

Commercially Confidential
Date: 3.2.14 (final)

Dear Sir/Madam

Subject: Response to European Commission (EC) letter of 7 January 2014 – SA.36401 (2013/CP)

1. Introduction

- 1.1. Thank you for your letter of 7.1.14. The UK Authorities welcome the opportunity to respond to your questions and provide further information and justifications for the decision the Stadium stakeholders have taken. We are grateful and in agreement with your (preliminary) conclusions set out in your letter response of 20.11.13 to the Complainant, who continues to put forward arguments and scenarios but no sound evidence or research results to support his case.
- 1.2. We trust the EC appreciates that the London Legacy Development Corporation (LLDC), the owner of the Stadium and wider Queen Elizabeth Olympic Park areas, has already submitted a significant amount of information to the EC to describe and justify the decision to develop the Stadium as a multi-function/multi-use facility using public funds, and appoint West Ham United FC (WHUFC) as the main tenant/concessionaire after a fair and open competitive process advertised in the Financial Times (international edition) and The Economist.
- 1.3. Our response is structured as follows:
 - Executive Summary
 - General remarks
 - Comments on the annexes to EC's letter (question 1);
 - Responses to questions 2, 3 and 4
 - Conclusions

2. Executive Summary

- 2.1. The UK Authorities continue to take the view that (i) the business cases on the basis of which the public investment for the transformation of the Stadium was provided, justify both the investment and the choice of delivering the Stadium as a multi-functional/multi-use venue to be operated under market economy principles; and (ii) the competitive process that was followed for the main tenant/concessionaire, confirm that LLDC¹ has been acting as a private market economy operator would have acted under the same or similar circumstances.
- 2.2. The Complainant's submissions to the EC are based on certain false assumptions as WHUFC (i) is not the sole or exclusive user of the transformed Stadium; (ii) makes a significant contribution to its costs, which (a) support and justify its transformation as a multi-functional/multi-use venue and (b) meets the costs of WHUFC's use of it.
- 2.3. LLDC has agreed a fully commercial deal with WHUFC which provided the best value available in the market. Any allegations made by the Complainant around "market price" are based on incorrect assumptions and interpretations, as he is not aware of the details of the Concession Agreement with WHUFC. We attach a more precise list of the benefits LLDC has extracted from WHUFC (Annex 1). To summarise:
- WHUFC makes a contribution of £15m² to the capital costs of the Stadium transformation;
 - WHUFC pays a Usage Fee³ of £2.5m per annum⁴, which covers the annual event costs associated with their use and it is subject to RPI;
 - E20 LLP has a share in WHUFC event/match-day catering revenue as follows: the first £0.5m⁵ of catering revenue goes to E20 LLP; any amount above that level is split 70:30 in E20 LLP's favour and it is subject to RPI;
 - E20 LLP gains a significant uplift in the value of the Stadium's naming rights⁶ from the presence of WHUFC (elite football). LLDC has analysed and benchmarked the revenue from the sale of naming rights to the Stadium in collaboration with Price Waterhouse Coopers (PwC) and Sport+Markt (a

¹ LLDC has been acting for E20 Stadium LLP (E20 LLP), the public owners of the Stadium. E20 LLP is a public partnership between LLDC and the London Borough of Newham (LBN). LLDC has been granted E20 LLP a long-lease over the Stadium island site on the Queen Elizabeth Olympic Park.

² In 2015 prices – the majority of the transformation works will be completed in 2015.

³ Please note that additional (Performance related) payments have also been agreed, should WHUFC finish in any position above 10th in the Premier League, wins the FA or League Cup, qualifies for the Europa or Champions League or wins either competition.

⁴ This is in 2016 prices – WHUFC tenancy starts in the summer of 2016.

⁵ The average spend per spectator assumptions reflect sector benchmarks.

⁶ Under the agreement with WHUFC, E20 LLP will receive the income for the sale of the Stadium naming rights up to £4m; if the income exceeds £4m, the incremental amount will be shared on 50:50 basis with WHUFC.

dedicated sponsorship and naming rights agency) who both value the uplift associated with WHUFC being a user of the Stadium at around [REDACTED] per annum;

- The net contribution from WHUFC's use of the Stadium (in 2012 prices) is £4.4m per annum, which in turn is a Net Present Value contribution over the 99 year term of the WHUFC agreement of £123.5m. The NPV calculation is based on HM Treasury guidance and is fully compliant with their methodology;
- These payments relate to WHUFC's use of the Stadium which totals 75 days per year (25 event days and one day either side for preparation and removal of any event overlay);
- LLDC negotiated (on the advice of Rothschild) a Threshold Amount payment. This means that, should the current owners and majority shareholders of WHUFC sell the club within 10 years of their relocation to the Stadium for an amount above its current valuation, E20 LLP will receive a share of that increase in value over a certain threshold; and
- There are significant community benefits arising from WHUFC's use of the Stadium including up to 100,000 tickets per annum, which are offered for free.

2.4. These financial terms, when taken together over the 99-year term of the WHUFC Concession Agreement, ensure that the deal in the round is value for money; covers all event day costs associated with WHUFC's use; contributes towards the operational and maintenance costs of the Stadium; supports the operation of the Stadium as a multi-use/multifunctional venue; aims to provide a return to E20 LLP; and meets the relevant State aid guidelines.

2.5. WHUFC contributes proportionately more of the total revenue to the E20 LLP than the number of days it uses the Stadium:

- WHUFC contributes 58% of total estimated income to E20 LLP;
- WHUFC's usage accounts for 21% of the total availability (25 event days, plus 2 days set up and set down i.e. 75 in total);
- WHUFC's net contribution (i.e. total estimated income less event day costs) contributes 72% towards the Stadium overhead costs.

2.6. The UK Authorities therefore believe that (a) LLDC has acted as a private market economy investor would have acted, if they were the owners of the Stadium in 2011/2012, and (b) WHUFC pay a fair price/market rate for their use of the Stadium and make an overall contribution to its operating and transformation costs, which is overall proportional to their use.

3. General remarks

Background to the UK Authorities decision to fund the Stadium's transformation

- 3.1. Securing a viable, sustainable solution for the legacy use of the Stadium has been a priority project for LLDC since its inception as the Olympic Park Legacy Company (OPLC) in May 2009. In October 2011 the UK Government and the Mayor of London made a public commitment to retain the athletics track in the Stadium and deliver a public sector-led solution to the future of the Stadium.
- 3.2. In December 2011, OPLC submitted an Outline Business Case (OBC) to central government requesting approval of the 'enhanced multi-use Stadium' (one of five options but the most economic) as the preferred legacy option as offering the best business case and value for money future for the Stadium. This would provide a permanent capacity of up to 60,000 seats, enhanced hospitality provision, retention of the athletics track, a full roof covering all seats and a community athletics facility including 400m track to the south of the Stadium. Despite the higher investment required, it had the lowest Net Present Cost (NPC), at £42m over 25 years, of the options which retain a viable, long-term Stadium. It was the only option under which the Stadium operates at a revenue surplus – some £3m a year on the basis of the then assumed transformation cost. Under the "Do Nothing" option, the UK taxpayer would have to incur around £2 million per year to keep the Stadium open.
- 3.3. HM Treasury approved the OBC and subsequently OPLC launched a competition in December 2011 to identify an anchor concessionaire(s) for the Stadium; that competition was, as noted elsewhere in this paper, launched through an advertisement in the Financial Times (International Edition) and The Economist. A Full Business Case (FBC) was approved in March 2013, after the review of the results of the competitive process, which formed the basis of LLDC signing the Concession Agreement with WHUFC.
- 3.4. The UK Authorities continue to be of the view that the arrangements for the transformation and future use of the Stadium are based on robust business cases which have been reviewed and approved by the public funders of the project. Both the OBC and FBC were compliant with the 'Green Book Appraisal' methodology set by HM Treasury for public financing of projects.
- 3.5. It is within the privilege of the Member State to decide the infrastructure they want/need to provide within their territory, as long as the delivery of the infrastructure complies with the relevant domestic and EU legislation including on public procurement and State aid.

Proper and widely advertised competitive processes

- 3.6. As stated above OPLC launched a competition seeking users of the Stadium on 20 December 2011, through international advertisements as stated above. At all times

the Contracting Authority aimed to ensure the greatest possible market interest in the opportunity and future use of the Stadium, and to meet the relevant EU law principles on fairness, transparency and non-discrimination.

- 3.7. Winning the bid for the Stadium to host the IAAF World Athletics Championships and IPC World Athletics Championships in 2017 (the 'WAC' and 'IPC' respectively) provided a significant boost to the future of the Stadium and clarity on the capacity and scope to which it must be transformed post-Games.
- 3.8. A key condition in the procurement process (reflecting the OBC) was that the rental payment by a party granted a concession should, as a minimum, cover the event day(s) costs associated with their use without further public financial support and contribute towards the ongoing operating costs of the Stadium. That was a hard but necessary test to avoid the Stadium requiring operating aid to remain open for use. In order to achieve that, the Stadium ought to be run commercially in accordance with private market principles and standards.
- 3.9. The competition was structured in order to maximise the possibility of having a number of concession holders by having a ranking system whereby as long as a suitable commercial business case for use could be made, and event calendars matched, any number of bidders could be granted a concession for use of the Stadium. This was designed to ensure the Stadium met the overarching objective of hosting a wide range of sporting, cultural and community activities to contribute to the regeneration of the East London area. These facts therefore confirm that the public funding was aiming to deliver a multi-functional/multi-use venue not for the sole benefit of one party.
- 3.10. The moment a Contracting Authority advertises so widely for a particular opportunity they have no means to know or forecast who will express an interest in it; the aim is to ensure both wide-ranging interest and also compliant, financially viable bids from the market. Indeed there was hope expressed in the OBC that football clubs would participate in the process and bid for a concession, but still there was no certainty.
- 3.11. Ultimately LLDC received four (4) compliant tenders (two (2) of which were from football clubs (WHUFC and Leyton Orient FC (LOFC)). The Supplementary Paper that the UK Authorities submitted to the Commission on 9 April 2013 provides detailed information on the bidders and the evaluation of the tenders and the outcomes of the evaluation.
- 3.12. When LOFC decided to challenge LLDC in the High Court in September 2013 on the process by means of a judicial review (not a review on merits but on process) the High Court dismissed their application because the Court was satisfied that LLDC ran a fair, open and transparent competition and rejected all LOFC's arguments (see judgement attached as **Annex 2**). That can only be an unequivocal confirmation of

the robustness of the process that was followed. Any suggestion therefore by the Complainant that WHUFC was “realistically the only possible ‘winner’” due to its proximity to the Stadium is an unfounded and speculative statement.

- 3.13. LLDC has further undertaken a significant amount of analysis on the business planning implications flowing from the competition, any capital cost requirements of bidders and the wider economic benefits of the preferred solution. One naturally flows from the other; the best revenue position is reached by having a professional sports club, in particular a football club, use the Stadium, but this requires significant capital investment by the public sector.
- 3.14. A lower capital cost would not have met the requirements of elite level football and international sports, the requirements of the terms of the 2017 WAC and IPC agreements, nor would it maximise the type and number of other potential uses such as concerts and conferencing and banqueting, and would have led to an ongoing public subsidy on an annual basis. The strategic case for the preferred option in the OBC and FBC was underpinned by the fact that having run two separate competitions (as the EC knows already) to determine the future for the Stadium, there has been no financially viable bid from any party not requiring significant capital works to the Stadium with ongoing use of the field of play, a capacity of c. 60,000 and significant hospitality arrangements.
- 3.15. The selection of a football club as an anchor tenant/concessionaire for the Stadium has some consequences on top of the LLDC agreement with IAAF for the 2017 WAC and IPC. For football to be played in the Stadium during the winter months certain licensing requirements need to be met, including relevant local authority safety regulations (for example all seats within the Stadium must be covered by a roof – this has particular relevance as a condition of both the WHUFC and LOFC bids was proximity of the front row of the lower bowl seating to the field of play) and relevant Premier League and Football Association guidelines. By providing retractable seating and full roof coverage of the seats, the Stadium now has significant capability for hosting a number of winter and summer sports and events, as evidenced by the fact it is hosting elite level athletics, matches during the 2015 Rugby World Cup and has additional events in the pipeline and subject to confirmation. The above considerations were addressed at length by the FBC.
- 3.16. We explained in our response to the EC of 2 May 2013 and paragraph 15 and 16 of the Supplementary Paper of 9 April 2013, the rationale behind the seating and the roofing decisions. It is important also to note that the seating and roofing solution that has flowed from the competitive process (and considered in the OBC Enhanced Option) enables the Stadium to host winter sports; on that basis LLDC has successfully secured five (5) games of the Rugby World Cup in September/October 2015; the public owners of the Stadium are hopeful that because of this specification the Stadium will attract more winter sports, which will consequently

provide more revenue to amortise the public investment under the Enhanced Option.

Update on the procurement of the Stadium transformation works and Operator

3.17. LLDC has now awarded all relevant contracts necessary for the transformation of the Stadium (except the design and fit-out of the Stadium hospitality areas) following a number of robust procurement processes all of which were advertised in the OJEU.

3.18. As significant, LLDC has also launched the public procurement process for an operator of the Stadium as a service concession, with the publication of a Contract Notice in the OJEU and a subsequent direct email notice to a number of potential candidates based in the US and elsewhere. The launch of the formal procurement process was preceded by a soft market testing exercise which was advertised in the OJEU through a PIN and with advertisements in the Financial Times.

3.19. The Stadium operator will be under clear general instructions by the Stadium's public owners to maximise the utilisation of the Stadium, charge market rates for its use by professional users (but not necessarily for community and other non-professional users) and generate a significant commercial return.

3.20. Furthermore, it will be in their own interest, as a service concessionaire operating at risk, not to undersell the use of the Stadium to professional users. The terms of the competition, and clear conclusions from the soft market testing, is that LLDC will expect to share in the profits generated by the operator's activity at the Stadium to be used to repay the capital costs of its transformation.

3.21. LLDC continues therefore to meet the EC guidelines on Stadia in respect of the selection of the main (long term) users, the Stadium transformation contracts, the Stadium operator contract and charging professional users a market rate for their use of the Stadium. The public owners of the Stadium continue to be committed to provide the Stadium as a multi-functional/multi-use venue in accordance with the EC guidelines.

No selective advantage through the competitive process

3.22. In light of the above, the UK authorities do not dispute the involvement of public funding in the transformation of the Stadium. However, they disagree that the funding provides a selective advantage to WHUFC, which, albeit the anchor tenant/concessionaire of the Stadium (for all home games during the football season (early August – early May)), is only one of the existing and future users of the Stadium. In simple terms: **the Stadium is being transformed with WHUFC (and other winter sports, including their relevant licencing and governing body requirements) in mind but not for WHUFC alone.**

- 3.23. In fact, the final transformation design of the Stadium, while in part resulting from the requirements of the football club bidders in the competition, has actually enhanced the attractiveness of the venue to other users, as evidenced by the acquisition of the five games during the 2015 Rugby World Cup (RWC 2015).
- 3.24. It is important for the EC to appreciate that WHUFC is not the exclusive user of the Stadium. UKA, the RWC 2015 and the other current users (as per Annex 2 of the Supplementary Paper) leave no doubt about this.
- 3.25. At this juncture it is also worth noting that LLDC has received a number of high-profile requests for the use of the Stadium in its transformed state. These include professional sports franchises from the USA, concert promoters and other parties wishing to take advantage of the flexible multi-use nature of the venue. In addition, LLDC responded positively to a fresh approach by LOFC (please see **Annex 3** for relevant press clippings) seeking access to the Stadium; LLDC has suggested to LOFC that they can approach the Stadium operator when it is in place and submit their proposals to them, subject to any public process that the operator needs to conduct to assess and agree terms of use for any long term users on the basis of market rates prevailing at the time.
- 3.26. It is also worth noting that, unlike many of the recent football stadia cases the EC has dealt with, WHUFC has not previously been the user or operator of the publicly financed and transformed Stadium, and they have not participated in the Stadium operator competitive process so far. The previous occupancy and/or operation of the stadia engaged in the abovementioned EC cases naturally raises the risk that the public financing of these stadia would benefit the resident football clubs – a distinction therefore needs to be drawn between this case and the other EC cases.
- 3.27. The Stadium was not a football stadium before its transformation and it is publicly financed specifically to become a multi-function/multi-use venue with a football club as an anchor tenant/concessionaire on the basis that the Stadium costs will be repaid by its users.
- 3.28. None of the above suggests to the UK Authorities that the publicly funded transformation of the Stadium provides a selective advantage to an undertaking for the purposes of Article 107(1) TFEU or falls short of the guidelines of the EC in this area, as reflected in its relevant case law.
- 3.29. In our view the EC will need to consider drawing a distinction between this case and a number of their cases which involved football stadia public financing where those stadia had a football club as the main user with no significant other users (the football stadia in Germany for the 2006 FIFA World Cup, the Dutch municipalities, the recent German stadia of Jena, Erfurt, Chemnitz and the French Stadia for EURO 2016 cases, etc.).

3.30. Finally, the selection of the anchor tenant/concessionaire through the public process described above must cast serious doubts on the applicability of the selectivity criterion in this instance. We note in this regard that the Complainant fails to explain why the football clubs he mentions in his letters to the EC did not participate in the competition; there was no barrier to entry based on location or type of organisation; if other clubs seeking a larger stadium chose not to enter the competition because of concerns over geographical location then that is a decision for them and a feature of the London football clubs market, not evidence of selective economic advantage. The location of the Stadium is fixed and all parties were aware of this prior to placing bids.

Effect on competition

3.31. Similarly, the UK Authorities maintain serious doubts as to the harm on competition in this instance given the competitive procurement process which has been followed for the appointment of the anchor tenant/concessionaire. Our doubts are further reinforced by the absence of any State aid complaints about distortion of competition by any UK or European football clubs (see also paragraphs 4.28 – 4.39 below).

3.32. Every football club in the wider London area which had ambitions to move to a bigger ground could have used the opportunity provided by the LLDC competition to review the relevant conditions and award criteria and express an interest, or team with another football club and submit a joint tender, if they could not meet the requirements of the process as a single party. By submitting a bid to the competition, WHUFC evidently saw the opportunity to increase their attendance and revenues; if no club other than LOFC came to a similar conclusion, then that is a matter for the London football club market, not evidence of any harm to competition.

3.33. In any event before considering any effect on competition the EC would need to consider the relevant economic market. A recent UK Competition Commission investigation into Arenas (closed venues) in London was not able to establish a narrow market and left the point open suggesting that the competition between venues could be wider both in service and geographic terms (see link: <http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/aeg-wembley-arena>).

3.34. That being said, the UK Authorities do not believe that the conditions of Article 107(1) TFEU are met in this instance.

4. Comments on the information submitted by the Complainant

Annex 1

First summary point: Cost of the Stadium and Market Rent

- 4.1. In respect of *annex 1* and the Complainant's summary of key points it is LLDC's clear view that converting an existing Stadium into a multi-functional/multi-use venue, which in turn makes it suitable for football, must be different from building a football stadium from scratch and solely for the exclusive use of that football club.
- 4.2. It appears to us that the Complainant's method of valuation of the Stadium (£400 million) is based on the total cost of £390m for the Emirates Stadium (the home of Arsenal FC), the cost of which also included relocation of businesses, a new waste and recycling centre and statutory obligations such as planning obligations and conditions). This comparison is flawed as it does not (a) reflect the OBC, which was approved prior to the competitive process, or (b) take into account the fact that WHUFC have not proposed building a new football stadium. The competitive process was based on the transformation of the Stadium as a multi-functional /multi-use, 60,000 seat venue before any bids were submitted. The Complainant has used the wrong counterfactual in this instance and the proposed comparison therefore needs to be rejected.
- 4.3. It is a misinterpretation of market price to implicitly link it to the capital cost of building, whether new build or transformation to an existing facility. The market price is based on the price at which a good or service can be bought or sold at a particular time, and takes into consideration the forces of supply and demand to ascertain the price the market is prepared to pay for that good or service. In this instance, the goods in question were the Stadium after it had been transformed into a multi-functional/multi-use venue as described elsewhere in this paper, not a new build dedicated football stadium.
- 4.4. The Stadium was offered to the market (e.g. sports clubs, entertainment groups, educational institutions or any other party who considered it suitable for their use), and the demand from that market was of a certain level. The market price was therefore the level that a particular bidder was prepared to pay and LLDC's consideration of whether that, along with other elements of the bidders business plan (balance sheet items, etc.) met the requirements of the ITT and the Stadium's wider business case. It is therefore misleading to suggest the true value of the stadium WHUFC will be using should be compared to that of a new build venue like the Emirates Stadium, and to then tie the cost of the transformation works to the market price.

The second Summary point – RPI uplift

- 4.5. As regards the second summary point, all WHUFC payments under the concession agreement are index-linked to UK RPI, with the exception of (a) the One-Off Usage Fee (i.e. the £15 million contribution to the capital works) and (b) Threshold Amount payment (i.e. the valuation of WHUFC, above which E20 LLP will receive a share of profits, should WHUFC be sold within 10 years from its relocation to the Stadium (“claw value back” clause))
- 4.6. That point therefore ought to be rejected; the EC should take this information into account when considering the argument that LLDC has concluded a fully commercial deal with WHUFC (PMEIP application) and that WHUFC pays a commercial rate for their use of the Stadium.

Third summary Point: WHUFC price for use of the Stadium

- 4.7. In his third summary point the Complainant claims that “WHUFC will have greatly increased capacity virtually *for free* [LLDC emphasis] in the context of their revenue”: this suggests the Complainant’s lack of information on the details of the commercial deal. WHUFC is paying for the use of the Stadium as we have explained in the Executive Summary and in **Annex 1**.
- 4.8. The commercial arrangements with WHUFC have been structured to ensure that the more successful WHUFC is in utilising the capacity of the Stadium to improve its overall business model and on-pitch performance the greater the revenue return for E20 LLP will be.
- 4.9. The Performance Payment in the arrangements (see footnote 3 above) further disproves the Complainant’s statement and further confirms that LLDC has acted as a private market investor would.
- 4.10. It is supposition to say that WHUFC couldn’t have gained the increased capacity they have at the Stadium compared to their current stadium in the market: WHUFC could redevelop Upton Park, and/or go to the banks to finance a new stadium (they may or may not be successful).
- 4.11. Furthermore it is conjecture to state that WHUFC will aggressively market in areas that will affect other clubs: WHUFC pays a commercial rate for the capacity and have the right to market it widely as they judge suitable. The more they utilise that capacity the more direct and indirect returns the E20 LLP receives. In any event the competitive process was open to any party to enter, and the Stadium capacity was available to all bidders and would have been provided with or without WHUFC as a user.
- 4.12. The increased capacity has already and will also attract further winter sport users; as noted above the Stadium is already booked for five (5) games for the RWC of

2015 providing a stream of rental and associated services revenues for the public owners of the Stadium. That further means more financial returns for E20 LLP.

- 4.13. On the other hand, when referring to “capacity virtually for free” the Complainant ignores the fact that WHUFC will have to incur significant costs to move to the Stadium e.g. greater investment in playing squad and marketing/corporate through their move to a larger venue. In addition, WHUFC will also forego significant revenue streams it currently enjoys as the sole and exclusive user of its current ground. This point is ill-conceived by the Complainant.

Fourth summary point: On location of the Stadium and selective advantage

- 4.14. As regards the fourth summary point it is incorrect to state that no other football clubs could seriously consider moving to the Stadium. The competitive process was open to all interested parties and football clubs and their relocation would be merely subject to governing body approval and other issues such as fan opposition (the latter is not for a public body to consider). Furthermore, over the two competitions run for the Stadium’s long term users by LLDC (and its predecessor, OPLC) three (3) football clubs participated, all of which were prepared to relocate to the Stadium site. That certainly disproves the Complainant’s allegations in point 4 and shows, in our view, that the location of the Stadium is not necessarily an obstacle. In this regard, please see also our comments in paragraphs 4.19 – 4.20 below.
- 4.15. In addition, as the Complainant accepts, there is a limitation on which clubs might be prepared to relocate from their current ground to one a significant distance away (e.g. Chelsea to Stratford) due to geographical issues; this necessarily limits the market in practice, but does not demonstrate a failure to obtain market price. Furthermore, there was no barrier to entry based on location or type of organisation. If other sports clubs seeking a venue with increased capacity chose not to enter the competition because of concerns over geographical location that is a decision each party was free to make on an individual basis. The market demand was from those parties who felt the Stadium was a “good” that met their needs.
- 4.16. It is worth mentioning that the Football Premier League (FPL) requires a football club considering changing grounds to obtain the written consent of the FPL Board before doing so, “*such consent not to be unreasonably withheld*”. In providing their consent the FBL Board they take into consideration whether the move “*would be appropriate having in mind the relationship (if any) between the locality with which, by its name or otherwise, the applicant Club is traditionally associated and that in which such Club proposes to establish its ground*”.

Comments on annex 1

- 4.17. The answer to the question in paragraph 1.1 of *annex 1* as to whether WHUFC has been given State financial assistance which will negatively affect competing business must be: No, as long as the participants in the competitive process were given clear rules and equal and fair opportunity to benefit from the transformation of the Stadium. The answer to that condition is: Yes, because of the competitive process that LLDC has followed.
- 4.18. The statement in paragraph 1.2 and 1.4 of *annex 1* that *'Those clubs which have increased their capacity put pressure on other clubs to increase their capacity too'* is not the whole truth. Increased capacity at one club only in part explains the desire of other similar sized clubs to do the same, but it is far more complex than that; this relates to the need to maximise match-day revenue, compete with the television market and provide a better, modern environment to watch football. The latter can be linked to something as simple as a ground being very old and needing (expensive) redevelopment compared to the ease of relocating/rebuilding – Queens Park Rangers (QPR) for example, are planning on building a new, 40,000 seat stadium for £200m, doubling their current capacity, rather than redevelop their existing stadium.
- 4.19. Increasing capacity alone does not guarantee success as stadium capacity is *only one* of the relevant factors that must be taken into account; another very important factor is that the club will need to reach a level of performance that attracts more spectators⁷; in order for the team to perform well the club will need to invest in players and coaches (this is what happened with Chelsea and Manchester City to name but a few clubs⁸); and a club has to market itself carefully and to the right audience, both in terms of spectators and potential sponsors. This is clearly evidenced by clubs such as Leeds United in England and Hertha Berlin in Germany, both of which have large capacity football stadia but have recently been relegated from the top division of their respective football leagues.
- 4.20. In our view the Complainant's argument in paragraphs 2.3 to 2.4 of *annex 1* suffers from a fundamental flaw: the Stadium was not transformed to accommodate only WHUFC's requirements and WHUFC is not the exclusive or sole user or source of revenues for the Stadium's public owners. WHUFC is an anchor tenant and a long term Stadium user but their use is essentially limited to 75 calendar days a year.
- 4.21. The Stadium operator/concessionaire to be appointed by the end of 2014, will have the opportunity and the challenge (as they will be at risk) to deliver additional

⁷ Currently the WHUFC Stadium has a capacity of 35,016 spectators and an average rate of utilisation of 90% on match days over the last five years.

⁸ Their owners provided a lot of equity support.

users (of any term) for example concerts, sport events, corporate (conferencing and budgeting) events, community events, subject to accommodating the WHUFC and the UKA timetable requirements and charging market rates to professional users.

- 4.22. With respect to point 2.8 the rental cost was not calculated on the basis of the revenues to be derived. Please see more information on how the rental price was calculated in paragraph 5.12 -5.18 below.
- 4.23. When it comes to paragraph 3.5, we would agree with the Complainant that there would be a potential distortion of competition with Arsenal and the other London based football clubs, if WHUFC was getting the Stadium for free (“effortlessly”).
- 4.24. We have however explained to the EC the type and level of contributions that WHUFC makes for their use of the Stadium (see **Annex 1**).
- 4.25. In addition, WHUFC have also incurred the costs of participating in the process finalising their contract with LLDC. It is also worth mentioning that WHUFC foregoes a number of revenue streams it has at its current football ground such as non-match day revenue from one-off and corporate events and tours and field of play events. Calling this an “effortless” move is factually incorrect and ought to be dismissed.
- 4.26. We have responded to the suggestions of the Complainant in paragraph 4.2 of *annex 1*. The transformation cost of the Stadium is not only for the benefit of WHUFC.
- 4.27. The Complainant in paragraph 4.3 again forgets that over the course of two competitions, three football clubs submitted bids for the use of the Stadium or site – Tottenham Hotspur FC, WHUFC and LOFC, along with partners and other organisations. This suggests that there was significant market interest in the opportunity.
- 4.28. Paragraph 10.7 of the LLDC response of 9 April 2013 is not irrelevant: the whole point of the argument we have made is that WHUFC are not moving to a new, purpose built football stadium which is exclusively theirs, with all the capital investment benefits accruing solely to them. The Stadium is a multi-function/multi-use venue, as demonstrated by the RWC, WAC and IPC, and UKA agreements and enshrined in the operator procurement documents. There is no factual competitive advantage over other football clubs as there is no evidence that the club in question, Charlton, will be impacted by WHUFC’s move or would themselves benefit from an increased capacity.
- 4.29. Finally as regards the Complainants suggestion that “*WHUFC should be compelled to pay more for the tenancy*”, we believe that we have provided to the EC enough information to dismiss this suggestion as unfounded. Please also see paragraphs 5.12 below for more detailed information on whether LLDC has acted under PMEIP, the rental price and the overall contribution of WHUFC to the Stadium’s costs.

Comments on Annex 3 - Distortion of competition

- 4.30. In respect of *annex 3* to the EC's letter, the Complainant relies on the EC's preliminary analysis in recitals 40 and 41 of the Decision to open a formal investigation into alleged State aid into the financial arrangements/relationship of six (6) football clubs with the respective municipal authorities in the Netherlands, to construct his theory/scenario of distortion of competition and effect on intra community trade by the move of WHUFC into the Stadium.
- 4.31. The Complainant has failed to appreciate a fundamental difference between the investigation of the Dutch municipalities and the transformation of the Stadium in London.
- 4.32. The UK authorities provide investment in infrastructure; the Dutch municipalities provide direct balance sheet restructuring/support by entering into various financial arrangements directly with the local football clubs; the main purpose of those arrangements was to support their balance sheets and cash flows by forgoing loans/interest payable, writing off debt, buying assets and leasing them back, and other similar actions. The result of their intervention is to directly improve the financial position (balance sheet) of the clubs in question and support their ability to restructure their debts and borrow to meet their operating requirements.
- 4.33. There is less doubt that the financial support provided by the Dutch municipalities has the potential to distort competition and we agree with EC's statements in recitals 40 and 41.
- 4.34. The UK Authorities on the other hand, do not provide cash assistance to WHUFC; they invest to transform the Stadium and deliver a world class multi-functional/multi-use venue, open to all users and run under private market criteria to generate commercial return for its public owners and provide community benefits to the area. This was set out clearly in the OBC, the procurement documents launching the competition, along with the specification of the baseline Stadium to be provided to successful concessionaires through public funding.
- 4.35. Public investment to provide a multi-functional/multi-use venue and appointing through a fully-compliant competitive process an anchor tenant/concessionaire, allied with the requirement clearly set out in the procurement documents cannot be compared with the direct (outside any public process) intervention of six Dutch municipalities to save bankrupt or near-bankrupt football clubs.
- 4.36. It would be inappropriate to compare the two situations and accept the Complainant's arguments based on that comparison.
- 4.37. Furthermore, the Complainant is wrong to suggest that by moving into the Stadium WHUFC will automatically ("immediate effect") compete with other

European football clubs and/or gain an unfair advantage. This assumption/conclusion is unfounded and unrealistic.

- 4.38. The Complainant provides no evidence of a causal link between a higher capacity football stadium and improved competitive advantage over, or negative impact on, other football clubs. A large capacity stadium can undoubtedly provide the opportunities for increased revenue and match-day income for a sports club, but having extra capacity does not automatically guarantee success as the Complainant suggests – see also our comment in paragraph 4.18 above.
- 4.39. It is simply conjecture on the part of the Complainant to state that WHUFC will gain an unfair economic advantage on the back of an increased capacity, in particular given that the specification of the Stadium as a 60,000 seat venue was enshrined prior to launch of the competitive process on documents which were available to any interested party to submit a bid against, including other football clubs, and that WHUFC is paying for its use.
- 4.40. Unlike the Dutch municipalities financial intervention, which has the potential of granting directly a selective competitive advantage, the tenancy of the Stadium (which comes as well at a significant annual cost to WHUFC and provides revenue sharing with E20 LLP) is not alone going to achieve an increase in revenues without improved on-pitch performance and fan attendance, and certainly not automatically. The EC should in the view of the UK Authorities dismiss that argument in its entirety.

The procurement process in this instance did eliminate the State aid risk

- 4.41. As regards the competitive procurement process⁹, the Complainant accepts the validity of the process; however, he goes on to make the suggestion that the existence of an open process does not mean that there is no selective advantage.
- 4.42. The logical question therefore follows: how would LLDC and E20 LLP appoint the anchor/concessionaire without undertaking an open competition? Appointing the anchor tenant/concessionaire directly would risk failing the EC's case law and guidelines in the areas of (i) public undertakings and privatisation; (ii) sales of public land and buildings.
- 4.43. The UK Authorities continue to be of the view that the public process structured properly as it was for the selection of one or more long term users for the public asset was the only option for its owners to meet their statutory and EU law obligations.

⁹ This was the case in a number of privatisations in the UK, including the PPP of the London Underground, which have been approved by the EC as conferring no aid on the basis of the robust procurement process that was followed. The most recent judgement of the EU CoJ in Joined Cases C-214/12 P, C-215/12 P and C-223/12P and the line of case law quoted therein confirms, despite the individual characteristics of that case, this proposition.

- 4.44. The process further assisted them in extracting the best deal for the UK taxpayers, who would otherwise (if the “do nothing option” in the OBC was followed) have to carry both the maintenance and its ongoing operational costs, estimated in the OBC to be over £2m per annum. The suggestions of the Complainant on this point are unrealistic and ought, in our view, to be rejected.
- 4.45. The suggestion that “*although the tender was open to anyone, in practice it was public knowledge that a football club was the preferred bidder*” is an arbitrary and unfounded allegation and inconsistent with the Complainant’s earlier and previous acceptance that the process was open, **fair and non-discriminatory**.
- 4.46. Two football clubs submitted tenders in the process, along with two other non-football club bidders. The OBC certainly considered the prospect of a football club bidding but it is clear in it that it did not take that prospect for granted.
- 4.47. The Complainant goes on to suggest that WHUFC had an advantage in the procurement process because of its location (proximity of their ground to the Stadium). This suggestion, including the other assertions of the Complainant about the “*tribal and geographical identities between football clubs*”, could lead to two paradoxes: on the one hand, that football stadia facilities belong to a small local market and therefore investment (infrastructure aid) in them is unlikely to meet the “*affects trade between Member States*” test under the basic rule of Article 107(1) TFEU; or, in the converse, that to counter any accusation of an advantage due to location, the public owners of the Stadium should have transferred the Stadium to a different location to allow football clubs competing with WHUFC to participate in the competitive process.
- 4.48. At risk of repetition: to state that the location of the Stadium in itself confers a selective economic advantage is a misinterpretation of the term and, if accepted, would set a dangerous precedent for any public authority wishing to dispose of a fixed asset through a competition. The Stadium’s location is a fact, and cannot be changed; the procurement documents made this clear, and if the location of the asset benefits one party over another, that is the very nature of geographical location of a business. For example, a company based in Germany has an inbuilt advantage over one in Portugal in the purchase of a distribution centre for German goods due to its location; the relevant fact is whether the competitive process is deliberately skewed in one party’s favour (the High Court rejected that possibility), or whether geography is a condition of the competition. Neither is the case in this instance.
- 4.49. As the Complainant explains, a number of football clubs are located in a short distance from the Stadium. Tottenham participated in the first competitive process but decided not to enter the second; LOFC submitted a bid for use of the Stadium in this second competition. The potential for competition between football clubs was

there; however, they would be subject to the same tests as any other bidding party to make a significant contribution the operating costs of the Stadium and provide a commercial return to its public owners.

4.50. As regards the final point of the Complainant in *annex 3*, namely that the competitive process did not provide the most economically advantageous offer (which was the award criterion used), or the market price, because LLDC negotiated with WHUFC to improve its tendered offer, it is ill-conceived and shows the Complainant is unaware of the rules of the process and the legal and market practice in similar circumstances where a services concession contract is at stake. The competitive process had an in-built final stage, post the announcement of the ranking of the bidders that involved inter alia a teaming exercise and a negotiation to finalise contract terms and conditions with the top ranked bidder(s). The result was that LLDC, as part of the process leading to signing of a very successful deal for the public owners, extracted further value from WHUFC.

4.51. It is perverse to interpret this success, which improves the financial position of the public owners of the Stadium, and extracts additional value from WHUFC, as evidence that the process (which was completed with the signing of the Concession Agreement) did not give the market price. The tendered amount by a bidder in a competition can be discussed under the negotiated procedure under the Public Sector Directive/Public Contracts Regulations to test the limit of the market's ability to pay, or to increase a bid to extract maximum value.

4.52. The terms of the competition were not to have a 'winning' and 'losing' bid, as per the aim to have a multi-function/multi-use, so the reference to this by the Complainant is irrelevant.

5. Response to the individual questions of the EC

Second EC Question: Was WHUFC the only "possible" winner of the tender?

5.1. Our answer to this question is that WHUFC was not the only "possible" winner of the tender. We have described above that OPLC/LLDC had chosen to run a competitive procurement process to select the anchor tenant/concessionaire of the Stadium.

5.2. The EC accepts that a competitive process is an appropriate and recommended route to market due to the potential public interest results the competition can provide to the public vendors/purchasers.

5.3. The Complainant accepted that the process was open, fair and non-discriminatory and the High Court rejected LOFC's application for a judicial review of aspects of the competitive process, which confirms the robustness of the process.

5.4. It is the nature of such public competitive process that one cannot know in advance which economic operators would participate in it or which will submit the most

economically advantageous tender; the only obligation on the procuring public body is to ensure that the competitive process is fair, transparent and open to all and its rules and requirements are transparent and do not favour a specific bidder. The OBC and the High Court, in dismissing LOFC's judicial review application, provide support of this.

- 5.5. The only way of neutralising the accusation that WHUFC's proximity to the Stadium gives them an unfair advantage would be either to preclude WHUFC from the competition (that would be illegal) or to move the Stadium elsewhere (that would be unrealistic).
- 5.6. As mentioned above the process had an in-built teaming stage after the ranking of the bidders. That also facilitated the possibility of more than one bidder being granted a concession agreement if their financial proposals were viable and their timetables for use of the Stadium were compatible.
- 5.7. The suggestion of the Complainant therefore is speculative and unreasonable.

Third EC Question: Did the [competitive] tender process guarantee a market price?

- 5.8. The answer to this question is that the public owners of the Stadium and its public funders have extracted from the competitive process the best available offer for the Stadium anchor/tenant concessionaire.
- 5.9. The UK Authorities continue to suggest that LLDC has acted in the same way that a private owner of the Stadium and the surrounding areas would have acted to deliver a Stadium as a multi-functional /multi-use venue that covers its operating costs and receives a significant contribution towards the capital investment made in it; in contracting with WHUFC LLDC has struck a deal which significantly contributes to this double objective.
- 5.10. LLDC, advised by PwC, Allen & Overy and Rothchild, was keen, throughout the process, to extract maximum value from any party to be appointed as anchor tenant/ concessionaire on the basis of the use required.
- 5.11. The list of benefits (**Annex 1**) that the public owners extracted from WHUFC through the process must be evidence of a proper commercial arrangement.

Fourth EC Question (Additional information demonstrating that that WHUFC pays a market price (both as regards the construction/rebuilding costs and the lease concession).

Do WHUFC pay for the operating costs of their use?

- 5.12. The Stadium operating costs include: Lifecycle costs, Overheads and event/match day(s) costs. Covering the cost of use (Event day(s) cost) was one of the most important criteria in the competitive process.
- 5.13. WHUFC agreed to pay an annual Usage Fee of £2.5 million (subject to RPI) for their use of the Stadium, which covers the annual event/match day(s) costs of their use (event/match day(s) (a total of three days)) for 25 home games.
- 5.14. The level of the rental/usage fee was negotiated on the basis of advice and support from PwC. The original offer made by WHUFC i.e. £1.5 million was analysed to ascertain whether it represented a market rate and if not, what a more realistic level of payment would be. Since it did not even cover the event/match day(s) costs for 25 matches a year, it was quickly concluded that it was insufficient. LLDC was successful in extracting £2.5 million during the negotiation stage. The Usage fee is just one element of the total payment. Other income which directly relates to WHUFC's use of the Stadium includes the uplift in the naming rights value, other Stadium sponsorship and a share of the catering income from football matches. In negotiating with WHUFC, LLDC sought to secure incremental income either directly from WHUFC or directly as a result of their usage which would cover the event/match day(s) costs and make a significant contribution to the overhead costs.
- 5.15. It should be noted that analysing market rate (NB not market price) in this case is a complex process and depends on a number of factors, including:
- who is covering event costs;
 - how other revenues (e.g. catering, naming rights) are shared;
 - success on the field (e.g. which division the club is playing in);
 - exclusivity of use;
 - capital contributions by the club to any transformation/construction costs; and
 - to an extent, the level of rent/fee paid by clubs in a similar arrangement.
- 5.16. It should also be noted that in respect of the final point, comparisons with other clubs are neither definitive nor straightforward as arrangements between a 'tenant' or user of a facility and the owner differ considerably based on location, site usage, match-day revenues and other factors.
- 5.17. LLDC analysed the following rates paid by professional English football clubs in assessing the market rate to be paid by both football clubs that entered the competition:
- Manchester City's payments as part of their deal at the City of Manchester stadium (now The Etihad);

- Coventry City's payments for use of the Ricoh Arena (Coventry City have now moved out of the stadium due to financial difficulties);
- Crystal Palace, who plays at Selhurst Park and who, until recently, did not own the stadium.

5.18. The arrangements between venues, such as Wembley and Millennium Stadium, and their users were also considered, given that these are longer term staging agreements which provide access for specific matches and therefore are comparable with E20's arrangements with WHUFC. In the case of Wembley, the payment from the event promoter is on the basis of a share of ticket revenue. All other revenue is typically retained by the venue.

5.19. In assessing the payments paid by other football clubs, and as noted above, a number of factors were taken into consideration to ensure a fair and useful comparison was made.

5.20. Ultimately, LLDC succeeded, with the support of their advisers, to extract a rental payment from WHUFC that covers comfortably their event/match day(s) costs and provides a significant contribution to the overhead costs of the Stadium.

5.21. In summary, the usage fee, plus income directly associated with WHUFC's usage of the Stadium contributes 58% of estimated total income and covers 72% of the overhead cost, after payment of event/match day(s) costs. This is achieved despite WHUFC only taking 21% of the available days in the annual event calendar.

Do WHUFC pay for the transformation costs of Stadium considering their use?

5.22. As stated above, the overall monetary contributions by WHUFC includes:

- The £15 million one-off contribution to the capital costs of the Stadium transformation;
- The £2.5m per annum Usage Fee¹⁰ (subject to RPI);
- The E20 LLP share¹¹ of WHUFC's event/match-day(s) catering revenue which is estimated to be around £1m per annum;
- The E20 LLP benefit¹² from the significant uplift in the value of the Stadium's naming rights from the presence of WHUFC (elite football) which amounts to around [REDACTED] per annum;

¹⁰ See footnote 3.

¹¹ Calculated as follows: the first £0.5m of general admission catering revenue goes to E20 LLP; any amount above that level is split 70:30 in E20 LLP's favour and it is subject to RPI;

¹² LLDC has analysed and benchmarked the revenue from the sale of naming rights to the Stadium in collaboration with PwC and Sport+Markt (a dedicated sponsorship and naming rights agency) who both value the uplift associated with WHUFC being a user of the Stadium at circa [REDACTED] per annum; this is subject to RPI.

- The E20 LLP benefit from stadium sponsorship revenue which is unlikely to be achieved without the presence of WHUFC.

These financial terms, when taken together over the term of the 99-year terms of the WHUFC Concession Agreement, ensure that the deal in the round is value for money; meets EC guidelines/case law on the absence of aid; covers all event day costs associated with WHUFC's use; contributes towards the operational and maintenance costs of the Stadium; maintains the Stadium as a multi-function/multi-use venue and aims to provide a return to E20 LLP;

6. Conclusions

6.1. In light of the above, the UK Authorities continue to believe that the public investment in the transformation of the Stadium in a multi-function/multi-use venue does not involve State aid for the purposes of Article 107(1) TFEU on the basis that:

- LLDC has acted as a private market economy investor would have acted, if they were the owners of the Stadium in 2011 and the surrounding areas;
- A fair and open competitive process was implemented to appoint WHUFC as the anchor tenant/concessionaire; and
- WHUFC pay a fair price/market rate for their use of the Stadium and make a significant contribution to its transformation costs, which is overall proportionate to their use.

Department for Business, Innovation and Skills

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ANNEX 1

List of benefits extracted from WHUFC

Commercial item	Benefits
Usage Fee	<p>£2.5m per annum in Premier League - linked to RPI.</p> <p>£1.25m in a lower league - linked to RPI.</p>
Capital contribution	£15m contribution on sale of Boleyn Ground, guaranteed by majority shareholders.
Threshold Amount payment (value claw back arrangement)	Should the current owners and majority shareholders of WHUFC sell the club (or their shares and any that are currently under option to purchase) within 10 years of the WHUFC relocation to the Stadium for an amount above its current valuation, E20 LLP will receive a share of that increase in value over a certain threshold. The full mechanism is set out in the Concession Agreement and referred to as the Threshold Amount.
Additional payments	£0.1m per competitive match over the set number of games and operating costs for u-21/academy matches -linked to RPI
Performance related payments	Payments potentially worth up to £0.775m extra p.a. if WHUFC finish in any position above 10th in the Premier League, wins the FA or League Cup, qualifies for the Europa or Champions League or wins either competition (not included in the above calculations of the WHUFC contributions)
Stadium Naming Rights	<p>First £4m kept by LLDC, anything above this split 50:50 with WHU with their share capped at their annual Usage Fee unless clearly attributable to their on-field performance (e.g. bonus payments for European football).</p> <p>Collaborative working agreed to ensure that the value of the package is maximised.</p>
WHUFC match/event day Catering revenue	<p>LLDC retains first £0.5m of catering revenue with remainder split 70:30 with WHU in LLDC's favour - linked to RPI</p> <p>WHU retain all VIP/hospitality revenue for their events, although LLDC will take a slice by virtue of the contract it agrees with a catering contractor.</p>

Associated benefits	<p>E20 receives any income from Stadium sponsorship, which could include stand naming rights, stadium partners (e.g. exclusive supply arrangements); no revenue is expected from this source if there is no football club concessionaire – estimated around █████ per annum.</p> <p>WHUFC's presence is likely to make the Stadium more attractive for a range of other users, such as non-match day pitch hire, conference and banqueting and Stadium tours. This income is directly payable to E20.</p>
Community	Up to 100,000 complimentary tickets made available for free to Community access to WHUFC home games.

ANNEX 2

High Court judgements rejecting LOFC Judicial Review Application

(See separate word document attached)

ANNEX 3

Sample of press cuttings relating to LOFC's fresh approach to LLDC and LLDC response

<http://www.telegraph.co.uk/sport/football/teams/leyton-orient/10526739/Leyton-Orient-could-share-Olympic-Stadium-with-West-Ham-as-Barry-Hearn-is-cleared-to-strike-rental-deal.html>

Orient back in the running for Olympic Stadium

By Ben Rumsby

West Ham United may yet be forced to share the Olympic Stadium with Leyton Orient after Barry Hearn was given permission to use the venue by legacy chiefs.

The London Legacy Development Corporation confirmed last night that it had no objection to Orient chairman Hearn negotiating a rental agreement with whichever firm ends up operating the London 2012 centrepiece, something that could lead to the club playing all of their home games there.

The revelation followed a meeting between the LLDC and Hearn, set up after last month's House of Lords report into the Olympic legacy, which recommended that Orient be allowed "occasional use" of the stadium.

The LLDC reiterated that there was no prospect of West Ham's sole-anchor tenancy being challenged but told Hearn that there was nothing to stop him striking a deal for Orient to play at the venue when it is not being used by their local rivals.

The right to manage the stadium during those periods will be put out to tender next year, with Live Nation and AEG likely to be among the bidders. The winner will be charged by the LLDC with cking the maximum possible revenue out of the arena during a contract expected to span between 10 and 20 years.

It will not be able to offer Orient a long-term lease such as the 99-year agreement enjoyed by West Ham but should have the power to grant permission for them to play an entire season at the venue, perhaps several.

Confirming the outcome of the meeting last week, Hearn said: "West Ham won't want to hear this but the news that came down is they have no problem with me renting the Olympic Stadium and playing fixtures there. It's only a question of what rental I agree with the new operators. That's a major breakthrough for me."

Hearn claimed that Orient using the stadium every other weekend would be attractive to whoever manages it because it would provide regular guaranteed income that a music concert or one-off event could not.

It remains to be seen if the new

stadium operator will agree with that assessment. "They'll realise that there is nothing else to go in there during the football season," Hearn said.

Hearn, who has lost every legal challenge to the LLDC's refusal to sanction a permanent groundshare, had offered to pay £500,000-a-year rent, double were Orient promoted from League One.

Revealing that he would ask the new operator to name its price, he said: "If they ask me for £1million per game, I'm not going to move in. But, when push comes to shove, to recoup fixed costs - even partial fixed costs - it is better than having an empty stadium as far as the taxpayer is concerned. If they quote something ridiculous, I will hang them out to dry, in terms of, 'This is a community club and you're trying to take liberties'."

Hearn's previous plan was to sell Orient's Brisbane Road home if they moved into the Olympic Stadium but he admitted that would now depend the length of any deal on the table.

An LLDC spokesman said: "We will appoint an organisation next autumn to manage, maintain and operate the stadium and programme activities and events. Leyton Orient are [then] free, as are anyone, to approach the operator to discuss using it."

West Ham declined to comment.



Ground for complaint: Orient may yet be able to rent the stadium