

## Live Nation/Ticketmaster Inquiry

### Ticketmaster's responses to Competition Commission's Remedies Hearing Follow Up Questions of 4 November 2009 to Ticketmaster

10 November 2009

**Question 1.** *What are the relevant customer benefits in the UK which arise from the merger? If you believe that there are relevant customer benefits, please provide clear evidence of them, including a quantification if possible? Please bear in mind that the benefits must be specific to the merger (i.e. would not be delivered by either TM or LN independently), and must be clearly passed to customers.*

Please refer to section 2 of the parties' joint submission of today's date.

**Question 2.** *What are the costs of the different remedy options to TM, LN or third parties (including both financial costs and staff time, etc)?*

#### **Costs of Divesting Ticketmaster UK Ltd.**

The costs involved, as described below, would be significant and divestiture would, depending on the nature of it, deprive the merger of some, or all, of the benefits and efficiencies that are projected to arise from the combination. Ticketmaster submits that there is no basis to impose a drastic structural remedy of divestiture when the behavioural remedy the parties have presented to the Commission is perfectly tailored to address and resolve the specific SLC that the Commission has provisionally identified. Nevertheless, Ticketmaster submits the following information in response to the Commission's request.

#### **1. Direct costs**

##### **1.1 Investment Banking Fees.**

1.1.1 For a sale of this size, Ticketmaster would likely engage an investment banking firm to conduct a sale process. Investment banks that conduct M&A advisory services typically charge for their services on the basis of a success fee upon completion of the transaction. For transactions of this size, Ticketmaster would expect to pay an investment banking firm approximately [X] of the sale price of Ticketmaster UK Ltd.

1.1.2 Ticketmaster UK's EBITDA for 2008 was [X] and acquisition multiples in the ticketing industry are typically around [X] times EBITDA. Using that as a benchmark, Ticketmaster would expect the sale price of Ticketmaster UK to be approximately [X]. Using the assumptions set forth above, that would entail investment banking fees to us of approximately [X] for the sale of the UK business.

## **1.2 Legal Fees.**

1.2.1 Ticketmaster estimates that it would spend about [X] on outside legal fees to complete the sale of Ticketmaster UK Ltd. Ticketmaster believes that the transaction would be legally complex. For example, in addition to the share purchase and sale agreement, there would be a considerable amount of work on relatively complicated transition services agreements and related ancillary work. Ticketmaster believes that this would consist of about [X] for transaction-related expenses, and [X] additional [X] work to unwind Ticketmaster's current corporate structure. For example, Ticketmaster's operating entities in the Netherlands and Norway are subsidiaries of Ticketmaster UK. That would have to change. Ticketmaster would also have to unwind internal corporate debt.

## **1.3 Real Property.**

1.3.1 Ticketmaster UK Ltd. conducts its operations from four locations in the UK. The offices in Manchester, Glasgow and Newcastle-under-Lyme support just the UK operations, and therefore would not need to be re-configured or altered as part of a sale. However, Ticketmaster would [X]

1.3.2 Ticketmaster UK's main office in Leicester Square would require some additional work, however. That location houses not only Ticketmaster UK staff, but also the international headquarters for the Ticketmaster companies outside of North America. In order to effect a sale of Ticketmaster UK on a stand-alone basis, offices would need to be re-configured to a degree, and Ticketmaster would need to enter into negotiations with the landlord to amend the leases such that Ticketmaster UK Ltd. and Ticketmaster Entertainment, Inc. are each individually responsible for their own offices. [X]

## **1.4 Call Centre Costs.**

1.4.1 Additional direct costs would also involve making alternative arrangements for the UK and Irish call centre in Manchester, currently shared by Ticketmaster in the UK and in Ireland. If Ticketmaster in the UK were to be divested, the following options would have to be considered. (A) The Irish business could also be sold; (B) a new call centre and fulfilment centre for Ireland could be opened; or (C) a complicated deal might be possible under which the divested Ticketmaster in the UK would still have to provide those services to Ticketmaster in Ireland (obviously these options would involve extra cost, but Ticketmaster has not yet been able to estimate the realistic cost as yet). This is one more complication, cost and time consuming consequence of a divestment of Ticketmaster in the UK.

## **2. Indirect costs**

### **2.1 London Olympics and Paralympics 2012 Ticketing Contract.**

2.1.1 [X]

2.1.2 [X]

2.1.3 [X]

### **2.2 Corporate Debt.**

2.2.1 Ticketmaster currently has two significant outstanding credit facilities. One is a senior secured credit facility with a syndicate of private banks, whilst the other consists of a class of unsecured publicly-traded bonds. Under the senior secured credit facility, the sale of Ticketmaster UK would require the consent of the lenders prior to the completion of the transaction. There can be no assurances that the lenders would consent to this transaction. In the event that the lenders did consent, Ticketmaster believes that in the current debt capital markets environment, the lenders would require that the proceeds of the sale be used to immediately re-pay debt, thus denying the company the use of that capital going forward.  
[X]

### **2.3 Technology.**

2.3.1 The key operational hurdle in divesting all of Ticketmaster UK Ltd. would be technology. Ticketmaster UK Ltd. operates on Ticketmaster's "host" system, which Ticketmaster uses in most of the territories in which it operates around the world. In order to effect the sale of Ticketmaster UK Ltd., there would be no practical way in which to separate the technology. Accordingly, Ticketmaster UK Ltd. would have to enter into a very complicated license agreement with Ticketmaster Entertainment, Inc. to meet its technology needs. This process would require detailed negotiations of the service level agreements that Ticketmaster UK Ltd. would need in order to provide its clients with the technology they need. In addition, Ticketmaster UK Ltd. would need to negotiate processes for future development needs.

2.3.2 Ticketmaster believes that it is entirely possible to operate a ticketing business on the basis of a licensed platform. Whilst Ticketmaster has not traditionally licensed its system to third parties, under these circumstances it would anticipate licensing the Ticketmaster system to a divested Ticketmaster UK. Therefore, the license of the system to a third party (i.e., a divested Ticketmaster UK Ltd.) would require new operational challenges. A logical licence fee (based on market knowledge) would be [X] per ticket sold on the system. Assuming that Ticketmaster's sales fall to [X] tickets per annum (following lost business from [X]), this would

equate to [X] per annum (the figure used for the total costs calculation below). However, if the ticket sales were higher, so the licence fee would rise (for example, based on 2008 sales of [X] million tickets, the licence fee would be [X]).

2.3.3 In sum, Ticketmaster believes that costs of a divestiture of Ticketmaster UK Ltd. could be quite substantial, and may very well total [X]<sup>1</sup> (with additional costs over time, given that the incremental cost of the debt will continue to accrue each year at an annual rate of [X] and the licence fees would continue to accrue). In addition, such a divestiture would result in numerous operational challenges in the divestiture process. [X]

### **3. Costs of Behavioural Remedy**

- 3.1 Ticketmaster has not seen the CTS/LN contract and therefore has a limited ability to quantify the costs of the behavioural remedy. From the CC's provisional findings Ticketmaster understands that CTS, LN and indeed the CC appear to have different interpretations of the CTS/LN contract. The main cost to Ticketmaster and the merged business of the behavioural remedy would be any difference between what CTS would have been given under the CTS/LN contract and what would have been on LN's or Ticketmaster's website and what inventory must be sold where under the remedy. If the remedy mirrors the correct counterfactual situation accurately then these costs would go to approximately zero.
- 3.2 There would also be costs to the merged company in terms of whatever auditing and/or arbitration arrangements are agreed as part of the monitoring and determination of the behavioural remedy. Ticketmaster expects that these costs would not be significant.
- 3.3 The cost of the behavioural remedy to third parties (and to a certain extent to the Ticketmaster and the merged business) might arise if there are any tickets guaranteed to CTS under the remedy, which would under the contract have been available to third parties. Such unintended consequences may be avoided if the remedy does not distort the correct counterfactual under the CTS/LN contract. If too many tickets are allocated to CTS (both their website and system), meaning more than CTS would ever have received, this could cause costs to third parties, LN, Ticketmaster and the merged business going forward and distort the market to the detriment of third parties other than CTS. The magnitude and competitive effect of those costs is difficult to predict, but tellingly the Commission's own provisional findings found that the merger was unlikely to result in any adverse effects on such third party agents.

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<sup>1</sup> This figure includes the license fee of [X] for one year, which is based on [X] tickets in a year at a [X] per ticket licence fee. This would therefore mean further costs going forward over a period of a number of years and if ticket sales were higher the figure would also rise.

- 3.4 An alternative unintended consequence could be that tickets which could not be effectively marked-back might remain unsold, which would be detrimental to artists and consumers alike.

***Question 3. What structural remedy would be most suitable to complement a behavioural remedy, to move LN's incentives away from frustrating its contract with CTS?***

Please refer to section 3 of the parties' joint submission of today's date.

***Question 4. What issues / factors need to be considered to ensure that CTS / another new entrant is given sufficient volume and range of tickets, and for a sufficient period to be able to sell them?***

- 4.1 Ticketmaster has had the opportunity to review the behavioural remedy proposed by Live Nation (including LN's responses of today's date to the Commission's follow-up questions following LN's Remedies Hearing). Based on its vast experience as a ticketing company, Ticketmaster finds that the behavioural remedy being proposed would be more than adequate to provide CTS with a sufficient volume and range of tickets to be positioned as a successful and credible ticketing agent in the UK. The ticketing market is dynamic and there are constant real-time adjustments to allocations among different agents to best ensure the maximum number of tickets are sold. There is no predetermined amount of time that an agent has, or should have, any block of tickets for sale. The fluid, competitive allocational market should not be affected. The bottom line is that the remedy contemplates a minimum number of tickets allocated per year and provides CTS with adequate time to be able to sell them.
- 4.2 Ticketmaster previously put to the Commission two different models for potential entry into the UK ticketing market. Though those models were completed for a different purpose, they do provide insight into Ticketmaster's views on the behavioural remedy currently being proposed. One of Ticketmaster's models presented the case of a hypothetical new entrant which came to the market and began retailing tickets simply on an allocational basis. The second model took the same approach, but also assumed that the hypothetical new entrant used (by way of a license, in that case) a venue-based system that enabled the new entrant to take on venues as clients. In each case, Ticketmaster assumed that a hypothetical new entrant could achieve a ticket sales volume of [X] tickets in the first year of operation. Also in each case, Ticketmaster's models showed that the hypothetical new entrant could use that volume of tickets as a base from which (on the basis of the Commission's analysis) it would be given the opportunity to grow to a third largest ticket agent in the market in some period of time, in each case retailing in excess of [X] tickets within [X].

- 4.3 In these models, Ticketmaster assumed that the new entrant would achieve the ticket volume of [X] simply on an allocational basis – that is, by getting small batches of tickets from many different sources. Any new entrant that is successful in selling those tickets would be able to gain additional tickets to sell. Based on Live Nation’s latest estimate that it would provide CTS an allocation of [X] of its controlled tickets to the CTS website Ticketmaster understands from the Provisional Findings that this would equate to about [X] tickets per year for allocation to the CTS website. Achieving a ticket volume of [X] from one client would make a new entrant extremely well placed to far exceed the ticket volume of [X] Ticketmaster's models had assumed possible in the first year (indeed, TM understands that CTS has already actively been seeking other UK ticketing clients and pitching for further inventory). Therefore, Ticketmaster believes that [X] tickets is more than a sufficient amount of tickets to provide a springboard and opportunity for CTS's potential future UK growth. The rate and extent of such growth would depend largely on how attractive CTS's offering was to other UK ticketing clients and how aggressively it competed for new business.
- 4.4 Ticketmaster also notes that the [X] retail tickets (by definition, on the CTS system) are supplemented by a further significant number of systems tickets (allocated to LN's website) which will also support and subsidise CTS entry into the UK. Those systems tickets will bring additional revenue and will allow (on the basis of the Commission's analysis) CTS to market itself as a major UK ticket agent with over [X] tickets on its system from day one. Few, if any, new entrants in any market are able to start from such a robust base of tickets.
- 4.5 In addition, Ticketmaster also believes that the behavioural remedy being proposed provides ample protection on some of the other key issues which the Commission has identified as being of concern to it, such as receiving a good range of tickets and giving CTS adequate time to sell them. In particular, the remedy proposed by Live Nation provides CTS access to all Live Nation events with capacity in excess of [X]. That ensures that CTS would receive an allocation for *all* of the best quality Live Nation events most sought after by consumers. This remedy also assures that CTS will receive its allocation at the same time that Live Nation receives its allocation. In addition, the remedy would ensure that CTS is given the maximum time in which to sell the tickets. Live Nation has proposed CTS would be the last sales channel to have tickets marked back from it. That provides CTS with assurances that the time available for it to sell its tickets is maximised.
- 4.6 To Ticketmaster's knowledge, no other ticket agent has this type of assurance, and therefore, this should provide CTS (the second largest ticket agent in the world and the largest in Europe) with maximum comfort that it will have an adequate time to sell the tickets.