

0

LW/MsZ/Mt/1/1

KEITH LISTER

17 dune 1992 Anwwn

CONFIDENTIAL

Mr Tlto Mbowenl Our Ref: KL265/12/AC

Economics Spokesnan BY HAND

The African National

Congress

let Floor, Shell House

51 Pleln Street

JOHANNESBURG

Dear Mr Mboweni

BMG INTERNATIONAL - INVESTMENT IN SOUTH AFRICA

I am writing to you on behalf of BMG International.

My cllent ls one of the world's leading nuslc and record companies. Its parent company ls situated ln Gennany.

After carrylng out a detailed Investlgatlon Into the South Afrlcan nuslc and record Industry, and after consulting wth the broadest posslble cross-sectlon of people involved In the Fonnal and lnformal music and cultural Industries, BMG International has resolved to establish a new company in South Africa. The new company wlll be naned BMG Records Africa (Pty) Limited. In addition to servlng the proposed company In an lnltlal capacity as an attorney and as a consultant, I shall contlnue to be associated wth the new canpany in an executive managanent position. The Board of BMG International have Instructed me to ensure that, In all respects, the structure of the new company and its operatlng methods are In accordance with the practical and philosophical tenets of a non-racist, non-sexlst and denocratic soclo-polttlcal order. Furthermore, I have been lnstructed to ensure that all posslble steps are taken to achleve the Following objectlves:

1. To Invest In South Afrlca In a manner that is conducive to the develounent of partnerships with people and businesses who have been disadvantaged and prejudlced by the apartheid system;
2. To ensure that the priceless nuslcal and cultural heritage of South Africa, with all its diversity, ls respected and indeed nurtured by the company that is to be established by BMG and by the dlfferent Forms of business that are to be carried out by BMG In South Africa;
3. That, ln slmllar veln, BMG's South Afrlcan company is to be regarded as an Afrlcan buslness as much as it Is a South African buslness, with resources being directed towards the development of nuslc, both In buslness and cultural tenns, lnltlally among our nelghbourlng Front-llne states but, thereafter, Into and among all the countries of Africa.

3/le

/ I

XV!

NINTH FLOOR, AEGIS BUILDING, 34 LOVEDAY STREET. IOHANNESBURC 2001

POST OFFICE BOX 5894 JOHANNNESBURG 2000 O TELEPHONES 4. 27 (11) 836-0282 0 FAX 1- 27 (11) 836-0933

Keith Spencer Lister B.A. LLB.

I shall set out below details of BNG's proposed form of Investment and of specific aspects of the structure and business as well as projects in which BMG intends to become involved.

Before doing so, it is appropriate for me to make some preliminary points.

1.

First, BMG's specific proposals have been formulated after consultation with many individuals who are active members of SAMA or who participate actively in SAMA's affairs. I believe that BMG could not have done more to have acquainted itself, at senior executive level, with the practical and structural problems which face people disadvantaged by apartheid who form part of the South African music and cultural community and industry.

I must put on record that, in my general capacity as an attorney rather than in my special capacity as attorney to BMG International, I have for the past three years acted as Honorary General Counsel to SAMA. In that capacity, I have represented SAMA in its dealings on scores of occasions with political organisations and their cultural desks, with foreign governments, major record companies, artists and artist managers, concert promoters, studio owners, copyright control agencies, the executive of the SABC and other broadcasters. I have also assisted many SAMA members who look to SAMA for practical advice and support in regard to matters that arise from their own relationships with more powerful elements of the music and record industry. It is perhaps as a result of my long and close relationship with SAMA that I have in fact been requested by the current executive of SAMA to assist them in drafting proposals to the African National Congress regarding the future of the music industry.

I obviously do not wish these separate roles - as honorary legal advisor to SAMA and as a BMG representative - to be confused in any way. It is clear that the final submissions which are put to you by SAMA will in fact be those of SAMA's executive rather than of my office or, equally obviously, of any third party company such as BMG International. I do believe, however, that the structures and programmes which have been designed at BNG's insistence are in all respects entirely compatible with the fundamental principles of SAMA's general submissions. Further, I believe that BMG's structures and programmes are in all material respects entirely compatible with the aims and conditions regarding proposed foreign investment in South Africa as formulated by the African National Congress.

In identifying structures and programmes that are relevant, we have paid particular regard to the inherent structural problems that are faced by:

:5 the disenfranchised majority in general;

:: women;

:4 people who operate informal businesses in a wide variety of different segments of the informal sector.

To better understand the Full extent of these problems and the disadvantages which are currently Faced by the disenfranchised majority, women and informal producers, it is necessary to give a brief overview of the structure of the South African record industry. I believe that it can be stated with confidence that new sources of Foreign invesUnent into the South African nusic and record industry will be to the clear benefit of people and businesses who have been disadvantaged by apartheid. The incremental effect of new Investment will Inevitably be to weaken the manufacturing and distribution monopoly domination that is currently enjoyed by the three major record companies, Gallo, EMI and Tusk, thereby opening up new opportunities In the Industry For all South Africans.

Gallo and EMI have traditionally controlled 100% of the vinyl and high quality cassette production capacity. Ultimate omership of Gallo, through the Premier Group, vests in Anglo American. EMI is 100% owned by a British company. Tusk is locally owned. Gallo, EMI and Tusk control the only CD manufacturing plant In the country. Gallo and EMI have very recently resolved to close dovm the only vinyl pressing plant In the country, notwithstanding that vinyl is the sole format that is acceptable to radio - and that radioplay is vital For the development of smaller, Independent record companies. Between them, Gallo, EMI and Tusk have used their financial strength to gather up a high percentage of available International licensed material From Britain, USA and Europe. Licensed material owned by BMG International has, until 30 June this year, been licensed to, and distributed by one of" these three companies. Gallo and EMI co-om MFP which is a racking operation which controls a significant percentage of the total market. The major retailer In South Africa Is OK Bazaars which also ultimately Fomls part of the Anglo American group. Gallo, EMI and Tusk control more than 9096 of the music publishing market. Between them they effectively control ASAMI (Association of the South African Music Industry) which Is the only industry body that is recognised by the current government when it comes to negotiating excise and similar tariffs. It is the only body recognised by the SABC which is itself a State controlled monopoly of radio and television services.

Because of' the long history of apartheid, black South Africans in particular have been denied access to the business sector of the music market. As a result, black manager's, black executives, black lawyers and black accountants with knowledge of the music Industry are few and far between. There is almost no infrastructure of any sort on which "Independent" record production houses or record companies have been able to build.

I believe that it is essential at this stage of' the analysis of the Industry to make the point that if conditions are Imposed at any time In the future which make It difficult or uneconomical For M Foreign Investors to enter the South African market, the effect of this will inevitably be to strengthen and perpetuate the monopoly domination of the three existing major companies. My respectful submission, on behalf of BNG, is that It is ne_w foreign investors who will be able to set standards for the South African music industry that existing investors should be required to meet.

10.

Everything that BMG International plans to do in South Africa, in structural and management terms, is designed to stimulate competition and, in doing so, to play the leading role in the breaking down of the dominance of the three major companies. The effect of this will be to increase the ability of independent companies to establish themselves or to improve their positions within the South African music industry. I shall now provide a brief summary of BMG's proposed form of investment and of specific aspects of the structure and business as well as projects in which BMG intends to become involved.

1.

3.

The new company will be wholly owned by BMG International. The company will, however, be expected to enter into a series of joint venture partnerships with existing and new South African businesses. In selecting joint venture partners, the company will be expected to give preference to providing opportunities for people and companies disadvantaged by apartheid. The company will also develop meaningful affirmative action programmes in regard to its internal management structures.

The company recognises the authority and pivotal role of SAMA, as the legitimate representative of a significant number of South Africans involved in the music industry and as a structure which has taken a leading and consistent role in the struggle against the apartheid system. Consequently, BMG's South African company has consulted with SAMA and has offered to sponsor at least two projects which we believe will be of great assistance to SAMA and its members.

2.1 The first programme which has been proposed to SAMA is that BMG should sponsor the development of sound reciprocal relationships between SAMA and musicians' unions in several international territories.

2.2 The second proposal is that BMG should assist SAMA to sponsor a comprehensive workshop and business seminar which will specifically be designed to assist disadvantaged people who either already earn their livings in the music industry or who might wish to do so in the future. BMG's intention is that each of these programmes should be structured in such a way as to become ongoing projects, with which BMG would be happy to continue to be associated.

BMG would like to commit itself to playing an active and positive role in the long-term development of the South African music industry, for the benefit of all South Africans and for people throughout Southern Africa and, indeed, the African continent.

#. In general terms, BMG intends to be a responsible and accountable corporate citizen of a new, democratic, non-racist and non-sexist South Africa. In establishing a new business in South Africa, BMG is prepared to be judged at all times against the highest standards and BMG is prepared to act as a role model for all investors in the South African music industry. BMG believes that, through a process of consultation and discussion, there are many aspects of the music industry that can be revitalised and which will lead to the creation of employment as well as the earning of foreign capital through the export of South African musical products.

I have been asked to convey these sentiments to you and to your organisation and to place on record our willingness to meet with you, or people of your choice, at any time to discuss either the practical implications of details set out in this letter or any other matters relating to the music industry or BMG's investment in South Africa which may be of interest to you.

Yours Faithfully

Quip

KEITH LISTER