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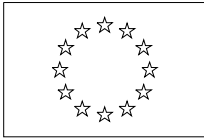
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Case No
COMP/M.4404 –
Universal/BMG Music
Publishing

Only the English text is authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 8 (2)
Date: 22/V/2007



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22/V/2007

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PUBLIC VERSION

**COMMISSION DECISION
of 22 May 2007**

**declaring a concentration to be compatible with the common market
and the functioning of the EEA Agreement**

(Case No COMP/M.4404 – Universal/BMG Music Publishing)

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of 22 May 2007
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(Case No COMP/M.4404 – Universal/BMG Music Publishing)

(Only the English text is authentic)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹, and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 8 December 2006 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations,

Having regard to the final report of the Hearing Officer in this case,

WHEREAS:

I. INTRODUCTION

1. On 3 November 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertaking Universal Music Group Inc. ("Universal") acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of the undertaking BMG Music Publishing ("BMG") which currently forms part of the Bertelsmann group, by way of purchase of shares and assets. Universal and BMG are collectively referred to in this decision as "the parties" with Universal alone being the "notifying party".
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and threatens to significantly impede effective competition in the common market. It therefore decided on 8 December 2006 to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation.

¹ OJ L 24, 29.1.2004, p. 1

3. On 15 March 2007, Universal offered commitments with a view to rendering the concentration compatible with the common market. These commitments were modified on 26 March 2007 and improved on 30 March 2007. The final version of the commitments was submitted on 23 April 2007.
4. The Commission has concluded that the commitments entered into by Universal remove the serious doubts as to the compatibility of the notified operation with the common market. The concentration is therefore to be declared compatible with the common market and the functioning of the EEA Agreement pursuant to Articles 8(2) and 10(2) of the Merger Regulation and Article 57 of the EEA Agreement.

II. THE PARTIES

5. Universal is a 100% subsidiary of Vivendi SA ("Vivendi"). It 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").
6. BMG is part of the Bertelsmann group ("Bertelsmann") which is an international media company. BMG comprises the worldwide music publishing and production music activities of Bertelsmann.

III. THE CONCENTRATION

7. On 6 September 2006 Vivendi and Universal signed a share purchase agreement with Bertelsmann AG and seven further companies within Bertelsmann for the acquisition of BMG. As a result of the transaction Universal will acquire sole control of BMG. The transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

8. Vivendi and BMG have a combined aggregate worldwide turnover of more than EUR 2 500 million (EUR 19 484 million for Vivendi in 2005 and EUR [...] for BMG in 2005). The aggregate Community wide turnover of each party exceeds EUR 100 million (EUR [...] for Vivendi in 2005 and EUR [...] for BMG in 2005).
9. The aggregate turnover of all the undertakings concerned exceeds 100 million in more than three Member States, namely France (Vivendi: EUR [...]*, BMG: EUR [...]*), Germany (Vivendi: EUR [...]*, BMG: EUR [...]*), Italy (Vivendi: EUR [...]*, BMG: EUR [...]*) and the United Kingdom (Vivendi: EUR [...]*, BMG: EUR [...]*). The aggregate turnover of each of Vivendi and BMG is more than EUR 25 million in all of these Member States.

* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

10. The Parties do not achieve more than two-thirds of their turnover in one and the same Member State. The notified operation therefore has a Community dimension pursuant to Article 1(3) of the Merger Regulation.

V. RELEVANT MARKETS

1. Relevant product markets

11. Both parties are active in the music publishing business. The Commission identified in the case *Sony/BMG*² that the main activities of a music publisher comprise the discovery and identification of new talented songwriters with a view to acquiring and commercially exploiting their intellectual property rights and the provision of financial and promotional support to authors, arranging for music recordings and supporting their dissemination.
12. Music publishing is the exploitation of intellectual property rights of song writers (in this decision the term "authors" will be used to cover both lyricists (text) and composers (music)). Generally, authors transfer copyright of their works (referred to in this Decision as "publishing rights") to music publishers and receive from the latter payments of advances and a share of the royalties generated by the commercial exploitation of their works. The term "transfer of rights" refers both to the assignment and licensing of copyright.³
13. While the Commission in past merger cases mainly focussed on the music publishing market on which publishers grant licences to right-users, such as to producers of movies, record companies or radio stations, it appears that another market level to be taken into consideration would be the one covering the supply of publishing services to authors.
14. The activities of a publisher are thus twofold: on the one hand, the downstream activity of exploiting the works of authors under contract, inter alia by means of licensing the rights through the collecting societies, and on the other hand an upstream activity of signing authors and providing them with financial and marketing support as a counterpart to the transfer of their musical works. It appears that these two activities relate to separate markets as each one implies a distinct supply and demand relationship (between publishers and final users downstream, and between authors and publishers upstream).

² Case No COMP / M.3333 – Sony/BMG, 19 July 2004.

³ An assignment of copyright is the absolute (except for moral rights) transfer of the copyright ownership from one person (an "assignor") to another (an "assignee"). Usually, an assignment contains no restrictions as to the subsequent exploitation of the work by the assignee. A licence of copyright is a contractual right or permission whereby the copyright owner (the "licensor") allows another person (the "licensee") to exercise particular rights under copyright for a specified term. Unlike an assignment, a licence is not an absolute grant of rights and legal title does not pass to the licensee. It is a contractual right that usually ends on expiry of the term or upon termination of the licence. On expiry or termination of the licence, all rights granted under it, including under any sub-licences, revert to the licensor. The precise conditions under which copyright is transferred may differ in each country. In the Decision, the term "transfer" will be used encompassing both the assignment and the licensing of rights by authors to publishers / collecting societies while "licensing" will mainly refer to the exploitation of these transferred rights by publishers / collecting societies granting licences to users.

1.1 Markets for the exploitation of music publishing rights (downstream market level: publisher - user)

15. Music publishers exploit the rights received from authors by granting licences to right-users. The right-users encompass all sectors where music is required (CDs, films, advertising, radio, TV, internet and mobile communications)⁴. The users pay royalties for the use of these musical works. Depending on the specific types of rights, the licences are granted to right-users either by the publishers directly or via collecting societies.

Combination of recording and publishing

16. Publishing rights (i.e. the rights originally held by authors) need to be distinguished from so-called "neighbouring rights" or "recording rights" which mainly protect the individual interpretation of a song by a performing artist. While the publishing rights of a song are with the authors and their publishers, the recording rights are with the recording companies and the singers who normally transfer them to their record companies.
17. In order to legally use a song, for example on the radio, or for downloading services on the internet, a music user in most cases has to acquire a licence for both the publishing right and the recording right. The lack of either of these prevents legal use of the song.

Types of publishing rights

18. The following different types of rights⁵ exist, each of which might constitute a distinct product market as they are commercialised through distinct channels, address different needs and apply for different uses:
 - i. **mechanical rights**: for reproduction of a work in a sound recording (e.g. CDs);
 - ii. **performance rights**: for commercial users such as broadcasters (TV or radio stations), concert halls, theatres, night clubs, restaurants etc.;
 - iii. **synchronisation rights**: for commercial users such as advertising agencies or film companies (i.e. when the music is synchronised with the visual image);
 - iv. **print rights**: for the reproduction of work in sheet music.

⁴ The publishing business has no direct relationship with final/end consumers and can therefore be considered as a wholesale market.

⁵ This categorization broadly covers the rights indicated in the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyrights and related rights in the information society (Official Journal L 167, 22/06/2001). The "reproduction right" covers mechanical and synchronization rights, the "right of communication to the public" includes also a "making available right" which relates to communication to the public where the public may access the works from a place and at a time individually chosen. This makes particular reference to downloading and streaming.

19. **Online rights** are a fifth category of rights to be considered. They constitute a specific combination of mechanical and performance rights for online applications, such as music downloading services.
20. The parties are of the view that a segmentation of the market by categories of rights is not necessary as it would not reflect the commercial realities of the music publishing industry. According to the parties, music publishers do not distinguish for operational purposes between separate categories of rights but administer all the different categories in respect of a particular song or composition and authors generally contract with a publisher to exploit *all* their rights rather than one category of rights.
21. In its decision in *Sony/BMG* (as in *Seagram/Polygram*⁶), the Commission stated that the exploitation according to the different types of rights may lead to the definition of separate product markets for each categories of rights, although the precise market definition was left open in that regard. Both demand-side (different characteristics of rights relating to different customer needs) and supply-side considerations (existence of different exploitation systems, application of dissimilar licensing rates) backed this statement.
22. From a demand-side perspective there is clearly no substitutability between the different categories of rights. A radio station needing a licence to play music on the radio (performance right) will not be able to take a licence for reproduction on CDs (mechanical right) instead.
23. The assumption of one overall market for publishing rights does not seem to be appropriate from a supply-side perspective either. While publishers often administer not only specific rights but several or even all of the authors' rights, the market investigation in this case has nevertheless shown that the market conditions differ significantly as to the different rights, which points to separate markets.
24. The main differences relate to the role of the collecting societies. It is worthwhile noting that licensing of mechanical and performance rights (which generate the largest share of revenues) are generally carried out by collecting societies⁷ on behalf of publishers and/or authors while synchronization and print rights are generally licensed and administered directly by the publishers without involvement of collecting societies. There are also differences in the way royalties are paid by users to the relevant collecting societies; for example, in the case of mechanical rights for Continental Europe, there is a standard rate whereas for performance rights rates are negotiated by each collecting society. In some countries, there are even separate collecting societies for mechanical and performance rights (e.g. Austria, United Kingdom and Sweden). The market investigation has confirmed that the licensing conditions differ per category of rights.
25. Therefore the product markets for publishing rights need to be defined according to the specific fields of application (mechanical, performance, synchronisation, print and online)

⁶ Case No IV/M.1219 – Seagram/Polygram, dated 21 September 1998.

⁷ The collecting societies generally sign agreements with all publishing companies, which allow the collecting society to grant a blanket licence (including repertoires from all publishing companies) on a non-discriminatory basis. Therefore all end users have a full and non-discriminatory access to musical works.

for which the rights are used since the prices as well as the overall economic conditions differ significantly.

Online rights

26. Among the five right categories mentioned above, specific considerations apply to online rights. The notifying party submits that there is no separate right for the online distribution of music but that these digital rights are merely a combination of mechanical and performance rights. Although the market investigation has shown that in most national laws online rights are not defined as a distinct legal right, it also demonstrated that competitive conditions for online applications differ from the other categories of rights. Online rights therefore constitute a distinct product market.
27. Online rights apply to a wide range of applications. All these online and mobile applications have in common that they require a licence combining both mechanical and performance rights.⁸ At present, the most important online and mobile music services, in terms of revenues generated, are (in systematic order):
- *On-line (audio) download:*
recording of music on the user's computer and the possibility (potentially limited by Digital Rights Management ("DRM")) to transfer it on other devices and to make copies;
 - *On-line (audio and video) streaming:*
temporary listening or viewing of music on the user's computer without recording;
 - *Mobile (audio) download:*
recording of music on the user's mobile device by wireless transmission, in particular a mobile phone;
 - *Mobile (audio and video) streaming*
temporary listening or viewing of music, without recording, on the user's mobile device by wireless transmission, in particular a mobile phone;
 - *Ringtones*
melodies, i.e. without lyrics, which are played as ringing signal of a mobile phone, in particular for incoming calls; ringtones may be monophonic or polyphonic melodies;
 - *Mastertones*
ringtones embodying sound recording excerpts, i.e. songs (melody and lyrics) used as ringing signal of a mobile phone, in particular for incoming calls;
 - *Ringbacktones*
songs or melodies played for the call initiator until the phone is answered.

⁸ Cf. paragraph 105 of the form CO.

28. There are many different business models for these music services: Some are advertisement-financed and thus free of charge for users; publishing royalties for these services are usually calculated as a percentage of the advertising revenues. Other services are integrated into a subscription model with the publishing royalties being calculated on the basis of the subscription revenues. Finally, many services are billed on the basis of the number of titles or tones downloaded; for these services publishing royalties are calculated as a percentage of the retail price or as a minimum fee per track. The importance of the various music services for the individual provider depends on its main business areas, e.g. for a pure mobile phone operator ringtones, mastertones and other mobile applications are most important whereas other providers such as Apple i-tunes focus on online downloads. However, it is also noteworthy that the convergence of online and mobile technologies increasingly blurs any clear borderline between online and mobile applications. This convergence applies in particular to downloading and streaming applications whereas mastertones, ringtones and ringbacktones are mobile-specific.⁹
29. Despite this convergence trend, a further distinction within the online rights category between online and mobile applications could be argued as from the demand side there is a limited substitutability. However, for the purpose of this case, such a further distinction would not be necessary as the competition analysis would remain unchanged under any distinction considered.
30. The delineation of online rights as a distinct market is furthermore supported by the following elements.
31. The Commission Recommendation of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services¹⁰ (the "Recommendation") singles out online rights in order to foster effective structures for the cross-border management of these rights. It defines online rights as: "(i) the exclusive right of reproduction provided for under Directive 2001/29/EC in the form of intangible copies, made in the process of online distribution of musical works; (ii) the right of communication to the public of a musical work, either in the form of a right to authorise or prohibit pursuant to Directive 2001/29/EC or a right to equitable remuneration in accordance with Directive 92/100/EEC, which includes webcasting, internet radio and simulcasting or near-on-demand services received either on a personal computer or on a mobile telephone; (iii) the exclusive right of making available a musical work pursuant to Directive 2001/29/EC, which includes on-demand or other interactive services".¹¹

⁹ In some countries (e.g. Germany), mastertones, ringtones and ringbacktones require an additional licence for so-called adaptation rights, a kind of moral right of the author. These adaptation rights are currently licensed directly by the publishers without involvement of the collecting societies.

¹⁰ OJ L 276, 21.10.2005, p. 54.

¹¹ Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC), point 1(f) (i) to (ii). See also Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, [2001] OJ L 167/10 and Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property [1992] OJ L346/67.

32. Universal itself considers¹² that online rights include telephone and online usage rights including reproduction, distribution and moral rights (synchronisation rights are excluded), telephone and online usage meaning mainly exploitation of musical works through downloading¹³ and streaming (simulcasting¹⁴ excluded). As far as BMG is concerned, online usage means online and mobile usage including ringtones and web casting (simulcasting excluded)¹⁵.
33. From a demand-side perspective there is no substitutability between online rights and traditional mechanical and performance rights since licences are granted for a specific application. The prices are defined according to different rules from the traditional mechanical and performance rights.
34. Since online applications are a comparably new development, there has been some uncertainty about the rules which apply to these rights on the part of the market participants. For instance some collecting societies have established specific rules as to online rights which were inserted into the collecting societies' statutes and thereby define distinct rules.
35. The market conditions under which online rights are licensed are, moreover, currently changing which further widens the gap between them and the traditional mechanical and performance rights. Thus, since the beginning of 2006, there have been some attempts (see in more detail further below) to turn the current system of collective management of rights (where all collecting societies, each enjoying a dominant position on its own territory, are dealing with equivalent rights through reciprocal agreements) into a system where a limited number of collecting societies are granted exclusivity in the management of online rights belonging to some publishers. This will distinguish online rights even more clearly from other rights since very specific rules will apply to online rights. So far, such a change mainly relates to the management of online mechanical rights (see below). Without it being necessary to determine whether the management of online mechanical rights constitutes a separate market from the wider online right market, the competitive assessment will focus on this segment as the conclusion will remain unchanged irrespective of whether the relevant product market is considered to be the overall online rights market or the online mechanical rights segment.

¹² This definition of the online right was provided by Universal to the Collecting Societies [...]*

¹³ It is often considered that downloading involves to 75% mechanical rights due to the storage of the song on a hard-disk which is comparable to a CD and to 25% performance rights since the online music provider normally offers to the end-customers the possibility to listen to parts of the songs before buying them.

¹⁴ Contraction of "simultaneous broadcast", and refers to programs or events broadcast across more than one medium at the same time.

¹⁵ In the same way, it can be also observed that the mechanical rights British collecting Society MCPS indicates on its website that "*online rights shall include online and mobile usage rights including, as regards the performing right, any right to communication to the public and as regards the mechanical right, to the extent possible, reproduction, distribution [...]*".

Anglo-American and Continental Europe repertoires

36. Apart from the categories of rights, the notifying party considers as a theoretically possible product market a segmentation of national and international¹⁶ repertoires for music publishing. A "repertoire" is the entirety of a number of titles, i.e. songs which may also be called works. However, the notifying party submits that a distinction between separate markets for national and international repertoires would not be justified.
37. The market investigation indicated that "Anglo-American" repertoire (i.e. titles registered with the collecting societies mainly in the U.S. (BMI and ASCAP) and the United Kingdom (MCPS and PRS)) may be distinguished from "Continental European" repertoire¹⁷ (i.e. titles registered with collecting societies in Continental Europe such as GEMA in Germany or SACEM in France). Anglo-American and Continental European repertoire differ for historical reasons (as explained in detail below). In addition, Continental European repertoire is largely commercialised on a national basis whereas Anglo-American repertoire relates to works acquired and exploited on a multi-national basis.
38. However, as will be explained in more detail later-on, the main difference between the Anglo-American and Continental European repertoire is the fact that publishers do not share the same level of control over the mechanical rights concerned: for Anglo-American repertoire, the publisher holds full control of the mechanical rights (which are transferred by the author to the publisher) whereas for Continental European repertoire a share is kept by the author. Hence, the management of the Anglo-American repertoire will in the future (after the reorganisation of the online rights market as discussed in more detail below) follow different rules from Continental European repertoire. For instance the mechanical British collecting society (MCPS) notably pays 100% of the royalties collected to publishers whereas Continental European collecting societies pay only a share of collected royalties to publishers, the other share being directly paid to authors.
39. On the other hand, both Continental European and Anglo-American repertoires address similar customers and follow the same market rationale. Major publishers generally have a strong position for Anglo-American repertoire compared to independent publishers who often appear to focus rather on specific genres and/or territories.
40. It is however not necessary to assess whether Anglo-American mechanical rights for online use could in the future constitute a separate market since the competitive assessment would not change. The current assessment is based on Universal's future market strength in Anglo-American repertoire on the overall online rights market (including Anglo-American and other titles). Even under the assumption of a separate market for Anglo-American titles (for online use) the market analysis would not be different.

¹⁶ The international repertoire corresponds mainly with the Anglo-American repertoire (i.e. US/Canada, United Kingdom/Ireland, Australia/New Zealand) whereas the national repertoire will refer to the Continental European repertoire.

¹⁷ As a synonym also the term BIEM repertoire is used.

Musical genres

41. In its previous cases the Commission also considered that the market might be delineated by different genres/categories of music. The basic segmentation generally referred to applies to pop versus classical music. However, in *Seagram/Polygram* and *Thorn EMI/Virgin* the Commission held that within pop music a large number of different categories could be identified (e.g. jazz, soul, heavy metal and techno). So far, however, the Commission has left the precise scope of the relevant product market open¹⁸.
42. The parties submit that music publishers usually acquire and commercialize rights for several types of music, while users will generally license rights covering a wide variety of genres. For this reason the parties consider that no distinction should be made between genres with regard to the product market definition. Even if a number of independent publishers specialize in one specific genre (niche strategy), this view is generally confirmed by the market investigation, with a possible exception for classical music.
43. However the question whether different genres may lead to the definition of separate product markets can be left open as the competitive analysis will remain unchanged under any envisaged definition.

Conclusion

44. For the reasons explained above, a definition of the market along the lines of different categories of rights is appropriate since the economic conditions seem to differ mostly between these categories. The precise definition of the market for music publishing rights for online applications with respect to a potential further sub-division into "mobile" and "online (excluding mobile)" can be left open as the effects of the transaction will be the same under both market delineations. The market for music publishing rights for online and mobile applications will hereinafter be referred to *pars pro toto* as the "market for online rights".

1.2 Market for music publishing services to authors (market level: author - publisher)

45. The author-publisher market level refers to the market on which publishers provide the authors with various services such as advances, management and administration of copyrights. Apart from this, publishers provide services to authors which serve the promotion and further development of the author. The parties describe those as "A&R" (Artist and Repertoire) services, which include for example the finding of producers, the provision of creative guidance and career development and suggestions of suitable writing partnerships with other authors. In return the authors transfer the rights connected to their own works to the publishers for exploitation. The business relation between authors and publishers is therefore partially characterised by a form of barter trade. Authors receive services for transferring their rights to publishers (either by assignment or by licence). While from the perspective of publishers this market level constitutes a market for the acquisition of rights, from the viewpoint of authors it constitutes a market for publishing services.

¹⁸ Case No IV/M.202 – Thorn EMI/Virgin, dated 27.04.1992 ; Case No IV/M.1219 – Seagram/Polygram, dated 21.09.1998.

46. Generally, authors license copyrights of their works to music publishers and receive from the latter payments of advances and a share of the royalties generated by the commercial exploitation of their works. The advances usually have the character of a loan since all royalties which are earned by licences to users go to the publisher until the advances are amortised. The publisher carries the risks if the advances are not fully amortised. Only then does the author receive the share of royalties as agreed with the publisher. A minority of authors do not rely on publishers' services and publish their works themselves. This can in particular be viable for established authors thanks to the existence of collecting societies who collect mechanical and performance royalties on behalf of the author.
47. For those working with a publisher, the licensing is based on an individual contract between the parties, where the publisher will administer the copyright of the author for a duration which varies between several years to the lifetime of the copyright (70 years after the death of the author). The most frequent situation is lifetime of copyrights with however some shorter term contracts signed in the recent past (e.g.: contract of 5 years plus a retention period of 10 years – meaning that the publisher will administer all rights for works created during the 5-year contract for a period ending 10 years after termination of the contract).
48. Authors should therefore not only be considered as suppliers of songs, but also as customers receiving various publishing services. For new authors principally, a publisher usually provides strategic support to start a career as it gives the author initial financial support and access to its established network of artists and record companies. More generally the administrative support of publishers allows authors to focus on creative activities. The market investigation confirms that many authors would not envisage working without a publisher.
49. It is relatively common for authors to work with different publishers who each administer different works. It is generally observed that one author can work with different publishers during different periods, each publisher administering the rights of the works created during the period in respect of which he had a contract with the author. However, authors do not seem to use different publishers for the different categories of rights. Therefore, in contrast to the considerations for the market for publishing rights (downstream level) no further segmentation of this market appears to be appropriate. In this Decision, a market for music publishing services for authors will be assumed.

2. Relevant geographic markets

2.1 Markets for the exploitation of music publishing rights (downstream market level: publisher - user)

50. The notifying party considers the geographic scope of the market for the exploitation of music publishing rights granted to right-users to be essentially national in scope and refer to the Commission's considerations concerning the geographic market in music publishing in the *Sony/BMG* decision.
51. In *Thorn EMI/Virgin Music* and *Seagram/PolyGram*, the Commission left open the question as to whether the geographical scope of the music publishing market(s) was

national or broader, in particular EEA-wide. In *Bertelsmann/Zomba*¹⁹ and *Sony/BMG* the Commission concluded that there were indications that the markets for mechanical and performance rights were national as these rights were generally administered and collected by national collecting societies on behalf of the publishers and/or authors. In addition, it was found that all publishers who wish to diffuse their repertoire outside their home country rely on local agencies implanted in the target country or sub-publish their repertoire to a publisher established in the target country. However the exact geographic scope of the market was left open.

52. The concept of national markets might be mitigated by major recording companies having signed so-called central licensing agreements for mechanical rights. This type of licensing agreement is signed with a selected collecting society who then grants licences for the European territory by negotiating itself with the individual national collecting societies.
53. However although this central licensing allows for a one-stop-shop for record companies, it is basically a centralised system of reporting of national sales and still involves activities of all national collecting societies in their respective territories.
54. As regards print and synchronisation rights, the scope of the licences obtained by the customers is usually national even if this could depend on the use foreseen (for instance a TV advertisement broadcast in several countries).
55. Moreover the market investigation confirms that publishers are generally active on their national market, or work with a local partner on foreign markets. Mostly, publishers work in different countries by having either own representations there or agreements with local sub-publishers to exploit their catalogues in the foreign countries.
56. There is no need to strictly define the geographic scope of the markets for mechanical, performance, synchronisation or print rights as the competitive assessment will remain unchanged, irrespective of whether the market was considered to have a national or EEA-wide dimension.
57. As regards more particularly online rights, and as mentioned above, the administration of online rights has so far been done by the collecting societies which in the traditional system work on a strictly national basis granting licences only for their respective national territory to national users. Therefore, currently the market is national.
58. A significant restructuring of online rights administration is currently taking place (this will be explained in more detail below) which may lead to an EEA-wide licensing of online rights. Where these restructuring initiatives have advanced already, they currently simply replicate the national licensing system on the basis of so-called "country of destination" tariffs. Even in this case, the market would therefore still be considered as a national market.
59. However, some of the current initiatives, where publishers appoint one (or more) collecting societies to manage and administer the online rights for mobile and online uses as the publisher's agent, aim at developing this activity throughout Europe, applying a foreseen single tariff. It is therefore possible that the market may eventually develop an EEA-wide scope.

¹⁹ Case No COMP / M.2883 Bertelsmann/Zomba.

60. The relevant geographic dimension of the online rights markets assessed will therefore mainly relate to the national markets where the transaction raises competition concerns. However, in order to take into account the developing restructuring initiatives and their likely impact on competition, a complementary assessment at the EEA-wide level will be undertaken. The conclusions remain unchanged under both geographical scopes.

2.2 Market for music publishing services for authors (upstream market level: author-publisher)

61. The geographic scope of the market for publishing services provided to authors appears to be national as authors mainly seem to turn to publishers with local presence and are members of the national collecting societies. The exact geographic scope may, however, be left open since the conclusions of the analysis will be the same, irrespective of the geographic dimension of the market.

2.3 Conclusion on market definitions

62. The competitive assessment will therefore examine the impact of the merger on the following markets:
- markets for publishing services for authors (on a national level)
 - market for synchronization rights (on national and EEA level)
 - market for print rights (on national and EEA level)
 - market for mechanical rights (on national and EEA level)
 - market for performance rights (on national and EEA level)
 - market for online rights (on national and EEA level)

VI. COMPETITION ASSESSMENT

A. MARKET FOR MUSIC PUBLISHING SERVICES FOR AUTHORS

1. Market structure

63. The market structure of the market for music publishing services is mirrored in the market for the exploitation of publishing rights. The authors choose a publisher for the provision of music publishing services which cover the promotion and exploitation of their songs. The revenues received by exploiting these rights (directly or via collecting societies) are shared between the publishers and the authors.
64. While some deviations are possible due to different splits between authors and publishers, it is likely that the market shares of the music publishing services are similar to their market shares on the downstream market(s) for the exploitation of publishing rights vis-à-vis the users. Basically the same market structure prevails in this market as for the overall market for music publishing rights (including mechanical, performance, print, synchronization and online rights) as summarized in the following table (source: parties' estimates):

Market share estimates for a market covering all publishing rights (2005)

All rights	Universal	BMG	Merged	EMI	Warner	Sony	Others
	%	%	%	%	%	%	%
Austria	[10-20]*	[0-10]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[20-30]*
Belgium	[10-20]*	[0-10]*	[10-20]*	[20-30]*	[10-20]*	[0-10]*	[20-30]*
Czech Rep.	[0-10]*	[0-10]*	[10-20]*	[30-40]*	[20-30]*	[0-10]*	[10-20]*
France	[10-20]*	[10-20]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*	[30-40]*
Germany	[0-10]*	[10-20]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[30-40]*
Greece	[10-20]*	[10-20]*	[30-40]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*
Hungary	[20-30]*	[20-30]*	[40-50]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*
Italy	[0-10]*	[10-20]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*	[40-50]*
Netherlands	[10-20]*	[10-20]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[10-20]*
Poland	[10-20]*	[10-20]*	[30-40]*	[10-20]*	[10-20]*	[10-20]*	[10-20]*
Spain	[10-20]*	[10-20]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*	[20-30]*
United Kingdom	[10-20]*	[10-20]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[20-30]*
EEA	[10-20]*	[10-20]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*	[30-40]*

Source: Parties' estimates

65. The operation would thus give rise to horizontally affected markets on an EEA-wide level and in the EEA-countries Austria, Belgium, Czech Republic, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Spain and the United Kingdom.

2. Non-coordinated effects

66. The parties submit that there is strong competition between publishers to sign and develop new artists since the large, vertically integrated major publishers ("majors": Universal, BMG, EMI, Warner, Sony) equally compete against each other and against the smaller independent publishers ("independents"). However, during the market investigation some concerns were raised by authors in respect of the merger which mainly pointed at potential non-coordinated effects resulting from the merger.

Impact of size of catalogue on the quality of services to authors

67. Some market participants raised the concern, that the larger the catalogue, the more difficult it is for the publisher to have detailed knowledge of each work, its characteristics and its potential. Majors who have much larger catalogues than independents are therefore reputed to bring more attention to a limited number of successful works and authors to the detriment of less successful ones. The independents generally have the reputation of better supporting authors and paying more attention to the development and commercial exploitation of their works.
68. Several market players submitted that, like previous mergers in the music publishing industry, the proposed merger is likely to result in a reduction of staff if compared with current Universal and BMG staff in charge of promotion of publishing rights. As a consequence, the same number of works would be managed by less people, therefore

ensuring a lower quality of service to authors. As a result, authors expect that the number of authors/works actively supported by Universal/BMG after the merger will decrease²⁰.

69. However, the investigation has ultimately not confirmed that the merger will lead to competition concerns on these grounds. Competition between the publishers for authors takes place when an author is looking for a publisher. Competition therefore becomes relevant at the time when an author signs a contract. At that time, the author can choose between the different publishers – he is, however, "locked in" after having signed for the duration of the contract according to the terms he agreed upon when signing. Promotional services of lower quality are therefore not a lack of effective competition since the author may choose between different publishers only at the time when a contract is signed, whilst the concern indicated in the market investigation mainly relates to business relations between authors and publishers once the author is "locked in" and may not be able to sufficiently influence the quality of the services provided by the publisher.
70. Authors have claimed that the contractual obligations of the publisher are rather vague. A "best effort" is often required to promote the works concerned, which does not lead to clear actions to be undertaken by the publishers with respect to the contract. The consequence is that it is difficult for an author to challenge the publisher with regard to its effective support for his works. The merger would, however, only raise competition concerns if the authors would be left with significantly reduced possibilities to switch to a different publisher after the expiry of the contract as a consequence of the deterioration in the promotional services. The market investigation has, however also not supported this second claim.²¹

Impact on the choice of authors to sign publishers

71. During the market investigation the concern was raised that the merger could reduce the authors' choice to an extent which would lead to a significant impediment of competition. It was argued that majors and independents have a different business focus which limits their substitutability.
72. Majors and independents have different characteristics with regard to their relationship with authors. Majors have the reputation of focusing more on renowned authors. They have a capacity to provide larger advances and promote international hits. Independents have the reputation to focus more on new authors to whom they propose tailor-made support. They also pay higher royalty rates. Independents often explore new trends and styles, which once successful are further developed and exploited by majors.

²⁰ Questionnaire to authors associations – phase 2. **Q 11a**

²¹ A proxy to measure how a catalogue is exploited is to calculate the average revenue per work. This analysis does not show any evidence that smaller catalogues enjoy a better exploitation as measured in terms of revenue per work. Majors even enjoy larger average revenue per work, which might however be explained by the larger proportion of international hits in their catalogues. (The average revenue per work is 3 to 4 times higher for the major publishers (EUR 300-600 per work) than for independents (EUR 50-200 per work). A few large and international independents reach the level of revenue of the majors.) The same analysis conducted only on independents' catalogues does not either provide evidence of a better exploitation of smaller catalogues. (When considering independents only, the revenue per work varies from EUR 50 to EUR 200 per work and is not correlated to the size of catalogue.)

73. Authors claimed that after the merger of Universal and BMG, their choices to sign a major will decrease and raise competition concerns. However these concerns are not confirmed by the market investigation. The competition to sign authors appears to be fully effective. Majors and independents actively seek to sign new authors through participation in concerts, music conferences, networking, contacting record companies, developing links with the artistic community, etc.
74. As explained above, majors tend to focus on renowned authors. It is mainly those established authors who will be eligible for large advances whereas the new authors (who are more risky for the publishers) will often not receive such an up-front investment into their future songs. The market investigation has shown indications that the large publishers compete with each other in particular with regard to established authors, generally through direct negotiation or, in the case of the very successful authors, even through bidding contests.²²
75. After the merger, the authors seeking large advances will still have a choice between four majors (Universal/BMG, EMI, Warner, Sony). In terms of market shares, Universal will be in a leading position after the merger but will be closely followed by EMI and Warner. The existence of at least two comparable publishers leaves sufficient room for switching possibilities should Universal/BMG decide to deteriorate the terms offered to authors following the merger. Apart from the fourth major Sony there are moreover, a few larger independents (e.g. Chrysalis) who are in an intermediary position and can also compete for renowned authors through the payment of large advances. The market investigation has also not shown any tight capacity constraints which would prevent Universal's competitors from signing additional authors who want to leave Universal following the merger when signing a new contract.
76. The market investigation confirms that publishers need to permanently renew their catalogue to maintain its value. This is highlighted by the table below where the active deals are deals where the author is still under contract and continues to produce new works. The percentage of turnover achieved through the exploitation of the works produced under these active deals is significantly higher than the share represented by works produced under active deals. In simplified terms, most recent works generate more revenue than oldest ones. This has been confirmed by majors and independents.

	Active deals		
	Number	%of total number of works	% of total publisher turnover
Universal	[...]*	[<10]*%	[>25]*%
BMG	[...]*	[<30]*%	[>50]*%

Source: Universal/BMG

77. This reflects the necessity for publishers to permanently renew their catalogue. This occurs in two ways: issuing of new works by signed authors and signing of new authors. Publishers, notably majors, therefore have a strong incentive to attract the most promising new authors or established ones, resulting in a competitive market for the signing of

²² Cf. Warner Chappell Music: "[...] it is rare that WCM signs someone who has not also received an offer from at least one other publisher" Questionnaire competitors (majors)1 – Q24.

authors. Independents confirm that they also actively compete to sign authors, even if majors have an advantage in terms of financial capacity and support to develop international hits.

78. The market investigation has moreover shown indications that the retention periods are becoming shorter. The retention period is the time period in which a publisher can exploit a song which was written by the author while under a contract with the publisher. All the majors and about half of the independents who responded to the market investigation indicated that they sign contracts for a shorter period than the life-time of copyright (70 years after death of the author). Half of the independents continue to sign contracts for the life of copyright. This appears to be a significant evolution compared with the situation in the past when, according to the profession, the majority of rights were transferred for the life-time of the copyright. Consequently, the authors' possibilities to switch will not only affect new songs to be written in the future but also, to an increasing extent, older songs for which the retention period expires.
79. The switching possibilities are even greater for those authors who are not seeking large advances. Those authors will still have the possibility to sign a publisher among the majors or all independents, where attractive offers can be found.

Sister companies (publishing & record)

80. The majority of independent competitors indicate that it is common practice for major companies to encourage singer-songwriters to sign with both the record and the publishing branches of the major. This also applies to authors who are not singers, who can be encouraged to sign with the publishing branch of the major recording their works.
81. Universal appears to integrate its publishing and recording business more closely than other music companies. [30-40]*% of its top 500 authors are also signed with (for singer-songwriters) or recorded by Universal, whereas Universal has a market share in the record industry of only [20-30]*%. This deviation is also observed within other major music companies. More generally, the majors do not confirm this practice and at best acknowledge that exchanges of information take place between their record and publishing branches. However EMI recently stated in a press release (12 January 2007 - where the company highlights the key elements of its strategy for the next period) that it aimed at "*Extracting revenue and cost synergies between recorded music and music publishing*".
82. The market investigation indicates that when authors are encouraged to sign with a publishing sister company, it is more commonly the record company that provides this "encouragement". However, it might happen that the publisher takes the initiative.
83. Many independents claim that this practice is detrimental to their business, as they cannot compete with the majors on this ground. However, this practice is also common within the independent publishers who also control a record company.
84. Authors have a mixed view on this issue, with half considering that it is common practice and the other half not reporting it²³. Several authors stress that this practice is a means to

²³ Questionnaire to authors– phase 1. Q 17 – 45% of authors considers it is common practice to be "encouraged" to sign with sister record company versus 55% who do not report it.

increase the margin within the music company, and that it is more common with the majors than with the independents. Others state that authors, notably new singer-songwriters, might have a direct interest in signing with the publishing and the recording branch of the same company as it is a guarantee to release an album. With regard to established singer-songwriters, they have enough negotiation leverage to impose their conditions.

85. However, the merger only concerns the publishing activities of Universal and BMG. The merger will not have an effect on the recording branch of Universal. Generally, the latter will not have a greater possibility to require authors to sign with its publishing branch than before the merger. The merger will therefore not strengthen the parties' market position in the market for publishing services to authors on the basis of Universal's (unchanged) recording activities.
86. Universal might after the merger have an increased capacity to influence singer-songwriters currently signed with BMG to sign a recording deal with Universal's recording arm. However, the current market situation shows that doing so is not a condition for signing a deal. It is therefore not likely, that Universal's influence on these BMG singer-songwriters would actually translate into additional recording contracts. Considering, moreover, that only a portion of all BMG authors are singer-songwriters, this effect cannot be considered as significant and would – if at all – take place only in the long-term with the successive expiry of the existing recording contracts of those singer-songwriters. With regard to authors who are not singers and who are signed with BMG, the merger will be neutral as they are already under contract.

3. Coordinated effects

87. The market investigation has, moreover, not shown any indications which would suggest potential coordinated effects as a result of the merger. Every major publisher has a large number of authors under contract (several hundred). There was no indication that the exact terms on which a publisher signs these authors could be transparent to the competitors. Also the unpredictability of the different authors' success appears to render coordination on prices or other conditions difficult. It is, moreover, likely that competition from those larger independents which are in an intermediary position between majors and independents (e.g. Chrysalis,) would be able to counteract any coordinated strategy by Universal/BMG, EMI and Warner (and potentially Sony).

4. Conclusion

88. For all the above reasons, the Commission therefore concludes that it is not likely that the proposed concentration would lead to competition concerns due to non-coordinated or coordinated effects on the markets for publishing services to authors. The merger therefore does not impede effective competition on the market for publishing services to authors.

B. MARKETS FOR THE EXPLOITATION OF MUSIC PUBLISHING RIGHTS

89. The analysis of the affected markets for the exploitation of music publishing rights differs according to the role taken by the collecting societies in the exploitation of the specific right. As already indicated in the market definition, the collecting societies' role varies

across the different publishing rights. While print and synchronisation rights are generally managed by the publishers directly without any involvement of the collecting societies, mechanical and performance rights are normally administered via the collecting societies, without any direct licensing on part of the publishers.

90. A particular situation applies to online rights as a mixture of mechanical and performance rights. Online rights have so far been administered in the same way as the mechanical and performance rights for traditional applications, i.e. via collecting societies. However, recently, this market has been undergoing significant changes. These changes will lead to a form of rights administration which is comparable to direct licensing while, at the same time, collecting societies will remain involved, albeit in a different role from mechanical and performance rights for traditional applications.
91. This leads to differing results in the assessment of this case:
- *Synchronization and print*: As will be shown in the following analysis, the merger does not raise any competition concerns in the synchronization and print rights markets. The market investigation has shown that in the synchronization rights market sufficient alternatives will remain available for the customers of synchronization rights after the merger. As already found in the decision addressed to the parties pursuant to Article 6(1)c of the Merger Regulation, there is no significant overlap in the market for print rights as Universal has only marginal activities in this field.
 - *Mechanical and performance*: In the markets for mechanical and performance rights the merger results in a substantive overlap. Nevertheless, the merger does not lead to competition concerns due to the strong role of the collecting societies in the administration of these rights which limits the publishers' independence in pricing.
 - *Online*: The limitation in the publishers' independence in pricing, as it applies for mechanical and performance rights in traditional applications, is, however, currently being removed for the mechanical part of online rights in Anglo-American repertoire due to the on-going withdrawal initiatives. As will be shown, the significant overlap of the parties' activities leads to serious doubts, which are, however, removed by the commitments offered by the parties.
92. In this Decision, the analysis of the rights administered directly by the publishers will precede the assessment of those markets in which the collecting societies are involved. With regard to the latter assessment, the collecting societies' role will first be described in general terms in order to then differentiate between the effects of the merger according to the extent of the collecting societies' involvement in the exploitation of mechanical, performance and online rights and in particular the impact of the publishers' withdrawals from the traditional system with respect to online rights.

1. Rights administered directly: Synchronization and print

1.1 Synchronisation rights

93. In the following analysis the concept of synchronisation rights must be understood in the following sense:

- a. rights that are purchased in order to synchronize a musical work with a visual image for incorporation in an audio-visual work such as a film, TV program or TV advertisement,

and

- b. only when those rights are directly commercialised by the publishers.

94. For the purpose of this analysis, licences commercialised by the collecting societies to synchronise musical work with videos are not considered, because they are subject to similar competition conditions as those prevailing for traditional mechanical and performance rights. Notably, the blanket licences granted by collecting societies to TV channels in certain countries, for synchronisation of video and musical works, are therefore not considered in the following analysis. According to the market investigation, these synchronisation blanket licences account for less than 5% of the total synchronisation turnover of publishers.

1.1.1 Market structure

95. Following the proposed transaction, Universal would become the largest music publisher for synchronisation rights on an EEA-wide level as well as in seven Member States as the following table shows:

Market shares for synchronization rights (2005)

Synchronization	Universal	BMG	Merged	EMI	Warner	Sony	Others
	%	%	%	%	%	%	%
Austria	[10-20]*	[0-10]*	[10-20]*	[20-30]*	[10-20]*	[0-10]*	[30-40]*
Belgium	[0-10]*	[0-10]*	[10-20]*	[20-30]*	[10-20]*	[0-10]*	[30-40]*
Czech Republic	[0-10]*	[0-10]*	[10-20]*	[30-40]*	[20-30]*	[0-10]*	[10-20]*
France	[10-20]*	[10-20]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*	[30-40]*
Germany	[0-10]*	[0-10]*	[10-20]*	[20-30]*	[20-30]*	[0-10]*	[30-40]*
Greece	[0-10]*	[10-20]*	[20-30]*	[30-40]*	[20-30]*	[0-10]*	[0-10]*
Hungary	[20-30]*	[0-10]*	[20-30]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*
Italy	[10-20]*	[10-20]*	[30-40]*	[20-30]*	[10-20]*	[0-10]*	[0-10]*
Netherlands	[0-10]*	[0-10]*	[10-20]*	[20-30]*	[10-20]*	[0-10]*	[30-40]*
Poland	[10-20]*	[30-40]*	[50-60]*	[10-20]*	[20-30]*	[10-20]*	[0-10]*
Spain	[10-20]*	[30-40]*	[50-60]*	[10-20]*	[10-20]*	[0-10]*	[0-10]*
Sweden	[10-20]*	[10-20]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*	[40-50]*
United Kingdom	[10-20]*	[10-20]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[20-30]*
EEA	[10-20]*	[10-20]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[20-30]*

Source: Parties' estimates

96. The combined market share of Universal and BMG would exceed 30% in Italy as well as in Poland and Spain. In the latter two countries, the parties would according to their own

estimates even reach market share of slightly more than 50%. In those countries where the merged entity would take the lead, EMI or Warner would follow as second strongest competitors. In a number of countries (Austria, Belgium, Czech Republic, Greece, Netherlands), EMI would remain the leading player even after the merger.

97. The market investigation has broadly confirmed that the merged entity will obtain a strong position on the market for synchronization rights but is very unlikely to reach more than 30%. The market share estimations provided by the parties may, in some instances, even have overstated the merged entity's position, e.g. in Spain (10-20% in Spain/Portugal instead of [50-60]*% as estimated by the parties). According to estimates derived from the market investigation, EMI will remain the market leader on the market for synchronisation rights in the EEA following the merger between Universal and BMG. Universal/BMG and Warner will be on a pair.
98. The share of the independents was derived from their market share in the synchronisation market as described by the parties. According to the market investigation, synchronisation deals account for 5 to 15% of independents' turnover. However, it is hardly feasible to estimate the market share of independents in the market for synchronization rights. Therefore the parties' estimates relying on the market share of independents in the global publishing market have been considered. Nevertheless, the position of Universal/BMG cannot be considered as dominant in any market as the other majors enjoy a high share of the market. Even without any independent publisher active on this market, the position of Universal/BMG would therefore not be dominant.

	Universal	BMG	Universal/ BMG	EMI	Warner	Sony/ATV	Independents⁽¹⁾
Austria/Germany	[10-20 %]	[0-10 %]	[10-20 %]	[20-30 %]	[10-20 %]	[10-20 %]	[20-30 %]
Benelux	[0-10 %]	[0-10 %]	[0-10 %]	[20-30 %]	[30-40 %]	[0-10 %]	[20-30 %]
France	[0-10 %]	[10-20 %]	[20-30 %]	[10-20 %]	[10-20 %]	[10-20 %]	[30-40 %]
Greece	[0-10 %]	[10-20 %]	[20-30 %]	[30-40 %]	[20-30 %]	[0-10 %]	[0-10 %]
Italy	[10-20 %]	[10-20 %]	[30-40 %]	[20-30 %]	[10-20 %]	[10-20 %]	[0-10 %]
Nordic countries ⁽²⁾	[10-20 %]	[0-10 %]	[20-30 %]	[10-20 %]	[10-20 %]	[0-10 %]	[30-40 %]
Spain/Portugal	[0-10 %]	[10-20 %]	[10-20 %]	[20-30 %]	[10-20 %]	[10-20 %]	[20-30 %]
United Kingdom/Ireland	[0-10 %]	[10-20 %]	[20-30 %]	[20-30 %]	[20-30 %]	[0-10 %]	[20-30 %]
Poland	[10-20 %]	[20-30 %]	[30-40 %]	[0-10 %]	[0-0 %]	[30-40 %]	[20-30 %]
Czech Republic	incomplete - data not recorded						
Hungary	incomplete - data not recorded						
EEA	[0-10 %]	[10-20 %]	[20-30 %]	[20-30 %]	[10-20 %]	[0-10 %]	[20-30 %]

EEA synchronisation market shares 2005 – source: EC Market investigation – ⁽¹⁾ Independents data have been estimated - ⁽²⁾ Denmark, Finland, Sweden, Norway

99. Following this methodology, Universal/BMG would lead the synchronisation market in France, Italy and in the Nordic countries, not far ahead of EMI. However, the merged entity would not reach market shares far ahead of the other competitors in any affected country. Countries where the parties would reach potentially critical levels of market shares would be (according to the parties' and/or the Commission's estimates) the national markets in Italy, Spain and Poland. Like in the other affected geographic markets, the merger is not likely to lead to competition concerns in those three Member States, as the following analysis demonstrates.

1.1.2 Analysis

(1) Characteristics of the synchronization rights markets

100. Synchronisation rights are purchased for the inclusion of musical works in advertising, movies or TV programs. To a much smaller extent, synchronization rights are also used in computer games and corporate presentations. They can also be purchased for digital applications such as video streaming; however this latter category is not analyzed here, but will be covered within the online/mobile rights since it mostly forms part of those rights.
101. The final customer (company requesting the advertisement, film producer, TV broadcaster) generally relies on an intermediate, such as an advertisement company, to identify musical works of potential interest for the application requested. In most cases, a pre-selection of works is proposed by the intermediate to the final customer, based on the features of the musical work and its suitability for the advertisement, film or TV show. On some rare occasions, the final customer has a specific track in mind. Therefore, in the very large majority of cases, the music is pre-selected by the agency/final customer before contacting the publisher²⁴. The final decision is usually taken either by the final customer or by the final customer together with the agency. Music companies are generally not involved, but in a few cases can make suggestions.
102. Synchronisation deals cover the following items: exclusivity, price, number of advertisement versions, territory, media concerned, and duration. Works are generally licensed to local publishers²⁵ and often concern international music²⁶. The geographical scope of the licence is national in one case out of two. The price is in general a percentage of the advertisement budget (1-5%) or film budget.
103. Synchronisation customers have the specific feature in the music industry that they do not need to have access to the complete music repertoire unlike other customers in the music industry such as record companies, radios, online music providers, etc. They negotiate each contract to have access to the rights related to one unique musical work.
104. Classical music represents a small minority of deals²⁷. Contemporary music is also in slightly greater demand than older works. Back catalogue is nevertheless an important asset in this business as chart relevant and non-chart relevant works are in equivalent demand.

²⁴ Questionnaire to synchronisation customers – phase 2. **Q 7 C** – 75% of respondents submitted that they preferably rely on an intermediate to pre-select a first set of titles.

²⁵ Questionnaire to synchronisation customers – phase 2. **Q 4** – 76% of titles are licensed from local publishers, including local subsidiaries of international publishers.

²⁶ Questionnaire to synchronisation customers – phase 2. **Q 6** – 70% of titles are extracted from international repertoires

²⁷ Questionnaire to synchronisation customers – phase 2. **Q 28** – 7% of titles are part of the classical repertoire.

105. All deals are different and are negotiated on a case by case basis²⁸. Some TV or online providers submitted that they sign blanket licences for specific TV or online applications. They are however in a different situation from usual synchronisation customers as they need the full repertoire for their daily business.

(2) Non-coordinated effects

106. The market investigation has shown that the merger will not lead to a significant impediment of effective competition as a result of non-coordinated effects in any of the affected geographic markets. Following the merger, Universal/BMG will significantly increase their market share on the market for synchronisation rights in the EEA. Universal/BMG will overall be comparable to EMI and on a par with Warner. As indicated above, only in Spain, Italy and Poland might the parties' combined market shares (according to the parties' estimates) reach critical levels. A number of practices revealed by the market investigation indicate, however, that Universal will not be in a position to impose higher prices for synchronization rights in any of the affected geographic markets.

Switching

107. Principally, synchronisation customers generally need to purchase one or a few single musical works, for example for an advertisement spot on TV or a movie. The selection of the work to purchase is done without the support of the publisher in most cases and customers usually contact the publisher via an intermediary (such as media consultants or advertising agencies). The customers therefore clearly do not select a publisher or a publisher's catalogue, but a song. The publisher is therefore in a 'waiting position' and will negotiate the terms and conditions of a synchronization licence on a case by case basis when approached by a customer.
108. Customers confirmed that they do not feel attached to any publisher, whatever its size. In particular, they confirm that the works are largely substitutable and that when the financial conditions offered for one work do not meet their expectations, they do not have problems identifying another musical work for which acceptable conditions can be agreed upon. The vast majority of customers²⁹ consider that it is even realistic to switch from one "genre" of music to another and/or from one music work to another (within the same "genre").
109. After the merger, there will therefore still be a large number of alternatives since all catalogues of the larger publishers contain several thousand different titles. A customer looking for a song for an advertisement spot will still be able to choose among thousands of songs from the other majors' and independents' catalogues even if Universal should take a leading position in terms of market shares in some countries, such as Spain, Italy and Poland.

²⁸ Questionnaire to synchronisation customers – phase 2. **Q 12**– 96% of deals are negotiated on a case-by-case basis

²⁹ Questionnaire to synchronisation customers – phase 2. **Q 27** – 83% of respondents submitted that titles are substitutable.

110. Customers report that it happens occasionally that a publisher does not grant a synchronisation licence. However the explanations varied; e.g. it was the author who refused to licence the song, or the negotiation delays were too long. Even in cases where no agreement on the granting of a licence was reached, customers could find a substitute which confirms that a sufficient number of alternatives is available to the customers.
111. The market investigation has also not confirmed that a large catalogue would be a decisive element for final customers or intermediaries in choosing a specific publisher. Customers have a mixed view on the importance of working with publishers who have a large catalogue³⁰. However, they are not interested by the size as such but rather by the possibility for a publisher to propose alternative songs when conditions cannot be agreed upon for a specific work or when suggestions are requested. However, all majors and the stronger independents, such as Chrysalis and Peer, have large catalogues with a sufficient number of works constituting credible alternatives. The larger catalogue that Universal will have after the merger will therefore not create a dominant position or allow Universal to unilaterally increase prices due to a lack of adequate possibilities for the customers to switch to other publishers in the market for synchronization rights.
112. This was confirmed by the responses of the customers in the market investigation. With regard to the merged catalogue of Universal and BMG, synchronisation customers consider that Universal/BMG would not be in a stronger position than its main competitors³¹.
113. Since synchronization right customers do not need access to a complete catalogue but pick only a few titles, the enhanced size of Universal's catalogue does not give rise to competition concerns because a sufficient number of alternative publishers with a vast number of songs remains available. Synchronisation customers have the possibility to find alternative titles easily across genres.

Volatility of market shares

114. The parties, moreover, submit that the business of synchronization rights is very volatile. The market shares exhibit significant changes from year to year. According to the parties' estimates, the market share for Spain only increased to [50-60]*% in 2005, after having ranged between [20-30]*% in the two preceding years. A similar situation applies to Poland, where the parties' combined market share was [20-30]*% in 2003, [20-30]*% in 2004 and [50-60]*% only in 2005.
115. This volatility results from the revenues achieved with synchronization rights sold for a single film or advertisement spot which are mostly limited to the time period in which the advertisement spot is published or the film is shown. The terms of the contracts for advertisements are, according to the parties' information, mostly 1 year or less (3 – 6 months). Depending on the deals closed in a specific year, the market shares may therefore change significantly.

³⁰ Questionnaire to synchronisation customers – phase 2. **Q 31** – 55% of respondents consider that it is important for a publisher to have a large catalogue, vs 45% who do not consider it to be a key success factor.

³¹ Questionnaire to synchronisation customers – phase 2. **Q 32**– 65% of respondents submitted that Universal/BMG would not be in a stronger position than its competitors thanks to the merger.

116. This also becomes apparent when looking at the total revenues achieved in those countries with the highest estimated market shares (parties' estimates) Italy, Spain and Poland. Only in Italy did the revenues achieved by Universal and BMG exceed EUR 1 million each in 2005 (Universal EUR [...]*; BMG EUR [...]*). In Spain and Poland, the revenue of each of them was below EUR 1 million (Poland: Universal EUR [...]*; BMG EUR [...]*; Spain: Universal EUR [...]*; BMG EUR [...]*). Considering that the revenue for one deal may amount to EUR 0.5 million ([...]*), the potentially leading market position of the merged entity cannot be regarded as stable. It is plausible that, with a few larger deals, the distribution of market shares among the large publishers may change considerably, which reflects that Universal's market position will remain contestable.

No impact of vertical integration

117. The market investigation has also not confirmed that Universal could achieve a leading market position after the merger on the basis of its vertical integration into the recording business.
118. When including music in a video, a synchronisation customer needs to obtain two licences, one from the publisher and the other from the record company. Therefore the unique position of Universal (post-merger) of controlling the largest publisher catalogue and being the largest record company might be theoretically leveraged to impose market conditions in its favour, notably for titles for which Universal/BMG would control both recording and publishing rights.
119. However the market investigation highlights that even if synchronisation customers would appreciate working with a single company to simplify the acquisition of rights, this is not a key element of their decision. They would notably not accept to pay higher fees when working with a company able to grant both record and publishing rights for the work they are interested in³². Customers consider that there is enough choice proposed by other companies to switch.
120. In addition, while the publishing rights are necessary to include a musical work in an audio-visual work, the record rights can be by-passed by recording a new version. This is done in many cases by advertising companies in order to adapt the music to the advertisement and to lower the costs when the record company's demands exceed what the customers are ready to pay. As the music comes in support to an audio-visual work, the artist is not the key element of the final product.
121. Moreover, Universal/BMG would only control both recording rights and complete publishing rights over a minority of the titles in which it has an interest. For instance, in Germany, Universal/BMG completely controls [10-20]*% of the titles in which it has both recording and publishing rights³³. In France, this control is as low as [0-10]* %, and

³² Questionnaire to synchronisation customers – phase 2. **Q 20**– 86% of respondents submitted that they would not accept to pay higher fees to a company for the reason that this company is able to propose a single package of recording and publishing rights.

³³ Based on the 2006 official top 100 charts in affected countries. Numerator: top 100 titles for which Universal/BMG controls both recording rights and 100% publishing rights. Denominator: top 100 titles for which Universal/BG controls either recording rights or a share of publishing rights. Austria – [10-20]*%; Belgium – [0-10]*%; Czech Republic – [10-20]*%; Finland – [0-10]*%; France – [0-10]*%; Germany – [10-

in the United Kingdom as low as [0-10]*%. This implies that focusing specifically on titles for which it has full control, would force Universal/BMG to decrease the commercial exploitation of the very large majority of works in its catalogue (both in recording and publishing).

122. Synchronisation customers are able to find a substitute relatively easily and have the possibility to record a new version of the musical work. Therefore a strong position in the record industry is an asset, but is unlikely to allow for changing the balance of negotiation. It is therefore unlikely that Universal/BMG could leverage any market power stemming from the vertical integration between publishing and recording activities in the market for synchronisation rights.

Conclusion on non-coordinated effects

123. It is very unlikely that the merged entity will achieve a critical market position. Even on the basis of the most critical market share estimates, it is not likely that competition concerns could arise since the merged entity's market position will remain contestable as a result of the fact that a sufficient number of alternatives will remain. Customers can easily switch between songs and publishers. The merger will therefore not lead to a significant impediment of effective competition on the basis of unilateral effects in the market for synchronization rights.

(3) Coordinated effects

124. It is also unlikely that the merger could lead to competition concerns on the basis of coordinated effects on the market for synchronization rights.
125. The market for synchronisation rights is such that two deals are rarely comparable in terms of price, duration, territory, media, and renown of work. For instance, two advertisements generally cover different products, address different target customers and therefore rely on different musical works. Musical works can be acquired for different periods and licences might cover different geographical areas. Therefore synchronization contracts are highly heterogeneous, and do not favor a coordinated approach of the majors.
126. In addition, according to the *Airtours*³⁴ and *Impala*³⁵ judgments, one of the conditions to be met to characterize a collective dominance on a market is sufficient market transparency, so that each member of the dominant oligopoly has the ability to know how the other members are behaving in order to monitor whether or not they are adopting the

20]*%; Greece – [0-10]*%; Hungary – [0-10]*2%; Italy – [10-20]*%; Netherlands – [0-10]*%; Norway – [0-10]*%; Poland – [10-20]*%; Spain – [10-20]*%; Sweden – [0-10]*%; United Kingdom – [0-10]*%.

³⁴ T-342/99 (*Airtours/Commission*), [2002] ECR II-2585.

³⁵ T-464/04 (*Impala/Commission*).

common policy. It can be inferred from the market investigation that such a transparency is not achievable in the synchronization market considering the large spectrum of deals³⁶.

127. Some synchronisation deals include a "Most Favoured Nation Clause"³⁷ with regard to the most preferential conditions and terms of the contracts. However this cannot be regarded as an indication for a degree of overall transparency which would allow to tacitly coordinating. This clause is notably applied in synchronisation deals to ensure that record and publishing company controlling a title obtain an equivalent share of the deal (which is difficult to obtain when the work (publishing) and the performer (recording) do not have the same notoriety).
128. In addition, the market investigation confirmed that customers do not consider that there is transparency on prices³⁸.
129. Synchronisation customers consider that the concentration will not facilitate the coordination between majors³⁹. It can be concluded that conditions for coordination in the market for synchronisation rights are unlikely to be met.

1.1.3 Conclusion

130. For all the above reasons, it is therefore concluded that it is not likely that the proposed concentration would create competition concerns. The merger, therefore, does not lead to a significant impediment of effective competition on the markets for synchronization rights.

1.2 Print rights

131. Print rights are regularly licensed directly by the publishers without any involvement of collecting societies. The print rights market is rather small in size (EEA-market volume EUR [...] million in 2005 according to the parties' estimates) with specialized publishers. Universal is mostly not active in this market. The merger will, therefore only lead to a marginal overlap in the Netherlands and at EEA-wide level as the following table shows:

³⁶ Several publishing companies provided examples of synchronisation deals varying from EUR 1 000 to several hundreds thousand euros, covering different geographical areas, different time periods, etc.

³⁷ The MFN clause stipulates that when purchasing synchronisation rights for several works from different publishers, if one publisher benefit from more advantageous conditions, these conditions will apply to all publishers involved in the deal. The MFN also applies when only one title has to be purchased by a customer, and ensures that the record company and the publisher who commonly control this title will receive an equal share of the deal. Questionnaire to synchronisation customers – phase 2. **Q 14**– 84% of synchronisation customers reported the existence of MFN clause in their contracts.

³⁸ Questionnaire to synchronisation customers – phase 2. **Q 33** – 79% of respondents did not believe that the prices they negotiate are known by competitors.

³⁹ Questionnaire to synchronisation customers – phase 2. **Q 42**– 65% of respondents consider that the merger will not facilitate coordination between the majors.

Print	Universal	BMG	Merged	EMI	Warner	Sony	Others
	%	%	%	%	%	%	%
Hungary	[0-10]*	[70-80]*	[70-80]*	[0-10]*	[0-10]*	[0-10]*	[20-30]*
Italy	[0-10]*	[30-40]*	[30-40]*	[10-20]*	[10-20]*	[0-10]*	[30-40]*
Netherlands	[0-10]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[0-10]*	[40-50]*
EEA	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[70-80]*

132. The market shares in Hungary and Italy also exceed 15%. However, there is no overlap.
133. It is therefore unlikely that the merger could lead to competition concerns in any of the affected national markets or at EEA-wide level.

2. Rights traditionally administered via collecting societies: Mechanical, performance and online

2.1 Background: Collecting societies

2.1.1 The current system of collecting societies

134. Collecting societies are organizations which were established to act on behalf of right owners in order to relieve the administrative burden of licensing publishing rights, monitoring the use of music and collecting royalty income. Collecting societies generally control the licensing of both mechanical and performance rights, including online rights which are composed of the previous two.⁴⁰ They may require an assignment of rights from the right-holders, or an exclusive licence to grant licences to users of music.
135. Authors usually become members of the collecting society in their country of residence. They thereby entitle their collecting society to administer their mechanical and performance rights, including online rights⁴¹. It is then the collecting societies' task to grant licences and collect the royalties from the users. For this, the collecting society retains a percentage of the royalties collected as commission fee. The net royalties collected are shared between the authors and their publishers.
136. The publishers' receive a part of the royalties as compensation for the advances they had paid to the author and the publishing services they provide to the author. In their classical role, the publishers' main service would consist in helping the author to establish a contact with a record company with a view to the author's song being chosen by the record company for one of their performing artists and subsequently recorded. For this, the recording companies need to have licences for the relevant publishing rights. They

⁴⁰ Certain exceptions apply. For example, the performing right societies do not always administer the so-called "grand rights" (performances of dramatico-musical works and ballets). In the United Kingdom, Germany and Scandinavia, for example, these performances are licensed directly. On the other hand, in France, Italy, Greece, Spain and the Netherlands "grand rights" are licensed through societies

⁴¹ Normally, synchronization rights (rights to combine music with pictures, e.g. in movies and advertisements) and print rights (rights to print sheet music) are not licensed via the collecting societies but directly by the publishers.

acquire these as blanket licences from the collecting societies who subsequently collect from them a share of the revenues made by selling the CDs containing the respective song.

137. In the case of online music providers a similar situation exists: In order to be able to offer the song on a downloading platform they have to acquire a licence over the author's publishing right from the collecting society. However, in addition, they also have to acquire a licence from the recording company for the recording rights which protect the individual interpretation of a song and which are originally partly in the hands of the recording company and partly in the performing artist's hands. The performing artist normally transfers them to the record company. As a consequence, a share of the online music provider's revenue made by selling the song as a downloading track will subsequently go as a license fee to the performing artist/record company and another share to the author and his publisher via the collecting societies.
138. In order to grant licenses and collect royalties also from users abroad, the collecting societies co-operate worldwide on the basis of so-called "reciprocal representation agreements". These representation agreements give each one of them the right to license not only the repertoire of their own members but also the repertoire of all associated collecting societies (this complete repertoire will hereinafter be referred to as "world repertoire" even though there might be exceptionally collecting societies which do not participate in this system). However, on the basis of these agreements, these licences are, currently only granted for the use of music within the country where the collecting society in question is located. Each collecting society in principle has the right to license the repertoire of its own members EEA- or even worldwide. On the basis of the reciprocal agreements, however, each collecting society limits the scope of its licences for the complete repertoire administered, including both the works of the own members as well as the other collecting societies' works, to its own country. At the same time each collecting society collects royalties from users in its own country not only for its own members but also for the authors and publishers abroad who are members of the associated collecting societies.
139. Collecting societies are normally considered dominant in their respective countries. They are for this reason bound by non-discrimination obligations and are not allowed to refuse licences. As a consequence, they usually charge a uniform price for the whole repertoire (only differing per category of use).

2.1.2 Commission's Recommendation concerning online rights

140. So far, mechanical, performance and online rights have been all managed in the traditional system of collecting societies. The pricing decisions in this system are made by the collecting societies. However, due to their dominant positions, the collecting societies are regularly obliged to charge non-discriminatory tariffs and are not allowed to refuse licences to customers. Consequently, they are not usually allowed to charge different tariffs to the right-users –differences in tariffs only apply with respect to different forms of exploitation. The music of all member authors and publishers is normally covered by a blanket licence which defines a uniform price for all titles and users of one right category. Publishers can normally only indirectly influence the tariffs for those licences via their representation on the boards of the collecting societies which, however, usually restrict the number of seats available to publishers.

141. In this traditional system, international music users need to get licences over the worldwide repertoire from the respective collecting societies in each of the countries in which they want to operate. The disadvantages of geographically limited licences were considered as particularly harmful for the development of the online music business. To address this problem in the online music business, the Commission has affirmed that right-holders should be able to withdraw their rights from the traditional collecting societies system in order to transfer them to one or more selected collecting societies for their EEA-wide administration. Right-holders may be publishers and authors who control the relevant rights to differing extents due to the specific features of rights management in the Anglo-American repertoire and the Continental European repertoire.
142. The lack of EEA-wide licences for online applications has already been under discussion for some time. The collecting societies themselves have attempted to create a system which allows for multi-territorial licensing. The so-called "Santiago agreement" (signed at a CISAC⁴² Congress in Santiago de Chile) was concluded between a number of collecting societies in 2001 and allowed for global performance right licences for internet broadcasting. However, the agreements contained a customer allocation provision which restricted the broadcasters to acquiring a multi-territorial licence only from the collecting society in the country in which they operated and resided economically (economic residency clause). In 2004, the Commission issued a statement of objections against the Santiago agreement and in particular the economic residency clause. The Santiago Agreement expired at the end of December 2004 and was subsequently not renewed.
143. In parallel to the Santiago agreement dealing with performance rights, the association of collecting societies in charge of mechanical rights, the "Bureau International des Sociétés Gérant des Droits d'Enregistrement et de Reproduction Mécanique" ("BIEM"), adopted a similar standard contract at its general meeting in Barcelona – the "Barcelona agreement" - for the corresponding mechanical rights, in 2001. Following the discussions on the Santiago Agreement, also the Barcelona Agreement was not renewed after its expiry at the end of December 2004.
144. In 2005, the Commission issued its Recommendation with respect to online rights: the Commission Recommendation on collective cross-border management of copyright and related rights for legitimate online music services (the "Recommendation") which addressed the issue of EEA-wide licensing in the online sector. The Recommendation was based on a preceding Commission Staff Working Paper ("the Working Paper") concerning Cross-Border Collective Management of Copyright⁴³ in which the Commission identified several problems with respect to the licensing of online rights.
145. The Working Paper examined the existing structures for cross-border collective management of copyright for the provision of online music services and concluded that the absence of EU-wide copyright licences for online content services makes it difficult for these music services to develop. In order to improve cross-border management of copyright, the Working Paper considered three options: (1) do nothing (Option 1); (2) improve the current system by eliminating territorial restrictions and discriminatory

⁴² Confédération Internationale des Sociétés d'Auteurs et Compositeurs

⁴³ Commission Staff Working Document - Study on a Community Initiative on the cross-border collective management of copyright, 7 July 2005.

provisions in the reciprocal representation agreements concluded between collecting societies (Option 2); or (3) give right-holders the choice to authorise a collecting society of their choice to manage their works across the entire EU (Option 3).

146. The Working Paper concluded that Option 3 would offer the most effective model for cross-border management. With respect to cross-border licensing, allowing right-holders to choose a collecting society outside their national territories for the EU-wide licensing of their works, would create a competitive environment for cross-border management of copyright. The Working Paper found that the right-holders' freedom to choose any collecting society in the EU would be an incentive for these societies to provide optimal services to all their right-holders, irrespective of their location.
147. While Option 3 explicitly referred to competition between collecting societies for right-holders (authors and publishers), Option 2 would – by removing the territorial restrictions in the reciprocal agreements – introduce the possibility for each collecting society to grant multi-territorial licences over the complete world repertoire and thereby focus on competition between collecting societies for right-users, who could choose their access point to this world repertoire. The Working Paper favoured Option 3 since it would not only introduce competition between collecting societies for right-holders, but at the same time would allow collecting societies to build up their own attractive repertoires for users. In the Working Paper it was expected that different prices would develop for these different repertoires.
148. The subsequent Recommendation consequently stated in paragraph 3 that "Right-holders should have the right to entrust the management of any of the online rights necessary to operate legitimate online music services, on a territorial scope of their choice, to a collective rights manager of their choice, irrespective of the Member State of residence or the nationality of either the collective rights manager or the right-holder" which reflects the withdrawal possibility indicated in option 3.⁴⁴ While the exact forms of withdrawal and subsequent licensing in a market following option 3 are still developing, some features are apparent: In a restructured market after a withdrawal of rights by authors and publishers from the traditional collecting societies system, an international music user would receive EEA-wide licences from the collecting society or societies in charge. These licences would no longer cover the world repertoire, but only the repertoire which is represented by the specific collecting society and its member right-holders who selected this collecting society for the EEA-wide administration of their rights.

⁴⁴ It is worth noting, that the possibility for right holders to withdraw and transfer their rights to one collecting society has been established notably by the "GEMA" Decision (case IV/26760 of 2 June 1971, OJ L 134/15 of 20 June 1971). This principle has been reaffirmed by the Recommendation. Apart from this, the Commission has recently taken a preliminary position against territorial restrictions and restrictions of membership in the CISAC-case (COMP/C2/38.698) in which a Statement of Objections has been issued. With respect to public performance rights, collecting societies have concluded reciprocal representation agreements based on a non-mandatory model of CISAC (The International Confederation of Societies of Authors and Composers). The Commission considers that certain aspects of the agreements might infringe Article 81 of the EC Treaty with respect to the membership restrictions which oblige authors to transfer their rights only to their own national collecting society and the territorial restrictions, which oblige commercial users to obtain a licence only from the domestic collecting society and limited to the domestic territory. The territorial restrictions raise competition concerns in particular in view of certain new forms of distribution, such as internet licensing, satellite transmission and cable retransmission.

149. In the framework of this merger assessment, no position is taken on the withdrawal of rights as such. The withdrawal initiatives already undertaken or likely to be started in the near future show the development of the market which needs to be taken into account in the merger analysis since it defines the competitive conditions under which the merger will show its effects. The following assessment therefore analyses the effects of the merger in a restructured market and compares the situation on the restructured market without the merger with the situation with the merger.

2.1.3 Withdrawal of rights from the current collecting societies system

150. Since the Recommendation was issued, several publishers have started to withdraw rights from the traditional system of collecting societies in order to give the rights to one or more selected collecting societies. All initiatives relate to online applications and mostly focus on Anglo-American mechanical rights as part of the affected online rights. The main reasons why publishers focus on mechanical rights for Anglo-American repertoire result from the differences in the administration of rights.

(1) Administration of rights

151. The administration of rights via collecting societies differs with respect to Anglo-American titles on the one hand, i.e. titles which are registered with collecting societies in the United Kingdom, Ireland and in the US⁴⁵, and Continental European titles on the other, even though both are part of the system of reciprocal agreements as described above. While the differences between Anglo-American and Continental European rights administration are not large with respect to *performance* rights they are substantial in the administration of *mechanical* rights.

152. One underlying reason for the differences is the historically different legal concept concerning the protection of works. In the US and in the United Kingdom, the "copyright" relates to a publisher's investment into a work. The publisher is entitled to full protection of his investment by the copyright law. In contrast, according to the originally French concept a creator of a work owns his creation and is protected by the "droit d'auteur". This concept which allocates the original control over a work to the creator spread from France throughout Continental Europe.

153. The administration of publishing rights mainly differs with respect to:

- ownership of rights and
- international contractual relations and transfer of royalties ("international administration").

154. Both aspects are intertwined and have an influence on the power of the publishers and their possibility to withdraw rights from the traditional collecting societies' system which is one pillar of the competition assessment in this case.

a. Continental European repertoire

⁴⁵ Other countries might have a similar system, such as Canada, Australia, New Zealand or South Africa. Accordingly, sometimes the term English-language repertoire is used instead of Anglo-American repertoire. Since the music from authors in the United Kingdom and in the US covers the large majority of non-classical titles, the following description will only refer to the United Kingdom and to the US.

155. *Ownership of rights:* In Continental Europe, most authors transfer their mechanical and performance rights directly to the collecting societies. They therefore do not normally transfer the rights over the works to the publishers, but rather give them a right to obtain a part of the royalties instead. The ultimate control of the mechanical and performance rights over the authors' works therefore usually remains therefore with the authors (or subsequently with their collecting societies if assigned to them) and is not transferred to the publishers. Any change as to the administration of rights would, in this system, normally need the approval of the author.
156. *International administration:* The collecting societies are entitled by the authors to do the administration as well as the international transfer of royalties within the collecting societies' system. On the basis of the reciprocal agreements, an author's collecting society will grant licences and collect royalties only on a national basis. The administration of these rights in other countries is done by the associated collecting societies in their respective countries. All associated collecting societies grant licences on a territorial basis and collect the royalties from the users in their territory.
157. The international transfer of these collected royalties from the countries of the users to the country of the author is done differently for the part of the royalties to be paid to the author and the part payable to the publisher. Generally, all collecting societies define a split of royalties between authors and publishers. This split is determined pursuant to the terms of the collecting societies' rules and reflected in their mandates with authors and publishers. The ultimate division of royalties between the author and the publisher may differ from this pre-defined split, if the publisher pays an extra portion of the royalties received to the author, in addition to the royalties paid directly by the collecting society. The split prescribed by the collecting societies guarantees a certain remuneration for the author and was established to protect the authors.⁴⁶ The shares for the two sides are called the "author's share" and "the publisher's share" respectively.
158. For the author's share, the distribution of royalties is done via the collecting societies. The collecting societies collect all the royalties for the author's work in their countries. They then transfer the author's share to the original collecting society which in turn passes it on to the member author. The publisher's share, however, will not be transferred to the original collecting society but to a local subsidiary or agent (both called "sub-publisher") of the original publisher in the respective countries.⁴⁷ These sub-publishers transfer the publisher's share of royalties to the original publisher.⁴⁸

⁴⁶ These splits vary between collecting societies as well as between the right categories. In Germany, for example, 40% of the collected net royalties for mechanical rights (after deduction of the collecting society's commission fee) will be retained by the publisher while the author retains 60%. For performance rights the publisher will usually retain 33.33% with the author receiving the rest of 66.66%. Also in the other Continental European countries such splits are applied (often 50% - 50% or 25% - 75%) which all have in common that none of the two sides involved – author and publisher – gets 100%.

⁴⁷ The parties indicate that the major music publishers are established in many Member States and as a result, their need to conclude sub-publishing deals in the EU is more limited than for many of the independents. Also the majors, however, use third-party sub-publishers in other parts of the world. Universal also has sub-publishing agreements in [...]*

⁴⁸ Since – as described above - the control over the mechanical and performance rights in Continental Europe is normally not with the publishers, the international distribution of the publisher's share generally does not take place on the basis that the sub-publisher owns the right over a work itself but only a right to the publisher's share of income.

b. Anglo-American repertoire

159. For Anglo-American repertoire different rules apply in respect of mechanical rights and in respect of performance rights.

Mechanical rights

160. *Ownership of rights:* Authors in the United Kingdom normally transfer their mechanical rights to 100% to their publishers who, in the traditional system, subsequently appoint the United Kingdom collecting society MCPS for the administration of these rights. The control over Anglo-mechanical rights is therefore normally fully transferred to the publishers who do not need the authors' approvals for decisions over the administration of these rights.
161. *International administration:* MCPS could, in principle, sell worldwide licences for the rights it administers. However, the publishers also grant territorial mechanical rights to the own sub-publishers abroad in parallel. These sub-publishers are members of their local collecting societies. They subsequently appoint their respective collecting society for the administration of the mechanical rights limited to their territory. As a consequence, the territorial scope of MCPS is restricted accordingly since its licences can only cover those countries in which no sub-publisher has the relevant mechanical rights.⁴⁹
162. Consequently, all royalties from Anglo-mechanical rights are collected internationally by the respective collecting societies in their countries. Since no split into publisher's share and author's share applies here, the complete royalties (after deduction of the collecting societies' commission fees) are transferred to the relevant local sub-publishers who pass it on to the original publisher in the United Kingdom. The original publisher will then pay out the agreed share of the royalties to the author.
163. For mechanical rights in the US a similar system applies with the difference that publishers collect mechanical royalties in the US directly from the users without any involvement from the US collecting societies. As in the United Kingdom, the US-publishers grant territorial rights to their sub-publishers in the different EEA-countries who appoint the national collecting societies for the administration of the rights. In Europe, therefore, effectively the same system applies for US-works as for United Kingdom-works with respect to mechanical rights.

Performance rights

164. For Anglo-performance rights the administration is in essence the same as for Continental European mechanical and performance rights. The United Kingdom-authors normally transfer their performance rights directly to the relevant collecting society in the United Kingdom: PRS. Control over these rights is therefore not transferred to the publishers.

⁴⁹ See MCPS-PRS' reply to Questionnaire to Collecting Societies 1, dated 7 November 2006, question 28: "The MCPS Membership Agreement is one of agency and it is concluded on the same terms regardless of whether the principal is a music publisher or writer. The member (whether writer or publisher) appoints MCPS to act as the member's sole and exclusive agent (clause 1). The appointment is not only for the United Kingdom: please see the definition of "Territory" contained in clause 6 of the Membership Agreement. Under this clause members retain the right subpublish, and be members of organisations similar to MCPS in other countries of the world; such sub-publishing and local collecting society membership overrides the Membership Agreement."

The publisher's share and the author's share are each 50%. Their international administration is managed as described above for Continental European rights.

165. For US-performance rights some specific features apply. American performance rights are typically not assigned to either a collecting society or a publisher but to both. The relevant US collecting societies are ASCAP and BMI. According to the parties, approximately 49% of the US authors are members of ASCAP and 49% are members of BMI.⁵⁰ The US authors licence their rights to the US performance collecting societies BMI or ASCAP and at the same time to a publisher. ASCAP and BMI have reciprocal agreements with the European collecting societies pursuant to which they grant them the right to licence the US performance rights for exploitation in their respective countries. The collecting societies pay the collected revenues to the sub-publishers who are members of the national collecting societies.⁵¹
166. US collecting societies also apply a split of royalties between authors and publishers in the same way as the European collecting societies do for performance rights. Both BMI and ASCAP, collect 100% of performing rights income and pay 50% to the author and 50% to the publisher. The parties confirm that the international flow of royalties is the same for US-performance rights as for Anglo-performance rights: the publisher's share goes via the sub-publishers and the author's share goes via collecting societies.

(2) Resulting withdrawal possibilities for publishers

a. Withdrawal possibility for Anglo-American mechanical rights

167. The main difference between Continental European repertoire and Anglo-American repertoire relates therefore (i) to the fact that, in the Anglo-American world, the authors' mechanical rights are completely transferred to the publishers who therefore have full control over those rights and (ii) to the sub-publishing system which fully applies to Anglo-American mechanical rights and preserves full control for the publishers over the international management of their rights. This system is to a large extent dependent on their agreements with sub-publishers as opposed to agreements with or between collecting societies.
168. While the parties disputed the possibility and scope of a withdrawal of rights by publishers, the market investigation has brought clear results as to Anglo-American mechanical rights. As described above, the Anglo-American authors assign 100% of their mechanical rights to their publishers. The publishers therefore have full control over these rights and may decide to withdraw from the traditional collecting societies system without the need for approval by the authors.

⁵⁰ The remaining 2% or less are members of the third US-collecting society SESAC.

⁵¹ While ASCAP members may grant their full rights in parallel to the publishers who assign those rights to the sub-publishers, BMI members assign their rights to the publishers only for those territories in which BMI has no reciprocal agreement with the national collecting society. The sub-publishers in the countries where BMI has a reciprocal agreement therefore do not own the rights (since the original publisher does not have them for this territory and therefore cannot assign them to the sub-publishers), but they may collect according to the BMI agreement the revenues out of the licensing which are made by the European collecting societies. Ultimately, therefore no major difference occurs between ASCAP and BMI with respect to the flow of royalties.

169. In practical terms, the withdrawal of Anglo-mechanical rights basically requires that the publishers in the United Kingdom terminate the sub-publishing agreements on mechanical rights with their sub-publishers in other countries in order to effectively withdraw these mechanical rights from the collecting societies in the different countries.⁵² With such a termination of sub-publishing contracts, the sub-publishers no longer have the right to represent the original publisher's repertoire in their respective territory for which they had been entitled to sub-publish. This "automatically" withdraws those rights from the local collecting societies since they only may grant licences and collect royalties for the repertoire which these sub-publishers represent. Some collecting societies accordingly indicated that the termination of sub-publishing agreements does not exactly qualify as a "withdrawal" since it does not require the (partial) termination of a membership agreement with the collecting society. The withdrawal effect is, however, the same as with a termination of a membership agreement. The collecting society which previously granted licences for the sub-publisher's repertoire is no longer entitled to do so for those rights which are no longer represented by the sub-publisher.
170. With such a termination of sub-publishing contracts, the original publisher in the United Kingdom gathers the rights for the Anglo-repertoire in all territories in which the sub-publishers previously were in charge. The geographical scope of the licences that MCPS can subsequently grant is – if no sub-publishing agreement is maintained – worldwide. A publisher wishing also to withdraw the rights from MCPS needs to consider the conditions under which such a withdrawal is viable according to the statutes and the membership agreement. MCPS indicates that following entry into the membership agreement a member can exclude MCPS' powers with respect to a number of right categories including online rights by giving MCPS three months notice.⁵³ With respect to American mechanical rights the publishers similarly only need to terminate sub-publishing contracts.
171. Anglo-American titles represent the majority of the non-classical popular music. Looking at the official charts in the affected countries, on average 74% of the titles are Anglo-American repertoire. The exact shares differ per country since the importance of local repertoire varies. The shares range from approximately 50% in Spain and France to virtually 100% in the United Kingdom.

b. Withdrawal possibility for Continental European repertoire

172. Rights in Continental European repertoire (as well as Anglo-American performance rights) are more difficult to withdraw from a publishers' perspective. Unlike for Anglo-American mechanical rights, here the rights are not assigned to the sub-publishers in the different territories, but are administered internationally via the network of collecting societies (only the publishers' share of royalties is transferred via the sub-publishers). A withdrawal would therefore require the (partial) termination of a membership agreement with the original collecting society to which the rights were assigned. As a consequence

⁵² It was largely confirmed by the collecting societies that a withdrawal of Anglo-American mechanical rights is easy for the publishers on the basis of the termination of sub-publishing agreements. See the responses to the Questionnaire to collecting societies 3, dated 5 February, question 8; 12 collecting societies answered to this question: 10 clearly confirmed, 2 confirmed in principle but also indicated that the actual legal effects depend on the specific agreements.

⁵³ See MCPS/PRS' answer to the Questionnaire to collecting societies 1, dated 7 November 2006, question 26.

of such a termination, neither the original collecting society nor the associated collecting societies abroad could continue to exploit these rights.

173. However, in general, it seems that it would be the authors, rather than the publishers, who could withdraw rights from the collecting societies. The parties submit that legally the publishers may not withdraw any rights, since in the Continental European system, the authors normally assign their rights to the collecting societies, whereas the publishers only receive a right to a share of the royalties, but not a right over the work itself. This would effectively prevent publishers from deciding on a withdrawal. According to the parties' submission, in Continental Europe, publishers therefore have no control over the mechanical and performance rights and would need the authors' approvals for a withdrawal. This would equally apply to Anglo-American performance rights.⁵⁴
174. The market investigation has shown, that the precise national conditions differ in this respect mainly due to often complex and intertwined provisions of the relevant national laws, the statutes and membership agreements of the collecting societies as well as the publishers' agreements with the authors. A number of collecting societies also indicate that the precise possibility of a withdrawal initiated by the publishers in the individual countries also depends on the contracts between the authors and the publishers⁵⁵ which might not be fully known to the collecting society.
175. The market investigation has largely confirmed that a withdrawal of Continental European repertoire (as well as Anglo-American performance rights) is substantially more difficult than is the case for Anglo-American mechanical rights. It is very likely that Universal could generally not withdraw the respective Continental European mechanical and performance rights without the authors' approvals. In Germany, for example, authors are regularly members of GEMA and assign their rights to GEMA under their membership agreement. They may only assign their rights to publishers to the extent that they have not been previously assigned to GEMA. This, however, generally only relates to synchronisation rights and print rights. GEMA confirms that the authors usually assign 100% of their rights to GEMA and that control over these rights is therefore with the authors.⁵⁶ The same applies to France: SACEM confirms that the authors regularly transfer 100% of their rights to SACEM, which even leads to the result that SACEM itself

⁵⁴ A specific situation applies to American performance rights. As explained above, US authors licence their rights to the US performance collecting societies BMI or ASCAP and at the same time to a publisher. ASCAP and BMI have reciprocal agreements with the European collecting societies pursuant to which they grant the right to licence the US performance rights for exploitation in their respective countries. While ASCAP members may grant their full rights in parallel to the publishers who assign those rights to the sub-publishers, BMI members assign their rights to the publishers only for those territories in which BMI has no reciprocal agreement with the national collecting society. Consequently, publishers can according to the parties bundle their ASCAP performance rights for EEA-wide administration, but the European collecting societies will nevertheless still be able to grant territorial licences for the ASCAP-repertoire which was assigned to them by the authors on a non-exclusive basis. For BMI, no withdrawal by the publishers appears to be possible where the authors have assigned the rights to BMI and in those territories where BMI has no agreement with any other collecting society.

⁵⁵ This is well reflected by AEPI in its response to the Questionnaire to collecting societies 2, Table 3: "For all rights the approval of the author depends on the agreement that he has entered into with the publisher. The publisher administers whatever the creator has assigned to him."

⁵⁶ See GEMA's reply to the Questionnaire to Collecting Societies 3, dated 5 February 2007, question 9c.

has control over the rights.⁵⁷ A withdrawal by a publisher would consequently not be possible.

176. In some other countries, there is significant legal uncertainty as to the publishers' possibilities to withdraw. According to the parties, Austrian authors, for example, assign their rights on an exclusive basis to both the collecting societies AKM (performance collecting society) and Austro Mechana (mechanical collecting society) as well as to the publishers. This would, according to the parties, create legal difficulties in the event that a publisher planned to withdraw. In fact, it would first have to be clarified which exclusive licence was valid. The answers of the two different collecting societies did not provide a clear picture: AKM confirmed that any withdrawal would generally need the author's approval, whereas Austro Mechana stated that it did not have any data on this question⁵⁸.
177. Similarly, for some of the affected countries the complex legal situation often made it impossible to obtain clear answers. This in itself shows the significant degree of legal uncertainty connected to a withdrawal of rights relating to Continental European repertoire. Overall, the market investigation confirmed that the authors as well as the collecting societies have substantially more control over their rights in Continental Europe than in Anglo-American countries and that any withdrawal of Continental European repertoire will – due to the likely legal difficulties - need more time than a withdrawal of Anglo-American mechanical rights. The withdrawal of rights by the publishers without prior approval by the authors is therefore only likely in respect of mechanical rights for Anglo-American repertoire. This is also confirmed by the fact that the current withdrawal initiatives focus on Anglo-American mechanical rights for online applications as described in more detail below. While it cannot be excluded that in the long-term also a withdrawal of Continental European repertoire will be intended by the publishers where legal possibilities for this can be found in the national legal frameworks, it cannot be assumed to be a likely step which could be expected in the foreseeable timeframe.

(3) Current withdrawal initiatives

178. All currently known withdrawal initiatives cover mainly mechanical rights for online use. They do not apply to mechanical or performance rights in their traditional, off-line applications. The withdrawal initiatives moreover generally only cover Anglo-American repertoire.
179. Several publishers are currently re-organising their Anglo-American mechanical rights for online applications according to different models. This trend follows the Recommendation which re-affirms that right holders have the right to authorize a single collecting society to licence and monitor their rights across Europe.
180. Just before the proposed transaction, Universal studied different scenarios [...] which ranged from granting one collecting society with all copyrights to select several collecting societies at the same time in order to withdraw the current collective management of copyrights. These attempts by Universal were formally made known to the Collecting Societies: Universal had initially informed them that it would withdraw its online rights

⁵⁷ See SACEM's reply to the Questionnaire to Collecting Societies 3, dated 5 February 2007, question 9c.

⁵⁸ See AKM's and Austro Mechana's replies to the Questionnaire to Collecting Societies 3, dated 5 February 2007, question 9d.

[...]*, but afterwards informed them that this process was put on hold. The most advanced projects of Universal involved [...]* dealing with the Anglo-American repertoire. The parties also indicated intentions to explore a co-operation with [...]*. This would, however, require subsequent agreements with other collecting societies due to the difficulties connected with a withdrawal of Continental-European rights by publishers as can be seen from the internal documents provided by Universal [...]*⁵⁹.

181. BMG also studied some withdrawal possibilities in 2006. The main one involved the creation of a joint venture with [...]* and related to online and mobile rights of BMG's non Continental-European repertoire. [...]* However, as Universal, BMG had already informed some collecting societies of these plans.
182. The most advanced model, [...]*, is the EMI initiative "CELAS" under which EMI has selected a new joint venture established by the German and the United Kingdom collecting societies for the EEA-wide administration of the EMI repertoire. At the beginning of 2006 EMI announced its agreement with the MCPS-PRS Alliance and GEMA and the joint venture has become active as of 1 January 2007. The initiative foresees that the EMI Anglo-American⁶⁰ will be offered under a single licence across Europe for mobile and online use. CELAS will be a new entity separate from the parent collecting societies and will represent the EMI rights on an exclusive basis. But CELAS, MCPRS/PRS and GEMA remain entitled to offer similar services individually to other right holders.
183. In February 2006, Warner Chappell Music launched its Pan European Digital Licensing (hereinafter "PEDL") initiative. Negotiations are still ongoing. It concerns Anglo-American online rights (Continental-European repertoire is not included). Warner intends to designate several collecting societies which have to be able to meet the standards Warner requires as its non exclusive licensing agents to grant pan-European online licences. This project therefore differs to some extent from the others, since there will not be one collecting society in charge of the licensing of the Warner repertoire but several.
184. Throughout the market investigation, some independent publishers (e.g. Chrysalis)⁶¹ have also mentioned considering the withdrawal of their online rights from collecting societies. MCPS-PRS has moreover, together with the Music Publishers Association (hereinafter "MPA"), developed a standard agreement which is supposed to allow to smaller independents an easy withdrawal and transfer to MCPS-PRS, respectively to its "Alliance Digital". The online rights are defined as telephone and online usage rights (including reproduction and distribution). Alliance Digital has sole and exclusive power to negotiate and enter into agreements with those who require licences either in the form of blanket or standard agreements, and to determine by negotiation or otherwise the terms and conditions on which licences are granted including the royalty fees. The payment of royalty by licensor is based on tariffs of country of destination.

⁵⁹ See Annex 5 provided by the parties, dated 22 January 2007, page 477.

⁶⁰ The single licence will also cover German repertoire contributed by GEMA. However, GEMA repertoire is not withdrawn in the sense described but only part of the initiative because GEMA is participating in the joint-venture.

⁶¹ See Chrysalis' response to Questionnaire to competitors (independents) 2, dated 21 December 2006, question 38.

(4) Conclusion

185. It can be concluded that the withdrawal of rights and the subsequent transfer of right to one or a few selected collecting societies is clearly a trend which is currently taking place in the industry. Universal is actively pursuing an own withdrawal initiative [...]*. The pause which was created by the merger proceedings before the Commission does not signal an end to this activity.
186. This trend however currently concerns mainly Anglo-American mechanical rights for online applications since all the initiatives described above at present only cover these rights.⁶² The following assessment will, therefore first cover mechanical and performance rights in their traditional applications and will then focus on online rights, in particular on the Anglo-American mechanical rights for online applications considering the current trend to withdraw.

2.2 Mechanical and performance rights (traditional applications)

2.2.1 Affected markets

187. The parties have provided market share estimations which are summarized in the following tables:

⁶² As a consequence of the current withdrawals, music-users will probably have to acquire separate licences for the mechanical part of the online rights and for the performance part of the online rights. Only those initiatives which select the performance right collecting society in the United Kingdom – PRS - will be able to offer a combined online licence for mechanical and performance rights for online applications with respect to the Anglo-repertoire. With respect to the American performance rights being held by ASCAP, even after withdrawal a combined licence will be possible since the authors grant a non-exclusive licence to both ASCAP and the publishers. Any publisher has therefore access to the performance rights of its own repertoire and may offer them (non-exclusively) together with the corresponding mechanical rights. With respect to BMI, the publishers only have the rights in those territories where BMI does not itself exploit the rights or has an agreement with a collecting society to do so. If BMI is not party to a withdrawal initiative, the online services will therefore have to acquire the licences for BMI-American performance rights separately from each of the EEA-collecting societies for their respective territories.

Mechanical	Universal	BMG	Merged	EMI	Warner	Sony	Others
	%	%	%	%	%	%	%
Austria	[10-20]*	[10-20]*	[30-40]*	[20-30]*	[10-20]*	[0-10]*	[20-30]*
Belgium	[0-10]*	[0-10]*	[10-20]*	[20-30]*	[10-20]*	[0-10]*	[20-30]*
Finland	[0-10]*	[0-10]*	[10-20]*	[0-10]*	[40-50]*	[0-10]*	[30-40]*
France	[10-20]*	[0-10]*	[10-20]*	[10-20]*	[10-20]*	[0-10]*	[40-50]*
Germany	[0-10]*	[0-10]*	[10-20]*	[20-30]*	[10-20]*	[0-10]*	[30-40]*
Greece	[10-20]*	[10-20]*	[30-40]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*
Hungary	[20-30]*	[10-20]*	[40-50]*	[20-30]*	[10-20]*	[0-10]*	[0-10]*
Italy	[10-20]*	[20-30]*	[30-40]*	[10-20]*	[10-20]*	[0-10]*	[30-40]*
Netherlands	[10-20]*	[20-30]*	[40-50]*	[20-30]*	[10-20]*	[0-10]*	[0-10]*
Poland	[10-20]*	[10-20]*	[30-40]*	[20-30]*	[10-20]*	[10-20]*	[10-20]*
Spain	[10-20]*	[0-10]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*	[20-30]*
Sweden	[10-20]*	[10-20]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*	[40-50]*
United Kingdom	[10-20]*	[10-20]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[30-40]*
Norway	[10-20]*	[0-10]*	[10-20]*	[10-20]*	[10-20]*	[0-10]*	[40-50]*
EEA	[10-20]*	[10-20]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[30-40]*

Performance	Universal	BMG	Merged	EMI	Warner	Sony	Others
	%	%	%	%	%	%	%
Austria	[10-20]*	[0-10]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[30-40]*
Belgium	[10-20]*	[0-10]*	[10-20]*	[10-20]*	[10-20]*	[0-10]*	[30-40]*
Czech Republic	[0-10]*	[0-10]*	[10-20]*	[30-40]*	[20-30]*	[0-10]*	[10-20]*
Germany	[0-10]*	[0-10]*	[10-20]*	[20-30]*	[10-20]*	[0-10]*	[30-40]*
Greece	[10-20]*	[0-10]*	[20-30]*	[20-30]*	[20-30]*	[10-20]*	[10-20]*
Hungary	[10-20]*	[20-30]*	[30-40]*	[20-30]*	[10-20]*	[0-10]*	[10-20]*
Italy	[0-10]*	[10-20]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*	[40-50]*
Netherlands	[10-20]*	[10-20]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*	[30-40]*
Poland	[10-20]*	[0-10]*	[20-30]*	[10-20]*	[20-30]*	[10-20]*	[20-30]*
Spain	[10-20]*	[10-20]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*	[20-30]*
United Kingdom	[10-20]*	[10-20]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[20-30]*
EEA	[0-10]*	[0-10]*	[10-20]*	[10-20]*	[10-20]*	[0-10]*	[50-60]*

188. According to this information, the horizontally affected markets are those for

- mechanical rights in: Austria, Belgium, Finland, France, Germany, Greece, Hungary, Italy, The Netherlands, Poland, Spain, Sweden, the United Kingdom and Norway;
- performance rights in: Austria, Belgium, Czech Republic, Germany, Greece, Hungary, Italy, The Netherlands, Poland, Spain, and the United Kingdom;

189. After the merger, the parties would acquire a leading position in a number of EEA-countries. They would exceed a combined market share of 30% in Austria, Greece, Hungary, Italy, the Netherlands and Poland for mechanical rights and in Hungary alone for performance rights, followed mostly by EMI. Warner would in most cases be the third strongest competitor with Sony following in some distance as the smallest of the majors.
190. The market investigation has, however, shown that the merger does not lead to competition concerns in the markets for mechanical and performance rights due to the strong position of the collecting societies which prevents independent pricing on the part of the publishers.

2.2.2 Pricing in the system of collecting societies

191. Mechanical and performance rights in their traditional (non-online) applications are managed in the described traditional system of collecting societies. The pricing decisions in this system are made by the collecting societies which the publishers may influence only indirectly via their representation on the boards. However, most collecting societies only grant a limited share of the voting rights to the group of publishers. In the majority of collecting societies, the number of seats open for publishers is limited to one third of the total number of seats or less.⁶³ In addition, some collecting societies further restrict the number of the publishers' seats available to vertically integrated publishers which mainly affects the majors. In the Spanish collecting society SGAE, for example, three out of twelve board members are publishers, one of which may be a major. In the French collecting society SACEM, six out of 19 board members may be publishers. Among these six only two may be vertically integrated.⁶⁴
192. In most collecting societies the decisions by the board are taken by simple majority.⁶⁵ Some collecting societies indicated exceptions to this rule for some important subject matters, such as the dissolution of the collecting society or significant changes of the statutes. Only a few collecting societies reported specific rules which, however, did not create a specific advantage for the group of publishers (e.g. if the group of composers on the GEMA-board has an unanimous view, this group cannot be overruled). Since generally all votes have equal weight, the publishers formally do not have a decisive influence on the collecting societies and even less so one single publisher. Universal's formal influence will also consequently not increase after the merger.
193. A number of collecting societies have however indicated that the economic weight of the majors is significant and the dependence of the collecting societies on Universal will increase after the merger. Some market participants made reference to the so-called "Cannes Agreement", according to which the publishers reached significantly lower commission fees for the collecting societies in the framework of central licensing agreements for mechanical rights. In this respect it has to be noted, however, that with the Cannes Agreement the publishers did not influence the tariffs for users but only the

⁶³ The main exception to this is the collecting society MCPS in the United Kingdom where the majority of seats on the board are open for publishers.

⁶⁴ See Questionnaire to collecting societies 1, dated 7 November 2006, questions 6, 7 and 53: e.g. SABAM: ¼, AKM 1/3, GEMA 1/3, SACEM less than 1/3, Buma ¼, Stemra 1/3, STIM 1/3, SGAE ¼.

⁶⁵ See Questionnaire to collecting societies 1, dated 7 November 2006, question 7.

commission fees retained by the collecting societies for their administration services. The tariffs themselves are set by the collecting societies. This derives mainly from the fact that collecting societies are bound by a number of legal provisions in their pricing which does not only limit the collecting societies but also any publisher's influence on the tariffs. The main provision is the non-discrimination principle which will be described in more detail in the following.

194. While the parties' economic weight will become larger after the merger, this will not allow Universal to price independently. The licensing tariffs may not under the current rules differ per publisher. It is therefore unlikely that the parties could impose price increases for mechanical and performance rights for traditional applications after the merger.
195. Due to their dominant positions, the collecting societies are regularly obliged to charge non-discriminatory tariffs. As a result, under the current system, they normally may not charge different tariffs to the right-users – differences in tariffs only apply (on a non-discriminatory basis) with respect to the different forms of exploitation. The music of all member authors and publishers is normally covered by a blanket licence which defines a uniform price for all titles and users of one right category.
196. The merger will also not give Universal the possibility to influence the collecting societies to change this system in its own favour. In most cases, the non-discrimination obligation is based on competition law as well as on the respective national copyright laws.⁶⁶ Remaining in the traditional system of collecting societies, it can therefore not be expected that Universal could after the merger impose higher prices for the own repertoire regarding mechanical or performance rights (traditional application).

2.2.3 No withdrawals of mechanical and performance rights for traditional applications

197. While significant changes to the rights administration are taking place for online rights, no such developments can currently be observed for mechanical and performance rights for traditional applications. While some collecting societies have mentioned the possibility of a parallel development occurring in the future in respect of mechanical and performance rights for traditional applications as in online rights, the market investigation has not indicated that any withdrawal initiatives are planned with respect to the traditional fields of applications in the near future.
198. It can be assumed that the withdrawal of mechanical and performance rights for traditional applications is more difficult than the withdrawal of online rights. In particular for performance rights, a withdrawal might be difficult due to the monitoring and collection of royalties from the numerous small and geographically widely dispersed customers, such as restaurants, bars and discotheques. The administration of these rights would continue to require a high degree of local presence in the countries where the customers are located whereas online rights can to a significant extent be administered via the internet. For a withdrawal of such rights, the assistance of most collecting societies would still be needed since each collecting society has for its own country the information about the users as well as the necessary monitoring network.

⁶⁶ See Questionnaire to collecting societies 3, dated 5 February 2007, question 3a.

199. It is, moreover, worth noting that in the current system of the mechanical rights management the large record companies have in the past succeeded in significantly decreasing the commission fees which are retained by the collecting societies and in establishing so-called "central licensing agreements" which constitute European-wide licences granted by a selected collecting society. As opposed to the withdrawal initiatives in online rights, these multi-territorial licences are, however, based on agreements between the relevant collecting societies and are thereby integrated into the traditional collecting societies' system. Due to the better terms and the easier European-wide administration of mechanical rights, the incentives for the vertically integrated music companies to withdraw those rights have to be considered as lower than it is the case for online rights.
200. As described above, the publishers could in essence only withdraw Anglo-American mechanical rights on their own initiative, since only those are regularly assigned to them by the authors. All other rights (performance rights, mechanical rights for Continental European repertoire) are normally assigned by the authors to the collecting societies. Any withdrawal of those rights by the publishers would normally require the authors' approval. Given that the approval of thousands of authors would be necessary a withdrawal of performance rights and Continental-European mechanical rights does not seem likely.
201. But even for Anglo-American mechanical rights for traditional applications a withdrawal cannot be expected in the foreseeable timeframe. All current initiatives focus on online rights. According to one major publisher, the online initiative has already required a huge amount of preparation over the past year. No publisher indicated to currently pursue any such plans for the "offline" rights (mainly Anglo-American mechanical rights). It can be assumed that any potential initiative to withdraw "offline" rights (mainly Anglo-American mechanical rights) in the future would require again a significant amount of time for planning and preparation. Several independents have indicated that a withdrawal of mechanical rights (in their traditional applications) could be in principle feasible for Universal. However, they also mention that mechanical rights account for approximately half of the publishers' turnover, and that any such move would if at all only be decided upon when the currently initiated change for online rights is firmly established. Given these indications, any such step therefore does not appear likely.
202. It can also not be assumed that the merger increases the incentives for Universal to withdraw mechanical rights for traditional applications where it is possible. Both Universal and BMG had indicated already before the merger that they would withdraw their online rights. Equally, a number of independents are currently withdrawing. Consequently, the size of the publisher does not seem to be essential to the decision to withdraw and transfer the rights to a selected collecting society. In any case, any potential minimum size is apparently already reached by the larger independents. The merger therefore cannot be considered to have a decisive effect in this respect.
203. While the possibility of a withdrawal of at least mechanical rights for traditional applications (Anglo-American repertoire) cannot be completely excluded in the long-term, it cannot be assumed as a probable development in the foreseeable timeframe.

2.2.4 Effects of the merger on mechanical and performance rights

204. Against this background, it is not likely that the merger could lead to competition concerns and to an increase in prices for licences for mechanical and performance rights

(traditional applications). The control over the pricing is to a large extent in the hands of the collecting societies and not in the hands of the publishers. No change to this system can currently be expected in the near future. The merger therefore does not lead to a significant impediment of effective competition in the markets for mechanical and performance rights.

2.3 Online rights

2.3.1. Scope of the analysis

(1) Serious doubts in the market for online rights

205. The merger raises serious doubts in the market for online rights, which are composed of mechanical and performance rights for online applications (including mobile). The concerns mainly relate to the mechanical rights part of the online rights and to Anglo-American repertoire. However, a price increase in this segment will have an appreciable effect on the overall market for online rights. The role of performance rights would be neutral since they are likely to remain in the traditional system of collecting societies who have an obligation to license at non-discriminatory terms.
206. Online rights have so far been administered by the collecting societies. The recent major restructuring of the market in which publishers withdraw online rights from the traditional collecting societies' system affects in particular the mechanical rights part of these online rights. Due to the specificities of the rights administration in the Anglo-American countries as described above, such withdrawal is currently easier with respect to Anglo-American repertoire. The current withdrawal initiatives are subsequently focused on Anglo-American mechanical rights for online use.
207. In the traditional collecting societies system the collecting societies are responsible for the pricing of licences which the publishers can influence only via their representation on the collecting societies' boards. The withdrawal shifts pricing power to the publishers who gain pricing independence with respect to the withdrawn rights. In this restructured market, the merger may lead to a significant impediment of competition due to unilateral effects leading to an increase in prices as compared to the situation in the restructured market without the merger.
208. The following analysis therefore assesses the effects of the merger on competition in the new licensing environment envisaged. It does not assess any effects of the withdrawal of rights from the traditional collecting societies' system as such, but neutrally considers the current developments as facts determining the relevant competitive situation in which the merger takes place. The withdrawal from the collecting societies system is the framework which allows the publishers to price independently. After the withdrawal, the collecting societies system and the corresponding regulatory framework cannot prevent a price increase resulting from the merger in this restructured market environment.

(2) Development of the online music market

209. Online rights are an input for the provision of online music services to end-customers. Online music providers, such as downloading services, need to acquire the licences for the necessary online rights in order to be able to offer the respective music titles on their platforms. The licensing of online rights to online music providers is therefore an

upstream (wholesale) market to the (retail) market of online music services to end-customers.

210. The volume of the upstream market for online rights depends on the size and development of the downstream market for online music services to end-customers. Since the revenue from licensing of online rights is generally a percentage of the revenues the online music providers make by selling online music services to the end-customers, the current size and the prospective growth of that market result in a corresponding development of the market for the licensing of online rights.
211. The online rights market is currently still very small which is due to the fact that the provision of online music services to end-customers is still in a very early stage of development. The total market volume of publishing online rights in the EEA is estimated by the parties at EUR [20-30]* million for 2005. According to the notifying party, online rights represented approximately 2% of the parties' total publishing revenues in 2005. A similar share appears to apply to the total downstream market: According to the report "Interactive content and convergence: Implication for the Information Society"⁶⁷, the total revenues made on the market for online music services to end-customers (EUR 196 million in 2005) also represent approximately 2% of the total music revenues.
212. It is, however, undisputed that the market for online music services to end-customers will grow significantly in the next years and will be of critical importance for the overall future music market. The "Commission staff working document – study on a community initiative on the cross-border collective management of copyright"⁶⁸ indicates a considerable estimated growth of online music revenues until 2008. The total online music revenues in Western Europe in 2004 are indicated as EUR 27.2 million. The estimation for 2008 is EUR 559 million. In the US the market volume was already EUR 207 million in 2004 and the estimated revenue for 2008 is EUR 1 270 million.
213. Also according to International Federation of the Phonographic Industry ("IFPI"), online music is still in an early phase of development but grows at high rates. Considering only recording revenues, IFPI states that revenues by record companies in the online music business have doubled worldwide in 2006 to US-\$ 2 billion. They are now around 10% of the total recorded music sales (after 5.5% in 2005) and are expected to grow to at least 25% by 2010. In Europe, the number of single tracks downloaded has according to IFPI increased by 80% between 2005 and 2006.⁶⁹
214. In March 2007, Vivendi reported for Universal digital sales in 2006 "strong growth in all markets and sectors". Universal's digital revenues were up [50-100]*% versus 2005 and

⁶⁷ See Interactive content and convergence: Implication for the Information Society – A study for the European Commission, Final Report October 2006, pages 31 and 36. The same study forecasts a growth of total online and mobile music revenues to €1.8 bn by 2010, i.e. a multiplication by more than the factor 9.
http://ec.europa.eu/information_society/europe/i2010/docs/studies/interactive_content_ec2006_final_report.pdf

⁶⁸ See Commission staff working document - study on a community initiative on the cross-border collective management of copyright, 7 July 2005, page 6, referring to Rightscom, DRM and Services in Europe and the US, 2005.

⁶⁹ See International Federation of the Phonographic Industry; IFPI:07 – Digital music report: http://www.ifpi.org/content/section_resources/digital-music-report.html

represented [0-10]*% of its total revenues.⁷⁰ In its "2007 Outlook" Vivendi states that regarding Universal's revenues (even excluding BMG Publishing) a "strong release schedule and digital sales growth are expected".⁷¹

215. The above mentioned report "Interactive content and convergence: Implication for the Information Society"⁷² similarly forecasts that online music revenue which currently represents 2% of the total music revenues will in 2010 represent a share of 20.4%. This assumes that the online music market will be multiplied by 9 between 2005 and 2010. Applying this growth rate to the publishing market for online rights, it is estimated that this market will reach a value of EUR 230 million in Europe. This is in line with the forecast of the International Music Publishers Association (IMPA) which gathers the 5 current majors. Considering that the US and Europe have similar sized overall music markets, IMPA expects that the European digital market (which is currently 7 times smaller) should be similar to the US digital market.⁷³

(3) Steps of the assessment

216. The analysis focuses on unilateral effects of the merger on the market for online rights and in particular on the mechanical rights portion of those online rights for Anglo-American repertoire. It follows three main questions:
- **Independence in pricing:** After the restructuring of the administration of the online rights by the described withdrawal initiatives, will the publishers be able to price independently from the collecting societies and the regulation applicable to them?
 - **Increase in market power:** Will the merger increase Universal's market power in the market after restructuring vis-à-vis the online right users as compared to the restructured situation before the merger?
 - **Profitability of a price increase:** Is it likely that Universal will be able to profitably increase prices or will the reactions of other market participants offset the positive revenue effect and therefore render a price increase unprofitable and unlikely?

2.3.2 Independence in pricing

217. As a result of the withdrawal initiatives in the online rights market, the publishers are gaining control over the licensing tariffs. Despite the remaining future involvement of collecting societies in the current withdrawal initiatives the publishers are likely to exert direct influence on the pricing of their withdrawn repertoire.

⁷⁰ Vivendi's Annual Financial Report and Audited Consolidated Financial Statements for the Year Ended December 31, 2006, dated 12.03.2007, p.36.

⁷¹ Vivendi presentation "2006 Results and 2007 Outlook" by Jean Bernard Lévy and Jacques Espinasse on 07.03.2007.

⁷² See Interactive content and convergence: Implication for the Information Society – A study for the European Commission, Final Report October 2006, pages 33 and 39.
http://ec.europa.eu/information_society/europe/i2010/docs/studies/interactive_content_ec2006_final_report.pdf

⁷³ See Annex 5 provided by the parties, dated 22 January 2007, page 307.

(1) *The changing role of collecting societies*

a. The traditional role

218. So far, the collecting societies have been responsible for the licensing of mechanical, performance and online rights and the corresponding definition of the exact terms of licensing. In the traditional system, for most uses they issue blanket licences which cover the complete repertoire administered. Collecting societies are mostly considered as being dominant in their respective territories due to the reciprocal agreements which essentially prevent any competition between the collecting societies and restrict their activities to the own country. On this basis, special rules apply to them in most Member States. These rules consist (i) of the general principles of non-discrimination and equal treatment which the collecting societies derived from the requirements of competition law and (ii) of specific regulation in some countries.
219. Specific regulation: The parties have provided an overview of the different national conditions prevailing in this respect and have shown that there are different mechanisms in the affected territories which influence the setting of royalty rates, which has generally been confirmed by the market investigation. The mechanisms range from specific bodies with jurisdiction to approve or set rates to arbitration bodies. The nature, jurisdictional scope, and respective powers of these mechanisms vary among the affected territories. According to the parties, there is a level of uncertainty regarding the exact scope of application of these mechanisms especially in relation to new and emerging licensing platforms for pan-territorial licences, in particular for the online exploitation of music.⁷⁴
220. The parties indicate mechanisms with specific jurisdiction over royalty rates in Austria, the Czech Republic, Germany, Hungary, Greece and the United Kingdom⁷⁵. These Member States have in common that the rules provide for arbitration mechanisms rather than for any direct tariff regulation as it is the case for regulated industries, such as telecoms. Only in Hungary is an approval of the tariffs by the Ministry of Culture required. Moreover, the arbitration procedures in the other countries only become effective when users dispute tariffs charged by the collecting societies before the courts or specific arbitration bodies.⁷⁶

⁷⁴ See response by the parties' to the questionnaire to the parties, dated 7 February 2007.

⁷⁵ In Spain, there is only a mechanism which is entirely voluntary and in the Netherlands, there is a body which can only make non-binding recommendations.

⁷⁶ The parties provided the following information on the individual countries:

- *Austria*: The Verwertungsgesellschaftengesetz 2006 (the VGG) determines the conditions under which the collecting societies AKM and austro mechana operate. The usual way for setting a tariff is for the Austrian collecting societies to conclude "collective agreements" with representative organisations of users. A specific arbitration mechanism exists where negotiations for a collective agreement are unsuccessful. Where this arbitration fails, either party is entitled to apply to the "Copyright Senate" ("Urheberrechtssenat") which will decide on the appropriate tariff.
- *Czech Republic*: Collecting societies in the Czech Republic must be authorized by the Ministry of Culture which supervises the activities of those societies. The Czech collecting society OSA is obliged to set adequate tariffs which apply equally to all users. Users may ask the Ministry of Culture to review the rates.

221. Non-discrimination principle: Apart from these specific regulation, the general non-discrimination principle is applied by the collecting societies as stipulated in their statutes and membership agreements. According to this principle they may not treat users differently for comparable forms of music applications. As a result, tariffs only differ per category of use but not per user. The collecting societies also apply the policy of charging one price for the whole repertoire. Therefore, no differentiated pricing for the publishers' or authors' repertoires applies in the traditional collecting societies system.
222. In the traditional collecting societies system, the publishers do consequently not have any direct influence on these tariffs. Since the licences and tariffs cover the complete repertoire no publisher-specific tariffs exist. In this system as described above, the publishers are able to influence these terms only via their representation on the boards of the collecting societies which does not, however, in most collecting societies entail any decisive control for the publishers. Consequently, the individual publishers do not have control over prices of their individual repertoires as the control is with collecting societies.

b. The change brought about by the withdrawal trend

223. The restructuring of the market provides for a new role for the collecting societies and a new relationship between publisher and collecting society in the field of the withdrawn rights. This new role is determined by the newly introduced competition between collecting societies for right-holders. Due to the withdrawal from the traditional collecting societies system, collecting societies will (for the withdrawn rights) adopt a role as agents and service providers for the publishers and will no longer act in the traditional sphere of the usual membership agreement and collecting societies' statutes.
224. After the withdrawal of rights, the collecting societies will compete with one another for the administration of online rights. Universal provided presentations made by several collecting societies which presented their offers for the administration of online rights to the publishers.⁷⁷ Moreover, an own internal presentation indicates that Universal met with [...] in this matter.⁷⁸ It is clear that these collecting societies have to make an offer to the publishers which complies with their wishes. The Dutch collecting society BUMA-Stemra summarizes the new competitive situation: "Rights holders will evaluate

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- *Germany*: In Germany, users can appeal against tariffs set by GEMA to the Arbitral Tribunal at the Patent Office which may alter this tariff.
 - *Greece*: In Greece, users who consider tariffs set by AEPI as too high may request a court of first instance to set an adequate tariff. In addition, the Ministry of Culture has the power to act on complaints regarding tariffs.
 - *Hungary*: Royalty rates set by the Hungarian collecting society Artisjus are subject to Ministerial approval. Users may turn to an arbitration board, which can propose a new tariff. If the parties to the dispute do not agree to this proposal the tariffs of the previous year remain applicable.
 - *United Kingdom*: In the United Kingdom, the Copyright Tribunal is responsible for the determination of disputes arising between licensing bodies and users. The Copyright Tribunal may set the terms that are "reasonable". It has the authority to confirm or vary the pricing scheme.

⁷⁷ See Annex 5 provided by the parties, dated 22 January 2007, section 1.

⁷⁸ See Annex 5 provided by the parties, dated 22 January 2007, page 466.

the services delivered by their society and compare these to services provided by other European societies. The most attractive society to a rights holder will be the one that best represents the online music rights of the rights holders, based on efficiency and service."⁷⁹ On the basis of such competition between the collecting societies, the publishers select one or a few collecting societies for the administration of their rights. The respective publishers base their cooperation with respect to the withdrawn rights on new, individual agreements with the selected collecting society which define the specific terms of the administration of the withdrawn rights beyond the usual membership agreements.

225. In the restructured market, it is therefore very likely that the publishers will have decisive influence on the tariffs for their withdrawn rights. The publishers can no longer be considered as one of many members in a collecting society with only limited influence on the conditions of licensing. Due to the process of 'tendering' their rights, the publishers gain a position which shifts control over the conditions of licensing from the collecting societies to the publishers who have the possibility to terminate their cooperation with the selected collecting societies and to switch to another one if they are not satisfied with the conditions and services offered. This view is also reflected by IMPA (International Music Publishers Association) which refers in a presentation to Option 3 of the Commission Working Paper and states that "Option 3 changes relationship between societies and rights holders – Option 3 gives rights holders the ability to negotiate terms on which societies can license our rights and to protect rates"⁸⁰.
226. This was further confirmed by the responses to the market investigation. When asked whether the publisher or the selected collecting society will decide on the tariffs of the withdrawn rights in the future, several collecting societies indicated that the conditions would depend on the agreements between the selected collecting society and the individual publisher.⁸¹ The Belgian collecting society SABAM indicates, for example, that "Due to the shifted balance of power and the fact that instead of a collective of right-owners one single publisher will be represented, the collecting society will operate more as an agency for the publisher than as a true collecting society. In such a case, the concerned publisher will determine the conditions against which this repertoire will be licensed."⁸² In the same way, the German collecting society GEMA confirms that the tariff conditions will be agreed between the selected collecting society and the publisher.⁸³ Equally SACEM, the French collecting society, states that if selected by a major publisher, SACEM would have to apply the specific tariff required by the respective publisher.⁸⁴ Both GEMA and SACEM have already been in negotiations with one or

⁷⁹ See Annex 5 provided by the parties, dated 22 January 2007, page 16.

⁸⁰ See Annex 5 provided by the parties, dated 22 January 2007, page 317.

⁸¹ See collecting societies' responses to the Questionnaire to Collecting Societies 3, dated 5 February 2007, question 7d.

⁸² See SABAM's response to the Questionnaire to Collecting Societies 3, dated 5 February 2007, question 7d.

⁸³ See GEMA's response to the Questionnaire to Collecting Societies 3, dated 5 February 2007, question 7d: "In diesem Fall ist davon auszugehen, dass die Tarifbedingungen bereits in der Vereinbarung zwischen dem jeweiligen Verleger und der Verwertungsgesellschaft festgelegt werden."

⁸⁴ See SACEM's response to the Questionnaire to Collecting Societies 3, dated 5 February 2007, question 3e (applicability of the non-discrimination rule for withdrawn rights): "La SACEM aurait à appliquer le tarif

several major publishers on the administration of withdrawn rights. It can be assumed that their replies reflect their experience resulting from those negotiations. Their statements are in line with MCPS-PRS' explanation that the right-holder will select an agent on the terms offered to him which he feels best represents his interests and is free to switch to another agent (collecting society) if his interests are not properly represented by the one initially selected.⁸⁵

227. While many other collecting societies indicate that the tariffs would depend on the agreement between the publisher and the selected collecting society, a few of them stated that they would also be the ones deciding on the tariffs in the restructured market and with respect to withdrawn rights transferred to them according to the rules currently determined by the membership agreements and statutes (OSA, AEPI, Artisjus)⁸⁶. As far as the Commission is aware, none of those respondents are currently among those which are in detailed discussions with the major publishers or even selected for the EEA-wide administration of the mechanical part of their online rights.
228. Market participants other than the collecting societies share a similar view of the future pricing power over withdrawn rights as shown by the statement of one online music provider: "The withdrawal by publishers of their repertoire from the system of blanket licences has the effect of removing the pricing power from collecting societies and therefore from national copyright authorities and tribunals. In other words, insofar as access to the global repertoire is essential for users such as broadcasters and providers of music streaming services (one cannot for example have a call-in program where one only plays songs owned by certain publishers), the publishers are acquiring full and unfettered pricing power in relation to users."⁸⁷
229. It can be concluded that the collecting societies will no longer have the same pricing power as in the traditional collecting societies system as regards the withdrawn rights. On the basis of competition between the collecting societies, this power over the pricing will shift to the publishers.

(2) Applicability of regulatory provisions after withdrawal

230. The publishers' independence in pricing will also not be prevented by regulatory provisions existing for collecting societies. All current initiatives include the participation of one or a few collecting societies. The market investigation has shown that the current provisions will most probably not apply equally to the new initiatives. This conclusion is also implicitly confirmed by the response of EMI, a music publisher which has conferred inter alia its Anglo-American repertoire to CELAS, a joint venture of GEMA and MCPS-PRS. In its assertion that music publishers would not be able to price their copyrights

spécifique exigé par l'éditeur si ce dernier lui confiait la gestion des ses droits dans le cadre d'un mandat particulier distinct des apports de droits normalement effectués à la SACEM par ses membres, mandat donnant à l'éditeur en cause la possibilité de spécifier des conditions particulières d'exploitation de son catalogue différentes de celles définies par la SACEM pour ses propres membres."

⁸⁵ See MCPS-PRS' response to the Questionnaire to Collecting Societies 3, dated 5 February 2007, question 7d.

⁸⁶ See questionnaire to collecting societies 3, dated 5 February 2007, question 7d.

⁸⁷ See fax registered as document 2759 on 1 February 2007, page 3 (name of respondent confidential).

independently, EMI does not at all refer to any regulation preventing the publishers from doing so.⁸⁸

231. As described above, in the traditional system collecting societies are normally considered as dominant and consequently apply the principle of non-discrimination. In addition, in a few countries there is specific regulation – mostly arbitration procedures in case of complaints. In the new initiatives pan-European licences are intended to be granted by a national collecting society selected by the respective publisher. The market investigation has shown that it is highly unlikely that the selected collecting societies will with respect to the administration of the withdrawn rights be bound to the non-discrimination principle and to any country-specific regulation to the same extent as in the traditional system.

a. Non-discrimination

232. In the new initiatives, the collecting societies are selected by the publishers as service providers. As described already earlier, they do not act anymore as the traditional collecting societies but as agents for the publishers. By concluding new agreements different from the usual membership agreements, those membership agreements and consequently the statutes of the collecting societies concerning the membership will no longer fully apply with respect to the withdrawn rights.

233. While the collecting societies traditionally have had the control over the rights administered, they will in the future rather take the role of service providers to the publishers with respect to the withdrawn rights. In essence, the publishers will buy administration services from the collecting societies while keeping the ultimate control over the rights. The market power held by the collecting societies will therefore in this respect shift to the publishers. It is unlikely that this will still require the application of non-discrimination principles by the collecting societies with respect to the withdrawn rights.

234. This is also reflected in the agreements drafted for the new initiatives which reflect the expectation that a collecting society acting only as a service provider to a publisher will not be bound to the non-discrimination principle as the publisher would also not be bound when licensing directly: [...] allows for example in its draft agreement with [...], the application of different tariffs for right users [...]⁸⁹.

b. Specific regulation

235. Similar considerations have to be made with respect to specific regulation prevailing for collecting societies in the traditional system as described in general terms in paragraph above. While the licences can cover several countries, the specific regulation which is based on national laws does not apply fully to such multi-territorial licensing. With respect to the specific regulations, the questions may be raised whether (i) the regulation in the country in which the collecting society is located will also apply to users abroad and (ii) whether collecting societies granting licences in other countries for uses in these other countries would be bound by regulation there.

⁸⁸ Response of EMI to the Commission's questionnaire of 15.03.2007, p. (i).

⁸⁹ See [...].

236. (i) Applicability of regulation to users abroad: For most of the described regulation, the parties are of the view that it would also apply to users which are not located in the respective countries. The parties moreover indicate that such cases have never been tested, since to date the collecting societies have not granted EEA-wide licences.⁹⁰
237. The market investigation has not fully confirmed the notifying party's analysis. The collecting societies were asked whether any existing regulation relating to tariffs would equally apply to users in other countries acquiring a European-wide licence. The large majority of the collecting societies did not fully support the suggestion that the provisions applicable to users in the own country would equally apply to users acquiring a licence for the use of rights in other countries. The answers mostly either clearly rejected this possibility, stated that no tariff regulation existed in general or indicated that the legal situation was not clear.⁹¹
238. Of the countries identified as having some form of tariff regulation, it appears that particularly far-reaching provisions exist in the United Kingdom. The collecting society MCPS-PRS considers that the Copyright Tribunal's jurisdiction may be limited to licences concerning the exploitation of rights in the United Kingdom.⁹² This would mean that users who are located outside of the United Kingdom might be covered by the regulation in the United Kingdom, but only with respect to their activity in the United Kingdom. Since those users would have to be considered as British users rather than as foreign users, the statement of MCPS-PRS does in essence not confirm that users acquiring an EEA-wide licence for the use of music outside of the United Kingdom would be covered by the existing regulation.
239. Also the majority of collecting societies in those countries which were identified by the parties as having some form of tariff regulation, did not support the applicability of this regulation to users in other countries. According to GEMA for example, this question will depend on whether the applicability of the German law will be agreed upon in the contract between the publisher and the respective collecting society and whether it would be admissible to agree on such applicability according to the principles of international law. The Austrian collecting society in charge for mechanical rights Austro Mechana clearly rejected such applicability, while its counterpart for performance rights, AKM, indicated that there is no clear provision concerning the applicability of regulation to EEA-wide licences. A confirmation of the international applicability of the national tariff regulations

⁹⁰ The parties also did not indicate any cases which might have already touched upon this issue in the framework of the Santiago agreement which allowed for EEA-wide licensing and expired at the end of 2004. It seems, however, that the EEA-wide licensing on the basis of the Santiago agreement differs significantly from the EEA-wide licences envisaged after withdrawal and that any potential examples in this respect might not be applicable for the new initiatives. The Santiago agreement was concluded between a number of collecting societies granting each other the right to issue multi-territorial licences. The Santiago agreement was therefore no withdrawal from the traditional collecting societies system – it can rather be regarded as an addition to the traditional model in which the control over licenses and pricing remained fully in the collecting societies' hands.

⁹¹ See the collecting societies' reply to Questionnaire to collecting societies 3, dated 5 February 2007, question 6 c (applicability of regulation to European-wide licensing).

⁹² See MCPS-PRS' reply to Questionnaire to collecting societies 3, dated 5 February 2007, question 6 e.

was also not received from OSA (Czech Republic), AEPI (Greece) and Artisjus (Hungary).⁹³

240. (ii) Applicability of regulation to collecting societies abroad: It is moreover, unlikely that the specific regulations existing in some Member States would equally apply to the collecting societies being selected for the EEA-wide administration of rights.
241. Some respondents to the market investigation indicate that any specific regulation on tariffs would only apply to a foreign collecting society if this collecting society could – in case it granted licences in another country – still be defined as a collecting society under the national laws in the country of the right-user. In most countries, several conditions have to be fulfilled in order to qualify as a collecting society (for example, administration of rights for more than one right-holder, non-profit making organisation). Moreover, special accreditation often has to be granted by the authorities in charge. In some countries, it is very likely that no other organization could work as a formally acknowledged "collecting society". In Austria, for example, only one collecting society can obtain an operating licence for the administration of a specific category of rights⁹⁴. Further, the Hungarian collecting society Artisjus confirmed that a foreign collecting society could only act as agent in Hungary, since only Artisjus qualifies as collecting society.⁹⁵ In Italy, SIAE is appointed by law to act as a collecting society. While this does not prevent any publisher from licensing the own rights directly and independently or via a selected agent, it shows that the role of a traditional collecting society representing many different right-holders and its specific regulation is reserved for very specific organizations.
242. Apart from this, a number of respondents indicated that also a foreign collecting society granting licences in the own country would have to generally respect the law of this country. This affected mostly countries in which no specific tariff regulation exists.
243. The parties' analysis does not lead to a different result. For most countries, the parties find that the national rules would theoretically apply to a foreign collecting society if it qualified as a collecting society under these national rules. The parties indicate that this qualification may in some countries only be achieved if the organization is located in the respective country or may be excluded completely since this status is reserved for the established collecting society (e.g., Germany, Hungary, Italy). The parties state that regulation would probably apply also to foreign collecting societies only in the United Kingdom and the Czech Republic. MCPS-PRS considers that a licensing body would not necessarily have to be located in the United Kingdom to fall under the regulation in the UK indicating at the same time that there is no decided case on this issue.⁹⁶
244. It can be concluded, that the legal provisions are clearly aimed at the current traditional collecting societies system and do not take into consideration any EEA-wide licensing

⁹³ See the collecting societies' replies to Questionnaire to collecting societies 3, dated 5 February 2007, question 6 c.

⁹⁴ See parties' reply to the Questionnaire to the parties, dated 1 February, paragraph 3.2.6.

⁹⁵ See Artisjus' reply to the Questionnaire to collecting societies 3, dated 5 February 2007, question 6e.

⁹⁶ See MCPS-PRS' reply to the Questionnaire to collecting societies 3, dated 5 February 2007, question 6e.

activity. The results of the market investigation show that the future structure of the online licensing market is accordingly not considered in the various national laws. It is therefore unlikely that the national regulation (where it exists for the national collecting societies) will "neatly" apply to the EEA-wide licensing activities of the collecting societies being selected and acting as service providers for the publishers. This is even more unlikely if new entities are established by the collecting societies (and the publishers) for the EEA-wide administration of rights. The fact that the publishers are aiming at an EEA-wide tariff for the withdrawn rights as described above shows that a deviation from the standard rates for the withdrawn repertoire is considered as possible. This is also confirmed by the market investigation. When asked whether it can be expected that the new initiatives may apply tariffs for the withdrawn rights in the future which are different from those which are not withdrawn, the majority of collecting societies answered yes.⁹⁷

(3) Tariff provisions in Universal's current initiatives

245. In the restructured market and on the basis of the new role of the collecting societies, the publishers will via individual agreements be able to control the pricing over the own withdrawn rights and either define the tariff conditions directly or design approval procedures in the agreements with the selected collecting society. [...]*
246. The notifying party has been in contact with [...] regarding the EEA-wide administration of Universal's withdrawn rights. [...] ⁹⁸ [...] ⁹⁹.
247. While [...]*, the current initiatives mainly stipulate that for the time being, the current rates will continue to apply ("country of destination tariff"). This does not contradict the pricing power by the publishers. The use of the country of destination tariffs reflects the current transition period of this market which needs some time to develop. It is clearly a voluntary decision by these publishers who choose to stay with the old rates for a certain time. This decision does not reflect the absence of pricing independence, but rather confirms it. It would not be necessary to state in the new agreements the application of these tariffs if the selected collecting society would still be the one setting the tariffs in accordance with the traditional system of membership and reciprocal agreements.
248. It can be expected that the collection of local tariffs will be in the near future exchanged by a new EEA-wide tariff. The parties indicate for example [...]* that it is envisaged to establish an EEA-wide tariff.¹⁰⁰ MCPS indicates on its website, that the country of destination principle applies for withdrawn rights making clear at the same time that this is intended to be used only "initially"¹⁰¹. MCPS moreover indicates [...]* that:

⁹⁷ See the collecting societies' replies to Questionnaire to collecting societies 3, dated 5 February 2007, question 7f: Of 13 replies to this question, 8 collecting societies indicated yes, 3 indicated no and the answers of 2 collecting societies was not clear.

⁹⁸ See [...]*, Annex 5 provided by the parties, dated 22 January 2007, page 237.

⁹⁹ See [...]*

¹⁰⁰ See [...]*, Annex 5 provided by the parties, dated 22 January 2007, page 301 and the [...]*, Annex 5 provided by the parties, dated 22 January 2007, page 205.

¹⁰¹ See under <http://www.mcps-prs-alliance.co.uk/>- Licensing the future - Question and Answers.

"Obviously, there are significant practical difficulties in applying the ToD [Territory of Destination] principle in the online sphere [...] it inevitably leads to a very complex royalty structure in any pan territorial licence. One solution is obviously harmonized rates. [...] it could therefore be abandoned [...] MCPS-PRS and Rights Holders would then have an opportunity to control the tariffs on a Europe-wide basis. As indicated elsewhere in this response, the route to achieving purely repertoire-based licensing may not be immediate but until that point, however, ToD is a principle that should be retained."¹⁰²

249. It is therefore realistic to assume that an EEA-tariff for each specific repertoire ("repertoire-based") is intended which deviates from the country of destination tariffs, which shows the publishers' pricing independence compared with their situation in the traditional collecting societies' system. It can be questioned why [...]*. This is also confirmed by responses from the market. When asked whether in the current withdrawal initiatives the country of destination tariff will apply, SABAM for example indicates that the "risk" of tariffs in function of the repertoire exists.¹⁰³ SACEM also notes that withdrawals have as an aim the increased influence of the publishers on the tariffs.¹⁰⁴ Taking into account the difficulties which MCPS sees with respect to the country of destination tariff, it can be expected that the aim of an EEA-wide tariff will be pursued in the near future. The current focus on the old rates before the merger does not at all exclude a new pricing policy by Universal after the merger, which will allow for larger pricing power vis-à-vis the users and will therefore also create stronger incentives to apply an own rate.

(4) Conclusion

250. It can be concluded, that in most countries no explicit application of the national rules for international licences is considered. Many legal uncertainties as to the international applicability of national rules remain in most countries. It is therefore very likely that with the withdrawal of rights from the traditional system of collecting societies, the publishers will gain pricing independence with regard to their repertoire or may obtain it. Due to the limited applicability of specific national rules, it is also unlikely that existing regulation (where it exists) will be able to limit the enhanced pricing power of the parties on EEA-wide level in the foreseeable future environment.

2.3.3 Increase in market power

251. In the foreseeable licensing environment as described above, the proposed concentration is likely to significantly increase Universal's market power vis-à-vis the providers of online and mobile music services. This market power of the merged entity results from the heavy dependence of most¹⁰⁵ of these music providers on access to Universal's and BMG's music publishing rights and on Universal's recording rights. As a consequence of

¹⁰² See[...]*, Annex 5 provided by the parties, dated 22 January 2007, page 58.

¹⁰³ See SABAM's response to the Questionnaire to collecting societies 3, dated 5 February 2007, question 7a.

¹⁰⁴ See SACEM's response to the Questionnaire to collecting societies 3, dated 5 February 2007, question 7a.

¹⁰⁵ The Commission acknowledges the existence of some niche players such as E-Music specialising in repertoire of independents. However, the market investigation has shown that vast majority of the online and mobile music providers rely on the repertoire of the majors.

the proposed concentration, Universal will (co-)control publishing rights as regards a large number of the best-selling titles. This high control share of music publishing rights is further entrenched by Universal's strong position regarding recording (neighbouring) rights. In view of the specific features of the online and mobile music providers' demand it appears likely that Universal will be able to use its strong positions in both recording and publishing to exert pressure on online and mobile music providers and to impose higher rates.

(1) Features of demand of online and mobile music providers

a. Need to secure both publishing and recording rights

252. Any provider of online or mobile music needs licences for both the recording and the publishing rights for all titles it proposes on its platform.¹⁰⁶ Whilst publishing rights relate to the copyright of the author(s) in the "abstract" lyrics and melody of a work, the recording rights cover the rights of the performing artist in a specific recording of that song. The same work (melody and lyrics) may thus be recorded several times by different singers, for instance as "cover versions". If a provider offers music without having secured all necessary rights for a song it runs the risk of litigation and damage claims on the part of the right owners. In the absence of such licenses for the relevant recording rights and for the relevant publishing rights of a title, an online or mobile music service provider cannot offer that title and the title will thus normally not be available on that platform.
253. So far, online and mobile music providers have regularly acquired licences for the music publishing rights from the collecting societies and licences for music recording rights directly from the record companies. In the new environment as described above, music publishing rights of a given publisher will be only available from one single organisation (e.g. CELAS for EMI) or a limited number of organisations or collecting societies which administer the online rights of that publisher. As explained above, these organisations or selected collecting societies are rather acting as agent or service provider on behalf of their "principal" publisher which will determine the licensing terms and conditions. The licensing of music publishing rights is thus developing from a collective licensing towards an individual licensing and will thus converge towards a licensing model similar to the licensing of music recording rights.
254. The market investigation indicates that in some cases major record companies with large record repertoires and high market shares have succeeded in imposing higher licensing rates for recording rights than smaller major record companies. The online and mobile music providers which reported such rate differences referred to the higher bargaining power of those majors with higher market shares as their catalogues are of greater importance for an online and mobile music provider. In addition, several online or mobile music providers stated that record companies have refused or delayed wholesale licences

¹⁰⁶ This is also recognised by Universal: see paragraph 105 of the form CO. Ringtones as pure melodies (without performance) should normally not require a recording rights licence. However, according to the market investigation, even ringtones seem to require recording rights licences. In any event, even if ringtones were not to require recording rights licences, the following analysis would not be altered: ringtones are only one of several mobile music applications and not the most important one. In addition, they are losing relative importance as compared to mastertones and mobile audio and video downloads and streaming which have higher growth rates and all definitely require recording rights licences.

in the past. Some providers indicated that record companies have delayed the licensing of their repertoire in order to achieve higher rates. It is noteworthy that such behaviour has only been possible with respect to recording rights as publishing rights have so far been licensed by collecting societies.

255. In the restructured environment Universal as an integrated music company will directly and indirectly license both the recording and publishing rights and will thus be able to use its strong position in music recording to put additional pressure on online and mobile music providers in order to accept higher rates for music publishing rights. In view of this close link between the recording and publishing rights, both for the customers (the providers need licences for both rights) and the music companies (possibility of joint management within the same music company), the following analysis will also take into account Universal's control of recorded music rights.
256. The complementary character of music publishing and recording is also reflected in the way Vivendi presents the benefits of the BMG Music Publishing acquisition to financial analysts: Vivendi states that the announced acquisition of BMG Music Publishing will increase Vivendi's profit in the first year as it improves "UMG's ability to capitalize on a music market that is improving supported by technological innovations and digital sales".¹⁰⁷ The acquisition of BMG Music Publishing is presented as a unique opportunity as "BMG Music Publishing enhances the strategic position and value of UMG as the world's leading recorded music company AND music publishing company" (emphasis by Vivendi).

b. Licensing of the entire repertoire and not of individual titles

257. The offer of online and mobile platforms is permanently changing and they thus need to be able to put new songs quickly on their platforms. It would be extremely inefficient, time-consuming and very costly to open negotiations for each title. Therefore, online and mobile music providers regularly conclude general licence agreements with the right owners or their agents. These licence agreements are often concluded for one year and usually cover the entire repertoire owned or administered by the respective right owner or his or her agent. They can therefore be considered as 'blanket' licences for the full repertoire of the respective right owner.
258. To date, general or blanket licences have been the licensing model for both recording rights and publishing rights for online and mobile applications. For the recording rights, each record company has granted licences for its full repertoire whereas for publishing rights the collecting societies have granted blanket licences comprising all the repertoires which they administered.
259. As explained above, the rights of the performing artists (recording or neighbouring rights) are normally assigned to the record companies. Generally, the record companies have, in addition to the performing artists' rights, neighbouring rights of their own in the recordings. In any event, due to the assignment of the performing artists' rights, all

¹⁰⁷ Jacques Espinasse on Morgan Stanley Conference, Barcelona, 17.11.2006, p.7 and 8: http://www.vivendi.com/ir/download/pdf/MS_TMT_171106.pdf

recording rights are in the hands of the record companies each of which is therefore able to grant blanket licences for its full repertoire of recording rights.¹⁰⁸

260. Publishing rights were, prior to the recently initiated re-organisation of publishing rights for digital applications, licensed by the collecting societies to the online and mobile music providers. As explained above, the collecting societies regularly granted, for "their" territory, a blanket licence which comprised the "world repertoire" of virtually all publishers to which they had access on the basis of bilateral agreements with other collecting societies around the world.
261. In the likely future scenario, as described above, following the already initiated process of re-organisation of publishing rights, online and mobile music providers will no longer be able to get a blanket licence for publishing rights for the "world repertoire" from any collecting society. Similar to the situation regarding recording rights, they will instead have to turn to each individual publisher and its "partner" collecting society which is in charge of licensing the publishing rights of that publisher and of collecting royalties on its account. The individual publisher and its respective partner collecting society will tend to grant general licences covering the complete repertoire, initially limited to the Anglo-American repertoire, of that publisher.
262. Such a publishing rights licence agreement (or framework agreement) determines the licensing terms and conditions, including the applicable tariff or tariff formula.¹⁰⁹ As the terms and conditions are thus negotiated ex ante and for the bundle of titles which form the entire repertoire of the publisher, the size and the characteristics of the repertoire are of major importance for the bargaining position of the publisher vis-à-vis the online and mobile music provider.
263. These licences will cover all full or split publishing rights held by that publisher.¹¹⁰ For the online and mobile music provider a licence is necessary, irrespective whether the relevant publisher holds the full publishing right or only a part of it together with other co-publishers. In case of co-publishing, the provider needs licences from all co-publishers. Solely published works and co-published works thus do not differ with respect to the requirement of a licence. They are also similar in so far as the same licence rate (or royalty rate) applies to all works whether they are solely published or co-published. The only difference occurs regarding the actual payments, as a co-publisher only receives the percentage of the full rate which corresponds to the percentage of his co-publishing right.

¹⁰⁸ Although in some countries "recorded music collecting societies" exist, it appears from the market investigation that online and mobile music providers regularly have direct agreements with the record companies. There is thus no compulsory licensing of recording (neighbouring) rights through these "recorded music collecting societies" as it was the case so far for publishing rights (mechanical and performance rights) through the "publishing collecting societies".

¹⁰⁹ Whilst the blanket licence agreement sets the (abstract) tariffs or tariff formula, the actual payments or accounts receivables are calculated on the basis of the actual sales or usages which are reported by the provider to the publisher.

¹¹⁰ According to the parties, both Universal and BMG hold full publishing rights for [70-80]*% of their respective titles, i.e. approximately [20-30]*% of Universal's and BMG's titles are co-published. For some of these currently co-published titles (namely those currently co-published by Universal and BMG only without any other publisher) Universal acquires full control as a consequence of the merger.

264. With respect to publishing rights which have not been administered by collecting societies, e.g. adaptation rights for ringtones in Germany and Austria, the past experience has shown that music publishers tend to maximise royalty rates. This is illustrated by the fact that in Germany the rate paid to GEMA for the mechanical and performance rights amounts to 10.45% whereas the adaptation right which is in addition claimed by the publishers amounts to 18%. Similar examples have been mentioned with respect to synchronisation rights which are directly licensed by publishers and which are needed for some online applications.

c. Size of the repertoire

265. The market investigation has shown that many online service providers, in particular music downloading services, consider a large repertoire as necessary in order to be able to operate on the market and to be accepted by the final customers. T-online – the internet subsidiary of Deutsche Telekom which provides also music downloading services in addition to fixed online services - indicates for example on its website that it gives access to more than one million songs. Other online download providers have indicated a similar number of titles available.

266. In order to achieve an offer which is accepted by the final customer, an online or mobile music provider ideally needs (blanket) licences from all recording companies and all publishers. The online service providers already have to separately purchase licences for recording rights from each of the different recording companies. After withdrawal from the existing collective rights management, the online service providers will also have to buy several licences for the individual publishers' repertoires and will combine them in order to create their own offer to the market. While the repertoires of the different publishers are therefore in this respect complementary, publishers face (in the restructured market after withdrawal) competitive pressure to the extent that the customers may do without single repertoires and can vary their different combinations of repertoires by including the catalogues of different publishers and exclude one or a few repertoires.¹¹¹

267. Some online music providers have indicated that they would ideally need to cover the world repertoire. However, according to some other providers, it may be possible to run an online or mobile music platform without the titles of some smaller record companies or some publishers, and temporarily, possibly without the repertoire of one major. While it is highly likely that each major's repertoire is already a highly important component of every online service provider's offer it is possible that the online service providers could at present do without one of the majors' repertoires.

268. The parties have provided examples according to which some online music providers offer their platform without one or more of the majors' repertoires, e.g. Apple i-tunes

¹¹¹ This can be illustrated with a hypothetical example: If an online music provider needs to have at least 50% of the total world repertoire and 20 equally large publishers offer their individual repertoires (which are similarly attractive), then this online provider can use many different combinations of complementary repertoires in order to reach the amount of titles needed. Despite the complementary nature of the product, the publishers compete against each other in order to be among the selected ones. If in this scenario one publisher gains a market share of 60%, his repertoire will be a "must-have" since no online music provider can do without this publisher's repertoire. Only the other publishers will compete in order to be chosen in addition. The largest publisher can be sure to be selected in any case.

Australia launched its platform without SonyBMG recording rights. One online music provider also reported in the market investigation that he was able to do without one major's repertoire for one full year before finally also receiving the necessary recording rights from this music company. Moreover, a few niche players may focus for example only on independent music. E-music is known for being a specialized provider of music from independent record companies (its repertoire is not limited to independent publishers). It can, however, not be assumed that this could be a business model for the main market. It has to be concluded that the online service providers need a large repertoire and that they would not be able to provide an acceptable offer to end-customers if they lack more than one of the large majors' repertoires.

d. Importance of chart hits

269. The parties also argued that the online music business was based on the so-called "long-tail" approach. According to this theory, online music platforms have a significant cost advantage for back catalogue in comparison with physical CDs as the digital availability does not generate any storage costs or occupy any shelf space. It is therefore argued that online music platforms generate important revenues through sales of back catalogue. However, the market investigation has demonstrated that, although online music providers consider a large available repertoire, including back catalogue, to be important for their attractiveness in their customers' perception, they generate by far the largest share of their revenues through chart hits (on average approximately 60-80%).¹¹² For mobile music providers, chart hits are even more important. For these reasons, and in respect of both online and mobile music applications, the following analysis of the market power of the different music companies will focus in particular on their presence in the chart titles.
270. However, the larger the relevant¹¹³ repertoire which is lacking in the offer of an online or mobile music provider, the less attractive and the less viable its platform.¹¹⁴ If one music company disposes of a sufficiently large repertoire of publishing and/or recording rights for the relevant titles, this repertoire is to be considered as *incontournable* and therefore represents a *must-have repertoire* since the necessary size and coverage of an online platform will not be achieved without the repertoire of this music company. The following analysis demonstrates that the merger clearly reduces the online providers' possibilities to circumvent Universal/BMG and that the combined repertoire of Universal and of BMG Music Publishing even constitutes such a must have repertoire which cannot be replaced by the repertoire of other music companies.

¹¹² Cf. responses to question 14 of questionnaire of 22.02.2007.

¹¹³ Relevant repertoire means in this context the repertoire which is important for the online or mobile music provider to meet the demand of its customers.

¹¹⁴ A large online music provider explained: "*The larger the repertoire an online music platform can offer its customers, the more viable the service becomes. Consumers want to access a service that has the widest possible offerings and thus acts as a "one-stop-shop", and want to access their favourite music regardless of the label that a particular artist may belong to. If a consumer cannot find his or her favourite music from a music service, it is unlikely that the consumer will return to that service*"; Response of [...] to question 17b) of the Commission's questionnaire of 22.12.2006.

(2) *Measuring the publishers' market power in repertoires*

a. Market shares (revenue based, volume based)

Market share estimates (revenue based)

271. The market shares for online rights (covering the complete repertoire including Anglo-American and Continental European repertoire) on the basis of revenues according to estimates by the parties are set out in the following table. The data provided by the collecting societies deviates to some extent from these estimations and regularly provides for combined market shares for the parties between 20% and 40%.¹¹⁵

Parties' estimates¹¹⁶ – Publishing market shares (online rights)

Online	Universal	BMG	merged	EMI	Warner	Sony/ATV	Others
	%	%	%	%	%	%	%
Austria	[10-20]*	[0-10]*	[10-20]*	[20-30]*	[10-20]*	[0-10]*	[30-40]*
Belgium	[0-10]*	[0-10]*	[0-10]*	[20-30]*	[10-20]*	[0-10]*	[30-40]*
Czech Rep.	[0-10]*	[0-10]*	[10-20]*	[30-40]*	[20-30]*	[10-20]*	[10-20]*
Finland	[0-10]*	[0-10]*	[10-20]*	[0-10]*	[40-50]*	[0-10]*	[30-40]*
France	[10-20]*	[10-20]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*	[30-40]*
Germany	[0-10]*	[10-20]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[20-30]*
Greece	[10-20]*	[0-10]*	[10-20]*	[20-30]*	[20-30]*	[10-20]*	[10-20]*
Hungary	[20-30]*	[20-30]*	[40-50]*	[20-30]*	[10-20]*	[0-10]*	[0-10]*
Italy	[10-20]*	[10-20]*	[30-40]*	[10-20]*	[10-20]*	[0-10]*	[30-40]*
Netherlands	[10-20]*	[0-10]*	[10-20]*	[20-30]*	[10-20]*	[0-10]*	[20-30]*
Poland	[10-20]*	[10-20]*	[30-40]*	[20-30]*	[10-20]*	[10-20]*	[20-30]*
Spain	[10-20]*	[30-40]*	[40-50]*	[10-20]*	[10-20]*	[0-10]*	[0-10]*
Sweden	[10-20]*	[0-10]*	[10-20]*	[10-20]*	[10-20]*	[0-10]*	[50-60]*
United Kingdom	[10-20]*	[10-20]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[30-40]*
Norway	[10-20]*	[0-10]*	[10-20]*	[10-20]*	[10-20]*	[0-10]*	[40-50]*
EEA	[10-20]*	[10-20]*	[20-30]*	[20-30]*	[10-20]*	[0-10]*	[20-30]*

Source: Notification - Parties

¹¹⁵ The collecting societies were asked to provide the distributions to publishers in 2005 and the total amounts distributed to publishers. The amounts distributed to authors directly as well as commission fees retained by the collecting societies are not included in the figures.

¹¹⁶ With respect to Austria, the parties stated that BMG does not capture separately revenues arising from licensing for digital exploitation in Austria. Such revenues may be included in the total mechanical and performance revenues reported. According to the parties estimates, BMG's 2005 market shares in Austria amounted to, respectively, [10-20]*% for mechanical rights and [0-10]*% for performance rights.

Collecting societies' data¹¹⁷ – Publishing market shares (online rights)

Online	Universal	BMG	merged	EMI	Warner	Sony/ATV	Others
	%	%	%	%	%	%	%
Austria	[...]*	[...]*	[30-40]	[...]	[...]	[...]	[...]
Belgium	[...]*	[...]*	[25-35]	[...]	[...]	[...]	[...]
Czech Rep.	[...]*	[...]*	[25-35]	[...]	[...]	<i>no data</i>	
Finland*	[...]*	[...]*	[25-35]	[...]	[...]	[...]	[...]
France	<i>no data</i>						
Germany	[...]*	[...]*	[20-30]	[...]	[...]	[...]	[...]
Greece	[...]*	[...]*	[30-40]	[...]	[...]	[...]	[...]
Hungary	[...]*	[...]*	[30-40]	[...]	[...]	[...]	[...]
Italy	[...]*	[...]*	[20-30]	[...]	[...]	[...]	[...]
Netherlands	[...]*	[...]*	[25-35]	[...]	[...]	[...]	[...]
Poland	<i>no data</i>						
Spain	[...]*	[...]*	[15-25]	[...]	[...]	[...]	[...]
Sweden*	[...]*	[...]*	[20-30]	[...]	[...]	[...]	[...]
United Kingdom	[...]*	[...]*	[15-25]	[...]	[...]	[...]	[...]
Norway *	[...]*	[...]*	[20-30]	[...]	[...]	[...]	[...]

Source: Collecting Societies - * as part of the Nordic area

272. The information provided by the collecting societies differs from the estimations from the parties in Hungary and Spain where the parties' estimated market shares were much higher than those the collecting societies' estimates. In Germany, Italy and the United Kingdom the parties' estimates are close to the market shares calculated by the collecting societies. Conversely, the parties' estimates for the other countries (Austria, Belgium, Czech Republic, Finland, Greece, the Netherlands, Sweden and Norway) are underestimated.

Market share estimates (chart based)

273. The Commission also carried out an analysis of the annual top 100 single charts for 2006¹¹⁸ - as provided by the parties - in every affected country. From this analysis market shares were derived which are based on the number of chart hits which may be used as an approximation of volume based market shares. Due to the importance of chart hits for online customers, the analysis of this part of the total repertoire indicates the effects of the merger. 77% of the online and mobile respondents indicated that chart hits are very important, representing 50-90% of their revenues.
274. The following calculations are based on the number of individual titles represented by a major within the charts. The chart data includes the ranking of the best selling titles, however it does not systematically include the number of titles sold. Since the presence of

¹¹⁷ No online data was provided by the French and the Polish collecting societies, and the Czech data is incomplete. For the Nordic countries (Sweden, Norway, Finland), the figures provided by NCB were taken. NCB administers the mechanical rights (including those for online use) for all Nordic and Baltic countries – no split according to the different countries was provided.

¹¹⁸ In countries where no top 100 annual charts are set up, the most appropriate alternative charts were taken into account (Austria: www.austriatop40.at ; Belgium: www.ultratop.be; Czech Republic: www.ifpicr.cz; Finland: www.yle.fi; France: www.disqueenfrance.com; Germany: www.media-control.de; Greece: www.ifpi.gr; Hungary: www.mahasz.hu; Italy: www.fimi.it; the Netherlands: www.magacharts.nl; Poland: www.rmfm.pl; Spain: www.promusicae.es; Sweden: www.hitlistan.se; United Kingdom: www.theofficialcharts.com; Norway: www.ifpi.no)

titles in the charts and the shares of chart-hits represented by the different publishers are analyzed, the assessment values a number 1 hit equally to a number 100.¹¹⁹

275. The charts are of particular importance for online music providers, as they notably create traffic and attract customers on their platforms. An analysis focused on the charts therefore adequately represents the specific demand of these customers. Apart from this, the chart analysis may also be a rough proxy for the overall market position of the parties in the publishing industry. This can be shown on the basis of market shares derived from chart data and which gives a similar picture as the revenue-based market shares provided by the collecting societies. The following methodology was applied: When a title is controlled by two publishers, the market share associated to this title is distributed between the publishers according to their share of the title (i.e. share of 33% is counted as 0.33; share of 100% is counted as 1). By considering any title according to the specific share held by each publisher a similar perspective is chosen as in the revenue based market share calculations by the parties and the collecting societies since revenues also arise for each publisher only according to the individual share of the right.

276. The results from this analysis on the basis of official charts are summarized in the following table:

Publishing market shares – top 100 official charts- 2006

	Universal	BMG	comb.	EMI	Warner	Sony/ATV	Others
Austria	17%	9%	25%	26%	11%	4%	34%
Belgium	14%	6%	20%	11%	12%	3%	54%
Czech R.	11%	9%	20%	13%	10%	6%	52%
Finland	5%	7%	12%	12%	7%	4%	65%
France	5%	13%	18%	11%	9%	4%	60%
Germany	15%	10%	24%	21%	14%	2%	38%
Greece	8%	6%	13%	7%	10%	3%	67%
Hungary	9%	8%	17%	19%	9%	3%	53%
Italy	13%	8%	21%	18%	15%	1%	45%
Netherlands	17%	10%	27%	14%	10%	5%	44%
Poland	14%	6%	19%	10%	6%	6%	58%
Spain	5%	8%	14%	9%	13%	1%	64%
Sweden	9%	15%	24%	16%	12%	3%	45%
United Kingdom	11%	10%	21%	26%	13%	10%	30%
Norway	13%	6%	19%	17%	14%	6%	44%
Affected markets	11%	10%	21%	19%	12%	5%	43%

¹¹⁹ Therefore, for instance in the United Kingdom charts, the title n°1 "Crazy" from "Gnarls Barkley" accounts for 820,050 sales and the title n°100 "MYMYMY" from "Armand Van Helden" accounts for 75,267 sales in 2006. Despite this large difference, both titles will be considered as accounting for 1% of the top 100 titles. This methodology might appear misleading at first sight; however, as the majors are evenly represented in the top 100 chart among top 10, top 20 or top 50, the results are very similar to those obtained when weighting each title by its sales. Weighted calculations were conducted for several of the countries where sales are available with chart ranking (France, Germany, United Kingdom). The final results are generally similar to those obtained without weighting each title by its sales.

277. For the largest markets (United Kingdom, Germany, Italy, Spain, Sweden, and the Netherlands) the market shares of Universal + BMG calculated on this basis are close to those provided by the collecting societies for 2005. The results for the smaller countries (Austria, Belgium, Czech Republic, Finland, Greece, Hungary and Norway) deviate more significantly and market shares provided by the collecting societies are higher than those calculated from the official charts. Nevertheless, although deviations in specific countries cannot be excluded, the chart perspective may be used as a rough proxy for the parties' overall position in the market.¹²⁰
278. The position from EMI in the chart is slightly stronger than its position in terms of total digital revenue as calculated by the collecting societies. This might reflect the success of EMI in developing new successful authors. Warner Chappell and Sony/ATV are similarly strong in the charts and with regard to digital revenue distributed by collecting societies. The position of the independents is also similar in the charts and when considering total digital revenues distributed by collecting societies. It can therefore be assumed that the chart analysis is also relevant for the analysis of the complete catalogue (notably back catalogue), considering that the relative market position of the different publishers is globally reflected in the market shares as calculated for the official charts only.

Inadequacy of market shares to measure market power

279. The market investigation has shown that market shares on the basis of revenues alone might not fully reflect the market positions of the different publishers since they do not adequately take into account their power on the basis of **co-publishing** and **recording rights**.
280. In many cases, several authors under contract with different publishers write a song together which leads to split copyrights (co-publishing). Each author owns a share of the song and each publisher administers the shares of the author under contract. The parties have submitted that approximately [20-30]*% of their catalogue is composed of co-published works. This proportion is even higher for some independents and major publishers. In order to offer the song, an online music provider needs to have a licence for all shares of publishing rights held by the different authors or their publishers in a specific title so that each publisher can veto the use of the right. For instance the title "Crazy" from "Gnarls Barkley", which ranks n°1 in the United Kingdom 2006 charts, is co-published by BMG, Warner and one independent.
281. To date, the collecting societies have organized the combination of the co-published rights by granting blanket licences for the complete world repertoire which then automatically covered all split rights. In the near future music online providers will have to secure those rights directly from the different publishers or their representatives.

¹²⁰ A similar result can be derived from a chart analysis conducted by the parties on the basis of official charts for 2005. The combined market share of the parties resulting from the chart analysis and based on the methodology indicated above would be 24% for all affected countries together. The EEA-wide market share as estimated by the parties on the basis of revenues is 26% for 2005. The overall market position as it is reflected in the conventional revenue based market shares therefore seems to be adequately reflected by the chart analysis on the basis of weighted co-publishing shares.

282. Some market participants further indicated in their responses that the parties' market power is based on both recording and publishing rights. Recording rights have always been managed by the recording branches of the majors individually. After the withdrawal from the traditional collecting societies system, all vertically integrated music companies will in the future be able to negotiate the access to the combined package of recording rights and publishing rights including fully and partly owned rights.
283. In order to offer a title, an online music provider must acquire licences for all co-publishing rights and recording rights controlling this title. If one part of all these rights is not covered, the online provider cannot offer this title to its customers. As a consequence, also shares of publishing rights and recording rights alone may confer market power which consequently has to be estimated by fully taking into account titles co-published or recorded by the parties, in addition to titles 100% published. The following chart analysis reflects these considerations under the concept of "control shares".

b. Control shares (chart based)

General principle of the analysis

284. In order to assess the market power derived from co-publishing and control of recording rights, the annual top 100 single charts for 2006 were analysed. The conventional market share analysis was subsequently extended in order to take into account the specificities of the market: An online music provider which fails to reach a licensing agreement with a particular publisher does not only lose access to the titles for which the publisher has the full publishing rights but also to those for which only parts of them are owned. The access to the specific publisher's partly owned songs is lost not only partly but completely since it is not possible to use a split right independently.

Split rights counted as full control

285. In order to reflect this specific market situation, a further analysis was conducted by counting each split right as a full work. The resulting shares (hereinafter "control shares") therefore do not represent market shares – they add up to more than 100% due to the overlap between the co-publishers. For instance, in the United Kingdom chart, the n°1 hit "Crazy" by "Gnarls Barkley" is co-published between BMG (30%), Warner (35%) and an independent publishing company (35%). BMG, as well as Warner and the independent publisher, are considered to control this title. This does not mean that BMG alone could license this work. It means that any online service who wants to use this song needs a licence from all three co-publishers and loses the complete song if he fails to achieve a licence from any one of the three co-publishers.

Methodology

286. Moreover, the following methodological position was taken:
- There are some titles which are already currently co-published by Universal and BMG. Therefore, for all BMG songs in which Universal already owns a co-publishing right, the BMG publishing right was not counted. For instance in the United Kingdom, the title "Smack that" from "Akin ft. Eminem" is co-published by Universal and BMG. To calculate the number of titles controlled by the merged entity Universal/BMG, this title was counted only once. The control share of Universal/BMG is therefore lower than the arithmetic addition of Universal and BMG control shares.

- Only publishing rights in Anglo-American titles were counted, since a withdrawal from the existing collective rights management system in the near future is more certain for this part of the repertoire than for the rest of the repertoire. For instance, in Germany, Universal Music Publishing owns publishing rights of 23 of the top 100 online titles. Among these titles, 2 belong to Continental European repertoire. Thus it was considered that in the short term Universal Music Publishing will only be able to influence the commercialization of 21 top 100 online titles in Germany.
- According to the data presented by the parties, many chart titles can belong to both Continental European and Anglo-American repertoires. This is possible when a title is co-published with one share controlled by a Continental European publisher and the other by a publisher in the United Kingdom. Controlling a share of a work due to its full or split publishing rights in Anglo-American titles is sufficient to block licensing. Therefore, when the co-published share of a publisher lies in the Anglo/American repertoire, it has been considered in this Decision that this publisher can influence the commercialisation of the relevant title. The control share was always only allocated to the co-publisher owning the Anglo-American part of the right¹²¹.
- Annual charts are available in most countries. However in several ones¹²², only weekly charts are available. For these countries, the charts of 13 different weeks, evenly distributed over the year, have been aggregated.
- The analysis was conducted in detail for the year 2006 and was cross-checked against the year 2005. The results of the year 2005 were broadly comparable with the year 2006.

287. Nevertheless, the chart analysis of one or two years can only be a kind of "snapshot" to reflect the position of a music company in the recent past and proxy for its market position. As the control shares regularly alter from year to year and depend on the success and the combination of different authors and performing artists, these control shares can only constitute indications for the market power of a music company.

288. The analysis was conducted for official charts which exist in all affected countries. In some countries also specific online charts exist. Where such online charts existed, an analysis showed that the parties' control shares were slightly higher according to online charts as compared to the official charts (with the exception of Norway).

¹²¹ "Hung up" from "Madonna" ranked n° 50 in the French charts in 2006. This title is co-published by Universal and Warner. The share of publishing controlled by Universal is part of the European continental repertoire, whereas the share controlled by Warner is part of the Anglo/American repertoire. Following the methodology described above, it is considered that this title is controlled by Warner, but it is not controlled by Universal.

"Talk" from "Coldplay", ranked n° 24 in the Dutch charts 2006. This title is co-published by BMG, Warner, Sony/ATV and independent(s). The share of publishing controlled by BMG is part of the Anglo/American repertoire, whereas the shares controlled by all the other publishers are part of the European continental repertoire. Following the methodology described above, it is considered that this title is controlled by BMG, but it is not controlled by the other publishers.

¹²² Official charts 2006: Czech Republic, Spain, Finland, Greece, Norway, Poland.

289. In the following, the official charts are used since they constitute the most representative data and therefore the most reliable basis for an analysis. Online charts are still nascent and cover in most countries exclusively or mainly online downloads. Still in 2005, the online charts only covered a very limited number of titles. While in 2006 a larger coverage was reached, it remains uncertain whether these charts are sufficiently representative. It is worth noting that for the time being, the online downloading of music is mainly done by a relatively small group of persons which could exhibit a specific taste of music since they for example might represent a similar age. The retail online music market is, however, strongly developing and is expected to grow significantly in the near future. It is likely that the participation of a larger public in this market will lead to the online charts becoming closer to the official charts which cover a much larger customer base.
290. In addition, the online rights market does not only consist of online music services offering titles for downloading. There are also other online music applications such as audio and video streaming which have not been covered by online charts. Moreover, mobile music applications which account for approximately [...] *% of Universal's digital (combined online and mobile) music revenues are not covered by online charts. Therefore, online charts do not appear to better reflect the market conditions for the overall online market as defined above, i.e. including all online and mobile applications. In addition, it appears that mobile music applications, e.g. mastertones, are strongly driven by traditional chart hits. Customers to a large extent wish to have the current chart hits as mastertones on their mobile phones. For mastertone providers and other mobile music providers, as for online music providers other than download services, therefore the official charts reflect their demand more closely than the online charts.
291. In order to avoid the described uncertainties of the digital charts, in the following the official charts will be used for the analysis.

Control shares (chart based) for publishing rights in Anglo-American titles

292. The analysis of publishing rights based on this methodology shows that of all chart hits (including Continental European and Anglo-American titles), Universal and BMG will control on average 27 titles out of 100 due to their full or split publishing rights in Anglo-American titles (i.e. without taking into account their control of Continental European repertoire), whereas they respectively controlled 15% and 13% pre-merger¹²³:

¹²³ The same analysis conducted on the base of the 2005 official charts leads to close results. Universal controls (either as sole or co-publisher) pre-merger 21 titles out of 100, BMG controls 15 titles out of 100, and Universal/BMG would control 32 titles out of 100 at the EEA level. It can be noted that the overlap between Universal and BMG is greater in 2005, with 4 of the BMG titles co-published by Universal and BMG, whereas only one of the BMG title is co-published with Universal in 2006.

Control shares – only publishing rights

Percentage of titles controlled (100% published and co-published) by publishers due to their full or split publishing rights in Anglo-American titles – 2006

	Universal	BMG	comb.	EMI	Warner	Sony/ATV	Others
Austria	18%	8%	25%	30%	12%	7%	27%
Belgium	17%	12%	27%	20%	13%	6%	42%
Czech R.	13%	17%	29%	21%	13%	6%	29%
Finland	5%	6%	11%	13%	7%	4%	18%
France	4%	10%	14%	13%	9%	6%	16%
Germany	18%	11%	28%	29%	13%	8%	29%
Greece	12%	7%	18%	9%	9%	5%	21%
Hungary	19%	13%	29%	20%	12%	8%	24%
Italy	16%	12%	26%	24%	22%	2%	30%
Netherlands	19%	15%	33%	19%	11%	9%	27%
Poland	14%	8%	22%	16%	9%	11%	31%
Spain	5%	9%	13%	6%	14%	0%	31%
Sweden	9%	9%	17%	17%	10%	5%	25%
United Kingdom	20%	19%	38%	44%	22%	16%	48%
Norway	20%	9%	28%	23%	16%	9%	21%
Affected markets¹²⁴	15%	13%	27%	28%	16%	9%	33%

Source: official charts 2006 – Commission analysis

293. In Finland, Universal/BMG will control only 11% of the titles, whereas in the United Kingdom, it will control as high as 38% of the titles on the basis of their publishing rights. EMI will control on average 28% of chart titles across the affected markets, which is comparable to the merged entity. Conversely, Warner Chappell and Sony/ATV will be far behind with respectively 16% and 9%.
294. For the sake of clarity, when it is assumed that Universal/BMG controls 14% of the titles in France, this means that out of 100 chart titles in this country Universal/BMG has a publishing share (co-published or total publishing control) in 14 titles which all belong to the Anglo/American repertoire. Nevertheless, within the 100 chart titles, Continental-European repertoire is still present. For instance in France "Le diner" from "Benabar" ranks 19th and is co-published by Universal. It is however not counted in the 14 titles controlled by Universal/BMG as it belongs to the Continental-European repertoire.

Control shares (chart based) for publishing and recording rights in Anglo-American titles

295. Some market participants further indicated in their responses that the parties' market power is based on both recording and publishing rights. Generally a title is recorded by a single record company. Record joint ventures are rare as opposed to the situation prevailing in the publishing area where co-publishing is frequent. Therefore with regard to recording rights, a market share of 10% will correspond to the controlling of 10 titles out of 100.

¹²⁴ The figures show an average weighted on the basis of record sales. See precedent notes.

296. The recording rights analysis includes titles from both Continental European and Anglo-American repertoires as there is no need for such distinction in the recorded music industry. Indeed a record company directly controls the commercialization of all its titles, whatever the repertoire they belong to. For the merged entity's control share, only Universal's recorded titles were counted since BMG's recording business (SonyBMG) is not part of the merger. With respect to publishing, both Universal's and BMG's Anglo-American titles were counted in order to derive the control share of the merged entity.

Recording market shares

297. Based on the top 100 official charts, the recording market shares are the following:

Record industry market shares, based on top 100 official charts 2006

	Universal	BMG	comb.	EMI	Warner	SonyBMG	Others
Austria	42%		42%	11%	14%	26%	7%
Belgium	29%		29%	29%	9%	14%	19%
Czech R.	42%		42%	19%	17%	18%	5%
Finland	22%		22%	13%	15%	15%	34%
France	29%		29%	10%	18%	34%	9%
Germany	40%		40%	6%	13%	33%	8%
Greece	30%		30%	28%	8%	19%	15%
Hungary	30%		30%	16%	8%	21%	25%
Italy	18%		18%	24%	18%	22%	18%
Netherlands	27%		27%	14%	11%	16%	32%
Poland	43%		43%	14%	9%	25%	8%
Spain	8%		8%	25%	11%	27%	29%
Sweden	22%		22%	6%	18%	27%	27%
United Kingdom	43%		43%	6%	14%	24%	13%
Norway	34%		34%	8%	15%	31%	13%
Affected markets ¹²⁵	34%		34%	10%	14%	27%	14%

Source: official charts 2006 – Commission analysis

Chart-analysis: Publishing and recording rights

298. After the re-structuring of the online rights market all vertically integrated music companies will in the future be able to negotiate the access to the combined package of recording rights and publishing rights including fully and partly owned publishing rights for online applications. The reason for this is that both categories of rights are held and controlled by the same undertaking and the customers are also the same. An online music provider will therefore have to negotiate with a music company whose market power will derive from the titles it controls either by recording rights or by publishing rights.
299. The titles with one or several of the following characteristics are considered to be directly controlled by the music companies, since they can, or in the near future will be able to, influence the commercialization conditions of these titles:

¹²⁵ The figures show an average weighted on the basis of record sales. See precedent notes.

- a. Recording rights are controlled by the record sister company (i.e. Universal Music Group), including Continental European and Anglo-American repertoires.
 - b. Publishing rights are 100% controlled by the publishing sister company (i.e. Universal Music Publishing or BMG Music Publishing) for Anglo-American repertoire only.
 - c. Publishing rights are partly controlled by the publishing sister company (i.e. Universal Music Publishing or BMG Music Publishing) for Anglo-American repertoire only.
300. The titles with the following characteristics are considered not to be directly controlled by the music companies, considering that they are unlikely able to influence the commercialization conditions of these titles in the future:
- a. Anglo-American repertoire: Recording rights are not controlled by the record sister company (i.e. Universal Music Group), and the sister publishing company does not have publishing rights (100% control or co-published).
 - b. Continental-European repertoire: Recording rights are not controlled by the record sister company (i.e. Universal Music Group), whatever the share of publishing rights controlled by the publishing sister company (i.e. Universal Music Publishing). For instance, "Le diner" in France is recorded by Sony BMG and partly published by Universal, however as this title belongs to the continental repertoire, it is not counted as controlled by Universal. It is nevertheless still part of the top 100 in France.
301. The following table indicates how many titles out of the top 100 official charts the major companies control:

Control shares – publishing and recording rights

Percentage of titles controlled by majors due to either control over recording rights or control over publishing rights (100% controlled or co-published) in Anglo-American titles – 2006

	Universal	BMG increment	comb.	EMI	Warner	Sony BMG ⁽¹⁾	Others
Austria	50%	6%	56%	41%	22%	26%	33%
Belgium	36%	7%	43%	47%	18%	14%	57%
Czech R.	43%	10%	52%	38%	21%	18%	33%
Finland	26%	4%	30%	25%	19%	15%	47%
France	31%	9%	40%	23%	24%	34%	25%
Germany	47%	7%	54%	35%	22%	33%	36%
Greece	38%	6%	44%	35%	16%	19%	35%
Hungary	41%	7%	48%	35%	14%	21%	48%
Italy	28%	10%	38%	42%	28%	22%	46%
Netherlands	36%	10%	46%	32%	18%	16%	55%
Poland	47%	4%	51%	29%	15%	25%	37%
Spain	11%	8%	19%	27%	22%	27%	54%
Sweden	27%	6%	33%	23%	23%	27%	47%
United Kingdom	51%	10%	61%	49%	30%	24%	52%
Norway	40%	6%	46%	30%	24%	31%	34%
Affected markets¹²⁶	40-41%	8-9%	49-50%	37%	24-25%	27-28%	42-43%

Source: official charts 2006 – Commission analysis – ⁽¹⁾ Sony BMG data does not include overlap with Sony/ATV

302. On average, before the merger Universal can negotiate access to 40-41% of the official chart hits. Together with BMG's catalogue this share will increase to up to 49-50%¹²⁷. Universal/BMG will control as high as 61% of chart titles in the United Kingdom, whereas this figure is 19% in Spain¹²⁸.
303. Pre-merger, Universal is already ahead of the other majors, controlling 4% more titles than EMI notably. Post merger, the advantage over the other majors is significantly increased. Universal/BMG will control almost twice as many titles as Sony BMG (not including Sony/ATV)¹²⁹ and Warner and 1.3 times as many titles as EMI. The merger would allow Universal to become the only major controlling half of the catalogue.
304. The parties submitted that a part of the titles distributed by Universal Music Group (record) are distributed within distribution or licensing deals on behalf of the record

¹²⁶ The figures show an average weighted on the basis of record sales. See precedent notes.

¹²⁷ The same analysis was conducted based on the official charts 2005. According to this set of data, Universal can before the merger negotiate access to 45% of the official chart hits. Together with BMG's catalogue this share will increase to up to 52%.

¹²⁸ When analysing the official charts 2005, it appears that Universal/BMG would control as high as 60% of chart titles in the United Kingdom and as low as 30% in Sweden. It would control 38% of Spanish charts.

¹²⁹ SonyBMG is a Joint Venture grouping the recording activities of Sony and Bertelsmann companies. Sony/ATV is a Joint Venture between Sony and the artists Michael Jackson and active in the music publishing sector.

company which originally recorded the title. However, these deals account for a limited share of the titles recorded by Universal. In addition, the majority of these deals are licensing deals where the licensee (Universal Music Group) has a certain degree of commercial freedom to promote, distribute and market a title. Therefore the Commission considers that these titles should be considered as the other Universal titles in terms of control.

c. Analysis of affected markets

305. A number of the affected countries in the EEA are significantly impacted by the merger. In assessing the control shares set out above, it has to be taken into consideration that these shares are not equivalent to traditional market shares. Genuinely, control shares are higher than market shares and add up to more than 100% due to the consideration of co-publishing and recording. Any company with a high control share will be difficult to circumvent for the demand side. This is all the more the case where a company reaches 50% since only half or less of the repertoire remains available as substitute. In a cautious approach, the Commission therefore considers that the merger would have a significant impact in those markets where the merged entity would reach or exceed a control share of 50%.
306. Universal/BMG will control 50% or more of the titles in the top 100 charts in 5 countries and on EEA-level.

Austria

307. Universal controls 50 titles out of 100. Together with BMG, they will control 56 titles out of 100. This 6% increment is among the smallest if compared to the average increment calculated for the affected markets.
308. EMI is relatively strong in Austria, controlling 41 titles out of 100 in the official charts. Warner, SonyBMG and Sony/ATV are significantly smaller, controlling respectively 22%, 26% and 7% of the official chart hits. All these music companies are already smaller than Universal and would be far behind Universal/BMG.
309. On the basis of this entrenched market position it is likely that Universal/BMG will be able to increase prices for its repertoire after the merger. Any circumvention of Universal/BMG by an online user will become even more difficult after the merger since only 44% of the top titles remain free of any Universal/BMG interest.
310. As described above, the specific regulation which exists in Austria on the basis of the law on collecting societies¹³⁰ is not likely to prevent such a price increase. The arbitration mechanism only exists on the basis of the national activity of the collecting societies AKM and Austro Mechana but does not define an extended scope for multi-territorial licensing and licensing in Austria by foreign collecting societies. In Austria only one collecting society may obtain an operating licence per category of right. Foreign collecting societies could therefore not have the status of a collecting society but only that of an agent not bound to the specific collecting society's rules.

¹³⁰ Verwertungsgesellschaftengesetz

311. The merger therefore significantly impacts the Austrian market for online rights.

Belgium

312. Universal controls 36 titles out of 100. Together with BMG, they will control 43 titles out of 100.

313. EMI is already strong in Belgium, controlling 47 titles out of 100 in the official charts remaining larger than Universal, even after the merger. Warner, SonyBMG and Sony/ATV are significantly smaller, controlling respectively 18%, 14% and 6% of the chart hits. They are already smaller than Universal and would be far behind Universal/BMG.

314. In Belgium, the merger would increase Universal/BMG's control share to 43%. Universal's repertoire would therefore still be substitutable for a user by combining most of the other publishers' repertoires since 57% of all chart hits would still be free of any Universal interest. It is therefore unlikely that the merger creates competition concerns with respect to the Belgian market. The merger therefore does not lead to a significant impediment of competition in the Belgian market for online rights.

Czech Republic

315. According to official charts Universal controls 43 titles out of 100. Together with BMG, they will control 52 titles out of 100. This 9% increment is equal to the average increment calculated for the affected markets.

316. EMI controls 38 titles out of 100 in the official charts. Pre-merger EMI was comparable to Universal, whereas after the merger it will become significantly smaller than Universal/BMG. Warner, SonyBMG and Sony/ATV are significantly smaller, controlling respectively 21%, 18% and 6% of the official chart hits. All these music companies are already smaller than Universal and would be far behind Universal/BMG.

317. After the merger, Universal/BMG will have a controlling stake in more than half of the chart hits in the Czech Republic. No online service provider will be able any longer to substitute Universal/BMG by combining all other repertoires. While the tariffs of the Czech collecting society OSA may be reviewed upon appeal by the Ministry of Culture, there appear to be no legal provisions which would provide for explicit rules for EEA-wide licences which may in addition be granted by a foreign collecting society. It is unlikely that a price increase by Universal in the Czech Republic could be effectively prevented by the existing national regulation. If at all, this would be conceivable if Universal/BMG chose OSA as service provider which, on the basis of the current information, is not intended.

318. In the Czech Republic, the merger would increase Universal/BMG's control share above the 50% threshold which means that it is not possible anymore to replace Universal/BMG's repertoire even by the combination of all other repertoires since the repertoire without any Universal interests is smaller than the one in which Universal/BMG has a controlling stake in one form or the other. It is therefore likely that Universal/BMG will be able to increase prices after the merger in the Czech Republic. The merger therefore significantly impacts the market for online rights in the Czech Republic.

Finland

319. According to official charts Universal controls 26 titles out of 100. Together with BMG, they will control 30 titles out of 100. This 4% increment is the smallest in all affected countries if compared with the average increment calculated for the affected markets where official charts are available. Finland is the least affected market.
320. All the major music companies are relatively weak in Finland. EMI controls 25 titles out of 100 in the official charts and is comparable to Universal. Warner, SonyBMG and Sony/ATV are smaller. They control respectively 19%, 15% and 4% of the official chart hits.
321. On the basis of the comparably low control shares it seems that online music providers would, even after the merger, still be able to do without Universal/BMG in case Universal/BMG required excessive prices since more than 70% of the totality of chart hits are without any Universal/BMG interest and therefore available as alternative. It is likely that sufficient leeway would remain for the online music providers and competitive pressure on Universal/BMG would consequently not decrease due to the merger. In Finland, it can therefore not be concluded that the merger would create competition concerns on a purely national basis. The merger therefore does not lead to a significant impediment of effective competition on the market for online rights in Finland.

France

322. Universal controls 31 titles out of 100. Together with BMG, they will control 40 titles out of 100. This 9% increment is slightly more than the average increment calculated for the affected markets. EMI is relatively weak in France, controlling 23 titles out of 100 in the charts. Pre-merger EMI was already smaller than Universal – after the merger, it becomes significantly smaller than Universal/BMG. Universal/BMG will control almost twice as many titles as EMI in the charts (x 1.7). Warner, SonyBMG and Sony/ATV are significantly smaller, controlling respectively 24%, 34% and 6% of the official chart hits. They are already smaller than Universal and would be far behind Universal/BMG.
323. Universal will after the merger control 40% of the chart hits. Universal's repertoire would therefore still be substitutable for a user by combining most of the other publishers' repertoires since 60% of all chart hits would still be free of any Universal interest. It is therefore unlikely that the merger creates competition concerns with respect to the French market. The merger therefore does not lead to a significant impediment of effective competition on the market for online rights in France.

Germany

324. According to official charts Universal controls 47 titles out of 100. Together with BMG, they will control 54 titles out of 100.
325. EMI controls 35 titles out of 100 in the official charts. Pre-merger EMI was already smaller than Universal, it becomes significantly smaller than Universal/BMG. Universal/BMG will control 1.5 times as many titles as EMI in the official charts. Warner, SonyBMG and Sony/ATV are smaller, controlling respectively 22%, 33% and 8% of the chart hits. They are already smaller than Universal and would be far behind Universal/BMG.

326. In Germany, Universal/BMG will therefore significantly increase its control share and thereby its market power due to the merger. A specific arbitration mechanism exists in Germany where users can appeal against tariffs set by GEMA to the Arbitral Tribunal at the Patent Office. However, according to the parties' information a body applying for a status of a collecting society must be located in Germany. It is therefore - as in the other countries – probable that any foreign collecting society would rather act as agent of the respective publisher and would not fall under the national rules for collecting societies. The German collecting society GEMA indicates that it would likely depend on the agreement between the publisher and the selected collecting society whether the regulation applies or not. This clearly shows that any such regulation does not apply per se.¹³¹ Against this background it is likely that Universal/BMG will after the merger have the possibility to increase prices.
327. In Germany, the merger would increase Universal/BMG's control share above the 50% threshold which means that it is not possible anymore to replace Universal/BMG's repertoire even by the combination of all other repertoires since the repertoire without any Universal interests is smaller than the one in which Universal/BMG has a controlling stake in one form or the other. It is therefore likely that Universal/BMG will be able to increase prices after the merger in Germany. The merger therefore significantly impacts the online rights market in Germany.

Greece

328. According to official charts Universal controls 38 titles out of 100. Together with BMG, they will control 44 titles out of 100. This 6% increment is among the smallest in all affected countries if compared with the average increment calculated for the affected markets where official charts are available.
329. EMI is comparable to Universal/BMG. It controls 35 titles out of 100 in the official charts. Warner, SonyBMG and Sony/ATV are significantly smaller and control respectively 16%, 19% and 5% of the official chart hits.
330. In Greece, Universal will control 44% of the chart hits in Greece after the merger. Universal's repertoire would therefore still be substitutable for a user by combining most of the other publishers' repertoires since 56% of all chart hits would still be free of any Universal interest. It is therefore unlikely that the merger creates competition concerns with respect to the Greek market. The merger therefore does not lead to a significant impediment of effective competition on the market for online rights in Greece.

Hungary

331. According to official charts Universal controls 41 titles out of 100. Together with BMG, they will control 48 titles out of 100. This 7% increment is below average if compared to the average increment (9%) calculated for the affected markets where official charts are available.
332. EMI controls 35 titles out of 100 in the official charts. Pre-merger, it was smaller to Universal, it will become significantly smaller than Universal/BMG. Warner, SonyBMG

¹³¹ See GEMA's reply to Questionnaire to collecting societies 3, dated 5 February 2007, question 6.

and Sony/ATV are significantly smaller and control respectively 14%, 21% and 8% of the official chart hits.

333. In Hungary, Universal will therefore control 48% of the chart hits after the merger. Universal's repertoire would therefore still be substitutable for a user by combining most of the other publishers' repertoires since 52% of all chart hits would still be free of any Universal interest. It is therefore unlikely that the merger raises competition concerns with respect to the Hungarian market. The merger does not therefore lead to a significant impediment of effective competition on the market for online rights in Hungary.

Italy

334. Universal controls 28 titles out of 100. Together with BMG, they will control 38 titles out of 100. EMI will continue leading before Universal - however, with a smaller distance to Universal. Warner controls 28%, SonyBMG 22% and Sony/ATV 2% of the chart hits.
335. An online music provider wanting to circumvent Universal/BMG's catalogue will still have more than 60% of the total repertoire by which it could replace Universal/BMG. It is therefore unlikely that the merger will lead to competition concerns in Italy. The merger will not lead to a significant impediment of effective competition on the market for online rights in Italy.

The Netherlands

336. According to official charts, Universal controls 36 titles out of 100. Together with BMG, they will control 46 titles out of 100.
337. EMI controls 32 titles out of 100 in the official charts. After the merger, it becomes significantly smaller than Universal/BMG. Warner, SonyBMG and Sony/ATV are significantly smaller, controlling respectively 18%, 16% and 9% of the chart hits. They are already smaller than Universal and would be far behind Universal/BMG.
338. In the Netherlands, Universal will therefore control 46% of the chart hits after the merger. Universal's repertoire would therefore still be substitutable for a user by combining most of the other publishers' repertoires since 54% of all chart hits would still be free of any Universal interest. It is therefore unlikely that the merger raises competition concerns with respect to the Dutch market. The merger therefore does not lead to a significant impediment of effective competition on the online rights market in the Netherlands.

Poland

339. According to official charts Universal controls 47 titles out of 100. Together with BMG, they will control 51 titles out of 100. This 4% increment is among the lowest in all affected countries if compared to the average increment calculated for the affected markets where official charts are available.
340. EMI is relatively weak in Poland, controlling 29 titles out of 100 in the official charts. Pre-merger, it was already significantly smaller than Universal. Warner, SonyBMG and Sony/ATV are significantly smaller and control respectively 15%, 25% and 11% of the official chart hits.

341. Universal/BMG will after the merger control half of the chart hits in Poland and will thereby become a must-have publisher. The merger would increase Universal/BMG's control share above the 50% threshold which means that it is not possible anymore to replace Universal/BMG's repertoire even by the combination of all other repertoires since the repertoire without any Universal interests is smaller than the one in which Universal/BMG has a controlling stake in one form or the other. It is therefore likely that Universal/BMG will be able to increase prices after the merger in Poland. The merger therefore significantly impacts the online rights market in Poland.

Spain

342. According to official charts, Universal controls 11 titles out of 100. Together with BMG, they will control 8 titles out of 100. EMI leads in Spain with 27% together with SonyBMG which reaches an equal value.
343. Due to the unusually weak position of the parties in Spain, it is not likely that Universal will be able to increase prices after the merger. The merger therefore does not lead to a significant impediment of effective competition on the online rights market in Spain.

Sweden

344. Universal controls 27 titles out of 100. Together with BMG, they will control 33 titles out of 100.
345. EMI, Warner and Sony BMG are comparable and control respectively 23, 23 and 27 titles out of 100 in the official charts. Pre-merger they were all comparable to Universal, they become smaller than Universal/BMG. However the gap (in terms of number of titles controlled) between Universal/BMG and these three major companies is less pronounced than in the other affected markets. Sony/ATV is significantly smaller, controlling 8% of the chart hits.
346. With a control share of 33% for Universal in Sweden, the online music providers would still have almost 70% of the market as alternative. It therefore cannot be concluded that the merger will lead to competition concerns in this market. The merger therefore does not lead to a significant impediment of effective competition on the online rights market in Sweden.

United Kingdom

347. Universal controls 51 titles out of 100. Together with BMG, they will control 61 titles out of 100. This 10% increment is slightly inferior to the average increment calculated for the affected markets. The United Kingdom is the country where Universal/BMG controls the most titles due to the low penetration of the continental repertoire.
348. EMI is particularly strong in the United Kingdom and controls 49 titles out of 100 in the official charts. Pre-merger EMI was smaller than Universal, it becomes significantly smaller than Universal/BMG, however still controlling almost half of the chart titles. Warner, SonyBMG and Sony/ATV are significantly smaller, controlling respectively 30%, 24% and 16% of the official chart hits. They are already smaller than Universal and would be far behind Universal/BMG.

349. In the United Kingdom, Universal and BMG will together reach a very strong market position in terms of control shares. Any online provider wishing to switch in case of a price increase will have only less than 40% of the remaining repertoire of chart hits available. It is evident that this is not sufficient as an effective alternative and that Universal/BMG's repertoire will become a must-have product without which it will not be feasible for an online music provider to offer an acceptable platform to end-customers. It is also not likely that regulation in the United Kingdom would be applicable to an extent which could prevent any price increase resulting from the merger. As in all other affected countries the regulation is based on national licensing by the national collecting society. It is unlikely that the rules could equally cover EEA-wide licences and activities from other collecting societies in the United Kingdom.
350. It is therefore likely that Universal/BMG will be able to increase prices after the merger in the United Kingdom. The merger consequently significantly impacts the online rights market in the United Kingdom.

Norway

351. Universal controls 40 titles out of 100. Together with BMG, they will control 46 titles out of 100. This 6% increment is among the smaller ones in all affected countries.
352. EMI and Warner are comparable and control respectively 30 and 24 titles out of 100 in the charts. Sony BMG reaches a control share of 31%. After the merger EMI and Warner will be significantly smaller than Universal/BMG. SonyBMG will control 31%. Sony/ATV is significantly smaller, controlling 9% of the chart hits.
353. In Norway, Universal will therefore control 46% of the chart hits after the merger. Universal's repertoire would therefore still be substitutable for a user by combining most of the other publishers' repertoires since 54% of all chart hits would still be free of any Universal interest. It is therefore unlikely that the merger raises competition concerns with respect to the Norwegian market. The merger does not lead to a significant impediment of effective competition on the online rights market in Norway.

EEA

354. The figures analysed for the EEA are based on an average of the figures for the affected markets. It therefore does not cover some EEA countries, such as Denmark, Slovenia or Portugal. However the analysis includes all the largest EEA markets and the calculated control shares are sufficient good proxy for the EEA averages¹³².
355. According to weighted average of the national charts, Universal controls between 40 and 41% of the top 100 titles. Together with BMG, they will control between 49 and 50% of the charts. EMI is the second most important music company in terms of control of titles in the charts, where it controls 37 titles out of 100. Pre-merger, Universal is already

¹³² A proxy to capture the potential deviation between the EEA averages calculated in this document and those that would be obtained with the data from all EEA countries is the following: According to the IFPI (2006 – Global recording industry in numbers), among the 42 largest record markets in the world 14 correspond to the EEA affected markets, and 3 correspond to EEA non-affected markets (Denmark, Ireland, Portugal). The record market value in the 3 non-affected market accounts for 4% of the record market value of the 14 affected markets.

ahead of the other majors, controlling more titles than EMI notably. The merger would allow Universal to become the only major controlling up to half of the chart hits on an EEA-wide basis.

356. It is likely that after withdrawal the market for online rights will develop towards an EEA-wide market since the licences will cover the whole territory of the EEA and online music providers will look for collecting societies offering the specific publishers' repertoires equally EEA-wide. Universal will reach a considerable market position in Europe and gather approximately half of the total relevant repertoire. Any online music provider trying to cover the whole or at least the largest part of Europe will not be able to do without Universal.
357. Universal has a considerable strength and coverage of repertoire in the largest markets in Europe, such as the United Kingdom and Germany. The margins are at the moment not considered to be large in the downstream online market. Online music services therefore need to achieve a large number of customers and downloads in order to break-even. Any online music provider offering popular music (mainstream) on a European level will have to reach the customers of these revenue-strong countries and will therefore not be able to circumvent Universal.
358. Universal's activities also cover many EEA-countries. Universal has a strong position all over Europe (with a slightly lower tendency in the Nordic countries and a significantly weaker position in Spain). In addition, wide geographic coverage which could be alternatively sought by an online music provider to reach a minimum scale will necessarily involve countries in which Universal has a strong market position or even has a must-have repertoire. After the merger, the possibilities for online music providers to do without Universal and choose a combination of repertoires offered by the other publishers instead will therefore further decrease, also at EEA-wide level. The complete combined remaining repertoire which is free of Universal interest on EEA-wide level only reaches a share of 50%.
359. The merger consequently significantly impacts the online rights market on an EEA-level.

d. Conclusion

360. After the merger, the possibilities for an online music provider to substitute Universal's repertoire by one or a few others clearly decrease. This would be the case in Austria, the Czech Republic, Germany, Poland, and the United Kingdom as well as on EEA-wide level. In fact, an online music provider would have to replace on average 49-50% of the official chart hits, and up to 61% in the United Kingdom. Only the remaining 50% of all titles (39% in the United Kingdom) would be free of any Universal interest. Customer's possibilities to provide a viable online music platform without the repertoire from Universal are surely limited in some countries already before the merger. After the merger this possibility is further decreased.
361. An online/mobile music provider wishing to develop a service with a large catalogue will not be in a position to do so without an agreement with Universal. Ideally this online music provider will preferably sign an agreement with all music companies or their agents. However, a viable service can be proposed even if a reasonable portion of the world catalogue is not included. Several examples were provided by the parties where online music providers could work without one of the record majors to some extent.

Therefore, it is likely that an online or mobile platform could be temporarily operated without the part of the catalogue controlled by Warner, Sony BMG, Sony/ATV or independents. The situation of EMI is intermediate as it controls a substantial share of the charts, however significantly lower than Universal/BMG.

362. Considering that Universal/BMG agreement is necessary to operate an online platform covering a large part of the world catalogue, and that it is not necessary to reach an agreement with all the other music companies, it can be expected that Universal/BMG will be in a position to extract sustainable higher licence rates than its competitors.

2.3.4 Profitability of a price increase

363. As demonstrated above Universal will, after the proposed merger, most likely be able to impose a price increase on online and mobile music providers as the combined Universal and BMG Music Publishing repertoire represents must-have content which these providers cannot replace by the repertoire of other music companies. However, it may be argued that Universal would be deterred from raising the rates for its repertoire if a price increase entailed such a decrease of demand which would make any price increase unprofitable.
364. An increase of royalty rates may become unprofitable if (a) the price increase is likely to be passed on by providers to their customers and, as a consequence, (b) the end consumers were to reduce their demand (volume) of Universal music to such an extent that Universal would lose more than it would gain by the higher rate. By contrast, if online and mobile music providers are not able to pass on increased royalty rates, such rate increase would be profitable for Universal unless the service providers dropped Universal content. The latter reaction is, however, most unlikely as it would seriously threaten the viability of the online or mobile music platform.

Analysis for the different online and mobile music business models

365. The consequences of an increase of Universal's licence rates to online and mobile music providers depends to a large extent on the business model of the individual provider. There are three main business models: advertising-financed, subscription and pay-per-download/streaming.
366. Advertisement-financed platforms are free of charge for the user. Therefore any increase of the royalty rate by the online or mobile music provider will not be passed on to the end consumer but rather represent an increase in costs for the service provider which will ultimately be borne by this provider. It is highly unlikely that providers of advertisement-financed platforms will change their free-of-charge business model. It is also highly unlikely that they will reject Universal's price increase and do without Universal's repertoire because this would reduce their attractiveness and consequently the advertising revenues they could generate. It results from the market investigation that providers of advertisement-financed music offers depend to the same extent as other online music business models on an offer as complete as possible. Some of these providers stated that they would not be able to pass on higher royalty rates as advertising customers have a large choice of alternative online and offline advertisement carriers.

367. Subscription platforms are, theoretically, able to pass on an increase of Universal's licence rate to their end consumers. However, it is not certain that they will do so. Some of these providers pay different rates for the recording rights of the different record companies which does not prevent them from a uniform subscription price. Although many online music subscription providers have various subscription offers at different price levels, the Commission has not found any evidence for online music subscription services which put the record label with the highest royalty rates into a particular (more expensive) subscription offer. In case Universal's royalty increase is not passed on the price increase would be profitable for Universal. Again, it is highly unlikely that providers of music subscription platforms would renounce Universal's repertoire because such a step would jeopardise the attractiveness of their offer.
368. Even in case of a pass-on, i.e. an increase of the subscription rate, Universal would only bear a part of a potential loss in end consumer demand whilst it would gain the full benefits of the increased licensing rate. This is due to the fact that subscription platforms can only increase the subscription rate for access to their entire catalogue. They are not able to differentiate between the repertoires of the different music companies as users subscribe to the service in order to get access to all titles, irrespective of their provenance.
369. Therefore, if a general increase of the subscription fees led to a loss of customers who would no more be willing to pay the increased subscription fee for the music service, the provider would transfer less licence fees to all music companies as the licence fees are a function of the subscription fees. In case of a rate increase, Universal would thus retain the gain of a higher percentage share whereas it would only be partly hit by the reduced overall subscription revenues as the other music companies would bear, together, the largest part of this reduction. Universal would therefore be able to largely shift to its competitors the risk of a falling demand as a reaction of a rate increase. Therefore an increase of the licence rate vis-à-vis online or mobile music providers operating on a subscription basis would most likely be profitable.
370. Providers of online and mobile music platforms operating under a "pay-per-track" model, i.e. billing their users for each download, stream, ringtone etc., may pass on an increased royalty rate to their customers. There are currently two retail pricing models of "pay-per-track" platform operators: on the one hand those with a uniform price as practised e.g. by Apple's i-tunes: Apple has set a relatively low price level for its music sales as it focuses on the sale of music devices (i-pods) to which the downloading services are an additional "promotion". This pricing model has attracted many customers for two reasons: the price level and the simplicity of pricing; several competing providers, e.g. Virginmega or Mediamarkt have followed this pricing model. It is noteworthy that several of the providers with such a uniform price level pay different rates for the recording rights to the different record companies. On the other hand there are operators which apply a price differentiation among titles, e.g. T-Online's Musicload.
371. The first category of providers with a "uniform price" model has two options to react in case of an increase of royalty rates: either they keep their retail prices stable and bear themselves the additional costs in which case the rate increase would be profitable for Universal. In that scenario end consumers would probably also be harmed in their choice of music as some online or mobile music providers would, in view of low margins, drop out of the market. The second option would be to pass on the royalty increase and raise retail prices. However, in a uniform price model such a price increase would affect all titles across the board, irrespective of the recording or publishing company. Therefore,

Universal would share the risk of a decreased demand with all other music companies whereas it would gain the full benefits of the rate increase. As explained above, in such a scenario the price increase would most likely be profitable for Universal.

372. The second category of providers with a "differentiated prices" model has the possibility to pass on the royalty increase for Universal titles only in putting these titles into a higher price category. In that scenario, only Universal would be exposed to the reaction of end-consumers whereas the titles of other music companies would not be affected.
373. Such a "categorical" price increase for all Universal titles is not certain as end users do not purchase music of a certain label but music they like. Indeed, those online and mobile music providers applying differentiated price categories use also other criteria than their royalty costs when deciding into which price category to put a title. Although their costs on the wholesale levels are one of the elements taken into account in the determination of the retail price category, they also apply other criteria such as exclusivity, novelty, bonus editions and other features influencing the user's willingness to pay.
374. This is also evidenced by the current pricing strategy of online/mobile music providers with a differentiated pricing model: although they pay slightly different royalty rates to the four major record companies, they do not put the major with the highest royalty rates systematically into a higher price category. Therefore, it is possible that they will not behave differently with respect to the pass on of publishing royalties once those may vary among publishers.
375. In addition, the online provider would have to apply the price increase also to co-published titles, in proportion of the share of publishing rights controlled by Universal/BMG. This would, first, make the providers' pricing categories less comprehensible for the user and, second, for the titles for which it is co-publisher, Universal/BMG would share the risk of a decreased demand with all other involved music companies whereas it would gain the full benefits of the rate increase.
376. However, even where online music providers systematically increase the retail price for Universal titles in a differentiated price model, Universal does not have to fear a significant volume reduction through the reaction of end consumers. First, according to the responses of online and mobile music providers, end customers who want to buy a certain title are unlikely to switch to another title just because that one is cheaper. As music is a heterogeneous good and each user has individual preferences, each user only considers a limited number of titles as substitutable to each other. Second, as demonstrated above, many of these titles considered as potential substitutes to a given title are controlled by Universal and BMG which have (co-)control of the publishing rights for approximately 50% of all chart hits. Therefore, the number of potential alternatives for the end consumer is considerably reduced.
377. Third, the willingness to pay is also driven by other factors than price, such as being the first to have novelties¹³³ and thus being cutting-edge or subjective preferences of the individual consumer. It is true that a certain pricing constraint results, mainly for online download applications, from CDs and other physical music carriers and from illegitimate

¹³³ This is confirmed by the fact that some platforms apply higher prices to the download of new releases which they offer in exclusivity.

downloads. However, file-sharing and other non-commercial offers seem to play a rather limited role with respect to mastertones and other mobile music applications.

378. With respect to online downloads, some end consumers may indeed be expected not to buy a certain title in case of a price increase, and possibly acquire them via file-sharing. However, it is also to be expected that the number of those customers who would abstain from buying will be rather limited: first, those end consumers with a low willingness to pay are unlikely to be potential buyers even at the current price level. The volume reduction effect which is relevant for the assessment of the profitability of a royalty rate increase by Universal, will therefore be limited to those customers who are willing to buy at the current price level but would be deterred to do so in case of a small but significant increase of royalty rates. In view of the relatively small part of publishing royalties in the total price of an online or mobile application a price increase by 10% is unlikely to have a deterrent effect on the end consumer.¹³⁴ In the light of the above and taking into account the limited substitutability of songs in the end customers' view, it is thus very unlikely that an end consumer would quit buying in response to such a price increase.
379. Therefore, even in the scenario that online and mobile music providers were to pass on higher royalty rates for Universal music to Universal titles in a targeted way, the reaction of end consumers is unlikely to result in a significant reduction of the demand volume for Universal titles. An increase of royalty rates would thus be profitable for Universal vis-à-vis all kinds of online and mobile music providers.
380. Therefore, following the profitability analysis, it can be concluded that the merger raises serious doubts in the markets for online rights identified above, *i.e.* in Austria, Czech Republic, Germany, Poland and the United Kingdom as well as for the EEA.

2.3.5 Reactions of customers (online and mobile music providers)

381. The extent of the price increase by Universal/BMG will be affected by - on the one hand - the degree of complementarity of the rights in its combined repertoire and - on the other hand - by the change in the bargaining power of its competitors as well as in particular the reaction of the customers.
382. It may be argued that online and mobile music providers exert an effective constraint on Universal due to their countervailing buyer power. The parties submitted that in particular Apple would have considerable buyer power as its "i-tunes" platform is the most important online download service in many European countries. It is true that Universal has a strong interest of being present on i-tunes. On the other hand, however, Apple's business model is based on the sale of music at relatively low prices in order to attract consumers which will be obliged to buy an "i-pod", Apple's portable music device. It is noteworthy that music downloaded via i-tunes can, due to Apple's DRM, only be played on the i-pod but not on other portable devices. Consequently, Apple makes a much higher margin on the sales of i-pods than on the sale of music.
383. In order to attract as many people as possible to buy i-pods, Apple has an extremely high interest to be the most attractive and complete download platform. In view of the large

¹³⁴ Publishing royalties currently amount to 8-15% of the net retail sales price, varying among countries and applications.

Universal/BMG repertoire, Apple cannot really threaten to switch to other suppliers¹³⁵ but it is limited to the threat not to offer Universal titles on its platform. If Apple were not able to offer the content of the new entity, it would lose its current attractiveness and risk foregoing not only revenues from music sales but, more importantly, higher revenues from the sales of i-pod devices. Therefore, Apple's bargaining position vis-à-vis Universal, the by far largest catalogue after the merger, is rather limited. It is therefore concluded that even Apple would not exert effective constraints on Universal's pricing behaviour.

384. Even if it were assumed that Apple had effective countervailing buyer power, *quod non*, this would not exclude the finding of a significant impediment of effective competition. First, Apple only accounts for a limited part of Universal's online and mobile music sales. According to Universal's parent company Vivendi¹³⁶, mobile music accounted for 45% of its total global digital revenue. Among the remaining 55% of Universal's digital revenues from online sales, Apple seems to be the largest individual customer but followed by a large number of other important providers. Therefore Apple's share of the total demand is far below 40% of the overall demand.
385. In any event, even if Apple had, in spite of the above, countervailing buyer power, this could not sufficiently off-set the above-described negative effects of the proposed merger. Universal is able to price discriminate between its customers, i.e. the various online and mobile music provider, and Apple's possible, *quod non*, buyer power would thus not shield these other customers from a royalty rates increase. It is therefore concluded that Universal's increased pricing power is not constraint by countervailing buyer power.

VII. RESULTS

386. Against this background, it is very likely that Universal will post-merger, on the basis of non-coordinated effects, have the possibility and the incentive to increase prices for its repertoire of Anglo-American mechanical rights for online applications. The merger therefore raises serious doubts with respect to the online rights market both on an EEA-wide level and in the countries Austria, the Czech Republic, Germany, Poland, and the United Kingdom. By contrast, the Commission has not found any indications in the market investigation that, in a scenario following the withdrawal of online publishing rights from the existing system of collective rights management through collecting societies and the re-organisation of the administration of those rights, the merger could lead to coordinated effects in the market for online rights.

VIII. REMEDIES

387. The notifying party submitted a first set of remedies on 15 March 2007. In response to the results of the market test and the Commission's comments, these remedies have twice been substantially improved, namely on 26 March and on 30 March 2007. Subsequently,

¹³⁵ Cf. Section 65 of the Horizontal Merger Guidelines.

¹³⁶ Vivendi presentation "2006 Results and 2007 Outlook" by Jean Bernard Lévy and Jacques Espinasse on 07.03.2007.

the commitments text received some technical refinements and a final version was submitted on 23 April 2007.

1. Description of the commitments submitted by the notifying party

1.1 Description of the First Divestiture Package

388. On 15 March 2007, Universal proposed to divest a number of catalogues covering a package of Anglo-American repertoire ("the First Divestiture Package"). According to the parties, these catalogues are separate legal entities within BMG which, after their acquisition by BMG, have continued to sign authors directly. Universal submitted that the First Divestiture Package could be sold in parts or as a single package and was structured in such a way that the individual catalogues can be added to an existing music publishing business or be used to enter the market as a new music publishing company.

389. The First Divestiture Package comprised the following catalogues and contracts:

(a) BMG catalogues

- (i) Zomba Music Publishers Limited ("Zomba UK")
- (ii) Unisong Music Publishers B.V.
- (iii) 19 Music Limited
- (iv) First Avenue Music Limited
- (v) Deconstruction Songs Limited
- (vi) Minaret Music Limited
- (vii) 19 Songs Limited
- (viii) Strongsongs Limited
- (ix) Logo Songs Limited
- (x) Block and Gilbert Music Limited
- (xi) Red Star Songs Limited
- (xii) Point Music Limited
- (xiii) Mucho Loco Music Limited
- (xiv) BBC music publishing catalogue

(b) Universal catalogues

- (xv) Anxious Music Limited
- (xvi) Momentum Music Limited
- (xvii) Momentum Music 2 Limited

390. The four most important (and eventually maintained) catalogues of the First Remedies proposal are described in the following. Zomba UK's catalogue includes amongst others Bruce Springsteen, Billy Ocean, Iron Maiden and rights to music by Denniz Pop and Max Martin who were the writer/producer behind Britney Spears, The Backstreet Boys, NSYNC, Celine Dion and Westlife. Amongst the most successful hits are "Hit me baby one more time" and "Oops I did it again" by Britney Spears, Kelly Clarkson's "Behind these hazel eyes", "I want it that way" from the boy group The Backstreet boys, "Everything I do..." by Bryan Adams, Bon Jovi's "It's my life" and Celine Dion's "That's the way it is". The EEA-wide revenues of Zomba Music Publishers Limited constantly increased from EUR [5-10]* million in 2004 to EUR [5-10]* million in 2006.

391. 19 Music's catalogue includes titles of Culture Club (e.g. "Karma Chameleon"), Spice Girls (e.g. "Spiceworld and "Spice") Boyzone (e.g. "Said and Done" and "A Different Beat") and S CLUB 7 ("Don't stop moving") form part of this catalogue. 19 Music's EEA revenues amounted to EUR [0-500 000]* in 2006. 19 Songs is a joint venture in which BMG and the record and television producer Simon Fuller each hold 50% of the shares and which generated revenues of EUR [0-500 000]* in 2006. It consists of pop music linked to TV reality shows and other pop repertoire such as songs by Emma Burton. Its most popular title is the American Idol theme. The BBC catalogue contains copyrights in television themes which are broadcast in the United Kingdom and globally such as the "Teletubbies" and "Bob the Builder". It generated EEA wide revenues of EUR [0-5]* million in 2006.
392. In addition to rights in the songs of these catalogues, the First Divestiture Package also included ongoing contracts. The parties indicated that these ongoing contracts also encompass contracts with authors who are still under obligation to produce further songs for these catalogues in the future. Moreover, Zomba UK was described as a "full service publishing" company with its own creative team which would be part of the divestiture if requested by potential purchasers. Universal proposed to divest the full rights for the various catalogues but to set up a "licensing back" agreement with the acquirer under which Universal would receive the worldwide rights outside the EEA.
393. The revenues generated by the First Divestiture Package amounted to EUR [10-20]* million in the EEA with Zomba UK representing alone more than half of these revenues.¹³⁷ The parties submitted that the Divestiture Package would represent, both in the United Kingdom and in the other EEA countries, [20-30]*% of BMG's top 1 000 works and [25-35]*% of BMG's top 500 works.

1.2 Results of the market test for the First Divestiture Package

394. In the first market test approximately 100 questionnaires were sent to publishers, collecting societies and online and mobile music providers with a return of 44 responses. The market test indicated that a divestiture of catalogues is in principle an appropriate remedy to remove the competition concerns identified by the Commission. However, the market test showed that the First Divestiture Package was not sufficient to remove the competition concerns identified by the Commission.¹³⁸ A large number of respondents indicated that the suggested remedies would not reduce to an acceptable extent the increase of Universal's market power in the online rights market. Many market participants considered that the divestiture would

¹³⁷ 2005 figures as submitted by the notifying party.

¹³⁸ See responses to the Questionnaire Remedies, dated 15 March 2007, questions 14 and 15: Out of 41 substantive responses, 22 market participants answered directly to the question as to whether the remedies would remove the competition concerns. Most of the others declared not to have sufficient knowledge to make this assessment. Among the 22 respondents were

- 11 publishers; 3 of them considered the Divestiture Package as adequate to remove the Commission's concerns with 8 expressing a negative view or raising doubts.
- 6 online/mobile music providers 4 of them expressed an overall negative view, 2 considered the Divestiture Package as sufficient.
- Not many collecting societies considered themselves capable of making an assessment: 4 of the 5 respondents, however, indicated that the remedies would probably not remove the concerns – only 1 of those answering the relevant question found the Divestiture Package to be sufficient.

have to be more substantial than that proposed by the notifying party. In particular, some respondents emphasised that the First Divestiture Package lacked a strong U.S. catalogue.

395. With respect to the characteristics of an appropriate remedies package the market test provided valuable information. Many respondents considered it as essential that the catalogues are of good quality and represent a sufficient volume in number of titles and revenues. The catalogues further should be an adequate mixture of recent hits and successful back-catalogue in order to secure steady revenue stream and the continuity of the business. Moreover, the catalogues should cover Anglo-American titles and authors with a scope for the whole of the EEA and not only for one or two countries. The catalogues should also provide for a good combination of successfully established authors with the potential to supply further hits and of newly signed authors with the potential to break through and develop new business.
396. These conditions were not met by the First Divestiture Package. Many respondents indicated that the quality of most of the proposed smaller catalogues was insufficient, with only four exceptions: Zomba UK, 19 Songs, 19 Music and the BBC catalogue. All other catalogues were mostly considered as insignificant and of little value. They were described as having no chart hits and only rather old songs which were not "evergreens" and were thus unlikely to be released in cover versions in the future.
397. Moreover, the market test indicated that many of these smaller catalogues only had a limited geographical scope¹³⁹ and that their titles were largely unknown in other European countries. In addition, some catalogues of the First Divestiture Package represented niche products.¹⁴⁰ Such niche catalogues are of only minor relevance for online and mobile music providers and their divestiture would thus not address the competition concerns.
398. By contrast, according to a number of respondents, Zomba UK, the largest catalogue in the First Divestiture Package, represents an important part of BMG's Anglo-American music publishing activities and provides hits all across Europe. Many respondents also indicated that Zomba UK probably had a number of good authors under contract. It was also mentioned that the 19 Songs and/or 19 Music catalogues are attractive, have a larger than national scope and constitute a relatively good combination of hits, back catalogue and authors. As to the BBC catalogue, it was described as attractive but not very chart relevant.
399. In spite of certain positive elements in some catalogues the First Divestiture Package was thus considered by the majority of the respondents as insufficient in view of the overall increment of Universal's position through the acquisition of BMG.

1.3 Description of the Second Divestiture Package

400. On 26 March 2007, Universal modified its initial proposal in order to respond to the feed-back of the market test and the Commission's subsisting concerns. The Second Divestiture Package comprised the following catalogues:

¹³⁹ Unisong's catalogue is mainly known in the Benelux area whereas most of the other catalogues concentrate on the United Kingdom.

¹⁴⁰ For instance, Unisong was described as specialised in Gospel and Dutch songs, Logo Songs as focusing on electric folk and Red Star Songs as consisting mainly of heavy metal.

(a) BMG catalogues:

- (i) Zomba Music Publishers Limited ("Zomba UK")
- (ii) 19 Music Limited
- (iii) 19 Songs Limited
- (iv) BBC music publishing catalogue

(b) Universal catalogue:

- (v) Rondor Music (London) Limited ("Rondor UK")

401. The Second Divestiture Package thus added Rondor UK, whereas the previously proposed catalogues Unisong Music Publishers B.V., First Avenue Music Limited, Deconstruction Songs Limited, Minaret Music Limited, Strongsongs Limited, Logo Songs Limited, Block and Gilbert Music Limited, Red Star Songs Limited, Point Music Limited, Mucho Loco Music Limited, Anxious Music Limited, Momentum Music Limited and Momentum Music 2 Limited ("initially proposed smaller catalogues") were withdrawn.
402. Rondor UK's revenues in the EEA increased from EUR [5-10]* million in 2004 to EUR [5-10]* million in 2006. The catalogue includes the British band Kaiser Chiefs, winner of three Brit Awards in 2006. Their first album reached number 2 in the United Kingdom with 4 hit singles in the United Kingdom Top 20 charts after its release in 2005, including "I predict a riot" by Kaiser Chiefs which generated revenues of EUR [...] in 2006. The second album was released in March 2007 and has reached number 1 in the United Kingdom, the Netherlands and Greece, and ranking high in other national charts, too. One song of this album became number 1 in the United Kingdom and the European single charts ("Ruby").
403. The catalogue further includes artists such as Sophie Ellis Bextor and the Danish pop production team Jorgen/Larsson. Amongst its top authors is the songwriter and Dire Straits' lead singer Mark Knopfler whose former chart hits "Money for nothing", "Walk of Life", "Sultans of Swing" and "Private Investigation" are part of the catalogue. Other famous titles are "Lady in Red" by Chris de Burgh and "Wouldn't it be good" by Nick Kershaw. The divestiture of Rondor UK does not include the works of Supertramp, Squeeze and Yes. [...]*
404. As for the First Divestiture Package, Universal proposed to divest the full rights for the various catalogues but to set up a "licensing back" agreement with the acquirer under which Universal would receive the worldwide rights outside the EEA
405. The combined EEA-wide revenue of the Second Divestiture Package amounted to EUR [20-30]* million, increasing by EUR [0-10]* million in comparison with the First Remedies Package.

1.4 The results of the market test for the Second Divestiture Package

406. The second market test was sent to those 44 market participants who had answered to the first market test by that time. Approximately, half of the addressees responded within the available timeframe.
407. With respect to the qualitative criteria which were confirmed in the second market test, most of the respondents acknowledged that the additional catalogue, Rondor UK, significantly

improved the package. Most of those respondents who evaluated the quality of the catalogues confirmed that Rondor UK is of good quality, with a large number of important titles, especially in the back-catalogue. Some market participants signalled that Rondor UK contained a limited number of recent chart hits.

408. Overall, although some respondents considered the Second Divestiture Package as sufficient, a number of respondents stated that also the Second Divestiture Package was not sufficient in size to reduce the increase in Universal's market power to an acceptable extent.

1.5 Description of the Final Divestiture Package

409. On 30 March 2007, and after having been informed of the result of the second market test, the notifying party submitted a third remedies package. This Final Remedies Package includes the Second Remedies Package and adds an EEA-wide licence of the full catalogue of Zomba U.S. This licence encompasses all those copyrights held by Zomba U.S. in respect of exploitation in the EEA, including those currently in existence and those to be delivered, under existing agreements or following the exercise of any options provided for under existing agreements.

410. The Zomba U.S. catalogue generated revenues of EUR [0-10]* million in the EEA in 2006. The catalogue contains songwriters, composers and producers with ongoing obligations such as Justin Timberlake, Linkin Park, Shania Twain, Korn, Limp Bizkit and R. Kelly and some back catalogue. Amongst the most known songs are R. Kelly's "I believe I can fly" and "Outrageous", "Señorita" by Justin Timberlake and the U.S. group Linkin Park's "Numb".

2. Assessment of the Final Divestiture Package

411. The Commission carefully analysed the Final Divestiture Package (hereinafter "the Remedies Package" or "the Commitments"). In its analysis it took particular account of the results of the two market tests and of its own findings in the market investigations.

412. The Commission considered that a third market test was not necessary. The second market test confirmed the quantitative and qualitative criteria for suitable remedies as they had been described in the first market test. The Final Divestiture Package was built around the already market-tested Second Divestiture Package and addressed the shortcomings which had been pointed out in the two market tests. It added considerable revenues (almost 50% more than the Second Divestiture Package) and included an important U.S. catalogue with many chart hits and successful authors. On the basis of these improvements the Commission found that the modifications made by Universal removed the serious doubts and that it had to authorise the transaction in line with Article 10 (2) of the Merger Regulation.

413. The Commission came to this conclusion on the basis of the combined evaluation of a bundle of criteria which will be analysed in the following. These criteria are considered as the most appropriate to evaluate the future potential of the Remedies Package. The analysis therefore has not been backward looking on effects in the past but rather forward oriented in order to identify the structural growth potential of the Remedies Package.

414. The Commission considers that the Remedies Package is necessary and sufficient in terms of size, quality and composition of the catalogues, their relevance for online and mobile

music services, the number and quality of authors under contract and their potential for future success.

2.1 Characteristics of a viable remedies package

415. The market test clearly confirmed that the divestiture of entire music publishing catalogues constitutes a suitable remedy to remove the competition concerns identified by the Commission. The divestiture of catalogues has a structural effect on the market and permanently reduces the market power of Universal. By contrast, a commitment to remain in the existing collecting society system for a limited period of time, as suggested by some respondents in the market test, would counteract the general market development which is currently leading to a re-organisation of the administration of online rights, but would not permanently solve the issue of market power created by the transaction.
416. A viable remedies package should include the divestiture of the full copyright for all applications or categories, i.e. including mechanical, performance, synchronization and print rights. This is necessary to avoid a copyright split for different applications and to secure the economical efficiency of the divested catalogues. This further implies that the divestiture includes right categories (and turnover generated by the exploitation of these rights) which are not directly related to the competition concerns identified with respect to online applications.¹⁴¹
417. In order for the remedy to be swiftly and easily implemented it is important that the divestiture comprises entire catalogues which are held as separate legal entities. Whilst individual titles usually cannot be divested without the approval of the authors, catalogues in separate legal entities can be transferred pursuant to the rules applicable to the sale of companies, and thus regularly without the approval of the authors. As it is time consuming to obtain the approval of the authors concerned, the divestiture of individual titles (or the transfer of individual authors) is generally not a viable option for a merger procedure commitment which needs to be implemented quickly. All catalogues included in the Remedies Package are held in separate legal entities and their divestiture is not expected to encounter specific difficulties. The same applies to the licensing agreement for the EEA exploitation of the Zomba U.S. catalogue which will be discussed in detail below. The Remedies Package therefore fulfils the requirement of a quick and uncomplicated transferability.
418. The music publishing business is characterised by the great importance of intangible assets such as copyrights in works. Therefore, a divested catalogue can be successfully managed by an established publisher without the need to transfer any tangible assets.
419. Finally, as the competition concerns identified by the Commission only related to Anglo-American repertoire, the Remedies Package had to focus on Anglo-American catalogues.

¹⁴¹ According to Universal, music publishing revenues from online applications accounted for 2% of Universal's total music publishing revenues in 2005.

2.2 Size of the Remedies Package

420. The Remedies Package generated EEA-wide revenues of EUR [30-40]* million in 2006. The total revenues generated by all BMG's Anglo-American catalogues in 2006 amounted to EUR [80-100]* million.¹⁴² Therefore the revenues generated by the Remedies Package which consists exclusively of Anglo-American catalogues, correspond to approximately [30-35]*% of BMG's total revenues with Anglo-American titles. On the basis of a sample provided for the United Kingdom, the Remedies package would correspond to around [40-45]*% of BMG's total revenue for online exploitation.
421. The figures submitted by the parties show that two of the three main catalogues of the Remedies Package (Zomba UK and Rondor UK) generated considerably higher EEA-wide revenues in 2006 than in 2005 (6% higher for Zomba UK; and 23% higher for Rondor UK whereas the EEA revenues of Zomba U.S. decreased by 5%) which is considerably better than the average of the music publishing sector¹⁴³. It can be expected that these catalogues, including Zomba U.S. which had some very successful hits in early 2007, will continue to grow faster than the average.
422. The analysis of the relative size of the Remedies Package also has to take into account that, already pre-merger, Universal could impact on a considerable part of BMG's music publishing repertoire, whether as a co-publisher or as holder of the corresponding recording rights. In that respect, Universal submitted that [70-80]*% of the revenues generated by BMG's top 500 United Kingdom works stemmed from works which were either co-published or recorded by Universal. However, it appears that this figure overestimates the actual impact of Universal as they do not properly distinguish between "original" recordings and cover versions. The Commission therefore rather considers, on the basis of the parties' responses to various questionnaires that approximately 55-65% of BMG's publishing catalogue (both in terms of weighted revenues and number of works) is either co-published or recorded by Universal.

2.3 Universal does not retain control in most of the Remedies Package

423. The Remedies Package is composed of six catalogues which have grown over a number of years. As the different publishing catalogues have over time been co-published or recorded by various record companies, including Universal, there is no significant catalogue in which Universal would not hold any co-publishing or recording right. However, it seems that the control share of Universal in the titles of the Remedies Package is lower than in the overall BMG catalogue.¹⁴⁴

¹⁴² Parties' response to question 2 of questionnaire of 22.12.2006, as reiterated in subsequent submissions.

¹⁴³ Enders Analysis (Recorded Music and Music Publishing, page 29) forecasts an annual growth rate of 2.2% for the global music publishing industry between 2006 and 2012.

¹⁴⁴ It should be reminded that according to Universal, [70-80]*% of the revenues of BMG's catalogues were controlled by Universal either through co-publishing or through recording.

424. Of the sample of the 1 900 top works of the Remedies Package 58% are neither co-published by Universal nor have they ever been recorded by Universal.¹⁴⁵ However, in case of "multiple recording", i.e. the existence of several recordings of the same composition, Universal does not usually have the recording rights for all of them, and not for all charted recordings either. Therefore, the notifying party proposed to take account rather of those titles which have been recorded by Universal and also by other record companies. According to Universal, in 79% of the 1 900 works Universal does not have a co-publishing right nor does Universal have the only recording.
425. The Commission considers that the figure of 58% underestimates the pre-existing control of Universal because it does not take account of the actual number of songs which have been recorded by Universal. Similarly, the Commission considers that the figure of 79% overestimates the pre-existing control of Universal. Therefore the Commission considers it appropriate that approximately 65-70% (as a rough average of 58% and 79%) of the total works of the Remedies Package are not controlled by Universal.
426. More importantly, only 11% of the 1 900 top works are co-published by Universal. This means that 89% of these most successful works can be released as cover versions by other record companies without Universal being involved as co-publisher. In view of the success of these top titles it is quite likely that they will be used for cover versions by other record companies. The importance of cover versions in the music industry is illustrated by the fact that 15 of Universal's 2006 top 50 single record sales in the United Kingdom were cover versions.¹⁴⁶ In a prospective analysis, the titles which are not co-published are particularly relevant as they are those which allow for future hit recordings outside Universal's control.
427. In value terms, the titles which were neither co-published by Universal nor have ever been recorded by Universal account for [50-60]*% of the revenues generated by of the top 1 900 works the Remedies Package. Those titles in which Universal neither has a co-publishing right nor an exclusive recording (i.e. parallel recordings of other record companies exist) generated [80-90]*% of the revenues¹⁴⁷ of the top 1 900 works of the Remedies Package. In order to take due account of "multiple recordings" (see supra), it is also appropriate to consider that titles accounting for approximately [60-70]*% (as a rough average of [50-60]*% and [80-90]*%) of the total revenues of the Remedies Package are not controlled by Universal.
428. Most importantly for the future potential of the Remedies Package, 90% of the revenues were generated by titles in which Universal had no co-publishing rights. In case of successful cover versions released by other record companies, Universal would have no control at all over these titles.

¹⁴⁵ Response to question 2 of questionnaire of 03.04.2007. The Commission asked for the top 500 works of each of Zomba UK, Zomba U.S. and Rondor UK as well as the top 200 works of the BBC catalogue and the top 100 works of both 19 Songs and 19 Music.

¹⁴⁶ Seven of these 15 titles were pure cover versions and eight were samples, remixes and interpolations, i.e. other forms of using an existing title.

¹⁴⁷ The parties explained that it would be extremely difficult to calculate the allocation of the publishing revenues to the different recordings.

429. These figures demonstrate that Universal will have co-publishing rights in only a very minor part of the repertoire contained in the Remedies Package and control over only a limited part of it. Due to the composition of catalogues which have grown over time and whose works may have been recorded several times, it is impossible to find catalogues containing exclusively titles in which Universal (or any other major music company) does not have any control. However, Universal's control shares in the Remedies Package still seem to be considerably smaller than in the average of BMG's catalogues.
430. The fact that Universal will not have a co-publishing right in around 90% of the works included in the Remedies Package is relevant for the particularly important future recordings as it means that Universal will not be able to control future cover versions recorded on the basis of these rights. In this context it has to be kept in mind that the competition concerns mainly relate to music publishing rights and that the competitive assessment identified serious doubts as to a possible significant impediment of effective competition in the music publishing markets.
431. For these reasons, the Remedies Package generally addresses the competition concerns identified above, namely the control of Universal of works through co-publishing rights or/and recording rights.

2.4 Relevance of the Remedies Package for Online and Mobile Music Services

432. The Remedies Package has a significant impact on Universal's control share of those titles which are of particular importance for the success of online and mobile music platforms, namely good back catalogue and recent chart hits. Regarding successful back catalogue the qualitative analysis has shown that it is well represented in the Remedies Package and that Universal only maintains control of a minor part of it.
433. As to chart hits, 169 works of the remedies package made it into the United Kingdom weekly charts in the years 2003-2006 and they have appeared in these charts 1,540 times. This represents an average chart presence of more than 9 weeks per title. The 169 chart titles of the Remedies Package thereby account for 6.2% of all entries in the United Kingdom weekly charts over this period.¹⁴⁸ In 139 of these 169 titles Universal will not retain any co-publishing rights and they can thus be recorded as cover versions by other record companies in which case Universal does not have any control of the title.
434. Also in Member States other than the United Kingdom, the works of the Remedies Package had a high number of chart entries. For the Member States other than the United Kingdom the parties have analysed only the charts of the first week of each month for the period 2003-2006. They consider that this approach covers approximately 85% of all works charted. The parties also point out that in some Member States the weekly charts do not cover the top 100 (as in the United Kingdom) but a smaller number. On the basis of this analysis, the Remedies Package had 100 entries in the weekly charts in Germany and 66 entries in the weekly charts in Austria.
435. Also in respect of the 2006 chart hits which have been used as a proxy to evaluate the parties' position, the Remedies Package leads to a considerable reduction of the "net increment" of Universal's control of titles.

¹⁴⁸ According to the parties the total number of chart entries during this period amounted to 24,727.

436. As explained above, the chart analysis of one or two years can only be a kind of “snapshot” to reflect the position of a music company in the recent past. However, as the control shares regularly alter from year to year and depend on the success and the combination of different authors and performing artists, these control shares can only constitute indications for the market power of a music company.

437. For this reason, it is not necessary that the Remedies Package completely removes the “net increment” based on the chart analysis of past years. The past net increment would be completely removed in theory if only the limited number of BMG-titles which entered the charts in the last year and created this net increment in Universal's control were divested. The divestment of this limited number of past chart hits would, however, clearly not address the competition concern. The purpose of the Remedies Package is to avoid that Universal, through the proposed merger, gains a market position which enables it to exert market power vis-à-vis online and mobile music providers. In the prospective remedies assessment, the analysis of the impact on the control shares for past chart hits thus only constitutes one of several parameters together with the size, quality and composition of the catalogues and the potential of signed authors to generate future hits and thus revenues.

438. The following table shows the impact of the Remedies Package on the chart analysis in all Member States with affected markets for online rights:

Characteristics of divested catalogues – Impact on official charts 2006

	Sample Official Charts 2006	Chart titles controlled by BMG MP	Chart titles controlled by divested catalogues	BMG MP chart titles contributing to the increment	Titles in divested catalogues reducing the increment	Chart titles in divested catalogues which are not co-published by Universal
Austria	100	8,0%	2,0%	6,0%	1,0%	2,0%
Belgium	100	12,0%	4,0%	7,0%	1,0%	4,0%
Czech R.	200	16,5%	3,5%	9,5%	1,5%	3,5%
Finland	260	6,2%	1,5%	4,2%	1,2%	1,2%
France	100	10,0%	2,0%	9,0%	1,0%	2,0%
Germany	100	11,0%	4,0%	7,0%	2,0%	4,0%
Greece	667	7,2%	1,9%	5,7%	1,6%	1,8%
Hungary	100	13,0%	3,0%	7,0%	0,0%	3,0%
Italy	50	12,0%	2,0%	10,0%	2,0%	2,0%
Netherlands	100	15,0%	3,0%	10,0%	1,0%	3,0%
Poland	240	7,9%	4,2%	4,2%	1,7%	4,2%
Spain	260	9,2%	3,1%	8,1%	3,1%	3,1%
Sweden	100	9,0%	4,0%	6,0%	3,0%	4,0%
United Kingdom	100	19,0%	11,0%	10,0%	5,0%	11,0%
Norway	80	8,8%	3,8%	6,3%	2,5%	3,8%
Affected markets		13,3%	5,2%	8,6%	2,8%	5,2%

439. The table above shows that in all affected countries the catalogues of the Remedies Package are present in the charts of the annual best-selling titles. The catalogues of the Remedies Package further reduce the net increment in control shares brought about by BMG in all affected countries except Hungary. The above table also shows that almost none of the chart titles in the Remedies Package is co-published by Universal. This means that all those chart

titles in the Remedies Package which do not reduce the net increment in control shares were recorded by Universal in 2006. However, in the future they can be recorded by any record company and Universal would thus have no control of that title at all. As they charted in 2006 the compositions have proven their popularity and are therefore quite likely to be released in a cover version or as sample or extract in new songs (e.g. in rap or hip-hop).¹⁴⁹ They, therefore, have the potential to reduce Universal's control share in the future.

440. It is worth noting, that the remedies apply to the whole EEA and therefore have an effect also in the EEA-countries concerning which no serious doubts have been found.
441. In the United Kingdom, the Member State with the highest post-merger (pre-remedies) control share of Universal (61%), the highest number of chart titles controlled by BMG (19%) and one of the highest net increments (10%) and where Anglo-American music plays the most important role, the Remedies Package has the strongest effect. It contains 11% of the charted titles and halves the net increment (by 5%). In addition, the other 6% of charted titles are not co-published by Universal and would thus not be controlled at all by Universal in case of a future release by another record company.
442. In Germany where Universal's post-merger control share reaches 54% and BMG controls 11% of the chart hits and where the net increment amounts to 7%, the Remedies Package contains 4% of the chart hits and reduces the net increment by 2%. In addition, the other 2% of charted titles are not co-published by Universal and would thus not be controlled at all by Universal in case of a future release by another record company.
443. In Poland where Universal's post-merger control share reaches 51% and BMG controls 8% of the chart hits and where the net increment amounts to 4%, the Remedies Package contains 4% of the chart hits and halves the net increment (by 2%). In addition, the other 2% of charted titles are not co-published by Universal and would thus not be controlled at all by Universal in case of a future release by another record company.
444. In Austria where Universal's post-merger control share reaches 56% and BMG controls 8% of the chart hits and where the net increment amounts to 6%, the Remedies Package contains 2% of the chart hits and reduces the net increment by 1%. In addition, the other 1% of charted titles are not co-published by Universal and would thus not be controlled at all by Universal in case of a future release by another record company.
445. In the Czech Republic where Universal's post-merger control share reaches 52% and BMG controls 16.5% of the chart hits and where the net increment amounts to 9.5%, the Remedies Package contains 3.5% of the chart hits and reduces the net increment by 1.5%. In addition, the other 2% of charted titles are not co-published by Universal and would thus not be controlled at all by Universal in case of a future release by another record company.
446. On the level of all affected EEA countries where Universal's post-merger control share reaches 49-50% and BMG controls 13.3% of the chart hits and where the net increment amounts to 8.6%, the Remedies Package contains 5.2% of the chart hits and reduces the net increment by 2.8%. In addition, almost all of the other 2.4% of charted titles are not co-published by Universal and would thus not be controlled at all by Universal in case of a future release by another record company.

¹⁴⁹ According to the parties some songs in the divested catalogues have been recorded 20 or 30 times. See response to question 2 of questionnaire of 03.04.2007.

447. These examples illustrate that the Remedies Package has an important effect on Universal's control shares of chart hits. However, as explained above and as illustrated by the variations of chart relevant control shares both from year to year¹⁵⁰ and from country to country (for the same titles of the Remedies Package), the control shares in chart hits only constitute a proxy for the post-merger market position of Universal. It is therefore not necessary for the Remedies Package to remove most of the increment or compensates for all chart hits published by BMG. Instead, it is important that the Remedies Package contains a certain number of chart hits which have been successful in all affected Member States.
448. This also applies to Austria and the Czech Republic where the reduction of the increment brought about by the transaction is smaller than in other affected markets with serious doubts. In this respect it has to be recalled that the chart control analysis only represents a "snapshot" and is only one of several parameters taken into account by the Commission in its analysis of the Remedies Package.
449. On the basis of the analysis above it can therefore be concluded that the catalogues included in the Remedies Package have been present in the charts and are likely to continue to deliver hits which are of particular relevance for online and mobile music providers.

2.5 Quality and composition of the Remedies Package

450. The Remedies Package presents a good mixture of successful back catalogues and recent hits. It is composed of significant catalogues, both Anglo and American, with important works of renowned authors. It thus responds to two important requirements emphasised in the market tests.
451. Zomba UK is a strong catalogue with many chart number 1 hits and evergreens. It contains, for instance, the catalogues of Billy Ocean, Iron Maiden, Peter Sinfield (who wrote *inter alia* for Celine Dion, Cher, Cliff Richard, Barry Manilow and Diana Ross) and Mutt Lange (who wrote *inter alia* for Shania Twain, Bryan Adams, Huey Lewis and Michael Bolton). It also includes the Cheiron/Grantsville/Maratone catalogues with many titles written for Britney Spears, The Backstreet Boys, NSYNC, Bon Jovi, Celine Dion, Westlife and Kelly Clarkson. As these titles were successful hits at their time, they have very good chances of being reproduced as cover versions in the future. In addition, many of those past hits are regularly sampled in new rap and hip hop songs.
452. Zomba UK also has a number of recent chart hits and consequently a high potential for future hits. In 2006, Kelly Clarkson's "Since you've been gone" (written by Zomba UK authors Sandberg/Gottwald) was number 1 in the charts in Germany, Ireland, the Netherlands and the United Kingdom. Jamie T's debut album "Panic Prevention" (written by himself) entered the United Kingdom album charts at number 4 in January 2007. Zomba UK author Martin Brammer has written several songs, including the title track and "The Pieces don't fit" on James Morrisons's recent debut album "Undiscovered" which charted in 2007. As analysed in detail below, Zomba UK also has signed a number of established and upcoming authors; it can therefore be reasonably expected that Zomba UK will continue to produce hits.

¹⁵⁰ See above in the Competitive Assessment: In 2006 BMG contributed to increase Universal control share in official charts by 9 percentage points on an EEA-wide level whereas in 2005 it only contributed to increase control shares of Universal by 6 percentage points.

453. Zomba U.S. is even better positioned as regards recent chart hits. It contains the works of Linkin Park (who had several chart hits in 2003 and 2004 and released their latest album in April 2007), R. Kelly (who had 13 number 1 hits), Justin Timberlake (who recently had several top chart hits such as "Sexyback", "My love" and "What goes around"), Korn (who charted in the United Kingdom and other Member States in 2005 and 2006 with "Coming Undone" and "Twisted Transistor", Ne-Yo (who had top chart hits in the United Kingdom and several other Member States in 2006 with "Sexy Love" (number 1 in the United Kingdom) and "So Sick" (number 5 in the United Kingdom) and who also wrote top chart hits for Mario ("Let me love you") and Rihanna ("Unfaithful") which both reached number 2 in several Member States.
454. Zomba U.S. also has a valuable back-catalogue, including Britney Spears (who co-wrote some of her hits), Shania Twain (who co-wrote four of her top ten hits), Macy Gray, Teddy Riley (who wrote for Blackstreet, Mary J. Blige and Michael Jackson). It is noteworthy that prior to its acquisition by BMG in 2002, Zomba was an important independent music publisher which had been very successful since the 1990s.
455. Rondor UK has a very strong back catalogue with more than 70 writers, including Mark Knopfler (Dire Straits), Wayne Hector (who co-wrote a number of Westlife chart hits, one of which has been already released in a successful cover version), William Orbit (who co-wrote six titles for Madonna), Nick Kershaw ("Wouldn't it be good"), Hammond and Hazelwood ("It never rains in Southern California" and "The air that I breathe" which has been released in numerous cover versions), Brenda Richie (who wrote for Lionel Richie hits such as "Hello", "All Night Long" and "Dancing on the Ceiling").
456. Rondor UK also has some recently very successful hit authors, in particular The Kaiser Chiefs (whose 2005 album "Employment" has brought four singles into the top 11 in the UK). Their latest album "Yours Truly, Angry Mob" was released in March 2007 and has already reached top album chart positions in several Member States (number 1 in Greece, the Netherlands and the United Kingdom). The first single release of this album, "Ruby" has hit the number 1 chart position in the United Kingdom and in the European singles charts. Another author with recent chart success is Sophie Ellis Bexter who had several chart hits in the years 2001-2004. Her latest album is due for release in May 2007 and the first single release of this album reached number 8 in the United Kingdom charts.
457. On the basis of the analysis above the Commission found that the catalogues included in the Remedies Package are of high quality and present a good mixture of recent hits and successful back catalogue. The latter can be expected to generate constant revenue flows (as it has done in the past) and to be the source for some successful cover versions in the future. The authors of recent hits seem particularly to meet the "current music taste" and usually write their own songs (in case of singer-songwriters such as The Kaiser Chiefs, Linkin Park, R. Kelly) or write for currently successful singers. It can therefore reasonably be expected that they will be able to maintain or repeat their success at least for the foreseeable future, i.e. the next album(s). In addition, some today's hits included in the Remedies Package have the potential to become "evergreens" and therefore to generate regular revenue streams and to be released again in cover versions.
458. The Remedies Package combines Anglo repertoire and U.S. American repertoire, as requested by several responses to the market tests. Zomba U.S. accounts for approximately one third of the EEA-wide revenues of the Remedies Package. The licensing of the repertoire of Zomba U.S. allows the acquirer to have direct access to U.S. hits which still

have a considerable impact on global hits. On the other hand, the European-wide success of The Kaiser Chiefs and other British groups (e.g Arctic Monkeys, Franz Ferdinand) shows that Anglo catalogue is very popular in Europe and therefore the larger part of the Remedies Package is composed of British catalogues.¹⁵¹

2.6 Potential of signed authors to produce future hits

459. The Remedies Package also contains an important percentage of BMG's top 200 authors, namely 58 (29%) which also account for [25-35]*% of the EEA revenues of BMG's top 200 authors. Rondor UK contributes four of Universal's global top 200 Anglo-American authors (and even 10 of the top 200 Anglo-American authors in terms of United Kingdom revenues) such as the Kaiser Chiefs, Chariscourt and Straitjacket Songs (Mark Knopfler).
460. Many of the most successful authors are still in their term, i.e. under contract. This means they have ongoing obligations to write or compose a certain number of works or, depending on the contracts, to publish via their publisher all works they create during the determined period of time. For instance Out of Pocket Productions (Mutt Lange) and Bruce Springsteen are still under contract with Zomba UK. The contracts with Daft Punk and The Delays are also still ongoing with another option (for extension) for Zomba UK. An option means that the publisher has the contractually agreed right to request an extension of the contract which implies that the author has to provide an additional number of works over a certain period of time. It is quite frequent that publisher and author stipulate several options, i.e. rights of extension, in the contract. In 19 Music, the contracts with the three most successful authors (Absoulte, Ray Hedges and Simon Ellis) are still running and 19 Music has another option for the contract with Simon Ellis. The contracts with the three top authors of 19 Songs are also still running, with an option for 19 Songs for one of them.
461. In Zomba U.S., the top [5-15]* authors ([...]*) are still under contract and Zomba U.S has [...]* options for [several]* of them. In Rondor UK, the contract with their top authors, The Kaiser Chiefs, is still ongoing and Rondor UK has at least [...]* to extend the contract. Contracts with Nik Kershaw and Deekay Music (both among Rondor UK's top 10 authors in 2006) and with Sophie Ellis Bextor (whose new album is to be released in [...]* 2007) are still ongoing with [...]*.
462. Moreover, the Remedies Package contains a high number of new authors with the potential to write future chart hits. [30-40]* of BMG's [60-70]* ([40-50]*%) newly signed authors in the United Kingdom since 01.01.2004 have been signed with Zomba UK and they have received advance payments of EUR [0-10]* million ([40-50]*% of all advances paid by BMG in the United Kingdom). Among these authors are Jamie T (advance payments of EUR [...]* and [...]*), Johnny Lipsey/Jony Rockstar (advance payments of EUR [...]* and [...]*), Ed Treacy/"Chopper Harris" (advance payments of EUR [...]* and [...]*), The Delays (advance payments of EUR [...]* and [...]*), M.I.A. (advance payments of EUR [...]* and [...]*), The Altekicks (advance payments of EUR [...]* and [...]*) and The Mystery Jets (advance payments of EUR [...]* and [...]*).
463. Also Zomba U.S. has signed [30-40]* new authors since 2003 and paid them more than US-\$ [0-10]* million from 2003 to 2006. This represents [10-20]*% of all authors signed in

¹⁵¹ It is noteworthy that there are also U.S. authors (e.g. writing for Britney Spears) have signed with Zomba UK.

the U.S. and [10-20]*% of the advances paid in the U.S. in that period. Among those authors are Ron Femster/Neff U (advance payments of US-\$ [...]*) and [...]*), Beau Dozier (advance payments of US-\$ [...]*) and [...]*), Cool & Dre (advance payments of US-\$ [...]*) and [...]*), The Bronx (advance payments of US-\$ [...]*) and [...]*), Brand New (advance payments of US-\$ [...]*) and [...]*), Ne-Yo (advance payments of US-\$ [...]*) and [...]*), T-Pain (advance payments of US-\$ [...]*) and [...]*)

464. These figures illustrate that considerable investments have been made in Zomba, and in particular in Zomba UK, and that the catalogues seem therefore well prepared for continuous success.

2.7 Geographical scope of the Remedies Package

465. The geographical scope of the Remedies Package is limited to the EEA. The catalogues Zomba UK, 19 Songs, 19 Music, BBC catalogue and Rondor UK will be assigned to the purchaser(s) who shall enter into an exclusive licensing agreement with Universal for the licensing back of the copyrights relating to the divested catalogues in respect of exploitation outside the EEA. The copyrights of Zomba U.S. in respect of exploitation in the EEA will be licensed to a purchaser.

466. The Commission considers the limitation of the geographical scope of the Remedies Package to be proportionate. The competition concerns identified by the Commission are confined to the markets for online music publishing rights in a number of EEA countries. In order to remove these competition concerns it is not necessary to prevent Universal from exploiting outside the EEA the music publishing rights contained in the Remedies Package. In the market test, some respondents stated that it would be preferable to have the catalogues divested for a worldwide exploitation. However, several answers to the market test also explained that the worldwide exploitation rights are not necessary for the viability of a catalogue. Many European publishers have conferred the overseas exploitation of their catalogues to foreign publishers either through sub-publishing agreements or in other ways.

467. With respect to the catalogues Zomba UK, 19 Songs, 19 Music, BBC catalogue and Rondor UK, the purchaser(s) will have ownership and control of the divested catalogues and the contractual relationship with the right owners (authors). The licensing back agreement which will transfer the exploitation rights for the areas outside the EEA to Universal will be negotiated at arm's length between the purchaser(s) and Universal and will be reflected in the purchase price of the divestment businesses. The mere receipt of licensing fees from Universal for the exploitation of the divested catalogues outside the EEA is not expected to negatively impact the exploitation of the divested catalogues by the purchaser(s) in the EEA and his/their competitive behaviour vis-à-vis Universal in the EEA. As it is in line with the standard business practice that publishers confer the exploitation of their catalogues in foreign territories to other publishers, the viability of the divested catalogues will not be affected.

468. Regarding Zomba U.S., the licensing agreement allows the purchaser (licensee) to exploit the full catalogue of Zomba U.S. in the EEA. The inclusion of Zomba U.S. strengthens the American repertoire in the Remedies Package and thus responds to the market test. The Commission considers that, under the specific circumstances of the present case, an assignment of this catalogue is not necessary. Zomba U.S. generates only [25-35]*% of its global revenues within the EEA whereas Zomba UK and Rondor UK achieve respectively

[60-70]*% and [70-80]*% of their global revenues within the EEA. In view of this geographical repartition of revenues it is acceptable that Zomba U.S. maintains the contractual relationship with the rights owners (authors) as it will be more familiar with the U.S. markets and negotiations with U.S. authors.

469. The terms of the licence agreement as set out in Schedule 3 of the Commitments will be negotiated at arm's length. Compositions existing at the date of the present decision shall be licensed on a royalty-free basis and be reflected in the purchase price. Thereby the purchaser/licensee will have to make an upfront payment but no more permanent royalty payments for the exploitation of existing works (without prejudice of the necessary payments to be made to authors). This structure should provide strong incentives to the purchaser/licensee to intensively exploit the licensed Zomba U.S. catalogue as he will not have to pass on any parts of the revenues to Universal. In addition, the licence agreement must not restrict the exploitation by the purchaser/licensee except for those restrictions contained in Zomba U.S.' agreements with its authors and licensors. In conclusion, the licence agreement for Zomba U.S. will thus enable the purchaser/licensee to compete effectively with Universal and other publishers in the EEA.

2.8 Conclusion on Remedies

470. In the light of the above the Commission concludes that the Final Remedies Package removes the serious doubts, both under an EEA-wide or national geographic market definition.

IX. CONDITIONS AND OBLIGATIONS

471. Under the first sentence of the second subparagraph of Article 8(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.

472. The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission decision declaring the merger to be compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(5)(b) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2)(d) and 15(1)(c) of the Merger Regulation.

473. In view of the foregoing, this Decision is conditional upon full compliance with the undertaking that the concentration will not be implemented unless and until the parties have signed a binding sales and purchase agreement with one or several purchasers over the Divestment Business pursuant to paragraph 1 of the Commitments and further described in paragraph 4 including Schedules 1 to 7, attached as Annex to this Decision. Furthermore, this Decision is conditional upon full compliance with paragraph 3 of the Commitments. The other parts of the Commitments are obligations.

X. CONCLUSION

474. It is accordingly concluded that the Commitments as set out in the Annex modify the notified concentration to such an extent that the serious doubts of the Commission as to the compatibility of that concentration with the common market are removed. The concentration should, therefore, be declared compatible with the common market pursuant to Article 8(2) of the Merger Regulation and with the EEA Agreement pursuant to Article 57 thereof, subject to compliance with the commitments set out in the Annex which is an integral part of this decision.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Universal Music Group Inc. acquires sole control within the meaning of Article 3(1)(b) of Regulation (EEC) No 139/2004 of the whole of the undertaking BMG Music Publishing is hereby declared compatible with the common market and the EEA Agreement.

Article 2

Article 1 is subject to compliance with the conditions set out in Section B, paragraphs 1, 3 and 4 (including Schedules 1-7) of the final version of the Commitments submitted by the parties on 23 April 2007 (attached as Annex to this Decision).

Article 3

Article 1 is subject to compliance with the obligations set out in the remaining provisions of Section B and in Sections C, D and E of the final version of the Commitments submitted by the parties on 23 April 2007 (attached as Annex to this Decision).

Article 4

This Decision is addressed to:

Universal Music Group, Inc.
1755 Broadway
United States of America - 10019 New
York, NY

Done at Brussels, 22/V/2007

For the Commission
Neelie KROES
Member of the Commission

**Case COMP/M.4404 Universal/BMG Music Publishing
COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Articles 8(2) and 10(2) of Council Regulation No. 139/2004/EC as amended (the “**Merger Regulation**”), Universal Music Group, Inc (the “**Notifying Party**”) hereby provides the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition of BMG MP by the Notifying Party (the “**Notified Concentration**”) compatible with the common market and the EEA Agreement by its decision pursuant to Article 8(2) of the Merger Regulation (the “**Decision**”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by UMG and/or by the ultimate parent company of UMG (i.e. Vivendi S.A.), whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

BMG MP: BMG Music Publishing is the music publishing division of Bertelsmann AG, a German stock corporation with its registered office in Guetersloh, Germany, registered in the commercial register of the local court Guetersloh, Germany, under HR B 3100

Closing: the transfer of the legal title of the Divestment Businesses to the Purchaser.

Divestment Businesses: the business or businesses as defined in Section B and Schedules 1 to 7 that the Notifying Party commits to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Notifying Party, who is approved by the Commission and appointed by UMG and who has received from UMG the exclusive Trustee Mandate to sell the Divestment Businesses to one or several Purchasers at no minimum price.

Effective Date: the date of adoption of the Decision by the European Commission.

First Divestiture Period: the period of **[Business Secret]** months from the Effective Date.

Hold Separate Manager: the person appointed by UMG for the Divestment Businesses to manage the day-to-day business under the supervision of the Monitoring Trustee.

Monitoring Trustee: one or more natural or legal person(s), independent from the Notifying Party, who is approved by the Commission and appointed by UMG and who has the duty to monitor UMG's compliance with the conditions and obligations attached to the Decision.

Notifying Party: the company Universal Music Group, Inc, incorporated under the laws of Delaware, with its registered office at 1755 Broadway, New York, NY 10019, USA and registered with the State of Delaware Division of Corporations under number 2961379

Personnel: personnel listed in Schedule 2

Purchaser: each entity approved by the Commission as acquirer of the Divestment Businesses in accordance with the criteria set out in Section D.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of **[Business Secret]** months from the end of the First Divestiture Period.

UMG: incorporated under the laws of Delaware with its registered office at 1755 Broadway, New York, NY10019 and registered with the State of Delaware Division of Corporations under number 2961379.

Vivendi SA: a French Société Anonyme whose principal place of business is at 42 avenue de Friedland, 75380 Paris, France

Zomba US: the business defined in Schedule 3.

Section B. The Divestment Businesses

Commitment to divest

1. In order to restore effective competition, UMG commits to divest, or procure the divestiture of the Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to a purchaser(s) and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out the divestiture, the Notifying Party commits to find a purchaser(s) and to enter into a final binding sale and purchase agreement for the sale of the Divestment Businesses within the First Divestiture Period. If the Notifying Party has not entered into such an agreement at the end of the First Divestiture Period, the Notifying Party shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Businesses in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.
2. The Notifying Party shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, the Notifying Party has entered into the final binding sale and purchase agreements, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 15 and if the closing of the sale of the Divestment Businesses takes place within a period not exceeding **[Business Secret]** months after the approval of the respective purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, the Notifying Party and its Affiliated Undertakings shall, for a period of **[Business Secret]** years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Businesses, nor solicit writers forming part of the Divestment Businesses in order for them to enter into music publishing agreements for exploitation of their rights within the EEA, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Businesses is no longer necessary to render the proposed concentration compatible with the common market. For the avoidance of doubt, and subject to the terms of the licensing of the Compositions from Zomba US as described in Schedule 3 of these Commitments, this clause shall not apply to any writers or compositions which are the subject of the licence from Zomba US, described in Schedule 3 of these Commitments.

Structure and definition of the Divestment Businesses

4. The Divestment Businesses consist of a number of self standing corporate entities (subject to the collection of copyrights described at Schedule 6 of these Commitments) which contain the

music publishing rights of varying durations, including the rights to future compositions, for a balanced and diverse portfolio of Anglo-American music catalogues, ranging from some of today's most successful authors, back catalogue to evergreen tracks and a number of exciting up and coming authors. The present legal and functional structure of the Divestment Businesses as operated to date is described in Schedules 1 to 7. The Divestment Businesses, described in more detail in the Schedules, include:

- (a) all existing tangible and intangible assets (including all copyrights in musical works ("**Copyrights**") and other intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses. The Purchaser shall enter into an exclusive licensing agreement with UMG or one of its Affiliated Undertakings for the licensing back of the Copyrights relating to the Divestment Businesses in respect of exploitation outside the EEA, the key elements of which will be as follows:
 - (i) the Purchaser will have ownership and control of the Divestment Businesses and the contractual relationship with the rights owner;
 - (ii) the Copyrights will include those currently in existence and those to be delivered under existing agreements and any renewals of those agreements; and
 - (iii) the financial terms will be those negotiated at arms length with the Purchaser and will be reflected in the purchase price of the Divestment Businesses.
- (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Businesses; and
- (c) all contracts, leases, commitments and customer orders of the Divestment Businesses; all customer, credit and other records of the Divestment Businesses (items referred to under (a)-(c) hereinafter collectively referred to as "**Assets**");
- (d) all licences for the popular music Copyrights held by Zomba US in respect of exploitation in the EEA, the key elements of which will be as follows:

- (i) UMG or its Affiliated Undertakings shall have the contractual relationship with the rights owner;
- (ii) The Copyrights will include those currently in existence, and those to be delivered, under existing agreements, and those to be delivered following the exercise of any options provided for under existing agreements; and
- (iii) The financial and other terms will be as set out at Schedule 3 of these Commitments.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, the Notifying Party shall preserve the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular the Notifying Party undertakes:
- (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Businesses;
 - (b) to make available sufficient resources for the development of the Divestment Businesses, on the basis and continuation of the existing business plans;
 - (c) to make best efforts, including appropriate incentive schemes or other benefits (based on industry practice), to encourage the Personnel to remain with that part of the Divestment Businesses described in Schedule 2;
 - (d) to renew options arising in contracts forming part of the Divestment Businesses, where it would be commercially reasonable to do so; and
 - (e) not to transfer any Copyrights out of the Divestment Businesses.

Hold-separate obligations of the Notifying Party

6. The Notifying Party commits, from the Effective Date until Closing, to keep the Divestment Businesses separate from the businesses it is retaining and to ensure that the Personnel and the Hold Separate Manager have no involvement in any business retained and vice versa. The Notifying Party shall also ensure that the Personnel do not report to any individual outside the Divestment Businesses.
7. Until Closing, the Notifying Party shall assist the Monitoring Trustee in ensuring that the Divestment Businesses are managed as distinct and saleable entities separate from the businesses retained by the Notifying Party. The Notifying Party shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Businesses, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Businesses independently and in the best interest of the respective businesses with a view to ensuring their continued economic viability, marketability and competitiveness and their independence from the businesses retained by the Notifying Party.
8. To ensure that the Divestment Businesses are held and managed as separate entities the Monitoring Trustee shall exercise the Notifying Party's rights as shareholder in the Divestment Businesses (except for its rights for dividends that are due before Closing), with the aim of acting in the best interest of the businesses, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Notifying Party's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Notifying Party. Upon request of the Monitoring Trustee, the Notifying Party shall resign as member of the boards or shall cause such members of the boards to resign.

Ring-fencing

9. The Notifying Party shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Businesses, other than in respect of royalty processing, copyright registration and other administration and

accounting services carried out in the ordinary course of business, such services to be overseen by the Monitoring Trustee insofar as they relate to the Divestment Businesses, and other than is necessary for the implementation of the provisions of Schedule 3 in respect of the licensing of the Compositions as described therein. In particular, the participation of the Divestment Businesses in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Businesses. The Notifying Party may obtain information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses or whose disclosure to the Notifying Party is required by law.

Non-solicitation clause

10. The Notifying Party undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Personnel for a period of **[Business Secret]** years after Closing, to the extent that the Personnel are transferred to the Purchaser after closing.

Due Diligence

11. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Businesses, the Notifying Party shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers sufficient information as regards the Divestment Businesses;
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

12. The Notifying Party shall submit written reports in English on potential purchasers of the Divestment Businesses and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
13. The Notifying Party shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an

information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

14. In order to ensure the immediate restoration of effective competition, the purchaser(s), in order to be approved by the Commission, must:
 - (a) be independent of and unconnected to the Notifying Party, subject to paragraph 4(a);
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Businesses as viable and active competitive forces in competition with the Notifying Party and other competitors;
 - (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Businesses (the before-mentioned criteria for the purchaser hereafter the "**Purchaser Requirements**").

15. The final binding sale and purchase agreement or agreements and all ancillary agreements shall be conditional on the Commission's approval. When the Notifying Party has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that each purchaser meets the Purchaser Requirements and that the Divestment Businesses are being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Businesses are being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Businesses without one or more Assets, if this does not affect the viability and competitiveness of the Divestment Businesses after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

16. The Notifying Party shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If the Notifying Party has not entered into a binding sales and purchase agreement(s) for each of the Divestment Businesses one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Notifying Party at that time or thereafter, the Notifying Party shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
17. The Trustee shall be independent of the Notifying Party, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Businesses, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Notifying Party

18. No later than one week after the Effective Date, the Notifying Party shall submit a list of one or more persons whom the Notifying Party proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, the Notifying Party shall submit a list of one or more persons whom the Notifying Party proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 17 and shall include:
 - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and
- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

19. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Notifying Party shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Party shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Notifying Party

20. If all the proposed Trustees are rejected, the Notifying Party shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 16 and 19.

Trustee nominated by the Commission

21. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Notifying Party shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

22. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Notifying Party, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

23. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee the on-going management of the Divestment Businesses with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Notifying Party with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, and the keeping separate of the Divestment Businesses from the business retained by the Notifying Party, in accordance with paragraphs 5 and 6 of the Commitments;
 - (b) supervise the management of the Divestment Businesses as distinct and saleable entities, in accordance with paragraph 7 of the Commitments;
 - (c) (i) in consultation with the Notifying Party and subject to paragraph 9 of the Commitments, determine all necessary measures to ensure that the Notifying Party does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Businesses, and in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses, and (ii) decide whether such information may be disclosed to the Notifying Party as the disclosure is reasonably necessary to allow the Notifying Party to carry out the divestiture or as the disclosure is required by law;

- (d) as applicable, monitor the splitting of assets and the allocation of Personnel between the Divestment Businesses and the Notifying Party or Affiliated Undertakings;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to the Notifying Party such measures as the Monitoring Trustee considers necessary to ensure the Notifying Party's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Businesses, the holding separate of the Divestment Businesses and the non-disclosure of competitively sensitive information;
- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Businesses and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;
- (vi) provide to the Commission, sending the Notifying Party a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Businesses so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending the Notifying Party a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Party is failing to comply with these Commitments;
- (vii) within one week after receipt of the documented proposal referred to in paragraph 15, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Businesses after the Sale

and as to whether the Divestment Businesses are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Businesses without one or more Assets or not all of the Personnel affects the viability of the Divestment Businesses after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Businesses to a purchaser(s), provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement(s) in accordance with the procedure laid down in paragraph 15. The Divestiture Trustee shall include in the sale and purchase agreement(s) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement(s) such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Notifying Party, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
25. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

III. *Duties and obligations of the Notifying Party*

26. The Notifying Party shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Notifying Party's or the Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Notifying Party and the Divestment Businesses shall provide the Trustee upon request with copies of any document. The Notifying Party and the Divestment Businesses shall make

available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

27. The Notifying Party shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. The Notifying Party shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure the Notifying Party shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
28. The Notifying Party shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Notifying Party shall cause the documents required for effecting the sale and the Closing to be duly executed.
29. The Notifying Party shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Party for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
30. At the expense of the Notifying Party, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate,

provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Notifying Party refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Party. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 29 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Notifying Party during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement discharge and reappointment of the Trustee

31. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
 - (a) the Commission may, after hearing the Trustee, require the Notifying Party to replace the Trustee; or
 - (b) the Notifying Party, with the prior approval of the Commission, may replace the Trustee.
32. If the Trustee is removed according to paragraph 31, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-21.
33. Beside the removal according to paragraph 31, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

34. The Commission may, where appropriate, in response to a request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee:

- (i) Grant an extension of the time periods foreseen in the Commitments, or
- (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where the Notifying Party seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall the Notifying Party be entitled to request an extension within the last month of any period.

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duly authorised for and on behalf of
the Notifying Party

23 April 2007

SCHEDULE 1

The Divestment Businesses as operated to date have the following legal and functional structure:

1 The Divestment Businesses are made up of the following companies:

- Zomba Music Publishers Limited
- Newco Limited (as described in Schedule 3)
- Rondor Music (London) Limited
- 19 Music Limited
- 19 Songs Limited
- BMG MP's BBC music publishing catalogue

2 In Schedules 2 to 7 which follow, revenues generated by each catalogue have been reported on the basis of revenues currently passed on to the legal entity in question, within the context of a broader group of local music publishing entities (either BMG MP or UMPG in the UK).

However, actual revenues generated by each of these catalogues are higher than those shown in Schedules 2 to 7 **[Business Secret]**.

SCHEDULE 2 – Zomba Music Publishers Limited

Summary

Zomba Music Publishers Limited (“ZMPL”) is a separate legal entity within BMG Music Publishing. ZMPL has been associated with some of the most successful Anglo American pop acts throughout the 1980s, 1990s, and 2000s, is a very significant and competitive music publishing catalogue, has a huge roster of current successful authors, with an independent, stand-alone creative infrastructure, which generated revenues of **€[5 - 10 million]** in the EEA and **€[10 - 20 million]** globally in 2006.

All staff are currently employed by BMG Music Publishing.

Asset Description

The ZMPL music catalogue consists of the following:

- Cheiron/ Grantsville/ Maratone – the various company names associated with Denniz Pop and Max Martin. Denniz and Max started one of the most successful writer/production teams in pop music history and shaped the modern pop sound of the 1990’s. After Denniz’s untimely death Max has continued to be one of the most in demand pop writers. Artists whose careers have been shaped by Denniz and Max include Britney Spears, The Backstreet Boys, NSYNC, Celine Dion, Westlife and Kelly Clarkson. Collectively they are responsible for 250 million album unit sales worldwide.
- Iron Maiden – one of the UK’s most successful rock bands selling in excess of 80 million records worldwide. Over 15 albums recorded and signed to Zomba Music from the start of their career.
- A Flock Of Seagulls – one of the first signings to Jive Records and one of the first UK bands from the MTV generation to break the US market. Their single ‘I

Ran' was one of the first videos to be championed by MTV and the album that the single was from went on to sell over 1 million units in the US.

- Billy Ocean – for many years Billy was the UK's best selling black artist. Still name checked and highly regarded by many current rap/hip hop stars.
- The Stone Roses – their debut eponymous album was recently voted by readers of the NME as the Greatest Album of All time. The catalogue of only one album for Silvertone Records / ZMPL continues to be one of the biggest earners.
- Mutt Lange – officially the most successful record producer of all time Mutt Lange has been the backbone of the company since its formation. Currently married to Shania Twain, Mutt has co-written her material. She has sold 100 million records worldwide. Other artists that Mutt has written hits for include Billy Ocean, Def Leppard, Bryan Adams, Michael Bolton, Huey Lewis, Billy Ray Cyrus, Heart, Britney Spears, Celine Dion, The Corrs and many more.
- Bruce Springsteen – ZMPL looks after the catalogue of Bruce Springsteen for the UK & Eire.
- Peter Sinfield – ZMPL acquired the catalogue of songwriter Peter Sinfield in 2005. Included are huge hits from Celine Dion 'Think Twice', Cher 'Heart Of Stone' and hits from Leo Sayer, Cliff Richard, Barry Manilow, Diana Ross, Five Star, Bucks Fizz & Gene Pitney. Peter has recently been back in the album charts with his song 'Have You Ever Been In Love' that was originally recorded by Leo Sayer and more recently by Westlife on their million selling 'Love' album.
- Current writers from the company include former BBMak frontman Christian Burns

- Vile Music – ZMPL has the largest catalogue of black/thrash metal in the world through one of its publishing divisions Vile Music. Vile Music signs songwriters introduced to it under a consultancy agreement with a record company run by Paul Halmshaw called Peaceville Records. We control the back catalogue of the trendsetting acts in this genre, such as Paradise Lost, Opeth & Cradle Of Filth and publish some of the hottest new acts in the world of metal including Anathema, Darkthrone, Madder Mortem, Novembre, My Dying Bride, Katatonia, Old & The Provence.
- Other selected highlights include writer Tim Friese Green's share of the Talk Talk song 'Its My Life' recently covered by No Doubt, Twisted Sister 'We're Not Gonna Take It', Jo Boxers 'Just Got Lucky' (featured in several big US movies in 2005/6), Steps '5678', Jona Lewie 'Stop The Cavalry', Gabrielle 'Dreams'.

Current active deals signed to ZMPL include:

- Daft Punk – French dance duo that have sold more than 7 million albums worldwide and have had their music used extensively in advertising including ads for iTunes & Motorola. Currently recording a new album for release later this year.
- Delays – Southampton based band that have released two albums on indie Rough Trade Records and have sold 250K units. The band is now working on a new album due for release 4Q07. They have also been successful in the synch world securing major ad campaigns for Bulldog Broadband, DeBeers Diamonds' & Sprite.

- Jamie T – one of our newer signings, Jamie T released his debut album ‘Panic Prevention’ in January 2007. The album entered at number 4 on the UK album chart and has so far sold 200K units. Jamie was also voted best solo artist at the 2007 NME awards.
- M.I.A – signed to XL Records in the UK and Interscope for America her debut album ‘Arular’ has now sold over 250,000 units worldwide. She has also co-written with Missy Elliot for her last album. M.I.A music has featured in a variety of ads including Honda cars. M.I.A is currently putting the finishing touches to her second album with producer Timbaland (Justin Timberlake/ Nelly Furtado) that is due for release 4Q07.
- Laura Izibor – Dublin based singer songwriter whose debut album is due for release 3Q07.
- The Mystery Jets – one of the most talked about acts on the UK indie scene in 2006. Their debut album ‘Making Dens’ has sold over 100,000 copies and they are currently putting the finishing touches to their second album due 3Q07.
- Nitin Sawhney – highly acclaimed artist and composer who has recently scored his first Hollywood movie ‘The Namesake’ for Fox Pictures. He has scored over 10 international films and provided music for numerous TV shows and ads including the BBC’s Natural World Symphony, and ads for Nike & The Financial Times. He has recently provided the score for the forthcoming Playstation 3 game ‘Heavenly Sword’. As an artist he has released 7 albums in his own right and has collaborated with Sir Paul McCartney.
- The Eagles Of Death Metal (“EODM”) – a side project from Queens Of The Stone Age front man Josh Homme and Jesse Hughes. ZMPL publishes Jesse.

EODM have sold over 200,000 albums sold so far and their music has been used in ads for VW, Budweiser, Wendy's, Microsoft Zune, Nissan and numerous TV shows and films.

- Kate Havnevik – London based Norwegian artist who has had huge success in the US with her music being used in numerous TV shows including The West Wing, The OC, and seven different songs being used in Grey's Anatomy. A total of [Business Secret] TV synchs so far. Kate's debut album 'Melankton' will be released on 27 March.
- Lethal Bizzle – the UK's leading grime MC. His debut album sold 60,000 units. His second album is due for release in May and features collaborations with new buzz acts Kate Nash and Mr Hudson and The Library.
- Alterkicks – a development project who are about to release their debut single. Their album has been produced by the acclaimed producer Stephen Street (The Smiths, Blur) and is set for release 3Q07.
- Chopper Harris – newly signed and currently working on his debut album due later this year.
- Other current signings that are in development are singer songwriter Vijay Kishore, 3 piece guitar band Freerunner and pop rock act Mamas Gun.
- Martin Brammer – Martin has written hits in the past for The Lighthouse Family, Tina Turner, Rachel Stevens & Nick Carter. He currently has several songs on the million selling debut album by James Morrison including the single 'The Pieces Don't Fit' and title track 'Undiscovered'. James Morrison has also recently won a Brit Award. Martin has also co-written five tracks with Beverly Knight for her new album that is due for release at the end of April. Martin has

five cuts on the forthcoming album by Jack MacManus and several cuts on debut act Jonas. He has two songs on debut artist Adam Argyle's album and numerous other songs cut with a whole range of acts including German Pop Idol.

- Jony Rockstar – writer producer known mainly for his work with The Sugababes. He has written several of their biggest hits. Currently working with ex Sugababe Mutya on her debut solo album, he is also writing with Cathy Dennis and Jennifer Lopez for her album. He has cuts on forthcoming albums from Siobahn Donaghy, Leon Jean Marie and Belle.
- Pete Kirtley – Ivor Novello winning pop songwriter who has just enjoyed a huge number 1 hit in Germany with the winners of German PopStars Monrose. The single has been one of the fastest selling ringtones in Germany selling 1.5 million ringtones. Pete had three songs on their number 1 album as well. Pete is currently working with new artist Sarah Jane Davis.

The ZMPL catalogue contains hit songs recorded by many leading contemporary artists:

- Britney Spears - “Hit me baby one more time” – chart #1 in countries including Belgium, Finland, France, Germany, Italy, the Netherlands, Norway and Spain;
- Britney Spears - “Oops I did it again” - #1 in Italy, the Netherlands, Norway and Sweden and top ten in Austria, Belgium, Finland, France and Germany.
- Bryan Adams - “Everything I do...” - #1 in Germany, the Netherlands, Belgium, Austria, Finland, Sweden, Denmark and Norway, amongst other countries.
- Backstreet Boys “I want it that way”, #1 in Portugal, Sweden, Ireland, the Netherlands, Norway, Greece, Austria, Belgium, Finland, Italy, Denmark and Latvia.

- Celine Dion – “That’s the way it is” #1 in Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Latvia, the Netherlands, Norway, Poland, Spain and Sweden.
- Kelly Clarkson “Since You’ve been gone” #1 in the Netherlands, Ireland, Germany and UK.

This list is by no means exhaustive, but gives a flavour of the international success of the songs included in ZMPL’s catalogue.

The following table provides a summary of the financial information over the past three years:

SUMMARY	2004	2005	2006
EEA Revenue (€‘000)	[5,000 - 10,000]	[5,000 - 10,000]	[5,000 - 10,000]
Global Revenue (€‘000) ¹⁵²	[10,000 - 20-000]	[10,000 - 20-000]	[10,000 - 20-000]

¹⁵² See paragraph 4(a) of these Commitments.

1 Following paragraph 4 of these Commitments, the Divestment Businesses include, but are not limited to:

(a) the following main intangible assets:

The main assets are the music publishing rights of varying duration. The following table shows the top 100 copyrights in ZMPL for 2006.

	Title	Composers	Revenue (EUR)
1	SINCE U BEEN GONE	SANDBERG/GOTTWALD	[Business Secret]
2	BEHIND THESE HAZEL EYES	SANDBERG/CLARKSON/GOTTWALD	[Business Secret]
3	OOPS!...I DID IT AGAIN	SANDBERG/YACOUB	[Business Secret]
4	BABY ONE MORE TIME	SANDBERG	[Business Secret]
5	STRONGER	SANDBERG/YACOUB	[Business Secret]
6	I WANT IT THAT WAY	SANDBERG/CARLSSON	[Business Secret]
7	LONG TIME COMING	GILBERT/GILBERT	[Business Secret]
8	POUR SOME SUGAR ON ME	CLARK/COLLEN/LANGE/SAVAGE/ELLIOTT	[Business Secret]
9	OVERPROTECTED	SANDBERG/YACOUB	[Business Secret]
10	COTTON EYE JOE	EDENBERG/ERICSSON/OBERG	[Business Secret]
11	GET OUT OF MY DREAMS, GET INTO MY CAR	LANGE/OCEAN	[Business Secret]
12	U DRIVE ME CRAZY	KREUGER/MAGNUSSON/SANDBERG/ELOFSSON	[Business Secret]
13	THE BEST	CHAPMAN/KNIGHT	[Business Secret]
14	IT'S MY LIFE	FRIESE-GREENE/HOLLIS	[Business Secret]
15	YOU WIN MY LOVE	LANGE	[Business Secret]
16	JUST WANT YOU TO KNOW	SANDBERG/GOTTWALD	[Business Secret]
17	AS LONG AS YOU LOVE ME	SANDBERG	[Business Secret]
18	I'M NOT A GIRL, NOT YET A WOMAN	SANDBERG/YACOUB/ARMSTRONG	[Business Secret]
19	LUCKY	SANDBERG/YACOUB/KRONLUND	[Business Secret]
20	THE NUMBER OF THE BEAST	HARRIS	[Business Secret]
21	RUN TO THE HILLS	HARRIS	[Business Secret]
22	I RAN	MAUDSLEY/REYNOLDS/SCORE/SCORE	[Business Secret]
23	WE'RE NOT GONNA TAKE IT	SNIDER	[Business Secret]
24	I STILL	SANDBERG/YACOUB	[Business Secret]
25	TECHNOLOGIC	BANGALTER/DE HOMEM-CHRISTO	[Business Secret]
26	PLEASE FORGIVE ME	ADAMS/LANGE	[Business Secret]
27	BYE BYE BYE	SCHULZE/LUNDIN/CARLSSON	[Business Secret]
28	THAT'S THE WAY IT IS	SANDBERG/LUNDIN/CARLSSON	[Business Secret]
29	IT'S MY LIFE	BON JOVI/SAMBORA/SANDBERG	[Business Secret]
30	BORN TO MAKE YOU HAPPY	LUNDIN/CARLSSON	[Business Secret]
31	BREATHLESS	CORR/CORR/CORR/LANGE	[Business Secret]
32	ONE MORE TIME	BANGALTER/DE HOMEM-CHRISTO/MOORE	[Business Secret]
33	JUST GOT LUCKY	BALL/BOSTOCK	[Business Secret]
34	LOVE BITES	CLARK/COLLEN/ELLIOTT/SAVAGE/LANGE	[Business Secret]
35	LOVE WILL TEAR US APART	CURTIS/HOOK/MORRIS/SUMNER	[Business Secret]
36	THE ONE	SANDBERG/LITTRELL	[Business Secret]
37	HALLOWED BE THY NAME	HARRIS	[Business Secret]
38	TROOPER, THE	HARRIS	[Business Secret]
39	ROCK OF AGES	CLARK/ELLIOTT/LANGE	[Business Secret]
40	SIBERIA	SANDBERG/TALOMAA/YACOUB	[Business Secret]
41	DON'T LET ME BE THE LAST TO KNOW	LANGE/LANGE/SCOTT	[Business Secret]
42	WHEN THE GOING GETS TOUGH, THE TOUGH GET GOING	EASTMOND/OCEAN/LANGE/BRATHWAITE	[Business Secret]
43	FEAR OF THE DARK	HARRIS	[Business Secret]
44	PHOTOGRAPH	CLARK/ELLIOTT/SAVAGE/WILLIS/LANGE	[Business Secret]
45	WHEN YOU'RE LOOKING LIKE THAT	SANDBERG/CARLSSON/YACOUB	[Business Secret]
46	GALANG	ARULPRAGASAM/FRISCHMANN/MACKEY/ORTON	[Business Secret]
47	EVERYBODY (BACKSTREET'S BACK)	SANDBERG/VOLLE	[Business Secret]
48	KEEP THIS FIRE BURNING	CARLSSON/EKHE/LINDSTROM/SIGVARDT	[Business Secret]
49	ARMAGEDDON IT	CLARK/COLLEN/ELLIOTT/SAVAGE/LANGE	[Business Secret]
50	AROUND THE WORLD	BANGALTER/DE HOMEM-CHRISTO	[Business Secret]
51	SHAPE OF MY HEART	SANDBERG/YACOUB/MISKOVSKY	[Business Secret]
52	OBSESSION	DESBARRES/KNIGHT	[Business Secret]
53	ALL I WANNA DO IS MAKE LOVE TO YOU	LANGE	[Business Secret]
54	ANIMAL	CLARK/COLLEN/ELLIOTT/SAVAGE/LANGE	[Business Secret]
55	HYSTERIA	CLARK/COLLEN/ELLIOTT/SAVAGE/LANGE	[Business Secret]
56	TOUCH IT	SMITH/BANGALTER/DE HOMEM-CHRISTO/DEAN	[Business Secret]
57	TWO MINUTES TO MIDNIGHT	DICKINSON/SMITH	[Business Secret]
58	SOMETIMES	ELOFSSON	[Business Secret]
59	HAVE YOU EVER REALLY LOVED A WOMAN?	ADAMS/KAMEN/LANGE	[Business Secret]
60	FOOL'S GOLD	BROWN/SQUIRE	[Business Secret]
61	SHOW ME THE MEANING	CRICHLAW/SANDBERG	[Business Secret]
62	CARIBBEAN QUEEN (NO MORE LOVE ON THE RUN)	OCEAN/ALEXANDER	[Business Secret]
63	ROCKET	CLARK/COLLEN/ELLIOTT/SAVAGE/LANGE	[Business Secret]
64	FOOLIN'	CLARK/ELLIOTT/LANGE	[Business Secret]
65	(EVERYTHING I DO) I DO IT FOR YOU	ADAMS/KAMEN/LANGE	[Business Secret]
66	5,6,7,8	UPTON/CROSBY	[Business Secret]
67	LET'S GET ROCKED	COLLEN/ELLIOTT/SAVAGE/LANGE	[Business Secret]
68	BRINGIN' ON THE HEARTBREAK	CLARK/ELLIOTT/WILLIS	[Business Secret]
69	FLYING	ADAMS/LANGE	[Business Secret]
70	IT'S GONNA BE ME	SANDBERG/CARLSSON/YACOUB	[Business Secret]
71	STOP THE CAVALRY	LEWIE	[Business Secret]
72	IRON MAIDEN	HARRIS	[Business Secret]
73	THE CALL	SANDBERG/YACOUB	[Business Secret]
74	TOUCH ME (I WANT YOUR BODY)	ASTROP/HARRIS/SHREEVE	[Business Secret]
75	LARGER THAN LIFE	SANDBERG/LITTRELL/LUNDIN	[Business Secret]
76	LET'S MAKE A NIGHT TO REMEMBER	ADAMS/LANGE	[Business Secret]

77	MY LOVE	KREUGER/MAGNUSSON/ELOFSSON/NYLEN	[Business Secret]
78	ROBOT ROCK	WILLIAMS/BANGALTER/DE HOMEM-CHRISTO	[Business Secret]
79	TWO STEPS BEHIND	ELLIOTT	[Business Secret]
80	HAVE YOU EVER NEEDED SOMEONE SO BAD	COLLEN/LANGE/ELLIOTT	[Business Secret]
81	OBJECT OF MY DESIRE	ADEYEMO/ALEXANDER/PHILLIPS	[Business Secret]
82	PHANTOM OF THE OPERA	HARRIS	[Business Secret]
83	IF I LET YOU GO	KREUGER/MAGNUSSON/ELOFSSON	[Business Secret]
84	CLIMBING THE WALLS	SANDBERG/GOTTWALD	[Business Secret]
85	DREAMS	BOBB/LAWS	[Business Secret]
86	QUIT PLAYING GAMES (WITH MY HEART)	CRICHLOW/SANDBERG	[Business Secret]
87	WHEN LOVE & HATE COLLIDE	ELLIOTT/SAVAGE	[Business Secret]
88	I WANNA BE ADORED ('GARAGE FLOWER' ALBUM ONLY)	BROWN/SQUIRE	[Business Secret]
89	DROWNING	CARLSSON/YACOUB/THOMPSON	[Business Secret]
90	WATERFALL	BROWN/SQUIRE	[Business Secret]
91	STILL IN LOVE WITH YOU	LINDMAN/BOSTRIM	[Business Secret]
92	CAN'T STOP THIS THING WE STARTED	ADAMS/LANGE	[Business Secret]
93	ATMOSPHERE	CURTIS/HOOK/MORRIS/SUMNER	[Business Secret]
94	DO YOU BELIEVE IN LOVE	LANGE	[Business Secret]
95	MUSIC SOUNDS BETTER WITH YOU	BANGALTER/QUEME/COHEN/KING/MUSKER	[Business Secret]
96	HOME	YOUNG/SAWHNEY/POOLE	[Business Secret]
97	DANCING IN THE DARK	SPRINGSTEEN	[Business Secret]
98	TELEVISION RULES THE NATION	BANGALTER/DE HOMEM-CHRISTO	[Business Secret]
99	WRATHCHILD	HARRIS	[Business Secret]
100	I AM THE RESURRECTION	BROWN/SQUIRE	[Business Secret]

(b) the following main contracts, agreements, leases, commitments and understandings:

The following table shows the top 10 EEA revenue earning writers for ZMPL in 2006. These contracts are of varying terms and duration.

Top 10 Writers	Total EEA Revenues, 2006 (EUR)
Out of Pocket Productions (Mutt Lange)	[Business Secret]
Iron Maiden	[Business Secret]
Martin Sandberg	[Business Secret]
Daft Punk	[Business Secret]
Bruce Springsteen	[Business Secret]
Def Leppard	[Business Secret]
Fractured Music (Joy Division)	[Business Secret]
Stone Roses	[Business Secret]
Delays	[Business Secret]
Rami Yacoub	[Business Secret]
Mike Chapman Publishing Enterprise	[Business Secret]

(c) It is not anticipated that it would be necessary for arrangements to be put in place for the supply of any necessary services for a transitional period, but UMG or affiliated undertakings would be prepared to agree to supply any such services on arm's length terms, if required by the Commission at the request of the Purchaser, for a reasonable transitional period.

2 The following personnel are currently employed by BMG MP but are dedicated to the ZMPL business:

- (a) **[Business Secret]** (General Manager);
- (b) **[Business Secret]** (A&R Manager); and
- (c) **[Business Secret]** (A&R Manager)

The Notifying Party undertakes to take all reasonable steps and to offer all reasonable incentives to assist in procuring the transfer of these personnel to the Purchaser in the event that the Purchaser wishes to employ these personnel following Closing.

- 3 The Divestment Businesses shall not include the Zomba name. The Zomba name is owned by the SONY BMG record company which uses it in connection with its Zomba record label. The trade name is currently licensed to BMG MP under transitional arrangements, put in place at the time of the creation of the SONY BMG joint venture in 2004 (and which are due to expire in **[Business Secret]**).
- 4 The Divestment Businesses shall not include Strongsongs Limited, a wholly owned subsidiary of ZMPL.
- 5 The Divestment Businesses shall not include ZMPL's production music business.

SCHEDULE 3 – Zomba US

Summary

Zomba US is the popular music publishing business of Zomba Enterprises Inc. (“ZEI”), which is a single corporate entity operating with several divisions: Zomba Songs (BMI) and Zomba Melodies (SESAC), which themselves are divisions of ZEI (ASCAP) (“Zomba US”). On or before the Effective Date, Zomba US shall procure the grant to ZMPL, or a newly incorporated corporate entity formed for the purpose of the divestment (the “Newco”), of licences of all popular music copyrights currently in existence for the EEA and those due to be delivered under existing agreements with Zomba US (the “Compositions”). The Purchaser(s) may elect to purchase either ZMPL together with the Compositions, or the Newco containing the Compositions.

Zomba US produced revenues in 2005 in the EEA of **€5 - 10 million]**. In 2006 these increased to **€5 - 10 million]** in the EEA.

Asset Description

Zomba US operates as a boutique music publisher in the Pop, Rock, and Urban genres. Zomba US’s most notable songwriters include R. Kelly, Linkin Park, Britney Spears, and Justin Timberlake. Additionally, Brentwood-Benson Music Publishing, Bridge Building (BMI), New Spring (ASCAP), and Designer Music (SESAC) are all divisions of ZEI and operate in the Contemporary Christian business. Brentwood-Benson has co-publishing ventures with two of the top Indie labels in this genre, SRE and 7Spin as well as artist Aaron Shust. In addition to the successes of ZMPL signed authors, Zomba US had early success from the growing hip hop scene in which it had a particularly strong position. Ground breaking artists were signed including Whodini, A Tribe Called Quest, featuring the rap group Q-Tip, and a young R&B group called R. Kelly and The Public Announcement. R. Kelly has gone on to become one of the most prolific writer/producers in the last three decades.

The Zomba US catalogue includes acclaimed songwriters, composers and producers including Britney Spears, Justin Timberlake, Linkin Park and Backstreet Boys. Zomba US is also home to an old-school Rap catalogue of hits from KRS-ONE, DJ Jazzy Jeff and the Fresh Prince, Teddy Riley (who has co-written with Michael Jackson); rock and metal hits from Poison and Twisted Sister. Zomba US has recently signed new hit acts in all genres of music including Ne-Yo and T-Pain.

Zomba US has an impressive array of current authors with ongoing delivery commitments.

These authors will continue to contribute valuable songs to the Purchaser. Authors within term, with ongoing obligations include:

- Linkin Park - multi-platinum rock act whose hits include “Breaking The Habit”, which reached the UK charts in 2004, and also charted in Austria, Germany, Ireland, France and the Netherlands; “Crawling”; “One Step Closer”; “Somewhere I Belong”, which charted in 2003 in the UK, Austria, Germany, Belgium, France, Sweden, Norway, Finland and the Netherlands; “Numb” - which was released by Linkin Park as a single in 2003, and reached the charts in the UK, Germany, Belgium, Ireland, Sweden and France; and Numb/Encore, which was a “mash-up” of the original single “Numb” and another original song “Encore” by the rapper Jay-Z song – this was a Grammy award winning song, which charted in the UK, Austria, Belgium, Germany, Ireland, France, Sweden, Norway and the Netherlands. Their first album “Hybrid Theory” has sold 24 million copies since 2000 and their second album “Metora” topped the charts in both the US and the UK. Albums consistently sell four-five million units each. The band’s next album will be released on April 3.

- R. Kelly – one of the most successful R&B/Urban artists of all time. He has had 13 number 1's including "You remind me of something" and "I believe I can fly" (for which he won 3 Grammy Awards in 1998), and has sold over 50 million albums worldwide. He has written/produced number one hits for himself including "Bump N Grind" and "Ignition" which hit number 1 in the UK in 2003, and the top 10 "Down Low" and "I Wish". He has also written songs for other artists such as Michael Jackson's "You Are Not Alone" and B2K "Bump, Bump, Bump". Chart hits in the past three years include "Playa's Only" which hit the UK charts in 2005, as well as charts in Germany, Ireland and France; "So Sexy", which reached the charts in the UK in 2004, "Happy People/U Saved Me" which charted in the UK, Germany and Ireland in 2004; "Step In The Name Of Love/Thoia Thong" which reached number 14 in the UK charts in 2003; and "Snake" which peaked at number 10 in the UK charts, and also charted in Ireland.
- Justin Timberlake - former member of massively successful boy band NSYNC (which holds the record for the highest and the second highest first week album sales) Justin has had an equally successful solo career since 2002, has won 4 Grammy Awards and released 2 solo albums producing over 12 million sales worldwide. Justin has had chart hits such as "Sexyback," which reached number 1 in the UK, Germany, Ireland and Norway in 2006, as well as charting in Austria (number 5), Belgium (number 3), France (number 8), Sweden (number 4), Finland (number 3) and the Netherlands (number 5); "What Goes Around"; "My Love", which reached number 2 in the UK, and also charted in Austria, Germany, Belgium, Ireland, France, Sweden, Finland and the Netherlands; "Cry Me A

River”, which reached number 2 in the UK in 2003, and also charted in Austria, Germany, Belgium, Ireland, France, Sweden, and the Netherlands; and “Like I Like You” which charted in 2003 in the UK, Germany, Ireland, Sweden, Norway, the Netherlands and Spain. Justin’s current album *FutureSex/LoveSounds* has sold over five million copies worldwide since its release in late 2006. Justin is also a co-writer on a number of other artists’ works, including one of the biggest worldwide hits of 2003, “Where Is The Love”, recorded by the Black Eyed Peas (and in which Justin Timberlake is featured in recording the chorus), reached number 1 in the UK, Austria, Germany, Belgium, Ireland, Sweden, Norway and the Netherlands. He wrote/produced current top 30 U.S. singles for Young Jeezy (“Go Getta”) and Bow Wow (“I’m A Flirt”).

- Britney Spears - has sold over 76 million records worldwide, making her the eighth best-selling female artist in American history. She has won a Grammy award and had 7 of her singles reach number 1 in the World Charts. Britney is also the only female in music history to have her first 4 studio albums debut at number 1. Hits include “Baby One More Time”, “Oops!.. I Did It Again”, “I’m A Slave 4 U” and “Me Against The Music.” Recent chart successes in the UK include “My Prerogative” which peaked at number 3 in 2004 in the UK, and charted in Austria, Germany, Belgium, Ireland (number 1), France, Sweden, Norway (number 1), and Finland; and “Me Against the Music”, which peaked in the UK at number 2 in 2003, and which also charted in Austria, Germany, Belgium, Ireland (number 1), France, Sweden, Norway, and Finland.

- Shania Twain - pop/country superstar whose hits – most co-written by Mutt Lange whose catalogue is published by ZMPL – include the number one and top 10 hits “You’re Still The One,” “Man! I Feel Like A Woman,” “From This Moment On” and “That Don’t Impress Me Much”.
- Ne-Yo - R&B/pop artist whose top hits include “So Sick”, which reached number 5 in the UK charts in 2006, and also charted in Germany, Ireland, France and the Netherlands; and “Sexy Love”, which reached number 1 in the UK in 2006, and also charted in Austria, Germany, Belgium, Ireland, France, Norway and the Netherlands. Ne-YO is also a sought-after writer/producer for other artists including number one hits for Beyonce “Irreplaceable”, which reached number 4 in the UK charts, and also charted in Austria, Germany, Belgium, Ireland, France, Sweden and the Netherlands; Mario “Let Me Love You”, which reached number 2 in the UK in 2005, and number 1 in Germany and Sweden; Rihanna “Unfaithful”, which reached number 2 in the UK, Austria, Germany, Ireland and Norway ; as well as Whitney Houston and Enrique Iglesias. Ne-Yo’s first debut album “In my own words” reached number 1 on the Billboard 200 in 2006, in the same week as his second single from that album “So Sick” reached number 1 in the Billboard Hot 100.
- Korn - multiplatinum rock group whose hits include “Freak On A Leash” and “Falling Away From Me”. Korn have sold over 30 million records worldwide, have had two number 1 albums in the US and have won 2 Grammys. Recent hits in Europe include “Coming Undone”, which charted in the UK in 2006, Germany and Ireland; “Twisted Transistor”, which charted in 2005 in the UK, Austria, Germany and Ireland; and “Did My

Time”, which charted in 2003, in the UK, Austria, Germany, Ireland and Sweden.

- Limp Bizkit - rock/rap multiplatinum group fronted by Fred Durst, Limp Bizkit have sold over 30 million albums worldwide, two of which reached number 1 in the US. Hits include “Nookie,” “Rollin” and “My Generation”, Recent singles chart successes also include “Eat You Alive”, which reached the UK chart in 2003, and also charted in Austria, Germany, Ireland and Sweden.
- Bowling For Soup - punky power pop group whose songs include “1985” and “Girl All The Bad Guys Want”, and UK chart hits “Almost” from 2005, and “Punk Rock 101” from 2003.
- Macy Gray - R&B/soul singer whose hits include “I Try.”, and “When I See You” (UK chart hit in 2003) and who is due to release a new album in 2007.
- Nas - rap pioneer whose most recent album *Hip Hop Is Dead* debuted at number one on the U.S chart. Hits include “I Can”, “If I Ruled The World” and “Hate Me Now”, while UK chart successes include “Bridging the Gap” (2004), “I Can”, and “Made You Look” (2003).
- 30 Seconds to Mars - platinum rock group fronted by Jared Leto. Their recent single “The Kill” spent over 50 weeks on the rock singles chart.
- Donald Lawrence - award-winning Gospel singer and writer/producer who has also crossed over into the pop world.

- Backstreet Boys - leading boy band pop group of the late 1990s whose hits include “Tearin’ Up My Heart,” “As Long As You Love Me,” “I Want It That Way” and “Incomplete.”
- Mike Shonoda is a member of bands Linkin Park and Fort Minor. Fort Minor won Ringtone of the Year for “Where’d You Go” at the MTV VMA’s in 2006 and their debut album has sold over 350,000 copies.
- Andrae Crouch - leading Gospel artist over the past three decades. Key titles include “He Is The Light,” “God Still Loves Me” and “Mercy.” Crouch has collaborated with important artists including Ce Ce Winans and Michael Omartian.
- Writer/producers include KNS (who has written for Kylie Minogue and songs in the movie *Happy Feet*), Ron ‘Neff-U’ Feemster (Ne-Yo, 50 Cent, The Game), Cool & Dre (50 Cent, The Game), Beau Dozier (Joss Stone, Avant, JoJo) and Steve Huff (Avant, Ron Isley, Joe).
- Development rock acts include Mutemath, Flyleaf, Saliva and The Crew.
 - Mudvayne Music – winners of the MTV2 Award for their single “Dig” in 2001 and their single “Happy?” was number 1 in the US Mainstream Rock Chart for one week in 2005. Mudvayne have been nominated for 3 Grammys.
 - Eamon Doyle - Eamon’s debut single “Fuck It (I don’t want you back)” reached number 1 in the UK, Australia, New Zealand, The Netherlands and Sweden, with his debut album “I Don’t Want You Back” making the Top 10 in the Billboard 200.

- Other authors still in term include Petey Pablo (who has recorded 3 albums and 9 singles, and featured on Ciara’s number 1 single “Goodies”), Lawrence Parker, Poison (have had 3 top 5 albums in the US), and Jolyon Skinner, and Andrew Gold (best known for his singles “Lonely Boy” (Top 10) and “Thank you for Being a Friend”).

The current authors listed above have generated an immense and impressive catalogue, as many have been signed to Zomba US for **[Business Secret]** or even over **[Business Secret]** years, and Zomba US holds music publishing rights for the life of copyright over the vast majority of these works.

Even on top of this catalogue from current writers, there is additionally a large back catalogue of important works by the following authors:

- Teddy Riley - a producer and artist of early hip-hop and “New Jack Swing” including Joe’s “Stutter” and Blackstreet’s “No Diggity,” which both reached number one on the pop and R&B charts. He has also written/produced songs for Mary J. Blige, Keith Sweat, Johnny Kemp, Michael Jackson and Al B. Sure. Works from 1992 to 2004 are covered in the Zomba US catalogue.
- Buddy Guy a blues legend whose 1960s classics include “Let Me Love You Baby,” “Ten Years Ago,” “Stone Crazy,” “My Time After A While,” “Leave My Girl Alone” and “No Lie.”
- Cowboy Junkies the rock band whose sound is rooted in country and blues. Hits include “Misguided Angel”.

- DJ Jazzy Jeff & The Fresh Prince, Will Smith’s rap duo with DJ Jazzy Jeff. Hits include top 5 “Summertime,” top 20 “Parents Just Don’t Understand” and “Girls Ain’t Nothing But Trouble”.
- Digital Underground the funky rap group whose hits include “The Humpty Dance”.
- Full Force with major hits for Lisa Lisa and Cult Jam including “Head To Toe,” “Lost In Emotion,” “All Cried Out” and “I Wonder If I Take You Home,” which was sampled on the 2005 Black Eyed Peas top five hit “Don’t Phunk With My Heart”.
- Forceful Music And Mokojumbi Music (Full Force). Full Force have written and produced songs for Britney Spears, James Brown, Cult Jam, Backstreet Boys and La Toya Jackson. They also produced Rihanna’s hit “Let Me” and the Black Eyes Peas hit “Don’t Phunk with my Heart”, which reached number 3 in the UK, and charted in Austria, Belgium, Germany, Ireland, France, Sweden and Norway (number 1).

The following table provides a summary of the financial information for the Zomba US catalogue over the past three years:

SUMMARY	2004	2005	2006
EEA Rev (€’000)	[5,000 - 10,000]	[5,000 - 10,000]	[5,000 - 10,000]

1 Following paragraph 4 of these Commitments, the Divestment Businesses include, but are not limited to:

(a) the following main intangible assets:

The main assets are the music publishing rights of varying duration. The following table shows the top 100 copyrights in the Zomba US catalogue for 2006.

	Title	Composers	Revenue (EUR)
1	STORCH/TIMBERLAKE/MOSLEY	CRY ME A RIVER	[Business Secret]
2	DOYLE/PASSY/ROBINSON	I DONT WANT YOU BACK	[Business Secret]
3	KELLY	HAPPY PEOPLE	[Business Secret]
4	STORCH/SMITH/HOUFF	LET ME LOVE YOU	[Business Secret]
5	KELLY	IGNITION	[Business Secret]
6	KELLY	BUMP 'N' GRIND	[Business Secret]
7	WEAVER JR./PROCTOR/LAYTON	COME IN HARD	[Business Secret]
8	HUGO/WILLIAMS/TIMBERLAKE	ROCK YOUR BODY	[Business Secret]
9	ZEKKARIYAS/ZEKKARIYAS	TEARDROPS	[Business Secret]
10	FARRELL/BOURDON/SHINODA/DELSON/BEN	NUMB	[Business Secret]
11	KELLY	I BELIEVE I CAN FLY	[Business Secret]
12	TAYLOR/MUHAMMAD/YANCEY/FAREED/FINDLAY/CA	IF EVERYBODY LOOKED THE SAME	[Business Secret]
13	STONE/DOZIER/DOZIER	SPOILED	[Business Secret]
14	TYSON/WARD	BLACK VELVET	[Business Secret]
15	MAY/TIMOTHY/WILLIAMS/JAMES	STRINGS OF LIFE (STRONGER ON MY OWN)	[Business Secret]
16	HUGO/WILLIAMS/TIMBERLAKE	LIKE I LOVE YOU	[Business Secret]
17	TIMBERLAKE/PINEDA/GOMEZ/FRATANTUNO/ADAMS	WHERE IS THE LOVE?	[Business Secret]
18	KELLY	TRAPPED IN THE CLOSET (CHAPTER 1 OF 5)	[Business Secret]
19	MAY/JAMES	STRINGS OF LIFE	[Business Secret]
20	KELLY	OUTRAGEOUS	[Business Secret]
21	BRATHWAITE/EASTMOND/LANGE/OCEAN	WHEN THE GOING GETS TOUGH, THE TOUGH GET GOING	[Business Secret]
22	KELLY	YOU ARE NOT ALONE	[Business Secret]
23	BOURDON/SHINODA/DELSON/BENNINGTON/HAHN	ENTH E ND	[Business Secret]
24	HANKERSON/KELLY	SHE'S GOT THAT VIBE	[Business Secret]
25	GRIFFIN/RILEY/BROWN	MY PREROGATIVE	[Business Secret]
26	ADEYEMO/ALEXANDER/PHILLIPS	OBJECT OF MY DESIRE	[Business Secret]
27	BOURDON/SHINODA/DELSON/HAHN/BENNINGTON	ONE STEP CLOSER	[Business Secret]
28	FEEMSTER/ARGSHEBEN	HERE I GO AGAIN	[Business Secret]
29	BORLAND/DEAN/DIMANT/DURST/OTTO/RIVERS	ROLLIN' (AIR RAID VEHICLE)	[Business Secret]
30	GOLD	NEVER LET HER SLIP AWAY	[Business Secret]
31	BAKER/JACKSON/FELDER/LYON/VALENZANO/TAY	HATE IT OR LOVE IT	[Business Secret]
32	GOLD	LONELY BOY	[Business Secret]
33	HUGO/WILLIAMS/TIMBERLAKE	SENorITA	[Business Secret]
34	FARRELL/BOURDON/SHINODA/DELSON/BENNINGT	BREAKING THE HABIT	[Business Secret]
35	BOURDON/SHINODA/DELSON/HAHN/BENNINGTON	POINTS OF AUTHORITY	[Business Secret]
36	DALL/MICHAELS/JOHANNESON/ROCKETT	EVERY ROSE HAS ITS THORN	[Business Secret]
37	DUDLEY/FLINT/HORN/HOWLETT/JECZALIK/DEAL/	FIRESTARTER	[Business Secret]
38	GEORGE/BEDEAU/CHARLES/CLARKE/GEORGE/GEOR	MOVE YA BODY	[Business Secret]
39	FROMM/LINZER/FranZEL	I DON'T WANNA SPEND ONE MORE CHRISTMAS WITHOUT YOU	[Business Secret]
40	DAVIS/SHAFFER/SILVERIA/ARVIZU/WELCH	DID MY TIME	[Business Secret]
41	BOURDON/SHINODA/DELSON/HAHN/BENNINGTON	PAPERCUT	[Business Secret]
42	FARRELL/BOURDON/SHINODA/DELSON/BENNINGT	LYING FROM YOU	[Business Secret]
43	KIERULE/SCHWARTZ	MY ONLY WISH (THIS YEAR)	[Business Secret]
44	GUPPY/RILEY/BROWN/REYES/BELLE	TWO CAN PLAY THAT GAME	[Business Secret]
45	OCEAN/ALEXANDER	EUROPEAN QUEEN	[Business Secret]
46	DAVIS/ARVIZU/WELCH/SHAFFER/SILVERIA	FALLING AWAY FROM ME	[Business Secret]
47	KELLY	TRAPPED IN THE CLOSET (PART 1)	[Business Secret]
48	FARRELL/BOURDON/SHINODA/DELSON/BENNINGT	FAINT	[Business Secret]
49	FARRELL/BOURDON/SHINODA/DELSON/BENNINGT	SOMEWHERE I BELONG	[Business Secret]
50	HUTCHINS/SMITH/CARDENAS SR.	SUMMERTIME	[Business Secret]
51	RENN/WRIGHT/SMITH	CHRISTMAS TIME	[Business Secret]
52	HUGO/WILLIAMS/TIMBERLAKE	GIRLFRIEND	[Business Secret]
53	KELLY	ONE MORE CHANCE	[Business Secret]
54	KELLY	YOUR BODY'S CALLIN'	[Business Secret]
55	BOLTON/GOLDMARK	SOUL PROVIDER	[Business Secret]
56	GEORGE/BEDEAU/CHARLES/CLARKE/GEORGE/GEOR	ALL I HAVE TO GIVE	[Business Secret]
57	FEEMSTER/UNKNOWN WRITER	COULDN'T SAY NO	[Business Secret]
58	DACHTLER	SHATTERED DREAMS	[Business Secret]
59	SMITH/FEEMSTER	SIGN ME UP	[Business Secret]
60	SMITH/JEFFERSON/BARRETT III	FREEK-A-LEEK	[Business Secret]
61	KELLY	NEXT TO YOU	[Business Secret]
62	WRITER UNKNOWN/FEEMSTER	HERE I GO	[Business Secret]
63	GOLD/GOULDMAN	BRIDGE TO YOUR HEART	[Business Secret]
64	HAMILTON/DIXON	STUTTER	[Business Secret]
65	BOURDON/SHINODA/DELSON/HAHN/BENNINGTON	CRAWLING	[Business Secret]
66	MCPHERSON/RUSSELL/HUGHES/MARTINEZ	MAKE IT UP WITH LOVE	[Business Secret]
67	MITCHELL/KELLY	SO SEXY	[Business Secret]
68	KELLY	IF I COULD TURN BACK THE HANDS OF TIME	[Business Secret]
69	GREGGS/RALPH/CHASEZ	SOME GIRLS (DANCE WITH WOMEN)	[Business Secret]
70	SERMON/SMITH	RIGHT NOW	[Business Secret]
71	KELLY	U SAVED ME	[Business Secret]
72	DAVIS/SHAFFER/SILVERIA/ARVIZU/WELCH	Y'ALL WANT A SINGLE	[Business Secret]
73	KELLY/MORGAN	SNAKE	[Business Secret]
74	HANNIBAL/RILEY/STEWART/VICK/WALTERS/WIT	NO DIGGITY	[Business Secret]
75	BENNINGTON/BOURDON/DELSON/FARRELL/HAHN/S	FROM THE INSIDE	[Business Secret]
76	KELLY/SMITH	BUMP, BUMP, BUMP	[Business Secret]
77	BOUCHET/DAVIS/BLACKMON	THINGS AIN'T THE SAME	[Business Secret]
78	KELLY/STORCH/TAYLOR	PLAYA'S ONLY	[Business Secret]
79	O'BRIEN/STEWART/NKHEREANYE/SPEARS/NASH/	ME AGAINST THE MUSIC	[Business Secret]
80	KELLY	THE TRUTH	[Business Secret]
81	DACHTLER	TURN BACK THE CLOCK	[Business Secret]
82	SMITH/TOWNES	FRESH PRINCE OF BEL AIR, THE	[Business Secret]
83	KELLY	MAKE YOU MY BABY	[Business Secret]
84	KELLY	STEP IN THE NAME OF LOVE	[Business Secret]
85	KELLY	I'M YOUR ANGEL	[Business Secret]
86	MYERS/BAKER/WILLIAMS	EVERY DAY I LOVE YOU	[Business Secret]
87	DAVIS/ARVIZU/WELCH/SHAFFER/SILVERIA	HERE TO STAY	[Business Secret]
88	WHITE	FROM THE BOTTOM OF MY BROKEN HEART	[Business Secret]
89	JONES/REMI/HAMMOND	I CAN	[Business Secret]

90	RILEY/JACKSON	IN THE CLOSET	[Business Secret]
91	KAYE/MONTENEGRO/SMITH/TOWNES	GIRLS AIN'T NOTHIN' BUT TROUBLE	[Business Secret]
92	KELLY	SEX IN THE KITCHEN	[Business Secret]
93	KELLY	THE WORLD'S GREATEST	[Business Secret]
94	DIAMOND/CARLSSON/DOROUGH	WHAT MAKES YOU DIFFERENT (MAKES YOU BEAUTIFUL)	[Business Secret]
95	WEAVER JR./SIMONS/ROWLANDS	BLOCK ROCKIN' BEATS	[Business Secret]
96	DEAL	CANNONBALL	[Business Secret]
97	WILLIAMS/BRITO	ALL OVER LOVE	[Business Secret]
98	MASCIS	FREAK SCENE	[Business Secret]
99	OCEAN/ALEXANDER	SUDDENLY	[Business Secret]
100	BURKS/FARRELL/BOURDON/SHINODA/DELSON/BE	JIGGA WHAT / FAINT	[Business Secret]

(b) the following main contracts, agreements, leases, commitments and understandings:

The following table shows the top 10 EEA revenue earning writers of Zomba US, together with EEA revenues in 2006.

Name	Total EEA Revenues in 2006 (EUR)
LINKIN PARK	[Business Secret]
KELLY, ROBERT (PUBLISHING)	[Business Secret]
JUSTIN TIMBERLAKE (TENNMANN TUNES)	[Business Secret]
SPEARS, BRITNEY DBA BRITNEY SPEARS MUSIC	[Business Secret]
LIMP BIZKIT DBA BIG BIZKIT MUSIC	[Business Secret]
DOYLE, EAMON DBA E CONTROVERSY	[Business Secret]
KORN	[Business Secret]
RILEY, TEDDY	[Business Secret]
FORCEFUL MUSIC AND MOKOJUMBI MUSIC	[Business Secret]
FEEMSTER, THERON PKA RON FEEMSTER	[Business Secret]

The Compositions shall be licensed on the following terms:

- (i) the territory of the Licence will be the EEA (the "Territory");
- (ii) the term of the Licence will be for the entire period of the rights Zomba US has for the Compositions in the Territory;
- (iii) the financial and other terms will be those negotiated at arm's length with the purchaser of ZMPL or Newco, as the case may be. However, Compositions existing at the Effective Date shall be licensed on a royalty-free basis (although the financial benefit to the purchaser of ZMPL (or, Newco, as the case may be) shall be reflected in the purchase price), subject to the purchaser being responsible to Zomba US for all royalty payments due to writers in respect of the Compositions. All Compositions due to be delivered in the future under existing agreements with Zomba US and those to be delivered following the exercise of any options provided for under those existing agreements shall be the subject of a separate royalty payment from the purchaser of ZMPL (or Newco, as the case may be) to Zomba US, to be agreed on arm's length commercial terms, which shall include royalty payments due to writers in respect of those compositions; and
- (iv) there will be no restrictions on exploitation of the Compositions by the Purchaser except for those contained in Zomba US' song-writer, administration and sub-publishing agreements with its writers and licensors.

- (c) It is not anticipated that it would be necessary for arrangements to be put in place for the supply of any necessary services for a transitional period, but UMG or affiliated undertakings would be prepared to agree to supply any such services on arm's length terms, if required by the Commission at the request of the Purchaser, for a reasonable transitional period.
- 3 The Divestment Businesses shall not include the Zomba name. The Zomba name is owned by the SONY BMG record company which uses it in connection with its Zomba record label. The trade name is currently licensed to BMG MP under transitional arrangements, put in place at the time of the creation of the SONY BMG joint venture in 2004 (and which are due to expire in **[Business Secret]**).
- 4 The Divestment Businesses shall not include ZEI's production music business.

SCHEDULE 4 – 19 Music Limited

Summary

19 Music Limited (“19 Music”) is a separate legal entity within BMG Music Publishing. In 2005, 19 Music’s total EEA revenues were **€(< 1 million]** and global revenues were **€(< 1 million]**.

The 19 Music catalogue is one of the most important UK-based pop catalogues in the last ten years. It comprises chart hits which continue to generate high revenues, such as songs from: Culture Club (including “Karma Chameleon”), Spice Girls (“Who do you think you are?”), B*Witched, S Club 7, Emma Bunton (Baby Spice) and Geri Halliwell (Ginger Spice). It also includes repertoire for reality television programmes, e.g. the Pop Idol repertoire.

The 19 Music and 19 Songs (see Schedule 5 below) catalogues include repertoire from the Spice Girls which charted as number 1 in many countries in Europe as well as from other authors which have featured in charts in both UK and continental European countries for a number of weeks, such as S Club 7, B*Witched, Boyzone and successful acts arising from reality TV shows around the EEA. Specific chart hits include:

- Spice Girls – Spiceworld - chart position # 1, sold over 10 million worldwide
- Stop (Absolute 50%) - chart position #2
- Too Much (Absolute 50%) – chart position #1
- Spice Girls – Spice - chart position # 1, sold 3 million worldwide
- Who Do You Think You Are (Absolute 50%) - chart position #1
- Boyzone – Said and Done - chart position UK #1, 900K worldwide
- Key To My Life (Ray Hedges 25%) - chart position #3
- Coming Home Now (Ray Hedges 25%) - chart position #4
- Boyzone – A Different Beat - chart position UK #1, 900K worldwide
- A Different Beat (Ray Hedges 20%) - chart position #1
- Isn't It A Wonder (Ray Hedges 33.33%) – chart position #2
- Will Young – From Now On – chart position UK # 1, sold 600K UK
- You And I (Johnsons 50%/ Peden 50%) – chart position #2
- S Club 7 – 7 - chart position UK # 1, sold 900K UK
- Never Had A Dream Come True (Simon Ellis 50%) – Chart Position # 1

- S Club 7 – S Club - chart position UK # 2, sold 600K UK
- Bring It All Back (Steelworks 53.32%) – chart position # 1
- Two In A Million (Simon Ellis 50%) – chart position # 2
- S Club 7 – Sunshine - chart position UK # 3, sold 600K UK
- You (Steelworks 50%) – chart position # 2
- Don't Stop Movin (Simon Ellis 50%)' – chart position # 1
- S Club 7 – Seeing Double - chart position UK # 17, sold 600K UK
- Love Ain't Gonna Wait For You (Simon Ellis 50%) – chart position # 2
- Alive (Simon Ellis 50%) – chart position # 5
- S Club Juniors – Together – chart position UK # 5, sold 600K UK
- Automatic High (Jewels & Stone 25%) - chart position #2
- B*Witched – B*Witched – chart position UK #3 / US #12, 600K UK
- C'est La Vie (Ray Hedges 27%) – chart position #1 / US #9
- Rollercoaster (Ray Hedges 28.33%) – chart position #1
- To You I Belong (Ray Hedges 33.33%) - chart position #1
- Blame It On The Weatherman (Ray Hedges 25%) – chart position #1
- B*Witched – Awake and Breathe – chart position #5, 300K UK
- Jesse Hold On (Ray Hedges 25%) – chart position# 4
- Billie Piper – Walk of Life - chart position # 14, sold 60K worldwide
- Day And Night (Steelworks 40%) - chart position #1

The following table provides a summary of the financial information over the past three years:

SUMMARY	2004	2005	2006
EEA Rev (€'000)	[< 1,000]	[< 1,000]	[< 1,000]
Global Revenue (€ '000) ¹⁵³	[< 1,000]	[< 1,000]	[< 1,000]

1 Following paragraph 4 of these Commitments, the Divestment Businesses include, but are not limited to:

(a) the following main intangible assets:

¹⁵³ See paragraph 4(a) of these Commitments.

The main assets are the music publishing rights of varying duration.
The following table shows the top 100 copyrights in 19 Music for 2006.

	Title	Composers	Revenue (EUR)
1	KARMA CHAMELEON	PICKETT/CULTURE CLUB	[Business Secret]
2	DON'T STOP MOVING	LEE/SPEARRITT/MCINTOSH/CATTERMOLE/O'MEAR	[Business Secret]
3	WHO DO YOU THINK YOU ARE	WILSON/WATKINS/SPICE	[Business Secret]
4	ONE STEP CLOSER	PERCY/LEVER/DENNIS	[Business Secret]
5	HANG UP	WILSON/WATKINS/ACKERMAN	[Business Secret]
6	AIN'T SUCH A BAD PLACE TO BE	MACKICHAN/POOLE	[Business Secret]
7	A PICTURE OF YOU	WILSON/WATKINS/KENNEDY/KEATING	[Business Secret]
8	STOP	WILSON/WATKINS/SPICE	[Business Secret]
9	NAKED	WILSON/WATKINS/SPICE	[Business Secret]
10	NEVER HAD A DREAM COME TRUE	ELLIS/DENNIS	[Business Secret]
11	SOMETHING KINDA FUNNY	WILSON/WATKINS/SPICE	[Business Secret]
12	LAST TIME LOVER	WILSON/WATKINS/SPICE	[Business Secret]
13	BREATHE	BALL/MINOGUE/VAUK	[Business Secret]
14	STONED IN LOVE	BUTLER/HEDGES/PICKERING/BRACEGIRDLE	[Business Secret]
15	TOO MUCH	WILSON/WATKINS/SPICE	[Business Secret]
16	CHICCO LATINO	WILSON/WATKINS/HALLIWELL	[Business Secret]
17	BRING IT ALL BACK	PERCY/LEVER/KENNEDY/S CLUB 7	[Business Secret]
18	DON'T GIVE UP	HEDGES/BRACEGIRDLE/ADAMS	[Business Secret]
19	THE LADY IS A VAMP	WILSON/WATKINS/SPICE	[Business Secret]
20	LOOK AT ME	WILSON/WATKINS/HALLIWELL	[Business Secret]
21	DO IT	WILSON/WATKINS/SPICE	[Business Secret]
22	DENYING	WILSON/WATKINS/SPICE	[Business Secret]
23	EVERYBODY WANTS YOU	WILSON/WATKINS/ACKERMAN	[Business Secret]
24	LOVE AIN'T GONNA WAIT FOR YOU	ELLIS/SOLOMON	[Business Secret]
25	SALSOUL NUGGET (IF U WANNA)	SIDOLI/MORRISON/SIGLER/HARRIS/TYSON/FELD	[Business Secret]
26	LIFT ME UP	WILSON/WATKINS/HALLIWELL/ACKERMAN	[Business Secret]
27	SALT WATER	HEDGES/BRENNAN/BRACEGIRDLE/BRENNAN	[Business Secret]
28	PERFECT CHRISTMAS	ELLIS/DENNIS	[Business Secret]
29	DON'T MISTAKE ME	WILSON/WATKINS/ACKERMAN	[Business Secret]
30	BRING THE HOUSE DOWN	WILSON/WATKINS/ACKERMAN	[Business Secret]
31	ALIVE AGAIN	HEDGES/BRACEGIRDLE/ACKERMAN	[Business Secret]
32	IT'S ALRIGHT	PERCY/LEVER/KENNEDY/WOODCOCK	[Business Secret]
33	C'EST LA VIE	HEDGES/BRANNIGAN/ACKERMAN/B*WITCHED	[Business Secret]
34	GOOD THING	HEDGES/BUTLER/MARSH/FOSTER,SULLIVAN/SHA	[Business Secret]
35	DON'T GO BELIEVING	HEDGES/BUTLER/MARSH/FOSTER,SULLIVAN/SHA	[Business Secret]
36	CROSS MY HEART	WILSON/WATKINS/ACKERMAN	[Business Secret]
37	BACK FOR MORE	ELLIS/SHEYNE	[Business Secret]
38	IT'S A MIRACLE	PICKETT/CULTURE CLUB	[Business Secret]
39	BLAME IT ON THE WEATHERMAN	HEDGES/BRANNIGAN/ACKERMAN/CAINE	[Business Secret]
40	EAST SIDE STORY	HEDGES/BRACEGIRDLE/ADAMS/PETERS	[Business Secret]
41	ALIVE	ELLIS/SOLOMON	[Business Secret]
42	WHEN THE LIGHTS GO OUT	PERCY/LEVER/KENNEDY/MCLAUGHLIN/FIVE	[Business Secret]
43	BEDTIME STORY	HOOPER/DE VRIES/BJORK	[Business Secret]
44	NO ORDINARY MORNING	HEDGES/BRACEGIRDLE	[Business Secret]
45	YOU	LEVER/PERCY/KENNEDY/WOODCOCK	[Business Secret]
46	BEST OF MY LOVE	ELLIS/ROBBINS	[Business Secret]
47	BAG IT UP	WILSON/WATKINS/HALLIWELL	[Business Secret]
48	ALL THE WOMAN	WILSON/WATKINS/ACKERMAN	[Business Secret]
49	ISOBEL	HOOPER/DE VRIES/BJORK/SIGURDSSON	[Business Secret]
50	CHECKIN' IT OUT	BUTLER/HEDGES/OSBORNE/HARDMAN	[Business Secret]
51	2 IN A MILLION	ELLIS/DENNIS	[Business Secret]
52	PRETTY PIECE OF FLESH	DE VRIES/HOOPER/WARFIELD	[Business Secret]
53	WITHOUT YOU	WILSON/WATKINS/MAY	[Business Secret]
54	AUTUMN TACTICS	HEDGES/BRACEGIRDLE	[Business Secret]
55	IMPOSSIBLE	WILSON/WATKINS/ACKERMAN	[Business Secret]
56	MOVE AWAY	PICKETT/CULTURE CLUB	[Business Secret]
57	UNSPEAKABLE	ELLIS/LEWIS/DIOGUARDI	[Business Secret]
58	LAST ONE STANDING	LEVER/PERCY/KENNEDY/MERRILL/GIRLTHING	[Business Secret]
59	SPICE INVADERS	WILSON/WATKINS/SPICE	[Business Secret]
60	MISS YOU	DENNIS/KENNEDY/LINCOLN	[Business Secret]
61	FEEL THE FEAR	WILSON/WATKINS/HALLIWELL	[Business Secret]
62	STRONGER	ELLIS/MOLLOY/S CLUB 7	[Business Secret]
63	TOGETHER	HEDGES/BRANNIGAN/KEATING	[Business Secret]
64	TAKE ME HOME	WILSON/WATKINS/SPICE	[Business Secret]
65	LOVE IS GONNA GET YA	WOODCOCK/LEVER/PERCY/KENNEDY	[Business Secret]
66	SO GOOD	GRAHAM/HEDGES/BRANNIGAN/KEATING/GATELY/L	[Business Secret]
67	COMING HOME NOW	GRAHAM/HEDGES/BRANNIGAN/KEATING/GATELY/L	[Business Secret]
68	LIMBO	BALL/MINOGUE/VAUK	[Business Secret]
69	BEEP BEEP	WINSTANLEY	[Business Secret]
70	WE'RE REALLY SAYING SOMETHING	HEDGES/BUTLER/TUCKER/LYNCH/WHITFIELD/STE	[Business Secret]
71	ONE OF THESE GIRLS	WILSON/WATKINS/SPICE	[Business Secret]
72	SABRINA (SHE'LL B*WITCH YA)	HEDGES/B*WITCHED/BRANNIGAN	[Business Secret]
73	DAY AND NIGHT	LEVER/PERCY/CAWLEY/KENNEDY/PIPER	[Business Secret]
74	SPEECHLESS	ELLIS/SOLOMON	[Business Secret]
75	ALL AROUND THE WORLD	PERCY/LEVER/OOSTERHUIS	[Business Secret]
76	ISN'T IT A WONDER	HEDGES/KEATING/BRANNIGAN	[Business Secret]
77	ROLLERCOASTER	HEDGES/BRANNIGAN/ACKERMAN/B*WITCHED	[Business Secret]
78	DON'T CALL ME BABY	WILSON/WATKINS/HALLIWELL	[Business Secret]
79	ALL IN LOVE IS FAIR	ELLIS/DENNIS	[Business Secret]
80	IT DON'T GET ANY BETTER	WILSON/WATKINS/HALLIWELL/ACKERMAN	[Business Secret]
81	TELL HER	HEDGES/BUTLER/HECTOR	[Business Secret]
82	POSSIBLY MAYBE	HOOPER/DE VRIES/GUDMUNSDOTTIR	[Business Secret]
83	TREAT ME LIKE A LADY	HEDGES/BUTLER/WHATMORE	[Business Secret]
84	JESSE HOLD ON	HEDGES/BRANNIGAN/B*WITCHED/HODGENS	[Business Secret]
85	A BETTER MAN	LIND/PICKETT/KENNEDY	[Business Secret]
86	KEY TO MY LIFE	HEDGES/BRANNIGAN/KEATING/GATELY/GRAHAM	[Business Secret]
87	GET THE MUSIC ON	HEDGES/BUTLER/PICKERING	[Business Secret]

88	THE STORY SO FAR	WILSON/WATKINS/ACKERMAN	[Business Secret]
89	BUMPER TO BUMPER	DENNIS/WILSON/WATKINS/SPICE	[Business Secret]
90	ARE YOU A GHOST?	HEDGES/BRANNIGAN/B*WITCHED	[Business Secret]
91	TAKE CONTROL	SIDOLI/MORRISON/DOUGLAS/FOWLER/RAMSAY	[Business Secret]
92	I COME ALIVE	WILSON/WATKINS/ACKERMAN	[Business Secret]
93	WE AIN'T GOIN' DOWN	BUTLER/HEDGES/ACKERMAN/BELLA	[Business Secret]
94	NO SIGN OF LIFE	ELLIS/LEE/BUNTON	[Business Secret]
95	WHEREVER YOU ARE	ELLIS/DENNIS	[Business Secret]
96	DANCE	ELLIS/SOLOMON	[Business Secret]
97	WHO THE HELL ARE YOU	HEDGES/BUTLER/BUNTON	[Business Secret]
98	THE DAY BEFORE THE RAIN	WILSON/WATKINS/ACKERMAN	[Business Secret]
99	WHEN THE EVENING COMES	ELLIS/LEE/CHEEKS	[Business Secret]
100	POWERPLAY	PICKETT/ROBERTSON	[Business Secret]

(b) the following main contracts, agreements, leases, commitments and understanding:

The following table shows the top EEA revenue earning writers of 19 Music in 2006.

Name	Total EEA Revenues in 2006, EUR
ABSOLUTE (Paul Wilson/Andy Watkins)	[Business Secret]
Ray Hedges	[Business Secret]
Simon Ellis	[Business Secret]
Phil Pickett	[Business Secret]
Tim Lever	[Business Secret]
Mike Percy	[Business Secret]
M & S PRODUCTIONS (SIDOLI/MORRISON)	[Business Secret]
Ingo Vauk	[Business Secret]
Marius De Vries	[Business Secret]

(c) It is not anticipated that it would be necessary for arrangements to be put in place for the supply of any necessary services for a transitional period on arm's length terms, but UMG or affiliated undertakings would be prepared to agree to supply any such services, if required by the Commission at the request of the Purchaser, for a reasonable transitional period.

SCHEDULE 5 – 19 Songs Limited

Summary

19 Songs Limited (“19 Songs”) is joint venture in which BMG Music Publishing holds 50% shares, the remaining 50% being held by Simon Fuller (a record and television producer). In 2005, 19 Songs’ total EEA revenues were €[< 1 million] and global revenues were €[< 1 million].

The 19 Songs catalogue consists of pop music linked to television reality shows. Indeed, the catalogue’s song generating the largest revenues of 19 Songs is the American Idol theme. It also includes other pop repertoire, for instance from: Emma Bunton, S Club 7 and Lisa Scott Lee (Steps).

The following table provides a summary of the financial information over the past three years:

SUMMARY	2004	2005	2006
EEA Rev (€’000)	[< 1,000]	[< 1,000]	[< 1,000]
Global Revenue (€’000)	[< 1,000]	[< 1,000]	[< 1,000]

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1 Following paragraph 4 of these Commitments, the Divestment Businesses include, but are not limited to:

(a) the following main intangible assets:

The main assets are the music publishing rights of varying duration.

The following table shows the top 100 copyrights in 19 Songs for 2006.

	Title	Composers	Revenue (EUR)
1	AMERICAN IDOL THEME	GINGELL/STONE/DENNIS	[Business Secret]
2	I SAID NEVER AGAIN (BUT HERE WE ARE)	GINGELL/STONE/DAVIS	[Business Secret]
3	IDOL (POP IDOL THEME)	GINGELL/STONE/DENNIS	[Business Secret]
4	HOME	LEWINSON/LEWINSON/HUCKNALL	[Business Secret]
5	YOU AND I	PEDEN/JOHNSON/JOHNSON	[Business Secret]
6	SLEEP	PEDEN/BUNTON/GORDINO/KEARNS	[Business Secret]
7	AUTOMATIC HIGH	GINGELL/STONE/MADHOO/RONALD	[Business Secret]
8	HOME LOAN BLUES	YASHIKI/JAIMES/KIRKHAM/SUZUKI/LEWINSON/H	[Business Secret]
9	COME AND FLY WITH ME	DAGGER/BURROWS	[Business Secret]
10	JUMPIN	PEDEN/RUSSELL/SILVAS	[Business Secret]
11	SUMMER ALL OVER AGAIN	LEWINSON/LEWINSON/MOMRELLE	[Business Secret]
12	NEW DIRECTION	DENNIS/WHITE/HANLEY	[Business Secret]
13	MISFIT	STUDT/ERIKSEN/POOLE	[Business Secret]
14	ALL CRIED OUT	PEDEN/ROBBINS/GATES/HUMAN LEAGUE	[Business Secret]
15	I’LL BE THERE	PEDEN/BUNTON/MUDDIMAN	[Business Secret]
16	POP IDOL (CUES)	GINGELL/STONE/DENNIS	[Business Secret]
17	FAKE	LEWINSON/HUCKNALL	[Business Secret]
18	JUST A LITTLE GIRL	STUDT/BONDY	[Business Secret]
19	WORLD STANDS STILL	LEWINSON/LEWINSON/LOVE	[Business Secret]

154 See paragraph 4(a) of these Commitments.

20	DOESN'T REALLY MATTER	STUDT/LEWINSON/LEWINSON	[Business Secret]
21	KICK ME	STUDT/BONDY	[Business Secret]
22	FINELINE	PEDEN/JOHNSON/JOHNSON	[Business Secret]
23	FAKE	LEWINSON/HUCKNELL/JAIMES	[Business Secret]
24	J'AI ENVIE DE SAVOIR	ARENA/BLACKWELL/BOCHENKO/GUARDIANI	[Business Secret]
25	EVERY LITTLE THING	GINGELL/STONE/DAVIS	[Business Secret]
26	SPEAK UP	JAMES/MARSTON	[Business Secret]
27	STRONGER	ELLIS/MOLLOY/S CLUB 7	[Business Secret]
28	RUNNING OUT	JAMES/MARSTON	[Business Secret]
29	LOVE YOU LIKE I DO	WHATMORE/KORPI/BLACKCELL/SILVAS	[Business Secret]
30	DANCE DANCE DANCE	GINGELL/STONE/DENNIS	[Business Secret]
31	FOOL NO MORE	CURNOW/WOODFORD/DENNIS/HANLEY	[Business Secret]
32	I CAN'T SLEEP AT NIGHT	GINGELL/STONE/DAVIS/MINOGUE	[Business Secret]
33	CAN'T LOSE WITH YOU	JOHNSON/MARSTON/REEVE	[Business Secret]
34	I GOTTA BE ME	MARSTON/DUNK/SERLIN	[Business Secret]
35	FREE ME	PEDEN/BUNTON/MUDDIMAN	[Business Secret]
36	SOONER OR LATER	PERCY/LEVER/KENNEDY/WOODCOCK/GIRLTHING	[Business Secret]
37	CRAZY SURF DUDE	PERCY	[Business Secret]
38	UNDER THE THUMB	STUDT/ERIKSEN/POOLE	[Business Secret]
39	GOING OUT OF MY MIND /HEY YOU	STUDT/LEWINSON/LEWINSON	[Business Secret]
40	EVERY LITTLE THING	GINGELL/STONE/DAVIS	[Business Secret]
41	SOMETHING SO BEAUTIFUL	LEWINSON/LEWINSON/BUNTON	[Business Secret]
42	MEMORY LANE	BROWN/WELLS/DUNK	[Business Secret]
43	TREAT ME LIKE A LADY	HEDGES/BUTLER/WHATMORE	[Business Secret]
44	HARLEM ONE STOP	DAGGER/BURROWS/RICHIE/ELLIS/ROWE	[Business Secret]
45	DISCOTEK	GINGELL/STONE/BARRETT	[Business Secret]
46	MY TIME	MARSTON/JAMES	[Business Secret]
47	NEW DIRECTION (MAGIC FLY MIX)	DENNIS/WHITE/HANLEY/MAROUANI	[Business Secret]
48	SINGING MY SONG	MARSTON/WALTMANN	[Business Secret]
49	DIG IT (INSTRUMENTAL)	DAGGER/BURROWS	[Business Secret]
50	(I'VE GOT NO) SELF CONTROL	GINGELL/STONE/DAVIS	[Business Secret]
51	GONNA BE FINE	STUDT/LEWINSON/LEWINSON	[Business Secret]
52	SENTIMENTAL	PEDEN/JOHNSON/JOHNSON/GATES/KEARNS	[Business Secret]
53	SINGLES NIGHT	GREGGS/O'DONOGHUE/SHEEHAN/BROWN/GAYLE	[Business Secret]
54	CLUB HOP	PEDEN/SHARPE/GATES/RUSSELL	[Business Secret]
55	PUT YOUR FAITH IN ME	STUDT/BONDY	[Business Secret]
56	DON'T YOU WANT MY NUMBER	DAGGER/BURROWS/SCOTT LEE	[Business Secret]
57	LET'S WORK	PEDEN/SILVAS/RUSSELL	[Business Secret]
58	SECONDS AWAY	STUDT/DENNIS	[Business Secret]
59	CREO EN MI	CARLSSON/LEWINSON/LEWINSON/NOVA/GARCIA	[Business Secret]
60	HEY (SO WHAT)	GINGELL/STONE/HANNAH	[Business Secret]
61	LONG FOR THE DAY	JAMES/MARSTON	[Business Secret]
62	SHOULD I	BROWN/RICH	[Business Secret]
63	IT AIN'T OBVIOUS	PEDEN/SILVERMAN/PARKER	[Business Secret]
64	THAT'S WHEN YOU KNOW	PEDEN/NEW/GORDINO	[Business Secret]
65	SUPERIOR MIND	STUDT/ERIKSEN	[Business Secret]
66	BEAUTIFUL LIE	STUDT/ERIKSEN/HANSSON	[Business Secret]

(b) the following main contracts, agreements, leases, commitments and understandings:

The following table shows the top 10 EEA revenue earning writers of 19 Songs in 2006.

Top 10 Writers	Total EEA revenue in 2006(EUR)
Barry Stone	[Business Secret]
Julian Gingell	[Business Secret]
Steve and Pete Lewinson	[Business Secret]
Mike Peden	[Business Secret]
Amy Studt	[Business Secret]
Edward and Henry Johnson	[Business Secret]
Lee Dagger	[Business Secret]
Marc Jackson Burrows	[Business Secret]
Matthew Marston	[Business Secret]
Gary White	[Business Secret]

(c) It is not anticipated that it would be necessary for arrangements to be put in place for the supply of any necessary services for a transitional period on arm's length terms, but UMG or affiliated

undertakings would be prepared to agree to supply any such services, if required by the Commission at the request of the Purchaser, for a reasonable transitional period.

SCHEDULE 6 – BMG MP’s BBC music publishing catalogue

Summary

The BBC music publishing catalogue consists of music publishing copyrights acquired from BBC Worldwide Limited in 2005. Assignment of these rights is subject to consent of BBC Worldwide Limited.

In addition, the BBC’s contracts with the writers of these works are likely to require author consent to assignment. Following the acquisition of the BBC catalogue by BMG MP, the BBC procured that writers entered into direct novations with BMG MP or the BBC continued to hold the catalogue as trustee for BMG MP acting under BMG MP’s direction, so that following the acquisition, the full benefit of all contractual rights vested in BMG MP. Similar arrangements could be put in place with the Purchaser. In 2005, total revenues originated by the BBC music publishing catalogue (virtually all in the EEA) were **€[1 - 5 million]**.

The BBC music publishing catalogue consists mainly of copyrights in television themes, broadcast in the UK and globally (which in some cases have obtained commercial success in the charts, e.g. Bob the Builder’s “Can we fix it?” and Teletubbies’ “Say eh-oh!”).

The following table provides a summary of the financial information over the past three years:

SUMMARY	2004	2005	2006
EEA Rev (€‘000)	[1,000 - 5,000]	[1,000 - 5,000]	[1,000 - 5,000]
Global Revenue (€‘000)	[1,000 - 5,000]	[1,000 - 5,000]	[1,000 - 5,000]

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1 Following paragraph 4 of these Commitments, the Divestment Businesses include, but are not limited to:

(a) the following main intangible assets:

The main assets are the music publishing rights of varying duration.

The following table shows the top 100 copyrights in the BBC catalogue for 2006.

	Title	Composers	Revenue (EUR)
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¹⁵⁵ See paragraph 4(a) of these Commitments.

1	TELETUBBIES	MCCRORIE-SHAND	[Business Secret]
2	CASH IN THE ATTIC	LOWE	[Business Secret]
3	WALKING WITH BEASTS	BARTLETT	[Business Secret]
4	BBC WORLD NEWS IDENTS 2002	LOWE	[Business Secret]
5	ANIMALS OF FARTHING WOOD	KUEHNE	[Business Secret]
6	BBC NEWS 2000	LOWE	[Business Secret]
7	CAR BOOTY	LEAVY	[Business Secret]
8	BBC BREAKFAST NEWS	LOWE	[Business Secret]
9	SHOEBOX ZOO - SERIES 1 AND 2	BALFE	[Business Secret]
10	BBC NEWS 24 CHANNEL MUSIC	LOWE	[Business Secret]
11	8TH WORLD WONDER	SHANKEL/PARKES/JACOBS	[Business Secret]
12	SPOOKS (SERIES 1)	MUSKETT	[Business Secret]
13	WALKING WITH DINOSAURS	BARTLETT	[Business Secret]
14	BBC TV NEWS REGIONAL - ENGLAND	LOWE	[Business Secret]
15	THE FIMBLES (BACKGROUND)	MULHALL/NEALE/NICHOLLS	[Business Secret]
16	TWEENIES (TELEVISION BROADCAST)	KITCHEN/PIKE	[Business Secret]
17	TOP OF THE POPS (ALL NEW)	GIBBER	[Business Secret]
18	WAKING THE DEAD SERIES 1	HART/CAMPBELL	[Business Secret]
19	BALAMORY	WILSON/MCLAUGHLIN	[Business Secret]
20	TELETUBBIES INCIDENTAL	MCCRORIE-SHAND	[Business Secret]
21	TELETUBBIES	HARTLEY	[Business Secret]
22	SPACE	UNWIN	[Business Secret]
23	STRICTLY COME DANCING	MCGRATH/PHILLIPS	[Business Secret]
24	READY STEADY COOK SERIES 1-6	BOLAM	[Business Secret]
25	HEY HEY ARE YOU READY TO PLAY	BRENTON/KITCHEN/LAUCHLAN/PIKE	[Business Secret]
26	TWEENIES THE BEE DANCE	BIGNOLD/JACKMAN	[Business Secret]
27	MONARCH OF THE GLEN	BRINT	[Business Secret]
28	WILD AFRICA	GUNNING	[Business Secret]
29	WILD WEATHER	MOLLISON	[Business Secret]
30	BB3B	JACQUEMIN/HOWMAN	[Business Secret]
31	THE HUMAN BODY	PARKER	[Business Secret]
32	LOST WORLD	LANE	[Business Secret]
33	BOO (SERIES 1)	HOWMAN/JACQUEMIN	[Business Secret]
34	D-DAY	PARKER	[Business Secret]
35	HAVE I GOT NEWS FOR YOU	WEBLEY	[Business Secret]
36	THE FLOWERPOT MEN	TAYLOR	[Business Secret]
37	WILLIAMS WISH WELLINGTONS - CLOSING TTILES	NICHOLLS/NEALE/MUHALL	[Business Secret]
38	JONATHAN CREEK - (INCIDENTALS)	LINDSAY	[Business Secret]
39	MYSTERIES OF THE LANDSCAPE	MOLLISON	[Business Secret]
40	TWEENIES OPENING TTILES (TV BROADCAST)	KITCHEN/PIKE/BRENTON/LAUCHLAN	[Business Secret]
41	ANIMALS OF FARTHING WOOD II	KUEHNE	[Business Secret]
42	BBC WORLD CHANNEL IDENT	GLASMAN	[Business Secret]
43	TANGO	LAWLOR	[Business Secret]
44	THE FIMBLES (THEME SONG)	JOYCE	[Business Secret]
45	POMPEII - THE LAST DAY	UNWIN	[Business Secret]
46	LIFE OF MAMMALS	SALISBURY	[Business Secret]
47	CBBC IDENTS	ARNON/RABJOHNS/LORD/DATTA	[Business Secret]
48	THE LIFE OF BIRDS	FAUX/BUTCHER	[Business Secret]
49	THE NATURAL HISTORY OF EUROPE	TAYLOR	[Business Secret]
50	DINNERLADIES (SERIES B) - SIGNATURE TUNE	FIRMAN/WOOD	[Business Secret]
51	THE LIFE OF MAMMALS OPENING MONTAGE	SALISBURY	[Business Secret]
52	TELETUBBIES THEME TUNE (OPENING TTILES)	MCCRORIE-SHAND	[Business Secret]
53	ROLY'S SONG	MULHALL/NEALE/NICHOLLS/WATTS/WHITELEY	[Business Secret]
54	TWEENIES: READY TO PLAY	KITCHEN/PIKE	[Business Secret]
55	AUF WIEDERSEHEN PET - SERIES 3	LUNN	[Business Secret]
56	THE STORY OF TRACY BEAKER (MOVIE VERSION)	APPLEBY	[Business Secret]
57	CASH IN THE ATTIC SERIES 2	LOWE	[Business Secret]
58	BBC1 TELEVISION IDENTS 2002	LAWLOR	[Business Secret]
59	MISS HOOLIE NURSERY SONG	PATERSON	[Business Secret]
60	ACROBAT	LAWLOR	[Business Secret]
61	CAN WE FIX IT?	JOYCE	[Business Secret]
62	THE SEARCH FOR THE LOCH NESS MONSTER	PARNELL/WADDELL/DAVIDSON	[Business Secret]
63	WALKING WITH CAVEMEN	PARKER	[Business Secret]
64	JUDGE JOHN DEED - SERIES 1	WISEMAN	[Business Secret]
65	CLICK ON LINE	DUNDAS	[Business Secret]
66	WAKING THE DEAD SERIES 3	HART/CAMPBELL	[Business Secret]
67	MAN AND BOY	LANE	[Business Secret]
68	GENERIC CLOCK STING	KITCHEN/PIKE	[Business Secret]
69	WAKING THE DEAD SERIES 2	HART/CAMPBELL	[Business Secret]
70	OPENING TTILES STINGS (TELETUBBIES)	MCCRORIE-SHAND	[Business Secret]
71	TO BUY OR NOT TO BUY	RAPHAEL/MORIS	[Business Secret]
72	THE FIMBLES: FINDING SONG - FLORRIE	JOYCE/PAGE	[Business Secret]
73	DOCTORS	HEMMINGS/BADGER	[Business Secret]
74	ANDES TO AMAZON	HOOPER	[Business Secret]
75	FLOG IT (INCIDENTALS/ STINGS)	SLATER	[Business Secret]
76	DEATH TRAP	CARTWRIGHT	[Business Secret]
77	TELETUBBIES : EVERYWHERE	MCCRORIE-SHAND	[Business Secret]
78	MONSTERS WE MET	LOCKE/NORFOLK	[Business Secret]
79	YOHO AHOY	TACKLEY	[Business Secret]
80	BOLLYWOOD	LAWLOR	[Business Secret]
81	TWEENIES : PARTY GAMES, LAUGHS & GIGGLES	BIGNOLD	[Business Secret]
82	COLOSSEUM	ESHKERI	[Business Secret]
83	TELETUBBIES SAY EH-OH	MCCRORIE-SHAND	[Business Secret]
84	JOSIE JUMPS HERO SONG	MUOTUNE	[Business Secret]
85	CLOSING TTILES STINGS (TELETUBBIES)	MCCRORIE-SHAND	[Business Secret]
86	THE COLOUR SONG	MCLAUGHLIN	[Business Secret]
87	THE PLANETS	MEACOCK	[Business Secret]
88	FULL CIRCLE WITH MICHAEL PALIN	PARKER	[Business Secret]
89	TAP DOGS	LAWLOR	[Business Secret]
90	SKATEBOARDING	LAWLOR	[Business Secret]
91	NUTS	WILSON	[Business Secret]
92	HIP HOP	DEWAR/HALE/LAWLOR	[Business Secret]
93	S.A.S.: ARE YOU TOUGH ENOUGH?	HENSON	[Business Secret]
94	OH,WE'RE GOING ON A PICNIC,YES WE ARE	MULHALL/NEALE/NICHOLLS/PAGE	[Business Secret]

95	IN SEARCH OF SHAKESPEARE	DAVIDSON	[Business Secret]
96	MURPHY'S LAW	BUTT	[Business Secret]
97	CAPOEIRA	LAWLOR	[Business Secret]
98	TELETUBBIES - UH-OH	MCCRORIE-SHAND	[Business Secret]
99	GENERIC CLOSING TITLE MUSIC- TWEENIES	KITCHEN/PIKE	[Business Secret]
100	ANIMAL GAMES	PARKER	[Business Secret]

- (b) the following main contracts, agreements, leases, commitments and understandings;

The following table shows the top 10 EEA revenue earning writers of BBC in 2006.

Name	Total EEA Revenues in 2006 (EUR)
BBC - LOWE, DAVID	[Business Secret]
RAGDOLL LIMITED (Andrew McCrorie-Shand/Paul Hartley) (Teletubbies)	[Business Secret]
TELL TALE PRODUCTIONS (Liz Kitchen/Graham Pike/Will Brenton/Iain Lauchlan) (Tweenies)	[Business Secret]
NOVEL FINDERS LTD (Paul Joyce/Lucinda Whitley/Terry Neale/Rick Nulhall/Ian David Nicholls) (Fimbles)	[Business Secret]
BBC - BARTLETT, BENJAMIN	[Business Secret]
BBC - LAWLOR, PETER	[Business Secret]
BBC - MCCRORIE-SHAND, ANDREW	[Business Secret]
BBC - LEAVY, KEVIN	[Business Secret]
BBC - BALFE, LORNE	[Business Secret]
BBC - KITCHEN, LIZ	[Business Secret]

- (c) It is not anticipated that it would be necessary for arrangements to be put in place for the supply of any necessary services for a transitional period on arm's length terms, but UMG or affiliated undertakings would be prepared to agree to supply any such services, if required by the Commission at the request of the Purchaser, for a reasonable transitional period.

SCHEDULE 7 – Rondor Music (London) Limited (“Rondor UK”)

Summary

Rondor UK is a pure pop catalogue which produced revenues in 2005 in the EEA of **€5 - 10 million]** and **€5 - 10 million]** globally. In 2006 these have increased dramatically to **€5 - 10 million]** in the EEA and **€10 - 15 million]** globally.

Of particular note is the depth of this catalogue, which includes over **[Business Secret]** writers which generated more than **€5,000** globally in 2006. Current writers include:

- The Kaiser Chiefs arrived on the UK music scene in 2005 following the release of their debut album ‘Employment’. This album went to number 2 in the UK, has sold 2.5 million copies worldwide to date and was the fourth biggest UK album of 2005, with four hit singles “(Everyday I Love You Less And Less”, which reached number 10 in the UK, “I Predict A Riot/Sink That Ship”, which reached number 9 in the UK, “Modern Way”, which reached number 11 in the UK, and “Oh My God” which reached number 6 in the UK). The band has gone on to win three Brit Awards in 2006, Britain’s most prestigious music awards (Best British Rock Act, Best British Live Act, Best British Group), and a prestigious Ivor Novello award (the top UK song-writing award) in 2006, as well as an NME Award for Best Album in 2006. The follow up album ‘Yours Truly, Angry Mob’ was released in March 2007 and has already reached number 1 in the UK, number 1 in Greece, number 1 in the Netherlands, number 2 in Ireland, number 4 in Austria and number 6 in Germany. It achieved platinum status in the UK (300,000 sales) within two weeks of release, and 540,000 total shipments globally by 24 March 2007. Sales of this album are anticipated to at least match sales of the first album. The single ‘Ruby’ reached number 1 in the UK charts in February 2007, and was number 1 in the European

singles charts. Gross income earned to date, over a period of just over one and half years, is in excess of €[Business Secret]. [Business Secret].

- Sophie Ellis Bextor was originally in a band called 'theaudience' but found fame singing and co-writing the worldwide hit 'Groovejet (If This Ain't Love)' by Spiller which was a number 1 single around the world including the UK where it sold 600,000 copies. Following this Sophie has pursued a successful solo career with album sales to date of 1.5 million copies and her debut album 'Read My Lips' entering the UK charts at number 2 in 2002. She has had 7 top 20 singles with 'Take Me Home' and 'Murder On The Dancefloor' reaching no 2 in 2001. The latter also topped the European Airplay Charts. In 2003 the single 'Mixed Up World' reached number 7 in the UK charts, and in 2004 'I Won't Change You' reached number 9 in the UK. Sophie's third album 'Trip the Light Fantastic' is due for release in May 2007, and the first single from this album 'Catch You' has already reached number 8 in the UK charts.
- Jorgen / Larsson - Danish pop production team whose credits include the boy band Blue who had several hits throughout Europe, including 'Breathe Easy' which reached number 4 in the UK and Ireland, and number 7 in Austria and Germany in April/May 2004.
- Other writers with ongoing delivery commitments include Aston Harvey and Jan Kask.

Key works in the catalogue include copyrights by top authors such as the following:

- Mark Knopfler - the songwriter and lead singer of Dire Straits, their biggest album 'Brothers in Arms' has sold in excess of 25 million copies, spent nine weeks at number 1 in the US and is the UK's fourth biggest selling album of all time. The

catalogue includes the Sting co-written song 'Money For Nothing' and other chart hits such as 'Walk Of Life', and 'Private Investigations'. Dire Straits have won numerous accolades and awards including two Grammys and three Brit Awards. To date, Mark Knopfler has sold over 60 million albums including approximately 10 million albums as a solo artist. Gross income earned to date is in excess of **€[Business Secret]**.

- Wayne Hector - co-written work includes Westlife songs such as 'Flying Without Wings' which was a UK number 1 in 1999 and the UK Song of the Year. 'Flying Without Wings' was also covered in 2003 by American Idol contestant Ruben Studdard; this cover version entered at number 2 in the Billboard Hot 100 chart and had sold 751,000 copies by December 2006. Wayne also wrote the Westlife hits 'Swear it Again' (number 1 in the UK and Ireland in 1999), 'What Makes a Man' (number 2 in the UK in 2000) and 'Queen of My Heart' (number 1 in the UK and number 14 In Ireland in 2001). Wayne co-wrote songs for Westlife which appeared on their chart topping greatest hits album, released in 2002. Wayne has also written for a number of the American Idol contestants, and has also co-written a number 1 country hit in the US in 2006 with 'What Hurts The Most', recorded by the Rascal Flatts.
- Steve Robson - Steve has written for numerous artists including S-Club 7 and had a number 1 country hit in the US in 2006 with 'What Hurts The Most', recorded by the Rascal Flatts, which featured on the number 2 selling album in the US in 2006, also by the Rascal Flatts.
- Leo Sayer catalogue, which includes the song 'Thunder in My Heart' which originally reached #22 in the UK charts in September 1977 but was remixed by MECK as 'Thunder in My Heart Again' and reached #1 in the UK charts in

February 2006 and number 7 in the Dutch charts. The catalogue contains chart toppers from across the globe from the 1970's and 1980's, including 'You Make Me Feel Like Dancing'.

- Imogen Heap – this singer-songwriter has had significant recent chart success, with her recent single 'Hide and Seek', which reached the charts in 2006, 'Goodnight and Go' which reached the UK charts in 2006, and 'Headlock' which also reached the UK charts in 2006. So far she has released two solo albums 'Megaphone' and 'Speak for Yourself', as well as writing songs for her band Frou Frou. Imogen Heap was nominated for a Grammy for Best New Artist and for Best Song Written For A Motion Picture "Narnia" in December 2006.
- William Orbit – this writer producer, who is also an artist in his own right, co-wrote six works recorded by Madonna on her 1998 album 'Ray of Light', which sold 15 million copies worldwide, including the hit singles 'Ray Of Light' and 'Drowned World/Substitute For Love'. William also co-wrote 'Pure Shores' with Shaznay Lewis which achieved number 1 in the UK charts in 2000, as well as being the top selling single of that year with sales of 683,000. Orbit won a prestigious Ivor Novello award (the top UK song-writing award) for this song in 2001.
- Nick Kershaw – this singer-songwriter achieved success in the mid-1980's with the chart hits 'The Riddle', 'I Won't Let The Sun Go Down On Me', and 'Wouldn't It Be Good', and wrote 'The One and Only' which was a number one single in the UK for Chesney Hawkes in 1991.
- Hammond and Hazelwood – this 1970's songwriting team wrote the evergreen hits such as 'It Never Rains in Southern California' recorded by Albert Hammond which was a number 5 chart hit in the US in 1972 and 'The Air That I Breathe', recorded

by the Hollies, which was a number 2 hit in the UK in 1974, which was released on 136 different products including well known covers by Julio Iglesias, Olivia Newton John, Simply Red, and kd lang in 1997.

- Brenda Richie – this catalogue includes songs recorded by Lionel Richie (winner of 3 Grammy awards) such as ‘Hello’ reached number 1 in the UK, ‘All Night Long’ number 1 in the US, ‘Dancing On The Ceiling’ number 6 in the UK, and ‘Stuck On You’ was from the number 1 album in 1983 in the UK ‘Cant Slow Down’.
- Joan Armatrading – Joan achieved success in the 1970’s with the hits ‘Love And Affection’, which appeared on the album ‘Joan Armatrading’ released in 1976, along with other songs such as ‘The Weakness In Me’, ‘Show Some Emotion’ and ‘Me Myself and I’.
- Other key copyrights include Chris de Burgh’s ‘Lady In Red’ number 1 in 25 countries, worldwide sales of 8 million – which has been released on 201 different products, and Andy Fairweather Low’s ‘Wide Eyed And Legless’ - a number 6 hit in the UK.

The following table provides a summary of the financial information over the past three years:

SUMMARY	2004	2005	2006
EEA Rev (€‘000)	[5,000 - 10,000]	[5,000 - 10,000]	[5,000 - 10,000]
Global Revenue (€‘000)	[5,000 - 10,000]	[5,000 - 10,000]	[5,000 - 10,000] ¹⁵⁶

1 Following paragraph 4 of these Commitments, the Divestment Businesses include, but are not limited to:

(a) the following main intangible assets:

¹⁵⁶ These revenues exclude the three bands Supertramp, Squeeze and Yes, which has the effect of reducing global revenues in 2006 by €[Business Secret].

The main assets are the music publishing rights of varying duration.

The following table shows the top 100 copyrights in the Rondor UK catalogue for 2006.

	Title	Composers	Revenue (EUR)
1	I PREDICT A RIOT	Baines, Hodgson, Rix, White &	[Business Secret]
2	MODERN WAY	Baines, Hodgson, Rix, White &	[Business Secret]
3	EVERYDAY I LOVE YOU LESS AND LESS	Baines, Hodgson, Rix, White &	[Business Secret]
4	OH MY GOD	Baines, Hodgson, Rix, White &	[Business Secret]
5	YOU CAN HAVE IT ALL	Baines, Hodgson, Rix, White &	[Business Secret]
6	CAROLINE, YES	Baines, Hodgson, Rix, White &	[Business Secret]
7	WHAT DID I EVER GIVE YOU?	Baines, Hodgson, Rix, White &	[Business Secret]
8	THUNDER IN MY HEART	Sayer & Snow	[Business Secret]
9	BORN TO BE A DANCER	Baines, Hodgson, Rix, White &	[Business Secret]
10	SATURDAY NIGHT	Baines, Hodgson, Rix, White &	[Business Secret]
11	NA NA NA NA NAA	Baines, Hodgson, Rix, White &	[Business Secret]
12	TEAM MATE (BICYCLE FOR TWO)	Baines, Hodgson, Rix, White &	[Business Secret]
13	TIME HONOURED TRADITION	Baines, Hodgson, Rix, White &	[Business Secret]
14	SULTANS OF SWING	Knopfler	[Business Secret]
15	WALK OF LIFE	Knopfler	[Business Secret]
16	HEADLOCK	Heap	[Business Secret]
17	MONEY FOR NOTHING	Knopfler & Sumner	[Business Secret]
18	ROMEO AND JULIET	Knopfler	[Business Secret]
19	BROTHERS IN ARMS	Knopfler	[Business Secret]
20	ONE AND ONLY, THE	Kershaw	[Business Secret]
21	STOP	Brody, Brown & Sutton	[Business Secret]
22	AIR THAT I BREATHE, THE	Hammond & Hazlewood	[Business Secret]
23	SINK THAT SHIP	Baines, Hodgson, Rix, White &	[Business Secret]
24	LADY IN RED, THE	De Burgh	[Business Secret]
25	PRIVATE INVESTIGATIONS	Knopfler	[Business Secret]
26	WOULDN'T IT BE GOOD	Kershaw	[Business Secret]
27	ALL NIGHT LONG	Richie Jr.	[Business Secret]
28	WEAKNESS IN ME, THE	Armatrading	[Business Secret]
29	GOING HOME	Knopfler	[Business Secret]
30	LIGHT MY FIRE	Densmore, Krieger, Manzarek &	[Business Secret]
31	LOVE OVER GOLD	Knopfler	[Business Secret]
32	ON EVERY STREET	Knopfler	[Business Secret]
33	FLYING WITHOUT WINGS	Hector & McCutcheon	[Business Secret]
34	LOVE AND AFFECTION	Armatrading	[Business Secret]
35	DON'T STOP MOVIN'	Barrett, Cattermole, Ellis, Le	[Business Secret]
36	YOU'RE THE VOICE	Qunta, Reid, Ryder & Thomson	[Business Secret]
37	WHAT IT IS	Knopfler	[Business Secret]
38	YOUR LATEST TRICK	Knopfler	[Business Secret]
39	PRIVATE DANCER	Knopfler	[Business Secret]
40	PURE SHORES	Lewis & Orbit	[Business Secret]
41	SO FAR AWAY	Knopfler	[Business Secret]
42	HELLO	Richie Jr.	[Business Secret]
43	TUNNEL OF LOVE	Knopfler	[Business Secret]
44	DANCING ON THE CEILING	Frenchik, Richie Jr. & Rios	[Business Secret]
45	LAST THING ON MY MIND	Keating & Robson	[Business Secret]
46	CALLING ELVIS	Knopfler	[Business Secret]
47	HEART IN NEW YORK	Gallagher & Lyle	[Business Secret]
48	I WANNA STAY WITH YOU	Gallagher & Lyle	[Business Secret]
49	STUCK ON YOU	Richie Jr.	[Business Secret]
50	BITTER SWEET AND SOUR	Madden	[Business Secret]
51	TELEGRAPH ROAD	Knopfler	[Business Secret]
52	PENNY LOVER	Harvey-Richie & Richie Jr.	[Business Secret]
53	OOMPA LOOMPA	Bricusse & Newley	[Business Secret]
54	DONKEYTOWN	Knopfler	[Business Secret]
55	WHY WORRY?	Knopfler	[Business Secret]
56	SWEAR IT AGAIN	Hector & McCutcheon	[Business Secret]
57	GROOVEJET (IF THIS AIN'T LOVE)	Davis, Ellis-Bextor, Montana J	[Business Secret]
58	WHAT MAKES A MAN	Hector & McCutcheon	[Business Secret]
59	DROWNED WORLD/SUBSTITUTE FOR LOVE	Ciccone, Collins, Kerr, McKuen	[Business Secret]
60	END, THE	Densmore, Krieger, Manzarek &	[Business Secret]
61	I WON'T LET THE SUN GO DOWN	Kershaw	[Business Secret]
62	CANDY MAN, THE	Bricusse & Newley	[Business Secret]
63	MURDER ON THE DANCEFLOOR	Alexander & Ellis-Bextor	[Business Secret]
64	SAY YOU, SAY ME	Richie Jr.	[Business Secret]
65	BEAUTIFUL STRANGER	Ciccone & Orbit	[Business Secret]
66	BREATHE EASY	Jensen, Larsson & Ryan	[Business Secret]
67	MY DESTINY	Richie Jr.	[Business Secret]
68	LONG ROAD, THE	Knopfler	[Business Secret]
69	RIDDLE, THE	Kershaw	[Business Secret]
70	I DUG UP A DIAMOND	Knopfler	[Business Secret]
71	SAILING TO PHILADELPHIA	Knopfler	[Business Secret]
72	WHAT HURTS THE MOST	Robson & Steele	[Business Secret]
73	CREEP	Greenwood, Greenwood, Hammond,	[Business Secret]
74	IT NEVER RAINS IN SOUTHERN CALIFORNIA	Hammond & Hazlewood	[Business Secret]
75	HEART ON MY SLEEVE	Gallagher & Lyle	[Business Secret]
76	HIDE AND SEEK	Heap	[Business Secret]
77	RED STAGGERWING	Knopfler	[Business Secret]
78	RIDERS ON THE STORM	Densmore, Krieger, Manzarek &	[Business Secret]
79	HEAVY FUEL	Knopfler	[Business Secret]
80	NEVER LET ME DOWN	Allen, Boyd & Ellis-Bextor	[Business Secret]
81	TWISTIN' BY THE POOL	Knopfler	[Business Secret]
82	FEEL GOOD TIME	Ferguson, Hansen & Orbit	[Business Secret]
83	FREE ELECTRIC BAND, THE	Hammond & Hazlewood	[Business Secret]
84	FIVE TO ONE	Densmore, Krieger, Manzarek &	[Business Secret]
85	LADY WRITER	Knopfler	[Business Secret]
86	HIT THE ROAD JACK	Mayfield	[Business Secret]
87	I CAN'T TAKE IT IN (SOUNDTRACK VERSION)	Heap	[Business Secret]
88	DO YOU KNOW	Gayle & Solomon	[Business Secret]
89	YOU MAKE ME FEEL LIKE DANCING	Poncia & Sayer	[Business Secret]
90	DARLING PRETTY	Knopfler	[Business Secret]
91	SISTA SISTA	Gammons, Knight & Wolinski	[Business Secret]
92	WILD THEME	Knopfler	[Business Secret]
93	LADY	Richie Jr.	[Business Secret]

94	ROADHOUSE BLUES	Densmore, Krieger, Manzarek &	[Business Secret]
95	L.A. WOMAN	Densmore, Krieger, Manzarek &	[Business Secret]
96	RIDE ACROSS THE RIVER	Knopfler	[Business Secret]
97	YOU'RE THE VOICE	Qunta, Reid, Ryder & Thompson	[Business Secret]
98	RUNNING WITH THE NIGHT	Richie Jr. & Weil	[Business Secret]
99	PUSH UP	Brehony, Cantor, Harvey, Safin	[Business Secret]
100	BUBBLIN'	Costa, Jensen, Jorgensen & Ten	[Business Secret]

- (b) the following main contracts, agreements, leases, commitments and understandings;

The following table shows the top 10 EEA revenue earning writers of Rondor UK in 2006.

Name	Total EEA Revenues in 2006 (EUR)
KAISER CHIEFS	[Business Secret]
CHARISCOURT LTD. (Mark Knopfler)	[Business Secret]
STRAITJACKET SONGS LTD. (Mark Knopfler)	[Business Secret]
KERSHAW, NIK	[Business Secret]
DEEKAY MUSIC APS (Danish writing team for Blue)	[Business Secret]
RAZE WAYBLUE LTD (Sam Brown)	[Business Secret]
SILVERBIRD SONGS LTD. (Leo Sayer)	[Business Secret]
ROBSON, STEVE	[Business Secret]
GUERILLA STUDIOS LTD. (William Orbit)	[Business Secret]
RAMJ BRENDA RICHIE PUBL (Lionel Ritchie)	[Business Secret]

- (c) It is not anticipated that it would be necessary for arrangements to be put in place for the supply of any necessary services for a transitional period on arm's length terms, but UMG or affiliated undertakings would be prepared to agree to supply any such services, if required by the Commission at the request of the Purchaser, for a reasonable transitional period.

2 The Divestment Businesses shall not include:

- (a) The Rondor name.
- (b) The works of the three bands: Supertramp, Squeeze and Yes.



EUROPEAN COMMISSION

Competition DG

Policy and Strategic Support

OPINION

of the ADVISORY COMMITTEE on CONCENTRATIONS

given at its 150th meeting on 10 May 2007

concerning a draft decision relating to

Case COMP/M.4404– Universal Music Group/BMG Music Publishing

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation and that it has a Community dimension pursuant to Article 1(3) of that Regulation.
2. The Advisory Committee agrees with the Commission that the relevant product markets can be characterised as follows:
 - a) Markets for the exploitation of music publishing rights
The relevant product markets need to be defined along the following categories of rights since the customer needs, the prices as well as the overall economic conditions differ significantly:
 - Mechanical rights;
 - Performance rights;
 - Synchronisation rights;
 - Print rights;
 - Online rights.
 - b) Market for music publishing services to authors.
3. The Advisory Committee agrees with the Commission that the geographic scope of the relevant product markets is:
 - a) Markets for the exploitation of music publishing rights
 - mechanical and performance rights: national;
 - print and synchronisation rights: largely national;
 - online rights: currently national, but it is possible that it will develop to an EEA-wide scope. However, there is no need to strictly define the geographic scope of the market for online rights as the competitive assessment will remain unchanged under a national or EEA wide dimension.

b) Market for music publishing services to authors

- The geographic scope of the market appears to be national. The exact geographic scope may, however, be left open since the conclusions of the analysis will be the same under any geographic dimension.
4. The Advisory Committee agrees with the Commission that the proposed concentration will not significantly impede effective competition on the market for music publishing services for authors.
 5. The Advisory Committee agrees with the Commission that the proposed concentration will not significantly impede effective competition on the market for the exploitation of synchronisation rights, on the market for the exploitation of print rights, on the market for the exploitation of mechanical rights and on the market for the exploitation of performance rights.
 6. The Advisory Committee agrees with the Commission's view that it is very likely that Universal will post-merger, on the basis of non-coordinated effects, have the possibility and the incentive to increase prices for its repertoire of Anglo-American mechanical rights for online applications. The Advisory Committee agrees that the merger therefore raises serious doubts with respect to the market for online rights (which are composed of mechanical and performance rights for online applications) both on an EEA-wide level and in the countries Austria, the Czech Republic, Germany, Poland and the UK.
 7. The Advisory Committee agrees with the Commission that the Final Remedies Package submitted on 23 April 2007 which comprises the following catalogues and contracts:
 - a) BMG MP catalogues
 - Zomba Music Publishers Limited
 - 19 Music Limited
 - 19 Songs Limited
 - BBC music publishing catalogue
 - Zomba U.S. (EEA-wide licence)
 - b) Universal catalogues
 - Rondor Music (London) Limited

is sufficient to remove the competition concerns on the market for publishing rights for online applications, both under an EEA-wide or national geographic market definition.

8. The Advisory Committee agrees with the Commission that, the proposed concentration as modified by the Commitments does not significantly impede effective competition in the common market or a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, and that pursuant to Articles 8 (2) and 10 (2) of the Merger Regulation and Article 57 of the EEA Agreement the proposed concentration is therefore to be declared compatible with the Common Market and with the EEA Agreement, subject to full compliance with the commitments offered by the notifying party.

9. The Advisory Committee asks the Commission to take into account all the other points raised during the discussion.

<u>BELGIË/BELGIOUE</u>	<u>BULGARIA</u>	<u>ČESKÁ REPUBLIKA</u>	<u>DANMARK</u>	<u>DEUTSCHLAND</u>
---	D. DIMITROVA	---	L. BREDAHL	K. HOOGHOFF
<u>ÉIRE/IRELAND</u>	<u>EESTI</u>	<u>ELLADA</u>	<u>ESPAÑA</u>	<u>FRANCE</u>
I. BAH	---	---	A. NUCHE BASCÓN	O. GUILLEMOT
<u>ITALIA</u>	<u>KYPROS/KIBRIS</u>	<u>LATVIJA</u>	<u>LIETUVA</u>	<u>LUXEMBOURG</u>
L. MICANGELI	---	---	---	---
<u>MAGYARORSZÁG</u>	<u>MALTA</u>	<u>NEDERLAND</u>	<u>ÖSTERREICH</u>	<u>POLSKA</u>
S. LENK	---	R. van HUTTEN	---	---
<u>PORTUGAL</u>	<u>ROMÂNIA</u>	<u>SLOVENIJA</u>	<u>SLOVENSKO</u>	<u>SUOMI-FINLAND</u>
R. MAXIMIANO	---	D. TOMŠE	E. BOCHNICKOVA	H. KAIPONEN
<u>SVERIGE</u>	<u>UNITED KINGDOM</u>			
P. HÖGSET	I. KOKKORIS			



EUROPEAN COMMISSION

The Hearing Officer

FINAL REPORT OF THE HEARING OFFICER
IN CASE COMP/M.4404 – Universal/BMG

**(pursuant to Articles 15 & 16 of Commission Decision (2001/462/EC, ECSC)
of 23 May 2001 on the terms of reference of Hearing Officers
in certain competition proceedings – OJ L162, 19.06.2001, p.21)**

On 3 November 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Universal Music Group Inc. (“Universal”) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the whole of the undertaking BMG Music Publishing (“BMG”) which currently forms part of the Bertelsmann group, by way of purchase of shares and assets.

Upon examination of the evidence submitted by the parties to the proposed concentration and after conducting a market investigation, the Commission concluded that the concentration raised serious doubts as to its compatibility with the common market and decided to initiate proceedings under Article 6 (1) (c) of the Merger Regulation on 8 December 2006.

Access to key documents was provided to the notifying party on 21 December 2006 and again on 26 January 2007, in accordance with the best practices on the conduct of EC merger control proceedings.

On 15 March 2007 the parties offered commitments that modified the original concentration plan. These commitments were modified on 26 March and again on 30 March, and final commitments were submitted on 23 April 2007. On the basis of these undertakings the relevant Commission service considered that the serious doubts had been removed. Accordingly no Statement of objections was sent to the parties.

No queries were raised before me by the parties or other companies as to the market test.

The case does not call for any particular comments as regards the right to be heard.

Brussels, 11 May 2007

(signed)

Serge DURANDE