

# THE INDEPENDENTS' VOICE

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## — The proposed Universal/EMI merger : why should we care?

The proposed Universal/EMI merger in recorded music not only raises serious issues from an anti-trust perspective, policy makers and citizens, including music lovers, are not sufficiently alerted to the issues raised by such a mega concentration in the arts and entertainment sector, and the consequences for Europe's identity and heritage, access to culture, creation and innovation.

The consequences of the proposed transactions on music creation should be carefully considered by the European Commission. Music is more than market shares and rights issues. It expresses the singular and the beautiful. Like other forms of art, music reflects our history and contributes to our social transformation.

The merged companies would have more than a 50% market share in a large number of European countries (at least 7 countries including UK and France) and its worldwide market share would be between 35 and 40%. This market dominance would be unacceptable in any industrial sector but even more so in an industry concerned with the production and dissemination of art and culture.

Los Angeles based Universal Music Group (UMG) is the largest music company in the world (with international stars such as Lady Gaga, Rihanna, Eminem, Justin Bieber<sup>1</sup>). London based EMI is the fourth largest in the world and the second or third largest recorded music company in most European countries. As a merged entity it would control the vast majority of successful artists that top the charts at international and local level (11 out of the 15 top selling albums in the world in 2010<sup>2</sup>). In individual markets this domination is even more striking: in France for instance in 2010 this "super-major" would have had 24 albums in the top 40 and 31 singles in the top 40 ranking<sup>3</sup>!

Their combined global market share in the classical sector would be around 75% with labels such as Deutsche Grammophon, Decca, Philips, EMI and Virgin Classics (the catalogue includes amongst others recordings from Karajan, Bernstein, Simon Rattle, Boulez, Cecilia Bartoli, Maria Callas, Claudio Abbado, Valery Gergiev etc). Effectively one company would own Europe's classical heritage since first recordings were made at the end of the 19<sup>th</sup> century.

Similarly in jazz the two most famous jazz labels, Blue Note and Verve, (whose respective rosters include for example Billy Holliday, Wayne Shorter, Herbie Hancock, Ella

Fitzgerald, John Coltrane, Miles Davis, Diana Krall, Louis Armstrong etc) would now belong to the same company.

Universal would control the back catalogues of British cultural icons such as the Beatles, the Rolling Stones, Pink Floyd, Queen, Radiohead, David Bowie, Peter Dinklage, Depeche Mode and Coldplay. EMI is also the label of Françoise Hardy, Edith Piaf or Charles Aznavour.

1. Music is an art form, integral to Europe's heritage and identity which serves an essential social function as a favourite past time and mind opener in particular for young people<sup>4</sup>.
2. Music is a creative art form that feeds an important European economic sector: the culture and creative industries.
3. Because of its social, cultural and entertainment characteristics, Music is an essential element of the "experience economy" which characterizes a post-industrial society.

Music announces or portrays a society. It is also a prophecy<sup>5</sup>. Indeed the impact of music is far reaching; it triggers revolution or protest, it foments new ways of behaving, it challenges the establishment and sets new trends.

Freedom in society owes much to the influence of singer/songwriters. Bach and Mozart reflect the nascent bourgeois world; Bob Dylan, Jimi Hendrix, the Beatles and the Rolling Stones are figures of the liberated 60s. Today rap and hip hop reflect urban conflict inspired by jazz and blues which were the expression of slavery and emancipation.

Music is intrinsically linked to the expression of freedom and democracy, cultural exchange and understanding. The influence of world music with mixed cultural influences contributes to new forms of dialogue.

Music is the most affordable and the most popular of art forms. It touches all generations. Its ability to crystallize social groupings makes it a powerful instrument for new media companies to understand tastes and build valuable consumer profiles for marketing purposes. Music is a powerful tool to drive social networking and to create on-line communities.

Music became, with the invention of the gramophone at the beginning of the 20<sup>th</sup> century, a product of mass consumption which nourishes other art forms (in pop art painting, fashion design (David Bowie, Sex Pistols, Madonna...),

1. Source: <http://www.universalmusic.com> on 11 January 2011.

2. Source: IFPI Recording Industry in Numbers 2011 – Global Best Sellers of 2010 (p.22).

3. Source: Syndicat national de l'édition phonographique (SNEP) <http://www.disqueenfrance.com/fr/pag-259376-Classements-Annuels.html>

4. For a remarkable account of music rhythm and influence on lives see Rob Sheffield, *Love is a Mix Tape*, Sonatine for the French edition 2009.

5. Jacques Attali, *Bruits*, Fayard, 2001.

architecture, cinema, video and the internet. The influence of music is extremely wide and impacts many sectors of the economy and society.

Music companies contribute to the democratization of access to culture enabling the distribution across borders of musical composition and performances. They help the realisation of the artistic act through investment and risk taking whilst trusting the artist's vision and craft.

Naturally the dominant company will seek to reduce its risk by influencing the production of the recordings (often driven by marketing considerations) or by concentrating its marketing power on a few titles which are more likely to travel internationally (usually Anglo-American repertoire).

In the European context with its highly specific linguistic markets music companies play an essential role in sustaining production in local languages and cultures. The risk is leaving a dominant player to decide on the viability of local cultural investment. This control of rights' catalogue explains to a large extent the domination of Hollywood in the European film market (70% market share). The same should not be allowed to happen in music through excessive concentration that marginalises independent players which are key to local cultural investment.

EU Competition and Internal Market regulation have guided the unification of goods. However dematerialization implies the development of new assessment criteria to take into account industrial strategies in which the control of copyright has become essential. Companies controlling music or images, Internet service providers, luxury brands are emblematic of this new economy. Cultural goods are the paradigm of this new economy.

Thus this merger should not be looked at solely from a music market perspective. It touches on the development of the experience or de-materialised economy and the ability of companies to control essential cultural resources that capture consumers' attention, independently of the price and functionality of the product.

Music facilitates the identification of consumer preference thus allowing a range of industries to segment markets and to establish price discrimination mechanisms. It enables new and powerful bundling offers (linking an ICT product to the availability of rich content, controlling access to the musical experiences (deals with concert promoters or festivals to limit economic risk of the distributors in exchange for stronger promotional platforms for the company's 'artists).

This new form of consumption gives enormous advantages to companies controlling a large amount of content as they can bundle this offering with other products or services for which consumers willingness to pay is much stronger. Securing access to cultural products and services in the social and economic market place will be a crucial political task in the years ahead.

Such a dominant control over musical production and distribution by a single entity has a number of consequences:

- It restricts production and investment in artists and creation.
- It prevents or strongly limits alternative intermediation between consumers and artists.
- It gives unparalleled control over the commercial exploitation of heritage recordings.
- It creates dominance in distribution channels and thus restricting or controlling consumer access to a very large segment of cultural goods and services.
- It allows a dominant commercial entity to block technological innovation.
- It impacts on other cultural sectors such as film and television which depend on access to music content.

The competition regulators need to take all the above elements into account when considering the UMG/EMI merger proposal. These elements are often intangible and are not necessarily reflected in traditional price competition assessments examined in the normal anti-trust assessment.

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