

Kluwer Competition Law Blog

2 Long Phase 2s Complete: What Lessons Learnt?

Philip Andrews (McCann FitzGerald) and Seán O’Dea (McCann Fitzgerald) · Tuesday, July 23rd, 2019

325 days from first filing, the CCPC just recently cleared Live Nation’s acquisition of sole control of Irish concert promoter, MCD Productions, a merger of Ireland’s largest ticketing company and venue operator with the country’s biggest concert and event promoter. Days later, the CCPC announced clearance of a three-to-two merger among Irish providers of commercial laundry and linen rental services following an in-depth 334-day probe. Both were cleared subject to behavioural type commitments, although *Berendsen (Elis)/Kings Laundry M/18/063* involved commitment to sell some customer contracts.

Key Takeaways

- **Phase two merger reviews are getting longer:** At 325 calendar days, *Live Nation/MCD Productions M/18/067* was the longest ever CCPC review process, until *Berendsen (Elis)/Kings Laundry* was approved three days later, 334 calendar days after it was notified to the CCPC. The previous record, *Enva/Rilta M/18/036* (cleared in late 2018), was 230 calendar days.
- **Complex deals still get approved:** It is over a decade since the CCPC blocked a deal outright – in *Kerry/Breeo M/08/009*, the CCPC’s decision in which was overturned on appeal by The Competition Court. *Live Nation/MCD Productions* involved consolidation of ownership of Ireland’s largest music concert promoter, three of Ireland’s biggest rock music festivals, some of Dublin’s largest concert venues, and Ireland’s number one ticketing provider, Ticketmaster. To complicate matters, Ticketmaster is reportedly subject to an on-going CCPC investigation following complaints alleging abuse of dominance. *Berendsen (Elis)/King’s Laundry* involved significant horizontal overlap of two of Ireland’s top linen rental and laundry businesses in a concentrated market.
- **‘Fix-it-first’ remedies may be required:** In *Berendsen (Elis)/King’s Laundry*, the CCPC required a fix-it first remedy, an unusual stipulation which may indicate a change of practice of the CCPC in respect of divestment remedies.

The Commitments in More Detail

Public versions of the CCPC determinations in the two cases have yet to be released. But the CCPC did already publish the commitments imposed as a condition of clearance in both cases.

Confidentiality Commitment: In *Live Nation/MCD Productions*, the CCPC was concerned about what it called “*potential for anticompetitive information sharing.*” The concern appears to have been that Live Nation’s ownership of live venues would provide access to sensitive information on rival event promoters’ plans. To address these concerns, ring-fencing style commitments were required. More specifically, Live Nation committed to take all reasonable steps to ensure that no “*employee or representative of Live Nation*” working at a Live Nation venue discloses confidential information to MCD personnel, and to provide ring-fence training and written guidelines to relevant employees.

Venues Commitment: Also in *Live Nation/MCD Productions*, the CCPC was concerned about potential for “*retaliatory action against independent live event venues because they choose an alternative ticketing services provider.*” Here the CCPC concern appears to have been that Live Nation and MCD could use their combined heft in the market effectively to force independent venues to use Ticketmaster. So the merged entity was required to commit not to refuse or threaten to refuse to deal with any third party if that party has “*contracted with, has contemplated contracting with, or has threatened to contract with, a supplier of Primary Ticketing Services other than [Ticketmaster].*”

Arm’s length Commitment: Again in *Live Nation/MCD Productions*, the merged entity committed (for 5 years) to ensure that “*any contract or other negotiations in respect of the supply of Primary Ticketing Services by [Ticketmaster] to MCD will be conducted on an Arm’s Length Basis.*” The CCPC understands this to mean both parties “*each acting independently and in its own interest at an arm’s length on the basis of normal commercial conditions.*”

Customer Contracts Commitment: In *Berendsen (Elis)/King’s Laundry*, the buyer committed to divest “*three (3) Healthcare Contracts*” and “*such additional Healthcare Contracts of an aggregate value (by reference to 2018 revenue figures), which, when aggregated with the value of the [three] Healthcare Contracts, have a total value of [deleted from public version].*” Notably, no real assets were required to be sold. According to a public version of the commitments package, the buyer committed to divest “*the rights and title in ancillary items such as linen stock (but excluding, for the avoidance of doubt any facilities or fixed assets (e.g., washers, dryers or trucks).*” Also notable is that the buyer committed to sell the relevant customer contracts “*in advance of completion, to the extent it is within its powers of procurement to do so.*”

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