

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

Summary of the CMA's decision on relevant merger situation and substantial lessening of competition

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Introduction

1. On 18 May 2021, Sony Music Entertainment (**SME**), a subsidiary of Sony Group Corporation (**Sony**), acquired all of the issued shares of certain entities comprising the AWAL business (**AWAL**) and the Kobalt Neighbouring Rights business (**KNR**) from Kobalt Music Group Limited (**Kobalt**) (the **Merger**). Sony, AWAL and KNR are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of SME, KNR and AWAL is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the share of supply test is met.
3. Sony is one of the three 'major' multi-national record labels (along with Universal and Warner). Sony, principally through Sony Music Entertainment (**SME**), provides a comprehensive range of supporting services, commonly known as artist and repertoire (**A&R**) services, to recording artists. These services, which include promotion, marketing, creative development, radio campaigns and tour support, are intended to support and enhance the distribution of an artist's recorded music.
4. Sony also owns The Orchard, EU Limited (**The Orchard**), which describes itself as 'the industry's leading distributor and artist & label [(**A&L**)] services company'. The Orchard distributes recorded music on behalf of artists (typically less well-known than those signed to SME) and independent third-party record labels. A&L services are similar in nature to A&R services, with both being intended to support and enhance the distribution of an artist's

recorded music, but tend to be narrower in scope and smaller in scale (eg tour support and capital advances are unlikely to be provided to the same extent within A&L services). Under agreements with A&L service providers, artists typically independently create and retain full ownership of the copyrights to the recorded music (which is usually not the case under an agreement with an A&R service provider).

5. AWAL also provides A&L services and distribution services to both artists and labels. AWAL provides a 'multi-tiered' service intended to provide different levels of support to artists at different stages of their career. Many artists join AWAL's platform through its online submission process, in which music submitted by artists is selected by AWAL's expert team (an offering described by the Parties as a 'gated' DIY platform). An artist typically retains ownership of the copyrights to the recorded music within all 'tiers' of AWAL's service offering, a model that an AWAL senior executive (the then-Kobalt chief marketing officer, Ryan Wright, in a *Billboard* interview in 2018) has described as a 'fundamental difference' to the traditional label model.
6. The music industry continues to evolve. Global revenues from streaming have grown significantly in recent years. While the music sector has historically focussed on high-earning artists, typically signed to the major labels, the increased streaming of music and the use of social media as a way for artists to connect with their audience directly has facilitated the emergence of a wider variety of artists. This has led to an expanding category of 'mid-tier' artists, a large proportion of which have sought to monetise their music through A&L services. This segment is expected to continue to grow in future, accounting for an increasing proportion of all revenues from recorded music.
7. In light of these market trends, the CMA's Phase 1 investigation focussed on a loss of potential competition in the wholesale digital distribution of recorded music¹ in the UK. The CMA also considered whether competition concerns arose from the combination of the Parties' overlapping activities in the supply of neighbouring rights administration services in the UK.

The wholesale digital distribution of recorded music in the UK

8. While there has been limited direct competition between Sony and AWAL to date (in particular to sign artists), the CMA considered whether the Parties would, absent the Merger, have competed with each other more significantly in future, particularly as the music sector continues to evolve. The CMA is

¹ Also referred to in this document as digital music distribution.

concerned this loss of potential competition between Sony and AWAL could have a significant impact on competition in the wholesale digital distribution of recorded music in the UK, for example in relation to the terms that artists or digital service providers (**DSPs**) are able to negotiate with music distributors.

9. At present, Sony holds a strong position in the wholesale digital distribution of recorded music in the UK. The market is highly concentrated, with the three major record labels (Sony, Universal and Warner) accounting for the vast majority of the share of supply.
10. AWAL is an important emerging supplier in the wholesale digital distribution of recorded music in the UK. AWAL is one of a small number of suppliers that has succeeded in gaining a meaningful foothold in the market. In contrast to many other suppliers of A&L services, AWAL has seen significant growth in recent years, with its stream share more than doubling between 2016 and 2020. AWAL appears frequently (and more prominently than other providers of artist services) in Sony's internal documents. Both Parties' internal documents reference the disruptive nature of AWAL's business model.
11. The evidence available to the CMA shows that AWAL was well-placed, absent the Merger, to materially grow its digital music distribution business. AWAL's internal documents show that it anticipated that its business would grow significantly over the next few years. The CMA therefore believes that AWAL had the ability and incentive to become a more significant competitor in digital music distribution in the UK.
12. The evidence available to the CMA also shows that Sony had, absent the Merger, a clear intention to expand The Orchard's A&L services business (particularly by expanding its offering to artists) in future. This would have led it to place more focus on the increasingly important mid-tier artist segment, competing more directly with AWAL.
13. The Parties submitted that Sony and AWAL are not close competitors at present, in particular because Sony focuses on signing major recording artists, whereas AWAL focuses on independent artists at the beginning of their careers and certain higher-tier 'on the verge' and established artists, and because The Orchard and AWAL have different areas of focus even within A&L services. The Parties suggested that this was supported by the fact that there has been limited switching between the Parties to date (ie the Parties have lost very few artists to each other).
14. The CMA found, however, that Sony's internal documents already regularly identify AWAL as a material competitor, and as a potentially disruptive threat to its artist development model. The evidence available to the CMA also

indicates that Sony is planning to change (or has already changed) some aspects of its business model, so that it offers artists contracts more akin to those offered by A&L service providers such as AWAL. Several third-party competitors also told the CMA the major record labels (including Sony) have been taking actions or making changes to their offering in response to AWAL, including by seeking to expand A&L services offerings, increasing A&L services acquisition activity, increasing advances and lowering royalties.

15. The CMA therefore believes that there is already a significant degree of competitive interaction between the Parties and that competition between them is likely to increase in future.
16. The CMA considered the competition that the Parties are likely to face in future, taking into account the possible entry and expansion of other suppliers.
17. As noted above, the market for the wholesale digital distribution of recorded music in the UK is highly concentrated at present. The two other major labels, Universal and Warner, are referenced frequently in Sony's internal documents, but are likely to have limited incentive to pursue disruptive business models, given that the vast majority of their business is accounted for by their frontline labels. While both of the other major labels have A&L services businesses (Ingrooves and Virgin for Universal and ADA for Warner), none of these businesses has been able to develop the same kind of market presence, or has grown at the same rate, as AWAL.
18. The CMA found that the competition that the Parties will face from other A&L service providers (such as Believe, FUGA/Downtown and PIAS) is limited. In particular, the CMA found that all of these suppliers are smaller than AWAL (the vast majority being significantly smaller), not growing as quickly as AWAL and/or do not receive the same attention as AWAL within Sony's internal documents.
19. The CMA found that the competition that the Parties will face from 'ungated' DIY platforms is limited. These are open platforms where artists can upload their music and have it distributed without any selection process. DIY platforms are commoditised, offer a very limited range of services and focus on attracting high volumes of artists. Such platforms tend to charge a low fixed yearly fee for their services, whereas A&L service providers tend to charge fees as a percentage of earnings. The CMA therefore believes that this is a materially different offering for artists than the services offered by the Parties.
20. The CMA found that the competition that the Parties will face from independent record labels is limited. These labels typically operate a similar

model as the major record labels, and may therefore not be particularly well-positioned to compete for the 'new wave' of artists. Independent record labels are not referenced prominently in the Parties' internal documents and were rarely mentioned by third parties as an alternative to the Parties. In addition, the shares held by independent record labels have generally declined (or in some cases only very moderately grown) over the last five years.

21. Accordingly, the CMA believes that the Merger raises significant competition concerns as a result of a loss of potential competition in relation to the wholesale digital distribution of recorded music in the UK.

Neighbouring rights administration services in the UK

22. Both Sony and KNR provide neighbouring rights administration services to artists in the UK.
23. Given the presence of other competitors, and the limited market presence of Sony's neighbouring rights administration services in the UK, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of neighbouring rights administration services in the UK.