

Completed acquisition by AEG Facilities (UK) Limited of the contract to manage Wembley Arena

ME/5886/13

The OFT's decision on reference under section 22(1) given on 22 March 2013. Full text of decision published 22 April 2013.

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

PARTIES

1. **AEG Facilities (UK) Limited** ('AEG Facilities') is a subsidiaryⁱ of the Anschutz Entertainment Group Inc ('AEG'). AEG is a leading provider of live entertainment services around the world, including live entertainment venues and sporting venues, the provision of venue management consultancy services, the promotion of live entertainment acts (including sporting events), retailing of live entertainment tickets, merchandising, marketing and advertising services. AEG's live entertainment venues in London comprise: The O2 Arena and IndigO2 (both at 'The O2 complex' in North Greenwich), the Hammersmith Apollo (jointly owned with CTS Eventim, AG) and also a five year contract (recently awarded) to deliver summer concerts at Hyde Park. AEG's UK turnover for the financial year ending 31 December 2011 was £[].

2. **Wembley City Estates Limited** ('WCEL') is a wholly-owned subsidiary of **Quintain Estates & Development PLC** ('Quintain'), a UK-listed property company with major London developments at Wembley and the Greenwich Peninsula. WCEL is the owner of Wembley Arena ('Wembley Arena').

3. Wembley Arena is an entertainment venue which originally opened in 1934. Following refurbishment as part of the regeneration of the

Wembley area in London, it re-opened to the public on 2 April 2006. Wembley Arena is primarily used for live music and entertainment events but also holds other types of events such as sporting events. Wembley Arena's revenues were £[] in the year ending March 2012.

TRANSACTION

4. On [], AEG Facilities entered into an agreement with WCEL to manage Wembley Arena (the '**Long-form Management Agreement**') pursuant to which AEG Facilities would replace Live Nation Entertainment ('**Live Nation**') as the manager of Wembley Arena. The Long-form Management Agreement is conditional on regulatory clearance. As part of the same transaction, AEG Facilities entered into an interim management agreement with WCEL (the '**Temporary Management Agreement**'), to manage Wembley Arena between the end of the termination notice given to Live Nation as the previous manager of Wembley Arena and the entry into effect of the Long-form Management Agreement, pending regulatory clearance of the latter.
5. For the purposes of its review, the OFT has considered the Long-form Management Agreement and the Temporary Management Agreement as a single overall transaction (the '**Management Agreement**' or the '**Transaction**').¹
6. According to the parties, AEG Facilities started to manage Wembley Arena on 12 February 2013, effectively replacing Live Nation as the venue manager from that date.

JURISDICTION

7. Under the merger provisions of the Enterprise Act 2002 (the *Act*) a relevant merger situation is created when two or more enterprises cease to be distinct or arrangements are in progress or contemplation which, if carried into effect, will lead to enterprises ceasing to be distinct and either the UK turnover of the enterprise being acquired exceeds £70 million ('the turnover test') or after the merger the enterprises which have ceased to be distinct together supply or acquire at least 25 per cent of a

¹ The OFT also notes that the Long-form Management Agreement may in itself constitute a relevant merger situation.

particular good or service within a substantial part of the UK ('the share of supply test').²

8. The OFT investigation has confirmed that enterprises have ceased to be distinct as a result of the proposed Transaction. For these purposes, the parties submit that the services provided under the Management Agreement constitute an enterprise. Overall, the OFT considers that the assets, rights and employees transferred to AEG are such as to constitute an enterprise.³
9. As stated above, Wembley Arena's revenues were £[] in the year ending March 2012. As such, the turnover test set out in section 23 of the Act is not met.
10. The parties submit that AEG's share of supply of indoor live music venues in London based on total maximum venue capacity will increase from 26 per cent to around 38 per cent post-transaction. The OFT considers that this is an appropriate measure for the purposes of the share of supply test in this case.⁴
11. The OFT therefore considers that the share of supply test is met as the parties have a combined share of supply of indoor live music venues in excess of 25 per cent, with an increment attributable to Wembley Arena, in London, which is a substantial part of the UK.
12. Therefore, the OFT considers that it is or may be the case that a relevant merger situation has been created as per section 23 of the Act.

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

³ According to OFT guidance, outsourcing arrangements involving ongoing supply arrangements will not generally result in enterprises ceasing to be distinct, but may do so where they involve the permanent (or long-term) transfer of assets, rights and/or employees to the outsourcing service supplier and where those may be used to supply services other than to the original owner/employer. (OFT, *Mergers: Jurisdictional and Procedural Guidance*, June 2009, OFT527, paragraph 3.13).

⁴ The OFT's guidance says that when applying the share of supply test the OFT may have regard to the value, cost, price, quantity, capacity, number of workers employed or any other criterion in determining whether the 25 per cent threshold is met (OFT, *Mergers: Jurisdictional and Procedural Guidance*, June 2009, OFT527, paragraph 3.55). In *AEG/Hammersmith Apollo (AEG + CTS Eventim / HMV Hammersmith Apollo*, OFT, 1 August 2012), the OFT noted that measures other than the supply of live music venue services by the number of venues were more appropriate for the purpose of applying the share of supply test since there is such variation in the size of venues.

FRAME OF REFERENCE

Industry background

13. Venue operators have two sets of customers, promoters who hire the venue for a particular event and end consumers who attend events at the venue.
14. Promoters are responsible for the organisation of the event and for selling the tickets. Promoters are allocated a percentage of the tickets to sell. The remaining tickets are allocated to the venue.
15. To sell tickets, promoters and venues generally appoint one or more ticket agents. Ticket agents own a large database of final consumer contact details, who they contact to promote the shows they are selling tickets for. Ticket agents may also use other marketing networks, such as radio stations and local newspapers. Ticket agents charge a booking fee on top of the ticket price (for example, 10 per cent of the ticket price), which represents most of their revenues and which is shared with their client (that is with the venue operator or the promoter).
16. Promoters usually guarantee artists a minimum revenue plus (in some cases) a percentage of the revenue generated through tickets sold above a certain level. The promoter's gain is, broadly speaking, the difference between the revenues from ticket sales net of marketing and operational costs and the revenues passed on to the artist's agent. Agents in turn retain a percentage (for example, 10 per cent) of the artist's revenues.
17. AEG operates as a venue operator and also as a promoter, through its subsidiary AEG Live and through promoter Marshall Arts (of which AEG is the largest shareholder with 49 per cent of shares).⁵

Product scope

18. The OFT's starting point in identifying an appropriate frame of reference is generally to consider if the narrowest plausible candidate markets in which the parties overlap can be widened through substitution on the demand side.⁶

⁵ Further, AEG operates as a ticket agent through its ticket system AXS.

⁶ OFT and Competition Commission, *Merger Assessment Guidelines*, September 2010, CC2(Revised)/OFT1254 (the *Merger Assessment Guidelines*), paragraphs 5.2.10 to 5.2.12.

19. AEG and Wembley Arena overlap in the operation and management of indoor live entertainment arenas in London.⁷ AEG operates a number of entertainment venues around the world. Pre-merger, AEG operated The O2 Arena, the Hammersmith Apollo and the Indigo O2 in London. It has also recently been awarded a five-year contract to deliver summer concerts at Hyde Park. The OFT has therefore considered the relevant frame of reference in relation to venue services.
20. The parties submit that the relevant product market in which the impact of the Transaction should be assessed is the market for the operation and management of live entertainment venues and a narrower approach is not appropriate.
21. Based on the evidence gathered during its investigation, the OFT considered whether the candidate market in which the parties overlap – indoor live entertainment arenas – could be widened to include different venue types, including outdoor venues, indoor venues of different uses and configurations, and venues of different capacity levels. Each of these is considered in turn below.

Type of venue

Indoor and outdoor venues

22. The parties submit that indoor venues compete with outdoor venues, noting that this is particularly true in relation to The O2 Arena. In this regard, the parties have provided evidence of lower seasonal demand for indoor venues during the parts of the year where outdoor venues may also host live entertainment acts, as well as examples of acts initially booked at The O2 Arena which eventually performed outdoors (one at a stadium, two at public squares). Further, the parties submit that artists will often choose to perform in the summer at an outdoor venue instead of The O2 Arena during any other part of the year. The parties also point at specific types of events that may also take place outdoors, notably sports events.

⁷ The term arena commonly refers to a large venue used for public entertainment acts and sporting events, usually indoors and composed of a large open space surrounded on most or all sides by tiered seating for spectators.

23. The Competition Commission in *Hamsard/Academy Music* found that 'in general there is limited substitution of outdoor venues for indoor venues'.⁸
24. Third parties contacted during the OFT investigation, including venue operators, promoters of live entertainment and artist agents, almost unanimously expressed the view that outdoor venues are not substitutes for indoor venues. The main factors cited by third parties to support this view are:
 - **Size:** outdoor venues such as parks and stadia generally have a much larger capacity than indoor venues.⁹ In stadia it is also difficult to disguise unsold tickets (that is, empty seats). In theory, multiple dates in one arena can be a substitute for one concert in an outdoor venue but outdoor venues generally require multiple dates to be viable.
 - **Facilities:** a range of basic facilities must be installed in order to hold live entertainment in parks including toilets, electricity, seats, hospitality and food and beverage. In both parks and stadia, installation of stage and further equipment (such as lighting, sound equipment or grass protection floors) must be undertaken. Overall, these elements are costly and require installation time (during which the venue is rented). In comparison, most of these facilities are either not required, or they are already available in arenas. Some third parties suggested that the installation of additional facilities is economically viable for multiple date concerts only (usually festivals).
 - **Artistic requirements:** stadia are generally inadequate for some types of shows, such as comedy shows (which generally require a more intimate atmosphere) or shows on ice (requiring the use of an ice rink, which is not feasible in warm weather).
 - **Limited availability:** stadia are regularly used for playing sports and are available for live events only when the sport season is terminated.

⁸ Competition Commission Final Report in *Hamsard/Academy Music* (*Hamsard and Academy Music - A report on the proposed acquisition of a controlling interest in Academy Music Holdings Limited by Hamsard 2786 Limited*, Competition Commission, 23 January 2007), paragraph 9.

⁹ For example, the three outdoor venues listed by the parties as venues used for live entertainment in London range in capacity between 105,000 and 55,000. In contrast, the biggest indoor live entertainment venue in London (The O2 Arena) has a capacity of 20,000.

- **Weather risk:** even in the summer there is a risk that it might rain.

25. The OFT therefore does not consider it appropriate to include outdoor venues in the frame of reference for the competitive assessment of the Transaction, as there appear to be significant limitations on the extent to which they are substitutable for indoor venues.¹⁰

Predominant use of indoor venues and configuration

26. The parties submit that The O2 Arena and Wembley Arena would face competition from certain venues, such as Earls Court and Alexandra Palace, which, the OFT understands, are not used predominantly for live music events or live entertainment events more generally, and are often used for other purposes, such as exhibitions and fairs.

27. The Competition Commission in *Hamsard/Academy Music* found that 'in general there is limited substitution of [...] venues used predominantly for other purposes for venues regularly used for popular live music'.¹¹

28. The OFT investigation has shown that indoor venues without installed seating or a stage are not close substitutes of indoor venues with installed seats, for reasons including the adaptation costs involved to install seats and the reputation of the venue as a space for other uses (see the competitive assessment of the Transaction below for more details).

29. Further, third parties indicated that the configuration of some indoor venues may limit substitutability. In particular, certain types of live entertainment, such as sporting events and events on ice, can only be performed in arenas because of the need to be able to place the game or show at the centre of the venue.

30. The OFT recognises that there may be a constraint from venues of a different configuration, although the extent of this, at a general level, is unclear at this stage. However, given the limited number of readily identifiable venues available for live entertainment which have alternative configurations or predominantly different uses, the evidence on the extent

¹⁰ The OFT notes that AEG is also active in the provision of outdoor live entertainment space in London, following the award to AEG, in November 2012, of a five-year contract to deliver summer concerts at Hyde Park.

¹¹ *Hamsard/Academy Music*, paragraph 9.

to which these other venues compete with the parties has been considered as part of the competitive assessment. Similarly, differences in uses have been taken into account to the extent relevant in the competitive assessment undertaken by the OFT.

Capacity

31. The parties submit that a range of indoor venues with varied capacity from 2,000 and above could, to a greater or lesser extent, provide an alternative to Wembley Arena or the indoor venues under the control of AEG in London (The O2 Arena, Hammersmith Apollo, IndigO2) (see **Table 1** below).

Table 1: Capacity at indoor live entertainment venues in London¹²

Venue	Capacity
The O2 Arena	20,000
Earls Court	18,889
Wembley Arena	12,525
Alexandra Palace	10,400
Royal Albert Hall	5,272
Hammersmith Apollo	5,039
O2 Academy Brixton	4,921
Roundhouse	3,300
Royal Festival Hall	2,775
IndigO2	2,400
HMV Forum	2,350
Shepherd's Bush Empire	2,000

Source: the parties.

32. In support of their assertion that smaller venues compete with the merging venues, the parties submit that [40-50] per cent of Wembley Arena events in 2011 were in the 1,000-5,000 capacity range, therefore for these events Wembley Arena must be competing with the smaller

¹² In addition, the parties also submit the following outdoor venues as representing, to a greater or lesser extent, an alternative to Wembley Arena and the AEG venues: Wembley Stadium (105,000 capacity), Emirates Stadium (60,000), and Twickenham Stadium (55,000).

venues. The OFT notes that this calculation is based on the number of tickets sold, rather than booked capacity.¹³

33. Further, the parties submit that some promoters and artists may choose to play multiple nights at smaller venues instead of a single or fewer acts at bigger venues.¹⁴
34. The Competition Commission in *Hamsard/Academy Music* found that 'in general there is limited substitution [...] between venues of significantly different capacities'.¹⁵
35. The OFT's market investigation did not support the parties' submission that venues of all capacities were substitutable. On the contrary, third parties pointed to there being no material constraint from any venue with capacity below circa 5,000 people. Third parties did consider that some venues with a capacity above 5,000 may, in a restricted set of circumstances, represent potential candidates for switching shows from larger capacity venues such as those operated by the parties.
36. The OFT therefore does not consider it appropriate to include venues with a capacity below circa 5,000 people in the frame of reference for the competitive assessment of the Transaction, as they do not appear to be substitutes for venues significantly above that capacity. The OFT therefore considers that the appropriate product scope is indoor live entertainment venues of circa 5,000 capacity and above.

Geographic Scope

37. The parties submit that a strict geographic market definition for venue operation is not feasible. However, for the avoidance of doubt, the parties consider that the OFT should not restrict its analysis to venues in London, pointing to venues outside London representing a competitive constraint for at least some events. The parties provide five examples of events that, between August 2010 and December 2011, switched from The O2 Arena – two to other UK venues outside London¹⁶ and three to venues

¹³ The OFT also notes that for [15-25] per cent of events at The O2 Arena in 2011 less than 5,000 tickets were sold.

¹⁴ On this point, see below paragraph 74.

¹⁵ *Hamsard/Academy Music*, paragraph 9.

¹⁶ [].

outside the UK¹⁷ – because the artists, having not secured their preferred dates at The O2 Arena, decided not to play in London.

38. In *Hamsard/Academy Music* the Competition Commission found that 'there is limited substitution of venues outside London for those within London'.¹⁸ The OFT has sought to assess the degree of substitution of venues outside London for venues in London.
39. Third parties contacted by the OFT (including promoters, agents, as well as other venue operators) almost unanimously indicated that venues outside London are generally not substitutable with venues in London. The key reasons submitted by third parties related to:
 - **Reputation:** London is one of the cultural and economic capitals of the world. London is one of the key locations for tours in the UK and in Europe.
 - **Population density:** London has the highest population density in the UK; on most tours around the UK a significant share of income comes from playing in London.
 - **Willingness to pay:** ticket holders' willingness to pay tends to be higher in London, thus permitting promoters and artists to charge higher ticket prices than elsewhere.
 - **Access to the media and prestige:** it is easier to advertise and give visibility to a show in London. For example, launching a tour in London provides a more prestigious image of the show than launching the tour in a smaller city.
40. The OFT recognises that the parties have provided some evidence pointing to a small number of acts that had scheduled to play in London but then rescheduled to play at another venue outside London. However, the OFT considers the evidence to be limited and insufficiently compelling to warrant widening the geographic scope beyond that of London, particularly given the absence of support for this proposition amongst third parties. The OFT therefore considers that the geographic scope of the frame of reference is no wider than London.

¹⁷ []

¹⁸ *Hamsard/Academy Music*, paragraph 9.

41. The OFT has considered whether for certain types of shows, such as comedy and family shows, the geographic scope of the relevant frame of reference may be narrower than London. This could suggest that there is limited substitutability between venues located in different parts of London. However, the evidence available to the OFT suggests that, in relation to venues of 5,000 capacity and above, the extent of competition across London venues is unlikely to be significantly limited by consumer unwillingness to travel across London. Therefore, the OFT considers that the geographic scope of the relevant frame of reference is not narrower than London.

Conclusion

42. For the reasons outlined above, the OFT has considered the competitive effects of the Transaction in relation to the supply of indoor live entertainment venues in London of a capacity equal to or larger than circa 5,000 people.

UNILATERAL EFFECTS

Framework of Analysis

43. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, the removal of this constraint allowing the merged firm profitably to raise prices and/or reduce choice and quality. The OFT has assessed the extent to which the parties currently compete in order to determine the loss of existing competition brought about as a result of the Transaction.

44. Where products are differentiated, for example by branding or quality, unilateral effects are more likely where the merger firms' products compete closely, where the merger eliminates a significant competitive force in the market and/or where customers have little choice of alternative suppliers.¹⁹

45. AEG and Wembley Arena overlap in the supply of indoor live entertainment venues in London. In particular, as a result of the Transaction, AEG would control the two largest indoor arenas in London,

¹⁹ *Merger Assessment Guidelines* section 5.4.

The O2 Arena and Wembley Arena. The OFT has therefore considered the possibility that the Transaction gives rise to unilateral effects in indoor live entertainment venues in London as a result of the loss of competition between two close competitors in a market with limited alternative suppliers. The OFT has also considered whether any anti-competitive effect could be mitigated through the indirect constraint provided by end-users of the parties' venues.

Share of capacity

46. The capacity of all venues above 2,000 is set out in **Table 1** in the frame of reference section. As discussed above, the OFT considers that indoor venues with a capacity of less than circa 5,000 are unlikely to provide an alternative to the larger capacity venues operated by AEG post-merger The O2 Arena and Wembley Arena.
47. **Table 2** sets out the share of capacity for all indoor live entertainment venues with a capacity of above circa 5,000 (on the basis of maximum standing capacity). The OFT notes that Hammersmith Apollo is jointly owned by AEG with CTS Eventim, therefore the capacity of Hammersmith Apollo has been added to AEG's for the purposes of calculating the combined share of capacity of the parties. As shown in **Table 2**, AEG would hold post-merger 49 per cent share of capacity, with a 16 per cent increment resulting from the Transaction.

Table 2: Capacity shares²⁰

Venue	Maximum standing capacity	Share of capacity (%)
The O2 Arena	20,000	26
Wembley Arena	12,525	16
Earls Court	18,889	25
Alexandra Palace	10,400	13
Royal Albert Hall	5,272	7
Hammersmith Apollo	5,039	7
O2 Academy Brixton	4,921	6
Combined	32,525	49

²⁰ The maximum capacity figures used are those provided by the parties in their submission.

48. The OFT notes that these shares of capacity do not fully reflect the strength of competitors – for example, they do not take account of capacity utilisation, actual attendance or revenue – but nevertheless considers them indicative of the alternative venues available for customers in London. The OFT considers these shares of capacity – to the extent that weight is placed on them and noting that they reflect shares in a candidate market which may not be the narrowest to satisfy the hypothetical monopolist test – point to the possibility of competition concerns and warrant further analysis on the extent and closeness of competition between the parties and the competitive constraints that will remain post-merger.

Services provided and hire prices

49. The parties submit that Wembley Arena is unable to offer comparable services to The O2 complex and occupies a wholly different market position. In particular, the parties argue:

- a. The range of services offered by The O2 complex is far wider than that provided by Wembley Arena. In particular, the parties submit that The O2 complex markets itself as an entertainment complex and not just a music venue (The O2 Arena). As far as the live entertainment experience is concerned, the parties submit that The O2 Arena has more to offer in terms of 'added-value', such as members-only VIP services and other services.
- b. The O2 complex's revenues in 2011 were over [] times the size of Wembley Arena's revenues, indicating that the businesses, while notionally both arenas, are of a completely different scale.
- c. There is a general gulf between the quality of each venue with The O2 Arena being an award-winning venue consistently ranked as number one in the top 100 most successful arena venues worldwide (in terms of the number of tickets sold),²¹ whereas Wembley Arena has not been listed in the top 10 of the most successful arenas worldwide (in terms of the number of tickets sold) since 2009. In 2012, it was ranked 33.

50. The parties also submit that The O2 Arena and Wembley Arena have different genre profiles with a significantly greater proportion of The O2

²¹ According to Pollstar, a trade publication covering the worldwide concert industry.

Arena's events between 2008 and 2011 being music (over [50-60] per cent) compared to music as a proportion of Wembley Arena's events ([30-40] per cent), whereas Wembley Arena, for example, hosts a greater proportion of sports events ([10-20] per cent) compared to The O2 Arena ([five-15] per cent). In the view of the parties, this is indicative of considerable differences in the genre profiles of the O2 Arena and of Wembley Arena. The parties argue that the two venues have become increasingly differentiated: their analysis looked at the proportion of events at each venue for 2011 (and a portion of 2012 for The O2 Arena). The parties argued that it shows that The O2 Arena is primarily focused on core music events ([]);²² whereas Wembley Arena's primary focus was on entertainment and sporting events.

51. Further, the parties submit that the differentiation between the parties has increased over time, with Wembley Arena hosting increasingly fewer core music acts. In fact, the parties submit that 76 music events are going to be hosted at The O2 Arena in 2013 ([] of which are core music events), whereas Wembley Arena will only host 12 ([] of which being core music events). Most of the events to be hosted at The O2 Arena (55 events) are hosted for more than one night, so that, according to the parties, 'a smaller venue such as Wembley Arena would not be a viable alternative'.
52. The OFT investigation indicates that the parties' offering is, to a degree, differentiated. Third parties generally confirmed that The O2 Arena is a higher quality venue. Nonetheless, third parties almost unanimously indicated that The O2 Arena and Wembley Arena are generally the only alternatives available for shows of a certain audience size, indicating that, despite a degree of differentiation between the two venues, they are competing with each other with limited alternatives.
53. The OFT considers that the two venues are capable of hosting, and do host, in practice, similar genre profiles, with significant overlapping event types and a large number of events that could potentially be hosted at each venue. Both venues cover the full range of genres, they both seem to focus predominantly on core music acts and the non-core music acts seem to be distributed across other genres in a very similar way.

²² According to the parties, core music genres include pop music events, rock music and 'legends'.

54. The parties submit that hire prices at The O2 Arena are set at a higher level than at Wembley Arena. The parties provided a comparison of Wembley Arena prices and average prices paid by promoters at The O2 Arena for events with an audience of less than 12,525.²³ According to the parties, based on this calculation, the difference in price between The O2 Arena and Wembley Arena, for events in this capacity range, would be around [] per cent, with The O2 Arena being the more expensive venue. In the view of the parties, such difference in price supports the contention that promoters would be unlikely to switch from Wembley Arena to The O2 Arena.
55. The OFT does not consider, however, that average prices are necessarily representative of the prices set or charged by the parties relative to capacity. Specifically, when The O2 Arena is offered in a reduced format (the so-called 'lower bowl' format), which brings its capacity to a size similar to that of Wembley Arena, the difference in prices between the two venues is not greater than [] per cent. This may indicate that, depending on the capacity contracted by promoters at each of these venues, hire prices for those events 'at the margin' over which the two venues are most likely to be competing, are typically within a similar range.
56. Furthermore, the OFT notes that a difference in price is not necessarily probative of the absence of competition between the parties or the extent to which customers would be willing to switch from one to the other (and consider one a substitute for the other), particularly if the parties offer a different value proposition such that the price differential is partly reflective of a different level of 'quality'.

Events and switching

57. The parties submit that the number of events in relation to which The O2 Arena and Wembley Arena actually compete for directly is small.
58. As part of its investigation, the OFT has considered:
 - a. the extent to which the venues have been used for similar size acts

²³ Because of their size, these are, in the view of the parties, the events that could also be held at Wembley Arena.

- b. instances where promoters have considered using both venues in relation to the same acts, and
- c. evidence of switching between the two venues.

Size of acts

- 59. The parties submit that the number of events in relation to which The O2 Arena and Wembley Arena actually compete directly, in terms of capacity, is small.
- 60. The parties provided data on the size of the events hosted at The O2 Arena and Wembley Arena in 2011 (based on ticket sales), noting that [40-50] per cent of Wembley Arena's ticket sales in 2011 were in the 1,000-5,039 capacity bracket, whereas only up to [15-25] per cent of The O2 Arena's ticket sales were in the same bracket, which would suggest, in the view of the parties, that there is limited competition between the two venues.
- 61. Further, the parties submit that there are a number of substitute venues which can host events in the 1,000-5,039 capacity range, therefore The O2 Arena and Wembley Arena face direct competition for a large majority of their events from other venues in London in that capacity range. The parties also submit that capacity is only one factor which artists and promoters take into account when choosing a venue.
- 62. The OFT considers that the evidence submitted by the parties in fact shows that The O2 Arena and Wembley Arena have hosted a significant number of similar size shows, suggesting that The O2 Arena can be an alternative to Wembley Arena for a significant proportion of its acts.

Provisional bookings and estimates of diversion

- 63. The parties provided information on the number of events that have in the past been pencilled for The O2 Arena and subsequently switched to other venues between August 2010 and December 2011. According to the parties, this evidence indicates that there is limited substitutability between The O2 Arena and Wembley Arena, as only on [] occasions out of [] events provisionally booked and subsequently cancelled at The O2

Arena during that period did third parties switch from The O2 Arena to Wembley Arena.

64. The OFT considers that the pencil data analysis provided by the parties is subject to significant uncertainty. Out of [] events considered by the parties: in [] instances no information was available as to the venue finally chosen by promoters; in [] cases the event did not go ahead (and the parties were unable to explain the reason for why the events had not gone ahead);²⁴ in [] cases there was no actual switching but a reduction in the nights played at The O2 Arena; in [] cases the event did not play in the UK; and in [] cases the event was re-scheduled for a different night at The O2 Arena.
65. In the view of the OFT this evidence shows that the Wembley Arena and The O2 Arena compete closely. In particular, this data shows that out of [] events that switched to alternative venues, [] ([30-40] per cent) switched to Wembley Arena. Each of the other venues to which the remaining [] events went ([]), appears only once as the eventual home for the event.
66. The weekly management reports produced by AEG at The O2 Arena²⁵ also contain references to [].
67. As part of its investigation the OFT has sought to compare provisional bookings (or pencilled events) made by promoters at Wembley Arena and at The O2 Arena. Promoters will provisionally schedule an event at more than one venue in advance of the event taking place. The promoter will commonly then only use a single venue for the event, cancelling the other venues it provisionally booked. The parties submit that pencilling can take place often more than a year in advance and reflects the promoter managing the uncertainty of demand for the event. The OFT does not have pencilled data for alternative, third party venues.
68. The OFT found that for at least [] per cent of the shows provisionally booked for 2013 at the Wembley Arena, both venues had been booked in relation to the same show. The OFT considers that, bearing in mind the

²⁴ The parties had initially noted that in [] cases the event did not go ahead. However, the parties later indicated that [] of those cases should not be taken into account, as they corresponded to [] instances where the artist did not have the work permits to perform in the UK and [] cases of double-counting. No information was provided about the remaining shows that did not go ahead.

²⁵ See below paragraph 85.

dynamics of the venue booking process, this is evidence of the two venues competing.

69. The OFT recognises that the primary objective of provisional booking may be to manage demand uncertainty. Nevertheless, the OFT considers, based on feedback from third parties, that, should an event be pencilled at The O2 Arena and Wembley Arena, this points to the promoter actively considering each venue as a feasible alternative. A decision on where to finally stage the event is dependent on a number of factors, including demand uncertainty amongst others. As a result, the OFT considers this analysis, while clearly not a perfect indication of diversion between the parties, does point to competitive interaction between the two venues and is broadly indicative of the switching preferences of promoters. While the data does not include pencilled dates at other venues, the OFT still considers it useful as an indicator of the extent to which the venues are considered as alternatives. The extent to which other venues may represent alternatives for promoters is considered in detail below.
70. In addition, the OFT considers that the overlapping pencil bookings only represent the minimum number of shows that the parties have competed on. The OFT investigation has shown that in many circumstances, promoters may consider a venue as a candidate for an act, but this is not reflected in a tentative booking with the venue, for example when the venue is not available for the desired dates or when the initial offer (made over the telephone) is too high for the show.
71. Finally, the OFT has also considered the effect of the entry into operation of The O2 Arena on the performance of Wembley Arena. The information provided by both the parties²⁶ and the previous manager of Wembley Arena to the OFT confirms that the start of operations at The O2 Arena resulted in a significant reduction in the number of events held at Wembley Arena. In particular, the number of events held annually at Wembley Arena dropped by [25-35] per cent between 2006 and 2008, coinciding with the entry into operation of The O2 Arena. Third parties have confirmed that this reduction in the use of Wembley Arena was to a

²⁶ During the Issues Meeting held on 22 February 2013, the parties told the OFT that the number of shows run at Wembley Arena decreased significantly shortly after Live Nation took over Wembley Arena in 2006. According to the information available to the OFT, the reduction in the number of shows, which is effectively a [25-35] per cent reduction between 2006 and 2008, took place mostly between 2007 and 2008, with a [20-30] per cent year on year reduction. This coincided with the entry into operation of The O2 Arena in June 2007.

large extent due to the diversion of events from Wembley Arena to The O2 Arena. The parties argue, as outlined above, that the two venues have since moved apart and are no longer competing as closely. Nevertheless, the OFT considers the evidence to be probative of the strength of the competitive constraint exerted by The O2 Arena on Wembley Arena. In particular, it suggests that should The O2 Arena raise prices significantly or should The O2 Arena be closed for any reason, Wembley Arena may benefit from an increased demand from promoters to the venue.

Constraint from other venues

72. The OFT has considered the constraint on The O2 Arena and Wembley Arena from other live entertainment venues with a capacity of above circa 5,000. The venues in this group are: Earls Court, Alexandra Palace, the Royal Albert Hall and the O2 Academy Brixton.²⁷
73. In order to assess the extent to which other venues are a competitive constraint on the parties the OFT took into account various types of evidence, including venue capacity, configuration and uses, venue hire costs, actual events held at third party venues and the views of the merger parties and third parties regarding competition of other venues with the merging parties.
74. In terms of capacity, the OFT considers that venues with a capacity around 5,000 may only provide a limited constraint to larger indoor venues, as their suitability to attract larger audiences would essentially depend on the willingness of the artist and the promoter to run multiple nights of the show. Some promoters indicated that in playing multiple nights there would be a multiplication of some costs, such as staff costs and expenses, which may not be outweighed by the lower rental of smaller venues. Some promoters also noted that artists may not be willing to play multiple nights due to their availability, artistic preferences or reputational reasons.

²⁷ Whilst there are other event venues of 5,000 capacity or above in London, such as the ExCel convention centre, none of them is designed or generally available for live entertainment events of such a capacity. Further, Hammersmith Apollo accommodates a maximum of 5,039 people (maximum seating capacity 3,632), but is controlled by AEG.

75. Further, the OFT noted that some of the alternative venues listed above would only accommodate audiences of 5,000 people or above if used primarily as a standing venue. Third parties suggested that such venues may therefore be a limited competitive constraint to the parties. In particular, the OFT noted that the all-seated capacity of the O2 Academy Brixton would be under 2,500.

76. In terms of services offered, some of the alternative venues listed above (such as Earls Court and Alexandra Palace) host live entertainment venues but generally operate as multi-purpose event spaces rather than a live entertainment venue. In some cases, this is largely due to the features of the venue. For example, some of the alternative venues listed above would not have any seating installed, or the light and sound infrastructure that can be found in established live entertainment venues. The versatility of the space in some of these venues may also make them unsuitable for certain acts. For example, some promoters explained that Earls Court is too large for many events, and the venue cannot be operated in a smaller format so as to hide unused space. According to third parties consulted by the OFT, the costs involved in adapting these other venues for live entertainment uses (such as through installing hired seats or a basic stage) may significantly increase production costs, making the venue comparatively less attractive than established live entertainment venues, especially for one-off shows.

77. The OFT also noted that at some of the venues listed above the number of live entertainment events held is typically significantly lower than at The O2 Arena and Wembley Arena. For example, at the time of the OFT decision, the number of live music event days scheduled for the remainder of 2013 is: five at Alexandra Palace and nil at Earls Court.²⁸ This compares to the number of live music event days in the remainder of The O2 Arena 2013 calendar (76) and in the Wembley Arena 2013 calendar (12).²⁹

78. The parties also provided examples of artists who played in the parties' venues and other venues, such as Earls Court, Alexandra Palace or Royal Albert Hall. However, it is unclear whether the examples provided are

²⁸ Available listings at www.pollstar.com on 22 March 2013.

²⁹ According to the parties' response to the OFT Issues Paper of 26 February 2013, and for the remainder of the year since that date.

indicative of substitution or complementarity across venues (for example, shows that are booked at both venues may equally be indicative of substitution or complementarity). Further, for the examples provided of shows switching between venues, it is unclear what the switching was triggered by and the reasons for the choice.

79. As far as availability is concerned, the OFT noted that some of the alternative venues in the range of 5,000 capacity and above have more limited availability than others, which restricts their ability to compete against The O2 Arena and Wembley Arena. This is the case in particular for the Royal Albert Hall, which promoters [] regarded as a relatively more difficult venue to hire, partly due to its use as a classical music concert hall.³⁰
80. The OFT also noted that significant uncertainty remains as regards the availability of Earls Court in the medium term, given the current plans by the landlord of the venue to demolish it and develop the land for residential and commercial use.
81. From the internal documentation provided by the parties, it appears that AEG would only regard certain other venues as competitors of The O2 Arena, [].³¹ [].³² ³³ [].
82. Finally, third parties viewed other venues as a limited constraint on Wembley Arena, and a very limited constraint on The O2 Arena. The majority of promoters and some of the venue operators contacted by the OFT indicated that exhibition and convention venues such as Alexandra Palace, Earls Court or Excel are not preferred alternatives to The O2 Arena or Wembley Arena, for reasons which included configuration (for example, events requiring a centre stage would limit the number of available seats significantly), additional costs to bring in the missing infrastructure required by entertainment acts, poorer acoustics, limited reputation as an entertainment venue and (in some cases) poorer basic facilities. However, Earls Court was mentioned by one promoter as a potential alternative to The O2 Arena and Wembley Arena; and Alexandra

³⁰ []

³¹ See below paragraph 85.

³² []

³³ []

Palace was mentioned by a number of third parties as a distant alternative to Wembley Arena. The Royal Albert Hall was often mentioned as a suitable alternative to both The O2 Arena and Wembley Arena, subject to the capacity and availability limitations discussed above. The O2 Academy Brixton was not considered a direct competitor of The O2 Arena and Wembley Arena by any third party.

83. On the basis of the above evidence, the OFT believes that none of the third party venues imposes the same degree of constraint on either of the two venues as they impose on each other. The OFT believes that third party venues in the frame of reference provide only a limited constraint on Wembley Arena, and a very limited constraint on The O2 Arena.

Internal documents

84. Internal AEG documentation points to The O2 Arena and Wembley Arena competing closely with each other.
85. The parties have provided the OFT with copies of the weekly reports used by The O2 Arena management team. [].³⁴
86. In addition, Wembley Arena features as one of the [] competitors of The O2 Arena in a presentation and [].

Views of third parties

87. Promoters and agents consulted by the OFT almost unanimously identified Wembley Arena as the best alternative (and often the only alternative) to The O2 Arena and noted that the two venues compete closely against each other. Third parties recognised that the two venues were differentiated – on the basis of quality and offering – but nevertheless pointed to them as close substitutes. Examples were provided by third parties of promoters that had switched events between the two venues and of negotiations between promoters and Wembley Arena, where promoters threatened to switch to The O2 Arena unless Wembley Arena provided them with better terms.³⁵

³⁴ For example, the content report for the week commencing [] states that [].

³⁵ For example, one promoter submitted that it had initially preferred The O2 Arena for a particular show, but then opted for Wembley Arena because the lower venue hire price allowed this promoter

88. Promoters and agents also told the OFT that Wembley Arena is currently charging very competitive fees to gain customers from The O2 Arena.
89. The OFT considers that the views of third parties indicate that Wembley Arena and The O2 Arena are competing closely and are each other's closest competitors.

Indirect constraints from end-users

90. As noted above, venue operators – particularly AEG, as outlined below – have two sets of customers, promoters who hire the venue for a particular event and end consumers who attend the show. Venues generate a proportion of their revenue both through direct venue hire to the promoter as well as a proportion of the money spent by the end customer through, for example, food and beverage and merchandise sales at the hosted event.
91. In this case, the parties have argued that generally end-users of the venues do not represent a potential separate demand-side constraint on venue operators, with the exception of AEG [].³⁶
92. As a result, the parties argue that, at The O2 Arena, AEG does not have any incentive to increase venue hire prices []. The parties argue that the same indirect demand-side constraint from end-users will apply to Wembley Arena going forward [].³⁷
93. The OFT does not consider that end-users represent a separate demand-side constraint – for the purposes of either market definition or the competitive assessment. In fact, the arguments made by the parties elsewhere in their submission point to any constraint from consumers having an effect only through the switching behaviour of promoters: an increase in venue fees drives the promoters to schedule fewer events and the venue operating at lower capacity utilisation, thus resulting in less

to achieve some savings that could be re-invested in enhanced equipment that would make the final experience at Wembley Arena better than at The O2 Arena.

³⁶ [].

³⁷ [].

end-consumers, rather than any direct effect on or through end-consumer demand for the venue.³⁸

94. The OFT has, however, considered the extent to which the merging parties may be subject to indirect constraints, such that there would be no incentive for AEG, with or without the Transaction, as the parties argue, to increase venue fees [].
95. The OFT is sceptical as to the weight that can be attached to these arguments in its assessment of the likelihood of unilateral effects for a number of reasons. First, the OFT considers that absent the competitive constraint presented by Wembley Arena (the main alternative to The O2 Arena, as highlighted above), AEG would have the ability to increase the venue hire fees while retaining events, as the threat that customers would move from The O2 Arena to an alternative venue is significantly reduced. Therefore, promoters may be willing to pay a higher fee to operate at The O2 Arena than they did pre-merger.
96. Second, it is not clear to the OFT at this stage that the same business model will be adopted and be successful at Wembley Arena, such that AEG's arguments [] apply to Wembley Arena.
97. Finally, the OFT considers that the recent introduction of a facility fee at The O2 Arena may be illustrative of [], particularly given the absence of other evidence of this elasticity. AEG charges a £1 facility fee, which is passed on in full by the promoter to the consumer through a levy on the ticket price. [].³⁹ []. The OFT recognises that this is a particular circumstance – a surcharge that has been transparently passed on in full by the promoter to the end-consumer and is also applied across a number of venues. Nevertheless, the OFT would expect a profit-maximising promoter to pass on to consumers as great a proportion of an increase in venue fee as is possible without materially affecting their own customer demand, so as to preserve their profit margin. The OFT thus considers that, although there may be some difficulty in drawing inferences from this specific example to a more general context of an increase in venue fee, the pass-through by promoters and [] is not supportive of the parties' arguments.

³⁸ It is therefore not clear that consumers represent separate demand-side constraints. That is, any increased demand from consumers does not appear to have a feedback effect into increased demand from promoters as in a two-sided platform.

³⁹ []

98. For the reasons set out above and on the basis of the evidence available to it, the OFT does not believe that any possible incentive for AEG to resist increasing prices at the venues under its control is a sufficient countervailing factor to prevent the OFT's unilateral concerns in respect of live entertainment venues as discussed above.

Conclusion

99. Based on the above considerations, the OFT believes that AEG and Wembley Arena compete closely and are each other's closest competitors in the provision of large indoor live entertainment venues in London (that is, for the purposes of the competitive assessment of this case, venues with a capacity of circa 5,000 people or above).

100. In this regard, the OFT notes that the extent to which each of the venues provide a competitive constraint on each other may not be identical. The evidence available to the OFT indicates that the strongest competitive constraint is from the O2 Arena on Wembley Arena, rather than the reverse. In particular, the OFT notes that the offering of the two venues is, to a degree, differentiated and The O2 Arena is generally regarded as a higher quality venue.⁴⁰ The OFT also notes the evidence that The O2 Arena may charge comparatively higher prices than Wembley Arena (although the OFT disagrees with the parties on the extent of the differences in prices between the two venues).⁴¹ Finally, evidence of switching behaviour generally points at more likely diversions from Wembley Arena to The O2 Arena than from The O2 Arena to Wembley Arena. Because of this asymmetry in the mutual constraints between the two venues, the OFT unilateral effects concerns are particularly strong in relation to the loss of the competitive constraint from The O2 Arena on Wembley Arena.

101. By removing the current competitive constraint between the parties, the Transaction may result in competitive harm, in the form of an increased ability to raise prices for promoters, which may in turn feed into higher ticket prices for consumers. The Transaction may also increase the ability to reduce the quality of service for users of the venues operated by AEG, including promoters and consumers.

⁴⁰ See above paragraph 52.

⁴¹ See above paragraphs 54 to 56.

102. Therefore, the OFT believes that it is or may be the case that the Transaction has resulted, or may be expected to result, in a substantial lessening of competition in the supply of live entertainment venues in London with a capacity of circa 5,000 people or above.

Countervailing factors

Customer Buyer Power

103. In some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. In particular, an individual customer's negotiating position will be stronger if it can easily switch its demand away from the supplier, or when it can otherwise constrain the behaviour of the supplier.⁴²

104. AEG submits that 'most of the core music events taking place at The O2 Arena are booked by major UK promoters, [].'

105. The OFT notes that the Transaction results in the loss of a key competing – and the closest alternative – live entertainment venue in London and that there are only limited alternative venues available to agents and promoters. As a result, the OFT considers that the number of alternative venue options for promoters were limited pre-merger and, as a result of the Transaction, will be even more limited. The OFT currently considers that this calls into question the extent to which any weight can be placed on countervailing buyer power in the assessment of the extent to which unilateral horizontal effects – or vertical effects – may arise in this case.

106. Further, the OFT considers that venue hire fees and other commercial conditions are negotiated individually and vary across promoters and agents. Therefore, the OFT considers that even under the circumstance that some promoters or agents did have considerable buyer power, such negotiation strength may not protect weaker promoters, weaker agents or final customers booking venues directly for their shows.

107. Therefore, on the basis of the evidence available to it, the OFT believes that neither promoters nor final consumers are likely to have significant

⁴² *Merger Assessment Guidelines* section 5.9.

countervailing buyer power such as to prevent the OFT's unilateral effect concerns in respect of live entertainment venues as discussed above.

Barriers to entry and expansion

108. In assessing whether entry or expansion might prevent a substantial lessening of competition, the OFT will consider whether such entry or expansion would be:
 - (a) timely
 - (b) likely, and
 - (c) sufficient.⁴³
109. The OFT considers that barriers to entry are very high in the market for live entertainment venue services for a number of reasons. The OFT notes that AEG's internal documentation reflects this view, [].
110. Third parties have also expressed the view that barriers to entry (including planning permission, building costs and suitability of available land) are very high in the market for venue services.
111. Therefore, on the basis of the evidence available to it, the OFT does not believe that entry or expansion would mitigate or prevent any potential anti-competitive effects of the Transaction in respect of live entertainment venues in London with a capacity of circa 5,000 people or above.

VERTICAL ISSUES

112. AEG operates as a promoter of live entertainment events through its subsidiary AEG Live and through promoter Marshall Arts (of which AEG is the largest shareholder with 49 per cent of shares).
113. As part of the assessment of the Transaction, the OFT considered whether following the Transaction AEG could favour its promotion business in relation to events to be held at The O2 Arena and at Wembley Arena, so as to prevent competing promoters from using these venues or to provide competing promoters access to these venues on less favourable conditions.

⁴³ *Merger Assessment Guidelines*, paragraph 5.8.3.

114. The parties submit that AEG has no incentive to restrict third party promoters from accessing The O2 Arena or Wembley Arena post-transaction because, as far as The O2 Arena is concerned, AEG currently relies on third party promoters to make The O2 Arena a successful venue. The parties also submit that AEG has no incentive to provide AEG Live with access to The O2 Arena on more favourable terms than other promoters, because The O2 Arena needs third party promoters to book events at the venue.
115. In order to assess whether any competitive harm could result from promoter foreclosure in this case, the OFT framed its analysis by reference to the following three questions:⁴⁴
 - a) **Ability:** Would AEG have the ability to harm rivals post-merger, for example through raising prices or refusing to supply them?
 - b) **Incentive:** Would AEG find it profitable to engage in such strategies?
 - c) **Effects:** Would the effect of any action by the merged firm be sufficient to reduce competition in the affected market to the extent that, in the context of the market in question, it gives rise to a substantial lessening of competition?
116. When assessing AEG's ability and incentive to foreclose other promoters, the OFT entertained the possibility of total foreclosure, but also foreclosure strategies involving discriminatory access to rival promoters and foreclosure of a selective group of promoters (for example, those attempting to book AEG's venues for events in direct competition with AEG's promotion business).
117. The OFT also considered whether AEG's ability to undertake foreclosure strategies may be undermined by either (a) promoters switching away from the parties' venues themselves, or (b) AEG not being able to satisfy the demand of The O2 Arena and Wembley Arena.
118. In view of its assessment of the effect of the Transaction in the supply of live entertainment venues, including the OFT conclusions on the availability of alternative venues to The O2 Arena and Wembley Arena,

⁴⁴ *Merger Assessment Guidelines*, paragraph 5.6.6.

the OFT considers that promoters and artists may not be able to switch to substitutable venues.

119. Further, the OFT considers that London is generally a key part of a UK music tour. The inability of foreclosed promoters to make a competitive offering for a London venue may also hinder their ability to compete effectively on UK tours.
120. The promoters and agents consulted as part of the OFT investigation have generally confirmed the inability of promoters to successfully compete in London without access to The O2 Arena and Wembley Arena. Third parties have also indicated that for most tours in the UK the majority of the income comes from London, so it is generally not possible to drop this location.
121. The OFT also considered the extent to which AEG would be able to expand to meet the vacant demand of The O2 Arena and Wembley Arena. The parties submit that AEG Live is currently a relatively small promoter of live entertainment the UK, with an estimated market share of [0-10] per cent. In line with this, one promoter told the OFT that AEG Live may not be able to satisfy the increased demand with the same success as promoters with a bigger presence in the UK.
122. However, the OFT noted that AEG Live is the second largest promoter of worldwide concert tours and one of the main customers of The O2 Arena. Further, third parties noted that no significant investment is needed for a promoter to expand, other than, perhaps, hiring more staff (individual promoters). Third parties also explained to the OFT that promoters generally use the revenues from ticket sales as liquidity to cover marketing and other short term expenses for a specific show. Therefore, access to finance and liquidity did not appear to be an obstacle to expand in the promoter business.
123. While the OFT notes these considerations, given the findings of the OFT in relation to unilateral effects in the supply of live entertainment venues in London justifying a reference to the Competition Commission, the OFT has not found it necessary to conclude on whether it is or may be the case that the Transaction has resulted, or may be expected to result, in a substantial lessening of competition in respect of the promotion of live entertainment.

EFFICIENCIES

124. While mergers can harm competition, they can also give rise to efficiencies. Efficiencies may be taken into account in the competitive assessment of a merger in two different ways.
125. Firstly, efficiencies arising from the merger may enhance rivalry, with the result that the merger does not give rise to a substantial lessening of competition.
126. Secondly, efficiencies may be taken into account in the form of relevant customer benefits. These are defined in section 30(1) of the Act as benefits to relevant customers in the form of lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom, or greater innovation in relation to such goods or services. The Act enables the OFT to take into account customer benefits arising in markets other than where the substantial lessening of competition is found, and benefits to future customers.⁴⁵
127. The parties have submitted that a number of potential benefits could arise from the Transaction. Specifically AEG states that the Transaction would result in:
 - an expansion of the live entertainment market and an increase in consumer choice
 - improved quality at Wembley Arena
 - the introduction of new services at Wembley Arena []
 - cost savings through [], and
 - [].
128. While the OFT does not rule out the possibility that the Transaction will give rise to efficiencies, including relevant customer benefits, of the sort suggested by the parties, on the basis of the evidence available to it, it has not been able to assess: (a) the extent of such efficiencies; (b) whether or not they are merger-specific; (c) the likelihood they will be passed on to customers; or (d) whether they are sufficient to countervail

⁴⁵ See *Merger Assessment Guidelines*, section 5.7.

any potential unilateral effects which may arise as a consequence of the Transaction.

129. Accordingly, on the basis of the evidence available to it, the OFT cannot conclude that there are efficiencies arising from the Transaction which have the result that the Transaction does not give rise to a substantial lessening of competition.

THIRD PARTY VIEWS

130. The OFT has asked customers and competitors of the merging parties for their views on the Transaction. Third party comments have been given due consideration by the OFT, and have been referenced in this decision where relevant.
131. Several third parties raised concerns that the Transaction would result in AEG controlling the two premier live entertainment venues in London. The OFT also received unsolicited comments from a promoter, who was not only concerned about the horizontal effects of the Transaction but also about the potential for AEG to foreclose access to Wembley Arena and The O2 Arena to rival promoters of AEG Live.
132. Some promoters considered that there would be benefits deriving from AEG taking over the management of Wembley Arena and improving the quality of service at Wembley Arena and the overall consumers' experience. However, these respondents recognised that there was a risk that AEG could increase fees post-merger.

ASSESSMENT

133. The OFT has considered the competitive effects of the Transaction in relation to the supply of indoor live entertainment venues in London of a capacity equal to or larger than circa 5,000 people.
134. The OFT believes that it is or may be the case that the Transaction has resulted in a relevant merger situation on the basis that the parties have a combined share of around 38 per cent in the supply of indoor live music venues, with an increment of 12 per cent.
135. The OFT has considered the impact of the Transaction on competition in the supply of indoor live entertainment venues in London of a capacity

equal to or larger than circa 5,000 people, where, on the basis of the evidence available to it, the OFT considers that the Transaction raises unilateral horizontal competition concerns.

136. The OFT therefore believes that it is or may be the case that the Transaction has resulted or may be expected to result in a substantial lessening of competition in the supply of indoor live entertainment venues in London of a capacity equal to or larger than circa 5,000 people.
137. The OFT has considered whether the Transaction may give rise to competition concerns in relation to the promotion of live entertainment. However, given the findings of the OFT in relation to unilateral effects in the supply of live entertainment venues in London of a capacity equal to or larger than circa 5,000 people justifying a reference to the Competition Commission, the OFT has not found it necessary to conclude on whether it is or may be the case that the Transaction has resulted, or may be expected to result, in a substantial lessening of competition in respect of the promotion of live entertainment.

EXCEPTIONS TO THE DUTY TO REFER

138. Where the duty to refer is met under section 22(1) of the Act, the OFT may decide not to refer the merger to the Competition Commission on the basis of one of the available exceptions to the duty to refer. These include that the market(s) concerned is, or are, not of sufficient importance to justify the making of a reference or that any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition concerned and any adverse effects of the substantial lessening of competition concerned.
139. In this case, AEG has not argued that any market or markets concerned would be of insufficient importance to justify such a reference.
140. On the basis of the evidence available to it, the OFT believes that any relevant customer benefits do not outweigh the substantial lessening of competition or any adverse effects of the substantial lessening of competition.

UNDERTAKINGS IN LIEU

141. Where the duty to make a reference under section 22(1) of the Act is met, pursuant to section 73(2) of the Act the OFT may, instead of making such a reference, accept from the parties concerned such undertakings as it considers appropriate for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may result from it.
142. In the present case, AEG has not offered any undertakings in lieu of reference to the Competition Commission.

DECISION

143. The completed acquisition will be referred to the Competition Commission pursuant to section 22(1) of the Act.

ⁱ In its decision of 22 March 2013, the OFT described AEG Facilities (UK) limited as a 'wholly-owned subsidiary' of AEG. The public version of this decision has been amended, as the Compass Group PLC (the '**Compass Group**') has also an indirect interest in AEG Facilities (UK), through the interest held by the Compass Group companies in AEG Facilities LLC, a US company and the direct owner of AEG Facilities (UK). [].