

DEROGATION LETTER
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 17 May 2021

Completed acquisition by Sony Music Entertainment of all of the issued shares of the entities comprising the AWAL and the Kobalt Neighbouring Rights businesses from Kobalt Music Group Limited ('the Transaction')

We refer to your emails and accompanying notes and further information of 24 May 2021, 28 May 2021, 3 June 2021 and 9 June 2021 requesting that the CMA consents to derogations to the Initial Enforcement Order of 17 May 2021 (the '**Initial Order**'). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Sony Group Corporation ('**Sony**'), Sony Music Entertainment ('**Sony Delaware**'), The Orchard, EU Limited ('**Sony Orchard**') and AWAL Digital Limited, AWAL Recordings Licensing Ltd, AWAL Recordings Ltd, Kobalt Neighbouring Rights Limited, Kobalt Neighbouring Rights II Limited, Kobalt Music Netherlands Artists B.V, Kobalt Music Netherlands OH Records B.V., AWAL Recordings America, Inc., AWAL Recordings Licensing America, Inc. and In2une Inc. (together the '**Target Entities**') are required to hold the Sony business and the Target business separate from one another and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference. After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Sony, Sony Delaware, Sony Orchard and the Target Entities may carry out the following actions, in respect of the specific paragraphs:

Paragraphs 5(a), 6(a), 6(f), and 6(l) of the Initial Order

Sony submits that:

- (a) it requires access to financial data of the Target Entities, as are necessary for the purpose of meeting Sony's external financial reporting obligations in Japan, the US, the UK and the Netherlands (**'Permitted Purpose A'**);
- (b) it requires access to financial data of the Target Entities, as are necessary for tax reporting purposes or tax elections (**'Permitted Purpose B'**);
- (c) it requires access to financial data of the Target Entities, as are necessary for the purpose of complying with Sony's International Financial Reporting Standards (**'IFRS'**) obligations, in particular to determine a purchase price allocation for the Target Entities and thereby (i) value the intangible assets of the Target Entities; and (ii) prepare the balance sheets for the Target Entities (**'Permitted Purpose C'**);
- (d) it requires access to information concerning the Target Entities' internal financial reporting controls, where necessary to verify their compliance with the requirements of the Sarbanes Oxley Act 2002 (**'Permitted Purpose D'**);
- (e) it is necessary to procure that Sony Delaware's accounting policies are applied by the Target Entities, and that it requires access to certain financial information of the Target business to assure itself that such policies are being implemented consistently (**'Permitted Purpose E'**); and
- (f) it is necessary to provide high-level monthly reports to certain members of the senior management teams of Sony Delaware and Sony Corporation of America, which present Sony's consolidated information which will include information of the Target business (where the Target business information will be fully consolidated into a residual 'Other' category alongside multiple other data points and will not be presented as isolated line items), for the purposes of (i) quarterly certifications pursuant to section 302 of the Sarbanes Oxley Act 2002; (ii) [X] audit of Sony Delaware's internal controls; and (iii) verifying and certifying the consolidated accounts (together, **'Permitted Purpose F'**).

Permitted Purposes A to F together, are the **Permitted Purposes**.

Sony further submits that:

- the requested derogations pertain to back-end functions and regulatory compliance, and do not affect the Target Entities' ability to compete independently in any market and to carry out their commercial functions, such as signing up artists, distributing music or collective neighbouring rights on artists' behalf;

- the Target Entities' viability benefits from having properly ordered and compliant tax and financial affairs; and
- none of the contemplated actions under these derogations would be difficult or costly to reverse in the circumstance that the CMA decided to impose remedies in respect of the Transaction, up to and including divestment.

The CMA consents to a derogation from paragraphs 5(a), 6(a), 6(f), and 6(l) of the Initial Order permitting the sharing of information for the Permitted Purposes, strictly on the basis that:

- (a) information received by the Sony business regarding the Target business will be limited to what is strictly necessary for each Permitted Purpose;
- (b) information will only be provided to a limited number of individuals within the Sony business (the '**Authorised Individuals**') and/or external advisors (the '**Authorised Third Parties**'), for whom it is strictly necessary to see Target business information for a Permitted Purpose. The Authorised Individuals and Authorised Third Parties for each of the Permitted Purposes are listed in Annex 1, along with their roles and details of the review functions each will carry out;
- (c) none of the Authorised Individuals (save for the Authorised Individuals for Permitted Purpose F, and [X] and [X] for Permitted Purpose C) has, or will have for the duration of the Initial Order, any commercial or strategic responsibility for the Sony business, and shall not use any information provided by the Target business in any way to intervene in the management or operation of the Target business or the Sony business;
- (d) the Authorised Individuals shall enter into non-disclosure agreements in a form approved by the CMA;
- (e) the Target business' financial information provided to the Authorised Individuals will:
 - i. be limited to that which is strictly necessary for Sony to comply with each Permitted Purpose, in template form as agreed with the CMA in Annex 2;
 - ii. be provided only on a fully anonymised basis, and not contain any information which identifies (or can be used to identify) an individual artist or customer (eg Artist A, Payee A, Track A, etc.);

- (f) for Permitted Purposes A to E, where further information or supporting documentation is required:
- i. any further information or supporting document must be the minimum that is strictly necessary for the Permitted Purpose;
 - ii. any further information or supporting document must be provided on a fully anonymised basis, and not contain any information which identifies (or can be used to identify) an individual artist or customer (instead replacing these with, where applicable, Artist A, Payee A, Track A, etc.) or information which relates to business strategy or provides senior management commentary;
 - iii. where certain information cannot be anonymised, Sony must seek the CMA's prior written approval (including via e-mail) before that information can be shared;
 - iv. where it is strictly necessary for the Authorised Individuals or Authorised Third Parties to discuss any information permitted under this derogation with the Target business, these discussions are permitted provided that the conditions listed in (f)(i) to (iii) above apply to such discussions, and that among Authorised Individuals such discussions are limited to specific individuals as detailed further in Annex 1;
- (g) no additions or changes to the Authorised Individuals and Authorised Third Parties set out in Annex 1, shall be made under this derogation without the prior written consent of the CMA (including via email);
- (h) no additions or changes to the information templates set out in Annex 2 shall be made under this derogation without the prior written consent of the CMA (including via email);
- (i) IT firewalls and/or other ring-fencing measures will be put in place to prevent any unauthorised individuals within the Sony business from accessing the information shared with the Authorised Individuals for the purposes of this derogation;
- (j) in relation to Permitted Purpose E, in all cases where the Sony Delaware accounting policy is made available to employees of the Target business, it will be accompanied by a cover note (in a form agreed with the CMA) emphasising that the use of the Sony Delaware accounting policy does not change the obligation for the Target business and the Sony business to be held separate and act independently of one another;

- (k) Sony will keep a detailed record of:
- i. all information shared by the Target business in accordance with this derogation which will be made available to the CMA on request; and
 - ii. all communications between the Target business and the Authorised Individuals / Authorised Third Parties for the Permitted Purposes;
- (l) should the Transaction be prohibited, or remedies required, any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received by Sony Delaware from the Target business for the purposes of this derogation will be returned to the Target business (and/or where relevant transferred to a new purchaser of the Target business) and any copies destroyed, except to the extent that record retention is required by law or regulation;
- (m) such actions:
- are necessary to preserve the viability and competitive capability of the Target business;
 - do not lead to integration of the Target business and the Sony business; and
 - do not impede the taking of any appropriate remedial action which the CMA may need to take regarding the Transaction.

Yours sincerely,

Cristina Caballero

Assistant Director, Mergers

9 June 2021

Annex 1



Annex 2 – Templates for financial information to be shared for each Permitted Purpose

