

Completed acquisition by Centenary Music Holdings Limited of V2 Music Group Limited

No. ME/3280/07

The OFT's decision on reference under section 22(1) given on 5 November 2007. Full text of decision published on 13 November 2007.

Please note that square brackets indicate figures or text which have been deleted or replaced 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 wholly owned by **Vivendi SA** (Vivendi). Universal is an international media company whose main activities comprise the production and distribution of recorded music and music publishing.
2. **V2 Music Group Limited** (V2) is an international music group operating in the field of recorded music. Physical and digital distribution of its recorded music is undertaken by Universal. V2 also provides services through its division 'CO-OP' to smaller independents and single artist labels. V2's UK turnover for the year ended 31 March 2006 was £9 million.

TRANSACTION

3. On 26 September 2007, Centenary acquired the entire issued share capital of V2. The transaction was notified on 5 September 2007. The administrative deadline expires on 5 November 2007 and the statutory deadline expires on 25 January 2008.

JURISDICTION

4. As a result of this transaction, Centenary and V2 have ceased to be distinct. The transaction qualifies as a relevant merger situation on the share of supply test under Section 23 (3) of the Enterprise Act 2002 (the Act) as the parties' combined share of supply in the UK for recorded music exceeds the 25 per cent threshold.

5. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.
6. The transaction was notified to the National Competition Authorities in Austria and Germany and has been approved in each jurisdiction.

FRAME OF REFERENCE

Product scope

7. The parties overlap in the supply of recorded music. As described in previous EC and OFT decisions,¹ music recording involves discovering and developing new artists², recording their music, manufacturing and reproducing the recordings on physical carriers or in digital format and distributing the recordings to wholesalers and retailers. While in these previous cases the precise product scope was left open as it did not impact on any of the competitive assessments, the narrowest frames of reference within music recording were considered on the basis of the following segmentations:
 - i) by genre (classical, popular and possible sub-segments for pop such as jazz, soul heavy metal and techno)
 - ii) by type of recording (for example compilations, albums, singles)
 - iii) by format (physical, digital (online)).
8. The parties submit that in the absence of a recognised definition or distinction between genres of music, the market for recorded music should be defined as comprising all genres of music. From a demand side perspective, the parties argue that retailers stock a range of recorded music products across a wide variety of genres and that consumers commonly switch between genres. From a supply side perspective, they submit that the skills necessary to operate a music recording activity coincide across all genres.
9. Moreover, the parties dismiss the relevance of segmentation by type of recorded music, submitting that consumers regard compilations as directly

¹ Comp/M.3333, Commission Decision in Sony/BMG of 19 July 2004; Anticipated acquisition by Centenary Music Holdings Limited of the Sanctuary Group plc, 20 July 2007.

² The development process in music recording is known as Artist & Repertoire (A&R). A&R for a recording company mostly covers the process of discovering a new recording artist (the opportunity to sign an established artist sometimes also arises), negotiating a contract, finding a producer and providing artistic and creative guidance to create a master recording. Once discovered, artists will sign contracts under which the artist agrees to record exclusively with that record company for a period of time.

substitutable to albums and that compilations are advertised, marketed and promoted through similar means to new releases.

10. Finally, the parties submit that digital and physical delivery of recorded music are simply two different ways of distributing the same recorded music to the public and that digital music is part of the overall market for the supply of recorded music.
11. However the OFT notes that, in line with the 2004 *Sony/BMG* decision whereby the EC found that digital music format should be considered separately from physical music format,³ third parties to the present transaction have identified significant differences between the two formats, pointing at two separate segments.
12. In light of the above considerations, the OFT adopts a cautious approach,⁴ and considers the competitive impact of the present transaction on each of the various identified segments. However, given that the transaction raises no competition issues even on the narrowest frames of reference, the OFT does not consider it necessary to conclude on the appropriate product scope.

Geographic scope

13. The parties submit that the relevant frame of reference in which to assess the transaction is national. Some third party comments indicate that there are both national and European dimensions to competition. Previous EC and OFT decisions have not concluded on the appropriate geographical scope.
14. As the present transaction does not raise competition issues, the OFT does not consider it necessary to conclude on the appropriate geographical scope. However, taking a cautious approach,⁵ the competitive impact of the transaction is assessed within the UK.

HORIZONTAL ISSUES

15. The parties have provided share of supply data on sales of recorded music in the UK by type of recording (compilations, albums and singles) and by format (physical and digital). The various information sets either rely on IFPI⁶ data and Universal's best estimates or have been sourced from the UK Official Charts Company. In addition, the parties submit that the impact

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

⁴ In line with the approach taken in the previous OFT decision: Anticipated acquisition by Centenary Music Holdings Limited of the Sanctuary Group plc, 20 July 2007.

⁵ In line with the approach taken in the previous OFT decision: Anticipated acquisition by Centenary Music Holdings Limited of the Sanctuary Group plc, 20 July 2007.

⁶ International Federation of the Phonographic Industry (organisation representing the interests of the recording industry worldwide).

of the transaction on the different segments by genre is the same as on recorded music as a whole. The parties have not provided supporting figures in that respect. However, no argument against this approach has been put to the OFT.

16. The parties submit that the transaction leads to a *de minimis* increment to Universal's existing share. The data provided indicate that across the different product segments,⁷ the merged entity's share of supply ranges from [20 - 30] per cent to [30 - 40] per cent, with increments to Universal's share ranging from 0.2 per cent to 1.4 per cent.
17. The share of supply data also show that the merged entity will continue to face competition in the UK from the three other major record companies (the majors): Sony/BMG, EMI, and Warner, whose shares in UK recorded music range between 10 and 23 per cent, and from a fringe of independent record companies (the independents) accounting altogether for some 17 per cent of UK recorded music (these include amongst others Beggars Group, Dramatico Entertainment, Ministry of Sound, Demon Music group, Domino Record). According to the parties' submission and third parties' comments, the independents form a long tail of smaller players which provides a significant competitive constraint in UK recorded music.
18. The parties submit that the present transaction does not remove one of Universal's closest competitors. Third party comments indicate that Universal's closest competitors are the other majors. One third party in particular explains that the majors compete with one another more frequently than they compete with independents as they all have a similar range depth, a significant number of artists on their rosters, and they all release a variety of albums each week. In view of the above and given the absence of evidence suggesting that V2 is a closer competitor to Universal than any other music recording company, the OFT considers that V2 and Universal were not each other's closest competitor pre-merger.
19. According to a small minority of third party comments, the transaction contributes to Universal's strong media and retail presence, while independents face difficulties in accessing radio, television airplay and retail space to promote and market their own titles. The argument is that the transaction removes a significant player among the independents, V2 being one of the few representing more than one per cent in UK recorded music, and that it diminishes significantly the negotiating power of the independents as a whole.

⁷ One third party refers to the allegedly particularly strong presence of Universal on charts. No evidence was put to the OFT indicating that charts should be considered as a distinct segment. However, the OFT notes that if charts were to be considered separately, to the extent that independents have a relatively lower presence in charts, the overlap and accretion's to Universal's shares would be even smaller.

20. However, the OFT has seen no evidence showing that V2 is capable of exerting a constraint greater than that implied by its presence in the UK recorded music market, as one of the small players of the industry with a 0.2 to 1.4 per cent share depending on the segment considered, or that its exit will have an impact on the ability of others to compete. In addition, this concern is not corroborated by other third party responses which identify new ways to promote and market recorded music such as artists setting up their own internet pages to market themselves or making their records available online directly. The OFT does not believe that the present merger will result in a substantial lessening of competition in terms of promotion and marketing.
21. One third party submits that independents are the main drivers of innovation through their A&R activity, while the majors engage to a lesser extent in discovering and signing new artists. In that respect, it is alleged that the present transaction removes V2 as an effective A&R based independent and consequently, results in weakening the innovative role of independents in the industry.
22. The OFT notes however that according to the parties' submission and other third party comments received, in line with the findings of the 2004 EC decision in Sony/BMG,⁸ while independents focus on A&R, the majors are also active in this area.
23. In addition, the evidence available to the OFT suggests that V2's activity in A&R is not in any way unique or difficult to replicate by other companies in the industry. On the contrary, the parties refer to new well known independents in the industry⁹ who have successfully settled their A&R activity, managing to release and market albums within a few years time (Domino Records, Dramatico Entertainment, B-Unique).
24. Moreover, the parties submit and third party comments corroborate that competition between all record labels to sign artists has significantly increased in recent years, given the growth of social networking and online video sites enabling individual artists to make their recordings readily accessible to all interested labels and even encouraging established artists to self-promote their titles *via* Internet. Therefore, on the basis of the available evidence, the OFT believes that there is no realistic prospect that innovation in the music recording market will be lessened as a result of the present merger.
25. The same third party further submits that the shrinking role of the independents will result in a reduction in consumer choice. However, the choice offered by V2 to consumers is to an extent reflected by its share of supply. Should there be demand from consumers for a broader product

⁸ Comp/M.3333, Commission Decision of 19 July 2004.

⁹ AIM (UK Association for Independent Music) press release, 11 February 2007.

offering, the OFT expects that record companies and retailers would supply alternative products. In addition, the existence of artists self promoting their work indicates a dynamic market leading to greater consumer choice. The OFT does not believe that the transaction will significantly reduce consumer choice.

26. Some third parties also point out that Universal operates a strategy of cumulated small incremental acquisitions,¹⁰ which considered together contribute to its position of leader in UK recorded music. However, the parties submit that the present transaction is the second acquisition implemented by Universal in the UK within the past five years (along with an increase of its share in another company). Given the presence of three other large and several smaller sized competitors, the OFT considers that this particular acquisition does not result in any substantial lessening of competition within the supply of recorded music in the UK.
27. Finally, the OFT has also considered whether the transaction would give rise to portfolio effects, which would impede competition in the market. Although the transaction extends Universal's roster, the OFT has seen no evidence that V2's catalogue significantly adds to Universal's in terms for example of increasing the number of genres covered by Universal. In addition, the OFT has seen no evidence of bundling, and the increment to Universal's shares of supply is not conducive to such behaviour post-merger. Finally, customers have not raised any significant concerns about the increased leverage on the part of Universal following the merger.

Conclusion

28. In light of the continued presence of the majors and the independents, given the small increments resulting from the transaction across all appropriate segments, and the lack of any evidence resulting from the OFT's investigation leading to any credible theory of harm, the OFT considers that no substantial lessening of competition arises as a result of the present transaction.

Barriers to entry and expansion

29. The parties submit and several third party comments corroborate that barriers to entry into the recorded music market are perceived as being low. The parties have supplied the OFT with evidence showing that there is a significant number of players presently attempting to enter the UK recorded music market and that some independents have recently been successful at settling in this market.

¹⁰Anticipated acquisition by Centenary Music Holdings Limited of the Sanctuary Group plc, 20 July 2007.

30. Two third parties expressed the concern that new entrants or existing companies seeking to expand have limited access to retail space, radio and television airplay and therefore face difficulties in marketing and promoting their titles. However, it is not necessary for the OFT to conclude on this issue and more generally on the nature of barriers to entry, in light of the minimal accretion to Universal's share of supply and therefore the absence of any competitive concern arising from the present transaction.

THIRD PARTY VIEWS

31. From a large sample of third parties contacted by the OFT, the majority even though pointing to Universal's strong presence in UK recorded music, considers the increments resulting from the present transaction as being very modest and is therefore unconcerned.
32. However, a few third parties (four) express concerns relating primarily to Universal's existing size and the current structure of the music recording market. Two in particular points to Universal's strategy of '*creeping acquisition*'. These concerns are addressed above and do not give rise to any credible theory of harm.

ASSESSMENT

33. The parties overlap in the supply of music recording in the UK. Their post-merger shares, depending on the segment considered, range from [20-30] per cent to [30-40] per cent. However, all increments resulting from the transaction amount to less than 1.5 per cent.
34. Post-merger, other majors and independents continue to operate as a strong competitive constraint to the merged entity. With the exception of a few third party concerns, which do not lead to any credible theory of harm, third parties generally agree that the increment to Universal's share of supply is very low and that it will have a negligible (if any) effect on competition. Finally, on the basis of the available evidence, the OFT does not believe that the transaction will give rise to any portfolio effects.
35. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the UK.

DECISION

36. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.