

Mergers: Commission approves acquisition of sole control over EMI Music Publishing by Sony

EMI Music Publishing (“EMI MP”), a music publishing company, is since 2012 jointly owned and controlled by Sony Corporation of America (“Sony”) and Mubadala Investment Company PJSC (“Mubadala”), an investment fund based in the United Arab Emirates. Under the proposed transaction, Sony would now acquire sole control and ownership over EMI MP.

Music publishers exploit the copyrights of authors by granting licences to users of music. The most common music publishing rights are mechanical rights (e.g. for recorded music), performance rights (e.g. for concerts and TV and radio broadcasting), online rights (e.g. for online music downloading or streaming) and synchronisation rights (e.g. for advertisements and film music).

Since 2016, the fully owned and controlled music publishing subsidiary of Sony, Sony/ATV, has been the exclusive administrator of EMI MP’s entire catalogue, whereas EMI MP itself plays no role in licensing its catalogue to digital platforms, or in signing and retaining authors.

Commission investigation

Since Sony already has joint control of EMI MP, the transaction would not lead to any increase in market share in any of the markets where Sony and EMI MP are active. Therefore, the Commission focused its investigation on assessing whether Mubadala has acted as a constraint on Sony’s ability to leverage across both recording music and music publishing rights and, in particular, into the potential impact of the removal of this constraint on any hypothetical Sony strategy for EMI MP.

As regards the **provision of music publishing services to authors**, the Commission concluded that, as Sony/ATV and EMI MP have not competed to sign new authors since 2012, and as Mubadala did not constrain Sony’s strategy before the merger, the merger would not raise competition concerns.

As regards the **exploitation of the copyrights offline**, the Commission excluded competition concerns because Sony/ATV already has the sole and exclusive right to license EMI MP’s publishing rights offline. Moreover, in relation to mechanical and performance rights the Commission concluded that control over pricing and licensing terms is in any case in the hands of collecting societies.

Finally, as regards the **exploitation of publishing rights for online use**, although the merger would not lead to any increase in market shares, the Commission analysed whether the transaction could increase Sony’s bargaining power vis-à-vis online music platforms in the market for online music

licensing.

This is because Sony not only holds publishing rights for songs but also recording rights (via its recording division – Sony Music), and online platforms need a licence to both sets of rights to be able to offer their services. As the repertoire of songs over which Sony has publishing rights only overlaps partially with the one over which it holds recording rights, Sony has control over a larger set of songs than just the songs controlled by Sony/ATV and EMI MP.

The Commission looked into whether, after the transaction, Sony could threaten not to license its rights – publishing or recording – in order to extract better terms from online platforms. However, the Commission found that the transaction would not materially increase Sony's bargaining power vis-à-vis online platforms, in particular because:

a) Any strategy to extract better terms from online platforms to the benefit of both music publishing and recorded music would have also been in the interest of Mubadala before the merger, and therefore the merger would not change the current situation.

b) The Commission found that authors could credibly threaten to switch away from Sony if it attempted to degrade the value of their publishing rights to the benefit of its recording division.

c) Even assuming that this type of strategy would be possible and valuable for Sony, the Commission found that, on the market for the licensing of online rights in the European Economic Area, the transaction would not give rise to competition concerns, as Sony's position vis-à-vis digital music providers would not significantly increase compared to the current situation. In fact, as is already the case today, online platforms would continue to have access to both Sony's and third parties' repertoire to operate in the EEA.

Therefore, following its phase I investigation, the Commission concluded that the transaction would raise no competition concerns in any of the affected markets and cleared the case unconditionally.

Companies and products

EMI Music Publishing, based in the UK, is a music publishing business currently jointly controlled by Sony and Mubadala.

Sony Corporation of America, the US subsidiary of Sony Corporation, headquartered in Japan, is a leading player in the music recording and publishing business. Sony/ATV is not a party to the transaction, but has administered EMI MP's catalogue since 2012. Sony/ATV is the wholly-owned music publishing subsidiary of Sony Corporation of America.

Mubadala Investment Company PJSC, based in Abu Dhabi, is a public joint stock company focused on investment and development that is wholly owned by the Government of the Emirate of Abu Dhabi in the United Arab Emirates. Mubadala is active in investing in a wide range of strategic sectors, including

energy, utilities, real estate, basic industries, and services.

Merger control rules and procedures

The transaction was notified to the Commission on 21 September 2018.

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the [Merger Regulation](#)) and to prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it.

The vast majority of mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

More information will be available on the [competition](#) website, in the Commission's [public case register](#) under the case number [M.8989](#).