



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No: 1150/4/8/10

Pursuant to rules 15 and 25 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (“the Rules”), the Registrar of the Competition Appeal Tribunal gives notice of the receipt of a notice of application on 19 January 2010 under section 120 of the Enterprise Act 2002 (“the Act”) by CTS Eventim AG (“Eventim”). Eventim challenges a decision by the Competition Commission (“the Commission”) published on 22 December 2009 entitled “A report on the anticipated merger between Ticketmaster Entertainment, Inc and Live Nation, Inc”, (“the Decision”)¹. Eventim is represented by Allen & Overy LLP, One Bishops Square, London, E1 6AD.

The Decision arises from the proposed merger announced by Ticketmaster Entertainment, Inc (“Ticketmaster”) and Live Nation, Inc (“Live Nation”) on 10 February 2009. The notice of application states that Live Nation is the world’s number 1 promoter, with exclusive or preferential global deals with a number of international artists and performers. Ticketmaster is the world’s number 1 ticket retailer and also the number 1 in the two biggest live music ticketing markets, the USA and the UK. Eventim is the world’s number 2 ticket retailer behind Ticketmaster, and the European leader.

Live Nation had been co-operating with Ticketmaster globally for many years on the basis of long-term agreements that made Ticketmaster Live Nation’s preferred and often exclusive supplier of ticketing services. These contracts expired in the USA and Continental Europe on 31 December 2008 and in the UK on 31 December 2009. Under a letter of intent (“LOI”) signed on 20 December 2007, Eventim replaced Ticketmaster as Live Nation’s preferred ticketing technology and sale partner worldwide.

The Office of Fair Trading investigated the proposed merger between Ticketmaster and Live Nation and referred it to the Commission on 11 June 2009. In its provisional findings, published on 8 October 2009, the Commission found that the merger was likely to lead to a substantial lessening of competition (“SLC”). The Commission provisionally found that, as a result of the merger, the merged entity would have the ability and incentive to foreclose Eventim from the market and, on balance, this foreclosure was likely to result in Eventim deciding to exit the UK market. On 22 December 2009 the Commission published the Decision, reversing the provisional findings and finding that the proposed merger was unlikely to have a significant effect on the prospects for Eventim succeeding as a primary retailer of live music tickets.

In summary, the principal grounds of review on which Eventim relies are that:

1. The Commission denied Eventim its right to a fair hearing, depriving Eventim of a reasonable opportunity to respond intelligently to the main reasons for the Commission’s reversal of its view on SLC and/or to comment specifically on the Commission’s analysis of (i) Eventim’s own German-language board documents and/or (ii) Eventim’s own forecasts for its proposed UK activities before adopting its final decision.
2. The Commission erred in its assessment of the relevant counterfactual – i.e. in assessing how competition would likely have developed absent the merger – because it wrongly failed to take account of relevant considerations, took account of irrelevant considerations, made an error of fact, made a finding that is not supported by adequate evidence and/or acted unreasonably.

¹ The Report may be found at: http://www.competition-commission.org.uk/rep_pub/reports/2009/fulltext/552.pdf

3. The Commission erred in its assessment of the effect of the merger on the market because it acted unreasonably, failed to take account of relevant considerations, acted without any or any adequate evidence and/or failed to give adequate reasons. Moreover, in finding that the LOI would provide Eventim with an assured revenue stream for the provision of a managed ticketing service, the Commission failed to consider the likelihood and consequences of breach by Live Nation of its obligations under the LOI.
4. The Commission erred in its application of the SLC test, i.e. in assessing whether the merger would result in a substantial lessening of competition on any market as compared with the situation absent the merger (the counterfactual).

Eventim seeks the following relief from the Tribunal:

1. a declaration pursuant to section 120(4) of the Act that the grounds of review are well-founded;
2. an order quashing the Decision pursuant to section 120(5)(a) of the Act;
3. an order referring the matter back to the Commission with a direction to reconsider and make a new decision under section 36 of the Act in accordance with the ruling of the Tribunal pursuant to section 120(5)(b) of the Act; and
4. an order that the Commission pay Eventim the costs it has reasonably incurred in bringing its application.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London WC1A 2EB, so that it is received by 28 January 2010.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE
Registrar

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