



EUROPEAN COMMISSION

## MEMO

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# **Mergers: Commission clears proposed merger between Universal and EMI Music subject to conditions-frequently asked questions**

(See [IP/12/999](#))

### **How did the Commission define the product markets?**

The relevant markets in this case are the markets where record companies sell their music to music retailers such as supermarkets, dedicated music outlets and digital platforms such as Spotify (the markets for the wholesale distribution of music). In line with its previous decisions concerning the music industry (notably *Sony/BMG II* in 2007, see [IP/07/1437](#)), the Commission identified separate markets for the wholesale distribution of CDs and other physical music, and the wholesale distribution of digital music. Physical music and digital music display different characteristics (for instance in terms of product formatting and sound quality). The Commission's investigation also showed that commercial conditions in the negotiations with customers (i.e. retailers) for physical and digital music differ and prices for physical and digital music remain very different. The Commission finally found that, given the limited presence of outlets of physical music in the digital sphere, negotiations with digital customers were not sufficiently constrained by the bargaining position that customers for physical music have towards record companies.

### **How did the Commission define the geographic markets?**

The Commission found that the markets for physical music are national. The Commission did not definitively conclude whether the market for digital music is EEA-wide or national. There was no need to define the market in this manner, because the merger raised concerns at both levels.

### **What were the Commission's competition concerns?**

The Commission's investigation focussed on the markets for the wholesale of digital music. In these markets, record companies negotiate licensing deals for their music with customers such as Apple, Amazon, Spotify, Deezer and Mobile Network Operators such as Vodafone and Telefónica that offer music together with their telephony subscriptions. The Commission's in-depth investigation showed that in these markets, the size of a record company increases its bargaining power and hence its ability to increase licensing prices and impose more onerous licensing terms. The Commission concluded that if Universal were to significantly increase its size after the merger, digital platforms would be likely faced with a significantly increased licensing cost. This would be particularly the case for the smaller platforms that offer innovative ways for consumers to buy and listen to digital music. The Commission was concerned that new digital platforms could be hampered in

their ability to launch or expand their services, which would reduce consumer choice for music and harm cultural diversity. The Commission was concerned that some platforms might even have been forced to increase the prices that consumers pay for music downloads and streams. Both scenarios would cause harm to consumers.

### **Did the Commission identify concerns in relation to physical music?**

The Commission investigated physical and digital markets, with a focus on the markets for the wholesale distribution of digital music. Digital markets are particularly important for consumers because digital music sales are likely to surpass the sales of CDs and other physical music in the near future. Moreover, in digital markets smaller, but innovative players are developing new ways to consume music. These customers would have been particularly vulnerable to any negative effects of the merger. The remedies solve these concerns. In order to allow the purchaser to exploit the divested assets effectively, the divested rights cover both physical and digital music sales. The divestiture therefore also removes any possible concern that the merger would harm physical music customers - such as supermarkets, consumer electronics and entertainment outlets such as FNAC, and specialised music retailers - as well as, ultimately, final consumers of physical recorded music.

### **Did the Commission assess the impact of piracy on music sales and the market power of Universal?**

The Commission extensively investigated the impact that piracy has on music sales and the ability of Universal to increase prices and otherwise impede effective competition. The Commission acknowledges that piracy exists and has an impact on music sales. In particular, piracy may have reduced the overall size of sales of legitimate music. However, this does not alter the fact that the merger would have significantly increased Universal's size and bargaining position vis-à-vis its digital customers that offer legitimate music. The Commission concluded that despite the existence of piracy, Universal would likely have the ability to increase prices or worsen licensing terms for these digital platforms.

### **Did the Commission investigate the possibility for large digital customers such as Apple to defeat price increases or other types of worsening of licensing terms by Universal?**

The Commission's investigation did not confirm that digital customers would have buyer power such as to prevent price increases by Universal. The Commission's investigation confirmed that even a customer such as Apple continues to launch new digital music services and that it is not established that it could defeat price increase or other types of worsening of licensing terms by Universal. In any event, there are many other smaller, particularly innovative, music distribution players, such as streaming platforms or mobile operators that offer music together with telephony subscriptions. These would be particularly vulnerable to a price increase or other types of worsening of licensing terms by Universal. In order to avoid harm to the consumers that use their services, these customers needed to be protected as well.

## **Which assets are included in the remedy package that the Commission accepted?**

As a condition for the clearance of its merger with EMI, Universal has to divest the following assets:

- EMI Recording Limited (including EMI's iconic Parlophone label, with the exception of the Beatles), featuring artists such as Coldplay, David Guetta, Lilly Allen, Tinie Tempah, Blur, Gorillaz, Kylie Minogue and artists with steady revenues such as Pink Floyd, Cliff Richard, Tina Turner, Kate Bush, David Bowie, Duran Duran and Kraftwerk;
- Other EMI labels, such as Chrysalis (featuring The Ramones, Jethro Tull and Spandau Ballet, but without the Robbie Williams catalogue) and Mute Records (featuring Depeche Mode, Moby and Nick Cave and the Bad Seeds);
- EMI Classics/Virgin Classics artist and composers;
- EMI's share in the popular "NOW! That's What I Call Music" compilations business;
- The following Universal labels: Sanctuary (featuring Black Sabbath, Iron Maiden and the Kinks), Co-op Music Limited (a label licensing business selling artists such as Mumford and Sons and Garbage), King Island Roxystar (featuring Swedish artists such as Agnes, Eric Saade and Erik Aasle) and MPS Records (featuring Oscar Peterson, George Duke and Monty Alexander);
- Universal's share in Jazzland (featuring Norwegian artists such as Bugge Wesseltoft and Sidsel Endresen).

In addition, Universal has to divest the following local EMI entities in the following Member States:

- EMI France (featuring the David Guetta catalogue, Milow and Colonel Reyel);
- EMI Spain (featuring Macaco, Bebe, Luz Casal, Pablo Alboran and Heroes del Silencio);
- EMI Portugal (featuring Madredeus, Mariza and renowned Fado artists such as Carmane and Caminho);
- EMI Belgium (featuring Clouseau, Ozark Henry, Buscemi and Novastar);
- EMI Denmark (featuring Kim Larsen, Christophe, Bjornskov and Turboweekend);
- EMI Sweden (featuring Lasse Stefanz, Magnus Uggla and Eric Amarillo);
- EMI Norway (featuring Madrugada and Silvert Høyem, Lene Marlin and Morten Abel);
- EMI Poland (featuring Gregorz Ciechowski, Republika, Bajm, Namaam and Budka Suflera);
- EMI Czech Republic (featuring Tři sestri, Orlík, Kabát and Lucie Bíla);
- Universal Greece (featuring Eleftheria Arvanitaki, the Goin' Through Group and Nikos Vertis).

## **Why did Universal not divest local entities in all the EEA States where the Commission had identified concerns?**

Universal committed to divest local EMI entities in 10 EEA States. These entities sell both international and local repertoire. In the remaining Member States where the Commission raised concerns, EMI's Anglo repertoire generates significant sales. This repertoire is mostly with EMI's UK business that Universal has to divest. The Commission concluded that for the remaining Member States, the proposed divestitures would be sufficient to restore effective competition.

## **Who can purchase the assets?**

Universal has to sell the assets to purchasers that are either already active as a record company, or have a proven track record in the music industry, for instance because they are music publishers seeking to enter or re-enter the recorded music markets. In this way, the Commission ensured that the divestiture will allow for the emergence of a strong competitor to Universal. This competitor can develop the Divestment Business, including by attracting new artists on the basis of the assets that are divested, and challenge Universal's market position in the future.

## **Can Universal re-acquire the assets and artists it now proposes to sell?**

No, it cannot. Universal committed to not re-acquire the assets or re-sign any artists signed with the relevant entities for a period of ten years. The divestiture of the assets is truly long-lasting.

## **Who are the likely buyers of the assets?**

It is ultimately up to Universal to find a buyer or multiple buyers for these assets. The purchaser requirements that the Commission has formulated cover both existing players in the recorded music industry and music publishers, which may enter the recorded music markets on the basis of this divestiture.

## **What does the commitment by Universal not to include Most-Favoured Nation Clauses in its agreements with digital customers in the EEA entail?**

Most-Favoured Nation clauses provide that if a digital customer negotiates an attractive licensing deal with Universal's competitors, this customer needs to offer the same terms to Universal. The effect of these clauses is two-fold. First, the licensing cost of this customer increases as it needs to offer the favourable conditions to both, Universal and its competitor. Second, Universal's competitors may be constrained in their negotiations with digital customers, as these negotiations take place under the threat that customers need to extend any favourable treatment, agreed between the customer and Universal's competitor, also to Universal. Universal now committed not to enter into any agreement with any digital customer in the EEA that contains MFN clauses. This includes new agreements that Universal negotiates with digital customers and the re-negotiation or renewal of existing agreements. This commitment should assist digital customers in preventing increases in their licensing cost. It also assists competitors in competing effectively with Universal, as they will no longer negotiate with digital customers under the constraints of Universal's MFN clause.

## **Will competitors, in particular independent labels (so-called "Indies"), disappear after the merger when they face a larger Universal?**

The remedies in this case are far-reaching and will sufficiently reduce Universal's size after the merger. In this way, the Commission avoided that competitors would be confronted with a significantly larger Universal that would have had the ability to seriously reduce their access to sufficient distribution channels for their artists and music. In particular, Universal will likely not be able to significantly reduce these competitors' access to digital platforms, which are particularly important for Indies to sell their music. This should allow smaller competitors to Universal to have sufficient access to consumers. "Indies" can of course choose to acquire parts of the assets that Universal will need to divest and strengthen their position in this manner.

## **Will this merger still have a negative impact on artists and cultural diversity?**

The remedies that Universal offered are very significant. The Commission ensured that the assets need to be sold to purchasers that are either active in music recording or have a proven track record in the music industry, for instance because they are music publishers. In this way, the divestiture will also allow for the emergence of a strong alternative for artists for signing their recording deals. This ensures that artists retain sufficient alternative channels to the consumer and that cultural diversity in Europe is preserved.

## **How is this case linked to the Sony/EMI music publishing merger that the Commission has cleared in April?**

The Commission cleared the acquisition of the music publishing business of EMI by a consortium led by Sony and Mubadala on 19 April (see [IP/12/387](#)). That acquisition was subject to a commitment from Sony to sell various music catalogues and assets. The two cases concern two different transactions. With the remedies in both cases, the Commission ensured that effective competition would be preserved in both the recorded music and music publishing markets.