

Anticipated acquisition by Centenary Music Holdings Limited of the Sanctuary Group plc

The OFT's decision on reference under Section 33(1) given on 20 July 2007.
Full text of decision published 16 August 2007.

Please note that square brackets indicate figures or text which have been deleted or replaced with a range at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Centenary Music Holdings Limited** (Centenary) is wholly owned by **Universal Music Group** (Universal) which is in turn 100 per cent controlled by Vivendi SA (Vivendi). Centenary is an international media company and its world-wide activities include music recording and publishing. Universal is active in music publishing through **Universal Music Publishing Group** (UMPG).
2. **The Sanctuary Group plc** (Sanctuary) undertakes a wide variety of merchandising and music activities. Sanctuary's UK turnover for the year ended 30 September 2006 was £ 54.9 million.

TRANSACTION

3. Centenary proposes to acquire the entire issued and to be issued, share capital of Sanctuary. This anticipated transaction was notified by way of merger notice, on 19 June 2007. The statutory deadline expires 31 July 2007.

JURISDICTION

4. As a result of this transaction Centenary and Sanctuary will cease to be distinct. The transaction satisfies the share of supply test under section 23 of the Enterprise Act (the Act) as the parties' combined share of supply in the UK for music publishing and recorded music exceeds the 25 per cent threshold. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

5. This transaction has also been notified to the competent authorities in Australia, the USA, Austria, Germany and Spain and has been approved in all of these jurisdictions.

FRAME OF REFERENCE

6. The parties submit and their internal documents and third party evidence confirms that their businesses are largely complementary. Universal's principal business is in recorded music and music publishing whilst Sanctuary's main business is merchandising and artist services.
7. To a limited extent, the parties overlap in the supply of music publishing and recorded music.
 - Music publishing (upstream) comprises the acquisition, administration, protection and the commercial exercise of intellectual property rights in musical works, and
 - Recorded music (downstream) includes the discovery and promotion of artists, the recording of music, the organisation of the manufacture, distribution, marketing and promotion of music products.
 - Online music: Any provider of online music needs licences for both the recording rights and publishing right. Online music publishing rights constitute a specific combination of mechanical and performance rights for applications such as music downloading services.

Product market

Music publishing

8. The parties submit that because music publishers normally acquire, administer and commercialise all types of rights,¹ all categories of rights should be considered together. In light of the fact that all music publishing companies are active across all categories of rights, the parties maintain that the correct frame of reference should be considered to be all music publishing rights, without further sub-segmentation.
9. By contrast, in *Universal/BMG*² and *Sony/BMG*³, the European Commission (EC) found that in terms of both demand-side⁴ and supply-side⁵

¹ that is mechanical rights (for example for recorded music), performance rights (for example for concerts or broadcasting), synchronisation rights (for example for film music), online rights (for example for music downloading) and print rights in respect of a particular artist or composition,

² Comp/M.4404, IP/07/695, 22 May 2007.

³ Comp/M.3333, Commission Decision of 19 July 2004.

⁴ Such as different characteristics, different customer needs, and the fact that a license of one type of right does not constitute a substitute for any other types of rights.

considerations there were some indications for the existence of separate product markets for each type of right.⁶ However, the Commission ultimately left open the exact product scope, as it had no impact on the outcome of its decision in those cases.

10. In the context of this assessment, the OFT has not received any compelling evidence that would warrant a different approach to that of the EC. However, even on the narrowest frame of reference considering each type of right separately, this transaction does not raise any competition concerns. Therefore, it has not been necessary for the OFT to conclude on the precise product scope in relation to music publishing.

Recorded music

11. The EC has previously considered recorded music in the context of its assessment in various cases.⁷ While the precise product scope has been left open, as it did not impact on the competitive assessment in those cases, the narrowest frame of reference considered by the EC was on the basis of:
 - i) distinction by genre (classical vs. popular (pop), and possible sub segments for pop such as jazz, soul, heavy metal and techno)
 - ii) different types of music recording (for example compilations, albums, singles), and
 - iii) physical and online delivery separately.
12. The parties submit that with regard to different genre, no meaningful or recognised definition or distinction exists and that the market is characterised by a chain of substitution. While this view was supported by competitors contacted by the OFT, customer respondents indicated that different music genres are not generally substitutable.
13. The parties further argue that consumers regard different types of music recording as directly substitutable. They maintain that, for example, albums and compilations are advertised, marketed, promoted and distributed similarly. Third party comments received by the OFT on this point were mixed.
14. As no competition concerns arise regardless of whether individual genre and types of recording are considered separately or as a whole, it has not

⁵ Different exploitation systems, dissimilar licensing rates, differences in commercial importance across types of rights.

⁶ *Ibid.*, at paragraph 42.

⁷ *Sony/BMG, IV/M.1219 Seagram/Polygram*, Commission Decision of 21 September 1998, *Thorn EMI/Virgin Music. IV/M.202*, 27 April 1992.

been necessary for the OFT to conclude on the precise product frame of reference for recorded music.

15. As for the distinction between physical and online delivery of recorded music, the parties say that these merely constitute two means of selling the same products. However, online sales are considered further below.

Online music

16. In *Sony/BMG* the EC found that online music was not part of the general market for recorded music as there were significant differences between the distribution of recorded music via physical carriers and online sales. It distinguished between i) a wholesale market for licences of online music, and ii) a retail market for the distribution of music. As the parties submit that they do not overlap in the latter, and we have no evidence to refute this claim, this is not considered further.
17. Any provider of online music needs licences for both the recording right and publishing right of the titles he intends to offer. The OFT has taken a cautious approach and considered both the provision of online publishing and recording rights separately as well as the collective provision of both rights, however, in the absence of any competition concerns, has not had to conclude on these points.

Geographic market

18. The parties submit that they consider the UK to be the appropriate geographic frame of reference, while noting that it may be wider than national in some respects. Third party respondents commented that there are both national and European dimensions to competition. The EC has in previous decisions⁸ not concluded on the geographical scope.
19. In the absence of competition concerns or any compelling evidence pointing to either a national or EEA-wide frame of reference, it has not been necessary for the OFT to conclude.

HORIZONTAL ISSUES

Music publishing

20. The parties combined share of supply ranges from [20-30] per cent in mechanical rights to [20-30] per cent in performance rights (with no increment in either print rights or synchronisation rights). The increment to share of supply is less than 1 per cent.

⁸ *Ibid.*

Recorded music

21. The merged entity's share of supply ranges from [20-30] per cent in local repertoire (increment: 1.3 per cent) to [45-55] per cent in classical albums⁹ (here the increment is unclear, as the parties submit that the target is not active in this field, however, their own data shows a 0.6 per cent increment). Across all possible segmentations in terms of geography, genre or type of music, the increment is less than 2 per cent.
22. While some third parties highlighted the fact that Universal currently is the strongest player in recorded music and that this transaction will add to its portfolio, the same third parties also acknowledged that it would not significantly add to Universal's share.

Online music

23. The parties submit that in relation to music publishing rights, the increment to share of supply is less than 0.5 per cent. Digital sales only represent [0-10] per cent of each of the parties' sales in 2006. In respect of the wholesale supply of recording rights for online applications, the parties' joint shares are estimated at [30-40] per cent (increment: 1.7 per cent). While the parties maintain that publishing and recording rights should not be considered collectively, they have confirmed that if they were, the increment would be of a similar size.

Conclusion

24. In light of the continued presence of other majors (EMI, Sony/BMG and Warner) and independents, the small increments in all relevant segments and the absence of third party concerns, this transaction is not considered to raise competition concerns.

THIRD PARTY VIEWS

25. While some third parties submitted that Universal was a major player in music publishing and recorded music, most respondents thought that the parties' activities were largely complementary and that the transaction would have very little (if any) effect on competition.

⁹ The parties note that the Official Chart Company data is likely to significantly over-state their share in classical music, as it is not confined to traditional classical albums. Also, this data would not accurately represent the parties' activities in classical music, as it excludes many classical music albums released by third parties.

ASSESSMENT

26. The parties overlap in the supply of music publishing and music recording in the UK. Their joint post-merger shares, depending on the segment considered range from [20-30] per cent to [45-55] per cent. However, all increments resulting from the transaction amount to less than 2 per cent.
27. Post-merger other majors and independents will continue to constrain the merger entity. The increment to share of supply is considered to be very modest and third parties confirm that it will have little (if any) effect on competition.
28. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

29. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.