

Conduct of the inquiry

1. On 30 November 1994 the OFT sent the MMC the following reference:

THE SUPPLY OF THE SERVICES OF ADMINISTERING PERFORMING RIGHTS AND FILM SYNCHRONISATION RIGHTS

The Deputy Director General, Office of Fair Trading, in exercise of his powers under sections 7(3), 47(1), 49(1) and 50(1) of the Fair Trading Act 1973 ('the Act'), having been authorised in this behalf by the Director General of Fair Trading under paragraph 7 of Schedule 1 to the Act, hereby refers to the Monopolies and Mergers Commission the matter of the existence or possible existence of a monopoly situation in relation to the supply in the United Kingdom of the services of administering performing rights and film synchronisation rights.

The Commission shall upon this reference 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 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.

For the purposes of this reference:

(a) 'performing right' means, in respect of a musical work, the right to do, or authorise another person to do, any of the following acts:

- (i) to perform a work in public;
- (ii) to broadcast a work or include it in a cable programme service,

insofar as such right subsists under the law relating to copyright in the United Kingdom; and it includes any corresponding right under the law of any jurisdiction outside the United Kingdom;

(b) 'film synchronisation right' means, in respect of any work, the exclusive right in any part of the world to record the work on the soundtrack of any film;

(c) 'administering performing rights and film synchronisation rights' includes exercising or enforcing such rights on behalf or for the benefit of composers or authors of works and others;

(d) 'musical work' without prejudice to the generality of the expression includes:-

- (i) any part of a musical work;
- (ii) any vocal or instrumental music recorded on the soundtrack of any film;
- (iii) any musical accompaniment to non-musical plays;
- (iv) any words or music of monologues having a musical introduction or accompaniment;
- (v) any other words (or part of words) which are associated with a musical work.

The Commission shall report on this reference within a period of 12 months from the date hereof.

30 November 1994

*(signed) J W PRESTON
Deputy Director General
Office of Fair Trading*

2. On the same day the OFT issued a press release announcing the reference. This is reproduced at Appendix 1.2.

3. On 4 May 1995 the OFT sent the MMC the following variation in the terms of reference:

THE SUPPLY OF THE SERVICES OF ADMINISTERING PERFORMING RIGHTS AND FILM SYNCHRONISATION RIGHTS

Whereas by a reference dated 30 November 1994 the Deputy Director General, Office of Fair Trading, in exercise of his powers under sections 7(3), 47(1), 49(1) and 50(1) of the Fair Trading Act 1973, and having been authorised in this behalf by the Director General of Fair Trading under paragraph 7 of Schedule 1 to the said Act, referred 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 the services of administering performing rights and film synchronisation rights;

Now therefore the Director General of Fair Trading in exercise of his powers under section 52(1) of the said Act hereby varies the said reference as follows:

(1) by inserting after 'film synchronisation rights' in the first paragraph of the said reference the following:

'by licensing bodies on behalf of the composers and authors of musical works, or the owners or publishers of or persons being otherwise entitled to the benefit of or interested in the copyright in such works';

(2) by deleting ', in respect of a musical work,' from the definition of 'performing right' in sub-paragraph (a);

(3) by deleting sub-paragraph (c) and substituting the following:

'(c) A "licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author.'

4 May 1995

*(signed) BRYAN CARSBURG
Director General of Fair Trading*

4. The composition of the Group of members responsible for the present investigation and report is indicated in the list of members in the preface. Mr J S Bridgeman was originally appointed as a member of the Group, but ceased to be a member on 1 October 1995 when he took up the post of Director General of Fair Trading.

5. Notices inviting interested parties to submit evidence to the MMC were placed in:

Music Week
Disco Mirror
Gramophone Monthly
Supermarketing

6. In order to assess the use of IT by the PRS we employed the consultants French Thornton Partnership. An abbreviated version of their report is given in Appendix 8.1.

7. In addition we sought evidence and views from a wide range of members and licensees of the PRS.

Users

8. We received written evidence from and held hearings with the British Broadcasting Corporation, Independent Television Association, BSkyB, the Music Users' Council and the British Hospitality Association.

9. Submissions were also received from the Association of Independent Radio Companies, the Cable Communications Association, the British Amusement Catering Trades Association, Channel Four Television Corporation, the Producers' Alliance for Cinema and Television, the British Retail Consortium, the Brewers and Licensed Retailers Association, the Confederation of Passenger Transport, the National Association of Holiday Centres, the Society of London Theatre and Theatrical Management Association, the Cinematograph Exhibitors' Association, the Cinema Advertising Association, International Talent Booking, the World Dance Organisation and others.

Writers

10. We received written evidence from and held hearings with the Association of Professional Composers, the British Academy of Songwriters, Composers and Authors (whose General Secretary, Ms A Harcourt, also gave oral evidence in a private capacity), and the Composers' Guild of Great Britain, the English Folk Dance and Song Society, Miss L Denny, Dr D Mitchell (the Britten Estate) and U2 (with PolyGram). Written evidence was also received from the Association of British Jazz Musicians, the Incorporated Society of Musicians, the Musicians' Union, the Music Industry Human Rights Association, Mr L Bart, Mr C Blyton, Mr D Bulmer, Mr M Dawson, Mr B Engel, Mr A Fawkes, Mr J Fishman, Ms J Fowler, Mr R Goodwin, Mr C Gunning, Mr K Jones, Mr E Tomlinson, Mr D Wadsworth and others.

Publishers

11. We received written evidence from and held hearings with PolyGram, Magnum Music Group, Westbury Music Ltd and another music publisher. Evidence was also received from the Music Publishers' Association, Boosey and Hawkes, BMG Music Publishing Ltd, Interspear Music, Savera Music Ltd, Oriel Library, Copyright Income Administration Ltd, Bardic Edition and Jelly Street Music.

Others

12. Evidence was received from the Mechanical Copyright Protection Society and Professor T Clarke with both of whom we held hearings. Phonographic Performance Ltd also submitted evidence, as did the Arts Councils of England and Scotland, Mr T Lyttleton and three former members of the PRS staff: Mr M Freeguard, with whom we also held a hearing, Mr R Abrahams, and Mr B Engel.

13. We also held a hearing with Mr M Bowers, Chairman of the Copyright Tribunal, in his private capacity, and heard the views of the Intellectual Property Policy Directorate of the Patent Office.

Overseas societies

14. Questions were put to a number of performing right societies and a hearing was held with ASCAP. The following societies completed our questionnaire:

Australasian Performing Right Association Ltd;
American Society of Composers, Authors and Publishers;
Broadcast Music Inc;
Japanese Society for Rights of Authors Composers & Publishers;
Société des Auteurs Compositeurs et Editeurs de Musique;
Society of European Stage Authors and Composers;
Society of Composers, Authors and Music Publishers of Canada Ltd; and
Svenska Tonsättares Internationella Musikbyrå.

In addition, we also received helpful information from a number of other overseas societies.

15. Staff visited Paris to discuss with the French Government Ministries the question of copyright law in France and the way in which copyright law and competition law interact.

16. Members of the Group accompanied by staff twice visited the PRS's offices at 29-33 Berners Street to be given an overview of the PRS and its divisions; they toured the Membership, Repertoire, Distribution, Regional Licensing Offices, Broadcasting and International Relations Divisions. Staff also made a number of additional visits.

17. Some of the evidence received during the course of our inquiry was of a commercially sensitive nature and our report contains only such information as we consider necessary for a proper understanding of our conclusions.

18. We should like to thank all those who helped us in our inquiry, particularly the PRS.