

IN THE COMPETITION  
APPEAL TRIBUNAL

Case No:1150/4/8/10

BETWEEN:

CTS EVENTIM AG

Applicant

-v-

THE COMPETITION COMMISSION

Respondent

-supported by-

LIVE NATION ENTERTAINMENT, INC

Intervener

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SUBMISSIONS OF THE INTERVENER FOR  
THE HEARING ON 10 FEBRUARY 2010

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1. These are the initial submissions of Live Nation Entertainment Inc (**Live Nation**) (the merged entity of Live Nation and Ticketmaster) for the hearing on 10 February. They are served pursuant to the Tribunal's Order of 1 February 2010.
2. Live Nation finds itself in a very difficult position through no fault of its own.
3. In its report of 22 December 2009, the CC found, after 6 months of close investigation, that the proposed merger between Live Nation Inc and Ticketmaster was unlikely to result in a substantial lessening of competition in any UK market (**the Decision**).

4. Following the approval of the merger by the Department of Justice in the United States of America, the merger was completed on 25 January 2010.
5. CTS Eventim (**Eventim**) lodged its Notice of Application for a review of the Decision with the Tribunal on 19 January 2010. This was the final day available to it to do so.
6. Live Nation submitted an application to intervene to the Tribunal on 27 January 2010. That intervention was ordered by the Tribunal on 1 February 2010.
7. On 28 January 2010, Freshfields, who act for Live Nation, received a copy of a letter from the Treasury Solicitor to Allen & Overy, who act for Eventim, indicating that the CC intended to ask the Tribunal formally to quash its finding in the Report that the merger is not expected to give rise to a substantial lessening of competition and to remit question 2(b) of the CC's terms of reference to the CC for reconsideration. The Treasury Solicitor and Allen & Overy disclosed their respective positions on this issue to the Tribunal on 29 January 2010.
8. Freshfields made repeated requests of Eventim for even a redacted version of its Notice of Application after its existence was publicised. However none was received. On 1 February 2010, the Tribunal ordered Eventim to serve a non-confidential version of its notice of application on Live Nation "as soon as possible, and in any event no later than 5 pm on 4 February 2010". The non-confidential version was served shortly before 5pm on 4 February 2010. Eventim had taken some two weeks to release the document and the maximum time allowed under the Tribunal's Order.
9. It is regrettable that Eventim has done its utmost to keep Live Nation in the dark about the nature of its application.
10. It is even more regrettable that the CC does not wish to defend its Report in relation to the Live Nation merger.
11. In its Order of 1 February 2010, the Tribunal has requested the parties to make submissions for the hearing on 10 February 2010 by 5pm on 8 February 2010. Without a better understanding of the position of the CC in response to the Tribunal's

letter of 1 February 2010, and, in particular items (i) and (ii) on page 1, save in one respect, Live Nation is not in a position to make relevant submissions and must reserve its position until it has seen the submissions of the CC and Eventim on the issues raised by the Tribunal.

12. There is, however, one important issue on which Live Nation can make submissions at this stage. If the Tribunal were to accede to the CC's proposal and quash the Decision and remit issues to the CC in some form, Live Nation submits that the entire Report should be quashed and remitted on the basis that, as proposed by the CC, the Report would then be treated as, in effect, the CC's provisional findings.
13. Live Nation submits that this would be the appropriate course as it would reduce the period of uncertainty that would persist so long as there was an outstanding challenge to the merger. If the Report as a whole were quashed and remitted, the CC could, as it wishes to do, "take account of any further representation any interested party wishes to make". This would reduce the risk of any further challenge to the CC's new decision.
14. If the Report were only quashed on Eventim's first ground (procedural fairness) and the scope of the remittal were limited accordingly, it would clearly be possible that Eventim's second, third and fourth grounds of challenge would be reactivated as soon as the new Report was published, thus extending the period of uncertainty for Live Nation.
15. In making these submissions, Live Nation emphasises that it does not believe that there is any merit in any of Eventim's grounds of challenge. However, given the position in which Live Nation has been placed, it submits that the Tribunal should do what it can to limit the detriment being suffered by Live Nation.

Mark Hoskins QC  
Brick Court Chambers  
8 February 2010