

REFERENCE RELATING TO THE ANTICIPATED ACQUISITION BY HAMSARD 2786 LIMITED (A COMPANY JOINTLY CONTROLLED BY LIVE NATION (MUSIC) UK LIMITED AND GAIETY INVESTMENT LIMITED) OF A CONTROLLING INTEREST IN ACADEMY MUSIC HOLDINGS LIMITED

Notice of possible remedies under Rule 11 of the Competition Commission Rules of Procedure

Introduction

1. On 21 August 2006 the Office of Fair Trading (OFT) in exercise of its duty under section 33(1) of the Enterprise Act (the Act) referred to the Competition Commission (CC) for investigation and report the anticipated acquisition of a controlling interest in Academy Music Holdings Limited (Academy) by Hamsard 2876 Limited (Hamsard), a company jointly controlled by Live Nation (Music) UK Limited (Live Nation) and Gaiety Investments Limited (Gaiety).
2. In its provisional findings on the reference notified to Hamsard, Academy, Live Nation, and Gaiety (the parties) on 30 November 2006, the CC inquiry group (the Group) concluded provisionally that the acquisition would result in the creation of a relevant merger situation; and that the creation of that situation may be expected to result in a substantial lessening of competition (SLC) as a result of the loss of rivalry between the Hammersmith Apollo, the Carling Academy Brixton, the Shepherd's Bush Empire, the Astoria, and the Forum.
3. This notice sets out the actions which the Group considers might be taken by the CC, including any recommendations it might make for action on the part of others, for the purpose of remedying the SLC and any resulting adverse effects identified in the provisional findings and invites comments on possible remedies (see note (i)).

Possible remedies on which views are sought

Option 1: prohibition of the acquisition

4. The Group considers that prohibiting acquisition would be effective in addressing the SLC identified as expected from the acquisition.

Option 2: partial divestiture

5. The Group is also considering whether a partial divestiture of certain live music venues in London would be an effective remedy to the SLC. In particular the Group invites views on:
 - The scope of the divestiture package. The Group is considering which of the following venues would need to be included in a partial divestiture package to ensure its effectiveness in addressing the SLC:
 - the Forum;
 - the Brixton Academy;
 - the Shepherd's Bush Empire; and

- the Hammersmith Apollo.

In considering which of these venues should be included in the package the Group will take into account:

- the capacity of the venues;
- whether the venues have an independent booking system and management team;
- the attractiveness of the venues to suitable purchasers; and
- the extent to which each of the venues competes with other venues.

The Group is considering whether an arrangement in which control of one or more of these venues was transferred to a third party by means of a long-term lease would be effective in addressing the SLC. However, the Group is concerned that any such arrangement would see the lease-holder retain a degree of influence over the venue, thereby compromising the operator's independence. The Group is also concerned that the complexity associated with any such solution would be likely to undermine the effectiveness of the remedy.

In view of the uncertainty affecting the future of the Astoria after 2008, the Group considers that the lease of the Astoria to a third party would not constitute an effective remedy in the medium to long term. The Group therefore does not consider that the Astoria should be included in any divestiture package.

Since they are not routinely used as live music venues, the Group does not consider that the Apollo Victoria, the Lyceum Theatre or the Dominion Theatre should be included in any divestiture package.

The Group currently considers it likely that any partial divestiture package would need to include one of the Brixton Academy and the Hammersmith Apollo and one of the Shepherd's Bush Empire and the Forum.

- The sale of one or several packages. The Group is considering whether it would be necessary to ensure the sale of all the venues to be divested as a single package to a single purchaser or whether different venues could be sold to different purchasers, and how this would affect the effectiveness of the remedy.
- Possible suitable purchasers. In general, the CC takes the view that a suitable purchaser should:
 - be independent of the parties to the merger or acquisition;
 - have the necessary financial resources, incentives, and access to appropriate expertise and assets in order to enable the divested business to develop as an effective competitor in the market; and
 - be free from competitive concerns.
- The use of an 'upfront buyer' approach. In general, where the CC is in doubt as to the attractiveness to purchasers of a divestiture package or believes there to be a limited pool of suitable purchasers, it may require the merging parties to identify a suitable purchaser that is contractually committed to acquiring the divestiture package before allowing the proposed merger to proceed. In this

case, the Group is considering whether to require that one or more suitable upfront buyers are in place before the acquisition is allowed to proceed.

- Any other conditions necessary to secure an effective divestiture in this case.

Behavioural remedies

6. The Group considers that behavioural remedies are unlikely to be effective in addressing the SLC identified in its provisional findings. The Group notes that, in this case, behavioural remedies would not maintain effective competition and could only address the adverse effects expected to result from the SLC. The Group notes that it has provisionally found that the acquisition would result in adverse effects both on venue rental prices and non-price aspects of competition among venues. It notes that venue rental prices are charged in a number of different ways (including use of flat venue rental charges, costs per person, and percentages of box office revenues with or without minimum charges and options to buy use of the venue for a capped amount) and, venue rental typically involves provision of certain services such as basic security with additional fees to meet specific requirements, creating difficulties for effective control and monitoring. Similarly, the Group has found that venues compete on a range of non-price factors, including provision of facilities and infrastructure dependent upon investment and continuing attention to service quality which it also considers could not be effectively specified, controlled and monitored. For these reasons, the Group proposes not to consider behavioural remedies further.
7. The Group would, of course, be willing to consider any other practicable remedies—structural or behavioural—that the parties or any interested third parties propose in order to address the expected SLC and any resulting adverse effects.

Criteria

8. In choosing appropriate remedial action, the Group will have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects identified as expected to result from the acquisition. When deciding on an appropriate remedy, the Group will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between two remedies that the Group considers equally effective, it will choose that which imposes the least cost or restriction.

Relevant customer benefits

9. The Group will also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 30 of the Act arising from the acquisition. Such benefits might comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services. A benefit is only a relevant customer benefit if the CC believes that: (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.
10. It has been suggested to the Group that this acquisition would result in the following benefits, which might be relevant customer benefits within the meaning of section 30 of the Act:

- The ability to use increased opportunities for sponsorship to improve facilities at the merged group's venues
 - The opening of more new venues in 'underserved' cities giving the public increased opportunity to enjoy live music events; and
 - The extension of 'one stop' booking to a larger range of venues.
11. The Group welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits.

Next steps

12. The parties are requested to provide any views in writing, including any practical alternative remedies they wish the Group to consider, by **14 December 2006** (see note (i)).
13. A copy of this notice will be posted on the CC website. Other interested parties are requested to provide any views in writing, including any other practical remedies they wish the Group to consider, by **14 December 2006**



Diana Guy
Group Chairman
30 November 2006

Note:

- (i) This notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the provisional findings notified to the parties on 30 November 2006. The parties have until 21 December 2006 to respond to the provisional findings published on 30 November 2006. In the light of any responses by the parties, or by other interested or affected third parties, the Group's findings may alter, in which case the Group may consider other possible remedies, if appropriate.