

***Case No COMP/M.6884 - ACCESS/ PLG***

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**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 14/05/2013

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## EUROPEAN COMMISSION

Brussels, 14.05.2013  
C(2013) 2909

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

### **To the notifying party:**

**Subject:** Case No COMP/M.6884 – ACCESS/ PLG  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

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1. On 5 April 2013, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Warner Music Group Corp. (United States) ("WMG") controlled by Access Industries, Inc. (United States) ("Access"), through its subsidiaries acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, control of whole of the undertakings PLG Holdco Limited (United Kingdom), EMI Music Belgium BVBA, EMI Czech Republic s.r.o., EMI Music Denmark AS, EMI Group Norway AS, EMI Music Poland s.p.z.o.o, EMI Group Portugal SGPS Lda, EMI Music Spain SL, EMI Music Sweden AB and EMI Music France SAS (together referred to as the "Parlophone Label Group" or "PLG") by way of purchase of shares (the "Transaction").<sup>2</sup> WMG is designated hereinafter as the "Notifying Party" and WMG and PLG collectively as the "Parties".

## **(1) THE PARTIES AND THE OPERATION**

2. Access, headquartered in New York, comprises a group of holding companies, ultimately held by Mr. Len Blavatnik. Access is active in natural resources, chemicals, telecommunications, media and real estate sectors.
3. WMG, which is solely controlled by Access, is a global music content company, headquartered in New York, with operations (either directly or via a distributor/licensee) in almost all EEA Member States. It has been owned by Access since 20 July 2011.<sup>3</sup> Its activities encompass recorded music, music publishing, including the marketing and sale of recorded music and the licensing of music publishing rights.
4. PLG is headquartered in London and active mainly in recorded music.
5. By decision of 21 September 2012 (the "Clearance Decision"), adopted in application of Article 8(2) of the Merger Regulation in case *Universal Music Group/EMI Music*,<sup>4</sup> the Commission declared the operation by which Universal Music Holdings Limited ("UMHL") acquires sole control of the activities of EMI Group Global Limited ("EMI") in the recorded music sector, as well as of its publishing rights, artist management and merchandising activities, by way of purchase of shares, compatible with the internal market and with the EEA Agreement, subject to full compliance with the commitments submitted by the notifying party annexed to the Clearance Decision (the "Commitments"). UMHL is a wholly-owned subsidiary of Universal International Music B.V., which is the parent company of the Universal Music Group ("Universal").
6. Under clause 1 of the Commitments, Universal committed to divest, or procure the divestiture of, certain legal entities and assets,<sup>5</sup> including PLG. PLG includes the so-called

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<sup>2</sup> Publication in OJ C 106, 12.4.2013, p. 11.

<sup>3</sup> Case COMP/M.6277 – *Access Industries/Warner Music Group*.

<sup>4</sup> Commission decision of 21 September 2012 in Case No. COMP/M.6458 *Universal Music Group/EMI Music*.

<sup>5</sup> Namely: EMI Belgium; EMI Czech Republic; EMI Denmark; EMI France; EMI Poland; EMI Portugal; EMI Spain; EMI Sweden; EMI Norway; UMG Greece, as well as Chrysalis Records Limited; Co-Op; EMI Records Limited; Ensign Limited; Mute Records Limited; King Island Roxystar Recordings AB; Sanctuary Records Group Limited; and the MPS Records catalogue.

"Main Package" as defined in the Commitments,<sup>6</sup> which, pursuant to the Commitments, Universal is to sell to a single purchaser. Moreover, Universal chose to include into PLG a number of other assets, which, pursuant to the Commitments, it could have sold separately and/or to different purchasers. These assets notably include EMI Classics and Virgin Classics.<sup>7</sup>

7. On 6 February 2013, Universal and WMG entered into a number of agreements,<sup>8</sup> pursuant to which, upon closing, WMG would acquire sole control over the whole of PLG.
8. Following a request lodged by Universal on 21 February 2013, WMG was approved by the Commission as a suitable purchaser of PLG on 8 May 2013.
9. The operation qualifies as an acquisition of sole control over PLG by WMG. Following the proposed transaction, WMG will own, directly or indirectly, the entire share capital of PLG HoldCo Limited and of the other legal entities comprising PLG.
10. In view of the above, the notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **(2) EU DIMENSION**

11. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 2 500 million<sup>9</sup> in 2011<sup>10</sup>/2012<sup>11</sup> (Access: [...]; PLG: [...]). The aggregate Union-wide turnover of Access and of PLG is more than EUR 100 million (Access: [...]; PLG: [...]). In each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million, and in each of the same three Member States, the aggregate turnover of each of the undertakings concerned is more than EUR 25 million (France – Access: [...]; PLG: [...]; Germany – Access [...]; PLG: [...], United Kingdom – Access: [...]; PLG: [...]). Finally, Access and PLG do not achieve more

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<sup>6</sup> Note, however, that, in agreement with the Commission, Universal modified the composition of the Main Package by replacing UMG Greece with Chrysalis Records Limited (which led to an increase of the size of the Main Package in terms of value of revenues).

<sup>7</sup> For completeness, it is noted that EMI Classics and Virgin Classics are not stand-alone legal entities and essentially comprise a number of contracts with classical artists, some of which are with EMIRL and some of which are with other EMI entities, which are not to be divested by Universal pursuant to the Commitments. [...].

<sup>8</sup> Share Sale and Purchase Agreement for the sale of the entire issued share capital of PLG Holdco Limited, a newly incorporated company and the sole shareholder of EMIRL, and the local EMI operating companies EMI Music Belgium BVBA, EMI Czech Republic s.r.o., EMI Music Denmark AS, EMI Group Norway AS, EMI Music Poland s.p.z.o.o, EMI Group Portugal SGPS Lda, EMI Music Spain SL, EMI Music Sweden AB, as well as binding and irrevocable Put Option agreement relating to EMI France under which WMG has granted Universal an irrevocable option to require it to acquire the entire issued share capital of EMI France.

<sup>9</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p.1).

<sup>10</sup> Access' financial year corresponds to the calendar year. Data for 2012 is not available and Access data relates to calendar year 2011, with the exception of the data included for WMG, which is based on WMG's fiscal year ended on 30 September 2012.

<sup>11</sup> PLG data corresponds to financial year 2012.

than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The proposed concentration therefore has an EU dimension.

### **(3) RELEVANT MARKETS**

#### **3.1. Product market definition**

12. The main overlaps between the Parties' activities are in the wholesale of digital and physical recorded music. The proposed transaction will also give rise to some very limited additional horizontal overlaps and vertical/conglomerate relationships between the Parties' activities, which are further discussed in Section 4.6 below.
13. In previous cases concerning the markets for the wholesale of physical and digital recorded music, the Commission identified separate product markets for the wholesale of physical music and of digital music.<sup>12</sup>
14. The Commission did not consider it appropriate to further segment these relevant product markets based on genre (e.g., pop, classical, jazz, etc.), singles versus albums, single-artist albums versus multi-artist albums (i.e., compilations), audio music versus video music. The Commission did not consider it appropriate either to further segment the markets on the basis of type of service offered by digital customers (streaming versus downloading and online versus mobile music applications).<sup>13</sup>
15. Furthermore, the Commission did not take a view as to whether the discovering, developing and promoting of recording artists, as well as the recording of their music, an activity known as Artists and Repertoire services ("A&R"), which is upstream of the markets for the wholesale of physical and digital recorded music, constitutes a separate relevant product market from the downstream wholesale of recorded music.<sup>14</sup> However, the strength of record companies in A&R was taken into account by the Commission as one of the key factors contributing to record companies' market position.
16. The Commission also considered that it is not appropriate from the demand side of these wholesale markets, i.e. the physical music retailers and digital music platforms, to consider legal and illegal music as part of the same relevant product market for the wholesale of recorded music.<sup>15</sup> In a nutshell, this relies on the fact that legal retailers and/or providers of physical and/or digital music will not consider switching into illegal music suppliers in case of a price increase by recorded music companies. Hence, illegally distributed music is not considered by music platforms to be a substitute to legal music.

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<sup>12</sup> Commission decision of 21 September 2012 in Case No. COMP/M.6458, *Universal Music Group/EMI Music*, Recital 128; Commission decision of 3 October 2007 in Case No. COMP/M.3333, *Sony/BMG*, Recital 27.

<sup>13</sup> Commission decision of 21 September 2012 in Case No. COMP/M.6458, *Universal Music Group/EMI Music*, Recitals 140, 149, 158, 161 and 163; Commission decision of 3 October 2007 in Case No. COMP/M.3333, *Sony/BMG*, Recitals 17 and 34.

<sup>14</sup> Commission decision of 21 September 2012 in Case No. COMP/M.6458, *Universal Music Group/EMI Music*, Recital 103.

<sup>15</sup> Commission decision of 21 September 2012 in Case No. COMP/M.6458, *Universal Music Group/EMI Music*, Recital 214.

17. The Notifying Party shares these views. However, the Notifying Party also submits that, in the context of the competitive assessment of the wholesale of digital recorded music market(s), the different competitive dynamics, which characterize each of digital downloading and digital streaming services, can be taken into account.
18. The market investigation confirmed that the findings of the Commission in previous cases are still valid. Market participants confirmed that the wholesale of physical and digital recorded music belong to separate product markets, as well as that no further segmentation of these markets is appropriate on the basis of genre (e.g., pop, classical, jazz, etc.), singles versus albums, single-artist albums versus multi-artist albums (i.e., compilations), audio music versus video music, and/or type of service offered by digital customers (streaming versus downloading and online versus mobile music applications).<sup>16</sup> The market investigation further confirmed that legal music and illegal music do not belong to the same product market.<sup>17</sup>
19. Therefore, the Commission considers for the purpose of this case that the wholesale of physical recorded music and the wholesale of digital recorded music constitute separate product markets, which do not include illegally distributed music, and which should not be further segmented on the basis of genre (e.g., pop, classical, jazz, etc.), singles versus albums, single-artist albums versus multi-artist albums (i.e., compilations), audio music versus video music.
20. The Commission also considers for the purpose of this case that it is not necessary to segment the market for the wholesale of digital recorded music between digital download services and digital streaming services, and/or between digital music delivered for online applications and mobile applications.
21. The Commission further considers for the purpose of this case that it is not necessary to take a view as to whether A&R activities should be considered and analysed as a separate product market or even whether the recorded music market should be viewed as a two-sided market, where the strength of a record company on one side of the market (A&R) has a positive influence over its market position on the other side of the market (wholesale of recorded music) and conversely. This reflects the fact that, regardless of the position on this point, the competitive assessment of the proposed concentration will not be affected, as the strength of record companies in A&R will be taken into account in the competitive assessment as one of the key factors contributing to their market position in the market for wholesale of recorded music.

### **3.2. Geographic market definition**

22. In previous decisions, the Commission concluded that the relevant geographic market for the wholesale of physical recorded music is national in scope.<sup>18</sup>

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<sup>16</sup> Competitors' reply to the Commission Request for information of 5 April 2013, questions 5, 6, 7, 8, 9, 10 and 11; Customers' reply to the Commission Request for information of 8 April 2013, questions 5, 6, 7, 8, 9, 10 and 11.

<sup>17</sup> Competitors' reply to the Commission Request for information of 5 April 2013, question 12; Customers' reply to the Commission Request for information of 8 April 2013, question 12.

<sup>18</sup> Commission decision of 21 September 2012 in Case No. COMP/M.6458, *Universal Music Group/EMI Music*, Recital 226; Commission decision of 3 October 2007 in Case No COMP/M.3333- *Sony/BMG*, Recital 37.

23. As regards the wholesale market for digital recorded music, the Commission found in its decision of 3 October 2007 in case n° COMP/M.3333 *Sony / BMG* that this market was national in scope, with indications that it could develop into a multi-territorial market in the future.<sup>19</sup> In its decision of 21 September 2012 in case n° COMP/M.6458 *Universal Music Group / EMI Music* the Commission took the view that the exact geographic market definition for the wholesale of digital recorded music should be left open given that the transaction raised concerns both at the a EEA and at the national level.<sup>20</sup>
24. The market investigation in the case at hand confirmed that the market for the wholesale of physical recorded music is national in scope.<sup>21</sup>
25. As regards the market for the wholesale of digital recorded music, the market investigation revealed that it may be broader than national and possibly EEA-wide in scope.<sup>22</sup> However, for the purposes of the present decision, the exact geographic market definition for the market for the wholesale of digital recorded music can be left open, since the notified transaction does not raise serious doubts as to its compatibility with the internal market at the EEA and/or at the national level.

#### **(4) COMPETITIVE ASSESSMENT**

26. The proposed concentration will give rise to the following affected markets in the wholesale of recorded music:
- The wholesale of physical recorded music in: Belgium, Denmark, Finland, France, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Norway, Poland, Slovenia, Spain, Sweden and the United Kingdom; and
  - The wholesale of digital recorded music at EEA level as well as in: Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Liechtenstein, Luxembourg, Malta, Norway, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.
27. In assessing the impact of the proposed transaction on competition in the above-mentioned markets, the Commission also pays attention to aspects of cultural diversity, given that in a cultural sector like the music sector, a reduction of choice may raise concerns with respect to cultural diversity.<sup>23</sup>

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<sup>19</sup> Commission decision of 8 August 2008 in Case No COMP/M.5272, *Sony/SonyBMG*, Recitals 37 and 41.

<sup>20</sup> Commission decision of 21 September 2012 in Case No. COMP/M.6458, *Universal Music Group/EMI Music*, Recital 229.

<sup>21</sup> See competitors' replies to the Commission Request for information of 5 April 2013, question 13 and customers' replies to the Commission Request for information of 8 April 2013, question 13.

<sup>22</sup> Competitors' reply to the Commission Request for information of 5 April 2013, question 14; Customers' reply to the Commission Request for information of 8 April 2013, question 14.

<sup>23</sup> Article 167 (4) of the TFEU requires the Union to take cultural diversity aspects into account in its actions under the other provisions of the Treaties, including Union competition rules. Moreover, the UNESCO Convention on the protection and the promotion of the diversity of cultural expressions to which the Union is a Party sets out a comprehensive set of guiding principles relating to the diversity of cultural expressions.



## **4.1. Wholesale of physical and digital recorded music: unilateral effects analysis**

### *4.1.1. Notifying Party's view*

28. The Notifying Party submits that the proposed transaction will not give rise to anti-competitive unilateral effects in the wholesale of physical and/or digital recorded music since vigorous competition both from the major music companies and the independent recorded music companies (the "Indies") will persist and even increase post-transaction.
29. The Notifying Party submits that WMG's increase in market share will not lead to increased bargaining power, as, post transaction, Universal will remain the clear market leader followed in almost all instances by the second-largest player, Sony. The Parties' combined market shares would remain below 25% in the majority of EEA countries, as well as at the EEA level.
30. The Notifying Party also refers to an agreement, which it entered into with each of the Independent Music Publishers and Labels Association ("IMPALA") and the Music and Entertainment Rights Licensing Independent Network B.V. ("Merlin") (the "IMPALA/Merlin Agreement"), which represent a large majority of the Indies.
31. Pursuant to the IMPALA/Merlin agreement, WMG essentially commits to: (1) certain behavioural undertakings aimed at promoting the development of the Indies ([...]); (2) [...]; and (3) enter into negotiations with Indies to sell to, or license to, or distribute through the Indies recorded music assets (whether from WMG or from PLG) [...]. [...].<sup>24</sup>
32. The Notifying Party therefore submits that its market shares, as provided in the Form CO, do not reflect the asset divestments that it will have to carry out pursuant to the IMPALA/Merlin Agreement and therefore overstate its market positions. Moreover, the IMPALA/Merlin Agreement will lead to a strengthening of a number of Indie labels in several countries across the EEA and therefore in greater competition in the various recorded music markets.
33. The Notifying Party further points out the presence of strong countervailing buyer power from physical and digital customers. According to the Notifying Party, this countervailing power exists pre-merger and will continue to exist after the proposed transaction.
34. In addition, the Notifying Party submits that the proposed transaction will not lead to a reduction of consumer choice and innovation since WMG will not have an increased ability or incentive to impose more onerous licensing terms on emerging, innovative digital platforms. WMG would always have been supportive of new services and would never have sought to impose onerous licensing terms on digital platforms. In any event, the combined entity would not be in a position to pursue such behaviour as its catalogue is not indispensable for digital customers and the increase in market share will not change this.
35. Finally, in the Notifying Party's view, the proposed transaction will enable the emergence of a stronger competitor in line with the Commitments in the Clearance Decision since the smallest of the three majors will be strengthened, i.e. the position of an existing and effective competitor will be re-enforced, and thus the competitive structure of the recorded music markets will be rebalanced without the creation of any competition concerns.

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<sup>24</sup> IMPALA/Merlin Agreement, Article 5(vi).

#### 4.1.2. Commission's assessment

##### (i) Market shares and market structure

36. **Wholesale of physical recorded music.** The Parties' and their competitors' shares in the affected markets for the wholesale of physical recorded music at the national level are as follows:

**Table 1: Parties' shares in markets for the wholesale of physical recorded music (including distribution deals)<sup>25</sup> (2011)**

	<b>WMG</b>	<b>PLG</b>	<b>Combined</b>	<b>Universal</b>	<b>Sony</b>	<b>Indies</b>
Belgium	[5-10]%	[10-20]%	[10-20]%	[40-50]%	[10-20]%	[20-30]%
Denmark	[5-10]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[30-40]%
Finland	[20-30]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[30-40]%
France	[10-20]%	[5-10]%	[20-30]%	[30-40]%	[10-20]%	[20-30]%
Iceland	[10-20] - [10-20]%	[0-5]%	[10-20]- [10-20]%			
Ireland	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[20-30]%
Italy	[10-20]%	[5-10]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%
Liechtenstein	[10-20]- [10-20]%	[0-5]%	[10-20]- [10-20]%			
Lithuania	<[10-20]%	[5-10]%	<[10-20]%			
Norway	[5-10]%	[5-10]%	[10-20]%	[30-40]%	[10-20]%	[30-40]%
Poland	[5-10]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[30-40]%
Spain	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[20-30]%	[20-30]%
Slovenia	[10-20]%	[0-5]%	[10-20]%			
Sweden	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[20-30]%
UK	[10-20]%	[0-5]%	[10-20]%	[30-40]%	[10-20]%	[20-30]%

*Source: Form CO based on 2011 IFPI data and Notifying Party's estimates for the countries where the IFPI data is not available<sup>26</sup>*

37. As shown by Table 1 above, the merged entity's market shares will remain moderate. In most of the affected national markets, WMG's and PLG's combined market share remains below 25%, which according to the Guidelines of the assessment of horizontal mergers

<sup>25</sup> Market shares including distribution deals are the most appropriate measure of record companies' market presence at a specific point of time. This is in line with well-established industry practice and reflects the fact that majors, when they act as distributors and deal with retailers and content providers (whether on the physical or digital market), typically negotiate on behalf of their entire recorded music catalogue, including that portion of their recorded music catalogue for which they only act as distributor. The Commission is of the view that market shares including distribution deals constitute a good proxy for a record company's past and current market position.

<sup>26</sup> The relevant countries are Bulgaria, Cyprus, Malta, Estonia, Latvia, Lithuania, Luxembourg, Romania, Slovakia.

under the Council Regulation on the control of concentrations between undertakings ("Horizontal Guidelines"), "*constitutes a first indication that the transaction is not likely to significantly impede effective competition.*"<sup>27</sup> In Finland, Spain and Sweden, the merged entity's market share will exceed [20-30]%, but not [20-30]%, which still constitutes a moderate market share level.

38. Moreover, the increment in WMG's market share deriving from the proposed transaction will be limited in the majority of Member States.
39. In addition, Universal will remain the clear market leader in the wholesale of physical recorded music in almost all Member States. Only in Denmark and Finland, Universal will not be the strongest player post-transaction. In Denmark, Sony will be the market leader with a market share of [20-30]% followed by Universal with a share of [20-30]%. In Finland, WMG will be the market leader with [20-30]% followed by Universal with a market share of [20-30]%. Sony continues to be the second most important player in several Member States, where the market for the wholesale of physical music is affected by the proposed transaction.
40. Further, WMG will continue to face competition by a number of Indies in all Member States.
41. **Wholesale of digital recorded music.** The Parties' and their competitors' shares in the affected markets for the wholesale of digital recorded music in the EEA and at the national level are as follows:

**Table 2: Parties' shares in markets for the wholesale of digital recorded music (including distribution deals)<sup>28</sup> (2011)**

	<b>WMG</b>	<b>PLG</b>	<b>Combined</b>	<b>Universal</b>	<b>Sony</b>	<b>Indies</b>
<b>Austria</b>	[10-20]%	[0-5]%	[10-20]%	[30-40]%	[10-20]%	[20-30]%
<b>Belgium</b>	[10-20]%	[5-10]%	[20-30]%	[50-60]%	[10-20]%	[5-10]%
<b>Cyprus</b>	[10-20]%	[10-20]%	[20-30]%			
<b>Denmark</b>	[5-10]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[20-30]%
<b>Estonia</b>	[10-20]%	[5-10]%	[10-20]%			
<b>Finland</b>	[20-30]%	[0-5]%	[30-40]%	[30-40]%	[20-30]%	[5-10]%
<b>France</b>	[10-20]%	[5-10]%	[10-20]%	[30-40]%	[10-20]%	[20-30]%
<b>Germany</b>	[10-20]%	[0-5]%	[10-20]%	[30-40]%	[20-30]%	[20-30]%
<b>Ireland</b>	[10-20]%	[5-10]%	[20-30]%	[30-40]%	[10-20]%	[20-30]%
<b>Latvia</b>	[10-20]%	[5-10]%	[20-30]%			
<b>Liechtenstein</b>	[10-20]- [10-20]%	[0-5]%	[10-20]- [10-20]%			
<b>Lithuania</b>	[10-20]%	[5-10]%	[10-20]%			

<sup>27</sup> See paragraph 18 of the Horizontal Guidelines.

<sup>28</sup> See footnote 24.

<b>Luxembourg</b>	[10-20]%	[0-5]%	[10-20]%			
<b>Malta</b>	[10-20]%	[5-10]%	[20-30]%			
<b>Norway</b>	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[20-30]%	[10-20]%
<b>Spain</b>	[10-20]%	[5-10]%	[20-30]%	[40-50]%	[20-30]%	[5-10]%
<b>Slovakia</b>	[10-20]%	[5-10]%	[10-20]%			
<b>Slovenia</b>	[10-20]%	[5-10]%	[10-20]%			
<b>Sweden</b>	[10-20]%	[5-10]%	[20-30]%	[40-50]%	[20-30]%	[5-10]%
<b>UK</b>	[10-20]%	[5-10]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%
<b>EEA</b>	<b>[10-20]%</b>	<b>[5-10]%</b>	<b>[10-20]%</b>	<b>[30-40]%</b>	<b>[20-30]%</b>	<b>[20-30]%</b>

*Source: Form CO based on 2011 IFPI data and Notifying Party's estimates for the territories for which IFPI data is not available<sup>29</sup>*

42. As shown by Table 2 above, the merged entity's market shares in will remain moderate under the different geographic market delineations. In most of the affected national markets, as well as at the level of the EEA, WMG's and PLG's combined market share remains below 25%, which according to the Horizontal Guidelines",<sup>30</sup> constitutes a first indication that the proposed transaction is not likely to give rise to horizontal competition concerns as a result of unilateral effects. In Norway, Spain and Sweden, the Parties' combined market share in the wholesale of digital music exceeds [20-30]%, but remains below [30-40]%. Only in Finland the combined market share amounted to [30-40]%.
43. Moreover, the increment in WMG's market share deriving from the proposed transaction will be limited at the EEA level (around [5-10] percentage points) and relatively modest in the majority of the affected Member States.
44. In addition, Universal will remain the clear market leader in the wholesale of digital recorded music with a market share of [30-40]% at the EEA level and even higher market shares in several of the national markets, which are affected by the proposed transaction. Sony continues to be the second most important player at the level of the EEA with a market share of [20-30]%, as well as in several Member States, where the market for the wholesale of digital music is affected by the proposed transaction. The merged entity will remain the third largest player in the EEA, while it will become the second largest player in some Member States.
45. Further, WMG will continue to face competition by a number of Indies, particularly at the national level.

(ii) IMPALA/Merlin Agreement

46. In the context of the assessment of the market position of the merged entity and its competitors, the Commission notes the existence of the IMPALA/Merlin Agreement, which, once implemented, may lead to WMG on-selling to the Indies (and/or licensing to, and/or distributing via, the Indies) certain PLG and/or WMG recorded music assets

<sup>29</sup> The relevant countries are Cyprus, Estonia, Latvia, Lithuania, Luxembourg, Malta Romania, Slovakia, Slovenia.

<sup>30</sup> See paragraph 18 of the Horizontal Guidelines.

corresponding [...] of the size of PLG. As a result, once the IMPALA/Merlin Agreement is fully implemented, the increases of WMG's market shares arising from the proposed transaction may be more limited than the ones shown in Tables 1 and 2 above. Moreover, the position of a number of Indies in certain Member States may be reinforced, so that they will likely be able to compete more effectively with the three majors in the future. The provisions included in the IMPALA/Merlin Agreement, pursuant to which WMG commits to help Indies to gain and/or retail access to certain key digital distribution channels, the implementation of the IMPALA/Agreement may also reinforce the competitive position of the Indies.

47. Based on the above, the Commission considers that, once implemented, the IMPALA/Merlin Agreement may further improve the competitive situation in the recorded music sector in the EEA, as well as in a number of Member States.
48. At this stage, however, the IMPALA/Merlin Agreement has yet to be implemented. In particular, it has not yet been decided, among other things, exactly what recorded music assets WMG will sell or license to the Indies, or distribute via the Indies, pursuant to the IMPALA/Merlin Agreement and/or what Indies will be the beneficiaries of these sales, licenses and/or distribution deals. As a result, for the purposes of the present decision, the Commission has conducted its assessment of the proposed transaction in the most “conservative” scenario, under which WMG would acquire control of the whole of PLG.

(iii) Results of the market investigation

49. The majority of the respondents to the market investigation did not raise competition concerns in relation to the proposed transaction in the wholesale of physical and/or digital recorded music.
50. Competitors. The majority of the competitors who responded to the market investigation submitted that the proposed transaction may have an impact on Warner's ability to extract better terms and conditions from customers due to the increased size of its repertoire. However, the majority of these competitors also explained that the possible anti-competitive effects of the proposed transaction will likely be counter-balanced by the pro-competitive effects stemming from the strengthening of WMG as a competitor and credible alternative to the two largest record companies in the EEA, Universal and Sony.
51. IMPALA and Merlin, amongst others, also referred to the pro-competitive effects which would likely arise from the implementation of the IMPALA/Merlin Agreement.
52. Moreover, with specific respect to the impact of the proposed transaction on price and innovation, the majority of the competitors who responded to the market investigation do not foresee any likely price increase and/or a negative impact on innovation resulting from the proposed transaction.
53. For completeness, it is noted that one of the competitors, who was also one of the market players who participated in the bidding process for PLG, but was ultimately not selected by Universal, submitted a complaint arguing that the proposed transaction would likely give rise to competition concerns in both the wholesale of digital and physical recorded music.

54. Referring to the Commission decisions in the cases *Fortis/ABN AMRO Assets*<sup>31</sup> and *T-Mobile Austria/Tele.ring*,<sup>32</sup> the respondent explains that, in a highly concentrated market, unilateral effects can result from a reduction in the number of competitors. It further submits that WMG's acquisition of PLG would remove an important competitive force and significantly impede effective competition through unilateral effects given that (1) the markets for recorded music are concentrated and characterized by high barriers to entry, which will be reinforced through the proposed transaction; (2) the majors will have increased buyer power vis-à-vis artists following the proposed transaction; and (3) downstream purchasers will be unable to exert countervailing buyer power following the proposed transaction.
55. The Commission firstly notes that the market conditions, in which the proposed transaction will take place, are not comparable to the conditions in the decision *Fortis/ABN AMRO Assets* where the fourth largest player in commercial banking in the Netherlands (Fortis) aimed at acquiring control of the largest player in commercial banking in the Netherlands (ABN AMRO), and where the Commission found that ABN AMRO and Fortis were close competitors. In the present case, post-transaction Warner will remain respectively number three or two in all of the affected markets. Furthermore, Warner's and PLG's activities in recorded music are to a certain extent complementary: (1) while PLG is characterized by a strong presence in Europe, Warner has a more US centric catalogue; (2) compared to Warner, PLG's has stronger presence in local repertoire; and (3) PLG owns important catalogues of classical music, a genre in which Warner has been traditionally weak. Given this complementarity of Warner's and PLG's activities, the two entities do not constitute particularly close competitors.
56. Similarly, the market conditions analysed in the *T-Mobile Austria/Tele.ring* decision are not comparable to the present case. In that decision, the Commission found a risk of unilateral effects resulting from the elimination of Tele.ring's important competitive force, as Tele.ring was a very aggressive competitor in the provision of mobile telephony services in Austria. However, in the present case, PLG, which is a newly created group following the reorganization of EMI as a result of the Commitments, cannot be considered as a maverick in the music industry, whose acquisition by Warner would be comparable to the circumstances in *T-Mobile Austria/Tele.ring*. This view is supported by the Clearance decision where competitive concerns did not stem from the finding that EMI or PLG would qualify as particularly important competitive forces in the music industry, but from Universal's increased size and ability to extract better terms and conditions from digital music service providers.
57. Moreover, the Commission considers that the concentration levels do not indicate competition concerns, given that post-merger Warner will remain the second or third largest player under any of the geographic market delineations of the wholesale market(s) for digital music, facing competition from market leader Universal and the other major Sony, as well as from Indies, whose aggregate market shares in 2011 amounted to 20% the EEA.
58. As regards the submission that the recorded music industry is characterized by very high barriers to entry, which will be reinforced by Warner's acquisition of PLG, it is not substantiated how the proposed transaction would actually reinforce these barriers to entry

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<sup>31</sup> Commission decision of 3 October 2007 in case No COMP/M.4844 *Fortis/ABN AMRO Assets*.

<sup>32</sup> Commission decision of 26 April 2006 in case No COMP/M.3916 – *T-Mobile Austria/Tele.ring*.

compared to today's situation. While the respondent submits that the majors' recent acquisition of shareholdings in digital streaming providers would entrench the majors' position in digital recorded music and reduce the possibility of entry by a new "major" or strong independent, it fails to explain the impact of the proposed transaction in this regard. In this context, the Commission notes that while WMG and Access hold certain shareholdings in digital music services providers, these shareholdings are all minority shareholdings.<sup>33</sup> As such, they do not enable WMG and/or Access to influence the strategic decisions of these streaming services providers. Furthermore, given that the providers of digital music services have to offer a repertoire that is as comprehensive as possible, they actually do not have any incentive to exclude the Indies' repertoire and/or repertoire from a new entrant from their platforms.

59. In addition, the allegations that the majors will have increased buyer power vis-à-vis artists and that downstream customers will not be in a position to exercise any countervailing buyer power as a result of the proposed transaction have not been confirmed by the results of the market investigation.
60. Customers. The overwhelming majority of the physical customers, who responded to the market investigation, were neutral to positive as regards the likely impact of the proposed transaction on competition.
61. As regards the digital music, while some of the digital customers who replied to the market investigation are concerned about Warner's increased size and greater bargaining strength following the proposed transaction, the majority of these customers consider that the proposed transaction is not likely to materially alter WMG's ability to extract better terms and conditions from them. The majority of customers also do not consider that the proposed transaction is likely to increase WMG's bargaining power vis-à-vis customers to such an extent that it could influence their editorial policy or their business model or any other parameter of their business model. Moreover, a large majority of customers consider that the price level in the wholesale of digital recorded music will remain the same following the proposed transaction.
62. Moreover, with specific respect to the likely impact of the proposed transaction on innovation, the majority of the digital customers who responded to the market investigation estimated that the proposed transaction will have no effect on their ability to launch new digital music services and/or improve and/or expand into other territories their existing music services. Certain customers even consider that the proposed transaction may have a positive impact on their ability to launch new music services by re-establishing a certain balance between the respective positions of the three majors.

(iv) Wholesale of digital recorded music: control share analysis

63. In previous Commission decisions,<sup>34</sup> the Commission also considered that, in order to assess the degree of market power held by recorded music companies *vis-à-vis* digital music retailers, it was necessary to consider combined market position in the recorded music sector and in the music publishing sector. This is due to the fact that, in order to

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<sup>33</sup> [...].

<sup>34</sup> Commission decision of 22 May 2007 in Case No. COMP/M.4404, *Universal/BMG Music Publishing*, Recital 283 and the following; Commission decision of 21 September 2012 in Case No. COMP/M.6458, *Universal Music Group/EMI Music*, Recital 553 and the following.

offer any song for download or streaming, digital music retailers need to acquire a license for both the relevant recording rights, that is to say the rights covering specific singers' interpretations of the musical work, and the relevant publishing rights, including the copyright belonging to the author of the musical work and covering its reproduction ("mechanical right") and its commercial use ("performance right").

64. Thus, and considering that music companies are generally active in both recorded music and publishing, the Commission has established the "control share" analysis which, instead of the analysis based on revenue market shares, takes into account the control over a given selection of songs with either the recording rights or at least part of the publishing rights.
65. The Commission considered a control share of 50% as the threshold above which a record/publishing company would be considered as unavoidable ("*incontournable*") from the point of view of digital customers, therefore enjoying significant market power and having the ability and incentives to increase prices.
66. Thus, the Commission considers that, in order to assess the degree of market power held by the merged entity *vis-à-vis* digital music retailers following the proposed transaction, it is also necessary to consider the merged entity's combined market position in the recorded music and in the music publishing sectors.
67. The Notifying Party submits that WMG's and PLG's combined control shares did not exceed 50% in 2011 and 2012 in any of the Member States, for which this information is available.

**Table 3: Parties' control shares in key Member States**

Country	Total songs	WMG + PLG "control"	WMG + PLG control share (%)
Austria	[...]	[...]	[20-30]%
Belgium	[...]	[...]	[30-40]%
Czech Republic	[...]	[...]	[20-30]%
Denmark	[...]	[...]	[20-30]%
Finland	[...]	[...]	[40-50]%
France	[...]	[...]	[20-30]%
Germany	[...]	[...]	[20-30]%
Hungary	[...]	[...]	[20-30]%
Ireland	[...]	[...]	[30-40]%
Italy	[...]	[...]	[20-30]%
Netherlands	[...]	[...]	[10-20]%
Norway	[...]	[...]	[30-40]%
Poland	[...]	[...]	[40-50]%
Portugal	[...]	[...]	[10-20]%
Spain	[...]	[...]	[30-40]%



Sweden	[...]	[...]	[30-40]%
UK	[...]	[...]	[30-40]%

*Source: Notifying Party's estimates*

68. Considering that the merged entity's control share post transaction would not exceed 50% in any relevant territory, for which the relevant information is available, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as a result of the combination of WMG's recorded music and music publishing activities and of PLG's recorded music activities in relation to digital customers.

(v) Conclusion

69. Based on (1) the above outlined results of the market investigation, (2) WMG's limited market share post transaction; (3) the limited increment of WMG's market share arising from the proposed transaction at the level of the EEA (4) the fact that WMG will continue to be smaller than Universal and Sony, and (5) the results of the control share analysis for the wholesale of digital music at the level of the EEA, the Commission concludes that the proposed transaction is unlikely to give rise to competition concerns as a result of unilateral effects in the wholesale of digital recorded music at the level of the EEA.

#### **4.2. Wholesale of digital and physical recorded music: coordinated effects analysis**

##### *4.2.1. Notifying Party's view*

70. The Notifying Party submits that in past music cases, the Commission has concluded that coordinated effects were unlikely considering the complexity of the markets involved and the subsequent difficulties to find terms of coordination.
71. The Notifying Party submits that post-merger there will continue to be a significant asymmetry between the sizes of UMG and its competitors, meaning that incentives to coordinate are not aligned across the key market participants. The Notifying Party claims that coordination is inherently difficult in asymmetric markets because smaller players are highly incentivized to "cheat".
72. Furthermore, the Notifying Party submits that there will be a lack of transparency between the record companies' terms and conditions that will make impossible any coordination. This lack of transparency cuts across both the digital and physical markets.
73. According to the Notifying Party, in digital markets, the multiplicity of business models (streaming services, subscription based service with PC and mobile phone access or without mobile phone access, MP3 download services, etc.) and price categories and the applicable discounts make it impossible for one major to reconstruct the final prices agreed by another major with digital distributors.
74. Furthermore, according to the Notifying Party, in the physical market, the complexity relies on the fact that the published price to dealer ("PPD") constitutes only a basis for discussions. The actual net price is based on a wide range of discounts related to volume, advertising, return of unsold products, etc. These discounts are specific to each customer and are opaque to the rest of the market.

75. The Notifying Party submits that recorded music markets are characterised by the absence of an effective retaliation mechanism that would constitute a sufficient and deterrent mechanism for the record companies to remain within the boundaries of any collusive scheme. The absence of price transparency and the complexity of the business models make it impossible to try and set up any type of retaliation mechanism.
76. Finally, the Notifying Party submits that major physical and digital customers could also destabilise any collusive scheme of the basis of their countervailing buyer power.

#### 4.2.2. *Commission's assessment*

77. According to the Horizontal Guidelines, coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination. This can for instance be the case in markets with few symmetric players that produce a single homogenous product. Furthermore, the Horizontal Guidelines provide that three conditions are necessary for any coordination to be sustainable: (1) coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to; (2) discipline requires that there is some form of credible deterrent mechanism that can be activated if deviation is detected; and (3) the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers, should not be able to jeopardise the results expected from the coordination.<sup>35</sup>
78. As regards the structure of the markets for the wholesale of physical and digital recorded music, it is firstly to be pointed out that, post transaction, Universal will remain the clear market leader in almost all of the affected markets over Sony and, less often, WMG. Moreover, the relevant markets will also continue to be characterised by the presence of a number of Indies, which may become even stronger following the implementation of the IMPALA/Merlin Agreement. This market structure in itself does not appear to be particularly conducive to coordination.
79. Second, the market investigation confirmed that the physical and digital markets for the wholesale of music are not sufficiently transparent to facilitate coordination and/or the activation of deterrence if the terms of any such coordination are not adhered to.
80. The majority of physical customers who responded to the market investigation consider that prices and other commercial conditions in the recorded music sector are insufficiently transparent to allow record companies to be aware with a sufficient degree of certainty of their competitors' prices and other commercial conditions. Respondents underline that commercial conditions are secret and often very complex and that the final prices and conditions change with every new negotiation. Hence, even if a record company were to be able to understand some of the other record companies' prices and conditions on a given negotiation round, this information would likely be of limited practical value in the next negotiation round.
81. The majority of the digital customers who responded to the market investigation also consider that prices and other commercial conditions in the recorded music sector are insufficiently transparent to allow record companies to be aware with a sufficient degree of certainty of their competitors' prices and other commercial conditions. These customers underline that these commercial conditions are secret and complex.

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<sup>35</sup> See paragraph 39 ff of the Horizontal Guidelines.

82. As a result of this lack of transparency, the vast majority of respondents submit that, during negotiations, they have not experienced that record companies were informed and/or able to anticipate the negotiating behaviour of their competitors.
83. Third, a large majority of customers submit that the reporting that they provide to recorded music companies does not enable them to monitor the evolution of their competitors' market share in the wholesale of digital and physical music. While information that is provided to recorded music companies on a regular basis includes volume and market share information, this solely relates to the concerned record companies. Information on competitors is only provided, if at all, on an aggregate basis.
84. Against this background, the claim made by one of the respondents to the market investigation, according to which the proposed transaction may lead to anti-competitive coordinated effects is to be dismissed. This respondent claims, in particular, that the market for digital music has become more transparent due to some majors' recent acquisition of shareholdings in digital streaming providers. In this context, the Commission notes that, while WMG and Access hold certain shareholdings in digital music services providers, these shareholdings are all minority shareholdings.<sup>36</sup> As such, they do not enable WMG and/or Access to influence the strategic decisions of these services and, more importantly, do not enable WMG and/or Access to access commercially sensitive information concerning their competitors' relationships with these services. Indeed, as explained, the post transaction market conditions, particularly in terms of market structure and (lack of) market transparency, do not appear to be conducive to coordination between the three remaining majors.
85. Based on the above, consistent with the position taken in previous music cases,<sup>37</sup> the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of coordinated effects in any of the affected markets for the wholesale of physical and of digital recorded music. The Commission indeed considers that the above outlined considerations supporting the conclusion that the proposed transaction does not raise serious doubts as to its compatibility with the internal market by and large equally apply to all the relevant geographic markets, since the specific characteristics of the digital and physical recorded music markets in terms of asymmetric market structure and/or lack of transparency are equally present at the EEA level and in the various affected markets at the national level.

### **4.3. A&R**

86. For the reasons outlined in paragraph 21, the Commission also concludes that, since the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market in the wholesale of physical and/or digital recorded music, it will also equally not give rise to competition concerns in the A&R sector. This conclusion is also based on the results of the market investigation, since none of the artist and/or artist managers who replied to the market investigation raised any concerns in relation to the proposed transaction.

### **4.4. Country by country analysis**

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<sup>36</sup> See footnote 32.

<sup>37</sup> See cases M6458 UNIVERSAL MUSIC GROUP / EMI MUSIC of 21 September 2012 and M.5272 SONY / SONYBMG of 15 September 2008.

#### 4.4.1. Austria

87. In Austria, the market for the wholesale of digital recorded music is an affected market.
88. The market leader on the market for the wholesale of digital recorded music in Austria post transaction will be Universal with a market share of [30-40]% based on 2011 IFPI data, followed by Sony with a market share of [10-20]%. The merged entity's market share will be [10-20]%, with an increment of [0-5] percentage points. Thus, post transaction, WMG will remain the third-largest market player with a market share of [10-20]%, with the Indies holding a combined market share of [20-30]%.
89. None of the respondents to the market investigation raised any specific concern with respect of the impact of the proposed transaction on competition in Austria.
90. Considering WMG's limited market share, the small increment in market share deriving from the proposed transaction and the fact that, post transaction, the merged entity will continue to face competition by the two other majors, as well as the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of digital recorded music in Austria.
91. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in this market can also be excluded.

#### 4.4.2. Belgium

92. In Belgium, the market for the wholesale of physical recorded music and the market for the wholesale of digital recorded music are affected markets.
93. Regarding the market for the wholesale of physical recorded music in Belgium, post transaction, Universal will be the market leader with a market share of [40-50]% based on 2011 IFPI data, followed by the merged entity with a much smaller market share of [10-20]%, Sony with a market share of [10-20]%. Indies have a combined market share of [20-30]%.
94. The market leader on the market for the wholesale of digital recorded music in Belgium post transaction will also be Universal with a market share of [50-60]%. The merged entity's market share will be [20-30]%, with an increment of [5-10] percentage points. Sony has a market share of [10-20]%, and Indies have a combined market share of [5-10]%. Thus, post transaction, WMG will become the second-largest market player with a market share of [20-30]%, far behind Universal and closely followed by Sony.
95. The majority of the respondents to the market investigation did not raise any specific concern with respect of the impact of the proposed transaction on competition in Belgium.
96. Considering that post transaction, the merged entity will continue to face competition by the two other majors, as well as the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of physical and digital recorded music in Belgium.
97. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in these markets can also be excluded.

#### *4.4.3. Cyprus*

98. In Cyprus, the market for the wholesale of digital recorded music is an affected market.
99. The merged entity's market share will be relatively limited – [20-30]% based on the Notifying Party's estimate, with an increment of [10-20] percentage points.
100. Considering WMG's limited market share, and that post transaction, the merged entity will continue to face competition by the two other majors, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of digital recorded music in Cyprus.
101. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in this market can also be excluded.

#### *4.4.4. Denmark*

102. In Denmark, the market for the wholesale of physical recorded music and the market for the wholesale of digital recorded music are affected markets.
103. Regarding the market for the wholesale of physical recorded music in Denmark, post transaction, Sony will be the market leader with a market share of [20-30]% based on 2011 IFPI data, followed by Universal with a [20-30]% market share. The merged entity's market share will be [10-20]%, with an increment of [5-10] percentage points. Thus, post transaction, WMG will remain the third-largest market player with a [10-20]% market share, with the Indies holding a combined market share of [30-40]%.
104. The market leader on the market for the wholesale of digital recorded music in Denmark post transaction will be Universal with a market share of [30-40]%, followed by Sony with a market share of [20-30]%. The merged entity's market share will be [10-20]%, with an increment of [10-20] percentage points. Thus, post transaction, WMG will remain the third-largest market player with a [10-20]% market share, with the Indies holding a combined market share of [20-30]%.
105. The majority of the respondents to the market investigation did not raise any specific concern with respect of the impact of the proposed transaction on competition in Denmark.
106. Considering WMG's limited market share, and that post transaction, the merged entity will continue to face competition by the two other majors, as well as the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of physical and digital recorded music in Denmark.
107. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in these markets can also be excluded.

#### *4.4.5. Estonia*

108. In Estonia, the market for the wholesale of digital recorded music is an affected market.

109. The merged entity combined market share will be limited – [10-20]%, with an increment of [5-10] percentage points based on the Notifying Party's estimates.
110. Considering WMG's limited market share, the limited increment in market share deriving from the proposed transaction and the fact that post transaction, the merged entity will continue to face competition by the two other majors and the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of digital recorded music in Estonia.
111. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in this market can also be excluded.

#### *4.4.6. Finland*

112. In Finland, the market for the wholesale of physical recorded music and the market for the wholesale of digital recorded music are affected markets.
113. Regarding the market for the wholesale of physical recorded music in Finland, the merged entity will become the market leader with a combined market share of [20-30]%, with an increment of [0-5] percentage points based on 2011 IFPI data. However, Universal as the second-largest player post transaction with a market share of [20-30]%. Sony will be the third-largest player post transaction with a market share of [10-20]% and the Indies have a combined market share of [30-40]%.
114. The market leader on the market for the wholesale of digital recorded music in Finland post transaction will be Universal with a market share of [30-40]%. The merged entity's market share will be [30-40]%, with an increment of [0-5] percentage points. Sony has a market share of [20-30]%, and the Indies have a combined market share of [5-10]%. Thus, post transaction, WMG will become the second-largest market player, followed by Sony.
115. None of the respondents to the market investigation raised any specific concern with respect of the impact of the proposed transaction on competition in Finland.
116. Considering the small increments in market shares deriving from the proposed transaction (less than [0-5] percentage points in the physical market and less than [5-10] percentage points in the digital market) and that, post transaction the merged entity will continue to face competition by the two other majors, as well as the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of physical and digital recorded music in Finland.
117. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in these markets can also be excluded.

#### *4.4.7. France*

118. In France, the market for the wholesale of physical recorded music and the market for the wholesale of digital recorded music are affected markets.
119. Regarding the market for the wholesale of physical recorded music in France, post transaction, Universal will be the market leader with a market share of [30-40]% based on

2011 IFPI data, followed by the merged entity with a market share of [20-30]%, and Sony with a market share of [10-20]%. The Indies have a combined market share of [20-30]%.

120. The market leader on the market for the wholesale of digital recorded music in France post transaction will be Universal with a market share of [30-40]%. The merged entity's market share will be [10-20]%, with an increment of [5-10] percentage points. Sony has a market share of [10-20]%, and the Indies have a combined market share of [20-30]%. Thus, post transaction WMG will become the second-largest market player, more than twice smaller in market share as compared to Universal, and closely followed by Sony.
121. The majority of the respondents to the market investigation did not raise any specific concern with respect of the impact of the proposed transaction on competition in France.
122. Considering WMG's limited market share and that post transaction, the merged entity will continue to face competition by the two other majors, as well as the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of physical and digital recorded music in France.
123. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in these markets can also be excluded.

#### *4.4.8. Germany*

124. In Germany, the market for the wholesale of digital recorded music is an affected market.
125. The market leader on the market for the wholesale of digital recorded music in Germany post transaction will be Universal with a market share of [30-40]% based on 2011 IFPI data, followed by Sony with a [20-30]% market share. The merged entity's market share will be [10-20]%, with an increment of [0-5] percentage points. Thus, post transaction WMG will remain the third-largest market player with [10-20]% market share, with Indies holding a combined market share of [20-30]%.
126. None of the respondents to the market investigation raised any specific concern with respect of the impact of the proposed transaction on competition in Germany.
127. Considering WMG's limited market share, the small increment in market share deriving from the proposed transaction and the fact that, post transaction, the merged entity will continue to face competition by the two other majors, as well as the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of digital recorded music in Germany.
128. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in this market can also be excluded.

#### *4.4.9. Iceland*

129. In Iceland, the market for the wholesale of physical recorded music is an affected market.

130. The merged entity's market share will be limited (around [10-20]- [10-20]%) based on the Notifying Party's estimate, with a limited increment of [0-5] percentage points.
131. Considering WMG's limited market share, the limited increment in market share deriving from the proposed transaction and the fact that, post transaction, the merged entity will continue to face competition by other record companies (majors and Indies), the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of physical recorded music in Iceland.
132. Based on the elements outlined in paragraphs 70 to 76, serious doubts based on anti-competitive coordinated effects in this market can also be excluded.

#### *4.4.10. Ireland*

133. In Ireland, the market for the wholesale of physical recorded music and the market for the wholesale of digital recorded music are affected markets.
134. Regarding the market for the wholesale of physical recorded music in Ireland, post transaction, Universal will be the market leader with a market share of [30-40]% based on 2011 IFPI data, followed by the merged entity with a market share of [20-30]%, Sony with a market share of [10-20]%. Indies have a combined market share of [20-30]%.
135. Post transaction, Universal will be the market leader on the market for the wholesale of digital recorded music in Ireland with a market share of [30-40]%. The merged entity's market share will be [20-30]%, with an increment of [5-10] percentage points. Sony has a market share of [10-20]%, and Indies have a combined market share of [20-30]%. Thus, post transaction, WMG will become the second-largest market player closely followed by Sony.
136. None of the respondents to the market investigation raised any specific concern with respect of the impact of the proposed transaction on competition in Ireland.
137. Considering WMG's limited market share and that post transaction, the merged entity will continue to face competition by the two other majors, as well as the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result unilateral effects in the wholesale of physical and digital recorded music in Ireland.
138. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in these markets can also be excluded

#### *4.4.11. Italy*

139. In Italy, the market for the wholesale of physical recorded music is an affected market.
140. The market leader on the market for the wholesale of physical recorded music in Italy post transaction will be Universal with a market share of [40-50]% based on 2011 IFPI data, followed by Sony with a [20-30]% market share. The merged entity's market share will be [20-30]%, with an increment of [5-10] percentage points. Thus, post transaction WMG will remain the third-largest market player, with Indies holding a combined market share of [10-20]%.



141. None of the respondents to the market investigation raised any specific concern with respect of the impact of the proposed transaction on competition in Italy.
142. Considering WMG's limited market share, the relatively limited increment in market share deriving from the proposed transaction and the fact that, post transaction, the merged entity will continue to face competition by the two other majors, as well as the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of physical recorded music in Italy.
143. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in this market can also be excluded.

#### *4.4.12. Latvia*

144. In Latvia, the market for the wholesale of digital recorded music is an affected market.
145. The merged entity's market share will be limited (around [20-30]%) based on the Notifying Party's estimate, with an increment of [5-10] percentage points.
146. Considering WMG's limited market share, the limited increment in market share deriving from the proposed transaction and the fact that post transaction, the merged entity will continue to face competition by the two other majors and the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of digital recorded music in Latvia.
147. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in this market can also be excluded.

#### *4.4.13. Lithuania*

148. In Lithuania, the market for the wholesale of physical recorded music and the market for the wholesale of digital recorded music are affected markets.
149. The merged entity's market share on the market for the wholesale of physical recorded music will be limited (below [10-20]%) based on the Notifying Party's estimates, with an increment of [5-10] percentage points.
150. The merged entity's market share on the market for the wholesale of digital recorded music will also be limited (around [10-20]%), with an increment of [5-10] percentage points.
151. Considering WMG's limited market share, the limited increment in market share deriving from the proposed transaction and the fact that post transaction, the merged entity will continue to face competition by the two other majors and the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of physical and digital recorded music in Lithuania.
152. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in these markets can also be excluded.

#### *4.4.14. Luxembourg*

153. In Luxembourg, the market for the wholesale of digital recorded music is an affected market.
154. The merged entity's market share will be limited (around [10-20]%) based on the Notifying Party's estimate, with an increment of [0-5] percentage points.
155. Considering WMG's limited market share, the limited increment in market share deriving from the proposed transaction and the fact that, post transaction, the merged entity will continue to face competition by the two other majors and the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of digital recorded music in Luxembourg.
156. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in this market can also be excluded.

#### *4.4.15. Malta*

157. In Malta, the market for the wholesale of digital recorded music is an affected market.
158. The merged entity's market share will be limited (around [20-30]%) based on the Notifying Party's estimate, with an increment of [5-10] percentage points.
159. Considering WMG's limited market share, and the fact that, post transaction, the merged entity will continue to face competition by the two other majors and the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of digital recorded music in Malta.
160. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in this market can also be excluded.

#### *4.4.16. Norway*

161. In Norway, the market for the wholesale of physical recorded music and the market for the wholesale of digital recorded music are affected markets.
162. Regarding the market for the wholesale of physical recorded music in Norway, post transaction, Universal will be the market leader with a market share of [30-40]% based on 2011 IFPI data, followed by the merged entity with a market share of [10-20]%, and Sony with a market share of [10-20]%. The Indies have a combined market share of [30-40]%.
163. The market leader on the market for the wholesale of digital recorded music in Norway post transaction will also be Universal with a market share of [30-40]%. The merged entity combined market share will be [20-30]%, with an increment of [10-20] percentage points. Sony has a market share of [20-30]%, and the Indies have a combined market share of [10-20]%. Thus, post transaction WMG will become the second-largest market player closely followed by Sony.
164. The majority of the respondents to the market investigation did not raise any specific concern with respect of the impact of the proposed transaction on competition in Norway.

165. Considering WMG's relatively limited market share and that post transaction, the merged entity will continue to face competition by the two other majors, as well as the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of physical and digital recorded music in Norway.
166. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in these markets can also be excluded.

#### *4.4.17. Poland*

167. In Poland, the market for the wholesale of physical recorded music is an affected market.
168. The market leader on the market for the wholesale of physical recorded music in Poland post transaction will be Universal with a market share of [30-40]% based on 2011 IFPI data. The merged entity's market share will be [10-20]%, with an increment of [10-20] percentage points. Sony has a market share of [10-20]%, and Indies have a combined market share of [30-40]%. Thus, post transaction WMG will become the second-largest market player with a market share of [10-20]%, closely followed by Sony with a market share of [10-20]%.
169. None of the respondents to the market investigation raised any specific concern with respect of the impact of the proposed transaction on competition in Poland.
170. Considering WMG's limited market share and the fact that, post transaction, the merged entity will continue to face competition by the two other majors, as well as the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of physical recorded music in Poland.
171. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in this market can also be excluded.

#### *4.4.18. Slovakia*

172. In Slovakia, the market for the wholesale of digital recorded music is an affected market.
173. The merged entity's market share will be limited (around [10-20]%) based on the Notifying Party's estimate, with an increment of [5-10] percentage points.
174. Considering WMG's limited market share, the limited increment in market share deriving from the proposed transaction and the fact that post transaction, the merged entity will continue to face competition by the two other majors and the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of digital recorded music in Slovakia.
175. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in this market can also be excluded.

#### *4.4.19. Slovenia*

176. In Slovenia, the market for the wholesale of physical recorded music and the market for the wholesale of digital recorded music are affected markets.
177. The merged entity's market share on the market for the wholesale of physical recorded music will be limited (around [10-20]%) based on the Notifying Party's estimates, with an increment of [0-5] percentage points.
178. The merged entity's market share on the market for the wholesale of digital recorded music will also be limited (around [10-20]%), with an increment of [5-10] percentage points.
179. Considering WMG's limited market share, the limited increment in market share deriving from the proposed transaction and the fact that post transaction, the merged entity will continue to face competition by the two other majors and the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of physical and digital recorded music in Slovenia.
180. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in these markets can also be excluded.

#### *4.4.20. Spain*

181. In Spain, the market for the wholesale of physical recorded music and the market for the wholesale of digital recorded music are affected markets.
182. Regarding the market for the wholesale of physical recorded music in Spain, post transaction Universal again will be the market leader with a market share of [30-40]% based on 2011 IFPI data, followed by the merged entity with a market share of [20-30]%, Sony with a market share of [20-30]%. The Indies have a combined market share of [20-30]%.

183. The clear market leader on the market for the wholesale of digital recorded music in Spain post transaction will be Universal with a market share of [40-50]%. The merged entity's market share will be [20-30]%, with an increment of [5-10] percentage points. Sony has a market share of [20-30]%, and the Indies have a combined market share of [5-10]%. Thus, post transaction WMG will become the second-largest market player with a market share of [20-30]%, closely followed by Sony.
184. None of the respondents to the market investigation raised any specific concern with respect of the impact of the proposed transaction on competition in Spain.
185. Considering that post transaction, the merged entity will continue to face competition by the two other majors, as well as the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of physical and digital recorded music in Spain.
186. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in these markets can also be excluded.

#### *4.4.21. Sweden*

187. In Sweden, the market for the wholesale of physical recorded music and the market for the wholesale of digital recorded music are affected markets.
188. Regarding the market for the wholesale of physical recorded music in Sweden, post transaction, Universal will be the market leader with a market share of [30-40]% based on 2011 IFPA data, followed by the merged entity with a market share of [20-30]%, Sony with a market share of [10-20]%, and the Indies holding a combined market share of [20-30]%.
189. The market leader on the market for the wholesale of digital recorded music in Sweden post transaction will be Universal with a market share of [40-50]%, followed by Sony with a [20-30]% market share. The merged entity's market share will be [20-30]%, with an increment of [5-10] percentage points. Thus, post transaction, WMG will remain the third-largest market player with a [20-30]% market share, with the Indies holding a combined market share of [5-10]%.
190. The majority of the respondents to the market investigation did not raise any specific concern with respect of the impact of the proposed transaction on competition in Sweden.
191. Considering that post transaction the merged entity will continue to face competition by the two other majors, as well as the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of physical and digital recorded music in Sweden.
192. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in these markets can also be excluded.

#### *4.4.22. United Kingdom*

193. In the United Kingdom, the market for the wholesale of physical recorded music and the market for the wholesale of digital recorded music are affected markets.

194. Regarding the market for the wholesale of physical recorded music in the United Kingdom, post transaction Universal will be the market leader with a market share of [30-40]% based on 2011 IFPI data. The merged entity's market share will be [10-20]%, with an increment of [0-5] percentage points. Sony has a market share of [10-20]%, and the Indies have a combined market share of [20-30]%. Thus, post transaction WMG will become the second-largest market player, more than twice behind Universal in respect of market share, and closely followed by Sony.
195. The market leader on the market for the wholesale of digital recorded music in the UK post transaction will be Universal with a market share of [40-50]%. The merged entity's market share will be [20-30]%, with an increment of [5-10] percentage points. Sony has a market share of [10-20]%, and the Indies have a combined market share of [10-20]%. Thus, post transaction WMG will become the second-largest market player, more than twice behind Universal in respect of market share, and closely followed by Sony.
196. None of the respondents to the market investigation raised any specific concern with respect of the impact of the proposed transaction on competition in the United Kingdom.
197. Considering WMG's limited market share, the relatively limited increment in market share deriving from the proposed transaction and the fact that, post transaction, the merged entity will continue to face competition by the two other majors, as well as the Indies, the Commission considers that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of unilateral effects in the wholesale of physical and digital recorded music in the United Kingdom.
198. Based on the elements outlined in paragraphs 77 to 85, serious doubts based on anti-competitive coordinated effects in these markets can also be excluded.

#### *4.4.23. Conclusion*

199. Based on the above country-by-country analysis and the considerations discussed Sections 4.1 and 4.2, the Commission also concludes that the proposed transaction is unlikely to give rise to competition concerns as a result of unilateral effects or coordinated effects in the wholesale of physical and digital recorded music in each of the national markets that are affected by the proposed transaction, and therefore does not raise serious doubts as to its compatibility with the internal market.

### **4.5. Other horizontal overlaps and vertical/conglomerate relationships**

#### *4.5.1. Horizontal overlaps*

##### (i) Music publishing

200. WMG and, to a limited extent, PLG, are active in music publishing. PLG is active in music publishing in France and Spain only.
201. The Commission previously identified the following different categories of publishing rights, each corresponding to a separate relevant product market:<sup>38</sup>

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<sup>38</sup> Commission decision of 19 April 2012 in Case No. COMP/M.6459, *Sony/Mubadala Development/EMI Music Publishing*; Recital 26; Commission decision of 22 May 2007 in Case No. COMP/M.4404, *Universal/BMG Music Publishing*; Recitals 18-25.

- Mechanical rights: the right to reproduce a work in a sound recording (for example CDs);
  - Performance rights: the right for commercial users such as broadcasters (TV or radio stations), concert halls, theatres, night clubs, restaurants to divulge a work to the public;
  - Synchronisation rights: the right for commercial users such as advertising agencies or film companies to synchronise music with a visual image;
  - Print rights: the right to reproduce a work in sheet music; and
  - Online rights: a combination of mechanical and performance rights for online applications, such as music downloading and/or streaming services.
202. As in previous decisions,<sup>39</sup> the Commission can leave open the question whether the markets for the exploitation of the various categories of music publishing rights are national or EEA-wide in scope.
203. Post transaction the merged entity's market share in relation to the various categories of music publishing rights in France and Spain (i.e., in the only territories where PLG is currently active) will be as follows:
- France: Parties' market share in mechanical rights will be [10-20]%, with a very limited increment of less than [0-5] percentage points; Parties' market share in performance rights will be [20-30]%, with a very limited increment of less than [0-5] percentage points; Parties' market share in synchronisation rights will be [10-20]%, with a very limited increment of less than [0-5] percentage points; Parties' market share in print rights will be [10-20]%, with a very limited increment of less than [0-5] percentage points; Parties' market share in online rights will be [10-20]%, with a very limited increment of less than [0-5] percentage points.
  - Spain: Parties' market share in mechanical rights will be [10-20]% with a very limited increment of less than [0-5] percentage points; Parties' market share in performance rights will be [10-20]%, with a very limited increment of less than [0-5] percentage points; Parties' market share in synchronisation rights will be [10-20]%, with a very limited increment of less than [0-5] percentage points; Parties' market share in print rights will be [20-30]%, with a very limited increment of less than [0-5] percentage points; Parties' market share in online rights will be [10-20]%, with a very limited increment of less than [0-5] percentage points.
204. At the level of the EEA, the increment in market share arising from the proposed transaction would even be lower, given that PLG is only active in music publishing in France and Spain.
205. Considering the relatively limited combined market share of the merged entity, as well as the insignificant increment in market share deriving from the proposed

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<sup>39</sup> Commission decision of 19 April 2012 in Case No. COMP/M.6459, *Sony/Mubadala Development/EMI Music Publishing*; Recital 61.

transaction, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in the music publishing sector.

(ii) Other activities

206. WMG and PLG also have limited activities in relation to online and mobile applications for digital recorded music and to artist management services and events management services. However, these horizontal overlaps do not give rise to affected markets and therefore do not raise competition concerns at the EEA and/or at the national level.

*4.5.2. Vertical and conglomerate relationships*

207. WMG has limited activities in the retail of recorded music. The downstream activities of WMG consist of direct sales of physical recorded music and digital recorded music,<sup>40</sup> as well as ancillary merchandising products to end-customers. These consist of direct sales through websites that WMG has set up for a number of its recording artists ([...]). WMG's total EU revenues for retail of recorded music in 2012 via these websites amounted to [...], of which [...] % related to physical products.
208. PLG does not have any direct music retail activities.
209. Thus, WMG is already active in the retail of recorded music and PLG is not active in the retail of recorded music. The proposed transaction would therefore not alter the market position of WMG on the downstream markets.
210. As a result, the proposed concentration may only raise vertical concerns in the retail of recorded music because of a risk of input foreclosure associated with the merged entity's ability to limit its competitors' access to recorded music due to its increased market position on the upstream market for the wholesale of physical and digital recorded music.
211. Similarly, any conglomerate concerns that the proposed transaction may raise, particularly due to the possible marginalisation of competitors in the provision of ancillary services or in music publishing, would also be associated with the merged entity's ability to marginalise its competitors due to its increased market power on the market for the wholesale of physical and digital recorded music.
212. However, the Commission concluded that the proposed transaction will not materially increase WMG's market power in any of these upstream markets. As a result, the Commission concludes that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of vertical and/or conglomerate concerns.

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<sup>40</sup> While WMG and Access hold certain minority shareholdings in digital music providers ([...]), these shareholdings do not confer control upon WMG or Access over these services (see footnote 32).



## **(5) CONCLUSION**

213. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission*  
*(signed)*  
*Joaquín ALMUNIA*  
*Vice-President*