

DETERMINATION OF MERGER
NOTIFICATION M/18/067 - LN-
GAIETY/MCD PRODUCTIONS

Dated 5 July 2019

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1. INTRODUCTION

Introduction

1.1 On 14 August 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification (the “Merger Notification”) of a proposed transaction whereby LN-Gaiety Holdings Limited (“LN-Gaiety”), via its wholly-owned subsidiary LN-Gaiety Holdings Ireland Limited (“LNG Ireland”), would acquire sole control of MCD Productions Unlimited Company (“MCD”), from its parent company Gaiety Investments Unlimited Company (“Gaiety”) (“the Proposed Transaction”). LN-Gaiety is jointly controlled by Live Nation Entertainment, Inc. (“Live Nation”) (through its wholly-owned subsidiary Live Nation (Music) UK Limited (“LN-UK”)) and Ronmall Unlimited Company (“Ronmall”) through its subsidiary Gaiety.

The Proposed Transaction

1.2 The Proposed Transaction is to be implemented pursuant to a share purchase agreement¹, dated 20 October 2017 and subsequently amended on 31 July 2018², whereby LN-Gaiety, via LNG Ireland, agreed to acquire MCD from its current owner, Gaiety. The Proposed Transaction includes the acquisition of two live music festivals owned by MCD on the island of Ireland, namely Longitude and Vital (collectively the “MCD Festivals”).

The Undertakings Involved

The Acquirer – LN-Gaiety

1.3 LN-Gaiety is a UK-incorporated joint venture which is jointly controlled³ by Live Nation (through LN-UK) and Ronmall (through Gaiety) with shareholdings of [%] and [%] respectively. LN-Gaiety’s business activities are focused on the operation of a number of live music festivals and venues, primarily in the UK but including ownership of the Electric Picnic live music festival in the State.

1.4 For the financial year ending 31 December 2016, LN-Gaiety had a worldwide turnover of approximately €[<], of which €[<] was generated in the State.

1.5 Live Nation is a global live music entertainment company listed on the New York Stock Exchange.⁴ In 2017, Live Nation promoted 90 live music festivals and 29,500 live music events in over 40 countries. In addition, Live Nation operates 222

¹ The share purchase agreement is agreed between Gaiety, [<], and LNG Ireland. Gaiety is the ultimate parent company of MCD and [<].

² [<]

³ LN-Gaiety is jointly managed by Gaiety and Live Nation with [<]. Mr Denis Desmond has fulfilled the role of Chairman of LN-Gaiety since 2005.

⁴ <http://www.nyse.com/quote/XNYS:LIV>

venues in 12 countries, provides artist management services to over 500 artists and provides outsourced primary ticketing services through its ticketing business Ticketmaster Entertainment Inc.

1.6 In the State, Live Nation's business activities comprise the following:

- the provision of outsourced primary ticketing services for live events through Ticketline Unlimited Company ("Ticketmaster"); and
- the operation of venues through its ownership of the 3Arena and its management of the Bord Gáis Energy Theatre, The Gaiety and Olympia theatres in Dublin.

1.7 For the financial year ending 31 December 2017, Live Nation had a worldwide turnover of approximately €6.8 billion, of which €[redacted] was generated in the State

The Target - MCD

1.8 MCD is an Irish-incorporated private unlimited company. MCD focuses predominantly on the promotion of live music events on the island of Ireland and owns the MCD Festivals.

1.9 For the financial year ending 31 December 2016, MCD had a worldwide turnover of approximately €[redacted], of which €[redacted] was generated in the State.

The Vendor – Gaiety

1.10 Gaiety's ultimate parent company is Ronmall, which is owned and controlled by Mr Denis Desmond and Ms Caroline Downey.

1.11 Gaiety is an Irish-incorporated private unlimited company. Within the State, Gaiety currently owns MCD and a number of venues, including The Gaiety and Olympia theatres in Dublin. In addition to its indirect ownership of the MCD Festivals, Gaiety also has an interest in a number of other music festivals operating in the State, namely Belsonic, [redacted].

1.12 For the financial year ending 31 December 2017, Gaiety had a worldwide turnover of approximately €[redacted], of which €[redacted] was generated in the State.⁵

⁵ These figures exclude revenues attributable to MCD and individual venues.

Rationale for the Proposed Transaction

- 1.13 In response to the Requirement for Further Information served on Ronmall on 21 September 2018 pursuant to section 20(2) of the Act, Ronmall stated as follows regarding the rationale for the Proposed Transaction:⁶

“Through the joint venture, [LN-Gaiety], Live Nation and [Gaiety] have worked together for 14 years. Adding the complementary MCD to the joint venture is the logical next step in the development of [LN-Gaiety].”

Preliminary Investigation (“Phase 1”)

Contacts with the Undertakings Involved

- 1.14 On 14 August 2018, in addition to the Merger Notification, an economic report by RBB Economics, commissioned on behalf of the notifying parties, was submitted to the Commission (the “RBB Report”).
- 1.15 On 21 September 2018, the Commission served a Requirement for Further Information on each of Live Nation, MCD and Ronmall, pursuant to section 20(2) of the Act (the “Phase 1 RFIs”). This automatically suspended the procedure for the Commission’s Phase 1 assessment.
- 1.16 Each of Live Nation, MCD and Ronmall responded in full to the Phase 1 RFIs on 21 December 2018. The issuing of the Phase 1 RFIs adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1. Upon receipt of all of the responses to the Phase 1 RFIs, the “appropriate date” (within the meaning of section 19(6)(b)(i) of the Act) became 21 December 2018.⁷
- 1.17 During the Phase 1 investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the notifying parties.

Third Party Submissions

- 1.18 During the Phase 1 investigation, the Commission received one third party submission that expressed competition concerns about the likely competitive impact of the Proposed Transaction. These competition concerns were fully

⁶ The rationale for the Proposed Transaction provided by the notifying parties in the Merger Notification Form contained confidential information. The Commission requested a non-confidential version of the rationale for the Proposed Transaction in the Requirement for Further Information served on Ronmall dated 21 September 2018.

⁷ The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.

considered by the Commission in the course of its analysis of the competitive effects of the Proposed Transaction.

Market Enquiries

1.19 The Commission circulated questionnaires to various third parties during the Phase 1 investigation, including:

- Promoters of live music festivals in the island of Ireland;
- Promoters of live events in the island of Ireland and internationally;
- Providers of outsourced primary ticketing services in the island of Ireland and internationally;
- Providers of ticketing software in the island of Ireland; and
- Operators of outdoor and indoor venues that host live music festivals and/or live music events in the island of Ireland.

1.20 The Commission received a response from the majority of the third parties to whom it sent a questionnaire. In each case, the Commission also contacted those third parties by telephone and/or e-mail to clarify and/or seek further detail in relation to their responses.

Phase 1 Determination

1.21 Having considered all the available information in its possession at the time, the Commission was unable to form the view at the conclusion of the Phase 1 investigation that the result of the Proposed Transaction would not be to substantially lessen competition in any market for goods or services in the State.

1.22 Consequently, on 3 January 2019, the Commission determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation in relation to the Proposed Transaction under section 22 of the Act.

Full Investigation (“Phase 2”)

1.23 The Commission’s Phase 2 in-depth investigation involved ongoing engagement with the notifying parties, further engagement with third parties who responded to the Phase 1 questionnaires, engagement with other third parties and the seeking of expert economic advice.

- 1.24 The Commission has carefully considered all submissions made by the notifying parties during Phase 2 in accordance with section 20(1)(a)(ii) of the Act.

Contacts with the undertakings involved

- 1.25 On 8 February 2019, the Commission served a Requirement for Further Information on each of Live Nation and Ronmall, pursuant to sections 20(2) and 22(4A) of the Act (the “Phase 2 RFIs”). The Commission received a full response from Live Nation and Ronmall in respect of the Phase 2 RFIs on 5 June 2019. In accordance with section 22(4A) of the Act, the time period for the Commission’s Phase 2 investigation was suspended on 8 February 2019 and resumed on 5 June 2019. This adjusted the deadline within which the Commission was required to conclude its assessment of the Proposed Transaction in Phase 2.
- 1.26 During the Phase 2 investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the notifying parties.

Third Party Submissions

- 1.27 No third party submission was received by the Commission during the Phase 2 investigation (although note paragraph 1.28 below).

Market Enquiries

- 1.28 During the Phase 2 investigation, the Commission contacted additional third parties. The Commission also continued to engage with some of the third parties who responded to the questionnaire circulated by the Commission during the Phase 1 investigation.

Expert Economic Advice

- 1.29 The Commission also sought independent expert economic advice from Professor Mike Waterson of the Department of Economics of Warwick University concerning aspects of market definition and the likely impact of the Proposed Transaction on any market for goods or services in the State.⁸
- 1.30 The findings of Professor Waterson are incorporated into the Commission’s analysis of the Proposed Transaction and, although the Commission benefitted

⁸ Professor Michael Waterson is a current member of the United Kingdom’s Competition Appeal Tribunal, and former member of the former Competition Commission in the United Kingdom. Professor Waterson produced an independent review of the online ticketing resale market in the United Kingdom in 2016. Professor Waterson’s report, entitled “Independent Review of Consumer Protection Measures concerning Online Secondary Ticketing Facilities” was presented to the UK Parliament pursuant to section 94(3) of the Consumer Rights Act 2015 in May 2016 and is available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/525885/ind-16-7-independent-review-online-secondary-ticketing-facilities.pdf (the “Waterson Report”).

from his expert advice, the Commission alone is responsible for the views expressed in this determination.

Phase 2 Proposals

1.31 During the Phase 2 investigation, the Commission held a telephone call with representatives of the parties to discuss its preliminary views on the Proposed Transaction and the potential concerns that the Commission had identified at that stage. In May 2019, Live Nation and MCD submitted proposals to the Commission in accordance with section 20(3) of the Act with a view to ameliorating the competition concerns identified by the Commission.⁹ The Commission engaged further with the notifying parties and their legal advisors to formulate the proposals to ameliorate the competition concerns identified by the Commission. On 5 July 2019, MCD and Live Nation submitted to the Commission a final set of formal proposals under section 20(3) of the Act. These proposals are discussed further in section 8 below.

⁹ The submission of these proposals by Live Nation and MCD extended the deadline within which the Commission was required to conclude its assessment of the competitive effects of the Proposed Transaction in Phase 2 by 15 working days to 135 working days in accordance with section 21(4) of the Act.

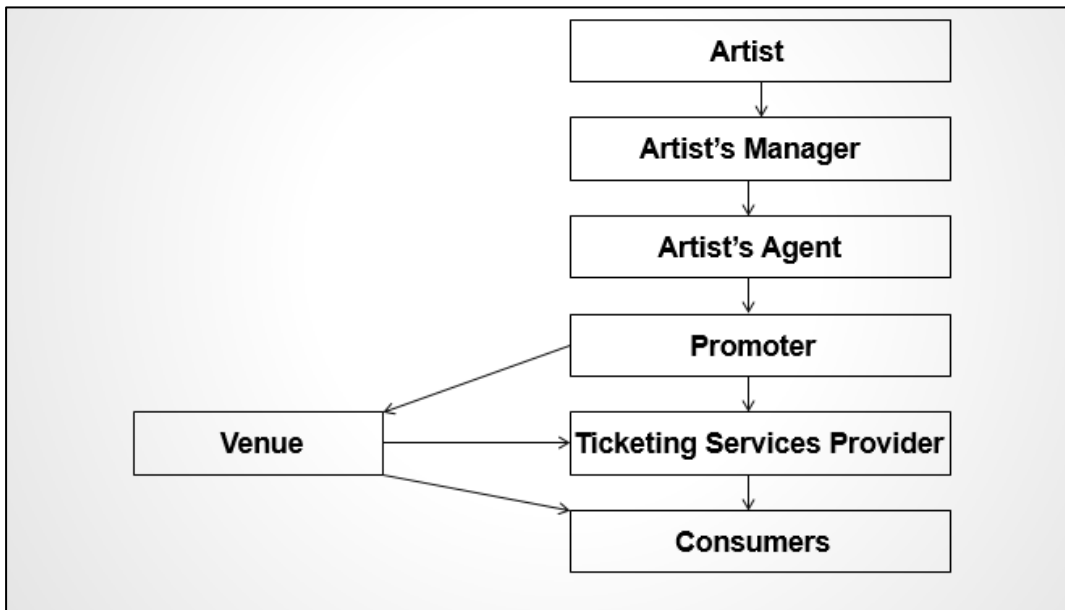
2. INDUSTRY BACKGROUND – THE SUPPLY OF LIVE MUSIC

2.1 Live events cover a broad range of genres, including music, sports, comedy and arts events. Live music and sports events account for the biggest volume of tickets sold for live events in the State. The organisation and promotion of live events differs somewhat between different genres. However, since the overlap in the business activities of the notifying parties primarily concerns live music events, the discussion in this section is limited to live music events only.

(i) Supply Chain for Live Music Events

2.2 This section describes the live music supply chain. It covers: artists, managers, agents and promoters and their revenue streams; live music festivals; venues and venue booking; ticket selling and the ticket price-setting process. Figure 1 below sets out the key participants in the live music event supply chain. The arrows in Figure 1 indicate direct relationships between parties operating at different levels of the supply chain.

Figure 1: Supply Chain for Live Music Events



Source: The Commission

Artists and their Managers

2.3 Artists or acts are generally self-employed and are responsible for the creative content. Artists hire a manager to negotiate all aspects of their commercial



relationships, including with record labels and agents. Artists and their managers are responsible for the content and production of a tour (e.g., sound and lighting).

- 2.4 Revenue generated from a live music event can be allocated a number of ways. An artist usually receives the higher of either: (i) a guaranteed fee based on net tour revenues (i.e., revenues net of promoters' costs) which are payable regardless of the actual generated revenue, or (ii) a high proportion (over 80%) of net profits (calculated on the basis of all concert(s) being sold out). The artist also receives a share of net merchandising revenues (i.e., revenues net of promoters' costs). If an artist performs at a festival, the promoter bears the production costs (e.g., lights, screens, staging expenses), but the artist will only receive a flat fee for performing.
- 2.5 An artist's manager receives a proportion of the artist's total net revenue, after fees and expenses.

Artists' Agents

- 2.6 An artist's agent is responsible for maximizing the artist's income from a tour. Artists and their managers use agents because of their knowledge of local markets and their relationships with promoters in these markets. The artist's agent will invite and evaluate bids from promoters in relation to a specific tour (or part of a tour) and will negotiate terms with promoters on behalf of the artist. An artist's agent also receives a proportion of the artist's total net revenues from a tour.
- 2.7 A number of large international agencies operate in the State, including Creative Artists Agency LLC, William Morris Endeavor Entertainment LLC, United Talent Agency, Inc. and Coda Music Agency Ltd who offer services to well-known artists.

Promoters

- 2.8 The promoter is responsible for organising and promoting an artist's tour (or part of a tour), including contracting with venues, organising advertising and sponsorship, and engaging with providers of primary ticketing services. The promoter will estimate the revenue and costs of the tour and suggest the appropriate ticket price to artists' agents. Artists' agents may choose a promoter because of the promoter's expertise in a particular music genre or in a particular geographic area.
- 2.9 The promoter takes most of the risk of an event being unsuccessful (e.g., lower than expected attendance).¹⁰ Promoters bid for the right to promote a tour or event based on an estimate of the likely revenue and costs of that tour or event. The promoter's income is the residual net profit after deductions of costs. Typically, the largest element of these costs is the artist or act's fee. The promoter

¹⁰ While promoters obtain insurance if artists decide to cancel their performance, they are exposed to the risk of poor event attendance.

guarantees payment of this fee, and part of the guaranteed fee (typically 50%) is payable in advance of the event.¹¹ The guaranteed fee is based on the promoter's estimate of revenue from ticket sales and costs. If the ticket sales are lower than estimated and/or costs turn out to be higher, the promoter will bear the financial risk.

- 2.10 The artist, manager and agent typically decide where and when they want to play, although promoters often propose venues based on capacity, availability, location and appearance. Promoters then reserve a venue by 'pencilling' an event for certain dates 6 to 12 months ahead of the event. Allocation of pencils is typically done on a first-come, first-served basis. These pencils (or tentative bookings) are then either cancelled or confirmed, in which case the promoter enters into a hire agreement with that venue.
- 2.11 The main promoters arranging live music events in the island of Ireland are MCD and Aiken Promotions ("Aiken"). A third promoter operating in the island of Ireland is POD, which is the trading name of Pod Festivals Limited and Pod Presents Limited.

Live Music Festivals

- 2.12 Festivals are temporary outdoor venues that vary in terms of size, duration, format and genre. Live music festivals differ from live music events from an organisational standpoint. Live music festivals are events held in temporary outdoor venues, with a wide range of capacities, taking place over one or more days, with live music as their primary content. Unlike live music events, which feature a performance from a given artist (often with one or more supporting artists) at indoor venues, live music festivals feature performances by a large number of artists predominantly at outdoor venues. Live music festivals require a greater level of organisation and effort on the part of the organiser, as the stages, security and other facilities are not provided by the venue operator. Artists are paid a flat fee for a performance at a live music festival.
- 2.13 The notifying parties overlap in the supply of festivals in the island of Ireland. LN-Gaiety owns and operates the Electric Picnic festival in County Laois and MCD owns and operates the Longitude festival in Dublin. Other operators of festivals in the State include Aiken (who runs Live at the Marquee) and POD (who runs All Together Now).
- 2.14 Some promoters may also provide services to owners and/or operators of live music festivals in the State. For example, MCD books artists for a number of third-party promoters of live music festivals as well as live music festivals in which Gaiety holds an ownership interest.

¹¹ From Commission discussions with third-party promoters (see minutes of meetings with [§<], [§<], [§<], and [§<]).

Venues

- 2.15 The promoter will propose a venue to an artist's agent to use for a tour, based on the size, location, suitability (in terms of both target audience and production design) and reputation of the venue. Certain, but not all, artists will have a preference for a particular venue and may make the ultimate decision in choosing a venue.
- 2.16 Venue capacity is an important consideration for promoters when choosing a venue. On the basis of size, venues can be categorised as follows:¹²
- a) Stadia (e.g., Croke Park¹³ and the Aviva Stadium¹⁴) are large permanent outdoor venues, usually with an audience capacity of over 20,000, hosting both live music events and major sporting events;
 - b) Arenas (e.g., the Live Nation venue, 3Arena)¹⁵ are large permanent indoor venues, usually with an audience capacity of between 5,000 and 20,000, with live music events as their primary use. Other examples include the RDS Simmonscourt¹⁶ and the SSE Arena¹⁷ in Belfast;
 - c) Concert halls, theatres and large clubs (e.g., Bord Gáis Energy Theatre, which is managed by Live Nation)¹⁸ are among the other venues which are used for live music and arts events, with a range of audience capacity from 1,000 to 5,000. Other examples include the National Concert Hall¹⁹ and the Gaiety Theatre²⁰; and
 - d) Pubs and small clubs (e.g., Whelan's and The Sugar Club) with small capacities also host many live music and arts events.
- 2.17 Some venue owners contract out the management of their venues to third parties (for example, management of the Bord Gáis Energy Theatre is contracted out to Live Nation). Venue managers are responsible for the physical operation of the venue and the provision of other services such as security and box office services. In some instances, promoters also own and/or manage venues.
- 2.18 Certain occasional venues, such as [§<], enter into right of first call agreements with promoters. These agreements, which generally involve the payment of a large up-front fee by the promoter, grant a promoter the priority right for booking

¹² See Live Nation's description of venues on page 6 of its 2017 Annual report which can be accessed at: http://www.annualreports.com/HostedData/AnnualReportArchive/I/NYSE_LYV_2017.pdf.

¹³ See <https://crokepark.ie/>.

¹⁴ See <http://www.avivastadium.ie/>.

¹⁵ See <http://3arena.ie/>.

¹⁶ See <http://www.rds.ie/The-Venue/Organising/Music-Venue-and-Special-Events>. The RDS holds indoor live music events at its Simmonscourt complex, while outdoor live music events are held in the RDS Main Arena.

¹⁷ See <https://www.ssearenaelfast.com/?>.

¹⁸ See <http://www.bordgaisenergytheatre.ie/>.

¹⁹ See <https://www.nch.ie/Online/>.

²⁰ See <http://www.gaietytheatre.ie/>.

an agreed number of live events at a venue. This right must be exercised by the promoter before the agreed date as otherwise the right is lost.

- 2.19 Venues set out the terms and conditions of rental arrangements, including the proportion of tickets which will be allocated to the venue for sale and distribution. The list of advertised hire fees charged by a venue are contained in the rate card. The rate card for each venue remains the same for all promoters. The venue receives a percentage of the rental fee in advance of the event.
- 2.20 Tickets will either be sold in person at the box office or by the venue's outsourced primary ticketing services provider. Venues may also use licensed ticketing software (or, on rare occasions, use ticketing software developed in-house) to sell tickets directly to consumers online (see further discussion at paragraphs 2.31 to 2.32 below).²¹
- 2.21 In addition, venues earn revenue from food and beverage sales and usually retain a percentage of the revenue from any merchandising sold on behalf of artists. Some venues also generate income from sponsorship. 3Arena, Bord Gáis Energy Theatre and Olympia also receive extra revenues from each ticket sold for live events taking place in these venues.²²

Ticketing Services Providers

- 2.22 Ticketing services can be divided between primary and secondary ticketing services.
- 2.23 The sale and distribution of tickets for large-scale live music events to the general public is typically managed by providers of outsourced primary ticketing services (referred to as "primary ticketing services providers"). In this determination, the services provided by primary ticketing services providers are referred to as "Outsourced Primary Ticketing Services". Ticket resale marketplaces enable consumers to resell tickets to other consumers through an online platform.

(ii) Sale of Tickets to Live Music Events

- 2.24 Tickets are typically sold by primary ticketing services providers or by promoters and venues themselves, using the services of providers of ticketing software.

Services provided by Primary Ticketing Services Providers

- 2.25 Primary ticketing services providers are responsible for selling and distributing tickets for live music events to the general public on behalf of promoters and

²¹ See paragraph 2.31 below for examples of venues self-supplying ticketing services.

²² These venues use the outsourced primary ticketing services of Ticketmaster, which applies a €1 facility charge on top of the face value of the tickets and booking fees charged by Ticketmaster in respect of live events. The facility charge (or a portion of it) is passed on to the venues.



venues. Primary ticketing services providers generally provide the following services to promoters and venues:

- (a) The provision of technology, including access to ticketing software and hardware;
- (b) The provision of staff to promoters and/or venues;
- (c) Selling tickets to consumers through their websites, mobile applications, retail outlets and call centres;
- (d) The fulfilment of ticketing purchases (i.e., printing and distributing tickets);
- (e) Sales reporting; and
- (f) Processing transactions and settling net proceeds from ticket sales with their customers.

2.26 The main primary ticketing services providers currently active in the island of Ireland are:

- (a) **Ticketmaster:** Ticketmaster is a subsidiary of Live Nation and is by far the largest primary ticketing services provider in the State. Ticketmaster provides Outsourced Primary Ticketing Services for different types of events to the majority of the large promoters, including MCD and Aiken; live music festivals, such as Vital; and venues in the State;
- (b) **Tickets.ie**²³: Tickets.ie is the main primary ticketing services provider for the Gaelic Athletic Association and some music and arts festivals (e.g., [§<]). Tickets.ie is also active in the supply of ticketing software to venues and promoters in the State; and
- (c) **Eventbrite Operations (IE) Limited (“Eventbrite”)**²⁴: provides a wide range of ticketing services, including Outsourced Primary Ticketing Services and ticketing software. It mainly provides Outsourced Primary Ticketing Services to organisers of conferences and exhibitions, but also provides such services to venues hosting live music events. For example, Eventbrite provides Outsourced Primary Ticketing Services to [§<].²⁵

2.27 Primary ticketing services providers typically provide a full suite of ticketing services. Primary ticketing services providers are also responsible for refunding customers when an event is cancelled.

2.28 For popular events, primary ticketing services providers may have to process large volumes of tickets very quickly. As such, they need to have information

²³ See <https://www.tickets.ie/>.

²⁴ See <https://www.eventbrite.ie/>.

²⁵ See [§<].

technology (“IT”) infrastructure (e.g., data centres) that can cope with high volumes of traffic on their websites.

- 2.29 Although primary ticketing services providers are dependent on the promoter’s advertising campaign to reach consumers, they also market live events themselves. For example, primary ticketing services providers circulate newsletters that inform registered users about upcoming live events and/or advertising live events on their website.
- 2.30 It is important to note that a ticket’s face value is determined by promoters and/or artists. However, a primary ticketing services provider determines the level of its booking fees with these fees being negotiated and set out in agreements between a primary ticketing services provider and promoter or venue.²⁶

Ticketing Software Providers

- 2.31 Promoters and venues can sell tickets for live events to consumers directly (referred to in this document as “self-supply”). Such self-supply is usually facilitated by a provider which licenses its ticketing software to promoters and venues (“Ticketing Software Providers”). Venues that use licensed ticketing software in the island of Ireland include the National Concert Hall, the Waterfront Hall²⁷, the Helix²⁸, the Abbey Theatre²⁹ and the Gate Theatre.³⁰
- 2.32 In addition to Eventbrite and Tickets.ie which are mentioned above, the main Ticketing Software Providers active in the State are:
- (a) **Future Ticketing Limited (“Future Ticketing”)**³¹: Ticketing Software Provider to a number of League of Ireland football clubs, [x], as well as a number of exhibitions (e.g., [x]) and family attractions (e.g., [x]);
 - (b) **Vivaticket S.P.A. (“Vivaticket”)**³²: Ticketing Software Provider to the [x] and the [x];
 - (c) **Tessitura Network, Inc. (“Tessitura Network”)**³³: Ticketing Software Provider to the [x];
 - (d) **Tickets.com, LLC (“Tickets.com”)**³⁴: Ticketing Software Provider to local and regional theatres and art venues including [x];

²⁶ Primary ticketing services providers charge promoters and/or venues an inside commission per ticket (see paragraph 2.40) and some primary ticketing services providers charge consumers a fee per ticket known as a service charge (see paragraph 2.41). The inside commission and service charge are collectively known as booking fees.

²⁷ See: www.waterfront.co.uk

²⁸ See www.thehelix.ie

²⁹ See www.abbeytheatre.ie

³⁰ See <https://www.gatetheatre.ie/>.

³¹ See <http://www.futureticketing.ie/>

³² See <http://www.vivaticket.com/>

³³ See <https://www.tessituranetwork.com/>

³⁴ See <http://www.tickets.com/>.



- (e) **Ticketsolve Limited (“Ticketsolve”)**³⁵: Ticketing Software Provider to the [×] and regional venues and arts festivals;
- (f) **Ticketweb**³⁶: a brand launched by Ticketmaster in 2016 providing ticketing software for a number of venues and promoters in the island of Ireland; and
- (g) **Ticketstop.ie**³⁷: Ticketing Software Provider for amateur promoters and small venues (pubs and clubs).

Ticket Resale Marketplaces

- 2.33 Ticket resale marketplaces are online platforms that enable consumers and professional resellers to resell tickets that they have purchased to other consumers. These are generally referred to as secondary ticketing services. In general, ticket resale marketplaces facilitate the payment and transfer of tickets between buyers and sellers, and provide guarantees for the delivery on time of valid tickets. Ticket resale marketplaces usually charge fees to both the buyer and the seller. However, they usually do not own or handle the tickets.
- 2.34 The main ticket resale marketplaces in the State are StubHub, Inc. (“StubHub”)³⁸ and Viagogo AG (“Viagogo”)³⁹. Ticketmaster facilitates secondary sales of tickets through its verified fan exchange.⁴⁰ Though each of these platforms operates in multiple countries, all have websites with an Irish domain name.
- 2.35 Ticket resale marketplaces occasionally act as primary ticketing services providers when they receive an allocation of tickets directly from promoters or when they sign an agreement with promoters to become their primary ticketing services provider. Occasionally artists’ agents and/or promoters (with the consent of artists’ agents) may choose to sell a proportion of tickets through ticket resale marketplaces as prices of tickets sold on these platforms are usually higher than the original face value of the ticket.⁴¹
- 2.36 Apart from ticket resale marketplaces, tickets may also be placed for resale on general online marketplaces (e.g., eBay), classified advertising websites (e.g.,

³⁵ See <https://www.ticketsolve.com/>.

³⁶ See <https://www.ticketweb.ie/>.

³⁷ See <https://ticketstop.ie/index.php>.

³⁸ See <https://www.stubhub.com/>.

³⁹ See <https://www.viagogo.ie/>.

⁴⁰ See <https://www.ticketmaster.com/verified>. Ticketmaster also owns another European ticket resale marketplace, Get Me In! Limited (“Get Me In”), which it acquired in 2008 and on which tickets for events in the State are offered for sale, though the website does not have an Irish domain name. Ticketmaster reportedly announced on 13 August 2018 its intentions of closing down its ticket resale marketplaces, Seatwave and Get Me In, and launching a fan-to-fan ticket exchange system instead. The websites for both Get Me In and Seatwave currently redirect visitors to Ticketmaster’s verified fan exchange.

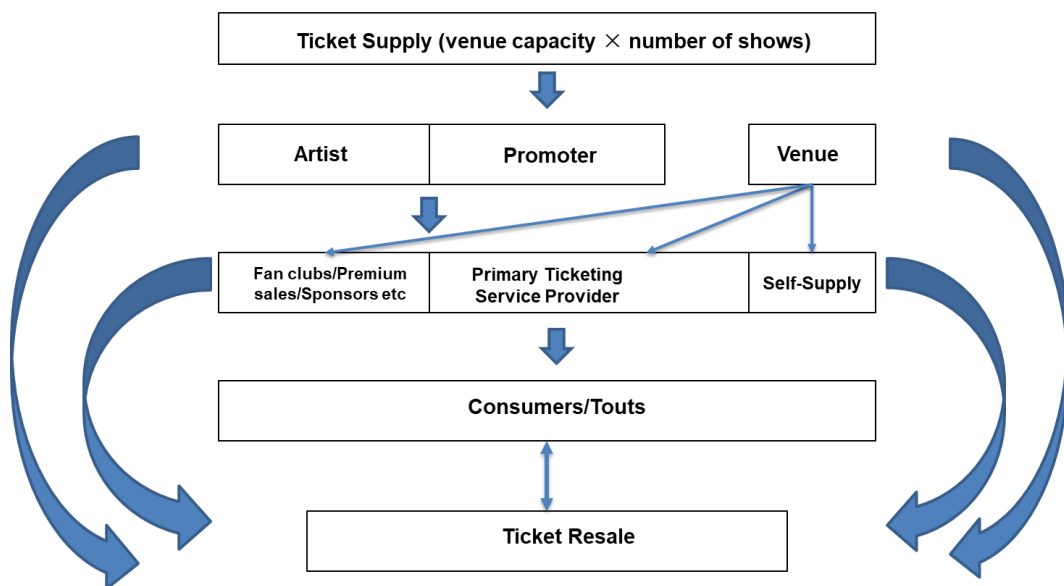
⁴¹ Viagogo in its response to the consultation issued by the Department of Jobs, Enterprise and Innovation and the Department of Transport, Tourism and Sport, entitled “*Consultation on the resale of tickets for entertainment and sporting events*”, dated 20 January 2017 noted that in 2016, 75% of tickets sold via Viagogo were sold for a price above the original face value of the ticket.

Done Deal) and social network fora (e.g., Facebook). Finally, tickets are still resold in the vicinity of venues on the day when live events are taking place.

Ticket Distribution Route

2.37 Figure 2 below illustrates the various routes by which a ticket for a live music event can reach the consumer. The total amount of tickets available for a live music event is divided between the artist and the promoter or the artist, the promoter and the venue. These tickets are then either sold through primary ticketing services providers or sold directly to consumers in the case of self-supplying venues or promoters. Finally, tickets may be resold by the purchasers of those tickets on a ticket resale marketplace. The Commission understands that, in some instances, artists and/or promoters may also place tickets directly on ticket resale marketplaces, albeit these tickets typically account for only a small proportion of the total ticket inventory.

Figure 2: Route of tickets to consumers



Source: The Commission’s analysis

Ticket pricing for live music events

2.38 As noted in paragraph 2.30 above, the face value of tickets is typically determined by promoters and artists/artists’ agents.⁴²

⁴² The exceptions to this are Ticketmaster’s platinum tickets. According to Ticketmaster, prices of platinum tickets are adjusted from time to time according to supply and demand similar to how airline tickets and hotel rooms are sold.

- 2.39 The Commission understands that, while promoters want to maximise turnover from a fixed number of attendees, they also want to sell all available tickets quickly in order to minimise costs and maximise returns on publicity for the event.⁴³ Separately, some artists care about their image and do not want to appear as “fan gougers” which may discourage fans from attending their future live music events. Frequently, artists also want to make some of the tickets to their shows affordable for less affluent fans.
- 2.40 Primary ticketing services providers charge their contractual partners a fee (sometimes referred to as an inside commission) per ticket sold.⁴⁴ The inside commission is calculated as a percentage of the face value of a ticket. In certain cases, the promoter or venue receives a rebate on ticket sales above a certain quantity, which is also calculated as a percentage of the face value of the ticket. The inside commission and/or rebate may be incorporated into the face value of a ticket if promoters/venues decide to pass these costs on to consumers.
- 2.41 Some primary ticketing services providers also charge consumers a fee per ticket known as a service charge. Ticketmaster’s service charge for ordering tickets online or via telephone accounts for [x] of the face value of a ticket. The percentage can vary depending on the face value of the ticket and the genre of the event, with a maximum service charge of [x] for tickets to music events in the highest price category.
- 2.42 The inside commission and service charge are collectively known as booking fees. Typically, the total level of booking fees is negotiated between promoters/venues and primary ticketing services providers and the maximum fees are set in the contracts. In most cases, booking fees increase in proportion to the face value of tickets, with booking fees being higher for more expensive tickets. However, a fixed booking fee cap is agreed with promoters for the most expensive tickets (e.g., tickets enabling whole weekend entry to festivals).
- 2.43 Tickets sold by primary ticketing services providers via retail outlets tend to incur lower booking fees (compared to booking fees applied to tickets sold online), with a proportion of such fees retained by the retail outlet owner. Tickets sold at venues’ box offices generally incur no booking fees. Booking fees apply to the tickets of all promoters and venues irrespective of event genre, although the level of these fees might vary on an individual promoter/venue basis. The primary ticketing services provider bears the cost of selling the ticket, including any credit card processing charges and the cost of dispatching the ticket.

(iii) Key Trends in the Supply of Live Music Events

- 2.44 The Commission is aware of the following key trends in the supply of live music events in the island of Ireland:

⁴³ See paragraph 22 of the Waterson Report.

⁴⁴ Promoters/venues have discretion on whether to pass on these fees to consumers via a higher ticket face value.

- (a) Increasing consumer demand for live music events;
- (b) Increasing prices of tickets to live music events; and
- (c) Increasing use of the internet to purchase tickets resulting in fewer tickets to live music events being sold through retail outlets.

(a) Increasing consumer demand for live music events

- 2.45 Sales of tickets to live music events tend to fluctuate significantly, depending on the number of artists touring in a particular year and promoters' ability to attract artists to the State.
- 2.46 Figure 3 below illustrates that the number of tickets sold on an annual basis for live music events and festivals in the island of Ireland has been steadily increasing from 2.1 million in 2012 to 3.4 million in 2017. This trend corresponds to a global trend of an increase in the number of live music events being held and fans' attendances at these events.⁴⁵ In recent years, artists have been increasingly reliant on touring income as sales of recorded music have declined significantly.⁴⁶

⁴⁵ For example, according to Pollstar, a leading source of concert industry information, the top 100 worldwide tours in 2017 generated an increase of 15.8% in revenue and an increase of 10.4% in tickets sold when compared to 2016. See <https://www.pollstar.com/article/2017-year-end-special-features-top-tours-promoters-venues-grosses-134154>.

⁴⁶ For example, the Recording Industry Association of America in its annual report on revenue statistics notes that despite the growth in revenue from recorded music in the US at the end of 2017, revenue is still 40% below its peak levels. See <http://www.riaa.com/wp-content/uploads/2018/03/RIAA-Year-End-2017-News-and-Notes.pdf>.

Figure 2: Sales of tickets to live music events in the Island of Ireland, 2012 - 2017

[3<]

Source: The Commission, based on information provided by primary ticketing services providers

(b) Prices of tickets to live music events are increasing

2.47 Figure 4 below illustrates that the average price of tickets including booking fees⁴⁷ sold by promoters of live music events (including live music festivals) in the island of Ireland increased from €57.01 in 2012 to €65.76 in 2017. During the period 2015 to 2017, the average ticket price grew by over 15%.

⁴⁷ This metric is also known in the ticketing industry as gross ticket value and the Commission use this industry term throughout the document. Gross ticket value incorporates both the face value of tickets and additional charges such as Booking Fees applied by primary ticketing services providers.

Figure 3: Average price of tickets by live event genre, 2012 - 2017

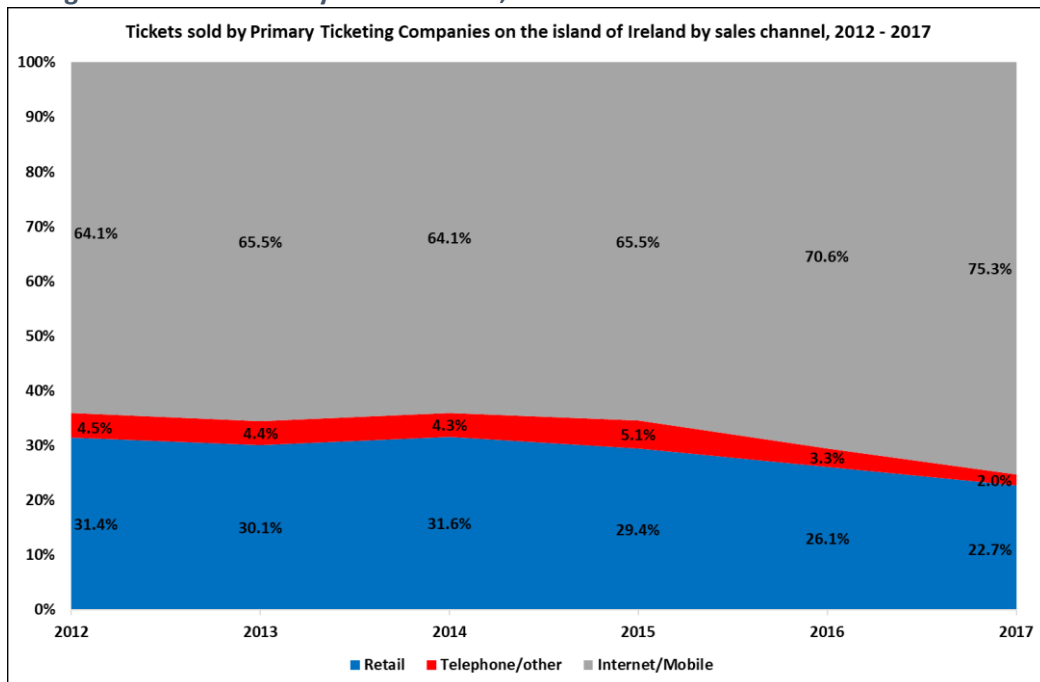
[3<]

Source: The Commission, based on information provided by primary ticketing services providers

(c) Increasing purchase of tickets to live music events online resulting in fewer tickets to live music events being sold through retail outlets

- 2.48 In general, there has been a steady increase in the proportion of tickets for live music events sold online and a corresponding decline in the proportion of tickets for live music events sold in retail outlets. 75.3% of all tickets sold to live music events in the island of Ireland in 2017 were sold online or via mobile applications, with 22.7% sold via retail outlets. Figure 5 below illustrates sales of tickets by sales channel in the island of Ireland between 2012 and 2017.

Figure 4: Ticket sales by sales channel, 2012 - 2017⁴⁸



Source: The Commission, based on information provided by primary ticketing services providers

- 2.49 While the sale of tickets to live music events via retail outlets has been in decline in the island of Ireland since 2012,⁴⁹ this sales channel remains important. Sales of tickets via retail outlets in the island of Ireland account for a higher share of total ticket sales when compared to other countries. For example, Live Nation notes that globally retail outlets accounted for 5% of Ticketmaster’s total ticket sales in 2016.⁵⁰ In comparison, retail outlets accounted for 19%⁵¹ of Ticketmaster’s total ticket sales in the island of Ireland in 2017.
- 2.50 Furthermore, [X] has informed the Commission that the availability of retail outlets as a sales channel is one of the key factors in deciding which primary ticketing services provider to use. Both [X] and [X] indicated⁵² to the Commission that, while sales via retail outlets have generally been declining on an annual basis, for some live music genres (e.g., rock or country music) sales via retail outlets can account for the majority of tickets sold.
- 2.51 [X] also informed the Commission that in certain circumstances artists instruct promoters and their primary ticketing services provider to ensure that any fans queuing outside retail outlets are able to purchase tickets to the artists’ live music event.

⁴⁸ “Other” refers to “back-office” sales reported by [X] which is used by [X] to sell tickets offline.

⁴⁹ When measured in terms of percentage share of all sold tickets.

⁵⁰ See page 5 of Live Nation’s Annual Report 2017.

⁵¹ According to Annex 44 submitted by Ticketmaster in its Response to RFI dated 21 November 2018, in response to question 44 of the Notice to Provide Information of 21 September 2018.

⁵² Commission discussions with a third-party promoter (see the note of meeting with [X] dated 28 January 2019).

3. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Introduction

3.1 In this section, the Commission identifies the product and geographic markets that are relevant for the assessment of the likely effects of the Proposed Transaction. It summarises the activities of the notifying parties, the general principles that apply to market definition, the views of the notifying parties and third parties and then sets out the Commission’s assessment below.

Horizontal Overlap

3.2 The Proposed Transaction will create a horizontal overlap between LN-Gaiety and MCD in respect of the supply of live music festivals in the State. In the State, LN-Gaiety operates the Electric Picnic live music festival and MCD owns and operates two live music festivals, Longitude and Vital. MCD, as the promotions business of Gaiety, is responsible for booking artists for Electric Picnic.

Vertical Relationships

3.3 There are vertical relationships between the parties in relation to the following:

- (a) The provision of artist management services;
- (b) The promotion of live events;
- (c) The operation of venues for live events; and
- (d) The provision of Outsourced Primary Ticketing Services for live events.

Relevant principles

3.4 The role of market definition is explained in the Merger Guidelines⁵³. It is a conceptual framework within which relevant information can be organised for the purpose of assessing the competitive effects of a merger.⁵⁴

3.5 According to the Merger Guidelines: *“The relevant product market is defined in terms of products rather than producers. It is the set of products that customers consider to be close substitutes. In identifying the relevant product market, the Commission will pay particular attention to the behaviour of customers, i.e., demand-side substitution. Supply-side substitution (i.e., the behaviour of existing and/or potential suppliers in the short term) may also be considered.”*⁵⁵

⁵³ Guidelines for Merger Analysis, adopted by the Commission on 31 October 2014 (the “Merger Guidelines”).

⁵⁴ Merger Guidelines, paragraph 2.1.

⁵⁵ Merger Guidelines, paragraph 2.8.

- 3.6 The relevant market contains the most significant alternatives available to the customers or consumers of the merging parties. Identifying the precise relevant market involves an element of judgement, with appropriate weight being given to factors on both the demand and supply side.⁵⁶
- 3.7 The Guidelines note that: *“Whether or not a product is a close substitute of a product supplied by one or more of the merging parties will depend on the willingness of customers to switch from one product to the other in response to a small but significant and non-transitory increase in price (or an equivalent decrease in quality). This will involve an assessment of the characteristics and functions of the products in question”*.⁵⁷
- 3.8 The standard economic test for defining the relevant market is the small but significant non-transitory increase in price (“SSNIP”) test. The SSNIP test seeks to identify the smallest market within which a hypothetical monopolist could profitably impose a SSNIP without a sufficient number of consumers/service purchasers switching to alternative products to render the price increase non-profitable. However, the Commission notes that the SSNIP test is just one of the tools used in defining the relevant product market. A substantial emphasis should also be placed on product characteristics, price and intended use as well as observed substitution patterns between various products that can potentially be included in the same product market.
- 3.9 It may not be possible to draw a clear line around the fields of rivalry. That being so, it is fallacious to regard as relevant to the competition analysis only those products defined as falling within the relevant market and to disregard any competitive pressure from those products defined as falling outside it. The Commission may therefore consider segmentation within the relevant market or factors outside the relevant market that impose competitive constraints on firms in the relevant market.⁵⁸
- 3.10 Ultimately, the Commission’s definition of the relevant market or markets depends on the specific facts, circumstances, and evidence of the particular merger under investigation.⁵⁹

(i) Supply of Live Music Festivals

Relevant Product Market

Views of the notifying parties

- 3.11 The notifying parties stated in the notification that the *“supply of live festivals which focus on music”* represents a product market which is distinct from the

⁵⁶ Merger Guidelines, paragraph 2.2.

⁵⁷ Merger Guidelines, paragraph 2.9.

⁵⁸ Merger Guidelines, paragraph 2.1.

⁵⁹ Merger Guidelines, paragraph 2.6.

market for live music events. The notifying parties also stated in the notification in relation to the supply of live music festivals that: *“For the purposes of assessing the Proposed Transaction, the parties submit that the CCPC can leave open the precise market definition, as no concerns arise whether the Proposed Transaction is assessed on a wide or narrow basis. According to statistics compiled by musicfestivalsireland.ie, there are more than 230 different festivals of varying sizes, genre, composition and duration which take place on an annual basis across the island of Ireland, of which the parties’ festivals comprise just a small fraction.”*

- 3.12 The notifying parties also stated in the notification that: *“the parties do not consider that any segmentation by reference to size of festival is relevant or appropriate in the context of festivals in Ireland – small festivals can quickly grow in size and change in line-up if they become popular and artists can be seen to perform at various different sizes of festivals.”*

Views of third parties

- 3.13 Third party promoters provided the following comments to the Commission in relation to product market definition in respect of the supply of live music festivals:
- (a)** while the decision by a customer to purchase a ticket to a live music event is primarily dependent on the artist performing at the live music event, the decision to attend a live music festival is dependent on a much wider range of factors, including duration, format (e.g., camping or non-camping), music genre, and non-musical content (e.g., food, comedy events, spoken-word events, etc.)⁶⁰;
 - (b)** live music festivals that focus on niche musical genres (e.g., jazz festivals, classical music festivals, etc.) do not compete in the same product market as live music festivals which focus on popular music genres⁶¹;
 - (c)** live festivals that focus primarily on non-musical content (e.g., arts and theatre festivals) impose little competitive constraint, if any, on live music festivals which focus on popular music genres⁶²;
 - (d)** size of festival is not the most important differentiating factor. More important drivers of competition between live music festivals are the overall offering of the live music festival, including factors such as the target audience (e.g., young, mature, family), the format (whether camping or non-camping, whether multi-day or a series of events) and the location (whether city-based or countryside).

⁶⁰ This is supported by internal documents of the notifying parties provided to the Commission. For example, [§<].

⁶¹ From Commission discussions with third-party promoters and responses to Commission market enquiries submitted by third-party promoters (see notes of meetings with [§<] dated 24 October 2018 and response submitted by [§<]).

⁶² From Commission discussions with third-party promoters and responses to Commission market enquiries submitted by third-party promoters (see notes of meetings with [§<] dated 24 October 2018 and responses submitted by [§<] and [§<]).

Previous determinations

- 3.14 The Commission has not previously considered the relevant product market in relation to the supply of live music festivals. However, the Commission has examined the approach to market definition taken by other national competition authorities.
- 3.15 The United Kingdom Competition and Markets Authority (“CMA”) (and its predecessor authorities, the Office of Fair Trading (the “OFT”) and the Competition Commission (“CC”)) has previously considered the relevant product market for the supply of festivals:
- (a) In its decision in *Mean Fiddler/Clear Channel*⁶³, the OFT concluded that, although individual live music festivals cannot be considered particularly close demand substitutes, and therefore the constraint they place upon each other may be weak, there is likely to be at least a proportion of customers who are marginal and would switch between certain festivals. The OFT therefore considered the transaction on the basis of a product market definition including all live music festivals in the United Kingdom;
 - (b) In its decision in *LN-Gaiety/MAMA*⁶⁴, the CMA considered that there is a degree of substitution between certain live music festivals. The CMA therefore considered the transaction on the basis of a product market definition that included all live music festivals, while taking into account in its competitive assessment the significant differentiation between different music festivals. In its competitive assessment the CMA referred to certain differentiating characteristics of live music festivals, including location, music genre and whether the festival is camping or non-camping;
 - (c) In its decision in *LN-Gaiety/Isle of Wight Festival*⁶⁵, the CMA took all live music festivals as the starting point for its analysis but considered whether the product scope should be segmented or expanded further. The CMA considered, in particular, whether the product scope could be further broadened or segmented according to specific features of festivals, including: (a) whether free events and non-music based festivals should be included within the frame of reference; (b) the size of the festival; and (c) whether the festival is a camping festival. The CMA found it likely that large live music festivals are more closely constrained by other large live music festivals than by smaller live music festivals and therefore the impact of the transaction was assessed in relation to large live music

⁶³ Case ME/1680/05 Anticipated acquisition of Mean Fiddler Music Group by Clear Channel Entertainment (Music) UK Ltd and Gaiety Investments Ltd, decision of the Office of Fair Trading, 17 June 2005 (“Mean Fiddler/Clear Channel”). For more information, see <https://assets.publishing.service.gov.uk/media/555de419ed915d7ae20000f5/meanfiddler.pdf>

⁶⁴ Case ME/6574/15 Completed acquisition by LN-Gaiety Holdings Limited of MAMA & Company Limited, decision of the CMA, 19 February 2016. For more information (“LN-Gaiety/MAMA”), see https://assets.publishing.service.gov.uk/media/57065b2f40f0b60385000051/LN-Gaiety_MAMA_decision_7.4.16.pdf

⁶⁵ Case ME/6693/17 Completed acquisition by LN-Gaiety Holdings Limited of Isle of Wight Festival Limited, decision of the CMA of 14 September 2017 (“LN-Gaiety/Isle of Wight Festival”). For more information, see <https://assets.publishing.service.gov.uk/media/59d34b6d40f0b6107da97850/ln-gaiety-isle-of-wight-festival-full-decision.pdf>

festivals. This was based on a number of factors including the ability of large live music festivals to attract top artists (and this being a key driver of ticket sales). The CMA also considered various pieces of evidence in its assessment of whether it is appropriate to include camping and day festivals within a single frame of reference but ultimately assessed the impact of the merger in relation to camping live music festivals only. The CMA took into account the constraint from non-camping live music festivals in its competitive assessment where the evidence supported the existence of such a constraint. The CMA therefore assessed the impact of the merger within the frame of reference for large camping live music festivals on the basis of a number of different capacity figures. The CMA noted that live music festivals are highly differentiated and that a wide variety of factors will be relevant to how closely particular festivals compete with one another.

- 3.16 The German Competition Authority (the “Bundeskartellamt”) has found that all live music festivals constitute a single product market (with the exception of classical live music festivals), without drawing any distinctions between festivals in terms of size, price or duration.⁶⁶

The Commission’s assessment

Live music events and live music festivals

- 3.17 The Commission first considered whether live music events sufficiently compete with live music festivals to be sensibly regarded as being in the same relevant product market. A live music event comprises a single performance by a headlining artist, generally with one or more supporting acts. Live music festivals are temporary outdoor venues with a wide range of capacities taking place over one or more days, often with live music events as their primary content.
- 3.18 Based on an analysis of the specific characteristics of live music events and live music festivals, the Commission has found that they are not functional substitutes for the reasons set out below.
- 3.19 First, the Commission found that the scope for demand-side substitution between live music festivals and live music events is limited, as they differ in the time of year when they take place and the locations in which they are held. The majority of live music festivals take place in the spring and summer months. In contrast, sales for live music events in the State typically peak in the winter months, when outdoor events are relatively less attractive.
- 3.20 Second, the Commission found that consumers consider a wide-range of factors when purchasing tickets for live music festivals over and above the identities of

⁶⁶ See Case B 6-53/16 CTS Eventim/FKP Scorpio (2017), paragraphs 49-55. For more information, see https://www.bundeskartellamt.de/SharedDocs/Entscheidung/DE/Entscheidungen/Fusionskontrolle/2017/B6-53-16.pdf;jsessionid=F40A3C9245CAC2990B02D53CF6F52A4.1_cid371?_blob=publicationFile&v=2

the artist performing at the festival. These factors include: the duration of the live music festival, format (camping or non-camping), location/venue (live music events are typically held in indoor venues and typically in large population centres, live music festivals are typically held outdoors and outside of urban areas⁶⁷) and non-musical content. This range of factors is not relevant to a consumer's decision to purchase a ticket for a live music event, such decision being primarily driven by the performing artist. Given these differences, the Commission found that consumers do not typically consider a live music event to be a close substitute for a live music festival.

- 3.21 The Commission found that under certain circumstances live music events and live music festivals may be considered as substitutes. For example, in instances where a live music festival is held in close proximity to a live music event on the same weekend, this could result in a reduction in sales for the live music festival. However, the Commission considered that this does not act as a sufficient competitive constraint on a live music festival since it has the potential to occur in a minority of cases, and in general their respective offerings differ significantly.
- 3.22 Third, in considering supply-side substitution, the Commission examined whether an operator of live music events would be likely to switch to provide a live music festival in response to an increase in the price of tickets for live music festivals, quickly and without investment. The Commission found that a degree of supply-side substitution may exist between the supply of live music festivals and live music events. In particular, the Commission notes that a number of operators of live music festivals in the island of Ireland also operate live music events. However, the Commission found that, in line with paragraph 2.8 of the Merger Guidelines, greater weight should be given to demand side factors in finding that live music events do not sufficiently compete with live music festivals to be in the same relevant product market for assessing the likely effects of the Proposed Transaction.

Genre

- 3.23 The Commission considered whether there is a sufficient degree of interchangeability between the supply of different genres of live music festivals.
- 3.24 Each of the live music festivals owned and operated by the notifying parties in the island of Ireland (including the live music festivals in which Gaiety holds a controlling interest) are live music festivals that focus on popular music (referred to below as live pop music festivals). Live pop music festivals generate the largest revenues derived from live music festivals operating in the island of Ireland.
- 3.25 From a demand-side perspective, the Commission found that a consumer's choice of live music festival is driven by a range of factors with the music genre of the performing artists being one of the key differentiators. The Commission found that live music festivals focussing on a particular music genre may be close substitutes for live music festivals focussing on the same genre. The Commission

⁶⁷ Notable exceptions include the Longitude and Forbidden Fruit live music festivals, both of which are held in Dublin city.



did not consider that there would be sufficient diversion from a live pop music festival to a live classical music festival for the live classical music festival to exercise sufficient constraint on the live pop music festival.

- 3.26 The Commission found that many promoters of festivals with primarily niche genres of music are highly specialised, and typically do not organise events outside of these specialisms. From the supply side, suppliers of live pop music festivals will compete more closely with each other to attract popular artists, than with suppliers of live music festivals that focus on traditional Irish music, opera or jazz.
- 3.27 In light of the foregoing, the Commission considered it appropriate to define the relevant product market for live pop music festivals, excluding live music festivals focussed on other music genres. In this regard, there is a relevant difference between the competitive conditions in the island of Ireland and the markets considered in the decisions mentioned at paragraphs 3.15 and 3.16 above.

Content

- 3.28 The Commission considered whether there is a sufficient degree of interchangeability between live music festivals and live festivals focussed on other content, such as comedy.
- 3.29 The Commission also found that from a demand-side perspective, consumers do not consider live festivals focussed on other types of content (such as live comedy festivals or live arts festivals) to be close substitutes to live music festivals on the basis of the specific characteristics of each type of festival (a live comedy or arts festival, for example, is more akin to a number of live events scheduled in a particular weekend or week as consumers are required to purchase tickets for individual events). The Commission did not consider that other types of live festivals would exercise sufficient competitive constraint on live pop music festivals for them to be regarded as part of the relevant product market.
- 3.30 The Commission also found that from a supply-side perspective there are significant differences, in particular in relation to cost and risk, between the supply of live pop music festivals and the supply of festivals focussed on other content. Furthermore, suppliers of live pop music festivals will evidently compete more closely with each other to attract popular artists, than with suppliers of live music festivals that focus on other content.
- 3.31 In light of the foregoing, the Commission considered it appropriate to exclude live festivals focussed on content other than music from the relevant market definition for the purposes of examining the effects of the Proposed Transaction.

Segmentation based on other factors (e.g. size, duration, format (i.e. whether camping or non-camping))

- 3.32 The Commission considered whether the relevant market for the supply of live pop music festivals should be segmented by reference to other factors such as size, duration or format.
- 3.33 From a demand-side perspective, the Commission found that a consumer's choice of live pop music festival is driven by a range of factors (including, but not limited to, size, duration, format, ticket price, location) and there is no single decisive factor. In this regard, the Commission found that there is likely to be a sufficient degree of substitution between live pop music festivals of differing size, duration and format for them to be considered as part of the same relevant market for the purposes of assessing the Proposed Transaction.
- 3.34 In considering possible segmentation by reference to the size of a live music festival, it is relevant that the notifying parties operate the two largest live music festivals which focus on popular music on the island of Ireland, by ticket revenue, namely Electric Picnic and Longitude. However, third party promoter comments suggested that format (i.e., camping/non-camping) may be a more important differentiator of live pop music festivals than size of festival⁶⁸.
- 3.35 From the supply-side perspective, the Commission found that there are certain considerations that may limit the ability of an operator of a small, non-camping live pop music festival to expand to offering a large, camping festival. For example such an operator may require a larger venue and greater logistical expertise in order to facilitate such expansion.
- 3.36 However, the Commission found that greater weight should be given to demand side factors in deciding not to segment the potential market for the supply of live pop music festivals on any additional basis on the basis that demand constitutes the most immediate and effective disciplinary force on providers.⁶⁹
- 3.37 The Commission has considered segmentation based on size and format when assessing the closeness of competition between live pop music festivals as part of its competitive assessment.⁷⁰
- 3.38 The Commission considered that, while the market for the supply of live pop music festivals could potentially be segmented on the basis of additional factors, for the purposes of its assessment of the competitive impact of the Proposed Transaction, such segmentation was not required and would not materially affect the Commission's assessment of competitive effects.

⁶⁸ Commission discussions with a third-party promoter (see the note of meeting with [redacted] dated 28 January 2019).

⁶⁹ Merger Guidelines, paragraph 2.8 and section 13 of the European Commission's Market Definition Notice.

⁷⁰ The CMA's decision in *LN-Gaiety/Isle of Wight Festival* found that large live music festivals are more closely constrained by other large live music festivals, based on a number of factors including the ability of large music festivals to attract top artists (and this being a key driver of ticket sales).

Conclusion on product scope in supply of live music festivals

- 3.39 In light of the above, the Commission has assessed the likely impact on competition of the Proposed Transaction with respect to the supply of live pop music festivals but has taken into account the evidence showing a potential competitive constraint from other types of music festivals where appropriate.

Relevant Geographic Market

Views of the notifying parties

- 3.40 In relation to the relevant geographic market, the notifying parties state in the notification that the appropriate geographic basis on which to assess the Proposed Transaction is at least national and is likely to be island of Ireland-wide in scope. In this regard, the notifying parties state that: *“Other than currency fluctuations which may affect the relative price of festivals in Northern Ireland and in the State, there are no substantial differences as between the two jurisdictions in terms of the types of festivals offered. Festivals take place all around the island of Ireland, with fans generally prepared to travel relatively substantial distances in order to attend, particularly in the context of a multi-day camping festival.”*

Views of third parties

- 3.41 A number of third parties indicated to the Commission that location was a key determinant of how closely specific live music festivals compete.

The Commission’s Assessment

- 3.42 With respect to the relevant geographic market, the Commission notes that live pop music festivals compete to an extent in terms of location, with customers prepared to travel significant distances for certain live pop music festivals.
- 3.43 From the supply side, it appears that there are few barriers which would prevent a Northern Irish promoter from launching a live pop music festival in the State, with one promoter indicating their intention to do so, and stating that they face no barriers to doing so.⁷¹
- 3.44 Accordingly, the Commission has decided to assess the competitive impact of the Proposed Transaction by reference to the supply of live pop music festivals in the island of Ireland.

Conclusion on geographic market definition in supply of live pop music festivals

⁷¹A third party operator of live music festivals indicated to the Commission that it was considering opening a live music festival in the State, and that it saw no barriers to doing so. (See [§<], the promoter of [§<])

- 3.45 In order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has assessed its likely impact on competition in the market for the supply of live pop music festivals in the island of Ireland.



(ii) The provision of artist management services

3.46 In relation to the provision of artist management services, Live Nation manages only one artist in the State, namely U2. As a result, the vertical relationship in the State between the artist management services provided by Live Nation and the promotion activities of MCD is limited to the promotion by MCD of live music events involving U2. Given that the vertical relationship concerns a single artist, the Commission did not consider it necessary to reach a definitive conclusion as to the precise market definition in this instance. Also, given that there are a significant number of well-known, world famous pop artists which remain available to promoters in the State, the Commission considered that the Proposed Transaction is not likely to raise any competition concerns in relation to the provision of artist management services in the State. Accordingly, the Commission does not consider the provision of artist management services further in this Determination.

(iii) Promotion of Live Events

Relevant Product Market

The notifying parties' activities

3.47 As set out at paragraph 1.8 above, MCD is involved in the promotion of live music events, including the promotion of two live music festivals in the island of Ireland, namely; Electric Picnic and Longitude. MCD is also involved in the promotion of non-music live events, for example, live comedy events. There is a vertical relationship between the notifying parties in the State as Live Nation provides MCD with: (i) Outsourced Primary Ticketing Services through Ticketmaster, and (ii) venues for the live music events promoted by MCD. MCD also promotes live music events on behalf of artists managed by Live Nation.

Views of the notifying parties

3.48 In relation to the relevant product market, the notifying parties referred in the notification⁷² to the decision of the former United Kingdom Competition Commission (the "CC") in *Ticketmaster/Live Nation*⁷³ and stated that they agree with the basic approach taken in that case in the context of the competitive assessment of the Proposed Transaction. In referring to that decision, the notifying parties stated in the notification that:

- (a) The relevant product market may be wider than the promotion of live music events only. The notifying parties stated that "*given the wide range*

⁷² See the Merger Notification, page 43.

⁷³ The CC's report on the completed merger between Ticketmaster Entertainment, Inc and Live Nation, Inc, dated 7 May 2010 ("*Ticketmaster/Live Nation*").

See here: https://assets.publishing.service.gov.uk/media/5519473540f0b61401000087/final_report.pdf

*of events promoted by the events promoters in Ireland, there is a strong case that the scope of the relevant category is now wider than live music events (excluding music festivals). They also stated that “while promoters may still focus primarily on live music, they increasingly can and do promote other types of events, such as comedy, musicals and other types of music and non-music shows”;*⁷⁴

- (b)** It is not appropriate to segment the market for the promotion of live music events by reference to venue size. The notifying parties stated that: *“promoters are readily capable of promoting shows for internationally-renowned and lesser known artists, as well as in venues of all sizes and compositions”;*⁷⁵ and
- (c)** It is not appropriate to segment the market for the promotion of live music events by reference to genre of music. The notifying parties stated that: *“the larger promoters (MCD and Aiken) offer the full range of promotion services required by agents of rock, pop, country and other artists. The requirements of the agents are essentially the same for all genres of music, such that there is no plausible basis on which to distinguish by reference to the type of music event being promoted”.*⁷⁶

Views of third parties

3.49 In relation to product market definition for the promotion of live music events, third party promoters expressed the view that, in respect of the differences between the promotion of live music events and the promotion of live music festivals, the promotion of live music festivals requires more focus on facilities (e.g., food, camping, etc.), set-up and infrastructure (e.g., security, insurance, etc.) than the promotion of live music events.⁷⁷

3.50 In addition, third party promoters stated that promoters of live music events also promote non-music live events such as comedy, theatre and cultural events.⁷⁸

Previous determinations

3.51 The Commission has not previously considered the relevant product market in relation to the promotion of live music events or live events more generally. That being so, the Commission has taken into account the approach to market

⁷⁴ See the Merger Notification, page 43

⁷⁵ See the Merger Notification, page 42

⁷⁶ See the Merger Notification, page 41

⁷⁷ From Commission discussions with a third party promoter (see note of call with [redacted] of 10 October 2018).

⁷⁸ From Commission discussions with third-party promoters and responses to Commission questionnaire (see notes of call with [redacted], and response by [redacted] dated 19 December 2018.



definition taken by other national competition authorities to the supply of live music promotion.

3.52 The CMA (and its predecessor authorities, the OFT and CC) has previously considered the relevant product market for the promotion of live music events:

(a) In *Ticketmaster/Live Nation*, the CC considered whether (i) the supply of live music promotion was a separate product market; (ii) the market was narrower than all live music events, segmented by the size of event promoted, or between concerts and festivals; and (iii) the market was wider than all live music events. The CC concluded that, for the purposes of its assessment, the promotion of live music festivals was part of the market for live music promotion. It also found that, although there might be an asymmetry, with small promoters generally only promoting small events and large promoters promoting both small and large events, there was no clear basis for delineating the market on the basis of the size of event. The CC ultimately assessed the transaction by reference to a product market for live music promotion (rock and pop), including large and small events and festivals.

(b) In *Mean Fiddler/Clear Channel*, the CMA did not reach a definitive conclusion on the relevant product market but noted that promoters carry out a specific function and it is not expected that any other type of service would be a reasonable demand side substitute.

The Commission's assessment

Promotion of live events

3.53 The Commission gathered a range of evidence to assess whether there was a single relevant product market for the promotion of live events; or whether the relevant market(s) should be defined more narrowly according to the event type, i.e., live music, live comedy, live theatre.

3.54 The Commission found that the main promoters active in the State, namely; MCD, Aiken and POD, all focus to a large extent on promoting live music events (including live music festivals). However, the Commission also found that both MCD and Aiken are active in the promotion of live comedy events and the promotion of other types of live events, including musicals and other live theatre events.

3.55 From a demand-side perspective, the Commission found that there is likely to be limited substitution between live music events and live comedy events given that consumer demand for live music events is primarily artist driven.

3.56 From a supply-side perspective, however, live comedy events and live music events utilise the same venues, have similar production requirements and therefore have a similar cost-base. In addition, both types of live event are

typically limited to a single performance or a small number of performances. However, the Commission found that greater weight should be given to demand side factors in deciding that promoters of live comedy events are unlikely to place a sufficient competitive constraint on promoters of live music events given the fact that consumer choice of live music event is artist driven.

- 3.57 In terms of live theatre events, the Commission found that MCD also promotes musicals and other live theatre events⁷⁹. From a demand-side perspective, there is likely to be limited substitution between live music events and live theatre events given that consumer demand for live music events is primarily artist driven. From a supply-side perspective, the Commission found live theatre events to be differentiated from live music events. For example, there is limited overlap in the venues used given the requirement for specific production capabilities and seating configuration.⁸⁰ In addition, the number of performers involved in a theatre production is generally higher and production costs are also usually higher than for live music events. For the foregoing reasons, the Commission found that promoters of live theatre events are unlikely to place a sufficient competitive constraint on promoters of live music events.
- 3.58 Accordingly, for the purposes of assessing the impact on competition of the Proposed Transaction, the Commission has defined the relevant market as the promotion of live music events. However, in its competitive assessment of the Proposed Transaction, the Commission has taken into account the competitive pressure from promoters of other types of live event in the island of Ireland book the same venues for both types of live events.

Promotion of live music festivals

- 3.59 The Commission has also considered whether the promotion of live music festivals acts as a sufficient competitive constraint on the promotion of live music events.
- 3.60 The Commission found that, despite artists being a primary driver of consumer demand for both live music events and live music festivals, there are significant differences in the specific characteristics of live music festivals and live music events.
- 3.61 From a demand-side perspective, as set out at paragraph 3.20 above, there is limited degree of substitution between live music festivals and live music events given the additional factors which consumers consider when deciding whether to attend a live music festival, such as duration, format and non-musical content. However, the Commission found that there is a greater degree of substitution between live music events and non-camping live music festivals which operate as one-day events or multiple one-day events.⁸¹

⁷⁹ For example, MCD promoted *Cirque du Soleil* at the 3Arena in October 2018, Mario Rosenstock at the Cork Opera House in April 2018 and the *Game of Thrones Live Concert Experience* at the 3Arena Dublin and SSE Arena Belfast in May 2018.

⁸⁰ From Commission discussions with third-party promoters (for example, see note of call with [redacted])

⁸¹ From Commission discussions with third-party promoter (see note of call with [redacted] dated 9 October 2018).

- 3.62 From a supply-side perspective, the evidence considered by the Commission suggests that the resources and skills required to promote live music festivals are broadly similar to those required for the promotion of live music events.⁸² The Commission found that the main live music promoters active in the State (MCD, Aiken and POD) promoted or co-promoted both live pop music festivals and live music events in the State. Furthermore, the top ten live pop music festivals by revenue in the island of Ireland are promoted (and/or operated) by a promoter of other live music events. However, based on comments provided by third party promoters, the Commission found that the promotion of a live music festival requires more logistical and organisational expertise than promoting a live music event⁸³.
- 3.63 The Commission found that, when competing to secure artists, promoters of live music festivals compete more closely with other promoters of live music festivals than promoters of live music events. As described in paragraph 3.20 above, live music festivals in the State are primarily held in the spring/summer months, while live music events are primarily held in the winter months. Typical agreements between an artist and a promoter governing the terms of promotion of a particular live music event usually contain a clause [§<] Accordingly, an artist will not generally play both a live music event and a live music festival within a six month period, thereby limiting competition between promoters in securing artists for these event formats.
- 3.64 On the basis of the foregoing, for the purposes of assessing the likely impact on competition of the Proposed Transaction, the Commission has decided that the promotion of live music festivals does not compete sufficiently with the promotion of live music events for them to be regarded as being in the same market.

Segmentation by reference to the size of the venue

- 3.65 The Commission considered whether the market for the promotion of live music events should be segmented on the basis of the size of the venues booked by promoters of live music events.
- 3.66 The Commission has considered the UK CC's decision in *Ticketmaster/Live Nation* which found that, although there might be an asymmetry, with small promoters generally only promoting small events and large promoters promoting both small and large events, there was no clear basis in that case for delineating the relevant market for venues on the basis of the size of event. The Commission's discussions with third party promoters indicated that similar conditions exist in the Island of Ireland, supporting the views of the notifying parties set out in the notification.
- 3.67 The Commission found that the main promoters of live music events in the State promote live music events in both large venues such as the 3Arena which has a capacity of 14,600 and small venues such as Vicar Street or the Olympia Theatre

⁸² From Commission discussions with third-party promoters (see notes of call [§<], dated 24 October 2018 and [§<], dated 24 October 2018).

⁸³ From Commission discussions with third-party promoters (see notes of calls with [§<] and [§<]).

with capacities of less than 2,000 (see paragraph 2.16 for a discussion on venue size). The evidence gathered by the Commission indicated that the capacity of a venue was not sufficiently distinctive to require it to define the relevant promotion market by capacity. No party adduced evidence that promoters in the State specialise in the promotion of live music events of a particular size.

- 3.68 The Commission attaches weight to the fact that promoters that will be rivals of the notifying parties did not provide the Commission with any comments in relation to the segmentation of the promotion of live music events by reference to the size of the venue.
- 3.69 Accordingly, for the purposes of assessing the likely impact on competition of the Proposed Transaction, the Commission has concluded that the relevant market for the promotion of live music events should not be segmented by reference to the size of the venues booked by promoters.

Conclusion on product scope in the promotion of live music events

- 3.70 Based on the evidence it has gathered, the Commission therefore concluded that the relevant product market in which to assess the vertical effects of the Proposed Transaction was the market for promotion of live music events, excluding live music festivals.

Relevant Geographic Market

Views of the notifying parties

- 3.71 In relation to the relevant geographic market, the notifying parties stated in the notification that the appropriate geographic basis on which to assess the Proposed Transaction is the island of Ireland. The notifying parties state the following in the notification: *“All promoters in Ireland operate on an island of Ireland basis at a minimum. Promoters based in the State promote events at the SSE Arena, Mandela Hall, Ulster Hall, Limelight and Ormeau Park in Belfast, City Hotel in Armagh and The Nerve Centre in Derry (among others), as well as promoting events in venues across the State, from the National Opera House in Wexford to the Royal Theatre in Castlebar, and the INEC in Killarney to the Phoenix Park in Dublin.”*⁸⁴

Views of third parties

- 3.72 Most third parties contacted by the Commission did not express a view on the relevant geographic market for the promotion of live music events. However, one third party expressed the view to the Commission that it is not common for promoters of live music events based outside the State to promote live music events in the State.

⁸⁴ See the Merger Notification, page 44.

The Commission's assessment

- 3.73 The Commission's investigation has not identified any evidence to suggest that the geographic market for the promotion of live music events is wider than the island of Ireland. Promoters based outside the island of Ireland rarely promote live music events in the island of Ireland.
- 3.74 All large promoters of live music events in the State promote live music events on an island of Ireland basis. Many smaller promoters of live music events in the State typically promote live music events in their local area, and similarly venue operators typically do not promote live music events in venues other than their own.

Conclusion on geographic scope in the promotion of live music events

- 3.75 The Commission has therefore assessed the likely competitive impact of the Proposed Transaction in the market for the promotion of live music events in the island of Ireland.

(iv) Operation of Venues for Live Music Events

Relevant Product Market

The notifying parties' activities

- 3.76 As set out at paragraph 1.6 above, Live Nation is active in the supply of indoor venues in the State. Live Nation owns and operates the 3Arena, manages the Bord Gáis Energy Theatre and operates the Gaiety and Olympia theatres, each of which are indoor venues located in Dublin. MCD contracts with Live Nation in booking indoor venues for live events.

Views of the notifying parties

- 3.77 The notifying parties stated in the notification that the supply of all venues for live music events should be considered as a distinct product market. The notifying parties state that it is not relevant or appropriate to define separate markets for the supply of venues for live music events by reference to: (i) whether venues are indoor or outdoor; (ii) the type of event for which the venue is primarily used; (iii) the configuration of the venue (seated, standing or both); or (iv) the venue's capacity. In particular, the notifying parties stated as follows in the notification:
- (a)** *“a promoter booking a venue will select the largest venue that an artist can fill to maximise revenues, and will compete for events based on the financial package that can be offered to the artist. If the venue is too small, the event will generate less revenue than would otherwise have been the case and the promoter would likely lose the business to a promoter which offered a larger venue. By contrast, if the venue is too*

large, then the promoter runs the risk of a serious financial loss, and the artist potentially risks reputational damage from failing to sell out the venue. Venue owners/operators will look to maximise the rental income that can be generated by offering attractive terms to promoters (booking the venue for an artist) and looking to hold as many events in the venue as possible.”⁸⁵

- (b)** *“while the 3Arena is the largest single indoor arena in the State, there are various indoor and outdoor venues of similar and larger capacities across the State which host live entertainment events, and there is clear evidence [...] that artists can choose between indoor and outdoor venues when organising concerts and tours”;*⁸⁶
- (c)** *“While some venues may be designed for a particular type of live music performance, in general venues can be adapted for a number of different types of performer and a range of popular genres of music. The 3Arena may have a tradition for playing host to traditional international rock and pop bands, but it has also hosted a wide range of music and non-music performers across all categories of the entertainment industry, from classical concerts to professional wrestling”;*⁸⁷
- (d)** *“The 3Arena can be organised into a number of different configuration styles, which differ in terms of the mix of standing and seating. Other venues across the State, such as the RDS and the INEC Killarney, are also capable of changing configurations in a similar manner. However, while individual artists may have specific preferences for particular configurations, this is not a decisive factor in relation to the selection of a venue (which will be driven to a far greater degree by the capacity of the venue and the commercial terms available).”;*⁸⁸ and
- (e)** *“While capacity is an important consideration when choosing a venue for a live entertainment event, there are no clear dividing lines between venues of different capacity”.*⁸⁹

Views of third parties

3.78 Promoters of live music events provided the following views to the Commission in relation to product market definition for the supply of venues for live events:

- (a)** The choice of venue for a promoter of live music events depends on a variety of factors, including: (a) the available commercial terms; (b) the

⁸⁵ See the Merger Notification, page 46.

⁸⁶ See the Merger Notification, page 47.

⁸⁷ See the Merger Notification, page 47.

⁸⁸ See the Merger Notification, page 47.

⁸⁹ See the Merger Notification, page 48.

location; (c) capacity of the venue; (d) the suitability of the venue for the artist; and (e) the venue configuration;⁹⁰ and

- (b)** Even if a high profile artist has sufficient appeal to switch from an indoor venue to an outdoor venue, a suitable outdoor venue may not be available for that artist. High profile artists on international tours typically have their own set (stage shape, lighting, etc.) which has been specifically designed for an indoor venue and thus cannot be switched to an outdoor venue.

Previous determinations

3.79 The Commission has not previously considered the relevant product scope for the supply of venues for live events. However, the Commission has taken into account the approach to defining the market for the supply of venue space to promoters taken by other national competition authorities.

3.80 The CMA (and its predecessor authorities) has considered the relevant product scope for the supply of venues for live events:

- (a)** In *Hamsard/Academy Music*,⁹¹ the CC considered a range of factors in assessing whether there was a single market for the supply of venue space to promoters or whether the market should be defined more narrowly, e.g., by taking into account whether the venues are indoor or outdoor; the type of event for which the venue is primarily used; venue capacity; and venue configuration. In that report, the CC stated that: *“Outdoor venues, [...] tend to be used only in summer months (primarily between May to September). They are rarely used during the rest of the year as the weather does not suit such outdoor events. Substitutability between indoor and outdoor events is therefore largely limited to the summer months.”* The CC also stated that: *“Although certain individual indoor venues may find particular outdoor venues are substitutable at certain times of year, we were not convinced that indoor and outdoor venues can generally be considered to be in same market, such that it would be unprofitable to increase the relative price of indoor venues. However, given the range of factors governing the choice of venues, we recognize that there may be exceptions to this on a venue by venue basis.”* The CC in also noted that *“Artists at different stages of their careers will tend to play different size venues; the more popular an artist becomes, the more likely it is that the artist will be playing to a larger audience at a bigger venue. Therefore a venue of less than 1,000 capacity, for example, is unlikely to be substitutable for a large arena or venue of over 5,000 capacity.”*

⁹⁰ Some venues offer a variety of configuration styles based on the mix of standing and seating.

⁹¹ CC report on the proposed acquisition of a controlling interest in Academy Music Holdings Limited by Hamsard 2786 Limited, dated 23 January 2007. (*“Hamsard/ Academy Music”*).



- (b)** In *AEG/Wembley*⁹², the CC gathered a range of evidence to assess whether there was a single market including all venues, or whether the relevant market(s) should be defined more narrowly according to: whether they are indoor or outdoor venues; venue capacity; venue configuration; and event type. The CC found that switching a tour between indoor and outdoor venues was limited. Third parties submitted that “*performing at indoor and outdoor venues required very different production design, and that it was generally prohibitively expensive to tour with two different productions*”. On that basis, the CC concluded that indoor and outdoor live entertainment venues were in different markets.
- (c)** In *LN-Gaiety/MAMA*, the CMA considered the factors previously identified by the CC, namely: (i) whether the venue is indoor or outdoor; (ii) the type of event for which the venue is primarily used; (iii) the capacity of the venue; and (iv) the configuration and facilities of the venue. However, LN-Gaiety and third parties did not argue that outdoor venues should fall within the same product market as indoor venues. Accordingly, the CMA assessed the competitive impact of that transaction in the market for the supply of indoor venues.

The Commission’s assessment

Indoor and outdoor venues

- 3.81 The Commission considered whether outdoor venues exercised a sufficient competitive constraint on the notifying parties’ indoor venues to be regarded as being in the same relevant product market. The Commission also noted that segmentation between indoor and outdoor venues is relevant primarily to live music events as other types of live event are not routinely held in outdoor venues.
- 3.82 Live music events are rarely held in outdoor venues in the island of Ireland during the period from 1 October to 1 April due to weather considerations. Accordingly, outdoor venues are likely to be a substitute for indoor venues only in the six months between 1 April and 30 September. Some degree of substitutability or competition is not sufficient in itself to regard the outdoor and indoor venues as forming part of the same relevant market. In any event, it is not appropriate to have a different definition of the relevant venue market for different seasons in light of the different characteristics of outdoor and indoor venues.
- 3.83 There is a significant difference in capacity between indoor and outdoor venues in the island of Ireland. This is illustrated in Table 1 below. The largest indoor venue in the island of Ireland, the 3Arena in Dublin, has a maximum capacity of 14,600 which is comparable to just one outdoor venue, Kilmainham. The 3Arena’s capacity is less than one fifth of the maximum capacity of the two largest outdoor

⁹² CC report on the completed acquisition by AEG Facilities (UK) Limited, a subsidiary of Anschutz Entertainment Group Inc, of the contract to manage Wembley Arena, dated 2 September 2013 (“*AEG/Wembley Arena*”).

venues in the island of Ireland, namely Croke Park and Slane Castle, which both have a maximum capacity of 80,000.

Table 1: Venues that hold Live Music Events in the island of Ireland			
Venue type	Description	Examples	Maximum capacity
Stadia and other large outdoor venues	Large, permanent outdoor venues, usually with a capacity over 15,000 but not dedicated to live music events.	Croke Park	80,000
		Slane Castle	80,000
		Phoenix Park	60,000
		Aviva Stadium	50,000
		Páirc Uí Chaoimh	45,000
		Boucher Playing Fields	42,000
		RDS Main Arena	40,000
		Botanic Gardens Belfast	40,000
		Thomond Park	30,000
		Pearse Stadium	26,000
		Donnybrook Stadium	25,000
		Malahide Castle	20,000
Arenas	Large permanent indoor venues, usually with a capacity of between 3,000 and 20,000, with live music events as their primary purpose.	3Arena	14,600 (9,500 all seated)
		SSE Arena	10,600
		RDS Simmonscourt	7,000
		Cork Marquee	5,000
		INEC Killarney	3,000-4,000
Theatres etc.	Theatres, concert halls, ballrooms and large clubs are among the mix of other venues which are used for live music events	BGE Theatre	2,111
		Gaiety Theatre	2,000
		Vicar Street	1,500
		The Helix	1,860
		Olympia Theatre	1,240

Table 1: Venues that hold Live Music Events in the island of Ireland			
Venue type	Description	Examples	Maximum capacity
	and range in capacity from 1,000 to 3,000.		

Source: The Commission, based on information provided by the notifying parties.

- 3.84 While other factors such as location and availability of a venue are important considerations, capacity is a key factor for promoters in the island of Ireland in determining the suitability of a venue for a particular artist. Promoters of live music events have a strong incentive to choose a venue that an artist is likely to sell out as they only make a return on live music events that sell most of their ticket allocation. Ticket sales well below expectations can lead to promoters incurring large losses.⁹³
- 3.85 Information provided by the notifying parties indicates that [X] of the total number of live music events held in the 3Arena in 2017 had an attendance of [X], while [X] of the total number of live music events held in the 3Arena in 2017 had an attendance of [X]. This demonstrates that a sufficiently large proportion of live music events held in the 3Arena attain an audience [X] its maximum capacity (14,600) and [X] than the capacity of most outdoor venues in the island of Ireland. Accordingly, the Commission found that there is likely to be a [X] number of artists which would be likely to switch away from the 3Arena to play an outdoor venue with a larger capacity. [X], there may be certain high-profile artists who may have the option to switch from a single date at an outdoor venue to several consecutive dates at the 3Arena.
- 3.86 The Commission considered that indoor venues with a lower capacity than the 3Arena are even less likely to host live music events which are large enough to fill an outdoor venue.
- 3.87 The Commission has concluded that promoters of live music events in the island of Ireland have limited ability to switch from indoor venues to outdoor venues and, *vice versa*. Based on the evidence outlined above, the Commission has assessed the likely effects of the Proposed Transaction in the relevant market for the supply of indoor venues for live music events in the island of Ireland.

Type of live music event, the configuration of the venue or the capacity of the venue

⁹³ Promoters are also likely to suffer reputational damage with artists and their agents if they regularly promote live music events that sell poorly.

- 3.88 The Commission considered whether the relevant market for the supply of indoor venues for live music events should be segmented by reference to the type of live music event, the configuration of the venue or the capacity of the venue.
- 3.89 While some indoor venues in the island of Ireland may be designed for a particular type of live music event,⁹⁴ the Commission understands that most indoor venues can be adapted for different types of live music events. In addition, the Commission understands that live comedy events utilise the same venues as live music events.
- 3.90 Some indoor venues in the island of Ireland (such as, for example, the 3Arena, the RDS Simmonscourt in Dublin and the INEC in Killarney) can be organised into a number of different configuration styles, which differ in terms of the mix of standing and seating. The Commission is not aware, however, of any evidence to indicate that indoor venues compete on the basis of different configuration styles.
- 3.91 As stated above, the Commission has found that capacity is a key factor in determining the suitability of a venue for a particular artist. The Commission considered whether the 3Arena is likely to compete for the same artists as, for example, Vicar Street or the Gaiety Theatre. The Commission has reached the view, consistent with the report of the CC in *Hamsard/Academy*, that while capacity is an important consideration for a promoter when choosing an indoor venue for a live music event, no clear lines can be drawn around venues of a certain size such that only venues of that size provide a competitive constraint.
- 3.92 The Commission has reached the view that the relevant product market should not be segmented by reference to the type of live music event, the configuration of the venue or the capacity of the indoor venue. In its assessment of the competitive effects of the Proposed Transaction, the Commission has also taken into account the fact that indoor venues for live music events are also used by promoters of live events for other types of live events, including live comedy events.

Conclusion on product scope in supply of venues for live music events

- 3.93 In order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has assessed its likely impact on competition by reference to the supply of indoor venues for live music events.

Relevant Geographic Market

Views of the notifying parties

- 3.94 In relation to the relevant geographic market, the notifying parties stated the following in the notification: *“the parties submit that the appropriate frame of*

⁹⁴ For example, the National Concert Hall in Dublin traditionally hosts live classical music events.

reference by which to assess the competitive impact of the Proposed Transaction on the venues category is at least island of Ireland wide, and likely to be wider, in scope.”

- 3.95 The notifying parties also stated in the notification that: *“Promoters in Ireland therefore compete not just against each other but also against promoters in other countries to secure Irish dates in the context of an artist's tour or otherwise busy schedule. From the perspective of an artist and its agent organising global or European tour, promoters in Ireland compete with promoters in other countries to convince the artist and its agent to play dates in Ireland rather than at locations in other countries. Part of the package offered by Irish promoters is the venue and, as a result, venues in Ireland have to compete against comparable venues in Ireland and in other locations in the UK and across Europe, particularly when taking into account the additional time and cost of shipping equipment to Ireland (particularly for a single performance) compared to staging the same show in the UK or mainland Europe”.*

Views of third parties

- 3.96 Third parties stated that high profile artists have a preference to play capital cities and it can be difficult to persuade such artists to play regional venues.

The Commission's assessment

- 3.97 The Commission found that promoters of live music events book venues for various artists and acts throughout the State and in Northern Ireland. From a demand perspective, concert goers are prepared to travel to attend a concert in different parts of the island of Ireland. From a supply perspective, venues in different locations that are capable of selling the required number of tickets are realistic substitutes for one another. However, the Commission found that a large proportion of indoor venues are concentrated in the Greater Dublin Area.

Conclusion on geographic scope in supply of venues for live music events

- 3.98 For the purposes of assessing the likely competitive impact of the Proposed Transaction, the Commission has defined the relevant geographic market for the supply of indoor venues for live music events as being no wider than the island of Ireland. For the purposes of its assessment of the Proposed Transaction, the Commission did not consider it necessary to define the market more narrowly than the island of Ireland (for example, by reference to the Greater Dublin Area), as it would not materially affect the Commission's assessment of the likely competitive effects.

(v) Provision of Outsourced Primary Ticketing Services

Relevant Product Market

Activities of the notifying parties



- 3.99 Live Nation is active in the provision of Outsourced Primary Ticketing Services in the State through Ticketmaster. MCD contracts with Ticketmaster for the provision of Outsourced Primary Ticketing Services for live events and live music festivals promoted by MCD.

Views of the notifying parties

- 3.100 The notifying parties stated in the notification that: *“the provision of ticketing services can be segmented between primary and secondary ticketing services. The function of primary ticketing service providers is to sell tickets on behalf of artists and promoters, while secondary ticketing service providers offer a platform to resell tickets. The Proposed Transaction concerns only the provision of primary ticketing services (where the clients of the relevant service providers are promoters and, to an extent, the artists and their agents) [...]”*.⁹⁵ The notifying parties did not address secondary ticketing further in the notification.
- 3.101 The notifying parties also stated in the notification that they agreed *“in general terms”* with the CC’s approach to market definition in *Ticketmaster/Live Nation* in relation to the supply of tickets *“and consider that the category includes self-ticketing as well as outsourced ticketing service providers”*.⁹⁶
- 3.102 The notifying parties also stated in the notification that the market for the supply of ticketing services should not be further segmented as between type of event but it should exclude *“categories in which Ticketmaster Ireland is not active, such as the sale of tickets for museums, clubs, etc.”*⁹⁷
- 3.103 The notifying parties also stated that: *“from the perspective of the promoter/organiser, all of the ticketing service providers active in the sector (in particular AXS, Eventim, Eventbrite, See Tickets and tickets.ie) are capable of supplying tickets for a wide range of events, without distinction as to the type of event. Fundamentally, all of the ticketing service providers are capable of receiving orders for tickets in large volumes, processing those orders, taking payment, printing and delivering tickets, irrespective of whether the ticket in question relates to a concert by Billy Joel at the Aviva Stadium, or an Ireland international rugby or soccer match.”*
- 3.104 In a 2017 interview with the International Ticketing Yearbook, Andrew Parsons, managing director of Ticketmaster UK Limited, stated the following: *“While we have a phenomenal record on Ticketmaster in terms of being able to sell, market to, and convert audiences, some segments require a different toolset – be that TicketWeb servicing clubs and small venues; Universe for those that want to be*

⁹⁵ Merger notification form, Section 5.1, page 44.

⁹⁶ Merger notification form, Section 5.1, page 45.

⁹⁷ Merger notification form, Section 5.1, page 45.



completely DIY; or Front Gate driving all those incremental service elements that festivals increasingly want.”⁹⁸

3.105 A confidential Ticketmaster document entitled “[§<]” dated [§<]⁹⁹ contains the following statement about [§<]¹⁰⁰: “[§<].”

3.106 A confidential Ticketmaster document entitled “[§<]” dated [§<]¹⁰¹ states that Ticketmaster “[§<]” and that “[§<]”.

Views of third parties

3.107 Third parties contacted by the Commission cited the following impediments to switching from a primary ticketing services provider to self-supply: (a) the inability of ticketing software to quickly and efficiently handle a large volume of sales over a short space of time; and (b) the absence of an option to sell tickets through a network of retail outlets.¹⁰²

Previous determinations

3.108 The Commission has not recently considered the relevant product scope for the supply of ticketing services for the purposes of merger review. The Commission’s predecessor, the Competition Authority, stated in its 2005 enforcement decision that the relevant product market was “*outsourced ticketing services for events with a national or international appeal*”.¹⁰³ In the course of its assessment of the likely effects of the Proposed Transaction, however, the Commission has made a fresh analysis of the conditions of competition that will not necessarily be based on the same considerations as those underlying the findings of its predecessor some 14 years ago.

3.109 The Commission’s approach to identifying the competitive constraints that the notifying parties may face has been informed by the approach to market definition taken by other national competition authorities when examining this sector:

- (a)** The CC¹⁰⁴, the US Department of Justice (the “DOJ”)¹⁰⁵ and the Australian Competition and Consumer Commission¹⁰⁶, concluded that tickets sold by self-supplying venues should be included in the relevant product market.

⁹⁸ Page 9 of International Ticketing Yearbook 2017, available at: https://issuu.com/gregiq/docs/ity_2017.

⁹⁹ [§<]

¹⁰⁰ [§<]

¹⁰¹ [§<].

¹⁰² From Commission discussions with third-party venue operator (see note of call with [§<], dated 11 November 2018 and from submission made by a third-party promoter (see [§<] response to questionnaire, dated 18 December 2018).

¹⁰³ For more information, see https://www.ccp.ie/business/wp-content/uploads/sites/3/2017/04/E_06_001-Ticketmaster-Enforcement-Decision.pdf. The Commission, however, is not bound by previous enforcement or merger decisions made by the Commission or its predecessor and each merger case has to be assessed on the basis of the available evidence at the time.

¹⁰⁴ *Ticketmaster/Live Nation*.

¹⁰⁵ DOJ assessment of the Live Nation Inc./Ticketmaster Entertainment Inc. merger. See the document titled “COMPETITIVE IMPACT STATEMENT” dated 25 January 2010, Case 1:10-cv-00139 (the “DOJ’s 2010 Statement”).

¹⁰⁶ Australian Competition and Consumer Commission v Ticketek Pty Ltd [2011] FCA 1489 (22 December 2011). See: <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2011/1489.html>.

Typically, these conclusions were supported by actual evidence of major venues and/or live event organisers self-supplying ticketing services.¹⁰⁷ For example, the CC noted that: “...venues which self-ticketed provided the same essential service to the consumer as a primary ticket agent acting for a venue.”¹⁰⁸ The CC also found that some self-supplying venues were in direct competition with primary ticketing services providers and sold tickets on behalf of other live event organisers/venues.

(b) On the other hand, neither the Competition Commission of Singapore (the “CCS”) nor the Bundeskartellamt, included self-supply of ticketing services in the relevant product market in relevant cases in the sector.

- In this regard, the CCS found that self-supply of ticketing services was not prevalent in Singapore and, thus, considered it in the context of countervailing buyer power by assessing whether live event organisers/venues could credibly threaten the primary ticketing services provider under investigation with switching to self-supply ticketing services.¹⁰⁹
- The Bundeskartellamt considered that Outsourced Primary Ticketing Services are not substitutable with services supplied by Ticketing Software Providers and/or white label providers of ticketing services¹¹⁰ due to differences in service quality, intended use of service and price.¹¹¹ The Bundeskartellamt was of the view that Ticketing Software Providers do not offer the distribution of tickets via multiple distribution channels, and in particular via retail outlets, unlike primary ticketing services providers. The Bundeskartellamt stressed the importance of retail outlets to event organisers in Germany noting that, on average, 40% of tickets were sold via retail outlets. Thus, the ability of primary ticketing services providers to offer ticket distribution via retail outlets was a key differentiator from services offered by Ticketing Software Providers.¹¹²

¹⁰⁷ In its assessment of the Live Nation Inc./Ticketmaster Entertainment Inc. merger, the DOJ discussed Live Nation’s choice to self-supply ticketing services instead of renewing its contract with Ticketmaster Entertainment Inc. See page 10 of the DOJ’s 2010 Statement.

¹⁰⁸ *Ticketmaster/Live Nation*, paragraph 56 of Appendix D.

¹⁰⁹ See paragraphs 5.5.22 to 5.5.24 of the CCS document titled “Notice of Infringement Decision issued by the Competition Commission of Singapore, Abuse of a Dominant Position by SISTIC.com Pte Ltd”, dated 4 June 2010.

¹¹⁰ According to the Bundeskartellamt, white label providers of ticketing services facilitate the organisation of online shops in Germany through which organisers of all kinds of events may manage their own ticket sales. “White label” is a term used to describe tickets sold via self-ticketing software purchased from third parties.

¹¹¹ See paragraphs 115 to 123 of Bundeskartellamt decision to prohibit exclusive contracts between CTS/ Eventim and Live Event Organisers and advance booking offices, dated 4 December 2017 (the “2017 translated Bundeskartellamt Decision”).

¹¹² See paragraph 120 of the 2017 translated Bundeskartellamt Decision.

The Commission's assessment

Supply of secondary ticketing services to venues and promoters

- 3.110 Ticketing services relate to either primary or secondary ticketing. Primary ticketing agents sell tickets on behalf of promoters or venues (see paragraphs 2.25 to 2.30). Secondary ticketing agents provide platforms for the resale of tickets (see paragraphs 2.33 to 2.36). The Commission considered whether the supply of secondary ticketing services to venues and promoters exercised a sufficient competitive constraint on Outsourced Primary Ticketing Services to be regarded as being within the relevant product market.
- 3.111 The characteristics of Outsourced Primary Ticketing Services are described at paragraph 2.25 above. These characteristics, i.e., the provision of technology, selling tickets to consumers and fulfilment of ticket purchases, define the requirements of promoters and venues and so indicate the limits of their willingness to substitute alternative services.
- 3.112 By contrast, as set out at paragraph 2.33, ticket resale marketplaces are online platforms that enable consumers and professional resellers to resell tickets which they have originally bought from venues, promoters or ticketing services providers.
- 3.113 The Commission found that, for promoters and venues purchasing primary ticketing services, services provided by ticket resale marketplaces are unlikely to be a viable alternative to providers of Outsourced Primary Ticketing Services or Ticketing Software Providers. In particular, the Commission found that ticket resale marketplaces do not provide the full suite of services provided by primary ticketing services providers. Promoters and venues would be required to self-supply some ticketing services if they were to sell tickets via ticket resale marketplaces instead of via primary ticketing services providers.
- 3.114 In considering potential supply-side substitution, the Commission found that none of the main promoters or venues in the island of Ireland have negotiated or entered into ticketing services agreements with ticket resale marketplaces for initial sale of tickets. In general, the majority of tickets re-sold via ticket resale marketplaces have already been sold via primary ticketing services providers. Even in the rare examples where event organisers or venues place tickets directly with ticket resale marketplaces, this is likely to be a very small proportion of the overall tickets available for sale. Thus, ticket resale marketplaces do not necessarily own or handle the tickets themselves, nor do they operate a wide range of sales channels. The dependence of the secondary ticketing market on the primary ticketing market limits the level of any constraint that could be imposed by ticket resellers on primary ticketing companies.
- 3.115 The respective structures of supply for the two services are far from identical. Whereas Ticketmaster accounts for a significant proportion of tickets sold to all events on the island of Ireland, the main ticket resale marketplaces in the State are StubHub and Viagogo. This means that there is little or no competitive overlap

between the provision of primary ticketing services, and the provision of secondary ticket resale.

- 3.116 Accordingly, in order to assess the likely impact on competition of the Proposed Transaction, the Commission has excluded secondary ticketing services from the relevant product market. In references to the relevant product market, the Commission refers to primary ticketing services to distinguish it from secondary ticketing services.

Self-supply of ticketing services by venues and/or promoters

- 3.117 The Commission considered whether or not self-supply of ticketing services by venues and/or promoters exercised a sufficient competitive constraint on the provision of Outsourced Primary Ticketing Services to be regarded as being in the same relevant market. The evidence and argument that is relevant to this issue are as follows.

- 3.118 First, none of Ticketmaster's largest customers for Outsourced Primary Ticketing Services have switched to self-supply of ticketing services since Ticketmaster increased its service charges¹¹³ in the island of Ireland in October 2016. This provides an actual example of a demand-side response to an increase in the price of Outsourced Primary Ticketing Services, where Ticketmaster was able to increase its prices without losing customers. On the contrary, the Gaiety Theatre, a venue owned by Gaiety and managed by Live Nation, switched from self-supply of ticketing services to Outsourced Primary Ticketing Services provided by Ticketmaster, a fact that highlights the different ways in which self-supply and Outsourced Primary Ticket Services operate.

- 3.119 Second, analysis of their specific characteristics and their uses by promoters and venues shows that self-supply of ticketing services and Outsourced Primary Ticketing Services are not good functional substitutes. Indeed, Ticketmaster itself operates a separate brand, Ticketweb, which it launched in 2016 to provide "Self Service Ticketing"¹¹⁴. By contrast, Ticketmaster's Outsourced Primary Ticketing Services include the following services: box office; access control via Access Manager, which manages attendees' entry to venues and provides reports on attendance; event programming, whereby Ticketmaster looks after the set-up and administration of events that are entered into the Ticketmaster system; provision of staff; sales support and group bookings; sales via all channels, including retail outlets; customer service support; and marketing support. A purchaser of Outsourced Primary Ticketing Services would not find self-supply to be a good functional substitute because self-supply would require additional capabilities and resources to be provided by the event organiser or venue.

¹¹³ On 1 October 2016, Ticketmaster's service charges to consumers increased by approximately [€] for tickets purchased via Internet/telephone service and by [€] to [€] for tickets purchased via retail outlets.

¹¹⁴ For more information, see <http://getstarted.ticketmaster.ie/ie/products-services/artists>

- 3.120 Third, there is a marked difference in the price of self-supply of ticketing services and primary ticketing services, which reflects the significant differences between the two services¹¹⁵.
- 3.121 Fourth, while existing and potential ticketing services providers contacted by the Commission expressed differing views on this issue, several venue operators/third party promoters told the Commission that self-supply of ticketing services was not appropriate for large live events, as ticketing software cannot process the high volume of sales required, and promoters are unwilling to risk complications arising from a website crashing as a result of heavy traffic.¹¹⁶
- 3.122 Fifth, so far as the Commission is aware, there have only been a few, isolated examples of smaller promoters or venues in the island of Ireland switching away from providers of Outsourced Primary Ticketing Services to self-supply of ticketing services. An internal Ticketmaster document entitled “[X]” refers to [X]. The Commission is also aware that a former customer of Ticketmaster, a third party operator of live music festivals, switched to self-supply of ticketing services in response to an increase in Ticketmaster’s service charges.¹¹⁷ These examples relate to instances where a relatively small number of tickets are sold annually, and do not appear to have been sufficiently strong to constrain Ticketmaster’s behaviour to a sufficient extent at any time. As set out in the Merger Guidelines, the question is whether “...a sufficient number of customers would respond to the price increase by purchasing another product... such that the hypothetical monopolist would find it unprofitable to impose such a price rise...”¹¹⁸ It is not necessary to find that there is a complete absence of switching to determine that products fall within different relevant markets - some degree of substitutability or competition is not sufficient in itself to regard the services as forming part of the same relevant market.
- 3.123 In considering potential supply-side substitution, the Commission has assessed whether any promoter or venue which self-supplies ticketing services would be likely to switch to provide Outsourced Primary Ticketing Services in response to an increase in the price of Outsourced Primary Ticketing Services, quickly and without significant investment. The Commission’s investigation has not identified any promoter or venue in the island of Ireland which self-supplies ticketing services and which also provides Outsourced Primary Ticketing Services to other promoters or venues.¹¹⁹
- 3.124 Having taken account of the evidence outlined above, the Commission has not included self-supply of ticketing services in the relevant product market for assessing the likely effects of the Proposed Transaction. However, to the extent it

¹¹⁵ From Commission discussions with a third-party provider of licensed ticketing software (see notes of call [with [X]], dated 23 January 2019).

¹¹⁶ From Commission discussions with a third-party promoter (see notes of call with [X], dated 28 January 2019).

¹¹⁷ From Commission discussions with a third-party operator of live music festivals (see note of call with [X] on 24 October 2018).

¹¹⁸ Merger Guidelines, paragraph 2.10.

¹¹⁹ This is in contrast to the United Kingdom where the CC in its assessment of *Live Nation Inc./Ticketmaster* noted that some venues which self-supply ticketing services also provide outsourced ticketing services. See paragraph 56 of Appendix D of the CC’s report.



is relevant, in its competitive assessment, the Commission has taken account where appropriate of the competitive constraint the self-supply of ticketing services places on primary ticketing services providers.

Supply of Outsourced Primary Ticketing Services for different genres of live event

- 3.125 The Commission considered whether there are separate markets for the supply of Outsourced Primary Ticketing Services for different genres of live event.
- 3.126 Providers of Outsourced Primary Ticketing Services currently active in the State sell tickets to different types of live events, including music (live music events and live music festivals), sport, and theatre. Promoters of various genres of live event purchase services from providers of Outsourced Primary Ticketing Services for the same purpose (i.e., selling and distributing tickets to live events to end consumers). This market practice is consistent with the relevant market not being segmented by the type of event.
- 3.127 From a demand-side perspective, live event organisers and venues that purchase Outsourced Primary Ticketing Services do not differentiate by genre. Organisers may organise events of different genres, and venues may host arts, music or sports events. In all cases, an organiser or venue that purchases Outsourced Primary Ticketing Services for one genre of event purchases Outsourced Primary Ticketing Services for other genres of event as part of a single contract. In this regard, the Commission notes that Ticketmaster has successfully expanded into the sports segment and currently provides Outsourced Primary Ticketing Services to most of the largest sports organisations on the island of Ireland.
- 3.128 The Commission found that organisers of live sports events have specific requirements (e.g., the availability of season tickets). While those requirements may require additional functionality, the Commission considers that it is unlikely to prevent supply-side substitution between live sports events and other genres of live events. The Commission notes that sports-specific features can be provided by all providers of Outsourced Primary Ticketing Services that aim to sell tickets on behalf of the largest sports organisations on the island of Ireland.
- 3.129 The Commission notes that there is some variation in the structure of supply of Outsourced Primary Ticketing Services between different categories of live events. Internal documents provided by Ticketmaster to the Commission indicate that Ticketmaster faces different competitive constraints for the provision of Outsourced Primary Ticketing Services in the State for different categories of live event. In particular, the Commission notes that as a result of Ticketmaster's vertical integration with Live Nation, as well as its long-standing agreements with MCD and Aiken, Ticketmaster has a particularly strong position in the provision of Outsourced Primary Ticketing Services for live music events. In contrast, Tickets.ie's business is focussed mainly on live sport events as a result of its contract with the GAA.
- 3.130 The Commission considered that, while the market for the provision of Outsourced Primary Ticketing Services could potentially be segmented for

different categories of live events (e.g., music, sports, theatre, etc.), for the purposes of its assessment of the likely competitive impact of the Proposed Transaction, such segmentation was not required.

- 3.131 As the Merger Guidelines note: *“It is often not possible or even necessary to draw a clear line around the fields of rivalry. Indeed, it is often possible to determine a merger’s likely impact on competition without precisely defining the boundaries of the relevant market”,* and *“It is not always necessary to reach a firm conclusion on market definition if more direct measures of market power are available”*.¹²⁰
- 3.132 Taking the Guidelines into account, the Commission considers that the precise definition of separate markets for separate genres of event or of a single market for the supply of Outsourced Primary Ticketing Services to all live events would not materially affect the Commission’s assessment of competitive effects.

Supply of Outsourced Primary Ticketing Services for non-live events

- 3.133 The Commission considered whether or not the supply of Outsourced Primary Ticketing Services to venues and promoters for non-live events exercised a sufficient competitive constraint on the supply of the same services for live events to be regarded as being part of the same relevant product market.
- 3.134 From a demand-side perspective, the Commission notes that the functional requirements of venues offering tickets for live events differs from venues offering tickets for other types of non-live event. The Commission first found that promoters and organisers of non-live events typically self-supply ticketing services using licensed ticketing software. However, unlike live event promoters and live event venues, non-live event promoters and organisers (with the exception of cinemas) typically do not require seat management capabilities¹²¹ from the licensed ticketing software that they use. In contrast, seat management capabilities are important for live event promoters, as ticket prices are differentiated based on seat location. This fact highlights the different ways in which the ticketing services for live and non-live events operate. It suggests ticketing services for live events are not subject to competition from equivalent services for non-live events, at least not to an extent likely to alter the competitive conditions prevalent on it.
- 3.135 The Commission also found that advance ticket sales are less common for non-live events such as cinemas and museums (where consumers tend to purchase tickets in person at the box office/entrance) in comparison to live events. This is one of the reasons that cinemas, museums and other places of public interest tend to self-supply ticketing services. It is also relevant that providers of Outsourced Primary Ticketing Services rarely sell tickets on behalf of cinemas, museums, etc. in the island of Ireland, suggesting that there are separate product markets for live and non-live events.

¹²⁰ Merger Guidelines, paragraphs 2.4 and 2.5.

¹²¹ In general, seat management capability means that an end consumer can select a seat(s) within the venue when ordering a ticket, with ticket prices varying according to seat location.

- 3.136 In considering the supply side, the Commission considered that, in comparison to providers of ticketing software designed for live events, providers of ticketing software designed for non-live events (e.g., museums, etc.) would incur significant costs and risks in order to switch to the provision of a full suite of Outsourced Primary Ticketing Services in response to small and permanent changes in relative prices. For example, it is likely that the ticketing software would need to be updated to incorporate seating management capabilities in order to cater for live events. A ticketing software provider would not therefore be able to enter the market for the supply of Outsourced Primary Ticketing Services in a timely manner and at minimal cost, confirming an absence of supply-side substitutability.
- 3.137 In light of the evidence set out above, the Commission decided that the supply of ticketing services to venues and promoters for non-live events do not form part of the relevant market.

Conclusion on the product scope for the supply of Outsourced Primary Ticketing Services

- 3.138 For the reasons set out above, the Commission assessed the competitive impact of the Proposed Transaction in the market for the provision of Outsourced Primary Ticketing Services for live events, excluding self-supply of ticketing services and excluding the supply of ticketing services for non-live events.

Relevant Geographic Market

Views of the notifying parties

- 3.139 In relation to the relevant geographic market, the notifying parties stated the following in the notification: *“the relevant geographic scope of the primary ticketing services category is at least as wide as the island of Ireland”*.¹²²

Views of third parties

- 3.140 The third parties contacted by the Commission did not provide views in relation to the relevant geographic market for the provision of Outsourced Primary Ticketing Services for live events.

The Commission’s assessment

- 3.141 The Commission notes that Ticketmaster operates on an all island of Ireland basis. Eventbrite also operates on an island of Ireland basis. The Commission is not aware of any providers of Outsourced Primary Ticketing Services located in Northern Ireland which could potentially provide their services to promoters or venues in the State.

¹²² Merger notification form page 46.

Conclusion on the geographic scope for the supply of Outsourced Primary Ticketing Services

3.142 In order to determine whether the Proposed Transaction is likely to result in a substantial lessening of competition, the Commission has assessed its impact on competition in relation to the provision of Outsourced Primary Ticketing Services for live events in the island of Ireland.

4. MARKET STRUCTURE

Introduction

- 4.1 Paragraph 3.1 of the Commission's *Merger Guidelines* explains that: "A central element in assessing the competitive impact of a merger is identifying its effect on market structure." It is therefore appropriate for the Commission to consider the structure of the relevant markets and how it will change as a result of the Proposed Transaction.
- 4.2 Consistent with its *Merger Guidelines*, the Commission used several aggregation indicators in assessing market structure including market shares, concentration ratios and the Herfindahl-Hirschman Index (HHI). Each of these is discussed below.
- 4.3 Market concentration provides a snapshot of market structure and is often a useful indicator of the likely competitive impact of a merger. It is of particular relevance to the assessment of horizontal mergers. Paragraph 3.3 of the Commission's *Merger Guidelines* point out, however, that market concentration is not determinative in itself. A high-level of market concentration post-merger is not sufficient, in and of itself, to conclude that a merger is likely to lead to lessen competition substantially. Other relevant factors, such as, for example, the closeness of competition between the merging parties, competitive dynamics, barriers to entry and expansion, etc., will also be examined by the Commission.
- 4.4 There is a horizontal overlap between the notifying parties in the relevant market for the supply of live pop music festivals in the island of Ireland.
- 4.5 The Proposed Transaction also gives rise to vertical relationships between the notifying parties. In this respect the Commission will examine the effects of the Proposed Transaction in the following markets¹²³:
- The promotion of live music events in the island of Ireland;
 - The supply of indoor venues to promoters for live music events in the island of Ireland¹²⁴; and
 - The provision of Outsourced Primary Ticketing Services for live events in the island of Ireland.
- 4.6 The structure of each relevant market is discussed in turn below.

¹²³ See paragraph 3.46 which states that the Commission will not further consider the provision of artist management services in this Determination.

¹²⁴ The likely vertical competitive effects of the Proposed Transaction in the market for the supply of indoor venues are not assessed on a standalone basis, but form part of the Commission's assessment of the markets for (i) the provision of Outsourced Primary Ticketing Services for live events and (ii) the promotion of live music events.

(i) Market Structure for the Supply of Live Pop Music Festivals in the island of Ireland

4.7 In this section, the Commission examines the structure of the market for the supply of live pop music festivals in the island of Ireland. LN-Gaiety currently owns and operates one live music festival in the island of Ireland, namely Electric Picnic, and following completion of the Proposed Transaction it will operate an additional two live music festivals in the island of Ireland, namely Longitude and Vital.

Views of the notifying parties

4.8 In the notification, the notifying parties estimated that their festivals accounted for [5-10]% of the total festival capacity in the island of Ireland, and the Proposed Transaction would lead to an increment of around [5-10]%.¹²⁵ The information provided by the notifying parties in the notification suggests that the acquisition of MCD's Longitude and Vital live music festivals by LN-Gaiety will result in an increase of [10-15]% in LN-Gaiety's pre-transaction market share.

4.9 The notifying parties expressed the view in the notification that barriers to entry are low in the market for the supply of live music festivals in the island of Ireland and that festivalgoers have wide choice and can readily switch.

The Commission's assessment

Market shares

4.10 The Commission considered that the market share figures presented by the notifying parties in the notification under-estimated the true size of their market shares for the following reasons:

- (a)** First, the Commission considered that market shares based on capacity as presented by the notifying parties do not provide an accurate reflection of the relative competitive position and strength of competitors in the relevant market. Live pop music festivals are highly differentiated products, with different target audiences, formats, genres of music, locations and non-musical content. There are significant differences in ticket prices for different festivals. The Commission therefore considered that market shares based on revenues generated by owners/operators of live music festivals as opposed to capacity provide a more accurate reflection of the relative market position and strength of competitors in the relevant market.

¹²⁵ The notifying parties state that capacity is calculated as daily capacity multiplied by the total number of days that the live music festival runs.

(b) Second, the market share figures presented by the notifying parties do not take into account revenue generated from all live pop music festivals in the island of Ireland in which the parents of LN-Gaiety (i.e., Gaiety and LN-UK) have an ownership or controlling interest.¹²⁶ In line with the approach taken by the European Commission in its decision-making under the EU Merger Regulation, the Commission considered that the market shares of the notifying parties should take account of the parent companies' activities in the relevant market.¹²⁷ The Commission considered that this approach better reflects the economic reality of the live pop music festival sector in the island of Ireland.

- 4.11 Table 2 below shows market shares for the largest 20 individual live music festivals by revenue which were in operation in the island of Ireland in 2018. Each of these live music festivals is focussed on popular music genres. Table 2 below illustrates that Electric Picnic and Longitude were the largest live music festivals in terms of revenues generated on the island of Ireland for the period from 2016 to 2018. The combined market share by revenue of these two festivals has [] from [40-45]% in 2016 to [40-45]% in 2018. When the market share of Vital is added, the combined market share by revenue of live music festivals owned by MCD and LN-Gaiety [] to [45-50]% in 2018.
- 4.12 Table 2 below also shows that live pop music festivals, other than Electric Picnic, Longitude and Vital, [] held a combined market share by revenue of [15-20]% in 2018.
- 4.13 All third party live pop music festivals are smaller in terms of revenue. Aiken's live pop music festivals, namely Live at the Marquee and Live at Iveagh Gardens, together represented [10-15]% of total revenue generated from live pop music festivals in the island of Ireland in 2018. POD's live pop music festivals, namely Forbidden Fruit, All Together Now and Metropolis, represented approximately 10% of revenues generated from live pop music festivals in the island of Ireland in 2018.

¹²⁶ The Commission notes that only Gaiety currently operates live music festivals in the Island of Ireland. In addition to Electric Picnic, Longitude and Vital, Gaiety holds a controlling interest in the following five live music festivals: [], [], Belsonic ([]%), [] and [].

¹²⁷ See, for example, M.3576 ECT/PONL/Euromax (22 December 2004). The Commission has also adopted this approach in M/18/016-Trinity Mirror/Northern Shell and M/07/069 – UTV/FM104.

Table 2: Market Shares for individual live music festivals focussed on popular music genres, Island of Ireland, 2016 -2018, by number of tickets sold and revenue generated (€)

Festival	2016		2017		2018	
	Tickets	Revenue	Tickets	Revenue	Tickets	Revenue
Electric Picnic (LN-Gaiety)	[10-15]%	[30-35]%	[5-10%]	[20-25]%	[10-15]%	[25-30]%
Longitude(MCD)	[10-15]%	[10-15]%	[10-15]%	[15-20]%	[5-10]%	[10-15]%
Vital (MCD)	[10-15]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Belsonic (inc. Custom House Sqr.) (Gaiety)	[10-15]%	[5-10]%	[20-25]%	[5-10]%	[20-25]%	[5-10]%
Life Festival ([<])	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Indiependence ([<])	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Sea Sessions Surf & Music Festival ([<])	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Live at the Marquee (Aiken)	[10-15]%	[5-10]%	[10-15]%	[5-10]%	[10-15]%	[5-10]%
All Together Now (POD)	n/a	n/a	n/a	n/a	[0-5]%	[0-5]%
The Forbidden Fruit (POD)	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Body and Soul	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Live at Iveagh Gardens (Aiken)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Summer Series	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
AVA Festival	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Beatyard	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Fever Pitch Music Festival	n/a	n/a	n/a	n/a	[0-5]%	[0-5]%
Townlands	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Knockanstockan	[0-5]%	[0-5]%	n/a	n/a	[0-5]%	[0-5]%

Table 2: Market Shares for individual live music festivals focussed on popular music genres, Island of Ireland, 2016 -2018, by number of tickets sold and revenue generated (€)

Festival	2016		2017		2018	
	Tickets	Revenue	Tickets	Revenue	Tickets	Revenue
Techworks	n/a	n/a	n/a	n/a	[0-5]%	[0-5]%
Metropolis Festival (POD)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: The Commission, based on information provided by Ticketmaster, third parties, and estimates based on publicly available information. Table 2 presents only the market shares for the 20 live music festivals with the largest market share by revenues in 2018.

Market concentration

4.14 Market concentration refers to the degree to which production/supply in a particular market is concentrated in the hands of a few large firms. A commonly used measure of concentration is the Herfindahl-Hirschman Index (“HHI”), which is defined as the sum of the squares of the market shares of all firms participating in the market. The HHI represents both the number of firms in the market and their relative size. Both the absolute level of the HHI and the change in the HHI as a result of a merger provide an indication of whether the merger is likely to raise competition concerns. However, the Merger Guidelines state that: *“The purpose of the HHI thresholds is not to provide a rigid screen in order to determine whether or not a merger is likely to result in an SLC. Rather, the HHI is a screening device for deciding whether the Commission should intensify its analysis of the competitive impact of a merger”*¹²⁸.

4.15 As set out in paragraph 4.11 above, post-Proposed Transaction, LN-Gaiety/MCD will account for [45-50]% of the revenue generated from live pop music festivals in the island of Ireland. Given the existing ownership links between LN-Gaiety and MCD, the Proposed Transaction will result in the reallocation of revenue between the notifying parties without significantly impacting on the pre-Proposed Transaction structure of the market. This being so, the Commission did not consider the HHI measurement to be an appropriate tool for assessing concentration in the market for live pop music festivals in the island of Ireland for the purposes of assessing the Proposed Transaction.

Conclusion

4.16 In conclusion, based on the information above, the Commission found that the market for the supply of live pop music festivals in the island of Ireland is concentrated with a substantial share of revenues attributable to the notifying parties and their parent companies. However, as stated, market concentration is

¹²⁸ Merger Guidelines, paragraph 3.11.

only an initial step in assessing the competitive effects of the Proposed Transaction.

(ii) Market Structure for the Promotion of Live Music Events in the island of Ireland

4.17 In this section, the Commission examines the structure of the market for the promotion of live music events in the island of Ireland.

Views of the notifying parties

4.18 In relation to the market for the promotion of live music events in the island of Ireland, the notifying parties provide in the notification estimated annual market shares for MCD and each of its principal competitors in the State during the period 2015-2017. The estimates are based on the proportion of sales of tickets for live music events (excluding festivals) which are attributable to each promoter, as recorded by Ticketmaster. Based on the estimates provided in the notification, MCD's estimated market share ranged from [45-50]% in 2015, [45-50]% in 2016 to [45-50]% in 2017, while Aiken's estimated market share ranged from [25-30]% in 2015, [25-30]% in 2016 to [35-40]% in 2017. Based on the estimates provided in the notification, the market share of MCD's other principal competitor, POD, was estimated at [0-5]% in 2015, [0-5]% in 2016 rising to an estimated [0-5]% in 2017.

4.19 The notifying parties stated in the notification that the market shares of promoters can vary substantially over time depending on the number and type of live events promoted.

Internal documents of the notifying parties

4.20 Confidential internal documentation provided to the Commission by the notifying parties entitled "[redacted]" and "[redacted]" indicated that Ticketmaster [redacted] as the largest promoters in the State:

"[redacted]."

"[redacted]."

"[redacted]"¹²⁹

4.21 An untitled and undated internal document provided to the Commission by Live Nation contains the following statement about the structure of the market for the promotion of live music events in the State:

¹²⁹ Provided by the notifying parties in response to the Phase 2 RFI response.

“[<]”.

The Commission’s assessment

Market shares

4.22 The market for the promotion of live music events in the island of Ireland is highly concentrated with two promoters, MCD and Aiken, accounting for the vast majority of ticket sales. Both MCD and Aiken have been promoting live music events in the State for over 30 years. Table 3 below presents annual market share data for the promotion of live music events in the State for the period 1 January 2015 to 30 June 2018, based on number of tickets sold and revenue generated. These shares are calculated on the basis of data provided by Ticketmaster, supplemented by third-party data on ticket sales.

Table 3: Market shares for the promotion of live music events on the island of Ireland, by number of tickets sold and revenue generated (€), the State, 2015-2017						
Party	2015		2016		2017	
	Tickets	Revenue	Tickets	Revenue	Tickets	Revenue
MCD	[55-60]%	[60-65]%	[45-50]%	[45-50]%	[45-50]%	[60-65]%
Aiken	[25-30%]	[25-30%]	[25-30%]	[35-40%]	[25-30%]	[20-25%]
Other	[15-20%]	[5-10%]	[20-25%]	[5-10%]	[20-25%]	[10-15%]
Total	100%	100%	100%	100%	100%	100%

Source: The Commission, based on information provided by Ticketmaster and third parties.

4.23 MCD was the largest promoter of live music events in the State during the period 2015-2017 with a market share by revenue which ranged from [60-65]% in 2015 to [60-65]% in 2017. MCD’s market share by revenue was lower in 2016 at [45-50]%. During the same period, Aiken’s market share by revenue ranged from [25-30%] in 2015 to [20-25%] in 2017. Aiken’s market share by revenue was higher in 2016 at [30-40%].¹³⁰

¹³⁰ Internal documentation provided to the Commission by the notifying parties (referred to at paragraphs 4.20 and 4.21 above) stated that MCD has a market share in the promotion of live music events in the island of Ireland of approximately [60-65]% with Aiken having a market share of approximately [20-25%].

- 4.24 In the notification, the notifying parties state that MCD faces a competitive constraint from smaller promoters in the State: *“promoters are readily capable of promoting shows for internationally-renowned and lesser known artists, as well as in venues of all sizes and compositions. Indeed, it is a recognised feature of the industry that while small promoters may initially promote only small events, if the artist with whom they worked achieves success and plays to larger audiences and venues, those promoters could move up to promote those events as well.”*¹³¹
- 4.25 This view does not, however, appear to be supported by the market share figures presented in Table 3 above which indicate that MCD and Aiken gain and lose market share at the expense of each other rather than to other promoters (e.g., POD or INEC Killarney). Furthermore, the combined market share of promoters other than MCD and Aiken has remained stable over the period, at approximately [5-10%] (by value) in 2015 to [10-15%] in 2017. The Commission is not aware of any recent new entrant in the market for the promotion of live music events in the State that has grown its market share at the expense of either MCD or Aiken. In fact, the Commission noted that the “Other” category in Table 3 above is comprised of many small promoters of live music events, and venues that hold events, none of which hold a significant share of the market.
- 4.26 All third parties contacted by the Commission expressed the view that MCD is by far the largest promoter of live music events in the State. Third parties expressed the view to the Commission that MCD’s main rival in the State is Aiken.

Barriers to entry and/or expansion

- 4.27 Third parties contacted by the Commission expressed the view that there are significant barriers to entry and expansion in the market for the promotion of live music events in the island of Ireland.
- 4.28 Third parties informed the Commission that the promotion of live music events entails a significant financial risk. It is industry practice that a promoter will pay a guaranteed fee to the artist which is non-recoupable in the event of poor ticket sales. The financial risk is greater the higher the profile of the artist as bigger upfront fees must be paid by the promoter. Several smaller promoters indicated that makes them reluctant to host high profile live music events unless they are very confident of selling most of the ticket allocation.¹³²
- 4.29 Promoters based outside the island of Ireland contacted by the Commission expressed the view that entry into the market for the promotion of live music events in the island of Ireland is difficult because artists (and their agents) prefer working with long-established local promoters who have knowledge of venues and consumer tastes¹³³.

¹³¹ Merger notification form, page 42.

¹³² From Commission discussions with third party promoters (for example, see note of meeting with [redacted] dated 28 January 2019.

¹³³ From Commission discussions with third-party promoters (see notes of call with [redacted] on 24 October 2018

- 4.30 Third party promoters also indicated that MCD's affiliation with Live Nation, the largest promoter of live music events internationally, also acts as a barrier to entry and expansion in the market for the promotion of live music events in the island of Ireland.¹³⁴ As a result of this affiliation, MCD is able to secure access to a large number of high-profile artists. In addition, as MCD's ultimate parent owns the Gaiety Theatre and the Olympia Theatre, and operates The Academy (all of which are located in Dublin), MCD may have an advantage in securing such venues to the detriment of new entrants in the market. These vertical links may provide MCD with a cost advantage over rival promoters. Aiken has a similar cost advantage over rival promoters through its ownership and operation of Vicar Street in Dublin and a close relationship with the global promoter, AEG.
- 4.31 One third party promoter expressed the view to the Commission that, in the case of worldwide tours for high profile artists, a large international promoter may outsource the organisation and marketing of shows in certain countries to a well-established local promoter.¹³⁵ Such a strategy allows a large international promoter to obtain the benefit of the local promoter's knowledge of the market and additional advantages, such as links with venues. As a result, promoters seeking to enter or expand in the market for the promotion of live music events in the island of Ireland may not be attractive partners for large international promoters and as such have additional practical hurdles to overcome in order to compete with the well-established players.

Conclusion

- 4.32 In conclusion, based on the information above, the Commission found that the market for the promotion of live music events in the island of Ireland is highly concentrated with two promoters, MCD and Aiken, accounting for the vast majority of ticket sales. The evidence also supports the Commission's finding that MCD and Aiken are close competitors in the market for the promotion of live music events in the island of Ireland.

(iii) Market Structure for the Supply of Indoor Venues for Live Events in the Island of Ireland

- 4.33 In this section, the Commission examines the structure of the market for the supply of indoor venues for live music events in the island of Ireland.

Views of the notifying parties

- 4.34 In relation to the supply of indoor venues for live events in the island of Ireland, the notifying parties provided in the notification estimated shares of tickets sales for "venues for live music events" in the island of Ireland for 2017. The estimates are based on numbers of tickets sold for live music events, at the main indoor and

¹³⁴ From Commission discussions with third-party promoters and responses to Commission questionnaire (see notes of call with [redacted] on 24 October 2018 and response by [redacted] dated 19 December 2018.

¹³⁵ Response by [redacted] to Commission questionnaire, dated 19 December 2018.

outdoor venues for live music events on the Island of Ireland. The notifying parties' estimates are based on information collated by Pollstar for 2017 and supplemented by Ticketmaster data.

4.35 The notifying parties estimate that the 3Arena had a share of ticket sales of [20-25]%, followed by the SSE Arena with approximately [10-15]% on the island of Ireland in 2017.

4.36 In addition, the notifying parties state the following:

“there are a large number of alternative venues of similar or larger capacity from which artists and promoters can choose, each of which has the experience and capability to host significant live music events, including indoor venues such as the SSE Arena and the INEC in Killarney which in aggregate accounted for an estimated [X] ticket sales in 2017.”¹³⁶

The Commission's assessment

Market Shares

4.37 The Commission considers that market shares based on capacity do not provide a good reflection of the relative position and strength of competitors in the relevant market. That is because, indoor venues are highly differentiated by, for example, location, capacity, configuration, etc. The Commission therefore considers that market shares based on revenues generated by venues as opposed to capacity

¹³⁶ Merger notification form, page 57.

provide a more accurate reflection of the relative market position and strength of competitors in the relevant market.

- 4.38 Table 4 below presents market share data (based on the gross value of ticket sales made through Ticketmaster) for the supply of indoor venues for live music events in the island of Ireland for the period from 1 January 2015 to 31 December 2017.

Table 4: Market shares for indoor venues for live music events in the island of Ireland by gross value of ticket sales (€), 2015-2017			
Venue	2015	2016	2017
3Arena	[45-50]%	[45-50]%	[50-55]%
Olympia	[5-10]%	[5-10]%	[5-10]%
BGE	[0-5]%	[0-5]%	[0-5]%
The Academy	[0-5]%	[0-5]%	[0-5]%
SSE Arena	[20-25]%	[15-20]%	[10-15]%
Vicar Street	[5-10]%	[5-10]%	[10-15]%
Other ¹³⁷	[10-15]%	[10-15]%	[15-20]%
TOTAL	100%	100%	100%

Source: The Commission, based on information provided by the notifying parties.

- 4.39 Table 4 demonstrates the importance of the 3Arena to promoters of live music events in the island of Ireland, with a market share by revenue of [45-50]% in 2015 growing to [50-55]% in 2017.

- 4.40 Third parties expressed the view to the Commission that no close substitute to the 3Arena exists for high profile artists that are likely to sell out the 3Arena but who do not have a sufficiently high profile to sell out an outdoor venue.¹³⁸ Some third parties also expressed the view to the Commission that there is limited ability for promoters in the island of Ireland to switch a live music event from the 3Arena to an indoor venue for live music events located outside Dublin.¹³⁹

- 4.41 The 3Arena can be configured for different sizes of events, ranging from approximately [X] capacity for smaller events, up to large events at the full 14,600 capacity. The Commission considers that the most likely indoor venue for

¹³⁷ RDS Simmonscourt is included here.

¹³⁸ From Commission discussions with third party promoters (for example, see note of call with [X], dated 10 October 2018.

¹³⁹ From Commission discussions with third party promoters (for example, see notes of call with [X], dated 10 October 2018 and meeting with [X], dated 28 January 2019

live music events to be a substitute for the 3Arena is the RDS Simmonscourt (also located in Dublin) which has a maximum capacity of 7,000.¹⁴⁰ There are, however, factors that limit the ability of a promoter to switch a live music event from the 3Arena to the RDS Simmonscourt. First, the RDS Simmonscourt holds a limited number of live music events annually as it is a multi-purpose venue, hosting a wide variety of sporting and cultural events such as the Dublin Horse Show and Young Scientist Exhibition. This is in contrast to the 3Arena which primarily hosts live music events. Second, [§].

- 4.42 Third parties expressed the view to the Commission that alternative indoor venues for live music events in the island of Ireland exist for each of the Olympia Theatre, the Academy and, to a lesser extent, the Bord Gáis Energy Theatre.

Barriers to entry and expansion

- 4.43 The Commission noted that establishing a comparable indoor venue to the 3Arena would require significant financial investment and is unlikely to be timely. This has been evidenced through the ongoing development of a new large-scale multi-functional event centre in Cork.

Conclusion

- 4.44 In conclusion, based on the information described above, the Commission found that Live Nation is the largest supplier of indoor venues for live music events in the State as a result of its ownership of the 3Arena, which has a very high market share and there are a lack of viable substitutes for the 3Arena. The Commission also found that the market for indoor venues for live events in the island of Ireland is stable, with market shares remaining broadly the same in the period from 2015 to 2017.

(iv) Market Structure for the Provision of Outsourced Primary Ticketing Services for Live Events in the island of Ireland

- 4.45 In this section, the Commission will examine the structure of the market for the provision of Outsourced Primary Ticketing Services for live events in the island of Ireland.

Views of the notifying parties

- 4.46 In the notification, the notifying parties estimated Ticketmaster's share in the market for the provision of Outsourced Primary Ticketing Services for live events in the State to be [55-60]% in 2017.¹⁴¹ The notifying parties listed, in the notification¹⁴², the following entities as existing competitors of Ticketmaster in the State in the market for the provision of Outsourced Primary Ticketing Services for

¹⁴⁰ See: <https://www.rds.ie/RDS/media/RDS/Files/PDF/Venue-Map-Capacities.pdf>. The RDS main arena, with a capacity of 35,000, is an outdoor venue.

¹⁴¹ Merger notification form page 55.

¹⁴² Merger notification form page 55.

live events: Tickets.ie¹⁴³, Tickets.com¹⁴⁴, Eventbrite¹⁴⁵, Future Ticketing¹⁴⁶, Ticketsolve¹⁴⁷ and Enta Ticketing Solutions¹⁴⁸.

- 4.47 The notifying parties also referred to [redacted]¹⁴⁹, CTS/Eventim¹⁵⁰ and See Tickets¹⁵¹ as credible potential competitors of Ticketmaster in the market for the provision of Outsourced Primary Ticketing Services for live events in the State¹⁵².
- 4.48 In relation to the competitive threat facing Ticketmaster, the notifying parties stated in the notification that this market share understates: *“the competitive threat from well-resourced and large scale operators based outside the State (such as Eventim and the AEG-backed platform AXS), who could quickly and easily enter the Irish market to supply Aiken or another promoter if the competitive offer from [Ticketmaster] were to deteriorate”*.¹⁵³
- 4.49 The notifying parties also stated in the notification that AXS has recently sought to enter the market for the provision of Outsourced Primary Ticketing Services for live events in the State by seeking to contract with [redacted].
- 4.50 In terms of entry into the market, the notifying parties expressed the view in the notification that the only investment required by an established international operator would be an office with [redacted] staff to provide Outsourced Primary Ticketing Services to Aiken and/or other promoters or venues in the State. The notifying parties estimated in the notification that an office could be established within [redacted] at a cost of €[redacted].
- 4.51 The notifying parties also stated in the notification that Ticketmaster’s ability to reduce its competitive offer to Aiken is constrained by the countervailing power of Aiken and further by the presence of large international providers of Outsourced Primary Ticketing Services to which Aiken could readily switch.

The notifying parties’ internal documents

- 4.52 The Commission has examined internal documents provided to the Commission by Ticketmaster in response to the Phase 1 RFI. These documents demonstrated that Ticketmaster perceives itself to have a strong position in the market for the provision of Outsourced Primary Ticketing Services for live events in the State.
- 4.53 By way of example, a Ticketmaster internal document entitled “[redacted]” dated [redacted] includes the following statements:

¹⁴³ <https://tickets.ie/>

¹⁴⁴ <https://www.tickets.com/>

¹⁴⁵ <https://www.eventbrite.ie/>

¹⁴⁶ <https://www.futureticketing.ie/>

¹⁴⁷ <https://www.ticketsolve.com/>

¹⁴⁸ <https://www.vivaticket.com/en/company/about-us-enta>

¹⁴⁹ [redacted]

¹⁵⁰ <http://www.eventim.co.uk/>

¹⁵¹ <https://www.seetickets.com/>

¹⁵² Merger notification form, pages 30-31.

¹⁵³ Merger notification form, page 56.

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]

Views of third parties

4.54 A number of third parties expressed the view to the Commission that Ticketmaster is the most significant player in the market for the provision of Outsourced Primary Ticketing Services for live events in the island of Ireland.

Views of the Commission

Market Shares

- 4.55 The Commission considers that there are three main providers of Outsourced Primary Ticketing Services in the island of Ireland: Ticketmaster, Tickets.ie and Eventbrite.
- 4.56 The Commission has estimated market shares in the market for the provision of Outsourced Primary Ticketing Services for live events using three sets of metrics:
- (a) Primary ticketing services providers' revenue generated from the provision of Outsourced Primary Ticketing Services for live events on the island of Ireland;¹⁵⁴
 - (b) Gross ticket value¹⁵⁵ of tickets for live events sold by Outsourced Primary Ticketing Services providers in the State; and
 - (c) The number of tickets for live events sold by Outsourced Primary Ticketing Services providers in the State.
- 4.57 Since the face value (i.e., the price paid by the consumer) of tickets to live events are highly differentiated, the Commission attaches more weight to market shares measured in terms of gross ticket value and the revenues generated by providers of Outsourced Primary Ticketing Services than market shares calculated by the number of tickets sold.

¹⁵⁴ This metric refers to net revenue retained by primary ticketing services providers from providing outsourced ticketing services to their clients. Such revenue include, for example, service charges charged to customers and inside commissions charged to promoters and/or venues. This metric excludes revenues earned from licensing ticketing software for self-supply of ticketing services and any other revenue not directly related to the provision of outsourced ticketing services.

¹⁵⁵ See footnote 52.

4.58 Table 5 below sets out annual market shares for the provision of Outsourced Primary Ticketing Services based on annual revenue generated on the island of Ireland during the period from 1 January 2012 to 31 December 2017.

Table 5: Market shares for the provision of Outsourced Primary Ticketing Services based on annual revenue generated on the island of Ireland, 2012 - 2017												
	2012		2013		2014		2015		2016		2017	
	€000s	%	€000s	%	€000s	%	€000s	%	€000s	%	€000s	%
Ticketmaster	[20,000-30,000]	[95-100%]	[20,000-30,000]	[95-100%]	[20,000-30,000]	[95-100%]	[20,000-30,000]	[95-100%]	[30,000-40,000]	[95-100%]	[40,000-50,000]	[95-100%]
Tickets.ie	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]
Eventbrite	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]
Total	[<]	100	[<]	100	[<]	100	[<]	100	[<]	100	[<]	100

Source: The Commission, based on information provided by the notifying parties and third parties.

4.59 Ticketmaster’s share of the market for the provision of Outsourced Primary Ticketing Services for live events in the island of Ireland, based on annual revenue, remained broadly stable over this period with a market share of approximately [95-100]% in 2017. Tickets.ie’s share of the market ranged from [0-5%] to [0-5%] during the same period. Eventbrite’s share of the same market was approximately [0-5%] in 2017.

4.60 Table 6 below illustrates annual market shares based on the gross ticket value of tickets for live events sold in the State during the period from 1 January 2012 to 31 December 2017. As gross ticket value incorporates both the face value of tickets and additional charges such as booking fees, it attributes the real value of the ticket to the primary ticketing services providers.¹⁵⁶

¹⁵⁶ As noted at paragraph 2.42, booking fees tend to increase as the face value of tickets increases. Thus, all else being equal, selling tickets with a higher face value is more profitable from the perspective of providers of Outsourced Primary Ticketing Services.

Table 6: Market Shares for the Provision of Primary Outsourced Ticketing Services, the State, by Gross Ticket Value, 2012-2017

	2012		2013		2014		2015		2016		2017	
	€000s	%	€000s	%	€000s	%	€000s	%	€000s	%	€000s	%
Ticketmaster	[150,000-160,000]	[95-100%]	[160,000-170,000]	[90-95%]	[160,000-170,000]	[90-95%]	[160,000-170,000]	[90-95%]	[210,000-220,000]	[90-95%]	[250,000-260,000]	[90-95%]
Tickets.ie	[<]	[0-5%]	[<]	[5-10%]	[<]	[5-10%]	[<]	[5-10%]	[<]	[5-10%]	[<]	[5-10%]
Eventbrite	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]
Total	[<]	100	[<]	100	[<]	100	[<]	100	[<]	100	[<]	100

Source: The Commission, based on information provided by the notifying parties and third parties.

4.61 Based on gross ticket value, Ticketmaster’s share of the market for the provision of Outsourced Primary Ticketing Services for live events in the State remained broadly stable over the examined period with market share of approximately [90-95%] in 2017. Tickets.ie’s share of the same market ranges from [0-5%] to [5-10%] during the same period, while Eventbrite’s share of that market has grown to [0-5%] in 2016 and 2017.

4.62 For completeness, Table 7 below sets out market shares in the market for the provision of Outsourced Primary Ticketing Services for live events in the State, in terms of the number of tickets sold for live events on an annual basis during the period from 1 January 2012 to 31 December 2017.

Table 7: Market Shares for the Provision of Outsourced Primary Ticketing Services, the State, by number of tickets sold, 2012-2017

	2012		2013		2014		2015		2016		2017	
	000s	%	000s	%	000s	%	000s	%	000s	%	000s	%
Ticketmaster	[2,000-3,000]	[90-95%]	[3,000-4,000]	[85-90%]	[3,000-4,000]	[80-85%]	[2,000-3,000]	[75-80%]	[3,000-4,000]	[75-80%]	[4,000-5,000]	[75-80%]
Tickets.ie	[<]	[5-10%]	[<]	[10-15%]	[<]	[15-20%]	[<]	[15-20%]	[<]	[15-20%]	[<]	[15-20%]
Eventbrite	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]	[<]	[0-5%]
Total	[<]	100	[<]	100	[<]	100	[<]	100	[<]	100	[<]	100

Source: The Commission, based on information provided by the notifying parties and third parties.

4.63 The Commission has not only considered Ticketmaster’s absolute market shares, but has also examined the relative market shares of Ticketmaster’s nearest rivals. The smaller their shares, the likelier Ticketmaster will hold a stronger market position, especially over time. The Commission notes that Ticketmaster’s market

share by number of tickets sold has gradually dropped from [90-95]% in 2012 to [75-80]% in 2017. Tickets.ie is the second-largest Outsourced Primary Ticketing Services provider in the State and its market share by number of tickets sold has increased steadily from [5-10%] in 2012 up to a peak of [15-20%] in 2015, before dropping slightly to [15-20%] in 2017. Eventbrite’s market share has been slowly growing throughout the period from [0-5%] in 2012 to [0-5%] in 2017.

- 4.64 The Commission notes that, irrespective of the metric used to calculate market shares, Ticketmaster’s market share is a multiple of that of its competitors. The gap is particularly marked in the assessment of market share by revenue and by gross ticket value, where the combined market shares of Ticketmaster’s competitors do not account for more than [5-10%] of the market. This means that, when measured by revenue and gross ticket value, Ticketmaster’s market share is more than [x] times that of its all rivals’ combined market shares.

Profitability

- 4.65 The Commission considers that profitability is also a relevant factor in assessing market power. In this regard, the Commission noted that the ability to sustain high margins and implement a profitable price increase could be indicative of the existence of a dominant position in the market for the provision of Outsourced Primary Ticketing Services for live events in the island of Ireland.
- 4.66 The Commission analysed the financial performance of Ticketmaster from 2014 to 2017 using data provided by the notifying parties. Table 8 below presents a summary overview of Ticketmaster’s financial performance in this period. The data indicates that Ticketmaster’s gross and EBIT margins have been [x] throughout this period. It should be noted that these figures incorporate all of Ticketmaster’s revenue streams (including revenue generated by Ticketweb from providing licensed ticketing software to self-supplying Promoters and venues). However, given that revenues from the primary sale of tickets to consumers account for over [x] of Ticketmaster’s revenue,¹⁵⁷ the Commission is of the view that these figures are reflective of Ticketmaster’s profitability levels from providing Outsourced Primary Ticketing Services in the island of Ireland.

Table 8: Ticketmaster's financial performance, the Island of Ireland, 2014-2017

	2014	2015	2016	2017
Revenue (€000’s)	[x]	[x]	[x]	[x]
Gross profit (€000’s)	[x]	[x]	[x]	[x]
Gross margin (%)	[x]	[x]	[x]	[x]

¹⁵⁷ Based on information provided by the notifying parties in response to the Phase 1 RFI.

Table 8: Ticketmaster's financial performance, the Island of Ireland, 2014-2017				
	2014	2015	2016	2017
EBIT (€000's)	[redacted]	[redacted]	[redacted]	[redacted]
EBIT margin (%)	[redacted]	[redacted]	[redacted]	[redacted]
Net income/(loss) (€000's)	[redacted]	[redacted]	[redacted]	[redacted]
Net income/(loss) (%)	[redacted]	[redacted]	[redacted]	[redacted]

Source: The Commission, based on information provided by Ticketmaster.

4.67 As illustrated in Table 8 above, Ticketmaster [redacted], and its profits have increased in recent years, [redacted].¹⁵⁸

Competitive constraints exercised by actual and potential competitors of Ticketmaster

4.68 Ticketmaster’s current competitors for the provision of Outsourced Primary Ticketing Services are Tickets.ie and Eventbrite. As evidenced when considering market shares, Ticketmaster’s competitors have a combined market share (measured by revenue and gross ticket value) of less than [5-10]% of the market. The Commission notes that this has remained the case between 2012 and 2017. The Commission does not therefore consider that actual competitors are able to exercise a competitive constraint on Ticketmaster.

4.69 The Commission’s view is that the main source of potential competition would come from UK based providers of Outsourced Primary Ticketing Services, including AXS, CTS-Eventim and SeeTickets. None of these companies has managed to establish itself in Ireland. The Commission’s view is that the extent to which UK based providers of Outsourced Primary Ticketing Services could constrain Ticketmaster is limited by the current structure of the market. As these companies have not managed to enter the market until now, it is unlikely that they would be able to enter the market if current conditions prevail.

Barriers to Entry and Expansion

4.70 The Merger Guidelines note that: “A barrier to entry is any factor that prevents or hinders effective new entry that might otherwise be capable of preventing an SLC arising from the merger. Barriers to entry are thus specific features of the market that give incumbents advantages over potential competitors. If the merger

¹⁵⁸ [redacted].

increases barriers to entry, the impact on competition is likely to be more severe since new entry that may have been possible pre-merger is likely to be prevented or impeded post-merger.”¹⁵⁹

- 4.71 The Commission has identified a number of potential barriers to entry and expansion in the market for the provision of Outsourced Primary Ticketing Services for live events in the island of Ireland. The Commission notes that the onus is on the parties to demonstrate that entry will be timely, likely and sufficient such that the merger will not lead to a substantial lessening of competition.¹⁶⁰ The types of evidence used by the Commission in assessing whether entry may act as an effective competitive constraint post-merger are set out in the Merger Guidelines.¹⁶¹
- 4.72 The potential barriers to entry and expansion identified by the Commission are: (i) the long-term exclusive agreements which exist between Ticketmaster and Promoters and venues; (ii) existence of a retail network; (iii) customer database; and (iv) existing vertical integration in the live music event supply chain. These are discussed in further detail below.
- (i) Ticketmaster’s long-term exclusive agreements**
- 4.73 Ticketmaster has entered into a number of agreements with promoters and with venues under which Ticketmaster supplies Outsourced Primary Ticketing Services (“Ticketing Agreements”).
- 4.74 From its review of the Ticketing Agreements¹⁶² for the purpose of assessing the effects of the Proposed Transaction, the Commission notes that these are usually multi-year agreements that cover all live events held during the contract period. Most of the Ticketing Agreements [redacted].
- 4.75 In practice, the Commission has observed that the number of tickets allocated to Ticketmaster under the Ticketing Agreements exceeds the minimum ticket allocation specified in the individual Ticketing Agreement. For example, the Commission notes that [redacted] and [redacted] sold more than [redacted] of their tickets via Ticketmaster during the period from 1 January 2012 to 31 December 2016.¹⁶³
- 4.76 In the context of the Commission’s review of the Proposed Transaction, the Commission notes that existing and potential rivals of Ticketmaster have indicated that Ticketmaster’s long-term exclusive agreements represent a significant impediment to entry and expansion in the island of Ireland¹⁶⁴.

¹⁵⁹ Merger Guidelines, paragraph 6.3.

¹⁶⁰ Merger Guidelines, paragraphs 6.17.

¹⁶¹ Merger Guidelines, paragraph 6.18.

¹⁶² Provided by the notifying parties on 4 December 2018 in response to the Phase 1 RFI.

¹⁶³ Response by [redacted] to the Commission questionnaire, dated 19 December 2019 and notifying parties’ response to the Phase 1 RFI.

¹⁶⁴ From Commission discussions with providers of primary ticketing services (for example, note of call with [redacted], dated 23 January 2019, note of call with [redacted], dated 17 January 2019 and note of call with [redacted], dated 17 January 2018).

- 4.77 While the notifying parties state in the notification that international Outsourced Primary Ticketing Services providers could enter in the State with ease, third-party providers have stated that the existence of long-term exclusive agreements significantly limit their ability to win large customers in the State.
- 4.78 The Commission concluded that, on balance, the existence of Ticketmaster's Ticketing Agreements, which, as noted above, are multi-year agreements with [redacted], makes it difficult for new and smaller existing providers to gain access to consumers on the relevant market for Outsourced Primary Ticketing Services. Thus, the Commission concluded for the purposes of examining the competitive effects of the Proposed Transaction, that the Ticketing Agreements constitute a significant barrier to entry and expansion.

(ii) Retail network

- 4.79 The notifying parties state in the notification that an established international primary ticketing services provider seeking to supply Outsourced Primary Ticketing Services in the island of Ireland would require only minimal investment. In particular, the notifying parties state that the only investment required would be in an office to provide relationship management services to Aiken and/or other promoters or venues. The notifying parties did not consider that a new entrant would require a retail network [redacted].
- 4.80 However, third-party promoters of live music events expressed the view to the Commission that they would require any provider of Outsourced Primary Ticketing Services to have the ability to sell tickets through a network of retail outlets in the island of Ireland. The Commission notes that although the proportion of tickets sold to live events through retail outlets has been declining in recent years in the island of Ireland, retail outlets accounted for [redacted] of total sales to live events in the State in 2017.¹⁶⁵
- 4.81 A third-party provider of Outsourced Primary Ticketing Services¹⁶⁶ based in the United Kingdom informed the Commission that it had been unsuccessful in bidding for [redacted] business [redacted].
- 4.82 The Commission considers that setting up a network of retail outlets for ticket sales is only viable upon securing a contract that will generate a substantial amount of ticket sales. Declining in-person sales (when considered as a proportion of overall ticket sales) and additional expenses associated with ticket sales via retail outlets makes this sales channel very unattractive for potential entrants. Third-party providers of Outsourced Primary Ticketing Services based in the UK indicated to the Commission that it would take a significant amount of time and additional financial overheads in order to set up such a network.

¹⁶⁵ The Commission's analysis of information provided by providers of Outsourced Primary Ticketing Services.

¹⁶⁶ From Commission discussions with providers of primary ticketing services (for example, note of call with [redacted], dated 23 January 2019, note of call with [redacted], dated 17 January 2019

- 4.83 The Commission also notes that Ticketmaster internal documents refer [§<].¹⁶⁷
- 4.84 On this basis, the Commission considers that Ticketmaster’s existing retail network is likely to operate as a barrier to entry for potential providers of Outsourced Primary Ticketing Services in the island of Ireland.
- (iii) Customer database
- 4.85 The Commission notes that Ticketmaster also has a significant incumbency advantage in relation to its customer database.¹⁶⁸
- 4.86 Ticketmaster has built up an extensive database about individual event attendees over many years of ticket selling in the island of Ireland. Ticketmaster uses this information to market its upcoming events, for example, by sending emails and newsletters to past event attendees about events similar to those attended previously by them. Customers may also register for ticket alerts and be informed by Ticketmaster about when tickets to live events of their favourite performers are available.
- 4.87 The Ticketmaster Agreements indicate that [§<].
- 4.88 Third-party providers of Outsourced Primary Ticketing Services expressed the view to the Commission that Ticketmaster’s extensive customer list gives Ticketmaster an advantage over existing and potential rivals by giving Ticketmaster greater customer reach than its rivals, which ultimately increases ticket sales for promoters.¹⁶⁹
- 4.89 The Commission considers that the ability to access a vast database of previous customers is likely to be an important factor for promoters and/or venues when selecting a provider of Outsourced Primary Ticketing Services. Having an extensive customer database generates indirect network effects in that it makes the provider of Outsourced Primary Ticketing Services with the largest database more attractive to promoters and/or venues due to that provider’s superior ability to make targeted marketing of live events. Such targeted marketing reduces to a certain extent the need for promoters to use other marketing tools (e.g., advertisements in the newspapers and on the radio).
- 4.90 While customer information is replicable in that it can be collected again, the Commission considers that compiling a database of previous customers that

¹⁶⁷ Provided by the notifying parties in response to the Phase 1 RFI.

¹⁶⁸ The Office of Fair Trading report entitled, “*Ticket agents in the UK*”, January 2005 noted that a database of previous customers generates economies of scale, as there are costs savings associated with serving the same customer more than once (paragraph 4.32). Link [here](#). More recently in 2016, the French competition authority and the Bundeskartellamt published a joint report on ‘Competition Law and Data’ in 2016: www.autoritedelaconurrence.fr/doc/reportcompetitionlawanddatafinal.pdf. Also from Commission discussions with third party providers of primary ticketing services (See notes of calls with [§<], dated 17 January 2018 and [§<], dated 22 January 2019.

¹⁶⁹ From Commission discussions with third party providers of primary ticketing services (see, for example, notes of calls with [§<], dated 17 January 2018 and [§<], dated 22 January 2019.

would be similar in size to the database available to Ticketmaster would require a significant amount of time and resources.

4.91 In this regard, [§<] noted that: “Larger competitors such as Ticketmaster effectively have bargaining power due to its volume of end user account holders throughout Ireland which it can use in a bid for ticketing services contracts to identify a certain number of end user customers within a specific geographical radius to a particular live event. This could potentially be used as a means of ‘guaranteeing’ a certain degree of consumer access.”¹⁷⁰

4.92 On this basis, the Commission considers that Ticketmaster’s existing customer database is likely to operate as a barrier to entry for potential providers of outsourced primary ticketing services in the island of Ireland.

(iv) Existing level of vertical integration between Ticketmaster and Live Nation

4.93 Ticketmaster has a potential additional advantage over existing and potential rivals due to its vertical relationship with Live Nation. In its submissions to the CC in *Ticketmaster/Live Nation*, Ticketmaster Entertainment, Inc. identified several positive benefits that would arise as a result of the merger.¹⁷¹ In particular, Ticketmaster Entertainment, Inc. argued that the merger with Live Nation would create opportunities for access to greater volumes of tickets for sale.

4.94 In general, there has been a growing trend internationally of providers of Outsourced Primary Ticketing Services integrating with live event promoters. The main providers of Outsourced Primary Ticketing Services in the United Kingdom tend to be owned or partially owned by either promoters¹⁷² or media conglomerates.¹⁷³ However, Ticketmaster’s main competitors in the island of Ireland (i.e., Tickets.ie and Eventbrite) are not vertically integrated.

4.95 The Commission considered that vertical integration provides an incumbency advantage to Ticketmaster for the following reasons:

(a) While Live Nation does not promote live events directly in the island of Ireland, it outsources the promotion of events to MCD, which pre-Proposed Transaction already has a very close affiliation with Live Nation (see for example, paragraph 6.28 below). Live Nation also owns and manages the 3Arena and operates the Bord Gáis Theatre. Live Nation has also recently invested in a venue that will be constructed in Co. Cork.¹⁷⁴ In addition, through LN-Gaiety, Live Nation operates the largest live music festival in the island of Ireland. The Commission notes that these venues, the live music events promoted by MCD and the live music festivals in

¹⁷⁰ From Commission discussions with providers of primary ticketing services (see note of call with [§<], dated 23 January 2019).

¹⁷¹ *Ticketmaster/Live Nation*, paragraph 3.11.

¹⁷² For example, AXS is partly owned by AEG Promotions and CTS/Eventim is also active in the promotion of live music events.

¹⁷³ For example, See Tickets is a wholly-owned subsidiary of Vivendi SA, a Paris-based international media and content group.

¹⁷⁴ See <https://www.irishexaminer.com/ireland/deal-agreed-for-stalled-73m-cork-events-centre-467028.html>.

which Live Nation holds an interest, generate a substantial volume of ticket sales, enabling Ticketmaster to build up significant scale.

- (b)** Furthermore, Ticketmaster’s integration with Live Nation could potentially make it more attractive to large venues compared to its competitors, as venue owners might expect a better chance of securing Live Nation’s artists¹⁷⁵ if Outsourced Primary Ticketing Services are purchased from Ticketmaster.

Countervailing Buyer Power

4.96 The Commission has examined whether Ticketmaster faces sufficient countervailing buyer power such that it constrains Ticketmaster’s ability to set competitive parameters on the market for the supply of outsourced primary ticketing services.

4.97 In a 2005 decision by the Commission’s predecessor, the Competition Authority, into the activities of Ticketmaster, the Competition Authority found that MCD and Aiken held considerable countervailing buyer power vis-à-vis Ticketmaster. The Competition Authority was of the view that promoters could credibly threaten Ticketmaster with switching their source of supply to: (a) self-ticketing; and/or (b) alternative providers of primary outsourced ticketing services.

4.98 Based on data submitted by the notifying parties in response to the Phase 1 RFI, the Commission estimates that MCD and Aiken accounted for [§], respectively, of Ticketmaster’s total ticket sales for live events in the State in the period from 2012 to 2017 and continue to be [§] individual customers of Ticketmaster in the State.¹⁷⁶ However, the available evidence suggests that the threat of switching supplier has had little or no impact on Ticketmaster’s ability to set service charges (and other competitive parameters) above a level that could be sustained in a competitive market.

- Potential for MCD to exert countervailing buyer power

4.99 In response to the Phase 2 RFI, Ronmall indicated that *“in negotiating the terms and conditions of the agreements in place with Ticketmaster, Gaiety Investments/MCD [§]”*.

4.100 In response to the Phase 2 RFI, Ronmall provided the following examples of instances in which Gaiety Investments/MCD/[§] / [§] sought and [§] improved terms and conditions from Ticketmaster:

(a) [§]

(b) [§]

¹⁷⁵ Live Nation manages more than 500 artists, including U2, Madonna, Miley Cyrus, Britney Spears and Little Wayne.

¹⁷⁶ The Commission’s analysis of information provided by the notifying parties in response to the Phase 1 RFI..

- 4.101 In response to the Phase 2 RFI, Ronmall also provided details of an approach made by [X] to Ticketmaster to re-negotiate the agreement in place with Ticketmaster. Ronmall informed the Commission that [X].
- 4.102 [X]
- 4.103 The notifying parties stated that: (i) Gaiety /MCD have alternative options for ticketing services and that they can leverage off this fact without ever actually turning to these other options; and (ii) Ticketmaster does not want to lose Gaiety/MCD as customers. The notifying parties consider that [X] uses [X] bargaining power in negotiations with Ticketmaster to secure improved terms and conditions to his satisfaction without the need to threaten to switch to an alternative provider of ticketing services.
- 4.104 However, the notifying parties also submitted that, [X]¹⁷⁷.
- 4.105 The Commission considered in detail the notifying parties' submissions in respect of MCD's potential countervailing buyer power. The Commission balanced these submissions against the notifying parties' submissions set out at paragraph 7.9 below which concludes that *"The merger therefore does not materially reduce the prospects of rival ticketing companies to serve MCD, which have been and will remain unrealistic regardless of the merger [..]"*. On this basis, the Commission found that in practice, MCD has not switched¹⁷⁸, and is unlikely to switch, provider of Outsourced Primary Ticketing Services and is therefore unlikely to exercise a significant degree of countervailing buyer power in respect of Ticketmaster.
- Potential for third party promoters to exert countervailing buyer power
- 4.106 The notifying parties consider that third party promoters, [X], has exercised countervailing buyer power in order to obtain improved commercial terms from Ticketmaster. The notifying parties stated in the notification that [X] has previously bid for [X] business, forcing Ticketmaster to improve the commercial offer made to [X] to keep its business. The notifying parties stated that there was no technical or other barrier to [X] competing for this business, and [X] (like other international ticketing service providers) represents a clear outside option for promoters to choose if it wishes to switch away from Ticketmaster. The notifying parties also noted that [X] has expressed an interest in [X] business.
- 4.107 Aiken submitted to the Commission that [X].¹⁷⁹ Aiken stated that [X]. Aiken also noted that a provider of Outsourced Primary Ticketing Services must have the [X]. Aiken noted that [X].

¹⁷⁷ [X].

¹⁷⁸ According to the notifying parties' submissions, MCD has used Ticketmaster for the provision of Outsourced Primary Ticketing Services since the 1990s.

¹⁷⁹ Response by [X] to Commission questionnaire, [X]

- 4.108 In relation to alternative providers of Outsourced Primary Ticketing Services, [§<]. [§<].¹⁸⁰
- 4.109 Aiken informed the Commission that it [§<].¹⁸¹
- 4.110 Furthermore the Commission notes the potential for existing long-term exclusive agreements between Ticketmaster and major venues in the island of Ireland to, significantly reduce promoters' incentives to switch to alternative providers of Outsourced Primary Ticketing Services as promoters have to use Ticketmaster for any live events held in such venues.
- 4.111 Ticketmaster, by selling tickets to a variety of live events across many venues for various promoters in the island of Ireland, benefits from economies of scale not available to promoters. Thus, the Commission is of the view that promoters are unlikely to be in a position to exert sufficient countervailing buyer power by credibly threatening to switch to self-supplying their own ticketing services.
- 4.112 The Commission's analysis has also taken account of Ticketmaster's internal documents, submitted in response to the Phase 2 RFI, an extract of which is set out at paragraph 4.53. The Commission considered that these internal documents have probative value of Ticketmaster's market power.
- 4.113 Having regard to the evidence set out above, the Commission found that MCD and Aiken do not have sufficient countervailing buyer power to constrain the behaviour of Ticketmaster.
- 4.114 The Commission concluded that there are high barriers to entry and expansion that tend to prevent or restrict the opportunities for new entrants and smaller firms to compete effectively with Ticketmaster. The evidence placed before the commission indicates that it is very difficult for ticketing providers to overcome these barriers; new entry has been limited in recent years and the market shares of existing providers have remained low.

Conclusion

- 4.115 As illustrated above, regardless of which unit of measurement is used by the Commission, Ticketmaster has consistently maintained a very high market share and substantial market power in the provision of Outsourced Primary Ticketing Services for live events in the island of Ireland. Current competitors exercise a very weak constraint, as they have a limited presence in the market. Barriers to entry and expansion are high, and have prevented market entry by potential competitors, and market expansion by actual competitors. There is no significant countervailing buyer power. The Commission has set out its assessment of the potential impact of Ticketmaster's strong market position on rivals of MCD

¹⁸⁰ From Commission discussions with third party promoters (for example, see note of meeting with [§<] dated [§<]).

¹⁸¹ From Commission discussions with third party promoters (for example, see note of meeting with [§<] dated [§<]).

following implementation of the Proposed Transaction by reference to a number of theories of harm in Chapter 7 below.



5. THE RELEVANT COUNTERFACTUAL

- 5.1 Identifying the relevant counterfactual is an important step in assessing the likely competitive impact of the Proposed Transaction.
- 5.2 As set out in paragraph 1.12 of the Commission’s Merger Guidelines: *“the term ‘counterfactual’ refers to the state of competition without the merger or acquisition. In other words the “actual” situation is the merger being put into effect and the counterfactual is the situation in the absence of the merger being put into effect. The counterfactual provides the reference point, or the point of comparison, for assessing competitive effects arising from a merger.”*
- 5.3 Paragraph 1.14 of the Commission’s Merger Guidelines states that *“Identifying the relevant counterfactual is forward-looking and necessarily involves judgement on the part of the parties and the Commission. Usually the situation prior to the merger or acquisition will be the relevant counterfactual. However, this may not always be the case, e.g., non-merger specific competitive effects may in some circumstances occur irrespective of the merger or acquisition.”*
- 5.4 The Commission has not found any evidence supporting a different counterfactual from the prevailing conditions of competition on the relevant markets, and the notifying parties and third parties have not put forward arguments in this respect. The Commission therefore believes the prevailing conditions of competition in the relevant markets to be the appropriate counterfactual for assessing the likely effects of the Proposed Transaction.
- 5.5 The prevailing conditions of competition include a long-term contract between MCD and Ticketmaster pursuant to which Ticketmaster will supply primary ticketing services to MCD until at least [§<]. Accordingly, the Commission considers in section 7 below, whether there is sufficient evidence showing that MCD may consider other ticketing agent options, including switching to a different ticketing services provider, or might seek to challenge the lawfulness of its agreement with Ticketmaster. In its competitive assessment, the Commission considered the creation of a structural link between MCD and LN-Gaiety/Ticketmaster in this context.

6. HORIZONTAL EFFECTS

- 6.1 In this section, the Commission sets out its analysis of the likely competitive impact of the Proposed Transaction in the market for the supply of live pop music festivals in the island of Ireland. In particular, this section examines the likelihood of unilateral effects occurring following implementation of the Proposed Transaction.
- 6.2 Assessing the competitive effects of the Proposed Transaction requires the identification of any relevant theories of harm (i.e., how the Proposed Transaction could result in a substantial lessening of competition) and an analysis of those theories of harm through an evaluation of the available evidence.
- 6.3 Unilateral effects, as explained in paragraph 4.8 of the Commission’s Merger Guidelines, occur when *“a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors.”*
- 6.4 The removal of a competing owner of live pop music festivals from the market could lead to consumer harm through higher prices and/or reduced service quality (e.g., through the loss of rivalry in securing headline artists), particularly in instances where the acquired competitor exerted a significant competitive constraint on the acquirer prior to the Proposed Transaction.
- 6.5 In considering the likelihood of unilateral effects occurring following implementation of the Proposed Transaction, the Commission has considered the factors identified in the Commission’s Merger Guidelines as outlined in paragraph 4.27 and assesses a number of factors:
- a) Impact of the Proposed Transaction on market structure;
 - b) The closeness of competition between the notifying parties’ live music festivals;
 - c) Constraints from competitors of the notifying parties; and
 - d) Barriers to entry.

(a) Impact of the Proposed Transaction on market structure

- 6.6 Paragraph 3.1 of the Commission’s Merger Guidelines states that: *“A central element in assessing the competitive impact of a merger is identifying its effect on market structure.”* The Commission notes however that, as will be discussed below, live music festivals tend to be highly differentiated. Paragraph 4.18 of Commission’s Merger Guidelines states that: *“In a differentiated product market competitors may well exercise asymmetric competitive constraints on each other. That is, the intensity of competition between particular pairs or sets of competing firms, more than the presence and/or size of other firms within the market per se,*



establishes a competitive constraint on the merged entity. Consequently aggregate indicators such as market shares and changes in concentration can be ambiguous and may over-estimate or under-estimate the competitive effect of a merger involving two (or more) competitors.”¹⁸²

- 6.7 Market share data may, nevertheless, provide some evidence of the competitive significance of the merging parties (relative to the size of the relevant market as a whole) and of the change in market power that would be brought about by the transaction.¹⁸³ Accordingly, the Commission has examined the impact of the Proposed Transaction on market structure in the market for the supply of live pop music festivals in the island of Ireland.

Views of the notifying parties

- 6.8 In the notification, the notifying parties expressed the view that the Proposed Transaction will not lead to a substantial lessening of competition in the supply of live music festivals in the island of Ireland for the following reasons:

- (a)** The competitive impact of the Proposed Transaction is minimal by virtue of the notifying parties’ involvement in the LN-Gaiety joint venture prior to the Proposed Transaction. Through LN-Gaiety, Gaiety already holds a [X]% interest in the Electric Picnic festival and [X]. The notifying parties argue that the impact of the Proposed Transaction in the market for the supply of live music festivals in the island of Ireland is therefore very limited;¹⁸⁴
- (b)** The notifying parties’ combined market share in relation to the supply of live music festivals in the island of Ireland was less than [15-20]% by capacity in 2017;¹⁸⁵
- (c)** The market for the supply of live music festivals is, and will remain, highly competitive, with customers continuing to have a wide range of live music festivals from which to choose, covering all genres of music;¹⁸⁶
- (d)** The notifying parties are not close competitors. The notifying parties argue that since [X] and Gaiety has an ownership interest in both MCD and LN-Gaiety, it is commercially rational for the notifying parties to differentiate the offering of Longitude and Electric Picnic. The notifying parties also argue that the Vital live music festival in Belfast is also clearly differentiated from Electric Picnic;¹⁸⁷ and

¹⁸² *Guidelines for Merger Analysis*, paragraph 4.18.

¹⁸³ *Guidelines for Merger Analysis*, paragraph 3.4.

¹⁸⁴ Merger notification form, section 5.3, page 58.

¹⁸⁵ Merger notification form, section 5.2, page 53.

¹⁸⁶ Merger notification form, section 5.3, page 58.

¹⁸⁷ Merger notification form, section 5.3, page 58.



- (e) Barriers to entry for new live music festivals are low and festival operators need to continuously adapt and compete in order to maintain an attractive offering, in terms of artist line-up and price¹⁸⁸.

6.9 The notifying parties provide estimates in the notification¹⁸⁹ that their combined market share for the supply of live music festivals in the island of Ireland was [15-20]% in 2017, as measured by capacity.¹⁹⁰ The notifying parties state that the acquisition of MCD's Longitude and Vital festivals by LN-Gaiety results in an increase in market share of [10-15]%.

Views of Third Parties

6.10 Third parties expressed the following concerns to the Commission:

- (a) Two third parties expressed the view to the Commission that they are struggling to compete with LN-Gaiety and MCD in the supply of live music festivals in the State.¹⁹¹
- (b) One third party expressed a concern in relation to the size of Live Nation at various levels of the supply chain for live music events, in particular in the supply of live music festivals in the State. This third party expressed the view that Live Nation's current market position in the supply of live music festivals in the State makes it difficult for competitors to secure the booking of artists at live music festivals.¹⁹²

The Commission's assessment

- 6.11 As noted in paragraph 4.10 above, the Commission identified several issues with the market share estimates presented by the notifying parties in the notification.
- 6.12 First, the Commission considers that market share estimates based on revenues as opposed to quantity or capacity provide a more accurate reflection of market concentration where, as is the case with live music festivals, the relevant products are differentiated.
- 6.13 Second, the Commission considers that the market shares of the notifying parties must also take into account the market shares of any live pop music festivals in which the parents of LN-Gaiety (i.e., Gaiety and LN-UK, although the Commission notes that only the former currently operates live pop music festivals in the Island of Ireland) have a controlling interest.

¹⁸⁸ Merger notification form, section 5.3, Page 59.

¹⁸⁹ Merger notification form, table 5.3, page 53.

¹⁹⁰ The notifying parties state that capacity is calculated as daily capacity multiplied by the total number of days that the live music festival runs for.

¹⁹¹ From Commission discussions with third party promoters (see note of call with [§<], dated 14 December 2018 and notes of meeting with [§<] dated 24 October 2018.

¹⁹² From Commission discussions with a third party promoter (see note of call with [§<], dated 14 December 2018.

- 6.14 As already set out at paragraph 4.15 above, based on the market shares calculated by the Commission and presented above in Table 2, the Commission found that the Proposed Transaction does not in itself bring about a significant change in market structure, whereby Gaiety will retain joint ownership of MCD through LN-Gaiety.
- 6.15 However, due to the high market shares of the notifying parties and their parents, the Commission will be vigilant to monitor and carefully assess the potential impact on the structure of the market of these entities seeking to acquire additional live pop music festivals (see further at paragraph 6.30).

(b) Closeness of competition

Views of the notifying parties

- 6.16 The notifying parties state the following in the notification:

“The festivals operated by the parties are differentiated and are not close substitutes. When MCD launched Longitude in 2013, Gaiety already had a significant ownership interest in Electric Picnic. Therefore, there was a clear commercial rationale to differentiate Longitude and not to position it in the same space as Electric Picnic, which remains the case and is reflected in the differences between the festivals.”¹⁹³

Views of third parties

- 6.17 Third parties contacted by the Commission provided the following views on the closeness of competition between the live pop music festivals owned by the notifying parties, namely; Electric Picnic, Longitude and Vital.¹⁹⁴
- 6.18 Table 9 below provides an overview of the live pop music festivals which were identified by third parties as being the closest competitors of each of the notifying parties’ live music festivals. Six out of eight promoters contacted by the Commission expressed the view to the Commission that the closest competing live pop music festival to Electric Picnic is All Together Now.¹⁹⁵ Other live pop music festivals listed by promoters as competing closely with Electric Picnic include Body & Soul¹⁹⁶ and Castlepalooza.¹⁹⁷ Each of these live pop music festivals are multi-day camping festivals that also offer family tickets and minimum age restrictions.¹⁹⁸

¹⁹³ Merger notification form, page 4.

¹⁹⁴ A two date annual non-camping music festival operated by MCD Productions, held in Belfast in August.

¹⁹⁵ A three-day annual camping live music festival owned by POD Festivals Ltd., held in Co. Waterford over the August bank holiday weekend.

¹⁹⁶ A three-day annual camping live music festival owned by Body and Soul Events Creations Limited, held in Co. Westmeath in June.

¹⁹⁷ A three day annual live music festival owned by Cherrycool Limited, held in Tullamore, Co. Offaly held in July.

¹⁹⁸ For 2019, All Together Now has a minimum age of attendance of 21, with the exception children under the age of 12 accompanied by an adult. For 2019, Body and Soul has a minimum age of attendance of 20, with the exception of children

- 6.19 Forbidden Fruit,¹⁹⁹ a three day non-camping festival located in Dublin city, was listed by three promoters as being a close competitor to Longitude. One promoter listed Forbidden Fruit as being a close competitor to Electric Picnic. One promoter indicated that Electric Picnic is a close competitor of Longitude.
- 6.20 In the case of Vital (which is a one-day live music festival held in Belfast), promoters listed AVA Festival²⁰⁰ and Belsonic²⁰¹, both live pop music festivals also held in Belfast, as Vital’s closest competitors. The Commission notes that a number of third party promoters contacted by the Commission were not familiar with Vital and as such did not provide views on which live music festivals were likely to be close competitors of Vital.

Table 9: Live Music Festivals that compete most closely with the notifying parties’ live music festivals, according to eight promoters of live music festivals

Festival	Closest Competitors	No. of promoters
Electric Picnic	All Together Now	6
	Body and Soul	2
	Forbidden Fruit	1
	Castlepalooza	1
Longitude	Forbidden Fruit	3
	All Together Now	1
	Metropolis	1
	Body and Soul	1
	Tech Works	1
	House Works	1
	Sea Sessions	1
	Electric Picnic	1
Vital	Belsonic	2
	AVA	1

Source: The Commission, based on information provided by eight promoters.

under the age of 12 accompanied by an adult. For 2019, and Electric Picnic has a minimum age of attendance of 18, with the exception of children under the age of 12 accompanied by an adult.

¹⁹⁹ A three-day annual live music festival owned by POD Festivals Ltd., held in Co. Dublin over the June bank holiday weekend.

²⁰⁰ A three-day annual live music festival owned by UP Productions Ltd, held in Belfast in late May/early June.

²⁰¹ A three-day annual live music festival owned by SD Events Management Ltd., held in Belfast in August.

The Commission's assessment

6.21 The Commission has assessed whether the notifying parties' live music festivals are close competitors by reference to the following factors: format (e.g., camping/non-camping, multi-day/one-day, etc.), size, location, content and target audience. As outlined in chapter 3 above, live music festivals are highly differentiated, and in such markets it is the degree of competition between the merging parties that is relevant to the assessment of unilateral effects.

Electric Picnic and Longitude

6.22 Electric Picnic is an annual live music festival that takes place in a large countryside location in Stradbally, Co. Laois over four days in late August/early September. In addition to live music, Electric Picnic provides a wide range of non-musical content, such as comedy and spoken word events. Admission to Electric Picnic is not open to persons under 18 years old, with the exception of children under 12 years old included on family pass tickets. Surveys of attendees at Electric Picnic carried out by LN-Gaiety in 2016 and provided to the Commission in response to the Phase 1 RFI indicate that the age profile of attendees is [redacted].²⁰²

6.23 Longitude is a non-camping annual live music festival, comprising three consecutive one-day live music events held in early July in Marlay Park in Dublin. MCD states in the notification that a large percentage of attendees at Longitude attend more than one day but not necessarily all three days. A survey provided to the Commission in response to the Phase 1 RFI by the notifying parties of attendees at Longitude carried out in July 2018²⁰³ indicates that the age profile of attendees at Longitude is [redacted]. A significant share [redacted] are under 18 years old and, thus, cannot attend Electric Picnic.

6.24 Most promoters contacted by the Commission expressed the following views:

- (a)** Electric Picnic is not a close competitor of Longitude;
- (b)** All Together Now (owned and operated by POD) is a close competitor of Electric Picnic; and
- (c)** Forbidden Fruit (also owned and operated by POD) is the closest competitor to Longitude.

6.25 The Commission also notes that a survey of attendees at Electric Picnic in 2016 carried out by MCD included the following question²⁰⁴: "*Which of the following festivals are you going to or have you been to this year?*". Almost [redacted] of respondents identified Longitude as a festival to which they were going or had

²⁰² However, single-day tickets can be purchased by consumers.

²⁰³ [redacted].

²⁰⁴ Response of the notifying parties to the Phase 1 RFI.

been to that year indicating that there is a degree of commonality of attendees at Electric Picnic and Longitude.

Electric Picnic and Vital

- 6.26 In contrast to Electric Picnic, Vital is an annual live music festival held in Belfast on a single stage, with an emphasis on urban music acts. In 2018 and 2019, Vital was held on a single day. The Commission does not consider that Electric Picnic and Vital are likely to be close competitors given the differences in format between the two festivals. This is supported by third party views.
- 6.27 It appears to the Commission that the live music festivals owned by the notifying parties may not be close competitors as a result of:
- (a) the incentives of Gaiety to ensure that the MCD Festivals do not compete with LN-Gaiety's Electric Picnic as a result of Gaiety's ownership interest in LN-Gaiety; and
 - (b) [redacted]. The Commission considers that this clause acts to further restrict competition between LN-Gaiety and its parent companies in respect of the supply of live music festivals in the island of Ireland.
- 6.28 Furthermore, Denis Desmond acts as non-executive Chairman for LN-UK and, [redacted]. The Commission considers that, examined cumulatively, Denis Desmond's involvement in each of LN-UK, LN-Gaiety, Gaiety and MCD suggests that the level of competition between the live music festivals of LN-Gaiety, MCD and Gaiety is likely to be limited.

Conclusion on closeness of competition

- 6.29 In summary, LN-Gaiety's Electric Picnic festival is a multi-day camping event in County Laois that is targeted at adults in the 18-35 age bracket and features a wide range of music and non-music content, whereas MCD's Vital and Longitude festivals are one-day events (without camping) in Dublin and Belfast that are aimed at a younger age demographic (16-22 year olds), and which are focused on music content. In light of these characteristics, the Commission believes that the notifying parties' festivals are highly differentiated and that the live music festivals owned and operated by LN-Gaiety and MCD in the State do not appear to be sufficiently close competitors.
- 6.30 For the reasons set out above, the Commission found that the Proposed Transaction, in itself, should not enable the notifying parties to raise prices or otherwise harm competition in the supply of live music festivals which focus on popular music genres in the island of Ireland. However, given the high concentration of ownership of live music festivals in the island of Ireland, the Commission will scrutinise closely any future acquisitions by the notifying parties or their parents in this sector.

(c) Competitive constraints from competitors

Views of the notifying parties

- 6.31 The notifying parties told the Commission that small festivals can quickly grow in size and change in line-up if they become popular and artists can be seen to perform at various different sizes of festivals.²⁰⁵

Views of third parties

- 6.32 Multiple promoters that operate small live music festivals²⁰⁶ expressed the view to the Commission that the market for the supply of live music festivals in the State is competitive.

The Commission's assessment

- 6.33 The Commission does not consider, however, that small live music festivals are likely to impose a strong competitive constraint on Longitude or Electric Picnic, due to their relatively limited scale and lack of well-known artists which promoters indicated to the Commission are key factors influencing a consumer's choice of festival.
- 6.34 In contrast, the live music festivals owned and operated by Aiken and POD (in particular, All Together Now and Forbidden Fruit) are large, high profile festivals that attract popular artists as headliners. The views which promoters expressed to the Commission clearly indicate that POD's live music festivals, All Together Now and Forbidden Fruit, compete most closely with Longitude and Electric Picnic, respectively, as a result of similar age demographics and formats.
- 6.35 The Commission considers that the Proposed Transaction does not affect the competitive constraint of the live music festivals operated by POD on Longitude or Electric Picnic, which is (and will continue to be) the primary competitive constraint faced by the notifying parties.

(d) Barriers to entry and/or expansion

Views of the notifying parties

- 6.36 The notifying parties expressed their view that the Proposed Transaction will not lead to a substantial lessening of competition in the supply of live music festivals in the State as barriers to entry for new festivals are low and festival operators

²⁰⁵ Merger notification form, section 5.1, page 40.

²⁰⁶ [§<], a [§<] promoter of live music events, indicated it had cancelled plans to create a live music festival in the State as a result of the strength of competition.

need to continue to constantly adapt and compete in order to have an attractive offering (in terms of line-up and price).²⁰⁷

Views of third parties

6.37 Third parties expressed the view to the Commission that the main barrier to entry in the supply of live music festivals is the upfront financial outlay, including guaranteed fees paid to artists, and the risk associated with poor sales.²⁰⁸

The Commission's Assessment

6.38 The evidence that the Commission has seen indicates that barriers to entry or expansion in the market for live music festivals which focus on popular music genres are low. Smaller live music festivals can and do frequently enter the market. For example, Fever Pitch Festival, a live music festival, was held for the first time in 2018 at Galway airport with estimated ticket sales of 6,000. It was organised by PFD Promotions Limited, a first time festival organiser.

6.39 The Commission further notes that smaller live music festivals when successful can and do expand in size. The Commission notes that Belsonic grew considerably in a short period of time, increasing the number of tickets sold from [20,000-30,000] in 2015 to [80,000 – 90,000] in 2017.

6.40 The Commission has seen evidence that promoters can successfully launch larger live pop music festivals, as evidenced by POD selling approximately [20,000-30,000] tickets for All Together Now in its first year of operation in 2018.²⁰⁹

6.41 The Commission also notes that a survey of attendees at Electric Picnic in 2016²¹⁰ included the question “Which of the following festivals are you going to or have you been to this year?”. Of the [§<] respondents, [§<] indicated that they had attended or were going to attend another festival in or outside of the State.²¹¹ The high number of festival-goers attending more than one live music festival in a given year reduces the difficulty of entry, as customers may attend a new live music festival without forgoing existing live music festivals.

Conclusion on Unilateral Effects

6.42 The Commission has concluded that, while the notifying parties' combined market share in the market for live music festivals which focus on popular music genres in the island of Ireland is significant, the Proposed Transaction will not provide the notifying parties with the incentive and ability to unilaterally increase the price, or otherwise harm competition, in the market for the supply of live music festivals

²⁰⁷ Merger notification form, section 5.3, page 59 and 60

²⁰⁸ From Commission discussions with third-party promoters (see notes of calls with [§<], dated 24 October 2018 and [§<], dated 24 October 2018). See also response of [§<] to Commission questionnaire dated 17 October 2018.

²⁰⁹ By way of comparison, LN-Gaiety sold approximately [160,000-170,000] tickets to Electric Picnic in 2019.

²¹⁰ Response of notifying parties to Phase 1 RFI.

²¹¹ Respondents were allowed to choose multiple options, and therefore it is not possible to identify exactly what percentage of respondents would attend other festivals in the State specifically.

which focus on popular music genres in the island of Ireland. The Commission has concluded that the live music festivals operated by the notifying parties are not close competitors and that, following implementation of the Proposed Transaction, they will continue to face a competitive constraint from the live music festivals operated by Aiken and POD.

Proposals submitted by Live Nation and MCD

6.43 As noted at paragraph 6.15 above, due to the high market shares of the notifying parties and their parents, the Commission will be vigilant to monitor and carefully assess the potential impact on the structure of the market of Live Nation and MCD seeking to acquire additional live music festivals.

On 5 July 2019, Live Nation and MCD submitted to the Commission final proposals under section 20(3) of the Act which provide that each of Live Nation and MCD shall inform the Commission in writing in advance of any proposal by Live Nation or MCD to acquire sole or joint control of a live music festival or an entity that controls one or more live music festivals in the State.

7. VERTICAL EFFECTS

- 7.1 As illustrated in Figure 1 above, Live Nation and MCD are active at different levels of the supply chain for live music events in the State.
- 7.2 In this section, the Commission sets out its views on the likely vertical competitive effects of the Proposed Transaction²¹² in:
- the market for the provision of Outsourced Primary Ticketing Services for live events in the island of Ireland;
 - the market for the promotion of live music events in the island of Ireland.
- 7.3 The likely vertical competitive effects of the Proposed Transaction in the market for the supply of indoor venues are not assessed on a standalone basis, but form part of the Commission's assessment of the markets for: (i) the provision of Outsourced Primary Ticketing Services for live events; and (ii) the promotion of live music events.
- 7.4 For each potential vertical theory of harm identified by the Commission as part of its assessment of the competitive effects of the Proposed Transaction, the Commission has assessed whether the Proposed Transaction is likely to lead to input foreclosure or customer foreclosure which, as described in paragraph 5.7 of the Commission's Merger Guidelines, arise when: *"a merged entity restricts the access of rival firms to upstream suppliers or to downstream customers"*.
- 7.5 As set out in paragraph 5.8 of the Commission's Merger Guidelines, there are three elements to the analysis of the likelihood of vertical foreclosure:
- "(i) the ability of the merged party to foreclose upstream or downstream competitors in spite of competitive constraints and/or consumer behaviour,*
- (ii) the incentive for the merged entity to foreclose upstream or downstream competitors, and*
- (iii) the likely effect on competition, particularly whether foreclosure would result in an SLC [substantial lessening of competition]."*

²¹² One live music festival operator expressed a concern to the Commission that, following completion of the Proposed Transaction, it would be more difficult to secure artists for live music festivals, as LN-Gaiety and MCD could tie an artist into contracts for longer periods, covering both live music festivals and live music events. The Commission found that the Proposed Transaction, in itself, will not provide the notifying parties with the ability to foreclose suppliers of live music festivals in the State, through a restriction of access to artists managed by Live Nation. Based on discussions with a number of live music festival operators the Commission found that the viability of their live music festivals are not dependent on securing artists managed or promoted by Live Nation. The Commission did not consider this issue further.

(i) The market for the Provision of Outsourced Primary Ticketing Services for Live Events in the island of Ireland

7.6 The Commission has assessed whether the Proposed Transaction will result in the foreclosure of existing and/or potential providers of Outsourced Primary Ticketing Services for live events in the island of Ireland. A number of potential vertical theories of harm were considered by the Commission and each is discussed below.

Theory of Harm 1: Customer Foreclosure of Existing and/or Potential Rivals of Ticketmaster

7.7 The first theory of harm considered by the Commission is whether the Proposed Transaction may result in customer foreclosure of rival ticketing agents. The Commission has considered whether the notifying parties would have the ability and incentive to restrict rival ticketing agents' access to MCD, as a promoter of live music events and live music festivals in the State.

Views of the notifying parties

7.8 In relation to the possibility of the Proposed Transaction resulting in the foreclosure of potential rival providers of Outsourced Primary Ticketing Services for live events in the State, the notifying parties state the following in the notification:²¹³

“MCD-promoted events account for [X] share of total ticket sales on an annual basis in Ireland. There will therefore remain a [X] contestable market for other ticketing service providers that is entirely unaffected by the Proposed Transaction. [...] MCD-promoted events account for [X] of the total number of tickets sold by [Ticketmaster] in 2017, leaving a [X] contestable market for other agents to compete for. Indeed, the size of the Aiken opportunity alone (accounting for nearly [X] tickets sold for live music events in 2017) means that there is no prospect of any foreclosure of ticketing service providers as a result of the Proposed Transaction. [...] The Proposed Transaction will have no impact on the ability of other existing ticketing services providers to compete for this [X] contestable market.”

“Moreover, the Proposed Transaction does not change the existing pre-merger position, as [Ticketmaster] is already the exclusive ticketing agent for MCD by virtue of the contractual arrangements in place between [Ticketmaster] and MCD for the distribution of tickets

²¹³ Merger notification form, section 5.3, Pages 68 and 69

for MCD-promoted events, which will run until at least [redacted]. The Proposed Transaction does nothing more than internalise these pre-existing arrangements, and does not in any way change the competitive landscape in relation to the supply of ticketing services in Ireland.”

7.9 The Commission requested clarification from the notifying parties on the potential likelihood of MCD using a rival provider of Outsourced Primary Ticketing Services to Ticketmaster, both in the absence of the Proposed Transaction and following completion of the Proposed Transaction. In response, MCD stated that: “*the chances of MCD using another ticketing agent in the future are slim for several reasons:*

- (a) *MCD has not used any other ticketing firm since the 1990s.*
- (b) *Mr. Desmond already has a close relationship with Live Nation prior to the Proposed Transaction, further reducing the likelihood that MCD would use another ticketing agent. Mr. Desmond has a joint venture with Live Nation and also serves as Chairman Live Nation in the UK and Ireland.*

(c) [redacted].

(d) *The contemporaneous evidence confirms that MCD [redacted].*

[...]

The merger therefore does not materially reduce the prospects of rival ticketing companies to serve MCD, which have been and will remain unrealistic regardless of the merger for each of the reasons set forth above.”²¹⁴

Views of third parties

7.10 A number of third parties noted in discussions with the Commission that rivals to Ticketmaster do not currently sell, and have not sold in the past, tickets to live events in the State on behalf of MCD.

7.11 In response to the Commission’s market survey, third party promoters provided the following comments on Ticketmaster’s position in the market generally and its relationship with MCD:

(a) [redacted] stated on a call with the Commission on 18 December 2018 that: “*whether the merger takes place or not, the strong relationship between MCD/Ticketmaster and Live Nation ensures that no agent will ticket on behalf of Live Nation*”;

(b) [redacted] stated on a call with the Commission on 17 January 2019 that: “*Ireland is small, with MCD, Aiken and sporting bodies being the only clients with a*

²¹⁴ Notifying parties’ response to the Commission’s queries of 24 May 2019.

large number of ticket sales. Theoretically were a ticketing agent to acquire their ticket allocation they could enter successfully, however the exclusive agreements between promoters and Ticketmaster prevent this. Furthermore, Denis Desmond's relationship with Live Nation would makes this difficult, and rule out ticketing on behalf of MCD"; and

- (c) [redacted] stated on a call with the Commission on 17 January 2019 that: *"the market was very difficult at the moment and that the barriers are already there, in the form of "tie-ins" between Ticketmaster and promoters and venues."*

- 7.12 Some providers of Outsourced Primary Ticketing Services for live events based outside the State expressed the view to the Commission that, due to the existence of a long-term business relationship between MCD and Ticketmaster in the State, it is unlikely that MCD would switch some or all of its requirements for Outsourced Primary Ticketing Services for live events to a competing Outsourced Primary Ticketing Services provider.²¹⁵

The Commission's assessment

- 7.13 In order to assess the notifying parties' ability to foreclose rival ticketing agents, the Commission has sought to understand the likely importance of MCD's live music festivals and of MCD as a promoter of live music events to existing and potential providers of Outsourced Primary Ticketing Services in the island of Ireland.
- 7.14 As set out Table 3 above, MCD is one of only two large promoters of live music events on the island of Ireland. In 2017 MCD held a [70-75]% share of the relevant market for the promotion of live music events in the island of Ireland. Approximately [30-35]% of Ticketmaster's total annual ticket sales for live events in the State during the period from 2012 to 2016 were accounted for by live events promoted by MCD²¹⁶. Owing to its share of supply in the promotion of live music events and live events on the island of Ireland and the scale of its promotion business, MCD could present an important opportunity for existing and potential providers of Outsourced Primary Ticketing Services.
- 7.15 As demonstrated by Table 10 below, however, MCD's existing requirements for Outsourced Primary Ticketing Services are satisfied entirely by Ticketmaster. In 2017, [redacted] % of MCD's total ticket sales (by value) in the State were made through Ticketmaster. The equivalent figure for the first six months of 2018 was [redacted]%. Remaining ticket sales by MCD were primarily made through self-supply by venues. Furthermore, MCD has used Ticketmaster as its Outsourced Primary Ticketing Services provider for its festivals and promotion business for approximately the last 20 years.

²¹⁵ From Commission discussions with third-party providers of primary ticketing services (see notes of calls with [redacted], dated 18 December 2018, [redacted], dated 17 January 2018 [redacted], dated 17 January 2018.

²¹⁶ See paragraph 4.98 above.

Table 10: The percentage of MCD’s total ticket sales made through Ticketmaster and self-supply by venues, by revenue generated (€), 2016-2017				
	2016		2017	
	Ticketmaster	Self-supply by venues	Ticketmaster	Self-supply by venues
The State	[X]	[X]	[X]	[X]
Northern Ireland	[X]	[X]	[X]	[X]
Island of Ireland	[X]	[X]	[X]	[X]

Source: The Commission, based on information provided by MCD.

- 7.16 The Commission considers that MCD is an important customer for primary ticketing services. A significant proportion of tickets sold for live events in the State are attributable to MCD promoted live events. This means that MCD may be capable of facilitating entry into, and/or expansion in, the market for the provision of Outsourced Primary Ticketing Services for live events in the State by potential or existing rivals of Ticketmaster. To do so, MCD would need to switch at least part of its requirements for Outsourced Primary Ticketing Services away from Ticketmaster.
- 7.17 The Commission has therefore examined whether, absent the Proposed Transaction, MCD would have switched all or some of its primary ticketing requirements to an existing or potential competitor of Ticketmaster.
- 7.18 Based on the evidence provided by the notifying parties and third parties, the Commission considered a number of factors relevant to the effect of the Proposed Transaction on rival ticketing agents, including:
- a) The terms of the existing contract between MCD and Ticketmaster for the provision of Outsourced Primary Ticketing Services for live events in the State;
 - b) The likelihood of MCD seeking to terminate its agreement with Ticketmaster before its expiry; and
 - c) MCD’s commercial strategy.

(a) The terms of the agreement between MCD and Ticketmaster for the provision of Outsourced Primary Ticketing Services for live events

7.19 In response to the Phase 1 RFIs, MCD provided²¹⁷ the Commission with, amongst other agreements, an agreement [redacted]. [redacted] which sets out the terms on which Ticketmaster provides Outsourced Primary Ticketing Services to MCD. [redacted]. The [redacted] Agreement includes the following provisions:

(a) [redacted].

(b) [redacted].

(c) [redacted]²¹⁸.

(d) [redacted].

7.20 The [redacted] Agreement appears to be capable of deterring entry and expansion by rival providers of Outsourced Primary Ticketing Services for live music events in the State. The Commission did not need to form a view on the effects of the agreement prior to the Proposed Transaction. Rather, the relevant question for the purposes of this Determination is whether the Proposed Transaction gives the notifying parties the ability and incentive to foreclose existing and potential providers of Outsourced Primary Ticketing Services on the island of Ireland, with the effect that there is a substantial lessening of competition in the relevant market compared to the counterfactual. For that reason the Commission next considered the prospect that MCD might seek to terminate the [redacted] Agreement. The Commission considered that MCD's intentions as regards the [redacted] Agreement were relevant to its assessment of the competitive effects of the Proposed Transaction given that, without the [redacted] Agreement, MCD would be an important potential customer of a third party provider of Outsourced Primary Ticketing Services seeking to enter or expand in the relevant market.

(b) The likelihood of MCD terminating the [redacted] Agreement

7.21 Given that the [redacted] Agreement [redacted], the Commission has considered whether there is any evidence to indicate that, absent the Proposed Transaction, MCD would have the ability and incentive to terminate the [redacted] Agreement before it is due to expire in December 2025.

7.22 The Commission has not received detailed or substantiated arguments in relation to MCD terminating the [redacted] Agreement before the end of [redacted]. Further, the Commission has not found any evidence that shows MCD considers (or has ever considered in the past) terminating the [redacted] Agreement before it is due to expire

²¹⁷ In its response dated 21 November 2018, MCD provided the Commission with a total of [redacted] current agreements which set out the terms on which Ticketmaster provides Outsourced Primary Ticketing Services to MCD.

²¹⁸ Annex 32(J) to the Response of MCD to the Commission's Requirement for Information of 21 September 2018, dated 21 November 2018: [redacted].

due to, for example, a material breach of contract or allegations under competition law or other grounds.

- 7.23 The Commission has taken account of the fact that MCD's parent company, Gaiety, [redacted]²¹⁹[redacted]²²⁰. The Commission considers that the [redacted] may affect Gaiety's willingness to end the [redacted] Agreement.

(c) MCD's Commercial Strategy

- 7.24 The Commission has assessed MCD's commercial strategy in relation to Outsourced Primary Ticketing Services for live events in the State. In particular, the Commission sought to understand whether MCD had made any attempt to switch (or threaten to switch) its requirements for Outsourced Primary Ticketing Services away from Ticketmaster to a rival provider of Outsourced Primary Ticketing Services in the State. In that regard, the Commission also sought evidence from MCD indicating any instances when MCD was approached by a provider of Outsourced Primary Ticketing Services other than Ticketmaster for the provision of Outsourced Primary Ticketing Services in the island of Ireland.
- 7.25 The Commission has not found evidence indicating that MCD has a commercial strategy (or pursued such a strategy in the past) to consider alternative providers of Outsourced Primary Ticketing Services to Ticketmaster in the island of Ireland.
- 7.26 The Commission gathered internal documents²²¹ from MCD [redacted]. Those documents did not indicate that MCD (or Gaiety) has attempted to switch its requirements for Outsourced Primary Ticketing Services away from Ticketmaster or recorded any internal deliberations about such switching. On the contrary, a close relationship has evolved between Live Nation and MCD's current owner Gaiety through the creation of the LN-Gaiety joint venture. The Commission therefore considers the Proposed Transaction does not materially affect the likelihood of MCD switching away from Ticketmaster.
- 7.27 Furthermore, the Commission attaches weight to an internal document dated [redacted] provided to the Commission by Ticketmaster entitled "[redacted]",²²² which states that Ticketmaster expects MCD will renew its existing agreement with Ticketmaster and the prospects of renewal are as high as 90%.²²³
- 7.28 Finally, the Commission has taken into account the views of rival providers of Outsourced Primary Ticketing Services that, absent the Proposed Transaction, MCD is unlikely to switch its requirements for Outsourced Primary Ticketing Services away from Ticketmaster. One rival provider of Outsourced Primary Ticketing Services expressed the following view to the Commission: "Post-

²¹⁹ See paragraph 4.104 above.

²²⁰ Notifying parties' response to the Commission's queries of 24 May 2019.

²²¹ Internal documents provided to the Commission in response to the Phase 2 RFI.

²²² Response of the notifying parties to the Phase 1 RFI, received on 21 November 2018.

²²³ An internal document dated [redacted] provided to the Commission by Ticketmaster as Annex 39.1(E) to the response of Ticketmaster to the Phase 1 RFI, received on 21 November 2018 entitled "[redacted]" indicates that Ticketmaster considers that the likelihood of MCD renewing its existing agreement with Ticketmaster is 100%.

*transaction, the market will still be impossible to compete in.”*²²⁴ Another rival provider of Outsourced Primary Ticketing Services expressed the following view to the Commission: *“MCD currently ticket with Ticketmaster, so ticketing of MCD tickets [will] not change.”*²²⁵

- 7.29 In addition, no rival provider of Outsourced Primary Ticketing Services informed the Commission that they had in the past been approached by MCD to tender for the provision of Outsourced Primary Ticketing Services.²²⁶ This is consistent with the Commission’s review of MCD’s internal documents that do not record MCD having been approached by a provider of Outsourced Primary Ticketing Services other than Ticketmaster for the provision of Outsourced Primary Ticketing Services in the State. The Commission notes, however, that several providers of Outsourced Primary Ticketing Services expressed the view to the Commission that if approached by MCD, they would be interested in providing Outsourced Primary Ticketing Services for live events to MCD in the State subject to MCD guaranteeing a specific minimum volume of tickets. These providers of Outsourced Primary Ticketing Services informed the Commission that they would be able to provide a similar service to the Outsourced Primary Ticketing Services currently provided by Ticketmaster to MCD in the State.²²⁷

Conclusion and parties’ proposals

- 7.30 In light of the above, the Commission considers that, absent the Proposed Transaction, MCD would be likely to continue to obtain Outsourced Primary Ticketing Services from Ticketmaster under the provisions of its current contractual arrangement. Therefore, MCD would be unlikely to facilitate the entry, or expansion, of a rival to Ticketmaster in the market for the provision of Outsourced Primary Ticketing Services for live events in the State. Having found that the prospect of customer foreclosure is unchanged by the Proposed Transaction, the Commission has not needed to assess the possible effect of any such foreclosure strategy.
- 7.31 Accordingly, the Commission considers that the Proposed Transaction would be unlikely to give the notifying parties a new or enhanced ability to foreclose Ticketmaster’s existing and potential rivals by restricting access to MCD as a promoter of live music events and live music festivals in the island of Ireland. Accordingly, the Commission has concluded that the Proposed Transaction will not give rise to any merger specific vertical effects in the market for the provision of Outsourced Primary Ticketing Services for live events in the Island of Ireland.
- 7.32 However, the Commission has some concerns that the Proposed Transaction will strengthen the existing links between MCD and Live Nation, thereby potentially

²²⁴ From Commission discussions with providers of primary ticketing services (for example, note of call with [redacted], dated 17 January 2018).

²²⁵ From Commission discussions with third-party providers of primary ticketing services (see note of call with [redacted], dated 17 January 2018).

²²⁶ This excludes specific the pre-sale ticketing for The Vamps in October 2014, and Wolf Alice in October 2015. For these two events, promoted elsewhere in Ireland and the UK by AEG, AXS sold pre-sale tickets on behalf of MCD.

²²⁷ Response dated 8 May 2019 of [redacted] to specific questions posed by the Commission on 3 May 2019; Response dated 14 May 2019 of [redacted] to specific questions posed by the Commission on 3 May 2019.

removing MCD as a potential customer of Outsourced Primary Ticketing Services and placing existing and potential rivals of Ticketmaster at a disadvantage in seeking to enter or expand in the island of Ireland. In this regard, the Commission took account of the fact that post-Proposed Transaction, MCD will form part of the LN-Gaiety joint venture company and will not be wholly-owned by Live Nation.

7.33 On 5 July 2019, Live Nation and MCD submitted to the Commission formal proposals under section 20(3) of the Act to ameliorate this potential concern under which Live Nation and MCD undertake to negotiate and contract for Outsourced Primary Ticketing Services on an arm's length basis (see further Chapter 11 below).

7.34 The Commission was satisfied that this proposal ameliorates its concerns about the Proposed Transaction and took it into account in reaching its conclusion that the Proposed Transaction will not give rise to any merger specific vertical effects in the market for the provision of Outsourced Primary Ticketing Services for live events in the State.

Theory of Harm 2: Foreclosure of existing and/or potential rivals of Ticketmaster by restricting ability to contract with third party venues

7.35 The second theory of harm examined by the Commission was whether the Proposed Transaction would give rise to input foreclosure of rival providers of Outsourced Primary Ticketing Services using venues owned by third parties. The Commission therefore considered whether, following implementation of the Proposed Transaction, Live Nation and/or MCD would have the ability and incentive to foreclose existing and/or potential rivals of Ticketmaster in the provision of Outsourced Primary Ticketing Services for live events in the State. The Commission was concerned that Live Nation and/or MCD may leverage MCD's position in the promotion of live music events in order to restrict Ticketmaster's rivals from contracting with venues which are owned or operated by parties other than Live Nation ("third party venues"). The Commission has considered whether such input foreclosure could arise by:

(a) MCD refusing (or threatening to refuse) to 'pencil in' or book live music events at third party venues that do not contract with Ticketmaster for the provision of Outsourced Primary Ticketing Services; and/or

(b) MCD organising and promoting (or proposing to organise and promote) live music events with third party venues that do not use Ticketmaster on terms that are less favourable than the terms MCD applies to venues that contract with Ticketmaster for the provision of Outsourced Primary Ticketing Services.

Views of the notifying parties

7.36 In a submission to the Commission dated 10 May 2019, the notifying parties state the following:

“the relevant venues control too few tickets to foreclose ticketing companies from the market. Unlike some other countries like the United States, only a minority of tickets in Ireland are sold by venues. ... Therefore, any promise to put more MCD shows in a venue if they use Ticketmaster (or threat to withhold MCD shows if they refuse) simply does not involve enough tickets to foreclose rivals.”

“Further precluding the merged entity’s ability to foreclose is the fact ticketing contracts with venues are typically concluded for several years and therefore at the time of the conclusion of such contracts the combined firm would not know how many shows MCD would promote in the coming years. The merged firm therefore could not make any credible promise to the venues to keep them away from other ticketing agents. This is all the more so since artists and agents may insist on using particular venues.”

“Nor would the merged firm have the incentive to engage in this conduct. The evidence shows that Ticketmaster and MCD have never teamed up in their negotiations with venues in the past [§].”

Views of third parties

- 7.37 Third parties have informed the Commission that Live Nation could use MCD as leverage to discourage switching away from Ticketmaster to an alternative provider of Outsourced Primary Ticketing Services. A number of existing and potential providers of Outsourced Primary Ticketing Services noted that this concern has been raised in commercial discussions with third party venues.

The Commission’s assessment

- 7.38 For the reasons set out below, the Commission considers that, following completion of the Proposed Transaction, where a third party venue chooses to contract with a provider of Outsourced Primary Ticketing Services other than Ticketmaster, Live Nation and/or MCD are likely to have the ability and incentive to: (a) refuse (or threaten to refuse) to provide live music events to the venue; and/or (b) provide (or threaten to provide) live music events on less favourable terms to the venue.
- 7.39 The Commission considers that the starting point is that MCD has a significant degree of market power over the promotion of live music events in the island of Ireland (see Table 3 above). As a result, the evidence before the Commission suggests that Live Nation and/or MCD would have the ability to refuse (or make credible threats) to withhold live music events from a venue that did not deal with

Ticketmaster or to insist upon a contract with such a venue on less favourable terms. Third parties told the Commission that such behaviour is likely to affect the commercial decision-making of the owners and operators of third party venues.

- 7.40 Currently, agreements between Ticketmaster and owners and operators of third party venues for the provision of Outsourced Primary Ticketing Services for live events in the State are of particular strategic importance to Ticketmaster. Indeed, such agreements generally take precedence over any exclusive agreements that exist between Ticketmaster and promoters of live events.
- 7.41 Accordingly, at a venue which has contracted with Ticketmaster for the provision of Outsourced Primary Ticketing Services on an exclusive basis, a promoter who is promoting a live event at that venue can only sell tickets to that live event through Ticketmaster even if the promoter has contracted with a different provider of Outsourced Primary Ticketing Services. For example, information provided to the Commission indicates that [redacted].²²⁸
- 7.42 Ticketmaster has contracted on an exclusive basis with the owners or operators of many of the largest indoor venues in the island of Ireland, including the 3Arena and the RDS.
- 7.43 Moreover, most rival providers of Outsourced Primary Ticketing Services describe securing contracts with suitable venues in the State as a key input for the provision of Outsourced Primary Ticketing Services for live events.²²⁹
- 7.44 The Commission considers that Live Nation and/or MCD are likely to have an incentive to make threats to third party venues seeking to contract with a rival of Ticketmaster in order to protect or enhance Ticketmaster's substantial market power (see analysis in paragraphs 4.45 to 4.115) in the market for the provision of Outsourced Primary Ticketing Services for live events in the State for the following reasons.
- 7.45 First, if Live Nation and/or MCD behaved in the manner just described, the merged entity would gain profits from third party venues that are willing to contract with Ticketmaster (or are prepared to accept less favourable terms), but it would lose profits from those venues that ceased to deal with MCD. Since the profits obtained by Ticketmaster from providing Outsourced Primary Ticketing Services for live events are [redacted] than the profits earned from the MCD's dealing with venues, the Commission concluded that the merged entity would have an incentive to deny access or degrade terms for third party venues that did not contract with Ticketmaster. The information provided to the Commission by the notifying parties indicates that Ticketmaster enjoys both high profits and high margins in the provision of Outsourced Primary Ticketing Services for live events in the State.

²²⁸ Response by [redacted] to the Commission's questionnaire, dated 19 December 2018.

²²⁹ From Commission discussions with providers of primary ticketing services (for example, note of call with [redacted], dated 17 January 2019).

- 7.46 Second, as detailed in paragraphs 4.20 to 4.21 above, internal documentation provided to the Commission by Ticketmaster highlights Ticketmaster’s strategy to protect its position in the market for the provision of Outsourced Primary Ticketing Services for live events in the State. For example, a [redacted] document entitled “[redacted]”: “[redacted].”²³⁰
- 7.47 Third, the Commission considers that insofar as the input foreclosure strategy consisted of making threats to venues, the cost to Live Nation/MCD would be negligible. Any reputational cost or loss of goodwill to Ticketmaster is likely to be minimal, and such costs are likely to be diminished in the event that the venue was considering or is in the process of switching Outsourced Primary Ticketing Services provider.
- 7.48 The Commission was concerned, on the basis of the information available, that the likely effect of this input foreclosure strategy would be to prevent existing and/or deter potential rivals of Ticketmaster from competing effectively or at all in the relevant market for the provision of Outsourced Primary Ticketing Services for live events in the State.
- 7.49 In light of the above, the Commission considers that any such threats would be likely to have a significant anti-competitive impact in the market for the provision of Outsourced Primary Ticketing Services for live events in the State, by increasing the barriers to entry faced by rivals to Ticketmaster.

Conclusion

- 7.50 The Commission is concerned that foreclosure may arise by: (a) MCD refusing (or threatening to refuse) to provide live events to third-party venues which do not contract with Ticketmaster for the provision of Outsourced Primary Ticketing Services; and/or (b) for third party venues which do not contract with Ticketmaster for the provision of Outsourced Primary Ticketing Services, providing (or threatening to provide) live events to on terms which are less favourable than the terms of an existing contract between MCD and that venue.

Proposals Submitted by Live Nation and MCD

- 7.51 On 5 July 2019, Live Nation and MCD submitted to the Commission formal proposals under section 20(3) of the 2002 Act to ameliorate any effects of the Proposed Transaction on competition in the market for the provision of Outsourced Primary Ticketing Services for live events in the State as identified by the Commission (described in paragraphs 4.45 to 4.115 above).
- 7.52 The Commission was satisfied that this proposal ameliorates its concerns about the Proposed Transaction and took it into account in reaching its conclusion that the Proposed Transaction will not give rise to any anti-competitive vertical effects

²³⁰ [redacted].

in the market for the provision of Outsourced Primary Ticketing Services for live events in the State.

(ii) The Promotion of Live Music Events in the island of Ireland

- 7.53 In this section, the Commission examines the likely vertical effects of the Proposed Transaction in the relevant market for the promotion of live music events in the State. As noted above, there is a vertical relationship between MCD and Live Nation given MCD's activities in the promotion of live music events in the State and Live Nation's activities in: (a) the provision of Outsourced Primary Ticketing Services for live events in the State, and (b) the supply of indoor venues in the State.
- 7.54 The Commission has assessed whether the Proposed Transaction will give Ticketmaster and/or Live Nation the ability and incentive to foreclose MCD's rival promoters of live music events by not supplying primary ticketing services or supplying on less favourable terms (in the case of Ticketmaster) or refusing access to Live Nation's venues or supplying on less favourable terms (in the case of Live Nation). A number of vertical theories of harm were assessed by the Commission and are described further below.

Theory of Harm 3: Foreclosure of Promoters in relation to Outsourced Primary Ticketing Services for Live Events in the island of Ireland

- 7.55 The Commission has considered whether, as a result of the implementation of the Proposed Transaction, Live Nation through LN-Gaiety would have the ability and incentive to potentially restrict access to Ticketmaster as a supplier of Outsourced Primary Ticketing Services to MCD's competitors or to provide Outsourced Primary Ticketing Services to MCD's competitors on less favourable terms. Furthermore, the Commission has considered whether any such foreclosure could potentially lead to a substantial lessening of competition in the market for the promotion of live events in the island of Ireland.

Views of the notifying parties

- 7.56 In relation to whether the Proposed Transaction would give the notifying parties the ability to foreclose rival promoters to MCD by restricting access to Ticketmaster for the supply of Outsourced Primary Ticketing Services for live events in the State, the notifying parties state the following in the notification²³¹:

“Taking into account [Ticketmaster]'s existing and long-term contractual relationship with Aiken, which will be unaffected by the Proposed Transaction, and the presence of other major ticket suppliers which provide a clear alternative option for Aiken's business, it is clear the parties will not have the ability to foreclose Aiken in relation to ticketing services in the post-merger environment.”

²³¹ Merger notification form, page 63.

- 7.57 In relation to whether the Proposed Transaction would give the notifying parties the incentive to foreclose rival promoters to MCD by restricting access to Ticketmaster for the supply of Outsourced Primary Ticketing Services for live events in the State, the notifying parties state the following in the notification:²³²

“Aiken is one of [Ticketmaster]’s largest customers. The aggregate number of tickets sold by [Ticketmaster] for events promoted by Aiken directly in the period 2012-2016 amounts to [X] tickets, or approximately [X] % of the total number of tickets sold by [Ticketmaster] during that period. In revenue terms, the total gross value of tickets sold by [Ticketmaster] for Aiken-promoted events during the same period was [X], generating revenues for [Ticketmaster] of [X]. Sales of tickets for Aiken-promoted events in 2017 alone accounted for around [X] tickets. [Ticketmaster] would have no incentive to undermine the competitive terms offered to Aiken, particularly when Aiken has clear alternative options for ticketing services from which to choose, including major international rivals to [Ticketmaster] (and the wider Ticketmaster group) such as AXS and Eventim among others.”

“The potential downside to [Ticketmaster] from the loss of Aiken as a key customer would be very significant. Ticketing services providers generate their revenue through a proportion of the value of tickets sold, but they do not take the same degree of financial risk as a promoter (on an event-by-event basis) in relation to an artist cancelling or a show failing to sell out. Therefore, adopting a strategy which is premised on potentially foregoing low-risk actual profit for [Ticketmaster] to pursue uncertain and inherently higher-risk potential profit for MCD would not be commercially attractive to Live Nation.”

“It is highly unlikely that the profits lost to [Ticketmaster] from Aiken-promoted events as a result of an attempted foreclosure strategy would be outweighed by additional revenues generated by artists potentially diverting to MCD. There are two clear reasons for this: First, as Live Nation will have only an indirect [X]% interest in MCD following the completion of the Proposed Transaction, it would obtain only [X] of any additional promotional profits accruing to MCD if Aiken were to be foreclosed and artists were to switch to MCD. Second, there is no guarantee artists/agents

²³² Merger notification form, page 64.

would in fact switch to MCD, even in the event that Aiken were unable to use [Ticketmaster] for ticketing services. In particular, even if the commercial terms received by Aiken from an alternative ticket agent were inferior to those currently obtained from [Ticketmaster], there is no reason to believe Aiken would lose substantial promotion business because ticketing fees are a relatively small proportion of costs at the promotion level. It would therefore necessitate a very significant worsening in the commercial terms on which Aiken obtains ticketing services to undermine Aiken's competitiveness vis-à-vis MCD. Such a scenario is inherently unlikely."

"The parties also have no incentive to foreclose other promoters such as POD, Egan or new entrants such as MJR. Fundamentally, it is in [Ticketmaster]'s interests to sell as many tickets as possible through its platform, including for events promoted by the promoters other than MCD and Aiken which are active across the island of Ireland. As noted in the section above, these promoters have a significant number of alternative options open to them in relation to ticketing services, and [Ticketmaster] would be likely to lose these sales if it were to worsen the terms offered to smaller promoters."

Views of Third Parties

- 7.58 One third party promoter expressed the view to the Commission that it did not seem credible that the notifying parties would, following completion of the Proposed Transaction, adopt a strategy to foreclose rival promoters in the State, given the level of turnover generated by Ticketmaster in the State from sales of tickets to live music events promoted by entities other than MCD.²³³
- 7.59 A number of third party promoters of live music events in the State contacted by the Commission also expressed the view to the Commission that, as there are currently no readily available substitutes to Ticketmaster, they may have little option but to accept any potential price increase that may be introduced by Ticketmaster for the provision of Outsourced Primary Ticketing Services for live events in the State following completion of the Proposed Transaction.²³⁴

²³³ From Commission discussions with a third party promoter (see note of call with [redacted], dated 14 December 2018.

²³⁴ From Commission discussions with third party promoters (for example, see note of meeting with [redacted] dated 28 January 2019.



The Commission's assessment

- 7.60 The Commission has considered whether the Proposed Transaction gives the notifying parties the ability and incentive to foreclose promoters competing with MCD by restricting their access to Ticketmaster, or by increasing the price of Outsourced Primary Ticketing Services provided by Ticketmaster, for live events in the State.
- 7.61 The Commission considers that Live Nation, prior to the implementation of the Proposed Transaction, already has the ability to foreclose third party promoters of live music events in the island of Ireland as a result of Ticketmaster's high market share and substantial market power in the provision of Outsourced Primary Ticketing Services for live events in the island of Ireland. The evidence before the Commission showed that Outsourced Primary Ticketing Services are an essential input for promoters of live events generally and live music events in particular. Put simply, if a promoter is unable to contract with a provider of Outsourced Primary Ticketing Services, it will be unable to make ticket sales. It follows that a reduction in the availability or quality of Outsourced Primary Ticketing Services is capable of affecting a promoter's ability to promote events and to compete effectively in the relevant market. Moreover, MCD's main competitor (Aiken) in the relevant market for the promotion of live music events is currently supplied by Ticketmaster, which, as already noted, holds a very strong position in the provision of Outsourced Primary Ticketing Services on the island of Ireland.
- 7.62 As can be seen in Table 11 below, Ticketmaster [§]. By comparison, Ticketmaster's profits are more regular and predictable, [§]. The greater volatility in MCD's profits are partly explained by the significant financial risk borne by promoters when organising live events. A number of third parties expressed this view to the Commission.

Table 11: Revenue, Gross Profit and Gross Profit margin for Ticketmaster and MCD, 2015-2017				
Party	Measure	2015	2016	2017
Ticketmaster	Revenue (€000's)	[X]	[X]	[X]
	Gross profit (€000's)	[X]	[X]	[X]
	Gross margin (%)	[X]	[X]	[X]
MCD	Revenue (€000's)	[X]	[X]	[X]
	Gross profit (€000's)	[X]	[X]	[X]
	Gross margin (%)	[X]	[X]	[X]

Source: The Commission, based on information provided by the notifying parties

7.63 It is not, however, the profitability of the notifying parties but the relative margins in the upstream and downstream markets that are relevant in determining the extent to which a vertically integrated firm is willing to trade-off forgone upstream sales for additional downstream sales. All else being equal, the higher the margin in the upstream market relative to the margin in the downstream market, the lower the incentive for a vertically integrated firm to forgo upstream sales via input foreclosure.

Table 12: Revenues, costs and margin per ticket for MCD and Ticketmaster			
Party	Revenue	Variable cost	Gross margin received by LN
MCD	[REDACTED]	[REDACTED]	[REDACTED]
Ticketmaster	[REDACTED]	[REDACTED]	[REDACTED]

Source: RBB Report, based on Ticketmaster and MCD accounts for 2017.

- 7.64 As set out in Table 12 above, the margin per ticket attributable to Live Nation [REDACTED] in the provision of Outsourced Primary Ticketing Services for live events in the State than for the promotion of live music events in the island of Ireland.
- 7.65 The Commission is of the view that the high profits and high margins earned by Ticketmaster is a direct result of the significant market power held by Ticketmaster in the provision of Outsourced Primary Ticketing Services for live events in the State, as outlined in paragraphs 4.45 to 4.115 above. The Commission is of the view that these high profits and margins give Ticketmaster, and therefore Live Nation, a strong incentive to protect and enhance the market position of Ticketmaster in the provision of Outsourced Primary Ticketing Services for live events in the island of Ireland.
- 7.66 In conclusion, the Commission considered that following completion of the Proposed Transaction, as a result of Ticketmaster’s significant market power in the provision of Outsourced Primary Ticketing Services for live events in the island of Ireland, and the greater margin and profits attributable to Live Nation from Ticketmaster than MCD, Live Nation has a greater incentive to favour strategies that strengthen Ticketmaster’s position in the provision of Outsourced Primary Ticketing Services for live events in the island of Ireland than MCDs position in the promotion of live music events in the island of Ireland.

- 7.67 The Commission also notes that the agreement between Ticketmaster and Aiken for the provision of Outsourced Primary Ticketing Services appears to be capable of deterring entry and expansion by rival providers of Outsourced Primary Ticketing Services for live music events in the State. The Commission considers that, the Proposed Transaction, in itself, will not give the notifying parties any additional incentive to seek to foreclose rival promoters to MCD in the State. Aiken indicated to the Commission that [§<].
- 7.68 The Commission considers that any such strategy to seek to foreclose rival promoters of MCD in the State is likely to lead to reduced ticket sales through, and therefore lower profits for, Ticketmaster.

Conclusion

- 7.69 In light of the above, the Commission has concluded that while the notifying parties will have the ability to foreclose rival promoters of MCD in relation to the provision of Outsourced Primary Ticketing Services for live events in the State following completion of the Proposed Transaction, they are unlikely to have the incentive to pursue such a foreclosure strategy. Accordingly, the Commission has concluded that the Proposed Transaction, in itself, will not give rise to any anti-competitive vertical effects in the market for the promotion of live music events in the island of Ireland. In light of the Commission's conclusion it is not necessary for the Commission to form a view in relation to the merits of the notifying parties' other arguments.

Theory of Harm 4: Foreclosure of Promoters in relation to indoor venues for live events

- 7.70 The Commission has considered whether, as a result of the implementation of the Proposed Transaction, Live Nation would have the ability and incentive to restrict access to Live Nation venues to MCD's competitors or to provide Live Nation venues to MCD's competitors on less favourable terms. Furthermore, the Commission has considered whether any such input foreclosure is likely to lead to a substantial lessening of competition in the market for the promotion of live music events in the island of Ireland.

Views of the notifying parties

- 7.71 In relation to whether the Proposed Transaction would give the notifying parties the ability to foreclose rival promoters to MCD by restricting their access to venues operated by Live Nation (in particular, the 3Arena) in the State, the notifying parties state the following in the notification:²³⁵

"...there are a number of viable alternatives of similar capacity to the 3Arena, including indoor arenas such as the RDS Simmonscourt, the INEC in Killarney and the SSE Arena in Belfast, along with outdoor areas such as the Phoenix Park, Kilmainham and the RDS, as well as the large stadiums located around the country."

²³⁵ Merger notification form, page 65.

“If the commercial terms at the 3Arena or the BGE Theatre were not sufficiently attractive, or if Live Nation attempted to use these terms to favour MCD over other promoters, this would be apparent to artists and their agents as promoters competed for particular tours or concert dates. Artists and their agents would be likely to look unfavourably on this and in response could then simply decide not to play the venue at all (in which case the venue operator would lose out entirely on the prospective booking fee and the other revenue generated from events such as bar sales and sponsorship), or look to exploit the difference in terms to play promoters off each other, ultimately driving down the cost of venue hire.”

- 7.72 In relation to whether the Proposed Transaction would give the notifying parties the incentive to foreclose rival promoters to MCD by restricting their access to venues operated by Live Nation (in particular, the 3Arena) in the State, the notifying parties state the following in the notification:²³⁶

“As a venue operator, Live Nation has an overwhelming incentive to ensure its venues are utilised as often as possible. For that reason, it has no incentive to turn away events promoted by Aiken or other promoters from these venues, or to offer those promoters less favourable commercial terms.”

Views of third parties

- 7.73 A number of third party promoters of live music events in the island of Ireland expressed the view to the Commission that a strategy of foreclosure in relation to Live Nation venues in the State following completion of the Proposed Transaction is likely to be unprofitable for Live Nation.²³⁷

The Commission’s assessment

- 7.74 The Commission considers that, following implementation of the Proposed Transaction, Live Nation will have the ability to foreclose rival promoters of MCD through Live Nation’s ownership and operation of key live event venues in the island of Ireland, in particular, the 3Arena.
- 7.75 First, the Commission found that indoor venues were an essential input for the promotion of live music events in the island of Ireland.
- 7.76 Second, as outlined in paragraphs 4.33 to 4.44 above, the Commission considered that there are no readily available substitutes to the 3Arena for promoters of live music events in the island of Ireland. The 3Arena is the largest indoor venue in

²³⁶ Merger notification form, page 66.

²³⁷ From Commission discussions with third party promoters (for example, see note of meeting with [X] dated 28 January 2019 and note of call with [X] dated 14 December.

the island of Ireland and has more than double the maximum capacity of the next largest indoor venue in Dublin, the RDS, which has a maximum capacity of 7,000. Furthermore, several promoters told the Commission that other indoor venues on the island of Ireland are not close substitutes for the 3Arena, given in particular they are smaller in size and artists would have to play more nights to sell the same number of tickets.²³⁸ As a result, rival promoters of MCD in the island of Ireland are likely to have little option but to accept any increase in the cost of renting the 3Arena from Live Nation following completion of the Proposed Transaction. In the notification, the notifying parties expressed the view that there are a large number of alternative venues of similar or larger capacity from which artists and promoters can choose, each of which has the experience and capability to host significant live music events, including indoor venues such as the SSE Arena and the INEC in Killarney. However, the capacity of the INEC in Killarney (maximum of 3,800) is not comparable to the 3Arena (maximum of 14,600). As noted in paragraph 4.40 above, one third party expressed the view to the Commission that it would typically not be profitable to switch an artist from the 3Arena in Dublin to the SSE Arena in Belfast, given that artists (and their agents) typically have a preference for performing in Dublin when touring in the island of Ireland.

- 7.77 However, for the reasons set out below, the Commission considers that, following completion of the Proposed Transaction, Live Nation will not have the incentive to foreclose rival promoters of MCD through Live Nation's ownership and operation of key live event venues in the island of Ireland in the State, in particular the 3Arena.
- 7.78 Information and data provided to the Commission by the notifying parties indicate that any attempt by Live Nation to seek to foreclose rival promoters of MCD through Live Nation's operation of venues in the State is unlikely to be profitable.²³⁹ In particular, information and data provided to the Commission by the notifying parties indicates that the loss of profits to Live Nation as a result of a foreclosure strategy in relation to the operation of venues in the island of Ireland would outweigh any profits gained by MCD in the promotion of live music events in the island of Ireland.
- 7.79 It is also significant that, as noted above, third party promoters of live music events in the island of Ireland contacted by the Commission did not express any concerns about the possibility of not being able to access Live Nation venues following completion of the Proposed Transaction. Several promoters expressed the view to the Commission that such a foreclosure strategy would likely be unprofitable for Live Nation.

Conclusion

²³⁸ Some third parties expressed the view to the Commission that no close substitute to the 3Arena exists for high profile artists that are likely to sell out the 3Arena but who do not have a sufficiently high profile to sell out an outdoor venue. One third party expressed the view to the Commission that it would typically not be profitable to switch an artist from the 3Arena in Dublin to the SSE Arena in Belfast, given that artists (and their agents) typically have a preference for performing in Dublin when touring in the island of Ireland. Some third parties also expressed the view to the Commission that there is limited ability for promoters in the State to switch a live music event from the 3Arena to an indoor venue located outside Dublin. (see note of call with [redacted] of 10 October 2018).

²³⁹ RBB Economics paper titled "Analysis of Incentives to Foreclose Rival Promoters", dated 9 August 2018.

- 7.80 The Commission has concluded that, following completion of the Proposed Transaction, the notifying parties will not have the incentive to seek to foreclose promoters of live music events in the State which compete with MCD by restricting their access to venues operated by Live Nation in the State. The Commission has concluded that the Proposed Transaction will not give rise to competition concerns on the basis of this theory of harm.

Theory of Harm 5: Foreclosure of Promoters of Live Music Events in the State through information sharing

- 7.81 The Commission has considered whether, as a result of the implementation of the Proposed Transaction, Live Nation would have the ability and incentive to foreclose MCD's competitors by sharing with MCD, information supplied by third-party promoters during the process for booking venues for live events. Furthermore, the Commission has considered whether any such foreclosure could potentially lead to a substantial lessening of competition in the market for the promotion of live events in the island of Ireland.
- 7.82 The Commission's concerns centre on the "pencilling in process" which the Commission understands to be an industry standard approach for booking venues. The Commission understand that so-called "pencils" are allocated on a first-come, first-serve basis by a venue. The first promoter to approach a venue in relation to a particular date will be the first pencil, the second promoter to approach the venue about the same date will be the second pencil, and so on. Promoters are under no obligation to disclose to the venue the identity of the act at this stage, and promoters do not always tell venue operators the genre or name of the event when pencilling-in a date. However, details of the artist are generally disclosed to the venue in the event of a challenge by a lower pencil and this information can be provided before the promoter has finalised its contract with the artist. As such there is scope for confidential information regarding an artist's identity to flow from a third party promoter to MCD via a Live Nation venue.

Views of the notifying parties

- 7.83 The notifying parties did not express any views in the notification about this theory of harm.
- 7.84 The notifying parties provided the following information to the Commission concerning the method by which promoters of live music events in the State rent a live music venue:²⁴⁰

"This industry standard approach is applied at the 3Arena. The process is both simple and well-known to promoters, with pencils being allocated on a first-come, first-serve basis. The first promoter to approach a venue in relation to a particular date will be the first pencil, the second promoter to approach the venue about the same date will be the second pencil, and so on. As in other venues, promoters are under no obligation to disclose to

²⁴⁰ Response to Phase 2 RFI, dated 27 March 2019.

the venue the identity of the act at this stage, and promoters do not always tell venue operators the genre or name of the event when pencilling-in a date. Moreover, in order to maintain the integrity of the pencilling-in system, venue operators do not cancel a reservation in order to fill the venue with a more profitable act.”

If a second (or lower) pencil secures the artist, they return to the venue and seek to “challenge” the first pencil. It is only at this point, once the act has been secured by a promoter, that the identity of the act must be made known to the venue. At this point, the higher pencil will typically have 48 hours to either confirm or surrender the date with the venue. If the higher pencil confirms their act and date, the lower pencil loses out on the date, but if they do not confirm within the 48 hour period, the higher pencil will typically have 48 hours to either confirm or surrender the date with the venue. If the higher pencil confirms their act and date, the lower pencil loses out on the date, but if they do not confirm within the 48 hour period, the higher pencil loses the date and the challenger then takes the date as confirmed.”

Views of Third Parties

- 7.85 [X] expressed a concern to the Commission that, following completion of the Proposed Transaction, the notifying parties may have the ability and incentive to use commercially sensitive information provided by third party promoters to venues owned or operated by Live Nation in the island of Ireland, in order to gain a competitive advantage in the market for the promotion of live music events in the island of Ireland.²⁴¹
- 7.86 [X] informed the Commission that they compete to win the right to promote an artist in the island of Ireland by bidding in an open tender, or, in some cases, by approaching the artist or the artist’s manager/agent directly.²⁴² Promoters of live music events then approach venue operators in order to “pencil in” a date as part of a national or international tour. Once the promoter has won the right to promote an artist, they will confirm the date and other relevant details with the venue and pay the rental fee to the venue.
- 7.87 [X] and [X] expressed the view to the Commission that the information submitted by third party promoters to a venue is commercially sensitive and considered

²⁴¹ From Commission discussions with third party promoters (see note of call with [X] dated 14 December 2018).

²⁴² Many promoters informed the Commission that in order to be successful it is important to develop and maintain strong business relationships with artists and their management.



confidential up until the point at which the promoter enters into a formal agreement with an artist.²⁴³

- 7.88 [X] expressed the view to the Commission that the information provided to venues operated by Live Nation as a result of the “pencilling-in” booking process could provide MCD with the ability and incentive to undermine rival promoters’ ability to compete effectively in the market for the promotion of live music events in the island of Ireland.²⁴⁴

The Commission’s assessment

- 7.89 Information provided by the notifying parties to the Commission indicates that the “pencilling-in” booking process used at the 3Arena: i) operates on a first come, first serve basis; ii) does not require promoters of live music events to divulge the identity of the artist at the pencilling-in stage; and iii) does require promoters of live music events to divulge the artist’s identity in the case of a challenge (i.e., where a promoter wishes to “pencil in” an artist on a date already “pencilled-in” by a rival promoter).

- 7.90 The Commission assessed the concerns raised by third party promoters of live music events in the island of Ireland by considering the following two questions:

- a) Following completion of the Proposed Transaction, would Live Nation have the ability and incentive to use commercially sensitive information provided by MCD’s rivals to venues operated by Live Nation in order to undermine their ability to compete effectively in the market for the promotion of live music events in the island of Ireland?
 - b) Following completion of the Proposed Transaction, would Live Nation have the ability and incentive to change the “pencilling-in” booking process used at the 3Arena in order to require promoters to provide information on the artist’s identity at the time of “pencilling-in”?
- a) *Following completion of the Proposed Transaction, would Live Nation have the ability and incentive to use commercially sensitive information provided by MCD’s rivals to venues operated by Live Nation in order to undermine their ability to compete effectively in the market for the promotion of live music events in the State?*

- 7.91 Information provided to the Commission by the notifying parties indicates that, in the event that a second promoter challenges the first promoter’s “pencil” at the 3Arena, the first promoter must provide to Live Nation the name of the artist that they are in negotiations with. Such information is commercially sensitive to the promoter.

- 7.92 Live Nation informed the Commission that it does not currently share other promoters’ commercially sensitive information with MCD. However, following

²⁴³ From Commission discussions with third party promoters (for example, see notes of calls with [X] dated 14 December 2018 and response to Commission questionnaire by [X], dated 17 June 2019.

²⁴⁴ From Commission discussions with third party promoters (for example, see note of meeting with [X] dated 28 January 2019 and note of call with [X] dated 14 December 2018.

completion of the Proposed Transaction, the Commission considers that Live Nation may have the ability and incentive to do so as such information could be used by MCD in negotiations with artists. This is likely to have the effect of harming rival promoters of live music events in the State.

b) *Following completion of the Proposed Transaction, would Live Nation have the ability and incentive to change the “pencilling-in” booking process used at the 3Arena in order to require promoters to provide information on the artist’s identity at the time of “pencilling-in”?*

7.93 The Commission assessed whether, following completion of the Proposed Transaction, the notifying parties will have the ability and incentive to change the “pencilling-in” booking process used at the 3Arena, in order to require promoters of live music events to provide the identity of artists at the “pencilling-in” stage of the booking process. The Commission assessed whether information regarding the identity of artists provided to venues operated by Live Nation as a result of the “pencilling-in” booking process could provide MCD with the ability and incentive to undermine rival promoters’ ability to compete effectively in the market for the promotion of live music events in the State.

7.94 The Commission considers that the position of Live Nation in the market for the supply of indoor venues in the State means that it is likely to have the ability to change the “pencilling-in” booking process used at the 3Arena following completion of the Proposed Transaction. As there are no indoor venues in the State of comparable size to the 3Arena, the Commission’s view is that promoters of live music events would likely have to accept any changes to the “pencilling-in” booking process used at the 3Arena.

7.95 The notifying parties informed the Commission that: *“There are no plans to change the industry wide pencilling in policy at the 3Arena following the completion of the Proposed Transaction.”*

7.96 The Commission considers that Live Nation is also likely to have the incentive to change the “pencilling-in” booking process used at the 3Arena following completion of the Proposed Transaction. One promoter, [X], expressed this concern to the Commission. Such a change to the “pencilling-in” booking process used at the 3Arena is likely to benefit MCD by undermining the ability of its rivals to compete effectively in the market for the promotion of live music events in the island of Ireland. In particular, by gaining access to commercially sensitive information on the artist’s identity during the “pencilling-in” booking process, MCD will have the opportunity and incentive to contact artists (and/or their management) with a view to “poaching” artists from rival promoters. The Commission considers that Live Nation will have the incentive to change the “pencilling-in” booking process as it is unlikely that, as a result of such a change, Live Nation would lose profits as a result of promoters switching to a rival operator of indoor venues. As set out in section 4 above, Live Nation is the largest supplier of indoor venues for live music events in the State as a result of its ownership of the 3Arena, which has a very high market share and there are a lack of viable substitutes for the 3Arena.

Conclusion

7.97 The Commission had concerns that, following implementation of the Proposed Transaction, Live Nation may have the ability and incentive to share with MCD commercially sensitive information provided to Live Nation by rival promoters of live music events through the “pencilling-in” booking process used at the 3Arena and other venues operated by Live Nation.

Proposals Submitted by Live Nation and MCD

7.98 On 5 July 2019, Live Nation and MCD submitted to the Commission formal proposals under section 20(3) of the Act to ameliorate the potential vertical competition concerns identified by the Commission (described in paragraphs 7.81 to 7.97 above).

7.99 The Commission was satisfied that this proposal ameliorates its concerns about the Proposed Transaction and took it into account in reaching its conclusion that the Proposed Transaction will not give rise to any anti-competitive vertical effects in the market for the promotion of live music events.

8. PROPOSALS TO ADDRESS COMPETITION CONCERNS

- 8.1 In light of the analysis as set out in Chapters 6 and 7 above, the Commission had competition concerns about the potential impact of the Proposed Transaction on the basis of the horizontal overlap between Live Nation and MCD for the supply of live music festivals which focus on popular music genres and vertical relationships between the notifying parties in the island of Ireland in the following product markets:
- a) The promotion of live music events;
 - b) The provision of Outsourced Primary Ticketing Services for live events; and
 - c) The supply of indoor venues for live events.
- 8.2 During the full (Phase 2) investigation, the Commission informed the notifying parties of its concerns regarding the potential impact of the Proposed Transaction on competition in the abovementioned markets. In May 2019, Live Nation and MCD submitted draft proposals to the Commission in accordance with section 20(3) of the Act with a view to ameliorating the potential effects on competition of the Proposed Transaction which were identified by the Commission during its investigation.²⁴⁵
- 8.3 The Commission engaged further with the notifying parties and their legal advisors to ensure that the proposals would fully ameliorate the potential competition concerns identified by the Commission.

Proposals Submitted by Live Nation and MCD

- 8.4 On 5 July 2019, Live Nation and MCD submitted to the Commission final proposals under section 20(3) of the Act which provide, *inter alia*, that:
- Each of Live Nation and MCD shall inform the Commission in writing in advance of any proposal by Live Nation or MCD to acquire sole or joint control of a live music festival or an entity that controls one or more live music festivals in the State (the “Merger Notification Commitment”);
 - Live Nation shall not disclose to MCD confidential information disclosed to it by a third party promoter regarding the identity of an artist that such third party promoter proposes to promote in the State at a venue owned, operated or managed by Live Nation (the “Confidentiality Commitment”);
 - Each of Live Nation and MCD shall not refuse or threaten to refuse to provide live events to a third party venue in the State because that third party venue has contracted with, has contemplated contracting with, or

²⁴⁵ The submission of these proposals by Live Nation and MCD extended the deadline within which the Commission was required to conclude its assessment of the competitive effects of the Proposed Transaction in Phase 2 by 15 working days to 135 working days in accordance with section 21(4) of the Act.

has threatened to contract with, a supplier of Outsourced Primary Ticketing Services other than Ticketmaster (the “Venues Commitment”);

- Each of Live Nation and MCD shall ensure that any contract or other negotiations between Live Nation and MCD in respect of the provision of Outsourced Primary Ticketing Services for live events by Ticketmaster to MCD are conducted on an arm’s length basis (the “Arm’s Length Commitment”).

- 8.5 The Commission considers that the Merger Notification Commitment is required given: (a) the high level of concentration in the market for the supply of live music festivals in the State following completion of the Proposed Transaction, and (b) the notifying parties’ high combined share of [55-60]% in this market (as set out in chapter 6 above).
- 8.6 The Commission considers that the Confidentiality Commitment ensures that existing or potential rival promoters of live music events will not be disadvantaged in the market for the promotion of live music events in the State following completion of the Proposed Transaction.
- 8.7 The Commission considers that the Venues Commitment ensures that existing or potential rival providers of Outsourced Primary Ticketing Services for live events to Ticketmaster will not be disadvantaged in the market for the provision of Outsourced Primary Ticketing Services for live events in the State following completion of the Proposed Transaction.
- 8.8 The Commission considers that the Arm’s Length Commitment ensures that, following completion of the Proposed Transaction, each of Live Nation and MCD will act independently and in its own interest at an arm’s length during any contract or other negotiations in respect of the provision of Outsourced Primary Ticketing Services for live events by Ticketmaster to MCD.
- 8.9 The Commission is of the view that the proposals submitted by Live Nation and MCD on 5 July 2019 are sufficient to address the competition concerns identified by the Commission during its investigation. The Commission has taken these proposals into account for the purpose of its assessment of the effect on competition of the Proposed Transaction. In light of these proposals (which form part of the basis of its determination), and in light of its analysis as set out in this determination, the Commission has determined that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.
- 8.10 In accordance with section 20(3) and section 26(1) and section 26(4) of the Act, the proposals submitted by Live Nation and MCD have become commitments binding upon Live Nation and MCD. The proposals are set out in full in Chapter 10, “Determination”, below.

9. ANCILLARY RESTRAINTS

- 9.1 The SPA contains a number of restrictive obligations on MCD. These include non-compete and non-solicitation obligations. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.²⁴⁶ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

²⁴⁶ In this respect, the Commission follows the approach adopted by the European Commission in paragraphs 20 and 26 of its Notice on restrictions directly related and necessary to concentrations [2005] OJ C56/03 (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29>).

10. DETERMINATION

- 10.1 Pursuant to section 20(3) of the Competition Act 2002, as amended, (the “Act”) Live Nation (Music) UK Limited (“Live Nation”) and MCD Productions Unlimited Company (“MCD”) have submitted to the Competition and Consumer Protection Commission (the “Commission”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services in the State, with a view to the said proposals becoming binding on Live Nation and MCD.
- 10.2 The Commission has taken the proposals into account and, in light of the said proposals (which form part of the basis of its determination), has determined in accordance with section 22(3)(a) of the Act that the result of the proposed acquisition whereby LN-Gaiety Holdings Limited, via its wholly owned subsidiary LN-Gaiety Holdings Ireland Limited, would acquire sole control of MCD, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect. Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, had regard to any relevant international obligations of the State, and concluded that there were none.

For the Competition and Consumer Protection Commission

Isolde Goggin
Chairperson

Competition and Consumer Protection Commission

11. LIVE NATION AND MCD'S PROPOSALS

M/18/067 – LN-Gaiety/MCD Productions
Proposals by Live Nation (Music) UK Limited and MCD Productions Unlimited Company
to the Commission (the “Proposals”)
XX XXXX 2019

Live Nation Music (UK) Limited (“Live Nation”) and MCD Productions Unlimited Company (“MCD”) hereby submit to the Commission the following Proposals under section 20(3) of the Competition Act 2002 (as amended):

Recitals

- A. On 14 August 2018, LN-Gaiety Holdings Limited (“LN-Gaiety”) and MCD jointly notified to the Commission under Part 3 of the Act a proposed transaction whereby LN-Gaiety, via its wholly-owned subsidiary LN Gaiety Holdings Ireland Limited, would acquire sole control of MCD from its ultimate parent company Gaiety Investments Unlimited Company (“Gaiety”) (the “Proposed Transaction”). LN-Gaiety is jointly controlled by Live Nation and Ronmall Unlimited Company (through its subsidiary Gaiety).
- B. On 3 January 2019, the Commission made a determination that it intended to carry out an investigation under section 22 of the Act in relation to the Proposed Transaction.
- C. Live Nation and MCD are submitting these Proposals pursuant to section 20(3) of the Act for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services in the State and with a view to the Proposals becoming binding on Live Nation and MCD if the Commission takes the Proposals into account and states in writing that the Proposals form the basis or part of the basis of a Determination.
- D. The Proposals are intended to require Live Nation and/or MCD to inform the Commission in advance of any proposal to acquire a Festival or to acquire control of a Festival Operator during the Term where this would not otherwise be notifiable compulsorily to the Commission or to the European Commission, and, if requested to do so by the Commission, to notify voluntarily any such Proposed Acquisition to the Commission.
- E. The Proposals are intended to alleviate concerns identified by the Commission which result from vertical overlaps in the activities of Live Nation and MCD in the provision of Primary Ticketing Services, the promotion of live events, and the operation of live event venues in the State.

Definitions

1. In these Proposals, the following terms shall have the following meanings:



“**Act**” means the Competition Act 2002 (as amended);

“**Arm’s Length Basis**” means MCD Productions Unlimited Company and all its subsidiaries, and TMI each acting independently and in its own interest at an arm’s length on the basis of normal commercial conditions;

“**Arm’s Length Commitment Term**” means a period of [X] years beginning on the Commencement Date;

“**Booking Process**” means the process whereby a Promoter or the agent of an artist books a Live Nation Venue for a live event, including where a Promoter or the agent of an artist attempts to provisionally secure or pencil-in a date for a live event at a Live Nation Venue;

“**Commencement Date**” means the date of the Determination;

“**Commission**” means the Competition and Consumer Protection Commission and its successors;

“**Confidential Information**” means the identity of an artist that a Third Party Promoter proposes to promote in the State, which is disclosed during the Booking Process by the Third Party Promoter or the agent of an artist, to a Live Nation Venue, Live Nation Venue Personnel or Live Nation;

“**Determination**” means a determination of the Commission under section 22(3)(a) of the Act that the Proposed Transaction may be put into effect;

“**EU Merger Regulation**” means Council Regulation (EC) No 139/2004 on the Control of Concentrations between Undertakings;

“**Festival**” means a live music festival that takes place in the State;

“**Festival Operator**” means an entity that controls one or more Festivals through a controlling interest or the right to operate and/or manage the Festival(s). The notion of control shall be interpreted pursuant to section 16 of the Act;

“**Live Nation**” means Live Nation (Music) UK Limited, a private limited company incorporated under the laws of England and Wales (registration no. 02409911), which has its registered office at 2nd Floor, Regent Arcade House, 19-25 Argyll Street, London, W1F 7TS, United Kingdom, its successors and assigns, and Live Nation Affiliates, including, for the avoidance of doubt, LN-Gaiety;

“**Live Nation Affiliates**” means all undertakings or persons which, directly or indirectly, control Live Nation, undertakings directly or indirectly controlled by Live Nation and/or by the ultimate parents of Live Nation, excluding MCD Productions Unlimited Company and its subsidiaries, whereby the notion of control shall be interpreted pursuant to section 16 of the Act;

“**Live Nation Venue**” means a live event venue located in the State that is owned, operated, or managed by Live Nation;



“Live Nation Venue Personnel” means any director, officer, manager, employee or representative of Live Nation involved in the operation or management of a Live Nation Venue;

“LN-Gaiety” means LN-Gaiety Holdings Limited, a private limited company incorporated under the laws of England and Wales (registration no. 05322257), which has its registered office at 2nd Floor, Regent Arcade House, 19-25 Argyll Street, London, W1F 7TS, United Kingdom, its successors and assigns, and Live Nation Affiliates;

“MCD” means MCD Productions Unlimited Company, a private unlimited company incorporated under the laws of Ireland (registration no. 348378), which has its registered office at 7 Park Road, Dun Laoghaire, Co. Dublin, A96 KP71, Ireland, its successors and assigns, and MCD Affiliates;

“MCD Affiliates” means all undertakings directly or indirectly controlled by MCD Productions Unlimited Company, whereby the notion of control shall be interpreted pursuant to section 16 of the Act;

“MCD Personnel” means any director, officer, manager, employee, representative of MCD;

“Primary Ticketing Services” means the sale and distribution of tickets for live events to consumers on behalf of Promoters and venues but does not include secondary ticket sales by consumers and professional resellers to other consumers;

“Promoter” means an entity that promotes live events in the State;

“Proposed Acquisition” means a proposal to acquire sole or joint control of a Festival or a Festival Operator where the acquisition would not be notifiable on a mandatory basis to the Commission pursuant to Part 3 of the Act (or its successor provision, if applicable) or notifiable to the European Commission under the EU Merger Regulation;

“Proposed Transaction” means the proposed transaction whereby LN-Gaiety, via its wholly-owned subsidiary LN Gaiety Holdings Ireland Limited, would acquire sole control of MCD Productions Unlimited Company from its ultimate parent company Gaiety Investments Unlimited Company;

“State” means the Republic of Ireland;

“Term” means a period of five years beginning on the Commencement Date;

“Third Party Promoter” means a Promoter that is not controlled by either Live Nation or MCD, whereby the notion of control shall be interpreted pursuant to section 16 of the Act;

“Third Party Venue” means a live event venue located in the State that is not owned, operated or managed by either Live Nation or MCD;

“TMI” means Ticketline Unlimited Company, a private unlimited company incorporated under the laws of Ireland (registration no. 135876), which has its

registered office at 2nd Floor College Park House, 20 Nassau Street, Dublin 2, Ireland, and TMI Affiliates.

“**TMI Affiliates**” means all undertakings or persons which, directly or indirectly, control TMI, undertakings directly or indirectly controlled by TMI and/or by the ultimate parents of TMI, excluding MCD, whereby the notion of control shall be interpreted pursuant to section 16 of the Act;

Proposals

Merger notification commitment

1. During the Term, each of Live Nation and MCD undertakes to:
 - (a) inform the Commission in writing in advance of any Proposed Acquisition by it;
 - (b) if requested to do so by the Commission, notify any such Proposed Acquisition to the Commission in accordance with section 18(3) of the Act (or its successor provision, if applicable);
 - (c) procure that Live Nation Affiliates and MCD Affiliates will inform the Commission in writing of any Proposed Acquisition by a Live Nation Affiliate or an MCD Affiliate; and
 - (d) if requested to do so by the Commission, procure that Live Nation Affiliates and MCD Affiliates will notify any such Proposed Acquisition by a Live Nation Affiliate or MCD Affiliate to the Commission in accordance with section 18(3) of the Act (or its successor provision, if applicable).

Confidentiality commitment

2. During the Term, Live Nation undertakes that:
 - (e) inform the Commission in writing in advance of any Proposed Acquisition by it;
 - (f) Live Nation shall take all reasonable steps to ensure that it shall not disclose, directly or indirectly, Confidential Information to, nor discuss Confidential Information with, MCD or MCD Personnel;
 - (g) Live Nation shall procure that Live Nation Affiliates and Live Nation Venue Personnel take all reasonable steps to ensure that they shall not disclose, directly or indirectly, Confidential Information to, nor discuss Confidential Information with, MCD or MCD Personnel; and
 - (h) Live Nation shall, and where necessary, shall procure that Live Nation Affiliates shall inform Live Nation Venue Personnel of their responsibilities pursuant to the Proposals and provide both training and written guidelines to them in that regard.



3. During the Term, MCD undertakes that:
 - (i) MCD shall take all reasonable steps to ensure that it shall not solicit, directly or indirectly, Confidential Information from, or discuss Confidential Information with, Live Nation Venue Personnel;
 - (j) MCD shall procure that MCD Affiliates and MCD Personnel take all reasonable steps to ensure that they shall not solicit, directly or indirectly, Confidential Information from, or discuss Confidential Information with, Live Nation Venue Personnel; and
 - (k) MCD shall, and, where necessary, shall procure that MCD Affiliates shall, inform MCD Personnel of their responsibilities pursuant to the Proposals and provide both training and written guidelines to them in that regard.

Venues commitment

4. During the Term, Live Nation and MCD undertake that they shall not, and they shall procure that Live Nation Affiliates and MCD Affiliates shall not:
 - (l) refuse or directly or indirectly threaten to refuse to provide live events to a Third Party Venue; or
 - (m) provide or directly or indirectly threaten to provide live events to a Third Party Venue on terms which are less favourable than the terms of an existing contract between MCD or MCD Affiliates, and that Third Party Venue,

because that Third Party Venue has contracted with, has contemplated contracting with, or has threatened to contract with, a supplier of Primary Ticketing Services other than TMI.

5. For the avoidance of doubt, outside of the circumstances described in paragraph 4, paragraph 4 shall not restrict or inhibit MCD's or MCD Affiliates' discretion to determine where to book live events in the State or to negotiate contractual terms with Third Party Venues.
6. For the avoidance of doubt, outside of the circumstances described in paragraph 4, paragraph 4 shall not restrict or inhibit MCD's or MCD Affiliates' discretion to determine where to book live events in the State or to negotiate contractual terms with Third Party Venues.

Arm's Length Commitment

7. During the Arm's Length Commitment Term, MCD Productions Unlimited Company and all its subsidiaries, and Live Nation undertake that any contract or other negotiations in respect of the supply of Primary Ticketing Services by TMI to MCD



Productions Unlimited Company and all its subsidiaries, will be conducted on an Arm's Length Basis.

8. For the avoidance of doubt, paragraph 6 does not in any way restrict or inhibit MCD's freedom of contract or place any obligation on MCD to contract with a party other than TMI or to accept any terms offered by a party other than TMI.

Compliance

9. For the avoidance of doubt, paragraph 6 does not in any way restrict or inhibit MCD's freedom of contract or place any obligation on MCD to contract with a party other than TMI or to accept any terms offered by a party other than TMI.
10. Live Nation shall submit to the Commission within twelve (12) months of the Commencement Date, and, at intervals of one year thereafter during the Arm's Length Commitment Term, a written certificate in the form set out in Schedule A, signed by a director of Live Nation confirming that Live Nation has complied with its obligations set out in these Proposals in the preceding period.
11. MCD shall submit to the Commission within twelve (12) months of the Commencement Date, and, at intervals of one year thereafter during the Arm's Length Commitment Term, a written certificate in the form set out in Schedule B, signed by a director of MCD confirming that MCD has complied with its obligations set out in these Proposals in the preceding period.
12. The Commission reserves the right to require Live Nation or MCD to provide to the Commission, at any time, such additional information as the Commission requires in order for the Commission to verify compliance with its obligations set out in these Proposals. Live Nation and MCD shall, and shall procure that their Affiliates' shall, promptly provide to the Commission all such information in its possession.
13. The Commission may provide such written directions to Live Nation or MCD from time to time as needed to require compliance with these Proposals. Live Nation and MCD shall, and shall procure that their Affiliates' shall, comply promptly with any written direction issued by the Commission pursuant to these Proposals.
14. Each of Live Nation and MCD shall nominate a director who will have responsibility for monitoring compliance by it with these Proposals, for responding to any request(s) for information and for complying with any written direction(s) received from the Commission in connection with these Proposals. Each of Live Nation and MCD shall provide the name and contact details of such director to the Commission and shall provide written notice to the Commission in advance of any change of the director nominated pursuant to this paragraph of the Proposals and shall promptly provide to the Commission the name and contact details of any director who is to replace the prior nominated director.
15. With the exception of paragraph 6 (the Arm's Length Commitment) and paragraphs 9 to 13 (Compliance), these Proposals will come into effect on the Commencement Date and will remain in force during the Term. Paragraph 7 and paragraphs 9 to 13 will remain in force during the Arm's Length Commitment. For the avoidance of

doubt, the Proposals shall have no retrospective effect.

Review clauses

16. The Commission may at its sole discretion waive, modify, or substitute any provision in these Proposals of its own motion at any time, subject to agreement with Live Nation and MCD.
17. The Commission may at its sole discretion waive, modify, or substitute any provision in these Proposals in response to a reasoned written request from Live Nation and MCD.



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Competition and
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