



EUROPEAN COMMISSION

The Hearing Officer

FINAL REPORT OF THE HEARING OFFICER
IN CASE COMP/M.3333 – Sony / BMG

**(pursuant to Articles 15 and 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 9 January 2004 the Commission received a notification of a proposed concentration by which the undertakings Bertelsmann AG and Sony Corporation of America acquired, within the meaning of Article 3(1)(b) of Council Regulation (EC) No 4064/89 (*Merger Regulation*), joint control of the record music joint venture "Sony BMG" by way of purchase of shares in a newly created company.

On 19 July 2004 the Commission declared the concentration compatible with the common market. On 13 July 2004 the Hearing Officer concluded in its final report that the right to be heard of all participants to the proceedings had been respected.¹

Subsequently, on 13 July 2006, further to an application for annulment submitted by Independent Music Publisher and Labels Association (IMPALA) the Court of First Instance of the European Communities annulled the Commission decision.

On 31 January 2007 the Commission received an updated version of the initial notification containing the necessary information and data to enable it to assess the notified transaction in the light of current market conditions. The updated notification comprised the creation of the recorded music joint venture "Sony BMG", which has been completed following the Commission's clearance decision of 19 July 2004.

After examining the updated notification the Commission concluded that the notified transaction fell within the scope of the Merger Regulation and that it raised serious doubts as to its compatibility with the common market and the functioning with the EEA Agreement. Accordingly, on 1 March 2007, the Commission decided to initiate proceedings in accordance with Article 6.1(c) of the Merger Regulation.

The procedure was suspended in accordance with Article 11(5) of the Merger Regulation from 22 March 2007 until 26 June 2007, as the parties had not fully responded to a request for information.

The Parties were, upon request, granted access on 15 March, 8 May and 3 August 2007 to key documents in the file provided by third parties in accordance with DG Competition's "Best Practices on the conduct of EC merger control proceedings".

¹ OJ C 52/5, 2.3.2005.

In addition, IMPALA, a third party representing independent record companies, received, on request, a non-confidential version of the Article 6.1(c) decision and subsequent comments submitted by the Parties as well as other key documents submitted in this case by the Parties, notably their comments on IMPALA's submissions.

Following an in-depth market investigation carried out by the Commission services it was concluded that the proposed transaction would not significantly impede effective competition in the common market or a substantial part of it and is therefore compatible with the common market and the EEA Agreement. Accordingly, no Statement of Objections was sent to the Parties in this case.

No queries or submission have been made to the Hearing Officer by the Parties or any other third party. The case does not call for any particular comments as regards the right to be heard.

Brussels, 25 September 2007

(signed)

Karen Williams