
Anticipated acquisition of Mean Fiddler Music Group by Clear Channel Entertainment (Music) UK Ltd and Gaiety Investments Ltd

The OFT's decision on reference under section 33 given on 17 June 2005. Full text of decision published 27 June 2005.

PARTIES

1. **Mean Fiddler Music Group plc (Mean Fiddler)** is a music company active in the provision of festivals, live music venues and touring and promotion services. For the financial year ending 1 January 2005 Mean Fiddler generated a turnover of £48 million.
2. **Clear Channel Entertainment (music) UK Limited (Clear Channel)** is a wholly owned subsidiary of Clear Channel Communications, a diversified media company listed on the New York Stock Exchange. In the UK, Clear Channel has interests in various sectors including music, sports talent management and theatre. For the financial year ended 31 December 2004 the UK turnover of Clear Channel Entertainment was £197 million, £122 million of which was accounted for by the music division.
3. **Gaiety Investments Limited (Gaiety)** is a limited company registered in Ireland and owned by Mr Dennis Desmond. It has interests in concert promotion (67 per cent of DF Concerts) festivals (67 per cent of T in the Park, 33 per cent of V festivals and 35 per cent of the Isle of Wight festival) and venues (12.5 per cent of the Academy Music Group). Its subsidiary, MCD Productions Limited, owns 24.3 per cent of Mean Fiddler. For the financial year ending 31 March 2004 Gaiety had a turnover of £14 million in the UK.

TRANSACTION

4. A joint venture company owned 50.1 per cent by Clear Channel and 49.9 per cent by Gaiety has been formed for the purpose of acquiring the entire issued share capital of Mean Fiddler.
5. The administrative deadline is 17 June 2005.

JURISDICTION

6. As a result of this transaction Mean Fiddler, Clear Channel and Gaiety will cease to be distinct. The parties overlap in the supply of popular music festivals ('festivals') and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. 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.

RELEVANT MARKET

7. The parties overlap in the supply of touring and promotion services, live music venues and festivals.

Touring and promotion

8. Artists wishing to undertake a tour will tender for one or more promoters to arrange and promote the tour by booking venues, advertising the tour and arranging publicity. Promoters carry out a specific function and it is not expected that any other type of service would be a reasonable substitute. There does not appear to be any clear supply side substitutes, although many festival organisers are also concert promoters.
9. A national frame of reference is appropriate for touring and promotion, since bands will typically seek a promoter in the UK to organize their UK tour.

Venues

10. Venues for live performances come in a number of sizes, locations and types, which may affect the extent to which they competitively constrain each other. Promoters may perceive some substitutability between indoor live venues (such as those which the parties control) and open air concerts (such as stadium concerts and festivals). However, outdoor performances tend to occur in the summer months only and so such venues are only likely to offer a partial constraint on indoor live venues.
11. Acts of differing popularity and appealing to different audiences will play different sized venues or a seated venue in preference to an unseated one. Large and small venues therefore rarely find themselves competing for the same acts, although this does occur on occasion – for example, multiple performances in a more intimate venue could substitute for one performance in a larger venue, though the increased cost of multiple performances limits the extent to which this occurs. Third parties agree that venues of a similar capacity compete more strongly, though there is no clear delineation between venue sizes. It may therefore be the case that a chain of substitution operates between the different sizes of venue. However as the precise delineation of the product frame does not affect the competition assessment, there is no need to conclude definitively on this point.
12. The appropriate geographic frame for venues is more likely to have local aspects as a typical tour includes multiple concert dates at different locations.

Festivals

13. The primary area of overlap is in the festivals sector. Festival organizers typically have an agreement with a landowner or local authority for 3-5 years. They then arrange an annual license and coordinate suppliers, promotion and booking talent to produce an event for which they sell tickets.

14. The parties argue that UK festivals are rather poor demand side substitutes for each other as they are generally specialised products, with differentiated line-ups that only slightly overlap, are often focused on different genres of music and would rarely be direct substitutes as they usually occur on different weekends. There is some evidence to support the claim that each festival is a separate frame of reference or in any event that festivals are weak substitutes for one another. Analysis of the line ups at four of the largest five festivals over the last three years confirms that between 5-20 per cent of bands overlap and customer surveys give the most common reason (45 per cent) for attendance at a festival as being the chance to see a specific artist.
15. However, the parties' customer research that shows that of those who came to see a particular band, 71 per cent would still have come if there was a different, but similar, one instead. This suggests it is arguable that some festival attendees are attracted by the general festival experience, almost irrespective of the line-up (perhaps within certain music genre parameters). If sufficient customers fell within this category and were thus marginal, the majority of festivals could indeed be considered demand substitutes.
16. Whilst it may be reasonable to conclude that individual festivals could not be considered particularly close demand substitutes, and therefore the constraint they place upon each other may be weak, there is likely to be at least a proportion of customers who are marginal. As such it is appropriate to take a cautious approach and consider a product frame of reference including all UK festivals.
17. Although some UK festival attendees may be prepared to travel to festivals in other EU states, as the parties argue, the cost of travel and the burden of camping equipment will limit their numbers and in turn the degree to which overseas festivals constrain the behaviour of UK festival operators. A UK-wide geographic frame of reference is therefore considered appropriate.

HORIZONTAL ISSUES

Market shares

Touring and promotion

18. Clear Channel is the UK's largest promoter, with 20 per cent of advertising spend by the top 20 UK promoters in 2003. Mean Fiddler accounted for 4.6 per cent of advertising expenditure, a figure which the parties and third parties agree will drop as Mean Fiddler's key promoter (Mr. Rob Hallet) has moved to rival AEG. The parties combined (Gaiety's DF Concerts add 1.5 per cent) will have a 26 per cent share of supply. Even if this level is maintained, there remain two other promoters with in excess of 15 per cent of advertising spend and a further three larger than Mean Fiddler. In the light of these factors, there appear to be sufficient existing competitive constraints to discipline Clear Channel post-merger, and the impact of the merger on the supply of touring and promotion services is therefore not considered further.

Venues

19. Nationally, Mean Fiddler owns eight venues, concentrated in London, and Clear Channel has 15, spread throughout the UK.¹ The parties overlap in the provision of venues in Cardiff but this does not give rise to concerns: Mean Fiddler's Cardiff venue, Sugar, is less than a tenth the size of Clear Channel's venue, Arena, and in relation to each there are a number of other venues which appear to exercise a stronger competitive constraint because they are closer in size. The only other overlap is in London. Here Mean Fiddler owns six venues, varying between 500 and 2000 audience capacity. Clear Channel owns the Hammersmith Apollo, which is more than twice the capacity of the largest Mean Fiddler venue.²
20. The parties argue, and third parties generally agree, that as a result of the difference in size and artists desire to play the largest venue possible, their venues very rarely compete for the same tour. In addition there remain alternatives of a similar size to Clear Channel's Hammersmith Apollo, such as the Royal Albert Hall.

Festivals

21. Post merger the parties will have sole control of music festivals accounting for an estimated 30 per cent of festival revenue in the UK (based on 2004 figures, aggregating Clear Channel's Isle of White, Download (held in Derbyshire) festivals and Gaiety's Glasgow-based T in the Park and Mean Fiddler's Reading/Leeds and Homelands festivals).³ This rises to around 45 per cent when the V festivals at Chelmsford and Staffordshire, over which Gaiety shares joint control with two promoters, are included. As Mean Fiddler only has a logistics contract with Glastonbury (which accounts for around 15 per cent of festival revenue) and is not involved in price setting, its revenue is not included for these purposes.
22. Despite the merged entity being the largest festival promoter by a substantial margin, the extent to which the individual festivals compete is debatable. Within the accepted cautious frame of reference, the degree of constraint the parties' festivals currently pose on each other should be considered more closely. It may be the case that there are sufficient customers who are only seeking a festival experience, irrespective of the artists appearing, and would substitute, for example, the relatively similar Clear Channel's Download for Mean Fiddler's Reading festival. Marginal festival-goers of this nature may have constrained the parties' current behaviour. However, evidence supporting this approach has not been forthcoming.
23. In fact, the parties, third parties and available evidence suggest that the degree of competition that would be lost as a result of the merger is limited for the following reasons:

¹ The Academy venues (including the Shepherd's Bush Empire, Brixton and Islington Academies in London) are not considered here as Gaiety has only a 12.5 per cent shareholding in the Academy Group.

² Mean Fiddler owns Forum and Astoria (2000 audience capacity), Mean Fiddler (1000 audience capacity) and the Garage, Jazz Café and Borderline (under 500 audience capacity). The Hammersmith Apollo has 5000 audience capacity, although only 3000 if fully seated.

³ Clear Channel has launched a new festival in Hyde Park in 2005.

- price competition is not particularly keen, with prices of festivals varying widely. Third parties did not indicate that they try to match each other's prices; instead, the consensus was that ticket prices are mainly driven by the cost of hiring artists. Since the organizer has to pay out a large sum in up-front costs to artists and suppliers, they may be generally wary of raising prices too much such that tickets sales may not be able to cover these costs. This may explain why the majority of the larger festivals tend to sell out very quickly and why a cost plus margin approach to pricing is common;
 - the parties and third parties generally agree that consumer demand is driven by specific artists, and as already noted the overlap does not rise above 20 per cent of the artists between the parties' festivals (being highest between the two festivals held the furthest apart and lowest between the neighbouring V and Download festivals);
 - the fact that major festivals sell out very quickly may also indicate a lack of competitive constraint. The parties' existing festivals appear unable to satisfy existing demand and so would have no incentive to undercut or otherwise compete with each other in order to win more customers under prevailing conditions;
 - none of the parties have placed their festivals in direct competition by arranging their festivals on the same weekend as any other party's festivals. By contrast, Clear Channel hold the Download and Isle of Wight festivals on the same weekend. This may suggest that Clear Channel do not regard their festivals as competing for the marginal customers identified above, perhaps in part because substitutability may decline given the geographic distance between the sites (of course, staggered timing of the festivals could conversely be regarded as indicating that the festivals are substitutable and that it is profit-maximizing not to put them head-to-head).
24. Nonetheless, even if the parties' festivals pose a greater competitive constraint upon each other than certain of the above evidence suggests, there is no need to conclude on this issue, as low barriers to entry (discussed below) resolve any concerns that the prima facie loss of competition between the parties may raise.

Barriers to entry and expansion

25. Parties and third parties agreed that barriers to entry in festival organisation are low. Sufficient financing is required to meet up front costs, but as there is no apparent incumbency advantage, this does not represent a barrier to entry. Both incumbents and new entrants require each year an agreement with a local landowner and a local authority licence. Although one third party raised the incumbent advantage of a developed brand, it had nevertheless succeeded in profitably launching its own new festival in its first year, and it would appear that with sufficient funds to attract headline artists a successful brand can be developed – as was the case with Clear Channel's Download, which has been in the top 5 largest festivals by revenue in the UK in each of the three years it has run. In addition there are numerous examples of new entrants and new festivals over the last three years.

26. Third parties state that the only hurdle to expansion are the need to get health and safety clearance; again, the parties would have no advantage in this respect. If such clearance cannot be achieved on one site several festivals have done so by adding sites and rotating the artists on different days, such as Reading/Leeds, the V festivals and, in 2004, Download.
27. Accordingly, even if the parties had market power not disciplined by existing competing festivals, any attempt to exploit it would likely be met by expansion by smaller festivals or new entry, thus providing an effective competitive constraint.

Buyer power

28. Festival customers are individuals and there is little or no prospect of them exercising buyer power.

VERTICAL ISSUES

29. A number of third parties expressed concern that as the merged entity would be active at several levels of the supply chain it would have the incentive to channel the acts they promote through their own venues and foreclose competing venue operators. However, to do so the merging parties would need to have, or gain by the merger, market power in the touring and promotion sector so as to deny rival venue owners sufficient tours to operate, whereas their share of touring and promotion is relatively modest. Furthermore, tour contracts are short term and bands can easily switch promoters if they are unhappy with service offered by a particular promoter. The OFT does not therefore believe that the merging parties would have the ability, post merger, to foreclose rival live venues.

THIRD PARTY VIEWS

30. With the exception of the vertical issue addressed above third parties generally raised no concerns about the merger.

ASSESSMENT

31. The parties overlap in the supply of touring and promotion services, live venues and festivals.
32. No concerns arise in relation to touring or promotion services, where the merger creates a small increment to a relatively low share and there remain several other large players. Similarly, on live venues the overlap is limited and the parties are not close competitors in the locations where they do overlap.
33. The parties exercise sole or joint control major festivals accounting for 45 per cent of festival revenue in 2004. The extent to which these festivals actually compete is not clear cut, with much evidence pointing to a limited overlap in practice due to differences in timing, location and artists. In addition, there is a wide variation in pricing which, the evidence suggests, is set by reference to upfront costs rather than in response to competitive pressure from other festivals. Nevertheless, irrespective of the degree to which the parties' festivals are substitutable for sufficient marginal consumers, the merged entity would face sufficient constraints

from threatened or actual expansion or entry by its rivals to eliminate material competition concerns.

34. Furthermore, it is not considered plausible that the merged entity would be in a position to foreclose rival venues as a result of the increased vertical integration which results from this merger.
35. 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

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