COMPETITION COMMISSION

Ticketmaster and Live Nation

A report on the completed merger between Ticketmaster Entertainment, Inc and Live Nation, Inc

7 May 2010

Website: www.competition-commission.org.uk

Members of the Competition Commission who conducted this inquiry

Christopher Clarke *(Chairman of the Group)*

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Chief Executive and Secretary of the Competition Commission

David Saunders

The Competition Commission has excluded from this published version of the final report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂].

Completed merger between Ticketmaster and Live Nation

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Summary

The following summary should be read in conjunction with the rest of this report, from which it is derived.

1. On 10 June 2009, the Office of Fair Trading (OFT) referred the anticipated merger of Ticketmaster Entertainment, Inc (Ticketmaster) and Live Nation, Inc (Live Nation) to the Competition Commission (CC) for investigation and report. The reference was made under section 33 of the Enterprise Act 2002 (the Act). We were required to publish our final report by 24 November 2009, which was subsequently extended to 19 January 2010.

2. We published our final report on 22 December 2009. However, on 19 January 2010, CTS Eventim AG (Eventim) lodged a Notice of Application with the Competition Appeal Tribunal (the Tribunal), challenging the decision in our final report to clear the merger between Ticketmaster and Live Nation. On 11 February 2010, the Tribunal ordered that our decision be quashed and the merger be referred back to us for reconsideration, with a deadline of 11 May 2010. Further to the Tribunal's decision, on 12 February 2010, we republished the report which we had previously published on 22 December 2009 as our further provisional findings, and we invited all interested parties to provide us with their comments on this document.

3. On 25 January 2010, following approval (subject to conditions) from the Department of Justice in the USA, Ticketmaster and Live Nation completed their merger. Therefore, pursuant to section 37(2) of the Act, we considered the merger during the remittal period as completed rather than as anticipated, and we treated the reference as if it had been made under section 22 of the Act.

Background

4. Live Nation is principally a promoter of live music events and an owner/operator of live music venues. Ticketmaster is principally a ticket agent, and sells many tickets on behalf of live music promoters and venue operators. Both companies are head-quartered in the USA but have significant operations in the UK.

5. The merger between Ticketmaster and Live Nation was a US-led transaction but it has implications for the activities of both companies in many geographic markets around the world, including the UK.

6. For many years, Ticketmaster and Live Nation had a contractual relationship, whereby Ticketmaster was Live Nation's preferred global ticket agent. This relationship expired in the USA at the end of 2008 and in the UK at the end of 2009. In replacement of this contract, Live Nation signed a global agreement with Eventim, which is both a provider of ticketing services and a ticket agent, and a promoter of live music events, headquartered in Germany. Both Live Nation and Eventim told us that they regarded this agreement as legally binding. Under this agreement, in the USA, Eventim would supply Live Nation with ticketing software, enabling Live Nation to sell its own tickets and to become a ticket agent for other promoters and venue operators. In the UK, Eventim would supply Live Nation with a managed ticketing service, enabling Live Nation to sell its own tickets, and enabling Live Nation's tickets to be sold by Eventim and through other retail channels. Live Nation and Eventim implemented this agreement in the USA on 1 January 2009 and in the UK on 1 February 2010 (one month later than initially planned). Following the announcement of the proposed merger between Ticketmaster and Live Nation, both Live Nation and Eventim stated publicly their commitment to honouring their

obligations under their agreement, whether the merger proceeded or not, and they repeated this commitment to us.

The relevant markets

Ticketing

7. We found that there was a separate market for the primary retailing of live music tickets, which included the retailing of tickets to consumers by promoters or venues directly, ie not using a ticket agent. We found that the retailing of tickets for other live events (eg theatre tickets), the secondary retailing of live music tickets, and sales of live music tickets in-person at the box office did not form part of this market.

8. We found that several retailers of tickets offered a managed ticketing service, providing venues, and some promoters, with a ticketing system, and managing it on an ongoing basis. We found that the provision of these services was relevant to our assessment of the live music ticket retailing market as several ticket retailers (including Ticketmaster) gained access to tickets to sell by providing live music venues and promoters with a managed ticketing service. We noted that, though some ticketing service providers relied on their own proprietary software (eg Ticketmaster), many ticketing service providers licensed ticketing software from another provider. We found that the provision of ticketing software was in a separate market.

9. We found that the geographic market for the primary retailing of live music tickets was not wider than the UK.

10. We found that Ticketmaster had a large share of the UK market for the primary retailing of live music tickets, which it had maintained for many years. We estimated that Ticketmaster's market share in 2008 was between 40 and 50 per cent, and the next largest supplier, See Group Limited, which trades as See Tickets, had a market share of about half this size, or slightly less. All the other suppliers in this market were relatively small (none with more than 5 per cent market share). We found that, although promoters and venue operators could switch between suppliers, in particular between Ticketmaster and See Tickets, the options were limited and, in order to maximize ticket sales, most promoters had to sell some tickets through Ticketmaster.

11. We found that there had been small-scale entry into the market, and it was possible for a new entrant to obtain from promoters a small allocation of tickets across a wide range of their events. However, we noted that none of the small-scale retailers in the market had grown their market shares significantly in recent years, which suggested that, whilst there were no significant barriers to small-scale entry, there were barriers to becoming a large-scale retailer of live music tickets. These barriers restricted the opportunities for new entrants or existing small-scale retailers to grow to a scale at which they could compete effectively with Ticketmaster and See Tickets. In particular, we found that, in order to sell large volumes of tickets, retailers needed to attract large numbers of customers, which required significant investment in marketing and brand development. We concluded that this requirement represented a significant barrier to becoming a large-scale retailer of live music tickets. We also noted that the need to invest in technology in order to be able to sell large volumes of tickets quickly and effectively, and the difficulty of accessing large volumes of tickets, due to the presence of long-term preferred relationships between incumbent ticket agents and promoters and venue operators, made becoming a large-scale retailer of live music tickets even harder. We found that we could not be confident that the recent small-scale new entrants to the market would grow to become effective

competitors to Ticketmaster and See Tickets in the near future, given these material barriers to large-scale entry and expansion.

12. Overall, we found that there was competition in the market for the primary retailing of live music tickets, in particular between Ticketmaster and See Tickets, but we found that the extent of the competitive constraint on these two large suppliers was limited. We noted that the market structure had not changed for a long period of time, with one provider (Ticketmaster) continuing to sell almost half of all the live music tickets in the UK, and being at least twice the size of its nearest competitor (See Tickets). We concluded that, with only two large primary retailers of live music tickets, and little likelihood of one of the small retailers in the market expanding to become a large retailer in the near future, competition in the market was less than fully effective.

Promotion

13. We found that there was a separate market for the promotion of live music events in the UK. We found that Live Nation was one of the largest suppliers in this market, with a market share of between 15 and 20 per cent, but there were other large and well-established promoters in the market, and many small promoters. We also found that artists' agents had significant bargaining power when negotiating with promoters. We concluded that Live Nation was unlikely to have substantial power in this market.

Venues

14. We found that, even if Live Nation had substantial market power as a venue operator, the merger was unlikely to give rise to any significant lessening of competition between live music venues. Therefore, we did not form a precise definition of the market for live music venues or assess the extent of Live Nation's market power.

Eventim's position in the market in the absence of the merger

15. In order to assess the expected effects of the merger on competition, we compared what was likely to happen following the merger with the situation which we believed would have occurred in the absence of the merger. This inquiry was unusual as, prior to the proposed merger, one of the parties to it had signed a long-term agreement with the largest global competitor of the other party to the merger (see paragraph 6) and, on the basis of this agreement, the competitor (Eventim) was in the process of entering the UK.

16. In the absence of the merger, we believed that, on the basis of its agreement with Live Nation, Eventim would have entered the UK market for the primary retailing of live music tickets. We noted that Eventim was the second-largest ticket agent in the world (after Ticketmaster) and had been studying the opportunities in the UK for many years. We found that Eventim's agreement with Live Nation provided it with a secure revenue stream from the provision to Live Nation of a managed ticketing service, which would cover Eventim's fixed costs and entry costs in the short term, and access to a guaranteed minimum volume of Live Nation's controlled tickets for Eventim to sell.

17. We found that Live Nation's corporate objective was to establish a direct relationship with consumers of live music events, and to sell through its website as many of its controlled tickets as possible, using Eventim's managed ticketing service. We found that, consistent with this objective, under its agreement with Eventim, Live Nation's financial incentive was to sell its tickets primarily through its own website, then

through Eventim, and then through other retail channels. We found that Live Nation would not have offered Eventim (or any other retail channel) any marketing or other support in selling its tickets, as to do so would have harmed Live Nation's own ticket sales.

18. Under their agreement, Live Nation was required to allocate a minimum proportion of its tickets to Eventim across the majority of its events. We found that this minimum allocation would have provided Eventim with a foothold in the UK market for the primary retailing of live music tickets. However, we found that, on the basis of this agreement alone, Eventim would have been a small-scale retailer in the market, selling at most 1 or 2 per cent of the total number of live music tickets in the UK. We found that, at this scale, Eventim would have had no material effect on the extent of competition in the market.

19. We considered whether, in the absence of the merger, the agreement between Live Nation and Eventim would have operated on an exclusive basis, ie whether the only websites through which Live Nation's controlled tickets would have been available would have been those of Live Nation and Eventim. Eventim provided us with evidence, which it said demonstrated that, in the absence of the merger, Live Nation had neither the intention nor the need to use Ticketmaster or any other online ticket agent. However, we found that the relevance of this evidence in informing us about the likely actions of Live Nation in the UK was limited. We noted that, in the UK, Live Nation had always used multiple ticket agents to sell its tickets, even when operating under its previous 'exclusive' agreement with Ticketmaster; and we noted that, in order to maximize their ticket sales, all promoters in the UK used multiple ticket agents. We concluded that Live Nation would have continued to allocate some tickets to Ticketmaster and other ticket agents. However, notwithstanding this conclusion, we considered at what scale Eventim might have operated in the UK on the basis of its agreement with Live Nation had the agreement been interpreted in the way posited by Eventim. We found that, due to Live Nation's intention to sell primarily through its own website, Eventim would still have operated, on the basis of its agreement with Live Nation alone, only as a small-scale retailer, selling at most 3 or 4 per cent of the total number of live music tickets in the UK.

20. We found that, in order to increase materially the extent of competition in the market, Eventim would have needed to become a large-scale retailer of live music tickets. However, we found that there were significant barriers to doing so, and none of the other small-scale retailers in the UK had been able to overcome them (see paragraph 11). We noted that Eventim was a distinctive new entrant but we found that the extent of Eventim's success in becoming a large-scale retailer of live music tickets and overcoming these barriers would have depended primarily on its own efforts and abilities.

21. We found that there was considerable uncertainty surrounding Eventim's position as a new entrant into the UK market for the primary retailing of live music tickets, and it would be highly speculative for us to form a view on precisely how successful it was likely to be. Rather, we focused on the extent to which the merger affected the factors on which Eventim's success in becoming a large-scale retailer of live music tickets in the UK depended and, thereby, the degree to which the merger affected the level of competition in the market.

Expected effects of the merger

Effects on the UK market for the primary retailing of live music tickets due to effects on the entry of Eventim

22. We noted that there were no significant barriers to small-scale entry into the UK market for the primary retailing of live music tickets, and there were at least two recent small-scale new entrants (see paragraph 11). However, we accepted that, for Eventim, its agreement with Live Nation was critical to its decision to enter the UK.

23. Notwithstanding our finding that, on the basis of its agreement with Live Nation alone, Eventim would have been only a small-scale retailer of live music tickets in the UK (see paragraph 18), we considered whether the agreement would have enabled Eventim to grow to become a large-scale retailer. In particular, we considered whether its ticket allocation from Live Nation would have enabled Eventim to begin to attract consumers, and so gain further ticket allocations, by establishing a 'virtuous circle' of growth. However, we found no evidence of such a virtuous circle. Furthermore, we observed that other existing small-scale ticket agents were selling similar numbers of tickets across a similar range of events to those which Eventim would have offered for Live Nation and they had been unable to grow in this way. We concluded that, regardless of whether Eventim's agreement with Live Nation was interpreted on an exclusive or a non-exclusive basis (see paragraph 19), it was only sufficient to cause Eventim's small-scale entry into the UK market for the primary retailing of live music tickets and it was not sufficient, on its own, to enable Eventim to enter that market on a large-scale. Rather, we found that overcoming the significant barriers to large-scale entry and expansion in the market depended primarily on Eventim's own efforts and abilities (see paragraph 20). We concluded that Eventim's prospects of becoming a large-scale retailer of live music tickets in the UK were not affected significantly by its agreement with Live Nation, and would not be affected significantly by the merger.

24. Notwithstanding this conclusion, we considered all the various ways in which the merged entity might have the ability and incentive to limit Eventim's success in the UK, and the extent to which any such actions were likely to be a result of the merger.

25. We found that, although Live Nation's financial incentives would be changed as a result of the merger (ie it would become more profitable for Live Nation to sell its tickets through Ticketmaster than through Eventim), the extent to which this change would affect Eventim's success as a retailer of live music tickets was limited. Whether the merger proceeded or not, Live Nation's primary financial incentive, and its corporate objective, was to sell its tickets through its own website, and Live Nation would not have provided Eventim with any significant support as a retailer of its tickets (see paragraph 17). Furthermore, while their agreement remained in place, Eventim would continue to be assured of a minimum allocation of Live Nation's tickets. We recognized that, due to the changed incentives, Live Nation might interpret its obligations under its agreement with Eventim more restrictively, and allocate it fewer tickets, but we did not believe the effect of this action would have a significant impact on Eventim's prospects of success as a retailer of live music tickets in the UK. We noted that the number of tickets which Live Nation would have allocated initially to Eventim in the absence of the merger would only have caused Eventim to enter the UK on a small scale (see paragraph 18), and we found that there were not significant barriers to entering this market on a small scale anyway (see paragraph 11). We also noted that Live Nation would still be required to allocate tickets to Eventim for the majority of its events, enabling Eventim to offer a wide range of events on its website. We concluded that, for these reasons, the merger

was unlikely to affect significantly Eventim's position in the market as retailer of live music tickets.

26. We also noted that, notwithstanding the merger, Live Nation had committed to paying Eventim the full fee due to Eventim for every Live Nation-controlled ticket sold (excluding sales made in-person at the box office and sales by Eventim), whether the ticket was sold from the Eventim system or not. This commitment ensured that, even if Live Nation sold more tickets through Ticketmaster, Eventim's entry into the UK would still be profitable (see paragraph 16).

27. We considered whether, following the merger, the agreement between Live Nation and Eventim would continue to operate. We considered the possibilities of litigation, arbitration and some form of settlement, each of which could result in its cessation. We noted that both Live Nation and Eventim had stated both to us and publicly that they continued to be committed to fulfilling their obligations under their agreement (see paragraph 6) and, notwithstanding some disputes between them, we noted that neither Live Nation nor Eventim had sought to terminate their agreement. We concluded that there was insufficient evidence for us to be able to form the view that the agreement was likely to cease to operate.

28. Nevertheless, we still considered what the effect on Eventim's prospects of becoming a large-scale retailer of live music tickets in the UK might be if its agreement with Live Nation did cease. We noted that Eventim had already entered the UK market for the primary retailing of live music tickets to some extent and was selling tickets. For this reason, and given our finding that there are not significant barriers to small-scale entry into this market (see paragraph 11), we concluded that Eventim could choose to remain in the market, even if its agreement with Live Nation were to cease to operate. However, given our finding that, in order to affect materially competition in the market, Eventim would need to become a large-scale retailer of live music tickets (see paragraph 20), and given our finding that its agreement with Live Nation was not sufficient, on its own, to enable it to achieve this position (see paragraph 23), we concluded that, if the merger were to result in the cessation of the agreement between Live Nation and Eventim, it was not likely to lead to a substantial lessening of competition.

29. We concluded that, in order to affect materially the extent of competition in the UK market for the primary retailing of live music tickets, Eventim would have to be a large-scale retailer of live music tickets. We found that Eventim's prospects of becoming a large-scale retailer of live music tickets were dependent primarily on its own efforts and abilities and were not affected significantly by the merger. Therefore, we concluded that the merger was unlikely to result in a substantial lessening of competition in the UK market for the primary retailing of live music tickets as a result of its effects on Eventim.

Effects on the UK market for the primary retailing of live music tickets due to effects on existing ticket agents

30. We found that, when operating under its previous global contract with Ticketmaster, Live Nation sold a small proportion of its live music tickets through the other existing ticket agents in the UK. We judged that, under its new contract with Eventim, there was little prospect of it selling a greater proportion of its tickets through these agents. For this reason, we found that the merged entity was unlikely to have the ability to harm the competitiveness of existing ticket agents as, even if these agents were deprived totally of Live Nation's tickets, they would not be constrained significantly in their ability to operate profitably in the market. We also found that, both as a

promoter and as a venue operator, the merged entity would incur costs if it tried to harm other ticket agents, which it would be unlikely to recover elsewhere in its business. We concluded that it was unlikely that the effects of the merger on existing ticket agents would result in a substantial lessening of competition in the UK market for the primary retailing of live music tickets.

Effects on live music promotion and venues

31. We found that the merged entity might have the ability to harm the competitiveness of other live music promoters and venue operators, either by Ticketmaster selling fewer tickets for other promoters and venue operators or by worsening the terms of its trade with them (eg by reducing its rebate, increasing its booking fees to their consumers, reducing its marketing for their events or delaying the payment of cash from their ticket sales). We also found that the merged entity might have the ability to harm the competitiveness of other promoters and venue operators by transferring customer data which it gained from selling tickets for them to Live Nation.

32. However, we found that the merged entity would not have the incentive to foreclose other promoters and venue operators in any of these ways, as it would suffer reduced revenues from forgone ticket sales, with very uncertain prospects for any benefit from increased business as a promoter or venue operator. We considered if the merged entity might be able to target any specific competitors but we found that the benefit from doing so would be limited.

33. We also noted that some forms of foreclosure, for example restricting the access of other promoters to Live Nation's venues, were possible prior to the merger and the incentives of the merged entity to engage in these practices would not change significantly as a result of the merger.

34. We concluded that, on balance, we did not expect the merged entity to try to harm other promoters and venue operators and, therefore, the merger was unlikely to result in any adverse effects on competition in these markets.

Conclusion

35. We concluded that the merger of Ticketmaster and Live Nation was unlikely to result in a substantial lessening of competition in any UK market.

Findings

1. The reference

1.1 On 10 June 2009, the OFT referred the anticipated merger of Ticketmaster and Live Nation to the CC for investigation and report. The reference was made under section 33 of the Act. Our terms of reference and an outline of how we conducted our inquiry are in Appendix A. We were required to publish our final report by 24 November 2009, which was subsequently extended to 19 January 2010.

1.2 We published our final report on 22 December 2009. However, on 19 January 2010, Eventim lodged a Notice of Application with the Tribunal, challenging the decision in our final report to clear the merger between Ticketmaster and Live Nation. On 11 February 2010, the Tribunal ordered that our decision be quashed and the merger be referred back to us for reconsideration, with a deadline of 11 May 2010. Further to the Tribunal's decision, on 12 February 2010, we republished the report which we had previously published on 22 December 2009 as our further provisional findings, and we invited all interested parties to provide us with their comments on this document.

1.3 On 25 January 2010, following approval (subject to conditions) from the Department of Justice in the USA, Ticketmaster and Live Nation completed their merger. Therefore, pursuant to section 37(2) of the Act, we considered the merger during the remittal period as completed rather than as anticipated, and we treated the reference as if it had been made under section 22 of the Act.

1.4 Following the order of the Tribunal (see paragraph 1.2) and our subsequent, further investigation, this document, together with the appendices, now constitutes our final report. Further information, including non-commercially-sensitive versions of main-party and third-party submissions, and summaries of evidence, can be found on our website.[1]

2. The industry and the companies

2.1 This section provides a brief overview of the live music industry and a description of the UK activities of Live Nation and Ticketmaster.

2.2 A more detailed overview of the live music industry is at Appendix B and a more detailed description of the recent financial performance of Live Nation and Ticketmaster is at Appendix C.

Live music industry

2.3 In recent years, the live music[2] industry has grown rapidly, with both growing attendances at live music events and higher ticket prices. One of the drivers to growth has been an increasing incentive for artists to tour as the income they receive from recorded music has fallen.

2.4 PRS for Music estimated that total live music ticket sales in 2008, for all genres of music, were worth about £0.9 billion (including booking fees, assumed at 10 per cent of the total), and that ancillary revenues, including merchandising at events,

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[1] www.competition-commission.org.uk/inquiries/ref2009/ticketmaster/index.htm.
[2] In this report, 'live music' refers to live rock and pop music, unless stated otherwise.

generated a further £0.3 billion.[3] PRS for Music estimated that advertising and sponsorship of UK live music events in 2008 was worth £89 million.[4]

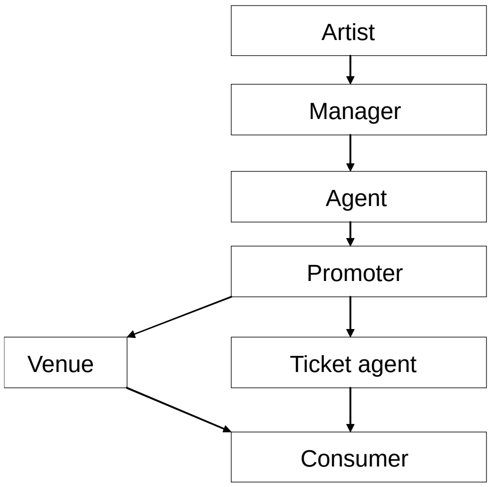
2.5 The number of live music venues and the number of festivals in the UK have both increased in recent years. For example, the O2 Arena in London, which, with a capacity of 20,000, is now the UK's largest indoor live music venue, opened in 2007 and in its first year sold almost 2 million tickets (many of the events held at the O2 Arena might otherwise have been held at Wembley Arena or other UK arenas).

Supply chain

2.6 Figure 1 illustrates the supply chain for the live music industry.

FIGURE 1

The live music supply chain



Source: CC analysis.

Artists/managers

2.7 Artists employ managers to negotiate all their commercial arrangements, for example with record companies, advertising agencies, and, when an artist wishes to tour, with an agent. A manager receives a proportion of the artist's total net revenue.

Artists' agents

2.8 An artist's agent seeks to maximize an artist's income from a tour, and will usually secure for the artist an upfront guaranteed payment, typically representing approximately 85 per cent of net tour revenues,[4] and a share of merchandising revenues. Alternatively, the artist will receive a flat fee for performing at a one-off event (eg a festival). Agents usually run a bidding process to decide on the promoter for each territory of the tour, and evaluate the bids received based on their experience of venue costs, ticket prices, etc. Agents receive a proportion of the artist's income from the tour, typically around 10 to 20 per cent.

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[3]Adding up the music industry for 2008, *Economic Insight* Issue 15, PRS for Music, 20 July 2009.
[4]This fee will be calculated on the basis of an assumed level of ticket sales and will be guaranteed even if ticket sales are lower. Net revenue is ticket sales less venue and marketing costs.

Promoters

2.9 Promoters organize and market an artist's tour, negotiating with venues, and deciding on the tour route. Some of the tickets for each event will be sold by the venue (typically between 50 and 75 per cent) but most of the remaining tickets for an event will be sold by ticket agents on behalf of the promoter (though a few tickets may also be sold through the artist's own website[5] or by sponsors). The promoter will estimate the cost of the tour and will propose a ticket price for each event to the artist's agent. Due to the guaranteed fee which is paid by the promoter to the artist, the promoter bears most of the risk of an event not selling out. Some promoters also promote festivals.

2.10 There are many small promoters in the UK, which usually focus on a specific region of the UK and mainly promote small events in pubs and clubs. There are several large promoters, which are able to promote large events for established well-known artists, but also promote small events as a way of building relationships with new artists. The largest promoters in the UK (both in terms of the number of events promoted and the number of tickets sold) are Live Nation and SJM Concerts Ltd (SJM), each of which represents over 15 per cent of the market. The next largest promoters are Scriptograph Limited (which trades as Metropolis Music (Metropolis)), AEG Live (UK) Limited (AEG Live) and 3A Entertainment Ltd (3A), each of which, according to our estimates, represent around [✂] per cent of the market (see Appendix F). Promoters sometimes work together to co-promote a tour, making use of their expertise in different parts of the UK. Several promoters (including Live Nation, SJM, Metropolis and AEG) have interests in the operation and management of venues.

Venue operators

2.11 The largest live music venues are outdoor stadiums (eg Wembley Stadium, with a capacity of 80,000). Arenas are the largest indoor venues, normally with a capacity over 5,000 (eg the O2 Arena and Wembley Arena). There are many other indoor venues, including concert halls, ballrooms, theatres, clubs and pubs. Festivals take place at temporary outdoor venues.

2.12 Venue operators are responsible for the physical operation of a venue and provide services such as security and the box office. The venue earns income from a rental fee for the hire of the venue, a proportion of any merchandising revenue (typically around 25 per cent), food and beverage sales, and sponsorship. In addition, the venue will retain a proportion of the tickets for sale (typically between 50 and 75 per cent). For most large venues, only a small proportion of the venue's ticket sales will be made in-person at the box office and the majority of tickets will be sold either by telephone or on the Internet. The venue may use a ticket agent for its sales by telephone (sometimes just the overflow sales not handled by the box office) and for sales on the Internet and, if so, the venue will receive part of the booking fee generated on the sale of these tickets. Alternatively, the venue might self-ticket by licensing a ticketing software package (and, if necessary, contracting services from a call centre) which will enable it to make all sales directly, without using a ticket agent, and will allow the venue to retain the full booking fee. Most sales in-person at the box office do not incur a booking fee.

[5] Increasingly, artists are requiring an allocation of tickets, which are then sold to the artist's fan club or as premium tickets, through the artist's own ticket agent. Premium tickets are sold at a higher price than the majority of tickets, either because they are for the best seats or because they have been held back from sale until all other tickets have been sold.

Ticket agents

2.13 Primary ticket agents sell tickets for live music events on behalf of a promoter or a venue. These ticket agents sell tickets at their face value and charge a booking fee (also known as a convenience fee or service fee) and a transaction charge (also known as a processing charge). The booking fee (and, exceptionally, the transaction charge) represents the ticket agent's principal income, though it is usually shared with the client (ie the promoter or venue) and sometimes with the artist. Ticket agents told us that the transaction charge is usually set to cover the costs of processing the customer's transaction, including the cost of sending the tickets.

2.14 Secondary ticket agents enable the resale of tickets and usually charge a fee from both the buyer and the seller.

2.15 The largest ticket agent in the UK is Ticketmaster, which sold [✄] million tickets in 2008, of which [✄] million tickets were for live music events. Ticketmaster's largest rival is See Tickets, which sold [✄] million tickets in 2008, of which [✄] million tickets were for live music events. Other ticket agents are much smaller and some have tended to specialize in particular geographical regions or types of events.

2.16 Many promoters and venues have preferred arrangements with ticket agents. Live Nation and the Anschutz Entertainment Group (AEG), which includes AEG Live, both have preferred arrangements with Ticketmaster (for promotion and venues), while SJM and Metropolis have preferred arrangements with See Tickets. Most promoters sell the majority of their tickets through their preferred ticket agent, but they use other ticket agents to some extent in order to maximize ticket sales. Live Nation changed its preferred ticket agent from Ticketmaster to Eventim, with effect from 1 February 2010. In terms of tickets sold, Eventim is the world's second-largest ticket agent, after Ticketmaster, operating in 18 European countries.

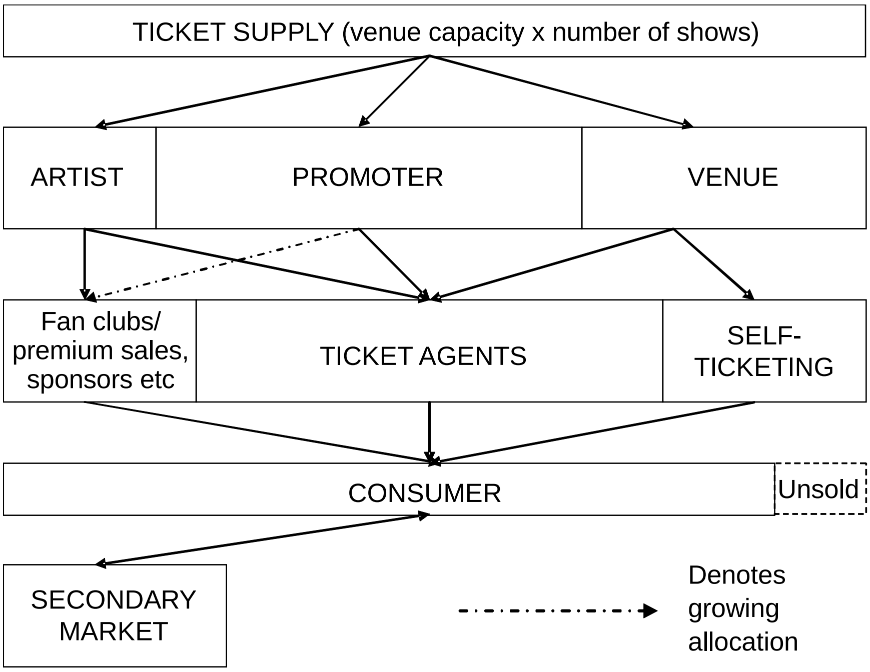
2.17 Venues usually use one ticket agent (due to the difficulty of operating the box office on more than one ticketing system), while promoters allocate tickets to several ticket agents in order to ensure that the maximum number of tickets are sold. Several promoters told us that the allocation of tickets is dynamic and promoters will re-allocate tickets between their tickets agents and, occasionally, between the venue's agent and the promoter's agents, if they perceive that one ticket agent is failing to sell tickets while another agent is selling well.

2.18 Venues do not have to use ticket agents and may choose to self-ticket (see paragraph 2.12). Recently, some self-ticketing venues have become primary ticket agents, offering to sell tickets on behalf of promoters or other venues (eg the Scottish Exhibition and Conference Centre Ltd (SECC) in Glasgow has set up Ticketsoup and the National Exhibition Centre Ltd (NEC) in Birmingham has set up Ticketfactory).

2.19 Figure 2 summarizes the principal ways in which tickets can reach the consumer.

FIGURE 2

Route of tickets to the consumer



Source: CC analysis.

2.20 The process of selling tickets has changed in recent years, as most tickets for live music events are now sold on the Internet, rather than in-person at the box office or through a call centre. Large ticket agents must be able to process sales quickly (on one day in 2008 Ticketmaster sold almost [✄] tickets). In addition, a promoter or venue operator will select the ticket agent which is most likely to be able to sell tickets, which includes being able to market tickets to previous customers on the basis of their previous purchasing behaviour.

Live Nation

2.21 Live Nation was formed in August 2005 when Clear Channel Communications Inc split into three companies.[6] Live Nation operates live music and theatrical venues in the USA and Europe, and promotes and produces live entertainment events around the world. It is the largest global producer of live music events, annually producing over 22,000 events for 1,600 artists in 33 countries. During 2008, the company sold over 50 million tickets to its live music events. Live Nation is headquartered in Los Angeles, California and is listed on the New York Stock Exchange.

2.22 In the UK, Live Nation:

(a) owns and/or operates live music venues (see Section 5 and Appendix G for a description of this market and Live Nation's activities);

(b) promotes live music events in Live Nation owned and/or operated venues and in rented third-party venues, including festivals (see Section 5 and Appendix F for a description of this market and Live Nation's activities); and

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[6]The other two companies were Clear Channel Communications, which focused on radio broadcasting, and Clear Channel Outdoor, which focused on out-of-home advertising.

(c) provides agency services to music artists.

2.23 Table 1 presents a summary of the significant events in the history of Live Nation in the UK.

TABLE 1 **History of Live Nation's UK business**

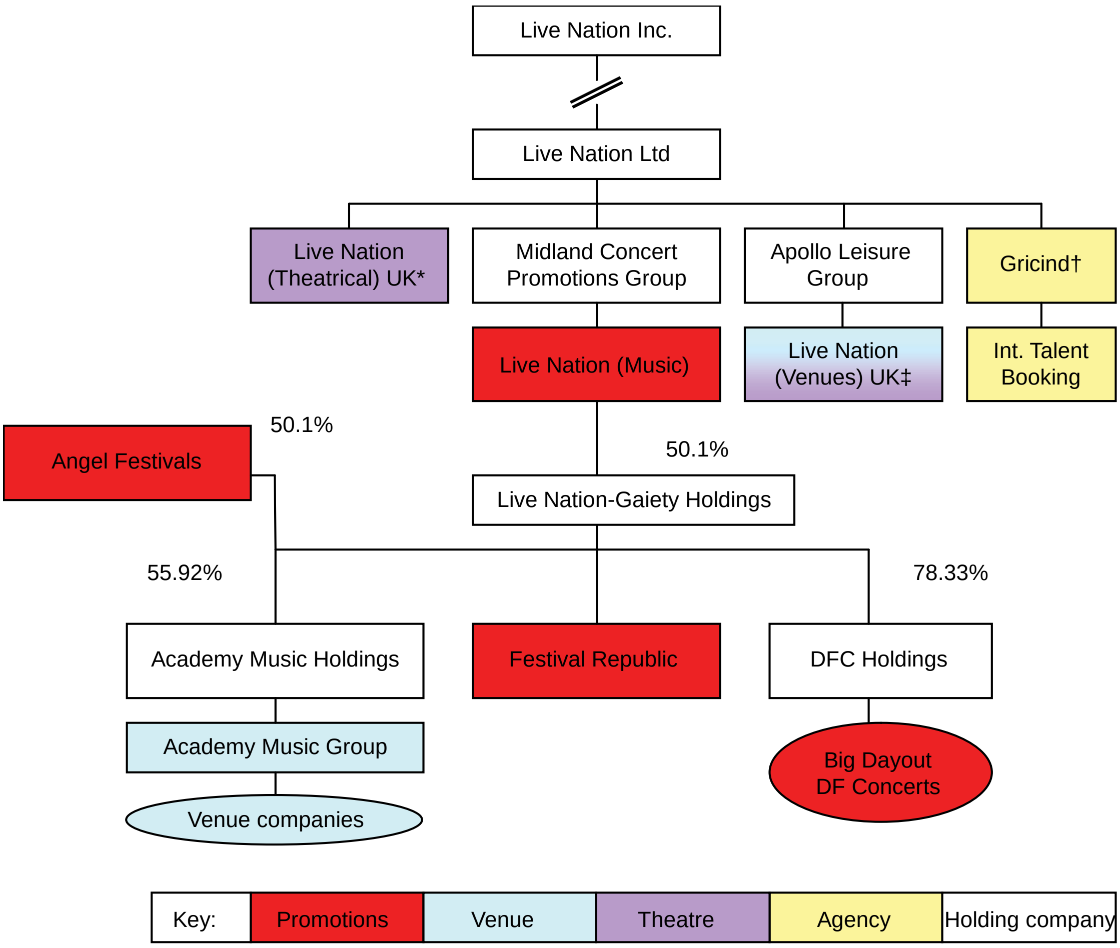
Date	*Event*
1977	Apollo Leisure founded
1999	Apollo Leisure sold to SFX Entertainment
1999	Acquisition of Midland Concert Promotions, BCC, ITB and Solo
2001	SFX Entertainment assets sold to Clear Channel Communications
2005	Acquisition (with Gaiety Holdings) of 50.1 per cent of Mean Fiddler Music Group
2005	Clear Channel Entertainment spun off and floated on NYSE as Live Nation Inc.
2007	Acquisition (with Gaiety Holdings) of 56 per cent of Academy Music Group
2007	Sale of the Hammersmith Apollo, the Forum and Mean Fiddler venues to the Mama Group
2008	Acquisition (with Gaiety Holdings) of 78 per cent of DF Concerts
2008	Exit from UK theatre production
2009	Exit from UK theatre ownership

Source: Live Nation.

2.24 The Live Nation UK group includes both 100 per cent owned subsidiaries and joint ventures, as shown in Figure 3.

FIGURE 3

Live Nation UK summary organization chart



Source: Live Nation.
*Previously operated Live Nation's theatrical productions—ceased trading May 2008.
†Gricind activities include both promotions and agency.
‡Includes music venues.
Notes:
1. The above group structure includes the main Group companies within the Live Nation UK group. A number of smaller companies and intermediary holding companies have been omitted.
2. All ownership is 100 per cent unless stated otherwise.

2.25 We discuss the extent of Live Nation's influence in Live Nation-Gaiety and its subsidiaries in Appendix D. We found that, although Live Nation has a majority shareholding in Live Nation-Gaiety, Live Nation does not, in practice, control this business or any of its subsidiaries in respect of the issues relevant to this inquiry. Nevertheless, we found that Live Nation does have material influence in Live Nation-Gaiety and some of its subsidiaries, which includes some influence in deciding the ticket agent(s) used by these businesses.

2.26 In the year ended 31 December 2008, Live Nation generated worldwide revenues of $4,167 million (£2,256 million), of which £[✂] million was generated in the UK (approximately [✂] per cent). In the same year, Live Nation reported a worldwide earnings before interest and tax (EBIT) loss of $14 million (£8 million), not including a significant goodwill write-off,[7] while its UK businesses reported [✂].[8]

2.27 In 2008, Live Nation's promotions and venues businesses were responsible for around [✂] per cent of Live Nation's UK revenue and [✂] per cent of its UK EBIT. Live Nation's promotions business generated £[✂] million of EBIT, [✂] per cent of total UK EBIT at a margin of [✂] per cent, while its venues business generated £[✂] million of EBIT, [✂] per cent of total UK EBIT at a margin of [✂] per cent (Live Nation's venues business employs significantly more capital than its promotions business). Around [✂] per cent of Live Nation's UK revenue and [✂] per cent of its UK EBIT was generated through part-owned subsidiaries.

Ticketmaster

2.28 Ticketmaster was founded in 1976. In 2002, the business was acquired by InterActive Corporation (IAC)[9] and, in August 2008, it was listed as a separate entity on NASDAQ. Ticketmaster is headquartered in West Hollywood, California, but operates in 20 countries, providing ticket sales, ticket resale services, marketing and fulfilment. In 2007, Ticketmaster sold approximately 141 million tickets worldwide.

2.29 In the UK, Ticketmaster is:

(a) a primary ticket agent, acting for promoters and venues, through Ticketmaster UK Limited (Ticketmaster UK), Ticketweb Limited (Ticketweb);[10] and Ticket Shop (NI) Limited (see Section 5 and Appendix E for a description of this market and Ticketmaster's activities);

(b) a secondary ticket agent, through GetMeIn Limited[11] (GetMeIn); and

(c) a ticketing systems provider, through Ticketmaster Systems Limited (Ticketmaster Systems).[12]

2.30 In October 2008, Ticketmaster acquired a majority interest in Frontline Management Group, Inc (Frontline), one of the world's largest artist management companies. Frontline, based in the USA, provides management services to approximately 200 music artists. Frontline does not operate in the UK, though some of the artists managed by Frontline do occasionally perform in the UK.

2.31 Figure 4 shows a simplified group structure, highlighting Ticketmaster's principal UK trading companies.

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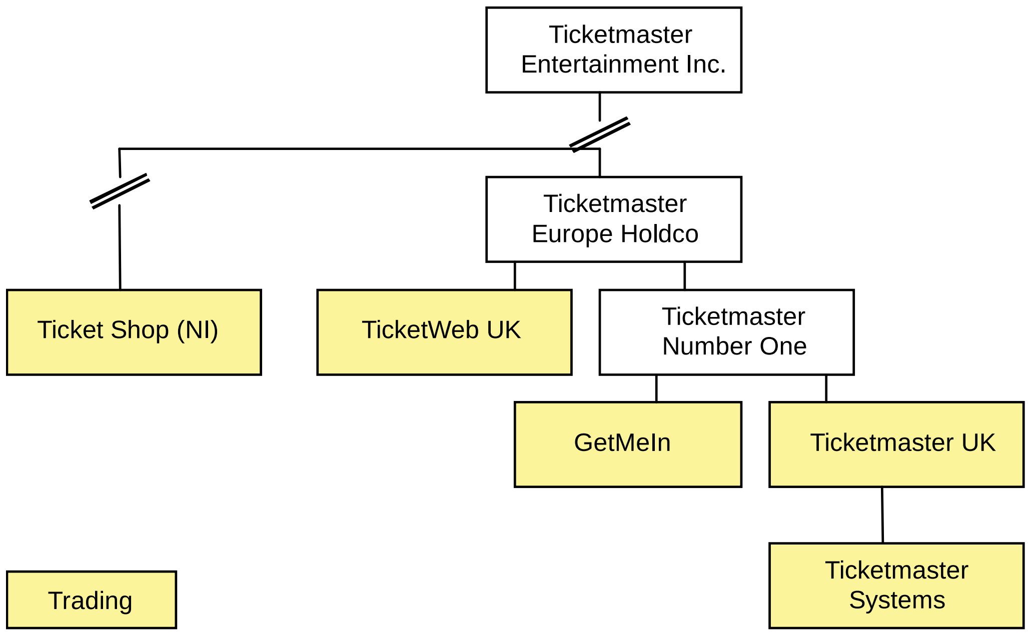
[7] In 2008, Live Nation wrote off goodwill relating to US acquisitions of £154 million ($284 million) in the year ended 31 December 2008.
[8] Live Nation has made a worldwide EBIT loss in three of the last five years, and has made a loss before tax in each of the last five years. The performance of Live Nation's worldwide business is shown in more detail in Appendix C.
[9] IAC acquired 50 per cent of Ticketmaster in 1998 and the remaining 50 per cent in 2002.
[10] Ticketmaster acquired 100 per cent of Ticketweb in May 2000.
[11] Ticketmaster acquired GetMeIn in January 2008.
[12] Ticketmaster Systems was formerly known as Synchro Systems Limited. Ticketmaster acquired 50 per cent of the business in 1993 and the remaining 50 per cent in 1997.

FIGURE 4

Simplified Ticketmaster UK group structure



Source: Ticketmaster.
Note: The above group structure includes the main Group companies within the Ticketmaster UK group. A number of smaller companies and intermediary holding companies have been omitted.

2.32 In the year ended 31 December 2008, Ticketmaster generated revenues of £[✂] million in the UK, which represented approximately [✂] per cent of Ticketmaster's worldwide revenues. In the same year, Ticketmaster achieved an EBIT of £[✂] million in the UK, which represented approximately [✂] per cent of its worldwide EBIT before goodwill write-offs.[13]

2.33 In 2008, Ticketmaster's primary ticketing services in the UK (through Ticketmaster UK and Ticketweb) were responsible for [✂] per cent of Ticketmaster's UK revenue, and [✂] per cent of its EBIT.[14]

3. The merger

Outline of the merger

3.1 On 10 February 2009, Ticketmaster and Live Nation announced their intention to merge. Ticketmaster began reviewing its strategic options in October 2008, following the appointment of Irving Azoff (the former CEO of Frontline) as the CEO of Ticketmaster. The boards of both companies met for the first time in December 2008. Ticketmaster's proposal, which was ultimately agreed by the board of Live Nation, was a merger of equals. The proposed structure of the transaction was that Ticketmaster would become a subsidiary of Live Nation and, following the merger, the former shareholders of Ticketmaster would own 50.1 per cent of Live Nation's shares through a 1.384:1 share swap. The board of the new parent company would be made up of representatives from both Ticketmaster and Live Nation. On 25 January 2010, following approval (subject to conditions) from the Department of

[13] In the year ended 31 December 2008, Ticketmaster wrote off goodwill of $1,094 million (£575 million).
[14] This percentage is based on Ticketmaster's profitable businesses and does not include the EBIT loss from GetMeIn.

Justice in the USA, Ticketmaster and Live Nation completed their merger in accordance with these proposals.

Rationale for the merger

3.2 On 31 December 2008, Live Nation's ten-year contract with Ticketmaster, under which Ticketmaster was Live Nation's preferred supplier of ticketing services (see paragraph 2.16), came to an end. The contract expired in the USA on 31 December 2008 (subject to some exceptions), and expired in the UK on 31 December 2009 (though Ticketmaster continued to provide Live Nation with ticketing services in the UK until 31 January 2010 (see paragraph 6.5)). During 2008, both Live Nation and Ticketmaster indicated their intent to offer artists a one-stop shop for their live music needs, each of them with the ambition of linking, through one company, the artist with the fan. In accordance with this intent, in October 2008, Ticketmaster acquired Frontline, one of the world's largest artist management companies, and, in replacement of the agreement with Ticketmaster, Live Nation developed its own ticketing system in the USA using ticketing software licensed from Eventim.

3.3 Live Nation and Ticketmaster told us that the merger was designed to create a company that could provide more and better services than either company could on its own and that, by combining the companies' complementary services, the integrated company would be better able to connect artists with their fans. They said that the merger would enable investment in innovation and would streamline the live entertainment supply chain, providing live music customers with a one-stop shopping opportunity. They told us that the merger would:

(a) align incentives between artist management, promotions, venues and ticketing, with the combined objectives of selling more tickets, generating increased revenue for artists, and helping artists to connect more directly with fans;

(b) enable different and simplified fee structures to fans;

(c) create a broader business base over which to spread the costs and risks of new products and business development; and

(d) enhance marketing and promotional opportunities.

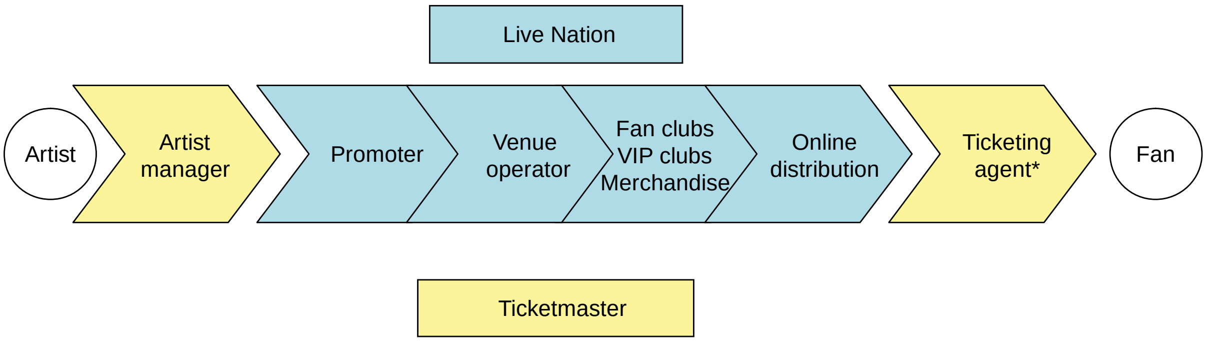
3.4 In presentations to their shareholders, Live Nation and Ticketmaster estimated world-wide synergies from the merger of around $[✂] million in earnings before interest, tax, depreciation and amortization (EBITDA) a year. The majority of these savings would be in operational efficiencies, in particular by Live Nation discontinuing its US ticketing operations, though they anticipated some revenue synergies as well. Live Nation and Ticketmaster anticipated some loss of business due to the merger, in particular as some clients of Ticketmaster might choose to switch to other ticketing suppliers (see paragraph 7.71).

Live Nation's rationale for the merger

3.5 Live Nation told us that its strategy was to create a live entertainment company which enabled artists to connect with their fans. This strategy has been demonstrated in Live Nation's merger and acquisition activity prior to the proposed merger, which has resulted in the sale of non-core activities, including businesses involved in motor sports, theatre and sports representation, and the acquisition of live music businesses involved in promotions, venue management, fan-based media, digital distribution and merchandising. In November 2009, Live Nation sold its theatre business in the UK [✂]. Live Nation said that the merger provided it with the opportunity to offer artists a full-service proposition, by adding Ticketmaster's artist management services and ticketing services, as illustrated in Figure 5.

FIGURE 5

Live Nation and Ticketmaster post-merger supply chain



Source: Live Nation and CC.

3.6 A presentation to Live Nation's board in January 2009 stated that [✂].

3.7 Furthermore, in December 2008, the Live Nation board noted that Ticketmaster 'had expressed its intention to consider a similar transaction with [✂], should [Live Nation] decline [the transaction]'. A US broker observed that if Live Nation thought its principal competitor for ticketing and new competitor for artists (Ticketmaster) was about to combine with [✂], Live Nation might want to do something with Ticketmaster first.[15]

Ticketmaster's rationale for the merger

3.8 Ticketmaster told us that growth in the retailing of tickets over the Internet, away from retailing through stores, had resulted in the commoditization of ticketing. Ticketmaster said that it had become increasingly easy for venues and promoters to develop their own ticketing solutions. Therefore, Ticketmaster believed that it needed to diversify away from ticketing into other areas of the live entertainment supply chain.

3.9 Ticketmaster considered transactions with Live Nation and [✂]. However, Live Nation, which was Ticketmaster's largest international client, had recently signed an agreement with Eventim, under which Live Nation would provide its own ticketing services in the USA, using Eventim software, and Eventim would replace Ticketmaster as Live Nation's principal provider of ticketing services elsewhere around the world. Ticketmaster was aware that the loss of the contract with Live Nation would have a significant effect on Ticketmaster's business. In addition, following Live Nation's agreement with Eventim and the establishment of its own ticketing services, Live Nation had won a five-year contract from SMG,[16] another large venue operator and manager, and previously another significant Ticketmaster client, to sell tickets for some of SMG's owned venues in North America.

[15] Miller Tabak + Co, LLC, 4 February 2009.
[16] SMG is a subsidiary of American capital, Ltd. A company listed on NASDAQ.

3.10 We noted that the merger enabled Ticketmaster to internalize its relationship with Live Nation (though Live Nation's contract with Eventim remains in place) and, by merging with Live Nation, Ticketmaster removed a new competitor for ticketing services in the US market.[17]

3.11 Ticketmaster believed that a merger with Live Nation would also have the following positive benefits:

(a) a combination with an innovative and fast-growing 'consumer marketing company', with good prospects for future growth;

(b) opportunities for access to greater volumes of tickets for sale;

(c) a slowdown in the 'commoditization' of ticketing, possibly facilitating higher margins through premium tickets, and rational pricing;

(d) significant synergies (see paragraph 3.4); and

(e) short-term opportunities to raise cash through the sale of non-core businesses.

Significance of the companies' UK activities in the merger

3.12 Live Nation and Ticketmaster told us that there was little focus on the UK operations of either company in the merger discussions and documentation. They said that the merger was predominantly a US-led deal, and the activities of both companies outside the USA had not affected the negotiations significantly, if at all. Live Nation's management in the UK told us that they were not involved in the discussions leading up to the proposed merger, [✂].

4. Jurisdiction

4.1 Initially, we considered the merger of Ticketmaster and Live Nation under section 36 of the Act, in accordance with our terms of reference (see Appendix A). However, following the completion of the merger on 25 January 2010, and pursuant to section 37(2) of the Act, we considered the merger during the remittal period as a completed merger rather than as an anticipated merger, and we treated the reference as if it had been made under section 22 of the Act. Accordingly, we considered the questions set out in section 35(1) of the Act, namely whether a relevant merger situation had been created and if so, whether the creation of that situation had resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the UK for goods or services. A relevant merger situation is created where two or more enterprises cease to be distinct,[18] and either the turnover test or the share of supply test is satisfied.[19] We were satisfied that both Live Nation and Ticketmaster were 'enterprises' for the purposes of the Act.[20]

4.2 As a result of the merger, Ticketmaster became a subsidiary of Live Nation and the former shareholders of Ticketmaster were given ownership of 50.1 per cent of Live Nation (see paragraph 3.1). The effect of this transaction was that Ticketmaster and

[17] [✂] estimated that Live Nation could capture [✂] per cent of the US ticketing market by 2011, principally through selling its own tickets and tickets for SMG ([✂]).
[18] Enterprises cease to be distinct if they are brought under common ownership or control (Section 26 of the Act).
[19] Section 23 of the Act.
[20] Section 129(1) of the Act.

Live Nation became interconnected bodies corporate,[21] and the UK businesses of Ticketmaster and Live Nation were under common ownership and control.

4.3 The turnover test is met if the value of the annual turnover in the UK of the enterprise being taken over exceeds £70 million.[22] Ticketmaster's turnover in the UK in the year ended 31 December 2008 exceeded £70 million (see paragraph 2.32), so the turnover test was satisfied.

4.4 Therefore, we concluded that the merger had resulted in the creation of a relevant merger situation in the UK within the meaning of the Act.

Interim measures

4.5 On 10 March 2010, we accepted undertakings from Live Nation and Ticketmaster to hold separate their businesses in the UK for the duration of our inquiry. We decided that, because of the vertical nature of the transaction, our knowledge of the two businesses which had been developed through our investigation since June 2009, and the relatively short period in which we had to reach our final decision (see paragraph 1.2), it was not necessary to require the appointment of a Monitoring Trustee or a hold-separate manager.

5. The markets

5.1 This section provides a description of the markets relevant to our analysis of the competitive effects of the merger.

Primary retailing of tickets for live music events

5.2 A detailed description of the markets relevant to the retailing of tickets in the UK is at Appendix E.

5.3 Tickets may be sold to consumers through a ticket agent or sold by a promoter or venue directly. We describe the company interacting with consumers (which may be a ticket agent, promoter or venue), and to which consumers usually make their payments, as the retailer; and we describe the process of selling tickets (whether by a principal or agent) as retailing.

Consumer preferences

5.4 We commissioned a consumer survey[23] (hereafter referred to as 'the consumer survey'), which found that 77 per cent of live music tickets were sold over the Internet and 16 per cent by telephone, with 5 per cent of tickets purchased in-person at the venue's box office. Nearly all respondents to the survey said that, when they last purchased live music tickets, they searched specifically for tickets for their chosen event, rather than browsing generally. Over 90 per cent of consumers[24] purchased tickets for their chosen event from the first place they tried.

5.5 The survey also found that nearly 90 per cent of consumers had used a ticket agent to purchase live music tickets at some point in the past and, among these respon-

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[21] Section 26(2) of the Act.
[22] Section 23(1)(b) of the Act.
[23] See: www.competition-commission.org.uk/inquiries/ref2009/ticketmaster/consumer_research.htm.
[24] In this report, 'consumers' refers to purchasers of tickets for live music events, unless stated otherwise.

dents, familiarity with the ticket agent and convenience, together with the reputation of the agent, including their trustworthiness and security, were key reasons for preferring their chosen ticket agent. The amount of the booking fee was not a significant reason.

5.6 Among consumers who had made their most recent ticket purchase through an agent, and could recall the level of booking fee they had paid, 84 per cent said that they would still have bought the ticket from the same place if the booking fee were 10 per cent higher, while 90 per cent would have continued with the purchase if the fee had increased by 5 per cent.

5.7 Based on the evidence from the consumer survey, we concluded that most consumers for live music tickets did not shop around and were insensitive to the level of the booking fee.

5.8 The consumer survey also found that the most common ways by which live music consumers learned about their chosen events were from family and friends, and articles in newspapers and magazines. Emails from ticket agents played a limited role.

5.9 When consumers bought tickets over the Internet, the consumer survey found that around 70 per cent bought from a ticket agent and 30 per cent bought from the website of the promoter, artist or venue. Of those who bought through a ticket agent, 57 per cent went directly to the agent's website, while 43 per cent accessed the agent's website through a search engine.

5.10 The consumer survey found that Ticketmaster was by far the most well-known ticket agent, with 75 per cent of respondents mentioning Ticketmaster spontaneously as a company which sold live music tickets. The next most well-known ticket agent was See Tickets, which was mentioned by just 18 per cent of respondents. The consumer survey also found that Ticketmaster was the ticket agent used most often by purchasers of tickets for live music events.

Competition between ticket agents

5.11 We noted that promoters did not usually require ticket agents to charge the same booking fee, even for the same event. However, promoters and venues did agree the maximum booking fees which their ticket agents could charge (sometimes also capped by the artist),[25] which suggested that, although consumers were insensitive to the level of fees (see paragraphs 5.5 to 5.7), consumers might be sensitive over the long term to the total cost of attending live music events.

5.12 We noted that the key features of competition between ticket agents, as they sought to gain allocations of tickets from promoters and venues, were the level of rebate offered and the quality of service, in particular the ability of the ticket agent to sell tickets to consumers.

5.13 Ticketmaster told us that, over the last few years, it had increased significantly the rebates it paid to promoters and venue operators, which reflected its need to compete aggressively for ticket allocations. [✂] Ticketmaster's gross margin had remained approximately constant in real terms.

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[25] Live Nation estimated that artists capped booking fees in about 5 per cent of cases.

Geographic market definition

5.14 Given that most live music tickets were now bought on the Internet (see paragraph 5.4), and most of the large ticket agents sold tickets for events across the UK, we concluded that the relevant geographic market was at least as wide as the UK. We noted that some international promoters and venue operators engaged with ticket agents on a global basis but we found that, in most of these agreements, the terms differed between countries, and promoters and venue operators in the UK worked with ticket agents in the UK, whether they were part of international companies or not. Therefore, we concluded that the relevant geographic market was the UK.

Product market definition

5.15 We observed that there were three main activities associated with the ticketing of live music events:

(a) the provision of technology, including ticketing software and hardware (sometimes developed in-house, sometimes licensed from a software provider and sometimes provided as a managed service);

(b) selling to consumers (usually through a website, but also through call centres and in-person either through a box office or ticket shop); and

(c) the fulfilment of ticketing purchases (ie the printing and distribution of tickets).

We considered how to define the market or markets in which these activities took place.

5.16 Where tickets were sold through an agent, the agent was usually responsible for all three functions. Where promoters or venue operators sold their tickets directly to consumers, ie as a self-ticketer, they usually purchased ticketing software from a specialist company and, in some cases, also contracted out operational activities such as fulfilment (see paragraph 5.15*(c)*).

5.17 We did not see evidence of a lack of competition in the provision of technology (including specialist ticketing software) or in fulfilment and other operational activities. We found that, while specialist software is needed for venue ticketing systems, such software is available from a number of companies in addition to the main ticket agents, including Seatem (which supplies the Enta ticketing system), Audienceview, tickets.com and Tessitura. Therefore, we did not consider further the market for the provision of software, or other input markets relevant to ticket retailing.

5.18 Eventim told us that we had not distinguished between the roles of a ticketing service provider and a ticket agent. According to Eventim, a ticketing service provider provides the IT and logistics system infrastructure that allows tickets to be distributed to consumers. Eventim told us that this service was more than the provision of ticketing software, an Internet ticketing platform, hardware and other operational activities, as the ticketing service provider continued to manage the ticketing system on an ongoing basis. Eventim told us that, under its agreement with Live Nation (see paragraph 2.16), Eventim was operating as a ticketing service provider, managing a ticketing system for Live Nation. Eventim said that both Live Nation and Eventim, and possibly other ticket agents, were then acting as ticket retailers, selling Live Nation's tickets off this system.

5.19 We acknowledged Eventim's description of the market and the distinctions between the various roles which it highlighted. However, we found that the distinction between a ticketing service provider and a provider of ticketing software and hardware, both of which enabled a promoter or venue operator to self-ticket, was small. We also found that, where a ticket agent acted for a promoter or venue operator, allowing them to outsource the whole of their ticketing function, the agent provided a managed ticketing service. Therefore, we did not see a need to consider a third market (ticket service provision) in addition to the provision of specialist ticketing software and hardware (see paragraph 5.17) and ticket retailing (see paragraphs 5.20 to 5.26).

5.20 With regard to ticket retailing, we identified four questions to help us define the relevant product market more precisely:

(a) Is the primary ticket market separate to the secondary ticket market?

(b) Is self-ticketing (ie by venues and, occasionally, by promoters) in the same market as the primary retailing of tickets by ticket agents?

(c) Is there a separate market for the retailing of tickets for live music events (ie separate from the retailing of tickets for other live entertainment events)?

(d) Is the retailing of live music tickets on the Internet and by telephone in a separate market to the retailing of tickets in-person at a venue box office?

Our analysis of these issues is in Appendix E and is summarized in paragraphs 5.21 to 5.26.

5.21 In making our assessment of the relevant market we judged that the ‘net price’ of ticket retailing should be considered as the ticket retailer’s net revenue (ie the total fees charged to the consumer less any rebates or other payments offered to the promoter/venue operator).

5.22 With regard to secondary ticket retailing (see paragraph 5.20*(a)*), we noted that some secondary ticket agents, which facilitated the exchange of tickets between consumers, had started to sell primary tickets (ie tickets sold directly to consumers on behalf of promoters and venues). However, so far, the only primary tickets which these agents had sold were premium tickets, eg for front row seats. We found that secondary ticket agents were not equipped to sell high volumes of primary tickets in the near future, as to do so would represent a different business model and require significant investment. We concluded that the primary retailing of tickets was in a separate market from the secondary retailing of tickets.

5.23 With regard to self-ticketing (see paragraph 5.20*(b)*), we did not have evidence to enable us to assess whether a small but significant non-transitory increase in price by ticket agents would be profitable, without inducing parties which self-ticketed to become ticket agents.[26] Eventim told us that it would not. Nevertheless, we noted that venues which self-ticketed provided the same essential ticketing service to the consumer as a primary ticket agent acting for a venue. We also noted that, particularly for large venues, the option of self-ticketing was credible, and many venues had adopted it. More importantly, we noted that two large self-ticketing venues (the SECC and the NEC) were now using the technology they used for self-ticketing to sell tickets for promoters and other venues, so acting as primary ticket agents (under the names Ticketsoup and Ticketfactory respectively). For these reasons, we concluded that the market for the primary retailing of tickets should include self-ticketing. Notwithstanding this conclusion, we recognized that market

[26]See *CC2*, paragraph 2.4.

definition was simply a tool to assist our assessment of competition and we still considered separately the extent of the constraint imposed on primary ticket agents by parties which self-ticketed (see paragraph 5.36).

5.24 With regard to the retailing of other live entertainment events (see paragraph 5.20*(c)*), we found that these events were not a demand-side substitute for live music events. We considered the potential for supply-side substitution, and we found that most of the retailers of tickets for other events had some presence retailing tickets for live music events. Therefore, these firms were already included in our assessment of competition. We found that there were no other firms which needed to be included because there were no other retailers which we could expect to start retailing live music tickets in response to an increase in net prices.

5.25 Ticketmaster submitted that no ticket agent operating in the UK market presented itself as a 'live music' agent and Ticketmaster told us that its market share would be different if we defined the market to include other events. We noted that the shares of Ticketmaster and See Tickets were higher for live music ticketing than for the ticketing of other events but we judged that this evidence supported our market definition as, if supply-side substitution were easy, we might have expected other ticket retailers to have expanded their live music activities already. We concluded that we did not need to consider a wider market definition and, for the purposes of our inquiry, we could focus on the market for the primary retailing of tickets for live music events.

5.26 With regard to the final question, whether the retailing of live music tickets on the Internet and by telephone is in a separate market to the retailing of tickets in-person at a venue box office (see paragraph 5.20*(d)*), we found that, although consumers could purchase live music tickets in-person from the box office, and avoid paying booking fees, few did so. Furthermore, the consumer survey found that, if the price of booking fees on the Internet or by telephone increased by a small but significant amount, few consumers would switch to purchasing their tickets in-person at the box office. Therefore, we concluded that in-person sales at the venue box office did not constrain the price of tickets sold over the Internet and by telephone and should not be included in the relevant market.

5.27 For these reasons, we concluded that the relevant market for our purposes was the primary retailing of live music tickets on the Internet and by telephone, including self-ticketing but excluding in-person sales at venue box offices.

Market shares

5.28 We found that Ticketmaster's share of the UK market for the primary retailing of live music tickets in 2008 was between 40 and 50 per cent and See Tickets' share of this market was around half this amount, or slightly less. We noted that both shares, especially See Tickets' market share, would be lower if we excluded 'white-labelled' or co-branded sales, ie sales where the consumer seeks to purchase the ticket through another channel (eg the promoter's or venue's website) but is passed through to transact with a ticket agent.[27] We found that no other provider had a share of the UK market for the primary retailing of live music tickets above 5 per cent.

[27]'White-labelled branding refers to the situation where the only branding visible to the customer is that of the initial sales channel (eg the promoter's or venue's branding). Co-branding refers to the situation where, prior to completing the transaction, the consumer is made aware of the ticket agent's branding as well as the branding of the initial sales channel.

5.29 We found that, although there was some volatility in market shares, the current market structure had persisted for some time, with the two largest ticket retailers, Ticketmaster and See Tickets, consistently maintaining their market shares despite some new entry into the market. We found that, over the last five years, Ticketmaster appeared to have gained some market share and See Tickets' market share appeared to have declined slightly. However, we found that, for several years, these two large incumbent ticket retailers had not been challenged significantly, either by large-scale entry or by the expansion of any of the existing suppliers in the market.

Competition between existing primary retailers of live music tickets

5.30 Promoters sell tickets for their live music events through ticket agents (usually including one preferred ticket agent) and sometimes through their own websites, where consumers transact with a ticket agent on a white-labelled or co-branded basis. A venue sells tickets for events in-person through its box office (which is outside the relevant market (see paragraph 5.26)); by telephone through its box office (usually routed out of hours and as an overflow to the call centre of its preferred ticket agent); through its own website (where the consumer transacts with a ticket agent on a white-labelled or co-branded basis); and through the website of its preferred ticket agent. If a venue self-tickets, the consumer transacts directly with the venue rather than with a ticket agent.

5.31 Metropolis told us that Ticketmaster and See Tickets were the strongest ticket agents in the UK and received its largest ticket allocations. Regular Music told us that Ticketmaster and See Tickets were the only two credible ticket agents of any real scale in the UK. See Tickets told us that there were only three other significant retailers of live music tickets: Ticketmaster, Ticketline and Stargreen.

5.32 Ticketmaster told us that there was no evidence that competition in the UK market for the primary retailing of live music tickets was less than fully effective. Ticketmaster told us that, in its negotiations with promoters, it was always aware that the promoter had a choice between Ticketmaster and numerous other ticket agents. However, in the examples Ticketmaster provided, we noted that the principal alternative was almost always See Tickets. Ticketmaster told us that it had to innovate continually and provide a good quality service to its customers in order to maintain its position in the market. Ticketmaster also told us that its net prices were commensurate with its competitors, and provided no indication that it had any market power.

5.33 However, we noted that Ticketmaster had several advantages over small ticket agents, including:

(a) higher consumer awareness;

(b) an ability to market events to large numbers of potential consumers, using an extensive database of previous customers; and

(c) a proven track record of operating reliably, even at significant scale, and trusted by both promoters and consumers.

We also noted that Ticketmaster's large customer base made it attractive to promoters and venues.

5.34 See Tickets told us that its main relationships were with promoters rather than venues. AEG told us that, due to Ticketmaster's scale and position in the market, it was effectively an unavoidable trading partner for large venue operators. AEG said that venues chose Ticketmaster because of its scale, ancillary services, interoperability and reputation.

5.35 Which? told us that it did not consider the primary retailing of event tickets, in particular for popular live music events, to be a market that was working well for consumers. Which? said that there was a lack of effective choice and innovation, the quality of service was often less than would be expected from online retailers, and the terms and conditions of trade were often biased unfairly against consumers.

5.36 We did not find any evidence indicating that self-ticketing venues were any less effective in selling tickets than venues which used ticket retailers. Nevertheless, we found that there was very little switching by venues between using a ticket agent and self-ticketing, which we would have expected to observe if the threat of self-ticketing was an active constraint on ticket retailers, including Ticketmaster. We noted that there were examples of self-ticketing venues changing their ticketing software, and examples of self-ticketing venues becoming small-scale ticketing retailers (eg Ticketsoup and Ticketfactory), but we found that very few venues had switched from using a ticket retailer to self-ticketing. Ticketmaster told us that the threat of self-ticketing was effective as a competitive constraint even if there were an absence of many examples of actual switching, and the option for a venue to self-ticket was a typical feature in many of its negotiations. While we accepted that venues did threaten to switch to self-ticketing, we judged that self-ticketing (either actual or threatened) imposed a limited competitive constraint on the large incumbent ticket agents.

Barriers to entry and expansion in the primary retailing of live music tickets

5.37 Barriers to entry and expansion are features of a market that may prevent or restrict entrants and smaller incumbent firms from exploiting profitable opportunities, and hence enable existing suppliers to raise prices above costs persistently without significant loss of market share.[28]

5.38 Ticketmaster told us that the principal requirements in order to enter the market were to develop or license a ticketing system, build a reputation for reliability and trust, establish effective sales points (eg websites and call centres), form relationships with promoters and venues, and create consumer awareness. Ticketmaster submitted that the costs for each of these components of entry were not exceptional or substantial, and all of them could be achieved on a scalable basis, allowing initial small-scale entry with the possibility of expansion over time.

5.39 Ticketmaster submitted a model of large-scale entry, which it said was based on realistic assumptions and would be achievable by a reasonably well-funded new entrant. This model suggested that entry as a ticket retailer should be highly profitable. Ticketmaster told us that its modelling showed that entrants did not need to make upfront large investments in order to operate at scale but, rather, they could build their businesses in line with growth in demand.

5.40 However, we noted that there were many small ticket agents which had not grown significantly over many years and the market shares of these agents had remained low, while Ticketmaster's market share had remained much higher. We noted that a situation where expansion has not occurred, but should be highly profitable, was consistent with there being barriers to expansion.

[28] *Market Investigation References: Competition Commission Guidelines, June 2003, CC3*, paragraph 3.22.

5.41 AEG told us that existing ticket retailers had significant incumbency advantages as the costs of switching ticketing supplier, particularly for a large venue operator, were substantial. These costs included the technology upheaval and the need to run two systems in parallel for the period of transfer (which could last several months).

5.42 Which? told us that the principal barriers to entry and expansion for a new ticket agent were the need to:

- establish a reputable and trusted brand (which is especially important due to the prevalence of online fraud and scam ticketing);
- access a sufficient volume of tickets (consumers will be unlikely to make repeat visits to ticketing agents that frequently run out of tickets and must be confident that their preferred ticketing agent will stock tickets for key events); and
- offer a prompt and reliable service, and deliver tickets securely once purchased.

Which? told us that brand awareness of the ticket agent was particularly important for consumers, as brand acted as a proxy for the legitimacy and availability of tickets, especially those sourced via the Internet.

Access to ticket allocations

5.43 We found that, in order to attract consumers, a new ticket agent needed access to tickets to offer for sale. Therefore, we considered how easy it was for a new ticket agent to gain ticket allocations from promoters and venue operators. We considered whether there was a 'chicken and egg' problem due to the two-sided nature of the market (ie due to the ticket agent's position between promoters and venue operators with tickets and consumers seeking to buy them).

5.44 Ticketmaster told us that it was not difficult for a new entrant to obtain tickets to a wide range of events because promoters allocated tickets to multiple ticket agents. Although the initial allocation might be small in terms of volume, this practice offered an entrant the opportunity to demonstrate its ability to sell tickets and, if successful, it would obtain larger ticket allocations.[29]

5.45 We noted that Ticketmaster's argument was supported by evidence from promoters. For example, Metropolis told us that it allocated tickets across a number of ticket retailers and it would be willing to provide a small number of tickets to a new retailer. Metropolis said that, if the new ticket retailer were able to sell tickets more successfully than other ticket retailers, it would be re-allocated more tickets.

5.46 We also noted that there had been some small-scale entry into the UK market for the primary retailing of live music tickets. We noted, for example, that Gigantic, a recent, small-scale new entrant, had been successful in obtaining ticket allocations to a wide range of events, both from Live Nation and other promoters. Although the volume of tickets sold by Gigantic was still small, it had been able to gain access to tickets to sell, and it had been able to promote these tickets to attract some consumers.

5.47 We concluded that gaining access as a ticket agent to a small volume of tickets across a wide range of events did not appear to be a significant barrier to small-scale entry. We concluded that small-scale entry into the UK market for the primary retailing of live music tickets was possible.

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[29] [✂]

5.48 In addition to finding that it was possible for new ticket agents to obtain small ticket allocations across a wide range of events (see paragraph 5.47), we noted that there was some evidence suggesting that it was not actually necessary for a new ticket agent to be able to offer tickets to a wide range of events in order to attract some consumers. In particular, we found that self-ticketing venues were not necessarily less effective in selling tickets than venues which used ticket agents (see paragraph 5.36).[30] In the light of these findings, we concluded that interactions between the two sides of the market were not decisive in determining competitive outcomes.[31] We concluded that the two-sidedness of the market did not appear to be, of itself, a significant barrier to entry, and hence that there was not a significant 'chicken and egg' problem (see paragraph 5.43).

Barriers to large-scale entry and expansion

5.49 We noted that the fact there had been no new large-scale entry in the UK market for the primary retailing of live music tickets for many years, and no examples of significant growth by small ticket retailers, suggested that there might be barriers to large-scale entry and expansion. We considered how a ticket agent might be able to obtain access to both a large allocation of tickets and many consumers.

5.50 We found that, due to the way in which the market operated in the UK, with the allocation and reallocation of tickets (see paragraph 2.17) and the overriding incentive for promoters to reduce to a minimum the number of unsold tickets (see paragraph 6.30), a ticket agent which managed to sell its full allocation of tickets for an event, when there were tickets remaining elsewhere, would be given more tickets to sell and so had the opportunity to grow. Conversely, a ticket agent could not be assured of a large-scale position in the market simply by gaining access to a large volume of tickets as, in order not to lose its ticket allocation, it needed to be able to sell its tickets at least as quickly as its rival ticket agents. For this reason, we found that the key determinant in building and sustaining a position as a large-scale retailer of live music tickets was to be able to sell tickets more quickly than other ticket agents.

5.51 We judged that the ability to sell quickly depended on gaining access to more consumers than other ticket agents and serving those consumers effectively.

5.52 We noted that our consumer survey found that a significant proportion of consumers went directly to their chosen ticket agent's website or call centre (see paragraph 5.9), which suggested that there was a degree of incumbency advantage. We found that, based on the responses in the survey, this advantage was likely to derive from consumers' perception that their chosen ticket agent was reliable and secure, and because it was more convenient for consumers to go directly to the place where they believed tickets for their desired event were most likely to be available. We recognized that, because many consumers went directly to the website or call centre of one of the large, incumbent ticket agents (ie Ticketmaster or See Tickets), many promoters and/or venue operators provided these agents with the largest allocations of their tickets (see paragraph 5.31). We concluded that one of the principal

[30]We noted that a self-ticketing venue was likely to have established relationships with many of the potential consumers for events at its venue and, therefore, it might be in a better position to sell tickets for events at its venue than a new small-scale ticket agent.

[31]The evidence suggested that the interactions between the two sides of the primary ticket retailing market operated in a similar way to how the two sides of the market operated in other forms of retailing, where the range of products on offer by a retailer is likely to affect the attractiveness of that retailer to consumers. The evidence suggested that the UK market for the primary retailing of live music tickets was dissimilar to other markets, such as video games consoles and credit cards, where strong interactions between the two sides of the market have been found.

differences between the large, incumbent retailers of live music tickets and small-scale retailers was their ability to access consumers.

5.53 We considered how a small-scale ticket agent could increase its access to consumers so as to be able to compete effectively with large-scale ticket agents. We noted that, in Ticketmaster's model of entry (see paragraph 5.38), it projected that, in the first year of entry, a large-scale new entrant would need to spend on average £1 on marketing and brand development for every ticket sale it achieved. For comparison, we noted that Ticketmaster achieved an average gross margin of £[✂] per ticket on ticket sales for its ten largest live music clients (see Appendix E, Table 9). Given that a new entrant, operating on a much smaller scale than Ticketmaster, was likely to achieve a much smaller gross margin per ticket, the proportion of the new entrant's income spent on marketing and brand development was likely to be substantial. We concluded that a large-scale entrant or a small-scale ticket retailer seeking to expand would need to invest significantly in marketing and brand development in order to obtain a level of consumer awareness similar to that enjoyed by the large-scale incumbent ticket retailers, and it was likely to need access to substantial financial resources to fund this investment. We noted that the need for this investment increased significantly the risks associated with large-scale entry and expansion.

5.54 In addition, we noted that there were other factors which made it difficult to become a large-scale retailer of live music tickets. First, we noted that, in order to sell tickets effectively to large numbers of consumers, it was necessary to operate a reliable, high-volume ticketing service. Although we recognized that scaleable ticketing software could be licensed relatively easily, we noted that, in many cases, ticket retailers had customized their ticketing software, and some of the large, incumbent ticket retailers (eg Ticketmaster and Eventim) had developed their own bespoke systems. Second, we recognized that there were many long-term relationships between promoters and/or venue operators, which controlled most live music tickets, and the large, incumbent ticket retailers. We noted that, although a new ticket agent might be able to gain access to some tickets by demonstrating a greater ability to sell those tickets than the incumbent ticket agent, the presence of a preferred relationship meant that the extent of any reallocation of tickets could be limited. We noted, for example that, over the last ten years, UK ticket agents other than Ticketmaster had been able to obtain few tickets from Live Nation (see Table 8 and paragraph 7.110). Nevertheless, we also noted that few preferred relationships between promoters and ticket agents in the UK were exclusive (see paragraph 2.16) and, given the high number of promoters and venue operators controlling live music tickets (see paragraphs 2.10 and 2.11), there were many preferred relationships in the industry, which came up for renewal on a regular basis.

5.55 Eventim told us that, in order to enter a new geographic market, it needed a significant guaranteed base of ticket inventory, as having tickets for sale attracted ticket buyers and, once an agent had relationships with ticket buyers, it could attract further tickets for sale from other promoters and venue operators.[32] Eventim said that the principal barrier to large-scale entry and expansion by Eventim in the UK was gaining access to a large volume of tickets. Eventim told us that a small allocation of tickets was not sufficient to justify the significant investment in marketing and promoting its ticket retailing activities in the UK which was essential to become a

[32]Eventim defined the chicken and egg problem as the problem of gaining access to large numbers of tickets to sell, and said that this problem operated as a barrier to large-scale entry and expansion. We recognized that this definition differed from our definition of the 'chicken and egg' problem (see paragraph 5.43). However, we considered the substance of both 'problems' under both definitions (see paragraph 5.48 for a discussion of the 'chicken and egg' problem as defined by us and paragraphs 5.49 to 5.62 for a discussion of the 'chicken and egg' problem as defined by Eventim).

large-scale supplier. Eventim told us that if it had significant numbers of attractive tickets to some of the best shows available to place on its system and it therefore invested heavily in marketing and promotion, then its website would attract large numbers of customers which, in turn, would enable Eventim to obtain substantial and increasing allocations of tickets from other promoters and venue operators, creating a ‘virtuous circle’.

5.56 Eventim told us that, in order to become one of the leading ticket retailers in the UK, it either needed to acquire one of the two largest existing retailers (ie Ticketmaster or See Tickets), or to become Live Nation’s preferred ticket agent. Eventim said that an acquisition of any of the smaller ticket retailers in the UK would not have given it a sufficient foothold in the market from which to grow, and no other promoter or venue operator could have offered Eventim the volume and breadth of ticket stock which it would need.

5.57 We considered whether gaining a larger initial allocation of tickets would, of itself, increase a ticket agent’s access to consumers, ie whether it could generate a ‘virtuous circle’ (see paragraph 5.55). We found that, when marketing the tickets available on their websites to consumers, ticket agents promoted the range of events for which they were selling tickets, not the volume of tickets they held for each event, and therefore consumers searching for tickets would be unaware of the volume of tickets available from each ticket agent.[33] This evidence suggested that the volume of tickets available from a ticket agent was not particularly relevant to its ability to attract consumers. We recognized that, if a ticket agent were to sell out all of their tickets for an event, some of their potential consumers might be dissatisfied and a preferred relationship with a consumer might be lost. We recognized that this effect would be even more likely if the ticket agent were to regularly sell out all of their tickets for events. However, given the overriding objective of a promoter or venue operator to maximize its ticket sales (see paragraph 6.30), and given the ability of a promoter to reallocate tickets very quickly (see paragraph 2.17), we judged that no ticket agent would be left with unsatisfied demand for very long while tickets were available elsewhere. For the same reasons, we judged that a ticket agent receiving large initial allocations of tickets from a promoter or venue operator would not continue to receive such allocations unless it could demonstrate consistently its ability to sell them as quickly as its rival ticket agents (see paragraph 5.50). We concluded that, in the context of the UK market, where tickets are allocated and reallocated between ticket agents on a regular basis, gaining a larger initial allocation of tickets from promoters and/or venue operators would not, of itself, increase a ticket agent’s access to consumers. As such, we found no evidence of a ‘virtuous circle’. Rather, we found that the key determinant to becoming a large-scale ticket agent was the ability to sell tickets quickly, which depended primarily on the ticket agent’s ability to promote its services to consumers.

5.58 Eventim told us that the conclusion that no ticket agent would be left with unsatisfied demand for an event for very long, while tickets for that event were available elsewhere (see paragraph 5.57), was wrong. Eventim said that most of the tickets for live music events are sold very soon after the event goes on sale, and a small proportion of tickets for an event are sold between this time and when the event takes place. Eventim said that, in the period of peak selling, it is not practicable to reallocate tickets, and it is very rare for tickets to be reallocated in this period.

[33] We recognized that, when progressing through the process of buying tickets, consumers might become aware of the volume of tickets available from a particular ticket agent, as, for example, they might be able to choose their seats from the available seats on a seating plan, or they might select tickets from price bands and some bands might be unavailable. However, consumers would only gain this awareness when they are in the process of buying tickets, not when searching for tickets or when making their initial choice of which ticket agent to try.

Eventim also told us that, if the promoter is confident of being able to sell all of its tickets for an event through its preferred retail channel, it would have no incentive to reallocate them to other ticket agents. Eventim noted that Live Nation was the promoter for several artists whose events were desirable (eg Madonna and U2). Eventim concluded that any reallocation of tickets would occur only after the immediate on-sale period and therefore only in relation to events that have not (almost) sold out during that period.

5.59 We recognized that the initial sale period was important in order for a promoter to achieve high ticket sales. However, we found that a proportion of the tickets to live music events remained unsold. Live Nation told us that, in the UK, about [✂] per cent of its tickets remained unsold (see paragraph 7.38). Indeed, we noted that, if tickets for all events sold out in the initial on-sale period, it would suggest that ticket retailers had little market power and the entry of a new large-scale ticket agent would make little difference to the extent of competition in the market—but this is not what we found (see paragraph 5.65). We found that the context in which promoters and venue operators sold their live music tickets was characterized by uncertainty. Live Nation told us that, frequently, [✂]. In this context, we found that promoters and venue operators would not risk possible lost ticket sales, at significant financial cost, simply in the hope that their preferred ticket retailers would be able to sell their tickets eventually (see paragraph 6.30). We also found that reallocating tickets during a busy on-sale period is only difficult practically if the promoter seeks to take tickets away from a retailer which is making ticket sales. However, if the agent is making sales then it is unlikely that tickets will be taken away from them. We judged that, even in the initial period of an on-sale, if one ticket agent is not selling tickets and another agent is selling quickly and is at risk of selling out, because of the promoter's incentive to maximize its ticket sales it will reallocate tickets as soon as possible in order to ensure that there is no unsatisfied demand.

5.60 Eventim agreed that significant investment in marketing and promoting its ticket retailing activities in the UK was essential in order for it to become a large-scale supplier in the market (see paragraphs 5.53 and 5.55). However, Eventim told us that a small allocation of tickets was not sufficient to justify this investment (see paragraph 5.55). Eventim submitted that there was no business case for investment at this scale, given that it would only be able to obtain reallocations of tickets to less desirable events after the initial on-sale period, by which time the demand for these events will have been satisfied, and it would be unable to gain tickets to the most desirable events, as these events will have sold out. Eventim noted that the lack of any small-scale retailer in the UK making such an investment and expanding to become a large-scale retailer supported its conclusion. Eventim submitted that, given it had the assets, skills and capital to have entered the UK previously, the fact it had not done so indicated that such entry and investment in marketing and promotion did not make sense without its agreement with Live Nation or an equivalent assured source of tickets to desirable events. Eventim noted that, at the time when its agreement with Live Nation was announced, it referred to the fact that it allowed Eventim to overcome the significant barriers to large-scale entry and expansion in the UK. Eventim also noted that, since entering the UK, it has chosen not to make any significant investment, while the uncertainty surrounding its agreement with Live Nation remains (see paragraph 7.74).

5.61 We accepted that gaining access to consumers was not sufficient to ensure that Eventim, or any ticket retailer, gained access to ticket allocations which it would be able to sell. Nevertheless, we found that gaining access to consumers, which depended on investing in marketing and brand development (see paragraph 5.53), was a necessary condition to becoming a large-scale retailer of live music tickets. We accepted that, for Eventim, its agreement with Live Nation, which assured Eventim of a guaranteed revenue stream from the provision to Live Nation of a managed ticketing service, as well as access to a proportion of Live Nation's tickets, was critical to its decision to enter the UK (see paragraph 6.87). However, we found that the proportion of the total number of live music tickets which Eventim was likely to have sold on the basis of its agreement with Live Nation alone was very small (see paragraph 6.65). Although we appreciated that Eventim's agreement with Live Nation enhanced significantly its incentives to enter the UK (ie due to its guaranteed revenue stream and an assured allocation of some tickets), we found that, on the basis of this agreement alone, Eventim would have operated in the UK only as a small-scale retailer of live music tickets (see paragraph 6.66). We accepted that, for a small-scale ticket retailer, investing in marketing and brand development was risky, when it would not guarantee becoming a large-scale ticket retailer. We recognized that other small-scale retailers had not made this investment and, as such, they had not overcome one of the principal barriers to becoming a large-scale retailer. We did not form a view on whether, in the absence of the merger, Eventim would have had sufficient incentive to invest in marketing and brand development, or on how successful it was likely to have become in the UK market for the primary retailing of live music tickets (see paragraphs 6.101 and 6.102). Rather, we assessed the extent to which the merger made a difference to Eventim's prospects of success in that market, and we found that the effect of the merger was not significant (see paragraph 7.99).

5.62 We concluded that the principal barrier to becoming a large-scale retailer of live music tickets in the UK was the need to invest significantly in marketing and brand development in order to gain access to consumers. However, we did not form a view on whether it was likely that Eventim or any new entrant would overcome this barrier. We concluded that, in principle, if a ticket agent could attract consumers and could demonstrate an ability to sell tickets more quickly and effectively than its rivals, it was likely that it would gain access to more tickets and, over time, it would establish its own preferred relationships with promoters and venue operators, but we did not conclude that such success was guaranteed.

Recent examples of entry

5.63 We observed two recent examples of entry (HMV and Gigantic), both of which currently had a low market share. We found that both of these entrants were seeking to offer a distinctive proposition. For HMV, we noted that the retailing of tickets was complementary to its existing business, and its network of stores, in addition to its established website, might offer promoters and/or venue operators access to new consumers. For Gigantic, we noted that it was seeking to position itself as an ethical ticket retailer, donating a proportion of its profits to charity. However, we also found that for both new entrants there were some uncertainties about their likely success. For HMV, we noted that it had little previous experience of retailing live music tickets, and few consumers were used to buying their live music tickets in-person in a store. For Gigantic, we noted that it was a small start-up business, which was competing for live music ticket sales on the Internet among many other Internet retailers, and it had not yet gained a large customer base (see paragraph 5.46). Therefore, we concluded that we could not be confident that these recent new entrants would grow to become effective competitors to Ticketmaster and See Tickets in the near future, particularly in the presence of material barriers to large-scale expansion (see paragraphs 5.49 to 5.62).

Assessment of competition in the market for the primary retailing of live music tickets in the UK

5.64 We found that promoters allocated tickets to many ticket agents, but Ticketmaster and See Tickets received the largest allocations from most promoters. We noted that, where one of the large promoters had a preferred relationship with a ticket agent, it was always with either Ticketmaster or See Tickets (see paragraph 2.16). We found that some venues self-ticketed but, for those venues which used a ticket agent, most used Ticketmaster and only two large venues used See Tickets. We found that, although promoters and venue operators could switch between suppliers, in particular between Ticketmaster and See Tickets, the options were limited and most promoters told us that, in order to maximize ticket sales, they had to sell some tickets through Ticketmaster.

5.65 We concluded that there was competition in the market for the primary retailing of live music tickets, in particular between Ticketmaster and See Tickets (and between self-ticketing large venues), but we found that the extent of the competitive constraint imposed on these large retailers by the small retailers of live music tickets was limited. We noted that the market structure had not changed for a long period of time, with one provider (Ticketmaster) selling almost half of all the live music tickets in the UK, at least twice the size of its nearest competitor (See Tickets). We concluded that, with only two large primary retailers of live music tickets, and little likelihood of one of the small retailers (none with more than 5 per cent of the market) expanding to become a large retailer in the near future, competition in the market was less than fully effective.

Promotion of live music events

5.66 A detailed description of the supply of live music promotion in the UK is at Appendix F.

Market definition

5.67 We found that the relevant market was not wider than the promotion of live music events, including festivals (hereafter referred to as live music promotion). We also found that, although there might be an asymmetry, with small promoters generally promoting just 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.

5.68 We found that, since UK promoters did not promote outside the UK, and non-UK-based promoters rarely promoted in the UK, the market for live music promotion was not wider than the UK. We found that, for some types of events, the relevant geographic market might be smaller, but we found no evidence to suggest that Live Nation's position in any smaller market was significantly stronger than in the UK as a whole, and hence we did not believe that defining smaller markets would affect significantly our analysis of the competitive effects of the merger.

Market shares

5.69 Live Nation submitted that its share of the market for live music promotion in the UK was no more than 20 per cent and, on some measures, was considerably less (see paragraphs 20 to 21 of Appendix F). Live Nation added that its share of this market had decreased over the last two years.

5.70 We attempted to estimate Live Nation's market share based on ticket sales data from Live Nation and other promoters, and Ticketmaster's estimate of the market size. We found that Live Nation's share of the market for live music promotion in the UK in 2008 (according to the number of tickets sold) was between 15 and 20 per cent.

5.71 We also estimated Live Nation's market share by ticket revenue, using data from PRS for Music.[34] In 2008, the total face value of ticket sales for live music events was approximately £776 million. We used this value to calculate Live Nation's share of the market for live music promotion in the UK in 2008 (according to ticket revenues) and the results confirmed our previous estimate of between 15 and 20 per cent (see paragraph 5.70).

5.72 We noted that Live Nation had a stronger position in the promotion of live music festivals, primarily due to its co-ownership of Live Nation-Gaiety.

Barriers to entry and expansion

5.73 We found that the presence of established incumbent relationships and the need for significant resources in order to finance events and to build relationships with a portfolio of artists inhibited, to some extent, the entry and expansion of new live music promoters. However, we found that these requirements for entry were not insurmountable. We noted that recent new entry had occurred, in particular by promoters leaving existing firms to start their own businesses (and taking some of their artists with them) and by non-UK promoters entering the UK.

Bargaining power of promoters

5.74 We found that artists and their agents possessed a significant degree of bargaining power in their negotiations with promoters, which constrained promoters' activities and their profitability. The position of artists' agents relative to promoters differed from that of promoters and venue operators relative to ticket agents (see paragraph 5.64), because artists' agents could threaten credibly to switch between a number of promoters whereas promoters and venue operators could only threaten credibly to switch between two large ticket agents (Ticketmaster and See Tickets). We found that most venues did not have much bargaining power with promoters, although some high-profile venues did.

Market power of Live Nation as a promoter

5.75 We noted that the presence of incumbent relationships and, at least in some circumstances, the lack of an active bidding process between promoters for a new tour, did not signal a lack of competition, as artists' agents were aware of promoters' costs and had the credible threat of switching. We found that artists' agents did not need a bidding process in all circumstances to ensure that they achieved the best price.

5.76 We compared the booking fee rebate paid by Ticketmaster to Live Nation with the rebate paid by Ticketmaster to other promoters, and concluded that the differences were not significant, so there was no indication that Live Nation had substantial market power.

[34] For most ticketed live music events, 3 per cent of ticket receipts (not including booking fees or commissions) are paid to PRS for Music.

5.77 We noted that the ability of Live Nation to use any power it had in the market for live music venues to advantage its position in the market for live music promotion did not change as a result of the merger.

5.78 We concluded that, due to the presence of other large and well-established promoters, and many smaller promoters, and the significant bargaining power held by artists and their agents, Live Nation did not appear to have power in the UK market for live music promotion.

Venues used for live music events

5.79 A detailed description of the supply of live music venues in the UK is at Appendix G.

5.80 We found that, for the purposes of our analysis of the competitive effects of the merger, we did not need to form a precise view on the definition of a relevant market for live music venues, or assess the extent of Live Nation's power in the market. Nevertheless, our high-level findings are set out below (see paragraphs 5.81 to 5.86).

5.81 Live Nation owns two live music venues: the Manchester Apollo and Cardiff International Arena. Live Nation also has an exclusive contract to manage Southampton Guildhall and a non-controlling management interest in the Sheffield Arena. Live Nation-Gaiety owns 56 per cent of AMG, which owns 12 live music venues, and manages Wembley Arena. We estimated that, overall, these venues (excluding Sheffield Arena, where Live Nation manages the venue but does not receive a ticket allocation) accounted for between 15 and 20 per cent of all UK live music tickets sold in 2008.

5.82 We found that, in 2006 and 2008, about 20 per cent of Live Nation's ticket sales as a promoter were for events in Live Nation venues, though, in 2007, this proportion was 30 per cent (principally due to a higher number of events at Wembley Arena).

5.83 We found that there were other venues in the same local area as each of Live Nation's wholly-owned or managed venues. However, in most cases, we noted that there were significant differences between the Live Nation venue and the competing venue, either in terms of the capacity, the suitability for indoor live music events, or the location. We found that the only Live Nation wholly-owned or managed venue which appeared to have a similar local substitute was Wembley Arena, where the O2 Arena was a close competitor.

5.84 Some promoters told us that Live Nation's position as a venue owner and manager gave Live Nation power in the market for live music promotion.

5.85 However, we found that each venue's market power was limited to some extent by a promoter's ability to switch events between towns and by Live Nation's primary need to fill its venues. We found that events promoted by Live Nation represented a small proportion of the total number of live music events at each of its venues, demonstrating Live Nation's need to attract events from other promoters.

5.86 We concluded that entry required substantial financial investment and took a long time to achieve but we noted that there had been several recent examples where entry had occurred, showing that these barriers were not insurmountable.

6. The counterfactual

6.1 In order to assess the effects of the merger on competition in the relevant markets, we sought to identify the nature and extent of competition which would be expected to arise in the relevant markets in the absence of the merger (the 'counterfactual').[35] In most cases the starting point for the counterfactual is the situation in the market pre-merger.

6.2 We found that there were no reasons to believe that, in the absence of the merger, the nature and extent of competition in the markets for live music promotion or live music venues would have been different from the pre-merger situation (described in Section 5 and Appendices F and G).

6.3 However, we found that there was a reason why the market for the primary retailing of live music tickets in the UK might be different from the pre-merger situation as, prior to Live Nation planning its merger with Ticketmaster, Live Nation had entered into an agreement with Eventim, whereby Eventim would provide Live Nation with various ticketing software and ticketing services in the UK and worldwide (see paragraph 6.5). Therefore, in the light of this agreement, and on the basis of the evidence available to us, we considered how this market was likely to develop so as to identify the counterfactual against which to compare the effects of the merger. We reviewed Live Nation's agreement with Eventim and considered the terms relevant to the UK. We reviewed Live Nation's financial incentives under the agreement, its corporate objectives, and Eventim's own projections, prepared at the time of negotiating the agreement. We evaluated, overall, how Live Nation would have used the different retail channels available to it to sell its tickets. We also considered the effect on competition of Eventim's entry into the UK market for the primary retailing of live music tickets.

Live Nation's agreement with Eventim

6.4 The terms of Live Nation's global contract with Ticketmaster relevant to the USA expired at the end of 2008 (subject to some exceptions), while the terms relevant to the UK expired at the end of 2009 (though Ticketmaster continued to provide Live Nation with ticketing services in the UK until 31 January 2010 (see paragraph 6.5)). Live Nation told us that, in 2007, it began to explore its ticketing options, including negotiating a new contract with Ticketmaster, self-ticketing (through licensing appropriate ticketing software), and contracting with a new ticketing provider. Live Nation told us that its senior management in the USA had [✂].

6.5 On 20 December 2007, Live Nation signed a Letter of Intent (LOI) with Eventim. The LOI specified that, in the USA, from 1 January 2009, Live Nation would license Eventim's technology and become both a retailer of its own tickets and a supplier of ticketing services to other parties. The LOI stated that, in the UK, from 1 January 2010, Eventim would provide Live Nation with a managed ticketing service (see paragraphs 6.10 to 6.16). The implementation date in the UK was subsequently postponed, by mutual agreement, to 1 February 2010. The LOI was expressed as a binding agreement between Live Nation and Eventim, though it included terms providing for [✂].

6.6 Live Nation told us that, in the USA, it had [✂] controlled tickets which, with the software provided to it by Eventim under the LOI, it would be able to sell directly to consumers, increasing its margins. Under the terms of the LOI, Live Nation was also

[35] *Merger References: Competition Commission Guidelines, June 2003, CC2*, paragraph 1.22.

able to offer its ticketing services in the USA to other promoters and venue operators, providing opportunities for additional revenue streams. Following the announcement of Live Nation's agreement with Eventim, Live Nation won a contract from SMG to provide its wholly-owned venues with a ticketing service (see paragraph 3.9).[36]

6.7 We observed that, after signing the LOI and prior to the announcement of the merger, both Live Nation and Eventim demonstrated their commitment to the LOI by investing significantly in its implementation. For example, in the USA, Live Nation incurred significant upheaval in transferring its venues' systems from Ticketmaster to Eventim, while Eventim incurred significant cost in tailoring its ticketing software for use in the USA.

6.8 Despite this investment, we saw evidence that, prior to the announcement of the merger, Live Nation had [✂]. Live Nation said that it had concerns about [✂].

6.9 Nevertheless, we concluded that, given the binding nature of the LOI, it was likely that, in the absence of the merger, both Live Nation and Eventim would have sought to comply fully with the terms of the LOI relevant to the UK. As a result, Eventim would have completed its process of entering the UK and would have operated as a primary retailer of live music tickets.

Terms of the LOI relevant to the UK

6.10 The LOI requires Eventim to implement, operate and manage a ticketing system and ticketing Internet platform for Live Nation in the UK. This system and platform enable Live Nation, Eventim and other retailer channels to sell Live Nation's controlled tickets (see paragraphs 6.17 to 6.25). Eventim must [✂], including the cost of making its ticketing system and platform suitable for operation in the UK.

6.11 Under paragraph 5.3 of the LOI, and subject to paragraph 5.8 of the LOI, Live Nation is required to place all the live music tickets it controls in the UK onto the Eventim ticketing system.[37] [✂]

6.12 The LOI specifies that Live Nation will pay to Eventim £[✂] for every ticket controlled by Live Nation sold from the Eventim ticketing system (except for tickets sold through the box office and tickets allocated to sponsors or the artist, where [✂].[38]

6.13 Under paragraph 5.8 of the LOI, Live Nation is free to determine which retail channels to use to sell its tickets, including via Live Nation's own website,[39] artists' websites or sponsors' websites. However, Live Nation is obliged to allow Eventim to sell over its website a minimum of [✂] per cent of the sellable ticket inventory to no less than [✂] per cent of Live Nation's events in the UK in any given year. For these tickets, Eventim will [✂].

6.14 The LOI states that Live Nation could request Eventim to provide it with [✂] services and [✂] services (ie [✂]), [✂]. Towards the end of 2009, Live Nation engaged

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[36]Live Nation told us that the implementation of this agreement has been postponed, by agreement between Live Nation and SMG, and, in the meantime, SMG has extended its contract with Ticketmaster.
[37]Under the same paragraph of the LOI, Live Nation is also obliged to place all the live music tickets it controls in the Republic of Ireland on to the Eventim ticketing system. We saw no evidence to suggest that the actions of either Live Nation or Eventim in the Republic of Ireland affected their actions in the UK market, or that they had any effect on our assessment of the merger in the UK. Therefore, we did not consider the obligations of Live Nation and Eventim in the Republic of Ireland under the LOI any further.
[38][✂]
[39]Live Nation operates several websites in the UK. We refer to these websites collectively as the Live Nation website.

Eventim to provide it with fulfilment services, but Live Nation chose not to offer its customers access to a central call centre.

6.15 [✂]

6.16 We noted that the services which Eventim provides to Live Nation in the UK under the LOI are not the same as the services which were provided previously to Live Nation by Ticketmaster. Ticketmaster had the exclusive right to sell Live Nation's live music (and theatre) tickets, subject to some exclusions, such as sales in-person at the box office. However, in practice, although the contract between Live Nation and Ticketmaster was expressed to be 'exclusive', it had operated in the UK as a preferred arrangement. Live Nation sold about [✂] per cent of its tickets through Ticketmaster and paid Ticketmaster about £[✂] per ticket for all sales made through other agents. Under the agreement between Live Nation and Ticketmaster, Ticketmaster charged booking fees which were agreed with Live Nation, and paid Live Nation a rebate (in 2008, the average rebate from Ticketmaster for Live Nation's live music tickets was £[✂] per ticket, equivalent to approximately [✂] per cent of Ticketmaster's average booking fee on Live Nation's tickets). Live Nation told us that, when operating with Ticketmaster, approximately [✂] per cent of its ticket sales originated through its own website but, in these cases, the consumer still transacted with Ticketmaster (on a co-branded basis) [✂]. Ticketmaster also provided the ticketing system (hardware and software) for Live Nation's venues.

Live Nation controlled tickets under the LOI

6.17 In order to evaluate the significance of the LOI to Eventim, we considered the number of tickets controlled by Live Nation.

6.18 The LOI defines tickets 'controlled' by Live Nation as tickets which Live Nation has the right to distribute for:

(a) events at venues which are owned or leased by Live Nation;

(b) events which Live Nation promotes; and

(c) events for which Live Nation has acquired the ticket distribution rights from other promoters or venues.

We refer to these tickets as Live Nation-controlled tickets. Tickets covered by agreements with third parties which pre-date the LOI are excluded from the definition.

6.19 Under the LOI, Live Nation is also required to use its commercially reasonable efforts to influence those of its subsidiaries which are not wholly owned, and which are excluded from the LOI (eg AMG, Festival Republic and DF Concerts), to sell their tickets using the Eventim system (see paragraphs 6.26 and 6.27).

6.20 Table 2 shows the number of tickets sold on behalf of Live Nation and its subsidiaries in 2008 (excluding box office sales).[40]

[40] In-person box office sales are outside the live music ticket retailing market (see paragraph 5.26) and, under the LOI, Eventim is unlikely to receive any revenue from box office sales.

TABLE 2 **Live Nation UK music and theatre tickets in 2008**

	Preferred ticket agent		*Other ticket agents*	*million*
	Name of preferred ticket agent	*Tickets sold through preferred ticket agent*	*Tickets sold through other ticket agents*	*Total tickets*
Live music tickets				
Promotions	Ticketmaster	[✂]	[✂]	[✂]
Venues	Ticketmaster	[✂]	[✂]	[✂]
Live Nation-controlled tickets		[✂]	[✂]	[✂]
Live Nation's principal subsidiaries' live music tickets				
Festival Republic	See Tickets	[✂]	[✂]	[✂]
Angel Festivals	Ticketmaster*	[✂]	[✂]	[✂]
DFC	Ticketmaster	[✂]	[✂]	[✂]
AMG	Ticketmaster†	[✂]	[✂]	[✂]
Wembley	Ticketmaster	[✂]	[✂]	[✂]
Tickets controlled by Live Nation's principal subsidiaries		[✂]	[✂]	[✂]
Other Live Nation tickets				
Theatres	Ticketmaster	[✂]	[✂]	[✂]
Total tickets under Live Nation's control or influence				[✂]

Source: Live Nation.

*In 2008, Angel Festival's main agent was Trinity Street, which went into administration in February 2009. Angel Festival's main agent is now Ticketmaster.
†AMG contract is with Ticketweb, which is a subsidiary of Ticketmaster.
Note: Excludes purchases from box offices, tickets sold for Astoria venues (now closed) and Live Nation's theatre touring productions (Live Nation has ceased this activity).

6.21 Table 2 shows that, in 2008, Live Nation sold about [✂] controlled live music tickets in the UK through its various retail channels (excluding box office sales).

6.22 Using this figure, and comparing it with the 19.5 million live music tickets which we estimated were sold in total in the UK in 2008 (see Appendix E, paragraph 70), we estimated that Live Nation controlled [less than 10] per cent of the total number of live music tickets in the UK.[41]

6.23 In 2008, about [✂] of Live Nation's controlled tickets were sold by Ticketmaster and [✂] tickets were sold by other agents. In addition, Live Nation sold about [✂] tickets through the box offices in its venues.

6.24 Live Nation told us that, using these 2008 numbers, it estimated that, under the LOI, [✂] tickets would be sold on the Eventim system (ie the same proportion as currently sold by Ticketmaster), and [✂] tickets would be allocated and sold through other ticket agents on their own systems. In contrast, Eventim told us that the LOI stated that all of Live Nation's controlled tickets must be placed on its system, and sold exclusively off its system. Live Nation told us that, regardless of the different possible interpretations of the LOI, it was committed to paying Eventim £[✂] for each controlled ticket sold (excluding box office sales (see paragraph 6.12) and sales through Eventim's website), whether or not the ticket was sold off the Eventim system. (For sales through Eventim's website, Eventim would [✂] (see paragraph 6.13)). Live Nation told us that this penalty fee arrangement would operate similarly to its previous arrangement with Ticketmaster, under which it paid Ticketmaster a fee for all tickets sold by other agents (see paragraph 6.16). Therefore, even if Eventim sold no Live Nation tickets as a ticket retailer, so long as these tickets were sold

[41]Live Nation told us that both SJM and AEG controlled more live music tickets in the UK than Live Nation.

either by Live Nation or by another party, Eventim would receive £[✂] per ticket, equal to around £[✂] a year.

6.25 Eventim told us that its system offered Live Nation the ability to offer for sale the same ticket simultaneously through multiple retail channels, with all channels (ie Live Nation's own website, Eventim's website, and any other retail channels) linking directly to the Eventim system. Eventim said that this functionality removed the need for promoters continually to reallocate tickets between ticket agents. However, Live Nation told us that it did not intend to use this functionality in the UK as it was incompatible with the long-established practice in the UK of allocating specific sets of tickets to different agents. Live Nation said that Eventim's model would be resisted by most, if not all, ticket agents operating in the UK because the agents would lose control of the customer sales process (see paragraph 6.50). Live Nation added that venue operators would also resist such a change. We found that we did not have sufficient evidence to be able to form a view on whether Eventim would be successful or not in introducing its alternative model for the retailing of tickets. However, we also found that it was not necessary for us to form a view on this issue for our purposes. Rather, our focus in assessing the counterfactual was on how Eventim's agreement with Live Nation would have operated in the absence of the merger, and on what factors Eventim's further growth in the market depended (see paragraphs 6.100 to 6.102).

Other tickets influenced by Live Nation

6.26 Live Nation told us that the live music tickets shown in Table 2 which were not controlled by Live Nation ([✂] tickets) were controlled by its subsidiaries and were not governed by the terms of the LOI. (Live Nation noted that within the total tickets for Live Nation theatres were around [✂] tickets for live music events promoted by Live Nation at Live Nation theatres.)

6.27 Live Nation also told us that, although the LOI obliged it to use its commercially reasonable efforts to influence its subsidiaries in their choice of ticketing provider, it did not, in practice, have a controlling interest over any of the Live Nation-Gaiety businesses, including AMG, and it could not dictate the ticket agent which these businesses used. Live Nation added that the ticketing arrangements for each subsidiary were negotiated separately and the other shareholders in each subsidiary would ensure that the best arrangements for that subsidiary were achieved. We considered the extent of Live Nation's influence over Live Nation-Gaiety and its subsidiaries (see paragraph 2.25 and Appendix D) and found that, although Live Nation had material influence[42] over some of these businesses, it did not, in practice, control them. We found that Live Nation would not be able to determine which ticket agent any of the Live Nation-Gaiety businesses chose to use. We accepted that the other shareholders of these subsidiaries would ensure that only the most favourable ticket agent for each subsidiary's purpose would be chosen. We concluded that, in the counterfactual, Eventim was likely to have sought to become the ticket agent for these businesses when their existing arrangements expired, and Live Nation might have provided some supporting influence, but Eventim would only have succeeded to become the ticket agent for each business if it offered the best bid.

6.28 [✂] Therefore, we did not include these tickets in the counterfactual.

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[42]Within the meaning of section 26 of the Act.

Live Nation's use of different retail channels

6.29 In order to assess how Eventim's entry into the UK might affect competition in the market for the primary retailing of live music tickets, we considered what success Eventim was likely to have in this market and, as a starting point, we considered the significance of its LOI with Live Nation. First, we considered how Live Nation's objectives as a promoter and venue operator influenced its choice of retail channel. Then we sought to evaluate Live Nation's financial incentives to use Eventim as a ticket retailer compared with its incentives to use other retail channels. We also considered Live Nation's corporate objectives in its use of retail channels. We then reviewed Eventim's own projections prepared at the time of negotiating the LOI. Lastly, we considered to what extent, in the absence of the merger, Live Nation would have used Eventim as a retail channel for the sale of its tickets.

Live Nation's objectives as a promoter and venue operator

6.30 We found that Live Nation's principal objective, both as a promoter and as a venue operator, was to sell as many tickets as possible. As a promoter, Live Nation had the financial incentive to maximize ticket sales as, given that many of the costs of putting on an event were sunk (ie because of the high fees guaranteed by promoters to artists in advance of an event), most of the face-value ticket price from every additional ticket sold went directly to Live Nation's own profitability (see paragraph 2.9). As a venue operator, Live Nation had the financial incentive to maximize attendances in its venues as every additional ticket sale generated more income in other areas, such as from food and beverage sales (see paragraph 8.112). We found that, both as a promoter and as a venue operator, Live Nation's rebate income from each ticket sale was small in comparison with the other income which each ticket sale generated. We also noted that, prior to the merger, Live Nation sold about [✂] per cent of its tickets through ticket agents other than Ticketmaster, despite the net rebate to Live Nation from these other agents being significantly lower than the rebate from Ticketmaster (see Table 3). Therefore, we concluded that, although the difference in the amount of rebate Live Nation received from each ticket agent meant that, by preference, it would use some ticket agents over others, this preference was secondary to its overriding incentive to ensure that as many tickets as possible were sold.

6.31 Nevertheless, given that the amount of the rebate from each ticket agent was a material part of Live Nation's overall income, we considered it necessary to assess Live Nation's incentives to use each of the different retail channels available to it. We focused on sales over the Internet because, following the switch to using Eventim's system on 1 February 2010, Live Nation had decided not to establish its own call centre (see paragraph 6.14). We did not focus on sales in-person at the box office as these sales were outside the relevant market (see paragraph 5.26).

Live Nation's financial incentives to sell through different retail channels

6.32 Table 3 shows Live Nation's financial incentives to use each of the possible retail channels available to it in the UK, both prior to the proposed merger (which was also prior to the LOI) and under the LOI.

TABLE 3 **Live Nation's approximate rebate (from sales through ticket agents) and margin (from sales through its own website) for Internet sales**

£ per ticket

Channel	*Prior to the merger*	*Under the LOI**
Eventim	[✂]	[✂]†
Live Nation	[✂]‡	[✂]§
Ticketmaster	[✂]‡	[✂]¶
Other agents	[✂]#	[✂]~

Source: CC calculations.

*Under the LOI, Live Nation pays £[✂] per ticket to Eventim for sales through Live Nation and other ticket agents.
†Assumes average booking fee of £[✂] per live music ticket less £[✂] assumed for premium and regular shipping fees and print-at-home fees, less £[✂] assumed for fees payable to other parties (eg outlet commissions, payment charges). Under the LOI, the resulting £[✂].
‡Under the contract between Live Nation and Ticketmaster, Live Nation [✂]. In 2008, Ticketmaster paid Live Nation an average rebate of £[✂]. (Under the contract, the booking fee was split as follows: Ticketmaster retained the first £[✂] per ticket with any revenue above this base amount [✂]. Therefore, using an average booking fee per ticket of £[✂], Live Nation received £[✂].)
§Assumes average booking fee of £[✂] per live music ticket less £[✂] system payment to Eventim, less £[✂] assumed fulfilment fee, less £[✂] assumed payment costs.
¶Under the LOI, we assume that Live Nation receives a similar rebate from Ticketmaster as from other agents.
#Live Nation told us it received rebates from other agents between £[✂] and £[✂] per ticket. We estimated that the average rebate from the other ticket agents which Live Nation used most regularly was about £[✂]. [✂]
~We assume that Live Nation continues to receive from other agents an average rebate of £[✂] per ticket, giving it a net rebate of £[✂] per ticket under LOI after the deduction of the £[✂] per ticket fee to Eventim.

6.33 Table 3 shows that, under the LOI, Live Nation has a clear financial incentive to use its own website to sell as many tickets as possible, with sales through Eventim being the next most profitable. Live Nation has the incentive to use other ticket agents only to the extent that tickets cannot be sold through either Live Nation or Eventim.[43]

Live Nation's corporate objectives to sell through its own retail channel

6.34 We found that, in addition to Live Nation's financial incentive to maximize sales through its own website, the following evidence indicated that it was Live Nation's corporate objective and intention in the UK to sell as many of its controlled tickets as possible:

(a) Live Nation had declared its corporate objective to be to provide an end-to-end service to artists and fans (see paragraph 3.5). Live Nation told us that, in the USA, it had already sold millions of tickets through its website and call centres (since 1 January 2009, using software provided by Eventim).[44]

(b) Live Nation told us that it had invested significantly in developing its website in the UK.[45] Live Nation's UK management told us that they had hoped to move to self-ticketing when Live Nation's existing contract with Ticketmaster expired. Eventim also told us that, based on its discussions with Live Nation, it believed that Live Nation had ambitions in the UK to become a significant sales channel for its own tickets.

[43]Live Nation told us that it was not necessarily the case that, under the LOI, it would always be more profitable for Live Nation to sell its tickets through Eventim rather than other ticket agents. Live Nation said that, [✂]. We noted this submission, but we judged that it was very unlikely that [✂].
[44]We noted that, following the completion of the merger in January 2010, Live Nation had decided in the USA to cease using Eventim's software and to revert to using Ticketmaster (see paragraph 7.82).
[45]Live Nation's third quarter 2009 results (published 9 November 2009) stated that, in the first nine months of 2009, Live Nation sold 10.6 million tickets globally through the Livenation.com network (including 1.7 million tickets sold outside of North America).

(c) Live Nation provided us with internal documentation from the time when the LOI with Eventim was negotiated, showing that Live Nation intended to promote its own sales channel exclusively and to encourage all consumers for its events to purchase tickets through its website.

(d) Live Nation told us that, by controlling the sale of most of its tickets for its own events, Live Nation would have more timely control over the sale of its tickets and more direct control over its customers' data.

6.35 We concluded that, due both to its financial incentives and its corporate objectives, in the absence of the merger, Live Nation would have sought to sell as many of its controlled tickets as possible through its own website.

Eventim's projections

6.36 Eventim told us that, at the time of entering into the LOI, its expectation was that Live Nation would work with Eventim in partnership and would allocate to Eventim a greater proportion of tickets for sale than the minimum required by the LOI. Eventim forecast that it would sell [✂] per cent of Live Nation's controlled tickets. However, during the course of our investigation, Eventim told us that this forecast was a conservative estimate and it had actually hoped to sell between [✂] and [✂] per cent of Live Nation's controlled tickets.

6.37 Eventim' projections for its entry into the UK, made at the time of the LOI, are shown in Table 4.

TABLE 4 **Eventim's projections for the sale of tickets in the UK**

million

	2010	*2011*	*2012*	*2013*	*2014*	*2015*
Live Nation website	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Eventim website	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Total Live Nation volume	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Other clients' volume	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Total volume	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: CC calculations based on Eventim forecasts at the time the LOI was executed.

Notes:
1. 'Total volume' in 2011 to 2015 is calculated using Eventim's forecast growth rates.
2. 'Other clients' volume' in 2011 to 2015 is calculated as the difference between total volume and total Live Nation volume.
3. Figures do not sum due to rounding.

6.38 Eventim told us that its forecasts were prepared on the basis of its agreement with Live Nation being exclusive, ie in the expectation that all Live Nation's controlled tickets would be placed on its system and Eventim would be Live Nation's sole online ticket agent. Eventim believed that Ticketmaster would receive no tickets from Live Nation in the UK (see paragraphs 6.45 to 6.56).

6.39 Eventim told us that, on the basis of information provided to it by Live Nation in the USA with reference to the UK, it believed that there were [✂] Live Nation-controlled tickets sold in the UK in 2006. Eventim assumed a growth rate of [✂] per cent a year, which resulted in a forecast of [✂] tickets in 2010. However, Live Nation told us that, in 2008, it sold [✂] controlled tickets (including box office sales). Live Nation explained that its sales of controlled tickets in the UK had fallen between 2006 and 2008, partly because of the sale of the Hammersmith Apollo venue but also because it had scaled back its promotions activity to focus on its more profitable events.

6.40 Eventim made a number of assumptions about the fees which it would be able to charge in the UK, both for Live Nation's ticket sales and ticket sales for other clients (live music and non-live music). However, although Eventim could show us the evidence on which it had based some of its assumptions (eg the average service fee charged by Ticketmaster for sales of Live Nation's tickets), it was unable to provide us with any market research or other evidence to support its other assumptions.

6.41 Eventim assumed that it would sell [✂] tickets on behalf of clients other than Live Nation in 2010 (live music and non-live music), increasing rapidly to [✂] tickets by 2015. Eventim based this forecast on there being an estimated [✂] live entertainment tickets not controlled by Live Nation in the UK each year, of which between [✂] and [✂] are contestable (based on typical preferred contracts of two to three years), of which Eventim expected to gain around [✂] per cent. However, Eventim was not able to provide us with any market research or other evidence to support its estimates or projections. Eventim told us that, due to the LOI being negotiated on a global basis, it had not [✂].

6.42 Eventim submitted that its actual experience in the UK in the six weeks following the implementation of the LOI on 1 February 2010 supported its net price assumptions. However, we noted that, in this six-week period, Eventim had made few ticket sales (compared with its forecast level of sales) and most of the sales it had made for clients other than Live Nation had been for non-live music events. We concluded that we could not rely on Eventim's recent experience to support its 2007 live music forecasts.

6.43 Eventim told us that its forecasts, made in 2007, were an outline of what it expected to achieve and not a blueprint to guide its behaviour. Eventim said that its objective was to enter the UK and to become a large-scale ticket retailer and it would have flexed its behaviour as necessary to achieve this objective. We found that, although Eventim's forecasts might have been sufficient for Eventim's purposes at the time of negotiating the LOI, they were insufficient to assist us in forming a view on how successful Eventim was likely to have been in the absence of the merger. Eventim was unable to provide us with any market research or other evidence to support its forecasts (except for headline numbers from Live Nation) (see paragraph 6.40). Furthermore, the forecasts had been prepared over two years before the implementation of the LOI and Eventim told us that it had not updated them or carried out any market research since. We also noted that some of the key assumptions underlying Eventim's forecasts, eg the extent to which Live Nation would have used other ticket agents (see paragraph 6.38), were dependent on an understanding of the LOI which was now in dispute between Live Nation and Eventim (see paragraphs 6.45 to 6.56). We concluded that we could not place much weight on Eventim's forecasts when seeking to assess the likely success of Eventim in the absence of the merger.

6.44 Nevertheless, we noted that, within Eventim's forecasts, most of Eventim's income in the early years of its entry into the UK was projected to come from the system fee payable by Live Nation (ie the £[✂] per ticket payable for all Live-Nation-controlled tickets sold by Live Nation and its other retail channels (see paragraphs 6.12 and 6.24)). We noted that the basis for this projected income was more robust than Eventim's projections for its ticket sales, as the price payable by Live Nation was dictated by the LOI and the volume of tickets on which it was payable was based entirely on Live Nation's data. We calculated that, notwithstanding that Eventim's estimates of the total number of Live Nation-controlled tickets turned out to be too high (see paragraph 6.39), the income from this activity was forecast to cover Eventim's fixed costs and entry costs in the short term and Eventim's entry into the UK would be profitable on the basis of this activity alone.

Live Nation's use of Eventim and other retail channels

6.45 We found that Live Nation and Eventim had very different ideas about the extent to which, in the absence of the merger, Live Nation would have used Eventim and other ticket agents as retail channels for the sale of its tickets (see paragraph 6.24 and below).

6.46 Eventim told us that, when the LOI was signed in December 2007, both Live Nation and Eventim shared the understanding that, in the UK, Eventim was to be Live Nation's sole online ticket agent. Eventim said that, although Live Nation retained a carve out in the LOI to give it discretion over which retail channels to use to sell its tickets, the purpose of this carve out was to ensure that sponsors and artists could sell Live Nation's tickets, and to allow Live Nation to use physical ticket outlets. Eventim provided us with the copy, made by one of its senior executives, of a flipchart diagram, the original of which it said had been drawn on 14 November 2007 by a senior Live Nation US executive at a meeting where Live Nation and Eventim negotiated the LOI. Eventim told us that this diagram showed the various retail channels which Live Nation intended to use in the UK, and demonstrated that, for online sales, Live Nation intended to use exclusively its own website and Eventim's website. Eventim said that this evidence was supported by a Live Nation presentation at its US investor conference on 15 November 2007, which also showed that Live Nation envisaged the carve out in the LOI to apply only to sponsors' and artists' websites, and not to the websites of any other ticket agents.

6.47 Live Nation told us that this flipchart diagram, and the investor presentation, was weak evidence given that the LOI was signed five weeks later on 20 December 2007. Live Nation said that the relevant sections of the LOI were changed many times before the document was signed.[46] Eventim told us that the relevant provisions in the UK section of the LOI on Live Nation's discretion over its retail channels were not changed substantively after the meeting on 14 November 2007.[47] Eventim said that the final version that was signed on 20 December 2007 was, in the sections relevant to our inquiry, materially the same as the version that resulted from the meeting on 14 November, and which was based on the flipchart drawing by Live Nation's senior US executive. Eventim said that there was no evidence of any material amendments to the LOI subsequently as a result of feedback from Live Nation's UK management.[48] Eventim provided us with three versions of the LOI: the first was prepared by Eventim on the evening of 14 November 2007, following the meeting with Live Nation; the second was a mark-up of the first version, prepared by Live Nation, also on the evening of 14 November 2007; and the third was the final version, signed on 20 December 2007. From our review of the documents, we found that between the version prepared by Eventim on 14 November 2007 and the marked-up version prepared by Live Nation also on 14 November 2007, there were two amendments to paragraphs 5.3 and 5.8 which we considered to be material: first, the requirement for Live Nation to place all of its controlled tickets exclusively onto Eventim's ticketing system and platform in the UK, which was in paragraph 5.3 of the LOI, had been made 'subject to' Live Nation's discretion as to which sales channels to use, in paragraph 5.8; and, second, with regard to Live Nation's discretion to choose which sales channels to use in the UK, in paragraph 5.8, the reference to tickets 'from the Eventim UK system' had been removed. We noted that these two amendments remained in the final version of the LOI which was signed on 20 December 2007. We recognized that there was significant uncertainty as to how paragraphs 5.3 and 5.8 of the LOI should be interpreted, but it appeared to us that

[46] [✂]
[47] [✂]
[48] [✂]

these amendments by Live Nation to the LOI, following the meeting on 14 November 2007, cast some doubt on Eventim's interpretation of Live Nation's intentions under their agreement.

6.48 Eventim also told us that, in the absence of the merger, there was no prospect of Live Nation using Ticketmaster as an alternative ticket agent in the UK, as Ticketmaster would have become one of Live Nation's principal global competitors. However, we noted that, although Live Nation intended to become a retailer of tickets for other promoters and venue operators in the USA, it was [✂] (see paragraph 6.15). We concluded that, in the absence of the merger, there was no prospect of Live Nation and Ticketmaster becoming competitors in the UK, other than for the retailing of Live Nation's own controlled tickets. We also saw no evidence to suggest that any competition between Live Nation and Ticketmaster outside of the UK would have had any impact on their relationship in the UK. Therefore, we concluded that, in the UK, it was unlikely that Live Nation would have ceased to use Ticketmaster as an agent through which to sell its tickets because of any competition between them.

6.49 Eventim recognized that Live Nation's incentive, both as a promoter and a venue operator, was to sell as many of its tickets as possible, regardless of the rebate received (see paragraph 6.30). However, Eventim submitted that its agreement with Live Nation was not a simple replacement of Live Nation's agreement with Ticketmaster and the intention, under the LOI, was to move to a different retailing model, with fewer online sales channels (specifically, Live Nation's website, Eventim's website and the websites of selected sponsors and the artist (see paragraph 6.46)). Eventim said that the LOI required Live Nation to place all of its tickets onto Eventim's system so any other retail channels used by Live Nation, such as artists and sponsors, would need to link into the Eventim system. Eventim said that the idea of Live Nation allocating tickets to other ticket agents for them to sell off their own systems was never envisaged, and to do so would be in breach of the LOI. Eventim submitted that, regardless of how the UK market had worked historically, and regardless of whether Live Nation's UK executives wished to operate under a different retailing model from the one they had operated under previously, the agreement that had been signed by Live Nation's senior US executives had committed Live Nation in the UK to the exclusive use of Eventim.

6.50 Live Nation told us that the requirements of the LOI were much less clear. Live Nation said that it would never have relinquished the right in the UK to sell tickets through any sales channel of its choice, including any ticket agent, and it had retained this right in paragraph 5.8 of the LOI. Live Nation provided us with internal documentation from the time when the LOI was being negotiated which demonstrated that a key priority for Live Nation was to retain control of its ticket inventory, subject only to the minimum allocation to be given to Eventim (see paragraph 6.34*(c)*). Live Nation pointed out that the requirement for it to place all of its tickets on to Eventim's ticketing system and platform, in paragraph 5.3 of the LOI, was subject to this condition, in paragraph 5.8 of the LOI. Live Nation said that, as other ticket agents would never accept an obligation to link into Eventim's system, which would make them an affiliate to Eventim rather than a ticket agent, the carve out in paragraph 5.8 had to apply in practice to the system as well as the retailer's website. Live Nation told us that no promoter in the UK uses a single ticket agent to sell its tickets, and no 'exclusive' agreement between promoters and ticket agents is truly exclusive. We saw no evidence from promoters or ticket agents to contradict these assertions. Live Nation pointed to the example of its own previous 'exclusive' agreement with Ticketmaster, under which it sold about [✂] per cent of its tickets through other ticket agents, albeit paying a fee to Ticketmaster for tickets sold in this way.

6.51 Eventim submitted that, in the absence of the merger, there would be no need for Live Nation to sell any tickets through Ticketmaster or any other ticket agent in the UK, because online consumers would find the tickets for their desired events wherever they were available. Eventim told us of an event, which went on sale in the UK in March 2010, for which the tickets were not available on Live Nation's website or any other website but were available on Eventim's website. On this occasion, Eventim sold considerably more tickets than Live Nation, despite not appearing on any promotional material for the event or marketing the event in any way. Eventim submitted that this example showed that, if tickets for an event are only available through one channel, consumers of that event will find them. Live Nation disputed this example and said that Eventim had been promoted as a retailer of tickets for the event, appearing on the artist's website as the first ticket agent in a list of agents from which tickets could be obtained.

6.52 We did not consider it necessary to form an opinion on what led consumers to choose to purchase their tickets from Eventim in this specific example. However, we did not agree that the example, even as presented by Eventim, led necessarily to Eventim's conclusion. We accepted that, where tickets for an event are only available through one retail channel, that channel could increase significantly its sales volumes compared with a situation where other channels were available, but we were not persuaded from this example that the number and choice of ticket agents through which Live Nation sold its tickets made no difference to the volume of its ticket sales. We noted that, if all consumers could always find the retailer selling their desired ticket, then ticket retailers would exert no market power and there could be no lack of effective competition in the live music ticket retailing market in the UK. But our assessment of competition in the market did not lead us to reach this finding (see paragraph 5.65). Our consumer survey showed that many consumers searched through the websites of their preferred ticket agents (see paragraph 5.9), meaning that, at least to some extent, the more ticket retailers which were used by a promoter to sell the tickets for an event, the greater the likelihood of maximizing ticket sales. We concluded that, if Live Nation were to sell its tickets through just two online sales channels (Live Nation and Eventim), it would be unlikely to sell as many tickets as it would if it continued to use multiple ticket agents. We also noted that, because venues retain control over a large proportion of tickets, for most of Live Nation's events, which take place at non-Live Nation venues, Live Nation is unable to limit the retail channels for its tickets to just itself and Eventim, so that consumers will always have at least one other source from which to buy tickets for most of its events.

6.53 Eventim also pointed to the roll-out of Eventim's system in geographic markets which it said were similar to the UK, in particular the Netherlands and Sweden (in both of which countries the LOI was implemented on 1 January 2009). Eventim argued that, in both these markets, no Live Nation-controlled tickets had been sold by Ticketmaster since Live Nation began using Eventim's system. In both markets, Live Nation and Eventim had sold Live Nation's tickets successfully and, furthermore, the sale of Live Nation's tickets had enabled Eventim to sell tickets for the organizers, promoters and venues of other live events (see paragraphs 6.92 to 6.94). However, we were not persuaded that the markets in the Netherlands and Sweden were similar to the UK (see paragraphs 6.95 and 6.96). We concluded that the differences made it very difficult to infer from Eventim's experiences in those markets how successful it was likely to be in selling Live Nation's tickets in the UK.

6.54 Eventim also pointed to the example of a promoter which had switched from a preferred relationship with Ticketmaster to a preferred relationship with See Tickets, without any substantial loss in ticket sales. Eventim submitted that this example showed how selling through Ticketmaster was not necessary. We accepted that many promoters sold the majority of their tickets through retailers other than

Ticketmaster. However, all the promoters in the UK which provided us with information told us that they sold some proportion of their tickets through Ticketmaster in order to maximize their ticket sales. We noted that even the promoter cited by Eventim continued to use Ticketmaster and other ticket agents to some extent. The significant point in our assessment was not that all promoters used Ticketmaster but that they all used multiple ticket agents (often the same ticket agents, albeit in very different proportions to each other) in order to maximize their ticket sales.

6.55 We noted that some of the evidence and views we received from Live Nation and Eventim relating to the extent to which, in the absence of the merger, Live Nation would have used Eventim and other retail channels for the sale of its tickets were in conflict. We considered whether these views had been affected by the merger. We noted that the LOI was not a clearly drafted document and, at the time when it was signed, Live Nation and Eventim had intended [✂]. However, [✂]. We saw correspondence which indicated that Live Nation and Eventim had differing interpretations of key provisions in the LOI prior to the merger, though we accepted that, due to the merger and Live Nation's changed incentives, the extent of these differences could well have increased. When assessing the evidence from both Live Nation and Eventim, we recognized these difficulties of interpretation, and the possibility of the merger having affected their interpretations. In the light of these difficulties and possible effects, we sought to form our views on Live Nation's likely actions in the UK under the LOI in the absence of the merger principally by assessing what its commercial incentives would have been.

6.56 We noted particularly that Live Nation's principal incentive, both as a promoter and a venue operator, was to maximize its ticket sales (see paragraph 6.30). We considered Eventim's interpretation of the diagram which it said indicated the intent of Live Nation's senior US executives on 14 November 2007 (see paragraph 6.46), but we did not believe that, in the UK, Live Nation would have acted in the way submitted by Eventim. We found that the UK market does not operate currently in the way in which Eventim envisaged the LOI would operate in the UK. In particular, we were not aware of any promoter which does not use multiple online ticket agents in order to maximize its ticket sales (see paragraph 2.16). Furthermore, we noted that Live Nation had not operated in this way previously under its 'exclusive' contract with Ticketmaster (see paragraph 6.16). We concluded that it would be highly risky for Live Nation to operate under a different retailing model from the rest of the industry in the UK when its primary incentive was the same, ie to maximize its ticket sales. We recognized that Ticketmaster was the market leading retailer of live music tickets in the UK, with many advantages over its smaller rivals (see paragraph 5.33), and it was used by all of the large promoters of live music events in the UK to some extent (see paragraphs 8.6 to 8.11). We also noted that both Live Nation and Eventim were start-up ticket retailers in the UK[49] and, particularly for events where Live Nation controls all the tickets (ie its festivals and events it promotes in its own venues), we did not believe it was credible that Live Nation as a promoter and venue operator in the UK would risk the success of its business by making its tickets available exclusively through these two new retail channels. We did not form a view on how the obligations of the LOI should be interpreted, but we judged that, at least in the short term, as Live Nation controlled the tickets, it was likely that its interpretation of the relevant terms of the LOI would have determined, in practice, where and how its tickets were allocated.[50] For all these reasons, we concluded that, in the absence of

[49]We recognized that, while under its previous agreement with Ticketmaster, Live Nation had established a retail presence but, at this time, most of its tickets were promoted for sale through Ticketmaster's website rather than through Live Nation's website.
[50][✂]

the merger, Live Nation would have continued to allocate tickets to multiple ticket agents, including Ticketmaster.

Summary of our assessment of Live Nation's use of different retail channels

6.57 We found that, in the absence of the merger, Live Nation would have sold as many of its controlled tickets as possible through its own website (see paragraph 6.35). We also found that, in most circumstances, Live Nation would have advertised only its own website on the promotional material for its events (see paragraphs 6.78). Furthermore, we found that most self-ticketing venues were able to sell tickets effectively (see paragraph 5.36), which suggested that a ticket retailer did not need to offer tickets to a wide range of live music events in order to be able to generate significant ticket sales. On the basis of all this evidence, we judged that, in the absence of the merger, Live Nation would have sold most of its controlled tickets through its own website.

6.58 Given that Ticketmaster's market share was twice that of its nearest rival (see paragraph 5.28), it is likely that, in the absence of the merger, Ticketmaster would have remained the market leading ticket agent in the UK, at least in the short to medium term, with access to more consumers than any other ticket agent (see paragraph 5.10). Given this position, and given that it sold previously [✄] per cent of Live Nation's controlled tickets, we concluded that, in the absence of the merger, and in order to maximize ticket sales, it was likely that Live Nation would have continued to allocate some of its controlled tickets to Ticketmaster.

6.59 We noted that, under its previous agreement with Ticketmaster, Live Nation sold about [✄] per cent of its controlled tickets through ticket agents other than Ticketmaster (see paragraph 6.16). We recognized that Live Nation had used these other ticket agents because they had access to consumers who could not be reached through Ticketmaster. Although the entry of Live Nation and Eventim as retail channels could be expected to have some effect on consumer behaviour in the market, we judged that it was likely that these other agents would continue to have access to some consumers who could not be reached in other ways. Therefore, we concluded that, in the absence of the merger, and in order to maximize ticket sales, it was likely that Live Nation would have continued to allocate some proportion of its controlled tickets to ticket agents other than Eventim and Ticketmaster.[51]

6.60 We did not form a precise view on how many tickets would have been sold through Ticketmaster or other ticket agents, as it would have depended on their ability to achieve sales relative to the abilities of Live Nation and Eventim, but we expected that some proportion of Live Nation's tickets would have been sold through them.

6.61 With these conclusions in mind, we considered what proportion of Live Nation's controlled tickets was likely to have been sold through Eventim in the absence of the merger. We noted that, under the LOI, Live Nation was obliged to allocate to Eventim at least [✄] per cent of the sellable ticket inventory to no less than [✄] per cent of its events in any calendar year (see paragraph 6.13). However, we also noted that, given the way in which promoters allocate and reallocate tickets between agents in the UK (see paragraph 2.17), if Eventim were able to sell Live Nation's tickets more quickly than its rivals, it was likely to be allocated more tickets; but, if it were unable to sell its allocation of tickets, they were likely to be reallocated elsewhere. Therefore, we concluded that the proportion of Live Nation's controlled tickets sold by Eventim in

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[51]Live Nation told us that it would still pay Eventim the £[✄] fee per ticket for all of its tickets sold through Ticketmaster and ticket agents other than Eventim (see paragraph 6.24).

the absence of the merger was unlikely to be the same as its minimum allocations as required in the LOI.

6.62 We concluded that the proportion of Live Nation's controlled tickets sold through Eventim would have depended principally on Eventim's ability to generate sales, in particular relative to Live Nation's ability but also relative to the abilities of Ticketmaster and other ticket agents in the UK. If Eventim were able to sell Live Nation's tickets more quickly than its rivals, it would have received more tickets to sell; if it were to sell Live Nation's tickets more slowly than its rivals, some of its allocation would have been taken away. We noted that, as a new entrant into the UK, the extent of Eventim's ability to generate sales was likely to depend on its investment in marketing and brand development and on how it attracted consumers (see paragraph 5.53). We noted that Eventim predicted that it would sell [✂] per cent of Live Nation's controlled tickets, and this forecast was based on the assumption of it being Live Nation's exclusive online ticket agent (see paragraphs 6.36 to 6.38), which was not the way we believed the LOI would have operated in practice (see paragraph 6.56). Given its position as a new entrant, and given that it would have received minimal marketing support from Live Nation (see paragraph 6.81), and given the strong, established positions of the incumbent ticket agents, including Ticketmaster (see paragraphs 6.58 and 6.59), we concluded that, in the absence of the merger, it was unlikely that Eventim would have sold more than 10 to 20 per cent of Live Nation's controlled tickets.[52] We considered that 20 per cent of Live Nation's controlled tickets represented the maximum upper bound.[53]

6.63 Although we thought it unlikely that Live Nation would have used Eventim as its exclusive online ticket agent (see paragraph 6.56), we considered what proportion of Live Nation's controlled tickets Eventim might have sold in the absence of the merger were it to have had this position. We noted that Eventim predicted that it would sell [✂] per cent of Live Nation's controlled tickets on this basis, though, in the context of our investigation, it told us that this estimate was conservative and it actually expected to sell [✂] to [✂] per cent (see paragraph 6.36). We did not ascribe much weight to Eventim's forecasts (see paragraph 6.43) and, given the lack of any market research or other relevant evidence to support its expectations given to us in the context of our investigation, we judged that these expectations were likely to be optimistic. We noted our finding that, if Live Nation were to use multiple ticket agents to sell its tickets, it was likely that it would sell more than half of its controlled tickets itself (see paragraph 6.57). We judged that, compared with this scenario, if Live Nation were to use Eventim as its exclusive online ticket agent, the proportion of tickets which Live Nation would sell itself would be higher, as some customers who would have purchased their tickets through a ticket agent other than Eventim would purchase through Live Nation's website. In addition, some of Live Nation's controlled tickets would have continued to be sold through the websites of artists and sponsors ([✂]). On the basis of these findings, we concluded that if, in the absence of the merger, Eventim had been Live Nation's exclusive online ticket agent (which we did not think was likely), Eventim would have sold, at most, 30 to 40 per cent of Live

[52]Our estimates presented here do not represent a range within which we believe Eventim's actual sales for Live Nation would have occurred. The range presented is for the maximum sales of Live Nation's tickets which we believed Eventim would have achieved. Therefore, these figures cannot be compared directly with Eventim's forecast for its actual level of sales (see paragraph 6.36). Also, we noted that Eventim's forecast was made on the assumption of it being Live Nation's exclusive online ticket agent, while our estimates in this paragraph were made on the basis of Live Nation using multiple ticket agents. Nevertheless, we noted that Eventim's forecast for the proportion of Live Nation's tickets which it would have sold in the absence of the merger was below our maximum upper bound.
[53]We present this estimate as a proportion of the total number of live music tickets in the UK in paragraph 6.65.

Nation's controlled tickets. We considered that 40 per cent of Live Nation's controlled tickets represented the maximum upper bound.[54]

Effect of Eventim's entry on the UK market for the primary retailing of live music tickets

6.64 We considered the effect of Eventim's entry into the UK market for the primary retailing of live music tickets.

6.65 We calculated that, if Eventim sold 10 per cent of Live Nation's controlled tickets, it would be selling less than 1 per cent of the total number of live music tickets in the UK; while, if it sold 20 per cent of Live Nation's controlled tickets, it would be selling less than 2 per cent (see paragraph 6.22). We calculated that, even if Eventim sold 30 or 40 per cent of Live Nation's controlled tickets, which we did not think was likely (see paragraph 6.63), Eventim would still sell less than 3 or 4 per cent of all the live music tickets in the UK.

6.66 We noted that there were a few small-scale retailers of live music tickets in the UK, each selling a few hundred thousand tickets a year (see Table 9 and paragraph 7.112). We concluded that, on the basis of the LOI alone, Eventim would be a similar small-scale retailer of live music tickets in the UK.

6.67 We also noted our previous conclusion that the small-scale retailers of live music tickets operating in the UK did not impose an effective competitive constraint on the large-scale ticket retailers (see paragraph 5.65). We concluded that, while Eventim remained a small-scale retailer of live music tickets, competition in the UK market for the primary retailing of live music tickets would not be enhanced materially. Only by growing to become a large-scale ticket retailer, ie larger than all the existing small-scale ticket retailers (which did not in aggregate impose an effective constraint), could Eventim increase materially the extent of competition in the market.

6.68 We considered whether, following its entry into the UK on the basis of the LOI, it was likely that Eventim would have become a large-scale retailer of live music tickets in the UK. We also considered on what factors this success might depend.

Live Nation's views

6.69 Live Nation submitted that Eventim's entry into the UK market for the primary retailing of live music tickets would not have had a material impact on the extent of competition. Live Nation told us that, if there were barriers restricting the entry and expansion of other competitors (which it disputed), these same barriers would have constrained Eventim.[55] Live Nation submitted that:

(a) Whilst Eventim might have a high profile in Continental Europe, it was not a recognized brand in the UK.

(b) Eventim would not, upon entry, have its own database of UK customers (and Live Nation was not obliged by the LOI to provide Eventim with access to its customer database).

(c) The terms of the LOI would give Eventim access to tickets for a limited portfolio of events (ie just Live Nation's promoted events or events in Live Nation's venues),

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[54] See previous footnote.
[55] See paragraphs 93 to 109 of Appendix E for a discussion of barriers to entry and expansion.

which would not assist Eventim significantly, either in building a base of live music consumers or in attracting further allocations of tickets from other promoters and venue operators.

6.70 For these reasons, Live Nation told us that, in the absence of the merger, it had not anticipated selling many tickets through Eventim's website and most of its tickets not sold through Live Nation's own website would have been sold by other ticket agents, including Ticketmaster. Live Nation added that, although Eventim was guaranteed a minimum allocation of Live Nation's controlled tickets under the LOI, if Eventim struggled to sell these tickets, they would be reallocated promptly to other ticket agents, as per usual UK market practice (see paragraph 2.17).

6.71 Live Nation submitted that, given the volume of tickets which Eventim was likely to sell on behalf of Live Nation, the agreement between Live Nation and Eventim was not critical to Eventim's success in the UK.

6.72 Live Nation added that Eventim's ticketing system did not offer any significant new technological capabilities suitable for the UK, and Eventim's entry into the UK was unlikely to have any significant impact on the rate of innovation in the market. Live Nation said that there had been [✂]. Furthermore, Live Nation said that, although Eventim's system might be established and proven in some other countries, the system could not be imported successfully into the UK without modification. [✂]

Opportunities in the market

6.73 We found that, prior to the anticipated merger, competition in the UK market for the primary retailing of live music tickets was not fully effective (see paragraph 5.65). Therefore, we found that there was an opportunity for a new ticket agent to offer a distinctive service and to build market share, so long as it had the capability to overcome the significant barriers to large-scale entry and expansion in the market (see paragraphs 5.49 to 5.62).

6.74 We considered whether the market was a 'natural duopoly', ie whether there was only room in the market for two large suppliers. However, we did not receive any evidence to support this hypothesis and we noted that in some European markets there were at least three large suppliers. Eventim also told us that it thought the market in the UK was sufficiently large to sustain three large ticketing providers (see paragraph 6.82).

6.75 Eventim told us that it had studied the opportunities in the UK for a long time and believed it to be an attractive geographic market to enter, due to the number of tickets sold in the UK and the profitability of the incumbent ticket retailers. Eventim said that it had sought previously to enter the market through acquisition but it had not been successful.

6.76 Ticketmaster told us that a high proportion of live music ticketing agreements between promoters and/or venues and ticket agents were due to expire within the next few years, [✂]. Ticketmaster said that the renewal of these contracts would provide many opportunities for new entrants to contest ticketing inventory. Ticketmaster added that many promoters and venues worked with ticket agents without contractual agreements so a large volume of tickets was always contestable. We considered what proportion of the total number of live music tickets in the UK could be contestable and found that, at any point in time, around half of all tickets were contestable. This estimate excluded all tickets for those promoters and venue operators which we were aware had a preferred relationship with a ticket agent. However, given our finding that, for promoters, no preferred relationship is exclusive (see paragraph 2.17), we considered this estimate to be conservative. We also noted that some of the existing preferred relationships between promoters and/or venue operators and ticket agents were due to expire in the next two or three years.

Partnership with Live Nation

6.77 Given Live Nation’s financial incentive to sell through Eventim’s website whatever tickets it could not sell itself, in preference to any other ticket agent (see Table 3 and paragraph 6.33), we considered whether Live Nation had an incentive to assist Eventim in becoming a successful retailer of live music tickets in the UK. We noted that this assistance could take many forms, for example, placing Eventim’s website details on the promotional material for Live Nation’s events or sharing its customer data with Eventim.

6.78 Live Nation told us that it had never intended to support Eventim in these ways. Live Nation provided us with internal documentation from the time when the LOI was being negotiated with Eventim, which demonstrated that its intention was to sell as many tickets as possible itself (see paragraphs 6.34*(c)*). Furthermore, Live Nation showed us from these documents that it had not intended to support Eventim’s sales efforts, whether through marketing or the provision of customer data. Live Nation told us that [✂] of the LOI was negotiated specifically to exclude the sharing of Live Nation’s customer data and, intentionally, the LOI did not include any requirement for Live Nation to support Eventim’s marketing efforts. Eventim did not dispute these views. We noted that, under the LOI, Live Nation was required to include the reference ‘powered by Eventim’, incorporating the Eventim logo,on its website, but we did not believe that this requirement would provide Eventim with any material marketing support for its own sales efforts. Given the size of the logo and the stage in the transaction process when it appeared, we believed that Live Nation’s consumers would perceive Eventim as the facilitator of their transaction with Live Nation, and it would have little effect on promoting Eventim’s brand as an independent ticket retailer. Live Nation submitted that, given that both its corporate intention and its financial incentive was to sell as many tickets as possible through its own website, any support which it offered to Eventim would reduce its own sales, and so be contrary to its own commercial interests.

6.79 We considered if there were other ways in which Live Nation could have supported Eventim’s entry into the UK, which would have involved it going beyond its obligations in the LOI, but without incurring any additional financial cost. We considered whether Live Nation would have been able to influence any of its subsidiaries (eg AMG) to use Eventim, but we found that it would not (see paragraph 6.27). Given that in each subsidiary there would be other shareholders with an incentive to choose the best ticketing service provider for that subsidiary, we found that Live Nation would have had little ability to encourage Eventim to be chosen over another ticket agent offering a preferable bid.

6.80 We also considered whether Live Nation would have allocated tickets to Eventim for all of Live Nation’s events (not just [✂] per cent), and across a range of seats (in different positions and prices). We found that, in the absence of the merger, the volume and range of tickets which Live Nation would have allocated to Eventim would have been dependent on Eventim’s ability to sell Live Nation’s tickets (see paragraph 6.62). Live Nation might have allocated to Eventim tickets across a wider range of its events, or a wider range of prices and positions within an event, than it was obliged, but, given Live Nation’s corporate objective and its financial incentive was to use its own website in preference to Eventim (see Table 3 and paragraph 6.33), it would only have done so if Eventim proved itself more able to sell Live Nation’s tickets than Live Nation. If other ticket agents, including Ticketmaster and

See Tickets, had proved themselves more able to sell Live Nation's tickets than either Live Nation or Eventim, these agents would have received a greater allocation, and both Live Nation and Eventim would have received fewer tickets (see paragraph 6.62).

6.81 We concluded from this evidence that, in the absence of the merger, Live Nation would have done little to assist Eventim's retail efforts beyond its obligations in the LOI. We accepted that, if Live Nation were faced with a choice between Eventim and another equally effective ticket agent, it would have chosen Eventim on the basis of a greater rebate (see Table 3 and paragraph 6.33), but we concluded that this financial incentive alone was not sufficient for Live Nation to incur costs in assisting Eventim to become a successful retailer of live music tickets in the UK. We concluded that, if Eventim were to become successful as a ticket retailer, for Live Nation or for other parties, it would be on the basis of its own efforts and abilities.

Eventim as a distinctive new entrant

6.82 We noted that Eventim is a large, multinational provider of primary ticketing services, with a proven technological solution and substantial expertise which it has built over many years. Eventim is the second-largest ticket agent in the world (after Ticketmaster) and operates on a completely different scale from the smaller operators which have tried to compete against Ticketmaster and See Tickets in the UK. Eventim told us that it had entered successfully 17 countries, though we noted that, in most cases, this entry had been by acquisition.[56] Eventim also told us that it only entered markets where it believed it could become one of the largest ticketing providers (supplying both managed ticketing services and ticket retailing) within a reasonable period, which it was able to evidence from its history in other Western European markets. Eventim said that, in most geographic markets, that meant becoming the largest or second largest ticket retailer, though in the UK it thought the market was sufficiently large to sustain three large ticketing providers (see paragraph 6.74).

6.83 Eventim told us that its website would offer greater functionality than the websites of most other ticket agents operating in the UK and it would win customers in the UK by investing significantly in marketing its website and by utilizing search engine optimization, with which it had proven success. Eventim also provided us with evidence showing its ability to generate ticket sales, both for Live Nation and for other events, in European markets where the LOI had been implemented for a year (see paragraphs 6.92 to 6.94). We observed that Eventim was not like any other recent new supplier of live music ticketing in the UK, most of which were small businesses, without their own proprietary ticketing system and without much prior experience of retailing live music tickets (see paragraph 5.63).

6.84 We noted that there were challenges for Eventim in entering the UK, in particular in modifying its system, but we also noted that Eventim had overcome these challenges in many other geographic markets. We observed that there were [✂] between Live Nation and Eventim in the UK around [✂], but we were unable to determine the extent to which these [✂] were affected by the parties' changed incentives following the merger and, in particular, [✂].

6.85 Eventim told us that its agreement with Live Nation was based on the mutual expectation that the two companies would form a long-term business relationship,

[56] Eventim pointed out that it had not entered by acquisition either of the two geographic markets which it cited as comparators to the UK, ie the Netherlands and Sweden (see paragraphs 6.92 to 6.96).

working cooperatively with each other. Eventim acknowledged that Live Nation had raised many concerns about its software in the USA and its system in the UK (see paragraphs 6.8, 6.72 and 6.84). However, Eventim told us that, in the absence of the merger, such disputes would have been resolved amicably and constructively, in the spirit of a long-term cooperative relationship. Eventim said that many of the concerns raised by Live Nation were clearly affected by the merger.

6.86 Eventim told us that its agreement with Live Nation was sufficient to give it a foothold in the UK, from which, over time, it would have built a significant position. Eventim said that its partnership with Live Nation was critical to its decision to enter the UK as it offered Eventim the opportunity to gain a secure revenue stream from the supply of a managed system over which Live Nation, and other retail channels of Live Nation's choice, could sell Live Nation's tickets (for which Eventim received £[✂] per ticket), and it offered Eventim access to significant ticket inventory from Live Nation which Eventim could offer for sale to consumers. Eventim told us that, due to this access to Live Nation's tickets, Eventim would be able to attract consumers to its website and, as a result, be able to attract further ticket inventory from other promoters and venues, as well as from organizers of non-live music events (see paragraph 5.55). Eventim told us that it had studied the opportunities in the UK for many years previously but, in the absence of an acquisition opportunity or a partnership with a significant source of tickets, it had decided not to enter.

6.87 We accepted that, for Eventim, the LOI with Live Nation was critical to its decision to enter the UK, as it provided Eventim with both a substantial revenue stream from the provision to Live Nation of a managed ticketing service and a guaranteed allocation of tickets from Live Nation, which Eventim could offer for sale.

6.88 Eventim provided us with its internal board minutes and presentations from the time when the LOI was being negotiated, which supported its stated rationale for entering the UK (see paragraphs 6.82 and 6.86). We noted from these documents that much of the discussion around Eventim's agreement with Live Nation in the UK was related to the provision of a managed ticketing service to Live Nation, and the £[✂] fee payable to Eventim for every Live Nation-controlled ticket sold (except for sales made in-person at the box office). We calculated that the provision of this service to Live Nation provided Eventim with a secure revenue stream and, on its own, offered a profitable entry opportunity (see paragraph 6.44).

6.89 Nevertheless, Eventim told us that, consistent with its overriding objective of becoming a large-scale ticket retailer in the UK (see paragraph 6.82), it had insisted on a minimum allocation of tickets from Live Nation for sale through Eventim's own website and, in particular, it had insisted that these tickets should cover the majority of Live Nation's events ([✂] per cent). Live Nation told us that it had not wanted to accept this obligation, given its intent to sell as many tickets as possible through its own website (see paragraph 6.34), but it had done so at Eventim's insistence and as part of the negotiation of a global deal, in which the terms in the USA comprised the most important part.

6.90 We noted that, although the LOI assured Eventim of a minimum allocation of tickets from Live Nation, and a possible expectation of more tickets, depending on Eventim's relative success in achieving sales (see paragraph 6.62), the total volume of tickets which Eventim was likely to have sold for Live Nation was still a small part of the total number of live music tickets in the UK (see paragraph 6.65). We concluded that, although Eventim's agreement with Live Nation would have caused Eventim's entry into the UK on a small scale, it would not, on its own, have enabled Eventim to enter that market on a large scale, either due to the volume of tickets Eventim would have been allocated by Live Nation (see paragraph 5.57) or because of any other support from Live Nation (see paragraph 6.81). Furthermore, we noted that there were significant barriers to large-scale expansion (see paragraphs 5.49 to 5.62) so, although Eventim might have planned to become a large-scale retailer of live music tickets in the UK (see paragraph 6.82), we concluded that its success in doing so was by no means guaranteed, by the LOI or otherwise.

6.91 We concluded that although, for Eventim, its LOI with Live Nation was critical to its decision to enter the UK, it was not sufficient to ensure that Eventim became a large-scale retailer of live music tickets in the UK. We noted that Eventim's eventual position in the market would depend on many factors, including the extent to which it invested in marketing its services and developing its UK brand in order to attract consumers and to sell tickets more quickly than its rivals, and the extent to which it was able to gain ticket allocations from other promoters and venue operators despite the presence of many long-term preferred relationships. We concluded that, although the LOI with Live Nation gave Eventim a foothold in the market, its prospects as a retailer of live music tickets in the UK remained uncertain and were dependent, primarily, on its own efforts and abilities.

Eventim's success under the LOI in other geographic markets

6.92 Eventim provided us with its sales figures, showing how it had been able to enter or increase its presence in other European markets on the basis of the LOI with Live Nation. Eventim told us that, in the Netherlands, where the LOI was implemented on 1 January 2009, it sold [✂] per cent of Live Nation's controlled tickets in the first year of operation. Eventim said that, in Sweden, which also implemented the LOI on 1 January 2009, it sold [✂] per cent of Live Nation's tickets[57] In both countries, all of the remaining sales of Live Nation's controlled tickets had been made by Live Nation. Eventim highlighted that, in both countries, no Live Nation controlled tickets had been sold by any other ticket retailer, despite neither Live Nation nor Eventim having any ticket retailing presence in either country before 1 January 2009. Eventim noted that, in the Netherlands, as a result of Live Nation's switch to Eventim, Ticketmaster's market share had fallen from over [✂] per cent to less than [✂] per cent.

6.93 Eventim submitted that the obligations on Live Nation under the LOI in the UK, in particular to place all of its tickets exclusively on Eventim's system, were the same as its obligations in the Netherlands and Sweden. The only significant difference was that the LOI was implemented in the Netherlands and Sweden before Live Nation and Ticketmaster agreed their merger. Therefore, in the UK, Eventim expected to achieve a significant proportion of Live Nation's ticket sales, and expected Live Nation to use no other online retail channels except its own website and that of Eventim (see paragraphs 6.36 to 6.38). Eventim acknowledged that, in the Netherlands and Sweden, fees are [✂], regardless of the sales channel making the sale, while, in the UK, Live Nation has a greater financial incentive to sell through its own sales channel (see Table 3 and paragraph 6.33). However, Eventim said that, for this reason, it forecast to achieve a lower proportion of Live Nation's ticket sales in the UK than in these other geographic markets, at just [✂] per cent (see paragraph 6.36).

6.94 Eventim added that, following its entry into the Netherlands and Sweden on the basis of its agreement with Live Nation, it had sold in 2009 [✂] tickets for other parties in

[57]The LOI also started in 2009 in Finland, Hungary and Poland but, in these countries, Eventim was already either the largest or second largest ticket retailer.

the Netherlands and [✂] tickets for other parties in Sweden.[58] Eventim submitted that it had been able to attract consumers to its website because of the Live Nation content it was able to offer and, once it had access to consumers, it had been able to attract further ticket content from other promoters and venue operators (see paragraph 6.86).

6.95 We considered the extent to which Eventim's experiences in the Netherlands and Sweden were informative about its likely performance in the UK. We found that there were significant differences between the market in the UK and the markets in the Netherlands and Sweden, as follows:

(a) We found that, in both the Netherlands and Sweden, it was usual for one party to control all of the tickets for an event (in the Netherlands, it was the promoter; in Sweden, the venue). It was also usual for the party controlling all the tickets to sell them from a single ticketing system. We found that the market in the UK did not work in this way (see paragraph 2.16). In the UK, tickets for most events are controlled by both the venue and the promoter (except festivals where they are controlled exclusively by the promoter), and both parties use their own ticketing retailer. Furthermore, in the UK, promoters sell their tickets through multiple ticket retailers, which they told us was necessary in order to maximize sales. Even where a promoter has a preferred relationship with a ticket retailer, the promoter still sells some tickets through other ticket retailers. We noted that, under Live Nation's previous global agreement with Ticketmaster, this difference was reflected in its different practices in the different geographic markets. In the Netherlands and Sweden, Live Nation had used Ticketmaster as its exclusive ticket agent; while, in the UK, Live Nation had continued to use multiple ticket agents, despite having to pay Ticketmaster a penalty fee for its tickets sold by other ticket agents (see paragraph 6.16). We noted that the switch from Ticketmaster to Eventim in the Netherlands and Sweden represented a change of system and retail channel, but it did not represent a change in Live Nation's retailing practices.[59]

(b) We found that, in the Netherlands, where the promoter controls all the tickets, Live Nation controlled a greater proportion of the total number of live music tickets than it did in the UK. We estimated that Live Nation controls around [✂] per cent of the total number of live music tickets in the Netherlands, compared with [less than 10] per cent in the UK (see paragraph 6.22). Eventim told us that differences between Live Nation's market shares in the different geographic markets were irrelevant, given its same objective in each market to maximize its ticket sales. However, we did not agree. We judged that the more tickets controlled by Live Nation, the greater Live Nation's ability to direct consumers to where its tickets are available. Therefore, in the UK, ticket retailers held more market power vis-à-vis Live Nation than in the Netherlands, and Live Nation was more dependent on these ticket retailers in the UK to reach consumers and maximize its ticket sales.

(c) As acknowledged by Eventim, the terms of the LOI in the UK are different from the terms in the Netherlands and Sweden. In the UK, Live Nation has a greater financial incentive under the LOI to sell its tickets through its own website, in comparison with sales through Eventim's website; whereas, in the Netherlands

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[58] Eventim provided us with sales figures for the first 46 weeks of 2009 and told us that there was no reason to believe that its sales for the remaining six weeks of the year were materially different. We calculated Eventim's annual ticket sales for other parties, as shown, by pro-rating the numbers provided to us by Eventim to a full year.

[59] We recognized that the cessation, in the Netherlands, of selling through physical retail outlets did represent a change in Live Nation's retailing practice, but we judged that this change was not relevant to the assessment of how Eventim's experiences in the Netherlands and Sweden might be informative of its likely experience in the UK.

and Sweden, the financial incentives are the same. We recognized that Eventim had sought to reflect this difference in [✂], but we found that there was little basis for predicting reliably what the effect of this difference in incentive would be. We noted that, if Live Nation were successful in selling its tickets in the UK, Eventim would have sold very few tickets for Live Nation; but, if Live Nation were less successful and Eventim managed to penetrate the market, Eventim might have sold a much higher proportion. Either way, we concluded that, because of the difference in the terms of the LOI between the UK and the Netherlands and Sweden, the relevance of Eventim's experience in these markets in informing us about Eventim's likely experience in the UK was limited.

6.96 We concluded that, because of these significant differences, Eventim's experiences in the Netherlands and Sweden could not inform us about Eventim's likely success in the UK. Rather, we noted simply that Eventim's successful entry into the Netherlands and, to some extent, in Sweden was supportive of our previous observation that Eventim was a distinctive new entrant which might be able to succeed in circumstances where other new entrants might struggle (see paragraph 6.83).

Eventim's future market share

6.97 We considered whether we could estimate reliably the market share which, in the absence of the merger, Eventim was likely to have achieved in the UK market for the primary retailing of live music tickets. However, we found that to do so would be highly speculative given the limited evidence available. We found that Eventim's forecasts did not provide a solid basis for estimating Eventim's market share (see paragraph 6.43), and we could not assume that Eventim would be able to replicate in the UK its performance in other geographic markets due to the many significant differences between those markets and the UK (see paragraph 6.96). Although we had some basis for estimating the maximum proportion of Live Nation's controlled tickets which Eventim might sell (see paragraph 6.65), we had little basis for estimating how successful it would be in attracting consumers or in gaining further ticket allocations from other promoters and venue operators.

6.98 Nevertheless, Eventim told us that, in order to assess the effects of the merger, we did need to form a precise view on the extent of Eventim's likely success in the UK, or at least to specify a range of counterfactuals incorporating varying degrees of its success. We did not agree that the approach suggested by Eventim was appropriate in this case. The counterfactual is a tool to aid our assessment of the competitive effects of the merger,[60] and its formulation will depend on the facts and circumstances of the particular case, and will be limited by the extent to which events or circumstances and their consequences are foreseeable (see paragraphs 6.1 to 6.3). We considered what the foreseeable effects of the counterfactual would have been based on the evidence available to us. We concluded that the available evidence was not sufficiently robust for us to reach a view that it was foreseeable that Eventim would have achieved a particular level of success in the absence of the merger, in particular given that the evidence demonstrated that Live Nation had not intended to 'sponsor' Eventim's entry into and expansion in the UK (see paragraph 6.81). To attempt to forecast a level of success for Eventim in such circumstances would have been to give a spurious degree of accuracy to the counterfactual that was not justified by the evidence available to us. Therefore, instead of speculating about precise outcomes we took the view that it was more appropriate for us to

[60]see CC2, paragraphs 1.22 and 1.23; and the judgment of the Competition Appeal Tribunal (CAT) in *British Sky Broadcasting Group plc v Competition Commission* [2008] CAT 25, which was upheld on this issue by the Court of Appeal in *British Sky Broadcasting Group plc v Competition Commission and others* [2010] EWCA Civ 2.

review the factors which could influence those outcomes, and consider how the merger might affect them. Eventim stated that the questions on the counterfactual could be summarized as: (1) whether Eventim has the assets necessary to enter the UK market for ticket retailing on a large scale (Eventim identified these assets as being a ticketing system that customers are happy to use and is capable of handling large volumes of customer traffic, financial capacity to build its brand and website traffic in the UK, the skills to launch into the UK, and the ability to obtain substantial further ticket allocations from other promoters); and (2) if the answer to this is 'yes', what volume of tickets Eventim would sell in the absence of the merger. We recognized that Eventim's market share in the counterfactual depended on many factors and, where we could form an opinion on the likely outcome of a significant factor, we did (eg whether Live Nation would have supported Eventim's entry into the UK with marketing support (see paragraph 6.81); but, where the factor would be the same regardless of the merger, we did not (eg whether Eventim could deliver a good website, with unique functionality (see paragraph 6.83)). Although we formed an opinion on some of the factors affecting Eventim's market share in the absence of the merger, we did not believe that we had sufficient evidence to estimate its resulting market share reliably.

6.99 We concluded that forming a precise view on Eventim's likely success in the UK in the absence of the merger was neither appropriate nor necessary. We recognized that Eventim was a distinctive new entrant, which might be able to succeed in the market and overcome the barriers to large-scale entry and expansion in ways which other new entrants had not (see paragraph 6.82), but we focussed our analysis on whether and, if so, how the merger would affect Eventim's prospects of success. We also considered how any effect on Eventim would affect competition in the UK market for the primary retailing of live music tickets.

Conclusions on the counterfactual

6.100 We concluded that the LOI with Live Nation provided Eventim with a way to enter the UK with a secure revenue stream, from the provision to Live Nation of a managed ticketing service, which would cover its fixed costs and entry costs in the short term (see paragraph 6.44), and with access to a guaranteed minimum volume of tickets from Live Nation to offer for sale (see paragraph 6.13). However, we concluded that, on the basis of the LOI alone, Eventim would have achieved only a small-scale position in the UK market for the primary retailing of live music tickets (see paragraph 6.65). We noted that, in order to increase materially the extent of competition in the market, it would have needed to become a large-scale retailer of live music tickets (see paragraph 6.67).

6.101 We recognized that, from the foothold established by its agreement with Live Nation, Eventim was likely to have offered similar services to other live music promoters and venue operators (and organizers and venues for other events) in order to try to grow. We noted that Eventim was a distinctive new entrant into the UK and it might have been able to overcome the significant barriers to large-scale entry and expansion which have inhibited growth by other small-scale retailers of live music tickets in the past (see paragraphs 5.49 to 5.62).We found that the extent of Eventim's success in overcoming these barriers would have been dependent on its ability to attract consumers and to gain further live music ticket allocations (see paragraph 6.91). We concluded that, although its agreement with Live Nation was critical to its decision to enter the UK, Eventim's success in becoming a large-scale retailer of live music tickets in the UK was dependent primarily on its own efforts and abilities (see paragraph 6.91).

6.102 We did not form a view on how successful Eventim was likely to be in the UK market for the primary retailing of live music tickets in the absence of the merger (see paragraph 6.99). Rather, we focused on the extent to which the merger affected the factors on which Eventim's success in becoming a large-scale retailer of live music tickets in the UK depended and, thereby, the degree to which the merger affected the level of competition in the market, which we discuss in Section 7.

7. Competitive effects of the merger in the market for the primary retailing of tickets for live music events

Horizontal effects of the merger[61]

7.1 The merger of Ticketmaster and Live Nation could be expected to remove, or at least reduce the significance of, Live Nation as a retailer of live music tickets. We considered the effect of this change on competition.

7.2 We judged that, in the absence of the merger, Live Nation would have sold most of its controlled tickets through its own website, using the Eventim system (see paragraph 6.57).

7.3 Given that Live Nation controls [less than 10] per cent of all the live music tickets in the UK (not including tickets controlled by its subsidiaries which were excluded from the LOI) (see paragraph 6.22), the implication of Live Nation selling at least half of its own tickets would be for it to capture at least [✂] per cent of the market for the primary retailing of live music tickets.

7.4 Eventim submitted that the merger would have substantial horizontal effects arising from the loss of competition between Live Nation and Ticketmaster in the primary retailing of live music tickets. Eventim noted that most of the events promoted by Live Nation took place in non-Live Nation venues, many of which were ticketed by Ticketmaster, and many of the events in Live Nation's venues were promoted by promoters which used Ticketmaster to sell their tickets. Eventim submitted that, therefore, in the absence of the merger, for any event either promoted by Live Nation or hosted by a Live Nation venue, consumers had a choice between purchasing their tickets from Live Nation or Ticketmaster (and, possibly, other ticket agents). Eventim submitted that, were the merger to proceed, this choice would disappear.

7.5 We recognized that, in the absence of the merger, Live Nation and Ticketmaster would compete to reach potential consumers for tickets to certain events, ie events promoted by Live Nation's wholly-owned live music business (these events are responsible for about [✂] per cent of the total number of live music tickets)[62] and other events at Live Nation's venues (responsible for about [✂] per cent of the total number of live music tickets). We accepted that rivalry between Live Nation and Ticketmaster could result in more consumers being reached and more tickets being sold for these events than if there was no such competition between them. However, we found that the principal beneficiaries of this competition would be the promoters of the events concerned, ie, in most cases, Live Nation (see paragraph 6.30). We found that it was unlikely that competition between Live Nation and Ticketmaster over tickets for a limited range of events would result in any significant benefits for consumers or other industry participants.

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[61] We use the term 'horizontal' to refer to activities in the same market. We use the term 'vertical' to refer to activities in different markets but within the same supply chain.
[62] This number is greater than the [✂] per cent of tickets controlled by Live Nation overall (see paragraph 7.3) as most of the events which Live Nation promotes take place in non-Live Nation venues and between 50 and 75 per cent of the tickets for these events are controlled by the venues.

7.6 Putting this conclusion another way, we found that, although the merger might result in a loss of competition between Live Nation and Ticketmaster for some events, the party which was most at risk of suffering any harm was Live Nation, as the promoter for the majority of the events affected.

7.7 We judged that, if the merger were to proceed, it was implausible that the merged entity would allow its promotions business to be harmed by its two ticket retailing businesses (Live Nation and Ticketmaster) failing to sell tickets to consumers. Rather, we believed that the merged entity would ensure that its ticket retailing businesses continued to reach as many consumers as possible and serve those consumers effectively. Therefore, we concluded that it was very unlikely that the merger would result in any detrimental effects on consumers, or on any other party, due to a loss of competition between Live Nation and Ticketmaster.

7.8 We also noted that, although much of the competition between ticket retailers occurs as they seek to supply their services to promoters and venue operators, [✂]. We concluded that this restriction under the LOI and independent of the merger would limit significantly Live Nation's overall impact on competition in this market.

7.9 We concluded that the merger was unlikely to lead to any substantial lessening of competition in the market for the primary retailing of live music tickets due to the loss of Live Nation as a ticket retailer.

7.10 Apart from Live Nation's presence in the market as a supplier of live music tickets, Live Nation and Ticketmaster do not both operate in any other markets. Therefore, we found that there were no other horizontal effects of the merger.

Vertical effects of the merger[63]

7.11 As Live Nation and Ticketmaster are active at different levels of the supply chain (see paragraph 3.5 and Figure 5), the merger has the potential to give rise to vertical effects. In particular, the merged entity may have the ability to use Ticketmaster's position in the market for the primary retailing of live music tickets to harm Live Nation's competitors in the markets for live music promotion or live music venues (we consider this possibility in Section 8). Alternatively, the merged entity may have the ability to use Live Nation's position in the markets for live music promotion and/or live music venues to harm Ticketmaster's competitors in the market for the primary retailing of live music tickets (we consider this possibility in this section). In both cases, the harm to the merged entity's competitors could be achieved by refusing either to use the competitors' services or to allow competitors access to the merged entity's services (total foreclosure), or by limiting the amount of trade with competitors, or worsening the terms of trade (partial foreclosure).

7.12 In order for the merged entity to foreclose its competitors, either partially or totally, it must have the ability and incentive to do so. For each possible method of foreclosure we assessed these two criteria. Where we found that the merged entity might have both the ability and the incentive to foreclose its competitors, we then assessed the effect on competition of this foreclosure by comparing it with the counterfactual.

[63]We use the term 'horizontal' to refer to activities in the same market. We use the term 'vertical' to refer to activities in different markets but within the same supply chain.

Efficiencies

7.13 We noted that the merger could give rise to efficiencies, which could result in the merged entity having the ability to compete more effectively against its competitors. Such efficiencies would represent a positive effect of the merger, possibly benefiting consumers, even if they had a negative effect on the merged entity's competitors, and should be distinguished from the adverse effects on competition caused by foreclosure.

7.14 Live Nation and Ticketmaster submitted to us that the merger would give rise to efficiencies in the UK market for the primary retailing of live music tickets. However, we found that the features of live music ticketing in the UK, including the split of tickets between promoters and venues and the allocation of promoters' tickets to a number of ticket agents, were unlikely to change (see paragraph 6.56). Also, we were not persuaded that any of the efficiencies cited by Live Nation and Ticketmaster could not also be achieved through the efficient working of long-term contracts. We recognized that the merger aligned some of the incentives of Live Nation and Ticketmaster which were not aligned during their ten-year agreement, but we were not convinced that, in the absence of the merger, Live Nation's incentives could not have become aligned with those of Eventim under its new ten-year agreement. Rather, we noted that part of Live Nation's rationale for changing the supplier of its ticketing services was to achieve this alignment, both in the USA and elsewhere in the world (see paragraph 3.3).

Effects on other ticket agents due to Live Nation's position in the markets for live music promotion and live music venues

7.15 The CC's guidelines state that 'generally, a vertical merger will only raise competition concerns when the firms involved are able to exercise a substantial level of market power in one or more markets along the supply chain'.[64] We recognized that, in this case, we did not find evidence that Live Nation had substantial market power either as a promoter or as a venue operator and, therefore, on the basis of our guidance, it was unlikely that the merged entity would have the ability and incentive to foreclose any other ticket agent. However, we noted that there were aspects of this case which were unusual and which might make foreclosure more of a possibility than in other circumstances, in particular the potential to foreclose a new entrant, Eventim.

7.16 Both as a promoter of live music events and as an operator of venues which host live music events, Live Nation controls many live music tickets (see Table 2). We estimated that Live Nation controls [less than 10] per cent of all the live music tickets in the UK (see paragraph 6.22). We considered whether the merged entity could use Live Nation's position in the markets for live music promotion and live music venues to foreclose competing ticket agents by ceasing to supply (or reducing the extent to which it supplies) these ticket agents with its tickets. The merged entity would have the incentive to do so if the lost profits from reduced ticket sales for the events it promotes and hosts in its venues were outweighed by the additional profits in its ticketing business.

7.17 We first considered the potential for the merged entity to foreclose Eventim because of Eventim's unique position as a business in the process of entering the UK on the

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[64] *CC2*, paragraph 3.64.

basis of its agreement with Live Nation.[65] We then considered the potential for the merged entity to foreclose other competing ticket agents.

Foreclosure of Eventim

7.18 We considered to what extent the merged entity would have the ability and incentive to foreclose Eventim as a retailer of live music tickets, and we sought to assess the effect on competition in this market if it did so.

Eventim's position in the UK and the factors affecting its success

7.19 We noted that Live Nation controlled [less than 10] per cent of all the live music tickets in the UK (see paragraph 6.22), which was a share significantly below the typical threshold at which foreclosure is usually considered possible.[66] Furthermore, we expected that, in the absence of the merger, Eventim would have sold, at most, 10 to 20 per cent of all Live Nation's controlled tickets (see paragraph 6.62), ie at most 1 or 2 per cent of the total number of live music tickets in the UK. Even accepting Eventim's view that, in the absence of the merger, Live Nation would not have used any online ticket agent other than Eventim, we found that Eventim would still have sold less than 3 or 4 per cent of all the live music tickets in the UK (see paragraphs 6.63 and 6.65). We concluded that the proportion of the total number of live music tickets in the UK which, in the absence of the merger, Eventim was likely to sell on the basis of its agreement with Live Nation was small.

7.20 We found that, on the basis of its agreement with Live Nation, Eventim's position in the market as a retailer of live music tickets would have been comparable with the position of other small-scale ticket retailers (eg Ticketline, Ticketsoup, etc, see Table 9 and paragraph 7.112). Given our finding that there were no significant barriers to small-scale entry into the UK market for the primary retailing of live music tickets (see paragraph 5.47), we found that, although its agreement with Live Nation was critical to Eventim's decision to enter the UK (see paragraph 6.87), it was not essential to enable Eventim to operate in the market at this scale. We noted that Eventim's decision was based on a wider set of factors, including a guaranteed revenue stream from the provision to Live Nation of a managed ticketing service, which would cover its fixed costs and entry costs in the short term (see paragraph 6.44). We also noted that the agreement provided Eventim with access to a guaranteed minimum volume of tickets across a wide range of Live Nation's events, which, as a new entrant without the agreement, it would have taken some effort to obtain.

7.21 We considered whether Eventim's agreement with Live Nation would have enabled Eventim to grow to become a large-scale retailer, and so be able to impose a material competitive constraint on the large incumbent retailers of live music tickets in the UK (ie Ticketmaster and See Tickets). We found that the factors on which this growth depended were its ability to attract consumers and its ability to gain further

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[65]Which? told us that, in the event of the merger, the prospects of successful entry into the UK market for the primary retailing of live music tickets will be much reduced, given the obvious incentives on the merged parties to foreclose the relevant markets. Which? said that, therefore, the merger should be considered against the prospects of success for an entrant to challenge the existing dominant positions of market incumbents; and whether the merger has a direct or indirect impact on the conditions necessary for successful entry and expansion. Given our finding that, in order to affect materially the extent of competition in the market it was necessary for a new entrant to become a large-scale retailer (see paragraph 6.67), and given Eventim's ambitions of being a large-scale ticket retailer in the UK (see paragraph 6.82), we judged that, by considering how the merger affected Eventim's prospects of success in the market, we had also considered how the prospects of another new large-scale entrant might be affected.

[66]For example, the merger guidelines of the European Commission refer to a typical market share threshold for the merged entity of 30 per cent in one or other market (see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:265:0006:0025:EN:PDF, paragraph 25).

ticket allocations from other promoters and venue operators (see paragraph 6.101). Eventim told us that its ticket allocation from Live Nation would have enabled it to begin to attract consumers, and so gain further ticket allocations, by establishing a 'virtuous circle' of growth (see paragraph 5.55). However, we found no evidence of a virtuous circle (see paragraph 5.57). Furthermore, we observed that there were other, existing small-scale ticket agents which were selling similar numbers of tickets across a similar range of events to those which the LOI would have given Eventim the opportunity to offer for Live Nation (see paragraph 7.20), and they had been unable to grow. Due to the presence of significant barriers to large-scale entry and expansion (see paragraphs 5.49 to 5.62), these retailers had remained small, and there was no virtuous circle at their scale of operations by which to overcome them. We concluded that, Eventim's prospects of becoming a large-scale retailer of live music tickets depended primarily on its own efforts and abilities (see paragraph 6.101) and these were not affected significantly by its agreement with Live Nation, with or without the merger.

7.22 We found that Eventim's agreement with Live Nation was sufficient, on its own, to cause Eventim's small-scale entry into the UK market for the primary retailing of live music tickets (see paragraph 7.20).[67] However, we found that its agreement with Live Nation was not sufficient, on its own, to enable Eventim to enter or expand in that market on a large scale (see paragraph 7.21). We concluded that the factors on which Eventim's prospects of becoming a large-scale retailer of live music tickets depended were not affected significantly by its agreement with Live Nation (see paragraph 7.21).

7.23 On the basis of these findings, we concluded that it was very unlikely that the merged entity would have the ability to affect significantly Eventim's prospects for success as a primary retailer of live music tickets in the UK. The factors determining whether Eventim would become a large-scale retailer of live music tickets in the UK, and so be able to increase materially the extent of the competitive constraint on the other large-scale retailers of live music tickets (Ticketmaster and See Tickets), were not affected significantly by the merger.

7.24 Notwithstanding this conclusion, since we had received detailed submissions from Eventim, explaining how its agreement with Live Nation was critical to its decision to enter the UK and how, in the absence of the merger and from the foothold in the market established by its agreement, it expected it would have grown, for completeness we considered various ways in which the merged entity might have the ability and incentive to limit Eventim's success in the UK, and thereby to foreclose its entry into the UK market for the primary retailing of live music tickets, compared with the counterfactual.

Possible ways in which the merged entity could foreclose Eventim

7.25 Following the announcement of the proposed merger, both Live Nation and Eventim stated publicly that they were committed to honouring their obligations under the LOI. Both Live Nation and Eventim reaffirmed this commitment to us. We also noted that the terms of the LOI were expressed to be legally binding (see paragraph 6.5).

7.26 Live Nation told us that, under the LOI, it would pay Eventim a fee of £[✂] per ticket for each Live Nation-controlled ticket sold on the Internet or by telephone, whether

[67] Given our finding that there are no significant barriers to entering the UK market for the primary retailing of live music tickets on a small scale (see paragraph 5.47), we found that Eventim's agreement with Live Nation was not necessary for Eventim to operate on a small scale in this market. Nevertheless, we accepted that, for Eventim, its agreement with Live Nation was critical to its decision to enter the UK (see paragraph 6.87).

sold by Live Nation using Eventim's system or by any retail channel other than Eventim (see paragraph 6.24). We calculated that the provision by Eventim of its managed ticketing service to Live Nation was profitable for Eventim on a stand-alone basis (see paragraph 6.44). Therefore, assuming the LOI remained in place, and noting Eventim's commitment to honouring its obligations under the LOI (see paragraph 7.25), we concluded that Eventim was likely to stay in the UK, at least as a provider to Live Nation of a managed ticketing service.

7.27 However, we noted that Eventim's ambition in the UK was to become a large-scale ticket retailer (see paragraph 6.82) and it told us that its agreement with Live Nation, which assured it access to a minimum volume of tickets to a wide range of Live Nation's events, was critical to its decision to enter the UK (see paragraph 6.86). Therefore, assuming initially that the LOI remained in place and Eventim remained in the UK, we considered the ways in which the merged entity could affect Eventim's success in the market for the primary retailing of live music tickets (see paragraphs 7.28 to 7.80). We went on to consider whether there was any realistic prospect of the LOI ceasing to operate and, if it did, whether Eventim's prospects for success would be affected (see paragraphs 7.81 to 7.97).

7.28 We found that there were four ways in which the merged entity might be able to limit Eventim's success in the UK market for the primary retailing of live music tickets, ie by:

(a) limiting the total number of Live Nation-controlled tickets (see definition in paragraphs 6.17 to 6.21), so reducing the number of tickets required to be placed on to Eventim's system under paragraph 5.3 of the LOI (which is subject to paragraph 5.8 of the LOI) (see paragraph 6.11);

(b) limiting Eventim's allocation of Live Nation-controlled tickets for sale;

(c) inhibiting Eventim's growth in other ways; and

(d) limiting Eventim's revenues from Live Nation.

We considered each possible method of foreclosure in turn. We also considered whether Live Nation's practice of allocating tickets to ticket agents other than Eventim (for these agents to sell off their own systems) might affect Eventim's position in the UK. In each case, we considered the extent to which any conduct which Live Nation might take could be attributed to the merger and, if so, what the overall impact on competition would be.

Limiting the total number of Live Nation-controlled tickets

Ability

7.29 We found four ways in which Live Nation might be able to limit the number of its controlled tickets, by:

(a) transferring tickets from its venues to the promoters using its venues (assuming that Live Nation is not the promoter);

(b) transferring tickets from its promotions business to the venues it uses (assuming that they are not Live Nation venues);

(c) applying an interpretation of 'control' with the effect of transferring tickets from its venues or promotions business to non-Live Nation venues and promoters (see *(a)* and *(b)*); and

(d) increasing the proportion of in-person sales at venue box offices, for which Live Nation will not usually pay a fee to Eventim.

We considered each method of limiting Live Nation's controlled tickets in turn.

7.30 We found that, respectively:

(a) Live Nation would have the ability to limit its number of controlled tickets as a venue operator, as the venue determines what proportion of tickets it retains (see paragraph 2.12), and there would be nothing to stop Live Nation from reducing this proportion for all its venues (and, possibly, offsetting the financial effects to some extent by increasing its rental charges);

(b) it would be difficult for Live Nation to limit its ticket allocation as a promoter as most venues retain a set proportion of tickets, leaving the promoter with the remaining proportion of tickets (see paragraph 2.9), and this proportion is not usually negotiated with individual promoters;

(c) it might be possible for Live Nation to relax its interpretation of 'control' as a venue operator (for the same reasons as in *(a)* above), though it would be much harder to remove its control of tickets as a promoter (for the same reasons as in *(b)* above); and

(d) it would be very difficult for Live Nation to influence the proportion of consumers purchasing tickets in-person from the venue.

7.31 We concluded that Live Nation would have the ability, to some extent, to limit the total number of tickets in its control, in particular by transferring controlled tickets from its venues to the promoters using those venues.[68] The effect of this transfer of control would be to reduce the number of tickets Live Nation is required to allocate to Eventim under the LOI.

7.32 Eventim also told us that Live Nation could adjust the number of its controlled tickets by transferring them to other Live-Nation-related entities not covered by the LOI. [✂][69] We considered whether it would be possible for Live Nation to transfer its controlled tickets to other Live Nation-related entities in the UK. We found that the venues operated by Live Nation-related entities (ie AMG) had standard policies for the proportion of tickets they retained and the proportion allocated to promoters, and these policies were applied consistently to all promoters using the venues, including Live Nation. Therefore, there was little possibility for Live Nation, as a promoter, to seek to transfer to the venue some of the tickets which were within its control. We also found that there was a clear distinction between the festivals promoted by Live Nation and those promoted by Live-Nation-related entities, such that the transfer of tickets in this area of its business was also very unlikely. We concluded that Live Nation had little ability to adjust the number of its controlled tickets by transferring them to other Live Nation-related entities not covered by the LOI.

[68]We did not form a view on whether such action would constitute a breach of the terms of the LOI.
[69]Eventim also told us that, following the announcement of the merger, Live Nation had [✂]. However, Live Nation disputed this assertion and told us there was no evidence for it. We found that we had insufficient evidence to form a view on whether such action had occurred, but we did not believe that it was necessary for us to do so, given our finding on Live Nation's ability in paragraph 7.30*(c)*.

Incentive

7.33 We found that, if Live Nation transferred tickets from its venues to other promoters, Live Nation would lose its rebate or retail margin from the ticket sale, which would cost Live Nation around £[✂] to £[✂] per ticket, although the extent of this loss would be limited if the promoter sold some of its tickets through Ticketmaster. We calculated that, if about 45 per cent of the tickets surrendered by Live Nation were still sold through Ticketmaster on behalf of the promoter (ie based on our estimate of Ticketmaster's market share—see paragraph 5.28) and if Ticketmaster achieved a gross margin of about £[✂] per ticket (see Appendix E, Table 9), the merged entity could expect to retain about £[✂] per ticket. Under these assumptions, the cost of this strategy would be to leave the merged entity at least £[✂] per ticket worse off. We recognized that it might be possible for Live Nation to offset this effect to some extent by increasing its venue rental charges to the promoters which received the extra ticket allocation (see paragraph 7.30*(a)*). However, we noted that promoters were likely to be reluctant to accept having to pay a higher rental charge in return for an uncertain gain through greater ticket rebates. Therefore, we judged that the benefit to Live Nation from higher rental charges was unlikely to be sufficient to outweigh the cost of this strategy. We concluded that, if the merged entity transferred its controlled tickets from its venues to other promoters, it was likely to incur a significant net cost.

7.34 We concluded that there was no significant benefit to the merged entity from foreclosure in this way so we concluded that Live Nation had no incentive to limit the number of Live Nation-controlled tickets.

Limiting Eventim's allocation of Live Nation controlled tickets for sale

Ability

7.35 We noted that Live Nation's ability to limit Eventim's allocation of its tickets was constrained by the LOI, which specified that Live Nation must allocate to Eventim at least [✂] per cent of the sellable ticket inventory to no less than [✂] per cent of its events in any calendar year (see paragraph 6.13). Furthermore, under the LOI, Live Nation was required to use its best efforts to provide Eventim with an even distribution of quality of tickets (eg quality of seats) for each event.

7.36 We considered how Live Nation might limit the allocation of its tickets to Eventim, compared with the counterfactual, while fulfilling its obligations under the LOI.

7.37 First, we sought to estimate the 'sellable ticket inventory' to Live Nation's events, though this term was not defined in the LOI. Live Nation told us that its obligations under the LOI to allocate a minimum volume of tickets to Eventim applied to its controlled tickets, consistent with its other obligations under the LOI. However, Eventim told us that the term 'sellable ticket inventory' was widely used and understood in the industry to refer to all the sellable tickets for an event (ie the capacity of the venue less any seats lost for staging, rigging, etc). Eventim's interpretation of Live Nation's minimum obligation was that, for [✂] per cent of Live Nation's events, Eventim would be guaranteed access to a minimum of [✂] per cent of the total sellable ticket inventory, not [✂] per cent of Live Nation's controlled ticket stock. For example, if there were 100 sellable tickets for an event and Live Nation controlled 50 per cent of the tickets, it would have to allocate [✂] tickets to Eventim (ie [✂] per cent of the sellable ticket inventory but [✂] per cent of Live Nation's controlled tickets). We estimated that, under Eventim's interpretation, and on the basis of most venues retaining between 50 and 75 per cent of the ticket inventory, but also considering that Live Nation promotes some events in its own venues for which it controls all the tickets, on average the total sellable ticket inventory was roughly double Live Nation’s controlled ticket stock.

7.38 Second, we sought to calculate Live Nation’s total controlled ticket stock, using Live Nation’s 2008 numbers for actual tickets sold. We noted that Live Nation’s controlled tickets were sold through all channels (not just those covered by the LOI), including in-person sales at the box office. In 2008, Live Nation sold about [✂] of its controlled tickets through the box office and [✂] tickets through all other channels (see Table 2 and paragraph 6.21), giving total sales of [✂] tickets. We also noted that Live Nation’s controlled ticket stock included tickets which ultimately remained unsold. In 2008, Live Nation’s proportion of unsold tickets in the UK was about [✂] per cent (in the USA, it was about 40 per cent). Using this data, we estimated that Live Nation’s total controlled ticket stock in the UK in 2008 was about [✂] tickets (ie [✂]). Using this figure, we estimated that the total sellable ticket inventory to events for which Live Nation controlled some of the tickets was, roughly, about [✂].

7.39 Third, we considered to which Live Nation events the obligations of the LOI might apply. In this regard, we found that there was scope for Live Nation and Eventim to interpret the minimum requirements under the LOI very differently. We identified two key areas of potential disagreement:

(a) The number of events for which Live Nation must allocate tickets to Eventim. Eventim told us that ‘Live Nation’s events’ included both (i) all Live Nation’s promoted events (at Live Nation venues and other venues) and (ii) events at Live Nation venues promoted by other promoters. However, Live Nation told us that ‘Live Nation’s events’ included just Live Nation’s promoted events (ie those in (i) above). We estimated that excluding all Live Nation-controlled tickets for events at Live Nation’s venues promoted by other promoters (ie those in (ii) above) would reduce Live Nation’s controlled ticket stock by [✂] tickets, to [✂] tickets (and reduce the sellable ticket inventory by about [✂], to [✂]).

(b) The range of events for which Live Nation must allocate tickets to Eventim. Live Nation is obliged under the LOI to allocate to Eventim tickets for [✂] per cent of Live Nation’s events, and to use its best efforts to provide Eventim with an even distribution of quality of tickets out of the full sellable ticket inventory for each event. Live Nation told us that the range of events to be included in the ‘[✂] per cent’ was entirely at Live Nation’s discretion. We calculated that, if Live Nation chose to focus the allocation of its tickets to Eventim on its smallest events, up to [✂] per cent of its events in total, the volume of tickets allocated to Eventim would fall significantly. We estimated that Live Nation’s largest [✂] per cent of events were responsible for [✂] per cent of its controlled ticket stock (and, correspondingly, to the sellable ticket inventory of its events). Therefore, if Live Nation chose to allocate to Eventim tickets for just its smallest events, Eventim would receive [✂] per cent of the tickets from, in effect, [✂] per cent of Live Nation’s total sellable ticket inventory, ie, using Live Nation’s controlled ticket stock, about [✂] tickets ([✂] per cent of [✂] per cent of [✂] tickets); while using the total sellable ticket inventory to Live Nation’s events, roughly [✂] ([✂] per cent of [✂] per cent of [✂]).

7.40 We calculated the potential effect of these two areas of possible dispute, combined with the potential effect of whether the obligations applied to Live Nation’s total controlled stock or the total sellable ticket inventory for Live Nation’s events. Under Eventim’s interpretation, we estimated that Live Nation must allocate to Eventim at least [✂] tickets (ie, roughly, [✂] per cent of [✂] per cent of [✂]); while, under Live Nation’s interpretation, Live Nation is obliged to allocate to Eventim just [✂] tickets (ie [✂] per cent of [✂] per cent of [✂]). The difference between these two interpretations is about [✂] tickets a year, or around [✂] per cent of the minimum number of tickets under Eventim's interpretation. We could not be sure that these three issues were the only areas of potential dispute between Live Nation and Eventim with regard to the minimum requirements under the LOI, although neither Live Nation nor Eventim highlighted to us any further significant areas.

7.41 We noted that the different interpretations of the LOI could result in a significant difference in the number of tickets which Live Nation would be obliged to allocate to Eventim. We did not form a view on the validity of these different interpretations of the LOI, but we noted that they demonstrated some considerable scope for dispute and the possibility, if the merger were to proceed, that Eventim could be allocated fewer tickets from Live Nation, compared with the counterfactual.

7.42 We concluded that there was sufficient scope for differing interpretations of the LOI for Live Nation to have the ability to limit, to some extent, Eventim's allocation of Live Nation tickets.

- *Live Nation's actual behaviour following the implementation of the LOI*

7.43 Live Nation began using Eventim's ticketing system in the UK on 1 February 2010. Eventim told us that, in the first six weeks of operation, Live Nation had [✂].

7.44 We put these claims to Live Nation, which told us: [✂].[70]

7.45 [✂]

7.46 We concluded that, if it were to seek to minimize the allocation of its tickets to Eventim, Live Nation could [✂]. We did not conclude on whether Live Nation had done any of these things in the first six weeks of the operation of Eventim's system in the UK, but we accepted that they were all possible actions which Live Nation might take. We concluded that these possible actions confirmed that there were ways in which Live Nation could limit the allocation to Eventim of its controlled tickets (see paragraph 7.42).

- *Extent of Live Nation's ability to limit Eventim's allocation of its tickets*

7.47 Live Nation told us that, in the absence of the merger, the volume of tickets which it would have allocated initially to Eventim would have been very small, due to Eventim's start-up position in the market and Live Nation's preference to sell as many tickets as possible through its own website (see paragraphs 6.34 and 6.69). For this reason, the extent to which it could limit its allocation of tickets to Eventim, compared with the counterfactual, was limited.

7.48 We noted that, given Live Nation's stated intention, and the lack of clarity in the LOI (see paragraphs 7.35 to 7.41), some of the potential disputes around Eventim's minimum allocation were likely to have arisen even in the absence of the merger.

7.49 While we acknowledged the possibility for dispute over the volume of tickets allocated to Eventim (see paragraphs 7.40 and 7.41), we noted that none of the areas of potential dispute would affect Eventim's right to be allocated tickets to [✂] per cent of Live Nation's events. We noted that gaining access to tickets across a wide range of events was important in order to be able to begin attracting consumers

[70] Live Nation told us that, in the first six weeks of using Eventim's system, [✂].

and establishing a small-scale position in the market, notwithstanding the barriers to becoming a large-scale retailer (see paragraphs 5.49 to 5.62).

7.50 In the absence of the merger, we expected that Live Nation would sell at least half of its controlled tickets through its own website (see paragraph 7.2). In addition, we expected it to continue using its existing ticket agents in order to maximize ticket sales, which would include some proportion through Ticketmaster (see paragraph 6.56). Therefore, we concluded that the extent to which the merged entity could increase its ticket sales through its own retail channels, compared with the counterfactual, was limited.

7.51 Furthermore, we recognized that, prior to the merger, Live Nation sold about [✂] per cent of its controlled tickets through other ticket agents (ie not Ticketmaster) in order to maximize ticket sales (see paragraph 6.16). In the same way, post-merger, even if Live Nation increased the percentage of its sales through Ticketmaster (due to a greater financial incentive arising from the merged entity gaining Ticketmaster's profit from each ticket sale), we expected that some proportion of Live Nation's tickets would still be sold through other ticket agents, including Eventim.

Incentive

7.52 We considered whether the merged entity would have the incentive to limit the allocation of Live Nation's tickets to Eventim.

7.53 We compared the rebate or retail margin which the merged entity might expect to achieve from sales of Live Nation's tickets through each of its possible retail channels, as shown in Table 6.

TABLE 6 **Live Nation rebate/retail margin for Internet sales**

	£ per ticket approximate	
Channel	*Counterfactual**	*Post-merger**
Eventim	[✂]	[✂]
Live Nation	[✂]	[✂]
Ticketmaster	[✂]	[✂]†
Other agents	[✂]	[✂]

Source: CC calculations.

*Under the LOI, Live Nation pays £[✂] per ticket to Eventim for sales through Live Nation and other ticket agents.
†Calculated as Ticketmaster's 2008 gross margin on Live Nation Internet sales, plus the rebate to Live Nation, less £[✂] payment to Eventim. Gross margin reflects fees less variable costs and does not reflect medium- and longer-term costs.

7.54 In the counterfactual (see paragraph 6.33), we found that Live Nation's incentive was to maximize ticket sales but, where possible, to sell primarily through its own website, then to sell through Eventim and only then to sell through other ticket agents, including Ticketmaster. Table 6 shows that, if the merger were to proceed, the merged entity would be indifferent between selling through Live Nation or Ticketmaster but it would still prefer to sell through Eventim rather than through other ticket agents. The significant change as a result of the merger is that the merged entity would have a significant financial incentive to sell through Ticketmaster rather than Eventim (assuming an equal ability to sell the tickets).

Conclusion on Live Nation's ability and incentive to limit Eventim's allocation of its tickets

7.55 We concluded that the merged entity would have some ability and the financial incentive to limit the allocation of Live Nation's controlled tickets to Eventim. We expected that, to some extent, Live Nation would sell a higher proportion of its tickets through Live Nation and Ticketmaster than in the counterfactual. However, we found that the extent to which it could increase the sale of its tickets through Live Nation and Ticketmaster, compared with the counterfactual, was limited (see paragraph 7.50), and also there were limits as to how much it could reduce the allocation of its tickets to Eventim (see paragraphs 7.49 and 7.51).

Inhibiting Eventim's growth in other ways

Ability

7.56 Live Nation provided us with internal documentation from the time when the LOI was being negotiated with Eventim, which demonstrated that, in the absence of the merger, its intention was to sell as many tickets as possible itself, and that it had no intention of supporting Eventim's sales efforts, whether through marketing support or the sharing of customer data (see paragraph 6.78). We found that, although Live Nation had a financial incentive to sell tickets through Eventim in preference to any other ticket agent, and was obliged to allocate a minimum volume of its tickets to Eventim, its focus was on selling its tickets through its own website and any support it offered to Eventim would have weakened the penetration of its own retail offering (see paragraph 6.81).

7.57 We also found that, although Live Nation had material influence over its subsidiaries, it was not able to control these subsidiaries' choice of ticket agent. In the absence of the merger, the minority shareholders of these subsidiaries would have ensured that each subsidiary chose the best ticket agent for its purpose (see paragraph 6.79).

7.58 We concluded that there were no additional ways in which Live Nation could inhibit Eventim's growth as a retailer of live music tickets in the UK compared with the counterfactual.

Limiting Eventim's revenues from Live Nation

Ability

7.59 We considered whether, as a result of the merger, Live Nation would be able to limit the revenues which Eventim was able to earn, affecting Eventim's viability in the market. We noted that, in the long term, Eventim's projections relied on growth in its ticket sales on behalf of other promoters and venues, as well as non-live music events, but, in the short term, its revenues from Live Nation's ticket sales going through the Eventim system were important for the viability of its entry, ensuring that its costs of entry were recovered relatively quickly (see paragraph 6.44).

7.60 Live Nation told us that, under the LOI, it is obliged to pay Eventim £[✂] for all its controlled tickets sold off the Eventim system (except for box office sales and sales by Eventim which have different arrangements) and, if Live Nation chose not to put its tickets on the Eventim system and sold them off a different system, it would still pay Eventim £[✂] per ticket sold (see paragraph 6.24). Since Live Nation began using the Eventim system on 1 February 2010, Live Nation has chosen to allocate a proportion of its tickets to other ticket agents for them to sell off their systems (see paragraphs 7.64 to 7.66) but, in accordance with its previous commitment, it told us that it had paid Eventim £[✂] for every ticket sold by these other agents.

7.61 Eventim told us that Live Nation's failure to place all its controlled tickets on to the Eventim system was a breach of the LOI. We noted that, under Eventim's interpretation of the LOI, it would receive £[✂] from Live Nation for every Live Nation-controlled ticket sold, as all Live Nation's controlled tickets would be sold off Eventim's system (see paragraph 6.24).

7.62 We noted that, if the merger were to proceed, Live Nation might choose to put the majority of its controlled tickets on Ticketmaster's system and not on Eventim's system. However, Live Nation stated in writing that it was committed to continuing to pay Eventim £[✂] for each of its controlled tickets sold by a ticket agent other than Eventim, whether sold off Eventim's system or not (see paragraph 6.24). We noted that this commitment was in accordance with Live Nation's previous practice, whereby it paid Ticketmaster a penalty fee for all tickets sold by other ticket agents (see paragraph 6.16). We also noted that Live Nation's actions following the implementation of the LOI on 1 February 2010 provided some indication of Live Nation's intention to act in accordance with this commitment (see paragraph 7.60). We concluded that we expected Eventim to continue to receive from Live Nation £[✂] for each Live Nation-controlled ticket sold by ticket agents other than Eventim, including Ticketmaster. Our expectation was based on Live Nation's expressed commitment and on its actions.

7.63 We concluded that, given Live Nation's obligations under the LOI, and its stated commitment to pay the £[✂] fee to Eventim for each controlled ticket sold by ticket agents other than Eventim, there was little scope for Live Nation to limit significantly Eventim's revenues compared with the counterfactual.

Effect of allocating tickets to other ticket agents

7.64 We considered to what extent Live Nation's failure to place all of its controlled tickets on Eventim's system (see paragraph 7.60) affected Eventim's position in the UK market for the primary retailing of live music tickets, even if Eventim did continue to receive the £[✂] fee for the sale of each Live Nation controlled ticket sold by ticket agents other than Eventim (see paragraph 7.62).

7.65 Eventim told us that being allocated fewer tickets from Live Nation would limit its ability to attract consumers and so limit its ability to gain further ticket allocations from other promoters and venue operators. However, we did not accept that the volume of tickets allocated by Live Nation to Eventim affected significantly Eventim's ability to sell tickets or to gain more tickets to sell. We did not believe that such a 'virtuous circle' existed in this way (see paragraph 5.57). Furthermore, we noted that, under the LOI, Eventim was guaranteed an allocation of some tickets to at least [✂] per cent of Live Nation's events (see paragraph 6.13). Therefore, the allocation by Live Nation of its tickets to other ticket agents could have only a limited effect on Eventim's ability to attract consumers, as it would still be able to offer tickets to the same broad range of Live Nation's events. We noted that, given Live Nation's overriding objective to maximize its ticket sales (see paragraph 6.30), if Eventim were able to sell all of its allocation of Live Nation's tickets more quickly than its rivals, with unsatisfied demand remaining, it was likely to be allocated more tickets to sell (see paragraph 6.62).

7.66 We found that, as a consequence of Live Nation's actions of allocating tickets to other ticket agents for them to sell off their own systems, Eventim would suffer some loss of brand recognition. In particular, fewer consumers would transact on a website which states that it is 'powered by Eventim' and fewer tickets would be printed on Eventim's ticket stock. Eventim also told us that it was unable to monitor Live Nation's ticket sales on other retailers' ticketing systems and so it was unable to verify the fee it was due. We did not believe that notifying consumers that their transaction was 'powered by Eventim' had a significant effect in enhancing Eventim's position in the market as a retailer of live music tickets (see paragraph 6.78). However, more importantly, given our conclusion that, in the absence of the merger, it was likely that Live Nation would have continued to use Ticketmaster and other ticket agents and that it would have done so by allocating them tickets to sell off their own systems (see paragraph 6.56), we concluded that much of any harm to Eventim from Live Nation's practice of allocating tickets to other ticket agents was not related to the merger.[71]

Additional incentives for the merged entity to foreclose Eventim if it results in Eventim exiting the market

7.67 We noted that, if foreclosure by the merged entity induced Eventim to exit the UK (ie to cancel its entry into the UK), the loss of competition in the market, compared with the counterfactual, would be greater than if Eventim remained in the market on a small scale. If Eventim exited the market, any ticket allocations which Eventim had managed to gain would become contestable and the competitive pressure on the merged entity (eg from lower prices, better service and/or new innovation) would be removed.

7.68 Eventim told us that, if it were to be foreclosed totally from the UK, one of the effects would be a loss of competition for innovation. Eventim said that it is an innovative company (see paragraph 6.83) and Ticketmaster is not (or, at least, has not been in the past) so, if Eventim were not to enter the UK, there would be a loss of competition due to the loss of innovation. We agreed that any loss of competition in the UK market for the primary retailing of live music tickets could result in a loss of innovation (see paragraph 7.67), as innovation is one of the features of rivalry between firms. However, we considered that a loss of innovation would be a consequence of any loss of competition, so we focused our efforts on assessing first whether there was likely to be a substantial lessening of competition due to the merger (in particular, whether Eventim was likely to be foreclosed), before, if necessary, we considered the specific harm which might derive from that loss of competition.

Conclusions on Live Nation's ability and incentive to foreclose Eventim

7.69 We concluded that, if the merger were to proceed, Live Nation would have the incentive and some ability to limit the number of tickets which it allocated to Eventim, by interpreting its obligations under the LOI as narrowly as possible. However, we found that the extent of this ability was limited (see paragraph 7.55). We noted that the merged entity's incentive to undertake this action could be greater if it believed it would lead to Eventim exiting the UK entirely (see paragraph 7.67).

Effects of the foreclosure of Eventim

7.70 Although we found that the ability of the merged entity to foreclose Eventim was limited, we still considered what effect this foreclosure might have, both on Eventim and on competition in the market for the primary retailing of live music tickets, compared with the counterfactual. Before doing so, we considered whether the merger might give rise to any positive effects for Eventim.

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[71] [✂]

Possible positive effects of the merger for Eventim

7.71 We recognized that, while Eventim might be disadvantaged as a result of the merger (see paragraphs 7.73 to 7.80), the merger could create opportunities for Eventim. Some promoters and venue operators expressed to us considerable concern about allocating their tickets to Ticketmaster if it were merged with one of their principal competitors, ie Live Nation. For example, prior to the completion of the merger, AEG told us that it would have serious concerns about remaining with Ticketmaster and was in the process of considering its ticketing options. Some of these concerns, which applied also in the USA, were recognized by the Department of Justice in its decision.[72] [✂]

7.72 We concluded that, if the merger were to proceed, Eventim could receive more tickets from promoters and venues which were previously clients of Ticketmaster. However, we believed that the extent to which Eventim would win ticket allocations from these switching clients, in the face of competition from other ticket agents like See Tickets, would depend principally on its own efforts and abilities.

Possible negative effects of the merger for Eventim

7.73 Eventim told us that, if Live Nation were to limit the number of tickets it allocated to Eventim, the effect could be significant, partly due to lower revenues from selling fewer Live Nation tickets but, more importantly, due to being able to attract fewer consumers and so being able to gain access to fewer tickets from other promoters and venue operators (see paragraph 5.55). Eventim told us that being able to offer tickets to Live Nation's events was a critical part of its agreement with Live Nation and its entry strategy for the UK (see paragraph 6.86).

7.74 Eventim told us that, if the merger went ahead, it did not believe that it could become profitable in the UK for a considerable period and, subject to negotiations with Live Nation with regard to the LOI, it was prepared to cancel its entry into the UK. Due to this uncertainty, and pending the outcome of our inquiry, Eventim said that, essentially, it had put its process of entering the UK on hold. Eventim told us that, although it had made some investment in the UK in order to fulfil its obligations under the LOI with Live Nation, it had limited the extent of this investment. Eventim added that, against the background of the merger, it had held discussions with other promoters and venues, and other sources of tickets for non-live music events, and it had gained some ticket allocations which it was selling through its website, but it had been keen to ensure that it did not make any long-term commitments at this stage, while the viability of its entry into the UK was uncertain. We noted that Eventim had hired several personnel in the UK, not just to deliver its obligations under the LOI but also to seek to win other business. Eventim said that its actions in the UK so far were within the context of ensuring that it could withdraw from the UK quickly and easily without incurring much further cost.

7.75 AEG told us that the volume of tickets Live Nation allocated to Eventim made a difference to Eventim's ability to sell tickets and its ability to win allocations of tickets from other promoters and venues.

7.76 However, Live Nation told us that the volume of tickets it allocated to Eventim would not have been determinative of Eventim's success in the UK (see paragraph 6.69). Live Nation said that the difference in the volume of tickets which Eventim would have received from Live Nation in the absence of the merger compared with the

[72] www.justice.gov/opa/pr/2010/January/10-at-081.html.

volume of tickets which Eventim would have received from Live Nation if the merger were to proceed was immaterial. Live Nation added that, whatever volume of tickets it allocated to Eventim initially, these tickets could have been reallocated to other ticket agents at any time (see paragraph 6.70), and they would have been reallocated if Eventim were unable to sell them as effectively as other ticket agents. We noted that, in accordance with standard industry practice, Live Nation had total discretion in this regard (see paragraphs 6.62 and 2.17). Live Nation submitted that Eventim might have made the decision to enter the UK on the basis of the LOI but, whether the merger proceeded or not, Eventim's success as a retailer of live music tickets in the UK depended on its own ability to sell tickets, both for Live Nation and other promoters and venue operators.

7.77 Live Nation also pointed to the example of Gigantic, which had been able to gain access to tickets for a wide range of events, without having a significant sponsor guaranteeing access to tickets (see paragraph 5.46). Promoters supported this evidence by telling us that, if a new ticket agent offered its services, they would allocate the agent a small volume of tickets and, if the agent were successful in selling the tickets, they would allocate more (see paragraph 5.45).

7.78 We noted that, under the LOI, Eventim was guaranteed access to tickets to at least [✂] per cent of Live Nation's events and, currently, it was able to sell tickets to 100 per cent of those Live Nation's events which were on general sale. We accepted that there were barriers to large-scale entry and expansion (see paragraph 5.62), but we did not find that gaining access to more tickets from Live Nation (ie a greater volume of tickets but for the same wide range of events) would have a significant effect in overcoming these barriers, ie we did not find that there is a virtuous circle (see paragraph 5.57). Given our conclusion that the only method by which the merged entity had the ability and incentive to foreclose Eventim was by limiting, to some extent, the number of tickets which it allocated to Eventim, we did not believe that the merged entity could affect significantly Eventim's ability to attract consumers and gain access to further ticket allocations from other promoters and venue operators (see paragraph 7.21).

7.79 We recognized that the merger would change the relationship between Live Nation and Eventim. In the counterfactual, Eventim would be Live Nation's global ticketing provider; whereas, as a result of the merger, Live Nation would be combined with Eventim's principal global competitor. We recognized that, following the merger, the merged entity would have the incentive to frustrate Eventim's position in the UK, so long as it did not damage its own business. However, we found that the extent to which Live Nation could, in practice, affect Eventim's position in the UK market for the primary retailing of live music tickets, by working with Eventim differently compared with how it would have worked with Eventim in the counterfactual, was limited. We found that Live Nation was constrained by contractual commitments in the LOI, which meant that:

(a) Eventim was guaranteed a revenue stream from Live Nation for each Live Nation ticket sold; and

(b) Eventim was guaranteed access to some minimum volume of tickets across a minimum range of Live Nation's events.

We did not believe that Live Nation would reduce the fee payable to Eventim as a systems provider (under *(a)* above) (see paragraph 7.62) and, though we accepted that there was some scope for Live Nation to limit the number of tickets it allocated to Eventim (under *(b)* above) (see paragraph 7.69), we found that this action would not have much effect on Eventim's ability either to attract consumers or to attract further ticket allocations from other promoters and venue operators (see paragraph 7.78). We also found that, irrespective of the merger, Live Nation would not have supported Eventim's entry into the UK as a live music ticket retailer beyond the terms of the LOI (eg through marketing support, sharing of customer data, etc (see paragraph 6.81)). For these reasons, we concluded that Eventim's position in the UK market for the primary retailing of live music tickets might be affected adversely by the merger to some limited extent, but the effect was not likely to be significant.

7.80 We also noted that, in the absence of the merger, the scale of Eventim's position in the UK market for the primary retailing of live music tickets, on the basis of the LOI alone, would have been small, ie less than 2 per cent (see paragraph 7.19). We found that small-scale ticket retailers did not provide an effective competitive constraint on the large-scale incumbent ticket retailers (see paragraph 5.65), so there was unlikely to be any material effect on competition from reducing the small scale of Eventim's position in the market. We also noted that, given we did not find evidence of any significant barriers to small-scale entry (see paragraph 5.47), it was possible for Eventim to gain access to other small ticket volumes from other promoters and venue operators. In order to affect competition, we found that Eventim would have to become a large-scale retailer of live music tickets (see paragraph 6.67). However, in order for Eventim to become a large-scale retailer in the UK, it would have to invest significantly in marketing its services to attract consumers and it would need to be able to demonstrate to other promoters and venue operators that it could sell their tickets more quickly and more effectively than other ticket retailers (see paragraph 6.90). We found that these factors, on which Eventim's prospects of becoming a large-scale retailer of live music tickets in the UK depended, were not affected significantly by the merger.

Effects of changes in the relationship between Live Nation and Eventim

7.81 We recognized that, following the merger, Live Nation's incentives had changed (see paragraph 7.54). Therefore, we considered whether there was any prospect of its agreement and relationship with Eventim coming to an end and, if so, what the effects on Eventim and on competition in the UK market for the primary retailing of live music tickets might be.

- *Likelihood of the LOI ceasing to operate*

7.82 Eventim told us that, in the USA, following the decision of the Department of Justice to clear the merger (subject to conditions), Live Nation had decided to discontinue its use of Eventim's software and to revert to using the Ticketmaster system. Eventim told us that, in the UK, following the publication of our report in December 2009, Live Nation had continued its aggressive correspondence claiming Eventim's failure to fulfil its obligations under the LOI. Eventim said these actions indicated that, were the merger to proceed, [✂]. Eventim told us that, by allocating tickets to other ticket agents for those agents to sell off their ticketing systems, Live Nation was seeking to limit its use of Eventim and it was in breach of the LOI. Eventim noted that all of these actions were consistent with Live Nation's incentive to minimize its obligations under the LOI or, if possible, [✂]. Eventim told us that, were the merger allowed to proceed, the likely outcome was either [✂]. Eventim told us that, although its provision to Live Nation of a managed ticketing system was [✂], it did not [✂], or enable Eventim to satisfy its ambition of becoming one of the leading ticket retailers in the UK (see paragraph 6.82). Eventim reminded us that, due to the uncertainty surrounding its position in the UK, it had continued to keep its entry into the UK on hold (see paragraph 7.74).

7.83 Both Eventim and Live Nation told us that they believed [✂] and we found clear evidence of both parties taking legal advice on the options available. Live Nation told us that any escalation in the forcefulness of its communication with Eventim [✂] and was not as a result of the merger.

7.84 [✂]

7.85 In the light of these circumstances, we considered whether the LOI was likely to cease to operate. However, we did not form a view on whether either party was in breach of its respective obligations under the LOI, as we found that it was neither appropriate ([✂]) nor necessary (given our limited purpose of assessing the effects of the merger on competition) to do so.

7.86 Despite there being [✂] between Live Nation and Eventim relating to the implementation of the LOI in the UK and elsewhere (see paragraphs 6.45, 6.84 and 7.82), both Live Nation and Eventim told us that they continued to be committed to fulfilling all of their respective obligations under their agreement (see paragraph 7.25).

7.87 We noted that, for Eventim:

(a) [✂]

(b) Despite its claim that Live Nation was in breach of its obligations under the LOI (see paragraph 7.82), it had not [✂].

(c) It had no clear incentive to breach the LOI by failing to deliver a system fit for Live Nation's purpose in the UK, when to do so would give Live Nation an easy way to avoid its obligations under the LOI, causing Eventim significant financial harm compared with the counterfactual.

(d) Any breach by Eventim in the UK would be surprising given the number of markets in which it had already rolled out its system for Live Nation without any pursuant litigation by Live Nation. Even in the USA, where Live Nation had abandoned Eventim's software, Live Nation had not initiated any legal proceedings.

7.88 Eventim told us that, given the current circumstances, it believed the most likely outcome was [✂].

7.89 Live Nation told us that:

(a) So long as Eventim's system worked, it would continue to use it and it would continue to allocate to Eventim the minimum volume of tickets as required under the LOI. Live Nation said that its corporate objective remained to build Live Nation's live music brand in the UK and, although Ticketmaster would receive an allocation of its controlled tickets, Live Nation intended to sell the majority of its tickets through its own website.

(b) [✂]

7.90 Given that the LOI is expressed as a binding agreement and that both Live Nation and Eventim have expressed to us their continuing commitment to fulfilling their obligations under it (see paragraph 7.86), we concluded that, notwithstanding the change in Live Nation's incentives following the merger, both parties' recent actions and [✂], there was insufficient evidence upon which to conclude that the LOI was likely to cease to operate, whether by settlement, termination or otherwise. Eventim told us that the fact the LOI was binding did not have any bearing on whether the LOI was likely to cease to operate, and any expression of commitment to its fulfilment by either party was irrelevant to the question whether, if Live Nation had a chance to bring the agreement to an end, it would choose to do so. However, we did not agree with these views. Given that we had asked both Live Nation and Eventim whether they intended to continue fulfilling the LOI in the context of potential litigation and arbitration (see paragraph 7.86), we took their answers to be pertinent to whether the LOI was likely to continue to operate. We recognized that, as a result of the merger, Live Nation's incentives had changed, but we concluded that, because the LOI was binding on both Live Nation and Eventim, and because neither party had sought or indicated that it had any intention of seeking the cessation of the LOI by any means, eg by settlement or termination, (and, indeed, they had expressed their continuing commitment to honouring it), there was insufficient evidence upon which to conclude that the LOI was likely to cease to operate.

7.91 Despite the change in Live Nation's incentives following the merger, we judged that Live Nation was likely to continue to pay Eventim the £[✂] fee for each Live Nation controlled ticket sold (see paragraph 7.62) and it was likely to continue to allocate to Eventim a minimum allocation of its tickets (see paragraph 7.65). We did not believe that this conclusion depended on whether either party was in breach of its obligations under the LOI, or on [✂].

7.92 We continued to conclude that Eventim's position in the UK market for the primary retailing of live music tickets might be affected adversely by the merger to some extent, but the effect was not likely to be significant (see paragraph 7.79). Moreover, we continued to conclude that the merger had no significant effect on the factors upon which Eventim's prospects of becoming a large-scale retailer of live music tickets in the UK depended (see paragraph 7.80).

- *Effects on Eventim and on competition were the LOI to cease to operate*

7.93 Although we did not find that the cessation of the LOI was likely, we still considered what the effect on Eventim's prospects of becoming a large-scale retailer of live music tickets in the UK might be if it did occur.

7.94 We noted that Eventim had already entered the UK market to some extent and it was selling tickets, both for live music events and other events. Eventim had already invested to customize its software and it had put the resources and infrastructure in place to operate in the UK, including recruiting key staff (see paragraph 7.74). For these reasons, we concluded that Eventim could remain in the UK, even if the LOI were to cease to operate, particularly if it had the ambition of becoming a large-scale retailer of live music tickets.

7.95 We also noted that the proportion of tickets to which the LOI assured Eventim access represented only a small part of the total number of live music tickets in the UK (see paragraph 7.19). Therefore, the LOI with Live Nation, on its own, would only have caused Eventim's small-scale entry into the UK (see paragraph 7.20). Given our finding that there are not significant barriers to such small-scale entry (see paragraphs 5.47), we concluded that, even if the LOI were to cease to operate, it was possible for Eventim to remain in the market, operating at a small scale.

7.96 We also noted that, while Eventim operated only as a small-scale retailer of live music tickets in the UK, its presence in that market would not enhance competition materially (see paragraph 6.67). Therefore, if it decided to exit the market, there would be no substantial lessening of competition.

7.97 We noted that, in order to affect competition materially, Eventim needed to grow to become a large-scale retailer of live music tickets (see paragraph 6.67). However, we found that the factors on which this growth depended were not affected significantly by Eventim's agreement with Live Nation (see paragraph 7.80). Therefore, we concluded that, if the LOI were to cease to operate, Eventim's prospects of becoming a large-scale retailer of live music tickets would not be affected significantly. As such, even if the merger were to result in the LOI ceasing to operate, it was unlikely that there would be any substantial lessening of competition in the UK market for the primary retailing of live music tickets.

Conclusion on the foreclosure of Eventim

7.98 We found that, if the merger were to proceed and given the change in incentives which would result, it was likely that Live Nation would seek to limit its use of Eventim's services and to use Ticketmaster's alternative services instead. However, we concluded that the extent to which it could do so was limited, in particular because it was constrained by its existing obligations in the LOI. We found that Live Nation could, to some extent, limit the volume of tickets it allocated to Eventim but we found that this action was not likely to affect significantly Eventim's ability to attract consumers or to gain access to tickets from other promoters and venue operators.

7.99 We found that the volume of tickets which Eventim would have been allocated by Live Nation in the absence of the merger was a small proportion of the total number of live music tickets in the UK. Furthermore, we found that the factors which affected Eventim's prospects of growing from this small-scale position in the market to become a large-scale retailer of live music tickets were not affected significantly by the merger. Rather, we found that Eventim's success in the live music ticket retailing market depended more on Eventim's own efforts and abilities than on its access to tickets from Live Nation. We found that, even were the merger to cause the agreement between Live Nation and Eventim to cease to operate (which we did not find was likely), Eventim's prospects of becoming a large-scale retailer and increasing the extent of competition in the market would not be affected significantly.

7.100 We concluded that the merger was unlikely to result in a substantial lessening of competition in the UK market for the primary retailing of live music tickets as a result of its effects on Eventim.

Foreclosure of other competing ticket agents

7.101 We also considered whether the merged entity had the ability and incentive to foreclose (either totally or partially) other competing ticket agents which were already active in the UK (eg See Tickets, Stargreen and Ticketline), and what the effect of such foreclosure would be on competition in the relevant market. We noted that we did not have evidence that Live Nation had substantial market power as a promoter or venue operator and that, in such circumstances, foreclosure was unlikely (see paragraph 7.15) but we were concerned that some of the special circumstances which made this case different from a general case of vertical foreclosure could apply equally to the foreclosure of other existing ticket agents as to the foreclosure of Eventim.[73]

[73]Following the publication of our further provisional findings, Which? told us that we had reached the wrong decision. Which? said that the merger will affect consumers detrimentally by limiting choice and worsening the terms of service. Which? said that the combination of the dominant ticketing agent and music promoter will distort significantly the incentives of the merged firm to restrict competition further and worsen directly the outcomes for consumers. Which? said that these outcomes will worsen consumer welfare further in a market that is not currently working well for consumers. We noted Which?'s views but we continued to analyse how the merger might affect competition in any UK market by considering its effects on market participants (including new entrants). Through this analysis we evaluated the incentives of the merged firm and the likely outcomes for consumers.

7.102 We set out first the various ways in which the merged entity might be able to foreclose other existing ticket agents, before considering whether it would have the incentive to employ these foreclosing strategies.

Ability

7.103 The merged entity would be able to foreclose competing ticket agents if it could stop selling (ie totally foreclose), or limit the degree to which it sells (ie partially foreclose), tickets through other ticket agents. We considered whether the merged entity would have this ability, and we also considered how such foreclosure might affect the competitiveness of the competing ticket agents.

Ability to stop or limit sales through other ticket agents

7.104 We noted that the ability of the merged entity to stop or limit sales through other ticket agents depended, in part, on Live Nation's contractual obligations with other ticket agents. Live Nation told us that, besides the LOI with Eventim, it had few contractual commitments to other ticket agents. Live Nation said that its previous long-term preferred ticketing relationship had been with Ticketmaster (see paragraph 2.16). We found that, for its general allocation of tickets to other ticket agents, Live Nation could reduce or cease using any particular ticket agent at any time.

7.105 We considered whether the ability of the merged entity to foreclose competing ticket agents depended on the merged entity's ability to sell sufficient tickets for its events without using these other ticket agents. We found that, although, pre-merger, Live Nation had an incentive to use Ticketmaster to sell as many of its controlled tickets as possible, Live Nation still sold approximately [✂] per cent of its tickets through other ticket agents (see paragraph 6.16), suggesting that this practice was necessary in order to maximize ticket sales for its events (see paragraph 6.30). We concluded that the extent to which sales for Live Nation's events reduced as a result of ceasing to allocate tickets to a competing ticket agent could be considered as a cost of foreclosure (see the discussion of incentives in paragraphs 7.128 to 7.145), and did not affect the ability of the merged entity to foreclose other ticket agents.

7.106 We concluded that Live Nation had the ability to stop or limit the allocation of its tickets to other ticket agents.

Ability to affect the competitiveness of other ticket agents

7.107 We considered whether a reduction in the number of tickets allocated from Live Nation to other ticket agents would harm the other ticket agents' ability to compete with the merged entity. We first considered the effect of the loss of Live Nation tickets compared with the situation prior to the LOI, before considering the effect compared with the counterfactual.

- *Comparison with the situation prior to the LOI*

7.108 We assessed what effect the loss of tickets from Live Nation would have on the ten largest ticket agents (excluding Ticketmaster) operating in the UK.

7.109 In 2008, Live Nation controlled approximately [✂] tickets for live music events, of which around [✂] tickets were sold through the box office (see paragraph 6.23). We estimated that Live Nation controlled [less than 10] per cent of all the live music tickets in the UK (see paragraph 6.22). We noted that Live Nation also had some influence over tickets controlled by its subsidiaries, in particular Live Nation-Gaiety and its subsidiaries, but we found that Live Nation could not exercise control over these tickets (see paragraphs 6.27).

7.110 In 2008, approximately [✂] per cent of Live Nation's controlled tickets were sold by Ticketmaster (including sales which came through Live Nation's own websites). Almost all of Live Nation's tickets as a venue operator (about [✂] per cent) and most of its tickets as a promoter (about [✂] per cent) were sold through Ticketmaster. The total volume of Live Nation-controlled tickets sold through other ticket agents in 2008 was about [✂] tickets (representing about [✂] per cent of Live Nation's total controlled tickets). Of these sales, about [✂] tickets ([✂] per cent) were sold by See Tickets and about [✂] tickets were sold by Ticketline ([✂] per cent), with the remaining tickets ([✂] per cent) sold by the other ticket agents in the market, as shown in Table 8.

TABLE 8 **Allocations of Live Nation controlled tickets to other ticket agents**

	Number of tickets sold ('000 tickets)		
	2006	*2007*	*2008*
Bristol Ticket Shop	[✂]	[✂]	[✂]
Gigantic	[✂]	[✂]	[✂]
lastminute.com	[✂]	[✂]	[✂]
Seatem	[✂]	[✂]	[✂]
See Tickets	[✂]	[✂]	[✂]
Stargreen	[✂]	[✂]	[✂]
Ticketfactory	[✂]	[✂]	[✂]
Ticketline	[✂]	[✂]	[✂]
Ticketsoup (SECC)	[✂]	[✂]	[✂]
We Got Tickets	[✂]	[✂]	[✂]
Others	[✂]	[✂]	[✂]
Total	[✂]	[✂]	[✂]

Source: Live Nation.

7.111 We considered what proportion of each ticket agent's business was represented by its sales of Live Nation tickets. For each ticket agent we estimated the volume of Live Nation tickets the ticket agent might sell in 2009 on the basis of sales over the past three years (shown in Table 8). Our findings are presented in Table 9.

TABLE 9 **Sales of Live Nation tickets as a proportion of total sales**

Ticket agent	*Sales of Live Nation tickets '000*	*Proportion Live Nation tickets in live music portfolio %*
Bristol Ticket Shop	[✂]	[✂]
lastminute.com	[✂]	[✂]
Seatem	[✂]	[✂]
See Tickets	[✂]	[✂]
Stargreen	[✂]	[✂]
Ticket Factory (NEC)	[✂]	[✂]
Ticketline	[✂]	[✂]
Ticketsoup (SECC)	[✂]	[✂]

Source: Live Nation and CC analysis.

7.112 Table 9 shows that, for most ticket agents, tickets from Live Nation account for a small proportion of their total live music ticket business. Live Nation's tickets represent about [✂] per cent of See Tickets' live music business and about [✂] per cent of Ticketline's live music business. However, for Stargreen, lastminute.com and

Ticketsoup, over [✄] per cent of their live music business comes from Live Nation ticket sales.

- *Comparison with the counterfactual*

7.113 In the counterfactual, we found that Live Nation had the incentive to sell tickets first through its own website, second through Eventim and only then through other ticket agents (including Ticketmaster) (see paragraph 6.33). Given that, prior to the LOI, Live Nation was able to sell [✄] per cent of its tickets through its own website and Ticketmaster (see paragraph 6.16), we concluded that the maximum proportion of Live Nation's tickets which would be allocated to other ticket agents (ie not Eventim or Ticketmaster) in the counterfactual would be [✄] per cent.

7.114 Therefore, we concluded that the maximum effect of Live Nation ceasing to allocate tickets to other ticket agents compared with the counterfactual would not be greater than the effect compared with the situation prior to the LOI (see paragraphs 7.108 to 7.112), and would probably be less.

- *Effect of fewer Live Nation tickets on the competitiveness of other ticket agents*

7.115 We considered what effect the loss of Live Nation tickets might have on the ability of the other ticket agents to compete.

7.116 We considered if the other ticket agents had high fixed costs, which meant that operating at a lower volume could cause them to struggle to remain profitable. However, we found that, for most ticket agents, their fixed costs were not especially high and, therefore, a loss of contribution from sales of Live Nation's tickets would be unlikely to cause their prices to rise.

7.117 We also considered whether the loss of range from not being able to offer Live Nation's tickets might cause the customers of the other ticket agents to shop elsewhere (ie with Ticketmaster) and, over time, might affect the ability of the other ticket agents to gain ticket allocations from other promoters and venues.

7.118 We found that, although other ticket agents sold a small proportion of Live Nation's total controlled tickets (see Table 8), they were able to offer for sale a much larger proportion of Live Nation's total range of events. Table 10 shows, for each ticket agent, the proportion of Live Nation tours for which it was able to offer tickets.

TABLE 10 **Proportion of Live Nation promoted tours (2006 to 2008) for which some tickets were offered for sale by each ticket agent**

	Proportion of tours where agent is used *%*
Gigantic	[✄]
lastminute.com	[✄]
See Tickets	[✄]
Stargreen	[✄]
Ticketline	[✄]
Other ticket agents	[✄]

Source: CC analysis of data from Live Nation.

7.119 Table 10 shows that See Tickets and Stargreen sold tickets for the majority of Live Nation's promoted tours in 2006 to 2008. However, Ticketline only received tickets for [✄] per cent of Live Nation's tours.

7.120 We recognized that the merged entity could employ a foreclosure strategy limiting the access of other ticket agents to Live Nation's tickets over the long term. We noted that Live Nation could, over time, reduce its allocations to other ticket agents or might only use other ticket agents for events which were difficult to sell. We noted that Live Nation could seek to sell all tickets for an event through its own sales channel initially and only use other ticket agents if sales were slow. As a result of these actions, we believed that some customers might, over time, become discontented with their preferred ticket agent and switch to Ticketmaster in order to gain access to Live Nation's tickets on a more reliable basis.

7.121 Our consumer survey found that 90 per cent of consumers purchased tickets from the first place they tried (see paragraph 5.4). However, the consumer survey also found that if tickets for the desired event were not available from the first place tried, 82 per cent of consumers that used ticket agents would try somewhere else (see Appendix E, paragraph 22). These results suggested that, if consumers were unable to find a ticket from their chosen ticket agent, they were likely to switch. We concluded that, over time, if tickets for Live Nation's most popular events were only available from Ticketmaster (or only available initially from Ticketmaster), it was likely that some consumers would make Ticketmaster their first choice ticket agent.

7.122 See Tickets told us that access to tickets for Live Nation's events was important for its business, as it needed to offer tickets for all the large live music events. HMV also told us that access to high-profile events was important for its business, many of which were promoted by Live Nation. Two other ticket agents expressed concern about the merged entity restricting their access to tickets for Live Nation's events.

7.123 However, we noted that, as a result of the merger, other promoters and venue operators might switch tickets away from Ticketmaster to other ticket agents, in order to avoid using their competitor for the sale of their tickets (see paragraph 7.71). Prior to the completion of the merger, AEG told us that it had serious concerns about using Ticketmaster if the merger were to proceed, and it was exploring what other ticketing options might be available.[74] We noted that, if the merged entity were to seek to foreclose other ticket agents and harm their ability to compete, other promoters and venue operators would have a particular interest in switching tickets away from Ticketmaster to these agents. We concluded that, to some extent, other promoters and venue operators could mitigate the ability of the merged entity to harm other ticket agents through foreclosure.

Conclusion on ability

7.124 We concluded that the ability of the merged entity to foreclose most live music ticket agents was limited due to the small proportion of these agents' sales represented by Live Nation tickets. We concluded that, even if these agents were deprived of Live Nation tickets, they could still operate profitably and compete effectively.

7.125 However, we concluded that the effect on a small number of ticket agents might be more pronounced. In particular, we noted that, over the last three years, [✂] was able to offer tickets for [✂] per cent of Live Nation's tours and [✂] sales of Live Nation's tickets represented over [✂] per cent of its total live music sales.

7.126 We found that it would take a long time for Live Nation to erode the customer base of [✂] or another ticket agent, and to limit the ability of the ticket agent to gain

[74]Some of these concerns, which applied also in the USA, were recognized by the Department of Justice in its decision. See www.justice.gov/opa/pr/2010/January/10-at-081.html.

allocations of tickets from other promoters and venues, but we concluded that this effect was possible over time.

7.127 We noted that any effect on [✂] or other ticket agents from foreclosure by Live Nation might be countered by other promoters and venues switching tickets away from Ticketmaster.

Incentive

7.128 We considered whether, if the merger were to proceed, Live Nation would have the incentive to foreclose other ticket agents.

7.129 We found that there were three factors affecting whether the merged entity would have an incentive to cease using or to reduce its use of other ticket agents, which were:

(a) the relative margins from ticket sales as a ticket agent and as a promoter;

(b) the impact of foreclosure on the profitability of the merged entity in the short term; and

(c) the impact of foreclosure on the profitability of the merged entity in the long term.

Relative margins from ticket sales as a ticket agent and as a promoter

7.130 If the merged entity were to limit the allocation of its tickets to other ticket agents and seek to sell more of its tickets itself, it would gain income as a ticket agent on all the extra tickets it managed to sell but would lose income as a promoter on any tickets which it did not sell and which would have been sold by the other ticket agent.

7.131 We found that the merged entity would earn £[✂] from selling a Live Nation ticket through Ticketmaster rather than through another ticket agent (see Table 6). However, for all unsold tickets, the merged entity would lose the face value of the ticket, which on average is £[✂]. Although some costs might be avoidable for a promoter if an event sells fewer tickets than planned (eg some dates might be cancelled), we noted that most of the costs for an event are fixed, in particular the artist's guaranteed fee (see paragraph 2.9). We estimated that, on average, the merged entity would lose £[✂] for every unsold ticket.[75]

Impact of foreclosure on the profitability of the merged entity in the short term

7.132 We considered what effect ceasing to sell tickets through another ticket agent might have on the profitability of the merged entity in the short term.

- *Critical reduction in ticket volumes*

7.133 Using our estimates of the relative margins from ticket sales for the merged entity, both as a promoter and as a ticket agent, we calculated the critical reduction in ticket

[75] This estimate does not take into account the loss incurred by Live Nation due to damage to its reputation should an event be cancelled or fail to sell well. While this loss would increase the average loss to Live Nation for each unsold ticket, we did not include it as we could not identify a reliable basis on which it could be quantified. This estimate also does not include lost supplementary income for Live Nation as a result of selling fewer tickets, eg less income for events in Live Nation's venues from merchandise sales and food and beverage sales. By omitting these extra costs, we believed that our estimate of the loss to Live Nation for each unsold ticket was conservative.

sales beyond which foreclosure would not be profitable (considering only the effects of foreclosure on the profits of the merged entity in relation to Live Nation promoted events). We found that, if more than 9 per cent of the tickets which would otherwise have been sold by the competing ticket agent remained unsold, foreclosure was not profitable.[76] In other words, the merged entity would have an incentive to cease selling through another ticket agent only if the merged entity were able to capture 91 per cent of the ticket sales which would have been made by the other ticket agent.

- *Actual reduction in ticket volumes*

7.134 Live Nation told us that, pre-merger, it sold [✂] per cent of its tickets through other agents (ie not Ticketmaster) in order to reach as many potential consumers as possible (see paragraph 6.30). Metropolis also told us that it sold through a variety of ticket agents in order to maximize ticket sales.

7.135 We noted that Live Nation paid a fixed penalty to Ticketmaster for each ticket sold through another agent (see paragraph 6.16). Assuming that Live Nation was acting optimally in deciding the proportion of its tickets to sell through agents other than Ticketmaster, we expected that, if there were no penalty, Live Nation would have sold more tickets through other agents. We concluded that Live Nation could have increased its ticket sales by selling more through other ticket agents, even if it would not have been optimal to do so due to the additional penalty it would have had to pay.

7.136 Our consumer survey found that, if tickets for an event were not available from the first place tried, 14 per cent of consumers who bought their last ticket through a ticket agent would not buy the ticket at all (23 per cent of all consumers) (see Appendix E, paragraph 22). This evidence suggested that, in the short term, if the merged entity did not allocate tickets to a ticket agent which, for some consumers, would have been the first ticket agent they tried, approximately 14 per cent of these consumers would be lost for that event. We noted that this percentage was significantly above the 9 per cent critical loss (see paragraph 7.133).

- *Conclusion on impact on profitability in the short term*

7.137 We concluded that, in the short term, it was unlikely that the merged entity would be able to sell enough of the tickets which would have been sold by other ticket agents for it to have an incentive to cease allocating tickets to those other ticket agents.

Impact of foreclosure on the profitability of the merged entity in the long term

7.138 We considered whether the foreclosure of another ticket agent would be profitable for the merged entity in the long term, in particular if it led to the exit of the other ticket agent from the market.

7.139 Live Nation told us that, pre-merger, it allocated tickets to other ticket agents for both its most popular events and its less popular events, even though it was able to sell tickets for its popular events more profitably through Ticketmaster. Live Nation explained that it wanted to ensure that other ticket agents were strong and able to serve their customer bases with a broad range of tickets, recognizing that Live Nation and Ticketmaster were unable to reach many of these customers. However, we

[76]This calculation is based on the increase in income for the merged entity as ticket agent being £[✂]. If we use a lower figure of £[✂], the critical reduction falls to 6 per cent.

noted that Live Nation's incentives post-merger would be very different. We noted that although, pre-merger, Live Nation had an incentive to sell as many tickets as possible through Ticketmaster, it did not, at this time, have an incentive to foreclose other ticket agents.

7.140 We noted that, if the merged entity were able to force another ticket agent to exit the market, it might be able to win many of the ticket agent's customers (and so be able to sell tickets for its events to these customers as effectively as the other ticket agent), and might be able to reduce the degree of competitiveness in the market (eg enabling the merged entity to increase its prices as a ticket agent to other promoters and venues, or to reduce its service quality or innovation). In other words, a short-term loss for the merged entity for the period of foreclosure could result in an increase in its market power in the long term.

7.141 We found that the potential long-term gain to the merged entity from reduced competition in the UK market for the primary retailing of live music tickets was uncertain and difficult to quantify. We recognized that the extent of the increase in the merged entity's market power would depend on which other ticket agent was foreclosed. [✂]

7.142 Since we found that the ability of the merged entity to foreclose all other ticket agents was limited (see paragraph 7.124), we found that, if the merged entity tried to foreclose a ticket agent, it was likely to incur a short-term cost in return for a very uncertain long-term gain.

- *Conclusion on impact on profitability in the long term*

7.143 We concluded that the foreclosure of one of the other existing ticket agents might be a profitable strategy for the merged entity in the long term but, given the high likelihood of short-term loss and the uncertainty of any long-term gain, it would be a highly risky strategy for the merged entity to adopt.

Conclusion on incentive

7.144 We concluded that the merged entity was unlikely to have the incentive to foreclose other existing ticket agents.

7.145 Given this finding and our finding that the merged entity was unlikely to have the ability to foreclose other ticket agents, we did not consider the effect on competition of this foreclosure.

Combining the effect of Live Nation's position as a promoter and venue operator

7.146 We considered whether, post-merger, Live Nation would have the ability and the incentive to foreclose competing ticket agents by combining the effect of its positions as both a promoter and a venue operator.

Foreclosure of other ticket agents using Live Nation's position as a venue operator

7.147 We considered whether, post-merger, Live Nation, as a venue operator, could increase the proportion of tickets sold by Ticketmaster, either by increasing the proportion of tickets retained by its venues or by requiring users of its venues to sell more tickets through Ticketmaster.

- *Incentive*

7.148 The benefits for the merged entity from foreclosing other ticket agents using Live Nation's position as a venue operator would be the same as the benefits from foreclosing other ticket agents using Live Nation's position as a promoter, ie greater revenue for Ticketmaster in the short term from all extra tickets sold and increased market power for Ticketmaster in the long term (see paragraphs 7.128 to 7.144).

7.149 However, the costs for the merged entity from this action would be different. If Live Nation were to stipulate that any promoter using its venues must sell all of its tickets for events at those venues through Ticketmaster, there could be two effects: first, overall ticket sales might fall, meaning that the venue earns less income from food and beverage sales, car parking, merchandise sales, etc; and, second, the attractiveness of the venue for other promoters would reduce, meaning that fewer events take place there. Alternatively, Live Nation could simply increase the proportion of tickets which it retains (so reducing the promoter's share of the tickets) but the same two effects would result.

7.150 We noted that Live Nation already retained [✂] per cent of the ticket allocation for all the venues for which it determined the ticketing arrangements (ie Cardiff International Arena, Manchester Apollo and Southampton Guildhall). Given our earlier finding that Live Nation needed to sell some tickets through other ticket agents in order to maximize sales (see paragraphs 6.30 and 7.113), we concluded that ticket sales would fall if Live Nation were to increase the proportion of tickets retained by its venues.

7.151 We also noted that, even if Live Nation's venues had some degree of market power (see Appendix G), if the attractiveness of these venues reduced, some promoters would find an alternative venue to use (ie another arena in a different large urban area).

7.152 We noted that Live Nation had material influence over other venues, in particular the venues owned by AMG and Wembley Arena. However, we found that Live Nation did not control the ticketing arrangements for these venues and we noted that any financial compensation which the merged entity would have to pay the owners of these venues in order to amend the ticketing arrangements in its favour would increase the cost of foreclosure.

7.153 We concluded that, just as for Live Nation as a promoter, the incentives for Live Nation as a venue operator to foreclose other competing ticket agents involved some likely short-term costs and only very uncertain long-term gains.

- *Conclusion on foreclosure of other ticket agents using Live Nation's position as a venue operator*

7.154 We concluded that Live Nation did not have the incentive to foreclose other ticket agents using its position as a venue operator. Therefore, we concluded that Live Nation would not foreclose other ticket agents as a venue operator and we did not consider its ability to do so or the effect on competition which might arise if it did so.

Conclusion on the combined effect of Live Nation's position as a promoter and venue operator

7.155 Given our conclusions that Live Nation did not have the incentive either as a promoter or a venue operator to foreclose other ticket agents, we concluded that Live

Nation would not combine its position as a promoter and venue operator to foreclose other ticket agents.

Conclusion on the foreclosure of other competing ticket agents

7.156 We concluded that, if the merged entity sought to foreclose other ticket agents, using its position as a promoter or venue operator, or both, it was likely to incur short-term costs, in particular by reducing the total number of tickets sold. We concluded that a strategy of foreclosure might result in an increase in Ticketmaster's market power in the UK market for the primary retailing of live music tickets, but this benefit was very uncertain.

7.157 We concluded that we did not expect the merger to result in the foreclosure of other competing ticket agents.

8. Competitive effects of the merger in the markets for live music promotion and live music venues

8.1 We considered whether the merged entity would have the ability and incentive to foreclose other UK live music promoters or live music venues, using Ticketmaster's position as a ticket retailer in the UK.

Foreclosure of other live music promoters

8.2 We considered the consequences for other live music promoters both from Ticketmaster ceasing to sell tickets on their behalf (total foreclosure) and from Ticketmaster selling fewer tickets on their behalf or worsening the terms under which it sold their tickets (partial foreclosure).

8.3 We noted that, in both cases, Ticketmaster could incur a loss as a result of selling fewer tickets on behalf of other promoters. However, if selling fewer tickets through Ticketmaster affected other promoters' ability to compete, Live Nation might be able to win artists from other promoters and Live Nation's market share as a promoter might increase, allowing it to set higher prices, reduce its service quality or cut back on its innovation. If Live Nation was more successful as a promoter, there might also be a feedback benefit to Ticketmaster, as Ticketmaster could gain access to a greater proportion of the tickets in the market. We noted that the merged entity would have an incentive to seek to foreclose other promoters if these benefits from doing so outweighed the costs.

Ceasing to sell tickets on behalf of other promoters

8.4 We considered Ticketmaster's ability and incentives to foreclose other promoters by ceasing to sell tickets on their behalf.

Ability

8.5 We considered how promoters might respond if they were not able to sell their tickets through Ticketmaster. We recognized that, if their overall ticket sales fell, affecting their profitability, some promoters would have to increase their prices to artists and their agents, causing some artists and agents to switch to Live Nation. In the extreme, some promoters could be forced to exit the market. However, if promoters were able to sell the tickets previously sold through Ticketmaster through other channels, there would be no ability for the merged entity to foreclose them. We considered the significance of Ticketmaster to promoters and the other channels for selling tickets which might be available to them.

- *Other promoters' use of Ticketmaster pre-merger*

8.6 We found that most of the large UK promoters used Ticketmaster's services to some extent for most of the events they promoted. We found that four of the largest promoters in the UK (Live Nation, SJM, Metropolis and AEG Live) all sold more than [✂] per cent of the tickets they controlled through Ticketmaster, even when Ticketmaster was not their preferred ticket agent. Metropolis told us that the number of large events for which it would not give any allocation of tickets to Ticketmaster was very small (principally events held at a Live Nation venue, for which Ticketmaster would be selling tickets on behalf of the venue).

8.7 Ticketmaster provided us with figures, from which we calculated that it sold no tickets for live music events accounting for about [✂] per cent of the live music market, and less than [✂] per cent of tickets for live music events accounting for about [✂] per cent of the live music market (see Appendix E, paragraph 84).[77] Ticketmaster submitted that it was not a necessary sales channel for live music events.

- *Evidence from the consumer survey re importance to promoters of Ticketmaster*

8.8 The consumer survey found that, of all ticket agents, Ticketmaster has by far the highest level of consumer awareness (75 per cent of consumers were aware of Ticketmaster, whereas only 18 per cent were aware of the next highest ticket agent, See Tickets (see Appendix E, paragraph 32)).

8.9 However, Ticketmaster told us that, if promoters could not access its services, they would not sell fewer tickets to an event or have to increase their marketing spend. Ticketmaster submitted that the consumer survey showed that its customer database and brand recognition were not important in generating consumer awareness for an event or ticket sales.

8.10 We noted that the consumer survey found that some consumers are difficult to reach other than through their preferred ticket agent.[78] We also noted that, just as Live Nation sold [✂] per cent of its tickets through ticket agents other than Ticketmaster in order to maximize sales (see paragraph 6.16), it was likely that other promoters needed to allocate a proportion of tickets to Ticketmaster in order to maximize their sales. We noted that the consumer survey found that Ticketmaster is more likely to be a consumer's preferred ticket agent than any other ticket agent.[79]

8.11 We concluded that, if a promoter did not sell any tickets through Ticketmaster, some ticket sales were likely to be lost, in particular sales to consumers for whom Ticketmaster was their preferred ticket agent and who were reluctant to switch elsewhere.

[77]These figures are calculated as percentages of the total capacity of live music events, not as percentages of total events by number. They effectively weight live music events according to their size.
[78]The consumer survey found that 14 per cent of consumers who bought their last ticket through a ticket agent (23 per cent of all consumers) would not have looked to buy tickets for their chosen event from elsewhere if their first choice supplier had not been able to supply them (see Appendix E, paragraph 22). The survey also found that 7 per cent of consumers found out about an event by an email from a ticket agent (see Appendix E, Table 2).
[79]The consumer survey found that 54 per cent of all consumers who had ever bought tickets through a ticket agent preferred Ticketmaster, compared with 10 per cent who preferred See Tickets, and smaller percentages for the other ticket agents (see Appendix E, paragraph 33).

- *Evidence from promoters and artists' agents re importance of Ticketmaster*

8.12 AEG Live told us that, in the UK, Ticketmaster was a 'must have' ticket agent. AEG Live said that Ticketmaster's customer database was far superior to all other ticket agents and AEG Live would not be able to market its shows effectively without access to this database.

8.13 AEG Live said that, historically, the promoter's choice of ticket agent had not been a key feature of its negotiations with artists and their agents. However, if it was denied access to Ticketmaster, AEG Live believed that its ability to sell tickets would fall significantly, and it would become much harder for AEG Live to win the right to promote an artist's tour.

8.14 Regular Music told us that the extent of consumer awareness of the ticket agents through which it sold its tickets was important, as some consumers found out about events from their preferred ticket agent rather than from the promoter's advertising material. Regular Music told us that, when it switched its principal ticketing supplier from Ticketmaster to See Tickets, it was concerned that ticket sales might fall, and its cost of advertising would have to increase to compensate. However, following the switch, Regular Music said that it found it was able to sell the same volume of tickets, mainly through See Tickets, without increasing its advertising costs, though it did continue to sell some tickets through Ticketmaster.

8.15 Regular Music said that no artist (or artist's agent) with which it had ever worked had stipulated the principal ticket agent through which tickets must be sold.

8.16 Live Nation also told us that the ticket agent used by a promoter did not affect an artist's choice of promoter.

8.17 Metropolis told us that different ticket agents were good at selling tickets for different types of events, eg Ticketmaster was good at selling tickets for mainstream pop events, while See Tickets was good for rock and indie events.

8.18 Metropolis said that, if it was not able to sell tickets through Ticketmaster, its business would suffer in the short term but it would be able to overcome the problem in time. However, Metropolis thought that it would not be in Ticketmaster's interests to foreclose promoters, as selling tickets for other promoters was essential to Ticketmaster's proposition to consumers, ie to be able to offer tickets for as many live music events as possible.

8.19 An artists' agent told us that consumers were not faithful to any ticket agent so it was not important what channels a promoter used to sell its tickets. The agent believed that consumers would buy the tickets from whichever ticket agent offered them.

8.20 We concluded that, while promoters were able to use other ticket agents for most ticket sales (in particular, See Tickets), for most events promoters needed to be able to sell some tickets through Ticketmaster in order to maximize ticket sales. Therefore, being denied access to Ticketmaster would be likely to harm other promoters, at least in the short term.

- *Conclusion on ability*

8.21 We concluded that Ticketmaster did have the ability to foreclose other live music promoters by ceasing to supply them with its ticketing services.

Incentive

8.22 We evaluated the costs and benefits to the merged entity from seeking to foreclose other live music promoters.

- *Costs*

8.23 The principal cost for the merged entity from adopting a foreclosure strategy would be the loss in profits for Ticketmaster from those tickets which it refused to sell on behalf of other promoters (which would now be sold by other ticket agents or remain unsold). A further cost, in the longer term, would be the detriment to Ticketmaster's market position as a result of offering for sale tickets to fewer events and, consequently, losing its relationship with some consumers. We also noted that there was a possible cost if the merged entity foreclosed SJM and Metropolis, due to their shared interest in AMG (see Appendix D, paragraphs 6 to 9).

  - *Loss in profit from lost ticket sales*

8.24 Table 11 shows the number of live music tickets sold by Ticketmaster on behalf of its largest promoter clients (other than Live Nation and its subsidiaries).

TABLE 11 **Ticketmaster sales of live music tickets per promoter (other than Live Nation)**

	Total ticket sales at face value £ million	*Total number of tickets sold million*	*Total revenue from booking/ transaction fees £ million*
[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]
Total sales on behalf of other promoters*	[✂]	[✂]	[✂]
Total live music ticket sales	[✂]	[✂]	[✂]
Other promoters as % of total live music ticket sales		[✂]	[✂]

Source: Ticketmaster and AEG Live.

*The numbers do not sum due to rounding.

8.25 Table 11 shows that Ticketmaster sold about [✂] tickets on behalf of other promoters in 2008, representing about [✂] per cent of its overall live music ticket sales.

8.26 We recognized that the costs to Ticketmaster of foreclosing competing promoters would depend on which promoters were foreclosed. We estimated that, if Ticketmaster ceased to supply all of Live Nation's largest competitors (ie SJM, Metropolis and AEG Live) with ticket retailing services, Ticketmaster's gross profit would fall by about £[✂] million a year (calculated using an average gross margin of £[✂] per ticket sold).[80]

[80] This average gross margin per ticket was calculated on the basis of the tickets sold by Ticketmaster on behalf of its top 10 live music clients (see Appendix E, Table 9). Ticketmaster submitted that its average gross margin per ticket sold for all of its live music clients would be lower.

- *Loss due to harm to Ticketmaster’s market position*

8.27 We found that it was difficult to quantify the cost to Ticketmaster from a weaker market position as a result of offering for sale tickets to fewer events. We noted that this cost would be limited if the merged entity were able quickly to force other promoters to exit the market. However, if other promoters were able to continue selling sufficient tickets for their events through other ticket agents, the range of events offered by Ticketmaster would reduce and some consumers would gradually switch to those other ticket agents. At the same time, other ticket agents would be strengthened through increased ticket sales and, possibly, through being able to offer tickets for a wider range of events. We noted that the consumer survey found that being able to offer tickets for a wide range of events is important for ticket agents as most consumers buying from a ticket agent (82 per cent) will try to find tickets for their chosen event elsewhere if the first place they tried could not supply them (see Appendix E, paragraph 22). The consumer survey also found that most consumers are repeat purchasers of live music tickets (see Appendix E, paragraph 19) so, if a ticket agent loses a customer for one purchase, the customer might be lost for all future purchases as well.

- *Loss from foreclosure of SJM or Metropolis due to shared interest in AMG*

8.28 We noted that Live Nation was a joint shareholder with two of the largest promoters in the UK (SJM and Metropolis) in AMG and, due to this common shareholding, Live Nation’s profits were correlated, to some extent, with the profits of SJM and Metropolis. All three promoters had an incentive to use AMG’s venues so, if SJM and Metropolis were foreclosed by the merged entity and, as a result, promoted fewer events, the profitability of AMG, and hence the profitability of the merged entity, could suffer.

- *Benefits*

8.29 The principal benefit of foreclosure would be an increase in Live Nation’s market share as a promoter, due to its competitors being weakened, or forced to exit the market, as a result of not being able to sell their tickets through Ticketmaster. Live Nation’s profits would increase through promoting more events. A secondary benefit would be an increase in Ticketmaster’s ticket sales as a result of Live Nation controlling a greater proportion of the tickets in the market.

8.30 [✂] told us that there would be further benefits to the merged entity from foreclosing promoters. [✂] said that, if Live Nation promoted more events, it would be able to increase its use of its own venues. However, promoters told us that artists and their agents had some considerable influence over which venues were used for a tour (see paragraph 2.8). Therefore, in order not to be outbid by other promoters, Live Nation would have to continue offering the most suitable venues for each artist. We concluded that the significance of this additional benefit to the merged entity from the foreclosure of promoters was likely to be small.

8.31 We estimated that Live Nation had a market share in the live music promotions market of between 15 and 20 per cent (see paragraph 5.71), with the rest of the market spread between many promoters. We found that there were a few large and many small promoters, with no one promoter significantly larger than all the others (see Appendix F). We did not receive any evidence with regard to diversion ratios between promoters so we assumed that, if a promoter were forced to exit the market, its business would divert to its competitors in proportion to their market shares. Therefore, even if one of the large promoters exited the market, the gain in market share for Live Nation would be small. We concluded that, only if several promoters were forced to exit the market, would Live Nation's market share increase significantly.

8.32 We noted that, if the increase in Live Nation's market share resulted in Live Nation having market power, a further benefit from foreclosure could arise if Live Nation were able to increase its prices (or reduce its service levels or amount of innovation). However, we concluded in Section 5 that Live Nation did not appear currently to have market power due to the presence of other large and well-established promoters, and many small promoters, and the significant bargaining power held by artists' agents. Given that Live Nation's market share would only increase significantly if several promoters were forced to exit the market (see paragraph 8.31), we found that it was unlikely that Live Nation would gain market power as a result of the foreclosure of other promoters by the merged entity.

- *Assessment of costs (in the short term) and benefits*

8.33 We calculated that the merged entity's average gross profit from the sale of a Live Nation-controlled live music ticket would be about £[✂] (calculated using Live Nation's average retail margin or rebate (see Table 6) and Live Nation's average gross profit per ticket in its promotions business (see Appendix C), excluding ticket rebates). Taking into account that around 60 per cent of the tickets to events promoted by Live Nation are sold by the venue (see Appendix E, paragraph 9), we calculated that the merged entity would achieve a gross profit of about £[✂] from each additional ticket for an event promoted by Live Nation. We compared this gross profit to the gross profit earned by Ticketmaster from the sale of a live music ticket, which was about £[✂] per ticket (see Appendix E, Table 9).

8.34 By comparing the margins per ticket sold for Live Nation and Ticketmaster, we calculated the critical proportion of promotions business which would need to switch to Live Nation in order for the foreclosure of other promoters to be profitable in the short term (ie not taking into account the possible long-term cost to Ticketmaster from only being able to offer a reduced range of tickets). We found that, for every 100 tickets which Ticketmaster ceased selling for other promoters, Live Nation needed to increase the size of its promotions business by 60 tickets.[81] For example, if Ticketmaster ceased selling tickets on behalf of Live Nation's three main competitors (SJM, Metropolis and AEG Live), for whom Ticketmaster sold about [✂] live music tickets in 2008, Live Nation would need to increase its promotions business by [✂] tickets a year (ie about [✂] per cent of these promoters' total business).

8.35 Given Live Nation's market share (see paragraph 8.31), we concluded that this strategy was only likely to be profitable if foreclosure by the merged entity resulted in a couple of large promoters or several small promoters exiting the market. For each promoter which exited the market, Live Nation would increase its market share, and so increase the extent to which it was able to capture the market share of the next foreclosed promoter.

8.36 We noted that the principal benefits and costs to the merged entity from foreclosure arose in different markets (promotions and ticketing). We also noted that these markets were characterized by differing degrees of risk: the margins in the promotions market are highly variable, while ticketing generates a more reliable revenue stream. Therefore, we found that a strategy to transfer market power from the market

[81]These calculations are based on average margins for Live Nation's promotions business. In reality there is a lot of variability in the profitability of Live Nation's promotions business.

for live music ticketing to the market for live music promotions would involve some increase in the merged entity's total risk.

- *Timing of costs and benefits*

8.37 We considered how long it might take Ticketmaster to force other promoters to exit the market.

8.38 Metropolis and Regular Music told us that artists did not change promoters very often, and an artists' agent told us that it tended to work with the same promoters for the same artists, unless there was any particular reason to change.

8.39 We concluded that, so long as other promoters could continue to sell tickets for their events, albeit with some lost sales due to not being able to sell through Ticketmaster, they were unlikely to lose their client base immediately. Therefore, the foreclosure of promoters was unlikely to lead to much benefit for the merged entity in the short term.

8.40 We also noted that the UK live music industry is a closely connected community. Both promoters and artists' agents told us that agreements were often determined by personal relationships rather than on the optimal commercial terms. We noted that artists' agents had the ability to sponsor promoters' expansion such that, if Live Nation was increasing its market power as a promoter significantly, some artists' agents might increase their use of competing promoters in order to retain a choice for the long term. We noted that no promoter expressed any concern to us about Ticketmaster ceasing to supply it with ticketing services.

- *Conclusion on incentive*

8.41 We concluded that, if Ticketmaster refused to supply other promoters with its ticketing services, there was some prospect of Live Nation increasing its market share as a promoter in the long term, in particular if a large promoter, or a couple of small promoters, were forced to exit the market. However, artists and their agents did not switch promoters quickly, so any benefits to the merged entity from foreclosure would probably take some time to materialize. In the short term, Ticketmaster would suffer costs, both from reduced revenues (from tickets it refused to sell) and from a reduced range harming its market position.

8.42 We concluded that a strategy of foreclosure based on Ticketmaster ceasing to supply other promoters with ticket retailing services would be highly risky for the merged entity. We concluded that, on balance, the merged entity was unlikely to have the incentive to foreclose other promoters in this way.

8.43 Given this conclusion, we did not consider the effects on competition from the merged entity foreclosing other promoters in this way.

8.44 [✂] told us that this analysis underestimated the potential benefits of foreclosure to Live Nation. [✂] said that Live Nation would know which promoters were its closest competitors and it would be rational for Live Nation to foreclose selectively these competitors. [✂] argued that, as a result of this foreclosure, Live Nation could expect to gain a greater proportion of the foreclosed promoter's business than would be suggested by Live Nation's market share. We recognized that the merged entity would have the ability to foreclose selectively its closest competing promoter, and its incentive to do so was likely to be greater than its incentive to foreclose other promoters. However, we concluded that the foreclosure of a single promoter, even

Live Nation's principal competitor, was unlikely to result in adverse effects on competition, because Live Nation did not appear to have market power and, even if it gained most of the market share of another promoter, it was unlikely that it would gain market power as a result (see paragraph 8.32). For the reasons in paragraphs 8.41 and 8.42, we did not believe that Live Nation would have the incentive to foreclose multiple promoters, even selectively.

Worsening the terms under which Ticketmaster sells tickets for other promoters

8.45 We also considered whether the merged entity would have the ability and the incentive to partially foreclose other promoters by worsening the terms by which it provided ticket retailing services. We considered five ways in which Ticketmaster could worsen the terms of its offer to other promoters:

(a) reducing the rebate it paid to other promoters;

(b) increasing the booking fees it charged to consumers of other promoters' tickets;

(c) reducing its marketing of other promoters' events;

(d) delaying the payment of cash from ticket sales to other promoters; and

(e) using other promoters' operational or customer data to the advantage of Live Nation.

8.46 We considered the ability of the merged entity to engage in each of these partial foreclosure strategies and, where necessary, we also considered the incentive to do so.

(a) Partial foreclosure by reducing rebates paid to other promoters

8.47 We considered the size of the rebate received by promoters from their ticket agents. Table 12 shows the rebates received by six promoters in 2008, and the proportion of the promoter's total income represented by rebates.

TABLE 12 **Promoters' rebate income**

	Revenue from sales of tickets at face value £'000	*Revenue from rebates £'000*	*Total revenue £'000*	*Rebates as % of total revenue*
AEG Live	[✂]	[✂]	[✂]	[✂]
Aiken Promotions	[✂]	[✂]	[✂]	[✂]
Kilimanjaro	[✂]	[✂]	[✂]	[✂]
Live Nation	[✂]	[✂]	[✂]	[✂]
Marshall Arts	[✂]	[✂]	[✂]	[✂]
Regular Music	[✂]	[✂]	[✂]	[✂]

Source: CC analysis of data submitted by these promoters.

Note: Figures do not sum due to rounding.

8.48 We found that rebates from ticket agents were a small part of promoters' overall income.

8.49 We also noted that, even if promoters wished to use Ticketmaster for some ticket sales (in order to reach consumers for whom Ticketmaster is their preferred ticket agent and who would not switch elsewhere), promoters could harm Ticketmaster by switching some volume of tickets to other ticket agents. The evidence we received from promoters showed that, while most promoters used Ticketmaster for a significant part of their ticket sales, all the promoters which used Ticketmaster also used other ticket agents to some extent. The evidence suggested that, for a large proportion of promoters' ticket sales, it was not necessary to use Ticketmaster in order to reach consumers. We noted that this evidence was consistent with the fact that most self-ticketing venues were also able to sell tickets effectively (see paragraph 5.36), suggesting that Ticketmaster's advantages (eg its customer database and technology) were not required to sell tickets to many consumers. Therefore, we concluded that, if Ticketmaster worsened the terms it offered to promoters, many of them would be able to switch some proportion of their tickets away from Ticketmaster to other ticket agents. [✂] confirmed this view by telling us that, when Ticketmaster worsened the terms of its offer to [✂], it switched most of its ticket volumes to See Tickets (see paragraph 8.71).

8.50 We concluded that, if Ticketmaster sought to worsen the terms of its offer to other promoters by reducing the rebate they received, many promoters would switch some ticket volumes away from Ticketmaster, eg to See Tickets. We found that this response would reduce significantly the incentive for the merged entity to foreclose other promoters in this way. We concluded that, due to this likely response, the merged entity would not have the incentive to partially foreclose other ticket agents by reducing the level of ticket rebates which it paid.

(b) Partial foreclosure by increasing the booking fees charged to the consumers of other promoters' tickets

8.51 We considered whether the merged entity had the ability to partially foreclose other promoters by increasing the booking fees which it charged the consumers of their tickets.

8.52 By selectively increasing its booking fees, Ticketmaster could reduce the sales of tickets for other promoters' events. As a result, Ticketmaster would lose profit from foregone ticket sales (about £[✂] per ticket), though this loss would be compensated partially by increased booking fees on Ticketmaster's remaining sales. However, the effect on other promoters could be significant if the tickets for their events remained unsold (around 80 per cent of the face value for each unsold ticket, ie about £[✂] per ticket on average). The merged entity would benefit if other promoters were so harmed by this action that artists and their agents switched to Live Nation, with an additional benefit to Ticketmaster as Live Nation's ticket agent.

8.53 However, booking fees are not usually set unilaterally by the ticket agent (see paragraph 5.11). Promoters, and occasionally artists and artists' agents, discuss and agree the level of booking fee which the ticket agent is allowed to charge. If Ticketmaster were to increase the booking fee which it charged consumers for the tickets of other promoters, many of these promoters would either demand a higher rebate or switch some of their ticket volumes to alternative ticket agents, eg See Tickets (see paragraph 8.49).

8.54 We noted that, if promoters switched away from Ticketmaster entirely, Ticketmaster's actions would have the same effect as ceasing to supply other ticket agents, with the same results on the income of the merged entity. Given that we found that the merged entity was unlikely to have the incentive to cease supplying other promoters, we concluded that the merged entity was also unlikely to have the incentive to increase its booking fees to the customers of other promoters if it resulted in those promoters switching to other ticket agents.

8.55 We also noted that the consumer survey found that, if booking fees rose by 5 to 10 per cent, the effect on ticket sales would be small (see Appendix E, paragraph 23).

8.56 We concluded that, if Ticketmaster increased its booking fees for the tickets of other promoters by a small amount (assuming it was allowed to do so by the promoters), there would be little effect on Ticketmaster's ticket sales for other promoters. If Ticketmaster increased booking fees for the tickets of other promoters substantially, then at least some promoters would switch some ticket volumes to other ticket agents (see paragraph 8.49) and the merged entity would probably result worse off.

8.57 We concluded that the merged entity would not have the ability to partially foreclose other ticket agents by increasing the booking fees charged to the consumers of other promoters' tickets by a small amount, and it would not have the incentive to do so by a large amount.

(c) Partial foreclosure by reducing the marketing of other promoters' events

8.58 We considered whether the merged entity had the ability to partially foreclose other promoters by reducing the extent to which it marketed other promoters' events.

8.59 As discussed in Section 5, we found that marketing and brand awareness were important for ticket agents, as a significant proportion of consumers go directly to a ticket agent's website or call centre to purchase tickets (see paragraph 5.9). However, the consumer survey results did not suggest that event-specific marketing by ticket agents (emails to consumers) was an important driver of consumers' ticket purchases. Only 7 per cent of respondents to the consumer survey found out about their chosen event from a ticket agent's email and, in some of these cases, the respondent also found out about the event from another source. Only 5 per cent of Internet purchasers mentioned a ticket agent's email first as their source of awareness for the event.[82] A higher percentage of respondents (18 per cent, see Appendix E Table 2) mentioned emails from ticket companies as a usual method of finding out about live music events but we judged that it was difficult to interpret this result when consumers find out about events from multiple sources.

8.60 Since event-specific marketing by ticket agents did not appear to be an important driver of consumers' ticket purchases, we thought it unlikely that Ticketmaster could affect materially the sales of other promoters by reducing the extent to which it marketed their events.

8.61 Nevertheless, we considered the effects that could arise if Ticketmaster were to cease marketing the events of other promoters. We found that ticket sales for other promoters would fall, and Ticketmaster would experience the same set of costs and benefits as if it raised its booking fees to promoters (see paragraphs 8.51 to 8.57). The difference between this strategy of foreclosure and the strategy of raising its booking fees to promoters would be that, under this strategy, Ticketmaster would not gain any additional income on remaining sales, and its cost saving would probably be small. However, Ticketmaster's objective through this foreclosure strategy would be the same, ie for other promoters to be so harmed by its reduced marketing that artists and their agents would switch to Live Nation, with an additional benefit to Ticketmaster as Live Nation's ticket agent.

[82]Excluding the 20 per cent of Internet purchasers who mentioned someone they knew first as their source of awareness, would increase this proportion to 6 per cent (see Appendix E, Annex 1).

8.62 However, if Ticketmaster stopped serving its promoter clients with the services they expected, including utilizing Ticketmaster's customer database to market an event to potential customers, it is likely that some promoters would switch some volume of tickets away from Ticketmaster to other ticket agents, just as they would if Ticketmaster increased its booking fees or reduced its rebates to promoters (see paragraph 8.49).

8.63 We concluded that, if reducing Ticketmaster's marketing activity for other promoters had any effect on the ticket sales of other promoters, the result for the merged entity was most likely to be a short-term cost with an uncertain long-term gain.

8.64 We concluded that, even if the merged entity had the ability to partially foreclose other promoters by reducing the extent to which it marketed their events (which was unclear), it would not have the incentive to do so.

(d) Partial foreclosure by delaying the payment of cash from ticket sales to other promoters

8.65 We considered whether the merged entity had the ability to partially foreclose other promoters by delaying the payment of cash from ticket sales.

8.66 Three promoters (Metropolis, Regular Music and PCL) told us that Ticketmaster might be able to cause other promoters significant harm by withholding cash from ticket sales. They told us that a promoter's ticket agents collect large amounts of cash from consumers on the promoter's behalf, which is essential for funding the promoter's operations. Metropolis and Regular Music told us that withholding cash payments could seriously threaten a promoter's financial viability.

8.67 We considered the extent to which promoters are cash constrained and rely on regular payments from ticket sales to finance an event. We found that promoters incurred significant costs for an event prior to the event, in particular the artist's guaranteed fee. Therefore, for small promoters which organized few events, cash from ticket sales in advance of an event was essential in order to finance the event. For large promoters, organizing many events, cash flow was also critical, but cash from one event could be used to finance another event on a rolling basis.

8.68 We also considered the significance for a promoter of being forced to cancel an event, or to delay payment to other parties, eg artists, due to insufficient funds. We noted that a promoter was dependent on a reputation for reliability in order to win further business from artists and their agents, so any failure to fulfil payment obligations could have a significant detrimental effect on the promoter's business.

8.69 Ticketmaster told us that its arrangements for paying cash to promoters depended on its assessment of each promoter's financial strength. Ticketmaster said that, if an event was cancelled, or if the promoter closed down, customers would expect Ticketmaster to refund ticket sales, even though the promoter would be liable. Therefore, Ticketmaster only paid cash from ticket sales to a promoter in advance of an event either if it had sufficient assurance that the promoter was financially reliable or if the promoter could provide sufficient bank guarantees. Ticketmaster said that it would not withhold cash other than in accordance with its contractual arrangements with any promoter as doing so would constitute breach of contract and, furthermore, would harm significantly Ticketmaster's reputation.

8.70 Regular Music told us that, although Ticketmaster might be contractually obliged to pay cash to promoters on certain terms, even just a temporary delay could be sufficient to force a small promoter into insolvency.

8.71 Both [✂] and Metropolis told us that Ticketmaster had recently attempted to lengthen the period when it paid them the proceeds from their ticket sales.[83] In response, [✂], which was not under contract with Ticketmaster, switched most of its ticket volumes to See Tickets and Metropolis threatened to switch away from Ticketmaster (though Ticketmaster then returned to its former terms with Metropolis). This response suggested that, while promoters might need to sell some tickets through Ticketmaster in order to maximize ticket sales, they were able to harm Ticketmaster by switching some volume of tickets to other ticket agents (see paragraph 8.49). This action, or the credible threat of this action, appears to have been sufficient to constrain Ticketmaster's behaviour pre-merger and should remain a sufficient constraint post-merger.

8.72 Therefore, we concluded that the balance of costs and benefits from foreclosing other promoters by delaying the payment of cash from ticket sales would be similar to the previous cases of partial foreclosure, involving both a likely short-term cost and an uncertain long-term gain. In the short term, Ticketmaster would lose income as some promoters would switch some volume of tickets to other ticket agents but, in the long term, Live Nation could increase its market power as a result of some of these other promoters either losing business from artists and their agents or exiting the market altogether.

8.73 We concluded that, though the merged entity might have the ability to partially foreclose other promoters by delaying the payment of cash from ticket sales, it would not have the incentive to do so.

(e) Partial foreclosure through using other promoters' operational or customer data to the advantage of Live Nation

8.74 We considered whether the merged entity had the ability to partially foreclose other promoters by using the operational or customer data of other promoters, to which Ticketmaster has access as their ticket agent, to the advantage of Live Nation.

8.75 Three promoters (AEG Live, Kilimanjaro and Regular Music) told us that the merger would enable Live Nation to access sensitive data from its competitors. In particular, they highlighted two types of sensitive data to which Ticketmaster has access on behalf of other promoters:

(a) operational data (eg data on planned events such as artists, venues, event dates, ticket prices, ticket sales processes, etc; and data on past events, such as rates of ticket sales, marketing effectiveness, etc); and

(b) customer data (eg for each customer, their name, events attended, purchasing behaviour, music preferences, postal address, email address, credit card information, etc).

8.76 We considered whether the merged entity's access to each type of data would provide it with the ability to partially foreclose other promoters.

[83] The CC has not verified this evidence with Ticketmaster.

- *Access to operational data*

8.77 Promoters told us that, in advance of their tickets going on sale with Ticketmaster, they would provide Ticketmaster with all the relevant operational data about the event or tour.

8.78 AEG Live, Kilimanjaro and Regular Music identified two broad concerns with Live Nation having access to this data:

(a) Live Nation could use the information on planned events to estimate other promoters' bids with artists and their agents, providing it with an asymmetrical advantage which would allow it to force other promoters from the market. In addition, Live Nation could use information about other promoters' past events to inform its own future strategies, with regard to planning tours, marketing events, running its ticket sales process, bidding to artists and their agents, etc.

(b) Live Nation could frustrate other promoters' ticket sales processes by making available tickets for its own events shortly in advance of tickets for the events of other promoters, in particular for events which might attract the same consumers.

- *Squeezing out other promoters by using information on their likely bids*

8.79 Live Nation told us that, once tickets for an event were on sale, most of the information regarding a tour (eg event dates, venues, ticket prices, etc) was publicly known. Other promoters told us that the costs of promotion (eg venue costs, security costs, etc) were generally well known in the industry.

8.80 Live Nation also told us that there was no need for promoters to give Ticketmaster any information relating to the promoters' bids to artists and their agents. The only information which Ticketmaster needed was the information which, typically, [✂] later (see paragraph 8.85) was in the public domain.

8.81 Live Nation added that, when competing promoters were bidding to artists and their agents for the right to promote an event or tour, the promoters usually knew the principal terms of each other's bids, eg the proposed venues and dates. Live Nation said that artists' agents often shared this information between bidders in order to gain the optimal terms for their artist, and sometimes the information was disclosed by venues when the promoter tried to reserve dates for an event.

8.82 We concluded that the extent to which the merger would allow Live Nation to increase its knowledge of other promoters' costs and bids was limited. We noted that Live Nation could gain more information on promoters' marketing strategies, in particular the number of tickets sold by a promoter through Ticketmaster, but we did not receive any evidence to suggest that such information would provide Live Nation with a significant competitive advantage.

- *Squeezing out other promoters by using information on their ticket sales*

8.83 AEG Live told us that, post-merger, Live Nation would know the date on which tickets for another promoter's event would be going on sale and could quickly put the tickets for its own events on sale first, so frustrating the other promoter's sales process.

8.84 AEG Live and Kilimanjaro told us that the exact timing of tickets being released on sale was usually agreed between the artist's agent and the promoter, with the relevant ticket agents only being informed subsequently.

8.85 Ticketmaster told us that, increasingly, it received very little notice from promoters and venues about when tickets for an event would go on sale. Ticketmaster said that most of its agreements with promoters and venues stated that they must provide Ticketmaster with at least [✂] notice, so that Ticketmaster could prepare its systems for the sale and release its own outbound marketing material.[84] [✂]

8.86 [✂] told us that it gave Ticketmaster as little notice as possible regarding the timing of its ticket sales processes, because of the risk of this information being shared with Live Nation or any other promoter.

8.87 We concluded that, in [✂] (or less), it was unlikely that Live Nation would be able to adjust its own plans in order to market and release tickets for its own events so as to frustrate the sales process of other promoters and venues. We also concluded that, if the merged entity did manage to frustrate another promoter's sales process in this way, many clients of Ticketmaster would begin to give Ticketmaster much less time to organize a sales process or would switch some volume of tickets away from Ticketmaster. Therefore, it was unlikely that the merged entity would be able to harm other promoters significantly by using Ticketmaster's information on other promoters' planned ticket sales.

- *Conclusion from foreclosure using Ticketmaster's access to operational data*

8.88 We concluded that Ticketmaster's access to other promoters' operational data would not provide the merged entity with the ability to partially foreclose other promoters.

- *Access to customer data*

8.89 As the largest live music ticket agent in the UK, Ticketmaster collects substantial volumes of data about customers purchasing live music tickets. In most cases, this customer data is co-owned by Ticketmaster and the promoter or venue for which it is acting. In some cases, the ways in which Ticketmaster may use this data are restricted by contractual agreement with the promoter or venue but, in most cases, Ticketmaster is able to use the data as it wishes.

8.90 AEG Live and Regular Music both told us that, post-merger, Live Nation would gain access to other promoters' customer data, enabling Live Nation to market its events to the customers of other promoters. AEG Live told us that Ticketmaster had an extensive database of customer information, which was unparalleled in the industry. AEG Live also said that this information could be used by Live Nation to inform the planning of its future events. AEG Live added that the importance of this data meant that, if Live Nation had access to it, other promoters could be willing to pay Ticketmaster for access to it.

8.91 Ticketmaster told us that it would usually use the data gathered from ticket sales for one promoter or venue when it marketed events for other promoters or venues. [✂]

8.92 Therefore, we concluded that the merger would not affect significantly the degree to which Live Nation benefited from Ticketmaster marketing its events using customer data from other promoters and venues because Live Nation benefited already from this data, albeit indirectly, by using Ticketmaster to sell its tickets.

[84] We reviewed the contracts between Ticketmaster and its largest live music clients (both promoters and venues) and confirmed that, in most cases, the contract specified a requirement for the promoter or venue to inform Ticketmaster of the details of an event (ie ticket price, artist, venue and event date) at least [✂] before tickets for the event were intended to be released on sale.

8.93 Nevertheless, we recognized that the merger would enable Live Nation to access this customer data directly, which could provide the merged entity with some benefits. We noted that, according to Live Nation, it was better at utilizing its customer data (eg to market events selectively to customers) than Ticketmaster. Live Nation told us that it sought to build a relationship with its customers and understand their live music tastes and concert-going preferences.

8.94 AEG Live also told us that, with direct access to Ticketmaster's full customer data-base, Live Nation would be able to market its events more effectively. AEG Live added that Live Nation would also be able to prepare better bids for artists and their agents on the basis of a more informed understanding of consumer demand. AEG Live submitted that, in both ways, Live Nation would have a significant advantage over other promoters.

8.95 We noted that, in addition to enabling Live Nation to access Ticketmaster's customer data, the merger also allowed Ticketmaster to access Live Nation's customer data, which would include ticket sales made on behalf of Live Nation by other ticket agents. However, Live Nation only sells about [✄] per cent of its tickets through other ticket agents (see paragraph 6.16) so the additional information to which Ticketmaster would have access would be limited.

8.96 Ticketmaster told us that it recognized the concerns of some of its clients that, as a result of the merger, Live Nation could gain access to their customer data. Ticketmaster said that, because of this concern, some clients had threatened to switch ticket volumes away from Ticketmaster to other ticket agents. Ticketmaster told us that it recognized that it would need to address these concerns in order to retain ticket volumes and, following the completion of the merger, it told us that it had taken steps to do so.[85] We judged that the fact Ticketmaster acknowledged these concerns suggested that they had some merit.

8.97 We concluded that the merged entity could have some ability to partially foreclose other promoters as a result of Live Nation's access to Ticketmaster's customer database, which included customer data gathered by Ticketmaster from sales for other promoters.

- *Incentive to partially foreclose other promoters through access to customer data*

8.98 We considered whether the merged entity had the incentive to partially foreclose other promoters through allowing Live Nation access to Ticketmaster's data.

8.99 AEG Live and Regular Music both told us that, if they perceived a risk that Ticketmaster might share their customer data with Live Nation, they would reduce the volume of tickets they sold through Ticketmaster, in order to mitigate this risk. This response would not restrict Ticketmaster from sharing the promoters' historical data with Live Nation, which could cause them some harm, but it would limit the extent to which they could be harmed by this action in the future. This response would also impose some cost on Ticketmaster (see paragraph 8.49).

8.100 Nevertheless, [✄] told us that, although it would like to work with another ticket agent in the UK so as to avoid offering Live Nation access to its customer data, there was no viable alternative to Ticketmaster. [✄]

[85] We note that Ticketmaster offered undertakings to the OFT to address these concerns.

8.101 We found that the merged entity would benefit from this foreclosure strategy if Live Nation were able to sell a greater proportion of tickets for its events or if it were able to win a greater proportion of business as a promoter from artists and their agents and so increase its market share. However, we concluded that access to other promoters' data was unlikely to increase Live Nation's ticket sales significantly as Live Nation already benefited from this data indirectly by selling through Ticketmaster (see paragraph 8.92). We also concluded that, given the long-term relationships between artists (and their agents) and promoters, and the low levels of switching (see paragraph 8.41), it was unlikely that access to other promoters' customer data would enable Live Nation to win much extra new business.

8.102 We concluded that the foreclosure of other promoters through providing Live Nation with access to Ticketmaster's customer data was likely to result in the merged entity suffering a significant short-term cost from Ticketmaster losing clients, and was unlikely to result in a significant gain, at least for a very long time.

8.103 [✂] told us that this analysis over-estimated the ability of promoters to threaten credibly to switch away from Ticketmaster. [✂] said that it would not find it easy to switch its ticket volumes to any other ticket agent in the UK (see paragraph 8.100). We recognized that some promoters faced particular challenges in changing their preferred ticket retailer. However, we found that our conclusions did not rely on all promoters being able to switch away from Ticketmaster, or on promoters switching all of their ticket volumes away from Ticketmaster. We judged that, even if Ticketmaster were to share with Live Nation only the customer data of those promoters that were least likely to switch away from Ticketmaster, the reputation of Ticketmaster would be so damaged that many other promoters would be likely to switch their ticket volumes to other ticket retailers. We also noted that, in order for Live Nation to gain substantial market share as a result of this foreclosure strategy, at least two other large promoters would need to be affected significantly, which we judged was unlikely (see paragraphs 8.32 and 8.44).

8.104 We concluded that, although the merged entity might have the ability to foreclose other promoters by providing Live Nation with access to Ticketmaster's customer data, it would not have the incentive to do so.

Conclusion on partial foreclosure

8.105 Having considered several ways in which the merged entity might contemplate foreclosing other promoters, we found that, for every way, either it would not have the ability to do so or it would not have the incentive to do so. In particular, we found that, were the merged entity to seek to foreclose other promoters, they would be able to respond with the credible threat of switching ticket volumes away from Ticketmaster (mostly to See Tickets), which would harm Ticketmaster significantly.[86] In most cases, any corresponding benefit to Live Nation was very uncertain.

8.106 We concluded that it was unlikely that the merged entity would foreclose other live music promoters and we did not consider the effects on competition which might result from this foreclosure.

[86] We did not consider the effect on competition in the market from the potential increase in See Tickets market share as the significance of this threat was its ability to constrain Ticketmaster's behaviour and we did not expect the threat to be followed through in most cases.

Foreclosure of other live music venues

8.107 We considered whether the merged entity would have the ability and incentive to foreclose live music venues which competed with Live Nation, using Ticketmaster's position in the market for ticket retailing.[87]

Ability and incentive

8.108 The merged entity could foreclose other live music venues by Ticketmaster either refusing to sell their tickets (total foreclosure) or by selling their tickets on worse terms (partial foreclosure).[88] As a result, Ticketmaster would suffer a loss from reduced ticket sales. However, other venues would also be likely to sell fewer tickets (depending on whether they were able to sell tickets through other channels) and would probably be less able to attract promoters to use them for live music events. If so, Live Nation would increase its market share as a venue operator, with some feedback benefit to Ticketmaster as Live Nation's ticket agent.

8.109 We noted that the market for live music venues was likely to be local (see Appendix G, paragraph 9). Therefore, the merged entity would only have an incentive to foreclose other venues in areas where Live Nation had a competing venue (ie one of similar size and suitable for similar events), and the incentive would be limited if there were many competing venues in the area.

8.110 We also noted that, for most venues, the venue's ticket allocation was sold almost exclusively by the ticket agent which provided the venue's ticketing system. Live Nation told us that almost all the tickets for its controlled venues were sold by Ticketmaster, and AEG told us that Ticketmaster sold almost all the tickets for the O2 Arena.[89] Live Nation told us that venues used one ticket agent for operational reasons (ie it was easier to use one ticketing system) and because maximizing ticket sales was not as important for venues as for promoters, as a smaller proportion of the venue's income was dependent on ticket sales.

8.111 We concluded that, if Ticketmaster were to cease selling tickets for other venues, or worsened its terms, either the venue would seek to use another ticket agent or the promoters of the events at the venue would reallocate the venue's tickets to other ticket agents. Therefore, we concluded that a strategy to foreclose other venues from access to Ticketmaster was unlikely to lead to a reduction in total ticket sales at these venues.

8.112 The main harm to other venues from foreclosure would be a decrease in the income which these venues received from rebates on booking fees (assuming the venues were not able to switch sales to another ticket agent). However, this income is a very small proportion of a venue's overall income. Live Nation told us that, in 2008, AMG's venues generated a total income of £[✂] million, of which ticket rebates represented £[✂] million (ie about [✂] per cent of the total). We found that the majority of a

[87]We also considered whether the merged entity would have the ability and incentive to foreclose other live music venue operators using Live Nation's position in the market for live music promotion. However, we found that it was unlikely that either Live Nation's ability or its incentive to engage in this strategy would be changed by the merger.

[88]We did not believe that Ticketmaster would have the ability to cause any harm to venues by foreclosing other venues from access to Ticketmaster's ticketing system as Ticketmaster does not appear to have substantial market power as a provider of ticketing systems (see paragraph 5.17). Rather, we found that the market for ticketing systems appeared to operate competitively with many suppliers. We believed that, if Ticketmaster ceased providing ticketing systems to non-Live Nation venues, these venues would switch to another ticketing system. We concluded that it was unlikely that this foreclosure strategy would affect other venues' ability to sell tickets, or affect their ability to win business from promoters. We also noted that Ticketmaster's ability to deny venues with access to its ticketing system might be limited by long-term contracts with venues.

[89]AEG has signed an agreement with lastminute.com which gives lastminute.com access to a small allocation of tickets for the O2 Arena.

venue's income came from rental fees, food and beverage and merchandise sales. We concluded that, even if other venues lost all their income from ticket rebates (which was unlikely as they could switch to another ticket agent or self-ticketing), the small loss in income which would result would be unlikely to have a significant impact on the venues' profitability or competitiveness.

8.113 [✂] However, we noted that many of the potential harms which [✂] might suffer [✂] existed prior to the merger and were not affected by the merger. [✂] We also noted that [✂] large live music venues had switched or were in the process of switching their ticketing systems, including Wembley Arena (from See Tickets to Ticketmaster), the SECC and the NEC (both of which self-ticketed but had changed the supplier of their ticketing system), and the three venues for which Live Nation controlled the ticketing (from Ticketmaster to Eventim).

8.114 [✂] However, we found that, if Ticketmaster were to foreclose [✂] including events promoted by Live Nation, then, in order to maximize the sale of its tickets, which is its overriding objective (see paragraph 6.30), Live Nation (as with all other promoters affected) would have to reallocate tickets from [✂] to its own ticket agents (whether Ticketmaster or others). As a result, [✂] might lose some revenue from ticket rebates, but it would continue to enjoy high attendances at its events, enabling it to maintain its principal revenues, eg food and beverage sales (see paragraph 8.112). We also found that [✂]. We concluded that it was unlikely that, by reducing its effectiveness in selling tickets or in reducing service quality or innovation, Ticketmaster could cause [✂] any significant harm.

8.115 We concluded that, if the merged entity foreclosed other live music venues by refusing access to Ticketmaster, or by worsening the terms of Ticketmaster's supply of ticketing services, it was very unlikely that the other venues would be harmed significantly or that Live Nation's venues would benefit. We concluded that the merged entity would not have the ability and incentive to foreclose other live music venues.

9. Findings

9.1 We found that the anticipated merger of Ticketmaster and Live Nation constituted an arrangement which, if carried into effect, would result in the creation of a relevant merger situation within the meaning of the Act (see paragraph 4.4).

9.2 However, we found that the merger of Ticketmaster and Live Nation was unlikely to result in a substantial lessening of competition in any UK market (see paragraphs 7.100, 7.157, 8.106 and 8.115).