

The Independents Voice

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SONY/BMG

The European judges and the art of wrong-footing

It might not be the world up any more but it's a great victory. I refer to a recent decision¹ by the European Court of Justice, whereby thousands of companies and artists gained credibility and influence in the debate on the structure of the creative industries. They have won recognition for their role in a concentrated market.

The Court's decision will contribute to raising awareness of the economic and social importance of cultural industries and the fact that these are made up, for the most part, of small and medium-sized enterprises, which account for the vast majority of the five million jobs in the sector Europe-wide. Independent music companies are not to be relegated to the sidelines.

The judgement wrong-footed many:

- Commissioner Monti, who seemed to be convinced that independent operators and artists in the music sector had neither the means nor the determination to bring an appeal before the European Court of Justice against a decision that was based on political considerations rather than on sound economic and legal arguments.
- The international financial press which led their influential readers to believe that the outcome was a foregone conclusion. Seemingly acting as a mouthpiece for the communication strategists of multinational companies, they insisted that nothing much stood in the way of a further merger in the music market, 80 per cent of which – according to their view – would henceforth be controlled by three major groups.
- Misguided analysts who assimilate competition in the music industry to competition in the power turbine industry (see editorial in the Financial Times of 13 July 2006). The impact of market concentration in the aluminium sector on cultural diversity and consumer choice needs to be clarified! When leading journalists start drawing analogies between the power turbine industry and the copyright industries – the time may be ripe for the White Stripes or Carla Bruni to metamorphose into a rotary compressor. But I dare say that the quality of the music might suffer.
- So called «anti-trust» experts, whose paymasters' interests blind their legal analysis, have now found that their strategy of abusing the EC's tight deadlines in the EU merger review process has backfired.
- Last but not least Sony/BMG, which from now on will be facing legal uncertainty and even the prospect of disintegration of a merger that is fast turning into a headache.

Independent operators in the music sector stood up for their rights and won despite the overwhelming odds against them. They deserve

to savour their victory. They made their voice heard without setting fire to any superstores or indulging in demagoguery.

It is a lesson in democracy and we thank the European court for strengthening our faith in Europe.

The Court's judgement is in fact very significant for the entire media sector and all creative industries that are faced with the pressures of globalisation and the attendant concentration of ownership. The Court supports the idea that we must guard against collective dominance with anti-competitive effects.

Undue market dominance by a small number of corporations is not exclusive to music but exists right across the creative sector – publishing, live performance and cinema to name a few. The Spanish competition authorities have recently drawn attention to the pernicious effects of this phenomenon in the film distribution sector, where major Hollywood companies follow similar patterns in their dealings with cinema exhibitors.

Hopefully, the entertainment giants will take the court decision as an object lesson and – in the light of the scrutiny that ownership concentration in the sector will no doubt continue to receive – downsize their ambitions of dominance.

For our modest consultancy and its collaborators which manage European networks in the creative sector, the ruling highlights the cost-effectiveness of a business model which consists in bringing together creative companies and pools their resources to enable them to take part in economic and legal debates.

IMPALA's members have shown the way. They have showed great courage and determination. Following on from IMPALA's instrumental role in preventing the merger of Warner and EMI in 2000, this latest victory further strengthens the credibility of the association.

IMPALA has shown to creators and other cultural sector participants that it makes sense to join forces to work collectively to ensure that EU rules do not work solely to the advantage of those who have the most resources or are most vocal in promoting their interests.

They can count on the European judges – and indeed this is a victory for Europe.

1. IMPALA v Commission, Judgment of the Court of First Instance 13 July 2006, Case T-464/04.