Anticipated acquisition of joint control over Wildlife Holdings Inc. by Anschutz Entertainment Group, Inc. and Onex Corporation

Decision on relevant merger situation and substantial lessening of competition

ME/6821/19

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 11.09.2019.

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

Contents

Page

SUMMARY

1. The transaction (the **Merger**) is the establishment of a new joint venture called ASM Global[1] (the **JV**) which will be jointly controlled by Anschutz Entertainment Group, Inc (**AEG**) and Onex Corporation (**Onex**). AEG will transfer its global venue management subsidiary AEG Facilities, LLC (**AEG Facilities**) to the JV and Onex will transfer its global venue management business SMG US Parent, Inc. (**SMG**) to the JV. AEG Facilities and SMG are together referred to as the **Parties**.

2. The Competition and Markets Authority **(CMA)** believes that it is or may be the case that venue management businesses contributed to the JV by AEG and Onex each constitute an enterprise; that these enterprises will cease to be distinct as a result of the Merger (as well as from each of AEG and ONEX); and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

3. The Parties overlap in the supply of venue management services and the supply of venue space for live music events. There are also vertical links between the Parties' activities in the supply of venue management services and AEG Presents' activities in the supply of promotion services for live entertainment events.

4. The CMA found that the Merger does not give rise to competition concerns:

   (a) In relation to horizontal unilateral effects in the supply of venue management services to owners of large indoor venues in the UK, the CMA believes that, while there is material competitive interaction between the Parties, they do not compete more closely than they do with other competitors such as Live Nation, NEC and OVG (with each of these options being particularly suitable for different types of contracts), with in-house supply typically also being a ready alternative for customers.

   (b) In relation to customer foreclosure of rival venues by AEG Presents, the CMA believes that AEG Presents would not have the ability to foreclose rival venues. The available evidence indicates that AEG Presents is not a particularly important customer for venue managers and that artists and agents play an important role in the selection of venues such that AEG Presents' ability to influence the choice of venue is likely to be limited

[1] JV company is currently called Wildlife Holdings, Inc., but to be renamed to include the ASM brand on completion of the Merger.

since doing so would risk artists and agents switching to another promoter.

(c) In relation to input foreclosure of promoters by limiting access to venues, the CMA considers that the Merger does not provide AEG with the ability to engage in input foreclosure of promoters by limiting access to venues. This is in light of the CMA's consideration of the importance of SMG's venues relative to the O2 Arena (**The O2**) and taking account of the JV structure, as SMG would have to agree to a strategy from which it would not benefit. The CMA also considers that, given the [✂] margins in venues compared to promotion, AEG would not have an incentive to engage in input foreclosure of promoters.

(d) In relation to a potential tying of The O2 with the Manchester Arena, the CMA believes that the Parties may have the ability to use The O2 to introduce a tying arrangement (although the future development of the MSG Sphere would reduce this ability). However, the CMA believes that the Parties do not have the incentive to introduce a tying arrangement. This is based on the [✂] margins at The O2 compared to the Manchester Arena, combined with the JV structure and the evidence on possible customer switching, while noting that it is likely that there would be additional costs associated with such a strategy.

5. The CMA therefore believes 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, vertical effects or conglomerate effects.

6. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

7. AEG is a sports and live entertainment company headquartered in Los Angeles, California, USA. The turnover of AEG in 2018 was approximately [✂] billion worldwide and approximately [✂] million in the UK.

8. Onex is a Canadian-based corporation that manages and invests capital in private equity. The turnover of Onex in 2017 was approximately [✂] billion worldwide and approximately [✂] million in the UK.

Transaction

9. The Merger is the establishment of a new joint venture called ASM Global. Under a contribution agreement entered into by entities controlled by the Parties on 6 February 2019, AEG will transfer its global venue management subsidiary, AEG Facilities, to the JV and Onex will transfer its global venue management business, SMG, to the JV.

10. Onex will hold a 50% voting interest in the JV. The other 50% will be held by a newly formed holding company, AEG Venue Management Holdings, LLC (**AEG Holdco**), which will be owned [✂] by AEG and [✂] by Compass Group PLC (**Compass**).

Procedure

11. The CMA launched its investigation following the European Commission's decision to partially refer the case to the United Kingdom under Article 4(4) of the EC Merger Regulation.

12. The Merger was considered at a Case Review Meeting.[2]

Jurisdiction

13. Each of AEG Facilities and SMG is an enterprise. As a result of the Merger, SMG and AEG Facilities cease to be distinct from one another and SMG and AEG Facilities cease to be distinct from AEG and Onex, respectively.

14. The Parties overlap in the supply of large indoor venues in the UK, with a combined share of supply of [20-30] % with an increment of [5-10] %.[3] The CMA therefore believes that the share of supply test in section 23 of the Act is met.[4]

15. The CMA therefore believes that it is, or may be the case, that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

16. The preliminary assessment period for consideration of the Merger under section 34A(2) of the Act started on 11 April 2019 and the statutory 45

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[2] See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, from paragraph 7.34.
[3] See Table 2 below.
[4] In relation to the turnover test, the anticipated UK annual turnover of the JV is estimated at [✂] million. However, the turnover threshold may not be met under section 28(1)(b) of the Act as the highest turnover of either SMG or AEG facilities does not exceed £70 million.

European Commission working day deadline for a decision is therefore 18 September 2019.

17. The CMA considered whether Compass would acquire a level of control over the JV. The CMA believes that the rights reserved to Compass are limited and do not confer the ability to exercise material influence over the JV either through voting rights, board representation or any other arrangements.

Counterfactual

18. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie, the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. 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 these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.[5]

19. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Background

20. The relevant supply chain for this transaction consists of: (i) venue managers that provide venue management services to venue owners (generally property companies, local authorities or sports/entertainment companies) and, in turn, make venue space available for events; and (ii) promoters who will create a tour based on the artist's preference and will then contact venues to make a booking in order to secure venue space. Further information in relation to these two levels of the supply chain is set out below.

Supply of venue management to venue owners

21. Venues are operated by a venue manager, which may be the owner of the venue or a third-party operator. A venue might be operated under:

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[5] *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).

a) a ‘managed account’, whereby the venue operator is paid a fixed or variable fee for managing day to day operations of the venue; or

b) a long lease or long-term management agreement. Such agreements may be under a profit and loss arrangement, where the venue operator assumes some or all of the risk for profits and losses incurred through operating a venue business.

22. The Parties manage a number of UK venues as set out in Table 1 below.

Table 1: Overview of UK venues managed by the Parties

Venues managed by SMG		
Venue	**Location**	**Ticketed Capacity**
Manchester Arena	Manchester	20,000
First Direct Arena	Leeds	12,345
Utilita Arena	Newcastle	11,000
AECC / BHGE Arena	Aberdeen	7,500
Bonus Arena Hull	Hull	3,500
Bridgewater Concert Hall	Manchester	2,371
York Barbican Centre	York	1,850
Baths Hall Scunthorpe	Scunthorpe	1,800
Playhouse Whitley Bay	Whitley Bay	638
Plowright Theatre	Scunthorpe	354
Venues managed by AEG		
Venue	**Location**	**Ticketed Capacity**
The O2 Arena	London	20,665
SSE Arena, Wembley	London	12,724
Eventim Apollo	London	5,318
Indigo at The O2	London	2,717

Source: Parties’ Merger Notice

23. Venue management can involve the provision of a wide range of services including: (i) event programming; (ii) venue operations including security, cleaning, maintenance and the management of service partner agreements; (iii) event management; (iv) human resource management; and (v) financial management. AEG also offers standalone consultancy services to venues that it does not manage (e.g. the SSE Hydro Arena in Glasgow).

Supply of venue space to promoters

24. Artists appoint a manager to look after their commercial and career interests. An artist’s manager assists in developing and promoting their work. For this purpose, the manager will liaise with the artist’s agent to organise a tour.

25. An artist's agent invites and evaluates offers from promoters to handle a tour (or part of a tour) and negotiates terms with a promoter on behalf of the artist. In return for these services, the agent will receive a proportion of the artist's income from the tour.

26. In designing a tour, the artist, manager and agent set the parameters of the type of venue desired for the tour prior to engaging a promoter. The promoter will then create the tour routing based on the artist's venue preferences and the availability of venues within the time period specified for the tour/event. The promoter will 'pencil in' possible dates at suitable venues and then propose those venues to the artist. Once the artist has made their choice of promoter and tour dates are confirmed, the promoter will confirm the dates with the venue. Venues typically have a rate card setting out usual terms, including price, for renting the venue. Once selected, a promoter is responsible for organising and promoting the event, including contracting with venues, and organising advertising and marketing.

Frame of reference

27. 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 merging 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.[6]

28. The Parties have horizontal overlaps in the supply of venue management services to venue owners and in the supply of venue space to promoters. In the UK, AEG Facilities owns and manages a large number of arenas, stadiums and convention centres. [i] SMG is a global venue manager of convention centres, stadiums, arenas, theatres and other venues. It manages venues in Europe, including the UK, through its wholly owned subsidiary SMG Europe.

[6] *Merger Assessment Guidelines*, paragraph 5.2.2.

29. AEG also operates AEG Presents,[7] which produces and promotes concert tours, music and special events and festivals in the UK and around the world. The Parties' activities are also vertically linked through AEG Presents.

Venue Management

Product scope

30. The CMA considered whether it would be appropriate to segment the frame of reference for the supply of venue management based on: (i) the capacity of the venue; (ii) whether the venue is indoor or outdoor; and (iii) the type of venue. The CMA also considered whether in-house provision should be included within the frame of reference.

Venue capacity

31. The Parties submitted that it is not necessary to define the market based on capacity. The Parties submitted that venue managers are not constrained in providing services to venues of only a certain capacity. The Parties explained that, while it may be easier for venue managers to switch from providing services to larger venues to providing services to smaller venues than vice-versa, this is not always the case.

32. Third party responses indicated that competition may vary depending on the size of the venue. Responses from venue owners suggested that venues with a capacity of more than 5,000 have similar requirements (including that the venue manager should have experience managing other venues with a capacity of 5,000 or more). Although the Parties provided examples of venue managers managing venues with capacities both below and above 5,000 (eg SMG and Live Nation), the CMA has received no evidence of managers of smaller venues transitioning to manage large venues. This is consistent with third party responses that noted the importance of experience when managing large venues.

33. Two third parties proposed a higher threshold for identifying "large" venues. One third party submitted that it considered large-scale venues to be those with a standing capacity over 10,000 but added that industry players would, by exception, generally consider Cardiff as a large venue even though it has a standing capacity of circa 7,500. One venue manager submitted that "large"

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[7] AEG Presents also has a [✂] shareholding in a smaller promoter, Marshall Arts, which is a promotions business in the UK, which provides promotions services for events at AEG Venues, SMG Venues and third-party venues. Under the current arrangements, [✂]. However, for completeness, Marshall Arts is included in the analysis of AEG's position in promoting in this decision.

venues should be considered as those with a maximum capacity of over 10,000 on the basis that that the venues below 10,000 capacity have fundamentally different business models and production requirements than larger venues.

34. The CMA did not receive any information to suggest that a capacity threshold above 5,000 is not an appropriate starting point for the definition of a “large venue”, with one large venue manager adding that *“once above a capacity of 5,000, the fundamental approach to operating an indoor entertainment venue is largely the same regardless of scale”* and another large venue manager noting more broadly that *“the tasks and skills for operating indoor venues of different capacities are largely the same”.*

35. The CMA acknowledges the Parties’ submission that the choice of a specific capacity threshold “is arbitrary and artificial”. However, the evidence received by the CMA indicates that capacity is a relevant differentiator for the purposes of competition analysis. The Parties primarily overlap in the supply of large venues, in particular, those venues with a standing capacity of 5,000 or more (up to 20,000).

36. Therefore, the CMA uses a standing capacity of over 5,000 as an indicative threshold for ‘large venues’ but has considered competitive constraints posed by suppliers currently managing smaller venues where relevant in its competitive assessment.

Indoor vs outdoor venues

37. The Parties submitted that venue managers are not intrinsically constrained in providing services to venues of only a certain type.

38. The CMA has, however, received evidence that it would be appropriate to consider the provision of venue management services for indoor venues separately from venue management services for outdoor venues. In particular:

(a) The majority of venue owners and managers noted differences in operating indoor venues compared to outdoor venues. For example, managers noted that the production process for events is easier for indoor venues than for outdoor venues. In addition, outdoor venues do not need to deal with multiple customers booking events to the same extent as indoor venues;

(b) Many indoor venue managers in the UK, such as the Parties and NEC, primarily operate indoor venues and do not operate outdoor venues in the UK;

(c) Outdoor venue managers indicated that they primarily operate outdoor venues and do not operate indoor venues.

39. Given the differences in operating indoor and outdoor venues and the different competitor set within each segment, the CMA considered the competitive effects of the merger within the supply of venue management services for indoor venues only.

Type of indoor venue

40. The Parties submitted that it is not necessary to define the market based on venue type (such as arenas, theatres and convention centres). The Parties submitted that venue managers are not constrained in providing services to venues of only a certain type.

41. Venue managers and the Parties have also indicated that they have competed to provide management services to a variety of different venues such as arenas and convention centres. Venue owners did not indicate that experience of managing a venue of a particular type (beyond indoor venue management experience) is important when selecting a venue manager.

42. One venue manager submitted that, in the UK, AEG exclusively and SMG almost exclusively focus on the supply of venue management services to indoor arenas, and therefore the market should be considered as the supply of venue management services to indoor arenas.

43. However, the Parties and third-party venue managers have indicated that they have competed to provide venue management services to a variety of different indoor venues. In addition, venue owners have not expressed preferences for venue managers with experience of managing a particular type of indoor venue. The CMA also considers that any differences in the type of venues managed by different venue managers can be accounted for, to the extent relevant, in the competitive assessment. The CMA therefore considered the supply of venue management services to large indoor venues of all types within a single frame of reference.

In-house provision

44. The Parties submitted that in-house and outsourced venue management services are generally viewed as substitutable and, therefore, should be considered as part of the same product market. The Parties submitted that only five out of 25 indoor venues with standing capacity over 5,000 in the UK have outsourced management, and most providers of venue management services also own venues that they manage in-house. The Parties also cited

examples of venue owners switching between in-house provision and third-party provision to demonstrate the substitutability between these two methods of supply.

45. The CMA's decision as to whether to consider in-house supply to be part of the relevant market is made on a case by case basis. The CMA acknowledges that, as submitted by the Parties, a significant number of large venues are operated in-house (see Table 2 below). However, as noted in the competitive assessment, while in-house supply is viable for a large number of venue owners, this is not always the case due to lack of the necessary in-house expertise. In previous cases where similar services have been provided both in-house and by third parties, the CMA has set a high bar and not considered in-house supply to be part of the relevant market since a customer that self-supplies has typically made a decision not to enter into a third-party transaction (eg *Electro Rent/Microlease*[8]).

46. Therefore, on a cautious base the CMA has considered the constraint on the Parties from in-house supply in the competitive assessment rather than as part of the frame of reference.

Geographic scope

47. The Parties submitted that suppliers bid for contracts in a number of different countries and, therefore, there is evidence that competition is broader than national and that venue managers in other countries provide a competitive constraint.

48. Generally, venue owners noted the relevance of a UK presence, but considered this to be secondary to cost and reputation when choosing a venue manager. Venue managers also noted the relevance of a UK presence and outlined the potential differences of operating venues in the UK such as the need to have relationships with promoters, the need to understand local markets, the importance of attracting a strong programme of performances and different competitive dynamics. Consistent with this evidence, the majority of venue owners referenced only operators holding contracts in the UK as alternatives to the Parties. In addition, the majority of UK managers only mentioned other managers holding contracts in the UK as competitors.

49. Given the evidence regarding the importance of a venue manager having UK experience, the CMA considered the geographic frame of reference to be UK-wide, focussing predominantly on suppliers that hold existing contracts with

[8] Completed acquisition by Electro Rent Corporation of Microlease, Inc. and Test Equipment Asset Management Limited Final report 17 May 2018, paragraph 5.91.

UK venues. The CMA has, however, considered the competitive constraint imposed by managers that do not hold any contracts in the UK at present in the competitive assessment, particularly where there is evidence that those suppliers are already actively pursuing business in the UK.

Venue space

Product Scope

50. The CMA considered whether it would be appropriate to segment the frame of reference for the supply of venue space based on (i) the capacity of the venue, (ii) whether the venue is indoor/outdoor, (iii) the type of venue and (iv) the type of event hosted at the venue.

Venue capacity

51. In *AEG/Wembley*[9], the Competition Commission (**CC**) considered that capacity was an important consideration in choice between venues. First, because artists/promoters want the venue with the largest capacity that an artist is able to fill in order to maximise returns and second, because tour production is designed with a venue size in mind and is costly to amend mid-tour. The CC considered size was not sufficiently distinctive to require it to define the relevant market by capacity but did assess the merger effect separately for (i) live entertainment venues which can host events with capacity under 5,000; (ii) venues which can host events with capacity between 5,000 and 12,500; and (iii) venues which can host events with capacity above 12,500.

52. While noting the importance of capacity and the considerations in *AEG/Wembley*, the Parties suggested that it would not be appropriate to segment the product market based on specific capacity thresholds which the Parties considered to be arbitrary. The Parties said that an approach based on specific capacity thresholds would ignore the competitive constraints that venues of all sizes impose on each other in the context of a tour.

53. Consistent with the decision in *AEG/Wembley*, most third parties considered that capacity is an important factor and that a venue is chosen on the basis of how many tickets are likely to be sold for a given artist in order to maximise revenue.

[9] Paragraph 7.13, CC Report AEG Facilities/Wembley Decision.

54. One venue manager considered that 10,000 plus (maximum) capacity venues is a more appropriate threshold for the purposes of analysing the current transaction and noted that the arena circuit is characterised by buildings of a capacity of 10,000-20,000 due to the fact that: (i) if an artist is able to sell out a 10,000-20,000 capacity arena, a promoter/artists would not consider a venue with a capacity of less than 10,000 as a viable substitute; (ii) from a prestige/reputational perspective, many of the big artists would also not wish to play venues below 10,000 and (iii) big artists tend to design their production for a venue of a certain size (i.e. large indoor arenas with 10,000-20,000) and bring large, sophisticated productions suitable for large venues which venues below 10,000 cannot support.

55. As noted above in paragraph 33, the CMA did not receive any information to suggest that a capacity threshold above 5,000 is not an appropriate starting point for the definition of a "large venue".

56. The CMA acknowledges that the precise choice of any capacity threshold is to some extent arbitrary. It is clear that the competitive interactions between individual venues will differ; in some cases, certain smaller venues could provide a constraint to larger venues, and constraints may vary significantly even amongst venues with a capacity of more than 5,000.

57. However, the CMA considers that, given the importance of capacity and since the Parties' primarily overlap in venues with a capacity of 5,000 or more, it is appropriate to specifically consider the effects of the Merger on "large" venues based on a standing capacity of 5,000 or more as an indicative capacity threshold for "large" venues. The CMA will, therefore, consider the supply of large venues to promoters and has considered the extent of competitive constraints from smaller venues and the differences in competitive interaction between venues of difference capacities in the competitive assessment.

Indoor and outdoor venues

58. In *AEG/Wembley*, the CC concluded that indoor and outdoor live entertainment venues were in different markets on the basis that switching of tours between indoor and outdoor venues is limited.[10]

59. The Parties submitted that outdoor live entertainment venues now compete more closely with indoor venues and should, therefore, be considered as part of the CMA's competitive assessment. The Parties cited large international touring artists who consider whether to play indoor or outdoor venues and may play both. The Parties added that outdoor venues are generally in close

[10] Competition Commission (**CC**) Report in AEG Facilities (UK) Limited and Wembley Arena, September 2013.

proximity to arenas and are likely to be seen as alternatives for concert goers.

60. Consistent with the decision in *AEG/Wembley*, most promoters and artists told the CMA that outdoor venues are not, or are rarely, an alternative to indoor venues, suggesting there should be a segmentation between indoor and outdoor venues. Third parties also submitted that, given outdoor venues are exposed to changes in weather, they are unlikely to be a viable alternative at all times of the year.

61. The CMA considers, that, in line with precedent and the submissions of third parties, the market for the supply of venue space should be segmented between indoor and outdoor arenas. The competitive constraint exerted by outdoor arenas is, however, considered in the competitive assessment where relevant.

Type of indoor venue and type of event

62. In *Hamsard/ Academy*,[11] the CC noted that venues that are mainly used for types of events other than live music, such as theatres, may sometimes stage popular live music events. However, the CC concluded that, in general, switching to such venues is unlikely to be sufficient to make a small price rise at venues that predominantly stage popular live music events unsustainable.[12]

63. In *AEG/Wembley*[13], the CC also considered whether it should segment venues according to event type but concluded that it should not on the basis that The O2 Arena and SSE Arena, Wembley (the venues that overlapped in that case) both held a mix of events and there were no significant differences in pricing based on event type. The Parties submitted that they agree with the conclusion reached in *Hamsard/Academy* that theatres should be considered as a separate market from venues that usually hold popular live music performances. This is on the basis that theatres have different characteristics and hold different events from live music venues. The Parties also submitted that it is not appropriate to distinguish between venues based on type of music or entertainment typically held at that venue (beyond the exclusion of theatres). The Parties note that many venues, including the Parties' venues host a variety of different events including live music, sports, comedy and

[11] CC's Report Hamsard and Academy Music, January 2007, paragraph 4.15.
[12] Although the CC recognised that it is necessary to consider whether there are any exceptions to this on a venue by venue basis.
[13] Paragraph 7.44-7.46 CC's Report AEG Facilities (UK) Limited and Wembley Arena, September 2013

children's shows. The CMA has received no evidence to contradict this position from third parties.

64. Therefore, the CMA has considered a frame of reference that includes only live music venues,[14] and excludes theatres and other venues that are not focused on live music.[15] The CMA has not further segmented the frame of reference by type of event held at the venue.

Geographic scope

65. *AEG/Wembley* involved a merger between two venues that overlapped in London. As the CC found little evidence that venues in other cities were substitutes to London-based venues, the CC defined the geographic scope of the relevant market as London-wide. The CC, however, took into account a narrower or wider set of constraints on an event-by-event basis where appropriate.[16]

66. The Parties submitted that the CMA should assess the Merger on a local basis because, from the perspective of consumers who attend events at venues, markets are local. The Parties submitted that promoters arrange tours to reflect the local demand and, as a result, artists will perform in at least several cities within a country. The Parties provided information on the location of concert-goers which showed little overlap in the locations of concert-goers attending the Parties' venues. Furthermore, the Parties suggested that venues in different cities are complements rather than substitutes from a promoter's perspective.

67. The CMA agrees with the Parties that, from the perspective of concert-goers, competition between venues is local, since concert-goers will generally only consider venues in their local area. This is illustrated by the location of concert-goers that attend events at the Parties' venues. The lack of competition for concert goers does not mean, however, that the Parties' venues do not compete to attract promoters. Promoters may seek to identify a number of suitable venues for an artist before selecting from amongst those venues. As a result, venues may compete with each other, even when there is no overlap in the location of concert-goers attending the venues.[17]

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[14] Live music venues, such as the O2, may also host non-music events. Therefore, by live music venue the CMA refers to venues whose primary function is hosting live music events. As described below, the CMA does not consider it necessary to segment more precisely by the exact types of event (eg music and non-music) within this category of venue.
[15] For example, the Copper Box venue.
[16] Paragraph 7.13, CC Report AEG Facilities/Wembley.
[17] For example, a promoter may choose between an additional date at the O2 or playing another venue in the UK, or a promoter may have identified five suitable venues in the UK but the artist is only seeking to play four shows in the UK.

68. Third parties predominantly indicated that AEG's venues (which are all based in London) and SMG's venues (all based outside London) typically do not compete due to their geographic differences. Promoters told the CMA that the Parties' venues are rarely viewed as alternatives since they are in different locations, and that many artists play at venues in both London and Manchester.

69. Third parties responding to the CMA's market test identified few alternatives to London.[18] This is consistent with the Parties' submissions about London's position as a "must-play" location and the supporting evidence provided by the Parties.[19]

70. By contrast, some respondents indicated that venues in different cities other than London could be considered as alternatives to each other – for example, venues in Birmingham, Glasgow and Liverpool could be alternatives to the Manchester Arena, and venues in Sheffield, Newcastle and Nottingham could be alternatives to the First Direct Arena in Leeds. This evidence is consistent with the geographic market being wider outside of London. The CMA therefore, considers that it is appropriate to identify separate frames of reference for venues in London and venues outside London.

71. In *LN-Gaiety/MCD*,[20] the CMA found that the relevant frame of reference for the provision of venue space was no wider than the island of Ireland and that promoters on the island of Ireland were not active elsewhere in the UK. Since the Parties do not operate any venues outside of Great Britain, the CMA considers that Northern Ireland is, consistent with the finding in *LN-Gaiety/MCD*, outside the relevant geographic frame of reference.

72. 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 large indoor venue spaces used for live music events in (i) London and (ii) outside of London (excluding Northern Ireland). It was not 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.

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[18] For example, the Wembley Arena was identified as alternatives to the O2 with almost no reference to venues outside of London.
[19] For example, the vast majority of UK tours play at least one show in London. Of the 48 tours in the UK by "Top 100" artists in 2017, 39 of these played in London. An even greater proportion of "Top 100" artists played London in 2015 and 2016 (52 out of 54 and 43 out of 49 respectively).
[20] Live Nation-Gaiety/MCD Productions (2019)

Promoter services

Product scope

73. The CMA considered whether it would be appropriate to segment the supply of promoter services by (i) type of event and (ii) size of event.

74. The UK competition authorities have previously considered promotion services in *Live Nation/Ticketmaster*, *AEG/Wembley* and *LN-Gaiety/Isle of Wight festival*. While, in *Live Nation/Ticketmaster*, the CC found that the relevant market was not wider than the promotion of live music events, including festivals, the CMA's investigation in *LN-Gaiety/Isle of Wight festival* considered the organisation of music festivals separately and assessed the effects of the merger in the frame of reference for promotion of live music events excluding festivals. In *AEG/Wembley*, the CC found that the market for promotion of live entertainment events was not segmented by genres or by venues with differing capacities.

75. More recently, in *LN-Gaiety/MCD*,[21] the CMA segmented the market for promoter services by type of event (live music) and by size (events with a capacity of 1,000 plus).

76. Although promoters and artists have noted the importance of size when selecting a venue, they have not suggested that promoters will only promote events of a certain size. The CMA, therefore, considers that in this case it is not appropriate to segment the market based on promotion of events of a specific size. With regards to segmenting by type of event, responses from promoters were mixed, with some promoters focused on comedy events or live music events while others focused on live entertainment events more broadly. However, the CMA has found insufficient evidence to suggest that it should define the frame of reference more narrowly than the promotion of live entertainment events.

77. However, it was not necessary for the CMA to reach a conclusion on the product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Geographic scope

78. Promoters told the CMA that they are active across Great Britain. As noted in LN-Gaiety/MCD, the two largest promoters active on the island of Ireland do

[21] Paragraph 74 LN- Gaiety Holdings Limited of MCD Productions Unlimited Company 2019

not promote outside the island of Ireland, and promoters not based on the island of Ireland rarely promote events on the island of Ireland.[22] The CMA, therefore, considers Great Britain to be the relevant geographic frame of reference.

Conclusions on frames of reference

79. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:

- the supply of venue management services to owners of large indoor venues in the UK;
- the supply of large indoor venue spaces used for live music events in (i) London and (ii) outside of London (excluding Northern Ireland); and
- the supply of promotion services for live entertainment events in Great Britain.

Competitive assessment

Horizontal unilateral effects

80. 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 to degrade quality on its own and without needing to coordinate with its rivals.[23] Horizontal unilateral effects are more likely when the merging parties are close competitors.

81. 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 the supply of venue management services to owners of large indoor venues in the UK.[24]

82. In its assessment, the CMA considered:

(a) shares of supply;

[22] Paragraph 71 LN- Gaiety Holdings Limited of MCD Productions Unlimited Company 2019
[23] *Merger Assessment Guidelines*, from paragraph 5.4.1.
[24] The CMA notes that it has not considered horizontal effects in the supply of venue space in detail, given the lack of geographic overlap between AEG's venues (all of which are in London) and SMG's venues (all of which are outside of London). The Parties' submitted information on the location of concert goers which evidenced little overlap in the location of concert goers attending the Parties' venues. Third parties confirmed that the Parties' venues are not alternatives to each other, with London being a 'must play' city.

(b) tender data;

(c) closeness of competition between the Parties; and

(d) competitive constraints from alternative providers.

Shares of supply

83. The Parties submitted that static shares of supply based on venue capacity are not an appropriate indicator of the Parties' respective competitive positions as venue management services are characterised by long-term contracts, lumpy demand and a small number of bespoke opportunities.

84. The CMA considers that, in markets with a small number of long-term contracts and 'lumpy' demand, shares of supply may not accurately reflect closeness of competition between the Parties or the extent to which other suppliers are a competitive constraint on the Parties. Shares of supply are only one part of the CMA's analysis and the CMA has put greater weight on other evidence.

85. There are 22 indoor venues in the UK with a standing capacity above 5,000.[25] For these venues, the location, manager, whether the venue is managed in-house and venue capacity are summarised in Table 2 below.

[25] The CMA notes that there are 22 indoor venues in the UK with standing capacity over 5,000. The Parties have included the following within Table 21 of the merger notice which the CMA has excluded: Derby Arena and O2 Academy Brixton (which both have standing and seating capacities below 5,000) and the Bournemouth International Centre which has a seated capacity well below 5,000.

Table 2: Overview of indoor venues in the UK with 5,000 plus capacity

Manager	Venue name	City	In-house managed	Capacity
SMG	Manchester Arena	Manchester	No	20,000
SMG	The Event Complex Aberdeen	Aberdeen	No	12,500
SMG	First Direct Arena	Leeds	No	12,345
SMG	Utilita Arena	Newcastle upon Tyne	Yes	11,000
AEG	The O2 Arena	London	Yes	20,665
AEG	Wembley Arena	London	No	12,724
NEC Group	Arena Birmingham	Birmingham	Yes	15,800
NEC Group	Resorts World Arena (Genting Arena)	Birmingham	Yes	15,685
Live Nation	Cardiff Motorpoint Arena	Cardiff	Yes	7,500
Sheffield Trust	FlyDSA Arena	Sheffield	Yes	13,314
SECC	The SSE Hydro Arena	Glasgow	Yes	12,947
ACL (Arena Coventry Limited)	Ericsson Indoor Arena	Coventry	Yes	12,000
ACC Liverpool Ltd	M&S Bank Arena	Liverpool	Yes	10,847
National Ice Centre Ltd	Motorpoint Arena	Nottingham	Yes	10,340
Haringey Council	Alexandra Palace	London	Yes	10,250
Odyssey Trust	Odyssey Arena	Belfast	Yes	10,000
Bolton Middlebrook Leisure Trust	Bolton Arena	Bolton	Yes	9,000
Westpoint Centre (Devon) Ltd	Westpoint Exeter	Exeter	Yes	7,500
Greenwich Leisure Limited	Copper Box	London	No	6,839
RAH (in-house manager)	Royal Albert Hall	London	Yes	5,544
Intu Properties	Braehead Arena	Glasgow	Yes	5,200
Derby City Council	Derby Arena	Derby	Yes	5,000

Source: Parties' Merger notice

86. Table 2 shows that:

a) Following the Merger, the Parties will manage six of the 22 indoor venues with a capacity of over 5,000. These venues will account for [20-30] % of the total capacity of venues with a capacity of over 5,000;[26]

[26] The CMA notes that if it would focus on venues with 10,000 plus capacity, the Parties would manage 6 out of 15 venues post-Merger.

b) 17 of the 22 indoor venues are managed in-house, including one managed by SMG, one managed by AEG, two managed by NEC and one managed by Live Nation.[27]

87. When considering third party management of venues, SMG is the market leader as it manages 3 out of 5 venues that are not managed in-house. Following the Merger, the Parties will manage a high proportion of the venues with third party management. They will manage four out of five of the indoor venues with a ticketed capacity above 5,000 that have third-party management.[28] The Merger leads to an increment of one venue with outsourced management. The Parties are significant suppliers of venue management services prior to the Merger, and will continue to be a significant supplier following the Merger.

88. Table 2 shows that, post-Merger, the main alternatives to the Parties who are currently active in the UK are NEC, Live Nation and in-house managers. This is in line with the views of third parties[29] (both venue owners and managers), which predominantly indicated that AEG, SMG, NEC and Live Nation are the key alternatives of venue management services in the UK

89. As noted above, given the long-term nature of the contracts, lumpy demand and the fact that opportunities are few in number and bespoke, shares of supply may not fully capture competitive dynamics. The CMA has therefore considered the shares of supply set out above along with other evidence described further below.

Tender data

90. The Parties submitted that tender data is a more appropriate means of assessing closeness of competition between the Parties, and their respective market positions, than shares of supply. As part of its assessment of the tender data, the CMA considered (i) concluded opportunities and (ii) ongoing/upcoming opportunities. In doing so, the CMA noted that the tender data provided by the Parties includes many opportunities that were not subject to formal tenders,[30] and that information about who a venue owner may have considered for these opportunities is not always readily available. This limits the ability of the CMA to rely on the tender data to assess the

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[27] Live Nation effectively owns the Cardiff Motorpoint Arena given the long lease.
[28] With SMG managing Manchester Arena, The Event Complex Aberdeen and First Direct Arena Leeds, and AEG managing Wembley Arena.
[29] As will be discussed further in the competitive constraints section.
[30] Venue owners will often use different procurement strategies, some of which may not be formally considered as tenders but instead resemble formal or informal conversations with a number of third parties.

extent to which the Parties compete with each other as compared to the extent to which each Party competes with other third parties.[31]

Concluded opportunities

91. The CMA considered the [✂] concluded opportunities to manage indoor venues with a capacity over 5,000 within the last five years. The CMA found that, in the last five years, the Parties have not submitted a bid in the same tender. SMG submitted [✂] bids in [✂] concluded opportunities and won all [✂] tenders in which it submitted a bid. In contrast, AEG submitted only [✂] bids in [✂] concluded opportunities and lost [✂].

92. The CMA notes that tender opportunities are relatively rare and that customer requirements within the frame of reference will vary. The CMA therefore considers that the fact that the Parties have not competed in these recent tenders would not, in isolation, establish that there is no material competitive interaction between the Parties, but does suggest that the Parties have not competed closely in the last five years. The evidence from concluded opportunities is also generally consistent with the Parties' submission that their commercial strategies are different, with SMG being more [✂] and AEG focussing more on [✂].

93. The CMA has also considered the extent to which the Parties' competitors have been involved in these venue management opportunities.

94. NEC has confirmed that it bid on [✂] of the [✂] concluded opportunities that SMG has participated in, so the overlap between SMG and NEC in relation to concluded opportunities is more significant than that between the Parties. In both instances NEC was [✂]. With regards to a [✂] concluded opportunity, the Parties provided evidence that NEC was used as a [✂] ([✂]).[32]

95. Live Nation placed a bid in [✂] of [✂] concluded opportunities in the last five years. [✂]. This suggests that it has not competed closely with SMG and AEG in historic bids.

96. In-house supply provided a competitive constraint against SMG in [✂] of the [✂] concluded opportunities SMG participated in, and against AEG in [✂] of [✂] opportunities AEG participated in (ie in [✂] of the opportunities in which

[31] For example, one third party might not consider that they had "participated" in a tender because they only had an informal conversation but another third party could decide the opposite in the same situation. In some cases the Parties provided internal documentary evidence supporting their submission regarding the other competitors who were considered.
[32] Email from [✂] dated 15 May 2018

each Party participated). This suggests in-house supply has provided a competitive constraint on the Parties in historic bids.

Upcoming or ongoing opportunities

97. The Parties also identified [✂] potential upcoming or ongoing opportunities to manage indoor venues with a capacity of over 5,000. Of these, the Parties identified [✂] where the venue owner is either actively in discussions with potential venue managers or has indicated it is likely to enter into a contract with a third-party venue manager within the next four years. Of the [✂] upcoming or ongoing opportunities, the Parties have indicated that they are both interested in four opportunities. These four opportunities to manage venues are discussed in turn below:

(a) **Opportunity 1:** In this opportunity there was no formal tender process, the venue owner considered [✂] providers: [✂]. The venue owner indicated that [✂]. The Parties submitted that [✂] on the basis of its limited interest in the opportunity, which was evidenced by [✂]'s tender submission. The CMA considers, having reviewed the written proposals made by each Party to the venue owner, that the fundamental proposition being offered by the Parties did not vary substantially. However, [✂]'s tender submission included [✂] whereas [✂], by contrast, provided [✂]. The venue owner itself confirmed [✂]'s limited interest in the opportunity and commented that [✂] had been dismissed as a possible venue manager on the basis of its 'cost and desire'.

In addition, there is evidence that in-house supply is also a competitive constraint in this ongoing opportunity.[33]

(b) **Opportunity 2:** In this opportunity no formal tender has taken place and the project is at a very early stage. The Parties submitted that SMG [✂] and that [✂] with the venue owner. The venue owner confirmed that "[✂]."

There is evidence that in-house supply is also a competitive constraint in this ongoing opportunity.[34]

(c) **Opportunity 3:** In this opportunity no formal tender has taken place and the project is at a very early stage. The Parties confirmed that they have

[33] Corroborated by internal documents, either through tender communications upon completion of a tender or through internal correspondence between the Parties and venue owner.
[34] Corroborated by internal documents, either through tender communications upon completion of a tender or through internal correspondence between the Parties and venue owner.

both had [✂]. However, SMG noted that [✂], as evidenced through internal documents.[35] AEG internal correspondence indicated that it would be an opportunity to be "[✂]" suggesting AEG did not consider itself to be a strong competitor for this opportunity.[36]

In addition, Live Nation [✂].[37]

(d) **Opportunity 4:** In this opportunity no formal tender has taken place and the project is at a very early stage. The Parties submitted that they would consider [✂]. When the CMA contacted this venue owner to ask about its views regarding the opportunity, the venue owner noted that the project was at such an early stage that no assessment regarding venue managers has been made, adding that "[✂]".

In addition, [✂] internal documents show that they have considered Live Nation to be interested in this opportunity and [✂] considers that Live Nation have previously been awarded preferred bidder status.[38]

98. With respect to the above-mentioned upcoming/ongoing opportunities, the CMA considers that with regards to opportunity 1, both Parties have not competed aggressively for the opportunity, AEG has shown limited interest in Opportunity 2, neither party has shown particularly strong interest in Opportunity 3 and limited conclusions can be drawn with regard to Opportunity 4 given the early stage of the project. In general, the CMA considers that it is difficult to draw definitive conclusions from this data given the early stages of the projects and the absence of formal tenders.[39]

Conclusion on tender data

99. The CMA therefore believes that tender data overall broadly supports the Parties' submission that there is only a limited degree of competitive interaction between them (albeit that, for the reasons described above, the CMA considers that only relatively limited weight should be placed on this data).

100. The involvement of other suppliers in these opportunities is considered in the assessment of those competitors below.

[35] CMA issues meeting, index of documents, Document 12
[36] CMA issues meeting, index of documents, Document 26
[37] As evidenced through [✂]
[38] SMG, Business Development Report, May 2017, see Annex 23
[39] The CMA also notes that AEG's interest in these opportunities runs counter to the argument submitted by the Parties that AEG [✂]. However, the CMA considers that this may be a result of the infrequency of venue management opportunities.

Closeness of competition

101. The Parties submitted that they focus on different geographies and different venue types. Furthermore, they submitted that they have different business models and strategic focuses. The Parties specified that AEG [✂], and SMG has a [✂].

102. The CMA has considered the Parties' submissions and examined the closeness of competition between the Parties by reference to the following evidence: (i) internal documents from the Parties and (ii) views of third parties.

Internal documents

103. In the round, the CMA found that the Parties' internal documents suggest that the Parties do not monitor each other more closely than they monitor other competitors.

104. SMG's internal documents monitor a range of competitors including [✂], [✂], [✂] and [✂]. SMG's documents support the position that AEG has a different geographic focus to SMG: they indicate [✂]. AEG's internal documents also monitor a range of competitors [✂].

105. The CMA considers that the Parties' internal documents do not suggest the Parties monitor each other more closely than they monitor other competitors. In addition, both Parties' internal documents confirm the Parties' different geographical focus.

Third party views

106. While more than half of venue owners considered that AEG and SMG were alternatives, these venue owners noted the differences in the Parties' respective focuses, such as SMG's focus on regional venues versus AEGs focus on [✂], SMG's focus on operational management versus AEG's focus on [✂], and SMG's lack of London experience versus AEG's extensive London experience.

107. The majority of competing venue managers considered that SMG and AEG compete closely. Two of these venue managers noted that there are few viable alternatives with regards to large indoor venues. Overall, venue managers also noted that there are few viable alternatives available when it comes to third party management of venues in general.

108. Consistent with venue owners' submissions that the Parties have a different focus, another third party noted that "*SMG and AEG are slightly different with nuances – SMG has been very successful across a wide range of venues in*

the UK but without any promoter allegiance and AEG has focused on The O2 and Wembley and capital markets in Europe and uses its own strong promoter arm."

109. The CMA considers that the evidence from third parties (particularly from customers) therefore broadly supports the position that, although the Parties are part of a small group of competitors, they are not particularly close competitors as they focus on different regions, types of venues and services.

Competitive constraints

110. The Parties submitted that there are a range of alternative suppliers of venue management services that would constrain the Parties post-Merger, including NEC, Live Nation, in-house supply, international venue managers and smaller suppliers. The CMA's assessment of these suppliers is provided below.

NEC

111. As identified in Table 2, NEC currently manages two large venues with a capacity of over 5,000. NEC owns both these venues: Arena Birmingham and Resorts World Arena. NEC also manages a number of other smaller venues but does not manage any large venues on behalf of a third-party venue owner. The Parties submitted that NEC is a closer competitor to SMG than AEG is.

112. NEC has confirmed that it bid on [✂] of the [✂] concluded opportunities that SMG has participated in (meaning, as explained in paragraph 93, that the overlap between NEC and SMG is more significant than that between SMG and AEG).

113. Several venue owners considered that NEC was an alternative, with one noting that it had a 'regional focus' and another noting that it was an "*experienced and suitable*" venue manager. In addition, a third party also identified NEC as a key player in the market, noting that it had "*become commercially strong and viable outside of its home area in recent years*". One [✂] noted, however, that "*NEC Group does not currently operate any third party venues and, as such, is not an actual competitor to SMG or AEG in this area*".

114. The Parties' internal documents, particularly SMG's internal documents, suggest that NEC [✂]. Several SMG documents describe NEC as its [✂] and SMG's documents [✂]. AEG's documents include [✂], but [✂].[40]

115. In the round, the evidence set out above shows that NEC has overlapped in more concluded opportunities with SMG than AEG has and that the majority of venue owners identify NEC as an alternative supplier (with a particular regional focus). SMG and AEG internal documents also comment [✂]. The CMA therefore considers that NEC will offer a material constraint on the Parties post-Merger and NEC also appears to be a closer competitor to SMG than AEG is to SMG.

Live Nation

116. Live Nation manages one large venue in the UK, the Cardiff Arena, which it effectively owns under a long lease. In addition, Live Nation Academy Music Group also operate The O2 Academy Brixton which has a capacity of just below 5,000. It also manages larger venues elsewhere in Europe, including the Ziggo Dome, Amsterdam (17,000 capacity), 3Arena, Dublin (14,000 capacity) and Royal Arena, Copenhagen (15,000 capacity).

117. The tender data indicates that Live Nation was not very active in competing for concluded venue management opportunities. See paragraph 94 for further details.

118. Half of the venue owners that responded to the CMA's investigation considered that Live Nation is an alternative to the Parties. Only one [✂] did not consider Live Nation to be an effective competitor for the management of large venues in the UK. This [✂] added that Live Nation is primarily focused on its promotions business in the UK and on operating live music clubs and festivals. With respect to the operation of large venues in the UK, this [✂] added that Live Nation has not successfully secured a contract on its own for the third-party operation of a large venue since 2011 (a contract that was then terminated in 2015). Another venue manager suggested that Live Nation is a secondary competitor, adding that ''[✂].''

119. In addition, a third party identified Live Nation as a key player in the market and added, more generally, that "*limited weight should be placed on the fact that a venue operator might have few venues currently under their management*".

[40] See AEG annex 0000174 provided with the Response to the Section 109 Notice dated 15 April 2019.

120. The Parties' internal documents, particularly SMG's internal documents, suggest that [✂]. [✂]describe [✂],[41] [✂].[42] AEG's documents include [✂][43]

121. Based on the evidence set out above, the CMA considers that Live Nation is likely to be a competitive threat in [✂] of the four upcoming opportunities of which the CMA is aware.[44] More broadly, Live Nation is [✂]. Furthermore, half of venue owners considered Live Nation as an alternative. The CMA therefore considers that Live Nation will be a material competitive constraint on the Parties post-Merger.

In-house provision

122. The Parties submitted that in-house provision could constrain the Parties post-Merger in a situation when a venue owner opts for in-house provision rather than contracting with a third-party. As noted in Table 2,17 of the 22 indoor venues with a capacity over 5,000 are managed in-house in the UK. The CMA considers that this shows that in-house provision will often be a suitable alternative for a venue owner.

123. The tender data shows that in-house supply has provided a competitive constraint across a number of opportunities as detailed in paragraph 95 and 96.

124. Venue owner views on the viability of in-house supply of venue management were mixed.

125. Some venue owners noted that they had operated their venues in-house for some-time. For example:

(a) A large venue owner and local authority noted that: "*in house approach has been in operation for nearly 15 years. The Skills and experience accumulated and the ability to align the Convention Centre asset with the objectives, goals and ambitions of the city are key*";

(b) A separate large venue owner noted that "*we are happy with running the venue in-house and do not plan to outsource management of the venue in the medium to long term*";

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[41] SMG, Management Session – Meeting of the Board of Directors", March 7 2019 – provided to CMA on 23 May 2019 (SMG_Q10_023), slide 84
[42] Response to questions 1-3 of the s.109 notice dated 15 April 2019, Annex number: SMG_0000323, Division Update - Meeting of the Board of Directors, March 2019, and SMG, US Visit Presentation February 2019 – provided to CMA on 23 May 2019 (SMG_Q10_022), slide 114
[43] See internal AEG email chain re [✂], 23 February 2019, provided as Annex 1
[44] As noted in the tender data section.

(c) Another venue owner noted that "*A formal tender was not completed. SMG and Live Nation were not engaged due to* [✂]. *The outcome of the feasibility was concluded as self-operating business model"*;

(d) An additional large venue owner with multiple venues noted that "*we have always managed our venues in house*";

(e) A separate large venue owner noted that it had operated its venue in-house since a new company acquired the venue in the mid-2000s but had more recently decided to outsource the management of the venue.

126. Other venue owners noted that while they had previously had third party venue management, they had since decided to switch to managing their venue in-house. For example, one large venue owner noted that: "*We decided to take the venue management in-house as we had the skills and expertise to run the Arena effectively without the need for a 3rd party contractor. We believed that for the long term development of the [the venue] being directly in control of the operation was the preferred way forward*".

127. Another venue owner who previously used third party venue management also decided to switch to in-house venue management. This venue owner had mixed views regarding in-house venue management, noting that it felt it had developed the required knowledge but had since developed doubts regarding its decision to manage the venue in-house.

128. Some venue owners also expressed concerns regarding in-house venue management, for example:

(a) A local authority noted that "*Whilst the decision was taken to operate an in-house model, with the ever increasing pressure on local government budgets the switch to a third party operated model or sale to private investors, who may choose to outsource as such, is a possibility*";

(b) A large London-based venue owner and property investment company noted that in-house venue management was "*no longer feasible given competition within London market and global nature of arena tours*";

(c) A separate large venue owner and property investment company noted that "*In-house supply would not be practical due to lack of expertise in the area*"';

(d) A separate large venue manager noted that "*the primary reason that this [venue management] was externalised was to ensure that the Council did not carry the risk of being called upon*".

129. The Parties' internal documents, particularly [✂] internal documents, suggest that in-house supply is a significant constraint and is assessed when bidding for a significant number of opportunities. Several internal documents indicate the strong constraint of in-house supply. For example one internal document notes that "*the biggest competitor is the existing, in-house team, who continue to push back on* [✂]*'s role in the venue.*"[45] In addition, [✂] is often challenged to provide venue owners with an indication as to why their venue management services are required, with one internal document indicating, for example, that the in-house team "[✂]."[46]

130. The CMA considers that, although in-house provision may not always be suitable, the fact that 17 of 22 indoor venues with a capacity over 5,000 are managed in-house indicates that in-house provision is often a good alternative for venue owners. The CMA therefore considers that in-house provision will be a material competitive constraint on the Parties post-Merger.

International providers

131. The Parties identified international venue managers as competitors in the UK, and, in particular, highlighted two international venue managers, OVG and MSG, who they submitted are actively pursuing opportunities to build venues in the UK. The CMA has considered the evidence regarding OVG, MSG and other international providers.

- *OVG*

132. OVG is self-styled as providing "*positive disruption to business as usual in the sports and live entertainment industry*." Irving Azoff (a previous executive chairman of Live Nation with a well-established reputation in the venue management industry) is the co-founder of OVG. OVG has significant experience in the supply of venue management in the US, managing a number of large capacity venues.[47]

133. OVG has established a UK base, OVG Europe Limited,[48] which the CMA understands is intended to form part of building out a broader global presence, including in relation to the supply of venue management services. Other aspects of the ongoing expansion of OVG's European presence are understood to include the development of a new arena in Manchester and its

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[45] Division Update – Meeting of Board of Directors (Tab 1 of internal documents)
[46] Internal SMG email – see Annex 83 May 2019, Accompanying Parties' response to additional questions dated 21 August 2019
[47] OVG's website, 'clients' page available here
[48] OVG EUROPE LIMITED, Company number 11343889, available at Companies House

role in leading an arena development project at the Santa Giulia arena in Milan,[49] where it is partnering with Live Nation. The Parties submitted evidence that that OVG has recruited a number of European and UK-based executives in the venue management space and now has at least 20 employees, several of which previously worked at AEG.[50]

134. The CMA notes that OVG does not, at present, hold any venue management contracts in the UK. The CMA has therefore considered to what extent the available evidence indicates that OVG is able to compete for ongoing and future opportunities in the UK.

135. OVG suggested that it should not be considered as an actual or potential competitor in the UK. However, in response to a statutory request for documents, OVG provided a strategy development plan indicating [✂].

136. The CMA has also received evidence that OVG has already been engaging in discussions with venue owners in the UK. [✂].

137. In particular, OVG told the CMA that [✂]. While the exact content of these conversations is unclear, [✂]. Furthermore, in one upcoming opportunity [✂], while this customer noted it did not choose [✂] and its conversation with [✂] had focused on [✂], it [✂] noted that "OVG are a very credible operator and do provide another alternative… they are now more established and our view may be different if we were still at initial conversation stages."

138. The CMA notes that such discussions are consistent with the evidence described above in relation to OVG's building out a broader global presence, including in relation to the supply of venue management services.

139. One manager also noted OVG's launch of the international division in 2019 adding that "*OVG is therefore considered a new competitor in the arena and stadia market, although is yet to operate any venues within the UK and so assessment of their level of competitiveness remains to be seen*."

140. The Parties' internal documents, particularly [✂]'s internal documents, suggest that [✂] is a [✂]. Several [✂] documents monitor [✂] presence in

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[49] 'Oak View Group confirms interest in Manchester as potential new arena location' Press Release provided by OVG dated 21/08/2019

[50] These include: Jessica Koravos (Co-Chair), formerly COO of The O2 Arena and MD of AEG Presents (and currently President of The Really Useful Group); Sam Piccione III (President), formerly SVP of partnership sales at AEG and Chief Commercial Officer of FIA Formula E; Mark Donnelly (COO), formerly Managing Director of The O2; Brian Kabatznick (EVP of business development and facilities), formerly VP of Business Development and Event Programming for AEG Facilities.; Marc Ellie Robert (SVP Commercial), formerly VP AEG Global Partnerships and SVP of Partnership Development at McLaren; and Gary Hutchinson, (Stadium consultant), formerly head of venue sales and commercial partnerships for Wembley Stadium and Commercial Director and Head of Venue at Sunderland FC

the UK and consider [✂] to a range of upcoming opportunities.[51] One notes that [✂][52] In addition with respect to [✂] in particular, [✂] notes that it will "*face stiffer* [✂].[53]AEG's documents include [✂] to [✂], but [✂] is mentioned in several documents with one noting that *'*[✂]*in the UK.'*

142. Finally, although venue owners indicated that UK experience was relevant third parties indicated that UK experience was of secondary importance to cost and a venue managers' reputation. The CMA is also aware, as noted above, that OVG has recruited a number of individuals with UK experience. Therefore, the CMA considers that OVG's current lack of UK experience is not likely to be a material barrier to OVG successfully winning a venue management contract in the UK.

143. Based on the evidence set out above, the CMA considers that OVG's recent entry into the UK market and the extent to which it is perceived to be a competitor means that OVG would impose an additional constraint on the Parties post-Merger.

- *MSG*

144. As noted in paragraph 196, MSG is developing the MSG Sphere in Stratford. However, MSG did not indicate that it has plans to provide third party venue management in the UK. Also, the CMA has not found any evidence in the Parties' internal documents that the Parties consider MSG to be a current (or potential) competitor.[54] Therefore, the CMA does not consider that MSG would be a significant constraint on the Parties post-Merger.

- *Other international providers*

145. The CMA did not receive any evidence that other international providers were actively seeking to win venue management contracts in the UK.

146. Other international providers were also not discussed in the Parties' internal documents as a material competitive constraint in the UK.

147. With the exception of OVG, the CMA considers that there is insufficient evidence to consider that other international providers will be a material competitive constraint on the Parties following the Merger.

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[51] SMG, US Visit Presentation February 2019 – provided to CMA on 23 May 2019 (SMG_Q10_022), slide 114 (see tab 13 of internal document pack provided at Issues Meeting) February 2019
[52] SMG, Management Session – Meeting of the Board of Directors", March 7 2019 – provided to CMA on 23 May 2019, (SMG_Q10_023), slide 86 (see Annex 37 to submission 15 August 2019) 7 March 2019
[53] SMG internal document "Growth spaces" – see Annex 14
[54] [✂].

Smaller venue managers

148. The Parties submitted that smaller venue managers have become active and begun to manage larger venues, specifically identifying Ambassador Theatre Group (ATG) as a competitor.

149. The CMA has not received any evidence indicating that smaller providers have been active in relation to the concluded opportunities described above, although some of [✂] internal documents suggest [✂] may be increasing its presence in the arenas market. In particular, the CMA has not received evidence indicating that any of these suppliers have been active in concluded opportunities (or are active in relation to upcoming or ongoing opportunities). The CMA notes, however, that some of SMG's' internal documents suggest that [✂] may be increasing its presence in the market, with one noting [✂] "[i]ncreasingly acquisitive UK business development, with a recent move into [✂]."[55]

150. None of these suppliers have previously successfully won a venue management contract for a large venue and customers and competitors did not identify smaller providers as being active in the supply of management services for large venues.

151. Based on the evidence described above, the CMA considers that smaller providers such as ATG have not been successful in winning opportunities for large venues (although there is some evidence to suggest that ATG may be more active in upcoming or ongoing opportunities). The CMA therefore believes that smaller providers such as ATG will be only a very limited, if any, constraint on the Parties post-Merger.

Conclusion on horizontal unilateral effects

152. For the reasons set out above, the CMA believes that there is material competitive interaction between the Parties in relation to the supply of venue management services in the UK but that they are not particularly close competitors. In particular, the CMA considers that available evidence indicates that the Parties do not compete with each other more closely than they do with other competitors such as Live Nation, NEC, and OVG. The CMA notes that in-house supply is typically a ready alternative for the Parties'

[55] SMG, US Visit Presentation, February 25-26, 2019 – provided to CMA on 23 May 2019 SMG Q10 annex 022), slide 118 – see Annex 36

customer base (and is currently a viable option for the vast majority of potential customers).

153. Taking the available evidence in the round, the CMA considers that the Parties will continue to face sufficient competitive constraints in the supply of venue management following the Merger. Therefore, the CMA has found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of venue management services to owners of large indoor venues in the UK.

Vertical effects

154. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier or downstream customer or a downstream competitors of the supplier's customers.

155. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anti-competitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.[56]

156. In this case the CMA has assessed the possibility of:

(a) Customer foreclosure of rival venues by AEG Presents; and

(b) Input foreclosure of promoters by limiting access to venues.

157. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.[57] Where relevant, each of these limbs is discussed with respect to the two vertical theories of harm below.

Customer foreclosure of rival venues by AEG Presents

158. The CMA considered whether post-Merger the Parties could reduce AEG Presents' use of rival venues and as a result worsen the ability of rival venues to compete with the Parties' venues, leading to a loss of competition to provide venue space to promoters. The CMA notes that a link already exists

[56] In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.
[57] *Merger Assessment Guidelines*, paragraph 5.6.6.

between AEG Presents and AEG's venues such that any merger-specific effect would arise through the combination of SMG's venues and AEG Presents.

159. The CMA also notes that it is AEG, through its control of AEG Presents that would choose whether to attempt to foreclose and who would therefore face the full cost (as a result of lost business of AEG Presents) of any foreclosure strategy. However, any benefits of such a strategy would be realised by the JV and would therefore be shared between the Parties.

Ability

160. In order to assess AEG Presents' ability to foreclose rival venue suppliers, the CMA has sought evidence regarding:

(a) The importance of AEG Presents as a customer to venue managers;

(b) The ability of promoters to affect venue choice; and

(c) Concerns held by agents, promoters and operators.

- *Importance of AEG as a customer to venue managers*

161. AEG Presents' share of supply in the supply of promoter services in Great Britain in 2018 was [20-30]% (by value) and from 2015 to 2018 its average share of supply was [10-20]%.[58] The Parties submitted that the largest promoters are Live Nation and SJM which the Parties estimated as having a combined share of 40-50% of the market.

162. Consistent with AEG's shares of supply, third parties appear not to view AEG Presents as the leading promoter, listing it as a second or third most important promoter, after Live Nation and SJM. For example:

(a) One venue manager ranked AEG as its second most important promoter, and third most important when ranked in terms of the revenue it receives;

(b) Two other venue managers also ranked AEG Presents as their third most important promoter;

(c) An additional venue manager ranked AEG Presents as its fourth most important promoter and fourth in terms of the revenue received; and

[58] The CMA notes that 2017 was below the average and the CMA considers this suggests that there is a year to year variation (which may, for example be due to promoting a big tour one year but not the next) rather than a trend of growth. Marshall Arts' weighted average share from 2015-2018 by volume, tickets sold was [0-5]%.

(d) Promoters identified AEG Presents as a second or third most important competitor primarily after Live Nation or SJM.

163. Based on AEG Presents' small share of supply, the submissions by the majority of venue managers that AEG Presents is not an important customer, and the absence of any submission by promoters that AEG is a key competitor, the CMA believes that AEG Presents is not an important customer for venue managers.

- *Ability of promoters to affect venue choice*

164. Although some promoters and agents consider that promoters have some influence in the selection of venues, the majority of promoters and agents considered that it was artists and agents who made the choice, or at best, that the choice was made in tandem with the promoter. These views were consistent with those expressed by agents. Therefore, if an artist had a preference to access a venue that was a rival to the Parties' venues, that artist could do so by using an alternative promoter. The majority of agents indicated that they work with multiple promoters and the choice of venue (and resulting income for the artist) is part of the 'pitch' from promoters to agents.

165. Therefore, given the influence of agents and artists in the choice of venue, if AEG Presents offers suboptimal venues, the CMA considers it likely that AEG Presents will lose business to rival promoters so that AEG Presents has limited ability to influence the choice of venue.

- *Venue managers' concerns*

166. The majority of venue managers considered that AEG Presents not booking events at their venues would result in substantial negative impact on their business. One venue manager submitted that in response to such a loss of business they would "*increase rents and retail prices from revenue streams such as parking and food and beverage*." However, the majority of venue managers also noted that AEG Presents accounted for a modest percentage of overall revenue in terms of events booked at their venues. In addition, venue managers commented that they contracted with a number of different promoters and considered AEG Presents of lesser importance relative to other promoters.

Conclusion on customer foreclosure

167. For the reasons set out above, the CMA believes that AEG Presents is not a particularly important customer for venue managers. This is based on its low shares of supply and the fact that venue managers ranked AEG Presents as

being of second or third order (or lower) relative to other promoters. Furthermore, the evidence indicates that artists and agents play an important role in the selection of venues such that AEG Presents' ability to influence the choice of venue is likely to be limited since any risk to do so would likely lead to artists and agents switching to another promoter. Therefore, the CMA considers that AEG Presents does not have the ability to foreclose rival venues. As the CMA has concluded there is no ability to foreclose, it has not considered the incentive[59] or effect of customer foreclosure.

168. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of customer foreclosure of suppliers of large indoor venues used for live music events in Great Britain (both in London and outside of London, excluding Northern Ireland) using AEG Presents.

Input foreclosure of promoters by limiting access to venues

169. The CMA considered whether, post-Merger, AEG would have the ability and incentive to foreclose rival promoters using the Parties' venues. Under such a theory, by restricting the use of the Parties' venues, the ability of rival promoters to make attractive offers to artists may be reduced, allowing AEG to foreclose competing promoters. It is the JV which operates the venues and in which AEG has a 50% stake (shared with Compass), that would decide whether to foreclose.

Ability

170. In order to assess AEG's ability to foreclose rival promoters following the transaction, the CMA has considered:

(a) The extent of AEG's current ability to foreclose promoters;

(b) The importance of SMG's venues to promoters and agents and therefore, the extent to which AEG's ability to foreclose would be enhanced by the Merger;

(c) The structure of the JV; and

(d) Third party views.

[59] Although the CMA notes that the JV's structure provides a further reason for AEG not having an incentive to foreclose rival venues (paragraph 158).

- *The extent of AEG's current ability to foreclose promoters*

171. The CMA notes that pre-Merger AEG is likely to already have the ability to foreclose promoters using The O2 given the limited alternatives currently available in London. Third parties responding to the CMA's market test identified few alternatives to London. This is consistent with the Parties' submissions about London's position as a "must-play" location and the supporting evidence provided by the Parties. Additionally, the ability to foreclose is likely to be greatest at venues which are (i) large, and therefore of most importance to rival promoters and (ii) have the fewest alternatives (so that promoters are unable to switch to a suitable alternative). In this case the evidence described above indicates that The O2 already has significant market power and is the most important venue in the UK such that any foreclosure concerns are most likely to arise in relation to the connection of The O2 and AEG Presents. However, the CMA notes that this relationship already exists, so is not Merger-specific and AEG has not engaged in input foreclosure with The O2 to date, despite The O2's market position.

172. Therefore, any Merger-specific concern is most likely to arise due to the connection between AEG Presents and the Manchester Arena and this is considered further below.

- *The importance of SMG's venues to promoters and agents*

173. While most agents noted the importance of SMG's venues (particularly Manchester), the majority of agents referenced on average two alternatives to each of SMG's venues.

174. Furthermore, the majority of promoters also noted the importance of SMG's venues, particularly Manchester. The majority of venue owners were able to identify two alternatives to the Manchester Arena but infrequently a promoter identified another SMG venue as an alternative.

175. The CMA also notes that there is the possibility of a new venue opening in Manchester in the foreseeable future (see paragraph 186).

176. The existing alternatives to SMG's venues therefore support the position that the Merger would bring about only a relatively limited change in market structure in this regard, meaning that the ability of the Merged Entity to foreclose rival promoters is not liable to be significantly greater than that of AEG pre-Merger.

- *The structure of the JV*

177. The CMA considers that while AEG will be able to exercise influence over the commercial policy of the JV, its ability to pursue a foreclosure strategy would be limited by the fact that all of the costs of such a strategy would be borne by the JV whereas all the benefits would be realised by AEG Presents, which is not part of the JV. Therefore, pursuing such a strategy would require that SMG agrees to a strategy from which it would not benefit but where it would face a cost. The CMA therefore considers that this is likely to significantly limit, if not prevent, AEG's ability to engage in this strategy since there would be no benefit to its JV partner.

- *Third party views*

178. The majority of promoters did not consider the merger would have a material impact on AEG's ability to foreclose rival promoters. The majority of agents did not raise concerns about the possibility of AEG foreclosing promoters, although one suggested that such a hypothetical scenario is a "good example of the potential dangers involved in this merger."

179. The CMA therefore considers that the vast majority of third parties suggest that the Merger would not significantly increase AEG's ability to foreclose rival promoters.

- *Conclusion on ability*

180. In light of the views from third parties and the importance of SMG's venues relative to The O2, the CMA does not consider that the Merger would significantly increase the ability of AEG to foreclose rival promoters. Additionally, the CMA considers that the structure of the JV is unlikely to provide AEG with the ability to foreclose rival promoters since SMG would have to agree to a strategy from which it would not benefit.

Incentive

181. Although the CMA considers that the Merger will not provide AEG with the ability to foreclose rival promoters, the CMA notes, in addition, that AEG would also be unlikely to have any incentive to foreclose rival promoters because the evidence received indicates that margins for venues are [✂] than margins for promotions.[60] This means that the costs of any foreclosure

[60] AEG Presents and Marshall Arts respectively had [✂] and [✂] profit margin per ticket sold in 2018. Profit per ticket at the Parties' large arena varied between [✂] and [✂] per ticket sold (median [✂]). The CMA notes that

strategy (lost business for venues) are likely to be high relative to the benefits (increased promoter margins). Therefore, a high level of switching to AEG Presents would be needed for such a strategy to be profitable.[61]

Conclusion on foreclosure of promoters by limiting access to venues

182. As described above, the CMA considers that the Merger does not provide AEG with the ability to engage in input foreclosure of promoters by limiting access to venues. In any case, the CMA considers that AEG would be unlikely to have any incentive to engage in input foreclosure of promoters given the [✂] in relative margins between venues and promotion.

183. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of foreclosure of promoters of live entertainment events in Great Britain through limiting access to the Parties' venues.

Conglomerate effects

184. 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 are nevertheless 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).[62]

185. 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, including through a tying or bundling strategy.

186. In the present case, the CMA understands that there is a proposal for a new arena with a capacity of 20,000 to be developed in Manchester. SMG currently manages the Manchester Arena, which also has a capacity of 20,000. The CMA has considered the potential for the Parties post-Merger to leverage the market power of The O2 to weaken the ability of the potential new rival arena (the "**New Arena"**) to compete in Manchester.

in the LN-Gaiety Holdings/MCD case profit margins per ticket were [✂] in promotion and [✂] for venues – although there are only two major promoters on the island of Ireland).
[61] Even accounting for AEG's [✂] stake in the JV which would reduce the costs to AEG.
[62] *Merger Assessment Guidelines*, paragraph 5.6.2.

187. Specifically, the CMA has considered whether, post-Merger, the Parties could make bookings at AEG's The O2 conditional on a commitment to also book any Manchester shows at SMG's Manchester Arena (the "**tying arrangement**"). If The O2 is considered to be a "must-play" venue, then such a tying arrangement could result in artists, who would otherwise have played at the new arena, playing at the Manchester Arena. The effect of such a tying arrangement could be particularly significant if high-value artists prioritise playing at The O2, and would therefore be most likely to forego playing at the New Arena. A reduction in demand for the New Arena could undermine future competition between the venues. Anticipation of such an outcome could potentially deter the future owner of the New Arena from proceeding with its planned entry into the market altogether.

188. In principle, such a merger-specific concern could also arise in relation to a potential tying arrangement between The O2 and SMG's other venues (eg the First Direct Arena in Leeds or the Utilita Arena in Newcastle). However, the CMA has focussed on a potential tie of The O2 to the Manchester Arena rather than a potential tie of The O2 to SMG's other venues for the following reasons:

(a) The majority of the events which take place at both The O2 and SMG's smaller venues also take place at the Manchester Arena. Pre-Merger there is already the potential for SMG to drive business to its next tier venues by tying the Manchester Arena to those venues. The CMA has no evidence that SMG engages in such activity. As a result, the Merger-specific effect on the ability and incentive to introduce a tying arrangement with respect to SMG's smaller venues is likely to be lower than any effect for the Manchester arena; and

(b) For a tying arrangement to have the potential to foreclose there must be a significant degree of overlap in the events playing at The O2 and the other venue. In this case, the proportion of a venue's revenue accounted for by events which also took place at The O2 was generally [✂] for the Manchester Arena than for SMG's other venues.[63] Any concerns with respect to a tying arrangement are therefore most plausible with respect to the Manchester Arena.

189. The CMA therefore considers that if the Merger did not lead to competition concerns in relation to a tying arrangement between The O2 and Manchester

[63] This is consistent with the more significant differences in the characteristics of the O2 and SMG's venue other than the Manchester Arena, such that one would expect SMG's smaller venues to attract a different variety of acts.

Arena it is unlikely to lead to competition concerns in relation to a tying arrangement between The O2 and SMG's other venues.

190. The CMA's approach to assessing conglomerate theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.[64] These are discussed below.

Ability

191. In assessing whether the Parties would have the ability to introduce a tying arrangement which might foreclose a competing arena in Manchester, the CMA has considered whether:

(a) The AEG venues (in particular The O2) provide the Parties with sufficient market power to support a tying arrangement;

(b) A tying arrangement between The O2 and the Manchester Arena has the potential to significantly reduce demand for any competing arena in Manchester; and

(c) A reduction in expected demand has the potential to deter entry by the potential owner of the New Arena.

Does AEG/The O2 have market power?

192. The Parties submitted that the Merger would not give rise to the ability to foreclose using a tying arrangement because Manchester Arena is already a sufficiently attractive venue to leverage content into less attractive regional venues and SMG has not chosen to adopt such a strategy. The CMA has considered whether The O2 has market power, and whether it may have more market power than the Manchester Arena.

193. If there are good alternatives to AEG's London venues (in particular The O2), then the Parties would not have the ability to implement a tying arrangement as promoters and artists who wanted to use the New Arena could simply decide to use an alternative to AEG's venues in London. However, the CMA considers that there are currently very limited alternatives to AEG's London venues in particular because:

[64] *Merger Assessment Guidelines*, paragraph 5.6.6.

(a) Promoters and artists are unlikely to switch from London venues to venues outside London. Evidence from the Parties[65] and many third-party promoters (see paragraph 67) confirmed that non-London venues are not generally alternatives for AEG's London-based venues. The Parties and several third parties stated that London is a key part of UK tours and is typically the "must play" city for promoters and artists before considering other parts of the UK due to:

    (i) The large and relatively more affluent population in the London metropolitan area, which means that London shows generate more revenue;

    (ii) Artists wanting to play in London because they see it as important for their brand. The Parties submitted that The O2 is particularly attractive to many artists because of its reputation as the best-known venue in the UK and one of the best known in the world.

    (iii) Logistics: a London venue is easier as international artists can fly more readily in and out of London airports.

(b) Within London, AEG controls the two most significant large venues (both with a capacity of over 10,000), with the only alternative large indoor venues being weaker competitors. For example, the *AEG/Wembley* inquiry found that Alexandra Palace was weaker because it is a standing-only venue, has poor transport links and poor acoustics and admits too much sunlight to be suitable for events requiring a dark performance area in the spring and summer months.[66] Several respondents to the CMA's investigation indicated that Wembley Arena is the only possible alternative to The O2, and some considered that there was no alternative at all to The O2 in London; and

(c) Third party evidence (see paragraph 59) indicates that switching to outdoor stadiums is generally not considered to be a viable alternative given weather-related issues, production difficulties and higher costs.

[65] The vast majority of UK tours play at least one show in London. For example, of the 48 tours in the UK by "Top 100" artists in 2017, 39 of these played in London. An even greater proportion of top 100 artists played London in 2015 and 2016 (52 out of 54 and 43 out of 49 respectively).
[66] Para 7.31

194. The O2's pre-eminent position is reflected in its profitability, which is [✂], including the Manchester Arena, even though The O2 and the Manchester Arena have similar capacity levels.[67]

195. The Parties have acknowledged that, between July 2017 and September 2018, AEG operated a policy which required artists playing in Los Angeles to play at least one of their Los Angeles performances at The Staples Center if they also wanted to play at The O2.[68] The evidence from this prior arrangement shows, on the one hand, that The O2 may have sufficient market power to effectively impose a tie for some events (the tie did result in [✂]). On the other hand, it also shows that at least some artists and promoters have [✂] either by switching away from the O2, or through [✂].

196. Therefore, the CMA considers that it is likely the case that The O2 currently has sufficient market power to enable the Parties to implement a tying arrangement, at least with respect to some artists and promoters. The CMA also considers that The O2, given its position in London and the other factors outlined above, may hold a materially different market position to that held by the Manchester Arena. Accordingly, the CMA does not consider that the fact that SMG has not previously implemented a tying strategy involving the Manchester Arena does not exclude that the Parties could implement a tying strategy involving The O2.

197. MSG has announced plans to develop a new large arena, the MSG Sphere, in London. The Parties submitted that concerns related to the tying of The O2 Arena and the Manchester Arena could only arise in a very specific "state of the world" in which a new venue of comparable size to Manchester Arena is built in Manchester, but no new rival venue is built in London. The Parties further submitted that the likely opening of the MSG Sphere in London means that, even if The O2 Arena is considered to have the requisite market power to underpin a tying strategy today, it would not do so by the time any rival Manchester venue was built and any concerns must be down-weighted accordingly.

198. The CMA has considered whether The O2 would be likely to continue to have market power if the MSG Sphere proceeds, and whether the MSG Sphere is likely to proceed.

199. MSG has purchased a site in Stratford for £60m and has spent a further [✂] to date on the potential development of the site. Although no material

[67] The O2 commands getting on for [✂] the rental rate of the Manchester Arena (£[✂]v £[✂]) and a [✂] 'facility fee'.
[68] The Parties submitted that the tying arrangement of The Staples Center and The O2 was in response to a tying arrangement between Madison Square Garden in New York and The Forum in Los Angeles.

construction work has commenced on the site, a detailed planning application was submitted in March 2019. [✂]. MSG has submitted that its objective is to open the venue in 2022.

200. MSG submitted that it expects that the MSG Sphere would compete closely with The O2.[ii] AEG's internal documents also indicate that it expects that the MSG Sphere [✂].

201. The CMA has considered whether The O2 might retain its market power if the MSG Sphere were to open. The CMA notes that there are multiple competing venues in New York, but MSG has (according to the Parties and certain third parties) been able to implement a tying arrangement in the past by leveraging its Madison Square Gardens venue to secure bookings at its Forum venue in Los Angeles. The Parties have submitted that Madison Square Gardens [✂]. The CMA has received no evidence to suggest that The O2 would have greater market power than another similarly sized and similarly situated venue in London. The CMA recognises that there may be differences between competitive dynamics in relation to venues in New York and London, and also notes that the O2 and the MSG Sphere will have very similar locations and transport links.

202. The CMA considers that there is some uncertainty, given the planning process, as to whether the MSG Sphere will enter the London market. The CMA considers, however, that if the MSG Sphere is developed, The O2 would no longer have sufficient market power to support a tying arrangement.

Are there sufficient overlapping events at The O2 and in Manchester to support a tying arrangement?

203. To assess the ability of the Parties to implement a tying arrangement, the CMA has considered the extent to which events overlap between the Manchester Arena and The O2.

204. The Parties submitted that, notwithstanding the complementary nature of The O2 Arena and Manchester Arena and the resulting overlap in artists at the two venues, there remains a significant volume of events in Manchester which could not be subjected to a tie either because they have specific reasons to play Manchester Arena and not The O2 Arena or are one-off events which cannot be tied.

205. Data provided by the Parties shows, however, that [60-70]% of the Manchester Arena's revenue in 2017 was attributable to events which also

took place at The O2 and in 2018 this figure was [60-70]%.[69] The available evidence also indicates that average margins for events at the Manchester Arena are higher when that event also takes place at The O2.[70]

206. Based on the data provided by the Parties, the CMA considers that a material proportion of the events at the Manchester Arena could, at least in theory, be affected by a tying arrangement.

Would a tying arrangement have the potential to significantly reduce demand at the New Manchester Arena?

207. The CMA has considered the likely degree of overlap between the Manchester Arena and the New Arena to assess whether the Parties could implement a tying arrangement that would reduce demand at the New Arena.

208. The CMA understands that SMG's Manchester Arena and the potential New Arena would be in close proximity to one another[71] and would be large indoor entertainment venues with similar capacities.[72] This similarity in characteristics indicates that the two venues are likely to compete closely to attract events.

209. The CMA has also assessed the New Arena's business plan to understand the extent to which it is premised on attracting artists (especially high-profile artists) away from SMG's Manchester Arena as opposed to relying on new demand and an increase in the number of artists coming to Manchester. The plan does not contain details of [✂]. It does, however, provide some evidence to support the potential owner's submission that [✂].

210. Although a new venue in Manchester could generally be expected to increase the number of events in Manchester, the extent to which this will be the case is unclear. Furthermore, SMG's response to the Manchester City Council's Eastland's Regeneration Framework consultation, which opposes the development of the New Arena in Manchester, submits that the two venues would compete very closely. That response argues that:

[69] The CMA identified the following events which were not identified by the Parties' as having played the O2 and Manchester Arena in 2018 but which the margin data for each venue indicated had played both venues in 2018: Disney on Ice, Fast and Furious, Flight of the Concords, League of Gentlemen, Nile Rodgers, Super Vet, WWE and War of the Worlds.
[70] The average margin for a Manchester Arena event in 2018 was [✂] and for an event which also took place at the O2 this margin was [✂].
[71] The Manchester Arena is located in the north of Manchester city centre and it is proposed that the new arena will be situated on the Etihad Campus in the east of the city (a 12 minute drive from the Manchester Arena) SMG internal document (slide 9): Annex 002
[72] Eastlands regeneration framework - 2019 update.

(a) "*The underlying supply analysis of the UK market does not support another venue of this type to a Manchester market, which is already one of the most saturated markets in the UK. There is no market case in terms of venue supply, audience demand or promoter need*"[73]; and

(b) "*More importantly, if built, such a facility would compete directly for entertainment events with the existing Arena*."[74]

211. SMG's Executive Vice-President European Operations has also made several public statements indicating that he expects the New Arena to compete closely with the Manchester Arena.[75]

212. Although the CMA has treated these statements with caution, given the context in they were made, the content of these statements is consistent with the position that any successful tying of The O2 and the Manchester Arena would have the potential to significantly reduce the demand for a competing venue in Manchester. That is because that venue would be unable to rely on "new" events and would need, at least to some extent, to attract events away from the Manchester Arena.

213. Some evidence from AEG's internal documents indicates that [✂].[76]

214. Therefore, it appears likely that the Manchester Arena and the New Arena would have a significant number of common customers, and that these customers would often be likely to be the most valuable customers, such that any tying arrangement by the Parties could have a material detrimental effect on demand at the New Arena.

Could any tying arrangement successfully deter entry?

215. The CMA has considered the stage of development of the New Arena to assess whether the implementation of (or the threat of) a tying arrangement on completion of the Merger is likely to deter entry altogether.

216. Were the new entrant's plans well-advanced (eg if the venue was about to open) then it might be that any tying arrangement would be unable to successfully deter entry. However, the CMA does not believe this to be the case.

[73] Paragraph 1.12 of SMG's ERF response
[74] Paragraph 1.13 of SMG's ERF response
[75] For example, https://www.manchestereveningnews.co.uk/news/greater-manchester-news/one-venues-going-fail-manchester-16414492 and https://twitter.com/sharkjp/status/1138821127323566086 (accessed 2/9/19)
[76] Email from [✂] dated 3 September 2018, Annex 0000072

217. There is evidence that the new entrant's plans to enter are serious. In particular, the entrant has spent £[✂] to-date and the potential owner has [✂]. However, it is still in the very early stages of the [✂] ([✂]) and the bulk of the required expenditure is yet to come ([✂]).

218. The CMA therefore believes that a change in the perceived profitability of the venue could deter the proposed entry.

Conclusion on the Parties' ability to introduce a tying arrangement

219. The CMA's view is that The O2 currently provides the Parties with sufficient market power and ability to introduce a tying arrangement. This is illustrated by the Parties' submissions regarding the position of The O2, third party views and the evidence that The O2 has previously been used as part of The O2-Staples Center tying arrangement. However, the CMA considers that the potential for a new large venue in London may significantly reduce The O2's future market power, removing the Parties' ability to introduce a tying arrangement, although this future entry is currently uncertain. Therefore, since the CMA considers that the Parties currently may have the ability to introduce a tying arrangement, the CMA has assessed the Parties' incentives to introduce a tying arrangement.

Incentive

220. The Parties submitted that they would not have the incentive to adopt such a tying strategy as it would be "value destroying" to force promoters to play venues that were sub-optimal from their perspective and would also damage the Parties' relationship with promoters, which they rely on to fill their venues.

221. The Parties further submitted that tying would be costly to the Parties as promoters could respond to a tie by refusing to play the Parties' venues to evade the tie, restrict the number of events played and demand discounts to compensate them for being forced to play a less preferred venue as a result of the tie. In addition, promoters could implement various mitigating strategies including using different promoters in London and Manchester to evade the tie, sponsoring entry of new venues in London and creating significant reputational risks for the Parties as well as engaging in litigation.

222. In considering the Parties' incentives to introduce a tying arrangement the CMA has considered:

(a) The nature of the direct costs and benefits of a tying arrangement;

(b) The possible direct net impact on the profitability of the Parties; and

(c) Other possible, indirect costs of a tying strategy.

The costs and benefits of a tying arrangement

223. As outlined above, the proposed New Arena in Manchester is expected to create a close competitor to the Manchester Arena. Such competition would likely lead to significantly lower levels of utilisation at the Manchester Arena relative to a scenario with no entry which would, in turn, result in weaker profitability. This is consistent with SMG's submission to the Manchester City Council's Eastland's Regeneration Framework consultation (see paragraph 209).

224. A tying arrangement could therefore deliver benefits to the Parties through the Manchester Arena in the following ways:

(a) If the new entrant is deterred from entering when it otherwise would have done so, the Manchester Arena will not face competition from the new entrant, avoiding a potential reduction in the venue's profitability; and

(b) If the new entrant proceeds with entry, an effective tying arrangement could shield the Manchester Arena from the new competition, helping to maintain both the number of events and margins, thereby limiting any potential reduction in profitability.

225. The CMA notes that the Manchester Arena is currently the only large arena in the city. It is also a significantly larger venue than other venues in the UK (with the exception of The O2).[77] As a result, maintaining this position by deterring entry or harming the initial offering of the New Arena may deliver much larger benefits than could be achieved by adopting a tying arrangement in a city with an established competing arena.

226. The most direct cost to the Parties of implementing a tying arrangement is expected to be in the form of a cost to AEG in lost performances at The O2 (eg because an artist would rather not play at The O2 than be obligated to play at the Manchester Arena).

227. As discussed further below, the CMA has also considered whether there would be other, more indirect, costs associated with a tying arrangement. One example of such a cost is if artists decide not to use the Parties' venues elsewhere in the world in response to a tying arrangement involving The O2 and Manchester Arena.

[77] The Factory is understood to be the next biggest venue in Manchester with a capacity of 6,500.

The possible net impact on the Parties' profitability

228. The CMA notes that The O2 is not being contributed to the JV. As a result, while the JV would receive any potential benefits from a tying arrangement, AEG would bear any costs associated with a tying arrangement.

229. The CMA has considered the relative margins at The O2 and the Manchester Arena, as a starting point for assessing the likely impact on the Parties' profitability of any tying arrangement. Margins at The O2 reflect the direct costs of any tying arrangement while margins at the Manchester Arena reflect the direct benefit. The average margins in 2018 are shown in Table 3. [78,79]

Table 3: Margins for events held at O2 and Manchester Arena (2018)

Venue	Average
O2 Arena	[✂]
Manchester Arena	[✂]
Multiple	[✂]

Source: CMA analysis using Parties' data

230. As Table 3 shows, the profit per event earned at The O2 is [✂] than margins at the Manchester Arena.[80] This comparison indicates that, even leaving aside the different ownership of The O2 Arena and the Manchester Arena, for every event lost at The O2, [✂] events would need to be gained at the Manchester Arena for a tying arrangement to be profitable.

231. AEG, the owner of the O2, has a [✂]% stake in the JV. This structure means that AEG would face 100% of the costs of any tying arrangement but would only receive [✂]% of the benefits. This implies that, from AEG's perspective, for every event lost at The O2, [✂] events would need to be gained at the Manchester Arena for a tying arrangement to be profitable.

232. To assess whether AEG could expect to gain a sufficient number of events at the Manchester Arena to compensate for any [✂] events at The O2, the CMA has considered evidence on the level of switching which resulted from the previous tie between The O2 and the Staples Center.

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78 Events held at both the O2 and Manchester Arena were identified based on the Parties' submissions including margin data. The margins are calculated on an event level (ie without adjusting for the number of performances) in line with the Parties' submissions.
79 The CMA notes that the contribution figures provided by the Parties includes ancillary income but does not appear to include any allocation of sponsorship income.
80 The CMA has focused on margins for events currently held at both venues as these are expected to be the events primarily impacted by a tying arrangement.

233. The Parties submitted that, as a result of this tying arrangement, The O2 lost [✂] events in 2018 and [✂] events in 2019. The CMA notes that it is not clear that all of the events the Parties' submitted were [✂] by The O2 could clearly be attributed to the introduction of The O2-Staples Center tying arrangement.[81] The evidence described above (paragraph 191) also indicates that The O2 currently has a strong position in London, such that only a small number of artists might be expected to switch away from The O2. The CMA nevertheless considers that the available evidence shows that it is likely that at least some artists did [✂] as a result of The O2-Staples Center tying arrangement.

234. In this context the CMA also notes that, based on the Parties' submissions, 53 events[82] were held at The O2 and Manchester Arena in 2018. Based on the multiple of [✂] outlined above, only [✂] of these events would need to be lost at The O2 to make a tying arrangement unprofitable for AEG.[83]

Other indirect costs of a tying strategy

235. The Parties submitted that a comparison of current margins (as described in paragraphs above) would underestimate the incentive to introduce a tying arrangement. The Parties identified a number of possible additional costs, including:

(a) The possibility that promoters, agents and managers would respond to any tying arrangement by avoiding the Parties' venues elsewhere in the world;

(b) Possible reputational costs, for example when competing to win other venue management contracts;

(c) Difficulties in ensuring that any tie was adhered to (eg due to the use of co-promotion); and

(d) The need to be willing to offer discounts on the Manchester Arena's current venue hire price if a tie is to be credible. Such discounts would be

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[81] It is also possible that some events switched to AEG's other venues in London (eg Wembley Arena). AEG provided evidence that very few of these events played at another AEG venue in London and AEG submitted the O2-Staples Center tying arrangements were [✂] even accounting for this (Assessment of potential concerns around tying, footnote 22).
[82] Events held at both the O2 and Manchester Arena were identified using the Parties' response to RFI3, question 1, plus the following events which were not identified in that response but which the margin data indicated had played both venues in 2018: Disney on Ice, Fast and Furious, Flight of the Concords, League of Gentlemen, Nile Rodgers, Super Vet, WWE and War of the Worlds.
[83] This applies even if some events did switch to AEG's other venues in London given the significant difference in margins between events held at the O2 and these other venues.

needed to compensate artists for the inability to play at their preferred Manchester venue.[84]

236. The CMA considers that the available evidence supports the position that there would likely be material additional costs incurred in any attempted tying arrangement. In particular: [✂] certain promoters and artists were deeply unhappy about the Staples tie resulting in complaints or even litigation (as demonstrated by the allegations made by John 'Ozzy' Osbourne against AEG) and third parties indicated that a tying strategy in the UK would materially damage their relationship with the Parties.

237. These costs will tend to further reduce the attractiveness of any attempted tying arrangements. While the CMA has not quantified these additional costs, given the uncertainties associated with both the magnitude of these additional costs and the likelihood with which they would arise, the CMA considers that they would be material. The existence of these additional costs means that the comparison of margins above (which indicates that the loss of only [✂] events at The O2 would be sufficient to make a tying arrangement unprofitable for AEG) is likely to overstate the Parties' incentives to introduce a tying arrangement.

Conclusion on the Parties' incentive to introduce a tying arrangement

238. The CMA believes that the available evidence, as described above, indicates that the costs of a tying arrangement would exceed the potential benefits and therefore that the Parties would not have the incentive to introduce such a strategy post-Merger. Having found that the Parties do not have the incentive to engage in a tying arrangement, the CMA has not needed to assess the possible effect of such a strategy.

Conclusion on conglomerate effects

239. For the reasons set out above, the CMA believes that the Parties may have the ability to use The O2 to introduce a tying arrangement (although the MSG Sphere may reduce this ability). However, the CMA believes that the Parties do not have the incentive to introduce a tying arrangement. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in relation to provision of venue space to promoters in (i) London and (ii) outside of London excluding Northern Ireland.

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[84] The Parties submitted that this would be necessary because the Parties would not be able to commit to a tying arrangement in advance (eg by technically integrating two products).

Decision

240. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.

241. The Merger will therefore **not be referred** under section 33(1) of the Act.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
11 September 2019

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[i] 'In the UK, AEG Facilities owns and manages a large number of arenas, stadiums and convention centres' should read 'AEG Facilities owns and manages a large number of arenas, stadiums and convention centres.'

[ii] MSG also noted that it expects to grow the London live entertainment market.