Ticketmaster's incentives to foreclose Aiken.

### ***The importance of Ticketing Services to promoters***

- 9.36 Ticketing Services are an essential element of Live Music Events, and the quality of the Ticketing Services provided is very important to promoters. The promoter relies on the Ticketing Services provider to put tickets on sale in a timely manner, to manage the sale of large volumes of ticket sales in a short period of time, and to manage large volumes of refunds if a show is cancelled.
- 9.37 A range of other activities by the Ticketing Services provider may also be important, depending on the promoter and the circumstances, including:
- (a) Providing prompt payments on ticket sales revenues so that the promoter can pay the artist promptly;
  - (b) Marketing activity on behalf of the event;
  - (c) Providing a network of retail outlets for the sale of tickets;
  - (d) On-site support at the event.
- 9.38 Artists are typically guaranteed to receive [X]% of Net Event Profits for an event,<sup>146</sup> so this is the principal cost element to the promoter. However, the financial terms on which Ticketing Services are offered could have a significant impact on the promoter's margin. We consider this point in more detail below.

### ***The potential impact of foreclosure mechanisms on Aiken's ability to compete***

- 9.39 In the following subsection we consider the specific foreclosure mechanisms that Live Nation / Ticketmaster could employ. Here we consider, in general terms, the potential impact of such actions on Aiken's ability to act as an effective competitor in the promotions market, in order to understand how these foreclosure mechanisms might lead to foreclosure, individually or in combination. The types of impact can be categorised as:

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<sup>146</sup> Industry Background, paragraph 5.4.

- (a) Reducing Aiken's revenues from Live Music Events as a result of reduced ticket sales. If Aiken were consistently making lower profits – or making losses – from Live Music Events as a result of reduced ticket sales, it could become less willing to promote them: for example, limiting its activities to the least risky Live Music Events, or potentially exiting the market. Alternatively, it could lead to Aiken offering less attractive terms to artists.
- (b) Increasing Aiken's costs, including financing costs, also leading to Aiken making lower profits. This could lead to Aiken limiting its activities, offering less attractive terms to artists, or exiting the market.
- (c) Harming Aiken's reputation among artists and their representatives (managers and agents). Aiken expressed concerns to us about its reputation and relations with artists, managers, and agents if, for example, there was a delay in paying ticketing receipts to artists or if the Live Music Event did not appear on Ticketmaster's website.<sup>147</sup> Reduced ticket sales could also harm Aiken's reputation, as artists prefer to play to full venues, and in some cases have a share of variable revenues (from ticket sales and concessions) above their guaranteed fee.<sup>148</sup>

9.40 Next, we consider how a foreclosure strategy could affect Aiken's ability to compete. First, we consider the effect on Aiken of lower ticket sales and Aiken's ability to absorb lower margins. In light of this, we consider the likelihood of Aiken responding to a foreclosure strategy by limiting its activities, exiting the market, or losing customers as a result of offering less attractive terms to artists.

#### *The effect on Aiken of lower ticket sales*

- 9.41 If an artist is sufficiently popular, a Live Music Event can sell out in a short time with little or no marketing activity by the promoter or Ticketing Services provider. However, even popular artists may struggle to sell out over multiple nights, or at the largest venues, or if tickets are overpriced.<sup>149</sup> The promoter must judge the local demand and tailor the Live Music Event to this demand.
- 9.42 The promoter relies on strong ticket sales to make a profit on a Live Music Event. In live music promotion, the artist receives a guaranteed fee

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<sup>147</sup> CMA file note, Aiken call, 10 September 2019

<sup>148</sup> Industry Background, paragraph 5.4.

<sup>149</sup> IQ Magazine's International Ticketing Yearbook 2018 reports that in Ireland '...megastars such as Taylor Swift, Billy Joel and the Rolling Stones failed to sell out ... amid suggestions of offputtingly high ticket prices.' <https://www.iq-mag.net/publications/the-international-ticketing-yearbook/#.XYi8A0ZKg2w>

accounting for [X]% to [X]% of Net Event Profits,<sup>150</sup> so even a modest shortfall in sales could mean that the promoter does not make a profit on the Live Music Event.

- 9.43 This point is illustrated in Figure 4, based on data provided by the Parties about an historic Live Music Event. For a Live Music Event where the artist takes [X]% of Net Event Profits, a [X]% decrease in ticket sales would reduce the promoter's revenue by [X]%; if the artist required a [X]% share of Net Event Profits, then [X] in ticket sales would reduce the promoter's revenue by [X]%.

**Figure 4: [X]**

[X]

Source: [X]<sup>151</sup>

- 9.44 Similarly, Figure 5 below illustrates that, with the artist taking [X]% of Net Event Profits, if only [X]% of tickets are sold, then the promoter's revenue is approximately [X] relative to a sell-out. [X].

**Figure 5: [X]**

[X]

Source: [X]<sup>152</sup>

- 9.45 Given the sensitivity of the promoter's revenues to ticket sales, a foreclosure strategy could be effective even if it had a relatively moderate impact on ticket sales.

#### *Aiken's ability to absorb lower margins*

- 9.46 The Parties submitted analysis by RBB<sup>153</sup> which included the following assessment:

*'MCD's gross margin in 2017 is EUR [X] per ticket, and its net payment for ticketing services is EUR [X] per ticket. Assuming that Aiken would have similar costs and margins to MCD on a per ticket*

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<sup>150</sup> Live Nation UK response to FDL, question 62

<sup>151</sup> Ticketmaster's response to RFI on 27 August 2019, questions 11, 12, 15 and 17, MCD's response to RFI on 27 August 2019, questions 1 and 4, MCD's response to FDL, question 25 and Live Nation UK's response to FDL, question 62.

<sup>152</sup> Ticketmaster's response to RFI on 27 August 2019, questions 11, 12, 15 and 17, MCD's response to RFI on 27 August 2019, questions 1 and 4, MCD's response to FDL, question 25 and Ticketmaster's response to FDL, question 62.

<sup>153</sup> *Analysis of incentives to foreclose rival promoters, Anticipated acquisition of MCD by LN-Gaiety*, RBB Economics, 9 August 2018. Provided as Annex 9 to Final Merger Notice.

*basis, Aiken's net payment for ticketing services would need to increase by EUR [X] per ticket in order for Aiken to make no profit and to be forced to change its offering to artists. This would be an increase in the net payment for ticketing services of some [X]%. Net payments for ticketing services would need to increase by this amount for foreclosure to have any effect when absorbed by Aiken in the form of lower margins.'* [Emphasis in the original.]<sup>154</sup>

- 9.47 RBB submitted that 'it does not appear to be plausible that Aiken's net payment for Ticketing Services would increase by [X]%. The reason given for this is that Aiken could easily switch to another provider of Ticketing Services in response to a price increase. We consider the scope for Aiken to switch to a different provider of Ticketing Services in response to foreclosure in paragraphs 9.142 to 9.154 below.
- 9.48 As regards the general plausibility of a price increase of this magnitude we note that:
- (a) Gross margins are before administrative expenses, taxes and interest, so Aiken's gross margin would not have to be reduced to zero for it to be making no profit – rather, it would be making a loss at this point.
  - (b) A reduction of Aiken's profits would not have to be to zero in order to materially reduce Aiken's willingness or ability to compete against MCD. Aiken would need to be making a sufficient profit as a reward for taking on the risk of promoting Live Music Events.
  - (c) While a [X]% increase in the net payment for Ticketing Services appears high, this would not necessarily appear as an increase in the per-ticket price. The range of foreclosure mechanisms we describe below could have a combined effect in eroding Aiken's margins.
- 9.49 We consider that, in principle, if Aiken faced higher costs for Ticketing Services this could have an impact on its ability to compete.

#### *Likelihood of Aiken limiting its activities or exiting the market*

- 9.50 As discussed above, the promoter relies on strong ticket sales to make a profit on each Live Music Event. The Parties submitted that last year [X]% of [X] events were loss-making.<sup>155</sup> In view of this, we consider there is a material risk that a significant reduction in Aiken's margins would reduce its willingness

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<sup>154</sup> *Analysis of incentives to foreclose rival promoters, Anticipated acquisition of MCD by LN-Gaiety*, RBB Economics, 9 August 2018, page 13. Provided as Annex 9 to Final Merger Notice.

<sup>155</sup> Main parties' reply to Phase 1 Decision, paragraph 86.

to promote Live Music Events, which could lead to it being a less effective competitor or exiting the market.

*Likelihood of Aiken losing customers as a result of offering less attractive terms to artists*

9.51 The Parties described the process of how promoters engage with agents as follows:

*'[T]here are no tendering procedures for the promotion of live music events. The process is informal and typically involves the agent reaching out by phone or possibly email to the promoter with whom they have a relationship to discuss the show and the financial conditions the promoter can offer to the artist. The agent can also reach out to other promoters (e.g., Aiken) and can use this to extract better terms (letting them know that they have received better offers and pushing them to improve their offering).'*<sup>156</sup>

9.52 We spoke to three artists' agents about their relationships with promoters in Ireland. In deciding which promoter to use for a Live Music Event, agents focused on issues such as which promoter the artist had worked with in the past, whether there was a prospect of the artist appearing at a festival run by the promoter,<sup>157</sup> whether the Live Music Event was part of a larger tour with Live Nation or AEG, and the type of artist with whom the promoter tended to work.<sup>158</sup>

9.53 Agents described a process in which the agent would contact one promoter, consider aspects of the promoter's offer, such as proposed ticket prices, venue, and advertising budget, and sometimes propose changes to the promoter's offer. These changes could go in either direction: for example, if proposed ticket prices were seen as too ambitious or too low, or whether the advertising budget was more or less than was needed to achieve a sell-out show. Agents recognise the promoter's need to make a profit from the Live Music Event. One agent said the artist's share of net Live Music Event profits depends on the size of the venue (eg 80% for smaller venues, higher for larger venues) rather than being a point of negotiation.<sup>159</sup> However, another agent said it negotiated with promoters over how profits were shared.<sup>160</sup>

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<sup>156</sup> Main parties' reply to Phase 1 RFI, 10 April 2019, question 10.

<sup>157</sup> CMA file note, [§] call, 20 September 2019.

<sup>158</sup> CMA file note, X-Ray Touring call, 19 September 2019.

<sup>159</sup> CMA file note, X-Ray Touring call, 19 September 2019.

<sup>160</sup> CMA file note, [§] call, 19 September 2019.

- 9.54 These agents said they did not typically invite MCD and Aiken to bid against each other for a Live Music Event or switch an artist from one promoter to the other to get a better financial deal. The artists' agents with whom we spoke said they consider a range of factors in choosing a promoter and see MCD and Aiken as somewhat differentiated. However, one told us that other agents tend to invite offers from a range of promoters.<sup>161</sup>
- 9.55 In contrast, the Parties have submitted that agents get offers from both promoters in order to extract better terms.
- 9.56 We note that perspectives of the agents with whom we spoke are likely to be informed by the current market context, in which Ticketmaster is supportive of Aiken's business and Aiken is able to compete effectively with MCD.
- 9.57 It is not clear whether, if Aiken were to offer marginally poorer terms, agents would necessarily respond by switching large volumes of business to MCD. However, if Aiken were to offer materially poorer terms, for example in the form of lower artist fees, delayed payments to the artist, or a smaller share of additional revenues (eg from ticket sales above the minimum guaranteed fee, or from concessions) we expect that this would lead agents to consider reducing their business with Aiken.
- 9.58 We therefore consider that if Aiken became less effective as a competitor as result of foreclosure, artists and agents would be likely to consider switching away from Aiken.<sup>162</sup>

### ***Assessment of foreclosure mechanisms***

#### ***Total foreclosure***

- 9.59 We considered whether Live Nation / Ticketmaster would have the ability to engage in total foreclosure against Aiken by refusing to supply Aiken with Ticketing Services. Such refusal to supply would be in breach of Ticketmaster's current contract with Aiken. However, that contract expires [REDACTED], at which point Ticketmaster could decline to renew its contract.
- 9.60 If Ticketmaster refused to supply Aiken directly, Aiken would potentially be able to bring Live Music Events to venues which have a contract with Ticketmaster, so that Ticketmaster would be required to provide Ticketing Services for these events. Ticketmaster has [REDACTED] supply arrangement with

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<sup>161</sup> CMA file note, [REDACTED] call, 20 September 2019.

<sup>162</sup> [REDACTED].

[X]. However, Live Nation also owns the 3Arena, which, by both volume and value, accounts for [X] Aiken's revenues from tickets at venues which have [X] contract with Ticketmaster,<sup>163</sup> and in a total foreclosure scenario it could also refuse access to this venue to Aiken.<sup>164</sup> As a result, we consider that in a total foreclosure scenario Aiken would have, at best, limited scope to bring Live Music Events to venues which have a contract with Ticketmaster.

- 9.61 In view of the above, we consider that Live Nation / Ticketmaster would have the ability to engage in a total foreclosure strategy against Aiken after the end of Aiken's contract with Ticketmaster, or sooner.

#### *Partial foreclosure*

- 9.62 We have considered a range of ways in which Live Nation / Ticketmaster could partially foreclose Aiken.

- (a) Delaying (or otherwise constraining) the date on which tickets for Aiken-promoted Live Music Events are announced or go on sale;
- (b) Reducing the speed at which ticket sales for Aiken-promoted Live Music Events are processed online;
- (c) Limiting or delaying the availability of tickets for Aiken-promoted Live Music Events at Ticketmaster's network of retail outlets;
- (d) Reducing Ticketmaster's marketing of Aiken-promoted Live Music Events through direct mail and/or the prominence of the Live Music Events on the Ticketmaster website;
- (e) Reducing the quality of ticket sales information available to Aiken.
- (f) Raising Ticketmaster's prices for Ticketing Services to Aiken;
- (g) Delaying payment of Ticketing Services revenues to Aiken.

- 9.63 These mechanisms can be categorised as quality foreclosure ((a) to (e)) and price foreclosure ((f) and (g)).

- 9.64 In the following, we consider how each of the above mechanisms might work, and how they would likely affect Aiken's ability to compete against MCD, before reaching a conclusion on whether Ticketmaster would be able to foreclose Aiken.

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<sup>163</sup> Main parties' reply to s109 request, 14 October 2019, questions 4-9.

<sup>164</sup> Live Nation also manages the BGE Theatre. LN-UK Response to First Day Letter s109 request, Question 1



## Quality foreclosure

9.65 The nature of Ticketmaster's service to promoters is complex and involves being responsive to problems that arise while a Live Music Event is on sale. We consider that there are important aspects of Ticketmaster's service to customers that are not explicitly set out in its contracts with customers. Ticketmaster told us that *'We are built on our ability to perform....One of the major things we do when we pitch for clients is we say that, 'We will deliver you the best service possible; we will sell your tickets in an efficient manner'*.<sup>165</sup> To the extent that Ticketmaster's activities contribute to the successful outcome of Live Music Events, Aiken's competitiveness could be particularly sensitive to quality foreclosure mechanisms (compared to price foreclosure mechanisms), especially if they lead to fewer tickets being sold, as discussed in paragraphs 9.41 to 9.45 above.

### *Delaying or constraining the date on which tickets for Aiken-promoted Live Music Events are announced or go on sale*

9.66 Aiken expressed a concern that Ticketmaster would give it less preferential treatment about the date on which tickets for a Live Music Event would go on sale, specifically in the context of outdoor events. [X]. Aiken said that [X].<sup>166</sup>

9.67 The Parties submitted that the impact of tinkering with announcement timings was limited and speculative, and that it would be obvious to the artist's management that Ticketmaster was not following the instructions from Aiken.<sup>167</sup>

9.68 We understand that tickets for Live Music Events typically go on sale well in advance of the performance. For example, as of 29 October 2019, tickets are available through Aiken's website for 36 events (by 24 different acts) in February 2020, most of which are Live Music Events, and tickets are currently on sale up to December 2020 (for Elton John's farewell tour).

9.69 Based on the available evidence, we consider that Ticketmaster would be able to delay or constrain the date at which tickets for Aiken events go on sale. However, there is a potential reputational cost to doing this, and we do not have evidence that such action by Ticketmaster would have a material impact on Aiken's ticket sales.

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<sup>165</sup> Transcript of Main Party Hearing, page 33.

<sup>166</sup> CMA file note, Aiken call, 10 September 2019.

<sup>167</sup> Main parties' response to the CMA's Working Paper on Vertical Effects, 10 October 2019, paragraph 16.

*Reducing the speed at which ticket sales for Aiken-promoted Live Music Events are processed online*

- 9.70 Slower booking times and longer queues could cause some fans to give up attempting to buy tickets online, leading to a reduction in ticket sales for the Live Music Event. A survey for Ticketmaster found that [REDACTED],<sup>168</sup> [REDACTED].<sup>169</sup>
- 9.71 The Parties told us that there are no guarantees offered to customers that Ticketmaster will reserve capacity to handle large volumes of bookings or refunds. However, they said that Ticketmaster provides the same quality service to all event organisers and fans,<sup>170</sup> and that a technical degradation of Ticketmaster's Ticketing Services would be impossible without also degrading the services to all other customers, including MCD.<sup>171</sup>
- 9.72 In the Main Party Hearing, the Parties told us that Ticketmaster's system [REDACTED].<sup>172</sup>
- 9.73 The Parties also questioned whether such a mechanism would damage Aiken, asking:

*'Would it have any impact with respect to the high-demand shows? I mean, the reality is we see, even when we do have technical issues, that the fans come back and purchase the tickets anyway. So, if we have an arena show that there is enough demand - and we work in a business where there is more demand than there is supply in a lot of cases - would it impair Aiken's better events? I do not realistically believe it would.'*<sup>173</sup>

- 9.74 The Parties further submitted that:

*'[REDACTED]. When we have technical problems in the normal course of business, the first people who immediately jump out on that are the consumer; they are the ones all over social media saying, 'The Ticketmaster site has crashed; Ticketmaster is not performing', typically when we have busy events going on.'*<sup>174</sup>

- 9.75 The Parties also submitted that performance problems on its platform would have negative implications for Ticketmaster's global business, and it would be

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<sup>168</sup> Live Nation UK response to FDL, [REDACTED].

<sup>169</sup> Live Nation UK response to FDL, [REDACTED].

<sup>170</sup> Live Nation UK response to FDL, Q63.

<sup>171</sup> Main parties' reply to Phase 1 Decision, paragraph 10.

<sup>172</sup> Transcript of Main Party Hearing, from page 31, line 14 to page 32, line 15.

<sup>173</sup> Transcript of Main Party Hearing, from page 32, line 23 to page 33, line 4.

<sup>174</sup> Transcript of Main Party Hearing, page 32, lines 16 to 32.

difficult to get internal agreement to this. In addition, the instructions for how events were set up and dealt with were clear-cut, and any instruction which would reduce the effectiveness of the platform would involve a paper trail.<sup>175</sup>

9.76 Taking these points in turn:

- (a) Technical functionality. It may be that this is not a straightforward exercise, as the Parties have submitted, but the Parties have neither stated nor implied that they would be unable to modify the website in this way; and the costs involved appear relatively limited in the context of the potential value to Live Nation of foreclosing Aiken.
- (b) Impact on Aiken. The Parties gave an example of an arena show where there is more demand than supply. We agree that a moderate slowing of ticket sales may be unlikely to have an impact on Aiken's profitability for such high demand Live Music Events. However, as discussed in paragraphs 9.40 and 9.49, even popular artists can fail to sell out, and the Parties told us that [X]% of [X] events were loss-making. On the other hand, there is a degree of uncertainty as to what the impact would be of slower processing by Ticketmaster on Aiken's ticket sales.
- (c) Consumer reaction. The Parties submitted that one part of Ticketmaster's site performing 'dramatically differently' to another would cause consumers to react and referred to a scenario in which the site crashed. As discussed in paragraphs 9.40 to 9.45 above, a promoter's profits from a Live Music Event are sensitive to the level of ticket sales, so the speed of processing for Aiken Live Music Events would not necessarily have to be dramatically different in order to have an impact. However, we recognise that there is uncertainty as to the extent of slowing that would be needed to adversely affect Aiken, and whether this would be visible to consumers or to Aiken.
- (d) Wider reputation. We do not have evidence as to the extent to which the Parties could pursue such a strategy without the risk of this becoming widely known. However, we recognise that this strategy could entail wider reputational risks to Ticketmaster's brand.

9.77 We also considered whether Ticketmaster could have an impact on Aiken's ticket sales by temporarily removing its tickets from sale on the Ticketmaster website. The Parties submitted that removing tickets for Aiken shows from the website would be similar to refusing to sell tickets for Aiken and would thus

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<sup>175</sup> Transcript of Main Party Hearing, page 33, lines 5 to 24.

breach the contract between Ticketmaster and Aiken.<sup>176</sup> The Parties also said that such action would be visible to fans, who would be quick to complain about Ticketmaster on social media.

- 9.78 Based on the available evidence, we consider that Ticketmaster would technically be able to process ticket sales more slowly for Aiken than for MCD. However, it is likely to face significant challenges, including reputational risk, in doing so. In addition, there is some uncertainty as to the impact this would have on Aiken's ticket sales, and hence on its ability to compete.

*Limiting or delaying the availability of tickets for Aiken-promoted Live Music Events at Ticketmaster's network of retail outlets*

- 9.79 While the majority of tickets for Live Music Events are sold online, a significant proportion continue to be sold through retail outlets. These are typically small franchised grocery stores. Ticketmaster has [X] retail outlets across Ireland.<sup>177</sup>
- 9.80 Aiken told us that retail outlets account for up to 15% of its sales and that 'walk ins' to these outlets are important. As an illustration, in Belfast, The Waterfront and Ulster Hall have their own ticketing system but, on request from Aiken, they typically give 25% of their tickets to Ticketmaster in order to get wider marketing reach through its outlets and ensure that their event sells out. The importance of retail outlets is supported by [X].<sup>178</sup>
- 9.81 If Ticketmaster were to withhold tickets for Aiken-promoted Live Music Events from its retail outlets, this could reduce the number of sales for these Live Music Events. Live Nation UK told us that all tickets for all customers are available through all channels, including all of Ticketmaster's retail outlets.<sup>179</sup> It said that all of Ticketmaster's sales channels sell tickets using a live database, meaning that the same inventory is available at all times in all sales channels, including online, via the mobile application, the box office, call centres, and retail outlets.<sup>180</sup>
- 9.82 The Parties also submitted that: *'There is no reason to believe that the few tickets sold through retail outlets could not easily be sold online if there were a sudden problem with those outlets.'*<sup>181</sup>

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<sup>176</sup> Main parties' response to the CMA's Working Paper on Vertical Effects, 10 October 2019, paragraph 20.

<sup>177</sup> Main parties' reply to RFI dated 28 August 2019.

<sup>178</sup> Main parties' reply to Phase 1 RFI, 10 April 2019, Annex I.2.

<sup>179</sup> Main parties' reply to FDL, Q63.

<sup>180</sup> Main parties' response to the CMA's Working Paper on Vertical Effects, 10 October 2019, paragraph 22.

<sup>181</sup> Main parties' response to the CMA's Working Paper on Vertical Effects, 10 October 2019, paragraph 24.

- 9.83 We do not consider it credible that a lack of availability of tickets at retail outlets would have no impact on ticket sales. If this were the case, there would be no reason for Ticketmaster to maintain these outlets. However, the impact would be limited by the fact that retail outlets account for a small proportion of ticket sales, and some of these sales would switch to the online channel. If, as the Parties submit, this foreclosure mechanism would entail a significant change in Ticketmaster's systems, we consider it unlikely that the potential impact on Aiken would be sufficient to warrant Ticketmaster making such a change as part of a foreclosure strategy.
- 9.84 We also considered the possibility that Ticketmaster could close some or all of its retail outlets with the purpose of foreclosing Aiken. Such a closure could have a commercial justification as sales from retail outlets have been declining steadily. Closing Ticketmaster retail outlets could have some impact on MCD's ticket sales, but it could have a disproportionate impact on Aiken given Aiken's view of the importance of retail outlets to its business. However, to the extent that Ticketmaster currently sees any value in retaining these outlets, closing them in order to foreclose Aiken could come at some cost, whether in reputation and prominence, or in fewer ticket sales for other customers.
- 9.85 Based on the available evidence, we consider that Ticketmaster would be able to limit or delay the availability of Aiken's tickets at retail outlets – if it is unable to do so by changing its systems it could do so by closing some or all of these outlets. However, this would likely entail some costs to Ticketmaster. This foreclosure mechanism could have an impact on Aiken's ticket sales.

*Reducing Ticketmaster's marketing of Aiken-promoted Live Music Events through direct mail and/or the prominence of the Live Music Events on the Ticketmaster website*

- 9.86 Ticketmaster provides the following marketing services for promoters of Live Music Events:
- (a) Displays details of Live Music Events on its website.
  - (b) Sends emails about Live Music Events to its database of past customers.
  - (c) Data analytics including demographics of Live Music Event attendees and ongoing updates of ticket sales.
- 9.87 Ticketmaster's surveys and analyses (conducted in the ordinary course of business) imply that its consumer brand and its marketing are an important aspect of its service.

(a) In a recent survey for Ticketmaster,<sup>182</sup> [REDACTED]<sup>183</sup> [REDACTED].<sup>184</sup>[REDACTED].<sup>185</sup>

(b) [REDACTED].<sup>186</sup> [REDACTED].

(c) Ticketmaster's most recent strategic plan identifies [REDACTED].<sup>187</sup> Live Nation's 2019 10-K comments that 'We are focused on selling tickets through a wide set of sales channels, including mobile and online, and leveraging our fan database.'

9.88 Ticketmaster emphasises its marketing abilities in communications to its own customers. For example:

(a) Ticketmaster's UK website includes a statement that 'Your needs are unique. Good thing we specialise in the unique. From concerts to clubs, arts to athletics, only we wield the data, technology and marketing power to connect you with more fans and sell more tickets.' The International Ticketing Yearbook 2017 quotes a Ticketmaster UK representative as saying '...we have a phenomenal record on Ticketmaster in terms of being able to sell, market to and convert audiences...'

(b) The International Ticketing Yearbook 2017 also includes a two-page advert from Ticketmaster which states: 'We Get Fans. As the world's leading ticketing expert, we have more audience data, distribution channels and marketing reach than anyone else. Wherever your event is happening, we make the world small enough to find the fans who'll fill the seats.'

9.89 We considered whether Ticketmaster could reduce Aiken's ticket sales by making Aiken-promoted Live Music Events less prominent on its website or not displaying them on its website, or by no longer sending emails to its database about Aiken-promoted Live Music Events.

9.90 The Parties submitted that Ticketmaster's marketing activities were not an important enough input to foreclose promoters.<sup>188</sup> They noted that promoters have access to other means of advertising and commented that '*We are aware of no case where mere marketing efforts were a sufficient input to foreclose rivals from a relevant market.*'

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<sup>182</sup> Main parties' reply to FDL, [REDACTED].

<sup>183</sup> Main parties' reply to FDL, [REDACTED].

<sup>184</sup> Main parties' reply to FDL, [REDACTED].

<sup>185</sup> Main parties' reply to FDL, [REDACTED].

<sup>186</sup> Main parties' reply to FDL, [REDACTED].

<sup>187</sup> Main parties' reply to FDL, [REDACTED].

<sup>188</sup> Main parties' reply to Phase 1 Decision, paragraph 22.

- 9.91 The Parties cited a 2016 survey which asked respondents how they got information about live music events. The most common answers were Facebook (51%) and Friends/Family (48%). However, we note that among the other replies 34% named 'General Website' and 33% 'Official Event Website', while 12% mentioned 'Email Newsletter'. While the meaning of these labels is not entirely clear, these results are consistent with a substantial proportion of consumers getting information about Live Music Events from Ticketmaster's website and emails. The report states that 'General websites and official event websites, where tickets can be purchased, and line-ups are generally announced, are both popular sources...'.<sup>189</sup>
- 9.92 As noted above, a foreclosure strategy in relation to Aiken could be effective even with a relatively moderate impact on ticket sales, so in principle a reduction in Ticketmaster's marketing activities could have an impact on Aiken, even if Aiken was able to reach the large majority of the intended audience through other channels.
- 9.93 On the other hand, Aiken told us that it does not rely on Ticketmaster's emails and website marketing, preferring a more tailored approach which may include purchasing advertising on Facebook or other social media to target audiences before allowing Ticketmaster to market a show, along with print and poster advertising.<sup>190</sup>
- 9.94 Aiken said it would be concerned if Ticketmaster were to refuse to list Aiken's events on its website. It said that this could be damaging to Aiken's reputation with the artists and agents it promotes. Aiken said that it would not expect to lose many ticket sales for any given event if Ticketmaster were to stop offering its marketing services, but there could be wider reputational consequences that could affect its standing in the live music industry.<sup>191</sup>
- 9.95 Based on the available evidence, we consider that Ticketmaster's prominence and marketing activities could in some cases make Ticketmaster an important aspect of marketing a Live Music Event. We consider that Ticketmaster would be able to reduce its marketing support for Aiken. However, we recognise that Aiken does not see itself as relying on Ticketmaster's marketing to sell tickets. We consider that there is uncertainty as to the impact that such actions by Ticketmaster would have on Aiken's ticket sales.

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<sup>189</sup> Reply to Phase 1 Decision, paragraph 23. Repucom Live Music Report 2016, available at <http://nielsenports.com/wp-content/uploads/2014/09/Repucom-Live-Music-Report-2015.pdf>. The figures cited refer to the UK market.

<sup>190</sup> CMA file note, Aiken call, 10 September 2019.

<sup>191</sup> CMA file note, Aiken call, 10 September 2019.

*Reducing the quality of ticket sales information available to Aiken*

9.96 Updated information about ticket sales can be important to a promoter, for example as it may wish to conduct more marketing and publicity, or reduce ticket prices, if a Live Music Event is selling poorly. If a Live Music Event is selling quickly, a promoter may respond by adding extra dates by the same artist. If Ticketmaster were to reduce the quality of ticket sales information to Aiken, for example by providing fewer or less-recent updates, this would potentially have an impact on Aiken's ticket sales and profitability

9.97 The Parties commented that:

*'[The CMA does] not explain how this alleged conduct could possibly harm Aiken so much that he's foreclosed from the market. In any event, the combined firm would not have the ability to do it [redacted]. TMI and all other ticketing firms everywhere in the world give event organisers information about how their event is selling. It is an integral part of a ticketing agent's services to event organisers. Such a practice would only antagonize Aiken who could be expected to start using other ticketing firms for as much of his business as possible. Moreover, agents often ask for regular ticket sales updates and if Aiken weren't able to provide the agent and artist would be blaming TMI, which would affect TMI's reputation.'*<sup>192</sup>

9.98 Taking these points in turn:

- (a) Scale of effect: we consider this mechanism alongside other potential mechanisms, rather than in itself foreclosing Aiken from the market.
- (b) Contractual protection: we consider this point in paragraphs 9.110 - 9.114.
- (c) Integral part of the service: our view is that this is not an argument against Ticketmaster's ability to use this mechanism.
- (d) Switching to other firms: we consider in paragraphs 9.142 – 9.156 below whether the risk of Aiken switching some of its business to other providers of Ticketing Services may affect the Parties' incentive to foreclose.
- (e) Reputation: Aiken's customers may have limited engagement with ticketing for the Live Music Events concerned. For example, [redacted].<sup>193</sup> If Aiken were unable to provide them updated information on ticket sales

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<sup>192</sup> Main parties' response to the CMA's Working Paper on Vertical Effects, 10 October 2019, paragraph 27.

<sup>193</sup> CMA file note, [redacted] call note, 20 August 2019.



they could see this as a problem with Aiken rather than Ticketmaster. On the other hand, an artists' agent told us that if Ticketmaster 'played funny' with Aiken, this would get back to everyone in the industry quickly.<sup>194</sup> We accept that there may be a degree of reputational risk to Ticketmaster of reducing the quality of information.

- 9.99 Based on the available evidence, we consider that Ticketmaster would be able to reduce the quality of ticket sales information available to Aiken, but there would be a degree of reputational risk in doing so. This foreclosure mechanism could have an impact on Aiken's ticket sales.

*Price foreclosure (offering Aiken poorer financial terms)*

- 9.100 We have considered two potential mechanisms for price foreclosure. We describe each of these and then provide an overall assessment of their potential impact on Aiken.

*Raising Ticketmaster's prices for Ticketing Services to Aiken*

- 9.101 Ticketmaster's agreement with Aiken includes the following financial terms:

(a) [REDACTED].<sup>195</sup>

(b) [REDACTED].

(c) [REDACTED].

(d) [REDACTED].

(e) [REDACTED].<sup>196</sup>

- 9.102 Ticketmaster would potentially be able to demand higher per-ticket fees to Aiken and/or end customers or take a longer time period for transferring the proceeds of ticket sales from an event. We consider whether the existing agreement protects Aiken from foreclosure in paragraphs 9.110 to 9.114. Ticketmaster could also offer Aiken a reduced [REDACTED], or no [REDACTED] when Aiken's agreement expires.

- 9.103 The Parties have submitted that an increase in Ticketing Services prices would have to be implausibly large in order to be sufficient to foreclose Aiken. We consider their reasons in paragraphs 9.46 – 9.49 above.

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<sup>194</sup> CMA file note, [REDACTED] on 20 September 2019

<sup>195</sup> [REDACTED].

<sup>196</sup> CMA summary of contract, submitted in phase 1 with merger notice

### *Delaying payment of Ticketing Services revenues to Aiken*

9.104 Aiken told us that [REDACTED].<sup>197</sup> We note that the current contract between Aiken and Ticketmaster sets out [REDACTED].

#### *Assessment*

9.105 The existing contract between Ticketmaster and Aiken will [REDACTED]. At that point, it will be open to Live Nation / Ticketmaster to change the terms of any future relationship with Aiken, and it could decide to offer less favourable terms. In the course of the current contract, it is also open to Ticketmaster and Aiken to change the terms of the contract by mutual agreement. If Live Nation / Ticketmaster is able to engage in a strategy of partial foreclosure, it could use this to put pressure on Aiken to renegotiate the terms of the contract even before its term expires. Therefore, we consider that Aiken's current contract (or any contract) with Ticketmaster is not sufficient to protect Aiken from a strategy of partial foreclosure by Live Nation / Ticketmaster.

9.106 Aiken submitted, in the context of the importance of the financial terms it receives from Ticketmaster:

[REDACTED],<sup>198</sup>

9.107 [REDACTED], the Parties commented that:

*'As the Competition Commission noted in Live Nation/Ticketmaster [paragraph 8.67], cash flow is less of an issue for large promoters like Aiken organising many events, since they can use cash from one event to finance another event. This is all the more so since, in the present case, [REDACTED].'*<sup>199</sup>

9.108 We consider that Ticketmaster would have the ability to worsen the financial terms that it offers to Aiken, and that Aiken's existing contract with Ticketmaster would not prevent Ticketmaster from foreclosing Aiken in this way.

9.109 As noted in paragraph 9.49, if Aiken faced higher costs for Ticketing Services this could have an impact on its ability to compete. We have heard opposing views from Aiken and the Parties as to whether [REDACTED] could have an impact on Aiken's ability to finance Live Music Events. However, a sufficiently large increase in prices for Ticketing Services (possibly in combination with [REDACTED])

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<sup>197</sup> CMA file note, Aiken call, 10 September 2019

<sup>198</sup> Main parties' reply to additional questions, 26 September 2019.

<sup>199</sup> Main parties' response to the CMA's Working Paper on Vertical Effects, 10 October 2019, paragraph 33.

and/or quality foreclosure) would increase Aiken's costs and reduce its ability to finance Live Music Events.

### ***Whether existing supply agreements prevent foreclosure***

9.110 Aiken has [REDACTED] contract with Ticketmaster [REDACTED]. If Ticketmaster were to attempt total foreclosure by refusing to supply Aiken, this would be in breach of the contract. In addition, the Parties submitted that:

[REDACTED].<sup>200</sup>

9.111 However, it is not clear that the contract would protect Aiken from the quality foreclosure mechanisms with which we are concerned. There is a limit to which matters such as functionality and operational support can be specified in a contract, and in our view the Parties have not demonstrated that the foreclosure mechanisms we have considered would be an obvious violation of Ticketmaster's agreement with Aiken.

9.112 In addition, while the Parties submitted that the threat of litigation would be a deterrent to foreclosure, litigation against Ticketmaster for breach of contract could be costly to Aiken<sup>201</sup> and disruptive of planned Live Music Events. Even if such litigation were successful, Aiken would be in the difficult position of having to work with Ticketmaster / Live Nation in order to continue to promote Live Music Events.

9.113 The contract is time limited, and as a commercial arrangement between its signatories it does not have the force of, for example, an Order by the CMA, with the result that the Parties may re-negotiate it or elect to waive enforcement of any breach.

9.114 Overall, we recognise that the contract in its current form may place some limitations on Live Nation's ability to foreclose Aiken until the end of [REDACTED]. However, for the reasons given above, we cannot rely on the contract to rule out the possibility of foreclosure.

### ***Conclusion on ability***

9.115 In view of the above, our findings are that:

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<sup>200</sup> LN-Gaiety / MCD Submission, dated 20 September 2019, Page 3.

<sup>201</sup> Including the potential reputational impact to Aiken of a public dispute with Live Nation / Ticketmaster, an entity which Aiken relies on for access to venues and Ticketing Services.

- (a) Live Nation / Ticketmaster has market power in the provision of Ticketing Services for Live Music Events, and Aiken could not easily switch all of its demand to alternatives in response to attempted foreclosure.<sup>202</sup> (Paragraphs 9.17 to 9.29.)
- (b) A reduction in Aiken's ticket sales, or an increase in its costs, could reduce its effectiveness in competing against MCD (Paragraphs 9.39 to 9.55.)
- (c) Live Nation / Ticketmaster would have the ability to engage in a total foreclosure strategy against Aiken after the end of Aiken's contract with Ticketmaster, or sooner. (Paragraphs 9.59 to 9.61.)
- (d) We have identified quality foreclosure mechanisms which Ticketmaster would potentially be able to employ, and which could have an impact on Aiken's ticket sales. (Paragraphs 9.66 to 9.99.)
- (e) We have also considered price foreclosure mechanisms. Ticketmaster would be able to offer Aiken poorer financial terms at the end of Aiken's current contract if not sooner. (Paragraphs 9.100 to 9.109.)
- (f) Taking the evidence in the round, we consider that Live Nation / Ticketmaster would be able to foreclose Aiken.

## **Assessment of Live Nation's incentive to foreclose Aiken**

9.116 In this section we assess whether Live Nation would have an incentive to engage in a foreclosure strategy against Aiken.

9.117 As discussed above, Ticketmaster is in a strong market position in Ireland, [X] (see paragraph 9.18), with limited risk compared to promoters. Its position to date has been based on the loyalty of its two most important customers – MCD and Aiken, which can be attributed to a high level of customer service and satisfaction, and financial support for promoters. A number of providers of Ticketing Services have told us they have the technical capability to compete with Ticketmaster.

9.118 If Live Nation were to foreclose Aiken, Aiken would have an incentive to seek alternative providers of Ticketing Services for at least some of its business. While foreclosure could weaken Aiken as a competitor to MCD, it could also lead to a loss in margins for Ticketmaster. Live Nation would only have an

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<sup>202</sup> However, we also consider the possibility of partial switching of Ticketing Services provider by Aiken, including for events other than Live Music Events, in the following assessment of incentives to foreclose.

incentive to foreclose Aiken if MCD would likely capture enough of any business lost by Aiken to at least compensate Live Nation (through its 50.1% holding of MCD) for any margins lost by Ticketmaster.

9.119 In the following analysis, we estimate the proportion of business lost by Aiken which MCD would have to capture for Live Nation to have an incentive to foreclose Aiken. This approach provides a structure for analysing Live Nation's incentives, and we also have regard to other factors which cannot be fully captured in the calculations. These estimates should also be treated with caution, as we explain below.

### ***Possible payoffs of foreclosure***

9.120 As set out in paragraph 9.12 above, foreclosure can be either total or partial. We begin by setting out the possible payoffs to Live Nation<sup>203</sup> for each of these in turn.

#### ***Total foreclosure***

9.121 In a total foreclosure scenario, Ticketmaster would stop supplying Ticketing Services to Aiken. This could lead to Aiken becoming less competitive (or ultimately exiting the market) because Aiken would have to sponsor a rival provider of Ticketing Services, which would likely be less effective than Ticketmaster in some or all of its:

- (a) Capacity to manage large events;
- (b) Reputation;
- (c) Marketing capability;
- (d) Experience of providing Ticketing Services for large Live Music Events (in Ireland); and
- (e) Network of retail outlets.

9.122 In response, some of the artists who would have used Aiken may decide to use MCD instead.

9.123 By pursuing this strategy, Live Nation would lose the margin which Ticketmaster makes on supplying Ticketing Services to Aiken. However, if

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<sup>203</sup> Our focus in this analysis is on payoffs to Live Nation, rather than LN-Gaiety, as Live Nation owns Ticketmaster.

some artists responded by switching from Aiken to MCD, then Live Nation would win a share of the margins associated with MCD serving these artists<sup>204</sup> and would also, via Ticketmaster's supply of Ticketing Services to MCD, recapture the margins on Ticketing Services associated with these artists.

- 9.124 The main question in relation to incentives is whether MCD would likely win enough business from Aiken to compensate Live Nation for the loss in margins on supplying Ticketing Services to Aiken.

#### *Partial foreclosure*

- 9.125 In a partial foreclosure scenario Aiken may continue to receive some or all of its Ticketing Services from Ticketmaster.
- 9.126 The costs and risks of partial foreclosure are less straightforward than those under total foreclosure.
- (a) If Ticketmaster reduced its service quality as part of a foreclosure strategy, with the result that Aiken sold fewer tickets, then Live Nation would lose sales margins from Ticketing Services (though less so than under total foreclosure).
  - (b) If Ticketmaster were to reduce its service quality or increase its prices, Aiken may also decide to switch some of its Ticketing Services to another provider. This would result in Live Nation losing some sales margins (although, again, less so than under total foreclosure).
  - (c) On the other hand, if Ticketmaster were to increase its prices to Aiken (or offer worse financial terms), and if Aiken were to continue to use Ticketmaster for at least some of its business, then Ticketmaster could enjoy higher margins than at present on the Aiken business it retains.
- 9.127 As under total foreclosure, the prospective gain to Live Nation from effective partial foreclosure would arise from artists switching to MCD, allowing Live Nation to capture MCD's increased margins from promoting, while Live Nation also recaptures some of its lost (from Aiken) Ticketing Services margins via Ticketmaster's supply of MCD.
- 9.128 As under total foreclosure, the prospective gain to Live Nation from effective partial foreclosure would arise from artists switching to MCD, allowing Live Nation to capture MCD's increased margins from promoting, while Live Nation

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<sup>204</sup> Live Nation would win only a share of MCD's increase in promotion margins because Live Nation will have only a 50.1% share of MCD (through its ownership of LN-Gaiety) post-acquisition.

also recaptures some of its lost (from Aiken) Ticketing Services margins via Ticketmaster's supply of MCD.

- 9.129 The cost of partial foreclosure to Live Nation is likely to be smaller than the cost of total foreclosure, to the extent that Ticketmaster continues to provide Ticketing Services to Aiken and receives positive margins from this service.
- 9.130 To assess whether a foreclosure strategy would be profitable, we assess whether the financial benefits are likely to be higher than the financial costs, which in turn depends on:
- (a) In the event that Aiken was to reduce or cease its business with Ticketmaster, the proportion of sales volumes lost to Ticketmaster's Ticketing Services that are recaptured by MCD's promoting services;<sup>205</sup> and
  - (b) The respective sizes of the margins Live Nation earns on each of its Ticketing Services, venues, and MCD's promoting services.
- 9.131 We use the Parties' estimates of their margins to calculate the minimum proportion of Aiken's lost business that would have to switch to MCD to make a foreclosure strategy profitable to Live Nation. This is the critical diversion threshold.
- 9.132 We do not have quantitative estimates of the expected diversion ratio in these foreclosure scenarios. Instead, we undertake a qualitative assessment of whether the diversion is likely to exceed the critical diversion threshold.

### ***The critical diversion threshold***

- 9.133 Other things being equal, input foreclosure is less likely when downstream margins are lower than upstream margins, because the foreclosing firm will need to win more downstream business in order to outweigh lost (upstream) margins.
- 9.134 In the following, we consider in turn:
- (a) The likely critical threshold based on a comparison of margins.
  - (b) The Parties' submission that the critical threshold will be higher than this in a partial foreclosure scenario because of partial switching by Aiken.

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<sup>205</sup> We also consider below whether Live Nation's ownership of the 3Arena in Dublin affects its incentives to foreclose Aiken.

- (c) The likelihood of partial switching by Aiken in response to foreclosure – and hence the likelihood that a higher critical threshold applies.
- (d) The implications of this analysis for total foreclosure incentives.

*Critical threshold based on a comparison of margins*

- 9.135 The Parties have told us that the variable per-ticket margin made by Ticketmaster on ticket sales in Ireland in 2017 was [X] per ticket and that the variable per-ticket margin made by MCD on promoting services in 2017 was [X] per ticket.<sup>206</sup> Live Nation will have a c.50% interest in MCD upon completion of the Proposed Merger, giving it a variable per-ticket margin of [X] on promoting services (50% of [X]).
- 9.136 If MCD were to re-capture additional promotion business as a result of foreclosure, then Live Nation would gain a share of the promoter margin of [X] per ticket. In addition, as MCD's ticket agent, it would gain the ticket agent margin of [X] per ticket. In total it would gain [X] per ticket.
- 9.137 Therefore, for every €1 lost in serving Aiken that is re-captured by MCD, Live Nation gains [X] ( $= [X]/[X]$ ). So long as it expected to re-capture more than [X]% of Aiken's promotion business (calculated as  $€1 / [X]$ , or equivalently as  $[X] / [X] + [X]$ )), then a foreclosure strategy would be profitable. On the basis of these estimates of the relevant margins, the critical threshold for profitable total foreclosure is therefore [X] %.
- 9.138 In the following discussion we assume that this is the correct critical threshold for ease of exposition. In practice this may not be the case given (a) the figure is calculated based on historical data whereas the foreclosure analysis is forward-looking and depends on Live Nation's expectations of future margins, (b) the promoter margins are based on MCD as a proxy for Ticketmaster's expectations of Aiken's margins and (c) the figure is based on data from a single year, in an industry which sees significant year-on-year volatility depending on the events promoted and their success.<sup>207</sup>
- 9.139 To illustrate the calculation above, suppose that absent foreclosure Ticketmaster would sell ten tickets each for ten Aiken Live Music Events, earning [X] from each ticket. When it forecloses Aiken, it would lose [X] from the sale of these 100 tickets. However, if MCD were able to recapture [X] of

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<sup>206</sup> Additional assessment of input foreclosure theory of harm in promotions, RBB Economics, 20 September 2019, page 9, table 2.

<sup>207</sup> As an illustration of the limitations arising from (b) and (c), a similar calculation for 2018, using figures from table 2 of Additional assessment of input foreclosure theory of harm in promotions, RBB Economics, 20 September 2019, gives a critical threshold of [X] %, but this is driven by [X], which makes no difference to the margins MCD could hypothetically have captured from Aiken in that year. ([X]).



the Live Music Events ([X] tickets) from Aiken, Live Nation would recapture ([X] x [X] =) [X] via MCD and ([X] x [X] =) [X] via Ticketmaster, giving it [X], making the foreclosure strategy marginally profitable compared to the counterfactual of earning [X] from providing Ticketing Services to Aiken.

9.140 It is possible that the critical threshold understates or overstates the true proportion of Aiken's business which MCD would have to win in a partial foreclosure scenario:

- (a) As discussed above, there is uncertainty about the correct threshold, as this depends on Aiken's future margins – or more specifically Live Nation's view of the margins it could achieve from business won from Aiken.
- (b) If a successful foreclosure strategy led to a reduction in competition for promoting services, this could enable MCD to achieve a higher average margin than in the counterfactual, thereby reducing the extent to which MCD would need to provide additional ticket sales to compensate for the loss of ticket sales for Aiken's Live Music Events. Conversely, if Aiken focused on retaining its most profitable customers, it is possible that MCD would only win lower-margin business from Aiken, so it would need to win a higher proportion of business from Aiken.
- (c) If partial foreclosure took the form of, or included, an increase in prices by Ticketmaster for any of Aiken's business to be retained, then the strategy could be profitable to Live Nation with a lower diversion than [X]%.<sup>208</sup>
- (d) Live Nation owns the 3Arena in Dublin. If a partial foreclosure strategy which included a reduction in quality from Ticketmaster led to lower ticket sales at Live Music Events at the 3Arena, or some Live Music Events not taking place at the 3Arena, this would have an impact on Live Nation's profits. The variable per-ticket margin made by Live Nation from the ownership and operation of the 3Arena in Ireland in 2017 was [X] per ticket, [X] that for Ticketing Services and promoting.<sup>209</sup> One implication of this is that Live Nation would have less of an incentive to partially foreclose Aiken in ways that reduced ticket sales for Live Music Events at the 3Arena.<sup>209</sup>

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<sup>208</sup> RBB Economics' analysis of 3Arena's 2017 financial records.

<sup>209</sup> Ticket sales could also suffer if Aiken switched to a different ticket agent who was less effective than Ticketmaster. However as discussed above, Ticketmaster would continue to be the provider of Ticketing Services for events at the 3Arena.

(e) The Parties have submitted<sup>210</sup> that promotion of Live Music Events is a riskier activity than Ticketing Services. We consider this point further below (from paragraph 9.162 to 9.163). To the extent that promotion is higher-risk than Ticketing Services, MCD would have to win a higher proportion of Aiken's business to compensate Live Nation for this risk.

9.141 On balance, in view of the above, and taking account of the fact that some of these effects would point to a higher critical threshold and some to a lower one, we consider that the critical threshold of [X]% (or, more broadly, [X]) provides a reasonable starting point for assessing the proportion of Aiken's business lost to Ticketmaster as a result of a partial foreclosure strategy which MCD would need to recapture.

*Critical threshold with partial switching*

9.142 The Parties have submitted that, even if Aiken was unable to switch all of its business away from Ticketmaster, it could switch to a different provider of Ticketing Services for smaller live music events, non-music events, and festivals. The Parties submit that MCD would not be able to win enough business from Aiken among Live Music Events to compensate Ticketmaster for the loss of this business.<sup>211</sup>

9.143 The Parties' analysis is set out in Table 7 below. In 2017, [X]% of Aiken's events (by value to Aiken) were Live Music Events. The remainder were at smaller live music events, non-live music events, and festivals. The Parties submit that Aiken's likely reaction to foreclosure by Ticketmaster would be to use alternative Ticketing Services providers for these other events. Given the relative margins of Ticketing Services and promotion, MCD would have to win [X]% of Ticketing Services business lost by Ticketmaster as a result of the foreclosure strategy. But since this includes lost business outside Live Music Events, MCD would have to win [X] ([X]%, or [X]% out of a possible [X]%) of Aiken's Live Music Events business for the strategy to break even for Live Nation.

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<sup>210</sup> Main parties' reply to Phase 1 Decision, paragraph 13.

<sup>211</sup> Additional assessment of input foreclosure theory of harm in promotions, RBB Economics, 20 September 2019, pages 2 - 3.

**Table 7: Critical thresholds for recapture with partial switching**

<b>Data</b>	<b>2017</b>	<b>2018</b>
<i>% of tickets sold by value:</i>		
Live music events above 1,000 capacity	[REDACTED]	[REDACTED]
Live music events below 1,000 capacity	[REDACTED]	[REDACTED]
Non-live music events	[REDACTED]	[REDACTED]
Festivals	[REDACTED]	[REDACTED]
 Ticketing Services margin	[REDACTED]	[REDACTED]
Promotion margin	[REDACTED]	[REDACTED]
Critical threshold (= promotion margin ÷ ((sum of Ticketing Services + promotion margin))	[REDACTED]	[REDACTED]
 Critical threshold allowing for loss of events outside the market	[REDACTED]	[REDACTED]

Source: CMA based on analysis by the Parties

- 9.144 The overall outcome is similar for 2018. In that year, a [REDACTED] of Aiken's revenues were from activities in Live Music Events, but that is countered by the fact that [REDACTED].<sup>212</sup> The Parties presented a similar analysis based on volumes of ticket sales rather than values, which had the result that a foreclosure strategy would not be profitable even if MCD won all of Aiken's business in the relevant market.
- 9.145 The Parties also submitted that Aiken would be able to switch its business at Vicar Street, a venue which Aiken manages, to a different provider of Ticketing Services, and this would further reduce the profitability of a foreclosure strategy. Vicar Street accounted for [REDACTED]% by value of Aiken's events in 2016, [REDACTED]% in 2017, and [REDACTED]% in 2018.<sup>213</sup>
- 9.146 We note it is possible that some non-live music events take place at venues which have [REDACTED] arrangement with Ticketmaster. However, we accept that Aiken could in principle switch its festivals business away from Ticketmaster and use a different provider of Ticketing Services. In addition, there would be little scope for MCD to recapture this business, as Aiken promotes festivals on its own behalf, rather than on behalf of an agent.
- 9.147 If Aiken were to switch this business away from Ticketmaster [REDACTED]. However, Aiken could decline to renew its contract with Ticketmaster at the end of [REDACTED], and the Parties submitted that the anticipation of this would be a disincentive for Live Nation to foreclose.<sup>214</sup>

<sup>212</sup> As noted in paragraph 9.138, use of MCD's margins as a proxy for Aiken's future margins is a limitation of the analysis.

<sup>213</sup> Staff meeting with Parties, 17 October 2019.

<sup>214</sup> Staff meeting with Parties, 17 October 2019.

9.148 We consider that, based on the Parties' analysis, the relevant critical threshold could be [X]% if Aiken is in practice likely to switch to a different provider of Ticketing Services for its business outside Live Music Events. We next consider whether Aiken is likely to do this.

*Likelihood of partial switching by Aiken in response to foreclosure*

9.149 As set out in paragraphs 9.19 to 9.21, in our view, Aiken could not easily switch all of its demand to another provider of Ticketing Services in response to foreclosure. However, it is possible that partial switching would be an option for Aiken in a foreclosure scenario. The greater Aiken's dependence on Ticketmaster for specific events, the less likely it would be to decline to renew its contract with Ticketmaster at the end of [X]. We considered the extent to which Aiken is dependent on Ticketmaster for promotion of:

- (a) Live Music Events at venues which have [X] contract with Ticketmaster, and
- (b) Stadium Live Music Events where there would be a risk to Aiken in using a different provider of Ticketing Services, due to the need to process large volumes of bookings in a short time, and the need for support from the provider of Ticketing Services if problems arise.

9.150 These two types of Live Music Event together account for [X] Aiken's activity in Live Music Events, as summarised in Table 8 below.

**Table 8: Aiken Live Music Events**

	2016	2017	2018
Live Music Events at venues with [X] Ticketmaster contracts	[X]	[X]	[X]
Live Music Events at stadia (non Ticketmaster-contracted venues)	[X]	[X]	[X]
<b>Sum</b>	[X]	[X]	[X]
Total value of sales €m	[X]	[X]	[X]
Total number of venues used	[X]	[X]	[X]

Source: CMA, based on data from Parties

9.151 The proportion of Aiken's Live Music Events at venues with [X] Ticketmaster contracts varied considerably over the last three years. In 2016, we understand that Aiken promoted Bruce Springsteen at Croke Park. In 2017, [X]% of its Live Music Events were at venues which have [X] contract with Ticketmaster. In 2018, Ed Sheeran performed a series of concerts at stadia across Ireland, promoted by Aiken.

9.152 We considered the likelihood that Aiken would agree to continue its [X] contract with Ticketmaster in a foreclosure scenario. If Aiken did not renew its contract with Ticketmaster from [X], it would face a risk that Ticketmaster would prevent or restrict its ability to promote Live Music Events at venues which have [X] contract with Ticketmaster. This would be particularly damaging to Aiken [X] would otherwise be from Live Music Events in those venues.

9.153 A number of providers of Ticketing Services have told us they have the capacity to manage high-demand Live Music Events.<sup>215</sup> From Aiken's perspective this would involve using an untested provider in circumstances where any problems with the ticketing system or service could have serious commercial consequences. On the other hand, in a scenario where Ticketmaster was seeking to foreclose Aiken, using Ticketmaster for these large Live Music Events would also be very risky for Aiken.

9.154 In summary, in a foreclosure scenario there is a potential downside to Aiken in declining to renew its [X] contract with Ticketmaster, which is the risk that it would be unable to use venues which have [X] contact with Ticketmaster. But there is also a potential upside to Aiken in no longer being dependent on Ticketmaster for stadium Live Music Events. On balance, we consider that there is a material risk to Ticketmaster that Aiken would not renew its [X] contract in a foreclosure scenario, and the result would be that the critical threshold could be [X]. We would not expect Live Nation to pursue a foreclosure strategy which would only be profitable if MCD won [X]% of any business lost by Aiken, and if the critical threshold is above 100% then the foreclosure strategy could not be profitable to Live Nation.

#### *The implications of this analysis for total foreclosure incentives*

9.155 In a total foreclosure scenario, the margins analysis set out above indicates that MCD would need to win [X]% of Aiken's Live Music Event business in order to be profitable. In this scenario – in which Ticketmaster effectively refuses to supply Aiken with Ticketing Services for Live Music Events, Aiken would again be unlikely to use Ticketmaster for smaller live music events, non-music events, and festivals (even if Ticketmaster was willing to serve Aiken for these events). As a result, the critical threshold could again be [X]%.

9.156 In addition, in this scenario Aiken would have no alternative but to find another provider of Ticketing Services. This would be an opportunity for entry or

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<sup>215</sup> CMA file notes, Ticketsolve call, 14 August 2019, paragraphs 7-8, See Tickets call, 16 August 2019, paragraph 8, CTS Eventim call, 4 September 2019, paragraph 20.

expansion to other providers of Ticketing Services and could lead to Ticketmaster facing stronger competition for Ticketing Services in Ireland.

- 9.157 As in the case of partial foreclosure, we would not expect Live Nation to pursue a foreclosure strategy which would only be profitable if MCD won [X]% of any business lost by Aiken, and if the critical threshold is above 100% then the foreclosure strategy could not be profitable to Live Nation.

***Likelihood of MCD winning sufficient business from Aiken for foreclosure to be profitable***

- 9.158 In the following we consider the ability of MCD to win business from Aiken. We note that, if the critical threshold is close to or above [X]%, it is unlikely that MCD would be able to win sufficient business from Aiken for foreclosure to be profitable.

- 9.159 MCD and Aiken together account for c. [X]% of ticket volumes in Live Music Events.<sup>216</sup> In two of the past three years MCD has had [X] market shares than Aiken; MCD had c.[X]% to Aiken's c.[X]% in 2016, [X]% to [X]% in 2017, and [X]% to [X]% in 2018.<sup>217</sup>

- 9.160 The Parties presented a number of arguments as to why former Aiken customers might not switch to MCD:

- (a) The Parties said that smaller events would be likely to switch to another smaller promoter in Ireland rather than MCD.<sup>218</sup> The Parties have not substantiated these claims. MCD has a strong presence in Live Music Events including those at smaller-capacity venues.<sup>219</sup>
- (b) The Parties submitted that [X].<sup>220</sup> [X].<sup>221</sup> We note that [X] accounts for a [X] of Aiken's ticket sales ([X]% in 2018 and [X]% in 2017).<sup>222,223</sup>
- (c) The Parties submitted that a number of major artists would not switch to MCD because of their relationship with Aiken.

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<sup>216</sup> Main parties' reply to Phase 1 RFI, 10 April 2019, question 6.

<sup>217</sup> Market Definition, paragraph 28, Table 1

<sup>218</sup> Main parties' reply to Phase 1 Decision, paragraphs 108 to 109.

<sup>219</sup> Main parties' reply to Phase 1 RFI, 10 April 2019, question 6.

<sup>220</sup> Main parties' reply to Phase 1 Decision, paragraph 13.

<sup>221</sup> CMA file note, call with [X], 20 August 2019

<sup>222</sup> [X] accounts for a [X] by value – [X]% in 2018 and [X]% in 2017.

<sup>223</sup> Live Nation UK response to RFI, 16 October, Annex 1.

(d) The Parties further submitted that some artists might no longer be willing to perform in Ireland if Aiken were foreclosed.<sup>224</sup> We note that Ireland is a popular destination for touring artists. Among the ten highest-paid music acts of 2018<sup>225</sup> seven have performed in Ireland in 2018 or 2019,<sup>226</sup> in most cases playing two or more dates. We expect that MCD would be capable of extracting better terms (for MCD) from artists and agents who have a strong demand to play in Ireland (and who no longer saw Aiken as a competitive alternative) while offering more competitive terms to artists and agents who are more willing to skip performing in Ireland.

9.161 In view of the above, our view is that in response to a foreclosure strategy reducing Aiken's competitiveness, Aiken's customers would be likely to consider alternative promoters, and MCD would be in a very strong position for attracting artists who wanted to switch from Aiken. However, as noted above in paragraph 9.158, if the critical threshold is [X]%, it is unlikely that MCD would be able to win sufficient business from Aiken for foreclosure to be profitable.

### ***Additional factors which may influence the Parties' incentives***

#### *The different level of risk between promotion and Ticketing Services*

9.162 The Parties submitted that a foreclosure strategy would require Live Nation to sacrifice stable profits in Ticketing Services in the hope of potentially winning more Live Music Events in promotion that could easily end up being loss-making. They submitted that the Competition Commission had recognised in its Live Nation / Ticketmaster report that a strategy to transfer market power from Ticketing Services to promotions 'would involve some increase in the merged entity's total risk'.<sup>227</sup>

9.163 We recognise that the higher risks associated with promotion compared to Ticketing Services may mean that MCD would have to win a higher proportion of Aiken's business to compensate Live Nation for this risk (see paragraph 9.140(e)). However, the risk from promoting an individual event is diversified by each promoter running many events over a year – this is reflected by the fact that both MCD and Aiken have maintained a strong position in the market over many years. In addition, to the extent that foreclosure of Aiken would lead to a reduction in competition between promoters, this would enable MCD

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<sup>224</sup> Main parties' reply to Phase 1 Decision, paragraphs 102 to 107.

<sup>225</sup> Billboard's Money Makers: The highest paid musicians of 2018 - <https://www.billboard.com/photos/8520668/2018-highest-paid-musicians-money-makers>

<sup>226</sup> Namely Taylor Swift, Drake, Ed Sheeran, Eagles, Elton John, Billy Joel and Pink.

<sup>227</sup> Main parties' reply to Phase 1 Decision, paragraph 13.

to negotiate more favourable terms with agents, which would reduce its overall risk (and hence the risk faced by Live Nation with regards to its margins from MCD).

#### *Reputational consequences to Live Nation*

9.164 The Parties told us that a reduction of Ticketmaster's quality of service would have a significant adverse effect on Ticketmaster's reputation both in Ireland and outside Ireland.<sup>228</sup>

9.165 We recognise that there is a reputational risk to Live Nation and Ticketmaster in reducing Ticketmaster's quality of service, to the extent that this would be visible to consumers, business customers, or the music industry more widely.

9.166 Given our conclusion, set out below, that Live Nation / Ticketmaster would not have an incentive to foreclose Aiken, we do not further consider the reputational consequences of these mechanisms to Live Nation or Ticketmaster.

#### *Entry by international providers of Ticketing Services*

9.167 The Parties submitted that if Live Nation sought to foreclose Aiken, Aiken would likely turn to an international provider of Ticketing Services such as AXS, CTS Eventim or See Tickets putting one of these companies 'on the ground' in Ireland and enabling them to use Aiken as a platform to take further businesses away from Ticketmaster.

9.168 We recognise that this is a potential risk of a foreclosure strategy. On the other hand, where foreclosure was successful in substantially weakening Aiken, it could also have the effect of removing or diminishing a possible (albeit challenging) route to one of these firms entering the market, that is by winning some business from Aiken.

9.169 As set out in paragraphs 9.20 – 9.21 above, Ticketmaster's [X] arrangements with major venues are a constraint on the scope for Aiken to sponsor entry by one of these providers of Ticketing Services. Some providers of Ticketing Services indicated they would need a large allocation of tickets to enter the market.

(a) CTS Eventim told us that [X].<sup>229</sup>

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<sup>228</sup> Main parties' reply to Phase 1 Decision, paragraph 13.

<sup>229</sup> CMA file note, CTS Eventim call, paragraph 10.



(b) AXS said that [REDACTED].<sup>230</sup>

(c) See Tickets told us that [REDACTED].<sup>231</sup>

9.170 We have considered the possibility of Aiken switching some of its business to another provider of Ticketing Services as part of our assessment of the critical diversion threshold above. We consider that any such switching could be to either an existing provider in Ireland, or to an international provider. In pursuing a foreclosure strategy, Ticketmaster would face the risk of Aiken switching some of its business to another provider of Ticketing Services. This could allow a rival to become established in Ireland on a substantial scale.

### ***Conclusion on incentives***

9.171 In view of the above, our conclusion is that, taking the evidence in the round, Live Nation would not have an incentive to foreclose Aiken.

- (a) The [REDACTED] margins Ticketmaster is currently earning in providing Ticketing Services to Aiken, and the fact that Live Nation has (indirectly through Live Nation UK) approximately half of the shares in MCD, mean that MCD would have to win a high proportion of any business lost by Aiken in a foreclosure scenario in order for the foreclosure strategy to be profitable. The critical threshold of [REDACTED]% (or, more broadly, [REDACTED]) provides a reasonable starting point for assessing the proportion of Aiken's business lost to Ticketmaster as a result of a partial foreclosure strategy which MCD would need to recapture. (Paragraphs 9.135 to 9.141.)
- (b) Based on the Parties' analysis, if Aiken were to switch to a different provider of Ticketing Services for its business outside Live Music Events, the relevant critical threshold could be [REDACTED]%. (Paragraphs 9.142 to 9.148.)
- (c) There is a material risk to Ticketmaster that Aiken would in fact switch its business outside Live Music Events to a different provider in a foreclosure scenario, and the result would be that the critical threshold could be [REDACTED]%. (Paragraphs 9.149 to 9.154.)
- (d) In pursuing a foreclosure strategy, Ticketmaster would face the risk of Aiken switching some of its business to a different Ticketing Services provider, which could allow a rival to become established in Ireland on a substantial scale. (Paragraphs 9.167 to 9.170.)

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<sup>230</sup> CMA file note, AXS call, paragraphs 10-11.

<sup>231</sup> CMA file note, See Tickets call, paragraph 13.

- (e) In response to a foreclosure strategy reducing Aiken's competitiveness, Aiken's customers would be likely to consider alternative promoters, and MCD would be in a very strong position to attract artists who wanted to switch from Aiken. However, if the critical threshold is [REDACTED]%, it is unlikely that MCD would be able to win sufficient business from Aiken for foreclosure to be profitable. (Paragraphs 9.158 to 9.161.)

## **Effects of foreclosure of Aiken by Live Nation using Ticketmaster**

9.172 In light of our conclusion on incentives, we have not considered the effects of foreclosure of Aiken by Live Nation using Ticketmaster.

## **Other potential vertical theories of harm**

9.173 As noted in paragraph 9.6, a number of stakeholders expressed concerns to us about Live Nation's position in Ireland with regard to Ticketing Services and venues. In this context, in response to our Issues Statement, a third party raised two merger-specific concerns in addition to the theory of harm considered above.<sup>232</sup>

9.174 One was that Live Nation could threaten music venues that, if they switched away from Ticketmaster, MCD would use its influence over artists to divert events away from the venue concerned. In assessing this theory of harm, we considered in particular the evidence from SSE Arena, because (a) it is the largest indoor venue for in Northern Ireland, (b) it has a contract with Ticketmaster, and (c) it is not owned or operated by Live Nation. SSE Arena told us that if MCD stopped booking events at the SSE Arena, the artist's representative would either book the SSE Arena directly or use another promoter to organise their event.<sup>233</sup> SSE Arena subsequently indicated that the promoter had some discretion over the choice of venue, although noting that the artist's or manager's preferences may in some cases be the deciding factor. However, SSE Arena did not expect the Proposed Merger to have any impact on its business.<sup>234</sup> In view of the available evidence, our view is that this theory of harm does not provide a basis for an SLC resulting from the Proposed Merger on the balance of probabilities.

9.175 The other concern expressed was that the Proposed Merger would remove the possibility of MCD switching to another provider of Ticketing Services, thereby foreclosing other providers. The CMA considered this as a theory of

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<sup>232</sup> CMA file note, [REDACTED] submission to CMA.

<sup>233</sup> Phase 1 SSE Arena call note, 1 May 2019.

<sup>234</sup> CMA file note, SSE Arena call, 13 September 2019.

harm in Phase 1 and concluded that there was no incentive for Live Nation to engage in this behaviour.<sup>235</sup> Our view is as follows:

- (a) As set out above (paragraphs 9.17 to 9.35), our view is that Live Nation / Ticketmaster currently has market power in the provision of Ticketing Services for Live Music Events. Following the Proposed Merger, MCD would become wholly-owned by LN-Gaiety, which has Live Nation as one of its ultimate parents. This would remove any possibility of other providers of Ticketing Services competing with Ticketmaster for the supply of Ticketing Services to MCD, which is the largest customer for Ticketing Services for Live Music Events. As such, the Proposed Merger removes a possible route of entry into the market.
- (b) However, MCD has used Ticketmaster as its preferred service provider for the past [X] years.<sup>236</sup> A 2017 internal document indicates that [X] (see paragraph 9.24 above). In addition, we consider that rival firms would face challenges in expanding their provision of Ticketing Services for Live Music Events (paragraph 9.25 above). [X]. In view of the above, absent the Proposed Merger, our view is that the prospect of a different provider of Ticketing Services winning MCD's business in the foreseeable future is limited. Accordingly, this theory of harm does not provide a basis for an SLC resulting from the Proposed Merger on the balance of probabilities.

9.176 We have received no further submissions relating to these concerns in response to our Provisional Findings. Our view remains that these theories of harm do not provide a basis for an SLC resulting from the Proposed Merger on the balance of probabilities.

## 10. Conclusion on the SLC test

- 10.1 We have concluded that the Proposed Merger may not be expected to result in an SLC, as a result of vertical effects, in the promotion of Live Music Events in Ireland, including in Northern Ireland, through the foreclosure of MCD's rivals from Ticketmaster's Ticketing Services.
- 10.2 We have also concluded that potential theories of harm raised by a third party in addition to the theory of harm considered above do not provide a basis for an SLC resulting from the Proposed Merger on the balance of probabilities.

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<sup>235</sup> [Phase 1 Decision](#), paragraphs 215 to 223.

<sup>236</sup> [Phase 1 Decision](#), paragraph 216.

10.3 Consequently, we conclude that the Proposed Merger may not be expected to result in an SLC within any market or markets in the United Kingdom.