

## LIVE NATION / TICKETMASTER

### RESPONSE BY LIVE NATION TO FURTHER PROVISIONAL FINDINGS

#### 1. INTRODUCTION AND SUMMARY

1.1 Live Nation (*LN*) fully agrees with the CC's further provisional finding that the merger is **unlikely to result in an SLC in the UK**, whether through its effect on CTS's entry into the UK ticketing market or for any other reason. LN further believes that the merger is not only "unlikely" to result in an SLC, but will not do so.

1.2 Nevertheless, in order to assist the CC, this paper addresses the following areas, which are likely to be relevant to the CC's further analysis in this inquiry:

- **Section 2** explains the **current scope and status of the LOI in the UK**, including [X]. As the CC correctly found, CTS's competitive impact in the UK does not depend on LN, but instead on CTS's own ability to obtain and successfully sell tickets from promoters and venues *other than* Live Nation. In any event, it is clear that LN is complying fully with the terms of the LOI, while CTS's [X] performance only undermines its depiction of the counterfactual
- **Section 3** addresses the **flaws in the substantive allegations raised by CTS** in LN's redacted version of the Notice of Application (*NoA*) to the CAT of 19 January 2010. In short, CTS's substantive arguments are entirely misconceived, and do **not** cast any doubt on the CC's finding that the merger is unlikely to result in an SLC.

1.3 LN will of course respond in full to any further substantive issues raised in CTS's submissions (and those of any other third parties) when it is given a proper and timely opportunity to review and comment on them, in accordance with the CC's published statements regarding the Conduct of the Remittal.

#### 2. CURRENT STATUS OF THE LOI IN THE UK

##### The CTS system is "live"

2.1 As pre-advised by LN to the CC in late 2009, LN implemented the CTS system under the LOI in the UK on 1 February 2010. Accordingly, the LN website is now "back-ended" by the CTS system ([www.livenation.co.uk](http://www.livenation.co.uk)<sup>1</sup>); and the CTS website is retailing LN-controlled tickets ([www.eventim.co.uk/cgi-bin/concert-tickets.html](http://www.eventim.co.uk/cgi-bin/concert-tickets.html)).

2.2 This launch date reflected an agreed one-month delay from the position contemplated under the LOI; the relevant addendum (no.3) to the LOI is attached at **Annex 1**.

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<sup>1</sup> By clicking on the "find tickets" or "buy tickets" option for any given event on the LN website, it is clear from the change in URL that the system is being back-ended by CTS Eventim (rather than by TM). By searching for tickets to that LN event on the CTS Eventim website, it can be seen that CTS is retailing those tickets as well.

2.3 The delay was caused by [REDACTED].

### **[REDACTED] Performance of the CTS system**

2.4 In addition to [REDACTED] it is plain that, since its launch, the CTS system has [REDACTED].

2.5 LN's decision to proceed with the launch [REDACTED] was motivated by its desire to implement the CTS system in the UK, irrespective of the fact that the merger had been completed on 25 January 2010. LN's reasonable expectation was that [REDACTED].

2.6 [REDACTED]

2.7 [REDACTED]

2.8 [REDACTED]

2.9 [REDACTED]

### **Allocations to the CTS system/LN website**

2.10 All LN events taking place after 1 February 2010 that went on sale *before* that date were built on the CTS system, and tickets for those events were transferred to the CTS system on 1 February. Similarly, all LN events that have gone on sale since 1 February have been built on the CTS system.

2.11 That said, as the CC recognised in its further provisional findings report<sup>2</sup> (the *Further PFs*), the commercial realities of the UK market make it necessary for all promoters, including LN, to allocate tickets across multiple distribution channels in order to maximise sales, and thereby minimise the substantial economic risk to which they are exposed if tickets remain unsold. The CC also recognised in the Further PFs that, similarly, LN's principal objective as a venue operator is to ensure that as many tickets as possible are sold.

2.12 Accordingly, as well as allocating LN-controlled tickets to the CTS system, LN has also continued since 1 February to allocate tickets to other agents (including Ticketmaster, See Tickets, Ticketline and Ticket Factory). This situation was predicted and accepted by the CC in the Further PFs<sup>3</sup>. And experience on particular shows has vindicated LN's approach.

2.13 Entirely consistent with the CC's Further PFs<sup>4</sup>, LN is paying [REDACTED] to CTS for each of those LN-controlled tickets that is sold via another agent *outside* the CTS channel. This, of course, is in addition to the [REDACTED] payable to CTS for each ticket sold from the CTS channel<sup>5</sup> and the fees payable to CTS in respect of sales from the CTS website.

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<sup>2</sup> At paras 2.17 and 6.26.

<sup>3</sup> At paras 6.31, 6.32 and 7.36.

<sup>4</sup> At paras 6.20, 6.38 and 7.42.

<sup>5</sup> Except box office sales, tickets allocated to sponsors or artists and sales from the CTS website (as noted in the CC's Further PFs, at paras 6.10, 6.20).

2.14 As the CC is well aware, it was never LN's intention that CTS should have anything other than the "preferred supplier" status recognised by the CC as being the reality of an "exclusive" long-term appointment. This reality was apparent to the CC through its study of the way in which the LN-TM supplier agreement had been operated. Whether in the counterfactual or in today's reality, LN will do whatever is required to avoid the major financial exposure attaching to unsold tickets. The merger has had no effect on this imperative.

### **Allocations to the CTS website directly**

2.15 As the CC is aware, the LOI requires that, at minimum, [X] of LN-controlled tickets to [X] of LN events in the UK be made available for sale on CTS's own retail website.

2.16 As it happened, [X] the necessary "ring-fencing" for a separate CTS website allocation would simply have involved yet further delay and cost.

2.17 Accordingly, rather than a specific allocation of tickets being 'ring-fenced' for the CTS website for a given event, LN chose (in relation to *all* events) to enable the CTS website and LN website to access the common pool of LN-controlled tickets from the CTS system. The effect has been that, since 1 February, CTS's website has had **access** to *significantly more* tickets than the minimum threshold under the LOI, although **sales** on the CTS website have (as described below) fallen short of that threshold.

2.18 Albeit as a by-product of [X] CTS certainly cannot complain as to the number and range of tickets to which it has had access.

2.19 Moreover, since LN generally tries to ensure that, if an event is selling out, the LN website is the last sales channel with tickets available (with the possible exception of the venue itself), another consequence of the delayed ring-fence is that the CTS website also enjoys that position.

2.20 Any eventual ring-fencing under the LOI would be entirely consistent with LN's overriding strategic objective and financial incentive, as recognised by the CC's Further PFs<sup>6</sup>, to drive sales through the LN website in preference to CTS' website.

### **Low volume of sales made by the CTS website**

2.21 Since 1 February, the number of LN-controlled tickets actually sold by the CTS website has been [X] both in absolute terms and relative to sales made via the LN website, **despite both websites having equal access to the same pool of tickets** (as noted above). In the first three weeks following the CTS system's launch, the CTS website sold only [X] LN-controlled tickets, compared to the [X] LN-controlled tickets sold through the LN website.

2.22 LN is confident that any analysis would show that the [X] volume of sales made by the CTS website **cannot** be attributed to its having insufficient time and opportunity to generate sales for those shows.

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<sup>6</sup> At paras 6.29 and 7.35.

2.23 The [✂] differential in sales between the LN and CTS websites is not surprising, in the light of CTS's apparent inertia in making its brand known to the public. It is notable that when Seatwave, for example, entered the market, its arrival was accompanied by major press and transport advertising and sponsorship online. Its aggressive media and online marketing programme has continued – see [http://www.telegraph.co.uk/sponsored/business/businesstruth/movers\\_and\\_shakers/4799276/Ticket-agency-Seatwave.com-thrives-on-online-partnerships.html](http://www.telegraph.co.uk/sponsored/business/businesstruth/movers_and_shakers/4799276/Ticket-agency-Seatwave.com-thrives-on-online-partnerships.html). LN is unaware of any comparable marketing activity on Eventim's part – another example of the way in which any disappointment it has encountered must be laid at its own door.

2.24 In the light of CTS's performance (as well as its lack of media relationships), it is unsurprising that a significant number of LN-controlled tickets and third party promoters' tickets at LN venues were sold through TM (as well as other third party agents) during the above three-week period.

2.25 More generally speaking, though, LN expects the proportion of LN-controlled ticket sales via TM to fall over time, particularly as the profile and consumer awareness of the LN website continues to rise. Indeed, LN began phasing out TM's logo from LN's event advertising in December 2009, and TM has not appeared on such materials at all since 1 February 2010.

2.26 In any event, the CC's Further PFs<sup>7</sup> noted that, even if LN sought to limit its use of CTS's services as much as possible following the merger and use Ticketmaster's alternative services instead (which, as demonstrated above, has **not** been the case), this was unlikely to have a significant effect on CTS's success in the UK. In reaching that clear view, the CC specifically took account of the possibility that, post-merger, LN might choose to put the majority of its controlled tickets on TM's system and not on CTS's<sup>8</sup>.

### **3. MATERIAL FLAWS IN CTS'S SUBSTANTIVE ALLEGATIONS**

3.1 LN has seen only a redacted version of CTS's NoA, and is therefore unable to comment exhaustively on all of the substantive allegations put forward by CTS in grounds (2) to (4) of the NoA.

3.2 Nevertheless, those of CTS's arguments that are visible to LN are, in several decisive respects, factually, economically and legally flawed, and none of them justifies any adjustment to the CC's Further PFs. These are arguments which the CC has already considered and properly rejected as unsupported by the facts. Their flaws are discussed below.

#### **Effectiveness of competition in UK ticketing**

3.3 Before addressing the flaws in each specific CTS allegation, LN notes that a necessary element underpinning all of CTS's arguments is the CC's view that

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<sup>7</sup> At para 7.59.

<sup>8</sup> At para 7.43.

competition in the UK ticketing market is “less than fully effective” – without that, all of CTS’s claims must logically fall away.

3.4 However, the evidence and analysis produced by the CC in its Further PFs to substantiate that view is insufficient, particularly given the departure from some of the earlier factors relied upon in the provisional findings of October 2009 (the *October PFs*). On the contrary, for the many reasons detailed in LN’s and TM’s previous submissions in this inquiry, **the UK ticketing market is competitive.**

3.5 In any event, given the CC’s (correct) finding that the merger would not significantly affect the extent of CTS’s success in the UK<sup>9</sup>, LN submits that **it is unnecessary for the CC to reach a conclusive view** on the competitiveness of the ticketing market prior to the merger.

### **CTS’s allegations: the counterfactual**

3.6 The following analysis of CTS’s arguments tracks the numbering in its NoA.

#### ***CTS allegation (2)(a): in not making a finding regarding the likelihood of CTS’s success in selling tickets absent the merger, the CC allegedly erred in its assessment of the counterfactual***

3.7 The CC’s approach was entirely rational and legitimate.

3.8 In determining whether the effect of the merger itself is likely to lead to an SLC, the CC was fully justified in assessing first the likely magnitude of the merger’s impact on CTS’s prospects of success.

3.9 If, and only if, such impact had been found to be significant (which it was not), would the CC then have had to consider whether CTS’s expected effect on the ticketing market in the counterfactual was sufficient to rise to a “substantial lessening of competition” within the meaning of the statutory test. Only in those circumstances would some quantification of CTS’s ticket sales in the counterfactual be required.

3.10 Accordingly, having found that the merger’s impact on CTS’s prospects of success (via the potential for LN to restrict the number of tickets allocated to it<sup>10</sup>) was “limited” and “not likely to be significant”<sup>11</sup>, it was not then necessary for the CC to go on and attempt a projection of CTS’s ticket sales absent and/or following the merger.

3.11 In any event, as the “real-life” post-merger evidence shows (see above), the merger has **not** resulted in LN seeking to minimise the volume of tickets available to the CTS website. As such, the merger has not had even a “limited” effect on CTS’s likelihood of success. Its level of success has been driven by CTS’s own poor performance.

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<sup>9</sup> At para 7.59.

<sup>10</sup> At para 7.58.

<sup>11</sup> At paras 7.58 and 7.60 respectively.

***CTS allegation (2)(b): when assessing the likely use of respective sales channels by LN in the absence of the merger, the CC allegedly ignored evidence from Sweden and the Netherlands***

3.12 CTS appears to argue, by analogy with the position in Sweden and the Netherlands, that all LN-controlled tickets in the UK counterfactual would have been allocated to the CTS system (for sale via a combination of the LN website and the CTS website), with TM and other agents receiving zero allocation.

3.13 Even if this assumption were correct (which, for the reasons below, it is clearly not), it has no impact on the aggregate revenue derived by CTS from the £[~~£~~] per ticket “system” fee in the UK, since LN has accepted that such fee remains payable to CTS for every LN-controlled ticket sold by another agent, including TM (see above).

3.14 In any event, the CC was entirely correct not to draw any inferences from the experience of the LOI in Sweden and the Netherlands. **These markets operate in quite different ways**, not least because of far higher concentration in promotions.

3.15 *First*, as the CC recognises (as did the OFT in its 2005 market study), it is market-wide practice in the UK for tickets to be allocated to multiple ticket agents to maximise ticket sales even for contracts that, unlike here, are purportedly “exclusive”. For example, this was precisely the case in the UK throughout the long-term supply agreement between LN and TM that expired at the end of 2009. In contrast, general market practice in Sweden and the Netherlands is for tickets to be sold off a single ticketing system.

3.16 As LN has explained previously, even if CTS’s “simultaneous access” platform is used with success outside the UK, it would be resisted by other industry participants here. It is not compatible with the long-established structure of the UK supply chain, with a wide spread of venues, all having their own ticketing arrangements dictating where the bulk of tickets are sold.

3.17 *Second*, in relation to the split of LN-controlled tickets among sales channels, there are two key differences under the LOI between the UK on the one hand and Sweden and the Netherlands on the other:

- (a) by way of a carve-out to the exclusivity provision in the UK (at section 5.3, LOI), section 5.8 states that LN shall be free to determine which sales channels to use in the UK: there is no equivalent provision in relation to Sweden or the Netherlands, where the default exclusivity accordingly applies;
- (b) in relation to the volume of LN-controlled tickets required to be allocated to the CTS website: the minimum obligation in the UK is 10% of sellable ticket inventory to [~~£~~] of LN events (section 5.8, LOI), whereas in the Netherlands the figure is [~~£~~] (section 4.8, LOI).

3.18 *Third*, CTS attempts<sup>12</sup> to dismiss the relevance of the distinction drawn by the CC between LN’s financial incentive to prefer its own website over CTS’s in the UK

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<sup>12</sup> NoA, at para 79.

and its corresponding incentives in Sweden and the Netherlands. Whilst such a distinction may, as CTS says, be irrelevant to the number of tickets that were likely to be allocated to TM in the UK counterfactual, it *is* relevant to other aspects of the counterfactual analysis, including the likely split of ticket allocations between the LN and CTS websites. Therefore, the CC was entirely justified in citing this distinction as not to draw any inferences from experience in Sweden and the Netherlands.

3.19 *Fourth*, CTS attempts<sup>13</sup> to dismiss the relevance of the differences in LN's market share of promotions and venues by country. This has been CTS's fundamental problem, incidentally, in appreciating who controls tickets at particular venues. Whilst such differences may, as CTS says, be irrelevant to LN's incentive to sell as many tickets as possible, they *are* clearly relevant to other aspects of the counterfactual assessment, including, for example, the volume/market share of tickets available to CTS under the LOI and, accordingly, the extent to which successful entry is dependent on winning additional business from clients other than LN. Again, therefore, the CC was entirely justified in citing these market share differences as a reason not to draw any inferences from experience in Sweden and the Netherlands.

***CTS allegation 2(c): CTS's UK entry allegedly was not "focused" on the provision to LN of a managed ticketing service***

3.20 As the CC noted in the Further PFs, the evidence submitted by LN in its response to the October PFs demonstrated the clear intention that CTS would **not** become a significant *retailer* of LN-controlled tickets. CTS's claimed subjective motivation is both irrelevant and contrary to the contract it signed:

- (a) pursuant to LN's corporate objectives to focus on its own website CTS' primary function under the LOI was to provide white label services in a "back-end" capacity to the LN website "shop-front";
- (b) the requirement under the LOI to allocate a small volume of LN-controlled tickets ([X] of [X]) to the CTS website was no more than a contractual sweetener.

3.21 Moreover, LN's evidence clearly showed that there was no expectation that it would provide any assistance to CTS's UK retail activities more generally (i.e. including for other potential clients):

- (a) CTS's rights to use customer data generated through sales of LN-controlled tickets were deliberately very limited; and
- (b) CTS's website would not receive any marketing or other support from LN, either under the LOI or otherwise.

3.22 Properly interpreted, none of the evidence contained in CTS' redacted NoA is inconsistent with the facts above. In particular:

- (a) even if CTS' stated ultimate objective in the UK was to become "one of the largest ticketing providers (supplying both managed ticketing services and

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<sup>13</sup> NoA, at para 80.

ticket retailing)”<sup>14</sup>, it does **not** automatically follow that both of those activities were central to the LOI itself or CTS’s perception of it. Rather, CTS’s ultimate objective could be achieved by using the primary provision of white label services under the LOI as a vehicle to: (i) establish an initial presence in the UK; and (ii) finance the growth of a retail business *with other UK clients*; and

- (b) the CC may find it rather troubling that the CTS press release of 14 January 2008 did **not** in fact say what the NoA claims it did<sup>15</sup>. Although the press release does refer to “barriers to market entry in England” being “particularly great”, it does **not** say - or even imply - anywhere that CTS’s decision to contract with LN was “in order to obtain to minimum volumes of high-profile artist content”, rather than merely revenues from a managed ticketing service.

***CTS allegation 2(d): the CC allegedly was wrong to reject CTS’s volume forecasts on the ground of unrealistically high and unreliable price expectations***

3.23 LN is not in a position to comment directly on the details of the CTS’s volume forecasts or the CC’s analysis of them, as they have not been disclosed to LN. Nevertheless, LN is able to make the following general comments.

3.24 Contrary to CTS’s assertion in the NOA<sup>16</sup>, it is clear that expectations of prices and volumes are inextricably linked, as both are dependent upon the perceived level of competition in the market. CTS’s unrealistically high expectations on price (which are corroborated by LN’s own experience of CTS’s pricing) demonstrate that it underestimated the extent of competition in the UK ticketing market, and this undermines the credibility of its volume forecasts.

3.25 Moreover, CTS’s claim<sup>17</sup> that it would simply be able to lower its prices in order to achieve an arbitrary volume target cannot be correct. In seeking to maximise profits from its entry into the UK, CTS would have to accept a trade-off between maintaining prices (and therefore profit margins) at lower than forecast ticket volumes versus lowering prices (and therefore profit margins) in order to maintain higher volumes. In light of the CC’s Provisional Findings that CTS’ price forecasts were over-optimistic, one would therefore expect CTS to have to accept both lower prices and lower ticket volumes to some degree.

3.26 In any event, as the CC recognised in its October PFs, CTS’s volume forecasts were also flawed in other respects, most notably in overestimating the number of LN-controlled tickets in 2010 (by applying a market-wide growth rate that was at odds with LN’s actual output).

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<sup>14</sup> NoA, at para 82(c)

<sup>15</sup> NoA, at para 82(d)(ii)

<sup>16</sup> NoA, at para 87.

<sup>17</sup> NoA, at para 88.

## CTS's allegations: the effect of the merger

### ***CTS allegation 3(a): the CC allegedly was wrong to find that access to tickets was not a barrier to large-scale barrier to entry and/or expansion***

3.27 CTS's assertion relies largely on a narrow textual analysis of the CC's findings, but in any event is substantively irrelevant when applied to the facts of this case.

3.28 Regardless of whether one characterises the issue in question as one of access to tickets for a *wide range* of events on the one hand, or *substantial ticket allocations* on the other, it is clear that the merger has no effect on CTS's entry into the retail market on either basis.

3.29 *First*, the LOI guarantees that allocations of LN-controlled tickets to the CTS website are spread across a wide range of events, namely "at least [REDACTED]" of LN shows (section 5.8, LOI). In considering the ways in which LN might seek to minimise the allocation of tickets to CTS post-merger, there was no suggestion that LN would be able to reduce that [REDACTED] figure, but rather that it might seek to meet that requirement from the smallest shows (which, for the reasons explained in LN's previous submissions, is not the case).

3.30 In any event, as noted previously by LN during this inquiry, LN's modest share of promotions and venues in the UK, coupled with the allocational nature of ticketing in the UK market, means that CTS is not dependent on LN to secure a wide range of tickets. It has ample opportunity to win a wide range of inventory from other clients, and its success or otherwise in doing so is entirely in its own hands. **Annex 5** shows that CTS has won UK retail ticket allocations from a number of other clients, within and outside the live music sector.

3.31 *Secondly*, the CC's Further PFs establish that the CTS website would **not** have received "substantial" allocations of LN-controlled tickets for retail sale in the counterfactual. Therefore, even if access to substantial ticket volumes were considered a barrier to large-scale entry or expansion, this would be irrelevant to an assessment of the merger's effect.

### ***CTS allegation 4: the CC allegedly failed to consider the likelihood and consequences of breach by LN of its obligations under the LOI.***

3.32 As stated throughout the inquiry, and corroborated by LN's ongoing conduct, LN has fully complied with its commitments under the LOI in the UK (and any other jurisdictions), and intends to continue to comply so long as the LOI remains in effect. Even if, contrary to the facts found in the Further PF's, the LOI were a key driver for CTS's competitive impact in the UK, there is absolutely no evidence to suggest that LN would breach the LOI while it remains in effect, let alone that any such breach would negatively affect competition.

3.33 Indeed, quite the reverse. LN *proceeded* with the implementation of the LOI in the UK on 1 February, [REDACTED].

3.34 That said, [REDACTED].

### 3.35 [✂]

3.36 Finally, even if (for argument's sake) CTS were to withdraw its UK operations as a result of a contractual breach by LN, there is no evidence that such a withdrawal would result in an SLC in the UK ticketing retail market on the basis of the loss of competitive constraint from CTS compared to the position it would have achieved in the counterfactual. In its Provisional Findings the CC has (quite reasonably) not reached a view on the likely success of CTS in the counterfactual, and therefore has not reached a view on whether, hypothetically, the exit of CTS from the market would be of sufficient impact to result in an SLC. However, the available evidence suggests that, were the CC to consider this issue, it could not be confident that CTS entry would have a substantial impact, since:

- (a) ticketing is competitive;
- (b) the CC found that CTS's own volume forecasts of its retail growth were economically unreliable (see above); and
- (c) there is no claim or evidence that CTS's absence from the market would cause any ticketing agent to gain or enhance market power, whether unilaterally or via tacit coordination, as required for an SLC finding.

### **CTS's allegations: the application of the SLC test**

#### ***CTS allegation 4(a): the CC allegedly underestimated the horizontal effect of the merger***

3.37 For the reasons below, LN considers that the CC was mistaken in finding that the merger involves *any* horizontal relationship between the merging parties at all. It follows that CTS's arguments are even less sustainable.

3.38 *First*, as explained in LN's and TM's previous submissions, competition in the UK ticketing market takes place primarily, if not exclusively, at the upstream level: ticket agents compete for contracts with promoters and venues. However, there is no evidence that LN would compete with TM for ticketing contracts from other clients in the counterfactual, and in fact the LOI expressly forbids LN from providing such third party ticketing services.

3.39 *Second*, whilst competition at the upstream level includes competing on all features of ticket sales that are likely to appeal to consumers, ticket agents do **not** compete with each other for ticket sales to consumers themselves. This view is supported by the CC's own consumer survey, which showed clearly that consumers do not tend to "shop around" among different agents when purchasing tickets.

3.40 The horizontal effect posited by the CC in the Further PFs, albeit **insufficient to cause it any concerns**, appears to be based on the following (mistaken) reasoning:

- (a) in the counterfactual, but not post-merger, LN would have a financial incentive to steal consumers (and hence booking fees) from TM in relation to LN-controlled tickets;

- (b) LN would therefore try harder in the counterfactual (than post-merger) to sell more LN-controlled tickets; and
- (c) the greater effort made by LN would result in “more consumers being reached and more tickets being sold” in the counterfactual (than post-merger).

3.41 That reasoning is mistaken, since it relies on an assumption that, following the merger, tickets for a given LN event remain unsold even though LN could sell them if it tried harder. However, as recognised by the CC elsewhere in the Further PFs (see above), LN’s primary financial incentive is to maximise ticket sales (and reduce the risk of promotions losses) via whatever sales channel is necessary. That imperative applies regardless of the merger, and overrides any incentive to win incremental booking fees. Accordingly, there is no prospect that the total number of LN-controlled tickets sold in the counterfactual would have been higher than after the merger.

3.42 Even if, for example for a sell-out event, a ticket sold by TM post-merger may, in the counterfactual, have been sold by LN instead (because of its incentive to retain the booking fee for itself), the CC recognises that the “benefit” from that sale by LN would have accrued entirely to LN (in the form of the booking fee), and not to the consumer (who obtains the ticket regardless).

***CTS allegation 4(b): the CC allegedly failed to consider the cumulative effect of horizontal and vertical effects***

3.43 Due to the merger’s lack of horizontal effects (see above), any consideration of the combined horizontal and vertical effects of the merger would add nothing to the overall competitive assessment.

3.44 The CC having dismissed any vertical concerns in the Further PFs, it follows that the merger cannot give rise to an SLC.

***CTS allegation 4(d): the CC allegedly failed to take account of the impact of the merger on innovation rivalry***

3.45 CTS argues that the CC must separately consider whether the merger might be expected to lead to an SLC through reduced levels of innovation. This argument is flawed.

3.46 Any post-merger detriment to consumers as a result of lost innovation rivalry from CTS (compared to the counterfactual) could only arise if the merger was likely significantly to affect CTS’s overall prospects of success in the UK ticketing market. Having found that the merger would have no such effect, it was not necessary for the CC to consider this issue any further.