

The Inquiry Director,
Live Nation/Ticketmaster merger inquiry,
Competition Commission,
Victoria House,
Southampton Row,
London, WC1B 4AD
By E-mail

Department
Direct Tel: 020 7770 7645
Direct Fax: 020 7770 7666
Email: john.holmes@which.co.uk

5 March 2010

Dear Sir,

Merger review - Live Nation / Ticketmaster

Which? welcomes the opportunity to set out our views on the Competition Commission's (CC) further provisional findings report in respect of the Live Nation and Ticketmaster merger (the parties). This response is not confidential.

As you know, the merger regime exists to protect consumer welfare, indirectly by ensuring effective competition on a market is not undermined. Under the current circumstances, where many consumers are concerned over the efficacy and fairness of markets, it is especially important that the competition authorities are seen to exercise a comprehensive and balanced review of proposed mergers. Which? was surprised and disappointed with the CC's reversal of its original decision prohibiting this merger and the lack of opportunity to respond. As a result, we trust the CC will consider the evidence before it afresh and adequately explain the reasons for its final decision.

We stand by our initial view, set out to the CC in our letter of 23 June 2009, that this merger will detrimentally affect consumers by limiting choice and worsening terms of service. We hold this view irrespective of an agreement between Live Nation and Eventim: we do not consider a commercial agreement to be as binding or influential on the behaviour and incentives of firms as a merger.

For the avoidance of doubt, Which? considers the CC's decision of 22 December 2009 not to prohibit, or impose any compensatory remedy, was wrong. We consider prohibition of the merger to be the only effective and proportionate remedy. We have set out our views in respect of the further provisional findings below.

Existing consumer detriment from primary retailing of event tickets

Which? does not consider primary retailing of event tickets, in particular for popular live music events, to be a market that is working well for consumers. We note that the CC agrees with this view (paragraph 5.52 of the further provisional findings). A merger between the two dominant firms providing music promotion and retail ticketing distribution will exacerbate consumer detriment by further eroding effective competition.

At this stage of its enquiry, the CC should be well acquainted with the importance of live music events to consumers and their experience of using ticket agents. Live music events are an important market for consumers, amounting to around £1.9 billion revenue per year.¹

Ticketing agents provide an intermediary service. Consumers choose ‘tickets’, not ticket agents; the service of ‘ticket agency’ is necessary to enable consumers to purchase the product they want: a night out at a concert. This leaves ticket agents in a strong position to exploit customers’ ‘inattention’, and able to exploit ‘hidden charging’ business practices.

In summary, our concerns with the retail ticketing market are:

- > Lack of effective choice and innovation - the focus is online ticket sales, where Ticketmaster appears to hold a dominant position in this key distribution channel, there is little use or access to alternative (e.g. box-office) distribution channels.
- > Price transparency and cost-reflectivity - consumers face a number of additional charges when purchasing tickets, often notified to the consumer late in the booking process, which do not reflect any obvious value-added or cost savings for consumers, for example where print-your-own tickets result in similar levels of fees to those posted directly to the consumer.
- > Quality of service delivery - reflecting the lack of competitive challenge, ticketing sites do not reflect the level of service consumers should expect from an e-commerce distribution channel.
- > Terms and conditions - consumers are often disadvantaged by ticket agents, where terms and conditions are not necessarily standardised and are often unfairly biased against the consumers, for example failure to refund if the concert is cancelled. We note that, at present, Ticketmaster does refund

¹ *Music Concerts and Festivals - UK, August 2008, Mintel.*

cancelled ticket prices but the incentive to do this may change once it also becomes an operator of venues / promoter.

A specific illustration of existing problems in the market for event tickets is the use of additional fees. These practices are similar to those that the Office of Fair Trading is considering in its current market study.² These charges have been excluded from headline prices, they are therefore insulated to a great extent from the process of competition. The charges are unavoidable where consumers must complete their transaction online. Other methods of avoiding charges may not be practicably cost-effective (e.g. visiting the box office directly when the consumer lives a significant distance from the venue). The level of the charges in some cases exceeds the amount that consumers' may reasonably expect, for example a 'postal' fee even though tickets are delivered by e-mail and must be printed off by the customer themselves.³

The annex at the end of this letter provides two specific examples of additional charges. Charges are 16 per cent higher on average than the face value price of two tickets for the Prodigy but with almost no variation in the charge between agents and, for the theatre show Legally Blond, surcharges are 20 per cent higher on average than ticket face values but with a significant variation in the level of charges between agents.⁴

Effects of the merger and the CC's analysis

As we noted in our original submissions to the CC, the combination of the dominant ticketing agent and music promoter will significantly distort the incentives of the merged firm to further restrict competition and directly worsen outcomes for consumers. This will further worsen consumer welfare in a market that is not currently working well for consumers.

Market definition

Which? broadly agrees with the CC's assessment of market definition.

Market entry and market power

Which? agrees with the CC's findings that market entry or expansion into the retailing of primary events tickets is very difficult. The absence of any historical

² 'Advertising of prices' market study, launched 15 October 2009.

³ See 'Raising the Curtain on the costs of a show' June 2008, Which? magazine.

⁴ For Legally Blond, the average surcharge is £16.50, but variation around this mean is 64 per cent with a standard deviation of £10.53.

entry on a large scale or expansion by an existing smaller incumbent supports this view, with Ticketmaster benefitting from a long period of high and stable market share. We agree with the CC's conclusions in paragraph 5.52 of its further provisional findings, although the CC is overly cautious, in describing the market as 'less than fully effective'.

The scale of Ticketmaster's position and existence of substantial entry barriers indicates Ticketmaster holds significant market power. The CC evidence indisputably demonstrates Ticketmaster's dominance in the supply of event tickets: 75 per cent unprompted awareness of Ticketmaster, nearly 60 per cent greater than its current nearest rival See tickets, with over 50 per cent of consumers citing Ticketmaster as its preferred supplier.⁵

We consider the barriers to entry and expansion, from the perspective of consumers, to be:

- > Establishing a reputable and trusted brand, this is especially important due to the prevalence of online sales and risks of fraudulent or scam ticketing;
- > Access to a sufficient volume of tickets, consumers will be unlikely to make repeat visits to ticketing agents that frequently run out of tickets and must be confident that their preferred ticketing agent will stock tickets for key events; and
- > A prompt and reliable service to deliver tickets securely once purchased.

As noted above, consumers choose 'tickets', not ticket agents; the service of 'ticket agency' is necessary to enable consumers to purchase the product they want. The choice of ticket agent is driven by the choice of specific tickets available. As a result, ticket agents are intermediaries, possessing the usual characteristics associated with a two-sided market. However, brand awareness of the ticketing agents is important to consumers. This is because brand acts as a proxy for the legitimacy and availability of tickets, especially those sourced via internet sales. In this case, Ticketmaster has a significant commercial advantage given its exceptionally high unprompted brand recognition and its reliable stock of tickets.

We consider promoters will similarly be focussed upon maximising sales and will select agents on the basis of their ability to distribute tickets to consumers.

⁵ Paragraphs 32 - 33, Appendix E 'Retailing of Tickets' to the Competition Commission's provisional findings report of 12 February 2010.

As noted above, successful ticket agents must have tickets available and be reliable and prompt in supplying its tickets. On this basis, small scale niche entry may be feasible but, to attract both promoters and consumers in large numbers, the agent must secure the core product - tickets -to meet consumer demand. We consider this view to be supported by the historical evidence outlined by the CC of weak entry and expansion, which has been unable to challenge Ticketmaster's dominant position for primary retailing of event tickets. Any other findings are contrary to reality of the historic market outcomes. As a result although the CC's findings in paragraph 5.44 are likely correct, they fail to address the problem of effective market expansion sufficient to challenge the dominant ticket agency.

Counterfactual and merger analysis

We are concerned that the further provisional findings report is not sufficiently clear in explaining the rationale behind the CC's choice of counterfactual. The evidence presented by the CC demonstrates well entrenched barriers to expansion, and the significant evidence that no small scale entrant has yet successfully grown their business to challenge Ticketmaster. The original reasoning, in the CC's October 2009 report, clearly identified specific barriers to expansion, in particular through difficulties accessing a sufficient stock of tickets (paragraph 5.39 of October 2009 report). We do not understand the reason for the omission of this reasoning in the February further provisional findings.

We appreciate that, unusually in this case, the counterfactual is especially challenging as, based on the CC's analysis, a sizeable new entrant (Eventim) was likely to enter the market as a primary retailer of event tickets prior to the merger. In the event of the merger, the prospects of successful entry will be much reduced, given the obvious incentives on the merged parties to foreclose the relevant markets.

For consumers, the harmful effects of the merger are a certainty irrespective of entry, namely, the hardening of barriers to entry and expansion while creating further opportunity for a direct worsening in product quality and pricing. We consider these directly attributable to the merger. The merger should therefore be considered against the prospects of success for an entrant to challenge the existing dominant positions of market incumbents; and whether the merger has a direct or indirect impact on the conditions necessary for successful entry and expansion. This should include a consideration of whether the prospects for a successful entrant (that challenges incumbents) are especially unique given the current facts of the case and whether, with the merger, these conditions may not be replicable in the foreseeable future.

We are concerned that the CC should recognise that the merger review process will have only one opportunity to assess the effects of this merger on consumer welfare. In this case, the risk of consumer detriment is very great if a merger that is harmful to competition is allowed to proceed without appropriate remedy. Which? believes that, given the purpose of the merger regime, the margin of error should fall in favour of protecting competition rather than firms.

As noted in our letter of 19 October 2009, Which? does not consider this merger results in any relevant consumer benefit and, as the CC note, any efficiency benefits can likely be achieved through a less harmful method than a merger.

Please contact me on the above number if I can be of any further help.

Yours faithfully,

John D Holmes
Principal Economist
Which?

Annex - Illustrative surcharges for events tickets

Illustration of charges for one music event - 2 tickets purchased for the Prodigy at Milton Keynes Bowl

Industry	Firms	Face value price for two tickets	Name of fee	Amount (£)	Unit charged	Total ticket cost after fees	Notes
Events tickets	Ticket Master	£85	Service charge	£4.25	Per ticket	£98.75	
			Order processing fee	£5.25	Per transaction		
	See Tickets	£85	Booking fee	£4.25	Per ticket	£98.30	
			Transaction fee	£4.80			
	Gigantic	£85	Booking fee	£4.25	Per ticket	£98.75	Royal Mail Special Delivery
			Transaction fee	£5.25	Per transaction		
	Ticketline	£85	Booking fee	£4.25	Per ticket	£98.45	
			Secure Delivery	£4.95	Per transaction		
	Stargreen	£85	Booking fee	£4.25	Per ticket	£99.25	
			Special delivery	£5.75	Per transaction		

Legally Blonde - The Musical, 2 tickets purchased (stall tickets where possible)

Industry	Firms	Face value price for two tickets	Name of fee	Amount (£)	Unit charged	Total ticket cost after fees	Notes
	Ticketmaster	£80	Order processing fee	£3	Per transaction	£83	
	See Tickets	£80	Booking fee	£4	Per ticket	£89.60	Packing and delivering tickets. Can also cover producing tickets
			Transaction fee	£1.60	Per transaction		
	Stargreen	£80	Booking fee	£10	Per ticket	£100	
	Theatre Tickets Direct	£110	No name	£14.50	Per ticket	£141.50	
			Delivery	£2.50	Per transaction		
	Ticket Switch	£58	Booking fee	£4.70	Per ticket	£68.90	
			Delivery	£1.50	Per transaction		
	West End Theatre Bookings	£80	Booking fee and VAT	£11	Per ticket	£104	
			Surcharge	£2	Per transaction		

Mystery shopping carried out on 11 November 2009, using firms' online booking process. The above illustration uses two separate events - one music and one theatre. It demonstrates the lack of transparency about added fees, how fees differ wildly from event to event - by type, artist/show. Even postal charges are different. Screen grabs show the various 'click throughs' and stages consumers have to go through to get the final price they pay.