



## **DETERMINATION OF MERGER NOTIFICATION M/10/045 - BMG/Chrysalis**

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### **Section 21 of the Competition Act 2002**

**Proposed acquisition by BMG RM Investments Luxembourg S.a.r.l. of Chrysalis plc.**

**Dated 18 January 2010**

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### **Introduction**

1. On 20 December 2010, in accordance with section 18 of the Competition Act 2002 (the "Act"), the Competition Authority (the "Authority") received a notification of a proposed transaction whereby BMG RM Investments Luxembourg S.a.r.l. ("BMG") would acquire, through its wholly-owned subsidiary Forte Bidco 1 Limited, sole control of Chrysalis plc ("Chrysalis").

### **The Undertakings Involved**

#### ***The Acquirer***

2. BMG is an international group of companies active in music publishing<sup>1</sup> and recorded music<sup>2</sup>.
3. BMG has a licensing arrangement with Sony Music Entertainment UK Limited ("Sony") for the exploitation of BMG's recorded music rights in relation to certain music catalogues in the State. Effectively this means that Sony collects royalties from the Irish collecting societies<sup>3</sup> in relation to this music catalogue.<sup>4</sup> The revenue generated by BMG in relation to this licensing arrangement is considered by BMG as turnover generated in the United Kingdom.
4. BMG had a similar licensing arrangement with Kobalt Music Group ("Kobalt") in relation to BMG's music publishing rights<sup>5</sup> that expired on

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<sup>1</sup> The European Commission (the "Commission") has defined music publishing as the exploitation of intellectual property rights of song writers [Case M4404 Universal/BMG Music Publishing paragraph 12]. Furthermore, the Commission has stated that: "the activities of a music publisher are two-fold (i) the downstream activity of exploiting the works of authors under contract; and (ii) an upstream activity of signing authors and providing them with financial and marketing support as a counterpart to the transfer of their musical works" [Case M.5533 Bertlesmann/KKR/JV paragraph 31].

<sup>2</sup> Recorded music is an activity that operates downstream of music publishing and as defined by the Commission "encompasses the discovery and development of artists and the promotion, marketing and sales of their sound recordings as well as the exploitation of rights in the sound of an artist's performance." [Case M.5533 *Ibid* paragraph 40]

<sup>3</sup> Irish collecting societies such as Irish Music Rights Organisation ("IMRO").

<sup>4</sup> The licensing arrangement between BMG and Sony commenced in October 2008 and is for [...] years.

<sup>5</sup> These music publishing rights include (i) mechanical rights (for reproduction in sound recordings, e.g. on CDs), (ii) performance rights (for TV, radio, live performance), (iii) synchronisation rights (for synchronisation of music with visual images), (iv) print rights (for reproduction on music sheets), and (v) online rights (for online exploitation).

31 December 2010. This arrangement related to the music catalogue of Evergreen Copyright America, a United States based music company acquired by BMG in 2010. BMG Rights Management (UK) Limited, a subsidiary of BMG, will take over the activities of Kobalt in the State in relation to this music catalogue from 30 June 2011.

5. BMG is jointly controlled by Bertelsmann AG ("Bertelsmann") and Kohlberg Kravis Roberts and Co LP ("KKR"). KKR is a private equity firm with a diverse portfolio of business interests. The activities of KKR's portfolio of companies do not overlap with the activities of Chrysalis in the State.
6. Bertelsmann is an international media company.<sup>6</sup> In the State, Bertelsmann is primarily active in the media sector,<sup>7</sup> and through its subsidiary FremantleMedia Limited ("Fremantle"), is active in television production and music publishing.<sup>8</sup> The type of music publishing engaged in by Fremantle is mainly limited to music used in its television programmes.
7. For the financial year ending 31 December 2009, Bertelsmann generated a worldwide turnover of approximately €15,364 million of which €[...] was generated in the State. Of this turnover in the State, Fremantle generated €[...].<sup>9</sup>

### ***The Target***

8. Chrysalis is a music company whose principal activities are music publishing, recorded music (including artist management) and the wholesale distribution of CDs, DVDs and book products.
9. In the State, Chrysalis is active in music publishing and the wholesale distribution of books, CDs and DVDs. Chrysalis' music publishing activities in the State involve the collection of royalties on behalf of artists in its music catalogue from the Irish collection societies.<sup>10</sup> Chrysalis is not active in recorded music in the State.
10. For the year ending 30 September 2010, Chrysalis generated a worldwide turnover of approximately €79 million of which approximately €[...] was generated in the State.<sup>11</sup>

### **Third Party Submissions**

11. No submissions were received.

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<sup>6</sup> This involves activities relating to television, radio, book publishing, magazine publishing, media services and media clubs.

<sup>7</sup> Bertelsmann is active in the sale and distribution of books and foreign language magazines, the manufacture of DVDs and other optical storage media and the provision of related distribution and logistic services. Bertelsmann is also active in the provision of finance services. Through another subsidiary, i2i Musikverlag ("i2i"), a German based company, Bertelsmann is indirectly involved in music publishing in the State. This music publishing is related to music used in movies and other programmes and these rights are exploited by a third party sub-publisher independently of i2i.

<sup>8</sup> The parties state that the turnover derived by Fremantle from music publishing in the State is negligible.

<sup>9</sup> Figures converted to Euro using the ECB average exchange rate of €1=£0.89094 Sterling.

<sup>10</sup> The royalties collected relate to the same music publishing rights as described in footnote 5 above.

<sup>11</sup> *Ibid.*

## Analysis

12. In the State there is no horizontal overlap between the activities of BMG and Chrysalis other than the licensing arrangements described above in paragraphs 3 and 4.
13. As stated above, BMG had entered into a licensing arrangement with Kobalt that expired on 31 December 2010. It is noted that from 30 June 2011 BMG will commence collecting royalties in relation to Evergreen Copyright America's music catalogue in the State.
14. In the State there is negligible horizontal overlap between the activities of Bertelsmann, through its subsidiary Fremantle, and Chrysalis in relation to music publishing.
15. The Authority considers that the proposed merger does not raise any competition concerns in the State with respect to music publishing for the following reasons:
  - (i) according to the parties, Chrysalis has an estimated market share of less than [range 0-5]% in music publishing activities in the State;
  - (ii) the music publishing activities of Fremantle are negligible and mainly related to its television production activities, and
  - (iii) there are a large number of music publishers in the State, some of which have a major international presence.
16. The proposed transaction does not raise any vertical competition issues in the State.
17. In light of the above, the Competition Authority considers that the proposed transaction does not raise competition concerns in the State in relation to music publishing.

## **DETERMINATION**

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby BMG RM Investments Luxembourg S.a.r.l. would acquire, through its wholly-owned subsidiary Forte Bidco 1 Limited, sole control of Chrysalis plc will not be to substantially lessen competition in markets for goods or services in the State, and accordingly, that the acquisition may be put into effect.

**For the Competition Authority**

**Dr. Stanley Wong**

**Member of the Competition Authority**