



DETERMINATION OF MERGER NOTIFICATION M/18/067 LN-GAIETY / MCD PRODUCTIONS

Section 22 of the Competition Act 2002

Proposed acquisition by LN-Gaiety Holdings Limited of sole control of MCD Productions Unlimited Company.

Dated 05 July 2019

Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended, (the “Act”) Live Nation (Music) UK Limited (“Live Nation”) and MCD Productions Unlimited Company (“MCD”) have submitted to the Competition and Consumer Protection Commission (the “Commission”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services in the State, with a view to the said proposals becoming binding on Live Nation and MCD.

The Commission has taken the proposals into account and, in light of the said proposals (which form part of the basis of its determination), has determined in accordance with section 22(3)(a) of the Act that the result of the proposed acquisition whereby LN-Gaiety Holdings Limited, via its wholly owned subsidiary LN-Gaiety Holdings Ireland Limited, would acquire sole control of MCD, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect. Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, had regard to any relevant international obligations of the State, and concluded that there were none.

For the Competition and Consumer Protection Commission

**Isolde Goggin
Chairperson
Competition and Consumer Protection Commission**



PROPOSALS BY LIVE NATION (MUSIC) UK LIMITED AND MCD PRODUCTIONS UNLIMITED COMPANY TO THE COMPETITION AND CONSUMER PROTECTION COMMISSION RELATING TO THE PROPOSED ACQUISITION BY LN-GAIETY HOLDINGS LIMITED OF SOLE CONTROL OF MCD PRODUCTIONS UNLIMITED COMPANY (“Proposals”)

Live Nation Music (UK) Limited (“Live Nation”) and MCD Productions Unlimited Company (“MCD”) hereby submit to the Commission the following Proposals under section 20(3) of the Competition Act 2002 (as amended):

RECITALS

- A. On 14 August 2018, LN-Gaiety Holdings Limited (“LN-Gaiety”) and MCD jointly notified to the Commission under Part 3 of the Act a proposed transaction whereby LN-Gaiety, via its wholly-owned subsidiary LN Gaiety Holdings Ireland Limited, would acquire sole control of MCD from its ultimate parent company Gaiety Investments Unlimited Company (“Gaiety”) (the “Proposed Transaction”). LN-Gaiety is jointly controlled by Live Nation and Ronmall Unlimited Company (through its subsidiary Gaiety).
- B. On 3 January 2019, the Commission made a determination that it intended to carry out an investigation under section 22 of the Act in relation to the Proposed Transaction.
- C. Live Nation and MCD are submitting these Proposals pursuant to section 20(3) of the Act for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services in the State and with a view to the Proposals becoming binding on Live Nation and MCD if the Commission takes the Proposals into account and states in writing that the Proposals form the basis or part of the basis of a Determination.
- D. The Proposals are intended to require Live Nation and/or MCD to inform the Commission in advance of any proposal to acquire a Festival or to acquire control of a Festival Operator during the Term where this would not otherwise be notifiable compulsorily to the Commission or to the European Commission, and, if requested to do so by the Commission, to notify voluntarily any such Proposed Acquisition to the Commission.
- E. The Proposals are intended to alleviate concerns identified by the Commission which result from vertical overlaps in the activities of Live Nation and MCD in the provision of Primary Ticketing Services, the promotion of live events, and the operation of live event venues in the State.

DEFINITIONS

- 1. In these Proposals, the following terms shall have the following meanings:



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

“Arm’s Length Basis” means MCD Productions Unlimited Company and all its subsidiaries, and TMI each acting independently and in its own interest at an arm’s length on the basis of normal commercial conditions;

“Arm’s Length Commitment Term” means a period of [CONFIDENTIAL] years beginning on the Commencement Date;

“Booking Process” means the process whereby a Promoter or the agent of an artist books a Live Nation Venue for a live event, including where a Promoter or the agent of an artist attempts to provisionally secure or pencil-in a date for a live event at a Live Nation Venue;

“Commencement Date” means the date of the Determination;

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

“Confidential Information” means the identity of an artist that a Third Party Promoter proposes to promote in the State, which is disclosed during the Booking Process by the Third Party Promoter or the agent of an artist, to a Live Nation Venue, Live Nation Venue Personnel or Live Nation;

“Determination” means a determination of the Commission under section 22(3)(a) of the Act that the Proposed Transaction may be put into effect;

“EU Merger Regulation” means Council Regulation (EC) No 139/2004 on the Control of Concentrations between Undertakings;

“Festival” means a live music festival that takes place in the State;

“Festival Operator” means an entity that controls one or more Festivals through a controlling interest or the right to operate and/or manage the Festival(s). The notion of control shall be interpreted pursuant to section 16 of the Act;

“Live Nation” means Live Nation (Music) UK Limited, a private limited company incorporated under the laws of England and Wales (registration no. 02409911), which has its registered office at 2nd Floor, Regent Arcade House, 19-25 Argyll Street, London, W1F 7TS, United Kingdom, its successors and assigns, and Live Nation Affiliates, including, for the avoidance of doubt, LN-Gaiety;

“Live Nation Affiliates” means all undertakings or persons which, directly or indirectly, control Live Nation, undertakings directly or indirectly controlled by Live Nation and/or by the ultimate parents of Live Nation, excluding MCD Productions Unlimited Company and its subsidiaries, whereby the notion of control shall be interpreted pursuant to section 16 of the Act;

“Live Nation Venue” means a live event venue located in the State that is owned, operated, or managed by Live Nation;



“Live Nation Venue Personnel” means any director, officer, manager, employee or representative of Live Nation involved in the operation or management of a Live Nation Venue;

“LN-Gaiety” means LN-Gaiety Holdings Limited, a private limited company incorporated under the laws of England and Wales (registration no. 05322257), which has its registered office at 2nd Floor, Regent Arcade House, 19-25 Argyll Street, London, W1F 7TS, United Kingdom, its successors and assigns, and Live Nation Affiliates;

“MCD” means MCD Productions Unlimited Company, a private unlimited company incorporated under the laws of Ireland (registration no. 348378), which has its registered office at 7 Park Road, Dun Laoghaire, Co. Dublin, A96 KP71, Ireland, its successors and assigns, and MCD Affiliates;

“MCD Affiliates” means all undertakings directly or indirectly controlled by MCD Productions Unlimited Company, whereby the notion of control shall be interpreted pursuant to section 16 of the Act;

“MCD Personnel” means any director, officer, manager, employee, representative of MCD;

“Primary Ticketing Services” means the sale and distribution of tickets for live events to consumers on behalf of Promoters and venues but does not include secondary ticket sales by consumers and professional resellers to other consumers;

“Promoter” means an entity that promotes live events in the State;

“Proposed Acquisition” means a proposal to acquire sole or joint control of a Festival or a Festival Operator where the acquisition would not be notifiable on a mandatory basis to the Commission pursuant to Part 3 of the Act (or its successor provision, if applicable) or notifiable to the European Commission under the EU Merger Regulation;

“Proposed Transaction” means the proposed transaction whereby LN-Gaiety, via its wholly-owned subsidiary LN Gaiety Holdings Ireland Limited, would acquire sole control of MCD Productions Unlimited Company from its ultimate parent company Gaiety Investments Unlimited Company;

“State” means the Republic of Ireland;

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

“Third Party Promoter” means a Promoter that is not controlled by either Live Nation or MCD, whereby the notion of control shall be interpreted pursuant to section 16 of the Act;

“Third Party Venue” means a live event venue located in the State that is not owned, operated or managed by either Live Nation or MCD;

“TMI” means Ticketline Unlimited Company, a private unlimited company incorporated under the laws of Ireland (registration no. 135876), which has its registered office at 2nd Floor College Park House, 20 Nassau Street, Dublin 2, Ireland, and TMI Affiliates.



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

PROPOSALS

Merger notification commitment

2. During the Term, each of Live Nation and MCD undertakes to:
 - (a) inform the Commission in writing in advance of any Proposed Acquisition by it;
 - (b) if requested to do so by the Commission, notify any such Proposed Acquisition to the Commission in accordance with section 18(3) of the Act (or its successor provision, if applicable);
 - (c) procure that Live Nation Affiliates and MCD Affiliates will inform the Commission in writing of any Proposed Acquisition by a Live Nation Affiliate or an MCD Affiliate; and
 - (d) if requested to do so by the Commission, procure that Live Nation Affiliates and MCD Affiliates will notify any such Proposed Acquisition by a Live Nation Affiliate or MCD Affiliate to the Commission in accordance with section 18(3) of the Act (or its successor provision, if applicable).

Confidentiality commitment

3. During the Term, Live Nation undertakes that:
 - (a) Live Nation shall take all reasonable steps to ensure that it shall not disclose, directly or indirectly, Confidential Information to, nor discuss Confidential Information with, MCD or MCD Personnel;
 - (b) Live Nation shall procure that Live Nation Affiliates and Live Nation Venue Personnel take all reasonable steps to ensure that they shall not disclose, directly or indirectly, Confidential Information to, nor discuss Confidential Information with, MCD or MCD Personnel; and
 - (c) Live Nation shall, and where necessary, shall procure that Live Nation Affiliates shall inform Live Nation Venue Personnel of their responsibilities pursuant to the Proposals and provide both training and written guidelines to them in that regard.
4. During the Term, MCD undertakes that:
 - (a) MCD shall take all reasonable steps to ensure that it shall not solicit, directly or indirectly, Confidential Information from, or discuss Confidential Information with, Live Nation Venue Personnel;



- (b) MCD shall procure that MCD Affiliates and MCD Personnel take all reasonable steps to ensure that they shall not solicit, directly or indirectly, Confidential Information from, or discuss Confidential Information with, Live Nation Venue Personnel; and
- (c) MCD shall, and, where necessary, shall procure that MCD Affiliates shall, inform MCD Personnel of their responsibilities pursuant to the Proposals and provide both training and written guidelines to them in that regard.

Venues commitment

- 5. During the Term, Live Nation and MCD undertake that they shall not, and they shall procure that Live Nation Affiliates and MCD Affiliates shall not:
 - (a) refuse or directly or indirectly threaten to refuse to provide live events to a Third Party Venue; or
 - (b) provide or directly or indirectly threaten to provide live events to a Third Party Venue on terms which are less favourable than the terms of an existing contract between MCD or MCD Affiliates, and that Third Party Venue,

because that Third Party Venue has contracted with, has contemplated contracting with, or has threatened to contract with, a supplier of Primary Ticketing Services other than TMI.

- 6. For the avoidance of doubt, outside of the circumstances described in paragraph 5, paragraph 5 shall not restrict or inhibit MCD's or MCD Affiliates' discretion to determine where to book live events in the State or to negotiate contractual terms with Third Party Venues.

Arm's Length Commitment

- 7. During the Arm's Length Commitment Term, MCD Productions Unlimited Company and all its subsidiaries, and Live Nation undertake that any contract or other negotiations in respect of the supply of Primary Ticketing Services by TMI to MCD Productions Unlimited Company and all its subsidiaries, will be conducted on an Arm's Length Basis.
- 8. For the avoidance of doubt, paragraph 7 does not in any way restrict or inhibit MCD's freedom of contract or place any obligation on MCD to contract with a party other than TMI or to accept any terms offered by a party other than TMI.

Compliance

- 9. Live Nation shall submit to the Commission within twelve (12) months of the Commencement Date, and, at intervals of one year thereafter during the Arm's Length Commitment Term, a written certificate in the form set out in Schedule A, signed by a director of Live Nation confirming that Live Nation has complied with its obligations set out in these Proposals in the preceding period.
- 10. MCD shall submit to the Commission within twelve (12) months of the Commencement Date, and, at intervals of one year thereafter during the Arm's Length Commitment



Term, a written certificate in the form set out in Schedule B, signed by a director of MCD confirming that MCD has complied with its obligations set out in these Proposals in the preceding period.

11. The Commission reserves the right to require Live Nation or MCD to provide to the Commission, at any time, such additional information as the Commission requires in order for the Commission to verify compliance with its obligations set out in these Proposals. Live Nation and MCD shall, and shall procure that their Affiliates' shall, promptly provide to the Commission all such information in its possession.
12. The Commission may provide such written directions to Live Nation or MCD from time to time as needed to require compliance with these Proposals. Live Nation and MCD shall, and shall procure that their Affiliates' shall, comply promptly with any written direction issued by the Commission pursuant to these Proposals.
13. Each of Live Nation and MCD shall nominate a director who will have responsibility for monitoring compliance by it with these Proposals, for responding to any request(s) for information and for complying with any written direction(s) received from the Commission in connection with these Proposals. Each of Live Nation and MCD shall provide the name and contact details of such director to the Commission and shall provide written notice to the Commission in advance of any change of the director nominated pursuant to this paragraph of the Proposals and shall promptly provide to the Commission the name and contact details of any director who is to replace the prior nominated director.
14. With the exception of paragraph 7 (the Arm's Length Commitment) and paragraphs 9 to 13 (Compliance), these Proposals will come into effect on the Commencement Date and will remain in force during the Term. Paragraph 7 and paragraphs 9 to 13 will remain in force during the Arm's Length Commitment. For the avoidance of doubt, the Proposals shall have no retrospective effect.

Review clauses

15. The Commission may at its sole discretion waive, modify, or substitute any provision in these Proposals of its own motion at any time, subject to agreement with Live Nation and MCD.
16. The Commission may at its sole discretion waive, modify, or substitute any provision in these Proposals in response to a reasoned written request from Live Nation and MCD.