

RESPONSE TO PROVISIONAL FINDINGS: SUPPLEMENTAL LN EVIDENCE

A. INTRODUCTION

1. This submission provides further evidence to substantiate various key arguments set out in LN's response of 22 October to the CC's Provisional Findings (*LN's Response to the PFs*).
2. Such evidence relates to the following main issues:
 - evidence demonstrating that, even absent the merger, there would be no obligation, no incentive and no intention on LN's part to provide additional "support" to CTS in the UK (see **section B**, below);
 - the fitness of the CTS system for the needs of the UK market (see **section C**); and
 - problems encountered by LN with CTS's system in other countries, prior to the announcement of the merger (see **section D**).
3. As the CC is already aware, both the LOI with CTS and the merger with TM were, from LN's perspective, US-led deals. LN's UK management had effectively no input on either set of negotiations. Similarly, LN's wider commercial rationale for entering into those deals was determined by, and driven from, the US.
4. Accordingly, the majority of records available to LN concerning the CTS LOI and to the merger with TM relate to the US or global aspects of the deal. Nevertheless, the evidence referred to below (and submitted with this paper) applies either specifically or generically to the position in the UK.

B. NO ADDITIONAL "SUPPORT" FOR CTS ABSENT THE MERGER

LN's strategy to build its own website and brand

5. As noted at paragraphs 2.9 and 2.47 of LN's Response to the PFs, 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, and to gain greater control over its inventory. Accordingly, contrary to the CC's provisional findings, LN has no incentive or intention (regardless of the merger), let alone any obligation under the LOI, to find ways to help CTS to build the CTS website or brand in the UK.
6. LN's strategy to focus on its own website and brand is clearly evidenced by the following documents (in chronological order) supplied with this submission:
 - (a) **Annex 1:** LN Ticketing Analysis board presentation (May 11, 2007), at slide 9, which states that LN's "Ticketing Vision" includes to "*build the Live Nation brand*" and to "*control the ticket*". This applied, and continues to apply, to the global LN business, including the UK;
 - (b) **Annex 2:** LN Online Update board presentation (September 11, 2007), setting out LN's strategy to drive more traffic through its website in the US and in 13 European countries (including the UK);

- (c) **Annex 3:** Ticketing Update board presentation (September 11, 2007), at slides 2, 6 and 8, which explain that CTS’s position in negotiations was at that time untenable, as CTS was asking for too much control over LN’s inventory. The presentation therefore recommended (at that time) that LN pursue an alternative solution with another ticketer, [redacted]; and
- (d) **Annex 4:** LN board minutes of November 14, 2007, at page 3: Nathan Hubbard of LN (President – Ticketing) explained that the revised and improved offer from CTS “*provides the Company [i.e. LN] with complete control over branding...*”. This statement applied to the global deal with CTS, including in the UK.

Departure from previous arrangements with TM

7. As noted at paras 2.11 and 2.48 of LN’s Response to the PFs, the CTS arrangements represented a conscious departure by LN from the nature of its pre-existing preferred supplier relationship with TM [redacted].

8. [redacted].

No obligation or intention to allocate more than [redacted] to CTS’s UK website

9. As noted at para 2.42 of LN’s response to the PFs, the [redacted] allocation to the CTS website was only included as a last-minute contractual ‘sweetener’, and there was never any intention (regardless of the merger) for CTS to be given a greater allocation of tickets for its website.

10. This position is confirmed by the evidence at **Annex 6**, which contains an internal LN email exchange between Nathan Hubbard (President – Ticketing) and Michael Rapino (CEO) in late November 2007. Those emails clearly show that LN’s imperatives in the latter stages of negotiations with CTS over the LOI included:

- (a) LN must have “*complete control of inventory except the [redacted] of UK shows*”; and
- (b) similarly, LN must have “*control of our inventory everywhere except for that small % through [the CTS] website in [the] UK, and [LN] don’t have to put [the] same inventory at Eventim.com as we do at LN.com (that would kill proposition of LN.com)*”.
- (c) Those statements are reinforced by the **summary table** of key outstanding issues attached to that email exchange.

C. FITNESS OF THE CTS SYSTEM FOR THE NEEDS OF THE UK MARKET

11. At para 2.68 of LN’s Response to the PFs, it was stated that LN would supply copies of the latest correspondence between LN and CTS regarding the fitness of the CTS system for the needs of the UK market (as required under the LOI). That evidence was supplied to the CC in **LN’s response of 23 October to the CC’s Remedies Notice** (at Annexes 1A and 1B).

D. PROBLEMS WITH THE CTS SYSTEM IN OTHER COUNTRIES PRIOR TO THE MERGER

12. At para 2.74 of LN's Response to the PFs, it was noted that material technical problems were identified in the CTS system in other countries prior to the announcement of the merger in February 2009.

13. In addition to the evidence already provided to the CC on such issues at earlier stages of this Inquiry, the evidence at **Annex 7** and **Annex 8** further substantiates this view. [§<]