

COMPETITION TRIBUNAL
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File No.

OTTAWA, ONT.

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COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34 (the “*Competition Act*”);

AND IN THE MATTER OF an application by the Consumers Council of Canada (“CCC”) for an order pursuant to sections 77 and 79 of the *Competition Act*;

B E T W E E N:

CONSUMERS COUNCIL OF CANADA

Applicant

and

LIVE NATION ENTERTAINMENT, INC., TICKETMASTER LLC, LIVE NATION CANADA, INC., LIVE NATION ONTARIO CONCERTS GP, INC., RESEAU ADMISSION ULC, TICKETMASTER CANADA LP, and TICKETMASTER CANADA ULC

Respondents

PROPOSED NOTICE OF APPLICATION
(Pursuant to sections 77 and 79 of the *Competition Act*)

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TAKE NOTICE THAT:

A. Definitions

1. In this Notice of Application, the following terms have the following meanings:

- (a) “**Act**” means the *Competition Act*, RSC 1985, c. C-34;
- (b) “**AEG**” means Anschutz Entertainment Group.
- (c) “**Canadian Affiliates**” means the respondents, Live Nation Canada, Inc., Live Nation Ontario Concerts GP, Inc., Réseau Admission ULC, Ticketmaster Canada LP, and Ticketmaster Canada ULC.
- (d) “**Live Nation**” means the respondent, Live Nation Entertainment, Inc., as well as all affiliated corporations that implement its directions in Canada, which may include any or all of the Canadian Affiliates.
- (e) “**OVG**” means Oak View Group.
- (f) “**Respondents**” means Live Nation and Ticketmaster, and all Canadian Affiliates.
- (g) “**Ticketmaster**” means the respondent, Ticketmaster LLC, as well as all affiliated corporations that implement its directions in Canada, which may include any or all of the Canadian Affiliates.
- (h) “**Tribunal**” means the Competition Tribunal.

2. In this Notice of Application, the terms used to refer to the five main industry participants – “**Fans**”, “**Artists**”, “**Venues**”, “**Promoters**” (including “**Artist Promoters**” and “**Venue Promoters**”), and “**Ticketers**” – are defined below in paragraphs 7-12.

3. In this Notice of Application, the five main payment types between industry participants – “**Ticket Prices**” (including “**Face Value**” and “**Fees**”), “**Artist Payments**” (often the greater of a “**Guarantee**” and a “**Variable Payment**”), “**Rent**”, “**Rebates**”, and “**Ticketing Fees**” – are defined below in paragraphs 13-19.
4. In this Notice of Application, the six relevant markets – the “**Venue Promotion Market**”, the “**Venue Market**”, the “**Artist Promotion Market**”, and the “**Artist Market**”, the “**Primary Ticketing Market**” – are defined below in paragraphs 20-39.

B. Relief Sought

5. The applicant will make an application to the Tribunal pursuant to section 103.1 of the *Competition Act* for:
 - (a) An order pursuant to sections 77(2)-(3) and 79(1)-(2) of the *Competition Act*:
 - (i) Requiring the Respondents to split up Live Nation and Ticketmaster, and/or to divest Venues;
 - (ii) Prohibiting the Respondents from exercising, enforcing, or threatening to enforce exclusivity clauses or radius clauses larger than 10 km in some or all of their contracts for Promotion or Ticketing with Artists and Venues in Canada, or from retaliating against counterparties who breach those terms;
 - (iii) Requiring the Respondents to inform the Artists and Venues in Canada with which they have contracted for Promotion or Ticketing that they will not enforce exclusivity clauses or radius clauses larger than 10 km and will not retaliate against counterparties who breach those clauses;

- (iv) Prohibiting the Respondents from entering into new contracts for Promotion or Ticketing with Artists or Venues in Canada containing exclusivity clauses or radius clauses larger than 10 km for 10 years;
 - (v) Declaring void any contract, written or unwritten, between the Respondents and OVG that include any of the terms described below at paragraphs 65-67; and
 - (vi) Requiring the Respondents to direct their subsidiaries to comply with the orders listed above;
- (b) An order pursuant to sections 77(3.1) and 79(4.1) of the *Competition Act* requiring the Respondents to pay an amount not exceeding the value of the benefit derived from the conduct that is the subject of the orders described in paragraph 5(a) above;
 - (c) Any orders that the Tribunal considers appropriate pursuant to sections 77(3.2) and 79(4.2) to implement the orders described in paragraph 5(b) above;
 - (d) Costs of this proceeding; and
 - (e) Such further and other orders, including interim orders, as the applicant may request and the Tribunal deems just.
6. The persons against whom the order is sought are the Respondents. Their addresses are set out below.

C. **Facts and Economic Theory**

(i) ***The Live Music Industry***

(a) **Structure of the Live Music Industry**

7. There are five main types of participants in the live music industry, each of which is described in turn below.

(1) **Fans**

8. “**Fans**” buy one or more tickets to live music events.
- (a) In this claim, the term “Fans” includes resellers and scalpers.
- (b) Fans bear a substantial part of the economic consequences of the Respondents’ conduct described below.

(2) **Artists**

9. “**Artists**” perform at live music events and tours.
- (a) In this claim, the term “Artist” is limited to people who derive or have derived a substantial fraction of their income from performing at live music events. The applicant will present evidence to establish a precise income threshold above which a person qualifies as an artist.
- (b) Artists are usually responsible for, and pay for, arranging hotels and transportation; building and moving sets; and hiring opening acts, background musicians, and personal security. They may offload some of those tasks to a Promoter, a Venue, or some other entity, but they usually have to pay for doing so.

- (c) Artists bear a substantial part of the economic consequences of the Respondents' conduct described below.

(3) Venues

10. “**Venues**” are amphitheatres, arenas, coliseums, stadiums, theatres, or other venues used at least in part to host live music events, or the owners or exclusive lessors of those locations.

- (a) In this claim, the term “Venue” is limited to large facilities. The applicant will present evidence to establish a more precise capacity threshold above which a facility qualifies as a “Venue”.
- (b) Venues are usually responsible for, and pay for, having adequate sound and lighting equipment; hiring sound and lighting technicians, backstage managers, production assistants, ushers, and building security; and obtaining liquor licenses and licenses for copyrighted music used by the Artist in their performance. They may offload some of those tasks to a Promoter or to some other entity, but they usually have to pay for doing so.
- (c) Venues bear a substantial part of the economic consequences of the Respondents' conduct described below.

(4) Promoters

11. “**Promoters**” produce and market live music events and tours.

- (a) In most cases, Promoters have contracts with both Artists and Venues, providing different but overlapping sets of services to each. However, in theory, a Promoter could act only for Artists or for Venues.

- (b) To the extent that Promoters are providing services to Artists, this claim refers to them as “**Artist Promoters**”. Artist Promotion services may include choosing and booking Venues, choosing and booking a Ticketer, marketing the tour, and most importantly paying the Artist out of the proceeds of the event or tour. It is usually the Promoter who pays the expenses of the event or tour upfront, and who is directly entitled to the Face Value of ticket sales. Artist Promoters may also be responsible for some of the tasks listed above in paragraph 9(b).
- (c) Artist Promoters should not be confused with booking agents or managers, who sit between the Artist and the Artist Promoter.
- (d) Exclusive Artist Promotion contracts may blur the lines between these roles. Still, there are two important differences. First, an Artist Promoter pays the Artist; the Artist pays their booking agent or manager. Second, Artist Promoters are generally limited to touring; booking agents or managers may have a role outside touring, such as booking private events or working with sponsors or advertisers.
- (e) To the extent that Promoters are providing services to Venues, this claim refers to them as “**Venue Promoters**”. Venue Promotion services may include choosing and booking Artists (and possibly events other than live music), choosing and booking a Ticketer, and marketing events held at the Venue. Venue Promoters may also be responsible for some of the tasks listed above in paragraph 10(b).
- (f) Venue Promotion should not be confused with venue booking agents, managers, operators, or developers.

- (g) Exclusive Venue Promotion contracts may blur the lines between these roles. Still, there are two important differences. First, Venue Promoters do not control the Venue's own events. For example, if the Venue is owned by a sports team, even an exclusive Venue Promotion contract will likely be limited to non-sports events. In that case, the booking agent, manager, or operator would remain in control of sports events. Second, managers, operators, or developers remain responsible for staff and physical upkeep of the facility.
- (h) The marketplace for Promoters has large cross-market network effects. The value of a Promoter to Venues is in large part driven by their access to Artists, while their value to Artists is in large part driven by their access to Venues.
- (i) Even with the benefit of large network effect on both sides, however, margins for Promoters are low. For example, the Respondents' adjusted operating margin for Promotion in 2023 was 1.7%.

(5) Ticketers

12. **“Ticketers”** are hired by Venues or Promoters to operate platforms to sell tickets for live music events hosted by the Venue or produced by the Promoter.
- (a) For greater certainty, “Ticketer” only refers to primary ticketing. No remedies are sought with respect to secondary ticketing, as such claims are already covered in an action certified in a decision reported at 2024 ONSC 2305.
 - (b) Margins for ticketing are high. For example, the Respondents' adjusted operating margin for ticketing in 2023 was 37.7%.

(b) Payment Flows in the Live Music Industry

13. The various participants in the live music industry have complicated financial relationships with each other. It is not uncommon for one participant to both pay and be paid by another in the same transaction, or for three participants to each be paying another.
14. To limit confusion, the following sections only discuss the four payment structures that are most important to this case, made between the main market participants.

(1) Fans Pay Ticket Prices

15. When Fans buy tickets *on the primary market* for live music events, they pay the “**Ticket Price**” plus applicable taxes. The Ticket Price includes the following amounts.
 - (a) “**Face Value**” is the amount set by the Artist Promoter as the base price for sales by the Primary Ticketer. The Face Value is paid to the Promoter.
 - (b) “**Fees**” are the sum of all charges and fees added to the price of tickets by or for the benefit of the Ticketer or the Venue, excluding taxes. Fees can be called by a wide variety of names, including service fees, fulfillment fees, convenience fees, handling fees, delivery fees, order processing fees, payment processing fees, facility fees, venue fees, capital restoration fund fees, Pricemaster fees, or Platinum fees. Fees can be paid to the Ticketer, the Promoter, or the Venue. The Respondents claim that they are all set by Venues, which is not accurate, but to the extent that this is true, Venues are directed on how to set Fees by Ticketers and Promoters.

(2) Promoters Pay Artist Payment

16. Promoters pay the Artist an “**Artist Payment**”. The Artist Payment is usually structured so that the Artist gets the greater of:

- (a) A fixed payment (“**Guarantee**”), e.g. \$10,000 / show; and
- (b) A payment that depends on Face Value of tickets sold (“**Variable Payment**”), e.g. 10% of the Face Value.

(3) Artists Pay Rent, But Venues Pay Rebates

- 17. Artists have to pay “**Rent**” to the Venue. In turn, Venues are often required to pay Live Nation a “**Rebate**” – a.k.a. a co-promotion, co-pro, or drawback.
- 18. Although these payments are conceptually distinct, there may not be separate payments. For example, suppose that the Promoter owes the Artist \$50,000 as an Artist Payment, the Artist owes the Venue \$40,000 in Rent, and the Venue owes the Promoter \$25,000 as a Rebate. The agreements between the parties might specify that the Promoter will make all of the payments, such that the Promoter would pay \$10,000 to the Artist and pay \$15,000 to the Venue, keeping the balance as its Rebate. In that situation, the contract might say that the Rent is payable by the Promoter, and there is no payment from the Artist to the Venue. But the Artist is bearing the economic burden of that Rent, and in that sense is the “customer” of the Venue with respect to that Rent within the meaning of section 77(1) of the *Competition Act*.

(4) Venues Pay Ticketing Fees

- 19. As described above, some of the Fees charged as part of the Ticket Price are charged on behalf of Venues, and Venues are entitled to those proceeds. In turn, however, the Venues have to pay a portion of at least some of those Fees to the Ticketer (“**Ticketing Fees**”).

(ii) The Markets at Issue

(a) Limitations applicable to all markets

20. This claim only deals with live music events. None of the market definitions below include other types of live entertainment events (e.g. sports games) or non-live music (e.g. recorded concerts on a streaming platform). Neither of those are substitutes for live music events.
21. In the alternative to paragraph 20, if some other types of live entertainment events (e.g. comedy shows) are substitutes for live music events, then the same allegations are made with respect to those segments of the markets described below.
22. As described above at paragraph 10(a), this claim only deals with events in Venues – not those in smaller facilities.
23. As described above at paragraph 12(a), to the extent that conduct of Ticketers are at issue, this claim is limited to primary ticketing.
24. The applicant will present evidence on the relevant geographic market. Depending on whether the market is seen from the perspective of the Fan, the Artist, or the Venue, the geographic market might be (a) the world; (b) Canada and the United States; (c) Canada only; (d) broken down by region; or (e) broken down by city.

(b) Venue Promotion Market

25. There is a market for Venue Promoters (the “**Venue Promotion Market**”).
26. In this market, Venue Promoters are the suppliers.
27. In this market, Venues are the customers, and they pay Rebates. As described below, the Respondents also raise the effective price by imposing contractual restrictions.

(c) Venue Market

28. There is a market for access to Venues (the “**Venue Market**”).
29. In this market, the people with the authority to book an event at a Venue are the suppliers. That is usually the Venue Promoter. The Venue is only a supplier if it does not have an exclusive Venue Promoter.
30. In this market, Artists are the customers, and they pay Rent. As described below, the Respondents also raise the effective price by imposing contractual restrictions.

(d) Artist Promotion Market

31. There is a market for Artist Promoters (the “**Artist Promotion Market**”).
32. In this market, Artist Promoters are the suppliers.
33. In this market, Artists are the customers, and they pay the inverse of the Artist Payment. In other words, the lower the Artist Payment, the higher the effective price the Artist is paying for services in the Artist Promotion Market. As described below, the Respondents also raise the effective price by imposing contractual restrictions.

(e) Artist Market

34. There is a market for access to Artists (the “**Artist Market**”).
35. In this market, the people with the authority to book one or more performances at a Venue by an Artist are the suppliers. That is usually the Artist Promoter. The Artist is only a supplier if it does not have an exclusive Artist Promoter.
36. In this market, Venues are the customers. As described below, the Respondents also raise the effective price by imposing contractual restrictions.

(f) Primary Ticketing Market

- 37. There is a market for Ticketers (the “**Primary Ticketing Market**”).
- 38. In this market, Ticketers are the suppliers.
- 39. In this market, Venues are the customers, and they pay Ticketing Fees. As described below, the Respondents also raise the effective price by imposing contractual restrictions.
- 40. The Respondents also impose indirect costs in the Primary Ticketer segment by requiring the Venue to agree to make Ticketmaster their exclusive Secondary Ticketer.

(iii) *The Respondents’ Market Shares and Market Power*

- 41. The Respondents act as three of the five market participants in the live music industry, and in all five of the markets described above.
- 42. Below, references are made to their particular involvement in Toronto (excluding the GTA) purely for illustrative purposes. This should not suggest that the issues described herein are just Toronto problems. The same issues exist in all major cities across Canada.

(a) Venue, Venue Promotion, Artist, and Artist Promotion Markets

- 43. The Respondents have a dominant position in the Venue and Venue Promotion Markets.
- 44. Live Nation owns or controls many of the largest Venues in Canada. For example, in Toronto, it owns the new Rogers Stadium (50,000 people), Budweiser Stage (16,000 people), History Toronto (2,500 people), Danforth Music Hall (1,427 people), The Opera House (950 people), and Velvet Underground (440 people).
- 45. The Respondents control roughly ten times as many Venues as they own, whether as lessors, operators, holders of exclusive booking rights, or equity holders.

46. Due to their ownership and control over Venues, the Respondents are “major suppliers” and “widespread” in the Venue and Venue Promotion Market within the meaning of sections 77(2)-(3) of the *Competition Act*, and “substantially or completely control” those markets within the meaning of section 79(1) of the *Competition Act*.
47. The Respondents also have a dominant position in the Artist and Artist Promotion Markets.
48. Live Nation is the Artist Promoter to 11,000 Artists, and also acts as the manager of an additional 380 Artists, which it claims makes it the “one of the world’s leading artist management companies”.
49. Due to their control over Artists, the Respondents are “major suppliers” and “widespread” in the Artist and Artist Promotion Market within the meaning of sections 77(2)-(3) of the *Competition Act*, and “substantially or completely control” those markets within the meaning of section 79(1) of the *Competition Act*.
50. The Respondents exercise their market power in the Venue Promotion Market and the Artist Market by:
- (a) Increasing Rebates and Ticketing Fees;
 - (b) Requiring Venues to make Live Nation their exclusive Venue Promoter; and
 - (c) Requiring Venues to make Ticketmaster their exclusive Primary Ticketer and Secondary Ticketer.
51. The Respondents exercise their market power in the Venue Market and the Artist Promotion Market by:

- (a) Increasing Rents;
- (b) Decreasing Artist Payments, and in particular reducing Guarantees and imposing fees that are used to reduce the final amount paid on account of Artist Payments;
- (c) Requiring Artists to make Live Nation their exclusive Artist Promoter;
- (d) Requiring Artists to forego acting as their own Primary Ticketer in competition with Ticketmaster;
- (e) Requiring Artists to accept that a large fraction of the Ticket Price will be composed of Fees; and
- (f) Requiring Artists to sign contracts containing provisions that restrict the Artist from performing at other Venues within a specified geographic distance and/or time window relative to a contracted performances (“**Radius Clauses**”).

(b) Primary Ticketing Market

- 52. Ticketmaster is the dominant Ticketer. In Canada, it acts both under its own name and under the name TicketWeb. The Respondents are “major suppliers” and “widespread” in the Primary Ticketing Market within the meaning of sections 77(2)-(3) of the *Competition Act*, and “substantially or completely control” that market within the meaning of section 79(1) of the *Competition Act*.
- 53. The Respondents exercise their market power in the Primary Ticketing Market by:
 - (a) Increasing Fees, and the fraction of Ticket Prices attributable to Fees; and
 - (b) Increasing Ticketing Fees.

54. As a result of these exercises of market power, the Respondents' adjusted operating margin is 37%, and increasing. This is above any genuinely competitive level.

(iv) The Respondents' Conduct

(a) Forcing Venues into Exclusive Agreements

55. The Respondents withhold access to the Artist Market – or threaten Venues by intimating that they will do so – unless the Venue agrees to:
- (a) Retain Live Nation as their (exclusive) Venue Promoter;
 - (b) Retain Ticketmaster as their (exclusive) Ticketer; and
 - (c) Limit access to their services in the Venue Market to Artists who the Respondents control, e.g. Artists for whom the Respondents are their (exclusive) Artist Promoter and/or (exclusive) Ticketer.
56. As part of, or ancillary to, the exclusivity arrangements, the Respondents require (or induce) the use of Radius Clauses that restrict Artists from performing at other Venues within a geographic radius and/or time window. These Radius Clauses foreclose rival Venues from accessing Artists and foreclose Artists from accessing rival Venues.
57. Where the Respondents control Venue Promotion or Primary Ticketing at a Venue, Radius Clauses operate to protect the Respondents' commercial position at that Venue by deterring or preventing proximate shows at rival Venues, even where those rival Venues would otherwise be available and efficient alternatives for Artists and Fans.
58. Where Live Nation is already a Venue's (exclusive) Venue Promoter, it directly:

- (a) Enters into agreements on behalf of Venues to retain Ticketmaster as the Venue's (exclusive) Ticketer; and
 - (b) Limits access to the services of the Venue in the Venue Market to Artists who the Respondents control, e.g. Artists for whom the Respondents are their (exclusive) Artist Promoter and/or (exclusive) Ticketer.
59. In contracts that Live Nation negotiates or administers on behalf of Venues it promotes, Radius Clauses are embedded with or alongside Ticketmaster exclusivity, such that a Venue's acceptance of Ticketmaster for primary ticketing is paired with restrictions on competing Venues' ability to host the same Artist within a defined radius or time period.
60. The Respondents follow through on those threats by diverting Artists to other Venues, even if those Venues are worse for the Artist and Fans. The CEO of Live Nation admitted as much in an interview to Variety, saying (emphasis added):
- We can't say to a Ticketmaster venue that says they want to use a different ticketing platform, 'If you do that, we won't put shows in your building.' ... [But] we can do what's right for our business, so we have to put the show where we make the most economics, and maybe that venue [that wants to use a different ticketing platform] won't be the best economic place anymore because we don't hold the revenue.
61. The Respondents engage in similar conduct in the United States. Venues in Canada are aware of these tactics being used in the United States, which implicitly communicates a threat to do the same in Canada. As a result, the Respondents do not have to explicitly communicate their threats to Canadian Venues to have a threatening effect.
62. Where critical Venues cannot be threatened or induced into doing what the Respondents want, the Respondents have a pattern of buying them to obtain the same effect. In Toronto

alone, the Respondents bought Embrace Presents, an independent Promoter that owned or controlled Danforth Music Hall (1,427 people) and Velvet Underground (440 people) in 2019, and then bought The Opera House in Toronto (950 people) in 2023. In each case, the Venues began exclusively using Ticketmaster as their Ticketer, and Fees significantly increased.

63. As a result of threats in Canada and the United States, and acquisitions, Ticketmaster has acquired a dominant position in Ticketing throughout Canada. In Toronto alone (excluding the GTA), they are the exclusive Ticketers for Rogers Stadium (50,000 people), Rogers Centre (39,150 people), Scotiabank Arena (19,800 people), Budweiser Stage (16,000 people), Coca-Cola Coliseum (9,000 people), Great Canadian Toronto (4,000 people), Rebel Toronto (3,900 people), Meridian Hall (3,172 people), Masey Hall (2,752 people), History Toronto (2,500 people), Cabana Pool Bar (2,500 people), Meridian Arts Centre (2,400 people), Danforth Music Hall (1,427 people), Pheonix Concert Theatre (1,350 people), St. Lawrence Centre for the Arts (868 + 449 people), DPRTMNT (1,200 people), Opera House (950 people), El Mocambo (650 people), Mod Club (600 people), Lee's Palace (600 people), CODA (550 people), The Rockpile Bar & Nightclub (500 people), Velvet Underground (440 people), The Horseshoe Tavern (400 people), The Garrison (300 people), Sneaky Dee's (200 people), The Drake Underground (200 people), Hard Luck Bar (150 people), and The Dance Cave (100 people).

(b) Allocating Markets with OVG

64. In the rare cases where competitors cannot be bullied or bought, the Respondents enter agreements to avoid competing. The Respondents' approach to OVG is an example. OVG was perfectly placed to compete with the Respondents.

- (a) OVG was founded in 2015 by two industry titans. Irving Azoff was the former CEO of Ticketmaster and the former Chairman of Live Nation. Tim Leiweke was the former CEO of AEG – Ticketmaster’s biggest competitor – and the former CEO of Maple Leafs Sports & Entertainment. This gave OVG the experience and credibility to take on the Respondents.
 - (b) By 2016, OVG was a major Venue Promoter and manager for Venues, representing an “Arena Alliance” of many of the top arenas across North America, including Scotiabank Arena in Toronto (19,800 people) and Rogers Arena in Vancouver (19,700 people). This gave OVG the scale to take on the Respondents.
 - (c) In 2018, OVG raised \$100 million in private equity. This gave OVG the capital to survive any price war with the Respondents.
65. Instead of competing, however, the Respondents and OVG allocated markets between each other: OVG agreed to not act as an Artist Promoter, while the Respondents agreed not to pressure Venues already managed by OVG into using Live Nation as Venue Promoter.
- (a) In 2016, OVG offered to promote an event. The CEO of Live Nation sent the CEO of OVG an email saying, “whats up? We have done his [touring] and vegas[.] Let’s make sure we don’t let [the artist agency] now start playing us off.” The CEO of OVG backed down, responding, “Our guys got a bit ahead. All know we don’t promote and we only do tours with Live Nation.”
 - (b) In 2019, a Senior Vice President at OVG wrote to a colleague, “It has been our policy to stay on the sidelines when it comes to buying and specifically promoting

tour dates as we are cognizant not to compete with our partner Live Nation in this side of the business.”

- (c) In 2022, OVG again offered to promote an event. The CEO of Live Nation sent the CEO of OVG an email saying, “who would be so stupid to do this and play into [the artist agent’s] arms”? The CEO of OVG backed down, responding, “We have never promoted without you. Won’t.”

66. In 2022, the Respondents and OVG entered into an agreement pursuant to which OVG would force its Venue clients to retain Ticketmaster as their (exclusive) Ticketer, pursuant to 10 year exclusivity agreements.

67. More generally, a key part of the arrangement between the Respondents and OVG is that OVG will act as the Respondents’ “hammer”, communicating the Respondents’ threats to Venues to pressure them into agreeing to use Ticketmaster as their (exclusive) Ticketer.

(c) Forcing Artists into Exclusive Agreements

68. The Respondents withhold access to the Venue Market – or threaten Artists by intimating that they will do so – unless the Artist agrees, for all shows in their current tour and often for shows in future tours, to:

- (a) Retain Live Nation as their (exclusive) Artist Promoter;
- (b) Retain Ticketmaster as their (exclusive) Ticketer, including foregoing making any direct sales to their Fans; and

- (c) Limit access to their services in the Artist Market to Venues who the Respondents control, e.g. Venues for whom the Respondents are their (exclusive) Venue Promoter and/or (exclusive) Ticketer.
- 69. Where Live Nation is already an Artist's (exclusive) Artist Promoter, it directly:
 - (a) Enters into agreements on behalf of Artists to retain Ticketmaster as the Artist's (exclusive) Ticketer; and
 - (b) Limits access to the services of the Artist in the Artist Market to Venues who the Respondents control, e.g. Venues for whom the Respondents are their (exclusive) Venue Promoter and/or (exclusive) Ticketer.
- 70. The Respondents follow through on those threats by refusing to allow Artists to perform in Venues they control, even if those Venues would otherwise be “**dark**”, i.e. they sit empty and unused on those days. A Live Nation internal analysis in 2018 found that the Respondents' 10 largest Venues were dark on nearly 50% of Saturdays in summer. Another internal analysis in 2022 found that their 15 largest Venues were, on average, dark on eight Saturdays between June and September – peak demand times for live music.
- 71. The Respondents also have long memories. When considering whether to allow an Artist to use a Venue they control, they will sometimes look back more than a decade to see whether the Artist has worked with a competitor Artist Promoter.
- 72. Even if Artists do not agree to retain Live Nation as their (exclusive) Artist Promoter, the Respondents are often able to force the Artist to work with them as their (exclusive) Ticketer. Taylor Swift's Eras Tour is the most prominent example. Even though her Artist Promoter was AEG – the owner of AXS, the largest Ticketer unaffiliated with Ticketmaster

– the Respondents leveraged their control over Venues to force Taylor Swift to use Ticketmaster as her exclusive Ticketer for the entire tour, including the shows in Toronto and Vancouver. If Taylor Swift is not able to use her own Artist Promoter’s Ticketer, it is hard to see how any Artist can realistically avoid working with Ticketmaster.

73. In addition, the Respondents require or induce Artists to accept Radius Clauses that restrict the Artist from performing at other Venues within a specified geographic radius and/or time window, thereby limiting the Artist’s ability to schedule shows with rival Venues.
74. The practical effect of Radius Clauses is to reduce the number of proximate shows of a particular Artist available to Fans, limit the capacity of rival Venues to compete for performances, and protect the Respondents’ position as Artist Promoter, Venue Promoter, and Primary Ticketer.

(v) The Respondents’ Conduct Harmed Competitor Promoters and Ticketers

75. The Respondents’ conduct described above prevented entry and expansion of Promoters (both Venue Promoters and Artist Promoters) and Ticketers.

(vi) The Respondents’ Conduct Harmed Venues, Artists, and Fans

(a) Inflation of Rebates and Ticketing Fees

76. But for the Respondents’ conduct described above at paragraphs 55-63, Venues would not be locked into long-term, exclusive agreements with Venue Promoters, or Ticketers. Thus, there would be more competition in the Venue Promotion Market resulting in lower Rebates, and more competition in the Primary Ticketing Market resulting in lower Ticketing Fees.
77. The inflation in Rebates and Ticketing Fees harms Venues.

(b) Inflation of Fees and Ticket Prices

78. The inflation in Rebates and Ticketing Fees has forced Venues to charge more and higher Fees in order to stay in business, which increases Ticket Prices.
79. The inflation in Fees harms Fans.

(c) Inflation in Rents

80. The inflation in Rebates and Ticketing Fees has forced Venues to charge higher Rent in order to stay in business.
81. The inflation in Rent harms Artists.

(d) Reduction in Artist Payments

82. The inflation in Fees relative to Face Value means that Variable Payments are calculated based on a smaller fraction of the Ticket Price. This reduces Variable Payments, which reduces Artist Payments.
83. Additionally, but for the Respondents' conduct described above at paragraphs 64-67, OVG would be competing in the Artist Promotion Market. But for the Respondents' conduct described above at paragraphs 68-72, Artists would not be locked into long-term, exclusive agreements with Artist Promoters. In both of these ways, there would be more competition in the Artist Promotion Market. This would have resulted in both higher Guarantees and Variable Payments being calculated based on a larger fraction of Face Value, each of which would have increased Artist Payments.
84. The Respondents have internally acknowledged that some of their actions had the goal of reducing Guarantees. For example, Live Nation has occasionally purchased Venues at valuations that were economically unjustifiable. Internally, their employees wrote that

these purchases were nevertheless justified because of the benefit of “keeping the [artist] guarantees down” and stopping competitors from “driving the price up” for Artists.

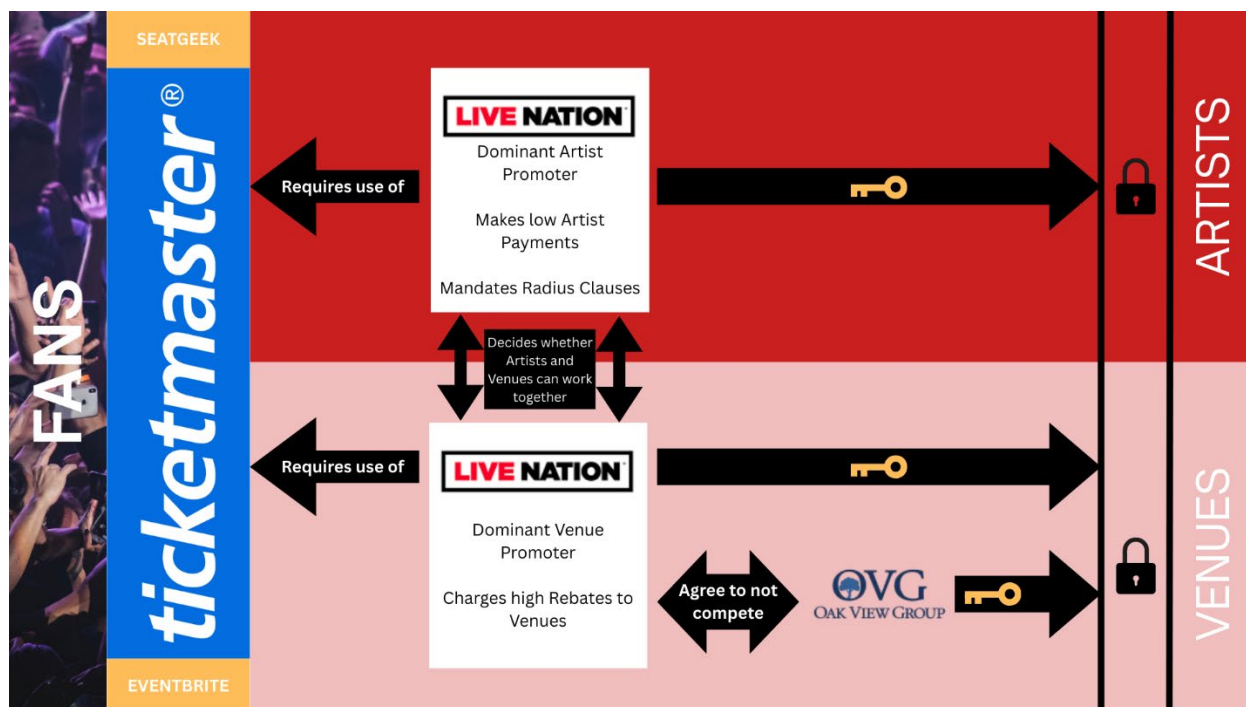
85. The reduction in Artist Payments harms Artists.

(e) Radius Clauses

86. Radius Clauses reduce the number of proximate performances available in a given area and time period, restrict the ability of rival Venues to host competing shows, and limit Artists’ ability to schedule additional performances. By reducing head-to-head competition between Venues and constraining Artists’ options, the Radius Clauses increase prices (including Fees and Rents), reduce consumer choice, and reduce Artist Payments.

(vii) ***Graphical Summary***

87. The image below is a graphical summary of some of the information above. On the right are Artists and Venues, each of which are locked down by Live Nation through exclusivity agreements. Live Nation (and its partner, OVG) hold the keys to allow Artists to perform and Venues to make their space available. They decide which Artists get to work with which Venues, and vice versa. The price for such collaboration invariably includes exclusive use of Ticketmaster as Primary Ticketer – driving Ticketmaster’s large market share – as well as low Artist Payments, Radius Clauses, and high Rebates.



D. Legal Theory

(i) *The Claim Under Section 77*

88. The Respondents' conduct warrants an order under section 77 of the *Competition Act*.

(a) Tied selling under section 77(2)

(1) Tying (with Venues as customers)

89. As described above at paragraphs 55(a)-55(b), 58(a), and 59-61, as a condition of supplying services to Venues in the Artist Market, the Respondents require those Venues to acquire (a) Live Nation's services in the Venue Promotion Market; and (b) Ticketmaster's services in the Primary Ticketing Market. This ties the Venue Promotion Market and the Primary Ticketing Market to the Artist Market within the meaning of part (a)(i) of the definition of "tied selling" in section 77(1) of the *Competition Act*.

90. As described above at paragraphs 55(c), 58(b), and 59-61, as a condition of supplying services to Venues in the Artist Market, the Respondents require those Venues to refrain

from using Artists that the Respondents do not control. This ties the Venue Market to the Artist Market within the meaning of part (a)(ii) of the definition of “tied selling” in section 77(1) of the *Competition Act*.

(2) Tying (with Artists as customers)

91. As described above at paragraphs 68(a)-68(b), 69(a), and 70-72, as a condition of supplying services to Artists in the Venue Market, the Respondents require those Artists to acquire **(a)** Live Nation’s services in the Artist Promotion Market; and **(b)** Ticketmaster’s services in the Primary Ticketing Market. This ties the Artist Promotion Market and the Primary Ticketing Market to the Venue Market within the meaning of part (a)(i) of the definition of “tied selling” in section 77(1) of the *Competition Act*.

92. As described above at paragraphs 68(c), 69(b), and 70-72, as a condition of supplying services to Artists in the Venue Market, the Respondents require those Artists to refrain from using Venues that the Respondents do not control. This ties the Artist Market to the Venue Market within the meaning of part (a)(ii) of the definition of “tied selling” in section 77(1) of the *Competition Act*.

(3) Exclusionary effects

93. These acts of tied selling foreclosed competition by competitor Venue Promoters in the Venue Promotion Market, competitor Artist Promoters in the Artist Promotion Market, and competitor Ticketers in the Primary Ticketing Market.

(b) Exclusive dealing under section 77(2)

(1) Exclusive dealing (with Venues as customers)

94. As described above at paragraphs 55(a)-55(b), 58(a), and 59-61, as a condition of supplying services to Venues in the Artist Market and/or the Venue Promotion Market, the

Respondents require those Venues to sign exclusivity agreements pursuant to which they agree to only use the Respondents' services in the Venue Promotion Market and/or the Primary Ticketing Market. This constitutes exclusive dealing in the Venue Promotion Market and the Primary Ticketing Market within the meaning of part (a)(i) of the definition of "exclusive dealing" in section 77(1) of the *Competition Act*.

95. Further, the Radius Clauses described above constitute or are implemented as part of exclusive dealing within the meaning of section 77(1) because they require or induce Venues to limit supply of their services to Artists that perform at rival Venues within a defined radius and/or time window.

(2) Exclusive dealing (with Artists as customers)

96. As described above at paragraphs 68(a)-68(b), 69(a), and 70-72, as a condition of supplying services to Artists in the Venue Market and/or the Artist Promotion Market, the Respondents require those Artists to sign exclusivity agreements pursuant to which they agree to only use the Respondents' services in the Artist Promotion Market and/or the Primary Ticketing Market. This constitutes exclusive dealing in the Artist Promotion Market and the Primary Ticketing Market within the meaning of part (a)(i) of the definition of "exclusive dealing" in section 77(1) of the *Competition Act*.
97. Further, Radius Clauses constitute or are implemented as part of exclusive dealing within the meaning of section 77(1) because they require or induce Artists to limit supply of their performances to rival Venues within a defined radius and/or time window.

(3) Exclusionary effects

98. These acts of exclusive dealing foreclosed competition by competitor Venue Promoters in the Venue Promotion Market, competitor Artist Promoters in the Artist Promotion Market, and competitor Ticketers in the Primary Ticketing Market.

(c) Market restriction under section 77(3)

(1) Market restriction (with Venues as customers)

99. As described above at paragraphs 55(c), 58(b), and 59-61, as a condition of supplying services to Venues in the Artist Market, the Respondents require those Venues to only supply services in the Venue Market to Artists the Respondents control. This restricts the Venue Market as “market restriction” is defined in section 77(1) of the *Competition Act*.
100. Radius Clauses also amount to “market restriction” within the meaning of section 77(1) because, as a condition of supply, Venues are required or induced to restrict the markets or customers to whom they may provide access, thereby limiting performances that would otherwise be hosted at rival Venues within the radius/time window.

(2) Market restriction (with Artists as customers)

101. As described above at paragraphs 68(c), 69(b), and 70-72, as a condition of supplying services to Artists in the Venue Market, the Respondents require those Artists to only supply services in the Artist Market to Venues the Respondents control. This restricts the Artist Market as “market restriction” is defined in section 77(1) of the *Competition Act*.
102. Radius Clauses also amount to “market restriction” within the meaning of section 77(1) because, as a condition of supply, Artists are required or induced to restrict the markets or customers to whom they may supply performances, thereby limiting performances at rival Venues within the radius/time window.

(d) Criteria common to all section 77 claims

(1) Major suppliers in the relevant markets

103. As described above at paragraphs 43-54, the Respondents are major suppliers or widespread in the Venue Promotion Market, the Venue Market, the Artist Promotion Market, the Artist Market, and the Primary Ticketing Market within the meaning of sections 77(2)-(3) of the *Competition Act*.

(2) Substantial lessening of competition

104. As described above at paragraph 75, the conduct described above harmed competitor Promoters and Ticketers.

105. As described above at paragraphs 76-85, the Respondents charge supra-competitive prices to Venues, Artists, and Fans. The existence and stability of supra-competitive prices is further evidence of a substantial lessening or prevention of competition within the meaning of sections 77(2)-(3) of the *Competition Act*.

(ii) ***The Claim Under Section 79***

106. The Respondents' conduct warrants an order under section 79 of the *Competition Act*.

(a) Anti-competitive acts under section 79(1)(a)

(1) Acquiring customers under section 78(1)(b)

107. As described above at paragraph 62, the Respondents have purchased Venues that were customers of competitor Ticketers or open to working with competitor Ticketers for the purpose of eliminating or preventing the entry of competitor Ticketers. Thus, they engaged in acts covered by section 78(1)(b) of the *Competition Act*.

(2) Scarce facilities under section 78(1)(e)

108. As described above at paragraphs 55-63 and 68-72:

- (a) Access to the Artist Market is a scarce facility for Venues;
- (b) Access to the Venue Market is a scarce facility for Artists; and
- (c) The Respondents have entered agreements with both Artists and Venues to restrict access to each of those markets, pre-empting them, which are acts covered by section 78(1)(e) of the *Competition Act*.

(3) Market restrictions under section 78(1)(h)

109. For the same reasons described above at paragraphs 99-101, the Respondents have engaged in conduct covered by section 78(1)(h) of the *Competition Act*.

(b) Lessening competition under section 79(1)(b)

(1) Substantial lessening of competition

110. For the same reasons described above at paragraphs 104-105, the Respondents' conduct has caused a substantial lessening or prevention of competition within the meaning of section 79(1)(b)(i) of the *Competition Act*.

(2) Plausible competitive interest in the relevant markets

111. As described above at paragraphs 43-54, the Respondents have a plausible competitive interest in the Venue Promotion Market, the Venue Market, the Artist Promotion Market, the Artist Market, and the Primary Ticketing Market within the meaning of section 79(1)(b)(i) of the *Competition Act*.

(iii) The Claim Under Sections 77(3.1) and 79(4.1)

112. If the Tribunal makes one or more orders under sections 77(2)-(3) or 79(1)-(2), then it is appropriate to also order a monetary remedy under sections 77(3.1) and 79(4.1), respectively.

(a) Cap for monetary remedies

113. Full details of the value of the benefit derived from the conduct listed above (the “**Benefit**”) may include any of the following:

- (a) Higher Rebates, Ticketing Fees, and Rents;
- (b) Higher Fees or the Respondents getting a larger fraction of Fees;
- (c) Lower Artist Payments;
- (d) The right to act as or designate merchandisers or payment processors for Venues and Artists; and/or
- (e) The right to act as sponsorship and advertising managers for Venues and Artists.
This is the Respondents’ highest-margin business. Their adjusted operating margin for sponsorship and advertising in 2023 was 61.6%.

(b) Basis for calculating monetary remedies

114. The only way to impose a sufficient incentive to make the Respondents comply is for the monetary remedy to be equal to the full Benefit.
115. In the alternative, the monetary remedy should be calculated on a damages basis, which may include some or all of the following:

- (a) The degree to which Rebates, Ticketing Fees, Rents, and Fees were increased;
- (b) The degree to which Artist Payments were decreased; and/or
- (c) The additional revenue that Venues or Artists could have made had they done their own merchandising, payment processing, sponsorship, and advertising, or found a competitor of the Respondents to do.

(c) Monetary remedies should be retroactive

- 116. The Respondents have engaged in the impugned conduct described above for years. If leave is granted, the precise timeline will be provided before trial, but it likely goes back to at least the time of the Live Nation – Ticketmaster merger in 2010.
- 117. It is unclear when the Respondents obtained the status of “major supplier”, “widespread”, or “dominant” in the relevant markets in Canada, and so obtained market power. If leave is granted, the applicant will present expert evidence to determine this date.
- 118. The first date on which the Respondents engaged in the alleged misconduct while they had market power in the relevant markets in Canada is the “**Start Date**”. The Benefit should be calculated going back to the Start Date. If damages are awarded, they should be calculated on the basis of harms suffered going back to the Start Date.

(d) Monetary remedies should be distributed to Artists, Fans, and Venues

- 119. Fans, Artists, and Venues (other than those owned or controlled by the Respondents) are the victims of the Respondents’ impugned conduct described above, so any monetary remedies net of fees and disbursements should flow to them.

120. Fans are consumers and Artists and Venues are mostly small- or medium-sized businesses. Thus, directing that they receive monetary remedies advances two of the purposes listed in section 1.1 of the *Competition Act*: (a) providing consumers with competitive prices and product choices; and (b) ensuring that small- and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy.

E. Other

121. The Applicant proposes to rely on such further and other material as counsel may advise and the Tribunal may permit.
122. The applicant intends to use English in the proceedings.
123. The applicant requests that the documents in this application be filed electronically.

Dated at Toronto, Ontario this 22nd day
of December, 2025


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