



ENFORCEMENT DECISION SERIES (E/06/001)

Competition Act 2002

Decision of the Competition Authority (Case COM/107/02)

Alleged excessive booking fees by TicketMaster Ireland and its exclusive contractual relationships with MCD Promotions Limited and Aiken Promotions Limited

Date of Decision: 26th September 2005

EXECUTIVE SUMMARY

The Competition Authority has concluded an extensive investigation into alleged abuses of dominance by The Ticket Shop Limited, trading as TicketMaster Ireland, in the market for outsourced ticketing services for events of national or international appeal in the island of Ireland. The Competition Authority has taken the view that TicketMaster Ireland's conduct does not constitute an abuse contrary to Section 5 of the Competition Act, 2002; nor do the agreements between TicketMaster Ireland and the two largest promoters prevent, restrict or distort competition contrary to Section 4 of the Competition Act, 2002.

The Competition Authority's investigation did highlight one issue of potential concern relating to the degree of transparency in ticket price information. However an absence of transparency in price information does not constitute a breach of competition law. Therefore the Competition Authority has brought this issue to the attention of the Office of the Director of Consumer Affairs and the National Consumer Agency.

The Competition Authority's investigation was prompted by complaints from thousands of consumers (including a complaint petition signed by in excess of 8,000 individuals) concerning:

- The price or face value of tickets sold by TicketMaster Ireland;
- The level of TicketMaster Ireland's booking fees. These fees are payable by the end consumer when purchasing a ticket. The booking fee depends on the method of purchase (i.e., Internet/telephone, event venue box office, or retail agent). In 2004, for example, TicketMaster Ireland's booking fees varied from zero to a maximum of €5.95 per ticket; and
- The alleged exclusive agreements between TicketMaster Ireland and the two largest event promoters currently operating in the island of Ireland, MCD Productions Limited and Aiken Promotions.

The Competition Authority has concluded that the promoter, in conjunction with the artist, sets the price or face value of the ticket sold by TicketMaster Ireland. High-profile artists perform only a limited number of concerts worldwide each year. Promoters in the island of Ireland compete aggressively

with promoters in other countries to convince high-profile artists to perform in Ireland by offering them sufficiently attractive terms. Thus, high-profile artists have strong bargaining power in their negotiations with promoters and can command substantial appearance fees, which, in turn, reflects the ticket price that end consumers pay.

TicketMaster Ireland currently accounts for 100% of the market for outsourced ticketing services for events of national or international appeal. However, TicketMaster Ireland is constrained from exploiting this position because:

- MCD Promotions and Aiken Promotions have the incentive to minimise the booking fee charged by TicketMaster Ireland to the end consumer. Outsourced ticketing services are like any other input purchased or contracted by the promoters for the concert or other event package they put together for sale to the consumer; and
- MCD Promotions and Aiken Promotions have strong countervailing buyer power vis-à-vis their ticketing service provider, TicketMaster Ireland. If TicketMaster Ireland will not agree to the booking fees demanded by the two major promoters, they can credibly threaten to either switch to another ticketing service provider or set up their own ticketing facilities.

The Competition Authority has concluded that MCD Promotions and Aiken Promotions have both the incentive and the ability to minimise booking fees charged by TicketMaster Ireland to the end consumer. Therefore, TicketMaster Ireland does not appear to be able to exercise market power by behaving independently of its customers (i.e., the promoters) by charging higher booking fees to the end consumer.

The Competition Authority can confirm that the contracts between TicketMaster Ireland and MCD Promotions as well as Aiken Promotions are:

- Multi-year; and
- Provide that TicketMaster Ireland will handle [75-85]% of all tickets to an event organised by either MCD Promotions or Aiken Promotions.

However, these contractual arrangements do not foreclose the market for outsourced ticketing services of national and international importance in such a way that limits competition to the detriment of consumers because:

- MCD Promotions and Aiken Promotions are the two largest customers of TicketMaster Ireland. On an annual basis, between 1998 and 2004, these two promoters accounted for between [50-100]% of the number of tickets sold by TicketMaster;
- There are frequent renegotiations by MCD Promotions and Aiken Promotions during the multi-year contracts with TicketMaster Ireland; and
- There are credible firms that could enter the outsourced ticketing market if either MCD Promotions and/or Aiken Promotions were to award them a multi-year contract on terms similar to those currently enjoyed by TicketMaster Ireland.

Thus competition in the market for outsourced ticketing services takes place *for* the contracts awarded by MCD Promotions, Aiken Promotions (and others), rather than *on* an event by event basis.

A recent example which illustrates this competitive process is the tender for outsourced ticketing services that the Gaelic Athletic Association ("GAA") employed for Croke Park in 2005. Eleven companies tendered for the contracts, with the GAA drawing up a short-list of five before finally selecting TicketMaster Ireland. Significantly, the contract duration was determined solely by the GAA. This example clearly demonstrates both the potential for competition between ticketing service providers for individual contracts and the bargaining power of promoters vis-à-vis TicketMaster Ireland.

There are good efficiency reasons why competition takes place *for* these multi-year contracts rather than *on* an event by event basis. By using a single ticketing service provider, a promoter does not incur the cost of:

- Dealing with several ticketing service providers on a per event basis which could lead to problems such as how to resolve fraud issues, manage ticket inventory and refund monies to customers in full for cancelled events; and
- Organising, negotiating and tendering for each event. MCD Promotions, for example, promoted approximately 500 events in 2002.

It is more efficient for a promoter to deal with one ticketing service provider for all their ticketing requirements as the latter will be familiar with the industry and the specific requirements of the promoter's operations. A single provider of ticketing services thus reduces transaction costs of the promoter leaving the promoter in a better position to compete for artists.

The Competition Authority has concluded that the market for outsourced ticketing services results in certain benefits to end consumers: lower prices for ticketing services, greater choice and variety of events; and easier and faster access to tickets than would otherwise be the case.

The Competition Authority's investigation did however highlight one issue of potential concern. This issue relates to the degree of transparency in ticket price information. Consumers need clear and accurate information concerning ticket prices and any additional charges in order to make a reasoned purchasing decision. The Consumer Information (Advertisements for Concert or Theatre Performances) Order, 1997 sets out what information must be provided in advertisements regarding ticket prices and additional charges.

Consequently, when a promoter advertises an event in a national newspaper or on its website, the words "*including booking fee*" follow the price of the ticket. For example, in advertising a concert, the promoter will state "*tickets priced from €75 including booking fee*". This gives the impression that the booking fees charged by TicketMaster Ireland to the end consumer are contained within the €75. This is not the case. The Competition Authority understands the term "*including booking fee*" to refer solely to the fee charged by TicketMaster Ireland to the promoter that is included in the face value of the ticket; it does not include the fee charged to the end consumer for using TicketMaster Ireland's service. It might be more transparent for consumers if a term other than "*including booking fee*" is used in advertisements for events.

An absence of transparency in price information does not constitute a breach of the Competition Act 2002. However, the Competition Authority believes that the use of the term "*including booking fee*" in advertisements may be a source of confusion for consumers. The Competition Authority has therefore brought this issue to the attention of the Office of the Director of Consumer Affairs and the National Consumer Agency.

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1. THE ISSUES

The Complaint

- 1.1 A significant number of consumers have filed complaints with the Competition Authority, alleging excessive pricing by The Ticket Shop Limited, trading as TicketMaster Ireland, ("TicketMaster Ireland") in relation to its service and handling fees for the sale of tickets to events. Some of the complaints focused on the allegedly arbitrary nature of the cost of TicketMaster Ireland's fees for purchasing tickets. Specifically, complainants noted that TicketMaster Ireland's service and handling fees were based on a percentage of the face value of the ticket sold and that the same fee per ticket was charged irrespective of the number of tickets purchased by a consumer. Some complaints also alleged excessive pricing on the face value of tickets.
- 1.2 Some of these complaints also claimed that TicketMaster Ireland has exclusive contracts with the two largest event promoters in the State; MCD Productions Limited and its affiliated companies ("MCD") and Aiken Promotion and its affiliated companies ("Aiken"), that are a violation of Sections 4 and/or 5 the Competition Act, 2002 ("the Act").

The Parties¹

- 1.3. For reasons of confidentiality, the identities of the complainants are not stated. The only exception to this is Ticeidi.com where a petition consisting of 8,017 signatures from consumers was made public via its website.²
- 1.4. TicketMaster Ireland is the trading name for an entity called The Ticket Shop Limited, 60% of which is owned by TicketMaster New Ventures Holdings, which is based in the US. TicketMaster New Ventures Holdings has ticketing operations in many countries.
- 1.5. The principal activity of TicketMaster Ireland is the sale of tickets to events in the State and Northern Ireland.³ These can be events of a local, national or international appeal. In 2004, TicketMaster Ireland sold approximately [2-3] million tickets. TicketMaster Ireland describes itself as Ireland's leading ticketing company. Tickets are sold by TicketMaster Ireland via the telephone, the Internet, or through one of the many ticketing outlets that are contracted to sell tickets on behalf of TicketMaster Ireland and which are located primarily in record stores throughout the island of Ireland. TicketMaster Ireland estimates that at least 50% of its ticket sales in the island of Ireland are through retail outlets.

¹ Virtually all of the information on the parties in this section is taken from publicly available sources, such as an undertaking's website.

² See www.ticeidi.com.

³ For the purposes of this Decision Note, "events" means and includes live entertainment events such as musical concerts and theatrical performances as well as sporting events. The term refers to individual performances by artists or groups such that, for example, an artist or group touring and performing in a number of regions around the State would constitute a number of discrete events.

- 1.6. TicketMaster Ireland has exclusive distribution agreements with two of the largest event promoters in the island of Ireland, MCD and Aiken.⁴ The principal activities of MCD and Aiken are the promotion of live events in the State and Northern Ireland.⁵ These are the largest promoters of musical events in the State, collectively accounting for the majority of individual musical events in the State in the last five years. MCD also owns and operates several venues in the State, namely The Gaiety Theatre, HQ, The Olympia, The Ambassador, and the SFX. Aiken operates the Vicar Street venue in Dublin.
- 1.7. The Competition Authority notified TicketMaster Ireland in February 2003 that it was the subject of an investigation into this matter. MCD and Aiken were notified in October 2003 that they were also subjects of the Competition Authority's investigation.
- 1.8. Throughout the investigation TicketMaster Ireland, MCD, and Aiken have been extremely cooperative by providing relevant information and documentation in a prompt manner when requested.
- 1.9. Certain confidential material is omitted from the redacted version of this Enforcement Decision Series Note ("Decision Note") while other confidential information has been presented as a range rather than a specific number. In all these cases the relevant amendments are denoted by [].

⁴ These contracts are not 'exclusive' in the strictest sense of the term. They provide that TicketMaster Ireland will handle [75-85]% - rather than 100% - of all tickets available for an event.

⁵ MCD and Aiken are sometimes collectively referred to herein as "the Promoters".

2. MARKET FACTS AND ANALYSIS

Introduction

2.1 Allegations that an undertaking (or a group of undertakings) has abused its dominant position are covered by Section 5 of the Act which reads as follows:

- (1) Any abuse by one or more undertakings of a dominant position in trade for any goods or services in the state or in any part of the State is prohibited.
- (2) Without prejudice to the generality of *subsection (1)*, such abuse may, in particular, consist in-
 - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions,
 - (b) limiting production, markets or technical development to the prejudice of consumers,
 - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage,
 - (d) making the conclusion of contracts subject to the acceptance by other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts.

An undertaking is defined in the Act as "a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service".

2.2 In order to establish that there has been a breach of Section 5 of the Act, the Competition Authority must demonstrate to the satisfaction of a court that the undertaking in question:

- holds a dominant position in a relevant market; and
- has abused that dominant position.

The creation or existence of a dominant position does not breach the Act; rather it is the *abuse* of that position that constitutes the breach.

2.3 Section 5 of the Act is based on Article 82 of the Treaty establishing the European Community. In applying Section 5, the Competition Authority has regard not only to its interpretation by Irish Courts, but also to that of Article 82 by the European Commission ("Commission"), the Court of First Instance ("CFI"), and the European Court of Justice ("ECJ").

2.4 There is no statutory provision for exemption from the application of Section 5 and/or Article 82 whereby the conduct of a dominant undertaking can be permitted if it satisfies certain welfare enhancing

criteria. To distinguish abusive from legitimate behaviour, European case law has used the concepts of "objective justification" and "proportionality".⁶ Establishing objective justification requires an assessment of the criteria considered by a dominant undertaking in determining its behaviour. If the conduct arises as a result of the application of objective (e.g., technical) rather than anti-competitive criteria that are uniformly applied in all its commercial dealings, this may be considered legitimate behaviour. Where it is established that the dominant undertaking's conduct is objectively justified, it must then be established that the conduct is proportional, i.e., does not go beyond what is necessary for the attainment of those objectives. These issues are considered on a case-by-case basis.

2.5 Section 4 of the Act applies when undertakings are engaged in arrangements⁷ which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State. Section 4(1) reads as follows:

Subject to the provisions of this section, all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State are prohibited and void, including in particular, without prejudice to the generality of this subsection, those which -

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions,
- (b) limit or control production, markets, technical development or investment,
- (c) share markets or sources of supply,
- (d) apply dissimilar conditions to equivalent transactions with other trading parties thereby placing them at a competitive disadvantage,
- (e) make the conclusion of contracts subject to acceptance by other parties, of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts.

2.6 In order to establish that there is a breach of Section 4(1) of the Act, the Competition Authority must demonstrate in court that:

- there is an agreement, decision or concerted practice,
- the parties to that agreement, or concerted practice are undertakings, or that the decision was made by an "association of undertakings" and
- the object or effect of the agreement, decision or concerted practices is to prevent, restrict or distort competition.

⁶ See, for example, *Centre Belge d'Etude de Marché Télémarketing v CLT*. Case 311/84 [1985] ECR 3261, [1986] 2 CMLR 558 and *Eurofix-Bauco v Hilti*. OJ [1988] L 65/19, [1989] 4 CMLR 677, upheld on appeal.

⁷ The arrangement can be either horizontal (i.e., between competitors in the same market) or vertical (i.e., between undertakings at different stages in the production/distribution/retailing chain).

2.7 Section 4(1) of the Act is based on Article 81(1) of the treaty establishing the European Community. In applying Section 4(1), the Authority has regard to its interpretation by Irish courts and that of Article 81(1) by the Commission, the CFI and the ECJ.

2.8 Section 4(5) of the Act insulates any otherwise anti-competitive agreement, decision or concerted practice that,

having regard to all relevant market conditions, contributes to improving the production or distribution of goods or provision of services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and does not –

(a) impose on the undertakings concerned terms which are not indispensable to the attainment of those objectives,

(b) afford undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

All of these conditions have to be satisfied in order that an anti-competitive agreement, decision or concerted practice is not prohibited under Section 4(1) of the Act.⁸

2.9 Determining whether or not the conditions in Section 4(5) are satisfied requires a careful assessment of the economic context of the agreement, decision or concerted practice. For example, the relevant market needs to be defined. In some circumstances, the market share of the parties to the agreement, decision or concerted practice, together with the importance of barriers to entry into the market, needs to be established. A judgment is also necessary as to whether there are terms or conditions of the agreement, decision or concerted practice that are indispensable for the attainment of its objectives.

2.10 Section 4(5) is analogous to Article 81(3) of the Treaty establishing the European Community. In considering Section 4(5), the Competition Authority has regard to its implementation by the Irish courts, but also to the implementation of Article 81(3) by the Commission, CFI and ECJ. However, the Authority also has regard to its own previous decisions, since, until 1 July 2002, the Competition Authority could grant exemptions under Section 4(5)⁹ to individual agreements, decisions or concerted practices. From that date, the Irish courts have applied the section directly.

The relevant market

2.11 For the purposes of this investigation, the relevant market is the market for outsourced ticketing services for events with a national or international appeal in the island of Ireland.

⁸ Section 4(5) and Section 4(1) are related through Section 4(2) which reads as follows: “[A]n agreement, decision or concerted practice shall not be prohibited under *subsection (1)* if it complies with the conditions referred to in *subsection (5) ...*”.

⁹ Under the Competition Act, 1996, the equivalent provision was Section 4(3).

Defining the product market

2.12 The European Commission *Notice on Relevant Market Definition*¹⁰ defines a relevant product market as one that:

comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use.

2.13 The Notice proposes a test to determine whether particular products are substitutes and thus within the same market, the **S**mall but **S**ignificant **N**on-transitory **I**ncrease in **P**rice ("SSNIP") test:

[T]he question to be asked is whether the parties' customers would switch to readily available substitutes or to suppliers located elsewhere in response to a hypothetical small (in the range of 5% to 10%) but permanent relative price increase in the products and areas being considered. If substitution were enough to make the price increase unprofitable because of the resulting loss of sales, additional substitutes and areas are included in the relevant market.¹¹

While data limitations often mean that the test cannot be applied, the test can nevertheless be a useful thought experiment in defining the market.

2.14 In defining the relevant market in the present case, the Competition Authority:

- Spoke to various ticketing service providers and event promoters in the island of Ireland, as well as theatres and sporting organisations that have their own ticketing requirements.
- Liaised with other National Competition Authorities examining the ticketing industry in their member states, e.g., the Office of Fair Trading's ("OFT") study of the UK ticketing industry, *Ticket agents in the UK*, which was released in early 2005.¹²

2.15 Ticketing requirements for a particular event are determined by the nature of the event itself. There are three core characteristics of an outsourced ticketing service for events of national or international appeal:

1. A network of fully equipped retail outlets for selling tickets located across the island of Ireland – this characteristic provides

¹⁰ European Commission, *Notice on the Definition of Relevant Market for the Purposes of Community Competition Law*, OJ [1997] C 372/5.

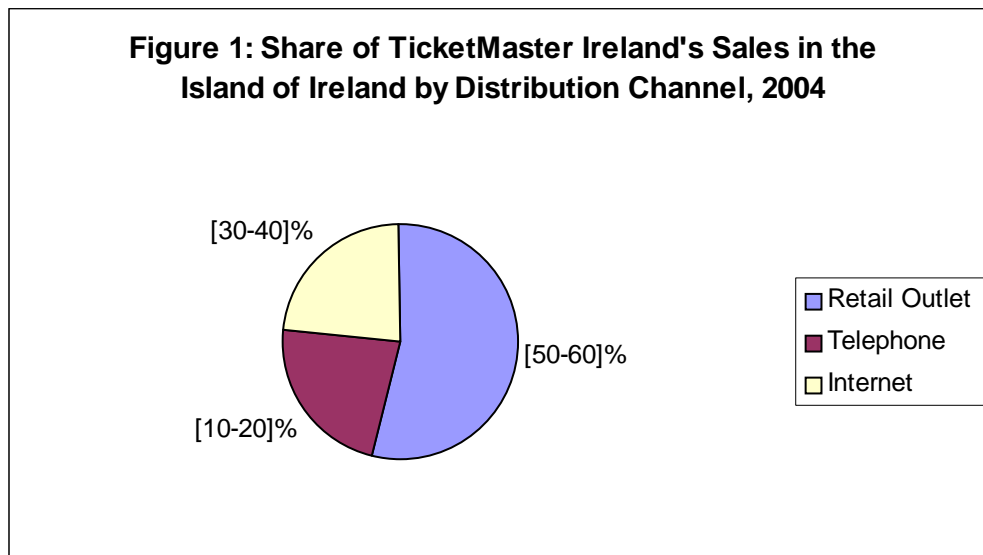
¹¹ European Commission, *supra* note 10, paragraph 17. The test is sometimes referred to as the "hypothetical monopolist" test.

¹² A copy of this study can be found at <http://www.oft.gov.uk/NR/rdonlyres/1A43C46D-FE3D-4074-B624-F81C702DFEA0/0/oft762.pdf>. Reference will be made to the OFT's study below.

end consumers with the option of purchasing a ticket for an event in a conveniently located retail outlet;¹³

2. The existence of fully-equipped call-centre and Internet ticket sales operations that can deal with periods of high activity where a large number of end consumers attempt to purchase tickets for an event simultaneously; and
3. The provision of high quality ticketing hardware and software. Among other things, this helps to combat credit card fraud and manage cash handling and treasury functions on behalf of the promoter, as well as to ensure adequate ticket inventory control and high speed printing on security paper stock (e.g., containing holograms).

As can be seen from Figure 1, all three methods of ticket distribution (i.e., Internet, phone and retail outlets) are important in the island of Ireland.



Notes:

1. Data refers to all ticket sales in the island of Ireland by TicketMaster Ireland, irrespective of whether events have a local, national, or international appeal. It is not possible to break down ticket sales by events of local, national or international appeal but it would appear to be the case that the vast majority of TicketMaster Ireland's sales are for events of a national or international appeal. Sales are measured by the number of tickets sold.

Source: TicketMaster Ireland

2.16 In determining the relevant market, the Competition Authority considered the issues that would be taken into account by an event promoter. The nature of the ticketing service required by a promoter will ultimately depend on the type of event being organised, i.e., regional or local events versus events of national or international appeal. The Authority considered a number of possible product groupings in its analysis of market definition:

- Outsourced ticketing services for events of national or international appeal;

¹³ The end consumer in this instance is the individual seeking to purchase a ticket for an event from a ticketing service provider. The event promoter who is considering outsourcing the task of selling tickets is a buyer of ticketing services.

- Outsourced ticketing services for events of a regional or local appeal;
- Insourced ticketing services for events of national or international appeal; and
- Insourced ticketing services for events of a regional or local appeal.

These are alternatives that a promoter or event organiser might consider in meeting their need to distribute tickets to the end consumer. However, the Competition Authority rejected the final three alternative market definitions.

Ticketing services for events of national or international appeal do not compete in the same market as ticketing services for events of regional or local appeal.

2.17 Events with a national or international appeal differ from those events with a regional or local appeal. An event organiser promoting the former type of event is more likely to require all of the above characteristics from a ticketing service provider. This is primarily because these events tend to attract a very high demand for tickets from a wide geographic “catchment area” over a short space of time. In these instances, it is likely to be the case that a ticketing service provider that does not possess an island-wide network of retail outlets and/or has limited call centre and Internet capabilities will not be considered a viable alternative to ticketing service providers that possess all of the characteristics outlined above.¹⁴

2.18 The ticketing requirements for events with a regional or local appeal are unlikely to be as extensive as those with a national or international appeal because the number of consumers looking to purchase a ticket is likely to be smaller and limited to a particular geographic region. Thus, a ticketing service provider that does not possess any retail outlets and/or has limited call-centre and Internet ticket sales operations may still be considered by a promoter as a viable option for an event that is expected to only have a regional or local appeal.

Outsourced and insourced ticketing service providers do not compete in the same market.

2.19 Insourced ticketing service providers allow event promoters that have their own venue to operate their own box offices by providing the promoters with the necessary software and hardware systems.¹⁵ For example, the National Concert Hall uses a system provided by

¹⁴ The Competition Authority recognises that in certain rare instances a promoter of the events in the relevant market will not consider a nationwide network of retail outlets essential. Purchasing tickets through retail outlets tends to be favoured by consumers who do not possess a credit card. An event organiser promoting an event that will primarily attract interest from high-income consumers who are all likely to possess a credit card (say, an opera event) may consider using a ticketing service provider that does not possess a nationwide network of retail outlets.

¹⁵ This would also apply to an event promoter that rents a venue that already possesses insourced ticketing service capabilities. However, for an event promoter that rents a venue for a short period of time that does not have insourced ticketing service capabilities, there would clearly be no incentive to install an insourced ticketing service. In this instance, an insourced ticketing service would not be considered by the event promoter as a substitute for an outsourced ticketing service.

Tickets.com. An insourced ticketing service enables an event promoter to print and distribute its own tickets. The extent to which insourced ticketing service providers exert a competitive constraint on outsourced ticketing service providers determines whether outsourced and insourced ticketing services are substitute products.

2.20 Promoters and venues may elect to outsource their ticketing requirements for some or all of the following reasons:

- The sporadic nature of some promoters' and venues' activities may make it difficult to staff ticketing operations, retain qualified staff and maintain required expertise. Ticketing service providers, on the other hand, can combine the activities of various promoters and venues to maintain a relatively constant business volume.
- Ticketing and related expertise is not a core business skill of promoters or venues, it is however a core skill of ticketing agencies.
- Ticketing service providers can assist the promoter or venue to combat credit card fraud. Ticketing service providers can also manage cash handling and treasury functions on behalf of the venue or promoter.
- Desire to maximise sales by taking advantage of the broad distribution capabilities of the ticketing services provider while avoiding capital and operating costs of call centres, outlet networks, Internet server infrastructures, etc.
- Reduction in the administration costs of dealing with event cancellation or postponement. Ticketing service providers will normally refund or reissue tickets for cancelled or postponed events with full refund to ticket purchasers at no additional cost to the promoter or venue. A promoter or venue doing its own ticketing, on the other hand, would have to bear all of the staff and out-of-pocket costs of selling the tickets originally and then refunding or reissuing the tickets.

2.21 There are two key reasons why an insourced ticketing service is unlikely to be considered a viable alternative for events with a national or international appeal. *First*, an insourced ticketing service does not provide an island-wide network of retail outlets that is currently considered essential for promoting these types of events. *Second*, given the high demand for tickets associated with events of a national or international appeal, an insourced ticketing service must possess the technical capability to quickly and efficiently handle a potentially large number of consumers over a short space of time.¹⁶ An insourced ticketing service is unlikely to offer large and sophisticated call-centre and Internet operations that are a key characteristic of an outsourced ticketing service.¹⁷

¹⁶ For example, all 160,000 tickets for two U2 concerts in Dublin in June 2005 sold out in approximately fifty minutes when they went on sale in February 2005. See www.rte.ie/arts/2005/0204/u2.html.

¹⁷ Due to space considerations, most venues are not able to install large call-centre and Internet operations to rival that of an outsourced ticketing service. Furthermore, most venues do not have

Supply-side substitutability factors are not sufficient to broaden the market definition.

- 2.22 The European Commission's *Notice on Market Definition* emphasises the potential importance of supply-side substitutability in defining the relevant market in those situations in which its effects are equivalent to those of demand substitution in terms of effectiveness and immediacy. For supply-side substitutability to act as a competitive constraint requires that suppliers be able to switch production to the relevant products and market seamlessly and immediately in response to a small but significant, non-transitory change in the price (in the range of 5%-10%) charged by the hypothetical monopolist without incurring significant additional costs or risks. When these conditions are met, the additional production that is put on the market will have a disciplinary effect on the competitive behaviour of the companies involved.
- 2.23 In this instance, the question arises as to whether an insourced ticketing service provider could switch to the provision of an outsourced ticketing service in the short-term in response to small and permanent changes in relative prices. Given that such a switch would entail a significant adjustment of an insourced ticketing service providers existing tangible assets, particularly because of the need to setup an island-wide network of retail outlets, the Authority does not consider it appropriate to enlarge the market to take account of insourced ticketing services.
- 2.24 In sum, the relevant product market is outsourced ticketing services for events with a national or international appeal.¹⁸

The relevant geographic market

- 2.25 The relevant geographic market in this investigation is the island of Ireland.¹⁹
- 2.26 The European Commission *Notice on Relevant Market Definition*²⁰ states

The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.

a sufficiently large capacity to justify installing large and sophisticated call-centre and Internet operations.

¹⁸ If the broader market definitions described in paragraphs 2.17-2.18 and 2.19-2.21 were accepted, the Competition Authority's finding with respect to dominance in paragraph 3.5 below would not change.

¹⁹ As the operations of TicketMaster Ireland, MCD, and Aiken affect trade between two or more Member States of the European Union, namely the State and the United Kingdom (mainly Northern Ireland), assessment of the matter is appropriate under both Section 5 of the Act and Article 82 of the EC Treaty as well as Section 4 of the Act and Article 81 of the EC Treaty.

²⁰ See supra note 10.

As with defining the product market, the SSNIP test can be employed to define the geographic market.

2.27 In *United Brands v. Commission*²¹ the ECJ stated that the opportunities for competition under Article 82 must be considered:

with reference to a clearly defined geographic area in which [the product] is marketed and where the conditions are sufficiently homogeneous for the effect of the economic power of the undertaking concerned to be able to be evaluated.

2.28 A geographic market definition that encompasses the State is too narrow in this case. This is primarily because events with national or international appeal, irrespective of where they are taking place in the State, attract interest from end consumers in Northern Ireland and vice versa. Therefore, an outsourced ticketing service provider must possess the ability to sell and distribute tickets in both the State and Northern Ireland. The fact that the TicketMaster Ireland website includes retail outlets in Northern Ireland as part of its network of retail outlets supports this view.

2.29 From a *demand* perspective, outsourced ticketing service providers outside the island of Ireland do not compete with those located in the island of Ireland. This is primarily because event promoters in the island of Ireland require a prospective outsourced ticketing service provider to possess a network of retail outlets located throughout the island of Ireland. Thus, an outsourced ticketing service that, for example, only possesses a network of retail outlets located throughout Great Britain is very unlikely to be considered a substitute service by an event organiser promoting events of a national or international appeal in the island of Ireland. Furthermore, from a *supply* perspective it is unlikely, given the investment and time required, that a regional outsourced ticketing service provider, or one located in Great Britain, could switch existing facilities easily and risklessly into the market over a comparatively short period of time, e.g., six months.

2.30 In sum, the relevant geographic market is the island of Ireland.

Market Characteristics and Analysis

2.31 In evaluating whether or not TicketMaster Ireland has abused its alleged dominant position and/or whether its contracts with the Promoters distort competition in the market for outsourced ticketing services in the island of Ireland, it is necessary to analyse the characteristics of this market and the related activities of the Promoters and the artists that end consumers pay to see perform. These characteristics are:

- TicketMaster Ireland holds 100% of the market for outsourced ticketing services for events of national or international appeal in the island of Ireland;

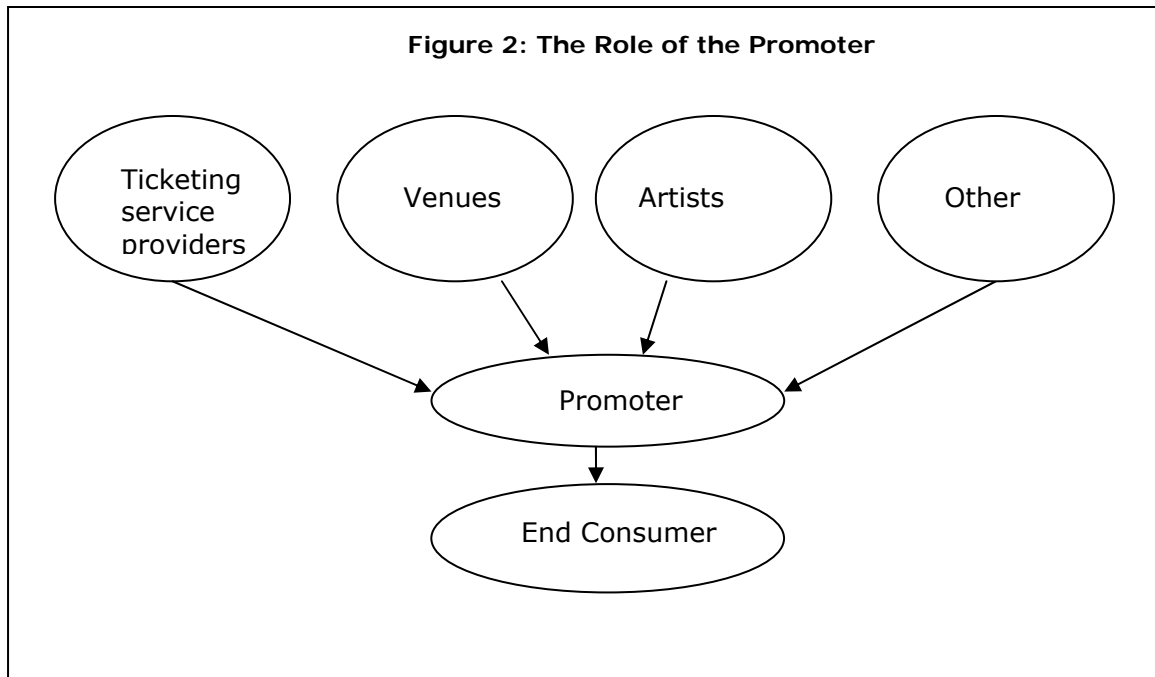
²¹ *United Brands v. Commission*, Case 27/76 [1978] ECR 207, [1978] 1 CMLR429, CMR 8429, ECJ.

- The role of the promoter is to organise performances by artists. High-profile artists typically demand high appearance fees to perform. Promoters in the island of Ireland compete aggressively with promoters in other countries to convince high-profile artists to perform by offering them sufficiently attractive terms. Thus, high-profile artists have strong bargaining power in their negotiations with promoters;
- The Promoters are the major buyers of TicketMaster Ireland's ticketing services, accounting for between 50 and 100% of the latter's ticket sales;
- The contractual agreements between the Promoters and TicketMaster Ireland are multi-year and exclusive (see footnote 4, above) with frequent renegotiation during the term of the contract at the behest of the promoter; and
- There are payments made under the contracts to the Promoters: upfront payments on signing, sometimes in instalments, that are non-recoupable, and advance payments that are recoupable against a volume discount on ticket sales.

It is only when these market facts are explored and analysed that a view can be taken as to whether or not a breach of the Act has occurred. This question is considered in the 'Assessment' discussion in Section 3 below.

Characterising the relationship between promoters, artists, outsourced ticketing service providers and venues: an overview

- 2.32 The promoter is responsible for contracting with an artist to appear at a certain time, date and venue in return for a fee, part of which is paid prior to the event taking place. The promoter is likely to compete with promoters in other countries for the artist to appear in the island of Ireland. The promoter will also advertise the event and may in some instances co-sponsor the event with a newspaper or radio station. Frequently, the contracts are signed and an advance fee paid to the artist well before the performance. Thus, the promoter takes a considerable risk since these payments are non-recoverable. The promoter in conjunction with the artist sets the face value of the ticket. This pays not only the artist but also all the expenses of the promoter, including promotion, hiring the venue, etc.



Source: The Competition Authority

- 2.33 Once the promoter has secured the services of the artist, hired the venue and agreed a promotional campaign, the promoter has to sell tickets to end consumers. For this, the promoter contracts with an outsourced ticketing service provider for events of international and national appeal. The contracts specify the booking fee to be charged by the outsourced ticketing provider to the end consumer. These fees vary depending on the distribution channel chosen by the end consumer to purchase a ticket: Internet; telephone; and retail outlet. The outsourced ticketing service provider acts as an intermediary for the promoter in selling tickets to the end consumer.²² The former do not take title to the tickets, which remain the property of the promoter.
- 2.34 Figure 2 illustrates the various inputs required by the promoter to put on an event. To the promoter, outsourced ticketing services are just one of many inputs necessary to put on an event. The remainder of this section describes and analyses the various relationships, particularly those between the promoters and the outsourced ticketing service provider.

TicketMaster Ireland’s Market Share in the Market for Outsourced Ticketing Services for Events of National or International Appeal

- 2.35 Based on the Authority’s investigation, TicketMaster Ireland holds 100% of the relevant market. TicketMaster Ireland has held this position since at least the mid to late-1990s. Prior to this, event promoters in the island of Ireland printed and distributed tickets themselves, primarily via retail outlets located across the island of Ireland which acted as agents for the promoters. The method of ticket distribution currently used by TicketMaster Ireland is considered by

²² Since the outsourced ticketing service provider does assume some risk, as shown below, the contractual relationship between the promoter and the outsourced ticketing service provider is not an agency relationship and thus they are covered by competition law. For further discussion, see Richard Whish, 2003, *Competition Law*, Fifth Edition. London: Butterworths, pp.587-88.

event promoters to be substantially more efficient than that used by promoters in the past.

- 2.36 Other ticketing service providers that operate in the island of Ireland include TicketLord Limited ("TicketLord") and Central Ticket Bureau ("CTB"), which both entered the adjacent market for outsourced ticketing services for events of regional or local appeal between 2002 and 2003. To date they have achieved minimal expansion into the relevant market. These firms sell tickets for events of a regional or local appeal, and they compete with TicketMaster Ireland in this market.
- 2.37 TicketLord recently entered into an agreement with [...] venues located throughout the island of Ireland to sell tickets on its behalf. TicketLord has installed and financed the ticketing hardware in each of these venues. Thus, TicketLord can now be viewed as a potential competitor of TicketMaster Ireland in the market for outsourced ticketing services for events of national or international appeal. TicketLord's market share in this market is zero as it currently only sells tickets for events of a regional or local appeal.
- 2.38 CTB does not possess a network of retail outlets located across the island of Ireland so it does not compete with TicketMaster Ireland in providing ticketing services for events of a national or international appeal. The fact that it does not have a comparable network of retail outlets located across the island means that it places little if any competitive constraint on TicketMaster Ireland's conduct in the market.
- 2.39 On present trends, the relative importance of the retail outlet channel of distribution is likely to decline in the future. In 2004, [50-60]% of the tickets sold by TicketMaster Ireland were through its retail outlets (see Figure 1 above). However, this figure has been declining in recent years, primarily because of the increasing importance of the Internet since 2000 as a means of purchasing tickets (see Table 1 below). Thus, it may become easier to enter the market in the future if the vast majority of end consumers purchase tickets through the Internet or over the phone as opposed to a retail outlet, thus removing (or diminishing in importance) the current requirement to create a network of retail outlets located across the island of Ireland.²³ However, although the relative importance of the retail outlet distribution channel has declined, it almost doubled in volume terms between 1998 and 2004. For further discussion of trends, see Appendix 1 below.

²³ This may, of course, mean the analysis of the necessity of long-term contracts would have to be reconsidered.

Table 1: Share of TicketMaster Ireland's Sales in the Island of Ireland by Distribution Channel, 1998-2004¹

Distribution Channel	1998	2000 ²	2002	2004
Retail Outlet	[55-65]%	[55-65]%	[50-60]%	[50-60]%
Telephone	[35-45]%	[30-40]%	[15-25]%	[10-20]%
Internet	N/A ³	[0-10]%	[15-25]%	[30-40]%
Total	100%	100%	100%	100%

Notes:

1. See Note 1 to Figure 1 above.
2. TicketMaster Ireland commenced selling tickets through the Internet in 2000.
3. na = not applicable as Internet sales only commenced in 2000.

Source: TicketMaster Ireland

The Promoters have significant countervailing buying power.

2.40 Although TicketMaster Ireland has 100% of the relevant market, there is one key factor suggesting that this high market share is not consistent with a finding of substantial market power. The countervailing buying power of the Promoters is such that TicketMaster Ireland does not appear to be in a position to exercise market power by behaving independently of its customers – the Promoters.

2.41 The importance of countervailing buyer power in neutralising high market shares is well recognised in EU case law. According to Whish,²⁴ market power is not solely a supply-side phenomenon; buyers may also exercise market power. The UK Competition Commission notes that buyers may have sufficient bargaining power to prevent the exercise of suppliers' market power.²⁵ Factors noted by the Competition Commission that will affect the ability of buyers to constrain suppliers include:

- The buyers' ability to find alternative suppliers in the case of a price rise;
- The ease with which buyers can switch supplier; and
- The extent to which buyers possess a credible threat of setting up their own supply arrangements.

An example of the latter was the European Commission's view that Tetra Pak had sufficient countervailing buyer power to neutralise the

²⁴ Whish, 2003, *infra* note 22, pp. 178-90.

²⁵ Competition Commission, 2003, *Market Investigation References: Competition Commission Guidelines*, London: Competition Commission, p 26.

potential increase in market power of the proposed merger between Enso and Stora who were estimated to have a market share post-merger of between 50-70% in the liquid packaging board market in the European Economic Area.²⁶

- 2.42 If TicketMaster Ireland could on a sustainable basis raise the price of its outsourced ticketing services above the competitive level this would demonstrate it had market power. On the other hand, if customers, (in this case, the Promoters) had alternative sources of supply and there were low costs associated with sourcing their demands elsewhere, it would undermine the ability of TicketMaster Ireland, despite its large market share, to profitably increase its prices above the competitive level.
- 2.43 MCD and Aiken are the two largest customers of TicketMaster Ireland. On an annual basis between 1998 and 2004, these two promoters accounted for between [50-100]% of the tickets sold by TicketMaster Ireland. (See Table 6 below for details). The next largest customer, after MCD and Aiken, accounted for only [<10]% of TicketMaster Ireland's ticket sales in 2004. Both MCD and Aiken have been operating as event promoters in the island of Ireland for at least 10 years, for part of which they also provided their own ticketing service.
- 2.44 The Promoters stated to the Competition Authority that when reviewing their ticketing service contracts they consider:
- a) Alternative ticketing service providers, and/or
 - b) Setting up their own ticketing facilities.

If the Promoters do not get the terms and conditions that they want from TicketMaster Ireland they can credibly threaten to examine either option (a) or (b) when they renegotiate the terms of their respective contracts with TicketMaster Ireland. The latter has identified in internal documentation that [this is the case].²⁷

- 2.45 Alternative ticketing service providers - MCD informed the Competition Authority in writing and orally that it has in the past received and examined proposals from, among others, An Post, [...] and [...]. With respect to An Post's proposal in 2001, MCD informed the Competition Authority that there were a number of problems with this proposal, including the fact that some of An Post's outlets were not open on Saturday afternoons. In addition, the service charges proposed by An Post were virtually the same as those charged by TicketMaster Ireland. In relation to the [...] and [...] proposals, neither firm could provide the

²⁶ Commission Decision 1999/641/EC in Case COMP/M.1225 - *Enso-Stora*, OJ L 254, 29.9.1999, p. 9, paragraphs 89-91. It should be noted that, in contrast to the market for outsourced ticketing services in the island of Ireland, there were high barriers to entry and that in the foreseeable future the Commission concluded that no greenfield entrants were likely to emerge in the liquid packaging board market (paragraphs 75 to 83). It should also be noted that the merged parties made certain undertakings not to price discriminate between Tetra Pak and its smaller rivals to avoid the possibility that Tetra Pak would have a competitive advantage over its smaller competitors (paragraphs 96 and 101). In the case of outsourced ticketing services, it could be argued that there might be a similar concern: the Promoters would receive preferential treatment vis-à-vis other promoters from TicketMaster Ireland. However, in the course of this investigation, the Authority has received no complaints to such an effect from other promoters. In addition, there is no indication that the combined market shares of the Promoters is increasing (see Table 6 below).

²⁷ This view was expressed by [...] of TicketMaster Ireland, in [...] analysis written in June 2001.

island-wide network of retail outlets that MCD deems essential for selling tickets.

- 2.46 Other ticketing service providers that operate in the island of Ireland such as TicketLord Limited and the Central Ticket Bureau have created viable businesses by selling tickets for events of regional or local appeal, and they compete with TicketMaster Ireland in this adjacent market. Furthermore, as explained above, TicketLord has recently set up an island-wide network of retail outlets which would appear to make it a potential alternative to TicketMaster Ireland.
- 2.47 Despite the fact that only TicketMaster Ireland has an extensive network of retail outlets located around the island of Ireland, MCD and Aiken generate large volumes of ticket sales which are likely to be sufficient for other ticketing service providers to expand/create such an extensive network were the Promoters to select them rather than TicketMaster Ireland for multi-year exclusive contracts. A rival ticketing service provider could achieve such an extensive network through an agreement with a retail chain, franchise, or symbol group. TicketLord informed the Competition Authority that it had reached an agreement in principle with an island-wide retail chain for the latter to act as a ticketing agent on its behalf.
- 2.48 There are numerous alternative outlets that would be suitable retail partners for a ticketing service provider and the possibility that providing a ticketing service on site would generate additional footfall for the outlet provides an incentive for that outlet to conclude such an arrangement, including being prepared to bear at least some of the cost.²⁸ TicketMaster Ireland has agreements with approximately 100 retail outlets, the vast majority of which sell CDs and DVDs. However, there are many other retail outlets, including music stores, which could be suitable partners for a ticketing service provider and which are not currently signed up with TicketMaster Ireland.²⁹
- 2.49 Although there do not appear to be substantial economies of scale in the creation of a network of retail outlets, call centres or Internet booking, there do appear to be economies of density in the creation of a network of retail outlets. As the network of retail outlets expands, holding demand per outlet constant, the unit cost of setting up an extra unit will be constant or perhaps decline slightly. However, if an entrant were to enter with a network of retail outlets sufficient to provide coverage across the island of Ireland, it would need sufficient demand in order that the costs of providing the ticketing service were

²⁸ TicketMaster Ireland estimates that the costs incurred in setting up a TicketMaster Ireland agent would include approximately €800 for a computer and €1000 for a specialised printer. In addition, annual broadband charges – to connect to the TicketMaster Ireland ticketing inventory management system – are in the range of €300 to €600. Training and call out charges might amount to approximately €[800-1,200] annually. These set up costs must be measured against a per ticket fee to the retail outlet of €[≤2]. In 2004, the number of tickets sold by TicketMaster Ireland through its retail outlets was [...]. Given that TicketMaster Ireland has approximately 100 retail outlets located across the island of Ireland, this means that each outlet sold on average just over [10,000-20,000] tickets in 2002.

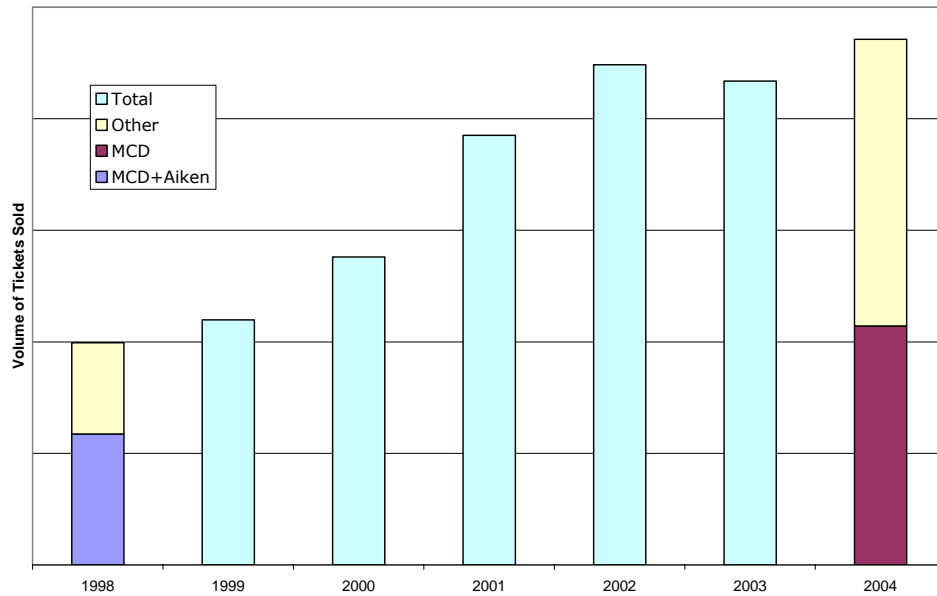
²⁹ For example, the Golden Discs franchise has 30 outlets located throughout the Republic of Ireland that sell CDs and DVDs. However, only one outlet has an agreement with TicketMaster Ireland to sell tickets on its behalf. Thus, there are 29 Golden Discs outlets currently available to an outsourced ticketing service provider seeking to create a network of retail outlets. The HMV franchise has 12 outlets located throughout the island of Ireland that sell CDs and DVDs. It had an agreement with TicketMaster Ireland to sell tickets on the latter's behalf but this agreement lapsed in 2001.

not prohibitive. Thus, the need to establish an island-wide network of retail outlets combined with the necessity of sufficient demand in each outlet to bring unit selling costs per ticket down is likely to act as a barrier to entry.

- 2.50 Foreign ticketing service providers with a good reputation for outsourced ticketing service provision and financial solvency could also enter the Irish market should they receive a contract from the Promoters.³⁰ [...], a ticketing service provider in the UK, informed the Competition Authority that entry into the Irish market is an attractive option if they received a contract from either MCD or Aiken. Furthermore, as shown below in paragraph 2.82, when the Gaelic Athletic Association decided to tender for outsourced ticketing services, there were many firms that had the reputation to compete with TicketMaster Ireland but not the network of retail outlets which appears to be the critical barrier to entry.
- 2.51 However, there is a chicken and egg problem with respect to the creation of a network of retail outlets. An alternative outsourced ticketing service provider is unlikely to roll out an island-wide network of retail outlets unless it has first secured a multi-year contract with MCD and/or Aiken. In essence, the promoter acts in the role of a sponsor of entry by giving the ticketing service provider sufficient certainty concerning future anticipated ticket sales volumes that the ticketing provider invests in an island-wide network of retail outlets. It is unlikely to make this investment without such a multi-year contract.
- 2.52 Self-supply - MCD informed the Competition Authority that it believed it would eventually provide its own ticketing distribution once the use of the Internet to purchase tickets for events has become pervasive in Ireland. MCD estimated that this might happen within approximately five years.
- 2.53 The growth in the event promotions market makes the Promoters' threat to self-supply their own ticketing requirements more credible. The fact that both MCD and Aiken can generate large annual volumes of ticket sales suggests that they can credibly threaten to self-supply. For example, in 2004, MCD generated total ticket sales, measured in terms of the number of tickets sold, that exceeded all of TicketMaster Ireland's ticket sales in 1998 (see Figure 3 for details).

³⁰ For a discussion of reputation as a barrier to entry, see the Authority's Merger Determination, *Determination of the Competition Authority under Section 22 of the Competition Act, 2002 Notification No. M/04/032 – Proposed acquisition by IBM Ireland Limited of Schlumberger Business Continuity Services (Ireland) Limited*, paragraphs 4.4-4.7.

Figure 3: TicketMaster Ireland, Sales by Customer, 1998-2004



Notes:

1. The Figures for 1999-2003 and additional detail in respect of 2004 have been redacted on confidentiality grounds at the request of the parties.

Source: TicketMaster Ireland

- 2.54 As is the case for an alternative ticketing service provider, there do not appear to be high sunk costs associated with the provision of fully equipped call-centre and Internet ticket sales operations that would prevent a promoter from establishing such facilities. It is not essential that the promoter own these facilities; they could be rented thereby limiting set-up costs, especially sunk costs. As transaction volumes expand, operations could expand to meet increased demand by renting more space or increasing the number of telephone operators.
- 2.55 As noted in paragraph 2.48 above, there are numerous alternative outlets that would be suitable retail partners for a promoter looking to self-supply its own ticketing requirements. Furthermore, the Promoters are likely to have considerable knowledge as to appropriate retail outlets in view of their past experience self-supplying and the fact that up to 20% of tickets for an event can be supplied directly by the Promoter to retail outlets.
- 2.56 In sum, the Promoters have considerable countervailing buyer power vis-à-vis TicketMaster Ireland. Not only do they account for the majority of TicketMaster Ireland's ticket sales, but they can credibly threaten to switch to alternative promoters or self supply. It is the ability of the Promoters to award multi-year contracts for large volumes of tickets to an outsourced ticketing service provider that enables the latter to enter the market and overcome any entry barriers associated with economies of density.

The Promoters Initiate Contract Negotiations and Determine Contractual Terms

2.57 The Promoters have significant buyer power vis-à-vis TicketMaster Ireland. This manifests itself in their contractual and other relationships. These relationships are contained in a series of contracts dating back to 1998. These contracts specify:

- a) a schedule of charges for the outsourced ticketing services provided by TicketMaster Ireland to the Promoters. For example, in the Promoters' [...] contract, the charge for a ticket sold through a retail outlet was €2.00, regardless of the face value of the ticket.
- b) the magnitude of the 'upfront payment' made to the Promoters by TicketMaster Ireland, usually on signing the contract. In some cases, however, the upfront payments were, in part, paid in instalments over the contract period. In either case, these are non-recoupable (i.e., non-refundable) payments. They are viewed by the Promoters as providing working capital. For example, in [...]’s [...] contract the upfront payment was €[...];
- c) the magnitude of the 'initial advance payment' to the Promoters by TicketMaster Ireland, usually on signing the contract. These payments are recoupable by TicketMaster Ireland against the volume discount and are viewed by the Promoters as interest free loans. For example, in [...]’s [...] contract, the advance payment was €[...];
- d) the duration. For example, the current contracts between the Promoters and TicketMaster Ireland each run for [three-five] years.

These contractual issues are separated into a discussion of (a) and then (b) to (d).

2.58 Statements provided by key officials of both Promoters and TicketMaster Ireland reveals that the renegotiations and extensions of the contracts were always at the behest of the Promoters, *not* TicketMaster Ireland. Typically foreclosure arises where a firm with alleged market power – TicketMaster Ireland - seeks to maintain or strengthen its position by limiting access to customers. In this instance, the reverse is true, and it is the Promoters, rather than TicketMaster Ireland, which drive the terms of the contract.³¹

The Promoters Exert Downward Pressure on Booking Fees

2.59 Depending on the method of purchase (i.e., retail outlet, box office, or Internet/telephone), consumers pay a "booking fee". If a consumer purchases a ticket from the box office of the venue, or, in some instances, retail outlets nearby, the consumer is not charged any

³¹ The Competition Authority does, of course, recognise that an exclusive agreement entered into by a firm with market power at the behest of a downstream supplier could still infringe the Act. For example, in *Almelo* (Case C-393/92 [1994] ECR I-1477) the ECJ considered that an exclusive purchasing agreement clause in a supply contract for electricity could infringe Article 82 of the Treaty Establishing the European Community if entered into by a dominant firm, even where local distributors requested the clause.

booking fee. If a consumer purchases a ticket at a TicketMaster Ireland retail outlet, the consumer is generally charged €2.00 per ticket that is split between TicketMaster Ireland and the retail outlet. Where a consumer purchases a ticket through TicketMaster Ireland's Internet site or through its call centre,³² the booking fees are set by reference to the face value of the ticket price. The booking fees are set out in Table 2.

Table 2: Booking Fees paid by end consumers by method of distribution, TicketMaster Ireland, 2004

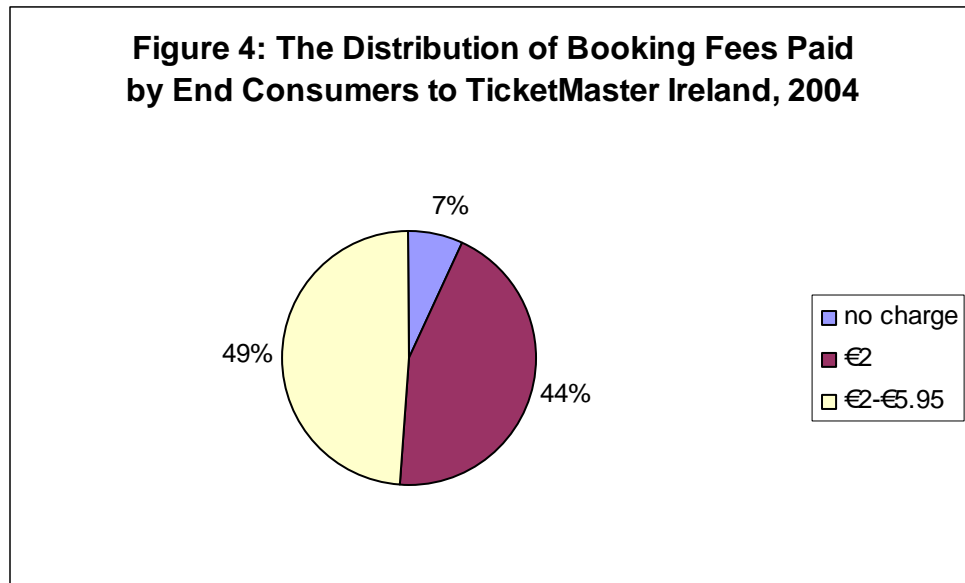
Ticket Price	Internet/Telephone Booking Fee	Event Venue Box Office	TicketMaster Retail Agent
<€15.00	€2.00	€0	€2
€15.01-€25.00	€2.95	€0	€2
> €25.01	12.5% up to maximum of €5.95	€0	€2

Source: TicketMaster Ireland

- 2.60 The maximum booking fee per ticket that TicketMaster Ireland can charge the end consumer for purchasing a ticket over the telephone or Internet is €5.95. A cap of €5.50 first appeared in TicketMaster Ireland's contract with Aiken in 2002. It was increased to €5.95 in the 2003 contract. In the case of MCD, a price cap of €5.50 first appeared in their 2002 contract, which was increased to €5.95 in the 2004 contract. Information provided by TicketMaster Ireland indicates that the average face value of a ticket for a MCD-promoted event for the first nine months of 2004 was €[...]. For tickets bought over the telephone or Internet, this ticket price represents a booking fee of €[...]. Thus, assuming a normal distribution, approximately 50% of consumers who bought tickets for events promoted by MCD over the telephone or Internet would have been subject to a booking fee in excess of €[...] in the absence of the price cap.
- 2.61 [50-60]% of TicketMaster Ireland's total ticket sales in 2004 were through its retail outlets. Thus, approximately half of all ticket sales are subject to a flat €2.00 booking fee. However, TicketMaster Ireland estimates that between [5-10]% of tickets sold through retail outlets do not charge the end consumer any fee in addition to the face value. Thus, it would appear that the booking fees paid by consumers to TicketMaster Ireland are as set out in Figure 4.

³² The call centre servicing TicketMaster Ireland is based in England. It is owned and managed by TicketMaster UK and TicketMaster Ireland pays annual fees for its service.

Figure 4: The Distribution of Booking Fees Paid by End Consumers to TicketMaster Ireland, 2004



Source: TicketMaster Ireland

- 2.62 The booking fees outlined in Table 2 above indicate that TicketMaster Ireland does not have unfettered discretion to charge any amount for its services. In other words, TicketMaster Ireland is unable to act as a supplier of ticketing services with substantial market power and charge the end consumer accordingly. Rather, for tickets sold over the telephone or Internet, TicketMaster Ireland is contractually bound to charge no more than the “cap” put in place in its contracts with the Promoters. This significantly restricts TicketMaster Ireland’s ability to set prices to end consumers. This is in contrast to the UK where in TicketMaster UK’s contracts with event promoters there is no specified upper limit to the booking fee.³³
- 2.63 The Promoters, of course, desire to maximise their profits from sales of tickets to events. The best way for the Promoters to achieve this objective, while covering the costs of an event and meet artists’ requirements, is for any given booking fees to be minimised. The Promoters therefore exert downward pressure on TicketMaster Ireland’s booking fees to promote ticket sales. According to statements provided by the Promoters, caps on all of TicketMaster Ireland’s booking fees were contractually agreed upon to facilitate profit maximisation by the Promoters.³⁴ Irrespective of the level of competition between the Promoters, there is an incentive for each promoter to ensure that TicketMaster Ireland’s booking fees are minimised.
- 2.64 In sum, TicketMaster Ireland’s ability to act independently with respect to the prices it charges end consumers is constrained by the strong bargaining position of the Promoters, which allows them to impose a limit on the level of the booking fee. The Promoters are quite properly concerned that if TicketMaster Ireland were unconstrained by such

³³ Letter from TicketMaster Ireland to the Competition Authority, dated 14 June 2005. Booking fees in the UK are generally agreed and set in negotiations between the ticketing agent and the promoter.

³⁴ The argument here is akin to the Promoters contractual relationship with TicketMaster Ireland resolving the double marginalisation problem. Essentially, by constraining the exercise of any market power by TicketMaster Ireland, the final ticket price is lower and the Promoters’ profits are higher.

contractual terms, it would charge end consumers a higher booking fee.

Upfront Payments and Advance Payments do not represent a sharing of monopoly rents between TicketMaster Ireland and the Promoters but rather reflect risk-sharing between TicketMaster Ireland and the Promoters.

2.65 The Promoters receive certain payments from TicketMaster Ireland under the terms of the contract. As noted above in paragraph 2.57, these payments can be divided into two components:

- Upfront payments - the magnitude of these non-recoupable payments are presented in Table 3 below, together with details concerning, for example, when they are paid during the contract period.
- Advance payments - the size of these recoupable payments are presented in Table 5 below, together with details of the procedure involved when the recoupable payment is drawn down.

Each table also includes the duration of the contracts between the Promoters and TicketMaster Ireland. While the description of the upfront payment requires no elaboration, some explanation is merited for the advance payments.

Table 3: TicketMaster Ireland's contracts with MCD and Aiken, Duration and Upfront Payments, 1998-2004

Panel A - MCD			
Contract/Amendment Date	Duration	Upfront Payment ¹	Comments
1998	3 years	[...]	[...]
2000	4 years	[...]	[...]
2002	6 years	[...]	[...]
2004	[3-5] years	[...]	[...]
Panel B – Aiken			
1998	5 years	[...]	[...]
2003	[3-5] years	[...]	[...]
2004	[3-5] years	[...]	[...]

Notes:

1. TicketMaster Ireland makes non-recoupable payments to the Promoters which may be paid on signing the contract and/or in staged payment(s) during the contract.

Source: TicketMaster Ireland

2.66 TicketMaster Ireland charges an inside commission which is payable by the Promoter to TicketMaster Ireland from the face value of the ticket. The inside commission is payable by the Promoter to TicketMaster Ireland in return for the latter's service of selling and distributing tickets on behalf of the Promoter. The amount of the inside commission is generally pursuant to the schedule in Table 4 below. This schedule of inside commissions (and volume discounts) applies to both MCD and Aiken.

Table 4: Inside Commission and Volume Discounts pertaining to each category of ticket prices, TicketMaster Ireland, 2004

Ticket Price	Inside Commission	Volume Discount
Up to €[...]	€[...]	€[...]
€[...]-€[...]	€[...]	€[...]
€[...]-€[...]	€[...]	€[...]
€[...]-€[...]	€[...]	€[...]
€[...]-€[...]	€[...]	€[...]
€[...]-€[...]	€[...]	€[...]
€[...]-€[...]	€[...]	€[...]
€[...]-€[...]	€[...]	€[...]
€[...] upwards	€[...]	€[...]

Source: TicketMaster Ireland

2.67 The volume discount is, in contrast to the inside commission, paid by TicketMaster Ireland to the Promoter. The volume discount is a discount on inside commissions based on anticipated business volumes. The volume discount is offset or drawn down against any advance payment made by TicketMaster Ireland to the Promoter. The Promoters have informed the Competition Authority that they regard the advance payment as an interest-free loan from TicketMaster Ireland. Table 5 below sets out the details of the advance payments made by TicketMaster Ireland to MCD and Aiken.

Table 5: TicketMaster Ireland's Advance Payments to MCD and Aiken, 1998-2004

Panel A - MCD			
Contract/Amendment Date	Duration	Initial Advance Payment	Further Advance Payment ¹
1998	3 years	[...]	[...]
2000	4 years	[...]	[...]
2002	6 years	[...]	[...]
2004	[3-5] years	[...]	[...]
Panel B – Aiken			
1998	5 years	[...]	[...]
2003	[3-5] years	[...]	[...]
2004	[3-5] years	[...]	[...]

Notes:

1. TicketMaster Ireland provides periodic advance payments against anticipated volume discounts to be earned by MCD and Aiken and such discounts are repaid by off-setting such volume discounts.

Source: TicketMaster Ireland

2.68 These upfront and advance payments can be substantial. Albeit a somewhat imperfect measure, the magnitude of the various payments made to TicketMaster Ireland by the Promoters in 2004 was equivalent to [...] % of the average ticket price in 2004. Hence, it is important to be able to analyse what they represent. Two hypotheses are considered:

- The payments reflect a sharing of monopoly rent between TicketMaster Ireland and the Promoters that results in end consumers paying higher ticket prices; and,
- The payments reflect information based capital market efficiencies that result in end consumers getting a greater variety of acts, since the payments mean that the Promoters are in a better position to bid for acts.

Each of these is considered in turn. The Competition Authority takes the view that the latter explanation is the relevant interpretation of these payments.

2.69 Sharing of Monopoly Rents - Given the combined market share of the Promoters and the fact that TicketMaster Ireland holds a 100% market share in the market for outsourced ticketing services for events of national or international appeal in the Island of Ireland, there may be concern that the exclusive distribution agreements are distorting the level of competition in the market for event promotions for events of national or international appeal in the island of Ireland. A particular concern is whether the Promoters might have an incentive to enter into

a long-term exclusive distribution agreement with TicketMaster Ireland as a commitment device to limit their own ability to switch to an alternative ticketing service provider and thereby commit to dampen competition between themselves. Furthermore, in order to limit competition from rival promoters, TicketMaster Ireland could undertake to refuse to supply outsourced ticketing services to such rivals. This does not seem a plausible argument for a number of reasons.

- 2.70 *First*, it is not clear how entering into an agreement with TicketMaster Ireland acts as a commitment device for the Promoters to dampen competition between themselves. There is no reason why either Promoter could not compete aggressively for artists whilst also having an exclusive agreement with TicketMaster Ireland to sell and distribute tickets on its behalf. The duration and periodic renegotiation of the contracts between TicketMaster Ireland and MCD and Aiken, respectively, are different. It could be argued that if the Promoters were coordinating their activities they would select common contract renewal dates in order to maximise their bargaining power vis-à-vis TicketMaster Ireland, in relation to threats to switch to an alternative ticketing service provider or to set up their own ticketing facilities.
- 2.71 *Second*, information in the Competition Authority's possession indicates MCD and Aiken compete very aggressively for artists. In addition, the Promoters informed the Competition Authority that they face strong competition from event promoters operating in other European countries. Both MCD and Aiken have displaced other event promoters such as Pat Egan Sound Limited as the largest promoters in the island of Ireland.
- 2.72 *Third*, barriers to entry into the event promotions market in the island of Ireland do not appear high. In addition to a good reputation for delivering on its financial commitments, financial solvency and access to working capital finance, one of the key requirements for setting up as an event promoter in the island of Ireland is knowledge of the market. However, this knowledge could be obtained by employing a local promoter with an intimate knowledge of the market in the island of Ireland. There are many small promoters currently operating in the island of Ireland, e.g., Pat Egan Sound Limited, Rag Lane Entertainment, etc. Easy access to venues is also important for a new entrant and, although MCD and Aiken own and/or operate a number of venues in the Dublin City Centre, access to these venues is unrestricted, based on testimony provided by the Promoters. There is also no evidence that TicketMaster Ireland would not supply outsourced ticketing services to promoters that compete with MCD and Aiken. The absence of any significant barriers to entry reduces the ability of the promoters to commit to dampening competition as any potential super-normal profit gains are likely to be competed away as rival promoters enter the market.
- 2.73 *Fourth*, the artist is the scarce resource determined by what the end consumer demands. To the extent that any rent is being earned, it is likely to accrue to the artist. This is primarily the case for high-profile artists. In contrast, artists with a lower profile are unlikely to have strong bargaining power in their negotiations with promoters. One way in which a dampening of competition between the Promoters might manifest itself is through a decline in the level of fees offered to artists for performing in the island of Ireland. However, as mentioned in paragraph 2.71 above, MCD and Aiken also compete with promoters in

other countries to attract artists. Any decline in the level of competition between the Promoters through lower artist fees would see artists switching to other countries where fees are more attractive. Alternatively, rival promoters, attracted by super-normal profit margins, would enter the market and bid up artist fees.

- 2.74 *Fifth*, there is no evidence from either market characteristics or market outcomes to suggest that the Promoters have engaged in collusive behaviour. Market shares are asymmetric and unstable (see Table 6 below). The contractual conditions for each artist are multidimensional and not made public, thus making agreement among the Promoters on such conditions difficult to reach and enforce. Finally, there is considerable uncertainty concerning the demand for events that are often organised months in advance, thus making coordinated behaviour difficult and perhaps necessitating some elaborate end-of-year settlements, of which there is no evidence.

Table 6: Percentage of TicketMaster Ireland's total annual ticket sales accounted for by MCD and Aiken, and the ratio of their respective market shares, 1998-2004.

This table, redacted on confidentiality grounds, illustrates the variation in importance of MCD vis-a-vis Aiken measured as percentage of total ticket sales by TicketMaster Ireland. The table demonstrates that although one client has, at given times, represented a higher percentage of the business than the other (by a ratio of x to y), the ratio of one client's business to the other has varied considerably. Over the period 1998-2004, the minimum ratio of market shares between the Promoters is 1.3, the maximum ratio is 2.9 while the average ratio is 2.1.

Notes:

1. Sales measured by number of tickets sold.

Source: TicketMaster Ireland

- 2.75 Risk-sharing Efficiencies - The upfront and advance payments reflect risk-sharing efficiencies. The promoter's desire for an upfront and advance payment is likely to reflect a mutually beneficial trade of risk between the promoter and the agent that will make the overall transaction more efficient. For example, it may be more efficient for the promoter to obtain some of its working capital finance via an upfront and advance payment from an agent (who understands the promoter's business and the risk it is assuming) than for the promoter to obtain equivalent finance from a bank (that does not have a full understanding of the risks in the promoter's business). Because of this, there may be genuine information-based efficiencies from the agent providing this element of finance as compared with a bank or other

financial institution. Further discussion on this issue is provided in Appendix 2 below.

- 2.76 The upfront and advance payments are used by the Promoters partly to finance the payments that need to be paid in advance to artists to attract them to perform in the island of Ireland. For example, [...] informed the Competition Authority in written correspondence that between 1998 and 2004 inclusive, it paid on average annual total advance payments of approximately €[...] to artists. Set against this figure, upfront and advance payments totalling approximately €[...] paid by TicketMaster Ireland to [...] between 1998 and 2004 represent a significant contribution. [...] also stated that in some cases, the advance payment to the artist is made two years in advance of the event taking place.
- 2.77 The upfront payment is likely to be linked to the length of the contract and the expected annual sales of the promoter. This is consistent with the contract data in Tables 3 and 5 above. As a promoter's ticket sales rise, its upfront payment can increase. Equally, as the duration of the contracts increases, so does the size of the upfront payment.
- 2.78 However, it is difficult to be precise about the relative importance of these issues in determining the magnitude of the upfront payment, especially in the case of [...] where it could be argued some of the agreements overlap. One way of examining the issue is to convert the lump sum upfront payment to a monthly payment, i.e., dividing the upfront payment by the length of the contract expressed in months. On that basis, during the first two contracts, the maximum monthly payment was €[x], for the latter two contracts, €[5x]. The latter two contracts are for longer periods (six years and [three-five] years compared to three years and four years), but, at the same time, [...]’s ticket sales have increased.

Exclusive agreements between TicketMaster Ireland and the Promoters do not foreclose the market

- 2.79 TicketMaster Ireland has long-term exclusive agreements with the largest promoters currently operating in the island of Ireland (See Tables 3 and 5 above for details). TicketMaster Ireland's initial contract with [...] was signed in March 1998 for a three-year period. In a supplemental agreement signed in 2000, this contract was extended to cover a four-year period. The contract was further extended in 2002 to cover a six-year period. In the case of TicketMaster Ireland's contract with [...], the first contract was signed in [...] 1998. Prior to its expiration, a new agreement was signed in [...] 2003 and covered a [three-five] year period. Although a supplemental agreement was signed in 2004, no amendment was made to the contract duration.
- 2.80 Taken together, MCD and Aiken accounted for between [50-100]% of TicketMaster Ireland's total ticket sales between 1998 and 2004 (see Table 6 above). The contracts could be viewed as a barrier to entry by foreclosing a large part of the market and hence restricting competition to the detriment of consumers.
- 2.81 This interpretation is incorrect. Competition in the market for outsourced ticketing services for events of national or international appeal occurs *for* the market rather than *in* the market. As noted in paragraph 2.45, the Promoters carefully consider the alternatives

available before extending, renewing or renegotiating a contract. They make very clear to TicketMaster Ireland that they have real alternatives.

2.82 A recent example which illustrates this process is the tender for outsourced ticketing services that the Gaelic Athletic Association ("GAA") employed for Croke Park, its largest sporting venue with a capacity of 80,000. In 2005, eleven companies tendered in total with the GAA drawing up a short-list of five. The GAA selected TicketMaster Ireland because of its "knowledge of GAA, experience in the global market, and ability to provide an immediate national infrastructure of outlets countrywide".³⁵ Two companies in particular, [...] and [...], were considered by the GAA to offer a ticketing service comparable to that offered by TicketMaster Ireland in all but one key area, namely the absence of a network of retail outlets located around the island of Ireland. The contract with TicketMaster Ireland expires in [2007-2009] and the contract duration was determined by the GAA. The GAA also informed the Competition Authority that the service provided by TicketMaster Ireland is seen as a short-term solution as the GAA hopes to be in a position by the end of the contract term to provide its own ticketing requirements.

2.83 The duration of the contracts between TicketMaster Ireland and MCD and Aiken, respectively, are similar to those between ticketing service providers such as TicketMaster UK Limited ("TicketMaster UK") and promoters in the UK. This is relevant since the market for outsourced ticketing services in the UK is more competitive than in the State. Since the contract signed in March 1998, the average duration of the contracts between TicketMaster Ireland and MCD is approximately 4.5 years. It is [...] under five years in the case of TicketMaster Ireland's contracts with Aiken. The OFT's 2005 study of the ticketing service industry in the UK notes that exclusive contracts of a five-year duration are common and that, in one case, a contract of between five-ten years exists between the promoter, Clear Channel Entertainment UK, and TicketMaster UK.³⁶

Exclusive Contracts Between the Promoters and TicketMaster Ireland Generate Efficiencies

2.84 There are efficiencies associated with the exclusive contracts. There are at least four areas under which efficiency gains can be grouped when considering TicketMaster Ireland's exclusive contracts with the Promoters:

- Reduced transaction costs;
- Economies of density;
- Risk-sharing efficiencies; and
- Improved provision of services.

The third efficiency has already been dealt with in paragraph 2.75.

³⁵ Letter from the GAA to the Competition Authority, dated 29 August 2005.

³⁶ OFT, 2005, supra note 12, pp. 30 and 37.

2.85 Exclusivity has two aspects: event and promoter. In other words, TicketMaster Ireland has the right to sell at least [75-85]% of the ticket manifest to an *individual* MCD or Aiken event, and it also has the right to sell *all* MCD and Aiken promoted events for a certain period of time. Reduced transaction costs and economies of scale flow from both forms of exclusivity, while the information based capital market efficiencies and the improved provision of services are a function primarily of the fact that TicketMaster Ireland has the right to sell *all* MCD and Aiken promoted events.

2.86 *Reduced Transaction Costs* – TicketMaster Ireland provides a series of services to the Promoters. These have been identified by MCD as follows:³⁷

- Distribution of tickets nationwide through TicketMaster Ireland distribution channel,
- Up to the minute information on sales nationwide,
- Management of ticket inventory,
- Collection of funds from distribution channels,
- Management of credit card fraud,
- Refund of monies to customers in full, including ticket handling charges, for cancelled events,
- Provision of information to customers for postponed or re-scheduled dates,
- Attendance and verification of sales at show settlements with agents and artist management, and
- Co-ordination of web site links from artists to the TicketMaster Ireland website.

2.87 By having all these functions provided by a single ticketing provider, a promoter does not incur the cost of:

- Dealing with several ticketing service providers on a per event basis. In other words, for a single event, the promoter has only one ticketing service provider not several. The latter situation could lead to problems such as how to resolve fraud issues, as well as attendance and verification of sales at show settlements.
- Organising/negotiating/tendering for each event, costs that would still need to be incurred even if there were a standard contract for each event between the promoter and the ticketing service provider. For example, MCD organised in the region of 500 events in 2002;³⁸

³⁷ Letter from DKC to the Competition Authority, undated but received on 25 March 2003. DKC are chartered accountants to MCD.

³⁸ Letter from DKC to the Competition Authority, undated but received on 25 March 2005. DKC are chartered accountants to MCD.

- Dealing with several ticketing service providers on an ongoing basis with respect to ticket sales, the collection of tickets that the promoter chooses to distribute itself (up to a maximum of [15-25]% per event), upcoming events, etc. A single ticketing service provider can furnish such information for all events in one telephone call or e-mail. In oral testimony to the Authority in this regard, the Promoters testified that they were in almost daily contact with TicketMaster Ireland on such issues. For example, MCD organised, on average, ten events per week in 2002.³⁹

A single provider of ticketing services thus reduces the fixed and variable transaction costs of the promoter.

- 2.88 *Economies of density* – as noted in paragraph 2.49, there are likely to be economies of density in the creation of a network of retail outlets. If an entrant were to enter with a network of retail outlets sufficient to provide coverage across the island of Ireland, it would need sufficient demand in order that the costs of providing the ticketing service were not prohibitive. Thus, the need to establish an island-wide network of retail outlets combined with the necessity of sufficient demand in each outlet to bring unit selling costs per ticket down is likely to act as a barrier to entry. The contracts offered by the Promoters are large enough to ensure that sufficient demand is created.
- 2.89 *Improved provision of services* – Exclusivity also makes it easier for consumers to purchase tickets and, thus, reduces consumer search costs. A market environment with no exclusivity is likely to lead to a decline in the number of retail outlets selling tickets to events. A retail outlet will only bear the cost of installing the facilities required to sell tickets (computer, specialised printer, etc.) if a ticketing service provider can guarantee a minimum volume of tickets. In the absence of exclusivity, no such guarantee can be given and, therefore, the number of retail outlets choosing to act as agents for ticketing service providers will decline. Given the importance of retail outlets to Irish consumers as an option for purchasing tickets, it will be harder for some consumers to purchase tickets.
- 2.90 It has not been possible to estimate the magnitude of the above efficiencies. In some instances, they might be quite modest. For example, economies of scale might not be that large in that an extra unit of capacity such as telephone and Internet facilities could be added at close to constant cost. For other efficiencies such as reduced transaction costs and information based capital market efficiencies, it is likely to be greater. Nevertheless, given the size of the Irish market, it seems reasonable to assume the efficiencies are non-trivial in total. In the UK, a much larger market than the island of Ireland, there are three leading ticketing service providers.⁴⁰ While there are a number of reasons for this, the efficiencies highlighted above may provide an important part of the explanation.

³⁹ *ibid.*

⁴⁰ OFT, 2005, *supra* note 12, para. 3.24-3.38.

Are End Consumers Adequately Informed about Ticket Prices and Booking Fees?

- 2.91 The Competition Authority examined the degree of transparency concerning price information. Consumers need clear and accurate information concerning ticket prices and any additional charges in order to make a reasoned purchasing decision. The Consumer Information (Advertisements for Concert or Theatre Performances) Order, 1997 sets out what price information ticket sellers must provide in advertisements for public concerts or theatre performances. Regulation 3 of this Act states that every written advertisement for a public concert or theatre performance should contain information regarding the admission price and, where applicable, any additional charges.
- 2.92 The Office of Fair Trading, in its 2005 study of the UK ticketing industry, *Ticket agents in the UK*, notes that advertisements for events in the UK currently contain very little information about ticket prices and additional fees. It recommends in paragraph 1.19 of its study that the Committee for Advertising Practice, the body in the UK that writes and enforces the codes of advertising practice, amend its guidance so that all advertisements for events be required to include the face value of the ticket and indicate that additional fees may apply and could vary depending upon the sales channel and ticket seller used. This type of legislation already exists in the State with the Consumer Information (Advertisements for Concert or Theatre Performances) Order, 1997.
- 2.93 TicketMaster Ireland charges a fee to (a) consumers, and (b) the promoter. The Competition Authority is of the view that the booking fees charged to consumers by TicketMaster Ireland, given in Table 2 above, are clearly set out in the various forms of advertising carried out by the promoter for an event.⁴¹ As a result, consumers are able to make a fully-informed choice about which distribution channel to use when purchasing a ticket.
- 2.94 TicketMaster Ireland also charges an inside commission which is payable by the promoter to TicketMaster Ireland from the face value of the ticket. The amount of the inside commission is generally pursuant to the schedule in Table 4 above. This schedule of inside commissions applies to both MCD and Aiken. However, this is not relevant to the purchasing decision of the end consumer since they are included in the face value of the ticket. Furthermore, as argued in Appendix 2 below, there is some degree of arbitrariness over the split between the inside commission and the portion of the face value of the ticket that accrues directly to the promoter.
- 2.95 When a promoter advertises an event in a national newspaper or on its website, the words "including booking fee" follow the price of the ticket. For example, in advertising two concerts by Phil Collins in November 2005 on its website MCD states "tickets priced from €75 including booking fee". This gives the impression that the booking fees charged by TicketMaster Ireland to the consumer are contained within the €75.⁴² This is not the case. If an individual purchases one ticket

⁴¹There is a clause in the contracts between TicketMaster Ireland and MCD and Aiken, respectively, which states that the promoter is responsible for all "advertising, marketing and promotion of the event".

⁴²www.mcd.ie

for this event over the telephone or Internet, s/he will be charged a booking fee of €5.95 in addition to €75, i.e., €80.95 in total. The term "including booking fee" might give the impression to some consumers that they are being double-billed for purchasing a ticket. In reality, the Competition Authority understands the term "including booking fee" to refer solely to the inside commission (the fee charged by TicketMaster Ireland to the promoter that is included in the face value of the ticket) – it does not include the fee charged to the end consumer for using TicketMaster Ireland's service. It might be more transparent for consumers if a different term was used instead of "including booking fee" in advertisements for events.

- 2.96 An absence of transparency in price information does not constitute a breach of the Act. However, the Competition Authority believes that the use of the term "including booking fee" in advertisements may be a source of confusion for consumers. The Competition Authority has therefore brought this issue to the attention of the Office of the Director of Consumer Affairs and the National Consumer Agency.

Is the End Consumer harmed by Current Market Arrangements for Outsourced Ticketing Services?

- 2.97 A careful competitive effects analysis of the conduct of TicketMaster Ireland, both unilaterally and collectively with the Promoters, is necessary in order to determine whether or not consumers are harmed by the activities of TicketMaster Ireland. This reflects the fact that the purpose and object of competition law is to improve consumer welfare.
- 2.98 There are a number of consumer benefits from the current market arrangements. *First*, consumers pay lower booking fees than would otherwise be the case because of the countervailing buyer power of the Promoters. If TicketMaster Ireland were not constrained by the Promoters, then it could charge something approaching the monopoly price, given the long term multiyear contracts it has with the Promoters. *Second*, the upfront and advance payments made by the Promoters are based on risk-sharing efficiencies that result in the Promoters being in a better position to bid for events to come to the island of Ireland. As a result, consumers benefit from greater choice and variety. In other words, events are put on that might not otherwise be. *Third*, the contractual arrangements between the Promoters and TicketMaster Ireland are likely to be efficiency enhancing. Consumers benefit because, for example, they are likely to find it easier to purchase a ticket for an event as more retail outlets act as agents for the ticketing service provider.
- 2.99 There are some interpretations of the market facts that might question this somewhat benign interpretation. However, alternative interpretations, such as collusion between TicketMaster Ireland and the Promoters as well as collusion between the Promoters to restrict or distort competition in various markets and so harm consumers, were examined. In all cases, these interpretations were rejected.
- 2.100 In sum, as a result of current market arrangements for outsourced ticketing services, consumers have lower prices for ticketing services, greater choice and variety of events, and easier and faster access to tickets.

3. ASSESSMENT

Introduction

3.1 The Competition Authority has considered in its investigation whether:

- a) TicketMaster Ireland's behaviour in the market for outsourced ticketing services for events with a national or international appeal in the island of Ireland constitutes an abuse of a dominant position and thus breaches Section 4 of the Act and/or Article 82 of the Treaty; and,
- b) The agreements that TicketMaster Ireland has in place with the two promoters, MCD and Aiken, amount to a breach of Section 4 of the Act and/or Article 81 of the Treaty.

Article 81 and/or Article 82 are relevant since the allegations concern conduct that is capable of affecting trade between Member States (i.e. the State and the UK).

3.2 The previous section outlined the Competition Authority's analysis of the market for outsourced ticketing services for events of national and international appeal in the island of Ireland as well as related activities (e.g. event promotion). In this section, inferences are drawn as to whether the conduct of TicketMaster Ireland either unilaterally or in agreement with MCD and/or Aiken breaches the Act and/or the Treaty.

3.3 In earlier Decision Notes,⁴³ the Competition Authority has set out the jurisprudence necessary to establish whether or not a breach of competition law has occurred. The reader is therefore referred to those sources for further elaboration and discussion. However, the relevant legislative provisions – Section 4 and Section 5 – are set out in paragraphs 2.1-2.10 above.

Section 5/Article 82

3.4 In order to establish that there has been a breach of Section 5 of the Act or Article 82 of the Treaty, the Competition Authority must demonstrate to the satisfaction of a court that the undertaking in question:

- holds a dominant position in a relevant market; and
- has abused that dominant position.

The creation or existence of a dominant position does not breach the Act; rather it is the *abuse* of that position that constitutes the breach.

3.5 Under existing case law, TicketMaster Ireland, with a market share of 100% since 1998 in the relevant market, would be presumed dominant unless there were 'exceptional circumstances'. The evidence in Section 2 above, including the countervailing buyer power of the Promoters which is sufficient to offset any barriers to entry into the relevant market provides compelling evidence that TicketMaster Ireland is not dominant. However, since the Competition Authority is satisfied that

⁴³ See www.tca.ie/enforcement_decisions.html for a full list of the Competition Authority's enforcement decisions.

the two major promoters, MCD and Aiken, prevent TicketMaster Ireland from abusing any dominant position it might have by charging excessive booking fees, the Competition Authority does not have to decide if TicketMaster Ireland is dominant in coming to the view that there is no breach of either Section 5 of the Act or Article 82 of the Treaty.⁴⁴ MCD and Aiken have constrained the behaviour of TicketMaster Ireland in such a way that benefits consumers – maintaining downward pressure on TicketMaster Ireland’s ticketing service charges and through risk sharing with TicketMaster Ireland that benefits consumers by attracting a greater variety of artists to the island of Ireland.

Section 4/Article 81

3.6 In order to establish that there has been a breach of Section 4 of the Act or Article 81 of the Treaty, the Competition Authority must establish that:

- there is an agreement, decision or concerted practice,
- the parties to that agreement, decision or concerted practice are undertakings or that the decision was made by an association of undertakings, and,
- the object or effect of the agreement, decision or concerted practice is to prevent, restrict or distort competition.

If the Competition Authority is able to establish these conditions to the satisfaction of the court then the burden of proof shifts to the parties to demonstrate that the agreement, decision or concerted practice meets all of the efficiency and other defences set out in Section 4(5) of the Act, reproduced in paragraph 2.8 above.

3.7 Although the agreements between the Promoters and TicketMaster Ireland meet the first two conditions set out above, the Competition Authority takes the view that the agreements do not prevent, restrict or distort competition in the market for outsourced ticketing services for events of national or international appeal in the island of Ireland. Competition exists primarily *for* the market rather than *in* the market. The major customers for outsourced ticketing services carefully consider the options available before entering into agreements with TicketMaster Ireland.

3.8 The Competition Authority also considered whether the agreements might represent, albeit indirectly and tacitly, an agreement between the Promoters to prevent, restrict, or distort competition in the event promotion market – assuming that such a market existed – and found no grounds for such a suggestion.

⁴⁴ The approach set out here is more in accord with that suggested in a July 2005 report by the Commission’s Economic Advisory Group for Competition Policy (“EAGCP”) on Article 82 which suggests that in considering breaches of Article 82 (i.e., Section 5), a competition authority should first focus on consumer harm. If that cannot be demonstrated then there is no breach; if it can be demonstrated then that implies dominance. For further discussion, see EAGCP, 2005, *An Economic Approach to Article 82*, Brussels: The Commission, pp. 12-17. It may be accessed at: http://www.europa.eu.int/comm/competition/publications/studies/eagcp_july_21_05.pdf.

4. DECISION

- 4.1 On the basis of the facts and for the reasons set out above, the Authority has decided that although TicketMaster Ireland accounts for 100% of the market for outsourced ticketing services for events of national or international appeal in the island of Ireland, it is constrained from charging excessive prices and so its conduct could not be construed as an abuse. Therefore, TicketMaster Ireland's behaviour does not constitute a breach of Section 5 of the Act and/or Article 82 of the Treaty.
- 4.2 The Authority is also of the view that the agreements TicketMaster Ireland has in place with the two promoters, MCD and Aiken, do not prevent, restrict or distort competition in the market for outsourced ticketing services for events of national or international appeal in the island of Ireland. Thus, these agreements do not amount to a breach of Section 4 of the Act and/or Article 81 of the Treaty.
- 4.3 This decision of the Authority does not affect the rights of private parties to take an action under the Act.

For the Competition Authority

Dr. Paul K. Gorecki

Member and Director Mergers Division

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APPENDIX 1: CHANGING PATTERNS OF TICKET DISTRIBUTION IN THE ISLAND OF IRELAND

The relative importance of creating a network of retail outlets for distributing tickets to events of national or international appeal across the island of Ireland is likely to decline in the future as consumers increase their usage of the Internet and telephone for purchasing tickets and become less reliant on retail outlets as a distribution channel. Information in the Competition Authority's possession suggests that the retail outlet aspect of an outsourced ticketing service may decline in importance in the future. [50-60]% of the tickets sold by TicketMaster Ireland in 2004 were through its retail outlets. However, this figure has been declining in recent years, primarily because of the increasing importance of the Internet as a means of purchasing tickets. By contrast, the equivalent figure for retail outlet sales by TicketMaster UK in the UK in 2002 was only [5-10]%. This is consistent with the findings of the OFT's consumer survey in the UK which found that of those whose last ticket purchase was from a ticket agent, 50% used the Internet, 43% the phone and only 7% bought in person.⁴⁵ One explanation offered by TicketMaster Ireland for this difference between the island of Ireland and the UK is the greater credit card penetration rate and Internet usage among the population in the UK relative to that in the island of Ireland.

Data published in the European Central Bank's *Blue Book*⁴⁶ show that the number of credit cards per 1,000 inhabitants in the Republic of Ireland was 456 in 2002, in comparison with only 176 in 1990 and 304 in 1999.⁴⁷ In contrast, the UK has the highest market penetration in the EU with 1,066 credit cards per 1,000 inhabitants in 2002.⁴⁸ As the State continues to experience economic growth, one would expect to see even greater credit card penetration and, therefore, fewer tickets sold through retail outlets.

With respect to Internet usage, since 2000 the Economist Intelligence Unit has published an annual e-readiness ranking of the world's 60 largest economies. A country's "e-readiness" is a measure of its e-business environment, a collection of factors that indicate how amenable a market is to Internet-based opportunities.⁴⁹ Each country is given an e-readiness score between 0 and 10. Ireland is ranked number sixteen in the world with a score of 7.45 in 2004. In contrast, the UK is ranked number two in the world with an e-readiness score of 8.27. This illustrates that Internet technology is more deeply incorporated into the lives of UK citizens in comparison to those in the Republic of Ireland. However, the market in the island of Ireland may increasingly resemble that in the UK in the future, with more individuals

⁴⁵ OFT, 2005, *supra* note 10, p. 15.

⁴⁶ European Central Bank, 2004, *Payment and Securities Settlements Systems in the European Union (Blue Book)*, Frankfurt: ECB, April.

⁴⁷ Figures published by the Irish Bankers Federation show that the number of credit cards in issue in the State increased from 1.2m in 1999 to 1.8m in 2003. See: www.ibf.ie/stats/stats_cc.shtml.

⁴⁸ However, it should be noted that one explanation for this difference between the State and the UK is that, unlike in the UK, an individual is charged a tax (called stamp duty) on each credit card held. Annual stamp duty rates for credit card accounts were increased from €19 to €40 in 2002. Stamp duty discourages the holding of multiple credit cards and may explain the much lower level of credit card penetration in the State relative to the UK. For further details, see LECG, 2004, *Study of Competition in the Provision of Non-investment Banking Services in Ireland: Report and Recommendations*, Dublin: The Competition Authority, pp. 40-49. A copy of this study can be found at www.tca.ie/professions/banking/banking_study.pdf.

⁴⁹ A full description of this measure and the e-readiness rankings for 2004 can be found at http://graphics.eiu.com/files/ad_pdfs/ERR2004.pdf

purchasing consumer products, including tickets to events, via the Internet. Over time, this will likely reduce the importance of having an island-wide network of retail outlets as part of an outsourced ticketing service.

APPENDIX 2: A THEORETICAL ANALYSIS OF THE IMPACT OF UPFRONT PAYMENTS⁵⁰

Upfront payments might contribute to higher agent service charges and hence higher consumer prices. The payment of up-front fees to the promoter will result in some shifting of value between the face value of the ticket and the service charge, but there is no reason why it should cause higher consumer prices, and indeed there are good reasons to suppose these payments will exert a positive influence on market outcomes.

Consider two hypothetical scenarios, A and B, the former without and the latter with up-front payments. For simplicity, suppose that the promoter has rights to sell a single event, and that there are no inside fees, so the agent's remuneration is set solely by the service charge. The question is how the ticket prices and agent fees would be expected to differ between these scenarios.

In both scenarios, the promoter will make an initial assessment of the event price that will maximise the profitability of selling the event. When making that assessment, the price that will be considered is the net consumer price (i.e. the face value plus any agent commission), since it is this net price that ultimately affects consumer demand.

In Scenario A, suppose that there is a ticket face value of €30 and a consumer service charge of €3. It is clear that the €3 service fee will represent the competitive price that the agent charges for providing the ticket distribution service, and the net consumer price of €33 will represent the price that maximises the return to the promoter from staging the event. The face value price of the ticket (of €30) is simply a residual number that falls out of this wider calculation.

If inside fees are introduced into this illustration, it is easy to see how the apparent split between the components charged to the end consumer could be shifted around without any real change in the economics of the transaction. For example, if the agent could charge the promoter an inside fee of €1, the competitive process amongst agents would ensure that the service fee would come out at €2 per ticket, since that would provide the agent with the same (competitive) rate of return of €3 per ticket in total. There is no reason why the net consumer price that maximised the profits from staging the event should be any different following this adjustment, so we would observe a face value ticket price of €31 and a €2 service charge. In the extreme case where the promoter did its own distribution (or, equivalently, paid a €3 per ticket inside fee to the agent), the consumer would simply observe a ticket face value of €33 with no apparent service charge, because the costs of distribution would be internalised within the ticket face value.

Now consider what happens in Scenario B where the agent has made an up-front payment to secure the promoter's contract. Clearly, if €3 per ticket is the competitive price for providing the distribution function it will be necessary for the service charge to be higher than €3, because that service charge must now perform two logically separate functions: first, to allow the agent to recoup its up-front investment; and second to cover the costs of the distribution function. By making the up-front payment, the agent has made some contribution towards underwriting the risks incurred by the promoter (though the risk remains substantially in the promoter's hands). Let us suppose that an additional €2 per ticket is required to recoup the agent's up-front payment. In effect, the service charge paid by the consumer to the

⁵⁰ This appendix is based on discussions with various parties concerned in this investigation.

agent now contains two elements: the €3 distribution fee; and the €2 recoupment charge which is in reality a part of the promoter's role that has been taken over by the agent when it assumed some of the promoter's risk through the up-front payment.

However, there is no reason why this should change the promoter's calculation of the profit-maximising net ticket price for the event. That price will remain at €33 per ticket, but because of the up-front fee the face value will now fall to €28, with a service charge of €5. The promoter appears to have conceded more to the agent here, but in reality the concession of the extra €2 per ticket is no more than a balancing item to compensate for the cost to the agent (and benefit to the promoter) of having received the up-front payment.

This shifting of value between the two scenarios and the neutrality to the consumer is summarised in Table 7.

Table 7: Illustration of Upfront Payment Scenarios

	Scenario A	Scenario B
	No up-front payments	Up-front payments
Ticket face value	€30	€28
Agent fees (i.e. inside + outside fees)	€3	€5
Net consumer price	€33	€33

Source: The Parties

The neutrality between Scenarios A and B shown above rests on the assumption that the up-front payment and the additional service charge cancel one another out perfectly. However, in practice the promoter's desire for an up-front payment is likely to reflect a mutually beneficial trade of risk between the promoter and the agent that will make the overall transaction more efficient. For example, it may be more efficient for the promoter to obtain some of its working capital finance via an up-front payment from an agent (who understands the promoter's business and the risk it is assuming) than for the promoter to obtain equivalent finance from a bank (that does not have a full understanding of the risks in the promoter's business). Because of this, there may be genuine information-based efficiencies from the agent providing this element of finance as compared with a bank or other financial institution. The associated gains from trade will at the margin allow the promoter's overall costs to fall, which could act to the benefit of the ultimate consumer (e.g. by allowing the promoter to stage events that would not otherwise be viable).

Thus, the impact of up-front payments is at worst neutral on net consumer prices (even if it raises service charges), and at best positively pro-competitive.