Sony-BMG Annulment Good For Business

BY MARTIN MILLS

The European court's recent judgment in favor of European independent labels' association Impala that annulled the European Commission's clearance of the merger between Sony Music and BMG is a watershed moment in many respects. It demonstrates yet again, and on a very different stage, the need for and the value of independent labels acting collectively. This judgment is far from just a technical hitch, not least as demonstrated by EMI and Warner Music's acknowledgement of its impact on their own plans.

We live in a very different environment label-wise than was the case 10 or 15 years ago. Then there were not just six majors, but 10 or more large multinational independents (such as A&M, Island, Motown, Virgin and Zomba) competing head on and successfully in the marketplace with the majors.

Now, following the purchase by the majors of all those companies, there is a chasm in terms of size between the smallest major and the largest independents (even though a number of these independents in many territories still compete just as hard and, often, successfully). That has created a very different dynamic in the marketplace and in the way that labels interact with key intermediaries between musicians and fans.

Four big companies can impose their will on retail and media in a way that 15 did not. In battling each other for space and attention—and leveraging their strength—they intentionally or unintentionally reduce opportunities for smaller players. It is to combat this that the smaller players have needed to unite. At the same time, the independents must be able to rely on the regulatory authorities to protect them and the consumer from the dominance of large corporations serving their shareholders' interests.

It was the failure of the European authorities to do this that prompted Impala's appeal. Now we have the court's recognition that those authorities did indeed fail to protect us all against that collective dominance.

Let's be clear that we are not anti-major per se. In many respects we continue to shelter under their umbrellas. They set the terms of the market in which we operate, and they do great work for many of their acts. Some independents use majors as trading partners around the world. All the majors have catalogs built on original independent copyrights.

There is a degree of symbiosis between us and them. But just four companies dominating a sector unfettered worldwide?

We wouldn't put up with just four airlines, four banks, four car manufacturers worldwide, would we? Why would we consider doing that in a market that is not about substitutional products but about artistic goods, which are not interchangeable and whose uniqueness thus confers unique powers on their owners?

Consider a practical example. If HMV wants U2 records, it has to get them from Universal. If MTV wants a U2 video, Universal is the only label that can supply it. When there's space for just "x" titles to be racked at the front of the store and just "y" videos on the playlist, that gives Universal the clout to get another space in that rack or on that playlist for another Universal artist.

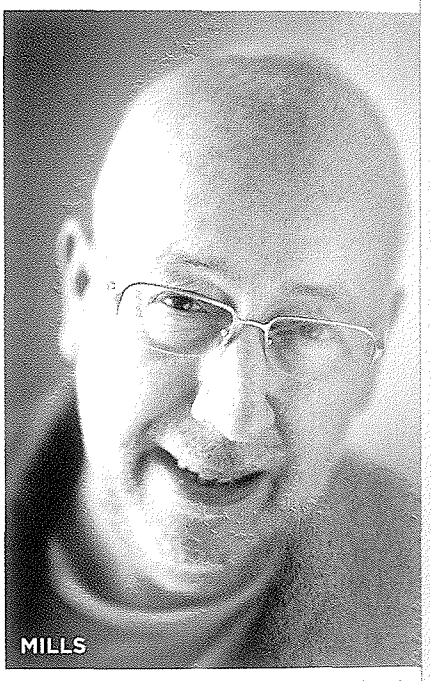
Fair enough, you might say, but when you've got four or even three big companies using such leverage, especially in a declining market in which it's increasingly expensive to operate, it's not hard to see how a great new artist on a small, quality label can quite simply get squeezed out—and that's perfectly legitimately, not even considering the kind of activities in label relationships with radio that U.S. authorities have focused upon of late.

So it's pretty clear that a concentrated market carries dangers to musical diversity, to smaller companies and to music fans. That's why the regulatory authorities must be held to their responsibilities of keeping the market relatively open and the playing field level enough for companies other than the majors to compete and succeed—if they're good enough and if their music is what fans want to hear and buy.

That's as it has been for decades, as musical history shows. Independent labels have always innovated and brought most new musical genres to the world—and increasingly so now, since the majors' economics create a tendency toward homogenization.

And no, independents are not "cry babies" in running to the regulator and the courts. We are using the weapons available to us, standing up for ourselves, and for our artists and music. Nor are we being dinosaurs trying to defend our place in the old world when the new world is our oyster.

Our very success in the online world—where independents have seized opportunity—demonstrates how much more successful smaller labels and new artists


MILLS

can be when benefitting from a more level playing field. But major labels have online relationships too, and would not be serving their shareholders if they were not seeking to dominate that space as they have offline. Indeed, new U.K. chart statistics demonstrate exactly this.

And offline is still mainline, still 80% of our business, today's business. Impala's battle on that front today will be tomorrow's on a new front, and without those battles being fought, music will be the loser.

Martin Mills is chairman of Beggars Group and Impala.

WRITE US. Share your feedback with Billboard readers around the world. Send correspondence to **letters@billboard.com**. Include name, title, address and phone number for verification. Letters should be concise and may be edited. All submissions published shall become the sole property of Billboard, which shall own the copyright in whole or part, for publication.