European Commission Clears Sony BMG Merger

October 3, 2007

For years, advocates have suggested that the big four major record labels operate like a monopoly. The latest news on the joint venture known as Sony BMG might not help alleviate these accusations. The European commission has announced Wednesday that it has approved the merger of Sony/BMG. Meanwhile, IMPALA which represents independent music labels, have voiced opposition to the move, noting that no remedy to competition would be handed down as a result of this merger.

Earlier this year, Warner tried buying EMI, but currently, Terra Firma was able to land the deal. Whenever these issues crop up, anti-trust concerns are bound to ensue - whether there is a take-over offer or not. Two months ago in the UMG vs Lindor case, the issue of anti-trust tactics were brought up, causing the major record labels to defend themselves over such accusations. Did the allegations have merit? Last year, the Department of Justice probed the industry for possible price fixing on CDs.

While anti-trust itself in the RIAA has a long history, so does the Sony/BMG joint venture in relation to anti-trust issues. The European Commissioner explained, "As you may remember, the Commission's first clearance decision - in 2004 - was annulled by the Court of First Instance last year. Today's decision re-examines the case from top to bottom, looking not only at what we think likely to happen on the markets, but what has actually happened on the marketplace from 2004 to today."

The issue of selling CDs was one topic looked at. Many, like the Department of Justice did last year, suspected of anti-competitive tactics in the selling of music albums. The commission found no such thing: "In its investigation, the Commission looked in detail at the arguments raised by third parties, and the points made by the Court. It analysed all retail net prices, discounts and wholesale prices for all CD chart albums sold by all major record companies to all of their customers in the European Economic Area between 2002 and 2006. This was an enormous exercise. We found no evidence to support any theory of actual or likely anti-competitive effects of this merger."
Allegations of anti-trust apparently didn’t end on the sale of albums. Other anti-trust theories presented to the commission included: coordination on budgets, on the pricing of each title, on pricing policy, on chart album prices, on access to retailers, on access to airplay, on chart rules, on release date, on coordination at the level of publishing activities. The commission gave the company a clean bill of health.

To that extent, the commission concluded, "We concluded that this merger was not a threat to competition, and have therefore cleared it without conditions."

While all was seemingly well with the commission, all was not well with IMPALA (Independent Music Companies Association) who condemned the green light. IMPALA said in their press release, "The independents will ask the European Ombudsman to investigate potential maladministration. IMPALA will examine the decision in detail when the non-confidential version becomes available. As well as a formal enquiry, there is the option of appealing, and a clear case for claiming damages against the EC."

"The Commission has ignored the duopoly with SonyBMG and Universal." IMPALA further writes, "These two companies alone have over 50% of the market and 70% of the vital Top 100 in many key EU territories (EC's own market share analysis in UniBMG)."

"We never got an explanation for the EC's u-turn last time around. The EC has ignored the simple fact that four companies control 95% of the music most citizens hear on the radio throughout the world." Patrick Zelnik, IMPALA President and President of Naive said, "What kind of a message does this send to European citizens? That the EU's prioritisation of cultural diversity, creative SMEs and pluralism is purely rhetoric?"

While the blow to IMPALA may be huge, it seems the music wars between them are far from over.