



The American Antitrust Institute

January 8, 2010

DISTINCTIONS BETWEEN THE IMPACT OF THE TICKETMASTER – LIVE NATION MERGER IN THE U.S. AND THE U.K.

James Hurwitz¹

On December 22, 2009, the Competition Commission (“Commission”) of the United Kingdom issued its final report on the proposed merger between Ticketmaster Entertainment, Inc. (“Ticketmaster”) and Live Nation, Inc. (“Live Nation”). The Commission found that the merger was unlikely to substantially lessen competition in any U.K. market. *The structure and competitive behavior of the market in the UK, however, is markedly different from that in the US.* This memorandum highlights a few of these distinctions, and demonstrates why the Competition Commission’s decision should have no application to the analysis of the merger as it affects the U.S. market.

1. The merger involves the two leading sellers in the US, but not in the UK.

In the U.S., the merger is between the two leading sellers of tickets in the market for primary ticket sales for live entertainment events.

In the U.K., the second largest seller of primary tickets, See Tickets, is not a party to the merger. Live Nation did not become an independent participant in this market until January 1, 2010, and is relying substantially on managed ticketing services provided by CTS-Eventim (“Eventim”). Eventim, the world’s second largest ticket seller, already operates in 18 countries and intends to enter the U.K. market. It has no entry plans for the U.S.

2. Ticketmaster is a monopolist in the US, but not in the UK.

In the U.S., Ticketmaster has, by most estimates, 75 –80% of the primary ticket sales market. Live Nation, which entered this market at the beginning of 2009, has approximately 10-15%. If it remains independent, Live Nation also has the potential of growing stronger as consumer awareness of and confidence in its new service increases.

In the U.K., Ticketmaster had only 40 – 50 % of the market in 2008. Unlike its US market share, recent measures of Ticketmaster’s UK market share include Ticketmaster’s sales of tickets for Live Nation. (Ticketmaster’s contract to sell tickets for Live Nation expired at the end of 2008 in the US, but continued throughout 2009 in the UK.)

¹ Research Fellow, The American Antitrust Institute. Mr. Hurwitz was the author of an AAI White Paper analyzing the competitive aspects of the proposed transaction, available at <http://www.antitrustinstitute.org/Archives/ticketmaster.ashx>.

Under U.S. law, Ticketmaster's market share is usually sufficient to establish monopoly power, especially where, as here, barriers to entry and expansion are significant. By contrast, Ticketmaster's market share in the U.K. would usually be insufficient to establish monopoly power.

3. **The US market has no significant, existing or potential competitors; the UK market does.**

In the U.S., no existing seller of tickets in the primary market is capable of providing competition on a substantial scale with the merged entity. In addition, there exists no potential entrant that can do so.

In the U.K., even after the merger, the second largest seller, See Tickets, will remain a viable competitor, with approximately 20% of the market. In addition, CTS-Eventim, the world's second largest seller of primary tickets, not only intends to enter the U.K. market but is poised to do so. Toward this end, Eventim entered an agreement to provide Live Nation with managed ticketing services in order to gain a foothold in the UK market and cover its entry costs.)

Significantly, the Commission "noted that . . . by merging with Live Nation, Ticketmaster removed a new competitor for ticketing services in the U.S. market." (Opinion Finding 3.10.)

4. **Barriers to entry and expansion are likely even greater in the U.S. than in the U.K.**

The Competition Commission noted that barriers to entry and expansion were present in the market for retailing tickets in the U.K. These rest primarily on an incumbency advantage enjoyed by Ticketmaster, which derives from a broad consumer perception that Ticketmaster is reliable, secure, and convenient, i.e., the ticket agent most likely to have the customer's desired ticket. Ticketmaster also enjoys an incumbency advantage with promoters and venues, which rests on Ticketmaster's market dominance and its large database of potential customers to whom it markets tickets.

These barriers likely exist in even greater measure in the U.S., where Ticketmaster enjoys far greater market dominance, consumer awareness, and access to tickets and customers.

In addition, in the U.K., promoters generally distribute 25 – 50% of the tickets. These promoters often allocate tickets to several different ticket agents. Thus, Ticketmaster in the UK is a non-exclusive sales agent. Rather, its clients provide a guaranteed minimum allocation of tickets.

By contrast, in the U.S., venues allocate almost all the tickets. Ticketmaster has well over 10,000 long-term contracts with venues to act as the exclusive agent for primary ticket sales. These contracts provide Ticketmaster with the foundation of its market power. Since Live Nation is the second largest owner/operator of venues in the U.S., and Live Nation also handles the ticketing for SMG, the largest owner of venues in the U.S., the merger would not only eliminate Ticketmaster's sole significant rival, but it would bring Live Nation's and SMG's venues into Ticketmaster's fold.

5. **Additional Points of Distinction**

To the extent that the structure and competitive conduct of U.K.'s live music market, as viewed by the Competition Commission, differ from the key characteristics of the U.S. market, the Competition Commission's analysis and conclusions have no bearing on an assessment of the merger's impact in the U.S. We do not currently know how the U.S. Department of Justice views the market here. It is clear, however, that the markets in the two countries are distinctive in many ways – market definition, market dominance, entry barriers, patterns of business conduct and competition, exclusive contracts, and state and national regulations, among other features. Assuming that the Competition Commission's assessment and conclusions about the U.K. live music market will neatly apply to the U.S. market risks indulging in the proverbial “comparing apples with oranges” fallacy.

For example, the Competition Commission chose not to distinguish between performances at large venues, such as amphitheatres, arenas, and stadiums, and performances at smaller venues, such as clubs. This market definition might not be appropriate for the U.S., since top rank stars tend to limit their performances to the larger venues and may create a valid submarket. In addition, the Competition Commission limited its market definition to include performance only of rock and pop music, presumably excluding country, blues, gospel, and other music genres, as well as sporting events. In the U.K., consumers are also not very sensitive to the amount of convenience charges. While these are only examples, it is clear that many distinctive features of the UK market, as viewed by the Competition Commission, are not pertinent to the U.S. market. Conclusions about competition in the U.K. market, therefore, cannot be readily applied here.