

Ticketmaster and Live Nation Merger Inquiry

Provisional Findings Report

Comments of Ticketmaster concerning the conclusions of the Competition Commission in relation to the UK ticketing market

Summary

1.1 Ticketmaster sets out below its key comments on the conclusions of the Competition Commission ("CC") in its Provisional Findings Report ("Report") in relation to the UK ticketing market.

1.2 In summary, the Report:

- presents no evidence as to why competition between Ticketmaster and See (in particular) and smaller ticket agents and systems providers (in general) is ineffective;
- ignores or unjustifiably evades the evidence on pricing and margins that clearly indicates the existence of fully robust competition between ticket agents;
- takes an internally inconsistent stance regarding the competitive constraint provided by self-ticketing, by properly accepting that self-ticketing should be included in the relevant market under the principles of the hypothetical monopolist test, but improperly denying that self-ticketing is a constraint in the competitive assessment;
- provides no credible analysis to explain how barriers to entry and, in particular, expansion, affect competition on the UK ticketing market;
- unjustifiably and uncritically accepts virtually the entirety of the evidence given by CTS concerning its UK market entry, while failing to take into account evidence provided by the parties on the same points;
- provides no explanation for how the UK ticketing market, which was found to be competitive in the OFT's market inquiry report in January 2005, could be performing less than optimally and could become "more" competitive in a way that serves consumers;
- relies on important evidence in arriving in its conclusions which has not been put to the main parties for comment.

- 1.3 These issues are each addressed in greater detail below. However, this paper is not intended to be an exhaustive response to all the inaccuracies found by Ticketmaster in the Provisional Findings Report ("Report").

CC's conclusions concerning the UK ticketing market

- 1.4 At paragraph 5.19 of the Report, the CC defines the relevant product market for the purposes of its investigation as:

"... the primary retailing of live music tickets on the Internet and by telephone, including the self-supply of tickets by venues but excluding in-person sales at venue box offices"

- 1.5 At paragraph 5.41, the CC summarises its conclusions on the state of competition in the ticketing market (as defined) as follows:

"We concluded that there was competition in the market for primary retailing of live music tickets, in particular between Ticketmaster and See Tickets (and between self-ticketing large venues), but we found that the extent of the competitive constraint imposed on these large retailers by the small retailers of live music tickets was limited. We concluded that, with only two large primary retailers of live music tickets, and no likelihood of one of the small retailers expanding to become a large retailer in the near future, competition in the market was less than fully effective."

- 1.6 Ticketmaster submits that the conclusions reached by the CC in paragraph 5.41 are not supported by the facts and that the underlying analysis is flawed, for the reasons set out below.

(A) The CC presents no evidence or explanation as to why competition between Ticketmaster and See is less than fully effective

Consistency of market shares does not imply ineffective competition

- 2.1 The CC found (at paragraph 5.21) that:

"... although there was some volatility in market shares, the current market structure had persisted for some time, with the two largest ticket retailers, Ticketmaster and See Tickets, consistently maintaining their market shares despite some new entry into the market."

- 2.2 This finding of "consistency" of Ticketmaster's and See's market shares is then used by the CC as evidence that the market is not "fully" competitive and could be "more" competitive. The CC does not explain why the rivalry between Ticketmaster and See does not lead to competitive outcomes. This is despite the fact that the UK ticketing market is a bidding market, with no obvious capacity constraints on suppliers (so there is no *prima facie* reason why rivalry between two bidders should not result in effective competition for ticketing contracts). The CC makes no suggestion that there is any evidence of coordinated behaviour by Ticketmaster and See or that such

coordination would be possible given the market characteristics and the large number of other players. Ticketmaster has provided evidence of how it has had to concede commercial terms to clients as a result of direct competition with See (and others).

- 2.3 Furthermore, the CC does not consider the possibility that the evidence which it cites could equally well support the view that competition between Ticketmaster and See is fully effective. **Stable market shares are consistent with a competitive market in ticketing.**¹

Pricing evidence is not consistent with ineffective competition

- 2.4 The pricing evidence which the parties have presented² suggests that **neither Ticketmaster nor See price at a premium to smaller ticket agents**, a market feature which one would expect to observe if competition from the "fringe" competitors was as ineffective as the CC suggests (paragraph 5.41: "... we found that the extent of the competitive constraint imposed on these large retailers [Ticketmaster and See] by the smaller retailers of live music tickets was limited"). Also, the CC makes no attempt to assess the extent to which **constant attempts by smaller ticket agents to expand** might constrain Ticketmaster's and See's prices (even if actual expansion by smaller ticket agents does not ensue).³
- 2.5 The CC advances **no evidence to suggest that Ticketmaster's prices and margins are too high**, and draws no inferences from the evidence submitted that **Ticketmaster's net remuneration per ticket in live music ticketing has fallen over time in real terms** even though ticket prices have been increasing over time. The CC has made no attempt to reconcile its view that Ticketmaster is immune from fully effective competition with the evidence regarding Ticketmaster's need to offer increasingly higher rebates to its clients or explained why Ticketmaster has not been able to benefit, at least to some extent, from rising ticket prices (and general growth in ticketing), given the alleged lack of competition in the ticketing market.
- 2.6 The available evidence supports the view that **neither Ticketmaster nor See price at a premium to smaller ticket agents**, which is not what one would expect if competition from the "fringe" were ineffective. The CC's position that it is not possible to make price comparisons between agents is weak and the CC appears to have made no effort to investigate this important empirical question despite the fact that it is in a position to gather evidence on the rebates paid by other ticket agents.

(B) CC's analysis of self-ticketing as a competitive constraint contains clear contradictions

- 3.1 The CC found (at paragraph 5.41) that, under the SSNIP test approach to market definition, self-ticketing should be included in the market in which Ticketmaster operates. This implies that a hypothetical monopolist of third party ticketing services

¹ Please see section H (paragraphs 9.1 to 9.2 below) for Ticketmaster's rebuttal in response to the actual market share numbers used in the Report.

² Please see previous submissions made by Ticketmaster, [3<]

³ Ticketmaster has submitted evidence of several events for which it has been unable to win bids against smaller ticket agents.

would **not** have the ability to increase its price profitably above the level that would exist under conditions of effective competition between ticket agents because it would be constrained by the threat of self-ticketing. This conclusion is justified given the business realities of the ticketing industry, in which a large number of venues have chosen to self-ticket.

- 3.2 It is inconsistent for the CC, having recognised the constraint that self-ticketing would place on a hypothetical monopolist of primary ticketing, to dismiss in the competitive assessment the constraint that self-ticketing imposes on Ticketmaster and See.⁴
- 3.3 The CC also found (at paragraph 5.27) that there was not much evidence of venues switching between (a) using a ticketing agent and (b) self-ticketing, which the CC states that it would expect to observe if the threat of self-ticketing formed an active competitive constraint on Ticketmaster and See. This conclusion does not follow logically, because **the threat of self-ticketing could be perfectly effective as a competitive constraint** even in the absence of many examples of actual switching. Ticketmaster has provided evidence that the threat of self-ticketing is a commercial reality and a typical feature of its negotiations with clients. It is therefore a proven competitive constraint.
- 3.4 In fact, in addition to examples where clients had threatened to self-ticket, **the parties provided the CC with examples of actual switching to self-ticketing.**⁵ For example, both Ricoh Arena and ATG switched to self-ticketing (even though ATG is primarily in the theatre sector, it also owns venues that host live music events).⁶
- 3.5 The CC's conclusion is particularly surprising given that, with respect to the promotions market, the CC accepts that incumbent relationships and the lack of an active bidding process between promoters for a new tour did not signal a lack of competition because artists' agents had "the credible threat of switching"⁷ Ticketmaster has, in any event, provided examples of negotiations with venues in which the threat of self-ticketing has allowed the venue to negotiate very attractive terms.⁸ The CC also mischaracterizes the extent of self-ticketing, when it notes, at paragraph 5.40, that "some venues self-ticketed", when in fact the evidence presented by Ticketmaster shows that 10 out of 19 UK arenas self-ticket.⁹

(C) Other evidence advanced by the CC is weak

- 4.1 There is little additional evidence cited by the CC to suggest that competition in the ticketing market is less than fully effective. The CC refers (at paragraph 6.49) to

⁴ The market share figures attributed to Ticketmaster by the CC are also not consistent with the recognition that self-ticketing is within the relevant market.

⁵ Please see previous submissions made by Ticketmaster, [redacted]

⁶ Ticketmaster has also provided evidence of [redacted], a smaller live music venue, very recently having given notice that it is leaving Ticketmaster as a retail client to start self-ticketing.

⁷ At para. 5.52

⁸ Please see footnote 6 (above) and 9 (below), as well as previous relevant evidence submitted by the parties.

⁹ Evidence has also been provided that 55 of 175 venues with an audience capacity greater than 1,000 now self-ticket.

evidence which it had received that "innovation had been limited¹⁰ and many consumers and clients were dissatisfied with the services offered by ticket agents". Presumably, if promoters and venues were very dissatisfied with the service they received from Ticketmaster and See they would be prepared to invest to sponsor the expansion of another agent (as the evidence of Metropolis Music to the Inquiry (at paragraph 13) suggests). No examples of client dissatisfaction were put to the parties for comment. The 2008 fhios survey undertaken on behalf of Ticketmaster provided no evidence of the sort of dissatisfaction identified by the CC and in fact found that the overwhelming majority of consumers were happy with services provided by ticket agents¹¹.

- 4.2 Evidence of lack of innovation in ticketing was not put to Ticketmaster. Ticketmaster has invested heavily in technology and innovation including print-at-home-ticketing and seat selection from an online seating plan (which is in place for some events in the UK already and is due to be rolled out across the UK business in November 2009). Ticketmaster continues to invest in innovation and does not accept that CTS's offering will bring additional innovation to the UK.¹²

(D) Analysis of barriers to expansion is defective

- 5.1 The CC's conclusions on barriers to entry and expansion in UK ticketing (at paragraph 5.39) were:

"... that there were some barriers to entry but that these were not insurmountable, as demonstrated by a couple of new entrants to the market. However, we concluded that there were significant barriers to expansion in the market, in particular a 'chicken and egg' problem by which a new ticket agent needed a consumer base in order to attract substantial ticket allocations from promoters and venues but, at the same time, needed substantial ticket allocations to attract consumers. We found that the incumbent positions of the large ticket retailers inhibited the ability of new ticket agents to gain substantial ticket allocations, so reinforcing this barrier. We noted that none of the small providers in the market had expanded significantly for many years."

- 5.2 The CC's analysis leading to these conclusions was inadequate, for the following reasons.

¹⁰ In Appendix E, at para.130, the CC refers to the fact that "... Ticketmaster did not offer consumers the ability to choose their seats from a seating plan or to purchase other merchandise at the same time as their live music tickets, both of which were offered by competing systems." Ticketmaster is in fact in the process of introducing both these features to its operations in the UK and currently anticipates that this functionality will be available in the UK in November 2009. In fact it is already live in the UK on Ticketmaster's system for certain events.

¹¹ The 2008 fhios survey found that more than 92 per cent. of customers who had used the Ticketmaster website were either satisfied or very satisfied with their experience.

¹² [3<]

Expansion by smaller agents

- 5.3 While the CC makes the observation (at paragraph 5.27) that "most of the small providers had failed to expand significantly, in some cases over many years", it is not clear whether the CC means in absolute terms or merely relative to Ticketmaster. The CC cites the low market shares of other providers and alleged continuing high market share of Ticketmaster as evidence that significant barriers to expansion exist. This is a purely structural approach that would imply that the successful retention of market share through effective competition is in itself evidence of a lack of competition.
- 5.4 The CC makes no attempt to examine the role that **Ticketmaster's increasingly attractive rebates** (resulting in falling net remuneration per ticket over time) have played in enabling it to maintain a high market share while frustrating others wishing to take share. In effect, the CC makes no attempt to determine whether a true barrier to expansion exists (whereby smaller agents cannot expand even if Ticketmaster were pricing above some competitive benchmark) or whether expansion is difficult precisely because of competitive behaviour by Ticketmaster and See.

"Chicken and egg" problem

- 5.5 At paragraph 5.39, the CC asserts the existence of a "chicken and egg" problem as a barrier to entry but the existence of such a phenomenon is not properly tested or established. Instead, the proposition appears to have been accepted by the CC in its entirety and then used to justify the CC's theory of harm, without any objective evidence or analysis to support its existence.
- 5.6 Network effects often arise where markets have two-sided features. However, it is unacceptable for the CC to conclude, without proper analysis of the nature and strength of network effects in this case, that they represent a barrier to entry. The European Commission in the **Google/DoubleClick** decision found the presence of two-sided network effects to be "theoretically compelling".¹³ However, it recognised that a coherent theory of how two-sided network effects might arise was not sufficient to conclude that the creation or protection of market power was likely. Instead, **it engaged in a detailed consideration of the facts of the industry to determine the relevance of two-sided network effects for the competitive assessment.** In particular, the European Commission gave consideration to i) whether there is evidence of competitors being able to enter and to operate at a small scale; ii) whether it is possible for clients to 'multi-home' by using several different platforms at once; iii) the size of fixed costs associated with using an additional platform; and iv) the ability of coexisting platforms to have sufficient coverage of the market. It concluded that "*While the presence of these network effects is theoretically compelling, the evidence gathered during the investigation suggests that these may not be as strong (or at least, not strong enough to lead to "tipping")*".¹⁴
- 5.7 The CC on the other hand has **not clearly articulated a theory that describes how two-sided network effects arise in this case.** Moreover, it **has not sought to test the relevance of the theory against the facts of the industry.**

¹³ Case No. COMP/M. 4731, paragraph 304

¹⁴ Ibid

5.8 It appears that CTS has told the CC that "a small allocation of tickets was not sufficient to attract consumers, and without access to consumers it was impossible to attract further allocations" (paragraph 5.32). This appears to have been entirely accepted by the CC (despite being unsubstantiated evidence from an interested party). However, the link between whether a small or a large allocation is obtained and the number of consumers that can be attracted is not explained. If by "a small allocation of tickets" the CC means "an allocation of tickets to a small number of events", it would at least be possible to envisage a hypothetical two-sided network effect where more events on offer attract more consumers and more consumers attract more promoter and venue clients (thus creating the so called "virtuous circle"). But even if the CC does envisage this type of network effect to be a possibility it would need to explain why it thought such an effect was powerful in determining competitive outcomes. In particular, the CC would need to give some consideration to the following factors that **clearly undermine the case for strong network effects in ticketing**:

- *Consumers do not browse for live music events.* When consumers book tickets they have in mind a single event (which, by and large, they have heard about through friends/family or magazine articles).¹⁵ **The CC does not explain why a wide range is necessary to attract consumers.** This possibility was considered and rejected by the OFT in the 2005 Report: "*Another feature that indicates that market tipping is unlikely to occur is the way in which final consumers currently use ticket agents... To the extent that consumers are mainly interested in attending particular events, they are more likely to find out about them from marketing carried out by promoters, and hence purchase tickets using the telephone number or website address included in advertisements. The other events offered by ticket agents will not be important to them. This will therefore act as a constraint on any tipping effects since it is not necessary for ticket agents to offer a full range of events to be able to continue in business*".¹⁶
- *Promoters can (and do) multi-home events on different ticketing platforms* and an event being advertised on one ticket agent's website does not mean that another ticket agent cannot also advertise the same event. It was noted in **Google/DoubleClick**¹⁷ that where clients multi-home it is less likely that a two-sided market will tip to a single platform or that network effects will cause significant barriers to entry or expansion for a new platform.
- *The evidence suggests it is not difficult for agents to obtain ticket allocations for a substantial number of events.* As the parties have shown in their evidence to the CC, **Gigantic** achieved this in a relatively short time. It is not clear why CTS could not emulate Gigantic's achievements. This seriously weakens the idea that it is difficult to set the "virtuous circle" in motion (to the extent that such a "virtuous circle" exists). Indeed, **the CC does not appear to make any attempt to estimate what the minimum number of events**

¹⁵ Please see footnote [4] above, CC survey results, slide 23, and fHios paper submitted by Ticketmaster on 21 August 2009, among others. Please also refer to slides 22 and 23 of the GFK Survey Presentation commissioned by the CC. Slide 22 specifies that 96 per cent. of respondents look for tickets to a specific event.

¹⁶ OFT 2005 Report, paragraph 4.44

¹⁷ Case No. COMP/M. 4731

required to initiate the "virtuous circle" might be or to compare this number with those that CTS might achieve without Live Nation.¹⁸

- The 2008 fhios report found that less than 1 per cent. of customers chose a ticket agent's website because it had a "broad range of events".
- Ticketmaster has also provided evidence of how affiliate programmes can be used to provide access to inventory for a website without needing to place that inventory directly on the website or for the ticket agent to have direct access to that inventory. The CC has not dealt with this evidence.

5.9 The CC later states (paragraph 5.32) that "no other promoter or venue operator could have offered CTS the volume and breadth of ticket stock which it would need". The CC does not explain the relevance of volume in this case. It does not explain why no other promoter or venue operator would be appropriate (such as SJM, or AEG, which has asserted its right to terminate its global ticketing agreement with TM should the LN merger proceed¹⁹). It does not explain why the question of whether there is another *single* promoter or venue operator that can offer the volume or breadth of ticket stock to CTS is the relevant question (i.e., why CTS could not, having entered the UK market, attempt to acquire this from *multiple* promoters/venue operators). A ticket agent would prefer to have multiple promoter clients rather than being dependent on a base of only one customer. In addition, the CC does not question why CTS could not, for example, **buy a promoter and enter as a vertically integrated entity** (as it is configured in Germany).

5.10 The CC dismisses the possibility that CTS could successfully enter the UK market by **acquiring a smaller ticket retailer** because it would not give it "a sufficient foothold". The CC has not provided evidence on what this critical "springboard" number would be. [X]

Advantages of incumbency

5.11 The CC found that the "incumbent positions of the large retailers inhibited the ability of new ticket agents to gain substantial ticket allocations". The CC also refers to the advantages which Ticketmaster enjoys over smaller rivals, such as higher consumer awareness, a proven track record of operational competence at scale and an "extensive database". However, the CC does not explain the relevance of these advantages or how they might immunize Ticketmaster from effective competition. Quite the reverse, the CC accepts the results of its consumer survey that **emails from ticket agents play a limited role in making consumers aware of future events**²⁰, and it is unclear what other competitive advantages the Ticketmaster database could confer.

5.12 Also, the fact that the CC has found that **self-tickers are no less effective at making sales than retail ticket agents** also suggests that any incumbency advantage enjoyed by Ticketmaster and See cannot be strong.

¹⁸ Please also see the final bullet point in para 5.8 (below).

¹⁹ AEG's ticketing in the UK accounts for approximately [X] tickets per year and is not taken into account in the counterfactual by the CC.

²⁰ Please see footnote [12].

- 5.13 The CC also ignores the **ability for new entrants to use search engine marketing to gain customers**, although, ironically, it notes that CTS is special in this respect because it has expertise in search engine marketing. That logic is flawed. **Ticketmaster's competitors are all skilled at search engine marketing and optimization**, and there is nothing to suggest that CTS possesses superior expertise in these fields.

Difficulties faced by new entrants

- 5.14 At paragraph 5.36, the CC casts doubt on the ultimate success of HMV's new entry because "it had little previous experience of retailing live music tickets, and few consumers were used to buying their live music tickets in-person in a store". However, **it is incorrect to characterize HMV's proposition as in-store sales only**. Not only does HMV retail tickets on-line through HMV.com but its plans are considerably more ambitious (as its **joint venture with MAMA Group and acquisition of the Mean Fiddler venues** indicate). The fact that it has partnered with MAMA Group and **Seatem** also suggests that lack of experience in either music or ticketing cannot be cited as a reason for doubting HMV's future success.

(E) Position of CTS as a new entrant to the UK ticketing market

CTS's "unique" attributes would make it an effective competitor if the merger proceeds

- 6.1 At paragraph 6.55 the CC explains the "uniqueness" of CTS as an entrant. All the factors cited by the CC (multi-national provider of primary ticketing services, proven technological solution, substantial expertise built up over many years), to the extent that they are relevant, must also be taken into account as **pertinent factors when assessing CTS's ability to compete in the event the merger proceeds**. The CC does not consider how these factors might help CTS (the second largest ticket agent in the world and the largest in Europe) compete effectively and expand in the event that it obtained smaller volumes from Live Nation than expected as a result of the merger.
- 6.2 The **asymmetry with which the CC treats CTS's capabilities in the merger case compared to the counterfactual case** is illustrated by the following two paragraphs. In both the counterfactual and the merger case the CC recognises that LN would only have an incentive to use "other" ticket agents for those tickets it could not sell using in-house sales channels. The question is whether, for those tickets that cannot be sold by in-house channels, CTS or some other existing ticket agent is the best option for maximising ticket sales. In the counterfactual, the CC paints CTS as a highly attractive option for selling those tickets versus other third party ticket agents:

"The CTS website is established and proven in many European countries. CTS could utilize its technology and expertise to become a successful ticket agent in the UK, both for Live Nation and for other clients, in live music and other events. CTS told us that it would offer greater functionality than the websites of most other ticket agents operating in the UK. CTS also said that it would win customers in the UK by

*investing significantly in marketing its website and by utilising search engine optimisation, with which it had proven success."*²¹

- 6.3 When considering the same problem (i.e., CTS's attractiveness relative to other third party ticket agents) in the merger case the CC states:

*"Live Nation's incentives would be to sell as many tickets as possible through Ticketmaster, and only to sell through other ticket agents any remaining tickets. Given CTS's position as a new entrant, we believed CTS was likely to have limited ability to sell these tickets. We judged it was more likely that Live Nation would continue to allocate some proportion of its tickets to the other existing ticket agents in the market, each with their own customer base, in order to maximise its ticket sales, and CTS would receive only a very small allocation of tickets (according to Live Nation's interpretation of its obligations under the LOI)."*²²

The CC does not provide any justification for this asymmetric treatment.

- 6.4 Moreover, it is also crucial to bear in mind that **the merger does not remove CTS as a competitor**, so CTS would continue to exist as a competitive constraint on Ticketmaster in any future negotiations with large promoters such as AEG or SJM.
- 6.5 Ticketmaster also notes that Seatem gave evidence to the Competition Commission, to the effect that "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 that the parties were informed of the outcome of the provisional findings).

"Virtuous circle" argument is unsubstantiated and flawed

- 6.6 At paragraph 7.24 the CC again refers to CTS's view of the "virtuous circle", **without giving any explanation as to the underlying mechanism driving this circle**. At paragraph 7.25 the CC tries to use comments from third parties to support its argument. The CC states "AEG told us that the volume of tickets Live Nation allocated to CTS made a difference to CTS's ability to sell tickets and its ability to win allocations from other promoters and venues". There is absolutely no explanation given for why AEG holds this view.²³ The CC goes on to state "Metropolis *also* [emphasis added] told us that it was important for CTS to be able to demonstrate that it could sell tickets in order for it to gain further allocations". This is an entirely different statement and does not necessarily imply the existence of network effects.
- 6.7 At paragraph 7.73 the CC expresses the view that CTS would only win allocations from switching clients if it were able to demonstrate its ability to sell tickets, which in turn would depend on CTS gaining a material allocation of tickets from "some" clients. This seems inconsistent with the CC's view regarding CTS's proven technology solution and experience. CTS has never demonstrated the ability to sell tickets in the UK but was still chosen by Live Nation. It is also unclear what risk

²¹ See paragraph 6.29 of the Report. The evidence of CTS's technical offering has not been previously put to Ticketmaster and Ticketmaster addresses this point above.

²² See paragraph 7.47

²³ AEG has already asserted its right to terminate its existing global agreement with TM and already partners with CTS in other countries and gave this evidence in its capacity as an interested party.

other promoters face in "trying out" CTS. They can always reallocate tickets if they do not sell.

Crucial evidence from AEG not made available to the main parties

6.8 The reason AEG gives for not considering CTS is entirely redacted. This is a key piece of evidence on which the parties have not been given the opportunity to comment (paragraph 7.76). SJM declined to comment when asked whether SJM would consider sponsoring CTS entry. Whether Metropolis had an interest in sponsoring CTS entry is not the relevant question given that entry has indeed occurred. The comment regarding Metropolis trying out CTS and increasing allocations if tickets sell well is entirely consistent with what the parties have said. The fact that Metropolis would have no concerns about using Ticketmaster post-merger is consistent with effective competition, and inconsistent with the central CC premise that the existing providers are not offering a competitive service.

(F) CC's market definition with respect to genres is flawed

7.1 In reaching its product market definition, the CC concluded that it was unnecessary to consider a wider market definition than the primary retailing of live music tickets because:

*" ... companies which offered tickets for other live entertainment events also offered tickets for live music events so were already included in our assessment of competition."*²⁴

7.2 The market shares attributable to Ticketmaster and See vary according to whether or not the market is defined to include ticket sales for events other than live music. The CC has based a large part of its competitive assessment on the market shares of Ticketmaster and See. It is therefore unclear how the CC can claim that it "did not need to consider a wider market definition".²⁵ On the contrary, Ticketmaster submits that given the importance that the CC attached to market shares it is necessary for the CC to consider the question of whether the relevant market should be defined to include ticket sales in other genres. The CC has not addressed the relevant question of whether there exists a barrier to supply-side substitution between the provision of services to theatre and live music clients. Ticketmaster submits that ticket agents use the same basic set of assets for ticketing live music and theatre events and that there are no material barriers to supply-side substitution and therefore no basis for focussing on the market position of ticketing companies in one segment of the wider ticketing market. No ticket agent operating in the UK market presents itself as a single genre, "live music" agent. For example Ticket Factory successfully tickets for a wide variety of events and is building its business and brand through such sales.

7.3 Competition authorities throughout the world have reviewed the ticketing industry and Ticketmaster is not aware of any authority that has defined the market this

²⁴ At para. 5.17

²⁵ Ibid

narrowly. The approach of the UK authorities is particularly surprising given that Ticketmaster sold more theatre tickets than music tickets for LN in the UK last year.

(G) CC does not explain divergence from 2005 OFT report

- 8.1 As the parties pointed out in paragraph 2.52 of their Statement of Case²⁶, following its market inquiry into ticket agents in the UK²⁷, the OFT concluded in January 2005, without qualification, that it had "not found a lack of competition between ticket agents resulting in a higher level of gross ticket prices to consumers." The CC has provided no evidence or analysis to explain how the market, which is already competitive, could logically become "more competitive" for any sustained period of time. Also, while it is true (as the CC points out in Annex B, paragraph 123, of the Report) that in 2005 the OFT did not consider whether competition could be made more effective by further new entry, there was clearly no need for the OFT to consider that point as it had already found that the market was fully competitive.

(H) CC's market share findings are flawed

- 9.1 At paragraph 5.20 of the Report, the CC finds that "Ticketmaster's share of the UK market for the primary retailing of live music tickets in 2008 was between 40 and 50 per cent. ...". The CC does not explain how it has reached this estimate nor, in particular, how it has taken into account self-ticketing in its calculation. Further, the figures advanced by the CC in paragraph 5.20 do not correspond to the levels of market share that were discussed in Ticketmaster's meeting with the CC staff which took place on 17 August 2009. Ticketmaster has submitted extensive evidence on its ticket sales, which the CC appears not to have taken into account and has not addressed.
- 9.2 The CC goes on to assert, at paragraph 5.21, that " ... over the last five years, Ticketmaster appeared to have gained some market share and See's market share appeared to have declined slightly." The CC provides no explanation for this finding and it is unclear upon what evidence it is based, particularly given Ticketmaster's submissions that there is no reliable basis for making a consistent comparison of Ticketmaster's share over time and the various submissions on its ticket sales made by Ticketmaster.

²⁶ *Ticketmaster Entertainment, Inc. and Live Nation, Inc., Statement of Case, 2 July 2009.*

²⁷ OFT762 ("OFT 2005 Report")