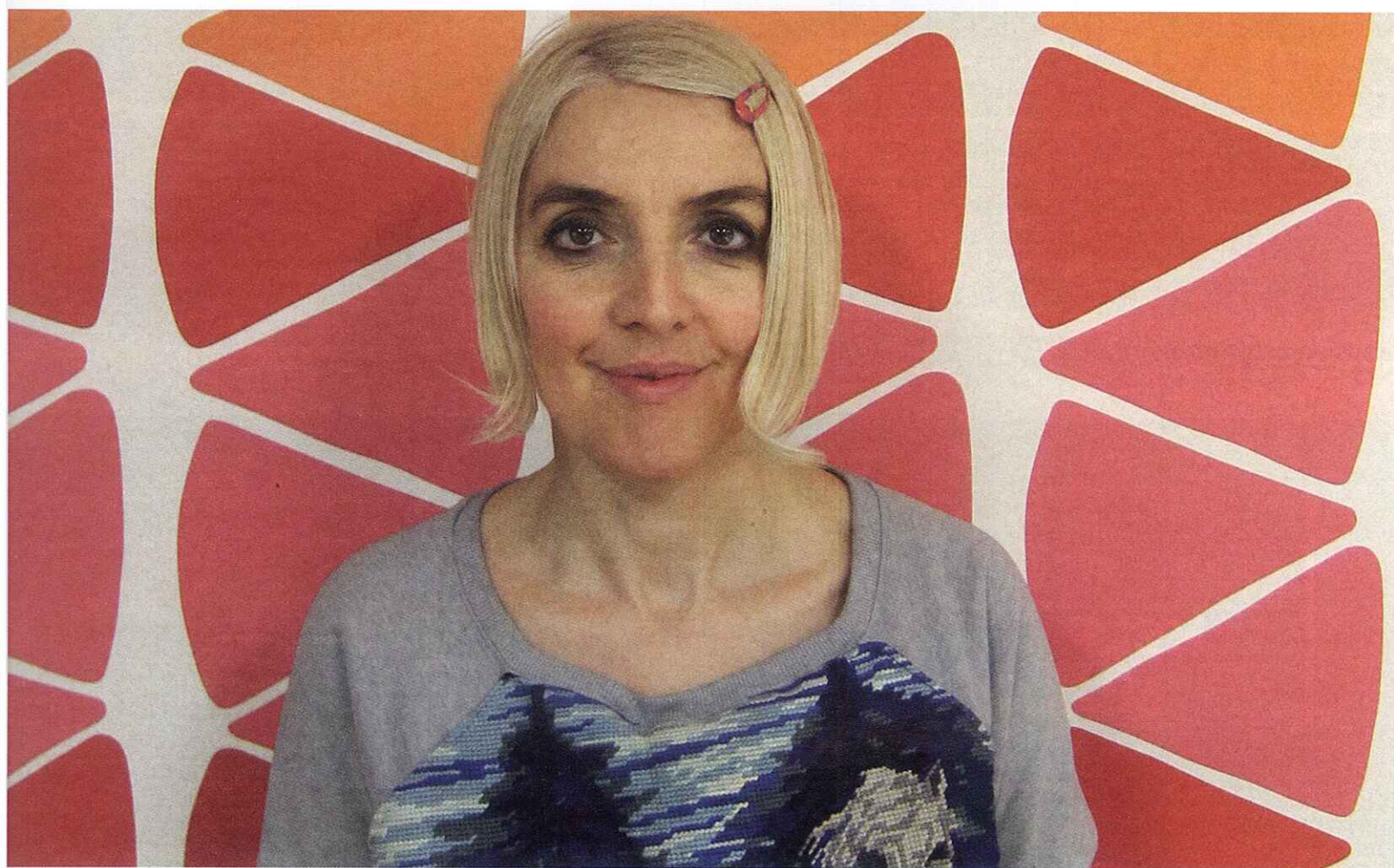


FIGHTING THE GOOD FIGHT

IMPALA has been the indies' undisputed European heavyweight champion for 15 years now. Executive chair Helen Smith gets in the ring with *Music Week* to talk about previous battles with major labels and current ones with tech companies. Seconds out...



TRADE BODIES

BY MARK SUTHERLAND

As she sits sipping tea in the foyer of a genteel London hotel, Helen Smith doesn't look like much of a scrapper. And indeed, many is the major label boss or tech company wunderkind who has underestimated her fighting qualities.

Most of them have lived to regret it. Because in her eight years as executive chair of European indies trade body IMPALA, Scottish-born, Brussels-based Smith has taken on – and beaten – almost everyone

who's tried to gain an unfair market advantage or give her members a raw deal.

Founded in 2000 to give indie associations, labels and publishers a Europe-wide voice, IMPALA's many victories include leading the opposition to Universal's acquisition of EMI, which eventually forced the major to sell off multiple assets in order to secure regulatory approval (2012); scuppering the original proposed EMI-Warner merger (2001) and helping to create global digital rights agency Merlin (2007).

Perhaps most significantly, in 2006, it persuaded the European Union's Court Of First Instance to overturn the European

Commission's approval of the 2004 Sony/BMG merger. Smith remembers well the moment the almost-unprecedented decision was announced: she was so surprised, she almost fell over.

"I just remember that motion, you're sort of falling back," she smiles. "Like, What, we won? [Everyone thought] IMPALA were mad. You probably need to be a bit mad, don't you, to take on that kind of task?"

Sony eventually dodged the bullet by buying BMG out of their joint venture, but the case established IMPALA as an important voice in any music market moves. And Smith and IMPALA are now bringing their

particular brand of righteous insanity to the tech sector. In unlikely coalition with Taylor Swift, the indies helped force Apple Music to belatedly agree to pay artists for streams during customers' free three-month trial of its new streaming service, and also caused YouTube to backtrack from launching a music streaming service without doing a deal with Merlin.

Those David vs. Goliath wars are not finished yet, with IMPALA still pushing the EU to close what it calls the "value gap" between the consumption of music on platforms such as YouTube and SoundCloud, and the money they pay out to labels and artists.

But all that can wait. To celebrate IMPALA's 15th anniversary, Smith sat down with *Music Week* to discuss previous triumphs – and where they'll take the fight to next...

What's changed in the 15 years that IMPALA has been operating?

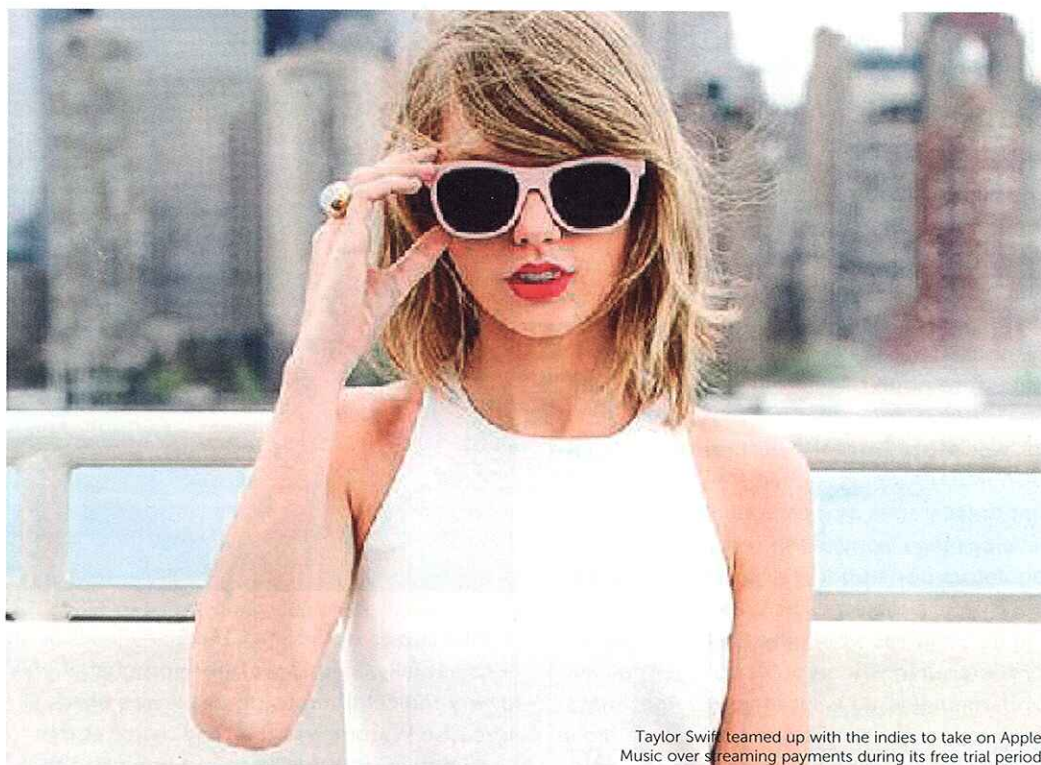
(Laughs) Apart from the entire music industry? Well, IMPALA has more members, so we can see a trend towards more [indie] organisations globally. There are definitely more independent labels and they are more structured and better organised. You can see the power and results when you are organised, speak with a collective voice and use your collective strength when it comes to negotiations. If you need proof as to why you have to work together, you just have to look at the Apple and YouTube negotiations.

Meanwhile, there are fewer major labels than there were 15 years ago. Is that good news or bad news for the indies?

It's both, isn't it? Because we are gaining more ground in lots of ways: far more visibility, far more effectiveness. But, when you look at the market shares, depending on which sectors you're looking at, you can see that there's more power concentrated in fewer hands, and that's not good news. So the bigger players are more powerful than they were before and the gap between the independents and the majors is much bigger. We're stronger but the problems are bigger.

What would you say have been IMPALA's greatest achievements over the 15 years?

Our greatest achievements have been on a commercial level so, if you look at the deals like the one we did with Warner [for the major to sell some of its assets to the indie sector following its purchase of Parlophone Label Group in 2013], or the impact of the [anti-trust] complaint against YouTube [in 2014], you have a whole raft of financial benefits which, without IMPALA, would never have seen the light of day. What you see is more confidence within the sector, the ability to take a stand and to take on



Taylor Swift teamed up with the indies to take on Apple Music over streaming payments during its free trial period

platforms like YouTube and Apple. That's something that we probably wouldn't even have imagined was necessary 15 years ago.

Was it annoying that, after the indies led the complaints about Apple Music's plan to not pay artists during its three-month trial, Taylor Swift came in and got all the credit for them changing their mind?

No, that's not annoying – that's just a function of how things work. What she had to say was important. What had already happened was important. The whole independent community across the world stood firm, so there was huge pressure on Apple – it was clear the negotiations had to deliver and Taylor Swift speaking up was great. Artists speaking up is important. But what's really important is the outcome and that benefited not just the independents, but the whole sector. So, effectively, the independents were negotiating for the majors, because the majors get paid.

"Google have the power to make you disappear, which put an extra level of pressure on our members"
HELEN SMITH, IMPALA

Did they send a cheque to say thank you? (Laughs) It's in the post, apparently!

Have there been any low points over the 15 years?

Of course. Not so many, considering the stakes and the fact IMPALA has never shied away from controversy but, yes, we have had a couple of serious spats along the way. Of

course, that's more difficult to manage when the members themselves don't agree, as opposed to someone on the outside calling you mad – that's easy. I actually like the tricky issues – they keep you on your toes. Airing tricky issues is vital, and a proper debate should bring out differing views across the membership. There's no point in having an organisation unless you have divergence of opinion from time to time, where you can come to a collective view. So all those examples where there are differing views, in the end you know the organisation is going to be stronger because it's withstood some difficult times. It's more interesting than an organisation where everyone agrees all the time. More importantly, where members are properly involved in decision-making, they tend to accept an outcome they may not agree with, because the process itself is inclusive. That's just democracy.

Given that diversity of opinion, how do you pick which battles to concentrate on?

I don't think we've had to say no to a battle because we were already busy on another one, but obviously you can't have 10 different battles at any one time.

Presumably some battles turn out to be bigger than others though...

YouTube is not just the world's biggest music service. Google shows how everyone accesses all information and data on the internet and they have the power to make you disappear, so that put an extra level of pressure on our labels and associations. For the first time ever, we had labels and associations who were thinking twice about putting their head above the parapet.

When Universal had to agree to a series of divestments from the EMI merger, did that set a precedent for any future mergers?

It's clear that there will never be another merger on that level, and that's one of the biggest sets of remedies in any merger case. The commissioners knew that Universal was too big. Universal really overplayed their hand, they had a very defensive approach. It was clear that their priority was to remove this valuable piece of market share and make sure none of their competitors would ever get it. It knew that the regulatory risk was astronomical. At the same time, from IMPALA's perspective, it's important that these issues are tested. If you don't have cases in front of the regulators, the regulators don't understand how the market works. The problem is not really Universal and its behaviour, because that's just par for the course when you're so big. The fundamental issue is whether it's right that that company was allowed to grow so big in the first place. But what they do is fantastic: there should be more Universals, not fewer.

Soon after it launched, IMPALA successfully helped block the original proposed EMI-Warner merger. Given that EMI eventually ended up in Universal's hands, is that something you regret?

That's a good question. You would definitely have had more balance in the marketplace, but whether or not the outcome would be fundamentally different... I think the market shares would look very different. Universal wouldn't be so big, Sony wouldn't be so big today. So if that [EMI-Warner merger] had gone ahead, yes, you would have more balance amongst the top three players, but I'm not sure the independent sector itself would necessarily be stronger. The gap between the majors and the independents would be smaller. But, from IMPALA's perspective, [it] was important in establishing a seat at a very important table and establishing the principle that you cannot just have consolidation after consolidation after consolidation. That was the first time IMPALA's voice could be heard.

In 2007, you did a controversial deal with Warner to not oppose any renewed attempt for them to merge with EMI. Ministry Of Sound quit AIM over that deal and other members were known to be unhappy. How difficult was it to hold the organisation together at that time?

That was very difficult, because we had decided that if we wanted something we had to go and negotiate it. We couldn't rely on the regulators, so we had to do those negotiations ourselves and meant that we had to conduct those negotiations in total secrecy. One of the difficulties was getting the board to agree whether or not it was the



right thing to do and not have any leaks at all – to actually do that was phenomenal. It was a very radical thing to do but it was done because Warner was the only major at that time that was prepared to put in writing that the independent sector was important for the overall strength of the music business. And it was prepared to deliver a set of remedies that went far beyond anything that a regulator would ever have delivered.

What Universal do is fantastic. There should be more Universals, not fewer.
HELEN SMITH, IMPALA

On IMPALA's 10th anniversary, you said, "The future is about reversing the indies' market share trend".

Five years on, how's that going?

If you look at digital, on the streaming services where you don't have the artificial barriers you see in the physical world, the market share is higher. But overall, the power of the majors remains.

Do you hate major labels?

No, not at all. On the whole, we have a very good relationship with the majors, we work with them every day. We are all joined in the effort to make sure that platforms pay properly for music and, if you are an artist on one label, you get the same deal as an artist on another label.

Do the majors hate IMPALA?

I don't think so. You'd have to ask them! IMPALA clearly has differences of opinion on many issues to the majors, but when you have a diversity of opinion within a sector it reinforces the overall message.

Some people would say: the two biggest artists on the planet – Adele and Taylor Swift – are both signed to indie labels. Why do the independents

need special treatment?

I don't think they are looking for special treatment. If you have the world's biggest artist with any one particular label, that gives them power and visibility in the marketplace. But, overall, the framework and rules of the game will always favour those with the biggest catalogues. So the way to deal with that is to work together. Adele's the world's biggest star but the market share of Beggars, even at its peak, is probably 2% worldwide. You're competing with a company [Universal] that has over 40% in most territories, so the gap in your ability to compete is, [even] when you've got an artist like Adele, phenomenal. It's not just about looking after the star of today, it's about developing new artists and making sure that the whole roster is important because that's what independent labels do best.

What will be IMPALA and the indies' big challenges for the year ahead?

The big priority now is the question of value gap. It's about making sure that platforms like YouTube and others, that are competing with Spotify and Deezer, are competing on a level playing field and paying properly. And also that they treat all artists equally, so they do not discriminate between an artist on an independent label and an artist on a major. YouTube is a great service, it just needs to pay properly. YouTube happens to be the world's biggest music distributor, so it's the obvious example, but there are others.

If the UK leaves the European Union, what will that mean for music?

I don't think they'll leave. The UK would lose out if it did that. It would lose an important voice, certainly for the music sector. It would be a bad move, because only Europe has had the guts to take really tough decisions. Maybe not radical enough for IMPALA and its members but certainly more radical than anywhere else in the world.

So, after 15 years, will IMPALA ever get tired of fighting the indies' corner?

(Laughs) It's funny. You say we've fought a lot of battles, but I think IMPALA is very consensus driven. When we're in meetings, we look to the solution. That may sound slightly out of sync with some of the examples that you've given, but our priority is to focus on solutions – not on fighting for the sake of fighting. We're very pragmatic, and I don't think we are actually that adversarial. You have individual points of conflict, but you still see the common interest. IMPALA wants change for its members and their artists. We challenge the status quo, which pretty much reflects our members' approach to their own work.