

Facsimile and mail

European Commission
Attn.: Dr. Herbert Ungerer
Rue de Genève 1
1140 Brussels
Competition DG
Information, communication and media

21 January 2005

Subject : COMP/C2/38440 – Universal Music v. BIEM; request for information dated 20 December 2004 (“the request for information”)

Dear Dr Ungerer,

I am writing on behalf of BIEM, based on my power of attorney dated 30 August 2002 (annex 1 to BIEM’s reply dated 6 September 2002).

1. BIEM does not understand what *relation* there may be between the request for information, on the one hand, and the complaint, on the other hand. As a matter of fact, nowhere in its written submissions has the complainant found antitrust grievance that would have been specifically caused by the reciprocal representation contracts. Consequently, BIEM would like to know what this relation is and what the current *subject matter* of the present procedure may be.

2. The points we make in paragraph 1 above are justified in light of Article 18 (2) of Regulation 1/2003 and of case law¹: A request for information must indicate what this request is looking for and the matters to which the investigation must relate.

Point 2 of the request for information (the model reciprocal representation contract)

3. The latest model of the reciprocal representation contract is attached.
4. Precisely this model has been an integral part of the notification of BIEM's statutes dated 24 February 1998 to the Commission (COMP/36.941):
 - (1) Article 7 (2) and 2 (2) of the notified statutes provide for reciprocal representation contracts. Article IX of the reciprocal representation contract subjects this contract to the statutes and to decisions by BIEM applying the statutes.
 - (2) The model of the reciprocal representation contract was provided to the Commission as annex 4 to the notification of BIEM's statutes.
5. The Commission decided by way of a comfort letter dated 4 December 2000 that the notified statutes raised no problem under Article 81 (1) EC.²
6. Already in 1983, the Commission had scrutinized the model reciprocal representation contract under Articles 85 and 86 of the EC-Treaty (now Articles 81 and 82 EC). The

¹ See, e.g., Case-94/00 *Roquette Frères* [2002] ECR I-9011, §§ 47 and 48: “The Commission is likewise obliged to state in that decision, as precisely as possible, what it is looking for and the matters to which the investigation must relate ... As the Court has held, that requirement is intended to protect the rights of defence of the undertakings concerned, which would be seriously compromised if the Commission could rely on evidence against undertakings which was obtained during an investigation but was not related to the subject-matter or purpose thereof ...”

² See point 34 of BIEM's reply dated 6 September 2002.

Commission had closed that matter by a letter dated 24 November 1983. This letter reads, in part:

“... les sociétés de droits d’auteurs de la Communauté ont maintenant déclaré que dans les accords de réciprocité, il n’existe, tant pour elles-mêmes que pour leurs partenaires, aucune restriction géographique quant à l’exportation de supports de son. Chaque société serait habilitée à autoriser l’exportation de supports de son sur une base mondiale. Les supports de son qui sont fabriqués et peuvent être mis en vente légalement dans un Etat membre peuvent dès lors circuler librement dans la Communauté.” See also Article I (2) of the model reciprocal representation contract *in fine*: “... the putting into circulation in any form and in any place of recordings and copies so reproduced.”

7. Still further ago, in 1971, the Commission had accepted the reciprocal representation contract.³
8. The BIEM statutes, including their provisions on reciprocal representation contracts, were submitted to the Commission on further occasions.⁴

Point 3 of the request for information

9. We refer to the notification of the BIEM statutes of 24 February 1998 in Case COMP/36.941. We recall to the Commission that the reciprocal representation contracts enable BIEM societies to offer licenses for almost the entire world repertoire.⁵ BIEM societies can do this at very similar conditions, as the reciprocal representation contracts and the Standard Agreement are integral parts of one and the same arrangement: collective licensing.⁶
10. We further recall to the Commission that reciprocal representation contracts must be identical or similar in order to bring about a new product: the “*licence globale et unique*”. We hereby incorporate by reference what was stated in the notification of

³ See 1st report on Competition [1971], page 84, footnote 1.

⁴ See, e.g. BIEM’s answers to a request for information dated 31 July 1997.

⁵ See points 34 to 39 of BIEM’s reply dated 6 September 2002.

⁶ See points 34 to 39 of BIEM’s reply. See also the contacts between BIEM and the Commission preceding the comfort letter relating to the statutes of BIEM (annex 2 to the reply).

BIEM's statutes (reproduced in part in point 39, footnote 23 of BIEM's reply dated 6 September 2002). The "*licence globale et unique*" provides repertoire to users with one-stop-shops. Without this, there would be an unmanageable myriad of individual licensing agreements, leading to higher cost of administration and of monitoring – also to the detriment of users, of cultural diversity and of end consumers.

Point 4 of the request for information

11. The present submission does not contain business secrets or other confidential information.

Respectfully submitted,

Gerrit Schohe