



DETERMINATION OF MERGER NOTIFICATION M/13/004 -

Bertelsmann / BMG

Section 21 of the Competition Act 2002

Proposed acquisition by Bertelsmann of sole control of BMG RM Investments Luxembourg S.a.r.l

Dated 21 March 2013

Introduction

1. On 1 March 2013, 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 Bertelsmann SE & Co. KGaA ("Bertelsmann") would acquire sole control of BMG RM Investments Luxembourg S.à r.l. ("BMG").
2. The effect of the proposed transaction would be to move from the current joint control of BMG to sole control by Bertelsmann, i.e., Bertelsmann would acquire the shares currently owned by KKR Forte (Cayman) L.P. ("KKR Forte") and also those shares held by other shareholders.¹

The Undertakings Involved

The Acquirer

3. Bertelsmann, headquartered in Gütersloh, Germany, is a private partnership limited by shares,² and active in over 50 countries in television, radio, book publishing, magazine publishing, media services and media clubs. Bertelsmann has four corporate divisions:³
 - RTL Group ("RTL") is a broadcasting and production company operating radio and television stations within Europe but not within the State,
 - Random House is involved in book publishing,
 - Gruner + Jahr ("G+J") is involved in printing and publisher of magazines and newspapers including via the internet, and
 - Arvato AG ("Arvato") is involved in business process outsourcing ("BPO") and other services such as billing and payments processing and customer relationship management.

¹ The shares of the remaining shareholders will be acquired pursuant to "drag-along" rights to be exercised by KKR Forte (Cayman) L.P. whereby minority shareholders would be required to also sell their shares.

² For further details see <<http://bertelsmann.com/Investor-Relations/Bertelsmann-at-a-Glance/Shareholder-Structure.html>>

³ For more information on Bertelsmann's corporate divisions see <<http://www.bertelsmann.com/Corporate-Divisions.html>>.

4. Within the State the majority of Bertelsmann's turnover, i.e., approximately [...]%,⁴ derived predominantly from Arvato's wholly owned Irish subsidiary, Arvato Finance Services Limited, and also through the wider Arvato group of companies. Within the State Arvato is involved in business process outsourcing (BPO), finance services (e.g., billing and payment processing), customer relationship management services (including contact centre solutions - i.e. customer services, sales, technical support and collections), loyalty and customer retention (e.g., loyalty systems, rewards management, fulfilment and customer services), supply chain services and public sector and citizen services particularly at the level of local government.⁵
5. In addition Sonopress Ireland Limited ("Sonopress"), an Irish based subsidiary of Bertelsmann provides CD and DVD replication services through a manufacturing plant in the State. Sonopress manufactures and produces CDs and DVDs (principally DVD ROMs) and other optical storage media for music, movies, games and software, and provides related distribution and logistics services.
6. The book publishing activities of Random House, including its Irish subsidiary Transworld Ireland,⁶ comprise approximately [...]% of Bertelsmann's turnover within the State.
7. In addition Bertelsmann is active through the following divisions and or subsidiaries (none of which generate turnover in excess of €[...] million⁷ within the State):
 - FremantleMedia ("Fremantle"),⁸ part of RTL, sells television programmes (already made for broadcast elsewhere) to Irish broadcasters,
 - IP Deutschland, an in-house sales agency for Bertelsmann's television stations sells advertising slots on German television shows to Irish-based customers,
 - G+J sells foreign language magazines (i.e., other than Irish or English) within the State,
 - UFA Sport, a subsidiary of RTL, acquires the broadcast rights for certain sporting events (e.g., Seria A football in Italy and the Schüco Open golf in Germany) and organisations (e.g., the German Football Association) which it sells to broadcasters, including within the State,⁹
 - Mohn Media, a business unit within Arvato, makes sales to customers based in the State for its printing services activities located in Germany,

⁴ This figure is calculated on the basis of unaudited accounts for the financial year ended 31 December 2012, as referred to in footnote 10.

⁵ See <<http://www.arvato.ie/en/our-commitment-to-ireland/services.html>>.

⁶ This figure is calculated on the basis of unaudited accounts for the financial year ended 31 December 2012, as referred to in footnote 10. For more information on Transworld Ireland see <www.transworldireland.ie>.

⁷ This figure is calculated on the basis of unaudited accounts for the financial year ended 31 December 2012, as referred to in footnote 10.

⁸ For more information on Fremantle see <www.fremantlemedia.com>.

⁹ For more information on UFA Sports see <<http://www.ufasports.com>>.

- RTL Interactive, the non-advertising arm of RTL is involved in on-line activities (e.g., gaming) and sells such services to Irish-based consumers,
 - Wer-kennt wen.de GmbH, a German social networking site sells advertising to Irish-based customers, and
 - M6, a French television channel, and also its subsidiary W9 TV SNC, derive revenue within the State from the sale of advertising slots (either on French television or on-line) to Irish-based customers.
8. The parties state that there are also a number of other Bertelsmann subsidiaries which generate negligible or de minimis turnover within the State. The parties state that none of these Bertelsmann subsidiaries are involved in the management or exploitation of music rights or the publishing or recording of music.
9. For the year ended 31 December 2011 Bertelsmann's worldwide turnover was approximately €15,253 million, of which approximately €[...] million was generated in the State.¹⁰

The Vendor

10. KKR Forte is controlled by funds affiliated with KKR & Co L.P. ("KKR"). KKR is a limited partnership listed on the New York Stock Exchange with affiliated private equity funds invested in companies in a wide range of sectors.¹¹

The Target

11. BMG, headquartered in Luxembourg, is an international group of companies involved in music rights management. This includes the administration, development and exploitation of music rights.
12. Within the State BMG has entered into license agreement, also called a catalogue distribution agreement with Sony Music Entertainment UK Limited ("Sony Music UK"). The licensing agreement concerns release, marketing, distribution and licensing of new and existing recordings. The license agreement gives Sony Music UK the exclusive right to exploit BMG's retained master rights in UK and Ireland for physical and digital sales and any further licensing. For the year ended 31 December 2012 this turnover amounted to approximately €[...] million.¹² The parties argue that "any turnover generated in the State from the exploitation of BMG's master rights catalogue is attributable to Sony Music rather than to BMG."¹³
13. Within the State BMG's wholly owned subsidiary, BMG Rights Management (Ireland) Limited ("BMG Ireland"), provides

¹⁰ Unaudited accounts, at the time of the notification, for the financial year ended 31 December 2012 indicate slightly higher turnover figures: worldwide turnover of approximately €16 billion of which approximately €[...] million was generated within the State. Of this amount approximately €[...] million was generated by Arvarto and approximately €[...] million by Random House.

¹¹ For more information on KKR see <<http://www.kkr.com>>. BMG is the only equity investment by KKR involved in the management of music rights.

¹² Correspondence with the parties dated 12 March 2013.

¹³ Notification Form page 18.

administrative services mainly to First State Media Group ("FSMG"). These administrative services comprise contract administration, copyright registration and royalties accounting in relation to the FSMG catalogue. In addition BMG Ireland provides sales and marketing services, in particular mechanical and synchronisation licensing¹⁴ and income tracking to exploit these rights. The parties state that BMG turnover within the State derives entirely from fees it receives from ("FSMG") for the administration of the FSMG Catalogue.¹⁵

14. Consequently for the year ended 31 December 2012 BMG's worldwide turnover was approximately €[...] million of which approximately €[...] million (excluding the Sony Music UK turnover) or €[...] million (including it) was generated in the State.

Third Party Submissions

15. No submissions were received.

Rationale for Transaction

16. The parties state that:

*"KKR has held its stake in BMG for over three years which is in line with its normal timeframe for looking for opportunities to return profits to investors."*¹⁶

17. The parties further state that the proposed acquisition of KKR's stake in BMG is consistent with:

- *"Bertelsmann's strategic interest in maintaining and growing its interests in the music sector through BMG", and*
- *"From KKR's perspective, it is in line with its objective of returning profits to its investors."*¹⁷

Analysis

18. The proposed transaction does not give rise to any horizontal competition concerns within the State.¹⁸ Within the State, both KKR and Bertelsmann are currently active in the management of music rights only through their joint control of BMG. In essence the proposed transaction is a move from joint to sole control and will involve no parties other than Bertelsmann, KKR Forte and BMG. The proposed transaction will effect no change in BMG's involvement, or market share, in the management or exploitation of music rights or the publishing or recording of music other than the change from joint to sole control.

¹⁴ A mechanical license refers to the manufacture and distribution of audio-only products, such as albums, compact discs and audiocassettes. Synchronization licensing refers to the combination or synchronising audio and video into one production.

¹⁵ Correspondence with parties dated 12 March 2013.

¹⁶ Notification Form page 8.

¹⁷ *ibid.* See also <http://media.kkr.com/media/media_releasedetail.cfm?ReleaseID=744522>.

¹⁸ In this instance this is the case irrespective of whether BMG's activities in the State include the exploitation of BMG's master rights catalogue as discussed in footnote 12.

19. It is also the case that within the State BMG is not active in any of the other sectors in which Bertelsmann is active. In particular, within the State, BMG is not active in BPO, financial services, customer relationship management services, loyalty and customer retention services, supply chain services, or public sector and citizen services.
20. The proposed transaction does not give rise to any vertical competition concerns within the State.
21. In light of the above, and also the relatively low level of turnover of BMG within the State, the Authority concludes that the proposed transaction will not raise competition concerns in any market for goods or services in the State.

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 transaction whereby Bertelsmann SE & Co. KGaA would acquire sole control of BMG RM Investments Luxembourg S.à r.l. will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

For the Competition Authority

Stephen Calkins
Member of the Competition Authority
Director, Mergers Division