

Conduct of the inquiry

1. On 14 May 1993 the Director General of Fair Trading sent to the MMC the following reference:

The Director General of Fair Trading in exercise of his powers under sections 47(1), 49(1) and 50(1) of the Fair Trading Act hereby refers to the Monopolies and Mergers Commission the matter of the existence or the possible existence of a monopoly situation in relation to the supply in the United Kingdom of pre-recorded compact and vinyl discs and pre-recorded analogue and digital tapes on which music is reproduced without visual image.

The Commission shall investigate and report on the questions whether a monopoly situation exists and, if so:

- (a) by virtue of which provisions of sections 6 to 8 of the said Act that monopoly situation is to be taken to exist;
- (b) in favour of what person or persons that monopoly situation exists;
- (c) whether any steps (by way of uncompetitive practices or otherwise) are being taken by that person or those persons for the purpose of exploiting or maintaining the monopoly situation and, if so, by what uncompetitive practices or in what other way;
- (d) whether any action or omission on the part of that person or those persons is attributable to the existence of that monopoly situation, and if so, what action or omission and in what way it is so attributable; and
- (e) whether any facts found by the Commission in the pursuance of their investigations under the preceding provisions of this paragraph operate, or may be expected to operate, against the public interest.

The Commission shall report upon this reference within a period ending on 31 March 1994.

14 May 1993

(Signed) BRYAN CARSBURG
Director General of Fair Trading

2. The Secretary of State for Trade and Industry subsequently directed that the period for reporting on the reference should be extended to 14 April 1994.

3. The questions asked in the reference are answered in the following paragraphs of the report:

whether a monopoly situation exists: paragraphs 2.44, 2.48 and 2.54;

- (a) paragraphs 2.44 and 2.48;
- (b) paragraphs 2.45 and 2.48;
- (c) paragraph 2.186;
- (d) paragraph 2.186; and
- (e) paragraph 2.186.

4. The composition of the group of members responsible for the inquiry and report is indicated in the list of

members in the preface. Mrs Doreen Miller MBE JP was originally appointed as a member of the group but, following her elevation to the House of Lords, Mr J Evans was appointed in her place on 15 September 1993. The Baroness Miller of Hendon subsequently resigned as a member of the MMC.

5. Notices inviting evidence were placed in the *Daily Mail*, *Gramophone* and *Q*.

6. Written evidence was provided by record companies, distributors, retailers, record clubs, trade associations, CA, the BPI, the IFPI, artists' managers, the MPA and MCPS, the MU, Umbrella, VPL, PPL, other industry bodies, and a number of individual consumers. We held a total of 27 hearings, including two with EMI, PolyGram, W H Smith, Our Price and Virgin Retail, and one each with BMG, Sony, Warner, HMV and Kingfisher.

7. Members and staff of the MMC visited EMI's Abbey Road recording studio in London, its manufacturing plant at Swindon, Sony's manufacturing and distribution plant at Aylesbury, Gallup and a number of retail stores in London. In addition, two members made a short visit to the USA where meetings were held at the headquarters of EMI Music and with an independent US record company, and visits were made to a variety of retail locations.

8. A comparative study of recorded music prices in the USA and Great Britain was carried out for the MMC by BMRB International, and a comparative study of the UK/US prices of other goods was carried out by Management Horizons Europe. A study to value the businesses of the major record companies was carried out for the MMC by KPMG Peat Marwick.

9. In November 1993 we informed the five major record companies (EMI, PolyGram, Warner, Sony and BMG) and a number of retailers (Kingfisher, W H Smith, Our Price and HMV) of our provisional findings that monopoly situations existed in their favour in relation to the supply of recorded music in the UK. Each of these parties submitted written views addressing the issues we raised with them as well as attending a hearing. Their views are summarized in Chapters 12 and 13.

10. Some of the evidence obtained during the course of our inquiry was commercially confidential and our report contains only such information as we consider necessary for a proper understanding of our conclusions.

11. We should like to record our thanks to all those who helped with our inquiry, particularly the companies principally involved and also the Intellectual Property Policy Directorate of the DTI for its help with the description of the national and international copyright system recorded in Chapter 4.