

SUMMARY OF BIEM'S CONTACTS WITH THE COMMISSION

1. In the complaint submitted to the European Commission by Universal Music International Limited (Case COMP/C2/38.440), the complainant states in point 1.6 that *“Universal understands from a recent meeting with the Commission that the Commission issued a comfort letter in respect of a notification of the BIEM Statutes. It is further understood that no Notice pursuant to Section 19(3) of regulation 17/62 was published in relation to this notification and third parties were generally not consulted during this process. It would therefore appear that the Commission was not informed at the time of that notification of all the relevant factual circumstances surrounding the practical operation of Article 7 of the BIEM Statutes, as more particularly described in this complaint”*
2. Notification of the BIEM Statutes was filed with the European Commission on 24 February 1998 (Case COMP/36.941). Following extensive deliberation on the Statutes and the parallel discussions on amendments to the Standard Contract, the European Commission issued a comfort letter on the BIEM Statutes on 4 December 2000 setting out that *this agreement (does) not restrict competition to an appreciable extent within the meaning of Article 81 (1) of the EC Treaty*
3. The granting of this comfort letter was not withheld from interested parties. The 30th report on competition Policy 2000 issued by the Commission clearly states the issuing of a comfort letter in this regard (page 164). Extensive discussions were also on-going with IFPI on related matters both before and during the entire three year period.
4. The complainant attempts to suggest that either BIEM did not produce the full facts when making its notification or that the Commission failed to undertake its tasks correctly. The latter is indicated by the suggestion that the Commission should have consulted third parties, presumably Universal and issued a comfort letter on the BIEM statutes without examining the implications for the standard contract.
5. These assertions seem strange given that a range of notification and negotiations were on-going during this time period.

6. The notification of the BIEM Statutes actually stemmed from a request to formally notify by DG Competition (John Temple Lang) at a meeting with BIEM on 4 November 1997.
7. This followed extensive discussions throughout 1996 and 1997 following the notification by BIEM of the Standard Agreement on 23 July 1996. Throughout the whole of 1997 negotiations had taken place between BIEM and IFPI on the standard contract. Indeed the complainant itself made sure that the Commission was fully aware of the full facts surrounding both the BIEM statutes and the standard contract.
8. Following the breakdown of negotiations between IFPI and BIEM, IFPI requested a meeting with the Commission. At the meeting with DG Competition on 23 July 1997¹, IFPI raised its concerns on Article 7 of the Statutes and the notification by BIEM of the standard contract. At this meeting John Temple Lang clearly indicated the link between the standard contract and the BIEM statutes. He stated that “*any consideration to the standard contract should start with the BIEM Statutes*” IFPI further developed its points in its response to the Article 11 letter dated 11 August 1997 which was submitted to the Commission on 16 October 1997.
9. It is therefore clear that the Commission was fully aware of the key issues at the time of the notification of the BIEM statutes.
10. Following notification of the statutes, the Commission made an Article 11 request to BIEM on 17 August 1998 in case IV/37 144 BIEM-IFPI to request further information on the royalty rate and maxima and minima issues.
11. It must also be recalled that IFPI notified to the Commission on 9 July 1998 the 7th amendment to the standard contract together with the correspondence of 26 and 28 January 1998 between the Presidents of BIEM and IFPI. The Commission subsequently issued an Article 11 letter on 17 August 1998, as a consequence of the notification by IFPI of the 7th amendment, requesting further information from BIEM on the agreement with IFPI and the implications of the changes. This response dealt with a number of the

¹ Compte rendu drafted by IFPI and approved by DG Competition, 31 July 1997

points raised in the Universal complaint. In relation to the 7th amendment of the standard contract IFPI indicated that it would be satisfied to receive a comfort letter.

12. BIEM has constantly kept the Commission abreast of developments and the substance surrounding both the amendments to the standard contract and the notification of the statutes. By way of example, BIEM held a meeting with DG Competition (Mr Lovergne) on 11 February 1999 to discuss the content of both the standard contract and the BIEM Statutes. During this meeting Mr Lovergne openly discussed the implications of amendments 6 and 7 and outlined the current thinking in DG Competition on these issues, together with comments, the minimum royalty and a single royalty rate applied by all societies.
13. At a subsequent meeting on 11 February 2000, held between BIEM and DG Competition (Mr. Lovergne and Mr. Mendes Pereira) to inform the Commission on the ongoing discussions between BIEM and IFPI concerning the ARP issue, the Commission delegation made a number of comments which clarified the position of the Commission. The Commission emphasized that in this context it is not a regulatory body and the role for the Commission is not to question the benefits of a particular system but merely whether the chosen system raises competition issues. The Commission again reemphasized that it had considered the PPD system as acceptable back in 1983 and any shift to another system would need to demonstrate that adaptation could be undertaken without significant problems.
14. As it became clear that discussions between IFPI and BIEM would not resolve the outstanding issues, BIEM was pro-active in providing the Commission with full details of the situation. In its response to the Article 11 letter of 16 June 2000, BIEM gave full details of the current state of play of discussions including the failure to resolve the dispute on the royalty rate and the other outstanding issues, many of which are raised by the complainant in the current complaint. This submission also included a copy of all the relevant correspondence between BIEM and IFPI on these points.
15. As the above demonstrates, while fully aware of the state of the discussions on the standard contract and the full implications of Article 7 of the BIEM statutes, the

Commission decided to issue a comfort letter on the BIEM statutes on 4 December 2000.

16. The complainant incorrectly suggests that BIEM did not provide full details to the Commission and fails to take note of the extensive deliberations by DG Competition. Moreover, there is a surprising disregard for many of the facts submitted on IFPI's behalf by the same legal counsel submitting the complaint.