

***Case No COMP/M.3042 -
SONY / PHILIPS /
INTERTRUST***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 20/12/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.12.2002

SG (2002) D/233491/233492

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.3042 - Sony/Philips/Intertrust
Notification of 21.11.02 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 21.11.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89² by which the undertakings Sony Corporation of America ("SCA") and Koninklijke Philips Electronics N.V. ("Philips") acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Intertrust Technologies Corporation ("Intertrust") by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

² OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

I. THE PARTIES

3. SCA is an indirect, wholly owned subsidiary of Sony (Japan). Sony is active in the manufacture of audio and video equipment, television displays, semiconductors, computers, information-related products, recorded music, motion pictures, home video products, computer game consoles and game discs.
4. Philips has its headquarters in The Netherlands and is a multinational company, which engages in the research, development, manufacture and sale of a wide range of electronic products, including lighting products, domestic appliances and consumer electronics, components, semiconductors and medical systems.
5. Intertrust is a Delaware company headquartered in Santa Clara, California. Intertrust was established in 1990 and developed patented technology in the area of digital rights management ("DRM").

II. THE CONCENTRATION

6. The notified operation concerns the acquisition of Intertrust by a newly formed company in which SCA and Philips will each hold a [...] % interest, whereas the remaining [...] % will be held by Stephens Acquisition LLC.
7. On the basis of the acquisition structure, the respective shareholdings, the contractual arrangements and the common interest of SCA and Philips to develop the Intertrust business, it must be concluded that SCA and Philips will (indirectly) acquire joint control of Intertrust in the sense of Article 3(2) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (Sony Group 68,503 million, Philips 32,339 million, Intertrust 9.3 million). Two of them have a Community-wide turnover in excess of EUR 250 million (Sony Group [...], Philips [...]), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. RELEVANT MARKETS

9. The concentration concerns the ownership and licensing of intellectual property rights ("IPR's") relevant to digital rights management ("DRM") technology. DRM is a type of content protection technology and is comprised of software and hardware

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

technology and related services that enable content owners to transmit or supply their content in digital form (for example, on-line over the internet or in physical storage media such as CD-ROMS or DVD's) while retaining control over the information, including how and when it is used. It enables owners of digital content (such as audio, video, software, text, e-mail, business information or game content) to have a secure mechanism for the transmission or supply of their data. DRM technology also provides means, by which it is possible to monitor, limit or count the number of times digital content is copied or accessed. It thus offers owners of confidential data or contents a mechanism for tracking and/or limiting the use of their information upon transmission.

10. The parties argue that it is difficult to define with any degree of certainty the relevant markets, because DRM technology is in its infancy and, although considerable development work on different aspects of DRM technology and its applications is being carried out by a wide range of companies, the widespread adoption of DRM solutions is uncertain. The markets must thus be viewed as developing or emerging.
11. The parties identify four relevant product markets:
 - 1) the market for DRM related IPR's, which concerns the creation and licensing of IPR's that can be used for DRM solutions. The parties submit that the development of DRM patent rights is a nascent and highly dynamic business;
 - 2) a downstream market for DRM solutions based on these IPR's;
 - 3) a downstream market for the retail distribution of digitised content that is secured by DRM technology, which involves the retail distribution via physical media or on-line distribution. All suppliers of digitalised content are actual or potential users of DRM solutions that can transform content into DRM-enabled content;
 - 4) a downstream market for content storing, display and playing devices that use DRM technology. All suppliers of digital services are either current, or in most cases, potential future users of DRM solutions as they may transform their products into DRM-enabled devices.
12. As to the geographical scope, the parties believe that all of these product markets are likely to be global.
13. The market investigation has confirmed in general the above-mentioned view of the parties concerning the relevant markets and especially the fact that these markets were developing or emerging. However, for the purpose of this case it is not necessary to define exactly the relevant product and geographical market.

V. COMPETITIVE ASSESSMENT

The market for DRM related IPR's

14. The parties submit that Intertrust's sole activity is the creation and licensing of IPR's that can be used for DRM solutions. Intertrust's intellectual property base includes 26 US patents, one European patent, one German patent and four Australian patents and approximately 85 pending patent applications worldwide.

15. On the basis of the information given by the parties, Philips presently does not have any property rights in DRM technology. Sony does own some IPR's relating to DRM technology. These rights relate to aspects of Sony's Open Magic Gate ("OMG") software, [...]⁴.
16. The parties submit that Intertrust is one of a number of firms and institutions that have developed DRM IPR's, including ContentGuard, Microsoft, IBM, RealNetworks, Wave Systems, Intel, Adobe, Macrovision, NEC, Lockstream and many others.
17. According to the parties the development of DRM patent rights is a nascent and highly dynamic business, populated by large IT and consumer electronic firms (such as Microsoft, IBM, Adobe, Intel and NEC) with substantial R&D and other resources to support their ongoing DRM efforts.
18. The parties estimate that Intertrust has a [0-10%] market share based on 2001 revenues and a [5-15%] market share based on 2002 estimated revenues. Sony's share would be [0-10%] (2001). These estimates are based on figures of IDC (International Data Corporation) which has estimated the total size of the worldwide DRM market, appears to include in that market revenues realised from the sale and/or licensing of both DRM patents and DRM solutions. The parties state that the IDC data underestimate the total volume of DRM technology, because it does not include any revenue for the Microsoft technology. The parties argue that, if the volume of the Microsoft products were taken into account the above mentioned percentages would be even lower.
19. An IDC paper of April 2002 states that over 35 players originally entered the market and that about 25 players remain, including roughly 20 DRM vendors: Alchemedia, Aries System, Authentica, Atabok, Digital Media on Demand, DigitalOwl, Infracore, Intertrust, IBM, Liquid Audio, Lockstream, Macrovision, Microsoft, NetActive, Phocis, RealNetworks, SealedMedia and ViaTech, among others.
20. The market investigation has neither revealed exact market share figures of the parties but it has been indicated that several other firms such as Microsoft, RealNetworks, IBM, Macrovision, ContentGuard and others are active as competitors in the market for DRM related IPR's.

Downstream market for DRM solutions

21. The parties submit that Sony supplies DRM solutions but that neither Philips nor Intertrust is active in this sector. Intertrust discontinued its attempts to commercialise DRM solutions based on its DRM technology in May 2002, given the extremely limited success of its product.
22. Sony has developed its OMG software, which is a DRM solution and is included in some devices Sony manufactures. However, Sony's revenue related to the licensing of OMG software in 2001 was [...] ⁵ and the parties state that Sony does not account for more than 25% of the market for DRM solutions.

⁴ Confidential information relating to Sony's existing DRM technology omitted

⁵ Confidential information relating to Sony's existing DRM technology omitted

23. The parties submit that the leading supplier for DRM solutions is Microsoft and the number two supplier is RealNetworks. There are a number of other firms currently offering DRM solutions, including IBM, Adobe, Alchemedia, Atabok, Authentica, SealedMedia, Nokia, Macrovision, Wave systems, Panasonic, Lockstream, NRC, Intel, Cisco Systems, Verisign and Digital World Services. In addition, several firms are developing DRM solutions that are likely to be commercialised within one or two years.
24. The parties submit also that Sony's DRM solution (Open Magic Gate) is [...]⁶.

Downstream content market

25. The parties submit that neither InterTrust nor Philips is active in any downstream content markets. Sony does have substantial interests in the production and wholesale distribution of recorded music, motion pictures and computer games. However the parties estimate that Sony does not represent 25% or more of the total digital content that is available as potential demand for DRM solutions (i.e. DRM-enabled content).
26. Furthermore other important content providers and media companies are active in this market such as AOL/Time Warner, Vivendi-Universal, Bertelsmann, Viacom, Disney, SKG Dreamworks and EMI.

Downstream market for DRM-enabled devices

27. The parties submit that neither InterTrust nor Philips supplies DRM-enabled devices, although Philips, like many other suppliers of consumer electronic equipment, is a potential supplier. However, Philips does not expect to begin supplying DRM enabled devices until [...]. Sony is currently present in this market, but is unlikely to amount to 25% of total sales of DRM-enabled devices.
28. All suppliers of digital devices are either current, or in most cases, potential future users of DRM solutions as they will transform their products into DRM-enabled devices. On the basis of the information given by the parties, Sony and Philips do not together represent 25% or more of the total digital hardware devices that are likely to form the potential demand for DRM solutions over the next few years.

General conclusion

29. On the basis of the above-mentioned position of the parties and of the fact that strong competitors are active in the markets, it can be concluded that the transaction raises no serious competition concerns. Furthermore, it can be concluded that the relevant markets must be viewed as nascent, because DRM is a developing technology.
30. In light of the above, the Commission has concluded that the proposed transaction is not likely to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

⁶ Confidential information relating to Sony's existing DRM technology omitted

VI. CONCLUSION

31. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission

(Signed)
Mario MONTI
Member of the Commission