

CCPC

Investigation Report and Outcome:

A report on the CCPC's investigation into suspected anti-competitive practices in the provision of tickets and ticketing services in the State

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1. Overview

- 1.1 In January 2017, the Competition and Consumer Protection Commission (the “CCPC”) opened an investigation into suspected anti-competitive practices in the provision of tickets and ticketing services in the State and on the island of Ireland contrary to any or all of: (i) section 5 of the Competition Act 2002, as amended (the “2002 Act”) and/or Article 102 of the Treaty on the Functioning of the European Union (“TFEU”); and (ii) section 4 of the 2002 Act and/or Article 101 TFEU (the “Investigation”).¹
- 1.2 The Investigation examined whether Ticketline Unlimited Company trading as Ticketmaster Ireland (“Ticketmaster Ireland”) may have abused a dominant position by entering into long-term, exclusive agreements with live event organisers and venues, contrary to section 5 of the 2002 Act and/or Article 102 TFEU. Ticketmaster Ireland holds a very significant share of the market for the supply of outsourced ticketing services to live events in the State. The Investigation also examined whether the agreements were in themselves anti-competitive contrary to section 4 of the 2002 Act and/or Article 101 TFEU. The Investigation covered the period from 1 January 2012 to 13 March 2020.
- 1.3 The Investigation identified a number of competition concerns and on 13 March 2020, the CCPC issued to Ticketmaster Ireland a letter of initiation and preliminary findings² in the Investigation (the “Preliminary Findings”). The Preliminary Findings formally set out the CCPC’s identified competition concerns and offered Ticketmaster Ireland an opportunity to address these concerns by means of an offer of adequate remedies. Letters of initiation and preliminary findings were also sent to two of the largest live event organisers in Ireland, MCD Productions Limited (“MCD”) and Aiken Promotions (Ireland) Unlimited Company (“Aiken”), both of whom had entered into ticketing agreements with Ticketmaster Ireland during the period under investigation.

¹ As set out further in section 2 below, this Investigation and its outcome supersede that of the CCPC’s predecessor, the Competition Authority (the “Competition Authority”), which concluded in 2005.

² Note that the term “preliminary findings” is used because, under Irish law, only the courts may make a finding of fact in respect of breaches of competition law. The CCPC may therefore only make “preliminary findings” at the conclusion of its investigations and, where appropriate, initiate proceedings against the party under investigation before the civil or criminal courts for determination. Note that the CCPC’s options for addressing potential competition law infringements will be enhanced with the implementation of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

1.4 Ticketmaster Ireland did not agree with the Preliminary Findings, and denied that it had infringed section 5 of the 2002 Act and/or Article 102 TFEU, and section 4 of the 2002 Act and/or Article 101 TFEU. Notwithstanding, following constructive engagement between the CCPC and Ticketmaster Ireland, the CCPC accepted remedies proposed by Ticketmaster Ireland to address the identified competition concerns. The remedies were set out in a commitment agreement in which Ticketmaster Ireland formally committed to make specific changes to its current and future contracts with live event organisers and venues operating in the State (the “Commitment Agreement”). The CCPC applied to the High Court, with Ticketmaster Ireland’s consent, to have the Commitment Agreement between the CCPC and Ticketmaster Ireland made an order of court pursuant to section 14B of the 2002 Act. The order was granted and came into effect on 29 January 2021.

2. Background

Previous investigation by the Competition Authority

- 2.1 The CCPC's predecessor, the Competition Authority, previously carried out an investigation into certain arrangements between Ticketmaster Ireland and its contractual partners, MCD and Aiken. The Competition Authority's investigation concluded in 2005 without any finding of a potential breach of competition law. The scope of the CCPC's Investigation was significantly wider than the Competition Authority's investigation, and took account of material developments and trends in the ticketing services sector on the island of Ireland since the conclusion of the Competition Authority's investigation in 2005.
- 2.2 The CCPC found that, in the 15-year period since the conclusion of the Competition Authority's investigation, Ticketmaster Ireland maintained its position as the predominant provider of outsourced ticketing services active in the State. Although several new ticketing companies have sought to challenge Ticketmaster Ireland's position, none has emerged as a successful rival. In addition, contrary to the Competition Authority's findings in 2005 in respect of likely future trends, the CCPC found no evidence that live event organisers sufficiently switched to alternative ticketing service providers (such as those primary ticketing companies operating in Great Britain or Europe) or self-supplied their own ticketing requirements. The CCPC also noted further changes in the market such as the vertical integration of Ticketmaster Ireland in Live Nation Entertainment, Inc. ("Live Nation") since 2010;³ and the acquisition by LN-Gaiety Holdings Limited (a subsidiary of Live Nation) of MCD, which was cleared by the CCPC on 5 July 2019 subject to a number of legally binding commitments.

³ Ticketmaster Ireland is part of "*Ticketmaster*", the ticketing business of Live Nation and its subsidiaries.

3. The CCPC Investigation

Steps in the Investigation

- 3.1 The Investigation covered the period from 1 January 2012 to 13 March 2020, and addressed conduct on the part of Ticketmaster Ireland and certain of its contractual partners (live event organisers and venues) during that period. Information was initially collected by the CCPC by issuing formal requests for information (“RFIs”). The CCPC has the power to issue these requests under section 18(1)(d) of the Competition and Consumer Protection Act 2014 (the “2014 Act”). The CCPC also obtained evidence by interviewing witnesses in summons hearings conducted under section 18(1)(a), (b) and (c) of the 2014 Act.
- 3.2 During the Investigation, the CCPC gathered information and evidence from Ticketmaster Ireland and other parties involved in the Investigation as well as a range of other relevant sources including parties who had entered into agreements with Ticketmaster Ireland for the provision of outsourced ticketing services in the State or on the island of Ireland, Ticketmaster Ireland’s competitors, live event organisers, venues on the island of Ireland, and primary ticketing companies operating in Great Britain. The CCPC received oral and documentary submissions from Ticketmaster Ireland and other parties, and reviewed complaints received from competitors, live event organisers and consumers. The CCPC also considered relevant information in the public domain. Ticketmaster Ireland and its contractual partners, including MCD and Aiken, cooperated fully with the CCPC throughout the Investigation.

Industry Background

- 3.3 The sale and distribution of tickets for live events to the general public on behalf of large live event organisers and/or venues are typically managed by specialised companies, called primary ticketing companies (“Primary Ticketing Companies”). The services provided by Primary Ticketing Companies to live event organisers and/or venues are referred to collectively in the Investigation as “Outsourced Primary Ticketing Services”.⁴ At the time of the

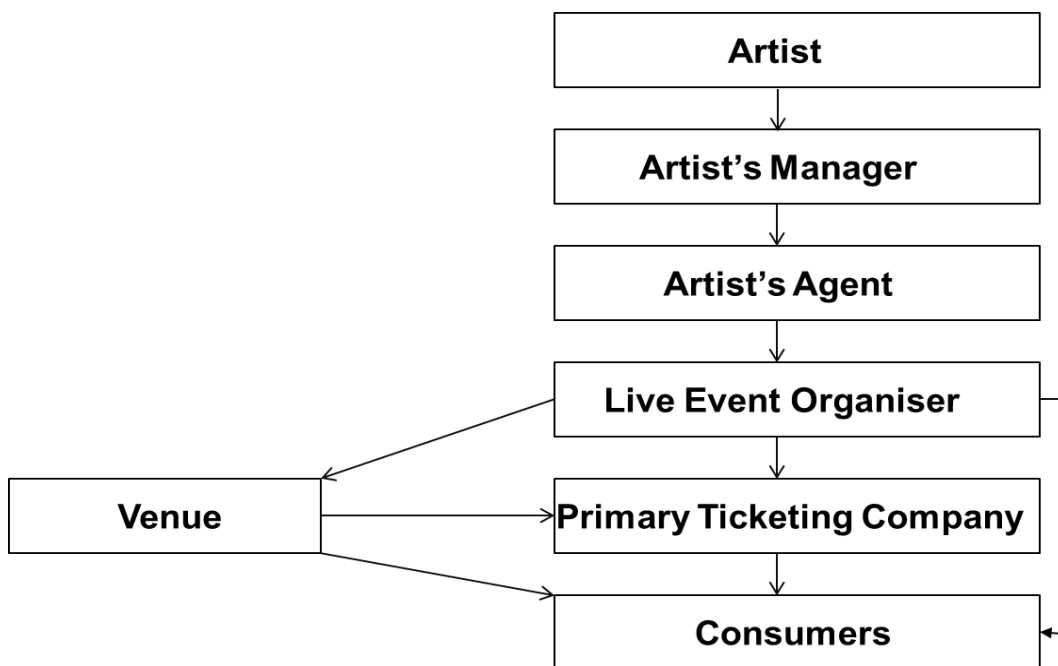
⁴ Such services typically include: (i) the provision of technology, including access to ticketing software and hardware; (ii) the provision of staff to live event organisers and/or Venues; (iii) selling tickets to consumers through their websites, mobile applications, retail outlets and call centres; (iv) the fulfilment of ticketing purchases (i.e., printing and distributing tickets); (v) sales reporting; and (vi) processing transactions and settling net proceeds from ticket sales.

Investigation, the main Primary Ticketing Companies operating in the State were Ticketmaster Ireland, Oshi Software Limited (“Tickets.ie”) and Eventbrite Operations (IE) Limited (“Eventbrite”).

3.4 Ticketing services may also be bought by organisers of other types of events (e.g., exhibitions, museums). There are differences in the types of service required by live event organisers and organisers of other types of events.

3.5 As Figure 1 shows, the supply chain for live music events is complex, and involves a number of parties, with each playing an important role.

Figure 1: Supply chain for live music events



Source: The CCPC's analysis

3.6 The Investigation concerned the supply of Outsourced Primary Ticketing Services to both live event organisers and venues on the island of Ireland. Venues play an important part in the organisational supply chain for live events. In particular, the availability, type (i.e., indoor/outdoor), location and capacity of a venue are all important considerations for live event organisers when choosing a particular venue to host a live event.

- 3.7 Live event organisers and venues can, and do, sell tickets for live events to consumers directly (referred to as the “self-supply” of ticketing services).⁵ Such self-supply is usually facilitated by companies that license their ticketing software to live event organisers and venues (“Ticketing Software Providers”). The CCPC found that Ticketmaster Ireland,⁶ Tickets.ie and Eventbrite all offered ticketing software services to self-supplying live event organisers and venues in addition to their provision of Outsourced Primary Ticketing Services. At the time of the Investigation, the CCPC noted that there were a number of other Ticketing Software Providers present on the island of Ireland, including Future Ticketing Limited, Vivaticket S.P.A., Spektrix Limited, Tessitura Network (UK) Limited, Tickets.Com Limited, Ticketstop.ie, Ticketbooth and Ticketsolve Limited.
- 3.8 Tickets purchased by consumers and professional resellers from Primary Ticketing Companies or directly from live event organisers and venues may also be re-sold either in person or online by, for example, using online ticket resale platforms (referred to as “Ticket Resale Marketplaces”), such as Viagogo AG, StubHub, Inc., or Ticketmaster Ireland’s own fan-to-fan exchange.

⁵ Examples of live event organisers which self-supply ticketing services include Connacht Rugby and numerous League of Ireland football clubs. Venues that self-supply ticketing services on the island of Ireland include the National Concert Hall, the Waterfront Hall, the Helix, the Abbey Theatre and the Gate Theatre.

⁶ Live Nation’s *Ticketmaster* business offers ticketing services to self-supplying live event organisers and/or venues via Ticketweb and Universe brands.

4. Preliminary Findings

Introduction

- 4.1 Section 4(1) of the 2002 Act provides that all agreements between undertakings that have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State are prohibited and void. Section 4(5) of the 2002 Act provides an exception to this where the agreement, though restrictive of competition, enhances economic efficiency. This provision mirrors Article 101 TFEU, save that the prohibition under EU law requires that there is an effect on trade between Member States of the European Union (the “EU”).
- 4.2 Section 5(1) of the 2002 Act prohibits any abuse by one or more undertakings of a dominant position in trade for any goods or services in the State or in any part of the State. Article 102 TFEU prohibits an abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it in so far as it may affect trade between Member States of the EU.
- 4.3 Section 14A of the 2002 Act (as inserted by section 4 of the Competition (Amendment) Act 2012) empowers the CCPC to bring civil proceedings in respect of any agreement, concerted practice or abuse which is prohibited under section 4 or 5 of the 2002 Act. The sanctions provided for in such cases are an injunction or declaration by the court that the behaviour constitutes an infringement of section 4 or 5 of the 2002 Act or Articles 101 or 102 TFEU. In addition, where a court has found that an undertaking has abused a dominant position, the court may make an order requiring the undertaking to discontinue the abuse or adopt measures for the purpose of its ceasing to be in a dominant position or securing an adjustment of that position (which may include a measure requiring the sale of assets of the undertaking) within a specified period.
- 4.4 Section 14B of the 2002 Act (as inserted by section 5 of the Competition (Amendment) Act 2012) provides a mechanism whereby undertakings under investigation by the CCPC may avoid the institution of proceedings under section 14A of the 2002 Act by entering into an agreement with the CCPC to provide commitments regarding addressing competition concerns and their

future behaviour. The CCPC may apply, subject to the consent of the undertaking concerned, to the High Court to have such an agreement made an order of court.

Market definition

- 4.5 The CCPC's preliminary view, supported by internal documents submitted by Ticketmaster Ireland and third parties in the course of the Investigation, was that the relevant product market for the purpose of the Investigation was the market for the supply of Outsourced Primary Ticketing Services to live event organisers and/or venues. The CCPC's preliminary view was that the self-supply of ticketing services (i.e., where a live event organiser or venue sells tickets to consumers directly), the supply of tickets for non-live events, and the supply of ticket reselling services did not form part of the same relevant product market for the purposes of assessing the impact on competition of the practices or agreements concerned in this Investigation. Furthermore, the CCPC's preliminary view was that the relevant market for the supply of Outsourced Primary Ticketing Services should not be differentiated by the genre of live event.
- 4.6 Ticketmaster Ireland did not agree with the CCPC's preliminary definition of the relevant product market, and proposed that the market should include self-supply, and should also include the supply of tickets to non-live events. The CCPC considered these views, but maintained its preliminary view, as supported by the evidence, that for the purposes of the Investigation, the relevant product market was for the supply of Outsourced Primary Ticketing Services to live event organisers and/or venues. The CCPC also considered that a broader market definition as proposed by Ticketmaster Ireland would not materially affect the assessment of dominance and agreements entered by Ticketmaster and its contractual partners.
- 4.7 The CCPC's preliminary view, supported by internal documents submitted by Ticketmaster Ireland and third parties, was that the relevant geographic market for Outsourced Primary Ticketing Services was the island of Ireland. Ticketmaster Ireland did not disagree with this view. The major providers of Outsourced Primary Ticketing Services compete on an island of Ireland basis, and the largest live event organisers tend to purchase Outsourced Primary Ticketing Services for all live events on the island of Ireland (including live events taking place in Northern Ireland) as part of a single contract. Evidence before the CCPC indicated that

providers of Outsourced Primary Ticketing Services outside of the island of Ireland face significant barriers to entry if they wished to launch their services on the island of Ireland.

4.8 On this basis, the CCPC's preliminary view was that the relevant market for the purpose of the Investigation was the supply of Outsourced Primary Ticketing Services on the island of Ireland.

Assessment of whether Ticketmaster Ireland is dominant

4.9 The CCPC came to the preliminary view that Ticketmaster Ireland held, and continued to hold, a dominant position in the market for the supply of Outsourced Primary Ticketing Services on the island of Ireland.

4.10 The CCPC considered a number of factors, including those identified below, in coming to its preliminary view on dominance:

- Ticketmaster Ireland had a very **high share** of the market for the supply of Outsourced Primary Ticketing Services on the island of Ireland and a much higher share of that market than any of its competitors. Between January 2012 and December 2018, Ticketmaster Ireland's market share exceeded 90%, whether measured by revenue or by gross ticket value.⁷ Ticketmaster Ireland's annual market share has been, and at the time of the Investigation remained, more than ten times higher than those of its two nearest competitors;
- Ticketmaster Ireland's **profitability**. Ticketmaster Ireland's management accounts indicated that Ticketmaster Ireland's margins gradually increased throughout the Investigation period;
- Existing and potential competitors of Live Nation's *Ticketmaster* business did not exert an **effective competitive constraint** on Ticketmaster Ireland;
- The market for the supply of Outsourced Primary Ticketing Services was characterised by the existence of a number of significant **barriers to entry and expansion**. These included the terms of the ticketing agreements between Ticketmaster Ireland and its contractual partners; the reputation of Ticketmaster Ireland (and the *Ticketmaster* business); Ticketmaster Ireland's long-standing business relationships with live event

⁷ Gross ticket value measures gross revenue from the sale of tickets to live events and includes revenue from both the face value of sold tickets and any additional fees (e.g., service charges and facility fees).

organisers and venues; Ticketmaster Ireland's vertical relationship with Live Nation; economies of scale; and Ticketmaster Ireland's incumbency advantages including its consumer database; and

- The **lack of countervailing buyer power**, due to Ticketmaster Ireland's position as an unavoidable trading partner, and the absence of credible alternatives to which live event organisers and venues could switch.

4.11 Ticketmaster Ireland did not agree with the CCPC's preliminary assessment of dominance. In particular, Ticketmaster Ireland argued that, due to the small size of the Irish market, market shares are not a good proxy for market power. Further, Ticketmaster Ireland proposed that it is not an unavoidable trading partner, and that its customers could readily switch to an alternative ticketing provider.

4.12 The CCPC considered Ticketmaster Ireland's submissions, but came to the view that these submissions did not materially alter the CCPC's preliminary findings. The CCPC therefore maintained its preliminary finding that: (i) Ticketmaster Ireland was (and continued to be) dominant in the market for the supply of Outsourced Primary Ticketing Services to live event organisers and/or venues on the island of Ireland; and, (ii) Ticketmaster Ireland's dominant market position was frequently reinforced by incentive payments made by Ticketmaster Ireland to its contractual partners.

Assessment of whether Ticketmaster Ireland abused its alleged dominant position and concerns regarding anti-competitive agreements

4.13 The CCPC's preliminary view was that Ticketmaster Ireland had abused, and was continuing to abuse, its dominant position in the market for the supply of Outsourced Primary Ticketing Services on the island of Ireland by entering into long-term, exclusive ticketing agreements with live event organisers and venues on the island of Ireland which were capable of foreclosing or likely to foreclose competition in that market. The CCPC took the preliminary view that this conduct had the potential to infringe both sections 4 and 5 of the 2002 Act and/or Articles 101 and 102 TFEU.

4.14 In coming to this conclusion, the CCPC examined a number of Ticketmaster Ireland's ticketing agreements in force on 1 September 2019. These ticketing agreements were between

Ticketmaster Ireland and a number of its contractual partners (i.e., live event organisers and venues). The Investigation preliminarily found that all such ticketing agreements contained one or more of the following clauses:

- (i) advertising exclusivity, where Ticketmaster Ireland was the only advertised source of tickets to an event; and/or
- (ii) minimum ticket allocation quota providing that Ticketmaster Ireland would receive a specified minimum proportion (typically 80% or more) of the total tickets available for a live event organised or hosted by the Live Event Organiser/Venue; and/or
- (iii) in addition to ticket quotas, some of the recent ticketing agreements featured a clause expressly prohibiting Ticketmaster Ireland's contractual partners from allocating tickets to Ticketmaster's competitors.

4.15 In addition, most of the ticketing agreements examined by the CCPC were of a long duration, and provided for a fixed contract term which could be extended automatically at the end of the term subject to mutual agreement by both Ticketmaster Ireland and its contractual partner.

4.16 The Investigation found that clauses in Ticketmaster Ireland's agreements with live event organisers and venues that granted Ticketmaster Ireland exclusivity for long contract terms may have acted to foreclose the relevant market to the detriment of effective competition and, ultimately, consumers. The CCPC estimated that the proportion of the market for the supply of Outsourced Primary Ticketing Services on the island of Ireland that was foreclosed from effective competition in the Investigation period varied between 70% and 90% in any given year, depending on the metric used.

4.17 Given the interdependence of the long contract duration and exclusivity clauses in Ticketmaster Ireland's contracts, the CCPC considered it appropriate to consider the effect of these clauses collectively, rather than individually, when assessing their impact on competition in the relevant market. The CCPC's preliminary finding was that the cumulative effect of the long-term exclusivity clauses in Ticketmaster Ireland's agreements was to restrict or prevent competition in the relevant market, by limiting competitors' and new entrants' ability to enter and expand. The CCPC's exclusivity concerns were therefore compounded by the length of the

agreements, and further exacerbated by the inclusion of automatic renewal clauses in those agreements. Further, the CCPC's preliminary view was that Ticketmaster Ireland's dominant position in the market for the supply of Outsourced Primary Ticketing Services on the island of Ireland was reinforced by incentive "upfront" payments made by Ticketmaster Ireland to its contractual partners. In the CCPC's view, such payments encouraged Ticketmaster Ireland's contractual partners to enter into ticketing agreements containing exclusivity clauses.

4.18 Ticketmaster Ireland disputed the Preliminary Findings and expressed a view that exclusivity clauses and long contract durations did not have any anti-competitive effect, and that advance or upfront payments were not a means of encouraging customers to enter into multi-year exclusive agreements. In Ticketmaster Ireland's view, multi-year exclusive agreements allowed for the upfront financing of events and allowed customers to invest in infrastructure and technology.

4.19 The CCPC considered Ticketmaster Ireland's submissions, but maintained its preliminary view that exclusivity clauses had anti-competitive foreclosure effects and were likely to cause consumer harm, particularly when the agreements containing those exclusivity clauses are of a long duration. The Preliminary Findings were that Ticketmaster Ireland abused its dominant position by entering into long-term exclusive agreements with live event organisers and venues, and that such agreements had as their effect the prevention, restriction and/or distortion of competition. The CCPC notes that, had proceedings been brought under Section 14A of the 2002 Act, it would have been for the Court to decide on the merits of the case.

5. Outcome: Commitment Agreement & Section 14B Court Order

- 5.1 The Preliminary Findings set out the CCPC's view that Ticketmaster Ireland had infringed some or all of sections 4(1) and/or 5(1) of the 2002 Act, and/or Articles 101 and/or 102 TFEU in relation to the supply of Outsourced Primary Ticketing Services to organisers of live events and/or venues hosting live events on the island of Ireland. Section 14B of the 2002 Act provides a mechanism whereby undertakings under investigation by the CCPC may avoid the institution of proceedings under section 14A of the 2002 Act by entering into an agreement with the CCPC to provide commitments which address the CCPC's competition concerns and their future behaviour.⁸ An offer of remedies in response to the CCPC's Preliminary Findings does not imply recognition on the part of Ticketmaster Ireland that it had acted in violation of the competition law prohibitions contained in the 2002 Act and/or the TFEU.
- 5.2 Although it disputed the Preliminary Findings, Ticketmaster Ireland provided to the CCPC a draft Commitment Agreement which was intended to address the CCPC's competition concerns and bring the Investigation to a close. Ticketmaster Ireland subsequently engaged with the CCPC over a number of iterations of the draft Commitment Agreement for the purpose of adequately addressing the competition concerns identified by the CCPC.
- 5.3 MCD and Aiken also disputed the CCPC's preliminary findings as to the lawfulness of their contractual arrangements with Ticketmaster Ireland. Notwithstanding this position, MCD proposed to postpone engagement with the CCPC on potential remedies until such time as discussions between the CCPC and Ticketmaster Ireland had progressed. Aiken proposed steps that it could take to address the CCPC's concerns. However, in this instance, the CCPC considered that its engagement with Ticketmaster Ireland had the potential to result in specific commitments which would adequately address the identified competition concerns. Accordingly, the CCPC postponed its engagement with MCD and Aiken pending the outcome of that engagement.

⁸ Note that, although the geographic market for Outsourced Primary Ticketing Services is the island of Ireland, the CCPC's jurisdiction is the State.

- 5.4 The CCPC considered that Ticketmaster Ireland’s proposed Commitment Agreement addressed the competition concerns identified by the CCPC in the Preliminary Findings, and accepted on a preliminary basis to enter into the Commitment Agreement with Ticketmaster Ireland, subject to notification to the European Commission as required under Article 11(4) of Council Regulation (EC) No. 1/2003 of 16 December 2002. The CCPC also considered that the Commitment Agreement would address the competition concerns identified by the CCPC with regard to MCD and Aiken.
- 5.5 Following completion of the notification process to the European Commission, the CCPC signed the Commitment Agreement on 20 November 2020. The Commitment Agreement is published on the CCPC’s website [here](#), and is provided as an Annex to this report.
- 5.6 The CCPC’s concerns over exclusivity clauses and contract duration have been adequately addressed in the Commitment Agreement by:
- (i) removing exclusivity clauses from Ticketmaster Ireland’s agreements with venues;
 - (ii) limiting exclusivity clauses in Ticketmaster Ireland’s agreements with live event organisers to three years;
 - (iii) removing automatic renewal clauses from Ticketmaster Ireland’s agreements;
- and,
- (iv) limiting all of Ticketmaster Ireland’s agreements to a maximum duration of five years.
- 5.7 The CCPC recognises that the COVID-19 pandemic has had a very significant adverse impact on the live events industry. Given these exceptional circumstances, the CCPC has for this specific case permitted a limited period of exclusivity to be retained. The CCPC has agreed with Ticketmaster Ireland that its agreements with live event organisers may still contain exclusivity clauses, but that any such clauses can only apply for a period of up to three years.
- 5.8 The Commitment Agreement includes detailed compliance and monitoring obligations on Ticketmaster Ireland. For a term of seven years from the commencement of the Commitment Agreement, Ticketmaster Ireland will be required to report annually to the

CCPC on the status of compliance concerning new and existing agreements. In addition, Ticketmaster Ireland will be required to report and justify to the CCPC should it seek to extend the duration of new or existing agreements due to exceptional circumstances. The CCPC may, at the latest after five years from the commencement date of the Commitment Agreement, review to what extent the undertakings remain warranted to address the competition concerns identified by the CCPC in the Investigation. Such a review would examine the impact that the Commitments have had in the market for Outsourced Primary Ticketing Services on the island of Ireland and whether concerns such as high barriers to entry have been appropriately ameliorated.

- 5.9 The CCPC considers that the measures that would be put in place as a consequence of its agreement with Ticketmaster Ireland would allow for improved competition in the market, and provide more choice for Irish live event businesses. Improved competition would facilitate multiple companies competing against each other to ultimately deliver consumer benefits in terms of price, service and innovation.
- 5.10 In addition to the specific harms associated with exclusivity clauses and long contract duration, there was a broader concern expressed in the Preliminary Findings with the way in which Ticketmaster Ireland’s contracts may create a ‘closed shop’. The interlocking nature of contracts that Ticketmaster Ireland holds with live event organisers and venues acts as a significant barrier to market entry and expansion. Removing exclusivity clauses from contracts with venues⁹ mitigates this ‘closed shop’ effect and is intended to facilitate greater competition in the market. Following implementation of the Commitment Agreement, live event organisers in the State will be able to organise an event in a venue and use their own choice of ticketing provider, should they wish to do so.
- 5.11 With Ticketmaster Ireland’s consent, the CCPC applied to the High Court under section 14B of the 2002 Act to have the Commitment Agreement made an order of court. Failure to comply with such an order of court would constitute contempt of court. The CCPC applied to the High Court for an order in the terms of the Commitment Agreement and this was granted on 15 December 2020 (the “Section 14B Order”). The Section 14B order is provided

⁹ Excluding venues controlled by Live Nation.

as an Annex to this report. In accordance with section 14B(4) of the 2002 Act, the Section 14B Order came into effect on 29 January 2021. This means that the measures set out in the Commitment Agreement are to be implemented from this commencement date. Accordingly, the CCPC decided to close the Investigation on the commencement date.

A. Annex A – The Commitment Agreement

AGREEMENT BETWEEN TICKETMASTER IRELAND AND THE COMPETITION AND CONSUMER PROTECTION COMMISSION

This Agreement and Undertakings is made by and between the Competition and Consumer Protection Commission (the “Commission”) and Ticketline Unlimited Company trading as Ticketmaster Ireland (“TMI”) on the date set forth below.

WHEREAS:

- A. The Commission is a statutory body and one of its functions pursuant to the Competition and Consumer Protection Act 2014 is to enforce the Competition Act 2002, as amended (the “Act”) and Articles 101 and 102 of the Treaty on the Functioning of the European Union (“TFEU”). Section 4 of the Act and Article 101 TFEU prohibit anti-competitive arrangements between undertakings, and section 5 of the Act and Article 102 TFEU prohibit the abuse of a dominant position by one or more undertakings.
- B. The Commission’s role is to investigate suspected breaches of provisions of the Act and/or Articles 101 or 102 TFEU and to take appropriate enforcement action to deter such breaches and encourage on-going compliance with the provisions of the Act and/or Articles 101 and 102 TFEU.
- C. In January 2017 the Commission commenced an investigation into suspected anti-competitive practices in the provision of tickets and ticketing services in the State and on the island of Ireland contrary to: (i) section 5 of the Act and /or Article 102 TFEU; and/or section 4 of the Act and/or Article 101 TFEU. As part of its Investigation, the Commission has investigated whether TMI’s ticketing agreements with live event organisers and venues have infringed (i) section 5 of the Act and/or Article 102 TFEU; and/or (ii) section 4 of the Act and/or Article 101 TFEU. Following its Investigation, the Commission made preliminary findings in respect of TMI’s ticketing agreements with live event organisers and venues, and communicated its competition concerns to TMI accordingly.
- D. TMI denies that these agreements infringe section 5 of the Act and/or Article 102 TFEU, and/or section 4 of the Act and/or Article 101 TFEU.
- E. The Commission has informed TMI that this Agreement and Undertakings resolves the Commission's competition concerns arising from its Investigation.
- F. It is the intention of the Commission to apply to the High Court under section 14B of the Act for an order in the terms of this Agreement and Undertakings. TMI consents to the High Court making an order in the terms of this Agreement and Undertakings pursuant to section 14B of the Act and has obtained legal advice before so consenting.

TMI AND THE COMMISSION HEREBY AGREE AS FOLLOWS:

Definitions

1. In this Agreement and Undertakings, the following terms shall have the following meanings:

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

“**Agreement**” means an agreement, or an extension of an agreement, concluded by TMI with a Customer regarding the supply of Outsourced Primary Ticketing Services in the State and covering more than one Live Event;

“**Automatic Renewal Clause**” means a clause in an Agreement that provides that the Agreement is automatically extended at the end of the Agreement unless it is terminated by one of the contracting parties;

“**Commencement Date**” means the relevant date as provided for under section 14B(4) of the Act;

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

“**Competitor**” means an undertaking that supplies Outsourced Primary Ticketing Services in the State in competition with TMI;

“**Compliance Officer**” means a director of TMI or a senior member of the legal department of TMI provided that, where a senior member of the legal department of TMI is nominated by TMI to act as the Compliance Officer in accordance with this Agreement and Undertakings, such individual shall hold a sufficiently senior role within TMI;

“**Customer**” means a Live Event Organiser or a Venue in the State that is not controlled (within the meaning of section 16 of the Act) by Live Nation. For the avoidance of doubt, the definition of “Customer” for the purposes of this Agreement and Undertakings shall include MCD Productions Limited and its subsidiaries for so long as clause 7 of the proposals which formed part of the basis of the Commission’s determination of 5 July 2019 in case M/18/067 LN-GAIETY / MCD PRODUCTIONS remains in force;

“**Exceptional Circumstances**” are situations where the number of tickets sold by a Customer over the duration of the Agreement is at least 20% lower than the expected number of ticket sales set out in the Agreement due to acts, events, non-happenings, omissions or accidents beyond the reasonable control of TMI;

“**Exclusivity Clause**” means one or several clauses included in an Agreement that provide that TMI is the only advertised source of tickets to a Live Event, and/or that require that TMI shall receive 80% or more of the tickets available for a Live Event, and/or that prohibit the Customer from allocating tickets to TMI’s Competitors;

“**Existing Agreement**” means an Agreement concluded by TMI with a Customer before the Commencement Date that is still in force on the Commencement Date;

“**Investigation**” means the investigation commenced by the Commission in January 2017 into suspected anti-competitive practices in the provision of tickets and ticketing services in the

State and on the island of Ireland contrary to: (i) section 5 of the Act and/or Article 102 TFEU; and/or section 4 of the Act and/or Article 101 TFEU;

“Live Events” means live performances of music, sports, comedy, art or theatre and other shows performed in front of an audience;

“Live Event Organiser” means an organiser of Live Events in the State that is not controlled (within the meaning of section 16 of the Act) by Live Nation. For the avoidance of doubt, the definition of “Live Event Organiser” for the purposes of this Agreement and Undertakings shall include MCD Productions Limited and its subsidiaries for so long as clause 7 of the proposals which formed part of the basis of the Commission’s determination of 5 July 2019 in case M/18/067 LN-GAIETY / MCD PRODUCTIONS remains in force. For the avoidance of doubt, a Venue will be considered to act as a Live Event Organiser for the purposes of this Agreement and Undertakings in circumstances where such Venue is the only organiser of the Live Event without the involvement of any other Live Event Organiser;

“Live Nation” means Live Nation Entertainment Inc. and all undertakings directly or indirectly controlled by Live Nation (excluding MCD Productions Limited and its subsidiaries for as long as clause 7 of the proposals which formed part of the basis of the Commission’s determination of 5 July 2019 in case M/18/067 LN-GAIETY / MCD PRODUCTIONS remains in force), whereby the notion of control shall be interpreted pursuant to section 16 of the Act;

“New Agreement” means an Agreement concluded by TMI with a Customer during the Term;

“Outsourced Primary Ticketing Services” means the sale and distribution of tickets for Live Events to consumers on behalf of Customers. Outsourced Primary Ticketing Services shall not include self-ticketing solutions (such as TicketWeb and Universe) or secondary ticket sales by consumers and professional resellers to other consumers;

“Parties” means the Commission and TMI;

“State” means the Republic of Ireland;

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

“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, its successors and assigns, and TMI Affiliates;

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

“Upfront Payment” means a lump-sum payment or any form of payment made by TMI to a Customer upon the signature of an Agreement with that Customer;

“Venue” means a venue hosting Live Events in the State that is not controlled (within the meaning of section 16 of the Act) by Live Nation.

Contract duration and exclusivity

2. For all New Agreements concluded during the Term, TMI undertakes to:
 - (a) refrain from entering into any Agreement with a Venue that contains an Exclusivity Clause;
 - (b) refrain from entering into any Agreement with a Live Event Organiser that contains an Exclusivity Clause if the duration of that Agreement exceeds 3 years, even upon the request of the Live Event Organiser;
 - (c) refrain from entering into any Agreement that has a duration exceeding 5 years, even upon the request of the Customer; and
 - (d) refrain from entering into any Agreement that contains an Automatic Renewal Clause.

3. For all Existing Agreements, TMI undertakes to send within three months of the Commencement Date a written notice to each Customer with whom TMI has an Existing Agreement in order to inform such Customer of the existence of this Agreement and Undertakings and, in particular, that, effective immediately:
 - (i) TMI releases the Venue from the contractual obligation to comply with any and all Exclusivity Clauses included in an Existing Agreement;
 - (ii) TMI releases the Live Event Organiser from the contractual obligation to comply with any and all Exclusivity Clauses from an Existing Agreement to the extent that such clauses apply beyond 3 years from the Commencement Date, even if such clauses have been included upon the request of the Live Event Organiser;
 - (iii) TMI grants the Customer the right to unilaterally terminate an Existing Agreement after a period of 5 years from the Commencement Date; and
 - (iv) TMI will terminate the Existing Agreement upon its term, such that any Automatic Renewal Clause will not apply.

Upfront payment

4. For all New Agreements concluded during the Term (and in the case of all Existing Agreements), TMI undertakes to refrain from offering an Upfront Payment to any Customer with the object or effect of circumventing the requirements of Clause 2 or Clause 3 of this Agreement and Undertakings.

5. TMI reserves the right, in Exceptional Circumstances only, to agree a proportionate extension of the duration of an Agreement that provides for an Upfront Payment. Within one month of any such extension being agreed with a Customer, TMI shall submit a written submission to the Commission which details the length of the extension to the duration of the Agreement that has been agreed with the Customer and reasons as to why such extension is proportionate and justified in light of the Exceptional Circumstances. For the avoidance of doubt, the duration of an Agreement with a Live Event Organiser that contains an Exclusivity Clause cannot be extended beyond the period specified in Clause 2(b) or Clause 3(ii) of this Agreement and Undertakings, even in Exceptional Circumstances.

Commission's undertaking

6. In consideration of TMI entering into this Agreement and Undertakings, the Commission undertakes that it shall conclude its Investigation and shall refrain from instituting proceedings pursuant to section 14A of the Act against TMI in respect of any matter to which the Investigation relates for so long as TMI remains in compliance with the Agreement and Undertakings.

Compliance

7. TMI shall submit to the Commission within one month of the Commencement Date a list of the names and contact details of all Customers with which TMI has an Existing Agreement, and details of the date of expiry of each such Existing Agreement.
8. TMI shall submit to the Commission within three months of the Commencement Date:
 - (a) a written certificate in the form set out in Schedule A to this Agreement and Undertakings, signed by a director of TMI confirming that TMI has complied with its obligations set out in this Agreement and Undertakings in the preceding period;
 - (b) copies of all Agreements in force on the Commencement Date; and
 - (c) copies of the notices sent to Customers pursuant to Clause 3.
9. TMI shall submit to the Commission at intervals of one year after the Commencement Date for the duration of the Term:
 - (a) a written certificate in the form set out in Schedule B to this Agreement and Undertakings, signed by a director of TMI confirming that TMI has complied with its obligations set out in this Agreement and Undertakings in the preceding period;
 - (b) a list of all Agreements in force on the date of the written certificate; and
 - (c) copies of all New Agreements concluded in the preceding period.
10. The Commission reserves the right to require TMI to provide to the Commission, at any time, such additional information as the Commission considers necessary in order for the Commission to verify TMI's compliance with its obligations set out in this Agreement and Undertakings. TMI shall promptly provide to the Commission all such information in its possession or control.
11. The Commission may provide such written directions to TMI from time to time as needed to require compliance with this Agreement and Undertakings. TMI shall promptly comply with any written direction issued by the Commission pursuant to this Agreement and Undertakings.
12. TMI shall nominate a Compliance Officer who will have responsibility for monitoring compliance by it with this Agreement and Undertakings, for responding to any request(s) for information and for complying with any written direction(s) received from the Commission in connection with this Agreement and Undertakings. TMI shall provide the name and contact details of such Compliance Officer to the Commission within one month of the Commencement Date. TMI shall provide written notice to the Commission in advance of any changes of the Compliance Officer nominated pursuant to this paragraph and shall promptly

provide to the Commission the name and contact details of any proposed replacement Compliance Officer who is to replace the prior nominated Compliance Officer.

Application under Section 14B of the Act

13. TMI consents to the Commission making an application to the High Court pursuant to section 14B of the Act for an order in the terms of this Agreement and Undertakings and further consents to the High Court making an order in the terms of this Agreement and Undertakings. TMI hereby acknowledges that it is aware that failure to comply with any order so made would constitute contempt of court.

Review clause

14. The Commission may, at the latest after 5 years from the Commencement Date, review to what extent the undertakings provided for in Clauses 2 and 3 of this Agreement and Undertakings remain warranted to address the competition concerns identified by the Commission in the Investigation.

Final provisions

15. This Agreement and Undertakings shall be and is intended by the Parties to be a binding and enforceable agreement which may be enforced by the Parties by an action in any court of competent jurisdiction in the State.
16. This Agreement and Undertakings shall be binding on TMI and on the successors and assigns of TMI and on its employees, servants and agents.
17. This Agreement and Undertakings shall take effect upon its execution by both Parties and shall remain in force for the duration of the Term.

SIGNED for and on behalf of the Competition and Consumer Protection Commission by:



Name: ISOLDE GOGGIN

Title: CHAIRPERSON

Date: 20/11/2020

SIGNED for and on behalf of Ticketline Unlimited Company trading as Ticketmaster Ireland by:



Name: KEITH ENGLISH

Title: Managing Director

Date: 18/11/20

SCHEDULE A TO THE AGREEMENT AND UNDERTAKINGS

[On Ticketline Unlimited Company Headed Paper]

[date]

Mr Ibrahim Bah
Director
Competition Enforcement and Mergers Division
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

Re: Investigation into suspected anti-competitive practices in the provision of tickets and ticketing services in the State and on the island of Ireland

Dear Mr Bah,

I refer to the Agreement and Undertakings entered into by the Competition and Consumer Protection Commission (the "Commission") and Ticketline Unlimited Company trading as Ticketmaster Ireland ("TMI") on [•] 2020 (the "Agreement and Undertakings"). The definitions of terms contained in the Agreement and Undertakings shall also apply to the terms used herein, unless otherwise stated.

In accordance with Clause 8 of the Agreement and Undertakings, I hereby confirm compliance by TMI with the terms of the Agreement and Undertakings during the period commencing on the Commencement Date and ending on the date hereof, and enclose the following information in respect of TMI's Agreements during that same period:

- Copies of all Agreements in force on the Commencement Date; and
- Copies of the notices sent to Customers pursuant to Clause 3 of the Agreement and Undertakings.

Yours sincerely,

[Name]
[Duly authorised representative]

SCHEDULE B TO THE AGREEMENT AND UNDERTAKINGS

[On Ticketline Unlimited Company Headed Paper]

[date]

Mr Ibrahim Bah
Director
Competition Enforcement and Mergers Division
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

Re: Investigation into suspected anti-competitive practices in the provision of tickets and ticketing services in the State and on the island of Ireland

Dear Mr Bah,

I refer to the Agreement and Undertakings entered into by the Competition and Consumer Protection Commission (the "Commission") and Ticketline Unlimited Company trading as Ticketmaster Ireland ("TMI") on [•] 2020 (the "Agreement and Undertakings"). The definitions of terms contained in the Agreement and Undertakings shall also apply to the terms used herein, unless otherwise stated.

In accordance with Clause 9 of the Agreement and Undertakings, I hereby confirm compliance by TMI with the terms of the Agreement and Undertakings during the period commencing on [the Commencement Date]/[date of the previous certificate issued by TMI] and ending on the date hereof, and enclose the following information in respect of TMI's Agreements during that same period:

- A list of all Agreements in force on the date hereof; and
- Copies of all New Agreements concluded during the period commencing on [the Commencement Date]/[date of the previous certificate issued by TMI] and ending on the date hereof.

Yours sincerely,

[Name]
[Duly authorised representative]

B. Annex B – The Section 14B Order

COURT

THE HIGH

COMPETITION
2020 267 MCA

Tuesday the 15th day of December 2020
BEFORE MR JUSTICE BARRETT

IN THE MATTER OF SECTION 14B OF THE COMPETITION ACTS 2002 TO 2017

BETWEEN

THE COMPETITION AND CONSUMER PROTECTION COMMISSION
APPLICANT
AND
TICKETLINE UNLIMITED COMPANY
TRADING AS TICKETMASTER IRELAND
RESPONDENT

Upon Motion of Counsel for the Applicant pursuant to Notice of Motion herein dated the 24th day of November 2020

Whereupon and on reading the said Notice the Pleadings herein and the documents adduced in evidence (including copy published notices herein) and the two Affidavits of Ibrahim Bah one filed the said 24th day of November 2020 and the other filed the 7th day of December 2020 and the documents and exhibits therein referred to

And the Court being satisfied that these proceedings are competition proceedings within the meaning of Order 63B of the Rules of the Superior Courts

IT IS ORDERED that these proceedings be entered in the Competition List for hearing and that all further applications and Motions be heard in said list

And Counsel for the Applicant informing the Court that the Applicant has entered into agreement (hereafter called “the Agreement”) with the Respondent pursuant to Section 14B of the Competition Acts 2002 to 2017

COURT

And upon reading the Terms of the said Agreement (a copy of the executed version annexed as a Schedule hereto By Order) dated the 20th day of November 2020 executed on behalf of the said Applicant and Respondent (the original Agreement being retained by the Applicant)

And the Respondent by its Solicitor confirming to the Court that it

1. consents to the application being made unto the Court this day and further consents to the making of an order by the Court pursuant to Section 14B of the Competition Acts 2002 to 2017
2. obtained legal advice prior to the said consent being committed
3. understands that failure to comply with the said Agreement would constitute contempt of Court if the Court makes an order in the terms of the said Agreement pursuant to Section 14B of the Competition Acts 2002 to 2017

And the Court being satisfied that the

- i. requirements of subsections (2) (3) and (6) of Section 14B are complied with in respect of the said Agreement and the publication of this application
- ii. restriction of subsection (6) does not apply
- iii. said Agreement is capable of being complied with

IT IS ORDERED pursuant to Section 14B of the Competition Acts 2002 to 2017 that the said copy Agreement be received and filed in Court and made a Rule of Court

And the Court noting the obligations undertaken by the Competition and Consumer Protection Commission the Applicant herein under the said Agreement

And **IT IS ORDERED** that the Respondent do abide by the terms of the said Agreement

THE HIGH

COURT

And **IT IS FURTHER ORDERED** that this Order shall have effect subject to and in accordance with the provisions of subsections (4) and (8) of the said Section 14B of the Competition Acts 2002 to 2017

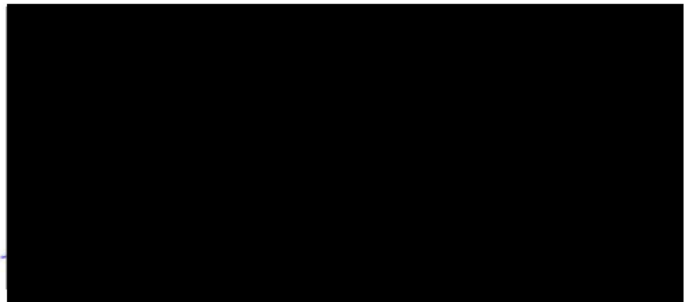
Liberty to either or both parties herein to apply

**JEAN BRENNAN
REGISTRAR**

Perfected: 21st day of December 2020

Laura McGovern Competition and Consumer Protection Commission
Solicitor for the Applicant

Mason Hayes and Curran LLP
Solicitors for the Respondent





Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

