



Peter Hill
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Performing Right Society Undertakings Review
Competition and Markets Authority

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BY POST AND EMAIL

22 April 2016

Dear Mr Hill,

CMA's provisional decision to release undertakings given by PRS ("Undertakings")

We support the CMA's provisional decision to release the Undertakings in light of the changes in circumstances identified.

While we agree with the overall conclusion reached by the CMA, and that the circumstances identified by the CMA would in themselves be sufficient to support the release of the Undertakings, we wish to respond to some of the statements made in the provisional decision.

Market position

In its provisional decision, the CMA makes various statements about the lack of significant change to PRS's market position in the UK (see for example, paragraphs 5, 9 and 97). We wish to reiterate that these share estimates were based on the CMA's own market definition (performing right exploitation in the UK) which we do not agree is the appropriate frame of reference. As stated in our responses to the CMA's information request dated 15 December 2015, PRS has a much more moderate share when considering a market definition that includes mechanical rights on a wider geographic basis – and also when considering certain possible segmentations.

Withdrawal of rights

We are not sure of the origin of the statement "due to PRS's desire to protect writer members from being forced to assign their rights to publishers" (paragraph 86). To the best of our knowledge, under publishing agreements certain rights are assigned to the publisher and others remain with the writer. Since PRS takes a direct assignment from members, the only person's instructions we can follow are those of the member (or his/her validly authorised attorney) and this is irrespective of what may or may not be agreed under the publishing agreement.

We also disagree with the statement that because the level of rights withdrawal from PRS is low, this leads to the conclusion that the possibility for withdrawal of rights is not a competitive constraint.

[CONFIDENTIAL]

The impact of online music

To the extent that this may become relevant to the CMA's final decision, we would be happy to explain this sector in more depth – as we do not consider the CMA's enquiries have accurately captured the extent of competitive constraints caused by the online market. In particular it should be noted that publishers may also license national online services outside of the collective. We also do not consider SACEM to be the only competitor active in attracting option 3 mandates.

Potential barriers to entry

While it may be unlikely that there would be a competitor seeking to enter all of the sectors in which PRS operates, we do not consider most of the reasons given at paragraph 100 of the provisional decision as credible barriers to entry for an independent organisation with sufficient funding to establish itself as a CMO.

We also wish to correct in particular the statements made about "bundling" mono- and multi-territorial rights for online music. As stated in our responses to your information request dated 9 February 2016 we do not "unbundle" mono- and multi-territorial digital licensing under our representation agreements with other CMOs (contrary to the statement in footnote 60 of the CMA's provisional decision), nor do we "bundle" them under our membership agreement – it is possible for a member to reserve territories to itself, or to appoint others, for the online category (as is the case for all our categories). While we understand our competitors may be seeking to argue that PRS should be required to reorganise its business to their benefit and establish two categories, mono- and multi-territorial online exploitation, we do not consider that this is in the best interests of the membership as a whole since it would significantly drive up costs and inefficiencies both for PRS and users (see further our responses to your information request dated 9 February). We consider that the specific categories adopted by the membership at a general meeting are in line with the ratio of the GEMA decisions (a balance between the length of time during which a member is bound by a membership agreement and the breadth of rights a member may exclude or withdraw).

Allegations of breach of competition law

While there is insufficient information provided in the provisional decision to respond substantively on this point, we would like to reiterate that PRS takes seriously its obligations under competition law.

Conclusion

In summary, we ask the CMA to confirm its provisional decision and release the Undertakings.

Yours sincerely,

Jonathan Aitken
Head of Legal – Competition, Corporate and International Affairs