

Completed acquisition by LN-Gaiety Holdings Limited of MAMA & Company Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6574/15

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 19 February 2016. Full text of the decision published on 7 April 2016.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. LN-Gaiety Holdings Limited (**LN-Gaiety**) acquired MAMA & Company Limited (**MAMA**) on 6 August 2015 (the **Merger**). LN-Gaiety and MAMA are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties' enterprises have ceased to be distinct and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the ownership and operation of indoor live entertainment venues in Birmingham, Manchester and London, and the ownership and operation of live music festivals in the UK. The CMA assessed the impact of the Merger in these product and geographic frames of reference.
4. The CMA also considered whether the Merger gave rise to vertical effects where the merged entity could increase the price it charges for venues to rival promoters, increasing their costs and making them less competitive; and/or whether the Merger gave rise to conglomerate effects where the merged entity could foreclose rivals through a tying or bundling strategy.

5. The CMA found that:
- in Birmingham the Parties' operate the Academy (LN-Gaiety) and the Institute (MAMA). While the Parties' venues were geographically close there was limited evidence of strong competition between them. In addition, LN-Gaiety's Academy faced stronger competition from the Wolverhampton Civic Hall and other venues; and the Institute faced competition from the Wulfrun Hall;
 - in Manchester the Parties' operate the Manchester Apollo (LN-Gaiety) and the Ritz (MAMA). The Parties' venues were not close competitors and each venue faced competition from other venues, including Victoria Warehouse, Manchester Academy and the Albert Hall; and
 - in London the Parties operate the O2 Academy Brixton, O2 Academy Shepherd's Bush Empire (SBE) and the O2 Academy Islington (LN-Gaiety), and the Forum, and The Garage (MAMA).¹ The CMA found that there was sufficient competition post-Merger amongst venues given the strengthening of the position of the Roundhouse and the IndigO2 as significant London music venues, and the opening and/or refurbishment of other London music venues of similar capacity to the Parties' venues.
6. LN-Gaiety ownsⁱ and operates 12 festivals in the UK and MAMA owned and operated five. Of these 17 music festivals five are non-camping music festivals held in London. The CMA found that the Parties had a low national combined share of supply for all music festivals in the UK, and that there were many music festivals that compete with those of the Parties. To the extent that competitive conditions in the supply of music festivals may differ in London, the CMA believes that the Parties do not compete closely, and that there are several other competing non-camping music festivals in London and further afield.
7. The CMA therefore believes that the constraints in the horizontal overlaps are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
8. The CMA believes that, in the absence of a realistic prospect of an SLC arising from horizontal unilateral effects, there is no realistic prospect that the

¹ MAMA also owned Hoxton Square Bar & Kitchen, The Jazz Café Camden, The Borderline and The Barfly Camden which have been sold since the acquisition.

Merger would give rise to an SLC as a result of either vertical or conglomerate effects.

9. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

10. LN-Gaiety owns and operates live music venues and festivals in the UK. LN-Gaiety is a joint venture between Live Nation (Music) UK Limited (**Live Nation**) and Gaiety Investments Limited. Live-Nation Gaiety Holdings' 2014 turnover was £[X]. Live Nation has a 50.1% stake in LN-Gaiety. Live Nation, a subsidiary of Live Nation Entertainment Inc. is an entertainment company which provides concert promotion, venue operations, ticketing, and artist management services. Live Nation Entertainment Inc. is publicly listed on NYSE, and its turnover was \$7.1 billion for the 12 months to September 2015. Gaiety Investments Limited is an Irish entertainment company, which provides promotion services and operates festivals and entertainment venues.
11. MAMA is a live music company, founded in 2005. It owns and operates a number of live music venues and festivals in the UK. The turnover of MAMA in the financial year to 30 April 2015 was around £[X] million in the UK.

Transaction

12. LN-Gaiety bought the entire issued share capital of MAMA. The transaction completed on 6 August 2015.

Jurisdiction

13. As a result of the Merger, the enterprises of LN-Gaiety and MAMA have ceased to be distinct.
14. The Parties overlap in the ownership and operation of indoor live entertainment venues and live music festivals. LN-Gaiety submitted that the Parties have a combined share of supply of [10-20]% in 'the Birmingham area' for live music venues of capacity 1,000 to 5,000. However, the CMA notes that this shares of supply includes venues in a range of Midlands cities, eg Wolverhampton, Warwick, Coventry and Nottingham. In the city of Birmingham the Parties' combined share of supply of such venues is around [20-30]% (with an increment of [5-10]%). The CMA considers that Birmingham

is a substantial part of the UK and therefore believes that the share of supply test in section 23 of the Act is met.

15. The Merger was first made public on 4 August 2015 and was completed on 6 August 2015. The CMA opened an own-initiative investigation into the Merger by sending an Enquiry Letter to LN-Gaiety on 23 September 2015.² The four-month deadline for a decision under section 24 of the Act is 28 February 2016, following extension under section 25(2) of the Act.
16. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
17. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 22 December 2015 and the statutory 40 working day deadline for a decision is therefore 19 February 2016.

Background

18. LN-Gaiety and Live Nation were bound by undertakings given under section 82 of the Act not to reacquire an interest in the Forum (the **Undertakings**), which it had divested along with the Hammersmith Apollo following a previous competition investigation.³ On 7 April 2015 Live Nation requested that the CMA (as successor to the Office of Fair Trading (OFT)) give written consent under clause 3(3) of the Undertakings for it to acquire an interest in the Forum. Following its review, the CMA gave consent on 1 June 2015 for Live Nation to acquire the Forum. As part of this transaction, Live Nation reacquired the Forum and the CMA has considered this as part of this acquisition.

Counterfactual

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of the pre-merger conditions continuing is not realistic,

² See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

³ Following the Competition Commission (CC) report on the proposed acquisition of a controlling interest in *Academy Music Holdings Limited by Hamsard 2786 Limited* (*Hamsard/Academy Music* decision, published on 23 January 2007. The CC found that the merger was likely to lead to an SLC as a result of the loss of rivalry between the Hammersmith Apollo, Brixton Academy, Shepherd's Bush Empire (SBE), the Astoria and the Forum.

or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁴

20. In this case, LN-Gaiety did not put forward any arguments for the adoption of a different counterfactual and the evidence before the CMA does not support an alternative counterfactual. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

Frame of reference

21. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁵
22. The Parties overlap in the ownership and operation of indoor live entertainment venues in Birmingham, Manchester and London, and the ownership and operation of live music festivals in the UK.

Product scope

The supply of indoor live entertainment venues

23. In its submissions on the competitive effects of the Merger, LN-Gaiety analysed the competitive constraints imposed by different venues based on capacity, configuration (ie whether the venue is standing or seated), and the type of live music act performed at the venue.
24. The CMA and its predecessor bodies, the OFT and the Competition Commission (CC), have considered the market for the operation of live entertainment venues on a number of occasions. In both *AEG/Wembley Arena* and *Hamsard/Academy Music*, the CC considered a range of factors in assessing whether there was a single market for the supply of venue space to promoters or whether the market should be defined more narrowly, eg by taking into account whether the venues are indoor or outdoor; the type of

⁴ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

⁵ [Merger Assessment Guidelines](#), paragraph 5.2.2.

event for which the venue is primarily used; venue capacity; and venue configuration.⁶

25. In *Hamsard/Academy Music*, the CC concluded that the extent of substitutability of one venue for another depends on a range of factors and, rather than attempt to define a product market for live entertainment venues, decided that a better approach was to examine the competitive constraints on each individual venue operated by the merging Parties.⁷ In *AEG/Wembley Arena*, without adopting a narrow market definition, the CC noted that the different factors (see paragraph 24) can have an impact on competition between venues, with capacity being a particularly important consideration.⁸
26. In the present case, in assessing the product frame of reference the CMA considered the factors previously identified by the CC, namely: (i) whether the venue is indoor or outdoor; (ii) the type of event for which the venue is primarily used; (iii) the capacity of the venue; and (iv) the configuration and facilities of the venue.

Outdoor vs indoor venues

27. The Parties overlap in the ownership and operation of indoor live entertainment venues. The CMA notes that in previous cases the CC found limited evidence of switching between indoor and outdoor venues and concluded that they fall within separate markets.⁹ In the present case, LN-Gaiety did not argue that outdoor venues should fall within the same product frame of reference as indoor venues and no third party suggested that they should be in the same frame of reference.
28. Accordingly, the CMA has adopted a frame of reference based on the supply of indoor venues only for its assessment of the Merger.

Type of event typically hosted by the venue

29. In previous cases, the CC found that venues tend to have a reputation, ambience and configuration, for a certain type of music. In *Hamsard/Academy Music*, the CC noted by way of example that the Royal Opera House is

⁶ Competition Commission Final Report in *AEG/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), paragraph 7.14 and Competition Commission Final Report in *Hamsard/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 4.7.

⁷ *Hamsard/Academy Music*, paragraph 4.24.

⁸ *AEG/Wembley Arena*, paragraph 7.48.

⁹ *AEG/Wembley Arena*, paragraphs 7.15 to 7.18.

generally known for opera and ballet, whereas the Brixton Academy has built its reputation on rock music.¹⁰

30. While some venues in Birmingham, Manchester and London, including those of the Parties, are specifically designed or equipped for live music performances by non-classical acts in a range of popular genres (including rock, metal/hard rock, pop, urban, indie, etc), there are a range of other venues in the area which are either used mainly for other purposes or host live music performances for other genres of music. Examples of such alternative venues include classical concert halls, theatres, clubs and certain civic or religious buildings.
31. LN-Gaiety did not make specific submissions regarding the inclusion of such venues in the product frame of reference. However, their submissions on the competitive constraints on their venues included evidence of live music events being booked at these non-specialist venues.
32. Third parties which responded to the CMA's merger investigation said that venues more associated with other genres of music or other activities may sometimes stage popular live music events, but they also said that: (i) the suitability of alternative venues will be determined on an event-by-event basis; and (ii) such venues are generally not close substitutes for a venue that predominantly stages popular live music events.
33. The CMA notes that, while the CC found in *Hamsard/Academy Music* that switching from a popular music venue to one that is mainly used for other types of music or a different purpose (eg a theatre) was not sustainable, it also recognised that it was necessary to consider any exceptions to this on a venue-by-venue basis.¹¹ The CC in *AEG/Wembley Arena* 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.¹²
34. Accordingly, in the present case the CMA considered the constraint imposed by any such venues on the Parties' venues on a case-by-case basis in the competitive assessment. However, the Parties' venues drew the majority of their revenue from popular live music, and were perceived by third parties to be most suitable for popular live music events.¹³ On the basis of the evidence before it, the CMA considered the Parties' venues competed most closely in

¹⁰ *Hamsard/Academy Music*, paragraph 4.12.

¹¹ *Hamsard/Academy Music*, paragraph 4.15.

¹² *AEG/Wembley Arena*, paragraph 7.46.

¹³ The Academy also put on a number of club nights. However, the CMA understood that the lesser requirements on a venue for such events meant that there was a wider set of available competitors to host such events, and no third party raised competition concerns with respect to this type of event.

the popular live music segment, and the CMA therefore focused its investigation on this segment.

Live entertainment venue capacity

35. As noted in paragraph 25, in previous cases the CC identified that capacity is an important consideration when choosing a venue for a live entertainment performance. In *Hamsard/Academy Music*, the CC concluded that, while certain broad distinctions could be drawn between venues of particular sizes, eg those above and below 1,000 capacity, it would not be safe to assume that clear lines could be drawn such that only venues of similar size compete with each other.¹⁴
36. Similarly, the CC in *AEG/Wembley Arena* found that, although the capacity of a venue was an important consideration in choice between venues, it was not sufficiently distinctive to require the CC to define the relevant markets by capacity. Instead, the CC analysed the effect on competition by identifying overlaps in segments based on venue capacities of: (i) up to 5,000; (ii) between 5,000 and 12,500; and (iii) above 12,500 – noting that large venues can often host small and medium-sized events if they can configure their capacity appropriately.¹⁵ The focus of *AEG/Wembley Arena* was on venues substantially larger than those in the present case.
37. In the present case, third parties told the CMA that capacity is a critical factor in choosing a venue for a live entertainment performance. Promoters said that they generally have a clear view, based on experience, of the number of tickets a particular act is likely to sell and will seek to book the venue that is most appropriately sized for that anticipated level of ticket sales. They also said that artists receive a minimum revenue guarantee based on the venue capacity, and therefore promoters were strongly incentivised not to book venues that the artist could not fill. Third parties said that artists and their management strongly prefer to fill venues, rather than to play in a partially filled larger venue – this ensures the ambience of the venue which is important for both artists and the audience. Most promoters told the CMA that, in the event of a price rise for a larger venue, they would be unlikely to book multiple nights in a smaller venue, given the significant costs of staging multiple nights.
38. In light of the previous decisions of the CC, the evidence from third parties and the fact that the Parties' venues' maximum capacities lie in the 1,000 to 5,000 capacity segment, the CMA assessed the impact of the Merger based

¹⁴ *Hamsard/Academy Music*, paragraph 4.19.

¹⁵ *AEG/Wembley Arena*, paragraphs 7.47 to 7.540.

on live entertainment venues with a capacity of between 1,000 and 5,000. Within this band, the CMA took into account the competitive constraint that venues of different capacities place on each other on a venue-by-venue basis.

Venue configuration

39. The CC noted in *AEG/Wembley Arena* that venues can be organised into a number of different configuration styles, which differ in terms of the mix of standing and seating. However, it found that individual acts may have specific preferences for particular configurations and that venues tend to be flexible and can offer different solutions. Accordingly, the CC concluded that the relevant market should not be segmented by venue configuration.
40. In the present case, third parties confirmed that the preference for a venue's configuration (eg seated or standing) is largely determined by the artist, the type of show envisaged and the intended audience. The evidence the CMA received suggested that certain seated venues may, in only limited circumstances, provide a substitute for a standing venue, though many venues have the ability to vary their configurations.
41. Accordingly, the CMA has not segmented the market based on venue configuration, but has taken this into account in its competitive assessment..

Supply of music festivals

42. LN-Gaiety did not make specific submissions on the product scope for music festivals.
43. In *Mean Fiddler/Clear Channel*,¹⁶ the OFT concluded that although individual music festivals cannot be considered particularly close demand substitutes, and therefore the constraint they place upon each other may be weak, there is likely to be at least a proportion of customers who are marginal and would switch between certain festivals.¹⁷ As such the OFT (taking a cautious approach) considered a product frame of reference including all UK music festivals.
44. The CMA, based on the evidence from third parties, considers that it remains the case that there is a degree of substitution between certain music festivals. The CMA therefore assessed the merger within a product frame of reference

¹⁶ Anticipated acquisition of *Mean Fiddler Music Group* by *Clear Channel Entertainment (Music) UK Ltd* and *Gaiety Investments Ltd*, 27 June 2005.

¹⁷ OFT, Anticipated acquisition of *Mean Fiddler Music Group* by *Clear Channel Entertainment (Music) UK Ltd* and *Gaiety Investments Ltd*, 27 June 2005, para 16.

that includes all music festivals, while taking into account in its competitive assessment the significant differentiation between different music festivals.

Conclusion on product scope

45. For the reasons set out above, the CMA considered the impact of the Merger in the following product frames of reference:
- indoor live entertainment venues with capacity between 1,000 and 5,000; and
 - music festivals.
46. However, it was not necessary for the CMA to reach a conclusion on any product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Geographic scope

Supply of indoor live entertainment venues with capacity between 1,000 and 5,000

47. As noted in paragraph 22, the Parties overlap in the supply of indoor live entertainment venues in Birmingham, Manchester and London. LN-Gaiety submitted that their venues are hired by concert promoters and agents who, when deciding where to play, select a city based on whether the population of that city is sufficient to sell the required number of tickets. LN-Gaiety therefore submitted that alternative UK cities are those that can fill venues with capacities comparable to the Parties' venues. LN-Gaiety submitted that there are at least ten cities across the UK which have venues with capacities between 3,000 and 5,000 and more than 60 cities and towns which have venues with capacities between 1,000 and 5,000.
48. In relation to Birmingham, LN-Gaiety submitted evidence of recent tours which it said showed that promoters consider other cities as substitutes for Birmingham on the basis that some artists have toured the UK in successive years, playing in Birmingham in some years and not in others. Of the 11 examples provided, Wolverhampton is the most regular alternative to Birmingham, followed by Nottingham. Notwithstanding this view, LN-Gaiety submitted that the geographic market definition could be left open because, in

its view, the Merger does not raise concerns even on narrower frames of reference focused on each of Birmingham, Manchester and London.¹⁸

49. Third parties who responded to the CMA's merger investigation said that location is a key factor in choosing a live entertainment venue. Some third parties, including competing operators and promoters, said that tours will usually include London, Manchester and Glasgow as primary locations, but the full list of cities will be smaller or larger, depending on the length of the proposed tour.
50. With regard to Birmingham, there were a range of views on its relative importance as a location for popular live music events. While some third parties said that it is not a primary location, others said that Birmingham is generally regarded as the preferred location for a performance in the Midlands on a UK-wide tour. One promoter indicated that this was particularly the case for non-UK acts, who are often less familiar with other cities in the Midlands and may be doing a shorter (eg six or seven date) UK tour. A small number of third parties suggested that venues in other nearby towns/cities might be alternatives to a venue in Birmingham in some cases, particularly if Birmingham had hosted a date on a previous tour by the same artist, but this would depend on the artist involved.
51. Accordingly, for Birmingham and Manchester, the CMA has followed the CC's approach in *Hamsard/Academy Music* and has not concluded on the relevant geographic market. The CMA has examined the effect of the Merger on competition between local venues on a venue-by-venue basis. For London, the CMA followed the approach taken in *AEG/Wembley Arena* and assessed the merger on the basis of a London-wide geographic frame of reference.

Supply of music festivals

52. LN-Gaiety made no submissions on the appropriate geographic market for the supply of music festivals.
53. One third party¹⁹ who responded to the CMA's merger investigation said that, in general, locations which offer good transport links, in easy reach of large population hubs, were favoured wherever they are in the country. Another²⁰ commented that inner city festivals are different to three day camping

¹⁸ In *Hamsard/Academy Music*, the CC did not conclude on the relevant geographic market and instead examined competition from venues in nearby localities on a venue-by-venue basis (paragraph 4.23). However, in *AEG/Wembley Arena*, in which the overlap between the merger parties was only in London, the CC considered that the geographic scope of the relevant market was London-wide (paragraph 7.13).

¹⁹ [REDACTED]

²⁰ [REDACTED]

festivals, as they are for people who don't wish to camp or who wish to go home afterwards. Another²¹ said that any location which provided good exposure would be a good alternative.

54. The CMA notes that, while a festival promoter may have various options in terms of alternative locations across the UK, there may be significant challenges in relocating an existing festival, particularly if its identity and/or branding is based on its current location.²²
55. As noted above (see paragraph 43), in *Mean Fiddler/Clear Channel Entertainment*,²³ the OFT concluded that although individual music festivals cannot be considered particularly close demand substitutes, and therefore the constraint they place upon each other may be weak, there is likely to be at least a proportion of customers who are marginal and would switch between certain festivals. As such the OFT (taking a cautious approach) considered a product frame of reference including all UK music festivals.
56. The CMA as a starting point, in line with this precedent and the majority of third party responses, considered all festivals in the UK as being in the same geographic market. However, because the Parties overlap in non-camping music festivals in London, the CMA also considered in its competitive assessment the effect of the merger if competitive conditions in the supply of music festivals differed in London.

Conclusion on geographic scope

57. For the reasons set out above, the CMA has considered the impact of the Merger in the following geographic frames of reference:
 - the supply of indoor live entertainment venues, with capacity between 1,000 and 5,000, in: (i) Birmingham; (ii) Manchester; and (iii) London; and
 - the supply of music festivals in the UK.
58. However, it has not been necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

²¹ [REDACTED]

²² [REDACTED]

²³ See Anticipated acquisition of *Mean Fiddler Music Group* by *Clear Channel Entertainment (Music) UK Ltd* and *Gaiety Investments Ltd*, 27 June 2005, paragraphs 16 -17.

Conclusion on frame of reference

59. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- the supply of indoor live entertainment venues, with capacity between 1,000 and 5,000, on a venue-by-venue basis in Birmingham;
 - the supply of indoor live entertainment venues, with capacity between 1,000 and 5,000, on a venue-by-venue basis in Manchester;
 - the supply of indoor live entertainment venues, with capacity between 1,000 and 5,000, on a London-wide geographic frame of reference; and
 - the supply of music festivals in the UK.

Theories of harm

60. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.²⁴ Horizontal unilateral effects are more likely when the merging parties are close competitors.
61. In this case the CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in each of the four frames of reference set out above (see paragraph 59).
62. The CMA also considered two types of non-horizontal effects:
- (a) *Vertical effects*. These effects may arise when a merger involves firms at different levels of the supply chain. In the present case, the CMA considered whether, as a result of the Merger, the merged entity would increase the price it charges for venues to rival promoters (partial input foreclosure), thereby increasing the costs of rival promoters and making them less competitive.
- (b) *Conglomerate effects*. These effects may arise in mergers of firms which are active in the supply of goods or services in different but related markets, eg where the products are complements (so that a fall in the price of one good increases the customer's demand for another) or because there are economies of scale in purchasing them (so that

²⁴ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

customers buy them together).²⁵ In the present case, the CMA considered whether the merger would result in the merged entity foreclosing rivals through a tying or bundling strategy.

Competitive assessment

The supply of indoor live entertainment venues with capacity between 1,000 and 5,000 in Birmingham

63. In order to assess the likelihood of the Merger resulting in unilateral effects in the supply of indoor live entertainment venues in Birmingham, the CMA considered the extent of competition between the Parties' venues, the Academy and the Institute, and the competitive constraints they face from alternative suppliers' venues, including from venues located in nearby towns and cities outside Birmingham.
64. In *Hamsard/Academy Music*, the CC identified the following factors as being taken into consideration when choosing a venue: location, availability, capacity, ambience and genre, configuration, facilities, artists' preference, costs, reputation and service quality. In the present case, third parties confirmed that all these factors are relevant when choosing a venue. Third parties also said that the requirements of promoters and artists' booking venues are varied. Therefore, the CMA notes that a simple fascia count does not provide any meaningful indication of the competitive constraints on the Parties' venues.

The Parties' venues in the Birmingham area

65. The Parties operate two indoor live entertainment venues in Birmingham, namely the the Academy, which was operated by LN-Gaiety pre-Merger, and the Institute, which was operated by MAMA pre-Merger. Both these venues are commonly used for popular live entertainment events.
66. The Academy is composed of three rooms: the Academy 1 (capacity 3,009), the Academy 2 (capacity 600) and the Academy 3 (capacity 250). Each of the rooms can be booked separately, with the Academy 1 and the Academy 2 offering standing or seated configurations. In addition, the Academy 1 offers a smaller 'short hall' configuration, providing a capacity of 1,800, which is achieved by closing the balcony. LN-Gaiety submitted that the Academy [REDACTED]²⁶ [REDACTED].²⁷ In 2014, the revenue of the Academy was £[REDACTED], of which the CMA

²⁵ [Merger Assessment Guidelines](#), paragraph 5.6.2.

²⁶ [REDACTED]

²⁷ [REDACTED]

estimates that approximately £[redacted] came directly from venue hire for live entertainment events (including both hire fees and food and beverage income).²⁸

67. The Institute is also composed of three rooms: the Institute 1 (capacity 1,500), the Institute 2 (capacity 600), and the Institute 3 (capacity 300). As with the Academy, each of these rooms can be booked separately. LN-Gaiety submitted that each of the rooms offers standing or seated configurations and, although it is not marketed, promoters could, in theory, book only the stalls of the Institute 1. In 2014, the revenue of the Institute was £[redacted], of which the CMA estimates that approximately £[redacted] came directly from venue hire for live entertainment events (including both hire fees and food and beverage income).²⁹
68. With regard to the two smallest rooms at each venue, Birmingham and the surrounding towns and cities have several indoor live entertainment venues for acts requiring capacities of less than 1,000, such as the smaller rooms at the Rainbow venues, the Glee Club, the Oobleck, the Hare & Hounds and the Wolverhampton Civic Hall's Slade Rooms, which compete with the smaller capacity rooms at the Academy and the Institute. None of the third parties who responded to the CMA's merger investigation expressed concerns about the Merger's effect on the supply of indoor live entertainment venues with a capacity of less than 1,000. Therefore, the CMA has not considered this overlap further.
69. The CMA's competitive assessment therefore focused on the overlap between the large rooms at each of the Parties' venues.

Shares of supply

70. For venues in the City of Birmingham with a capacity between 1,000 and 5,000 the Parties have an estimated combined share of supply of [20-30]% by capacity, with an increment of [5-10]%. However, as noted above, shares of supply may not be a meaningful indicator of the level of constraint between the Parties' venues and those of other suppliers.

²⁸ Based on the accounts supplied in Annex 7b of Live Nation's response to the CMA's 23 September 2015 information request, adjusted to exclude non-live music events on the basis of Annex 1 of Live Nation's response to the CMA's 18 January information request. The Academy also received a significant portion of its revenue from hosting club nights and from sponsorship.

²⁹ Based on the accounts supplied in Annex 8 of Live Nation's response to the CMA's 23 September 2015 information request, adjusted to exclude non-live music events on the basis of Annex 1 of Live Nation's response to the CMA's 18 January information request. The Academy also received a significant portion of its revenue from from sponsorship.

Assessment of constraints imposed by the Parties' venues on each other

71. The CMA, based on decisional precedent and this investigation, has assessed the parameters of competition between the live entertainment venues on the basis of location, venue characteristics including capacity, configuration, reputation including types of venues/acts, and venue hire price. Taking each of these factors into account alongside third party views, the CMA considers that the Academy and the Institute, taken at face value, share many characteristics: they are in close proximity to each other in central Birmingham, their primary use is for popular live music, they both possess high standard facilities, and both offer standing configurations. However, they differ significantly in relation to capacity and price. The Institute's maximum capacity is 3,009 and the Academy's capacity is 1,500. This is reflected in their venue hire fees with the Academy's venue hire fee at £[redacted] and Institute's venue hire fee at £[redacted]. The Academy also has a short hall format with a capacity of 1,800 and venue hire fee at £[redacted] (this has been hired on this basis [redacted], or about [redacted]% of live music performances, in the past year). We assessed the extent of competition between the Parties venues, in the light of these features.
72. The evidence received from third parties is mixed. While several third parties described the Academy and the Institute as alternatives to each other, others said that that the Parties' venues (that is, their larger rooms) were not competitors, due to their significantly different capacities. Only one promoter gave examples of three events in the past year for which it said it had considered both the Academy and the Institute. Several third parties said that, given an event would almost always be placed in the venue which offered the maximum ticket sales for a particular artist, there would be very few events which would consider the Academy and the Institute as alternatives due to their significantly different capacities.
73. LN-Gaiety submitted that, due to the difference in booking fees and capacity and to the system of guaranteeing revenues to artists based on venue capacity,³⁰ the typical costs of the Institute and the Academy were substantially different, with venue cost plus guaranteed revenue being [redacted] at the Academy, and that this difference in cost was many times the margin available to promoters. They submitted that the two venues would therefore not be close alternatives for any given act from the promoter's point of view.
74. The differences in capacity and in cost are less between the Academy in short hall format and the Institute. However, on the basis of third party replies, this

³⁰ See paragraph 37 above.

format is not popular with promoters, [redacted] (around [redacted]% of all popular live music events at the Academy).

75. In light of the differing capacities of the Parties' venues, the CMA looked for indications of competition between the Academy and the Institute for mid-size events, ie those which expected to sell between 1,500 and 3,000 tickets (noting that promoters could not perfectly predict actual sales). The CMA found [redacted] However, the CMA found limited evidence that the Parties' venues were close competitors for such events. In particular the CMA found no evidence of actual third party switching between the venues and only one example of promoters considering both venues for the same event.
76. LN-Gaiety submitted evidence based on touring artists who played the Parties' venues large rooms in Birmingham, and the other venues they played on the same tour.³¹ It showed that for all the tours that included the Institute, the capacity of other venues booked for the same tour [redacted]. The spread for bands who played the Academy was wider in absolute terms, but more than [redacted]% of their other tour dates were in venues larger than the Institute. The CMA considers that this suggests that – to the extent that demand in other cities is reasonably similar to Birmingham³² – it would be rare for a band to play both a venue the size of the Institute and a venue the size of the Academy.
77. The CMA considers that the evidence in this case relating to competition between the Parties' venues in Birmingham suggests that there is a degree of differentiation between venues of different sizes which offer different capacities. Specifically, within the 1,000-5,000 segment, this difference in size and capacity between two venues may be large relative to the size and capacity of each venue. Since, on the basis of third party replies, promoters typically make revenue guarantees to artists on the basis of venue capacity, the difference in size and capacity may also have significant financial implications, such that a 1,000 capacity venue is a poor substitute for a 5,000 capacity venue. Therefore even within this segment, the degree of competitive constraint related to capacity is best assessed on a venue-by-venue basis.
78. The CMA therefore found that, although the Parties' venues might be expected to compete for some events given their location, the CMA did not find any evidence to support the fact that they were strong alternatives to

³¹ Based on tours booked by Live Nation as a promoter between the period 1 January 2010 to 31 December 2015 (booked by 3 December 2015 when the dataset was assembled). Tours included are those with four or more dates, and excluding London dates (where LN-Gaiety said that demand is inherently more buoyant and promoters may book larger venues than in other UK cities).

³² LN-Gaiety told us that, for example, demand is generally stronger in cities such as Manchester and Glasgow than in Birmingham, which implies some scope for a band to play a larger venue in those cities than in Birmingham.

each other. The competition that would be lost as a result of the Merger was therefore limited, in part, due to the size, capacity and possible returns available at each venue. Even so, given the Parties' venues' proximate location and the fact that the Academy has, [REDACTED], been let or used, on a 'short hall' basis, the CMA does consider that a limited degree of competition would be lost as a result of the Merger. The CMA therefore considered the extent to which each of the Academy and Institute would face competition from other venues in the 1,000 – 5,000 capacity segment.

Venues in Birmingham and the surrounding area

79. The CMA's frame of reference relates to Birmingham. However, the CMA's investigation (and past investigations) have shown that competition takes place between venues. We would expect, all things being equal, that location plays a critical factor in choosing a venue. The replies from third party promoters indicated a range of alternatives to each of the Parties' venues including venues in other nearby towns and cities. As noted in paragraph 47, the CMA has assessed the closeness of competition between the Parties from the point of view of promoters, who have told the CMA that they will consider substituting between venues in different cities on the basis of the number of end customers the venue can attract; however, the promoter does not need to attract exactly the same customers in different cities. Even if the same end customers were considered, the Parties submitted that, for actual customers attending the Academy,³³ around [REDACTED]% would have a shorter journey to the Wolverhampton Civic Hall than to the Academy, and [REDACTED]% of customers would see their journey time increase by no more than 20 minutes.
80. Table 1 below sets out the details of the venues in the Birmingham area with capacities between approximately 1,000 and 5,000, as provided by LN-Gaiety.

Table 1: Parties' submission on venues in the Birmingham area which compete with the large rooms of the Academy and the Institute

Venue	Location	Capacity	Rental fee	Standing configuration?	Distance from the Academy † (Miles)
Genting Arena‡	Birmingham	5,400 (academy format*)	£[REDACTED]	Yes	7.9

³³ Data based on tickets sold through TicketWeb for all shows at the Academy regardless of the promoter. TicketWeb accounts for at least 50% of sales for each event. Travel based on drive times from the customer's home.

Venue	Location	Capacity	Rental fee	Standing configuration?	Distance from the Academy † (Miles)
Jaguar Hall (Ricoh Arena)	Coventry	5,000 (academy format*)		Yes	17.1
Barclaycard Arena§	Birmingham	4,500 (academy format*)	£[X]	Yes	0.8
Academy (LN-Gaiety)	Birmingham	3,009 (1,800 in short hall format)	£[X] (short hall format: £[X])	Yes	-
Wolverhampton Civic Hall	Wolverhampton	3,000	£[X]	Yes	12.5
Symphony Hall	Birmingham	2,262	£[X]	No	0.6
Rock City	Nottingham	1,900	£[X]	Yes	45.7
Warwick Arts Centre	Warwick University	1,872	£[X]	Yes	15.7
Rainbow Textile Factory	Birmingham	1,700	£[X]	Yes	0.8
Institute (MAMA)	Birmingham	1,500	£[X]	Yes	0.6
New Alexandra Theatre	Birmingham	1,320	£[X]	No	0.2
Wulfrun Hall	Wolverhampton	1,134 (1,334 from Nov 2016)	£[X]	Yes	12.5
Town Hall	Birmingham	1,086	£[X]	Yes	0.5
Rainbow Warehouse	Birmingham	1,000	£[X]	Yes	0.8
The Assembly	Leamington Spa	1,000	£[X]	Yes	20.2
The Copper Rooms	Warwick University	900	£[X]	Yes	15.7

Notes: * Academy or cut-down format means that in the larger arenas the stage is brought forward and parts of the hall curtained off to create a more intimate atmosphere.

† Due to the proximity of the Parties' venues, distance from the Institute is approximately the same. Straight line distances.

‡ Formerly the National Exhibition Centre (NEC).

§ Formerly the National Indoor Arena (NIA).

Source: LN-Gaiety

Closeness of competition between the Parties' venues and other venues in the Birmingham area

81. The CMA considered the extent of competition between each of the Institute and the Academy and other venues in the Birmingham area. The CMA based its analysis on evidence provided by LN-Gaiety and the views and evidence provided by promoters and third party competitors.
82. As noted above (see paragraph 64), third party responses to the CMA's merger investigation indicated that venues tend to be highly differentiated in terms of their characteristics and that the choice of venue for a particular event is driven by a large number of factors.³⁴ In *Hamsard/Academy Music*, the CC identified the following factors as being taken into consideration when choosing a venue: location, availability, capacity, ambience and genre, configuration, facilities, artists' preference, costs, reputation and service quality.³⁵ In the present case, third parties confirmed that all these factors are relevant when choosing a venue. The CMA therefore assessed the venues put forward by the Parties (Table 1 above) against these factors. Below, we first address location, capacity and configuration, and then take into account other factors third parties considered relevant as appropriate in our assessment.

Location

83. LN-Gaiety told the CMA that, when promoters choose venues for a typical tour, they will often want a Midlands venue but are generally willing to consider different locations in the Midlands³⁶ so that the effective geographic area is quite broad. They provided evidence on tours promoted by Live Nation which showed that the type of artist who might play at the Parties' Birmingham venues would only rarely play at both Birmingham and Wolverhampton, or both Birmingham and Nottingham, on the same tour.
84. The majority of third parties who responded to the CMA's merger investigation said that, when selecting a venue, promoters and artists prefer to choose venues in Birmingham (where it is easier to sell tickets since the population density is higher) rather than those elsewhere in the Midlands. However, some third parties emphasised that this was not a strong preference. Of the

³⁴ In *AEG/Wembley Arena*, the CC found that venue choice was primarily based on capacity, location, reputation, acoustic qualities, appearance and other quality characteristics (paragraph 8.10). The CC also noted that venue configuration and event type could be factors considered when choosing a venue (paragraphs 7.38 and 7.46).

³⁵ *Hamsard/Academy Music*, paragraph 4.4.

³⁶ Unless there are specific reasons such as wanting to play the artist's home town, for example.

locations outside Birmingham, promoters said that Wolverhampton was the closest substitute to Birmingham.

85. On the basis of this evidence, the CMA considered that, if other features of competition were the same, venues located in Birmingham were likely to be the closest substitutes to other venues in Birmingham but venues located outside Birmingham, in particular in Wolverhampton (Wulfrun Hall and Wolverhampton Civic Hall), but also in Coventry (the Jaguar Hall), Warwick (Warwick Arts Centre), Leamington Spa (Assembly) and Nottingham (Rock City), would also provide some constraint on venues located in Birmingham. The CMA therefore took location into account as one factor among several others, discussed below.

Capacity

86. LN-Gaiety submitted that all the venues identified in Table 1 compete in the 1,000 to 5,000 capacity segment. In particular, LN-Gaiety identified five venues³⁷ with capacities between the large rooms of the Academy and the Institute, which it submitted make them closer competitors to each of the Parties' venues.
87. LN-Gaiety also submitted that there are several arenas in the Birmingham area with maximum capacities above 5,000, but which offer cut-down 'academy' formats designed for lower capacity shows, although they provided no evidence that these venues pose a significant constraint on venues with a capacity of 1,000 to 5,000. Some third parties in Birmingham noted that an arena in 'academy' format may serve as an alternative to smaller venues, such as, the Academy. For example, one third party which did not consider venues outside Birmingham to be an alternative did consider an arena in Birmingham as an alternative. However, the majority of third parties who responded to the CMA's merger investigation said that arenas in academy format compete in a very limited way with smaller venues, because:
- (a) artists typically tour either arenas or smaller venues, and therefore only have the appropriate sound and lighting equipment for one type of venue;
 - (b) arenas used in cut-down form are much more expensive than smaller venues; and
 - (c) artists prefer to perform in sold-out venues, with the ambience of a full venue, rather than the ambience of a full part of a much larger venue.

³⁷ Wolverhampton Civic Hall, Symphony Hall, Rock City, Warwick Arts Centre, Rainbow Textile Factory.

88. On the basis of this evidence, the CMA believes that arenas, such as the Genting Arena and the Barclaycard Arena listed in Table 1, impose only a limited constraint on the Parties' venues' large rooms, and in particular given their size and capacity are more likely to constrain the Academy than the Institute.
89. Third parties also said that venues with a capacity of significantly less than 1,500 (ie smaller than the large room of the Institute) were likely to be weak substitutes for the large rooms at the Parties' venues. Promoters said that as they want to book the biggest venue they believe their artists can fill, significantly smaller venues are not credible alternatives.
90. On the basis of this evidence, the CMA believes that small venues (below 1,000 capacity), such as the Copper Rooms, impose only a very limited constraint on the large rooms of the Academy and the Institute.
91. However, the CMA believes on the basis of the evidence before it, that there remain a number of other venues in the Birmingham area which have a capacity that could impose a constraint on one or both of the Parties' Birmingham venues, subject to other factors.

Configuration

92. LN-Gaiety submitted that the Academy and the Institute cannot be considered to be each other's closest competitors on the basis of configuration, as there are a number of other venues which offer standing configurations in the Birmingham area, six of which are in Birmingham (see Table 1 above).
93. Third parties who responded to the CMA's merger investigation said that a venue's ability to offer a standing configuration was a key differentiator, and considered that it was particularly important for popular live entertainment events targeted at younger audiences.
94. On the basis of this evidence, the CMA believes that some indoor live entertainment venues, namely the Birmingham Symphony Hall and the New Alexandra Theatre, are not strong competitors to the Academy or the Institute due to their lack of a standing configuration.

Assessment of constraints imposed by other venues on the large rooms of the Academy and the Institute

95. The Wolverhampton Civic Hall is a venue which has many similar features to the large room of the Academy as it is a venue of similar size, with standing configurations and similar facilities, and its hire fee is [✂] than that of the

Academy (more than the Institute). It also commonly hosts, and has a reputation for, popular live music events which might otherwise perform at the Academy. Moreover some promoters who responded to the CMA's merger investigation said that they would consider the Wolverhampton Civic Hall as an alternative to the Academy. One third party provided evidence that both the Wolverhampton Civic Hall and the Academy were considered suitable by promoters for the same event on at least seven occasions in 2015.³⁸ Wolverhampton Council (which also runs the Wulfrun Hall, described below) told the CMA that the opening of the Academy resulted in a substantial reduction in live music bookings at the Wolverhampton Civic Hall. It said that the two venues compete, particularly for rock and pop acts who it said, 'will play one venue or the other'. It also told us that its venues are popular at the same times of year as its competitors' venues are, and that its venues' tariffs are designed to compete with those of the Academy and the Institute. On the basis of third party replies, the CMA considers that the extent of the competitive constraint of the Wolverhampton Civic Hall on the Academy is weakened by its location, which is 18 miles outside of Birmingham, and that the Wolverhampton Civic Hall closed in December 2015 for refurbishment until July 2017 (although it will be open for several events during the month of November in 2016 and is currently taking bookings for events beyond that date). However, notwithstanding these points, the CMA believes that the Wolverhampton Civic Hall is a strong competitor to the Academy (apart from the limited period of its closure).

96. The Wulfrun Hall is also 18 miles from Birmingham but has many similar features to the large room of the Institute, and has a [redacted] hire fee. Again, it is a venue of similar size, with standing configurations and similar facilities, and it commonly hosts, and has a reputation for, popular live music events which might otherwise perform at the Institute. It is currently in the process of increasing its capacity to 1,334, which will make it more similar to the Institute in capacity terms. Moreover, some promoters said that they would consider the Wulfrun Hall as an alternative to the Institute, and this was supported by evidence from the operator of the Wulfrun Hall that both venues were considered suitable by promoters for the same event, and that (as noted above) its tariffs are designed to compete with those of the Parties' venues. The CMA notes that Wulfrun Hall closed in December 2015 for refurbishment until November 2016, but is taking bookings for events beyond that date. For these reasons, the CMA believes that the Wulfrun Hall is a strong competitor to the Institute.

³⁸ This evidence was provided by Wolverhampton Council, which operates the Wolverhampton Civic Hall and the Wulfrun Hall.

97. The CMA considers on the basis of third party replies, that, of the other competitors listed in Table 1, Rock City in Nottingham is the most similar to the Academy and the Institute; third parties told the CMA that it offers a standing configuration, comparable facilities to the Parties' venues and is well-known for hosting popular live music events; and [X] competes with the Parties' venues for popular live music. Wolverhampton Council also thought that Rock City was a competitor to some extent. Rock City has a capacity of 1,900, which suggests that it could be an alternative to both the Institute and the Academy, and its hire fee is [X] than the Institute's but [X] than the Academy's. The evidence that bands rarely play both Birmingham and Nottingham as part of the same tour (paragraph 83) is consistent with the Parties' view that promoters may view the two cities as substitutable for some events. However, on the basis of third party responses the CMA considers that, Rock City's distance from Birmingham (approximately 46 miles) means that it would not be an alternative for promoters for all acts which perform at the Parties' venues.
98. The CMA also notes that other venues such as Warwick Arts Centre and the Assembly listed in Table 1 above are similar to the Parties' venues in many respects (in terms of size, configuration, facilities and reputation) and sufficiently close geographically that they could be a substitute for at least some events (depending on the promoter's requirements). However, the CMA did not receive direct evidence to indicate that they provide a strong constraint at present.

Conclusion

99. Based on the evidence available to it, the CMA found that the Academy and the Institute were not close competitors to each other and that both the Parties' venues face competition from a range of other venues, specifically the Wolverhampton Civic Hall and the Wulfrun Hall and, to a lesser degree, Nottingham Rock City. The CMA also notes that the Warwick Arts Centre and the Assembly listed in Table 1 above are similar to the Parties' venues in many respects (in terms of size, configuration, facilities and reputation) and sufficiently close geographically that they could be a substitute for at least some events (depending on the promoter's requirements).³⁹

³⁹ For example, promoters told the CMA that the Symphony Hall would be appropriate for some upmarket acts (such as certain singer-songwriters), and that the Warwick Arts Centre would be an alternative to the Parties' venues for some pop acts.

100. For these reasons, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC in the supply of indoor live entertainment venues in Birmingham.

The supply of indoor live entertainment venues, with capacity between 1,000 and 5,000 in Manchester

101. The CMA followed the same approach with regard to its assessment of the supply of indoor live entertainment venues in Manchester as it did in Birmingham.

Shares of supply

102. For venues in Manchester with a capacity between 1,000 and 5,000 the Parties have an estimated combined share of supply of [10-20]%, by capacity, with an increment of [5-10]%.

The Parties' venues in the Manchester area

103. The Parties operate two indoor live entertainment venues in Manchester, namely the O2 Manchester Apollo (**the Apollo**), operated by LN-Gaiety pre-Merger, and the O2 Ritz (**the Ritz**), operated by MAMA pre-Merger. These venues are commonly used for popular live entertainment events.
104. The Apollo has a maximum standing capacity of 3,480, while the Ritz has a maximum standing capacity of 1,500. In 2014, the revenue of the Apollo was £[X], of which the CMA estimates that approximately £[X] came directly from venue hire; and the revenue of the Ritz was £[X] of which the CMA estimates that approximately £[X] came directly from venue hire.⁴⁰

Closeness of competition between the Parties' venues in the Manchester area

105. Using the factors identified by the CC in *Hamsard/Academy Music*,⁴¹ the CMA considered the closeness of competition between the Parties' venues. The CMA notes that the difference in capacity between the Parties' venues is even greater than in Birmingham (with associated implications for minimum revenue guarantees to artists), and the difference between the rental fees is also large; and therefore, for the reasons discussed above related to capacity

⁴⁰ Based on the accounts supplied in Annexes 7b and 8 of LN-Gaiety's response to the CMA's information request of 23 September 2015. Venue hire revenues include both hire fees and food and beverage income, but the CMA is not able to say what proportion of this derived from live popular music events. Other significant sources of income for both venues include sponsorship.

⁴¹ See paragraph 76.

and finances, see paragraphs 71 to 78, the CMA believes that the likelihood of the two venues being close substitutes for any given act is remote.

106. Responses from third party promoters' supported this. They consistently told the CMA that the Ritz was not an appropriate substitute for the Apollo or vice versa, because of the size difference and the relative costs of hiring.

Assessment of constraints imposed by the Parties' venues on each other

107. The CMA notes that, while the Apollo and the Ritz are both in Manchester, with their primary use being popular live entertainment and both offering standing configurations and similar facilities, they have significantly different capacities. Several third parties said that, for this reason, the Apollo and the Ritz were not good alternatives to each other. The CMA found little evidence of third party switching between the venues or of promoters considering both venues for the same event.
108. The CMA therefore believes that the Parties' venues are not close competitors.
109. LN-Gaiety submitted that several venues in the Manchester area with capacities of between 1,000 and 5,000 compete with the Parties' venues, as set out in Table 2.

Table 2: Parties' submission on venues in the Manchester area which compete with the Apollo and the Ritz

Venue	Location	Capacity	Rental fee	Standing configuration?	Distance from the Apollo [†] (miles)
Victoria Warehouse	Manchester	5,000	£[REDACTED]	Yes	2.6
O2 Manchester Apollo (LN-Gaiety)	Manchester	3,480	£[REDACTED]	Yes	0
Manchester Academy	Manchester	2,525	£[REDACTED]	Yes	0.6
Store Street	Manchester	2,500	£[REDACTED]	Yes	0.8
Bridgewater Hall	Manchester	2,341	£[REDACTED]	No	1.1
Manchester Palace Theatre	Manchester	1,957	£[REDACTED]	No	0.9
Manchester Opera House	Manchester	1,875	£[REDACTED]	No	1.4

Venue	Location	Capacity	Rental fee	Standing configuration?	Distance from the Apollo [†] (miles)
Albert Hall	Manchester	1,800	£[X]	Yes	1.2
The Lowry	Salford	1,730	£[X]	No	3
The O2 Ritz (MAMA)	Manchester	1,500	£[X]	Yes	0.9
Pyramid & Parr Hall	Warrington	1,100	£[X]	Yes	16.5
Manchester Cathedral	Manchester	1,000	£[X]	Yes	1.4

[†]Due to the proximity of the Parties' venues, distance from the Institute is approximately the same. Straight line distances.

Source: LN-Gaiety

Closeness of competition between the Parties' venues and other venues in the Manchester area

110. Using the factors identified by the CC in *Hamsard/Academy Music*,⁴² the CMA considered the closeness of competition between the Parties' venues and the competitive constraint imposed by other venues in the Manchester area, taking into account evidence provided by LN-Gaiety and the views of third party competitors and promoters. In this case third parties confirmed that, as in Birmingham, the same considerations remain relevant when choosing a venue.

Location

111. Many third parties who responded to the CMA's merger investigation said that, when selecting a venue, promoters and artists prefer to choose venues in Manchester rather than those located outside the city. However, some third parties said that venues in Manchester also compete with venues located in other major cities. On the basis of this evidence, the CMA believes that, if other features of competition were the same, venues located in Manchester are likely to be the closest substitutes to constrain other venues in Manchester most strongly (subject to other features of competition) but venues located outside Manchester, such as the Pyramid & Parr Hall in Warrington, also provide some constraint on venues located in Manchester.

⁴² See paragraph 82.

Capacity

112. LN-Gaiety submitted that all of the venues identified in Table 2 compete in the 1,000 to 5,000 capacity segment, and that there are eight venues that are closer in capacity to the Apollo than the Ritz, namely, Victoria Warehouse, Manchester Academy, Store Street, Bridgewater Hall, Manchester Palace Theatre, Manchester Opera House, Albert Hall and the Lowry.
113. Third parties who responded to the CMA's merger investigation said that venues with a capacity significantly less than 1,500 (ie smaller than the Ritz) did not compete with the Apollo. At the opposite end of the scale, the Victoria Warehouse with 5,000 capacity was identified as an alternative to the Apollo but not the Ritz, due to its large capacity.
114. On the basis of this evidence, the CMA believes that there are eight venues which on the basis of capacity are better substitutes to the Apollo than the Ritz, subject to other factors discussed below.

Configuration

115. As noted above (see paragraph 93), third parties told the CMA that configuration, either standing or seated, was an important factor in venue choice. The Apollo and the Ritz both offer seated and standing configurations. As such, subject to capacity requirements, customers can choose between them on this basis. However, for popular live music, a standing configuration was generally preferred, and therefore the CMA's analysis has focused on this configuration. We therefore assessed whether there were alternative venues within the 1,000 to 5,000 capacity range who could also provide standing configurations. LN-Gaiety submitted that six competing venues, Victoria Warehouse, Manchester Academy, Store Street, Albert Hall, Pyramid & Parr Hall, and Manchester Cathedral offer standing configurations in the Manchester area.
116. The CMA found on the basis of third party responses to its investigation that a number of venues, which may offer a constraint on a capacity basis, did not offer standing configurations, including the Bridgewater Hall, the Manchester Palace Theatre, the Manchester Opera House and the Lowry. The CMA does not consider that these indoor live entertainment venues compete closely with either of the Parties' venues since they do not offer a standing configuration. This is also reflected in third party views provided to the CMA in relation to these venues.

Assessment of constraints imposed by other venues on the Apollo and the Ritz

117. The CMA has considered the evidence available to it and believes that the closest competitors to the Apollo are the Manchester Academy and the Victoria Warehouse and the closest competitor to the Ritz is the Albert Hall.⁴³ These venues are closest in terms of capacity (see Table 3 below), they are all in central Manchester, they offer the same configuration and similar facilities, and all commonly host popular live music events. Moreover, several third parties named these venues as suitable alternatives for their needs to the Parties' venues.

Table 3: Venues that the CMA views as the closest competitors to both the Apollo and the Ritz

Venue	Location	Capacity	Rental fee	Standing configuration?
Victoria Warehouse	Manchester	5,000	£[redacted]	Yes
Apollo	Manchester	3,480	£[redacted]	Yes
Manchester Academy	Manchester	2,525	£[redacted]	Yes
Albert Hall	Manchester	1,800	£[redacted]	Yes
Ritz	Manchester	1,500	£[redacted]	Yes

118. The CMA notes that, in addition, there is a fringe of more differentiated competitors, either offering a different capacity or different ambience, or located outside of Manchester, which may pose an additional constraint on the Parties' venues in Manchester. The CMA has not needed to rely on evidence of this constraint to reach this conclusion and therefore does not examine this in any further detail.

Conclusion

119. Based on the evidence before it, the CMA found that the Parties' venues are not close competitors and that other venues in Manchester are closer competitors to each of the Parties' venues. In particular, the Manchester Academy and the Albert Hall are seen as strong competitors to the Parties' venues for events whose promoters prefer smaller venues than the Apollo or larger venues than the Ritz. The CMA also found that there is a fringe of differentiated competitors which offer some constraint on the Parties' venues. Therefore, the CMA does not believe the Merger gives rise to a realistic

⁴³ Store Street was not well-known to third parties and therefore did not appear likely to be a strong competitor at present, although the CMA is not aware of any reason why it could not become one in response to a worsening of the offer at other venues.

prospect of an SLC in the supply of indoor live entertainment venues in Manchester.

The supply of indoor live entertainment venues, with capacity between 1,000 and 5,000, on a London-wide geographic frame of reference

120. In London, LN-Gaiety own and operate the O2 Academy Brixton, maximum capacity 4,921, the O2 Academy Shepherd's Bush Empire (SBE), maximum capacity 2,200 and the O2 Academy Islington, maximum capacity 800. MAMA owned and operated the Forum, maximum capacity 2,300, as well as five smaller venues with a maximum capacity of less than 1,000, see paragraph 123 below.
121. During the process through which LN-Gaiety was granted consent to reacquire the Forum (see paragraph 18),⁴⁴ LN-Gaiety submitted that, in the eight years since the Undertakings, many things had changed in the London market, including the closure of the Astoria (a LN-Gaiety venue in the 1,000 – 5,000 capacity bracket) due to the Crossrail project, the refurbishment of several competing venues (eg the Roundhouse) and the launch of some new venues.⁴⁵ LN-Gaiety submitted that these changes meant that there was a considerable competitive constraint on its existing venues in London which would not be significantly diminished through its reacquisition of the Forum.
122. Recent decisions of the OFT and the CC supported LN-Gaiety's submissions. For example, in 2012, the OFT noted that third parties identified the SBE, the Forum and the Roundhouse in the relevant competitor set to the Hammersmith Apollo. In the same decision, third parties identified the SBE, the Forum, KoKo, the Roundhouse and Troxy in the relevant competitor set to IndigO2.⁴⁶ In 2013, the CC found that there were many alternatives to host events with capacities under 5,000.⁴⁷
123. The Merger also resulted in LN-Gaiety acquiring five venues⁴⁸ with capacities between 300 and 1,000 in the London area. However, since the Merger, LN-

⁴⁴ Hamsard 2786 / Academy Music Holdings / Live Nation (Music) UK / Gaiety Investments merger inquiry: [Final decision](#).

⁴⁵ LN-Gaiety identified the following third party venues: the Roundhouse (capacity 3,000); the Royal Festival Hall (capacity 2,500); the IndigO2 (capacity 2,800); The Clapham Grand, which underwent a substantial renovation in early 2009 (capacity 1,250); Heaven, which became a venue for live music events after it changed management in 2009 (capacity 1,100); Troxy, which was recently converted to host live music and other events (capacity 3,100); Koko (capacity 1,410); Electric Brixton, which opened in September 2011 as an independent live music venue (capacity 1,500); Coronet (capacity 2,600); Barbican (capacity 1,989); London Palladium (capacity 2,286); The Copper Box, which is still mainly focused on sporting events, but has started to promote itself as a venue to host live music events (capacity 3,500).

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

⁴⁷ CC decision on *AEG/Wembley*, paragraph 8.6.

⁴⁸ The Garage, Hoxton Square Bar & Kitchen, The Jazz Café Camden, The Borderline, and The Barfly Camden.

Gaiety has sold four of these venues (the Jazz Café, the Borderline, the Barfly and the Hoxton Bar & Kitchen) to other operators which do not raise competition concerns, and has retained only the Garage. For this reason, and given the large number of live entertainment venues with capacity below 1,000 in the London area, the CMA has not considered the effect of the Merger in relation to venues below 1,000 further.

Shares of supply

124. For venues in London with a capacity between 1,000 and 5,000 the CMA calculated that the Parties have an estimated combined share of supply of [10-20]% by capacity, with an increment of [5-10]%. Before LN Gaiety sold on the four smaller MAMA venues, see paragraph 123 above, based on CMA calculations, the Parties had an estimated combined share of supply by capacity of [10-20]%, with an increment of [0-5]% for venues in London with a capacity between 300 and 1,000.

Third party views

125. As part of its review of the Undertakings, the CMA carried out a consultation between 1 June and 16 June 2015 into the proposed reacquisition of the Forum. At that time, no third party, including customers of LN-Gaiety, expressed concerns. With one third party mentioning that currently there is sufficient competition between mid-size venues, (ie venues with a capacity between 1,500 and 3,000) in the London area.
126. During the current merger inquiry, the CMA received comments from two third parties who were concerned about the effect of the Merger in London and in particular the effect of the reacquisition by LN-Gaiety of the Forum and the consequent reduction in competition. However, third parties that responded did not indicate that the competitive conditions had altered in the period since the CMA's assessment in June 2015.

CMA's views

127. In considering LN-Gaiety's request to consent to the reacquisition of the Forum, the CMA found in 2015 that market conditions had changed significantly since the *Hamsard/Academy Music* decision. In particular:
- The Astoria had been closed and subsequently demolished; and
 - There had been an increase in the competitive constraint from third party venues, including:

- the strengthening of the position of the Roundhouse⁴⁹ and the IndigO2⁵⁰ as significant London entertainment venues; and
- the opening and/or refurbishment of other London entertainment venues of similar capacity to the Forum and the SBE.⁵¹

128. In the present case, the CMA has found no evidence to indicate that competitive conditions have changed significantly since this assessment in 2015.

Conclusion

129. The Parties overlap both in the 1,000 to 5,000 capacity and 300 to 1,000 venue spaces. In both these overlaps the increment to LN-Gaiety's existing share of supply is small and our previous consultation in the London area in June 2015 demonstrated that, in general terms, sufficient competition existed amongst venues with this level of capacity. The Parties' venues do not, on the basis of the evidence available, appear to be very strong competitors and therefore the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC in the supply of indoor live entertainment venues in London.

The supply of festivals in the UK

Shares of supply

130. Prior to the Merger, LN-Gaiety ownedⁱ and operated 12 festivals in the UK and MAMA owned five.⁵² LN-Gaiety submitted that there are a further 194 festivals in the UK, including, for example, the Isle of Wight, Glastonbury, British Summer Time, Secret Garden Party and Bestival. LN-Gaiety provided shares of supply based on all festivals nationally, which indicated that the Parties'

⁴⁹ The CMA notes that the Roundhouse appears to have consolidated its position as music venue in London beyond the 'honeymoon period' that followed its re-opening, it has a similar capacity to the SBE and the Forum (3,000) and hosted a similar number of popular music events in 2014 to that of the Forum and SBE (ie more than 100). The Roundhouse has also hosted world-class music festivals over the past few years (eg the iTunes Festival and Electric Proms series) and featured a wide range of artists in its calendar. Therefore the CMA considers that it would be an effective competitor to Live Nation's venues and the Forum.

⁵⁰ IndigO2 has a similar capacity to the SBE and the Forum (2,800) and hosted close to 100 popular music events in 2014. Additionally, there are examples of the same artists performing at the IndigO2 and the Forum and at the IndigO2 and the SBE.

⁵¹ The CMA notes that Live Nation venues and the Forum together account for: (i) [5-10]% of total capacity offered by music venues with over 1,000 capacity in London; (ii) [10-20]% of total capacity offered by music venues with over 2,000 capacity in London. Live Nation's and the Forum's revenues account for less than [5-10] % of the total revenue of all music venues with over 1,000 capacity in London.

⁵² LN-Gaiety: Reading Festival, T In The Park, V Festival, Leeds Festival, Download, Creamfields, New Look Wireless, Latitude Festival, Glasgow Summer Sessions, Electric Daisy Carnival UK, Calling Festival, and BluesFest. MAMA: Lovebox, The Great Escape, Wilderness Festival, Citadel, and Somersault.

combined share of supply is [5-10]% by number, with an increment of [0-5]%; and [20-30]% by capacity, with an increment of [0-5]%.

Third party views

131. Third party competitors had mixed views on the extent to which the Parties' festivals competed with each other. These third parties listed several other competing festivals in the UK, including Parklife, Wildlife, EDC, British Summer Time, Secret Garden Party, Bestival, Isle of Wight, Green Man and Glastonbury festivals among others. The CMA considered whether the parties' festivals were close substitutes on the basis of location, genre or other characteristics and did not find any meaningful level of concentration leading to competition concerns on any basis.
132. Given that some of the Parties' festivals are non-camping music festivals in London, the CMA also considered, on a cautious basis, the effect of the merger if competitive conditions in the supply of music festivals differ in London. The Parties' internal documents relating to the transaction [REDACTED]. In addition, some third parties who responded to the CMA's merger investigation said that all festivals in London are generally non-camping and that, for this reason, these festivals might attract a different type of attendee than camping festivals outside of London.
133. The CMA's analysis showed that, in London, there are at least 13 non-camping festivals and the Parties together own [REDACTED] of these.⁵³ There are, however, several other comparable live music festivals in London which are not owned or operated by either of the Parties (including Caught By The River Thames, FSTVL, Meltdown, Fold Festival, BST, Sunfall, SW4 and On Blackheath). In addition, a few third parties also indicated that MAMA's festivals in London differ from LN-Gaiety's festivals in London in terms of their music genre. For example, two third parties commented that Wireless (LN-Gaiety) is more a traditional 'main stage' festival focused on guitar music, whereas Lovebox (MAMA) is an event festival with lots of other activities, a party atmosphere and a variety of music with some focus on the dance genre.

Conclusion

134. Based on the evidence before it, and in particular the Parties' low national shares of supply, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC in the supply of music festivals in the UK. To the extent that competitive conditions in the supply of music festivals may differ in

⁵³ Of which one was owned by MAMA but its operation was sub-contracted to a third party.

London, the CMA believes, that the Parties' music festivals differ in terms of their music genre, that the Parties do not compete closely, and that there are several other competing non-camping music festivals in London and further afield. Therefore the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC in the supply of non-camping music festivals in London.

Vertical effects – Foreclosure of promoters and ticketing agents

135. LN Gaiety is vertically integrated and operates across all levels of the supply chain being active in venues and festivals, and through other subsidiaries of its ultimate parent company, promotion and ticket sales. Responses from third parties to the CMA's Merger investigation showed a degree of concern that LN-Gaiety favoured its own ticketing operations, and that more generally, a strengthening of LN-Gaiety's position in one area of the supply chain (in this case, venues and festivals) would be leveraged into other areas. As a result, while generally non-horizontal mergers can lead to benefits to consumers, the CMA considered it appropriate to assess whether or not the accretion of these venues and festivals occasioned by this merger could lead to harm.
136. The CMA's approach to assessing non-horizontal theories of harm is to analyse (i) the ability of the merged entity to foreclose competitors, (ii) the incentive of it to do so, and (iii) the overall effect of the strategy on competition. The CMA could only reach an SLC finding if it finds that all three limbs are present post-merger, and at least one is created or enhanced by the merger. Therefore if one factor is not present, it may not be necessary to consider all factors.

Input foreclosure of venues in Birmingham, Manchester and London to promoters and to ticketing agents

137. The CMA assessed whether the merged entity could:
- (i) increase the price charged for venues to rival promoters (partial input foreclosure), making it harder for rival promoters to compete by increasing their costs, making them less competitive; or stop supplying these rivals altogether (total input foreclosure), thereby reducing the set of suppliers available for rival promoters; or
 - (ii) increase the price charged for venue tickets to rival ticketing agencies (partial input foreclosure) thereby making it harder for rival ticketing agencies to compete by increasing their costs, making them less competitive; or stop supplying these rivals altogether (total input

foreclosure), thereby reducing the set of suppliers available for rival ticketing agencies.

138. With regard to foreclosure of venues to promoters, the CMA first assessed whether the merger would enhance the Parties' ability to harm rival promoters. The CMA notes that, as LN-Gaiety is already vertically integrated and has, through this Merger, only gained further inputs (ie festivals and venues), there would need to be a horizontal merger effect in one of these markets in order for a vertical effect to arise as a result of the Merger. As this is not the case, there is no basis for believing the Merger to give rise to harm as a result of vertical effects on promoters. Since the merged entity would continue to be constrained by other venues to a similar extent as pre-merger, the Merger would not create or significantly enhance the merged entity's ability to harm other promoters; and, for similar reasons, the Merger would not be likely to change the incentive to foreclose as it would not significantly change the balance between lost revenues from shows switching to other venues against gains from bands switching to Live Nation as a promoter. This would also apply for total input foreclosure. Since the CMA does not believe that merger would create or enhance the ability or incentive of the merged entity to foreclose, the CMA has not found it necessary to assess effect.
139. With regard to foreclosure of venues to ticketing agents, some third parties submitted that any further growth of LN-Gaiety in venues would mean that the live event ticketing market would become even more biased towards Ticketmaster.⁵⁴ However, LN-Gaiety submitted that there could be no merger effect with respect to the foreclosure of venues to ticketing agents since MAMA had a pre-Merger ticketing agreement with Ticketmaster. It also pointed out that ticketing agents operate in a national market, and will also sell tickets for promoters, larger and smaller venues and other live entertainment events such as sports events. LN-Gaiety submitted data showing that the total UK market for tickets is over [X] by volume and named [X] other ticketing agents which each sell [X] tickets. The CMA notes that the total number of tickets sold for events at the Academy Birmingham in 2015 was around [X] and for the Institute Birmingham was around [X]. Combined, this represents around [0-5]% of the total UK supply of tickets, with an increment of [0-5]%. Given the size of the acquisition relative to the total market, and again noting that LN-Gaiety has, through this Merger, only gained inputs (festivals and venues) and that the CMA has found no horizontal merger effects, the CMA does not believe that the Merger would create or enhance either the ability or the incentive of the merged entity to foreclose ticketing agents. Since the CMA does not believe that the merger would create or enhance the merged

⁵⁴ Ticketmaster, a global ticketing agency, is a division of Live Nation Entertainment Inc. [X].

entity's ability or incentive to foreclose, the CMA has not found it necessary to assess effect.

Conclusion on vertical effects

140. Due to the limited change in LN-Gaiety's position in venues and festivals as a result of the Merger, the CMA does not believe that the Merger will create or enhance the merged entity's incentive or ability to foreclose rival music promoters or ticketing agents. Therefore the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of vertical effects.

Conglomerate effects – bundling of venues and festivals nationally

141. Conglomerate effects may arise in mergers of firms that are active in the supply of goods or services that do not form part of the same markets but which nevertheless are related in some way, either because their products are complements (so that a fall in the price of one good increases the customer's demand for another) or because there are economies of scale in purchasing them (so that customers buy them together). Most non-horizontal mergers are considered to be benign or even efficiency-enhancing (when they involve complementary products) and do not raise competition concerns. However, in certain circumstances, a conglomerate merger can result in the merged entity foreclosing rivals, through for example, a tying or bundling strategy.

Third party views

142. A number of third parties who responded to the CMA's merger investigation expressed concerns that the Merger would enable LN-Gaiety to incentivise more bands to sign exclusivity deals. One third party commented that, as a result of the Merger, LN-Gaiety would have a stronger collective bargaining power with artists and agents, giving it a greater ability to impose exclusivity deals on artists, preventing them from playing other events. Another third party commented that as venues, festivals, tickets, and promoting activities all support each other, LN-Gaiety, by reducing the amount of competition in many of these areas, would push competitors in all these markets to the side. However, the CMA also received comments from two promoters who said that venue bundling is not attractive and is never a consideration.

LN-Gaiety's views

143. LN-Gaiety submitted that it does not bundle venues. With regard to bundling venues and festivals, it submitted that: 'No artists, agents or promoters sign

exclusivity clauses with respect to any Live Nation venues. Nor is Live Nation aware of any other venue operator who enters into such arrangements.’

144. In respect of exclusivity agreements to play Live Nation music festivals, LN-Gaiety submitted that:

Popular headline artists often agree not to play at another festival during the same season (ie the summer), to differentiate festivals from each other. The arrangement may also provide that the artist will not organise a concert within a certain timeframe. These arrangements are generally concluded with popular headline artists who typically perform in large arenas. Festival organisers rarely conclude exclusivity arrangements with the kinds of artists who play in venues such as the Parties’ venues in Birmingham and Manchester. These arrangements are offered in exchange for the remuneration paid to the artist.

CMA analysis

145. As noted above (see paragraph 136), the CMA’s approach to assessing non-horizontal theories of harm is to analyse ability, incentive and effect, although it may not be necessary to assess all three factors.
146. In the present case, the CMA considered whether, as a result of the Merger, the merged entity might be able to leverage its position:
- (a) in festivals to bundle or tie in venues for artists;
 - (b) in venues (nationwide or in a particular locality) to bundle or tie in festivals for artists;
 - (c) in venues in a particular city (eg Birmingham) to bundle or tie in venues in other cities; and/or
 - (d) venues and festivals to offer a proposition with which no other provider could compete.

a) Leveraging from festivals to venues

147. This theory of harm is that it may be the case that music festivals gained through the Merger may be attractive enough such that LN-Gaiety would be able to adopt a forced bundling/tying approach, resulting in affected artists being unable to play other venues.

148. With regard to the ability of the merged entity to leverage its position in music festivals to bundle or tie in venues for artists, the CMA notes that the merged entity controls a number of music festivals. The CMA notes that an internal document of LN-Gaiety mentioned [✂].
149. The CMA considers that in order for this harm to arise as a result of the Merger, the Merger would need to create the ability for the merged entity to foreclose other venues. In practice, this would involve the merged entity making a sufficient number of artists move to the merged entity's venues such that other venues would be sufficiently harmed that they either close or in some other way become less able to compete with the offer of the merged entity.
150. However, as explained above (see paragraphs 130 and 133), the CMA found that the Merger gives rise to both a low combined market share and a small increment in music festivals overall, and that the Parties' music festivals are not close competitors (so their position with respect to particular bands/types of band would also not be affected). Therefore the CMA believes that there is no realistic prospect that the Merger would significantly enhance the merged entity's bargaining position in festivals to give it the ability to foreclose or deny artists access to other venues.

b) Leveraging from venues to festivals

151. With regard to the merged entities' ability to leverage its position in venues (nationwide or in a particular locality) to bundle or tie in music festivals for artists, the CMA notes that it has not found an SLC in any of the local areas where the Parties' venues overlap, and LN-Gaiety has stated that it does not currently bundle music festivals and live entertainment venues. Therefore the CMA assessed whether the merger might cause it to change behaviour in this regard.
152. The CMA also considers that the likelihood that the merged entity would have the ability to leverage its position in venues nationwide to bundle or tie in music festivals for artists, is remote because, on the CMA's estimates, the Parties' combined share of supply in venues nationally is approximately [10-20]%, with an increment of approximately [0-5]%, based on capacity. Furthermore, the only artists affected by the Merger would be those that play in venues with a capacity of less than 5,000, who would not typically be music festival headliners (see paragraph 144), and therefore the CMA considers that the merger will not affect the merged entity's ability to significantly harm music festivals. Also, all third party concerns related to leveraging music festivals to sell venues, rather than the other way around. Indeed several third parties said that leveraging venues to sell festivals was implausible due to the fact

that artists earn significantly more money from music festivals than from touring venues. For all these reasons, the CMA believes that there is no realistic prospect that the Merger would enhance the merged entity's ability to foreclose or deny artists access to festivals as a result of its position in venues.

c) Leveraging from venues in a locality to other venues

153. With regard to the merged entity's ability to leverage its position in venues in a particular city (eg Birmingham) to bundle or tie in venues in other cities, the concern is that artists could be required to sign an exclusivity clause which would prevent rival venues being able to access certain artists.

154. However, LN-Gaiety submitted that it does not bundle venues, and promoters told us that venues are always considered on an individual basis. Moreover, even if this practise were to change, the CMA does not believe that the Merger significantly strengthens the Parties' position in any individual city so, as with the effect on the merged entity's ability to leverage its position in venues (nationwide or in a particular locality) to bundle or tie in music festivals for artists (see paragraph 152), there is no significant effect from the Merger. Therefore, the CMA believes that there is no realistic prospect that the Merger would enhance the merged entity's ability to foreclose other venues through bundling.

d) Offering a portfolio of venues and festivals

155. With regard to the merged entity's ability to offer a portfolio of venues and music festivals with which no other provider would be able to compete, the CMA considered whether, even given the lack of an SLC in an individual market as a result of the Merger, the combination of venues and music festivals that LN-Gaiety will own and operate post-Merger would increase the attractiveness of a bundle. The CMA notes that discounting or offering a new bundled product would not in itself be a competition concern, but it could be a concern if it caused other music festivals/live entertainment venues to exit or become less competitive, thus giving the merged entity an opportunity to raise prices/reduce service quality in the future.

156. The CMA received several concerns from third parties relating to the merged entity's increased ability to foreclose rival venues and promoters from access to artists due to an increased use of exclusivity contracts as a result of the Merger. If the merged entity could cause sufficient artists to opt for their bundle (eg through an exclusivity contract) then this may cause competing venues and music festivals to exit (or otherwise become less able to compete)

due to a lack of access to artists. However LN-Gaiety stated that it does not currently engage in bundling strategies.

157. The CMA assessed whether the Merger increased the ability of the merged entity to offer attractive bundles. As noted above, closeness of competition between the Parties in music festivals is low (and therefore unlikely to use the same artists to any great degree), and the Parties' venues would only affect the merged entity's attractiveness (relative to venues offered by third parties) for a small minority of artists. For these reasons, the Merger would not significantly increase the attractiveness of the merged entity's offer to artists in general (unless the Parties reduced their prices, which would generally be a pro-competitive effect). Consequently, the CMA believes that there would be little or no effect of the Merger on the merged entity's ability to bundle. Moreover, the CMA notes that it has found no evidence that the merged entity could persuade a sufficient number of artists to bundle such that competing venues or festivals could be sufficiently harmed so as to be foreclosed. Therefore the CMA believes there is no realistic prospect that the Merger would enhance the merged entity's ability to foreclose as a result of this theory of harm.

Conclusion on conglomerate effects

158. For the reasons set out above, the CMA believes that the Merger does not give rise to an ability to foreclose as a result of conglomerate effects and, therefore, it has not been necessary for the CMA to consider incentive or effect. The CMA does not believe that there is a realistic prospect of an SLC as a result of conglomerate effects.

Barriers to entry and expansion

159. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁵⁵
160. In the present case, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns.

⁵⁵ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

Third party views

161. The CMA contacted customers, promoters, festival operators and venue operators, and relevant trade bodies. Third party comments have been taken into account where appropriate in the competitive assessment above.
162. Some third parties raised concerns regarding [X], but these concerns were not specific to this Merger as set out above.

Decision

163. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the UK.
164. The Merger will therefore not be referred under section 22(1) of the Act.

Sheldon Mills
Senior Director
Competition and Markets Authority
19 February 2016

ⁱ The Parties clarified that the festivals operated by LN-Gaiety may be owned by Live Nation, LN-Gaiety or other Live Nation joint ventures.