

NON-PAPER TO EUROPEAN COMMISSION
PROPOSALS FOR THE LONDON OLYMPIC STADIUM

Overview

1. The purpose of this note is to inform the Commission on the UK Government's proposals for the future use of the London Olympic stadium (**Stadium**) and to explain why the UK Government considers that these proposals do not involve State aid.
2. The UK Government is attempting to maximise the ongoing use and value of the Stadium by running competitive, fair and open processes allowing for the selection of multiple ongoing users of the Stadium in addition to contracting out operation of the Stadium. The UK Government is keen to secure long term legacy benefits from its hosting of the 2012 Games in London and to avoid leaving the Stadium under utilised or, in a worst case, not used at all (as happened, for example, following the Athens games) which itself would be likely to result in an ongoing cost to the public purse.
3. The UK Government would welcome the opportunity to discuss the issues arising from this note with the Commission.

Background to the Stadium competition

4. Since 2005, when London was awarded the 2012 Olympic and Paralympic Games (**2012 Games**), there has been significant public investment (more than £9 billion) to buy land, build facilities, improve transport connections and support British athletes with their training preparations for the 2012 Games. The Stadium has very recently been the centrepiece of the 2012 Games, hosting the opening and closing ceremonies and the track and field athletics events. During the 2012 Games, the Stadium had a gross capacity of 80,000 spectators. Construction work began in 2008 and was completed on 29 March 2011.
5. The Stadium has not been designed as a permanent 80,000 seat venue. In 2005, when London won the right to host the 2012 Games, a commitment was made to the International Olympic Committee that there would be a lasting legacy for the Stadium, with a proposal for its conversion to a 25,000 seat multi-purpose venue.
6. Responsibility for transforming the Stadium to its final legacy form and for ensuring its continued operation rests with London Legacy Development Corporation (**LLDC**).¹ A key goal of LLDC is to develop a lasting 2012 Games legacy at the centrepiece venue, the Stadium, and its surrounding site (**Stadium Island Site**).²
7. Subsequent to the 2005 Olympic bid, the UK was also successful in its bid to host the 2017 World Athletics Championships, and that commitment requires a venue with a larger capacity than the 25,000 initially envisaged. Consequently, it is now intended that the Stadium will be transformed into a 60,000 seat multi-purpose venue with athletics as a key capability (the **Pre-Concession Works**), with a roof extending over all of the seats in the Stadium. The requirement to retain athletics capability (with a running track between the pitch and the spectators) substantially reduces the attractiveness of the venue to a range of other potential bidders (for example, football clubs) and, for those interested, the price they are prepared to pay. The reason for this is that the distance between the spectators and the pitch reduces enjoyment for the fans and detracts from the atmosphere for the players.

¹ LLDC is a public sector, Mayoral Development Corporation, that is responsible for the regeneration legacy from the 2012 Games and is directly accountable to Londoners through the Mayor of London. It is the successor to the Olympic Park Legacy Company.

² See interactive map at: <http://www.londonlegacy.co.uk/news-and-resources/key-facts-and-figures/>.

8. These Pre-Concession Works will include the provision of a roof to cover all the existing seats within the Stadium, which was part of the 2017 World Athletics Championships commitment. The total cost is currently estimated at some £[] million. The Stadium Island Site is also intended to be redeveloped for the benefit of the local community.
9. The construction/transformation, operation and ongoing commercial use of the Stadium by concessionaires will be subject to open and non-discriminatory tender processes advertised internationally and conducted in accordance with EU rules. The tender process to identify key users of the Stadium in order to secure future revenue streams is still in progress. The intention is that one or more concessions (**Concessions**) will be granted to one or more concessionaires (**Concessionaire(s)**). Each Concession will give the Concessionaire the right to stage sports, entertainment, educational and/or cultural events at the Stadium subject to payment by each Concessionaire of a usage fee (**Usage Fee**). An Invitation to Tender (**ITT**) was issued on 22 December 2011 and bids were received on 23 March 2012. 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.³ To date, four bids have been received and LLDC is in the process of evaluating them.
10. Each Concession eventually awarded (and there is no limit on number, beyond the physical capacity of the Stadium to stage events) will give that Concessionaire the right to stage sports, entertainment and/or cultural events at the Stadium for a minimum term of five years and a maximum term of 99 years and to retain revenues from each event, subject to the Usage Fee which will be paid by each Concessionaire to the grantor of the Concession. Concessionaires may, during the life of a Concession, request an extension to the term of a Concession (in multiples of 5 years) subject to certain conditions, including that the maximum term does not exceed 99 years. Bidders will be required to share the Stadium with whomever is selected by the grantor of the Concession. Bidders may also bid for naming rights to the Stadium.
11. The Pre-Concession Works to transform the Stadium from its Olympic format to its intended permanent format will need to be carried out irrespective of who is ultimately selected as the successful Concessionaire.⁴ Two of the four bidders have in addition requested (or made their bids subject to the condition) that certain bespoke works be carried out as part of the Pre-Concession Works to adapt the Stadium in order more closely to meet their needs (**Bespoke Works**). These Bespoke Works would consist of the provision of retractable seating (to enable spectators to be closer to the pitch), and roofing to cover the retractable seats. The costs of any Bespoke Works will be taken into account in evaluating the various bids.⁵

The role of Newham

12. LLDC is not intending to grant the Concessions directly: this will instead be done by a special purpose vehicle (**SPV**), which has very recently been established as a limited liability partnership (**LLP**), jointly owned by LLDC and (indirectly) the London Borough of Newham (**Newham**), via a private limited company that is wholly-owned by Newham, Newham Legacy Investments Limited (**NLI**).⁶ As the local authority in whose local area the Stadium is situated, Newham is seeking to regenerate the area around the Stadium, using the 2012 Games and its venues as a catalyst for that regeneration, thereby delivering benefits to local residents. In return for a cash commitment from

³ See press release at: <http://www.londonlegacy.co.uk/statement-on-the-olympic-stadium-from-the-london-legacy-development-corporation/>.

⁴ Another option would be to retain the Stadium in its current form, with minimal transformation works. This would mean that it would be suitable for athletics, community and educational uses (but not compliant with the World Athletics Championship bid specification). This option assumes that no Concessions are entered into with any of the bidders. Under this scenario, the Stadium would remain in public ownership but would produce an annual operating deficit.

⁵ To the extent that the requested Bespoke Works would result in benefits to other users of the Stadium, these will also be taken into account in the evaluation of bids.

⁶ [].

Newham to fund part of the Pre-Concession Works, Newham will receive an interest in the SPV and an ability to influence the ongoing use of the Stadium for the benefit of the local population. It is proposed that Newham will make a loan to NLI which will not be on arm's length terms as it will be used by NLI, in turn, to make an equity investment into the SPV on behalf of Newham.

13. The selection of Concessionaire(s) will be made by LLDC and Newham will have no role in that selection process, albeit it will be kept informed of progress. LLDC will grant a long lease of the Stadium to the SPV at a nominal rent. The lease will oblige the SPV to grant Concessions as previously agreed by LLDC.
14. Following the grant of the Concession(s), the SPV will be responsible for ensuring that the Pre-Concession Works and the Bespoke Works are carried out. In practice, however, these functions will not be carried out by the SPV itself, but will be outsourced by means of an open and non-discriminatory tender process to third parties. In fact, LLDC launched the competition to select the construction contractor in April 2012.
15. Similarly, although the SPV will nominally become the Operator of the Stadium once the Concession(s) are entered into (in the sense that it will be contractually responsible to the Concessionaire(s) for the operation of the Stadium), the intention is that the SPV will not actually perform those functions itself. Rather, LLDC or the SPV will run a competition to select one or more Operators of the Stadium, a process in which NLI will play an active role as an investor in the SPV. The Operator(s) will be responsible for, amongst other things, venue marketing, facility management and maintenance, utilities, upkeep, security and ticket checkers.
16. LLDC and NLI will each make capital contributions to the SPV to enable the SPV to fund the Pre-Concession Works. The benefit of any operating surplus generated by the Stadium will accrue to LLDC and NLI and will be split between them in accordance with an agreed profit share ratio calculation, although it is also intended that a portion of any surpluses should be paid to two newly created local charities, the Newham Legacy Trust (which is intended to be formed by Newham) and The Legacy List (formed by LLDC). There is no guarantee that the competition will produce a surplus, but that is one of its aims.
17. As regards the land to the south of the Stadium (within the Stadium Island Site boundary),⁷ any development of this land will not be carried out by the SPV; instead it is contemplated that LLDC may enter into an agreement with Newham to develop this land with the net proceeds being shared between LLDC and NLI.

State aid analysis

18. The UK Government has considered whether the proposals described above could be said to involve State aid to the Concessionaire(s), the Operator(s), the SPV or NLI,⁸ but has concluded that this will not be the case for the reasons set out below. The Pre-Concession Works and any other works or services required in connection with the Stadium will also be allocated following an open and non-discriminatory tender process and there should be no State aid involved for similar reasons.

⁷ See note 2 above.

⁸ The UK Government considers that the two local charities who may receive payments from surpluses generated by the SPV should not be viewed as 'undertakings' for State aid purposes; additionally, it considers that any selective 'advantage' to them will not distort competition or affect inter-State trade. **The Legacy List** is a new charity established by LLDC to support the long term cultural, social and physical regeneration the Olympic Park and its surroundings. The charity will facilitate, fund and fund places, programmes and partnerships which actively engage people in the transformation of the park and their own lives. The focus will be on arts and culture, education and skills. The purpose of the **Newham Legacy Trust** is to provide or assist in the provision of facilities for recreation or other leisure time occupation in the interest of social welfare.

19. **Concessionaire(s)** are being selected pursuant to an open and non-discriminatory competitive tendering process. Thus the Concessionaire(s) cannot be regarded as aid beneficiaries as they will be paying a market price for the use of the asset.⁹
20. Similar considerations apply in relation to the **Operator(s)**: specifically, the fact that the Operator(s) will be selected pursuant to an open, transparent and non-discriminatory tender process should logically mean that there is no aid to the Operator(s).
21. As regards the **SPV**, the UK Government takes the view that no aid is involved in the transfer of funds by LLDC and Newham to the SPV, or the grant of a lease to the SPV at a nominal rent. The SPV is essentially a vehicle which is being used by the UK Government to generate value from the transformation and use of the Stadium (by means of open and non-discriminatory tenders) which will flow back to its public sector owners.
22. The purpose of granting a lease to the SPV is simply to enable the SPV to grant the Concession(s). Arguably the lease does not have any value in the hands of the SPV, because the only thing the SPV can do with it is use it in order to grant Concessions. Alternatively, any selective 'advantage' which may be said to be conferred on the SPV ultimately flows back to LLDC and Newham, as it is they who ultimately receive the benefit of any operating surplus generated by the Stadium: no operating surpluses will be retained in the SPV itself.
23. It can also be argued that the SPV is not an 'undertaking' for State aid purposes: its main purpose is to procure the Operator(s) for the Stadium, the Pre-Concession Works and any Bespoke Works. [¹⁰] Arguably it is not providing goods or services on any market in competition with other undertakings. Even if it were technically viewed as an 'undertaking', there would seem to be no distortion of competition or effect on inter-State trade. Although the SPV is structured as a 'for-profit' entity, it is in substance merely the intermediary through which two public (i.e. State) bodies cooperate to ensure the exploitation of the Stadium for the public benefit. Again, the SPV is not competing with any other undertakings in the fulfilment of this role. It is not being specifically remunerated for this task by its parents, save that its costs are being borne by LLDC and Newham.
24. Similar arguments can be made in relation to **NLI**. This entity exists only because of restrictions on direct local authority investments and its sole function is to be the vehicle by which Newham invests in the SPV. Any profits which accrue to NLI as a result of membership of the SPV will in turn be distributed to Newham. NLI will not be operating on any market for the provision of goods or services in which it faces competition from other undertakings, nor is it being remunerated by Newham for fulfilling this role.

Conclusion

25. For the above reasons the UK Government takes the view that the process of converting the Stadium and selecting Concessionaire(s) and Operator(s), by means of an SPV to be established by LLDC and Newham as described above, does not involve State aid. The UK Government would welcome the opportunity to discuss the issues raised by this note with the Commission and to get a preliminary indication of the Commission's views.

⁹ There are parallels with the treatment of sales of land and buildings by public authorities where the Commission accepts that a sale: "following a sufficiently well-publicised, open and unconditional bidding procedure, comparable to an auction, accepting the best or only bid is by definition at market value and consequently does not contain State aid. The fact that a different valuation of the land and buildings existed prior to the bidding procedure, e.g. for accounting purposes or to provide a proposed initial minimum bid, is irrelevant." The UK Government notes that the Communication on land sales is stated not to apply to the letting or leasing of land and buildings. Nonetheless, there seems no reason in principle not to apply the same analytical framework to the award of a Concession. The essential point is that the price for use of the asset is being determined through a competitive process. This ensures that Concessionaire(s) are not receiving any selective 'advantage' for which they are not paying a fair market price, and that the State (in this particular case, acting through the medium of LLDC) is acting as a market economy investor in selecting Concessionaires.

¹⁰ [].