



# **AEG Facilities (UK) Limited and Wembley Arena**

A report on the completed acquisition by AEG Facilities (UK) Limited, a subsidiary of Anschutz Entertainment Group Inc, of the contract to manage Wembley Arena



## **Members of the Competition Commission who conducted this inquiry**

Martin Cave (*Chairman of the Group*)

Roger Finbow

Andrew Popham

Anthony Stern

## **Chief Executive and Secretary of the Competition Commission**

David Saunders

The Competition Commission has excluded from this published version of the final report information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. Non-sensitive wording is also indicated in square brackets.

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### Glossary

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## Summary

1. On 22 March 2013, the Office of Fair Trading (OFT) referred the acquisition by AEG Facilities (UK) Limited (AEG UK) of the contract to manage Wembley Arena (Wembley) to the Competition Commission (CC) for investigation and report. We published our provisional findings on 23 July 2013. We were required to publish our final report by 5 September 2013.
2. Anschutz Entertainment Group Inc (AEG) is a leading provider of live entertainment services around the world. It manages a number of entertainment venues in London (through wholly-owned subsidiaries) including The O2 Arena (The O2). AEG is also vertically integrated as a promoter, AEG Live (UK) Limited (AEG Live), and a ticketing service, AXS.com (AXS), as well as offering other events-related ancillary services.
3. Quintain Estates and Development PLC (Quintain) is a UK-listed property company. Through Wembley City Estates Limited (WCEL), a wholly-owned subsidiary, it owns Wembley, a live music entertainment venue in north-west London.
4. In 2006, WCEL appointed Live Nation, another leading provider of live entertainment services worldwide, to manage Wembley on its behalf. On 10 December 2012, Quintain served a termination notice to Live Nation and, on 11 February 2013, terminated the contract with Live Nation.
5. AEG UK operates venues and provides venue management consultancy services. It entered into an agreement with WCEL in 2012 to manage Wembley (the Agreement). AEG UK started to manage Wembley on 12 February 2013 under an interim management agreement (the Interim Agreement). The Interim Agreement enabled AEG UK to take over the management of Wembley for the period following the termination of the Live Nation contract and, pending regulatory clearance, the commencement of the Agreement.
6. We concluded that, as a result of AEG UK acquiring the contract to manage Wembley, a relevant merger situation had been created because the enterprise of the management of Wembley had ceased to be distinct from the enterprise of the management of other facilities by AEG subsidiaries such as The O2.
7. We assessed what would have happened in the absence of the merger (the counterfactual). We formed the view that, in the absence of the merger, Wembley would continue to be run by Live Nation under its existing contract as a live entertainment venue for at least three years. During this period we considered it likely that Quintain would have looked at alternative uses for the venue, but given the uncertainty surrounding this issue we considered that any change of use would be unlikely in the timescale envisaged in the counterfactual.
8. We assessed the relevant markets for the inquiry. We identified three services for which the merger may have given rise to horizontal competitive effects: provision of venue space to promoters; provision of sponsorship opportunities; and provision of ancillary service space (eg catering).
9. For the provision of venue space to promoters, we concluded that the market was the supply of indoor live entertainment venues in London with various configurations and segmented by capacity. We found there to be three relevant segments to the market based on venue capacity: under 5,000; between 5,000 and 12,500; and over 12,500. We concluded that the merger would result in an overlap in the provision of venue space both with capacity under 5,000 and in the 5,000 to 12,500 capacity grouping.

10. We investigated whether the market for the supply of indoor live entertainment venues in London should be segmented by event type (eg live music or comedy). We looked at the cost of hiring each venue and found no discernible difference in pricing for different types of events. We also found that when promoters book venues they often do not reveal the type of event until after the booking. Therefore we concluded that the market was not segmented by event type.
11. We found that sponsorship revenues generated at The O2 and Wembley accounted for a very small proportion of overall UK sponsorship revenues. We found that there were many different options for sponsors to achieve their target number of impressions from a given demographic and that the market was not limited to sponsorship of live entertainment venues. Therefore, we concluded that while the venues overlapped in a market for sponsorship—which was likely to be at least UK wide in this case—the limited nature of these overlaps meant that we did not need to consider the market for sponsorship in our analysis of competitive effects.
12. We found that the geographic market for the provision of ancillary service space was narrow since its customers in turn derive the majority of their revenues from the immediate vicinity. We concluded that any market for ancillaries was local to each venue and that the venues did not overlap in any of these markets.
13. We considered the interaction between these three markets for the supply of indoor entertainment space, the provision of sponsorship opportunities and ancillary service space. We concluded that these markets were related since revenues generated in the supply of indoor entertainment space had a positive impact on both sponsorship and revenues from the provision of ancillary services. We took the relationship across customer groups into account in our analysis of competitive effects, in particular when assessing the impact of the merger on non-price characteristics.
14. We also identified two services supplied by AEG that may have given rise to vertical competitive effects: promotion services to artists and agents (AEG Live) and ticketing services (AXS). We defined a market for live entertainment promotional activity in the whole of the UK, which was not segmented by event type. We also considered the market for ticketing services to be covering the whole of the UK, and not to be segmented by event type.
15. Having identified the markets potentially affected by the merger, we next assessed the unilateral horizontal effects of the merger. We considered how a promoter might choose a venue for an event and how venue hire fees were determined. We found that while a promoter may have some influence over the venue decision, the final choice of venue usually lies with the act and their agent. The choice of venue is based on a number of factors, the main ones being: capacity; availability; appearance; brand; and reputation.
16. We found that bookings are governed by ‘pencilling’, a transparent and industry-wide standardized diary management process that ensures that a ‘first come, first served’ approach is consistently applied. The venue hire price is not set at the time of initial booking, although the rate card price is known. The promoter and agent have some expectation as to the level of discount they could achieve off the rate card. Final venue prices are set at the point of booking confirmation, which happens after overall tour costs and revenues have already been agreed between the promoter and the act and their agent. We found that price negotiations usually involved a discount for promoters as well as discounts for event-specific reasons (eg the event runs over more than one day). We found little evidence of switching between venues, or threats to switch, as a part of the price negotiation process.

17. We considered whether AEG would or would not have an incentive to increase prices to promoters following the merger. We found that the impact of the merger on price competition would be limited because:

(a) Pre-merger price competition was very limited. We found that:

- (i) The choice of venue was very rarely determined by the venue hire price.
- (ii) The price negotiations which took place occurred after the venue had been confirmed. They typically involved negotiations over discounts for event-specific reasons (eg the event was held over multiple days). We saw very little evidence of discounts being granted because of threats to switch to alternative venues.
- (iii) There was limited switching between venues. When switching between venues occurred, it was almost always for non-price reasons (eg tickets did not sell fast enough at the first choice venue).
- (iv) The opening of The O2 Complex in 2007, which led to a reduction of the number of events held at Wembley, did not lead to a change in the advertised pricing of venue hire at Wembley between 2007 and 2012.

(b) Promoters have buyer power. This stems from the multiple interactions that they have with venue operators both in the UK, for different acts, and also globally. Promoters and agents therefore have an expectation as to the rate card and the discounts that they can achieve from it, regardless of the alternative venue choices available for any particular event. They can also retaliate against any attempts to increase price for isolated events in other markets. Consistent with this, we found that promoters were not awarded bigger discounts off the rate card for medium-sized events for which there are alternative venues, compared with large events. Furthermore, promoters were not offered lower discounts in periods where demand was higher.

(c) There are constraints from other revenue sources. Venues generate revenues from other sources including sponsorship and provision of ancillary service space. These other revenue sources are particularly important to AEG's business model. A very small loss of events or footfall would cause a reduction in ancillary revenues which would be sufficient to make a price increase unprofitable. This imposes a constraint on AEG's activities in the market for the supply of live indoor entertainment space.

(d) AEG UK would have a contractual incentive to increase volumes at Wembley.

18. We therefore concluded that, for the reasons above, a price rise to promoters would be unlikely.

19. We also considered whether AEG would or would not have an incentive to reduce the non-price aspects (capacity, availability, appearance, brand or reputation) of the competitive offer post-merger. We found that:

- (a) Some non-price characteristics may be difficult to change (eg type of venue, global branding or the size of the venue).
- (b) Changing these factors for the worse would have a negative impact on revenue sources other than venue hire income. The venue would be highly incentivized to retain or improve quality aspects such as appearance, brand and reputation.



Furthermore, any reduction in quality would not only impact the venues in question, but could also have an impact on AEG's reputation and its other venues.

- (c) AEG's agreement with Quintain would incentivize AEG to increase the number of events at the venue, and therefore indirectly to maintain or improve the non-price characteristics of Wembley.
  - (d) AEG's business plan for Wembley showed that it intended to invest to improve the quality of the venue.
20. We therefore concluded that a post-merger reduction in the non-price aspects of competition was unlikely.
  21. We considered 'facility fees', which are venue-imposed fees on tickets, and how these fee levels are determined. We found that these fees were an increasingly common factor in venue operations but that they were not related to the way that venues compete. Any introduction of facility fees at Wembley post-merger is unlikely to be caused by a loss of competition, therefore we did not consider them as a part of this inquiry.
  22. We also considered possible vertical effects of the merger on the event promotion market(s). We found that AEG Live promoted only a small number of events at the venues affected by the merger and we did not consider that it would easily move towards promoting substantially more events. We also considered the nature of current competition among venues over 12,500 capacity where Earls Court and Excel were the only (weak) alternatives to The O2. We found that AEG had not foreclosed other promoters in this capacity bracket. We therefore concluded that AEG would be unlikely to foreclose other promoters following the merger.
  23. We also investigated if AEG would or would not have had an incentive to channel more sales through its ticketing agent AXS following the merger and whether this would have led to any competition concerns in ticketing services. AXS had a small part of the ticketing market and any increase in AXS' market share would be unlikely to have a significant impact on competition between ticketing agents. We therefore concluded that AEG would be unlikely to foreclose other ticketing agents.
  24. We looked at the ease of entry or expansion within the market. We decided that entry or expansion was unlikely. However, whilst entry and expansion are important potential countervailing factors where a merger would otherwise give rise to a substantial lessening of competition (SLC), given our findings on the effects of the merger, we did not consider that difficulty of entry or expansion was relevant to our conclusion on the competitive effects of the merger.
  25. On this basis, we concluded that the merger had not resulted, and was not expected to result, in an SLC within any market or markets in the UK for goods or services.

# Findings

## 1. The reference

- 1.1 On 22 March 2013, the OFT referred the acquisition by AEG UK, a subsidiary of AEG, of the contract to manage Wembley to the CC for investigation and report.
- 1.2 We had to decide:
  - (a) whether a relevant merger situation had been created; and
  - (b) if so, whether the creation of that situation had resulted, or may have been expected to result, in an SLC or anti-competitive outcome within any market or markets in the UK for goods or services.
- 1.3 Our terms of reference are set out in Appendix A. We were required to publish our final decision by 5 September 2013.
- 1.4 This document and appendices constitute our final report. Further information can be found on our website,<sup>1</sup> including non-commercially-sensitive versions of AEG's submissions and summaries of evidence from third parties.

## 2. Industry background

- 2.1 A live entertainment venue normally hosts a wide range of events, including: sport; music; comedy; children's entertainment; religious shows; and artistic entertainment. Live music (including indoor, outdoor and festival) has seen significant growth in recent years and is the largest live entertainment sector.<sup>2</sup> Live comedy hosted at large arenas has also seen significant growth in recent years with major tours, for example Michael McIntyre and Peter Kay. Sporting events include both one-off events, such as boxing matches, as well as tournaments played over a longer period.<sup>3</sup> Other types of event include: children and family entertainment shows, such as Disney on Ice and CBeebies; religious shows, such as the Hillsong Church; and conferences, such as St James Place.
- 2.2 Depending on its characteristics, location and reputation, a venue may become known for hosting a particular type of live entertainment which will represent a larger share of its events.<sup>4</sup> London holds a significant position in the live entertainment industry because of its population and location, with national and international acts seeking to play London in the context of a UK, European or worldwide tour. The iconic nature of some London venues may also be a significant factor in tour routings.
- 2.3 Live entertainment venues can be categorized by size and function as follows:
  - (a) *Stadiums* are permanent outdoor venues, usually with a capacity of over 20,000, with live sport events as their primary use.

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<sup>1</sup> [www.competition-commission.org.uk/our-work/directory-of-all-inquiries/aeg-wembley-arena](http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/aeg-wembley-arena).

<sup>2</sup> Live music revenues in the UK have grown from £1.3 billion to £1.6 billion between 2007 and 2011, a growth of 29 per cent. In 2012, the UK music festival market was worth around £185–£190 million with around 157 music festivals taking place (Mintel Report, August 2012).

<sup>3</sup> For example, Wembley hosted the Masters snooker from 2007 to 2011 which ran for four weeks; The O2 hosts the Tennis ATP World Tour finals tournament which runs for one week.

<sup>4</sup> Hammersmith Apollo in London is well known for hosting comedy shows as well as music events.

- (b) *Arenas* are permanent indoor venues, usually with a capacity of between 5,000 and 20,000, with live music events as their primary use.
- (c) *Concert halls, ballrooms, theatres and large clubs* are permanent indoor venues, typically with a capacity of between 1,000 to 5,000, which host a mix of live entertainment events.
- (d) *Pubs and small clubs* are permanent indoor venues usually with a capacity of below 1,000, with a wide range of live music events as a common use.
- (e) *Festivals* are temporary outdoor venues, with a wide range of capacities, taking place over one or more days, often with live music events as their primary content.

2.4 We noted that whilst each venue has a listed capacity, in practice the actual capacity of each venue varies based on:

- (a) the proportion of the audience seated and standing, ie if a space is flexible and can be fitted with seats or left clear for standing room;
- (b) the production configuration, ie a concert at one end of the arena or a sports event in the centre of the arena; and
- (c) the production size, ie the size of the stage, additional rigs for lighting or special effects, and crowd barriers.

2.5 For example, The O2 has a listed capacity of 20,000 seated. For events with a large production and stage, seated capacity may reduce below 20,000. Throughout this document, we use the listed capacities of venues, noting that these reflect differing configurations of sitting and standing unique to each venue and vary with production type.

### ***Venue owners and operators***

2.6 A live entertainment venue may be operated by its owner or the owner may choose to contract out the management of the venue to a venue operator. Venue operators are usually completely responsible for the management and physical operation of a venue, providing services such as event booking, security and a ticket office. The venue operator will typically either guarantee the owner a minimum level of income with any income generated above that level split between owner and operator according to an agreed formula, or the owner will be paid a fixed fee with the venue operator bearing the operating risk.

### ***Revenue streams and customers***

2.7 A live entertainment venue earns revenue in a number of ways. A common revenue model is the 'rent-based' model. Under this model the venue derives the majority of its revenue from the hire charge for the venue. Most venues have a 'rate card' setting out the standard daily rental charge for the venue. The rate card is usually the starting point for the negotiations for the eventual hire fee. Discounts to the rate card may be negotiated between the venue operator and the person hiring the venue (usually the event promoter). A venue may occasionally take a lower rental fee in return for a

percentage of ticket sales.<sup>5</sup> In addition, a venue may enter into a joint venture with a client.

2.8 Live entertainment venues also derive income from:

- (a) *Ticket sales*—selling a percentage of tickets for events being held at the venue (usually between 50 and 75 per cent).<sup>6</sup> A venue will often engage a ticketing agent to do this and will be entitled to a share of the booking fees charged by the ticketing agent. Alternatively the venue may use its own ticketing system, entitling it to the entire booking fee charged to the customer (see Appendix F).
- (b) *Ancillary sales*. These include food and beverage sales and merchandise sold at the event. A venue operator will either sell food and beverages directly to customers or it will contract this out and receive rents. Rents received may be directly linked to the sales performance of the vendor. In addition, a venue operator will usually retain a percentage of all merchandise sales at an event.
- (c) *Sponsorship income, including naming rights* (see Appendix K). Often this income will contain fixed and variable elements, with the variable element being driven by performance criteria such as the venue attendance rates, the total number of events held, and the type of events being staged at the venue.
- (d) *Corporate hospitality*. For example, this may include the sale of corporate boxes or specific venue areas to sponsors. The higher the number and quality of events which are being held at a venue, the greater the value an operator will be able to obtain.
- (e) *A facility fee*. Charged by some venues, this fee is added to the face value of a ticket and passed by the ticketing agent from the ticket buyer through to the venue operator.
- (f) *Car parking*.

2.9 Each live entertainment venue will have a different mix of revenues depending on its characteristics. For example, a venue may be particularly attractive to sponsors due to the number and/or type of visitors it can attract, whilst other venues may host events where customers consume large amounts of food and beverages. Equally, some venues may rely more heavily on the venue rental fee. Because many of the potential revenue streams for a venue are variable (that is, they increase with higher attendance and vice versa), audience numbers are important to a venue operator. Many of the potential revenue streams listed above are directly linked to, and increase with, the number of people attending the venue. A venue with a broad mix of these types of variable income streams will therefore be particularly incentivized to maintain and/or increase attendance numbers.

### **Vertical integration**

2.10 The event supply chain runs from the act to the customer. The act employs an agent and a manager who are responsible for all aspects of marketing the act's work. The agent or manager will contract with a promoter who is responsible for organizing a

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<sup>5</sup> Mick Perrin told us that it rented venues on a fixed hire price or an agreement where the ticket sale proceeds were split between the venue and promoter. Sometimes it worked with venues that would require a minimum hire fee with ticket sales split in addition to that fee.

<sup>6</sup> Tickets are allocated to the venue, promoter and artist to be sold through their own preferred ticket agent.

tour and negotiating with venues. The agent and manager, alongside the artist, set the ticket price. The full live entertainment supply chain is set out in Appendix F.

- 2.11 Some venue owners and operators are vertically integrated, in that they also own promotion and ticketing businesses. AEG is a venue owner and operator, a live entertainment promoter through AEG Live and a ticketing agent through AXS. Other vertically integrated owners/operators in the UK include Live Nation, SJM Concerts<sup>7</sup> and MAMA.<sup>8</sup>

### 3. The businesses

#### **AEG operations**

- 3.1 AEG has worldwide operations in sports and entertainment, including venue ownership and operation, sponsorship and marketing. [§]. The relevant UK entities for the inquiry are AEG UK which manages Wembley, AEG Live which is a promoter, AnSCO Arena Ltd (AnSCO) which manages The O2, and The Waterfront Limited Partnership (Waterfront) which is the leaseholder of The O2 Complex and landlord to its tenants.<sup>9</sup> AEG UK is a subsidiary of AEG Facilities LLC, a subsidiary of AEG operating venues and providing venue operation consultancy services worldwide. AEG Live is a wholly-owned subsidiary of AEG Live LLC (AEG Live USA) which is primarily involved in the promotion of concert events and tours.
- 3.2 The UK business is vertically integrated in the live entertainment industry operating in promotion (AEG Live), venue ownership/operation (AEG UK, AnSCO and Stage C Limited) as well as ticket sales (AXS).<sup>10</sup>

#### **The O2 Complex**

- 3.3 The most significant part of AEG's UK business is The O2 Complex in London, which opened in June 2007. This is a 113,300 square metre (28 acre) site situated in east London by the River Thames encompassing: The O2, Indigo2 (a live music club), the Entertainment District (around 30 bars & restaurants and a cinema), and The O2 Bubble (Exhibition Centre). Indigo2 is operated and managed by AnSCO Music Club Limited, a 100 per cent owned subsidiary of AEG Live. The O2 Complex had revenue of [§] million in 2012.<sup>11,12</sup> Around [§] per cent of this revenue is generated by The O2. Approximately [§] The O2's revenue is generated from contractually obligated income (COI)<sup>13</sup> with a further [§] per cent from venue hire fees (based on The O2 2013 budget).

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<sup>7</sup> SJM Concerts has an official ticket-selling website called [Gigs & Tours.com](http://Gigs & Tours.com). SJM Concerts is also a shareholder in the Academy Music Group (AMG) which has venues across the UK including the O2 Academy Brixton and O2 Shepherd's Bush Empire in London.

<sup>8</sup> The MAMA group operates a range of live music venues and festivals across the UK as well as a team of inhouse promoters, operating under the 'MAMA Presents' brand (previously 'Mean Fiddler Presents').

<sup>9</sup> Hammersmith Apollo is owned by a joint venture (Stage C Limited) owned by AnSCO Music Club Limited, a 100per cent owned subsidiary of AEG Live LLC and CTS Eventim.

<sup>10</sup> AXS uses Outbox, a joint venture including AEG, as the ticket software provider.

<sup>11</sup> Details of the financial performance of The O2 Complex are set out in Appendix B.

<sup>12</sup> The O2 Complex leases the site from the Homes and Communities Agency (HCA) for a fixed fee of £[§] plus 3 per cent of gross ticket revenue, subject to a minimum annual fee of £[§] and a maximum of £[§]. There is also a [§]. (Source: AEG, London Arena and Waterfront Finance LLC financial statements for the year ended 31 December 2009.)

<sup>13</sup> COI comprises revenue from contracts with a term of one or more years.

## **The O2**

- 3.4 The O2 is a 20,000<sup>14</sup> capacity live entertainment venue and is the most significant part of The O2 Complex, selling 1.9 million tickets for music events in 2012. In 2012, it was awarded Pollstar's 'International Arena of the Year' award for the sixth consecutive year.

## **Hammersmith Apollo**

- 3.5 The Hammersmith Apollo is an art deco theatre-style venue with a listed capacity of 3,632 for seating events and 5,039 for standing. It is now primarily a live music and entertainment venue (eg Riverdance), but is also available for private corporate hire, launch parties, fashion shows, film screenings, award dinners and film sets.

## **AEG's business model**

- 3.6 AEG told us that its business model was based on maximizing COI and ancillary revenue streams at its venues through increased audience attendance or 'footfall' by the provision of a high number of quality events. The key revenue streams under this model are:

- (a) *sponsorship*: [REDACTED];
- (b) *ancillary sales*; and
- (c) *corporate hospitality*.

## **Wembley**

- 3.7 Wembley is a Grade II listed live entertainment venue with a capacity of 12,525 (mixed standing and seated) or 9,000 fully seated. It is situated in north-west London, next to Wembley Stadium. It opened in 1934 as a swimming pool for the British Empire (now Commonwealth) games and was converted to an entertainment venue in the mid-1960s. It stages a mixture of live music, comedy, family, sports entertainment shows, religious and conference events.

## **Ownership and management**

- 3.8 Wembley is owned by Wembley City Estates Limited (WCEL), a wholly-owned subsidiary of Quintain, a UK-listed property company.<sup>15</sup> Quintain acquired Wembley and a freehold interest comprising 348,000 square metres (86 acres) of land around (but not including) Wembley Stadium in 2002 (the Wembley complex). Quintain does not operate Wembley; instead it contracts this to a specialist venue operator.<sup>16</sup> Quintain told us that it was [REDACTED].<sup>17</sup>
- 3.9 We examined the split of revenues at The O2 and Wembley—see Table 1.

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<sup>14</sup> The O2 has a listed seating capacity of 20,000, subject to variation as set out in paragraph 2.5.

<sup>15</sup> Throughout the report we refer to Quintain rather than WCEL as WCEL is not distinct from Quintain, where the management strategy is developed.

<sup>16</sup> This is in line with its overall management strategy. For example, at the Wembley Complex it has management contracts with Hilton Hotel Corporation for the hotel; CSP for event day car parks; and LRM for residential properties.

<sup>17</sup> Since 2002, Quintain has [REDACTED].

TABLE 1 Revenues at The O2 and Wembley by customer group

Customer group	Venue offering	The O2 (2011/12)		Wembley (2011/12)	
		'000	%	'000	%
Promoters	Hire of venue space	[X]	[X]	[X]	[X]
Event-goers	Sale of tickets	[X]	[X]	[X]	[X]
	Ancillary revenues*	[X]	[X]	[X]	[X]
Sponsors	Sale of advertising	[X]	[X]	[X]†	[X]
Ancillary sales	Hire of service space‡	[X]	[X]	[X]	[X]
Other		[X]§	[X]	[X]	[X]
Total		[X]	[X]	[X]	[X]
Profit¶		[X]	[X]	[X]#	[X]

Source: AEG and Wembley management accounts (2011/12).

\*Merchandise and event car parking.

†Accrues to Quintain.

‡Food and beverage royalties and catering service charge.

§Includes [X] million of Olympic revenue.

¶EBITDA.

#Live Nation only.

3.10 Revenue for the hire of venue space is important at Wembley, where in 2011/12 it accounted for [X] per cent of total income. The share of The O2 income from venue hire was much lower at [X] per cent.

3.11 Income from sponsorship [X] at The O2, accounting for a significant proportion ([X] per cent) of all income. At Wembley, sponsorship [X], accounting for just [X] per cent of the total revenues in 2011/12.<sup>18</sup>

## 4. The merger

### Outline of merger situation

4.1 Wembley had been managed by Live Nation since 2006 under a [X]. On 10 December 2012, Quintain served a termination notice to Live Nation and, on 11 February 2013, terminated the contract with Live Nation. AEG commenced management of Wembley on 12 February 2013.

4.2 On [X], AEG UK entered into a management agreement (the Agreement) with WCEL to manage Wembley. The Agreement between AEG UK and WCEL is a long-term management agreement with an initial term of [X] years [X]. The Agreement was subject to competition authority clearance.<sup>19</sup>

4.3 At the same time as entering into the Agreement, Quintain and AEG entered into an Interim Management Agreement (the Interim Agreement) which enabled AEG to take over management of Wembley for the period following termination of the Live Nation contract and, pending regulatory clearance, the commencement of the Agreement. The Interim Agreement will terminate on [X] or earlier if required by the competition authorities or once all conditions precedent are met. Further details of the Agreement and the Interim Agreement are set out in Appendix C.

<sup>18</sup> Furthermore, under the management agreement for that period, [X].

<sup>19</sup> The Agreement is also subject to the grant of a licence by Brent Council. An application for the licence has been lodged.

## ***The rationale for the merger***

- 4.4 Quintain told us that a successful Wembley would complement its redevelopment of the Wembley complex. It would [REDACTED] enhance its reputation as a world class entertainment destination. In this context, Quintain told us that it had appointed Live Nation in 2006 to manage Wembley as it believed Live Nation would be able to leverage its worldwide live entertainment experience in promotion and venue management to bring high-profile acts to Wembley. However, after an initial period of satisfactory operation, the performance of Wembley declined following the opening of The O2, leading to Live Nation missing key performance targets within the contract.<sup>20</sup>
- 4.5 The effect of this decline in event and attendance numbers was that in 2009, 2011 and 2012 Quintain's [REDACTED].<sup>21,22,23</sup>
- 4.6 [REDACTED]
- 4.7 [REDACTED]
- 4.8 Quintain told us that over the period of the contract with Live Nation, it had spoken to many industry participants about ways to enhance Wembley's performance, and became aware of AEG and its business model with [REDACTED]. Quintain told us that it considered this business model critical for making Wembley a success as it [REDACTED].
- 4.9 Quintain said that it considered AEG to be the best operator because AEG had proven ability to turn around an unsuccessful venue, international profile and access to world class talent. In addition, Quintain saw AEG's focus on customer service as important for Wembley because a positive customer experience in the venue could help the overall reputation of the area.
- 4.10 Quintain told us that it was aware of the capabilities of other potential venue operators, [REDACTED].<sup>24</sup> However, Quintain did not consider any of these operators as suitable for Wembley because [REDACTED].
- 4.11 [REDACTED]
- 4.12 Quintain stated that under the proposed venue management agreement with AEG, it anticipated minimum guaranteed revenue of £[REDACTED].

## ***AEG's rationale for the transaction***

- 4.13 AEG told us that it believed Wembley to be an underutilized venue. It viewed the implementation of its business model and improving Wembley's reputation as critical to Wembley's success. It planned to increase Wembley's overall profitability by increasing indirect (eg from sponsorship) and direct (eg from venue hire and ancillary services) event-related revenues. It aimed to do this by:
- (a) increasing the number of events at Wembley;

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<sup>20</sup> The contract's targets included spectator and event numbers. (See Appendix B for details of the number and type of event and attendance figures.)

<sup>21</sup> Details are set out in Appendix B.

<sup>22</sup> [REDACTED]

<sup>23</sup> [REDACTED]

<sup>24</sup> [REDACTED]



- (b) investing in the venue to increase the overall visitor experience and create a VIP offer;
- (c) increasing attendance as a result of improved quality of content and improved experience;
- (d) using the increase in attendance to attract new sponsorship partners;
- (e) using AEG's established networks in all aspects of the events industry to build the live entertainment market overall as well as bringing higher-profile acts to Wembley;
- (f) [REDACTED]; and
- (g) [REDACTED]

4.14 AEG forecast that Wembley would make an EBITDA<sup>25</sup> before sponsorship of between [REDACTED] and [REDACTED] million in 2016. Further details of AEG's business plan are included in Appendix D.

## 5. Relevant merger situation

- 5.1 The test to determine whether the transaction has resulted in the creation of a relevant merger situation has two parts:
- (a) we had to decide whether two or more enterprises had ceased to be distinct; and
  - (b) whether or not the value of the turnover in the UK of the enterprise being acquired exceeded 70 million or, if not, whether or not the share of supply of goods or services of any description in the UK (or a substantial part thereof) was at least one-quarter.<sup>26</sup>

### *Enterprises ceasing to be distinct*

- 5.2 The Act defines an 'enterprise' as 'the activities or part of the activities of a business'. 'Business' is defined as 'including a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied other than free of charge'.<sup>27</sup>
- 5.3 As noted in paragraph 4.2, AEG UK provides entertainment venue management services, ie management of Wembley as a commercial activity [REDACTED]. We were therefore satisfied that the activity of management of Wembley conducted by AEG UK constituted an enterprise for the purposes of the Act.
- 5.4 We looked at the services that AEG UK was required to perform under the Interim Agreement and the Agreement (see Appendix C). The services related directly to the operation of Wembley. Although the Agreement was conditional upon regulatory clearance, and the grant of a licence by Brent Council, the nature of the services to be provided under the Agreement did not differ from those provided under the Interim Agreement. It was also relevant that the staff at Wembley formerly employed by Live Nation transferred to AEG UK under TUPE arrangements. This evidence indicated to

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<sup>25</sup> Earnings before interest, tax, depreciation and amortization.

<sup>26</sup> Under section 23 of the Act.

<sup>27</sup> Under section 129(1) and (3) of the Act.

us that the Interim Agreement amounted in substance to the completed transfer of an enterprise to AEG UK and the change in the means of remuneration under the Agreement merely reflected its long-term nature rather than a separate conditional agreement which had not yet commenced.

- 5.5 We were also satisfied that the activities of operation or management of The O2 Complex and Hammersmith Apollo by other subsidiaries of AEG, as set out in paragraphs 3.2 to 3.5, were also enterprises for the purposes of the Act.
- 5.6 We therefore concluded that the management of entertainment venues in London and the management of Wembley by subsidiaries of AEG were enterprises for the purpose of the Act.
- 5.7 The concept of ‘ceasing to be distinct’ is described in section 26 of the Act which provides that any two enterprises cease to be distinct if they are brought under common ownership or common control (whether or not the business to which either of them formerly belonged continues to be carried on under the same or different ownership or control).
- 5.8 As a result of entry into the Agreement and commencement of the Interim Agreement, the enterprise conducted by AEG UK, namely the management of Wembley, ceased to be distinct from other enterprises, namely the management of The O2 and Hammersmith Apollo, carried out by subsidiaries of AEG. This is because the companies which carry out these enterprises are under common ownership or control of AEG and are interconnected bodies corporate of AEG.
- 5.9 Section 24 of the Act [✂] that a reference of a completed merger may be made if two or more enterprises have ceased to be distinct no more than four months before the date of the reference. The four-month period starts to run from the date on which the enterprises cease to be distinct, or the date on which notice of material facts about the completion of the transaction have been given to the OFT or made public. As noted above, we concluded that the Interim Agreement and the Agreement should be treated as a single continuous transaction that completed with the entry into effect of the Interim Agreement on 12 February 2013. As a result, we were satisfied that the reference was made within the four-month period required by section 24 of the Act.

### ***Turnover test***

- 5.10 The turnover test applies where the value of the turnover in the UK of the ‘enterprise being taken over’ exceeds £70 million. Section 28 of the Act provides a mechanism for determining what must be taken into account in terms of the turnover of the ‘enterprise being taken over’.
- 5.11 In this case, the ‘enterprise being taken over’ was management of Wembley. The turnover of Wembley for the year ended 30 March 2012 was £5.06 million. The turnover test was therefore not satisfied and the share of supply test had to be considered.

### ***Share of supply test***

- 5.12 The share of supply test is satisfied if the merging enterprises supply or acquire goods or services of a particular description and as a result of the enterprises ceasing to be distinct, the merged entity will supply or acquire 25 per cent or more of those goods or services in the UK or a substantial part of the UK, provided the

merger results in an increment to that share.<sup>28</sup> The relevant point in time for calculation of the share of supply is immediately before the reference is made.<sup>29</sup>

- 5.13 At the time of the reference, the Live Nation contract had terminated<sup>30</sup> and AEG UK had commenced management of Wembley in accordance with the Interim Agreement.<sup>31</sup>
- 5.14 The concept of goods or services of ‘any description’ is very broad. The CC is able to measure shares of supply by reference to such criteria (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria as the CC considers appropriate.<sup>32</sup> In each case, the criteria are to be such as the CC considers appropriate in the circumstances of the case.<sup>33</sup> The description of goods or services identified for the purposes of the jurisdictional test does not have to correspond with the market definition adopted for the purposes of the substantive assessment.
- 5.15 In this case, the relevant enterprises supply management services to a number of live entertainment venues in London: to The O2 Complex; Hammersmith Apollo; and Wembley. In this case, we considered that venue capacity was the appropriate measure for determining the share of supply test because the enterprises conducted at these venues give the operator a share of the supply of venue capacity to customers.
- 5.16 AEG submitted that the share of supply of indoor live entertainment venues in London was determined by AEG’s share of total venue capacity in London. The parties told us that AEG’s share of supply increased from 26 to 38 per cent following commencement of the Interim Agreement.
- 5.17 In applying the share of supply test, we can consider whether it is satisfied on a national basis or in a substantial part of the UK. We examined if London could be considered ‘a substantial part of the UK’.
- 5.18 The test to be applied in determining what is a substantial part of the UK is set out in *R v MMC and another ex parte South Yorkshire Ltd*. In that case, the House of Lords said that for a given area to be a substantial part of the UK it must be of such ‘size, character and importance as to make it worthy of consideration’ for merger control purposes. Relevant factors for the CC to consider include the relative proportion of the area in question by comparison with the UK as a whole as regards surface area, population and economic activities. We are satisfied that London is clearly of such a size, character and importance as to make it worthy of consideration.
- 5.19 We therefore concluded that the share of supply test was met as the parties have a combined share of supply of indoor live entertainment venues in excess of 25 per cent, with an increment attributable to Wembley, in London, which is a substantial part of the UK.

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<sup>28</sup> Under [section 23](#) of the Act and the *Merger Assessment Guidelines*, CC2, [paragraphs 3.3.3–3.3.4](#).

<sup>29</sup> Under [section 23\(9\)](#) of the Act.

<sup>30</sup> A notice period of 60 days was sent by Quintain to Live Nation on 10 December 2012. The contract terminated at midnight on Monday 11 February 2013.

<sup>31</sup> 27 March 2013.

<sup>32</sup> Under [section 23\(5\)](#) of the Act.

<sup>33</sup> Under [section 23\(8\)](#) of the Act.

## ***Conclusion on the relevant merger situation***

5.20 For the reasons set out above, we concluded that the completed acquisition by AEG UK of the right to manage Wembley under the terms and conditions set out in the Interim Agreement and the Agreement constituted a relevant merger situation for the purposes of section 35 of the Act.

## **6. Counterfactual**

6.1 Consideration of whether the merger may give rise to an SLC involves a comparison of the prospects of competition with the merger against the competitive situation without the merger. The latter is called the 'counterfactual'.<sup>34</sup> Our Merger Assessment Guidelines<sup>35</sup> (the Guidelines) explain that we may examine several possible counterfactual scenarios based on evidence obtained during the course of our inquiry. The CC will then select the most likely scenario absent the merger, which may or may not be the continuation of the pre-merger situation. The Guidelines note that 'the CC will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of the facts available to it and the extent of its ability to foresee future developments'.<sup>36</sup> The Guidelines also note that in most cases the starting point for the counterfactual is the situation pre-merger.

6.2 We started our assessment of the counterfactual with the contractual position which existed prior to 11 February 2013, the date when Quintain terminated the contract with Live Nation. At that time, Live Nation had a contract with Quintain to manage Wembley until 2021. Quintain told us that in the foreseeable future there were no other alternative venue managers for Wembley other than AEG and Live Nation. It said that in the absence of appointing AEG to manage Wembley, it [redacted]. Accordingly we examined, in the absence of AEG, how likely it would have been that Quintain:

- (a) would have terminated the contract with Live Nation, and if so who were the likely alternative managers; and
- (b) would have exited the live entertainment venue market by redeveloping Wembley for another use.

### ***Who would have operated Wembley?***

6.3 In our assessment of who would have operated Wembley, we looked first at the likelihood that Quintain would have retained Live Nation under its existing contract. Second, we looked at whether there were credible alternative venue operators which Quintain might have used to manage Wembley. Third, we looked at the role of the minimum rental guarantee in relation to the merits of Live Nation and alternative venue operators.

### ***Would Quintain have retained Live Nation under its existing contract?***

6.4 We noted Quintain's view in paragraph 4.4 that a successful Wembley would complement its [redacted] and that it had believed that Wembley would be successful under the management of Live Nation. We also noted in paragraphs 4.5 to 4.9 that

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<sup>34</sup> CC2, paragraph 4.3.1.

<sup>35</sup> CC2, paragraphs 4.3.1 & 4.3.7.

<sup>36</sup> CC2, paragraph 4.3.6.

the performance of Wembley under Live Nation was below Quintain's expectations and its contractual obligations. [REDACTED]

6.5 [REDACTED]

*Were there other credible managers for Wembley?*

6.6 We noted in paragraph 4.10 that Quintain was aware of other venue operators including the [REDACTED].

6.7 [REDACTED]. We note in this regard that Quintain is a property development company and it generally outsources management contracts to specialist third parties.

*The minimum rental guarantee*

6.8 [REDACTED]

***Would Wembley have been redeveloped for an alternative use?***

*Quintain's incentives to change the use of Wembley*

6.9 [REDACTED]

6.10 [REDACTED]

6.11 [REDACTED]

6.12 [REDACTED]

*Quintain's ability to effect a change*

6.13 [REDACTED] It stated that although Wembley was currently Grade II listed, it did not see this as an impediment to changing its use. [REDACTED]

6.14 [REDACTED]

***Conclusion***

6.15 We considered it likely that Quintain would have been looking to terminate the contract with Live Nation only if Quintain had identified a suitable alternative operator for Wembley. For that operator to be considered suitable, it would need to [REDACTED]. We noted that Quintain considered all [REDACTED] to be unsuitable. We also noted that it was likely that, even if Quintain had chosen [REDACTED], the financial return for Quintain may have been lower than [REDACTED]. This is because any new contract would have been likely to have a lower minimum rental guarantee.

6.16 Because none of the alternative operators were suitable to Quintain, we found it likely that Quintain would have retained Live Nation as operator if Wembley was to remain a live entertainment venue and it would most likely have done so under the current Live Nation contract. The contract with Live Nation provided Quintain with a minimum rental guarantee (in excess of the value it would be likely to obtain in a new contract) and [REDACTED], the contract provided Quintain with some, albeit suboptimal, return.

- 6.17 We considered that the reputational effects and the declining underlying performance of Wembley would be likely to have led Quintain to assess formally alternative uses for the venue. Rental value may have been higher for the alternative uses; although we noted that the rent achieved under the contract with Live Nation is around the lower bound of Quintain's estimated potential rental range.
- 6.18 We noted Quintain's view that it would take around three years to change the use of the venue. We also noted that the venue is Grade II listed and it would require planning consent to change its use. In addition, Quintain had not undertaken any exploratory work in relation to a change of use with the planning authorities. We therefore considered that it may take three years to achieve a change of use for Wembley, in addition there is a large degree of uncertainty surrounding whether such change of use would be permitted and, if it were to be permitted, how long this would take to obtain.
- 6.19 We therefore concluded, as our counterfactual, that Wembley would have continued to be run by Live Nation under its existing contract as a live entertainment venue for at least three years. During this period, we considered it likely that Quintain would have looked at alternative uses for the venue but, given the uncertainty surrounding this issue, we considered that any change of use was unlikely in the foreseeable future.

## **7. Market definition**

- 7.1 In this section, we define the relevant markets affected by the merger. Our Guidelines<sup>37</sup> state that the purpose of market definition in a merger inquiry is to provide a framework for the analysis of the competitive effects of the merger. The Guidelines go on to state that the CC will identify the market, or markets, within which the merger may give rise to an SLC and that these will include the most relevant constraints on the behaviour of the merger firms.
- 7.2 The Guidelines also note that, in practice, the analysis leading to the identification of the market or markets will overlap with the assessment of competitive effects, with many of the factors affecting market definition being relevant to the assessment of competitive effects and vice versa.<sup>38</sup> The relevant market contains the most significant competitive alternatives available to the customers of the merger firms. It includes the most relevant constraints on the behaviour of the merger firms.<sup>39</sup>
- 7.3 In this section, using the approach set out in the Guidelines, we set out the relevant geographic market and product market and the segments within this market in which we have assessed the effects of the merger.
- 7.4 The subsidiaries of AEG overlap in the supply of management services to live entertainment venues in London. Within this we identified three services supplied by the AEG subsidiaries at different venues on which we focused our assessment. They were:
- (a) the supply of venue space to promoters;
  - (b) the supply of sponsorship opportunities; and

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<sup>37</sup> CC2, paragraph 5.2.1.

<sup>38</sup> CC2, paragraph 5.1.1.

<sup>39</sup> CC2, paragraph 5.2.1.

- (c) the provision of ancillary service space at venues.
- 7.5 We also identified two relevant services supplied by other subsidiaries of AEG not involved in live entertainment venue management, for which the merger may have given rise to vertical competitive effects:
- (a) promotion services: AEG Live and its subsidiaries provide live event promotion services to agents and artists; and
  - (b) ticketing services: AXS provides ticketing services to venues and promoters.
- 7.6 Our assessment of the scope of the relevant market for the supply of each of these five services is described below.

### ***Horizontally affected markets***

#### *The supply of venue space to promoters in London*

##### *Geographic market*

- 7.7 We began by defining the scope of the relevant geographic market. We found that there was an overlap in the provision of supply of management services to live entertainment venues in London. The venues managed by AEG are located in London. To define the geographic market in which they operate, we considered whether venues outside London were substitutable with AEG's venues.
- 7.8 AEG told us that the CC should not restrict its analysis to venues in London. It told us that tour planning was considered on an event-by-event basis, and that the decision whether to include London on a UK tour could be different from one tour to another. It provided five examples of UK tours which had excluded London, and it claimed that this was not an exhaustive list.<sup>40</sup> AEG also told us that an act which had already conducted a tour including London in one year, and which may not have new material the next year, may decide to tour the UK, excluding London, until they had new material to perform. However, AEG did not provide evidence on the likelihood of promoters substituting a London venue for a non-London venue in response to a price increase.
- 7.9 Live Nation told us that venues outside London were not alternatives to venues in London because London was often the first or last place of performance on a UK tour. Live Nation also said that it would be unusual for an act not to play London on a UK tour, and that this would occur only when acts came to the UK for a specific festival date.
- 7.10 Other third parties told us that they considered London to be a separate geographic market for live entertainment venues. The key reasons provided to support this argument were:
- (a) London venues usually generated the most income for an act;
  - (b) most acts considered that playing an event in London was important to build, or to protect, their reputation; and

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<sup>40</sup> AEG provided the following examples of tours which have excluded London: Kenny Rogers, 2013; Eminem, 2013; The Enemy, 2013; The Enemy, 2012; and Stone Roses, 2012.

(c) for many touring acts, arriving or leaving the UK through a London airport, it made logistic sense to play at least one night at a London venue.

- 7.11 We were told that for some events, the catchment area from which most revenues were derived could be more local, so for some events more than one London venue might be included on the same tour. We were told that this was the case in particular with comedy shows, and children's entertainment.
- 7.12 We recognized that the location of substitutes would vary on an event-by-event basis. We looked for, but did not see, any evidence of substitution between London venues and venues outside London for competition reasons.
- 7.13 Based on the evidence of third parties that other cities, and hence the venues located there, were not substitutes for holding events in London and its venues, we defined the geographic scope of the relevant market as London-wide.<sup>41</sup> We took into account narrower (or wider) sets of constraints on an event-by-event basis where they were appropriate.

#### *Product market*

- 7.14 The merger creates an overlap in the supply of venue space to promoters in London. We gathered a range of evidence to assess whether there was a single market including all venues, or whether the relevant market(s) should be defined more narrowly according to: whether they are indoor or outdoor venues; venue capacity; venue configuration; and event type.

#### *Indoor and outdoor venues*

- 7.15 There are various outdoor venues in London which host live entertainment. These include stadiums, such as Wembley Stadium and Twickenham Stadium. We considered whether these venues are substitutable with indoor venues and whether any substitution was restricted to certain periods of the year.
- 7.16 AEG told us that there could be substitution between indoor and outdoor venues, and that the two types of venue could also act as complements on a tour. It said that substitutability between indoor and outdoor venues would depend in each particular case on the circumstances of the specific event. However, it also said that the constraint of a tour potentially covering multiple countries and cities meant that an act had to choose between touring with an outdoor or indoor production.
- 7.17 Third parties told us that there was a limited amount of substitution between indoor and outdoor live entertainment venues. We were told that performing at indoor and outdoor venues required very different production design, and that it was generally prohibitively expensive to tour with two different productions.
- 7.18 Based on the evidence, we found that switching a tour between indoor and outdoor venues was limited. Given this and the evidence of third parties, we concluded that indoor and outdoor live entertainment venues were in different markets.

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<sup>41</sup> Our treatment of London as a separate geographic market is consistent with the findings in [Hamsard/Academy Music Holdings](#) (2007).



## *Venue capacity*

- 7.19 AEG told us that it would be incorrect to rule out venues as potential substitutes on the basis of capacity. It provided examples of when an act might choose to play several nights in a smaller venue, rather than give a single arena performance. An act might choose to do this, for example, because multiple smaller venues would enable them to play a more intimate setting, play in different audience catchment areas, or reduce the risk of an undersold show.
- 7.20 However, the majority of views received from third party venues, promoters and agents suggested that capacity was the most important characteristic when choosing a venue for two main reasons:
- (a) Staging events in the largest-capacity venue that an act was likely to sell out maximized the return for the act, agent and promoter through ticket sales for a given tour date.
  - (b) A tour's production (the physical elements that were constructed, or put in place, at the venue to enable the act's performance) would be designed with a particular venue size in mind, considering the space constraints and the quality of delivery of the performance to the audience. Once a tour production had been designed and built, it could be costly to amend mid-tour. Touring with multiple productions was possible, but added to the tour costs.
- 7.21 We were told by some third parties that occasionally venue capacity could be a secondary consideration, particularly for successful artists who might put on a performance where the size of their financial return was not the main consideration.<sup>42</sup>
- 7.22 Analysis of venue hire prices at The O2<sup>43</sup> showed that venue hire prices vary and were lower for smaller events. The O2 rate card hire price for 'full arena' events was £[redacted], for events on Monday to Thursday, and £[redacted] for events on Friday to Sunday. For events booked in the lower bowl, which accommodates a seated capacity up to 8,000, the hire price was £[redacted] for Monday to Thursday, and £[redacted] for Friday to Sunday. For shows booked to the lower bowl, but where actual ticket sales exceed lower bowl capacity, the venue hire price included a variable element of £[redacted] for each additional ticket sold. This suggested that there may be either demand-side or supply-side differences between events of different sizes that can be exploited in the rate card, which we investigated further in our assessment of the competitive effects of the merger (see Appendices G and H).
- 7.23 Table 2 shows the major venues in London which currently supply each of the markets for live indoor entertainment space, by capacity.

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<sup>42</sup> For example, [redacted] told us that in 2011, the singer [redacted] chose to perform at the Royal Albert Hall due to the prestige associated with the venue, rather than perform at a larger-capacity venue where, due to her popularity, she probably could have sold out tickets.

<sup>43</sup> See Appendix H.

TABLE 2 Major venues in London supplying each of the capacity market segments

Venue	Capacity*	Small Below 5,000	Medium 5,000– 12,500	Large 12,500– 20,000
The O2†	20,000	✓	✓	✓
Wembley†	12,525	✓	✓	
Hammersmith Apollo†	5,039	✓		
IndigO2†	2,400	✓		
Alexandra Palace	10,400	✓	✓	
Brixton Academy	4,921	✓		
Earls Court‡	18,889	✓	✓	✓
Excel	40,000	✓	✓	✓
HMV Forum	2,350	✓		
Roundhouse	3,300	✓		
Royal Albert Hall	5,272	✓		
Royal Festival Hall	2,775	✓		
Shepherd's Bush Empire	2,000	✓		

Source: AEG.

\*Listed capacities reflect differing configurations of sitting and standing unique to each venue. The O2 has a listed seated capacity of 20,000.

†Venues operated by AEG post-merger.

‡Earls Court is due to be demolished, but is currently taking bookings until October 2014.

7.24 We identified three capacity segments within the market for indoor live entertainment: venues which can host events with capacity under 5,000; venues which can host events with capacity between 5,000 and 12,500; and venues which can host events with capacity above 12,500.<sup>44</sup> This was on the basis of the evidence indicating that venue capacity was an important consideration in the choice of venue and evidence of price discrimination on the basis of size of venue.

7.25 We considered each of these market segments in turn.

- *Below 5,000 capacity*

7.26 In the small market segment, apart from AEG's venues (including Wembley), there are nine other venues in London. The merger would therefore reduce the number of independently-operated venues from 11 to 10. We noted that there were some limitations to the extent of the competitive constraint of three of the other nine venues since:

- Earls Court is due to be demolished and was only taking bookings until October 2014. We were told that there is no fixed date yet for demolition.
- The Royal Albert Hall tends to be more capacity constrained than other venues and gets booked up three years in advance.
- Excel London does not currently host music events.<sup>45</sup>

7.27 Nonetheless, the O2 Academy Brixton and the Royal Albert Hall have capacity to host around 5,000 attendees. The HMV Forum, Shepherd's Bush Empire,

<sup>44</sup> In our identification of segments we have rounded to 5,000 and 12,500. We have used the listed capacity of each venue to assess in which segment each venue belongs.

<sup>45</sup> Excel London is a large (approximately 100,000 m<sup>2</sup>) indoor event space. The majority of that space is floor space, with no fixed seating, though temporary seating can be, and has been, added at a cost to host some events, notably during the London 2012 Olympics. The majority of events hosted at Excel are exhibitions and trade conferences. Excel does not currently host music events, though it told us that it could host an event up to 40,000 capacity.

Roundhouse and Royal Festival Hall host events with capacity of between 2,000 to 3,300 attendees.

7.28 For events with capacity below 5,000, we were told that The O2 is often not the preferred choice of the promoter, agent or act, because it is too large. On investigation we found that The O2 had a limited presence in this segment. Only [%] per cent of The O2's events were below 5,000 attendees, compared with [%] per cent for Wembley. Hammersmith Apollo and IndigO2 had a bigger presence in this market, since all of their events were below 5,000 capacity.

7.29 Therefore we did not consider the AEG venues to be close competitors in this market segment and we found that there are many alternatives to AEG's venues post-merger. As such, we had no concerns about the effect of the merger and did not consider this segment further.

- *Between 5,000 and 12,500 capacity*

7.30 In the market segment for live indoor entertainment venues offering events with capacity 5,000 to 12,500, there are fewer alternatives. Analysis of AEG's booking data showed that [%] per cent of The O2's events in 2011 had attendance between 5,000 and 12,500, compared with [%] per cent for Wembley.

7.31 Earls Court, Alexandra Palace and Excel also operate in this market. However, as noted above, Earls Court is due to exit the market at some point in future. Alexandra Palace also has limitations as an alternative to The O2 and Wembley because it is a standing-only venue and it has poor transport links. We were also told that Alexandra Palace has poor acoustics and admits too much sunlight to be suitable for events requiring a dark performance area in the spring and summer months.<sup>46</sup> Excel, as noted above, has a limited offering.

- *Over 12,500 capacity*

7.32 There is no overlap between the venues in the market segment for live indoor entertainment venues with capacity exceeding 12,500. We had no concerns about the effect of the merger on this market segment.

7.33 We therefore focused our inquiry on the market segment for venues, offering events between 5,000 and 12,500 capacity, where the merger would result in the two most significant venues being run by the same venue operator.

#### *Venue configuration*

7.34 Indoor live entertainment venues can be organized in a number of configuration styles, which differ, for example, in terms of the mix and location of seating and standing spaces, and the location of the stage or performance area (which may be front, centre, or 'in the round').<sup>47</sup> The configuration in many venues can be adapted by installing movable seating (albeit at a cost) or adjusting the location of the performance area.

7.35 We analysed whether the substitutability of venues depended on certain configuration characteristics of venues.

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<sup>46</sup> We were told that fixed seating could be added at a cost, but that this was generally only feasible for events with a fairly long run of performances, enabling the fixed cost of installing seating to be recouped.

<sup>47</sup> In an 'in-the-round' configuration, the audience surrounds the performance area on all sides.

- 7.36 AEG told us that for certain events with more demanding staging requirements, the promoter's choice of venue might be constrained by the venue's configuration. It said that should complex staging be required, only certain venues would be appropriate. However, it told us that there were a number of venues, which could offer the flexibility required for such events, and provided examples of complex staging events held at a number of London's indoor venues.<sup>48</sup> The examples included adding seating (at venues like Earls Court) or removing seating (at venues like The O2).
- 7.37 Live Nation told us that Wembley was flexible in terms of its configuration. It said that Wembley readily turned itself to 5,000 plus standing and had done so on many occasions and therefore would be competing with Brixton for standing shows and Hammersmith for seated shows.
- 7.38 We asked venues, promoters and agents whether venue configuration was an important factor in venue choice, and about the degree of substitutability between venues of different configurations. We received a variety of responses, most indicating that configuration was a factor to consider when choosing a venue, but the evidence about the degree of substitutability between venues of different configurations was mixed.
- 7.39 The evidence indicated that whilst individual acts may have specific preferences for particular configurations, venues tend to be flexible and can offer different solutions. We therefore concluded that the relevant market should not be segmented by venue configuration.

#### *Event type*

- 7.40 Indoor live entertainment can take a very broad variety of forms. For practical purposes most promoters and venues classify these forms into a loose and overlapping set of genres or event types. There is no standard classification of event types adopted across the industry. However, commonly recognized event types include music (which can also have a number of sub-genres), sport, comedy, cultural shows, family entertainment and conferences. AEG and other venue operators, as well as promoters, told us that they classified events into various different genres, or event types. However, AEG also stated that 'live performances are extremely heterogeneous across multiple dimensions. They do not tend to lend themselves to meaningful classification into well defined "genres" or "types" because they may straddle different potential categories'. We were told that at the time of pencilling an event, promoters did not always tell venue operators the genre and/or name of the event.
- 7.41 We were told by several third parties that some of London's other indoor venues hosted a similarly broad mix of live entertainment, whilst others were more focused on particular genres.
- 7.42 The Royal Albert Hall told us that it hosted a diverse range of entertainment. It had events from the BBC Proms through Cirque du Soleil, to rock and pop, to tennis, comedy and a whole host of other types of entertainment. It also told us that a lot of venues were very specific in the types of entertainment that they promoted.

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<sup>48</sup> Earls Court (Nitro Circus Live); The O2 (Barclays ATP World Tour Final); Wembley (Walking with Dinosaurs, British Basketball League Playoff Final); Alexandra Palace (Masters Snooker, Sleeping Beauty Ice Show); Royal Albert Hall (Statoil Masters Tennis 2013, Championship Boxing).

- 7.43 In order to assess the role of event type in determining choice of venue, we analysed AEG's booking data to determine whether The O2 or Wembley were predominantly used for specific types of events (see Appendix G). We found that while the majority of events held at both venues are music concerts, the type of events held at both venues was fairly broad.
- 7.44 We also analysed booking data at The O2 and Wembley<sup>49</sup> to determine whether venue hire pricing varied by event type, but found no substantial difference in pricing for different types of events.
- 7.45 We analysed whether the availability of substitute venues depended on the type of event to be held.
- 7.46 Based on this evidence, we concluded that although some types of events have specific requirements that must be taken into account when choosing a venue, these were not common enough or different enough to warrant segmenting venues according to event type.

#### *Conclusions on the supply of venue space to promoters in London*

- 7.47 Based on the evidence we gathered, we concluded that whilst venue configuration and event type can sometimes have an impact on competition between venues, these aspects were not sufficiently distinctive to require us to adopt them as part of our market definition.
- 7.48 The evidence we gathered indicated that the capacity of a venue was an important consideration in choice between venues, but was not sufficiently distinctive to require us to define the relevant market by capacity. We were satisfied that analysis of the relevant market, segmented by venue capacity, would allow us to take account of those venues in segments where the merger creates an overlap and we have taken the other segments into account where appropriate.
- 7.49 The segments we defined were: small venues, which host events with capacity below 5,000; medium-sized venues, which can host events between 5,000 and 12,500; and large venues, which can host events above 12,500. We noted that large venues can host small and medium-sized events if they can configure their capacity appropriately.
- 7.50 Consistent with our Guidelines, the evidence we gathered suggested that the supply of live indoor entertainment venues in London satisfied the hypothetical monopolist test,<sup>50</sup> and we concluded that this is an appropriate relevant market in which to assess the competitive effects of the merger.

#### *The supply of sponsorship opportunities*

- 7.51 Indoor live entertainment venues provide a variety of opportunities to display advertising, or otherwise promote commercial brand awareness. Venue operators use venues as opportunities to raise additional revenue by offering opportunities to commercial customers, generally referred to as sponsors, to associate their name or brand with the venue on a long-term basis. The types of sponsorship opportunities available at a venue include:

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<sup>49</sup> See Appendix G.

<sup>50</sup> See CC2, [paragraph 5.2.3](#).

- (a) naming rights: the sponsor's name is adopted as all or part of the venue's name;<sup>51</sup>
  - (b) limited naming rights: the sponsor's name is adopted as all or part of the name of a defined area within the venue, or the sponsor's guests are offered exclusive or preferential access to an area or service such as parking, entry, or seating;<sup>52</sup>
  - (c) promotion of a sponsor's name, brand and/or product within the venue using various forms of media, including static or dynamic screens; and
  - (d) experiential advertising where the sponsor is allocated space within the venue to deliver an experience to the venue's attendees, intending that attendees will associate the experience with the sponsor's brand or product.<sup>53</sup>
- 7.52 We considered whether the supply of sponsorship opportunities was a relevant market in which to assess the effects of the merger. We defined the scope of the relevant geographic market for sponsorship opportunities.
- 7.53 The merger creates an overlap in the supply of sponsorship opportunities at venues operated by AEG. We gathered evidence to assess whether there was a single market for sponsorship opportunities at live entertainment venues or whether the relevant market should be defined more widely. We gathered evidence from AEG, venue operators, sponsors and a media agency.
- 7.54 Submissions from AEG and third parties consistently indicated that there were many substitutes for the sponsorship of live entertainment venues, and that sponsors were willing to switch between these readily in order to maximize their return on investment for their marketing spend.
- 7.55 Sponsors, venue operators and a media agency told us that the main objective of sponsorship was to reach the sponsor's target demographic effectively. Sponsors and a media agency said that the budget for sponsorship normally made up a very small part of a sponsor's overall marketing and advertising budget. They indicated that they could move their investment easily between different forms of sponsorship, and many other available marketing channels. If they were faced with worse terms on their sponsorship deals, they told us that they could reallocate their marketing spend to:
- (a) other London arenas;
  - (b) arenas or other-sized live entertainment venues outside London;
  - (c) smaller indoor live entertainment venues, or larger stadium venues, in London with similar audience demographics;
  - (d) other locations where they would get a large number of impressions (views of their brand advertising or sponsorship) by the target demographic—busy airports or shopping centres were named as good substitutes; or
  - (e) a large variety of other sponsorship or advertising media, including experiential marketing, billboards, television, radio or online marketing.

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<sup>51</sup> For example, Emirates Stadium.

<sup>52</sup> [X]

<sup>53</sup> The Nissan Innovation Station at The O2 Complex.

- 7.56 We asked sponsors if they would respond to price increases by a venue by substituting for advertising in other venues, sponsorship opportunities offered by other organizations, or other advertising media, both within and outside London.
- 7.57 Sponsors told us that they considered the market for sponsorship to be at least as wide as the UK. Some sponsors told us that London was of particular significance, particularly for global brands, but that they still considered the market to be UK-wide.
- 7.58 On the basis of the evidence we gathered, we consider that the relevant product market is wider than the sponsorship opportunities at indoor live entertainment venues. We concluded that because of the scope of the relevant product and geographic scope of the market, it was not a relevant market for the purposes of our assessment of the effects of the merger. We have therefore not considered the supply of sponsorship opportunities as a part of our competitive assessment.

### *Supply of ancillary service space at venues*

- 7.59 Indoor live entertainment venues provide a variety of opportunities for the provision of ancillary services at venues such as food and drink, and merchandising.
- 7.60 AEG told us that there were generally three options for operating ancillary services at venues:
- (a) Self-operation: for example, catering at Madison Square Garden.
  - (b) Using a contractor: for example, at The O2, Compass Levy (a catering contractor) provides catering services at a number of generic (non-branded) food and beverage outlets within the venue. Compass Levy is also the main supplier of catering services at Wembley, under a contract initiated by Live Nation.
  - (c) Individual ancillary outlets: these are generally individual outlets providing a known-brand retail product. There are several examples of this within The O2's Entertainment District, for example Garfunkels, Nando's and Zizzi.
- 7.61 AEG told us that it did not apply exclusivity clauses to contractors at The O2 so that suppliers were not precluded from supplying other venues. In fact, AEG said that it was of benefit if a contractor supplied more than one venue, because the contractor would be able to offer experience.
- 7.62 We first considered the geographic scope of the market for the supply of ancillary service space. We took account of the evidence received from AEG as a venue operator that the geographic scope of the market was local to the venue and the immediate surrounding area. This suggested to us that both contractors and caterers are likely to view opportunities at different venues to be complementary (or at least independent) rather than substitutable.
- 7.63 We considered the relevant product market. We found that the provision of ancillary service space was local to each venue and providers of ancillary services were not prevented from offering the same services at another venue. We therefore concluded that there was no overlap by the venues in the provision of ancillary service space. On this basis, we found that the supply of ancillary service space in a local area was not a relevant market in which to assess the effects of the merger.

### *Are the markets multi-sided?*

- 7.64 We considered the interaction between the supply of entertainment, the provision of sponsorship opportunities and the provision of ancillary service space to different customers within the same venue. In particular, we considered whether the market might be multi-sided.
- 7.65 A multi-sided market could exist if the prices charged in one of these markets (eg the supply of venue space to promoters) were constrained by activities in the other markets (eg the provision of ancillary service space) and vice versa. For example, AEG told us that it could not increase prices for venue hire and risk losing events or attendance numbers, because of the impact that this would have on profits in ancillary markets and, in particular, on sponsorship.
- 7.66 We were mindful of the commercial relationship between the different customer groups, which is particularly important at The O2. Pre-merger, it was less important at Wembley where sponsorship and ancillaries accounted for a smaller proportion of revenues, although this may have changed as a result of the merger. Whilst we did not treat the market as multi-sided within the hypothetical monopolist framework, we took into account constraints on the venue hire market from the sponsorship and ancillaries markets in our analysis of competitive effects.

### ***Vertically-affected markets***

- 7.67 AEG is a vertically-integrated provider of various services connected with live entertainment (see paragraphs 3.1 and 3.2). We identified two services where subsidiaries of AEG (which are not live entertainment venue operators) were active and which could be affected by the merger: promotion of live events and ticketing services. In this section, we define the relevant markets for the provision of these services.

#### *Promotion of live entertainment events*

- 7.68 We considered whether the market for the promotion of live entertainment events should be defined according to the size, or genre, of the event and whether the relevant geographic market was the whole of the UK, wider or narrower.
- 7.69 We were told by third parties that most promoters represented different artists who performed live events with a range of attendance levels.
- 7.70 We reviewed promoter activity at The O2, by analysing The O2 booking data (see Appendices G and M). We found that many promoters had promoted events at different capacities in 2011. For example, Live Nation's smallest event had 7,149 attendees and its largest event had 18,309. The larger events tended to be promoted by Live Nation, SJM, 3A Entertainment and AEG Live. There were many promoters who promoted medium and small events.
- 7.71 We found that some third party promoters were focused on particular genres. For example, Mick Perrin Worldwide is focused on the comedy genre and described itself as 'tour promoters and producers of comedy'. Pucka Entertainment Ltd<sup>54</sup> is focused on promoting football events, as well as other sporting events including ice hockey and basketball.

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<sup>54</sup> Pucka Entertainment Limited, an event organizer and sports promoter, primarily for the football industry. It promotes [Masters Football events](#).



- 7.72 However, the larger promoters (by revenue) that we spoke to, including AEG Live, Live Nation and Harvey Goldsmith, promoted a range of different genre of live entertainment.
- 7.73 Based on the evidence we gathered, we found that the market for promotion of live entertainment events was not segmented by genres or by venues with differing capacities.
- 7.74 We therefore concluded that the relevant product market in which to assess the vertical effects of the merger was the market for promotion of live entertainment events.

#### *Geographic market*

- 7.75 We were told by the main and third parties that the same promoter would normally provide promotion services for the whole of a UK tour, or the UK (sometimes wider) leg of a European or global tour.
- 7.76 Metropolis Music told us that tours could be promoted entirely through a single promoter, could be co-promoted on a 50/50 basis for an entire tour, or that promoters could be responsible for certain geographic territories. It said that it promoted only in the UK, unlike AEG Live and Live Nation, which promote globally.
- 7.77 Harvey Goldsmith told us that it produced shows all over the world.
- 7.78 The Roundhouse told us that when an act was doing a national tour it might make losses on the regional shows, but make its money back in London.
- 7.79 Pucka Entertainment Ltd told us that the majority of events that it promoted were in the UK, but that it also ran events around the world. In the UK, Masters Football promoted a football tour that went around different cities in the UK.
- 7.80 Based on this evidence, we have found that the relevant geographic market is at least as wide as the UK.

#### *Ticketing services*

- 7.81 AXS, an AEG subsidiary, provides ticketing services for live entertainment events. We looked at the market to sell tickets for live events in the Ticketmaster/Live Nation inquiry<sup>55</sup> where, for the reasons given there the CC defined the product market as: 'primary retailing of live music tickets on the Internet and by telephone, including self-ticketing but excluding in-person sales at venue box offices'. The CC found that the relevant geographic market was UK-wide.
- 7.82 Evidence from the ticketing agents, venues and promoters that we spoke to was largely consistent with this market definition except that the segmentation (by type of event, and by method of sale) of the events market was rejected.
- 7.83 The evidence we gathered on the geographic scope of the market indicated that it was at least UK-wide.

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<sup>55</sup> Ticketmaster and Live Nation: a report on the completed merger between Ticketmaster Entertainment, Inc and Live Nation, Inc, CC, May 2010.

7.84 We considered that there were unlikely to be significant vertical competitive effects as a result of the merger in the market for ticketing services, regardless of the precise market definition. Therefore, while we noted that the geographic scope of the market was likely to be at least UK-wide, we found it unnecessary to define precisely the market to assess competitive effects.

## **8. Assessment of the competitive effects of the merger**

8.1 In this section, we assess the competitive effects of the merger and consider whether it may be expected to result in an SLC within any market or markets in the UK.<sup>56</sup> We discuss the theories of harm that we set out in our issues statement. We did not identify any other relevant theory of harm, and none were put to us.

### ***Horizontal effects***

8.2 Our first theory of harm was that the merger might create incentives for AEG to increase prices in venue hire, sponsorship and ancillary services. We focused our assessment on the market(s) for the supply of live indoor entertainment venues to promoters. We did not consider further the effect of the merger on the UK market for sponsorship, where we found that the share of supply of the merging venues was likely to be negligible. We also did not consider further the effect of the merger on the local markets for ancillary services, where we found that there was no overlap by the merging venues.

8.3 In the market for the supply of live indoor entertainment venues, we assessed whether AEG was likely to increase prices to promoters and/or whether it was likely to degrade the non-price aspects of its venues (eg capacity, appearance, quality) as a result of the merger. We also considered whether it might impose additional fees on event tickets as a result of the merger.

8.4 We first considered the way that venues competed pre-merger. We then assessed whether there would be any horizontal effects arising from the merger, compared with the competitive position absent the merger.

### ***Pre-merger competition***

8.5 We identified three capacity segments within the market for indoor live entertainment: venues which can host events with capacity under 5,000; venues which can host events with capacity between 5,000 and 12,500; and venues which can host events with capacity above 12,500.

8.6 In the segment for venues with capacity below 5,000, we found that there were many alternatives to AEG's venues post-merger. As such, we had no concerns about the effect of the merger and did not consider this market further.

8.7 There was no overlap between the venues in the market for live indoor entertainment venues with capacity exceeding 12,500. We had no concerns about the effect of the merger on this market.

8.8 We therefore focused our inquiry on the market for venues operating in the medium segment, hosting events between 5,000 and 12,500 capacity, where the merger results in the two most significant venues being run by the same venue operator.

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<sup>56</sup> Under [section 36](#) of the Act.

### *How venues compete*

- 8.9 We assessed the nature of competition between venues for staging events. The process by which promoters, artists and agents choose venues, and prices are set, is described below (see also Appendices F and H). This is based on information from main and third parties, which provided consistent descriptions of the way this process works.
- 8.10 First, the act, manager and agent design a tour. This might be, for example, a 'stadium tour' or an 'arena tour'. They approach promoters and ask them to plan and cost the tour. At this stage, the choice of venue(s) has typically been made by the artist and agent, although the promoter may have some influence over the decision in some cases. The venue choice is made primarily on the venue capacity, location, reputation, acoustic qualities, appearance and other quality characteristics. At the stage that the venue choice is made, the agent and promoter have some expectation of the price of the venue based on previous experience and knowledge of the rate card. However, we heard from almost all venue operators and promoters that the venue hire price was a small element in the overall cost of putting on a tour, and therefore was not an important factor in determining the tour routing.<sup>57</sup>
- 8.11 Second, the promoter pencils<sup>58</sup> the booking at the preferred venue(s). There may be multiple promoters associated with the same pencil if the agent has not selected a single promoter at this stage. AEG and other third parties consistently told us that the 'first pencil' (that is, the first agent or promoter to reserve a date) had the right of first refusal to that date. We were told that venues did not cancel a reservation in order to fill the venue with a more profitable act. We were told that this system was adhered to on an industry-wide basis.
- 8.12 Third, the agent selects the promoter (if it has not already done so) and the promoter confirms the booking. If the event has the 'first pencil', then the promoter confirms immediately, and must pay a deposit. If the event is lower down the pencilling system, higher pencils are required to secure the date(s), by paying a deposit within 24 hours, otherwise the date passes to the lower pencil event. If the promoter does not get the dates it wants, it can either switch to less preferred dates or to another venue. Detail of the pencilling process is set out in Appendix F.
- 8.13 Fourth, the booking is confirmed and then the price is agreed.<sup>59</sup> [redacted] discounts are expected by promoters, for example Live Nation, SJM Concerts and Metropolis Music [redacted]. Further discounts may be negotiated on the basis of volume (multiple events). AEG told us that occasionally [redacted]. In these cases, AEG may [redacted].
- 8.14 We were told that the price negotiation almost always took place after an event had been confirmed and related to event specifics such as number of days and configuration.<sup>60</sup>

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<sup>57</sup> AEG and third parties were consistent in telling us that pricing details of venue rate cards were well known across the industry, and promoters were sometimes given [redacted] discounts [redacted]. Therefore at the time that acts, agents or promoters chose the venue, the venue hire charge was approximately known.

<sup>58</sup> Pencilling describes the booking process for an entertainment venue. In this case, the promoter contacts the venue operator and requests that a provisional booking is made for the event within the venue's diary.

<sup>59</sup> The promoter pays for the venue but this cost affects the total event profits which are ultimately shared between the promoter, agent and act in pre-agreed proportions.

<sup>60</sup> See Appendix H.

### Analysis of venue hire prices

- 8.15 We analysed prices at The O2 to understand the outcomes of negotiations, the frequency of discounting, and whether promoters manage to achieve higher discounts for events where there are alternative venues to The O2.
- 8.16 For weekends in 2012, The O2's rate card was £[redacted] for the full arena, and £[redacted] for the lower bowl plus £[redacted] per seat sold in addition to the lower bowl capacity. Its rates are slightly lower for weekdays. This compared to a Wembley rate card of £[redacted] on weekends and weekdays. The rate cards are explained in more detail in Appendix H.
- 8.17 [redacted] and promoters told us that there was [redacted] discounting against the rate card. We analysed venue hire prices to assess the extent of the discounting, and found that it was a common practice at both The O2 and Wembley. In the case of full arena events, we observed discounts for [redacted] per cent of events.<sup>61</sup>
- 8.18 We found that discounts tended to be given for multi-day events, joint-venture or shared-risk events (between the promoter and the venue, which more often took place at The O2). We were told by AEG that it offered [redacted], but we did not find the differences in discounts offered across promoters to be large.
- 8.19 We investigated whether prices, discounts and margins vary when attendance or booked capacity was below 12,500 (where the venues competed pre-merger) compared with when attendance or booked capacity was above 12,500 (where they did not compete pre-merger).
- 8.20 We found that discounts off the rate card did not vary significantly—in percentage terms—when attendance or booked capacity was below 12,500 compared with when it was above 12,500. This can be seen in Figure 1.

FIGURE 1

### Discount on rate card (The O2) by attendance

[redacted]

Source: AEG.

Note: Identification of rate-card fee is based on day of the week for full arena events. The rate card has two lower bowl rates with two different attendance thresholds. The lower bowl rate-card fee has been identified based on day of the week plus attendance and the discount has been calculated with the most favourable lower bowl rate. The discount for an event in per cent is applied for all event days. The graph only includes events with one performance per day and excludes following outliers: [redacted]. Negative discount percentages reflect events where the promoter has paid a venue hire fee above the rate card, taking into account build days.

- 8.21 This was consistent with our understanding of the price-setting process and the lack of evidence on switching, or threats to switch, to get discounts on price which is outlined below.
- 8.22 However, we noted that the effective price paid (rate card less discount) was significantly higher for events with attendance above 12,500. This was driven by the difference between the lower bowl and upper bowl rate cards.

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<sup>61</sup> Share of events with a venue hire price below the rate-card price. Calculation based on events with one performance per event day.

8.23 We considered whether this difference could be explained by higher event costs for larger events. We saw that costs were higher for larger events, which partially explains the higher rates. We compared AEG’s margin on venue hire (over event costs) for events with different attendance levels. We found that AEG generated a slightly higher margin on large events than on medium events, and a significantly higher margin on both than on small events.

8.24 This can be seen from our results which are summarized in Table 3.

TABLE 3 Average event attributes by attendance bracket

	Attendance		
	0–5,000	5,000–12,500	12,500+
Average venue hire fee (£)	[redacted]	[redacted]	[redacted]
Average event costs (£)	[redacted]	[redacted]	[redacted]
Average margin (absolute) (£)	[redacted]	[redacted]	[redacted]
Average margin (%)	[redacted]	[redacted]	[redacted]
Number of days	[redacted]	[redacted]	[redacted]

Source: AEG.

Note: Information for 23 event days with multiple performances per day is aggregated per event day and does not report attendance per performance. Therefore, only event days with one performance per day are considered.

8.25 Table 3 shows the average venue hire fee, average event cost and average margin (venue hire fee less event cost) by attendance level. The average margin was [redacted] per cent for small events, [redacted] per cent for medium-sized events (attendance 5,000 to 12,500) and [redacted] per cent for large events (12,500+). This indicates that higher event costs did not entirely explain why venue hire prices were higher for larger events, although we note that the margin on large events was only [redacted] percentage points higher than the margin on medium-sized events.

8.26 We asked AEG why it charged a higher rate card for larger events, given that it wants to attract large events because of the positive impact that they have on ancillary revenues.

8.27 AEG told us that the higher prices and margins that it generated on events over 12,500 were not caused by the lack of alternative venues in this capacity bracket. It said that it could achieve higher prices for larger events because the cost of the event was less important for promoters (ie suggesting that promoters/acts were less price sensitive when booking larger events).

8.28 AEG submitted an analysis of the total profit stream generated by an event which is shared between the promoter and the venue. It characterized the bargaining process as a negotiation over the share of this ‘pot’. It argued that if The O2 could exercise greater market power over large events, it should be able to extract a higher proportion of the total event profits.

8.29 We reviewed this analysis and conducted our own analysis. We found that the share of total event profits which accrued to AEG was [redacted] per cent for small events, [redacted] per cent for medium events, and [redacted] per cent for large events, taking into account the ancillary revenues that AEG generated.<sup>62</sup> This was because the promoter generated significantly more profit for larger events, which is consistent with AEG’s argument that promoters are less concerned about the venue hire cost for

<sup>62</sup> If ancillary revenues are excluded from this analysis, the profit shares would be [redacted], [redacted] and [redacted] per cent respectively.

larger events (indicating that demand is more inelastic in this market, particularly when compared with the small-capacity market).

- 8.30 This evidence, along with our finding that the discounts off the rate card did not vary significantly between the medium- and large-capacity segments, and that the percentage margin in the large-capacity segment was only slightly higher than in the medium segment, suggests that there was limited price competition either on the rate card or through discounting. To the extent that there was price discrimination in the rate card, this appears primarily to reflect costs and demand-side differences between events of different sizes, where promoters appeared to be less price sensitive for larger events.

#### *Switching between venues*

- 8.31 We analysed switching between venues. This informed us about competition that took place after the preferred venue had been chosen.
- 8.32 It was difficult to measure competition between venues solely by looking at switching patterns because:
- (a) If the preferred venue of the artist was available, we did not typically see the alternatives that were considered, since they were not recorded.
  - (b) An act may play at, for example, Wembley on one tour and at The O2 on the following tour, but this does not necessarily mean that the artist considered the venues to be substitutes (the tours might have had different purposes, themes, configurations or target audiences).
  - (c) Events recur infrequently so it was not possible to identify regular switching patterns.
- 8.33 In our analysis we focused primarily on the degree of switching between The O2 and Wembley, rather than switching to other non-AEG venues, because of data limitations. Given these difficulties, we placed limited emphasis on this evidence as a part of our analysis. The full switching analysis is set out in Appendix G.
- 8.34 We received a submission from Live Nation that identified events that were pencilled at Wembley but eventually took place at The O2. This was the case for between one and four events per year in the period 2010 to 2013 (less than 5 per cent of events per year).
- 8.35 Live Nation also provided evidence of events that received reduced venue hire fees as direct response to the competition faced from The O2 (where the promoter threatened to switch some or all performance dates). The most recent examples provided took place in 2008 and 2009.
- 8.36 AEG submitted pencil and booking data at The O2 and bookings for Wembley.<sup>63</sup> We found that of [X] events held at Wembley in 2011, five were pencilled at The O2 but not confirmed, and 13 took place at both The O2 and Wembley.
- 8.37 AEG provided information on the 13 overlapping events to show that there was limited substitution between the venues for these events. The reasons provided for the overlap were as follows:

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<sup>63</sup> Wembley's pencilling system deletes released pencils and only keeps confirmed bookings.

- (a) One event switched venues as a consequence of the speed of early ticket sales.
  - (b) Two events switched venues due to availability constraints at one of the venues on one of the intended tour dates.
  - (c) Nine events took place at both venues to draw from different catchment areas. For four of these nine events, some dates were switched between the two venues as a consequence of the speed of early ticket sales (where early tickets sold better at one venue than the other, later dates were switched to the more popular venue).
  - (d) In one case, the choice was determined by the promoter's strong preference to play at both venues (even though the catchment areas were not considered to be different).
- 8.38 Of the five switching events which were pencilled at The O2 and eventually took place at Wembley, we were told that this was for the following reasons:
- (a) Venue size determined the final choice of three events.
  - (b) Availability determined the final choice of two events.
- 8.39 We checked the consistency of these explanations with the data and found that it was consistent with AEG's reasoning.
- 8.40 AEG submitted its own analysis. It collected and analysed information from the booking teams at The O2 and Wembley on every event which took place in 2011 and 2012. This exercise had two purposes:
- (a) First, it sought to identify the extent to which Wembley was a 'feasible' alternative to The O2, and vice versa, on an event by event basis.
  - (b) Second, it sought to identify when the booking teams thought an event had been pencilled at the other venue to which it was booked, and when it had been mentioned in discussions.

*Extent to which the venues were feasible alternatives*

- 8.41 AEG asked The O2 booking team to identify events for which Wembley was a 'feasible alternative',<sup>64</sup> and it asked the Wembley booking team the equivalent question for The O2.
- 8.42 The booking team at Wembley considered that of the [X] events held at Wembley in 2011/12, [X] (30 to 40 per cent) could feasibly have been held at The O2. Of these [X] events, the Wembley booking team considered that The O2 was only a reasonable or good alternative for [X] events ([X] per cent) since for the others the venues were either complements rather than substitutes, or were poor alternatives.
- 8.43 The booking team at The O2 considered that of [X] events held at The O2 in 2011/12, [X] (20 to 30 per cent) could feasibly have been held at Wembley. Of these [X] events, The O2 booking team considered that Wembley was only a reasonable

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<sup>64</sup> A broad definition of 'feasible' was used in this analysis. The analogy which the booking teams were given as to whether Wembley was a feasible alternative to The O2 was that it was feasible to travel to Heathrow by taxi, tube, or train, but not feasible to walk.

or good alternative for [redacted] events, since for the others the venues acted as complements rather than substitutes, or were poor alternatives.

*Extent to which the other venue was mentioned during discussions*

- 8.44 The booking teams at Wembley and The O2 estimated that the other venue was mentioned in about one-third of discussions. They said that promoters mentioned the other venue for various reasons: for example, if they had played at the other venue in the past; if they were playing both venues on the same tour; and if they were holding the other venue in case there was no availability at the preferred venue. They said that, infrequently, an artist might have requested a discount on the basis that they could use the other venue, although this was seldom the reason given.
- 8.45 The booking team at The O2 thought that, of the [redacted] events at The O2 in 2011/12, 26 per cent were pencilled at Wembley.
- 8.46 We have concerns about the accuracy of the data used in the all of the above analyses, which we describe in detail in Appendix G. Nonetheless, we found that all of the analyses were consistent in showing that: (a) the venues were alternatives for each other for some events; (b) there was some switching between venues although it was somewhat limited and when it took place it was on the basis of either capacity or availability rather than price; (c) there was limited evidence of promoters successfully using the threat to switch in order to get further discounts off the rate card. This evidence was consistent with our analysis of venue pricing, which is set out in Appendix H.

*The effect of The O2's entry into the market*

- 8.47 The former Millennium Dome underwent significant transformation and reopened as The O2 Complex in June 2007.
- 8.48 We examined the impact of the opening of The O2 on the number of events staged at Wembley, and the overall attendance at those events. Table 4 shows the overall number of events at Wembley. Both total and average attendances have decreased since the opening of The O2.
- 8.49 In 2012, there were [redacted] per cent fewer events held at Wembley than in 2007, and the average attendance at those events was [redacted] per cent lower than in 2007. Furthermore, the main and third parties told us that the number of events held at both Wembley and The O2 was bolstered during 2012 by a significant number of event dates booked for events related to the London Olympics.



TABLE 4 Summary of the number of events and the attendance at Wembley, 2007 to 2012

	Years ended 31 March					
	2007	2008	2009	2010	2011	2012
Concerts	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Entertainment/ conferences/religious	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sport	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Attendance	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Average event attendance	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Quintain.

Note: CC analysis of Wembley booking data for 2011 (see Appendices G to J) shows 77 events held at Wembley in 2011. CC analysis excludes 'other income' and 'Brent events', as these events generate no, or minimal, income and would have skewed the analyses in Appendices G to J.

- 8.50 We were told by Live Nation that the decrease in the number of events held at Wembley over the past five to six years could be attributed to the opening of The O2 in 2007.
- 8.51 We compared the Wembley rate-card rates over the period 2007 to 2012 to assess whether the opening of The O2 led to a price response by Wembley. We found that there was no change in the Wembley rate card (excluding inflation) between 2007 and 2012.<sup>65</sup>
- 8.52 This seems consistent with competition taking place on non-price factors rather than on venue hire prices.<sup>66</sup>

### *The effect of the merger*

- 8.53 To assess whether there would be either an increase in the venue hire price or a degradation of non-price venue characteristics following the merger, we considered the following evidence:
- (a) remaining competitors post-merger;
  - (b) parties' views;
  - (c) analysis of venue operator/promoter interactions;
  - (d) analysis of internal constraints from other revenue sources; and
  - (e) contractual constraints.

### *Remaining competitors post-merger*

- 8.54 There were at least nine alternative indoor entertainment venues in London to compete with The O2 and Wembley post-merger for events below 5,000 capacity. We did not consider AEG to be a particularly strong competitor in this market, although The O2, Indigo2, Hammersmith Apollo and Wembley were present.

<sup>65</sup> 2007 hire charges per day: Short hall £[REDACTED]–£[REDACTED]; Fully seated £[REDACTED]; Fully standing £[REDACTED]. 2008 hire charges per day: Short hall £[REDACTED]–£[REDACTED]; Fully seated £[REDACTED]; Fully standing £[REDACTED].

<sup>66</sup> We are unable to test whether there was an impact on discounting since the data is not available.

However, given the number of remaining alternatives post-merger, we did not consider that there would be a significant change in competitive conditions.

- 8.55 For events requiring capacity over 12,500, the merger has no effect, since Wembley's listed capacity is 12,525—and so Wembley would provide no competitive constraint before, or after, the merger.
- 8.56 For events requiring capacity between 5,000 and 12,500, the only alternatives to The O2 and Wembley, post-merger, would be Earls Court, Alexandra Palace and Excel. As explained above, we expected Earls Court to exit the market within the foreseeable future, and understood that Alexandra Palace and Excel have limitations on their ability to host certain types of event. Therefore in the medium-sized event market we assumed that there were no effective alternatives to The O2 and Wembley post-merger. In our analysis, we focused on the market for live indoor entertainment venues in the market segment where the venues could host events at capacity 5,000 to 12,500.

#### *AEG's views*

- 8.57 AEG told us that it considered the supply of entertainment space to promoters to be part of a multi-sided market, including attendees and sponsors. It said that AEG's business model was predicated on successfully 'achieving high event numbers and visitors to the venue', which in turn generated sponsorship and ancillary income.
- 8.58 AEG told us that venue rental income made up only a small part of The O2's revenue, and that the decision to set venue rental fees was one of a number of factors which the business used to maximize overall performance.
- 8.59 AEG said that it would not have an incentive to increase the price of venue hire to promoters, as doing so might cause a reduction in the number of events and attendance at the venue, which in turn would cause a reduction in the revenue that it could generate from attendees through ancillary income, and through sponsorship income from sponsors who wanted to reach attendees.
- 8.60 AEG also told us that it planned to implement its business model at Wembley, thereby increasing the importance of sponsorship and ancillary income, relative to venue hire income, at that venue.
- 8.61 AEG said that, because it had a [redacted] business model at The O2, and intended to implement one at Wembley, an increase in venue rental fees at The O2 or Wembley (or both), and thereby a decrease in the number and quality of events offered, would not be in its interest.
- 8.62 AEG also told us that the number of events for which The O2 and Wembley meaningfully 'competed' on rental fees (in the sense that they may arguably provide a binding constraint on one another) was limited. It said that The O2 and Wembley were only truly close competitors for staging a small subset of events.

#### *Third parties' views*

- 8.63 Most of the third parties that we spoke to told us that the venue hire price was not an important element in the promoter's decision to book an event at a venue.
- 8.64 Metropolis Music told us that the venue hire price was not an important element in the decision-making process when a promoter pencilled or booked a venue.

- 8.65 Harvey Goldsmith said that promoters had buyer power when negotiating the venue hire fee with venue operators, and that they would use that to resist any moves by AEG to increase venue hire fees at The O2 or Wembley.
- 8.66 Some third parties expressed a concern that the merger could possibly weaken the negotiating position of promoters, especially for events with attendance between 5,000 and 12,500. However, when questioned further they expressed the opinion that AEG would not increase venue hire prices at The O2 or Wembley as a result.
- 8.67 Live Nation told us that promoters used The O2 as an alternative venue when negotiating terms with Wembley, to try to drive down the Wembley venue hire price. Live Nation provided only two examples<sup>67</sup> of when it had experienced this negotiation technique to be successful.
- 8.68 An agent, Agency Group, said that should the merger go ahead, there could be a reduction in the negotiating power of agents and promoters. It was not, however, concerned about the impact of the merger on venue price.
- 8.69 A promoter, Mick Perrin Worldwide, while generally not expressing concerns about the merger, speculated that having three venues under the control of one company could lead to some loss of negotiating power.

#### *Venue operator/promoter interactions*

- 8.70 AEG told us that promoters had bargaining power and that this prevented venue operators from increasing prices. It told us that this bargaining power stemmed from the multiple interactions that AEG had with promoters, not just for medium-sized events in London, but for other events in London and globally. It said that it could not afford to damage its relationship with promoters by increasing prices. AEG told us that the agent could also exert substantial bargaining power with venues.
- 8.71 We investigated:
- (a) the extent of AEG's interactions with promoters;
  - (b) whether promoters of larger events tended to get higher discounts off the rate card for medium-sized events at The O2 than promoters who focused on medium-sized events only; and
  - (c) whether The O2 charged higher prices to promoters when it had limited availability compared with when it had a lot of availability (which would suggest that promoters cannot leverage their buyer power across time periods).

#### *AEG's interactions with promoters*

- 8.72 In order to identify promoters promoting tours that took place at multiple AEG venues worldwide, AEG analysed the top 50 tours in 2012, as reported by Pollstar. It submitted evidence that showed that nine of the Top 50 tours in 2012 played at The O2 and other AEG venues. They accounted for 17 per cent of event days at The O2 in 2012. The promoters of those nine tours accounted for 58 per cent of The O2's event days in 2012.<sup>68</sup>

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<sup>67</sup> [REDACTED]

<sup>68</sup> Total number of event days does not include events by AEG Live.

8.73 We considered whether promoters of medium events were the same promoters of large and small events. Table 5 shows number of event days by event day size and sets out the size of events days promoted by promoters.

TABLE 5 Promoters and events by event size, 2011

Event day size promoted by promoter	Number of promoters	Small events		Medium events		Large events	
		Number of events days	Share of event days %	Number of events days	Share of event days %	Number of events days	Share of event days %
Medium only	15	-	-	22	33	-	-
Medium and large	11	-	-	35	53	103	96
Small, medium and large	2	6	86	5	8	4	4
Small and medium	1	1	14	4	6	-	-
Total	29	7	100	66	100	107	100

Source: AEG.

Note: Promoter with event days only within the small or large segment are not included.

8.74 Table 5 shows the number of promoters of medium events which also promoted small and large events in 2011. There were 29 promoters which promoted medium-sized events at The O2. Of these promoters, 14 also promoted small and/or large events in the same year. Those 14 promoters accounted for 67 per cent of event days held within the segment of medium-sized events.

8.75 The remaining 15 promoters held only medium-sized events. Nine of those 15 promoters were recurring customers with events at The O2 in 2010 or in 2012. Only six promoters, accounting for 12 per cent of event days, hosted medium-sized events in 2011 but not in the previous or subsequent year (see Appendix F).<sup>69</sup>

8.76 AEG told us that in addition to having multiple interactions with promoters, it also had multiple interactions with agents, who themselves represented multiple artists. Therefore even if a particular promoter had not promoted many events with AEG in the past or in the same year, the agent might have a longer relationship with AEG.

#### *Analysis of promoter-specific discounts*

8.77 AEG submitted an analysis of the venue hire fees paid for events with attendance below 12,500. The analysis segmented promoters into 'top tier' promoters and 'mid-lower tier' promoters based on the size of their business, the portfolio of artists and the type and number of shows they have promoted at The O2. It showed that the venue hire price paid by 'mid-lower tier' promoters was not systematically different from the price paid by 'top tier' promoters for events below 12,500.

8.78 We conducted our own analysis investigating whether promoters of medium-sized events achieved lower discounts compared with larger promoters, and found that this was not the case. This analysis is set out in Appendix H.

#### *Analysis of prices and capacity levels over time*

8.79 We considered whether The O2 was able to charge higher venue prices (by granting lower discounts off the rate card) in periods of high demand compared with periods of

<sup>69</sup> An extension of this analysis has been also provided by the main parties. They identified promoters with medium-sized events in 2012. All promoters have been either recurring customers over the time or have been also involved with other AEG venues than The O2.

low demand. If it was able to do this, it would be indicative of a lack of bargaining power on behalf of promoters. However, if it was unable to charge higher prices in periods of high demand, this might be because promoters have bargaining power in other periods that they can leverage.

8.80 Figure 2 shows the discount off the rate card at The O2, by month, for 2011.

FIGURE 2

### Discounts off rate card at The O2, by month

[REDACTED]

Source: AEG.

Note: Scatter includes only event days with one performance per day, and does not display Brit Awards 2011 (15 February 2011, venue hire fee of £[REDACTED]).

8.81 Figure 2 shows that while there was variation in the discounts offered both within and across months, discounts did not appear to be systematically lower (and therefore prices systematically higher) in busier months.

8.82 On the basis of the above analysis, we concluded that promoters have buyer power stemming from the multiple interactions that they have with AEG, the revenues that they generate over time and across venues, and the events in different size categories that they represent.

#### *Analysis of spillover effects*

8.83 AEG told us that it would not increase venue hire fees at The O2 as a result of the merger because of the potential impact on other revenue streams (spillover effects). It said that if it increased the venue hire fee, it could lose events if promoters would switch to different venues as a result of the price increase (either immediately or in future due to worsened relations with AEG). It said that the reduction in attendance, due to lost events, would cause large losses in profits from ancillary services and sponsorship. It told us that these losses would be greater than the gain from increased venue hire fees.

8.84 We performed a critical loss analysis (CLA) to calculate the number of events that AEG would need to lose at The O2 and Wembley to make a venue hire fee increase, imposed on all promoters, unprofitable. Our analysis is presented in detail in Appendix I.

8.85 The results of our CLA showed that it would be unprofitable for AEG to raise venue hire prices by 5 per cent<sup>70</sup> if, as a result, it lost:

(a) [REDACTED] events, or [REDACTED] per cent of total annual event attendance, at The O2; or

(b) [REDACTED] events, or [REDACTED] per cent of total annual event attendance, at Wembley.

8.86 We performed variations of the CLA under different scenarios. The only alternative scenario that had a significant impact on the results of the analysis was where we assumed that Wembley would move to a business model in which sponsorship and

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<sup>70</sup> A price increase of 5 per cent was chosen to provide an illustrative example. We note that the Guidelines do not specify the appropriate percentage change to use to test for an SLC.

ancillary income accounted for a greater proportion of its total income. In this scenario we used assumptions taken from AEG's business plan for Wembley.

- 8.87 Under this scenario we found that a 5 per cent venue hire price increase at Wembley would be unprofitable if the venue lost [X] events, or [X] per cent of its total annual event attendance—fewer lost events or attendance than under the current business model.
- 8.88 This analysis suggests that if AEG increased prices to all promoters (ie by increasing the rate card), then it would only have to lose a very small number of events or foot-fall to make this price increase unprofitable. However, there is a limit to the usefulness of this analysis in this particular case, which we took into account when interpreting the results (see Appendix I).
- 8.89 We also considered whether spillover effects would prevent AEG from worsening the non-price aspects of its competitive offer.
- 8.90 We performed a second CLA to calculate the number of events, or percentage of total annual attendance, that would need to be lost at The O2 and Wembley to make a strategy to worsen the competitive offer unprofitable. We did this by comparing the lost profits from events, to the cost savings that could be made by reducing quality or other non-price aspects.
- 8.91 The results of our CLA showed that it would be unprofitable for AEG to reduce quality (to achieve a 5 per cent<sup>71</sup> saving on total costs) if, as a result, it lost:
- (a) [X] events, or [X] per cent of the total annual attendance, at The O2; or
- (b) [X] events, or [X] per cent of total annual attendance, at Wembley.
- 8.92 We performed variations of the critical loss analysis under different scenarios. The only alternative scenario that had a significant impact on the results of the analysis was where we assumed that Wembley would move to a business model in which sponsorship and ancillary income accounted for a greater proportion of its total income. In this scenario we used assumptions taken from AEG's business plan for Wembley.
- 8.93 We found that a reduction in quality (to achieve a 5 per cent cost saving) would be unprofitable if the venue lost [X] events, or [X] per cent of its total annual event attendance—a lower volume of lost attendance than under the current business model.
- 8.94 We concluded that spillover effects will impose some constraint on the ability of AEG to either increase prices or worsen non-price factors as a result of the merger.

#### *Contractual constraints*

- 8.95 We examined the Agreement between Quintain and AEG to see whether there were any relevant contractual constraints.
- 8.96 AEG's Agreement with Quintain includes a minimum fee<sup>72</sup> to be paid to Quintain irrespective of the number of events. [X] The minimum number of music events is

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<sup>71</sup> A 5 per cent cost saving was chosen to provide an illustrative example. We note that a 5 per cent cost saving is not equivalent to a 5 per cent price increase, and in both cases the Guidelines do not specify the appropriate percentage change to use to test for an SLC.

[redacted] during the first two years, rising to [redacted] after that (compared with [redacted] in the year to 31 March 2011).

- 8.97 Conversely AEG would receive an increasing percentage of Wembley's profit above this minimum fee as Wembley's profit increases.<sup>73</sup> Similarly at The O2, AEG has a number of contracts ([redacted]) which impose [redacted] on AEG if minimum event numbers/attendances are not met (see Appendix I).
- 8.98 We therefore concluded that there were some contractual constraints which incentivized AEG to maintain or improve both the price and the non-price characteristics at both The O2 and Wembley post-merger in order to drive volumes.

#### *Conclusions on horizontal effects in the supply of venue hire to promoters*

- 8.99 We found that:
- (a) The choice of venue was very rarely determined primarily by the venue hire price, and as such price competition was limited.
  - (b) The price negotiations which took place occurred after the venue had been confirmed, and typically involved negotiations over discounts for event-specific reasons (eg events are held over multiple days). We saw very little evidence of discounts being granted because of threats to switch to alternative venues.
  - (c) There was limited switching between venues. When switching between venues occurs, it was almost always for non-price reasons (eg tickets were not selling fast enough at the first choice venue).
  - (d) Promoters had buyer power which stems from the multiple interactions that they had with venue operators both in the UK, for different acts, and also globally.
  - (e) Venues generated revenues from other sources including sponsorship and provision of space for ancillary services. These other revenue sources were particularly important to the AEG business model. A small loss of events or footfall would cause a reduction in ancillary revenues which would be sufficient to make a price increase unprofitable.
  - (f) There were contractual constraints that incentivize AEG to maintain or improve the non-price characteristics at both The O2 and Wembley post-merger.
- 8.100 We therefore concluded that, given the reasons above, a price rise to promoters was unlikely.

#### *Ticket prices to consumers*

- 8.101 We considered whether the merger would lead to an increase in venue-imposed fees on tickets (for example, facility fees).
- 8.102 We were told by venue operators, promoters and agents that the face value of the ticket price was not set by the venue operator, but was a decision arrived at between the act, agent and promoter. The extent of influence of these three parties on ticket price depends on how familiar the artist and the agent are at playing in the same type

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<sup>72</sup> See Appendix C.

<sup>73</sup> Further details of the management contracts between AEG and Quintain are included in Appendix C.

of venues in the same geographic location. Where they are very familiar they will often lead this decision; where they are less familiar they are likely to request more input from the promoter.

- 8.103 The face value price of the ticket is then subject to booking fees applied by the ticketing agents who sell to consumers, and can be subject to a facility fee, imposed by the venue operator. During 2012, [REDACTED].
- 8.104 We did not consider the merger to have created the conditions under which it would be any more or less feasible for the venue operator to introduce a facility fee at Wembley.
- 8.105 We considered that the venues do not impose pricing constraints on each other's ticket fees pre-merger. We therefore concluded that any increase in ticket fees post-merger would not be as a result of the merger.

### ***Vertical effects***

- 8.106 Our second theory of harm was that the merged company could foreclose on promoters or ticketing agents, and as a result, worsen the offer for artists, agents or end-consumers.

### ***Promotion services***

- 8.107 We considered whether AEG would have an incentive to foreclose event promoters from The O2 or Wembley as a result of the merger. We found that AEG Live promotes only a small number of events at the venues<sup>74</sup> and to foreclose other promoters from using these venues would mean that it would, in the foreseeable future, lose the majority of its event revenues and profits. For foreclosure to be profitable, it would need to recoup these profits through significantly increased promotional activity.
- 8.108 We performed analysis (see Appendix J) to determine how many new tours AEG Live would need to win as a promoter, so that the profits from those new tours would exceed the venue hire profits that would be lost from its venues as a result of foreclosing non-AEG promoters at The O2 and Wembley. We estimated that AEG Live would need to win [REDACTED] more UK tours than it currently promotes ([REDACTED] in 2011, and [REDACTED] in 2012) in order to make a foreclosure strategy profitable.
- 8.109 We also considered whether AEG would be capable of implementing a foreclosure strategy, even if in theory it could gain enough new tours through AEG Live to make the strategy profitable in theory. We considered it unlikely that AEG could successfully implement this strategy, and particularly would not be able to do so in a short time frame. Even if AEG Live could gain a very large number of new tours, this would be likely to occur across several tour periods/years. Losses from foreclosing non-AEG promoters would begin as soon as AEG began to implement a foreclosure strategy.
- 8.110 We concluded that AEG would be unlikely to foreclose other promoters following the merger.

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<sup>74</sup> See Appendix J.



## *Ticketing services*

- 8.111 We investigated whether AEG could foreclose competing ticketing agents following the merger and whether this would lead to any competition concerns. We found that even if AEG channels more sales through its ticketing agent AXS following the merger, the allocation of tickets as a part of the venue hire arrangement offered a number of options for ticket sales through any number of ticketing agents. The choice of ticketing agent was determined by both the promoter and the venue. In addition, AXS had a very small part of the ticketing market and any increase in AXS market share would be unlikely to have a significant impact on competition between ticketing agents.
- 8.112 We concluded that AEG would be unlikely to foreclose other ticketing agents following the merger.

## **9. Barriers to entry or expansion**

- 9.1 In our analysis of the effects of the merger on competition, we looked at whether there were any countervailing factors which may have prevented an SLC. One of these is the ease with which entry or expansion could occur within the market as we have defined it.
- 9.2 We received a mixed response from AEG and third parties in respect of the ease of entry. AEG considered that although it would be difficult to acquire land with planning consent and transport links, it would not be impossible, and a number of new arenas had opened or were due to open.<sup>75</sup> It also considered that barriers to an existing venue, [X], to expand into live entertainment were low. Third parties generally believed that barriers to new entry were high, based on the cost of acquiring and building a venue and the likely lack of government/local authority funding.<sup>76</sup> Third party cost estimates for the cost of new entry were generally in the range £70–£165 million (excluding land).<sup>77</sup> Third parties told us that renovations to the Roundhouse and Wembley had cost between £30 million and £40 million. Third parties also told us that it was difficult to find suitable development sites within London.
- 9.3 We noted the difference in views as to the ease of entry and expansion and the recent examples provided by parties. We considered that capital costs of entry and expansion (although lower) were significant. We also considered that finding a suitable site within London with adequate transport links would also be difficult. We did not carry out a detailed assessment of whether such sites were available, nor the likely returns on investment. We decided that entry or expansion in a timely and sufficient manner would be unlikely. Entry and expansion are considered an important countervailing factor where otherwise it appears that a merger would give rise to an SLC. However, given our conclusions that the merger would not affect competition, the provisional findings on entry and expansion do not have a bearing on our analysis of the competitive effects of the merger.

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<sup>75</sup> Copper Box, with a capacity of 7,500, is due to open in London in 2013. Three Arenas are due to open outside London: the Echo Arena and Convention Centre in Liverpool is an 11,000-capacity arena which first opened in 2008; the First Direct Arena in Leeds is due to open in the summer of 2013—it has a 13,500 capacity (13,000 seated); and the Hydro in Glasgow is a 12,500-capacity (12,000 seated) arena due to open in September 2013.

<sup>76</sup> Live Nation said that schemes in Edinburgh, Bristol, Brighton and Cardiff had been in the planning stage but were not being developed due to a lack of capital. The arenas in Glasgow and Leeds both received government funding.

<sup>77</sup> Estimates were based on recent arena builds in the UK.

## **10. Findings**

- 10.1 For the reasons set out above, we concluded that the merger has not resulted, and is not expected to result, in an SLC within any market or markets in the UK for goods or services.