

**LN-GAIETY HOLDINGS LTD ACQUISITION OF MCD PRODUCTION  
UNLIMITED COMPANY**

**RESPONSE TO THE CMA'S PROVISIONAL FINDINGS REPORT**

**I. Introduction**

- (1) This paper responds to the CMA's Provisional Findings Report of 7 November 2019, which concludes that the anticipated acquisition by LN-Gaiety Holdings Ltd of MCD Productions Unlimited Company is not expected to result in a significant lessening of competition in any market in the United Kingdom. This paper focuses on the Report's provisional view that Ticketmaster has "*market power*" in the provision of ticketing services on the Island of Ireland.
- (2) [REDACTED] the finding is not necessary to the final decision in the merger proceeding and the evidence gathered during this investigation does not provide a sufficient basis to conclude that Ticketmaster has market power in ticketing services. It rather shows that there are multiple alternatives to Ticketmaster that preclude it from having market power in ticketing services on the Island of Ireland and certainly in Northern Ireland.
- (3) [REDACTED]
- (4) A finding of market power is not necessary in the current merger proceeding to support the CMA's conclusion on the absence of an SLC. The CMA's conclusion instead is based on Live Nation not having the incentive to foreclose Aiken in the promotion of live music events in Ireland through partial or total input foreclosure. That theory is predicated on Live Nation having cumulatively: (i) the ability to foreclose Aiken by totally or partially limiting its access to Ticketmaster's ticketing services, (ii) the incentive to do so, and (iii) on such a foreclosure strategy having the effect of preventing rival music promoters from

competing effectively against Live Nation in the Island or Ireland.<sup>2</sup> Once the CMA has concluded that Live Nation does not have the incentive to engage in foreclosure, it no longer needs to reach a final view on ability or effects. Consequently, because Ticketmaster’s alleged market power in ticketing is only relevant to the assessment of ability, the CMA does not need to reach a position on market power to support its finding that there is no SLC. The fact that the CMA does not need to reach a view on ability, and hence market power, is also consistent with the CMA’s approach to effects in paragraph 34 of the provisional findings, where it explains that “[i]n light of our provisional conclusion on incentive, we have not considered the effects of foreclosure of Aiken by Live Nation using Ticketmaster.” Once a conclusion is reached on one of the prongs (in this case on incentive), it is no longer necessary to reach a view on the other two (ability and effect).

- (5) In its provisional findings, the CMA also considers two additional potential vertical theories of harm raised by a third party, neither of which depends on any market power in Ticketmaster: (i) that Live Nation could threaten venues with diverting events away from them if they switch away from Ticketmaster, and (ii) that the merger would remove the possibility of MCD switching to rival ticketing services providers, thereby foreclosing Ticketmaster’s rivals. The CMA provisionally dismisses the first theory based on statements made by the SSE Arena (the largest arena in Northern Ireland) that if MCD stopped booking events at the SSE, the artists would either book the arena directly or use another promoter to organize the event, and that SSE did not expect the merger to have any negative impact on its business.<sup>3</sup> None of these considerations are dependent on Ticketmaster having market power. The second theory is discarded because, due to MCD’s historic relationship with Ticketmaster, the prospect of a different ticketing service provider “*winning MCD’s business in the foreseeable future is limited.*”<sup>4</sup> Again this conclusion does not require the CMA to reach a view on whether or not Ticketmaster has market power.

- (6) [REDACTED]  
[REDACTED]  
[REDACTED] As the CMA is aware, the standards and assessments of market power [REDACTED] is [REDACTED]:

- a. In the provisional findings, the assessment of Ticketmaster’s market power is made within the “*frame of reference*” that the CMA uses to assess the impact on competition of the merger. With respect to ticketing, this frame of reference is the “*provision of primary ticketing services for live music events on the island of Ireland.*” As indicated by the CMA in its provisional findings, this frame of reference involves “*an element of judgment*” and is not a “*separate analysis*”,<sup>5</sup> but intrinsically linked to the competitive assessment of the merger. As explained in the provisional findings: “*many factors affecting market definition are relevant to the assessment of competitive effects and vice a versa.*”<sup>6</sup> This is consistent with the

<sup>2</sup> As set out in Section 5.4 of the CMA’s Merger Assessment Guidelines and as explained in paragraph 20 of the CMA’s provisional findings.

<sup>3</sup> Section 9.169 of the Provisional Findings Report.

<sup>4</sup> *Id.*, Section 9.170.

<sup>5</sup> *Id.*, Section 8.3.

<sup>6</sup> *Ibid.*

CMA's Merger Assessment Guidelines, that describe how in a merger context *"market definition is a useful tool, but not an end in itself"* and the *"boundaries of the market do not determine the outcome"* of the CMA's analysis of the competitive effects of a merger. The CMA has also stated that *"the market definition used in a previous case may not always be the correct one to use in subsequent cases"*.<sup>7</sup>

[REDACTED]

- b. The CMA's assessment of Ticketmaster's market power is centred on Aiken and its ability to *"easily switch to alternatives."*<sup>8</sup> It focuses on Aiken specific factors, such as its [REDACTED] contract with Ticketmaster<sup>9</sup> or Ticketmaster's [REDACTED] contracts with venues where Aiken organizes a significant part of the events it promotes.<sup>10</sup>

[REDACTED]

- c. The degree of market power necessary to reach a conclusion on the ability to foreclose a rival's access to an important input as part of the analysis of the negative vertical effects of a merger, [REDACTED]

[REDACTED]

[REDACTED] Indeed, both in the assessment of horizontal and vertical mergers, the SLC test (or the EU's SIEC equivalent) does not require a [REDACTED] but a [REDACTED] level of market power that primarily focuses on the likely impact of the merger on prices.<sup>12</sup>

- (7) Live Nation respectfully urges the CMA to avoid any conclusions with respect to Ticketmaster's alleged market power in the CMA's final decision [REDACTED]

[REDACTED]

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<sup>7</sup> OFT402, para. 4.9.

<sup>8</sup> *Id.*, Section 9.17.

<sup>9</sup> *Id.*, Section 9.19.

<sup>10</sup> *Id.*, Section 9.20.

<sup>11</sup> See paragraph 97 of the European Commission Guidelines on Vertical Restraints.

<sup>12</sup> [REDACTED]

- (8) In sum, a conclusion in the CMA's final merger decision with respect to Ticketmaster's market power:
- a. is not necessary for the CMA to reach a decision on SLC with respect to the LN/MCD merger;
  - b. is not supported by the evidence in the CMA's merger file; which rather shows that Ticketmaster lacks market power in the frame of reference assessed by the CMA;
  - c. [REDACTED]
- (9) The CMA should thus not conclude in its final decision that Ticketmaster has market power, or at the very least leave this question open.
- (10) In the sections below, we outline the reasons why: (i) the current evidence in the CMA's file does not allow the CMA to conclude that Ticketmaster has market power in the provision of ticketing services for live music events in the Island or Ireland; (ii) but rather shows that there are multiple alternatives to Ticketmaster that preclude it from having market power.

## **II. Evidence in CMA's file does not support finding of market power**

- (11) The evidence in its provisional findings 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. The provisional findings note Aiken's description of 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>13</sup> If anything, Aiken's description shows that Aiken likes Ticketmaster and sees it as an efficient competitor that strives to provide it with high quality services and the most innovative technology. None of these are markers of market power. Companies with substantial market power can act in disregard of its customers and competitors. Yet Aiken describes a company operating in a competitive marketplace that requires it to perform at the highest level.
  - b. The provisional findings rely on a Ticketmaster Brand Tracker awareness survey that puts the brand awareness of Ticketmaster above that of its nearest competitors.<sup>14</sup> The respondents to this survey were ticket buyers, not event organizers who hire Ticketmaster. Consumers buy tickets from Ticketmaster and other ticket agents, but do not purchase ticketing services. The customers of ticketing services - e.g., live music promoters, sport event organizers, or venues - are professional organizations that are well aware of the existence of alternatives to

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<sup>13</sup> Section 9.22 of the Provisional Findings Report.

<sup>14</sup> *Id.*, Section 9.23.

Ticketmaster. It is only that awareness that matters in determining whether Ticketmaster may have market power.

- c. The provisional findings rely on Ticketmaster's [REDACTED] [REDACTED].<sup>15</sup> These [REDACTED] 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. Indeed, 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 [REDACTED] in the live music segment, but that represent a credible alternative to Ticketmaster for customers in that segment. Ticketmaster's [REDACTED] also overstate its position because [REDACTED] the demand of ticketing services in that segment comes from just two customers (i.e., Aiken and MCD), with whom Ticketmaster had a contractual relationship during that period.
- d. The evidence cited in the provisional findings to support its overly narrow frame of reference, on which to assess Ticketmaster's market power, is also insufficient. To support such a narrow segmentation, the provisional findings rely on:
- i. Some Ticketmaster internal documents that [REDACTED] [REDACTED].<sup>16</sup> It is however normal practice for companies to [REDACTED] [REDACTED] but this cannot be seen as indicative of a separate market. Further, the documents cited in the provisional findings primarily analyse Ticketmaster's position in a market for ticketing services that includes all types of events. In these internal documents, Ticketmaster's [REDACTED] [REDACTED] [REDACTED] [REDACTED] relate to a ticketing market that encompasses all types of events (see for instance [REDACTED] [REDACTED]).<sup>17</sup>
- ii. The share estimates segmented by type of event provided by Ticketmaster in response to the CMA's requests for information, and the fact that the [REDACTED].<sup>18</sup> First, these shares by segment were provided in responses to the CMA's request and do not reflect Ticketmaster's views on the relevant market. Second, the share estimates show that, just like Ticketmaster, its main competitors are active across segments [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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<sup>15</sup> *Id.*, Section 9.24.(a).

<sup>16</sup> *Id.*, Section 8.9.(a).

<sup>17</sup> Provided as Annex 5 to the Parties' Merger Notice.

<sup>18</sup> Section 8.9.(b) of the Provisional Findings Report, citing Parties' response to CMA's request for information 10 April 2019, question 17.

[REDACTED]

- iii. The views of a provider of ticketing services, that told the CMA that live music events “*often exhibit spikes in demand over short periods of time, which are not present when servicing other types of events.*”<sup>19</sup> Again this, in isolation or together with the other evidence cited in the provisional findings, does not provide a sufficient basis to define the relevant market on which to assess Ticketmaster’s market power. First, as explained in prior submissions, Ticketmaster estimates that there are only about [REDACTED] live music events a year in the Island of Ireland with a significant spike in demand.<sup>20</sup> Those events only represent a very small portion of total ticket sales in the music segment. Second, significant spikes in demand are not exclusive to the music segment. In our prior submissions, we gave the example of [REDACTED], an event that sold out very quickly.<sup>21</sup> The provisional findings state that this is the only non-music high spike in demand event that has been referred to by the parties. But that was just an example and popular sport events regularly generate high spikes in demand. Further examples include:

- [REDACTED]
- [REDACTED]
- [REDACTED]

Further, shows such as “[REDACTED]” or “[REDACTED]”, which have multiple performances during a multi-week run at the Bord Gais Energy Theatre, go on sale at the same time and can also experience high spikes in demand.

A delineation of the relevant market confined to ticketing for live music events, based on the fact that a few live music events generate a significant spike in demand, would thus be arbitrary.

### **III. Other evidence in CMA’s file precludes a finding of market power**

- (12) There is a significant body of evidence in the CMA’s file that goes against a finding of market power by Ticketmaster in the live music segment (or in the market for the ticketing of all types of events). These include, but are not limited to:

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<sup>19</sup> *Id.*, Section 8.9.(c).

<sup>20</sup> Paragraph 65 of the Parties’ Reply to Phase 1 Decision of 11 July 2019.

<sup>21</sup> *Id.*, Paragraph 68

a. Ticketmaster's internal documents that show that it views national and international ticketing services providers as a threat and source of competitive pressure across all segments. See for instance references in Ticketmaster's Ireland Strategic plans to:

- i. [REDACTED]
- ii. [REDACTED]  
[REDACTED]
- iii. [REDACTED]  
[REDACTED]
- iv. [REDACTED]  
[REDACTED]  
[REDACTED]
- v. [REDACTED]  
[REDACTED]
- vi. [REDACTED]  
[REDACTED]
- vii. [REDACTED]  
[REDACTED]
- viii. [REDACTED]  
[REDACTED]
- ix. [REDACTED]  
[REDACTED]
- x. [REDACTED]  
[REDACTED]

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22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]  
29 [REDACTED]  
30 [REDACTED]  
31 [REDACTED]  
32 [REDACTED]  
[REDACTED]

- xi. [REDACTED]
- xii. [REDACTED]
- xiii. [REDACTED]
- xiv. [REDACTED]

b. Information provided by third parties to the CMA during its merger inquiry showing that multiple ticketing services providers view themselves as a credible alternative to Ticketmaster across all segments in the Island of Ireland. Some of these third party ticketing services providers are not currently active in Ireland but consider themselves capable of replacing Ticketmaster if given the opportunity. This is reflected in the declarations made to the CMA by:

- i. [REDACTED]
- ii. [REDACTED]
- iii. [REDACTED]
- iv. [REDACTED]

33 [REDACTED]

34 [REDACTED]

35 [REDACTED]

36 [REDACTED]

37 [REDACTED]

38 [REDACTED]

39 [REDACTED]

40 [REDACTED]



The above statements reflect Ticketmaster’s assessments of these rivals’ capabilities and explains why it regularly refers to them as a threat in its internal strategy documents. Each of these rivals has the technical expertise and commercial resources required to meet the demands of ticketing customers in Ireland across all segments. These rivals could quickly and easily replace Ticketmaster and thus preclude it from having market power.

- c. [REDACTED]
- i. [REDACTED]
  - ii. [REDACTED]
  - iii. [REDACTED]
  - iv. [REDACTED]
  - v. [REDACTED]

- d. The CMA’s own analysis which concludes that in a foreclosure scenario:
- i. there is a material risk that “*Aiken would in fact switch its business outside live music events to a different provider;*”<sup>45</sup> and
  - ii. 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.*”<sup>46</sup>

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<sup>41</sup> Parties’ Reply to Phase 1 Decision of 11 July 2019, Annex A.4.

<sup>42</sup> Annex 2 to the CCPC paper provided to the CMA on 9 May 2019.

<sup>43</sup> Parties’ Reply to Phase 1 Decision of 11 July 2019, Annexes A.1 and A.2.

<sup>44</sup> *Id.*, Annex A.3

<sup>45</sup> Section 9.166.(c) of the Provisional Findings Report.

<sup>46</sup> Section 9.166.(d) of the Provisional Findings Report.

#### **IV. Conclusion**

- (13) The evidence in the provisional findings does not support a finding of market power by Ticketmaster in ticketing on the Island of Ireland. On the contrary, there is a significant body of evidence in the CMA's file that goes in the opposite direction. This evidence shows that there are a sufficient number of alternatives to Ticketmaster in Ireland across all event segments. These alternatives are real. They are perceived as a threat by Ticketmaster [REDACTED]. In its dealings with customers in Ireland, Ticketmaster does not act as a supplier with "market power" but as a firm who is well aware of its competition and strives to offer better terms to avoid losing business to rivals. Ticketmaster's perception is matched by the assessment that its main rivals make of their own capabilities. These rivals view themselves fit to replace Ticketmaster for the largest live music contracts and are keen to do so if given the opportunity, something which is entirely in the hands of Irish ticketing customers.
- (14) Therefore, the CMA should find in its final merger decision either that Ticketmaster does not have market power, or at least leave this question open. Maintaining the finding that Ticketmaster has market power would not only run against the evidence in the CMA's possession but is also unnecessary. The CMA does not need to reach a conclusion on market power to supports its finding of the absence of an SLC. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]