

**Opinion of the Advisory Committee on mergers given at its meeting of 7 September 2012  
regarding a draft decision relating to Case COMP/M.6458 — Universal/EMI**

**Rapporteur: United Kingdom**

(2013/C 220/06)

1. The Advisory Committee agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
2. The Advisory Committee agrees with the Commission that the notified transaction has a Union dimension pursuant to Article 1 of the Merger Regulation.
3. The Advisory Committee agrees with the Commission's definitions of the relevant product markets as stated in the draft decision.

In particular, concerning the product market definition, The Advisory Committee agrees that the impact of the notified transaction must be assessed on the following markets:

- (a) the market for the wholesaling of physical music;
  - (b) the market for the wholesaling of digital music; and
  - (c) other vertically-related and/or neighbouring markets (including A&R, music publishing, ancillary activities and retailing of recorded music).
4. The Advisory Committee agrees with the Commission's definitions of the relevant geographic markets as stated in the draft decision.

In particular, concerning the geographic market definition, The Advisory Committee agrees that the impact of the notified transaction must be assessed on the following markets:

- (a) the market for the wholesaling of physical music at the national level; and
  - (b) the market for the wholesaling of digital music at the EEA and at the national level.
5. The Advisory Committee agrees with the Commission's assessment that the notified transaction is not likely to give rise to coordinated effects that would significantly impede effective competition on the market for the wholesaling of physical music at the national level and on the market for the wholesaling of digital music at the EEA level, as well as at the national level.
  6. The Advisory Committee agrees with the Commission's assessment that the notified transaction is not likely to significantly impede effective competition due to anti-competitive vertical and/or conglomerate effects, which may result in the foreclosure of the merged entity's customers and/or competitors in the relevant markets identified in the draft decision.
  7. The Advisory Committee agrees with the Commission's assessment that the notified transaction would likely lead to a significant impediment to effective competition in the following markets:

— Market for wholesale of digital recorded music

- (i) Within the EEA; and
  - (ii) Within 24 Member States (Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden, UK) and within Iceland and Norway.
8. The Advisory Committee agrees with the Commission's analysis of (i) piracy (ii) buyer power and (iii) entry and the conclusion that they are not of a nature to counteract the significant impediment to effective competition likely resulting from the notified transaction.

9. The Advisory Committee agrees with the Commission that the final commitments offered by the Notifying Party on 25 August 2012 (the 'final commitments') fully address the competition concerns identified by the Commission in the market for the wholesale of digital recorded music both at the EEA level and at the national level.

A minority abstains.

10. The Advisory Committee agrees with the Commission's conclusion that, subject to the full compliance with the final commitments, the notified transaction is not likely to significantly impede effective competition in the internal market or in a substantial part of it.

A minority abstains.

11. The Advisory Committee agrees with the Commission that the notified transaction must therefore be declared compatible with the internal market and the functioning of the EEA Agreement in accordance with Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.

A minority abstains.

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