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Proposed Universal-EMI Merger Violates Anti-Trust Laws

Consumer Group tells Federal Trade Commission: "Use the full range of tools available to ensure consumers get the full benefits of digital technologies"

Today, the Consumer Federation of America and Public Knowledge jointly filed a detailed report with the Federal Trade Commission evaluating the impact the proposed merger between Universal Music Group (UMG) and EMI would have on the U.S. music industry and corresponding digital distribution-dependent economy. Using the standards and methods outlined in the recently revised Department of Justice/Federal Trade Commission *Merger Guidelines,* the report concludes that the UMG-EMI merger creates "an unfair method of competition" that constitutes "an unreasonable restraint of trade" because it will "substantially lessen competition" and is "likely to enhance market power".

Dr. Mark Cooper, CFA's Director of Research and co-author of the report states: "In simple terms the post-merger firm would have a strong incentive and increased ability to exercise market power to undermine, delay, and distort new digital distribution business models, in a market that has been a tight oligopoly for over a decade. The FTC must take steps to prevent this severe harm to competition and consumers."

"This report is a thorough analysis which shows the very real dangers of allowing Universal Music Group to take over EMI. The report shows very clearly that the result of the transaction will be a highly concentrated market in the digital distribution of music, which will harm consumers, and makes the case that the Federal Trade Commission needs to act to prevent those results from occurring," said Jodie Griffin, staff attorney for Public Knowledge.

Key findings of the report, entitled *The Role of Antitrust in Protecting Competition, Innovation and Consumers as the Digital Revolution Matures: The Case against the Universal-EMI Merger and E-Book Price Fixing,* include the following:

- The proposed merger creates a highly concentrated market by eliminating one of only four major record labels and results in an increase in concentration across every major product market, including current and catalogue CDs, digital albums and digital singles, that is five times the level that the DOJ/FTC identify as a cause of concern.
- The recent history of anti-competitive, anti-consumer conduct by the U.S. music industry and the role of EMI as a maverick in the digital era compound the

anticompetitive effects of the merger and significantly increase the likelihood that the merger will not only result in higher prices but also undermine incipient competition.

- Claims that piracy will prevent the abuse of market power are directly refuted by evidence on consumer purchasing behavior, estimates of elasticities of demand by academics, and marketing research conducted by the music industry.
- The strong parallels between the impact of the merger on the development of digital disintermediation in the music sector and the recent case brought by the Department of Justice against e-book publishers highlight the economic efficiency and consumer benefits from the digital distribution of goods and services.

"Antitrust authorities and others must use the full range of tools available to protect competition, innovation, and consumers and ensure that consumers and the economy enjoy the full benefits of the development of digital technologies," Cooper concluded.

The complete report is available at:
http://www.consumerfed.org/pdfs/Studies.CaseAganstUMG-EMIMerger.pdf