PRICING POLICY (COMPACT DISCS): THE BERTELSMAN CASE

Subject: Pricing policy

Industry: Compact Discs

Parties: Bertelsmann Music Group
EMI
Sony Music
Universal Music
Warner Music

Source: Commission Statement IP/01/1212, dated 17 August 2001

(Note. In this case, the mountain has given birth to a mouse. There is a widespread feeling among consumers that CD prices in Europe are excessively high, especially when compared with the corresponding prices in the United States. This feeling may be unfounded; but the Commission's statement, reproduced below, does not give great confidence that the position has been fully explored. Essentially, the Commission is saying that, while some relatively minor changes have been made in the practices of the companies concerned, both the changes and any residual problems are national in character and that any further investigations which may be needed should be carried out by the national authorities. The Commission self-righteously claims that reference back to national authorities is in line with its policy of decentralization of competition policy; but this would not be the first time it has pleaded subsidiarity when it has been confronted with an awkward case.)

In January of this year, the Commission opened five separate investigations into the vertical relationships between the five major record companies and their retailers. The investigation focussed on allegations of retail price maintenance by the "majors" through the use of contracts with retailers where co-operative advertising arrangements were linked to minimum advertised prices. The Commission's investigation found that three of the "majors" were including minimum advertised prices in certain of their co-operative advertising agreements in Germany. These companies have subsequently ended these activities. The investigation also uncovered a limited practice by one of the "majors" in Italy that could have the effect of maintaining retail prices.

As the possible infringements were confined to the territory of single Member States, and in line with the Commission's policy of decentralising the enforcement of competition law in appropriate cases, the Commission is informing the relevant national competition authorities of the results of its inquiry. The national authorities can then determine whether or not further investigation or action at the national level is appropriate.

The Commission notes that the UK's competition authority, the Office of Fair Trading has opened an investigation into allegations that the "majors" are restricting the import of CDs into the United Kingdom, in an attempt to maintain high retail prices in the UK. This inquiry is different and separate from the Commission's inquiry.

The Commission is therefore suspending its inquiry. Given the high degree of concentration in the industry, the Commission will continue to keep the industry under close scrutiny: the Commission's inquiry may be re-opened if additional information comes to light in relation to this or similar practices.

The CD pricing investigation is separate from the investigation into DVDs, which is continuing. In the latter case, the Commission is investigating whether the DVD regional coding system is compatible with EC competition rules. The Commission is concerned that this system prevents EU consumers from benefiting from a broader choice of DVD titles and potentially cheaper prices. In this context, all aspects relating to the establishment and the ongoing operation of the system are being examined. Having sent requests for information to all companies concerned by the system, the Commission is currently reviewing the first batch of material.

The inquiry followed a similar inquiry in the United States, where the Federal Trade Commission found widespread use of minimum advertised prices linked to co-operative advertising funds. ■

FIAT / Montedison

This is an odd case, in that it is concerned mainly with the electricity market in Italy, but involves a large number of partners whose interests are in motor vehicles, electricity and banking. The Commission has cleared the acquisition by the Fiat Group of sole control of Italy's energy company Montedison and its subsidiaries Edison and Sondel. The Commission's investigation has shown that the takeover will not adversely affect competition in the Italian electricity market since, at this stage, Montedison will be controlled by Fiat and the latter has only a small activity in the electricity sector. However, in the event of Electricité de France (EdF) acquiring joint control of Montedison, the Commission will have to examine the case again. Fiat SpA is a diversified industrial group active mainly in the manufacture and sale of automobiles, commercial vehicles and agricultural and construction machinery; it has a small presence in the Italian electricity generation market through its subsidiary Fiat Energia SpA. Montedison SpA is active in a number of economic sectors, including the food industry, chemicals and the electricity sector. Italenergia SpA is a company set up by the FIAT Group, EdF and a group of Italian banks for the purpose of acquiring exclusive control of Montedison. (Source: Commission Statement IP/01/1229, dated 28 August 2001)