

Competition Tribunal



Tribunal de la concurrence

Reference: *The Commissioner of Competition v Live Nation Entertainment, Inc et al*, 2018 Comp Trib 8

File No: CT-2018-005

Registry Document No: 16

IN THE MATTER OF an application by the Commissioner of Competition for orders pursuant to section 74.1 of the *Competition Act*, RSC 1985, c C-34 regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.05 of the Act;

AND IN THE MATTER OF a case management conference held on April 9, 2018 to discuss the proposed schedule for the disposition of this application.

BETWEEN:

The Commissioner of Competition
(applicant)

and

Live Nation Entertainment, Inc, Live Nation Worldwide, Inc, Ticketmaster Canada Holdings ULC, Ticketmaster Canada LP, Ticketmaster L.L.C., The V.I.P. Tour Company, Ticketsnow.com, Inc, and Tnow Entertainment Group, Inc
(respondents)



Date of case management conference: April 9, 2018
Before Judicial Member: D. Gascon J. (Chairperson)
Date of Order: April 17, 2018

SCHEDULING ORDER

[1] **FURTHER TO** the application filed by the applicant, the Commissioner of Competition (“**Commissioner**”), against the respondents, Live Nation Entertainment, Inc et al (“**Respondents**”), for orders pursuant to section 74.1 of the *Competition Act*, RSC, c C-34, as amended (“**Act**”) regarding conduct allegedly reviewable under paragraph 74.01(1)(a) and section 74.05 of the Act (“**Application**”);

[2] **AND FURTHER TO** the jointly proposed timetable submitted by the parties on March 27, 2018 and to the discussions with counsel for both parties at a case management conference held on April 9, 2018 (“**CMC**”);

[3] **WHEREAS** the parties’ jointly proposed timetable provides for a total period of over 20 months for the disposition of this Application, from the filing of the Notice of Application to the hearing on the merits, which is proposed to start in October 2019;

[4] **AND WHEREAS** the Tribunal has indicated to the parties and their counsel that it would be available and ready to hear this matter earlier, in the first half of 2019;

[5] **AND WHEREAS** the Tribunal aims at issuing scheduling orders that contemplate completing the various discovery and pre-hearing disclosure steps of its proceedings within benchmarks that the Tribunal considers to be reasonable timelines;

[6] **AND WHEREAS** the Tribunal nonetheless remains mindful of the fact that the actual timetable of each matter may vary depending on the particular context and circumstances of each case;

[7] **AND WHEREAS** further to the submissions made by counsel for the parties at the CMC, the Tribunal was informed that this Application is not a typical deceptive marketing practices case, that the alleged conduct covers a long period of time, that the number of relevant documents to be produced is expected to be large and to involve numerous custodians, and that expert evidence will be required;

[8] **AND WHEREAS** the Tribunal further notes that, in this case, the longer proposed timeframe for the service of Affidavits of Documents and the delivery of documents will allow for a single production of documents by all parties on the proposed date for this step;

[9] **AND WHEREAS** counsel for the parties have indicated to the Tribunal that the jointly proposed timetable is realistic and achievable, and will considerably limit the risk of any adjournment of the hearing on the merits scheduled to start in October 2019;

[10] **AND WHEREAS** counsel for the parties have mentioned to the Tribunal that, in their view, reducing the proposed timetable by four months or more in order for the hearing on the merits to take place in the Spring of 2019 would not be reasonably possible or feasible;

[11] **AND WHEREAS** neither the Commissioner nor the Respondents have proposed a timetable that would contemplate a hearing on the merits in the first half of 2019, despite the fact that the Tribunal has informed the parties that it would have been available and ready to deal with this matter more expeditiously;

[12] **AND WHEREAS** in light of the foregoing and in the particular circumstances of this case, the Tribunal is satisfied that the following scheduling order is appropriate and respects the principles found in subsection 9(2) of the *Competition Tribunal Act*, RSC 1985, c 19 (2nd supp) and, in particular, the considerations of procedural fairness;

THE TRIBUNAL ORDERS THAT:

[13] The schedule for the discovery and pre-hearing disclosure steps of the Application shall be as follows:

April 20, 2018	Filing of any preliminary motion brought by the Respondents, including in respect of venue
May 4, 2018	Deadline to file any response to preliminary motions
May 10, 2018	Hearing of any preliminary motion brought by the Respondents, including in respect of venue
July 20, 2018	Service of Affidavits of Documents and delivery of documents by all parties
September 14, 2018	Last day to file motions arising from Affidavits of Documents and/or productions, including motions challenging claims of privilege
October 1, 2018	Deadline to file any responses to motions arising from Affidavits of Documents and/or productions, including motions challenging claims of privilege
October 11, 2018	Hearing of any motions arising from Affidavits of Documents, productions and/or claims of privilege
November 2, 2018	Deadline for delivery of any additional productions resulting from Affidavits of Documents, productions and/or claims or privilege motions
November 30, 2018	Deadline for completion of examinations for discovery, in accordance with a schedule to be settled between counsel
January 14, 2019	Deadline for fulfilling answers to discovery undertakings
February 11, 2019	Last day to file motions arising from answers to undertakings and refusals
February 18, 2019	Deadline to file any responses to motions arising from answers to undertakings and refusals
February 21, 2019	Hearing of any motions arising from answers to undertakings or refusals
March 22, 2019	Last day for follow-up examinations for discovery

April 10, 2019	Deadline to provide and deliver mediation briefs
April 17-18, 2019	Mediation
April 25, 2019	Case management conference on pre-hearing disclosure steps and preliminary issues
June 5, 2019	Applicant to serve and file documents relied upon, witness statements and expert reports, if any
	Applicant to serve list of documents proposed to be admitted without further proof
	Applicant to indicate documents on which privilege is waived
June 12, 2019	Last day to file motions for further examination for discovery following waivers of privilege
June 19, 2019	Deadline to file any responses to motions for further examination for discovery following waivers of privilege
June 27, 2019	Hearing of any motions for further examination for discovery following waivers of privilege
August 9, 2019	Respondent to serve and file documents relied upon, witness statements and expert reports, if any
	Deadline for delivering any requests for admissions
August 27, 2019	Applicant to serve and file list of reply documents, witness statements and expert reports, if any
	Last day to file motions for summary disposition and/or any motions related to the evidence (documents relied upon, witness statements and expert reports)
September 6, 2019	Deadline to file any responses to motions for summary disposition and/or motions related to the evidence (documents relied upon, witness statements and expert reports)
September 10, 2019	Pre-trial case management conference
September 12, 2019	Hearing of any motions for summary disposition and/or any motions related to the evidence (documents relied upon, witness statements and expert reports)

September 20, 2019 Deadline to provide documents to the Tribunal for use at the hearing (e.g., briefs of authorities, witness statements, expert reports)

Deadline for responding to any requests for admissions

September 27, 2019 Deadline for delivering any agreed statement of facts.

[14] The hearing of the Application shall commence at 9:30 a.m. on Tuesday, October 8, 2019, at the place to be determined by the Tribunal in a subsequent order, and the schedule for the hearing shall be as follows:

October 8-11, 2019 First week of hearing (4 days)

October 15-18, 2019 Second week of hearing (4 days)

October 22-25, 2019 Third week of hearing (4 days)

October 30-31, 2019 Oral arguments (2 days)

DATED at Ottawa, this 17 day of April 2018.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Denis Gascon

COUNSEL OF RECORD:

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The Commissioner of Competition

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For the respondents:

Live Nation Entertainment, Inc et al

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