

BODY TALK IMPALA

MIND THE GAP



What will be the outcome of Universal's proposed EMI takeover?

LABELS

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Thousands of new jobs created by biggest music mergers in history". "Music duopoly provides the answer to diversity, signing more artists and songwriters than ever before".

If headlines like these were realistic, the regulators might feel positive about the attempt by Universal and Sony to buy EMI. But the reality is starkly different – something Brussels will be acutely aware of, especially with a socialist commissioner in charge of competition. I don't know if Mr Almunia is a follower of his national charts, but one debut Spanish artist in the Top 50 this year is hardly an example of diversity at work.

In Europe generally, politicians are pinning their hopes on culture, innovation and diversity, knowing smaller players are key. We don't need to look any further than music to see the proof, with independents accounting for 80% of new releases and 80% of the sector's jobs. In this context, allowing a global duopoly to become even more powerful doesn't seem to fit Europe's cultural and economic priorities.

Let's not make the mistake of thinking none of this is relevant to competition rules. Cultural diversity has to be taken into account in all decisions. The European Parliament and the European Commission have both recognised the importance of "cultural SMEs" and the need to "level the playing field" to close the gap, insisting that traditional policy areas such as competition adapt to the specificities of the sector.

And even if we were to look at the regulatory situation more narrowly, an outright

'no' still seems the most likely result.

Approval of EMI's sale to Universal and Sony would see the music industry become the most concentrated of any culture or media sector (indeed the most concentrated of almost any other business). What are the chances of that, especially considering that Brussels has raised the alarm in every single music merger case in the past decade? Ironically, this is in some part due to Universal, who have been one of the most vehement objectors to mergers they weren't party to.

In the last few years the merger rules have changed, making it easier to intervene. You only need to glance at the most recent merger decision on Universal to see the reality facing the duopoly. Brussels said that combined power in both recording and publishing for the Top 100 is what counts. The conclusion was that Universal controlled so much music, it was *incontournable* and a danger.

"Universal was already too big, even before it started bidding for EMI"

HELEN SMITH, IMPALA

BELOW

Causing a commotion: The Live Nation tie-up and Madonna's next album release under the Universal banner shows the major was already too big before it made its move for EMI, argues Helen Smith

That's what makes music different to other sectors where you can pick between competitors. If you don't have Universal on board, you can't launch a global music service. Brussels found that even far bigger players such as Apple couldn't counter such market power.

The net result was Universal had to scale back to what was deemed an acceptable size. The key conclusion here is not how much you have to sell to get a merger through, but the definition of "acceptable size". Since then market shares have grown.

The Live Nation tie-up, which IMPALA has already asked Brussels to investigate, adds a new dimension to Universal's dominance, with Madonna's forthcoming album already confirmed as a Universal release. Put all that together and Universal was already too big, even before it started bidding for EMI.

We also need to factor in the multiplier effect resulting from the removal of a major standalone

competitor. That compounds the power of the remaining major players to the detriment of the smaller ones. No level of divestment is likely to change that, although the duopoly may hope a significant effort will persuade the regulators, along with arguments on piracy and being squeezed by online giants.

The piracy argument hasn't carried much weight with the regulators in previous competition cases. In Sony/BMG, Brussels specifically rejected it. As for being squeezed by online giants, if Brussels found iTunes couldn't counter Universal's power before, how could it justify a different conclusion now when there is far more competition among online services? And if we think Sony is in for an easier time, let's get our calculators out and look at control shares.

Big, clever players are essential, but there must be a balance, especially at a time when the music sector should be working together to find innovative ways to nurture and invest in new talent. Unless the duopoly's plan is to ask Europe to recalibrate the competitive gap for independents, in effect regulating the market, it is difficult to see how making a known predatory duopoly more powerful is the solution. Prompt action is essential. EMI's artists and songwriters should not be in this state of limbo any longer than necessary.

The conclusion seems to be that the duopoly has priced competitors out of the bidding to overpay for something it will have to sell. Why take that risk? A long regulatory process will certainly put competitors in a state of limbo and enhance the duopoly's power, whatever the outcome.

If Brussels can be persuaded by remedies, the only market share block that has the potential to challenge the leaders' market power, EMI, is neatly carved up. What if Brussels says 'no' outright and EMI has to be sold altogether? Has the duopoly properly factored in that risk?

"Brilliant gameplan" or "Abuse of dominance on the scale of corporate and cultural irresponsibility"?

It is now for the regulators to decide what the headlines will be.

