

## LIVE NATION/TICKETMASTER INQUIRY REMITTAL

### Conduct of the remittal

#### Introduction

1. By Order of the Competition Appeal Tribunal (CAT), dated 11 February 2010, the decision of the Competition Commission (CC) in its report dated 22 December 2009 to clear the merger between Ticketmaster Entertainment Inc and Live Nation Inc was quashed and the questions contained in paragraph 2 of the terms of reference dated 10 June 2009 were referred back to the CC for reconsideration and a new decision.<sup>1</sup> The Order requires the CC to issue its new decision within a period of three months from the date of the Order, being 11 May 2010.
2. The CC sets out below the way in which it intends to conduct its inquiry following the remittal, particularly with regard to gathering further evidence, and testing that evidence.

#### Information gathering and analysis

3. The CC decided to treat its report dated 22 December 2009 as further provisional findings and, on 12 February 2010, the CC issued a Notice of further provisional findings seeking comments in writing on that document by 5 March 2010.
4. The CC requests anyone wishing to provide written comments on the further provisional findings to also provide a second version of their submissions in a form that can be disclosed and which excludes information that is considered to be sensitive. Non-sensitive versions of submissions should be provided at the same time as the full submission.
5. The CC will consider any submissions made to it in response to the further provisional findings report issued on 12 February 2010, along with any other information or evidence which any interested party wishes to submit.
6. The CC will also consider the implications of the completion of the merger between Live Nation and Ticketmaster which took place on 25 January 2010, following approval (subject to conditions) by the US Department of Justice.
7. The CC will hold hearings with some parties following receipt of submissions on the further provisional findings report.
8. The CC does not propose at this stage to initiate any further economic or financial analysis. However, it will consider how any new information it receives during the course of its inquiry should be taken into account.

#### Consultation and disclosure of information

9. The CC publications CC4 *General Advice and Information* and CC7 *Chairman's Guidance on Disclosure of Information in Merger and Market Inquiries* (which can be found on the CC website at

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<sup>1</sup>The decision of the CAT and a summary of Eventim's Notice of Application can be found on the CAT website: <http://www.catribunal.org.uk/237-5250/1150-4-8-10-CTS-Eventim-AG.html>.

[http://www.competition-commission.org.uk/rep\\_pub/rules\\_and\\_guide/index.htm](http://www.competition-commission.org.uk/rep_pub/rules_and_guide/index.htm)) explain in more detail the CC's approach to the disclosure of information.

10. The CC aims to be open and transparent in its work, while maintaining the confidentiality of information. The CC will always invite parties to inform it of the sensitivity of any information they supply. However, the Enterprise Act 2002 (the Act) requires that the CC's reports contain the information necessary to understand its decisions and the reasons for those decisions. The effect of this requirement is that, ultimately, the CC must decide what information should be disclosed in a report and throughout its investigations in order to fulfil its statutory functions and in order to operate an open and transparent process.
11. During the course of its inquiries the CC publishes some of the information which is provided to it, either in its reports as evidence on which its decisions are based, or on its website as background information, to enable interested parties to comment on it. The CC may also disclose additional information to the main parties to an investigation, or to selected third parties. The CC always gives parties the opportunity to make further representations if there is a dispute between that party and the CC about whether or not a piece of evidence should be disclosed. In such cases, the party may also write to the CC's Chief Executive about its concerns.
12. When it is considering the disclosure of submissions, the CC will apply the statutory considerations set out in section 244 of the Act, which are explained in *CC7 Chairman's Guidance on Disclosure of Information in Merger and Market Inquiries*. These considerations apply both to the disclosure of information in the CC's published decision, and to the disclosure of submissions it receives during the course of its inquiry for the purposes of enabling other parties to comment upon them.
13. Further to paragraph 4, during this stage of its inquiry the CC requests, in accordance with its guidance (CC7), all parties making submissions to it to provide both a confidential and non-confidential version of those submissions. The non-confidential submissions will either be published on the CC website (along with a summary of any hearing which the CC holds) or, in cases of sensitivity, will be provided to the main parties and selected third parties. If any party does not provide the CC with a non-confidential version of its submissions, the CC will consider preparing such a document itself, with a view to its being published in the same way. As set out above, the CC will invite the party concerned to comment on the non-confidential version of its submissions which the CC prepares prior to its publication. In all circumstances, the CC considers that, at this stage of its inquiry, it is very important that it operates as transparent a process as is reasonably practicable. As a result, any accommodation which the CC was prepared previously to extend to parties regarding confidentiality and the disclosure of information may no longer be appropriate. This process is to ensure that all parties are given as much opportunity as possible to comment on any substantive new evidence which is submitted to the CC during this time.
14. The CC must test the evidence it receives with the main parties to the investigation and, in some cases with selected third parties, in order to comply with its statutory duty to consult and its common law duties of fairness. The CC will find it difficult to place weight on evidence it receives which it has not been able to test in this way.

### **Duration of remittal**

15. As stated above, the CC has issued a further provisional findings report on 12 February 2010. It will consider any submissions any interested party wishes to

make, and issue its final report no later than 11 May 2010, in accordance with the Order of the Competition Appeal Tribunal.