

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

Summary of Final Report

Notified: 19 December 2019

Introduction

1. The Competition and Markets Authority (CMA) has found that the anticipated acquisition by Live Nation-Gaiety Holdings Limited (LN-Gaiety) of MCD Productions Unlimited Company (MCD) (the Proposed Merger) may not be expected to result in a substantial lessening of competition (SLC) as a result of vertical effects, in the promotion of live music events above 1,000 person capacity (Live Music Events) in Ireland, including in Northern Ireland, through the foreclosure of MCD's rivals from ticketing services (Ticketing Services).

Background

The reference

2. On 25 July 2019, the CMA, in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred the anticipated acquisition by LN-Gaiety of MCD for further investigation and report by a group of CMA panel members.
3. 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 an SLC within any market or markets in the UK for goods or services.
4. Throughout this summary, 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'.

The Parties and transaction

5. The acquirer is LN-Gaiety, a joint venture between Live Nation (Music) UK Limited (Live Nation UK) and Gaiety which was formed in 2005. LN-Gaiety owns and operates music events and festivals in the UK.
6. The ultimate parent of Live Nation UK is Live Nation whose principal business is promoting live music and operating venues. It is the largest live entertainment company in the world and operates in approximately 44 countries.
7. Live Nation owns Ticketmaster Entertainment, Inc. whose principal business is selling tickets for events. It operates in approximately 29 countries, including on the island of Ireland (Ireland) as Ticketmaster.
8. MCD, the company which LN-Gaiety proposes to acquire, promotes Live Music Events and festivals in Ireland. It is currently wholly owned by Gaiety which also operates and manages Live Music Event venues in Ireland.
9. The Proposed Merger would change control of MCD from sole control by Gaiety to joint control by Live Nation and Gaiety.

The live music industry

10. In recent years, the revenues generated by the live music industry have grown rapidly, as a result of both growing attendances at events and higher ticket prices while artists' revenues from recorded music have declined.
11. Music artists are supported by managers who look after their commercial interests. The manager liaises with an agent who negotiates terms with live music promoters. Promoters are responsible for organising and promoting the concerts, including selecting and contracting with venues, organising advertising and marketing of the event and engaging a provider of Ticketing Services. The promoter suggests the appropriate ticket prices to the artist's agent and the artist, who have the final say on this. Providers of Ticketing Services sell tickets to consumers on behalf of both promoters and venues. A successful sale of tickets is crucial for the commercial success of the event.

Our findings

Jurisdiction

12. We have found that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation within the meaning of the Enterprise Act 2002 (the Act).
13. As part of that finding, we have established that there is a sufficient nexus within the UK on a share of supply basis, as set out in section 23 of the Act, to give us jurisdiction to investigate.

Market definition

14. We have found that the appropriate market definitions upon which to assess the impact of the Proposed Merger are:
 - (i) The provision of primary ticketing services (Ticketing Services) for live music events in Ireland, including Northern Ireland.
 - (ii) The promotion of live music events above 1,000 capacity (Live Music Events) in Ireland.

Competitive effects

The counterfactual

15. The Proposed Merger has not yet been completed and LN-Gaiety and MCD remain independent of each other. Absent the Proposed Merger, we consider that LN-Gaiety and MCD would be likely to remain independent companies.
16. Neither the Parties nor third parties have made any submission to the CMA on the counterfactual to the Proposed Merger.
17. Our conclusion is that the appropriate counterfactual against which to assess the Proposed Merger is the prevailing conditions of competition.

Theories of harm

18. In this phase of the inquiry, the CMA has considered the competitive effects of the Proposed Merger using a single, vertical theory of harm. This is, that the Proposed Merger could result in an SLC in the promotion of Live Music

Events in Ireland as a result of Live Nation using Ticketmaster to effect vertical input foreclosure of rival promoters.

Vertical effects: foreclosure of rival promoters using Ticketmaster

19. In line with CMA guidelines, we have assessed the vertical effects in terms of:
 - (a) The ability of Live Nation via Ticketmaster to foreclose rival music promoters.
 - (b) Live Nation's incentive to foreclose rival music promoters, in terms of any likely loss of profit in ticketing (upstream) it would have to incur in order to make financial gains in music promotion (downstream).
 - (c) The effect of any foreclosure strategy on the ability of rival music promoters to compete with the Merged Entity post-merger.
20. We have considered both total and partial foreclosure.
21. Our assessment has focused on Aiken, which is MCD's only major competitor in the promotion of Live Music Events in Ireland. Competition would be reduced if Aiken were less able to compete with the Merged Entity. However, our assessment could be relevant to any other existing or potential competitor to MCD in Live Music Events in Ireland.

Ability to foreclose

22. Live Nation (through Ticketmaster) has a very high share of the market for Ticketing Services for Live Music Events in Ireland, including through its contracts with rival music promoters and with several venues for Live Music Events in Ireland.
23. Our view is that Live Nation has market power in the provision of Ticketing Services for Live Music Events in Ireland and that Aiken could not easily switch to alternative providers in response to foreclosure.
24. We consider that ticketing is an essential element of Live Music Events, and the quality of Ticketing Services is very important to promoters, as are the financial terms on which Ticketing Services are provided to them.
25. 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.

26. Turning to partial foreclosure, we have considered both quality and price foreclosure mechanisms which could be employed by Live Nation / Ticketmaster and whether they might, individually or in combination, lead to foreclosure of the Merged Entity's rival promoters. These mechanisms are:
- (a) Quality mechanisms: delaying (or otherwise constraining) the date on which tickets for Aiken-promoted Live Music Events are announced or go on sale; reducing the speed at which ticket sales for Aiken-promoted Live Music Events are processed online; limiting or delaying the availability of tickets for Aiken-promoted Live Music Events at Ticketmaster's network of retail outlets; 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; and reducing the quality of ticket sales information available to Aiken.
 - (b) Price mechanisms: raising Ticketmaster's prices for Ticketing Services to Aiken or otherwise offering poorer financial terms; and delaying payment of Ticketing Services revenues to Aiken.
27. We consider that Live Nation / Ticketmaster could employ quality foreclosure mechanisms which would have an impact on Aiken's ticket sales. We consider that Live Nation / Ticketmaster could also employ price foreclosure mechanisms after the end of Aiken's contract with Ticketmaster, or sooner. Taking the evidence in the round, our view is that Live Nation / Ticketmaster would be able to foreclose Aiken.

Incentive to foreclose

28. We have assessed whether Live Nation would have an incentive to engage in a foreclosure strategy against Aiken. In particular, we estimate the proportion of business lost by Aiken as a result of foreclosure which MCD would have to capture (the critical threshold), in order for Live Nation to have an incentive to foreclose.
29. Our view is that foreclosure of Aiken would only be profitable to Live Nation if MCD won a high proportion of Aiken's lost business. This is because of the value of Ticketmaster's margins in providing Ticketing Services relative to margins from promoting Live Music Events and the fact that the Proposed Merger would only result in Live Nation having a partial share of MCD.
30. We also note that, if Aiken were to respond to foreclosure by switching to another provider of Ticketing Services for its business outside Live Music Events, then the amount of Aiken's Live Music Events which MCD would need to recapture could increase even further. This very high threshold makes it

unlikely that MCD would be able to win sufficient business from Aiken for foreclosure to be profitable to Live Nation.

31. In addition, in pursuing a foreclosure strategy, Ticketmaster would face the risk that if Aiken switched some business to another provider of Ticketing Services, this could allow a rival of Ticketmaster to become established in Ireland on a substantial scale.
32. For these reasons, our conclusion is that Live Nation would not have an incentive to foreclose Aiken.

Effect of foreclosure

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

Vertical effects: other potential theories of harm

34. We have also considered additional potential theories of harm raised by a third party:
 - (a) 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; and
 - (b) that the Proposed Merger would remove the possibility of MCD switching to another provider of Ticketing Services, thereby foreclosing other providers of Ticketing Services.
35. In view of the available evidence, we have found that those potential theories of harm do not provide a basis for an SLC resulting from the Proposed Merger on the balance of probabilities.

Conclusion on SLC

36. The CMA has found that the anticipated acquisition by LN-Gaiety of MCD 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 Ticketing Services.
37. The CMA has also found that additional potential theories of harm raised by a third party do not provide a basis for an SLC resulting from the Proposed Merger on the balance of probabilities.

38. 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.