

Anticipated acquisition by a joint venture between Anschutz Entertainment Group and CTS Eventim AG of the HMV Hammersmith Apollo

ME/5523/12

The OFT's decision on reference under section 33(1) given on 1 August 2012. Full text of decision published 15 August 2012.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Anschutz Entertainment Group Inc** (AEG) is wholly owned by the Anschutz Corporation in the US. It is a leading provider of venues for live entertainment and sporting events across the world. Its activities include the operation and management of live entertainment venues, the provision of venue management consultancy services, merchandising, marketing and advertising services. Its live music venues in London are situated in the O2 complex in Greenwich and comprise the O2 Arena and IndigO2.
2. **CTS Eventim AG** (CTS) is the parent company of the CTS Group and is a leading ticketing company and promoter of live events in Europe. Its activities include planning, organisation and promotion of concerts, concert tours, festivals and other live events.
3. **The HMV Hammersmith Apollo** (Apollo) is a live music and entertainment venue located in London. The venue is currently owned by Hammersmith Apollo Limited, an indirect subsidiary of HMV Group plc and operated by MAMA Group (a subsidiary of HMV). Apollo's UK turnover was £5.6 million for the financial year ending 31 July 2010 (latest available figures).¹

¹ The parties submitted that the Apollo's turnover for the nine months to 30 April 2011 was approximately £4 million.

TRANSACTION

4. AnSCO Music Club Limited (a subsidiary of AEG) and Getgo Consulting GmbH (a subsidiary of CTS) formed a joint venture limited liability company ('the JV') as a vehicle to acquire Apollo for a consideration of £32.04 million. Both parties have an equal interest in the JV. The administrative deadline in this case is 1 August 2012.

JURISDICTION

5. Under the merger provisions of the Enterprise Act 2002 (the Act) a relevant merger situation is created when two or more enterprises cease to be distinct or arrangements are in progress or contemplation which, if carried into effect, will lead to enterprises ceasing to be distinct and either the UK turnover of the enterprise being acquired exceeds £70 million ('the turnover test') or after the merger the enterprises which have ceased to be distinct together supply or acquire at least 25 per cent of a particular good or service within a substantial part of the UK ('the share of supply test').²
6. The OFT's investigation has confirmed that enterprises will cease to be distinct as a result of the proposed transaction. The turnover test pursuant to section 23(1) of the Act is not met in this case.
7. The parties submitted that the share of supply test set out in section 23 of the Act is not met since:
 - the parties together will own around 15 per cent of indoor live music venues in London (as measured by the number of venues with seating capacity of at 1,000 people),³ and
 - for indoor live music venues of seating capacity of at least 2,000 the parties would account for three out of 13 venues (amounting to around 23 per cent of venues).
8. However, the OFT believes that measures other than the supply of live music venue services by the number of venues are more appropriate for the

² OFT, *Mergers: Jurisdictional and Procedural Guidance*, June 2009, OFT527, paragraph 3.3.

³ The parties selected seating capacity of at least 1,000 since that is what the Competition Commission used in '*A report on the proposed acquisition of a controlling interest in Academy Music Holdings Limited by Hamsard 2786 Limited*', 23 January 2007 ('Hamsard/Academy').

purpose of applying the share of supply test since there is such variation in the size of venues. For example, the O2 Arena has 20,000 seats whereas Brixton Academy has slightly fewer than 5,000 seats and Shepherd's Bush Empire has 2,000 seats. As such, it may be the case that the O2 Arena has a greater share of live music revenue or live music goes than its share of the number of venues suggests.

9. Indeed, the OFT's guidance says that when applying the share of supply test the OFT may have regard to the value, cost, price, quantity, capacity, number of workers employed or any other criterion in determining whether the 25 per cent threshold is met.⁴
10. In this case the OFT does not have data on live music venue revenues or on how many people visited live music venues last year. However, the OFT considers that the parties' share of capacity is appropriate in this instance. The parties together account for 26 per cent of the capacity of indoor live music venues of seating capacity of at least 1,000 in London.⁵ Consequently, the OFT considers that the share of supply test in section 23 of the Act is met in this case.
11. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

MARKET DEFINITION

Product scope: live music venues

12. The parties submitted that the relevant product markets in this case are:
 - the operation and management of live entertainment venues, and
 - the retailing of live entertainment tickets.

⁴ OFT, *Mergers: Jurisdictional and Procedural Guidance*, June 2009, OFT527, paragraph 3.55.

⁵ The relevant venues are O2 Arena, IndigO2, Hammersmith Apollo, Earl's Court, Wembley Arena, Alexandra Palace, Royal Albert Hall, Brixton Academy, Roundhouse, Troxy, Royal Festival Hall, The Coronet, Shepherd's Bush Empire, HMV Forum, Barbican, Heaven, KoKo, Clapham Grand, Scala and Electric Ballroom.

13. The parties said that the OFT should not rely on a rigid product market in this case since various venues provide credible alternatives to different music acts and promoters. The parties explained that when deciding on a venue, acts and their promoters typically consider the location that they would draw an audience from, the capacity of the venue as well as its atmosphere and reputation. Generally this will include whether a venue was regularly used for that type of act, such as live music.
14. In *Hamsard/Academy* the Competition Commission (CC) found that outdoor venues generally did not impose a strong constraint on indoor venues and that venues used predominately for uses other than live music did not impose a strong constraint on those indoor venues which were used mostly for live music.⁶
15. []. Given the outcome of its competition assessment the OFT has not found it necessary to conclude on the product market in this case and has assessed the merger on the basis of the provision of indoor live music venues.

Product scope: ticketing services

16. The parties overlap in the retailing of tickets to customers. They submitted that the relevant product market is the retailing of live music tickets.
17. In *Ticketmaster/Live Nation*, the CC concluded that there was a separate market for the primary retailing of live music tickets through an agent and directly to customers by promoters and the venues themselves.⁷
18. However, the parties do not overlap in the direct provision of ticketing services to customers. Tickets for live music events at the O2 Arena, IndigO2 and Apollo are sold on a preferred basis through an agent, Ticketmaster. Indeed, the parties submitted that CTS does not provide ticketing services to any major London live music venue on a preferred basis.

⁶ *Hamsard/Academy*, paragraph 4.24.

⁷ 'A report on the anticipated merger between Ticketmaster Entertainment Inc and Live Nation Inc', 22 December 2009.

19. Given the ticketing arrangements for the parties' venues and the outcome of the OFT's competition assessment, the OFT has not found it necessary to conclude on whether the supply of tickets through agents is in the same market as the supply of tickets directly to customers.

Geographic scope: live music venues

20. The parties submitted that a strict geographic market definition for indoor live music venues is not feasible since competition between venues varied significantly between acts. For example, the dynamics of competition for acts on a brief national tour may be different from local acts or those on an extensive tour around the country.
21. The parties' approach is in line with the CC in *Hamsard/Academy* which concluded that the competition between venues in different locations was dependent on the number of concerts on a proposed tour and the desire to reach centres of population that maximises ticket sales.
22. The OFT notes that whilst many of the venues are in London, and may appeal to a local audience, the parties provided evidence that some acts will perform for several consecutive nights in the same venue and not tour around the UK.
23. The OFT has taken a cautious approach in this case and has restricted its analysis of this case to indoor live music venues in London.

Geographic scope: ticketing services

24. The parties submitted that most tickets for live music events can be purchased on the telephone or by the internet and that many ticket agents sell tickets to events across the UK. They submitted that the primary retail of live music tickets is at least as wide as the UK. The CC likewise found that the market for ticketing services was UK-wide in *Ticketmaster/Live Nation*.
25. The OFT has not found it necessary to conclude on the geographic market in this case since the transaction does not give rise to competition concerns on any plausible geographic market. The OFT has assessed the case on the UK-wide basis.

UNILATERAL EFFECTS

Indoor live music venues

26. The proposed transaction will bring together the O2 Arena, IndigO2 and Apollo under common ownership. These venues have a maximum seating capacity of 20,000, 2,900 and 5,039 respectively.
27. The parties submitted that the venues do not compete closely, or exercise a significant competitive constraint on each other. Instead, the parties point to several factors which influence how closely venues compete, the most important of which are the:
 - venue's capacity
 - venue hire prices
 - type of acts a venue typically attracts, and
 - premium services offered by the venue.
28. The parties submitted that a main driver for the venues is seating capacity. The O2 Arena can seat up to 20,000 whilst Apollo seats 3,632 people (but has a standing capacity of 5,039). Therefore, the parties submitted that the O2 Arena and Apollo are unlikely to be close competitors. This is more likely to be the case when other venues are closer in capacity to O2 Arena such as Earl's Court (around 19,000 people) and Wembley Arena (around 12,500). Conversely, in terms of capacity, venues similar to Apollo include Brixton Academy (over 4,900 seats), Roundhouse (3,300 seats) and Troxy (3,050 seats). In addition, for some acts the Royal Festival Hall and the Royal Albert Hall may offer some constraint to Apollo.
29. IndigO2 has a maximum seating capacity of 2,900 and so may provide some constraint to, or be constrained by, Apollo. However, the parties submitted that the hire cost of Apollo is [] that of IndigO2 and the two venues host different types of acts since IndigO2 tends to focus on niche or smaller scale acts. Likewise, the hire cost for the O2 Arena is [] that of Apollo.

30. Similarly, in terms of the acts hosted in the parties' venues, because of its large size the O2 Arena hosts very popular acts that are able to sell out a 20,000 seat arena. The parties submitted that Apollo, by contrast, hosts live music acts that are less likely to be able to sell out such a large arena.
31. The O2 Arena and nearby IndigO2 have restaurants available to customers (whereas Apollo does not) and they also offer premium seating and a VIP lounge. Again, Apollo does not offer these services.
32. Almost all third parties competitors and promoters contacted by the OFT agreed that the parties are not close competitors. One third party commented that there was no direct competition between the venues since the size and capacity of their venues are different and they attract different artists and events. Another third party commented that some acts can sell out multiple nights at Brixton Academy but would not be expected to sell out Wembley Arena (since, for example, fans want to see some acts in smaller venues).
33. Third parties generally named the Shepherd's Bush Empire, Brixton Academy, the HMV Forum and the Roundhouse as competitors to the Apollo. In addition, some thought The Royal Albert Hall, KoKo and Troxy as competitors. For the O2 Arena, Wembley Arena and Earl's Court were considered by third parties to be key competitors. For IndigO2 third parties generally listed Shepherd's Bush Empire, HMV Forum, KoKo, Roundhouse and Troxy as key competitors. One third party added that the Barbican and Royal Festival Hall are also competitors to IndigO2.
34. Based on the evidence available to it, the OFT considers that after the merger there will be sufficient competitive constraints imposed on the merged entity to prevent it raising prices or reducing its quality of service. Therefore, the OFT does not believe the transaction gives rise to a realistic prospect of a substantial lessening of competition in the market for the supply of indoor live music venues in London.

VERTICAL ISSUES

35. The OFT has investigated whether the proposed transaction will result in vertical foreclosure given CTS' involvement in ticketing services. The merged entity may be able to do this by either raising its prices to rival

venue operators or by refusing to deal with them.⁸ In undertaking its assessment, the OFT examines whether the merged entity would have the ability and incentive to foreclose rivals and, if it did, what the overall effect on competition would be.

36. The parties submitted that two ticket agents are predominately used in the UK: Ticketmaster and SEE Tickets. The parties estimated that Ticketmaster accounts for 40–50 per cent of ticketing services and SEE Tickets accounts for 20–25 per cent. The remaining ticket agents are significantly smaller and include the likes of Ticketline, ATG Tickets, the Ticket Factory and CTS.
37. They also submitted that CTS currently holds a market share of significantly less than five percent for live music venues and does not provide ticketing services on a preferred basis to any major London venues.
38. The parties submit that following the transaction, CTS will provide ticket services for the Apollo instead of Ticketmaster, and that will increase the competitive constraint faced by it and SEE Tickets post-transaction and may put a downward pressure on the prices charged by ticket agents to customers using their services
39. Some third parties were concerned that there might be harm to ticketing agents through lack of access to the Apollo. However, the OFT notes that there are a number of other venues in London which compete directly with Apollo and third party comments to the OFT indicates that Apollo is not a 'must have' venue.
40. The OFT also notes that CTS is only one ticket agent amongst many in the UK and London venues, especially as ticketing agents do not only deal with live music. Similarly CTS is too small to be considered a must have partner.
41. The OFT considers that in relation to vertical effects in ticketing, it does not believe there is a realistic prospect of anti-competitive vertical effects arising as a consequence of the transaction.

⁸ See, for example, OFT '*Merger Assessment Guidelines*', OFT1254, September 2010, paragraph 5.6.5.

BARRIERS TO ENTRY AND COUNTERVAILING BUYER POWER

42. Given the outcome of its competition assessment in this the OFT has not found it necessary to conclude on barriers to entry and countervailing buyer power.

THIRD PARTY VIEWS

43. Third party views have been mentioned where appropriate. Third parties who responded to the OFT did not consider that the transaction would lead to a substantial lessening of competition.

ASSESSMENT

44. The OFT has assessed the merger on the basis of the supply of indoor live music venues in London.
45. The proposed transaction brings together AEG's venues, the O2 Arena and IndigO2 with Apollo. These venues have different capacities and therefore are used for different purposes. The O2 Arena can seat up to 20,000 people and attracts very popular acts. Apollo has a capacity of around 5,000 people and attracts acts that are unable or unwilling to sell out an arena of 20,000 seats. IndigO2 has fewer than 3,000 seats and tends to host smaller scale acts than Apollo.
46. Moreover, the parties and third parties identified a number of competitive constraints to each of the parties' venues. For the O2 Arena these are Wembley Arena and Earl's Court; for Apollo they are the Shepherd's Bush Empire, Brixton Academy, the HMV Forum and the Roundhouse; while for IndigO2 third parties generally listed Shepherd's Bush Empire, HMV Forum, KoKo, Roundhouse and Troxy as key competitors.
47. Given the evidence discussed above the OFT does not consider that the parties' venues have been close competitors and that therefore a realistic prospect of a substantial lessening of competition does not arise as a result of the proposed transaction.

48. The OFT has also assessed the vertical effects of the proposed transaction. CTS offers ticketing services and the OFT investigated whether it could foreclose ticketing or venue operating rivals.
49. Some third parties told the OFT that they were concerned that after the transaction some ticketing agents would not have access to tickets for events to be staged at Apollo. However, the OFT's investigation has found that there are a number of competing venues to Apollo which promoters can and do use.
50. Moreover, from the perspective of the merged entity raising its prices for ticketing services or refusing to deal with venue rival, the OFT has found that CTS has only a small share of ticketing services in the UK (around five per cent) and that Ticketmaster and SEE Tickets account for the bulk of ticketing services provided in the UK. Therefore, the OFT does not believe that the merged entity would have the ability to foreclose ticketing rivals as a result of the merger.
51. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

52. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.