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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 22 May 2007

declaring a concentration compatible with the common market and the functioning of the EEA Agreement

(Case COMP/M.4404 — UNIVERSAL/BMG Music Publishing)

(notified under document number C(2007) 2160)

(Only the English version is authentic)

(2007/595/EC)

On 22 May 2007 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ⁽¹⁾, and in particular Article 8(2) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competition/index_en.html

SUMMARY OF THE DECISION

- (1) This case concerns a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 (the Merger Regulation), by which the undertaking Universal Music Group Inc. (Universal, USA), belonging to the group Vivendi SA (Vivendi, France), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking BMG Music Publishing Group (BMG, Germany et al.) which currently forms part of the Bertelsmann group, by way of purchase of shares and assets.
- (2) Universal is a subsidiary of Vivendi which is an international media company. Its worldwide activities include music recording and publishing. Universal is active in music publishing through Universal Music Publishing Group (UMPG).
- (3) BMG is part of the Bertelsmann group (Bertelsmann) which is an international media company. BMG

comprises the worldwide music publishing activities of Bertelsmann.

- (4) The market investigation has revealed that in the market for online rights in Austria, the Czech Republic, Germany, Poland, and the United Kingdom as well as on EEA-wide level the concentration would, in terms of serious doubts, significantly impede effective competition through unilateral effects. The commitments proposed by the parties are, however, suitable to remove the competition concerns.

1. The relevant product markets

- (5) Music publishing is the exploitation of intellectual property rights of authors (in the following, the term 'authors' will be used to cover both lyricists (text) and composers (music)). Generally, authors transfer copyrights of their works (publishing rights) to music publishers and receive from the latter payments of advances and a share of the royalties generated by the commercial exploitation of their works.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

- (6) Music publishers exploit the rights received from authors by granting licences to right users. The users pay royalties for the use of these musical works. Depending on the specific types of rights, the licences are granted to right users either by the publishers directly or via collecting societies.
- (7) The market investigation to define the relevant product markets confirmed that as to the exploitation of music publishing rights, different categories of rights need to be distinguished, i.e. mechanical rights, performance rights, synchronisation rights, print rights and online rights. These categories of rights apply to different forms of use of music, e.g. mechanical rights are needed for the recording of CDs; performance rights need to be acquired if music is played on the radio and in bars; synchronisation rights are needed if music is used in films; print rights allow the user to produce sheet music; and online rights are necessary in order to sell music via the Internet and mobile telephony. These categories of rights therefore constitute separate markets.
- (8) With respect to the provision of music publishing services to authors, the market investigation confirmed that no further distinction has to be made since the authors normally do not use different publishers for the categories of rights.

2. The relevant geographic markets

- (9) The market investigation showed that the geographic scope with respect to the market for the provision of music publishing services to authors, and the markets for the exploitation of performance, mechanical, synchronisation, print and online rights appear to be national. For online rights it is likely that an EEA-wide market will develop in the future. The exact geographic scope of all relevant product markets can be left open since the conclusions of the analysis are the same, irrespective of the geographic dimension of the markets.
- ## 3. Affected markets and competition analysis
- (10) The notified concentration affects the market for the provision of music publishing services to authors, and the markets for the exploitation of performance, mechanical, synchronisation, print and online rights in several countries in the EEA as well as on EEA-wide level. The market investigation has shown that the concentration does not lead to competition concerns in any of the affected markets except for those for online rights.
- (11) In the markets for the provision of music publishing services to authors the market investigation has shown that authors will continue to have a sufficient number of alternatives to the merged entity. The merger, therefore, does not create competition concerns in any of the affected markets for music publishing services to authors.
- (12) With respect to the exploitation of music publishing rights the market investigation has shown that the merger is unlikely to create competition concerns in the markets for mechanical, performance, synchronisation and print rights. In those markets, where collecting societies play a predominant role (mechanical and performance rights), the merger will not have a significant effect since the collecting societies take the pricing decisions and grant licences on a non-discriminatory basis to users. In the markets where the publishers administer the rights without the involvement of collecting societies (synchronisation and print rights), the market investigation confirmed that the customers will after the merger continue to have sufficient alternatives to the merged entity. It is therefore unlikely that Universal will after the merger be able to increase prices for performance, mechanical, synchronisation and print rights.
- (13) In the market for online rights, the publishers have recently started to withdraw their respective rights for Anglo-American repertoires from the traditional collecting societies system. They have started to transfer their rights to selected collecting societies acting as agents for the individual publisher — a possibility which has been reaffirmed by a Commission Recommendation issued in 2005.
- (14) The market investigation has shown that, following the withdrawal, the pricing power shifts from the collecting societies to the publishers. In this new environment, Universal will after the merger be able to exert control over a large percentage of titles either via its (fully or partly-owned) copyrights in the authors' works or via its rights in the individual recordings. In Austria, the Czech Republic, Germany, Poland, and the United Kingdom as well as on EEA-wide level, Universal would even control 50 % or more of the chart hits and thereby become a 'must-have' product for all online and mobile music services whose possibilities to circumvent Universal will be significantly reduced by the merger.
- (15) The Commission had therefore concerns that the merger would give Universal the possibility and the incentive to increase prices for online rights in Anglo-American repertoire.

Conclusion

- (16) It therefore can be concluded that the proposed concentration in its notified form would likely to lead to a significant impediment of effective competition in the market for online rights in Austria, the Czech Republic, Germany, Poland, and the United Kingdom as well as on EEA-wide level.

4. Commitments offered by the Parties

- (17) In order to remove the Commission's concerns, Universal committed to divest a number of important catalogues covering Anglo-American-copyrights and contracts with authors. These catalogues include the EEA-activities of Zomba UK, 19 Music, 19 Songs, BBC music publishing, Rondor UK as well as an EEA-licence for the catalogue of Zomba U.S. These catalogues contain many bestselling titles and several successful authors such as The Kaiser Chiefs, Justin Timberlake and R. Kelly. Even though the concerns only relate to online rights, for reasons of viability the commitments have to cover the complete

copyrights (i.e. also mechanical, performance, synchronisation and print rights).

5. Assessment of the commitments submitted

- (18) The parties significantly improved the package of remedies twice responding to the results of two market tests. In the light of the quality of the finally proposed catalogues, the Commission concludes that the commitments remove the competition concerns.
- (19) It can therefore be concluded that, on the basis of the commitments submitted by the Parties, the notified concentration will not lead to a significant impediment of effective competition in the common market or in a substantial part of it on the market for online rights. Hence, the proposed concentration was to be declared compatible with the common market pursuant to Articles 8(2), 10(2) of the Merger Regulation and to Article 57 of the EEA Agreement.