

Notice of intention to give consent to Live Nation's acquisition of the Forum under clause 3(3) of the undertakings given to the Competition Commission by LN-Gaiety Holdings Limited and Live Nation (Music) UK Limited under section 82 of the Enterprise Act 2002

On 22 February 2007, undertakings were given by LN-Gaiety Holdings Limited (**LN-Gaiety**) and Live Nation (Music) UK Limited (**Live Nation**) to the Competition Commission under section 82 the Enterprise Act 2002 (the **Undertakings**).¹

Clause 3(3) of the Undertakings prevents Live Nation and LN-Gaiety from re-acquiring the assets divested under the Undertakings without the prior written consent of the OFT.²

On 7 April 2015, Live Nation requested the Competition and Markets Authority (CMA) (as successor to the OFT) to give written consent under clause 3(3) of the Undertakings for Live Nation to acquire an interest in the Forum.

Having carried out a preliminary assessment of Live Nation's request, the CMA now gives notice of its intention to give its consent – under clause 3(3) of the Undertakings given to the Competition Commission by LN-Gaiety and Live Nation – to Live Nation's acquisition of an interest in the Forum for the reasons set out in its provisional decision. The other obligations of the Undertakings will remain in force.

The CMA invites written representations from any person or persons who wish to comment on the CMA's intention to give its consent to the acquisition of an interest in the Forum by Live Nation under clause 3(3) of the Undertakings.

Representations should reach the CMA by **5pm on 16 June 2015** and should be addressed to: Maria Duarte, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD, or by email to: maria.duarte@cma.gsi.gov.uk.

Before giving its consent to the acquisition of the Forum by Live Nation, the CMA will have regard to any representations made in response to this Notice.

¹ See [Final Undertakings](#).

² On 1 April 2014 the CMA took over the functions of the Competition Commission and the competition and certain consumer functions of the Office of Fair Trading (**OFT**).

(signed) ADAM LAND

Senior Director of Remedies Business and Financial Analysis

1 June 2015

Provisional decision on a request for consent to acquire an interest in the Forum under the undertakings given to the Competition Commission by LN-Gaiety Holdings Limited and Live Nation (Music) UK Limited under section 82 of the Enterprise Act 2002

Introduction

1. On 23 January 2007, the Competition Commission (**CC**)¹ published a report on the proposed acquisition of a controlling interest in Academy Music Holdings Limited by Hamsard 2786 Limited (**Hamsard/Academy Music decision**). The CC found that the merger was likely to lead to a substantial lessening of competition (**SLC**) as a result of the loss of rivalry between the Hammersmith Apollo, Brixton Academy, Shepherd's Bush Empire (**SBE**), the Astoria and the Forum. The CC highlighted, in particular, the effect of the merger on competition between the Hammersmith Apollo and the Brixton Academy, between the SBE and the Astoria, and between the SBE and the Forum.²
2. For the purpose of remedying, mitigating or preventing the SLC and any other adverse effects that might be expected to result from the SLC, the CC found that the merger should only be allowed to proceed subject to the divestiture of two venues, comprising one of the Brixton Academy or the Hammersmith Apollo plus one of the SBE or the Forum.
3. Undertakings (the **Undertakings**)³ were given by LN-Gaiety Holdings Limited (**LN-Gaiety**) and Live Nation (Music) UK Limited (**Live Nation**) under section 82 of the Enterprise Act 2002 (the **Act**), under which the Hammersmith Apollo and the Forum were divested.⁴ The Undertakings provide that Live Nation will not acquire any interest in those divested venues without the prior written consent of the OFT (or successor body).⁵

¹ On 1 April 2014 the CMA took over the functions of the CC and the competition and certain consumer functions of the Office of Fair Trading (**OFT**).

² The CMA also refers in this provisional decision to the Hammersmith Apollo, Brixton Academy, the SBE, the Astoria, and the Forum as the 'five venues'.

³ See [Final Undertakings](#).

⁴ The Forum was sold to the MAMA Group.

⁵ See clause 3(3) of the Undertakings.

Live Nation's request for consent to the acquisition of an interest in the Forum

4. On 7 April 2015, Live Nation requested the CMA (as successor to the OFT) to give written consent under clause 3(3) of the Undertakings for Live Nation to acquire an interest in the Forum (the **Acquisition**).
5. Live Nation submitted that the facts underlying the Undertakings have changed in the eight years since the Undertakings came into force, with the launch or refurbishment of several additional venues with similar capacities that compete at least as closely with the SBE and the Forum as those venues do against each other.

Considering Live Nation's request

6. The CMA's approach to granting consent under a remedy will depend on the individual circumstances affecting a particular undertaking or order and its terms.
7. In determining whether to give consent under the Undertakings in this case, the CMA has considered whether the circumstances prevailing at the time of the Undertakings which required the divestment of the Forum have changed, such as to make it appropriate for the CMA now to grant consent to Live Nation to reacquire an interest in the Forum. In doing so the CMA has had regard to the substantive considerations set out in its guidance on merger remedies,⁶ guidance on remedy review,⁷ and the Chairman's Guidance on Disclosure.⁸
8. The scope of the CMA's provisional decision on consent is limited to determining whether to grant consent for Live Nation to acquire an interest in the Forum under Article 3(3) of the Undertakings. The CMA has not considered whether the Acquisition, by itself, or as part of any wider transaction, would be subject to the merger control provisions of Part 3 of the Enterprise Act 2002, nor has the CMA considered any issues relating to the divestment of the Hammersmith Apollo.

⁶ [Merger remedies: Competition Commission Guidelines \(CC8\)](#). This guidance was originally published by the CC and has been adopted by the CMA board. The original text has been retained unamended, therefore it does not reflect or take account of developments in case law, legislation or practice since its original publication.

⁷ [Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders \(CMA11\)](#). In paragraph 2.6 of this guidance the CMA considers that changes in market conditions are among the change of circumstances that may lead to a variation or termination of undertakings.

⁸ [Disclosure of information in CMA work \(CC7\)](#). This guidance was originally published by the CC and has been adopted by the CMA board. The original text has been retained unamended, therefore it does not reflect or take account of developments in case law, legislation or practice since its original publication.

Market conditions at the time of the Hamsard/Academy Music decision

9. In the Hamsard/Academy Music decision, the CC found that, within London,⁹ substitutability between live music venues was greater between Brixton Academy and Hammersmith Apollo than from either of those to any third party venue. The CC also found that substitutability between the SBE and the Astoria was greater than to any third party venue, and that the Forum was also a significant substitute for the SBE. The CC found that there was limited realistic scope for substitution of third party venues given their characteristics and availability.¹⁰
10. The CC considered that there was some prospect of increasing competition to the five above venues from the Roundhouse, the Royal Festival Hall, and from the O2 Music Club (now the **IndigO2**). The CC noted that the Roundhouse, the Royal Festival Hall, and the IndigO2 were all similar in capacity to the SBE, the Astoria and the Forum, which might suggest that they would compete more closely with those three venues than the Hammersmith Apollo and Brixton Academy. However, the CC was not, at the time, able to rely upon future competition from the Roundhouse, the Royal Festival Hall and the IndigO2 to offset the impact of loss of rivalry between the above five venues. In particular:
 - the CC could not be confident that the Roundhouse, the Royal Festival Hall and IndigO2 would compete closely in practice, given that capacity was only one of the factors taken into account in venue choice;
 - the development of the Roundhouse and of the Royal Festival Hall as a mainstream venue for popular live music events might be constrained by its use for other purposes; and
 - on the basis of the limited information available, the IndigO2 remained an unknown quantity in terms of how it would be assessed by agents and promoters.¹¹

⁹ See paragraphs 4.20–4.24 of the [Hamsard/Academy Music decision](#), which distinguish between live music venues in London and outside London.

¹⁰ See paragraph 5.52 of the [Hamsard/Academy Music decision](#). In reaching this decision, the CC took into account evidence on: (a) factors on which venues compete; (b) number of live music events; (c) responses to a questionnaire to promoters and agents; (d) overlap of artists between venues; (e) usage of venues by promoter; (f) Academy lost show reports; (g) the parties' analysis of alternative venues for events held at the Hammersmith Apollo, the Brixton Academy, and the SBE; and (h) the parties' assessment of the impact on the Brixton Academy of the reopening of Hammersmith Apollo following its refurbishment and the installation of removable seating in 2003.

¹¹ See the [Hamsard/Academy Music decision](#), paragraphs 5.12–5.19.

Changes to market conditions

11. The CMA considers that market conditions have changed significantly since the Hamsard/Academy Music decision. In particular, the following significant changes are discussed below:
 - The closure and subsequent demolition of the Astoria.
 - Increased competitive constraint from third party venues, including:
 - (a) the strengthening of the position of the Roundhouse and the IndigO2 as significant London music venues; and
 - (b) the opening and/or refurbishment of other London music venues of similar capacity to the Forum and the SBE.
12. The CMA notes that it has not received evidence to suggest that the SBE no longer closely competes with the Forum. The CMA has therefore focused its analysis on the closure of the Astoria and on whether new entry or expansion by third party venues since the Hamsard/Academy Music decision would provide a sufficient constraint to offset the impact of any loss of rivalry between the SBE and the Forum.

Market exit of the Astoria

13. Live Nation advised the CMA that in 2009 the Astoria was closed and demolished. The CMA considers the market exit of the Astoria to be a significant change in market conditions. This is because, in the Hamsard/Academy Music decision, the CC found that the Astoria was a close substitute for the Forum and the SBE. The exit of the Astoria has reduced Live Nation's market share of venues with similar capacity to that of the Forum and the SBE. It may also have increased the likelihood of promoters considering third party venues as an alternative to the SBE.
14. The CMA also notes that, since the Hamsard/Academy Music decision, Live Nation's overall presence in the live music venue sector in London is likely to have diminished somewhat. Both the Hammersmith Apollo and the Forum were sold to the MAMA Group (pursuant to the Undertakings), the Mean Fiddler was demolished, and the management of the Wembley Arena was transferred from Live Nation to AEG.

Increased competitive constraint from third party venues

15. Live Nation submitted that the presence of a number of third party venues – some of which have opened or been refurbished since the Hamsard/Academy

Music decision – would continue to provide a sufficient competitive constraint on the SBE and the Forum.¹²

16. Live Nation estimates that its capacity share of supply based on the number of music venues with a capacity above 1,000 in London is currently [5-10] %, while at the time of the Hamsard/Academy Music decision it was [20-25]%. The Forum accounts for less than [0-5]% of the total number of venues with over 1,000 capacity.¹³
17. While the CMA considers that shares of supply can often be a useful indicator of market power, shares of supply based on venue capacity may not fully reflect the strength of competitors, as they do not take account of capacity utilisation, actual attendance or revenue.¹⁴ The CMA's assessment has therefore focused on which, if any, of the third party venues identified by Live Nation would act as an effective competitive constraint on the SBE and the Forum.
18. The factors on which music venues compete include capacity, location, availability, ambience and genre, configuration, facilities, artists' preference, reputation and service quality.¹⁵
19. Although each of the venues mentioned in Live Nation's request for consent has over 1,000 maximum capacity, the CMA considers that the strength of the constraint that each of these venues impose on the SBE and the Forum differs.
20. The evidence provided by Live Nation suggests that the Roundhouse and IndigO2 have developed into particularly significant London live music venues since the Hamsard/Academy Music decision:
 - **Roundhouse:** the Roundhouse has a similar capacity to the SBE and the Forum (3,000) and hosted a similar number of popular music events in 2014 to that of the Forum and the SBE (ie more than 100). The

¹² Live Nation identified the following third party venues: the Roundhouse (capacity 3,000); the Royal Festival Hall (capacity 2,500); the IndigO2 (capacity 2,800); The Clapham Grand, which underwent a substantial renovation in early 2009 (capacity 1,250); Heaven, which became a venue for live music events after it changed management in 2009 (capacity 1,100); Troxy, which was recently converted to host live music and other events (capacity 3,100); Koko (capacity 1,410); Electric Brixton, which opened in September 2011 as an independent live music venue (capacity 1,500); Coronet (capacity 2,600); Barbican (capacity 1,989); London Palladium (capacity 2,286); The Copper Box, which is still mainly focused on sporting events, but has started to promote itself as a venue to host live music events (capacity 3,500).

¹³ The CMA notes that Live Nation venues and the Forum together account for: (a) [5-10]% of total capacity offered by music venues with over 1,000 capacity in London; (b) [10-15]% of total capacity offered by music venues with over 2,000 capacity in London. Live Nation's and the Forum's revenues account for less than [5-10]% of the total revenue of all music venues with over 1,000 capacity in London.

¹⁴ See the OFT decision regarding the [completed acquisition by AEG Facilities \(UK\) Limited of the contract to manage Wembley Arena](#) (March 2013), paragraph 48.

¹⁵ See the [Hamsard/Academy Music decision](#), paragraph 6.29.

Roundhouse has hosted world-class music festivals over the past few years (eg the iTunes Festival and Electric Proms series) and featured a wide range of artists in its calendar. The CMA therefore provisionally considers that the Roundhouse appears to have consolidated its position as music venue in London beyond the 'honeymoon period' that followed its reopening, and would be an effective competitor to Live Nation's venues and the Forum.¹⁶

- **IndigO2:** IndigO2 has a similar capacity to the SBE and the Forum (2,800) and hosted close to 100 popular music events in 2014. Additionally, there are examples of the same artists performing at the IndigO2 and the Forum and at the IndigO2 and the SBE.¹⁷

21. The evidence provided by Live Nation also suggests that the recent opening and/or refurbishment of other venues in London provides a competitive constraint on the SBE and the Forum:

- **Troxy** has a similar capacity to the Forum and the SBE (3,100) and hosted more than 50 popular music events in 2014.
- **Electric Brixton** opened as an independent music venue in 2011. Since then it has hosted 244 live music events, including more than 50 music events in 2014. There are examples of the same artists performing at the Electric Brixton and the SBE;

22. In addition, although KoKo's capacity is less than the SBE and the Forum (1,410), it hosted a large number of popular music events in 2014 (almost 200). This suggests that it remains an effective competitor to the Forum and the SBE.

23. The evidence submitted by Live Nation is supported to some extent by recent decisions of the OFT and the CC. In 2012, the OFT noted that third parties identified the SBE, the Forum and the Roundhouse in the relevant competitor set to the Hammersmith Apollo. In the same decision, third parties identified the SBE, the Forum, KoKo, Roundhouse and Troxy in the relevant competitor

¹⁶ See the [Hamsard/Academy Music decision](#), paragraph 5.52.

¹⁷ Although IndigO2 is located in south-east London and both the SBE and the Forum are located in west and north London, respectively, the CMA notes that location is only one of the various parameters on which music venues compete and that the key in terms of competition between venues in different locations appears to be the number of concerts on a proposed tour and the desire to reach centres of population that will maximise ticket sales. The CMA has not identified any reason at this stage to depart from the approach of its predecessors in previous decisions which defined the geographic scope of the relevant market as London-wide: See, for instance, the CC's [report on the completed acquisition by AEG Facilities \(UK\) Limited, a subsidiary of Anschutz Entertainment Group Inc, of the contract to manage Wembley Arena](#), 2 September 2013 (**CC decision on AEG/Wembley**).

set to IndigO2.¹⁸ In 2013, the CC found that there were many alternatives to the acquirer's venues to host events with capacity under 5,000.¹⁹

24. In relation to the other venues identified by Live Nation – such as the Royal Festival Hall, the Clapham Grand and Heaven – on the basis of the evidence provided by Live Nation it is not clear that these venues would provide a significant competitive constraint on the SBE and the Forum. These venues are either substantially smaller in capacity relative to the SBE and the Forum, or they have hosted a limited number or different type of music events than the Forum and the SBE.
25. At the time of the Hamsard/Academy Music decision it was uncertain whether the Royal Festival Hall would be available for popular live music events. In 2014, this venue hosted fewer than 50 popular music events. Similarly, in the AEG/Wembley decision, the CC noted that the Royal Albert Hall tends to be more capacity constrained than other venues and that it gets booked up to three years in advance.²⁰

Conclusion

26. Based on the information submitted by Live Nation and having regard to the findings of the OFT and of the CC in recent decisions, the CMA has provisionally decided that it would be appropriate to give consent under the Undertakings to Live Nation to the Acquisition under clause 3(3) of the Undertakings. In reaching this provisional decision, the CMA had particular regard to the following market developments since the Hamsard/Academy Music decision:
 - The closure and subsequent demolition of the Astoria. In the Hamsard/Academy Music decision, the loss of competition between the Astoria and the SBE – as well as between the Forum and the SBE – had been a relevant factor in the decision to require the divestiture of the Forum.
 - The strengthening since the Hamsard/Academy Music decision of the position of the Roundhouse and the IndigO2 as significant London music venues. At the time of that decision, the Roundhouse had only recently opened and the IndigO2 was not yet taking bookings. Both venues have a similar (albeit slightly larger) capacity than the Forum and the SBE.

¹⁸ See the OFT decision regarding the *Anticipated acquisition by a joint-venture between Anschutz Entertainment Group and CTS Eventim AG of the HMV Hammersmith Apollo, 1 August 2012 (AEG/Hammersmith Apollo)*, paragraphs 33 & 46.

¹⁹ [CC decision on AEG/Wembley](#), paragraph 8.6.

²⁰ [CC decision on AEG/Wembley](#), paragraph 7.26.

- The opening and/or refurbishment of other London music venues of similar capacity to the Forum and the SBE – both larger and smaller than these venues – including the Electric Brixton and Troxy.
27. These developments suggest that the concerns that led the CC to require the divestiture of the Forum in 2007 are likely to have been substantially reduced by changes to the market which have increased the competitive constraints on the SBE and the Forum.
28. In reaching this provisional decision, the CMA has relied primarily on evidence provided by Live Nation, some of which has been readily verifiable from public sources.²¹ The CMA will have regard to any further information submitted by Live Nation or third parties before making its final decision.

The CMA's provisional decision

29. The CMA proposes to give its consent to the Acquisition under clause 3(3) of the Undertakings.
30. The CMA's consent to the Acquisition does not preclude the statutory powers²² of the CMA to review any acquisition by Live Nation involving the Forum under its merger control functions.

(signed) ADAM LAND

Senior Director of Remedies Business and Financial Analysis

1 June 2015

²¹ As identified in paragraph 6 of the provisional decision the approach adopted by the CMA will depend on the individual circumstances of a particular undertaking or order.

²² See sections 22(1) and 33(1) of the Act.