



UK Representation to the EU Brussels

Harold Nyssens
Deputy Head of Unit
DG Competition
European Commission

Stephen Clark-Foulquier
Competitiveness &
Markets
Avenue d'Auderghem 10
1040 Brussels

Tel: +32 (0)2 282 8269
Mobile: +32 (0) 478 963 800
www.fco.gov.uk

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Dear Mr Nyssens,

SA.45479 – Alleged aid to West Ham for the use of the Olympic Stadium

1. Introduction and summary

- 1.1 Thank you for your letter dated 11 July 2016. The UK Authorities welcome the opportunity to provide further clarity to the European Commission (**Commission**) as to why no State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (**TFEU**) has been granted to West Ham United Football Club (**West Ham**) in respect of its use of the London Olympic Stadium (the **Stadium**) and to address the specific questions raised in your letter. With the exception of information highlighted in green below which is commercially sensitive and confidential to the UK Authorities, a redacted version of this letter may be shared by the Commission with the Complainant provided that, before sharing, the Complainant first agrees not to disclose this letter or any of the information contained therein to any other party.¹
- 1.2 As a preliminary observation, we wish to point out that in fact all the relevant issues raised in the redacted version of the complaint attached to your letter (the **Complaint**) have already been addressed in the earlier submissions by the UK Authorities to the Commission that are referred to in your letter, i.e.:
- (a) the non-paper of 16 October 2012;
 - (b) the supplementary paper of 9 April 2013;
 - (c) the submission of 2 May 2013 in response to the Commission's letter of 10 April 2013; and
 - (d) the submission of 4 February 2014, in response to the Commission's letter of 7 January 2014 (together, the **Previous Submissions**).
- 1.3 For the reasons set out in the Previous Submissions and as discussed further below, our position remains that there has been no grant of State aid within the meaning of Article 107(1) TFEU to West Ham in relation to its use of the Stadium. Specifically, no advantage within the meaning of Article 107(1) has been conferred on West Ham

¹ A redacted version of this letter will be provided to the Commission for this purpose.

as a result of the decision by the London Legacy Development Corporation (**LLDC**) to award West Ham a concession to use the Stadium (the **Concession Agreement**). The commercial terms (including fees payable by West Ham) of the Concession Agreement were set through an open and non-discriminatory competitive tender process that ensured the payment of a market price.² The tender process also met the conditions set out in paragraphs 90 to 96 of the Commission's Notice on the notion of State aid (the **Notice**)³ – notwithstanding that the Notice had not been issued at the time of awarding the Concession Agreement.⁴ As set out in more detail at section 2 below, that tender process was competitive, transparent, non-discriminatory and unconditional. It follows that the Concession Agreement is in line with normal market conditions and satisfies the market economy operator (**MEO**) test set out in the Notice.

- 1.4 Moreover, each of the alleged “*additional elements*” identified in the Complaint and raised at paragraphs (b) to (f) of the Commission's letter were in fact agreed as part of the competitive process in awarding the Stadium concession and, for the reasons set out in more detail at section 2 below, cannot therefore be said to constitute State aid. Likewise, a fundamental commercial term of the draft concession agreement provided to bidders under the tender process was that E20 Stadium LLP (and ultimately LLDC) would bear the commercial risk of any unforeseen increase in the expected costs of converting the Stadium to multi-use functionality. In relation to item (a) of the Commission's letter, therefore, an increase in the conversion costs borne by LLDC following the award of the Concession Agreement cannot be said to constitute evidence of State aid to West Ham or indeed any other commercial user of the Stadium.

2. The Stadium concession tender process and selection

- 2.1 Economic transactions carried out by public bodies do not confer an advantage on the relevant counterparty, and therefore do not constitute State aid, if they are carried out in line with normal market conditions.⁵ This is referred to in the Notice as the MEO test.⁶ Accordingly (as the Commission acknowledges in its letter), paragraph 226 of the Notice states that:

“In accordance with the general principles explained in section 4.2, an advantage to users in such cases can be excluded where the fees for use of the infrastructure have been set through a tender that meets all the relevant conditions set out in paragraphs 90 to 96.”

- 2.2 Likewise, paragraph 89 of the Notice states:

*“If the sale and purchase of assets, goods and services (or other comparable transactions) are carried out following a **competitive, transparent, non-discriminatory and unconditional** tender procedure in line with the*

² See paragraph 19 of the non-paper of 16 October 2012 and the reference in footnote 9 to the Commission's treatment of the sale of land and buildings by public authorities.

³ *Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union* 2016/C 262/01.

⁴ The Notice does not have retrospective effect. The assessment for State aid purposes of any State measure must be made on the basis of the legislation and guidance in force when the measure is adopted. The non-paper of 16 October 2012 drew parallels with the Commission Communication on State aid elements in sales of land and buildings by public authorities, which is replaced by the Notice (see paragraph 229).

⁵ Paragraph 74 of the Notice.

⁶ Paragraph 75 of the Notice.

principles of the TFEU on public procurement (see paragraphs 90 to 94), it can be presumed that those transactions are in line with market conditions, provided that the appropriate criteria for selecting the buyer or seller as set out in paragraphs 95 and 96 have been used” (emphasis added).

- 2.3 Applying each of these criteria in turn, it is clear that the award of the Concession Agreement to West Ham did not entail State aid and that the Concession Agreement is in line with normal market conditions and satisfies the MEO test in the Notice.

Competitive

- 2.4 In order to satisfy the MEO test, paragraph 90 of the Notice states that a tender process has to be competitive to allow all interested and qualified bidders to participate in the process. The evidence provided to the Commission in the Previous Submissions clearly shows that the Stadium tender was designed and run as a competitive process in order to maximise the ongoing use and value of the Stadium.
- 2.5 In particular, as outlined in paragraph 9 of the 16 October 2012 non-paper, an Invitation to Tender (ITT) in relation to the Stadium concession was issued on 22 December 2011. The tender process was structured so as to maximise the possibility of there being more than one successful concessionaire by incorporating 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.
- 2.6 On 14 May 2012, LLDC announced that it was extending the Stadium competition by a further eight weeks to allow all parties who registered to receive the ITT additional time to submit a bid. In its press release announcing the extension, LLDC stated:

“we want to make the process as competitive as possible and extending the competition period will allow all parties that registered an initial interest in the Stadium another chance to bid”.

- 2.7 An amended version of the ITT was subsequently issued on 16 May 2012. Four bids in response to the revised ITT were received by the bid submission deadline of 12 July 2012. Those bids were from: (1) The University College of Football and Business (**UCFB**); (2) West Ham; (3) Intelligent Transport Services (**ITS**); and (4) Leyton Orient FC (**LOFC**). West Ham was ultimately selected as the concessionaire according to the selection procedure described at paragraphs 2.12 to 2.15 below.

Transparent

- 2.8 In order to satisfy the MEO test, paragraph 91 of the Notice states that a tender process has to be transparent to allow all interested tenderers to be equally and duly informed at each stage of the tender process. Further,

“A tender has to be sufficiently well-publicised, so that all potential bidders can take note of it. The degree of publicity needed to ensure sufficient publication in a given case depends on the characteristics of the assets, goods and services. Assets, goods and services which may attract bidders operating on a Europe-wide or international scale in view of their high value or other features should be publicised in such a manner as to attract potential bidders operating on a Europe-wide or international scale.”

- 2.9 As noted at paragraph 3.3 of the 4 February 2014 submission, the ITT was advertised in the Financial Times (International Edition) and The Economist. The UK Authorities submit that this clearly meets the requirements set out at paragraph 91 of the Notice as regards a sufficient and appropriate degree of publicity for this tender.
- 2.10 Bidders were also equally and duly informed at each stage of the tender process. In particular, all bidders had equal and sufficient clarity over the selection and award criteria (discussed in detail below) as these were set out in the ITT itself. Likewise, all bidders were given equal access to a data room containing further information relevant to the tender. Finally, as noted in paragraph 28 of the 9 April 2013 submission, all bidders received written confirmation of the ITT evaluation results as well as debriefings on their scores and their position in the course of meetings with LLDC and its legal advisers Allen & Overy.⁷

Non-discriminatory / objective selection and award criteria

- 2.11 Paragraph 92 of the Notice states:

“Non-discriminatory treatment of all bidders at all stages of the procedure and objective selection and award criteria specified in advance of the process are indispensable conditions for ensuring that the resulting transaction is in line with market conditions. To guarantee equal treatment, the criteria for the award of the contract should enable tenders to be compared and assessed objectively.”

- 2.12 Again, the UK Authorities maintain that the Previous Submissions clearly demonstrate that bidders for the Stadium concession were treated in a non-discriminatory manner at all stages of the process. In particular, as noted in paragraphs 22 to 30 of the 9 April 2013 submission, the criteria for the award of the Stadium concession were based on entirely objective considerations. Further, the evaluation criteria (financial, deliverability, usage and legal mark-up), and the weightings given to each of them, were fully disclosed to bidders in section 8.4 the ITT so that all bidders had the same information on which to prepare their bid.
- 2.13 In addition, the financial aspects of all the bids were evaluated with the support of LLDC’s financial advisers, PwC, taking account of the level of risk associated with each bid, as explained in the Previous Submissions. PwC’s analysis was precisely the kind of analysis which any prudent private market facility owner/operator could be expected to undertake, looking not just at the amount of money on offer from each bidder, but scrutinising the business plans of each bidder to assess the robustness of the bids and the ability of each bidder to perform their contractual obligations over an extended period.
- 2.14 The following table shows the criteria against which all of the bids were assessed and the weightings applicable under each of the criteria. This produced the following overall ranking (repeated from Table 2 of the 9 April 2013 submission):

⁷ It is noteworthy that bidders did not raise issues with their evaluation scores during these debriefing meetings or afterwards.

Table 1: Evaluation results – Ranking of Bidders

Criteria	Weighting (%)	UCFB (%)	West Ham (%)	ITS (%)	LOFC (%)
Financial	50	☐	☐	☐	☐
Deliverability	15	☐	☐	☐	☐
Usage	25	☐	☐	☐	☐
Legal mark-up	10	☐	☐	☐	☐
Total score		☐	☐	☐	☐
Ranking		☐	☐	☐	☐

2.15 The UK Authorities also consider that the tender process followed and the award criteria used were also entirely consistent with the requirement set out at paragraph 95 of the Notice that “*the only relevant criterion for selecting the buyer should be the highest price, also taking into account the requested contractual arrangements (for example the vendor’s sales guarantee or other post-sale commitments).*” Paragraphs 2.3 and 5.8 to 5.9 of the 4 February 2014 submission show that the Concession Agreement with West Ham provided the best value available in the market.

Unconditional

2.16 Paragraph 94 of the Notice states:

“If there is a condition that the buyer is to assume special obligations for the benefit of the public authorities or in the general public interest, which a private seller would not have demanded — other than those arising from general domestic law or a decision of the planning authorities —, the tender cannot be considered unconditional.”

2.17 No such special obligations were required of West Ham (or indeed any other bidder in the tender process) as a condition for the award of the Stadium concession.

Conclusion on the Stadium tender process

2.18 For the reasons set out in the Previous Submissions and as summarised above, the UK Authorities remain of the view that the tender process for the award of the Stadium concession and subsequent evaluation of the various bids received under

that process, was competitive, transparent, non-discriminatory and unconditional within the meaning of paragraphs 226 and 90 (*et. seq.*) of the Notice. As such, no advantage (and therefore no State aid under Article 107(1) TFEU) has been granted to West Ham in respect of the decision by the LLDC to award West Ham the Concession Agreement.

3. Matters raised in paragraphs (a) to (f) of the Commission’s letter

- 3.1 We note that the Commission has asked for a comparison of what was foreseen in relation to paragraphs (a) to (f) of the Commission’s letter as between: (i) the ITT; (ii) West Ham’s bid responding to the ITT; (iii) the Concession Agreement; and (iv) the “*situation on the ground*”.⁸
- 3.2 The UK Authorities have sought to do this so far as possible and so far as relevant to the paragraphs under consideration. However, it should be noted that in relation to paragraph (a), it was made clear in section 3.2 of the ITT that responsibility for the Pre-Concession Works to convert the Stadium into its legacy form as a multi-use facility following the 2012 Games would rest with LLDC and that no cost risk would be borne by any concessionaire. Thus, bidders would have been indifferent to the level of the estimated or actual out-turn conversion costs. In relation to paragraph (b), the Stadium Specifications against which bids were invited were for a 60,000 seat multi-sport facility (see ITT, Appendix II). In relation to paragraphs (c), (d), (e) and (f), although bidders were provided with a draft concession agreement, it was ultimately for bidders to propose detailed amendments that would then be assessed as part of the evaluation process. Notably, as regards paragraph (f), the draft concession agreement was deliberately framed in fairly general terms as regards the signage rights to be granted to any potential concessionaire, given that LLDC did not know at that stage what sort of organisations might ultimately submit bids in response to the ITT.
- 3.3 As regards the Commission’s request for a comparison with the “*situation on the ground*”, this simply reflects the terms of the Concession Agreement and is discussed further below.
- 3.4 For the reasons set out in section 2 above, the UK Authorities consider it beyond doubt that the award of the Concession Agreement to West Ham did not entail State aid. Notwithstanding that West Ham’s bid was already the most commercially attractive of those submitted in response to the ITT (as noted above at paragraph 2.14), LLDC was successful in extracting a number of improvements in the terms offered by West Ham in the course of negotiating the Concession Agreement. These were summarised in Annex 1 of the submission of 4 February 2014. In light of this, the assertion by the Complainant at page 8 of the Complaint that the terms finally agreed with West Ham were “in no way a ‘market rate’ deal” are unsustainable and reveal a misunderstanding of the nature of the MEO test: the terms were precisely those of a market rate deal because they were the result of an open, transparent and non-discriminatory tender process.
- 3.5 In the remainder of this section we comment briefly on the points mentioned at paragraphs (a) to (f) of the Commission’s letter. To the extent that we do not

⁸ We also note that the Commission’s letter does not ask LLDC to comment specifically on all of the arguments put forward in the Complaint. The Complaint presents a series of arguments that are manifestly unsound and we assume from the fact that we have not been asked to comment on them that the Commission is of the same view.

comment on specific allegations made by the Complainant, no inference should be drawn that the UK Authorities agree with them; on the contrary, we adopt this approach because the points raised by the Complainant are either irrelevant or have already been dealt with in our Previous Submissions.

Paragraph (a): conversion costs

3.6 Notwithstanding the significant one-off usage fee (£15 million) agreed with West Ham (which LLDC intended should be put towards the conversion costs of the Stadium), a fundamental commercial term of the draft concession agreement provided to bidders under the tender process was that E20 Stadium LLP (and ultimately LLDC) would bear the commercial risk of any unforeseen increase in the expected costs of converting the Stadium to multi-use functionality. Indeed, the ITT as amended on 16 May 2012 expressly stated to all bidders that:

*“(C) Pre-Concession Works. LLDC will procure, via a competitive tender process that was launched in April 2012, a construction contractor for the Pre-Concession Works...No cost risk will be borne by a **Concessionaire**.”⁹*
(emphasis added)

3.7 In relation to paragraph (a) of the Commission’s letter, therefore, an increase in the conversion costs borne by E20 Stadium LLP following the award of the Concession Agreement cannot be said to constitute State aid as the agreement with West Ham (which, for the reasons set out above, was entered into on MEO terms) allocated that risk to LLDC and expressly provided that it would not be borne by any concessionaire.

3.8 For completeness, as explained in paragraph 16 of the submission of 9 April 2013, LLDC’s unilateral decision¹⁰ to utilise the more expensive retractable seating option to deliver a multi-use legacy Stadium meant that the total conversion costs of the Stadium were estimated to be £[] million as of the date of that submission. This was a pre-contract award estimate and excluded ‘interface’ risk contingencies. In June 2015 LLDC announced that the cost of the contracts awarded to complete the Stadium conversion was £272 million. LLDC’s current estimated cost of conversion, including subsequent and additional scope, is £[] million, although it should be noted that not all contracts have been closed out. []:

[]

3.9 None of these additional costs were incurred by LLDC for the benefit of West Ham. To the extent that West Ham could be said to benefit indirectly as a result of their incurrance (e.g. in relation to the work carried out to extend the Stadium roof), again the Concession Agreement clearly allocated the risk of incurring such unforeseen costs to E20 Stadium LLP.¹¹

⁹ See paragraph 3.2(c), page 16.

¹⁰ As none of the bidders asked for fully retractable seats to be installed, the extra cost of the fully retractable seating was not taken into account in the financial evaluation of the various bids. It was LLDC’s own choice to use retractable seating to enhance the multifunctional nature of the Stadium and maximise its use potential.

¹¹ Page 9 of the Complaint draws comparison with the capital costs of the Arsenal Emirates stadium, the new Tottenham Hotspur stadium and the planned redevelopment of the Chelsea Stamford Bridge stadium to argue that the commercial arrangements agreed in the Concession Agreement “could not, under any circumstances, be considered to be a ‘market rate’ deal”. However, as set out in more detail at paragraphs 4.1 to 4.4 of the 4 February 2014 submission, it is misconceived to link the market price of the Concession

3.10 Subsequent operational and revenue maximising expenditure, included in the figure above, has been made or is planned to be made to the Stadium, including the installation of outdoor digital screens, a fabric wrap, wider gangways to extend concert capacity, enhancing concession areas to support a wider catering offer, enhancing lighting to support a wider range of sports, and other potential enhancements to improve the functionality of the Stadium. [1]. Also included above are LLDC staff and insurance costs of £[2] million associated with the Stadium and wider Olympic Park transformation, incurred over the course of the project.

Paragraph (b): seating capacity

3.11 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Agreement with the capital cost of building a new stadium or transforming an existing facility. Moreover, using another stadium's costs as a comparison cannot be the correct frame of reference when the public authorities have run a competitive tender process to select concessionaires. By definition that tender process generated the market price for use of the Stadium. The logical consequence of the Complainant's argument seems to be that LLDC should not have awarded a concession to any of the bidders. The Complainant does not explain how that would be consistent with the MEO test.

¹² Paragraphs 3.2 to 3.3 of the 4 February 2014 submission.

¹³ Paragraph 4.2 of the 4 February 2014 submission.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Paragraph (c): additional facilities and services

- 3.16 Paragraph (c) of the Commission’s letter refers to a number of “*additional facilities and services*” that the Complaint alleges constitute State aid to West Ham and asks for comment on the costs of providing Stadium maintenance, repair and lifecycle costs and other facilities and services (such as the provision of staff, police and services related to the prevention of unauthorised products being sold in the Stadium).

- 3.17 As regards the first part of paragraph (c), all of the allegedly “*additional*” facilities and services listed in the Complaint and identified in the Commission’s letter were in fact discussed and agreed with West Ham during the competitive tender process and were subsequently included within the Concession Agreement (as acknowledged by the Complaint). Furthermore, many of these services were initially set out in the ITT as services which LLDC would deliver or procure to be delivered.¹⁶ For the reasons set out in detail at section 2 above, such facilities and services cannot therefore be said to constitute State aid to West Ham; they are simply elements of a transaction that is in line with normal market conditions and satisfies the MEO test.

¹⁴ See paragraph 1.1, page 5.

¹⁵ 190 metres between a particular seat and the furthest football corner flag from that seat.

¹⁶ See paragraph 4.6, page 23.

- 3.18 Likewise, in relation to the Commission's request for comment on the costs of such services, the allocation of such costs was a fundamental commercial term of the Concession Agreement reached with West Ham following the competitive tender. The absolute levels of such costs are therefore not relevant to a determination of the existence of possible State aid under Article 107(1) TFEU.¹⁷
- 3.19 With regard to the £1.4-2.5 million range which the "additional facilities and services" are alleged to cost, the Complaint states that this figure was based on a documentary broadcast by the BBC in August 2015. LLDC does not accept the thrust of that documentary and it should be noted that a complaint made by LLDC was partly upheld by the BBC's Editorial Complaints Unit in June 2016.¹⁸

Paragraphs (d) to (f): usage fees, priority usage / ground sharing and appearance of the Stadium

- 3.20 Each of the considerations raised in the Complaint referred to at paragraphs (d) to (f) of the Commission's letter relate to commercial terms that were discussed and agreed with West Ham during the competitive tender process and were subsequently included within the Concession Agreement. Again, for the reasons set out in detail at section 2 above, such commercial provisions cannot therefore be said to constitute State aid to West Ham within the meaning of Article 107(1) TFEU: they are simply elements of a transaction that is in line with normal market conditions and satisfies the MEO test.

¹⁷ In order to guide its position during commercial negotiations, LLDC did in fact take into account the costs of providing similar services that are charged in other concessions (notwithstanding the fact that, from a State aid perspective, it did not need to do so as the Concession Agreement that was negotiated resulted from a competitive tender that itself generated a market price for that particular asset).

¹⁸ <http://www.bbc.co.uk/complaints/comp-reports/ecu/howthehammersstruckgold>.

3.21 In relation to paragraph (f) of the Commission’s letter, the UK Authorities can confirm that the appearance of the Stadium is in line with its multi-functional character. Indeed, in addition to hosting games at the 2015 Rugby World Cup, the Stadium has recently hosted and, in the next year, will be hosting, the following non-football events:

- (i) 19 July 2015: Great Newham London Run;
- (ii) 24 to 26 July 2015: IAAF Diamond League London Anniversary Games;
- (iii) 29 August 2015: Rugby World Cup test event – Barbarians v. Samoa;
- (iv) 7 November 2015: Rugby League match, England v. New Zealand;
- (v) 20 to 21 November 2015: Race of Champions;
- (vi) 4 June 2016: AC/DC concert;
- (vii) 14 July 2016: Great Run for Fun and Great Team Relay;
- (viii) 17 July 2016: Great Newham London Run;
- (ix) 22 to 23 July 2016: IAAF Diamond League London Anniversary Games;
- (x) 13 November 2016: England v Australia Rugby League International;
- (xi) 14 to 23 July 2017: IPC World ParaAthletics Championships; and
- (xii) 4 to 13 August 2017: IAAF World Athletics Championships.

3.22 The Complaint argues (page 5) that the Stadium “*has been designed to have the appearance of a permanent home for the club*”, and focuses in particular on (a) the replacement of black and white seats with claret and blue seating (being the colours of West Ham); (b) the addition of giant replica shirts of West Ham players in the Stadium concourse; and (c) the insertion of a ‘crossed hammers’ design into the seating. At page 9 of the Complaint it is alleged that “[*it*] will be impossible to remove the majority of the West Ham branding (which dominates the seating bowl, the exterior and the concourse of the Stadium). This will make it very difficult for any other user with its own branding to use the Stadium on anything other than an ad hoc basis”.

3.23 However, the Complainant’s account contains a number of material inaccuracies. Firstly, it omits to mention that the cost of the claret and blue seat decoration (including the West Ham logo) was paid for by West Ham, not by LLDC (West Ham also paid for decoration to the concourses beneath the stands). Secondly, the Concession Agreement provides that most signage costs are to be borne by West Ham, not by LLDC. Thus, clause 11.3(a) provides:

“Other than any signage and dressing that is included in the Specification, the Concessionaire shall be responsible for the production, installation, maintenance (in a good state of repair) and costs associated with all the advertising, signage, dressing and promotional material in respect of the Concessionaire Signage Rights or any other marketing rights and opportunities granted to the Concessionaire under this Agreement.”

3.24 Thirdly, the Complainant ignores the fact that LLDC is permitted (at its own expense) to remove and store all the West Ham advertising, signage, dressing and promotional material: see clause 11.3(b) of the Concession Agreement. LLDC is able to do this within 48 hours following the final match in the football season each year, and on 7 days' notice during the season where it wishes to stage an event at the Stadium. These rights enable LLDC to ensure that, where necessary to accommodate the requirements of other Stadium users, the West Ham branding materials can be removed. It is therefore misleading to assert (as the Complainant does) that the presence of the West Ham branding "*will be impossible to remove*" and that this "*will make it very difficult for any other user with its own branding to use the Stadium on anything other than an ad hoc basis*". Indeed, the calendar of events listed above amply demonstrates that the Stadium is being used, and will in the future be used, to host a variety of different sporting and popular cultural events, including some that do have their own branding.

3.25 In any event, the mere fact of West Ham branding does not impact the multi-functional character of the Stadium or affect the ability of the Stadium to host other events. For example, music concerts have been held at Arsenal's Emirates Stadium without Arsenal branding being completely cleansed beforehand.

Yours sincerely,

Stephen Clark-Foulquier

Stephen Clark-Foulquier

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 £3m 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 eling 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