



Accounting, Law, Finance
& Economics Department

Written exam
Duration : 90 minutes

*Students can bring paper
documents*

EDHEC 2
Academic year 2008/2009

Final exam

European Competition
Law

Prof. Cédric MANARA

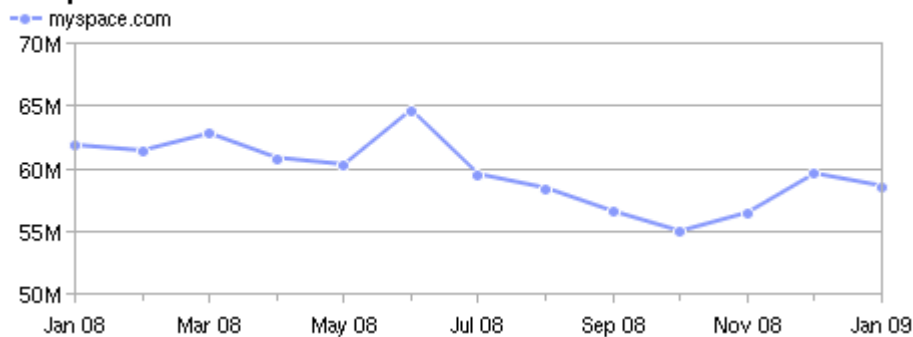


News Corporation is a diversified global media company with operations in eight industry segments: filmed entertainment, television, cable network programming, direct broadcast satellite television, magazines and inserts, newspapers and information services, book publishing, and other. The activities of News Corporation are conducted principally in the United States, Continental Europe, the United Kingdom, Australia, Asia and Latin America. News Corporation had total assets as of December 31, 2008 of approximately US\$50 billion and total annual revenues of approximately US\$33 billion.



News Corporation's assets include MySpace, bought for \$US580 million in 2005. MySpace is often presented as the world's premier lifestyle and social-networking site. MySpace is an interactive, user-submitted network of friends, personal profiles, blogs, groups, photos, music, and videos for teenagers and adults internationally. MySpace is credited for launching the careers of a number of artists who would not have had access to recording labels. MySpace has 125,000,000 registered users. It generated nearly \$1 billion revenues in 2008.

Unique Visitors



The company that runs MySpace is part of News Corporation's Fox Interactive Media division. This new-media unit has contributed \$US7 million to News Corporation's \$US818 million second-quarter operating income, the company said in February 2009. MySpace uses information that members put in their profiles to target them with specific ads.



On September 25, 2008, MySpace launched a joint venture with four partners which include EMI Music, Sony BMG Music Entertainment, Universal Music Group, Warner Music Group, Sony ATV/ Music Publishing, which are the biggest music labels in the world. These four companies together have 40 % of the shares of MySpace Music.

On that day, this joint venture unveiled the new 'MySpace Music' product (<http://www.myspace.com/music>), aimed at becoming the world's richest online music community with a host of new features for both users and artists. The new suite of products, which includes an ever-growing catalog of premium audio and video content, e-commerce offerings, and user and artist playlists, aims to further enhance the MySpace Music experience as well as provide monetization opportunities for its active music community. It is designed as a global product which will ultimately include a vast catalogue of premium and promotional content, a wide selection of new user-to-user sharing tools, and additional e-commerce opportunities for artists including merchandise and ticketing.

The first phase of the new MySpace Music unveils:

- The new, 'MyMusic,' personal music management toolset
- Free and unlimited ad-supported, full-length audio streaming
- Free and unlimited playlist functionality
- Free discography and content catalogues for Sony BMG, Universal Music and Warner artists
- DRM-free MP3 music e-commerce downloads powered by Amazon MP3
- Ringtone e-commerce powered by Jamster

The 'MyMusic' toolset empowers the MySpace Music community to download, stream, and personalize their music content. The new product allows MySpace users to create playlists for both personal and public consumption and profile display, allowing profile visitors to stream all playlisted content on-demand and purchase MP3s of their favorite songs. Users can virally add a friend's playlist to their own profile or take songs from a friend's profile to their own.

In addition to managing and discovering new music, users are now able to utilize MySpace Music's enhanced search capability to browse and search for music by artist, song title, or album title. Users can freely stream their preferred content through a personal music player for a seamless listening experience while browsing MySpace or the other websites.

Users can purchase DRM¹-free MP3 music downloads through MySpace Music's new e-commerce solution powered by Amazon MP3. Now, adjacent to licensed songs within artist profile media players, user-created playlists, and certain music editorial pages, MySpace Music features buy buttons that allow users to download and purchase MP3s playable on all digital music devices, including the iPod. Similarly, users can click on a "Find Ringtones" button—powered by Jamster—within music players to purchase ringtones of their favorite artists.

The first three integrated sponsors to advertise on MySpace Music are McDonald's, Sony Pictures, and Toyota. These brands are powering customers' access to a host of new music services. McDonald's has presence on MySpace Music's personal music player giving away a variety of free music downloads. To promote the opening of Sony Pictures' comedy "Nick & Norah's Infinite Playlist," the movie studio has been skinning all MySpace Music users' profile playlists for a week with branding from the film. With "Toyota Tuesdays," the auto company offers free music downloads and has a strong presence on MySpace Music's Personal Music Player every Tuesday for a year.

MySpace Music hosts more than 5 million major, indie, and unsigned artists within the site's music profiles section, which provides for a vast artist-powered collection of songs, music videos, tour dates, blogs, and photos. MySpace's deep, long-standing ties to the music community have allowed for numerous exclusive features from the most groundbreaking musicians in the world and it is believed that its new marketing initiatives will greatly enhance the existing MySpace Music offline concert franchises (including Secret Shows, MySpaceLIVE!, Transmissions, Front to Back and The List).



MySpace Music has not signed any deal with the independent labels. In December 2008, the European Independent Music Companies Association (IMPALA), which represents more than 4,000 independent labels, has asked the European Commission to investigate a possible violation of European competition law.² According to IMPALA, MySpace, with the help of major music companies, discriminates against independent companies. Independent labels would like to have the same treatment as majors, and become shareholders of MySpace Music. They say they are barred from having a similar deal, which is a disadvantage.

May this lead to formal legal proceedings?

- **If yes, against who, on which legal basis, and why?**
- **If no, justify why there would be no legal basis for a competition lawsuit.**

[Some facts have been edited. You may find in the appendixes that follow (ranged by date) additional information on the economic context, but do not spend too much time reading them]

¹ Digital Rights Management (a technical protection that allows restrictions to file uses).

² Les Echos, Feb. 12, 2009.

MySpace Music Partners with INgrooves, Nettwerk Music Group, IRIS Distribution, and RoyaltyShare

Thu Jan 15, 2009 11:30am EST

MySpace Music Also Adds Wind-up Entertainment Music Catalog
LOS ANGELES--(Business Wire)--

MySpace Music, the world's premier online music community, today announced the addition of Nettwerk Music Group, INgrooves, IRIS Distribution, and RoyaltyShare to its rapidly growing roster of independent music partners. In addition, the music catalog of Wind-up Records, the nation's largest independently owned and operated record label, will be available via MySpace Music's existing distribution deal with Sony Music Entertainment. These exciting new partnerships will add several hundred thousand songs to MySpace Music's ever-growing catalog and provide several additional distribution partners through which independent artists and labels can monetize their content on the MySpace Music platform.

"These important new partnerships will allow the MySpace Music community to access even more of their favorite independent music while enabling monetization opportunities for the newly licensed artists," said Courtney William Holt, President of MySpace Music. "We are thrilled to have our new partners on board and will continue our aggressive content acquisition efforts."

Nettwerk Music Group is Canada's leading privately-owned record label and artist management company. The Nettwerk catalog includes over 250 artists, including Old Crow Medicine Show, The Weepies and Ladytron. Nettwerk is also responsible for managing some of the industry's biggest artists, including Sarah McLachlan and Barenaked Ladies.

"Nettwerk is incredibly excited about this partnership with MySpace. As a company, we are constantly looking for inventive, non-traditional ways to introduce new music and make new fans," said Terry McBride, CEO of Nettwerk. "We have always valued MySpace as a top partner in allowing music fans and our artists to connect, and we look forward to further developing our relationship with such an innovative and forward-thinking company."

INgrooves is an industry leader in customized marketing, promotion and synch licensing. INgrooves also provides administrative support to help maximize the earnings potential of specific releases or catalogs. The INgrooves partnership will give MySpace Music users access to the full music catalogs of a richly diverse set of labels and artists, including VP Records, K-Tel International, Fat Possum, Metal Blade, Dolly Parton, J Dilla, Thievery Corporation, Tila Tequila, The Crystal Method, Cary Brothers, Tracy Lawrence, Lady Sovereign, Too \$hort, Paul Oakenfold and John Digweed.

"We are delighted to be working with MySpace Music," stated Robb McDaniels, CEO and Founder of INgrooves. "Part of the INgrooves difference is providing our partner labels and artists with new and compelling ways to reach their customers and fans. And by tapping into MySpace's extensive network of avid music fans, our labels and artists will benefit greatly from one of the world's leading communities dedicated to music discovery."

IRIS Distribution is a leading digital distribution company, whose catalog includes such top labels as Chemikal Underground, Duck Down, K Records, Ninja

Tune, and prominent artists including She Wants Revenge, Mogwai, KRS-One, Marvin Gaye, Lou Reed, Modest Mouse, and Deerhunter.

"Making sure our labels are able to participate in all significant distribution outlets is a priority for us," said Bryn Boughton, Chief Marketing Officer for IRIS. "We look forward to working with MySpace Music to foster a closer artist-fan connection as well as provide additional revenue streams for our clients."

RoyaltyShare is a premier provider of digital royalty solutions to the entertainment industry, focused on providing comprehensive royalty accounting and content management services to record labels, music distributors and music publishers. RoyaltyShare offers an expansive music catalog, including George Carlin, Tesla and New World Records.

"MySpace Music is breaking new ground by delivering one of the most comprehensive selections of independent music in a social networking environment, connecting artists and fans on an unprecedented personal level," said Bob Kohn, Chairman and CEO of RoyaltyShare. "We are pleased that RoyaltyShare's record labels clients will now have the opportunity to distribute content through MySpace and take advantage of the great opportunities that exist to build and maintain lasting relationships with their fans."

Users will also be able to access Wind-up's music catalog, including audio and video content from the likes of Evanescence, Creed, Seether and Finger Eleven through MySpace Music's current distribution deal with Sony Music Entertainment.

"MySpace has always been friend to independent music, which is why we're thrilled to be strengthening our partnership via MySpace Music," said Ed Kiang, Vice President, Digital Platforms of Wind-up Entertainment. "Through this platform, Wind-up Records will be able to offer our fans a more integrated cross-channel music experience that leverages our 360-degree artist development philosophy while fostering greater social engagement among artists and fans alike."

MySpace Music includes a vast catalog of premium and promotional content, a wide selection of new user-to-user sharing tools, and e-commerce opportunities for artists. MySpace Music's existing independent partners include leading digital distribution companies The Orchard and IODA.

About MySpace Music

MySpace Music is a landmark joint venture among MySpace, The EMI Group, Sony Music Entertainment, Universal Music Group, Warner Music Group, and Sony ATV, and whose independent music distribution partners include The Orchard, IODA, Alternative Distribution Alliance, RED, Fontana, and Caroline.

About Nettwerk Music Group

Founded in June of 1984, Nettwerk Music Group is Canada's leading privately owned record label and artist management company with several offices located around the world including Los Angeles, New York, Boston, Nashville, London, Hamburg and the main office in Vancouver. Nettwerk Management handles the careers of such esteemed artists as Sarah McLachlan, Barenaked Ladies, Dido, Jars of Clay, Josh Rouse and Sixpence None The Richer. As a record company, Nettwerk has released over 200 full-length albums and sold over 10 million albums in our 25-year history. Artists on the roster include: Old Crow Medicine Show, The Weepies, Ladytron, The Submarines, Uh Huh Her, Datarock, Delerium,

Abigail Washburn & The Sparrow Quartet and Kinky.

About IRIS Distribution

Founded in 2003, IRIS has emerged as a leader in the digital distribution and marketing of prominent independent music and video catalogs. IRIS provides a comprehensive suite of technical, marketing, and legal services, helping clients navigate the ever-changing digital marketplace. The company also provides support through BlinkerActive, its dedicated marketing division. IRIS boasts a strong roster of leading independent labels from all genres and distributes to over 450 digital outlets in 85 countries around the world.

About RoyaltyShare

RoyaltyShare is the worldwide leader in Web-based royalty processing and digital content management solutions for the global entertainment industry. Utilizing an innovative Software-as-a-Service (SaaS) application delivery model, RoyaltyShare provides a suite of on-demand services dedicated to simplifying the increasingly complex digital sales process. Its state-of-the-art system and dedicated 24/7 support team enable music labels, distributors and publishers to accurately manage the entire digital sales process anytime, anywhere. RoyaltyShare's service offerings include the ripping and coding of content, metadata management, storage and delivery of digital content, managing sales and distribution information, calculating royalties and generating Web-accessible royalty reports. RoyaltyShare's web-based solution supports the management of content sold through digital, physical, subscription, mobile and other channels. For more information, please visit <http://www.royaltyshare.com>.

About INgrooves

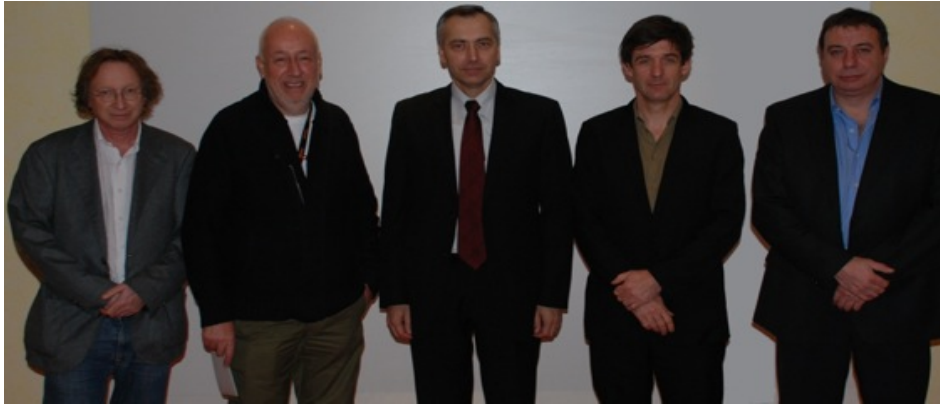
INGrooves is a digital media infrastructure company that provides various distribution and marketing services via its INgrooves and ONE Digital divisions. ONE Digital is a proprietary software platform that provides distribution and administration to large distributors, record labels and film production companies at rates far below the industry standard. INgrooves provides clients customized distribution, marketing, promotion, synch licensing and administrative support to help maximize the earnings potential of specific releases or catalogues. For more information, check out www.ingrooves.com.

About Wind-up Entertainment

Wind-up Entertainment Inc. is a privately owned company that was founded in March 1997. Wind-up Records, a subsidiary of Wind-up Entertainment is currently the largest independently owned and operated label in the United States. Wind-up Entertainment Canada Inc., Wind-up Nashville, and expansion across Europe reflect the growing global presence for the label and development of the company's repertoire to encompass most genres. The label's roster features Evanescence, Seether, Finger Eleven, the entire Creed repertoire, and more than a dozen developing artists which include Thriving Ivory, Civil Twilight, Pilot Speed and others. Wind-up Entertainment also houses the publishing concerns Sakyamuni Music Publishing, LLC, Bodhi Music Publishing, LLC and Renfield Music Publishing, Inc., as well as Pronto Merch, LLC, a full-scale retail, on-line and tour merchandising company. Wind-up Entertainment also operates Wind-up Artist Development Corporation and Wind-up Touring, LLC.

APPENDIX 2

IMPALA Press release - IMPALA meets EC Commissioner Figel' in Cannes - Discrimination of independents to be examined in EC's Cultural Industries Green Paper, Midem, Cannes, Monday 19th January 2009



From left to right: Patrick Zelnik, Martin Mills; Ján Figel', Horst Weidenmueller and Michel Lambot

IMPALA got off to a great start at Midem with a private meeting with European Commissioner for Culture, Ján Figel', to discuss the concrete issues that affect independents all over Europe. One of the principal concerns raised is the discrimination and exclusion the independents often face in the vital online and mobile market.

The Commissioner recognized the importance of the independent sector and some of the key issues affecting them, such as market access. The Commission is currently preparing a Green Paper on the Cultural industries. Given the importance of SMEs to the sector, Impala calls for a specific chapter on cultural SMEs, including the barriers they face and a thorough examination of the discrimination experienced by independent music companies in the online and mobile market.

IMPALA has also called on the Commission to create a specific program for music which provides the same support as the EC gives to the film sector through the Media program.

IMPALA welcomes the creation of the member states cultural platform of coordination where cultural policies best practices are discussed. IMPALA calls for the dissemination across Europe of the French cultural initiatives (for example the tax credit and advance fund for cultural industries.).*

Quote: European Commissioner for Education, Training, Culture and Youth, Ján Figel', said: "This year is the European year of Creativity and Innovation. What we must remember is that for music SMEs, like those represented by IMPALA, every year is a year of creativity and innovation. Direct dialogue with IMPALA members is vital because of the specific contribution made by cultural SMEs to Europe in economic, social and cultural terms - we must understand their markets and foster the conditions necessary to give them the support they need."

Horst Weidenmueller, Co-president of IMPALA and CEO of !K7 added: "Discrimination of independents on-line is something that has been overlooked for some time. That this is being recognized at European level is a great step forward. It is now a question of whether the Commission will be able to keep up with the evolution of the market"

Michel Lambot, Co-president of IMPALA and Co-president of PIAS said: "IMPALA has always said that the concentration that exists in the physical market must not happen in the new on-line market, but this is the case. This is something that the Commission urgently needs to act on and turn its vocal support of the independents into concrete actions."

A picture of the Commissioner - together with IMPALA board members Michel Lambot, Martin Mills, Patrick Zelnik and Horst Weidenmueller - is also available from the IMPALA office (info@impalamusic.org)

**The French Culture Minister Christine Albanel also called for all member states to react following the adoption during the French Presidency of the EC of the European Declaration of Independence, setting out 10 points of priority action for cultural SMEs. Last year (following talks at Midem) IMPALA adopted an Action Plan for Music calling for urgent action to boost cultural SMEs and guarantee them market access online and offline.

Music rocked as 360 deals turn sector on its head A merger between Live Nation and Ticketmaster would alter the industry

By Amanda Andrews
February 7, 2009
The Daily Telegraph

(...) Shrinking CD sales have led artists and entertainment companies to consider wide-ranging deals that bring all activities under one roof, helping cross-promotion and boosting profit margins.

To counter this trend, some artists and labels have launched their own initiatives, such as offering free downloads or giving away CDs with a newspaper or cup of coffee. Radiohead's last album could be downloaded from the band's website, with fans being asked to choose how much - if anything - to pay for it, while Prince recently gave away his latest CD with a newspaper and Sir Paul McCartney signed up with Starbucks.

While the downloads market led by iTunes has proved lucrative, piracy remains a problem. The music industry is still losing out to internet pirates on a huge scale, with recent figures from the International Federation of the Phonographic Industry (IFPI) estimating that 95pc of music available online was downloaded illegally. In the UK alone, the record industry lost pounds 180m last year, and could lose more than pounds 1bn by 2012, the IFPI said.

Faced with these challenges, live music has become an increasingly important revenue stream, with the likes of Madonna charging as much as pounds 160 for a ticket. While consumers are increasingly reluctant to pay pounds 8 to pounds 10 for a CD, they are willingly paying to see their favorite artists perform live. Technological innovation may have changed how we listen to recorded music, but the market for live music is as buoyant as it was in the 1960s.

"Live music trends have remained robust in the past five years, with the number of concerts, days and prices increasing, although the industry is not recession-proof," said Alice Enders at Enders Analysis. "If Live Nation and Ticketmaster merge, they may need to make cutbacks and there are no obvious duplications."

The traditional music giants now face a difficult future, with executives desperately searching for new sources of revenue. Services such as distribution have become less important as CD sales have dwindled.

The computer games industry has begun to play a fundamental role as labels such as EMI fight to revive their businesses and secure long-term growth. Artists from The Beatles to Metallica have signed licensing deals with games makers such as Activision, which produces Guitar Hero, as consumers imitate their favourite bands in the comfort of their living rooms.

"The number of products that use or feature music keeps growing, said Lord Birt, the chairman of Maltby Capital, the vehicle used by Guy Hands to take EMI private. Success stories include games like Guitar Hero, the launch of Nokia's Comes with Music phone and the imminent launch of a game featuring The Beatles. "Sainsbury's is selling clothes with lyrics licensed from EMI Music Publishing and even toothbrushes now can come with music," Lord Birt added.

Some in the industry have even questioned the eventual need for marketing, a key service provided by the labels. While labels insist there will always be a requirement for this, user-generated websites have done a lot of the promotional work. MySpace is credited for launching the careers of a number of artists who would not have had access to recording labels. Adele Adkins was spotted from songs she had posted on her MySpace page and was subsequently invited to perform on television with Jools Holland. The website also gave the 20-year-old Londoner Kate Nash a headstart following a MySpace recommendation by fellow female singer Lily Allen. Her debut album, Made of Bricks, soon topped the UK sales chart.

Dramatic changes are taking place in the industry and labels need to be creative. Many will be forced to focus on monetizing their back catalogues, be it through computer games or toothbrushes, as the appeal of 360 deals continues to cause big acts to stray.

Newspapers not dead yet, says Murdoch as MySpace dips

Miriam Steffens

February 9, 2009

The Sydney Morning Herald

RUPERT MURDOCH has delivered a sobering assessment about the internet as a growth engine, revealing search and advertising revenues at News Corp's Fox Interactive Media division - which houses the popular MySpace networking site - have stalled.

The new-media unit, which has invested heavily to expand MySpace, contributed just \$US7 million (\$10.4 million) to News Corp's \$US818 million second-quarter operating income, the company said on Friday.

There was a "slight downturn" in revenue at the social networking site, Mr Murdoch said. That compares to \$US179 million News Corp made from newspapers including The Wall Street Journal and information services such as the Dow Jones news wire.

Asked about his views on the long-term viability of the internet, Mr Murdoch said generating a return on investment for assets such as MySpace, which News Corp bought for \$US580 million in 2005, was still a challenge.

"I think we have to find new ways to monetize our huge audiences," he told analysts. Websites reaching very specific target groups showed solid revenue increases, with the Journal's site on track to book \$US120 million in advertising this year. Search sites were also doing well.

"But overall, you have a problem in that there is an almost infinite increase in inventory for websites and for display [advertising]," he said. "There is constant downward pressure on the rates you could get."

Providing more data and collecting information about web users to more effectively sell them to advertisers would be "increasingly important", Mr Murdoch said.

MySpace already uses information that members put in their profiles to target them with specific ads, which he said was showing "very promising returns".

Live Nation-Ticketmaster Combination Probed by U.S.

By James Rowley and Adam Satariano

Feb. 11 (Bloomberg) -- The U.S. Justice Department opened an investigation of Live Nation Inc.'s proposed merger with Ticketmaster Entertainment Inc., in the first test of the Obama administration's antitrust policy. (...)

The review gives the Obama administration an opening to set the tone for evaluating transactions that raise concerns over market power. The Ticketmaster-Live Nation agreement has sparked an outcry among lawmakers, fans and artists who say the deal will consolidate too much control of live entertainment.

"There is great potential for abuse when two companies of this size and scope join forces," U.S. Senator Charles Schumer, New York Democrat, told reporters in Washington today. "This merger would snuff out the strongest competitor that Ticketmaster has" in concert-ticket sales, he said.

Ticketmaster, based in West Hollywood, California, owns the world's largest ticket-selling network and the biggest artist-management firm. Beverly Hills, California-based Live Nation, the largest concert promoter, owns the most venues and has exclusive deals with Madonna, U2 and Jay-Z.

Live Nation began its own ticketing service last year. Before that, the company was Ticketmaster's largest customer, representing about 17 percent of 2007 sales.

The two companies would control 80 percent of concert ticket sales, Schumer said. Today he and U.S. Representative Bill Pascrell, a Democrat from New Jersey, released a letter sent to Attorney General Eric Holder opposing the deal.

The "merger is in clear violation of this country's antitrust laws" because Ticketmaster wants to "eat their primary competitor," Pascrell said today. He vowed to push antitrust enforcers to block the deal. (...)

Live Nation fell 83 cents, or 17 percent, to \$3.99 at 4 p.m. in New York Stock Exchange composite trading, its biggest skid since Dec. 22. The shares have dropped 62 percent in the past year. Ticketmaster lost \$1.14, or 19 percent, to \$5.01 in Nasdaq Stock Market trading, and has declined 79 percent since it began trading in August. Today's drop was the most since November.

Shareholders in each company will own about half the equity in the new one, to be called Live Nation Entertainment. It would have an enterprise value of about \$2.5 billion and annual sales of almost \$6 billion, according to a statement yesterday.

Ticketmaster Chief Executive Officer Irving Azoff, who would be executive chairman of the combined company, defended the merger yesterday against criticism that it would mean higher ticket prices and less competition.

"We think that it will be a more level playing field, and there is no real barrier of entry," Azoff said on a conference call.

Consumers will reap "measurable benefits," Live Nation Chief Executive Michael Rapino said in a statement yesterday.

Last Updated: February 11, 2009 18:35 EST