UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Director
Bureau of Competition

Statement of Bureau of Competition Director Richard A. Feinstein
***In the Matter of* Vivendi, S.A. and EMI Recorded Music**
September 21, 2012

Today, the Commission voted to close its investigation of the proposed acquisition by Vivendi, S.A., parent company of Universal Music Group ("Universal"), of EMI Recorded Music ("EMI"). After a thorough investigation into the likely competitive effects of the merger, Commission staff did not find sufficient evidence that the acquisition would substantially lessen competition in the market for the commercial distribution of recorded music in violation of Section 7 of the Clayton Act.

Universal is the largest recorded music company in the world. EMI is the fourth largest. Together with Sony Music and Warner Music Group, Universal and EMI are among the four "Majors" in the recorded music industry. The Majors distribute recorded music through a variety of retail channels, including: (1) the sale of compact discs in large mass merchandise and big box stores; (2) the sale of compact discs online; (3) the sale of digital downloads; and, increasingly, (4) the subscription to interactive music streaming services. Although independent recorded music companies, including a large number of independent record labels and distributors, compete in the market for commercial distribution of recorded music, the majority of independent record labels rely on the Majors to provide distribution services.

Based on its review of company documents, discussions with industry participants, and empirical analysis, Commission staff did not find sufficient evidence of head-to-head competition to conclude that the combination of Universal and EMI would substantially lessen competition. In the recorded music business, the products are highly differentiated, and companies compete for distribution in multiple ways, including: (1) the sale of new titles in large retailers; (2) the sale of catalog titles; and (3) the opportunity to promote artists and records. Commission staff therefore considered the level of direct competition between Universal and EMI across all of these different types of channels. Universal is very strong in popular new releases, but EMI – the smallest of the Majors – has a portfolio much more heavily weighted toward older titles. Further, while all of the Majors participate to different degrees in a variety of catalog discount programs, the competition between Universal and EMI in this area is relatively insignificant. We emphasize, however, that the decision to close is fact-driven and based largely on the different product portfolios of Universal and EMI. It is entirely possible that a transaction between other market participants or on different terms may yield a different conclusion.

Commission staff also assessed the impact of the acquisition on the development of interactive music streaming services. Staff focused on whether Universal would have enhanced bargaining leverage after the acquisition, allowing it to extract from streaming services superior financial terms, or advantaged positioning for its content. Commission staff sought to determine whether the transaction would lead to higher costs to interactive streaming consumers or a more limited selection of recorded music. Commission staff found considerable evidence that each leading interactive streaming service must carry the music of each Major to be competitive. Because each Major currently controls recorded music necessary for these streaming services, the music is more complementary than substitutable in this context, leading to limited direct competition between Universal and EMI. In the end, insufficient evidence existed showing that Universal and EMI offer products that could be viewed by streaming services as direct substitutes.

Commission staff also did not find sufficient evidence to support the concern that Universal's acquisition of EMI would significantly increase the potential for coordination among recorded music companies. Market conditions have changed since previous antitrust enforcement actions, such as in the unique situation of *Three Tenors*. The evidence showed that recorded music products are differentiated, with each record label offering a wide portfolio of titles, the success of which, in many instances, is uncertain and not strongly correlated with the success or failure of other titles. The net price for each title often is not particularly transparent because of the complexity of negotiated arrangements between record labels, distributors, retailers, and other rightsholders. Further, many factors impact sales of a particular title, and the transaction does not change competitors' ability to monitor each other or respond to competitive activity. In addition, the absence of evidence that EMI's competitive behavior has been disruptive to the status quo in recent years undermined the argument that it had functioned as a maverick.

We worked closely with the European Commission throughout the investigation, but reached different conclusions because of different evidence unique to each jurisdiction. For example, concentration levels in a number of EU Member States were significantly higher than the combined market share of Universal and EMI in the United States. In addition, the markets in Europe have a different, larger, and more diverse set of customers, and it appears that the market dynamics relating to digital streaming services differ significantly from those found in the United States. Although the Commission did not conclude that a remedy was needed to protect competition in the United States, we note that the remedy obtained by the European Commission to address the different market conditions in Europe will reduce concentration in the market in the United States as well.