

Competition Tribunal



Tribunal de la concurrence

Reference: *The Commissioner of Competition v Live Nation Entertainment, Inc et al*, 2018 Comp Trib 18

File No: CT-2018-005

Registry Document No: 45

**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 request by the Respondents for an extension of time to comply with the Tribunal's Order of October 17, 2018.

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: November 8, 2018

Before Judicial Member: M. Phelan J.

Date of Order: November 9, 2018

**REASONS FOR ORDER AND ORDER REGARDING THE RESPONDENTS' REQUEST FOR AN EXTENSION OF TIME TO COMPLY WITH THE TRIBUNAL'S ORDER OF OCTOBER 17, 2018**

[1] The Respondents requested an extension of time to comply with the Tribunal’s Order of October 17, 2018 (“**Production Order**”) requiring production of certain records. The due date for compliance was November 2, 2018. The Respondents request a two-week extension to November 16, 2018.

The request is opposed by the Commissioner.

[2] There is no utility in outlining in detail the facts and arguments. Suffice it to say that the task of production has not proved easy or quick – at least in the Respondents’ view.

[3] The only area of substantive dispute is the production of “transactional data”. The Commissioner has vacillated between requesting only certain categories of information to the production of the whole transactional data base.

[4] On August 24, 2018, in recognition of the significant size of the transactional data, the Commissioner indicated the types or categories of information which he expected to receive. Properly understood this was an attempt to narrow the production to a more manageable and relevant basis.

[5] Following the Production Order, on October 17, 2018, the Commissioner expanded or changed some of the categories of transactional data he wished to see.

[6] In the course of trying to respond to the Commissioner’s October 17, 2018 request, the Respondents advised that some of the information sought did not exist and that compliance with the remainder could not be completed by November 2, 2018.

[7] Largely as a result of this issue the Commissioner refused to consent to the proposed amendment. In furtherance of its position, the Commissioner has taken the position that if he cannot get everything he particularized, he wanted the whole data base.

[8] This latest position while technically correct (subject to relevancy) is wholly unreasonable at this time. The Respondents have said they would be producing the information as particularized on October 17, to the extent it exists. To now switch to wholesale production would require a review for relevancy which would extend far beyond November 16 and prematurely push off production of any of this information to a later date.

[9] Having sensibly sought to particularize the type of data needed, the Commissioner invites a “data dump” even before production has been made.

[10] In my view, the appropriate approach is to allow the Respondents to complete production of the transactional data as particularized, and to provide the Commissioner with the data dictionaries or other information (if existing) which identifies the available fields of information in the transactional data base. The Respondents have no obligation to create records for the Commissioner.

[11] Any alleged deficiencies or production problems can be addressed – if there is any basis for complaint.

[12] Given the interrelationship of part of the Production Order (revised Affidavits of Documents for example) which are dependent on the production of other records, I am prepared to grant an extension of time for compliance with the Production Order.

[13] It is apparent that this delay impacts the Scheduling Order which calls for discoveries to be completed by the end of November.

[14] The parties are to consult each other with a view to adjusting the Scheduling Order while maintaining compliance with the date of the hearing of the matter. The parties are to advise the Tribunal of the need for a case management conference to address scheduling adjustments after production, as ordered, has been made.

[15] With respect to the Clickstream data produced by the Respondents, the Respondents have advised the Commissioner how to obtain the necessary software from an arm's length third party. Nothing further need be done at this time by the Respondents on this matter.

[16] This is not a proper case for a cost award; there is a mixed result for each party.

**THE TRIBUNAL ORDERS THAT:**

[17] Compliance with the Production Order is extended to November 16, 2018.

[18] The parties are to comply with the terms of the Reasons.

[19] No costs are awarded.

DATED at Ottawa, this 9<sup>th</sup> day of November 2018.

SIGNED on behalf of the Tribunal by the presiding judicial member

(s) Michael Phelan

**COUNSEL OF RECORD:**

For the applicant:

The Commissioner of Competition

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Derek Leschinsky  
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Paul Klippenstein

For the respondents:

Live Nation Entertainment, Inc et al

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