COMPETITION COMMISSION

REFERENCE RELATING TO THE PROPOSED ACQUISITION BY HAMSARD 2786 LIMITED OF A CONTROLLING INTEREST IN ACADEMY MUSIC HOLDINGS LIMITED

Notice of provisional findings made under Rule 10.3 of the Competition Commission Rules of Procedure

1. On 21 August 2006, the Office of Fair Trading, in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act) and its power under section 36(5) of the Act, referred to the Competition Commission (CC) the proposed acquisition of a controlling interest in Academy Music Holdings Limited by Hamsard 2786 Limited, a company under the control of Live Nation (Music) UK Limited and Gaiety Investments Limited.

Provisional findings

2. The CC inquiry group (the Group) appointed to consider this reference has made the following provisional findings on the statutory questions it has to decide pursuant to section 36(1) of the Act:

   (a) arrangements are in progress or in contemplation which, if carried into effect by Hamsard 2786 Limited, will result in the creation of a relevant merger situation; and

   (b) the creation of that situation may be expected to result in a substantial lessening of competition as a result of the loss of rivalry between the five venues the Hammersmith Apollo, the Carling Academy Brixton, the Shepherd's Bush Empire, the Astoria, and the Forum, and in particular between the Apollo and the Academy and between the Shepherd's Bush Empire, the Astoria, and the Forum.

3. The Group's provisional findings on these questions and its reasons are set out in full in the provisional findings report, a summary of which is attached to this notice. A copy of the provisional findings report will be published on the CC web site (see note 1).

The next steps

4. Anyone wishing to comment on the provisional findings is now invited to provide the Group with their reasons in writing as to why these provisional findings should not become final (or, as the case may be, should be varied).

5. These reasons should be received by the Group no later than 21 December 2006.

6. The Group will have regard to any such reasons provided by in making its final decisions on the statutory questions and actions.

7. The Group is also publishing a notice of the actions which it considers might be taken by the CC to remedy the adverse effects provisionally identified and sending it to Hamsard 2786 Limited and Academy Music Holdings Limited.

Diana Guy
Group Chairman
30 November 2006

Notes:

1. A copy of this notice and the executive summary of the provisional findings report will be placed on the CC website on 30 November 2006. The CC proposes to publish the provisional findings report on its website by 5 December 2006. The published version of the provisional findings report will not contain any information which the Group considers should be excluded from the report, having regard to the three considerations set out in section 244 of the Act.

2. Comments should be made in writing to:

Tom Muir
Inquiry Secretary (Hamsard/Academy)
Victoria House
Southampton Row
London WC1B 4AD

or by email to: tom.muir@cc.gsi.gov.uk.

Summary of provisional findings

The reference

1. On 21 August 2006, the Office of Fair Trading (OFT) referred the proposed acquisition of a controlling interest in Academy Music Holdings Limited (Academy) by Hamsard 2786 Limited (Hamsard) a company jointly controlled by Live Nation Music (UK) Limited (Live Nation) and Gaiety Investments Limited (Gaiety) to the Competition Commission (CC) for investigation and report. The reference was made under section 33(1) of the Enterprise Act 2002 (the Act). We are required to publish our final report by 2 February 2007.

The parties and the transaction

2. Live Nation is a wholly-owned subsidiary of the US company Live Nation Inc. Live Nation owns a 50.1 per cent share in Hamsard and has interests in live music venues through ownership and/or management of 27 venues throughout the UK (including four in London); live music promotion, in its own and third party venues, and promotion of music festivals; provision of agency services; promotion of theatrical and arts performances. Its London venues are the Hammersmith Apollo, the Apollo Victoria, the Lyceum, and the Dominion Theatre.

3. Gaiety is an Irish company jointly owned by Dennis Desmond, which has a 12 per cent shareholding in Academy and a 49.9 per cent holding in Hamsard. It promotes live music indoor events and festivals in Scotland and festivals in England.

4. Hamsard acquired all of the Mean Fiddler Music Group in 2005. Hamsard has interests in concerts, festivals, touring, and venue management. Hamsard manages the Wembley Arena under contract. Mean Fiddler owns and manages seven venues in London (Forum, Astoria, Mean Fiddler, Jazz Café, Garage, Borderline, and Upstairs Garage).

5. Academy owns and manages 11 live music and club venues in the UK (including four in London) and has a small in-house promotions business, Academy Events. Academy's London venues are Carling Academy Brixton, Shepherd's Bush Empire, Carling Academy Islington, and Bar Academy Islington. Academy is 51 per cent owned by three private equity funds under the umbrella of RJD Partners; 12 per cent each by Dennis Desmond, Robert Angus, and Simon Moran, the latter two owners of promotions businesses (Metropolis Music and SJM Concerts, respectively) which are major users of Academy and Live Nation venues; and 13 per cent by Academy management.

6. In June 2006 RJD reached agreement to sell the private equity funds shares in Academy to Hamsard. We found that this arrangement, if carried into effect, would result in the creation of a merger situation qualifying for investigation on the basis that the acquisition of Academy by Hamsard would lead to the share of supply of venues in London of over 1000 capacity under the control of Live Nation increasing, and amounting to more than one-quarter in total. The parties did not contest this.

The relevant markets

7. In this inquiry we focused on two separate services being supplied by the merging parties:

   (a) live music venue management, provided by Live Nation, Gaiety (through Bar None Management Limited), Hamsard, and Academy at venues owned or operated by each company across Great Britain; and

   (b) live music promotion services, provided by Live Nation, Gaiety (through DF Concerts), and Academy Events.

Venues

8. The parties and third parties told us that choice of a venue depended on location, availability, capacity, ambience and music genre, configuration between standing and seated, facilities, cost, service quality, and artist preference. The parties stated that there was no clear line defining the product market; and that it included those venues perceived by artists, agents, and promoters as offering comparable facilities and thus substitutable for the venues owned by the parties. The parties and third parties told us that London constituted a distinct geographic market for popular live music events.

9. We found that since the extent of substitutability of one venue for another depends upon a range of factors, the relative importance of which depends upon the event being staged, the extent of the competitive constraint of one venue on another will vary. In general there is limited substitution of outdoor venues for indoor venues, of venues used predominantly for other purposes for venues regularly used for popular live music, or between venues of significantly different capacities, although each of these may occur in particular circumstances. Similarly, there is limited substitution of venues outside of London for those within London. However, these are generalizations and rather than define the market in terms of them we considered each of the venues operated by the merging parties individually and examined the competitive constraints on that venue.

Promotion services

10. The parties suggested that the key factor in choosing a promoter is the share of profits or guaranteed fee that the promoter is offering to the artist, and that promotion services can be carried out by any adequately financed promoter or even by an agent. They accordingly suggested that the product market covers the promotion of all live entertainment, and that the geographic market should be the UK. However, we were told by third parties that artists and agents have a preference to work with

certain promoters and we saw very few examples of agents providing promotion services, possibly because promoters have to bear most of the risk of organising a tour and so it is not an attractive option when the agent is already guaranteed a proportion of the artist's share of profits.

11. We concluded that the relevant market is no wider than live music promotion services in the UK and that it was unnecessary for the purposes of our inquiry for us to decide whether there are narrower product or geographic markets.

Venue by venue competition

Outside London

12. We examined four pieces of evidence—competing venues as ranked by the parties; 'lost show' reports identifying shows at other venues which Academy thought its venues could have staged; types of show at each venue; third party views on alternative venues. Our analysis shows that none of the merging parties' venues outside London is in close competition with any other.

Inside London

13. A similar analysis of competition between venues in London indicated that the parties' venues appeared to be competing. We therefore undertook a further analysis of the competitive interaction between these venues and third party venues, drawing in more detail on evidence on:

    (a) factors on which venues compete;

    (b) number of live music events;

    (c) responses to our questionnaire to promoters and agents;

    (d) overlap of artists between venues;

    (e) usage of venues by promoter;

    (f) academy 'lost show' reports;

(g) the parties' analysis of alternative venues for events held at the Hammersmith Apollo, the Brixton Academy and the Shepherd's Bush Empire (SBE); and

(h) an assessment by the parties of the impact on the Brixton Academy of the re-opening of Hammersmith Apollo following its refurbishment and the installation of removable seating in 2003.

14. Our analysis shows that although the parties' venues of up to 1,000 maximum capacity compete with one another in some cases (for example, Islington Academy with Mean Fiddler) there are a significant number of alternative third party venues with which the main party venues compete (including the Scala, ULU, Underworld, 100 Club, Bush Hall, Electric Ballroom, Metro, Cargo, and Kings College). We concluded that any impact of the merger on competition is therefore likely to be primarily in relation to the parties' larger venues.

15. The parties own or operate six venues in London with a maximum capacity over 1,000—Wembley Arena, Brixton Academy, Hammersmith Apollo, SBE, Astoria, and the Forum. We considered 11 third party venues as possible alternatives—the O2 Dome, Earl's Court, the Royal Albert Hall, Alexandra Palace, the Roundhouse, Hammersmith Palais, the Royal Festival Hall, Coronet, KoKo, Barbican and the London Palladium. Taking all the evidence together, on the basis of our analysis we concluded that substitutability is greater between Brixton Academy and Hammersmith Apollo than from either of those to any third party venue. Similarly, substitutability between SBE and the Astoria is greater than to any third party venue. The Forum is also a significant substitute for the SBE. In each case, there appears to be limited realistic scope for substitution of third party venues given their characteristics and availability.

16. The parties told us that, as a result of entry, venue choices are sufficiently different from those that existed in 2005 to render historic data of limited relevance. We consider that there is some prospect of increasing competition from the Roundhouse, Royal Festival Hall, and O2 Music Club to the parties' venues, but concluded that we cannot rely on future competition from these venues to provide a sufficient constraint to offset the impact of loss of rivalry between the parties' venues.

Competitive constraints on venues

Negotiating strength of agents and promoters

17. We considered carefully the negotiating strength of agents in relation to both promoters and venue operators. We consider it likely that agents representing extensive rosters of popular acts are in a strong position in relation to promoters. However, the ability of agents to constrain venue operators depends ultimately upon their ability to switch acts from one venue to another. Although it appears to us likely that leading agents representing extensive rosters of popular acts are currently in a position to constrain the ability of venue operators to increase venue prices, or reduce quality, the effect of the merger is to reduce the range of alternative venues not controlled by the parties. We concluded that, given the reduction in the range of alternative venues not under common control post merger, we cannot be confident that the buyer power of agents would be sufficient to ensure that the merger would not lead to adverse effects.

Entry and expansion

18. We also considered the extent of constraints arising from new entry and expansion. In the light of our earlier analysis, we focused on the prospects for entry or expansion of venues that might provide a competitive constraint to one or more of the Hammersmith Apollo, Brixton Academy, SBE, Astoria, and the Forum. We took the view that for this purpose we should give limited weight to entry or expansion

expected beyond two years. Whilst our examination of recent entry suggested that under particularly favourable circumstances entry from a previously unidentified source within two years in response to a rise in venue hire prices (or a reduction in non-price competition) at one of the venues listed above could not be ruled out, we heard no evidence to lead us to believe that this was likely.

19. We concluded that the threat of entry or expansion (or actual entry or expansion) within a timescale relevant to our inquiry from venues not already under development (ie new entry in response to any increase in venue prices or worsening in non-price competition) is unlikely to provide a competitive constraint upon which we can rely.

Competition in provision of live music promotion services

20. We examined popular live music events promoted by the merging parties. This showed that Academy Events, which promotes events only at Academy's own venues and focuses on small acts, does not compete closely, if at all, with Live Nation.

Counterfactual

21. In deciding whether the proposed merger would be likely to give rise to a substantial lessening of competition (SLC), we needed to compare the competitive situation that we expect following it with that expected to prevail without the proposed merger. We consider that in the absence of the merger, the most likely outcome would have been that RJD would have kept its investment until 2007 or 2008 and then sought an exit for its investment. We concluded that in the absence of the merger, Academy would remain independent.

Effects of the proposed merger

Horizontal effects in relation to venues

22. On the basis of our findings set out above, we explored in more detail the adverse effects we expect if the proposed merger were allowed to proceed.

23. The parties told us that it would be neither practicable nor economically rational for the merged group to lose agent/promoter goodwill by seeking to raise rents at their venues since any marginal advantage would be insignificant as compared with the inevitable future lost business, given that only a small number of acts would need to switch away to alternative venues to leave the merged group's venues in a less profitable position.

24. Having examined the constraints, we concluded that none were sufficient to ensure that the merged group would not be able to benefit from the loss of competition between the Hammersmith Apollo, the Brixton Academy, the SBE the Astoria, and the Forum. We therefore concluded that the merger would lead to a worsening in the price and non-price factors on which the parties compete. Our expectation was that this would result in venue prices being higher than would otherwise be the case and to some loss of service quality at the five venues. We also identified potential issues over ticketing commission and merchandising commission, but did not consider that we had sufficiently clear evidence to form an expectation that these would be adversely affected by the merger.

Portfolio effects

25. We considered third party concerns that the merged group may have the ability and incentive to tie the rental of one venue to another (portfolio effects). We concluded that any portfolio effect is dependent upon the horizontal effect in relation to venues considered above. Accordingly, we concluded that we did not need to reach a

separate judgment on whether the merger would lead to a SLC on the basis of portfolio effects.

Horizontal effects in relation to promotion services, coordinated effects in relation to promotion services and vertical effects

26. We also considered the possibility of horizontal effects in relation to promotion services, coordinated effects in relation to promotion services and vertical effects.

27. On the basis that Academy Events does not compete closely, if at all, with Live Nation and we do not expect them to do so in future, we concluded that we did not expect the merger to lead to an SLC as a result of horizontal effects in relation to promotion services.

28. In view of the limited impact of the merger on most of the factors against which coordinated effects are normally judged, and the competitive constraint that may arise from the strong position of agents in relation to promoters, we could not reach an expectation that the merger would have a significant impact on the ability of Live Nation, SJM and Metropolis to engage in coordinated behaviours

29. We examined the incentives and constraints on the merged group restricting third party promoters from accessing its venues or providing access to its own promoters on favourable terms, using its promotions business to favour its own venues or tying appearances of acts at festivals linked to the merged group to appearances at its indoor venues. We concluded that, whilst the merger has the potential for vertical effects, any impact is likely to be too limited for us to find an SLC on the basis of vertical effects.

Efficiency gains

30. The parties suggested several efficiency gains that they believed would result from the merger and enhance competition in the provision of venues, including greater opportunities for sponsorship; opening of more new venues in 'underserved' cities; and extension of 'one stop' booking for more venues, to the benefit of promoters. We were not convinced that these were dependent on the merger or would provide a sufficient benefit to competition to outweigh or substantially offset the adverse effects we identified.

Provisional findings

31. We provisionally conclude that the proposed acquisition of a controlling interest in Academy by Hamsard may be expected to lead to an SLC as a result of the loss of rivalry between the Hammersmith Apollo, Brixton Academy, SBE, the Astoria, and the Forum venues, and in particular between the Hammersmith Apollo and the Brixton Academy, between the SBE and the Astoria, and between the SBE and the Forum, leading to a worsening in the price and non-price factors on which the parties compete and, in particular, to rentals at those venues being higher than would otherwise have been the case.