

RESPONSE TO PROVISIONAL FINDINGS REPORT

1. INTRODUCTION AND SUMMARY

1.1 LN agrees with the CC's provisional finding that the merger will not adversely affect other promoters, venue operators or existing ticket agents in the UK.

1.2 However, LN **completely disagrees with the CC's provisional finding that the merger would lead to an SLC by impeding CTS's entry into the UK ticketing market.** The reasoning underpinning the CC's conclusion is, in several decisive respects, factually, economically and legally flawed. The legal flaws are detailed in the parties' separate paper responding to the Provisional Findings.

1.3 One of the most striking deficiencies in the CC's Provisional Findings report (the *Report*) is the lack of evidence or analysis provided to support findings that are crucial to the SLC allegation, including notably:

- the finding that competition in the UK ticketing market is currently "*less than fully effective*": this issue is addressed at greater length in TM's response to the Report; however, it is particularly clear that the CC has failed to give due consideration to the extent of competition between TM and See; and
- the nature and extent of the effect that CTS's entry could be expected to have on competition absent the merger, including in particular:
 - the alleged propulsion of CTS onto the so-called "virtuous circle" by reason of its relationship with LN;
 - the level of support that CTS could have expected to receive from LN in the counterfactual, above and beyond the terms of the LOI; and
 - the CC's view that CTS will, by 2015, become a third 'large' player (with a market share between 11 – 15%) in UK ticketing.

1.4 On several critical issues, the evidential requirements and rigorous analysis ordinarily required to justify an SLC finding are absent from the Report. Instead, the CC seems simply to have accepted at face value many of CTS's unsubstantiated, highly speculative and, in some cases, simply incorrect assertions (notably, for instance, in relation to the alleged existence of a "virtuous circle").

1.5 Those key assertions by CTS do not appear to have been corroborated by evidence from other third parties, and as far as LN can tell, the CC did not even seek other parties' views on them. This undermines the reliability of CTS's evidence (which was supplied to the CC for the purposes of an inquiry, in whose outcome CTS clearly has a vested interest).

1.6 Nor were any of CTS's claims 'put back' to LN or TM, despite the parties' timely requests for a proper opportunity to comment in advance on any third party evidence on which the CC intended to rely in the Provisional Findings. Nor was any of CTS's evidence made available on the CC's website. The parties consider this to be procedurally irregular. Such a restrictive approach has been highly prejudicial to

the parties' case and, most importantly, has led the CC into error in provisionally finding an SLC.

1.7 Moreover, the CC's decision to withhold all of CTS's evidence from LN and TM prior to publication of the Provisional Findings cannot be justified on grounds of commercial sensitivity – many key elements of that evidence (including the alleged “virtuous circle” effect, among others) were clearly not confidential in nature, as demonstrated by the fact that they were not excised from the published Report.

1.8 This submission does not purport to contain an exhaustive list of the flaws and factual errors in the Report, but rather only those that are material to the CC's provisional SLC finding. Those issues are addressed in two parts in this paper:

- first, this paper deals with the **material flaws in the CC's counterfactual** – where we demonstrate that the Provisional Findings misunderstand the size, scope and importance of the LN contract with CTS; and
- second, the paper deals with **material flaws in the CC's competitive assessment of the merger** – where we show there is no significant prospect that the merger could weaken CTS as a potential competitor, and that there can be no SLC when judged against the correct counterfactual.

These are set out in sections 2 and 3 respectively, below.

2. MATERIAL FLAWS IN THE CC'S COUNTERFACTUAL

2.1 For the many reasons already provided by LN to the CC (as summarised at paras 6.45 – 6.48 of the Report), LN remains firmly of the view that CTS's entry into the primary retailing of live music tickets would **not** materially increase competition in UK ticketing services.

2.2 The analysis carried out by the CC in reaching the opposite view is based on a series of misunderstandings and false assumptions. What is more, the reasoning in the Report relies heavily (and unjustifiably) on a number of assertions put forward by CTS, and accepted seemingly without question or qualification by the CC, and without the parties being given an opportunity to rebut them.

2.3 The key flaws in the CC's counterfactual analysis can be categorised under the following headings:

- first, the Report **overestimates the volume of LN-controlled tickets that would be allocated to the CTS website** in the counterfactual;
- second, **the relationship with LN would not put CTS onto any “virtuous circle”**, as it would not put CTS in a materially more advantageous position than a number of existing ticket agents who are clearly not (and have not been) on a cycle of growth;
- third, the CC's estimates significantly **overstate CTS's future market share**;

- fourth, the Report contains no evidence or analysis on **how the alleged competitive benefits from CTS’s entry might be manifested in concrete terms**; and
- finally, notwithstanding all of the above, the CC fails to take due account of the **fitness of CTS’s system for the needs of the UK market**, and overlooks the significant technical problems encountered in its development.

The Report overestimates LN ticket volumes for the CTS website

2.4 There is **no valid reason for the CC to suppose that LN would have allocated more than the contractually envisaged volume of tickets [x] to the CTS website** in the counterfactual. As explained below, it would never have been in LN’s interest to do so. Indeed, the Report itself acknowledges (at para 6.53) that LN has an incentive to sell as many of its own tickets as possible through its own website.

2.5 However, at para 6.37(b) of the Report, the CC’s counterfactual assumes (based on CTS’s projections) that, of the total sales of LN-controlled tickets:

- [x] would be routed through the LN website; and
- **[x] would be routed through CTS’s website** (equating to around [x] tickets in 2008, based on the CC’s calculations). This is clearly higher than the contractual position under the LOI.

2.6 The CC’s assumptions (on which LN was **not** given an opportunity to comment before the publication of the Report) are incorrect, as demonstrated by the following commercial intentions and realities of the LN-CTS relationship. Rather, the differential between those two channels will be greater, i.e. the LN website will account for more than [x] and, crucially, **the CTS website will account for less than [x]**.

2.7 In assuming that the LN website’s share of total LN-controlled ticket sales would increase under the CTS arrangements to [x] (from the current [x] level), the CC notes (quite rightly) that this would be consistent with the changed financial incentives on LN under the LOI, as against the existing situation with TM.

2.8 However, the CC fails to take into account another key difference between the CTS and TM arrangements, namely the extent to which LN does or does not assist in **marketing the ticket agent’s brand**. As described below, this difference will have the effect of driving an even greater proportion of traffic through the LN website, relative to the CTS website.

2.9 The arrangements entered into with CTS in 2007 formed part of a wider shift in LN’s overall commercial strategy to build its own brand. Since the outset of negotiations on the LOI, it has been clear to both parties that **LN will not be expected, let alone obliged under the LOI, to provide any support for the marketing of the CTS website or brand in the UK**: the LOI contains no “tag-along” marketing rights, and any marketing of the CTS brand and website will be done directly by CTS itself, without LN’s help.

2.10 Significantly, **there is no obligation on LN under the LOI to include CTS’s website address or logo on promotional material** for LN-promoted events. And, as CTS has always known (and accepted), LN has never intended (regardless of the merger) to do so.

2.11 This represented a conscious departure by LN from the nature of its pre-existing preferred supplier relationship with TM [×]. At present, the TM logo and call centre number (albeit not the TM website address) are routinely shown on promotional materials for LN-promoted events.

2.12 From the moment the LOI comes into effect and the references to any third party ticket agent are removed from LN’s promotional materials (thereby leaving LN as the exclusive sales channel shown on advertisements), **this will significantly increase the proportion of traffic through the LN website (i.e. above [×]), at the expense of the CTS website.**

2.13 It is also reasonable to assume that the LN website would be more successful at attracting consumers than CTS’s website. The LN website already markets tickets for LN events (with the consumer clicking through to transact with TM), and the LN brand has a much wider existing presence in the UK live music market. In comparison, at least initially, the actual number of ticket sales achievable by CTS over its website may be impacted by the general public’s limited awareness of the site (in stark contrast to TM’s UK profile).

2.14 Indeed, when considering LN’s incentive to use CTS to achieve incremental ticket sales in the event the merger proceeds, the Report states: “Given CTS’s position as a new entrant, we believed CTS was likely to have limited ability to sell these tickets” (at para 7.47). The asymmetry with which the CC assesses CTS’s intrinsic ability to sell tickets in the merger case as compared to the counterfactual is entirely unjustified.

Relationship with LN would not put CTS onto any “virtuous circle”

Overview

No corroborating evidence for the “chicken and egg” problem or “virtuous circle”

2.15 TM’s response to the Report sets out why the so-called “chicken and egg” problem identified by the CC, and the “virtuous circle” that CTS claims would allow it to overcome that problem, are both entirely unfounded.

2.16 LN notes that **the Report does not contain statements (let alone supporting evidence) from any parties other than CTS** as to the existence of the “chicken and egg” problem or the “virtuous circle” (i.e. network effects).

2.17 Indeed, it appears that the CC did not actively seek others’ views on these issues. It is particularly concerning that **the CC did not test these propositions with other ticket agents** who are already established in the market (including TM), and who therefore may be best placed to comment. The very brief comments from non-ticketing companies, AEG and Metropolis (cited at para 7.25), do not appear to be direct responses to these issues, and have arguably been cited out of context.

2.18 The CC appears to cite only two factual pieces of evidence to support its acceptance of CTS's assertions on these issues. Neither of those pieces of evidence is compelling:

- the simple fact that **many customers access ticket agents' websites directly** does not suggest that a wide range of content attracts consumers as the 'virtuous circle' supposes – that could only be true if customers were using those websites to search for events, which the CC's own consumer survey shows they do not; and
- the observation that **smaller ticket agents have, in recent years, failed to grow larger** is not indicative of a network effect, it is consistent with intense and effective competition from Ticketmaster and See – indeed, in the *Google/DoubleClick* case, the European Commission's view was, quite rightly, that the entry and continued viability of smaller competitors was a key indicator that network effects played a limited role in the market.

2.19 Moreover, in response to the CC's working papers in August, **LN and TM presented substantial evidence and argument on the non-existence of network effects**, none of which seems to have been taken properly into account in the Report. In particular, the parties' submissions showed that:

- a wide range of content is easy for ticket agents to acquire;
- it is easy for successful ticket agents to grow organically by selling well and being allocated more tickets; and
- the vast majority of customers are searching for a specific event when they buy tickets, and do not rely on ticket agents' websites or marketing for information (as confirmed by the CC's own consumer survey).

2.20 Given how critical these issues are to the provisional SLC finding, the above flaws in the CC's reasoning, compounded by the clear evidential gap and failure to address the parties' views, **completely undermine the reliability of the CC's conclusions**.

2.21 The lack of any robust analysis in the Report is even more surprising (and damaging to the validity of the CC's findings) when one considers that the OFT in its 2005 market study specifically examined whether "tipping" was a feature of the UK ticketing market – an equivalent concept to the virtuous circle – and concluded it was not because, amongst other evidence: *"If tipping were taking place it is likely that some of these smaller players would have left the sector, which has not happened"*. The CC's Report presents **no argument or evidence justifying a departure from the OFT's more thorough analysis on this issue**. What is more, it remains the case today that none of the 'smaller' players referred to in the OFT market study has since left the sector.

Even if a virtuous circle exists, the LN relationship would not put CTS onto it

2.22 Even if such a virtuous circle were to exist, **the relationship with LN would not give CTS the supposed springboard onto that virtuous circle**. Thus, the merger will have no bearing on CTS's likely success (or failure) in the UK market.

2.23 The CC should not accept at face value CTS's assertion to the contrary, particularly given the lack of cogent supporting evidence or analysis, and CTS's status as an interested party in the current inquiry. There is nothing in the LOI agreement that declares the intention of either party to create such a circle or to enable CTS to do so. Moreover, there is nothing in the LN anecdotal or documentary record to indicate any such thing.

2.24 And, even assuming CTS privately harboured such aspirations, neither CTS nor, more importantly, the CC appears to have attempted to quantify how many tickets (even in ballpark terms) are required to trigger the virtuous circle, or systematically to articulate what other factors (if any) may contribute towards an agent getting onto it, or not.

2.25 Nonetheless, LN's understanding from the Report is that the CC believes a "virtuous circle" exists because "significant ticket inventory" is required to attract consumers to a website, and those consumers in turn enable the agent to attract further ticket inventory from other promoters and venues.

2.26 The CC appears to imagine *three* possible ways in which LN's ticket inventory might be "significant" in the counterfactual, namely: (i) the volume of tickets available to the CTS website; (ii) the range of events CTS would be able to offer for sale on its website; and (iii) other support LN might offer to develop the success of the brand of CTS website.

2.27 However, none of these factors (whether individually or in combination) is sufficient to substantiate any prediction that the relationship with LN would be sufficient to put CTS onto any virtuous circle, since:

- **the ticket volumes** available to CTS **are not sufficient to trigger the virtuous circle** – whilst the CC fails to identify what it thinks is the minimum number of tickets an agent must sell before a virtuous circle can commence, it is clear that the volume of LN-controlled tickets available to the CTS website is substantially lower than the number of tickets already sold by each of several other UK ticket agents, none of whom appears to have benefitted from a 'virtuous circle' of growth, according to the CC's Report.
- **the range of events** available to CTS under the LN contract **would not provide it any unique advantage** – as demonstrated by the CC's own evidence, ticket agents can and do readily access ticket allocations for a wide range of events in order to offer a breadth of content on their website, so CTS's contract with LN provides it with no special advantage; and
- **LN's incentives and intentions** in the counterfactual **are to support its own brand, not CTS's** – the evidence clearly shows that LN's financial and strategic incentives and intentions under the LOI have always been to build up LN's own brand and website.

2.28 Each of these points is substantiated below. It follows logically that either: i) no virtuous circle exists; or ii) if a virtuous circle does exist, CTS would not be in a position to benefit from it in the counterfactual. In either case, the CC's provisional finding of an SLC cannot be sustained.

Ticket volumes available to CTS are not sufficient to trigger the virtuous circle

2.29 Contrary to CTS's claim that "*a small allocation of tickets was not sufficient to attract consumers*" (at para 5.32 of the Report), it is **highly questionable whether ticket volumes should be considered a trigger for any alleged virtuous circle at all**, given that:

- consumers have no visibility regarding the number of tickets that any individual ticket agent sells for a given event. By visiting an agent's website, consumers can see the *range* of events for which tickets can be purchased (which, as argued below, is irrelevant to consumers' ticket buying behaviour), but not the number; and
- as the CC is aware, any initial ticket allocations for a given event are subject to reallocation depending on rate of sales. An agent that sells its allocation quickly can expect to receive (and sell) further tickets for that event. The implication is that neither the initial allocation nor final sales can be relevant to whether CTS joins a virtuous circle as a result of its contract with LN.

2.30 Nevertheless, given the CC's uncritical acceptance of CTS's claim, and the central role that it plays in the CC's counterfactual analysis (and ultimately its provisional SLC finding), the Report should contain detailed analysis quantifying the "critical volume of tickets [required] to establish a virtuous circle of growth" (para 7.73). Whilst such analysis is entirely absent, **it is clear for the reasons below that the LN relationship would be below any such critical threshold.**

2.31 Nor is the CC explicit about whether these volumes must be sold in a consumer-facing way (i.e. over the CTS website), or can be sold as a "white label" supplier (i.e. when the CTS system back-ends the LN website). However, the CC's description of the virtuous circle (that ticket allocations *attract consumers to the ticket agent's website*, and promoters are consequently more willing to allocate ticket volumes to that agent) strongly implies that **tickets sold via the CTS website are the only relevant tickets** for these purposes.

2.32 Even adopting the CC's overestimate of the number of LN tickets available over the CTS website in the counterfactual (i.e. around [x] in 2008; see para 2.5 above), that number would place CTS in only 13th place in the UK ticketing market (or in 9th place on the basis of live music tickets, behind: TM, See Tickets, Ticketline, Ticket Factory, Wegottickets.com, Ticketzone, Ticketsoup and Gigantic)

2.33 Despite already selling more tickets than the CTS website would get from LN, none of those other players from third place downwards appears to have been on a virtuous circle, given their apparent lack of significant growth (according to the Report) in recent years. Accordingly, **it is difficult to see how the ticket volumes that CTS receives for its website from LN could be expected to set that circle in motion.**

2.34 Even if one were to add in the LN tickets available to the CTS system in a ‘white label’ capacity (which, for the reasons above, would not be appropriate for these purposes), this would equate to only [X] tickets in 2008, based on the CC’s assumptions in para 6.37 of the Report. Again, there are established UK agents who already achieve higher ticket sales, without leading to demonstrable growth.

No unique advantage for CTS in range of events

2.35 Whilst the focus of the CC’s analysis of ticket allocations has been on the overall number of tickets that would be available to CTS under the counterfactual, the CC has also discussed the range of events that would be made available to CTS.

2.36 As noted above, there is no compelling evidence in the Report that the range of tickets offered by an agent matters to consumers. Indeed, the CC’s own finding (at para 5.27) that **self ticketing is no less successful as a means of selling tickets** should cast considerable doubt on any assumption that range of events is determinative of success as a ticket agent.

2.37 Nevertheless, the CC expects that, in the counterfactual, CTS would have access to the full range of LN events for sale on its website – a range that allegedly would be restricted as a result of the merger (the basis for this alleged merger effect is flawed; see the discussion in section 3 below).

2.38 However, regardless of the importance of range or the existence of any merger effect on the range of events available to CTS, **access to tickets for the full range of LN events would not confer any unique or significant advantage on CTS in the counterfactual**, so as to stimulate any virtuous circle.

2.39 Ticket agents can and do achieve a wide range of content for sale on their websites because – as the CC has found – promoters are willing and able to ‘multi-home’ tickets for their events with several different ticket agents at the same time.

2.40 As with ticket volumes above, the implication of this is that CTS could not expect the LN contract to deliver it into a materially more advantageous position than that enjoyed by other ticket agents competing with Ticketmaster and See. These other ticket agents can and do readily access an equally wide range of content in the UK live music industry, since:

- [X] of LN’s inventory, covering the full range of events, is already made available for sale by other ticket agents and – as the CC concludes, this would be no different either in the counterfactual (at para 6.37) or following the merger (at para 7.69);
- other ticket agents, including small ticket agents, already access a very wide spread of LN events, for example Stargreen, which the Report notes sold tickets for nearly all LN tours in 2008 (at para 7.105); and
- in any event, LN occupies only a modest part of the UK promotions market (15 – 20%, based on the CC’s own findings, at para 5.46), so any ticket agent must rely on other, non-LN sources for 80 – 85% of its range. This demonstrates that access to LN’s range cannot be determinative for the ability of a ticket agent to list a sufficient breadth of content on its website.

2.41 Accordingly, **CTS cannot justifiably claim that access to the range of LN's events would be a critical success factor for its entry into the UK market.** First, if CTS were to operate a successful system, it could gain access to LN's range of events (as other ticket agents do) without the need for a preferential contract. Second, CTS could access a much wider range of content (over five times more) by dealing with other UK promoters.

No incentive for LN to support CTS's brand and website

2.42 The CC's counterfactual analysis gives this issue just two paragraphs of consideration, before concluding that: "*although it is uncertain how Live Nation might have helped CTS, we believed that, in the absence of the merger, Live Nation would have had the incentive to find ways to do so*" (para 6.54). Not only is this assertion extremely vague, it is also factually incorrect.

2.43 Nothing in the LOI requires LN to provide additional assistance (e.g. marketing support) to CTS, and CTS never asked for such additional assistance. Moreover, there is no evidence that LN believed there to be too few ticketing service companies, or that having more such players would be desirable, or that CTS was a particularly good candidate for stepping into such a role regardless.

2.44 For the reasons set out below, the CC's assumption that LN would have the incentive to support CTS's website at the expense of its own is not only incorrect, but also inconsistent with the CC's own conclusions in other passages of the Report.

2.45 Most importantly, and notwithstanding the fact that LN was (mis)led by CTS's initial pitch to believe that the CTS software platform was better than it has turned out to be, the CC has failed to understand that, in the counterfactual:

- LN has an immediate financial incentive to promote sales through its own website, rather than through CTS's website;
- LN has a powerful long term strategic interest in developing its own website and brand; and
- there would be no significant advantage, either in the short term or long term, for LN to benefit the CTS website or brand – quite the opposite, any such course of action could involve real disadvantages for LN.

These key factual misunderstandings which substantially undermine a key component of the CC's SLC finding, are expanded on below.

Incentives to prefer the LN website

2.46 First, as the CC itself noted, absent the merger, LN has a number of clear incentives - including financially - to maximise the number of sales that are routed (to the CTS system) via the LN website (paras 6.26 – 6.28, and 6.53). Crucially, those

incentives outweigh the benefits to LN of sales made through the CTS website (and, in fact, this is true with or without the merger).

LN's wider commercial strategy to build up its own website and brand

2.47 The arrangements entered into with CTS in 2007 formed part of a wider shift in LN's overall commercial strategy to build its own brand, long before the merger with TM was contemplated.

2.48 As noted above, this represented a conscious departure by LN from the nature of its pre-existing preferred supplier relationship with TM [§<].

2.49 It appears from para 6.26(b) of the Report that CTS itself has acknowledged LN's intention to focus its efforts on promoting the LN website as the main channel through which consumers access LN tickets, rather than building up CTS's (or any other party's) website or brand.

2.50 It was always envisaged that the CTS system would primarily be used merely in a 'white label' capacity to back-end those sales, and CTS has been aware of this since the initial LOI negotiations in 2006 (and certainly long before LN contemplated any merger with TM).

2.51 The LOI contains no "tag-along" marketing rights, and any marketing of the CTS brand and website will be done directly by CTS itself, without LN's help. Indeed, despite LN's requests for information on CTS's marketing strategy, CTS has not even informed LN which CTS/Eventim brand(s) or website(s) it plans to use in the UK.

Small portion of tickets for CTS website was merely a contractual 'sweetener'

2.52 Whilst the LOI does also provide for a comparatively small proportion of tickets [§<] to be made available for sale over the CTS website (section 5.8, LOI), this was only included as a last-minute 'sweetener' to get the deal done, and CTS recognised that this channel was always intended to be ancillary to sales routed via the LN website.

No intention or obligation to publicise CTS's website or brand on LN promotional materials

2.53 As noted above, and consistent with the strategy to focus on the LN website and brand, LN has never had any intention (regardless of the merger) to include CTS's website address or logo on promotional material for LN-promoted events, and the LOI does not provide that it should.

No intention to share LN customer data with CTS

2.54 Again, consistent with its wider commercial strategy, LN has never had any intention (regardless of the merger) to give CTS access to LN's customer data. Indeed, the LOI explicitly reserves to LN the exclusive ownership of all such data,

other than for the small proportion of sales made over the CTS website (section 5.9, LOI).

No advantage to LN from supporting the development of the CTS retail brand

2.55 Whilst LN would have a clear interest in ensuring CTS's *system* operates to the requisite standard, **this does not translate into a desire to support the development of CTS' retail brand in the UK** at the expense of LN's own brand. In particular, the success of CTS' retail brand would imply:

- (a) adding value to a party (i.e. CTS) that is one of LN's rival promoters in other territories. Such a strategy would be counter-intuitive, particularly if such support were provided at LN's own expense – e.g. via marketing support or cannibalising sales from LN's own website;
- (b) a direct cost to LN through lower ticket remuneration than if it made the sales itself, and fewer opportunities for LN to build its relationship directly with fans;
- (c) no direct benefit to LN through additional ticket sales, since the CC has accepted (and LN would agree) that self-ticketers are no less effective in making ticket sales than retail ticket agents; and
- (d) no indirect benefit to LN through CTS becoming an effective competitor to TM and See Tickets in the UK, since all promoters would benefit equally from any implications for ticketing rebates resulting from the alleged increase in competition (indeed, to the extent that the LOI has fixed terms, LN may even become worse off than its rival promoters when competing for artists' and agents' business)

2.56 In short, there are no grounds to support the CC's assumption that LN would have sought additional ways to help CTS. Accordingly, this would not have contributed in any way towards CTS achieving its goal of getting onto any virtuous circle.

The CC has overstated CTS's future market share

2.57 LN's ability to comment on the robustness of the CC's projected market shares for CTS (in Table 5) is significantly limited by the extensive excisions in the Report.

2.58 Nevertheless, given the flaws in the CC's methodology for estimating CTS's future shares (as set out below), the CC's conclusion that CTS would become the third largest UK live music ticketing supplier (alongside TM and See Tickets) by 2015 is unsupported. More importantly, even if CTS were to achieve that status over time, that would not be as a result of its relationship with LN, but rather CTS's ability to win business from other clients.

2.59 The CC's projected shares (at Table 5 and para 6.40) represent a substantial over-estimate of CTS's future position, since:

- the CC has wrongly assumed that the number of LN-controlled tickets will necessarily increase pro rata with the size of the live music market (para 6.37(a)). As acknowledged by the CC, the number of LN-controlled tickets in fact fell between 2006 and 2008, due not only to the disposal of certain LN venues (including Hammersmith Apollo), but also [redacted];
- more significantly, CTS’s sales for clients other than LN will increase by far less than the CTS projections adopted by the CC in para 6.37(c), since:
 - most importantly of all, for the reasons above, the relationship with LN will not propel CTS onto any virtuous circle. The rate of growth that was assumed to arise from entering that alleged circle must be scaled back accordingly;
 - as the Report acknowledges (at para 6.44), CTS’s success in winning non-LN business depends whether its offering is attractive to other UK clients. However:
 - as noted above, the CTS system is not yet proven to be fit for the needs of *the UK market*, and LN’s experience to date suggests that the system may not turn out to be superior, or even equivalent, to those of its rivals; and
 - by way of example, CTS [redacted].
 - although the CC recognised that CTS had, as a result of applying a market-wide growth rate, overestimated the number of LN-controlled tickets available to it in 2010 (para 6.34), the CC chose not to make any corresponding reduction in the volume of tickets that CTS is projected to receive from non-LN sources. It is not clear why the CC considered that the “continuing partnership with LN” makes such adjustments unnecessary. Moreover, such an approach is totally contradicted by the very same adjustments that *are* made by the CC - via two alternative scenarios - in the competitive effects section, when attempting to estimate the impact that the alleged reduction in CTS ticket volumes from LN would have on the number of tickets CTS could expect to gain from other clients (at para 7.69).

2.60 Given that such non-LN business is said to account for most of CTS’s sales and all of its growth (para 6.40), these flaws are critical to the reliability of the CC’s SLC finding.

Effect of CTS’s entry on the UK market for the primary retailing of live music tickets

2.61 Contrary to the CC’s findings (at para 6.62), the parties submit that CTS’s entry in the counterfactual would **not** have had “a significant beneficial impact on the extent of competition” in the UK ticketing market. At the very least, the available evidence does not substantiate a prediction that CTS would have become such a competitor, and indeed it more reasonably tends to support the opposite conclusion.

2.62 This view is supported by Seatem, whose hearing evidence states “**Seatem did not think that the entry of CTS in the UK market would improve competition**” (the parties note that this evidence did not appear on the CC’s website until the same day the parties were informed of the outcome of the provisional findings).

2.63 Moreover, aside from a brief reference to potential improvements in “price, service and innovation”(at para 6.59), and the simplistic (yet mistaken) observation that successful CTS entry would mean there being three “large” suppliers in the market instead of two (at para 6.62), the Report nowhere attempts to assess, either qualitatively or quantitatively, how the alleged benefits might be manifested in concrete terms. The lack of any such explanation totally undermines the reliability and robustness of the CC’s provisional SLC finding, in both economic and legal terms.

2.64 On the contrary, there is evidence that CTS’s pricing is likely to be *above* current UK market rates. [§].

2.65 In terms of ancillary services, for instance, CTS by its own admission deliberately chose not to bid aggressively to provide call centre and fulfilment services to LN under the LOI, as it did not expect that business to generate much profit (para 7.30). This clearly militates against any notion that CTS may introduce a lower cost model to the UK market (with those savings being passed down the chain via higher rebates to promoters and venues).

2.66 TM’s response to the Provisional Findings addresses why the CC was incorrect to believe that CTS’s system would increase innovation in the market (an issue which, again, was not ‘put back’ to the parties prior to the publication of the Report).

Fitness of CTS’s system for the needs of the UK market

2.67 Even if the CC’s predictions were correct that the LN relationship would put CTS onto the virtual circle and as to CTS’s future market share, the CC has given insufficient consideration in the counterfactual analysis to the evidence provided by LN of the non-trivial technical deficiencies that have emerged in the CTS system during the implementation process in the UK.

2.68 LN considers that CTS [§]. Copies of the latest correspondence between LN and CTS will be provided to the CC under separate cover.

2.69 As the CC is aware, LN has enumerated for CTS (and given CTS time to address) numerous elements of the CTS system that do not meet UK standards. Key features that the CTS system is **not** yet able to offer (all of which are currently available to LN through the TM system) include: [§].

2.70 Today, CTS has not delivered a system suitable for use in the UK. While LN nevertheless continues to work with CTS to implement the LOI in the UK (contrary to the implications in para 6.55 of the Report that LN may choose to try and frustrate CTS’s entry), there remains considerable uncertainty as to whether CTS will ever be able to meet the contractually required standard, and if so on what timeframe.

2.71 Clearly, if CTS fails to meet that standard, the correct counterfactual is radically different, and completely negates the basis for the CC's provisional SLC finding. [§].

2.72 In the Report, the CC appears to accept CTS's explanation that the technical issues have resulted from its deliberate decision to "put its process of entering the UK market on hold" pending the outcome of the US and UK regulatory reviews of the merger (e.g. at paras 6.55 and 7.62). That claim is misleading, unfounded and a direct breach of the commercial agreement in place between CTS and LN (the same agreement that LN has agreed it will honour, and that CTS now wants the CC to enforce).

2.73 In reality, CTS's problems in the UK are more accurately explained by its failure to recognise until relatively late in the process that the UK market operates very differently from other markets in which CTS has traditionally been active. For example, in the UK, the venue operator has a significantly greater role in ticketing arrangements than in many other countries. In Germany, for example, it is promoters (including the vertically-integrated CTS itself) who tend to 'call the shots' over ticketing arrangements. CTS is having to tailor its systems accordingly to reflect these UK-specific features.

2.74 There is substantial evidence that material technical problems were identified in the CTS system prior to the announcement of the merger in February 2009 – particularly in other countries, [§], where the deadline for implementation under the LOI was earlier than in the UK. Further evidence of such issues will be provided to the CC under separate cover.

2.75 In the face of this established and longstanding track record of uneven performance (at best), it would be perverse indeed for the CC to rely instead on CTS's decision simply not to honour the commitments in its agreement with LN, as better evidence of CTS's capabilities and dependability going forward.

2.76 These technical challenges that CTS has encountered also provide reason to doubt the CC's bald assertion that CTS's entry would have special status in the UK market resulting from the supposed advantage of its system over those of established ticket agents in the UK or of any other potential entrants.

3. MATERIAL FLAWS IN THE CC'S COMPETITIVE ASSESSMENT OF THE MERGER

3.1 Contrary to the CC's Provisional Findings, the merger will **not lead to the foreclosure of CTS** when measured against the correct counterfactual (as set out above) or on any other basis. Accordingly, there is no realistic prospect of an SLC.

3.2 The CC's view is that, following the merger, LN would have an ability and incentive to limit the number of tickets sold over the CTS website compared to the counterfactual. The alleged motivation for such a strategy would be to protect TM from effective competition.

3.3 However, on a proper reading of the facts and evidence, and notwithstanding the fact that TM already faces effective competition (as addressed at greater length in TM's response to the Provisional Findings), there could be no material merger effect on CTS, since:

- the forms of support – either ticket volumes, range of events, or branding and website support – that the CC supposes that LN would withdraw following the merger would not be present in the counterfactual;
- any other strategies that LN might seek to employ following the merger to damage CTS’ prospects of success could only be of limited effect; and
- the CC has in any case significantly overstated the impact that any attempted foreclosure might have on CTS.

3.4 In assessing the hypothetical range of means by which the merged entity may attempt to foreclose CTS, the Report contains a number of significant flaws, as detailed below.

Limiting the number of LN-controlled tickets

3.5 LN agrees with the CC’s finding (at para 7.41) that it would not have any incentive to limit the number of LN-controlled tickets.

3.6 However, in relation to the CC’s analysis of whether LN has the ability to do so, LN wishes to clarify that it rejects CTS’s assertion (at para 7.13) that, following the announcement of the merger, LN has sought in other European markets to apply new interpretations to the meaning of “controlled” under the LOI or to transfer the “control” of its tickets to other group entities not covered by the LOI.

Limiting CTS’s allocation of LN controlled tickets for sale

3.7 As referred to in para 7.17, LN did indeed tell the CC that the range of events to be included in the [X] provision under the LOI was entirely at LN’s discretion. However, the CC has wrongly inferred that LN would use such discretion to minimise CTS’s allocation, by designating the *smallest* events to CTS’s entitlement.

3.8 In fact, the practical realities of ticketing mean that the opposite is true, and that it is much more likely that small-scale events would be the ones *excluded* from the [X]. This is because, for such events (of say, 150 capacity), it would make little commercial sense for LN to impose on itself the additional logistical and administrative burden of having to allocate such a tiny number of tickets (namely [X], in this example) to the CTS website.

3.9 Accordingly, the Report (at para 7.18) **overstates the potential difference between CTS’s and LN’s respective interpretations** of the number of tickets available to CTS’s website under the LOI.

3.10 Moreover, although the volume of LN tickets ring-fenced for the CTS website at on-sale, with or without the merger, would be small [X], CTS would have the opportunity to increase that volume (up to a maximum of the [X] tickets that will be built on the CTS system, based on the CC’s assumptions in para 6.37), provided it is successful (through its own efforts) in building its brand and drawing customers to its website, thereby enabling it to sell out its initial website allocation sufficiently quickly.

Inhibiting CTS's growth in other ways

3.11 For the reasons noted above in relation to the counterfactual, it has never been LN's intention to provide CTS with additional support above and beyond the terms of the LOI (e.g. by advertising CTS's website on promotional material for its events or by sharing customer data). Accordingly, the merger could not have the effect of denying CTS support to which it was never entitled, or was never going to receive, anyway.

Limiting CTS's revenues

3.12 Following the merger, LN would not have any ability materially to limit CTS's revenues and thereby to undermine the financial viability of CTS's entry. Rather, CTS could still expect to receive a substantial income stream from its relationship with LN, which would go towards offsetting its UK start-up costs.

3.13 *First*, contrary to the CC's assumption (at para 7.29), it is not the case that the majority of the merged entity's ticket sales would be undertaken on TM's system rather than CTS's system. If the CTS system meets the contractual standard required (see above) and is installed in LN's venues, then all sales of LN-controlled tickets for events at those venues – whether for LN promotions or third party promotions - will be booked on the CTS system. In accordance with the terms of the LOI, CTS will receive [X] for each of those tickets booked on the CTS system, regardless of the sales channel through which they are ultimately retailed (including LN's website or TM's website).

3.14 *Second*, in relation to LN promoted events at third party venues, having revisited its commercial position, LN now accepts that - regardless of the strict interpretation of the LOI - it will have to make a de facto [X] payment to CTS for each LN-controlled ticket that is sold by a non-CTS agent (including TM) outside the CTS system. Accordingly, the CC's concern at para 7.28 of the Report no longer applies.

3.15 *Third*, in relation to the provision of call centre and fulfilment services, LN has recently notified CTS of its decision to decline CTS's offer and to make alternative arrangements. However, this decision *cannot be attributed to the merger*, and so is not relevant to the CC's assessment. Rather, regardless of the merger, the terms of CTS's offer were not sufficiently attractive to LN. CTS's proposed charges were materially above the current UK market rates, and this fact is supported by CTS's own admission (at para 7.30 of the Report) that it did not bid aggressively for the provision of such services. LN simply could not have accepted such rates, as these would have raised the overall level of LN ticket prices, and increased LN's already significant risk (as a promoter) of tickets remaining unsold.

3.16 What is more, the CC has presented no evidence to quantify the magnitude of CTS's fixed and entry costs, or to compare CTS's claims against the substantial evidence that LN understands was submitted on such costs by TM. CTS already has a sophisticated system and hardware (outside the UK), which constitute two of the largest fixed costs for a ticketer. Further, CTS itself states that it could leverage its existing technology and expertise to become successful in the UK, suggesting that the incremental costs associated with UK entry are not substantial, and relate mainly to marketing and local adaptation costs, rather than the kinds of costs that would face a

true green field entrant. This view is supported by CTS stating that it would win customers by marketing its website and utilizing search engine optimization. Search engine optimization is not a high cost operation, as shown in Ticketmaster's entry models.

Effects on CTS from alleged foreclosure by the merged entity

3.17 CTS's claim that it would cancel its UK entry if the merger were to proceed is commercially irrational, for several reasons:

3.18 *First*, contrary to the implication in para 7.74, even if the merged entity were to limit CTS's ticket volumes in the manner posited by the CC (which it would not), this would not make it necessary for CTS to find a single alternative promoter or venue promoter willing to "sponsor" CTS's entry on the same scale as the LN relationship.

3.19 There is no suggestion that CTS would 'lose' the *entirety* of the LN allocations following the merger. Accordingly, CTS would only need to find alternative sources to 'top-up' the alleged LN shortfall (if any) resulting from the merger. Moreover, for the reasons explained above, CTS could not expect in the counterfactual to receive any additional marketing or other support from LN, so it would not be reasonable for CTS to consider its entry to be conditional on finding such support from another 'sponsor'.

3.20 Accordingly, CTS could effectively replicate the counterfactual position by securing tickets from a range of multiple non-LN clients, including live music promoters and live music venues (e.g. SMG, who are not considered at all in this context in the Report, despite controlling substantial volumes of UK live music tickets), as well as non-live music clients. This could take the form of a series of allocations along the lines that Metropolis, for example, has expressly said it would consider giving to CTS (para 7.77). Nor does AEG appear to have ruled out the possibility of allocating tickets to CTS in this way (as opposed to "sponsoring" CTS's entry in some wider and more formal manner).

3.21 On that basis, it would not be necessary for CTS to secure an alternative long-term preferred supplier contract – so, contrary to the CC's observation in para 7.78, any lack of availability of such contracts in the near future (if that turns out to be the case) would not preclude or inhibit CTS's UK entry.

3.22 *Second*, the merger itself may in fact create additional opportunities for CTS. As the CC observed (at para 7.72), the merger may cause some of LN's rival promoters and venues to switch away from TM. CTS should have every chance of taking advantage of these opportunities if its system is as innovative and attractive as it claims (and the CC appears to believe in its provisional findings).

3.23 Moreover, *if* the CC is correct (which, for the reasons in the TM response, it is not) in concluding that competition between existing ticket agents is not fully effective and that rebates are too low and innovation is slow (for which no evidence has been provided to the CC), other promoters and venue operators should be more than willing to work with CTS.

3.24 As noted in the Report, the parties understand that AEG is actively exploring alternative options for its UK ticketing (amounting to an estimated [x] million live music tickets per year, thereby making it equally if not more attractive than LN). CTS would be perfectly capable of competing for, and (if its offering is as compelling as it claims) winning that contract, particularly given its familiarity with AEG's business through their existing relationship outside the UK (including CTS being AEG's ticketing partner at the O2 in Berlin).

3.25 Nevertheless, if AEG's claim is genuine that it would not consider engaging CTS in this manner in the UK (rather than merely a strategic attempt to harm its competitor's (LN's) prospects in the current inquiry):

- may say something about CTS's (lack of) capabilities, based on AEG's experience in other countries; and/or
- would be consistent with AEG believing that competition in the UK ticketing market is already fully effective.

3.26 *Third*, as the CC is aware, a substantial volume of tickets will be contestable in the UK in the near future (see para 6.52). Again, CTS will be able to compete for those volumes, with a real prospect of winning them if its technical offering, customer service and expertise are compelling and attractive. And, *if* the CC were correct that competition between existing ticket agents is not fully effective, other promoters and venue operators should be anxious to work with CTS, in order to support another competitor in the market and thereby increase competition.

3.27 *Fourth*, even if CTS were (mistakenly) to consider that the merger would have the effect of closing off any realistic prospect of its becoming a "large" player in the UK, this does not necessarily mean that it would not be able to build a profitable UK business and remain in the market on that basis.

3.28 Indeed, the CC's own counterfactual analysis in the Report suggests that, by 2015, CTS would achieve 'only' third place in the UK. The CC makes no attempt to reconcile that finding with CTS's policy (as stated in the Report) of only entering markets in which it has a chance to become one of the top *two* players within a reasonable period. If CTS believes the CC's projection to be more correct than its own, this suggests that CTS may now look for a way to cancel its entry – but, if so, this would be due to CTS's own mistaken calculations rather than any merger effect, and it would not be appropriate for the CC to use CTS's own business plan as a route to finding foreclosure by the merging parties.

Effects on competition from the alleged foreclosure of CTS

3.29 Aside from listing the textbook, generic indicators of sub-optimal competitive conditions ("higher net prices", "lower service levels" and "lower levels of innovation"), the CC makes no attempt to examine or explain the specific ways in which the alleged SLC would manifest itself or to provide any evidence of any of those conditions. This lack of analysis is inconsistent with the ordinarily careful consideration and evaluation that the CC gives to these critical issues.

3.30 For all of the reasons above, it is clear that no such anticompetitive effects would flow from the merger. Rather, on a proper assessment of the facts and

evidence, **the merged entity will have neither the ability nor the incentive to foreclose CTS, and any effect the merger may have on CTS would not constitute an SLC when viewed against the corrected counterfactual set out above.**