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PUBLIC VERSION

MERGER PROCEDURE

To the Competition and Markets
Authority

Dear Sir,

Subject: Case M.7297 – Dolby/ Doremi
Request for referral by the Competition and Markets Authority to the Commission pursuant to Article 22(1) of Council Regulation (EC) No. 139/2004

Ref.: Letter of the Competition and Markets Authority of 1 August 2014

I. INTRODUCTION

1. With the above-mentioned letter, the United Kingdom formally requests the Commission to examine, in application of Article 22(3) of Council Regulation (EC) No 139/2004 ("the Merger Regulation"),¹ the concentration whereby Dolby Laboratories Inc ("Dolby", United States) acquires control of Doremi Technologies, LLC, and Doremi Laboratories, Inc (together, "Doremi", United States), as well as their French spin-off company Highlands Technologies S.A.S. ("Highlands", France).
2. Pursuant to Article 22(1) of the Merger Regulation, one or more Member States may request the Commission to examine any concentration as defined in Article 3 of the Merger Regulation, which does not have a Union dimension within the meaning of Article 1 of the Regulation but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request. Such a request must be made within 15 working days

¹ OJ L 24, 29.1.2004 p. 1. 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.

of the date of the notification of the concentration, or if notification is not required, otherwise made known to the Member State. Pursuant to Article 22(2) of the Merger Regulation, any other Member State may join the initial request within a period of 15 working days of being informed by the Commission of the initial request. Pursuant to Article 6(3) of Protocol 24 to the EEA Agreement, any EFTA State may join the request within a period of 15 working days from the day on which the Commission informed the EFTA Surveillance Authority of the initial request.

3. In the present case, Dolby notified to the Comisión Nacional de los Mercados y la Competencia, the Competent Competition Authority of Spain ("CNMC") the proposed acquisition of sole control of Doremi and Highlands on 24 June 2014.
4. The Commission received the referral request made by Spain pursuant to Article 22(1) of the EC Merger Regulation on 9 July 2014.
5. The Commission informed, in accordance with Article 22(2) of the EC Merger Regulation, the competent authorities of the other Member States and the EFTA Surveillance Authority on 10 July 2014.
6. The United Kingdom joined the request on 1 August 2014 by letter of its Competent Competition Authority, the Competition and Markets Authority ("CMA").

II. THE PARTIES AND THE OPERATION

7. Dolby designs and manufactures audio, video and voice technologies. It specialises in digital signal processing, compression technology, noise reduction systems and multichannel sound programming for home, work, cinema and mobile applications.
8. Doremi is active in the design and manufacture of audio workstations and digital video, in particular digital cinema servers ("DCS").
9. Highlands is a European spin-off of Doremi Technologies, owned by Mr Patrick Zucchetta and Mr Hervé Baujard. Highlands acts as a re-seller of Doremi products in Europe, the Middle East and Africa. [Most][BUSINESS SECRET] of Highland's revenues are achieved via the sale of Doremi DCS and related accessories.
10. Dolby and Doremi, together with Highlands, are hereafter referred to as the "Parties".
11. The proposed transaction involves the acquisition of sole control of Doremi and Highlands by Dolby.
12. According to a Membership Interest Purchase Agreement of 23 February 2014, between Dolby and Doremi, Dolby will acquire [Doremi's USA and French businesses] [BUSINESS SECRET] Through a separate Asset Purchase Agreement executed on 23 February 2014, Dolby France SAS, a subsidiary of Dolby, will acquire the assets of Highlands. These two agreements are conditional upon each other.
13. Finally, Dolby France and Doremi will enter into a Successor Agreement [BUSINESS SECRET] This Successor agreement is a condition to the closing of acquisition of Doremi.

III. ASSESSMENT OF THE REFERRAL REQUEST

14. In order for a referral to be made by a Member State, one procedural and two substantive conditions must be fulfilled pursuant to Article 22(1) of the Merger Regulation. As to the procedural precondition *the referral shall be made at most within 15 working days of the date on which the concentration was notified, or if no notification is required, otherwise made known to the Member State concerned*. Pursuant to Article 22(2) of the Merger Regulation, *any other Member State may join the initial request within a period of 15 working days of being informed by the Commission of the initial request*. As to the substantial conditions the concentration must: i) *affect trade between Member States*; and (ii) *threaten to significantly affect competition* within the territory of the Member State(s) making the request². If these requirements are met, the Commission may decide to examine the concentration.

Procedural criterion

15. As to the procedural condition, Spain received notification of the proposed transaction on 24 June 2014 and made the referral request to the Commission on 9 July 2014. Therefore, the referral request that the Commission received within the period of 15 working days following the “satisfactory submission of the parties” to Spain was made within the deadline of Article 22(1) second indent of the Merger Regulation.
16. The Commission informed the United Kingdom on 10 July 2014 about the initial referral request made by Spain. Therefore, the United Kingdom's request of 1 August 2014 was made within the period of 15 working days pursuant to Article 22(2) of the Merger Regulation.

Substantive criteria

Effect on trade between Member States

17. As regards the first substantive criterion, paragraph 43 of the Commission’s Notice on Case Referral in respect of concentrations (“the Referral Notice”)³ provides that a concentration fulfils this requirement to the extent that it is likely to have some discernible influence on the pattern of trade between Member States.
18. The CNMC and the CMA argue that the markets on which the Parties' activities overlap, namely the markets for (i) the manufacture and supply of DCS and (ii) the supply of Theatre Management System (TMS) software, are likely to be at least EEA-wide.
19. DCSs are one of the components in a digital cinema system, along with the projector, the screen and the digital sound system. DCSs are used to load, store, decrypt, decode and re-encrypt digital film files for presentation on a projector.
20. Neither the Commission, nor the CNMC or the CMA have analysed such a market before. However, it is likely that the geographic scope of this market is larger than national. The CNMC and the CMA argue, following the Parties' submission, that the

² See also Commission Notice on Case Referral in respect of Concentrations, paragraphs 42-44.

³ OJ C 56, 5.3.2005, p. 2.

relevant geographic market for the production and supply of DCS is global or at least EEA-wide. This is because:

- (i) the DCI-standard⁴ developed by the Hollywood studios is in use globally;
 - (ii) the main standalone producers of DCS and the four main digital projector manufacturers (Sony, Barco, Christie and NEC, all of whom have interests in DCS and are important customers of standalone DCS manufacturers) are all active globally and offer the same products in all regions of the world;
 - (iii) product specifications are identical in all regions; and
 - (iv) prices are broadly similar across geographic regions.
21. Moreover, most standalone manufacturers of DCS do not do business in Europe directly with exhibitors, but rather through dealers (or “integrators”), which assemble digital cinema systems (comprising the projector, DCS and audio components) and market them to exhibitors. Several of these dealers are active across a number of Member States, from where they procure equipment directly from the manufacturers in order to re-ship it to exhibitors/customers, regardless of their location in the EEA.
22. As regards the second market where the Parties' activities overlap, a TMS is a software tool, sold either standalone or with a hardware film library, that enables managers to control digital equipment, however many screens they manage, using a single computer. In past decisions, the Commission, while ultimately leaving the exact definition of the geographic market open, considered the market for software to be at least EEA-wide in scope.⁵
23. In light of the above and without prejudice to the outcome of its investigation on the exact geographic scope of these markets, the Commission considers that the proposed transaction would affect trade between Member States.

Threat to significantly affect competition within the territory of the Member State(s) making the request

24. Regarding the second criterion, paragraph 44 of the Referral Notice provides that a referring Member State should demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse effect on competition and thus deserves close scrutiny, without prejudice to the outcome of a full investigation.
25. The CMA submits that the proposed transaction threatens to significantly affect competition on the market for the manufacture and supply of DCS within the United Kingdom.

⁴ "Digital Cinema Initiative", whose purpose is to establish and document voluntary specifications for an open architecture for digital cinema that ensures a uniform and high level of technical performance, reliability and quality control (<http://www.dcimovies.com/>).

⁵ Commission decision of 20 July 2010 in Case M.5904 – SAP / SYBASE, paragraphs 29 and 30.

26. The main players active on this market are the Parties and their competitors Barco, NEC, GDC, Qube, Sony and Christie.
27. During the early years of digital conversion in Europe (from 2008/9 through to the end of 2011), Dolby and Doremi were the only manufacturers of standalone servers that were close to DCI-compliant. This has given Dolby and Doremi a first-mover competitive advantage during the first years of digital cinema roll-out.
28. Doremi still represents the market leader in the manufacture and supply of DCS, whereas Dolby would rank third or fourth on a global level. The table below sets out the Parties' market shares in 2013 in terms of DCS installations:

Company	World-wide	EU	Spain	UK
Dolby	[10-20]%	[10-20]%	[30-40]%	[20-30]%
Doremi	[30-40]%	[50-60]%	[50-60]%	[30-40]%
<i>Combined</i>	<i>[40-50]%</i>	<i>[70-80]%</i>	<i>[80-90]%</i>	<i>[60-70]%</i>
Sony	[5-10]%	[10-20]%	[0-5]%	[20-30]%
Christie	[20-30]%	[5-10]%	[0-5]%	[0-5]%
GDC	[30-40]%	[5-10]%	[5-10]%	[0-5]%
Qube	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[5-10]%

29. The Parties' combined market share on the market for the manufacture and supply of DCS is slightly below 50% at the world-wide level and it is significantly above 50% in the EU and in the United Kingdom. Such combined market shares significantly exceed the safe harbours of 25% provided for by the Commission's Horizontal Merger Guidelines.⁶
30. On this basis, the Commission considers that the proposed transaction threatens to significantly affect competition on the market for the manufacture and supply of DCS in the United Kingdom, as well as at EEA- and possibly at the global level.
31. As for TMS software, the CMA was unable to provide any data concerning the Parties' market position.
32. On the basis of the *prima facie* analysis submitted by the United Kingdom, the Commission considers, without prejudice to the outcome of its investigation that the concentration threatens to significantly affect competition within the territory of the United Kingdom.

⁶ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C31, 5.2.2004, p.5), paragraph 18.

Appropriateness of the referral

33. Pursuant to paragraph 45 of the Referral Notice, referrals of concentrations already notified should normally be limited to those cases which appear to present a real risk of negative effects on competition and trade between Member States and where it appears that these would be best addressed at the Union level. The categories of cases normally most appropriate for referral to the Commission pursuant to Article 22 are accordingly the following:
- cases which give rise to serious competition concerns in one or more markets which are wider than national in geographic scope, or where some of the potentially affected markets are wider than national, and where the main economic impact of the concentration is connected to such markets,
 - cases which give rise to serious competition concerns in a series of national or narrower than national markets located in a number of Member States, in circumstances where coherent treatment of the case (regarding possible remedies, but also, in appropriate cases, the investigative efforts as such) is considered desirable, and where the main economic impact of the concentration is connected to such markets.
34. As set out in paragraphs 18 to 23, the proposed transaction essentially affects two markets, which are at least EEA-wide, if not larger. Also, the main economic impact of the proposed transaction is connected to these two markets. Therefore the present concentration falls under the first category of cases referred to in paragraph 45 of the Referral Notice.
35. Moreover, taking into account that the proposed transaction was notified in Spain and would be notifiable in the UK and that both Member States made a request under Article 22, an assessment of the proposed transaction by the Commission increases administrative efficiency, avoids duplication and fragmentation of enforcement effort, as well as potentially incoherent treatment (regarding investigation, assessment and possible remedies) by multiple authorities, pursuant to the one-shop-stop principle laid down in paragraph 11 of the Referral Notice.
36. Finally, the Commission is the more appropriate authority to deal with the proposed transaction. It is better positioned to gather information from other operators in the two relevant markets, many of which are established outside Spain. Also, the CNMC may have difficulties to design and implement effective remedies in the case at hand given that the assets of the merged entity will be located outside Spain.
37. Therefore, the present concentration is an appropriate one for referral to the Commission pursuant to Article 22 of the EC Merger Regulation.

IV. CONCLUSION

38. For the above mentioned reasons, the Commission has decided to examine the concentration by which Dolby acquires sole control of Doremi and Highlands. This decision is based on Article 22(3) of the Merger Regulation.

For the Commission
(signed)
Joaquín ALMUNIA
Vice-President