

The EMI / Time Warner Case

MERGERS (RECORDING): THE EMI / TIME WARNER CASE

Subject: Mergers

Industry: Recording; music recording and publishing
(Some implications for other industries)

Parties: EMI plc (UK)
Time Warner Inc (USA)

Source: Commission Statement IP/00/1122, dated 5 October 2000

(Note. From the consumers' point of view, it was hard to feel entirely comfortable about the proposal referred to in this report: the recording companies already enjoy considerable power, which would have been further concentrated as the result of the proposed merger. To make the deal palatable, substantial concessions would have been needed; and these could not apparently be provided within the statutory time-limits. It remains to be seen whether a further notification will be received at a later date. In the meantime, the Commission is continuing its separate investigation of the proposed merger between Time Warner and America on Line.)

EMI Plc and Time Warner Inc have informed the Commission that they have decided to terminate their agreement and to withdraw the notification they had submitted to the Commission for regulatory clearance. In view of this, the Commission will not take any decision with regard to the notified operation.

On 5 May 2000 EMI and Time Warner had notified to the Commission an agreement by which they would have combined their music recording and publishing businesses. On 14 June the Commission opened an in-depth investigation over concerns that the operation could create a collective dominant position in national European markets for recording music, a single dominant position in national markets for music publishing, and a single dominant position in the markets for on-line music and software based music. The Commission made known its preliminary position to the companies in a statement of objections on August 22.

EMI and Time Warner submitted undertakings on 19 September - the deadline, in this deal, for offering remedies - which proved insufficient to meet the Commission's concerns. Despite the fact that the deadline had expired, the Commission continued discussions with the parties to find a solution. During that process, EMI and Time Warner provided informal proposals that improved substantially the initial remedies. But the Commission still had doubts and in view of the late stage of the procedure could not properly evaluate the undertakings.

When a merger review is in the second (in-depth) phase, undertakings must be submitted at the latest one month before the deadline for a ruling: in this case, 18 October. Because of the need for transparency and of the Advisory Committee's role, the practice of the Commission is not to accept remedies submitted after the deadline unless they resolve all concerns in a clear and obvious way and do not require a further market evaluation.

The parties informed the Commission on 5 October that they had decided to terminate their deal and to withdraw the notification they had submitted. They have publicly announced that they will continue the discussions between themselves and with the Commission and other regulators to try to reach a new agreement. The Commission will obviously review any new modified agreement that the parties may reach.

At the time of writing, the Commission has just approved Time Warner's proposed merger with AOL, subject to stringent conditions. This will be covered in a report in our next issue. ■

The Volvo / Renault Case

The Commission has decided not to oppose the acquisition by Volvo of Renault Vehicules Industriels (RVI). Volvo is a Swedish manufacturer of trucks, buses and engines. RVI has until now been a wholly owned subsidiary of Renault SA. The decision follows a careful investigation of the affected markets, in the course of which the parties have made significant undertakings that will remove the competition concerns resulting from the acquisition of RVI.

On 14 March 2000, the Commission declared the proposed merger between Volvo and Scania incompatible with the Common market. Following this decision Volvo has remained a significant shareholder in Scania. Similarly, RVI has, through the Irisbus joint venture, been linked to Iveco (of the Fiat group) in the production and sales of buses. However, in the context of the RVI acquisition, the parties have given the Commission an undertaking that they will remove these links to Scania and Iveco within a specific timeframe. In addition, the parties have also undertaken to eliminate the overlap in bus activities in France created by the operation.

These undertakings will ensure that the present concentration will not lead to negative effects on competition on the markets considered in the Volvo/Scania case or, through the additional link with the Fiat group, on the bus markets. They have also enabled the Commission to focus its investigation on the relatively limited number of markets where both Volvo and RVI have significant activities.

Source: Commission Statement IP/00/962, dated 1 September 2000.