

IMPALA's further reactions to Neelie Kroes' statement

The Commission has ignored the duopoly with SonyBMG and UniversalBMG. 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). Even the "mini majors" EMI and Warner no longer have critical mass - they only have 10% and 14% respectively of the national Top 100s. Their market share has plummeted in two years. As for the other competitors, no independent has even 1.5%. This is an effect which has clearly exacerbated competition in the last two years so we do not understand how the Commissioner can say she has found no problems. It does not make sense. Is this a competitive market? It is worse than energy.

The Commissioner refers to the fact that it took into account what the court said, yet the Commission is contradicting the courts findings that the market suffers from collective dominance and co-ordination, characterised by:

- alignment of prices, both gross and net,
- transparency of discounts and other terms, including campaign
- stable and relatively high level of pricing, considering significant fall in demand
- links between majors companies (eg jvs for compilations, distribution and licensing, industry association membership, joint copyright negotiations, merry-go-round of senior executives, vertical links)
- relative stability of market shares (ie if they were really competing we would expect to see real variations)
- homogeneity of product (even though content is heterogenous)
- existence of deterrents

The court also identified 8 points on price that make music very transparent and easy to co-ordinate prices and other competitive behaviour.

1. Public nature of PPDs
2. limited no of reference prices
3. limited no of albums that need to be monitored
4. publication of weekly charts
5. long-term stable relationships between retailers and majors
6. limited no of players on market
7. monitoring of the retail market
8. regular and permanent contact between majors' sales forces and retailers and distributors

For the independents, apart from market share, there are considerable barriers to entry and growth to compete with the majors (increased costs of marketing and competing with the majors to sign artists; difficulty of getting into retail, on radio, tv, print media etc). An independent could never grow to become the size of a major. There have been no new independent market entrants. The Sony BMG merger has clearly made it harder for independents to promote new artists.

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