CMA Music and Streaming – Beggars Group Responses

General questions

1. **What have been the main changes in the music industry as part of the shift to music streaming, including any changes to:**
    a. **business models;**

- Most of the companies that offer different business models to traditional record labels were formed to serve the digital download market which has been around for 20 years. But clearly, the growth of the music streaming market has made these companies more viable, successful and appealing to certain artists. The features of these new companies are that they:
    - are primarily technology focused;
    - operate almost exclusively in digital rights exploitation;
    - tend to have many fewer employees than traditional record labels;
    - offer short term deals to artists and writers;
    - offer very competitive royalty rates or in some cases an annual fee rather than a percentage of revenue;
    - often provide upfront investment monies on a repayable basis, as opposed to recoupable from royalties only as with a traditional label deal.
- Examples include AWAL, Distrokid, CDbaby, and TuneCore.
- Releasing music in the streaming era is very different to before – before the revenue from releasing records would be front loaded, the week one sales would be the number that everyone would focus on. In the streaming era the revenue flows in over a much longer time scale, over a number of years. This exacerbates the problems that smaller labels without catalogues have.

    b. **the cost structure of the industry (eg costs of music companies, costs recouped from music creators; and costs of music streaming services);**

- We have had to invest very heavily in our digital systems and resources over the last 6 years, but the result is that we have industry leading matching rates and metadata.
- We estimate the costs of digital distribution to be similar to our physical distribution costs – but with digital we do save the actual cost of making the physical record.
- We need to maintain our physical record infrastructure as the physical record market is still very important to us, but the costs of that have not gone away and we anticipate them increasing.
- The costs of signing artists have increased – artist advances are higher than before

due to the revenues being generated by streaming.

- The costs of marketing and promoting artists have not decreased for us in the last 6 years.
- There are more expectations of video content which is more expensive to produce than audio and there is a constant demand for ‘content’ to keep the audience’s attention.
- The new business models typically offer high percentage of revenue deals to artists but then recoup 100% of the costs from that percentage of revenue, in contrast to a traditional record label deal where the label pays for most of the costs out of its percentage but pays a lower royalty rate.
- We have very little visibility over the costs of the streaming services. We have when negotiating licenses asked them to be transparent about their costs but they have never agreed to.
- We do know the streaming services offer very competitive salaries to their employees, that the advertising supported services require substantial infrastructure for their selling of advertising that usually needs to be nationally based, plus they spend a lot on R&D and the space race in developing their apps, and marketing and advertising to a mass market.

c. risks that music companies and music streaming services take on;

- Signing new artists involves a lot of risk, but that is the key function that record labels provide.
- Obviously there is far less risk attached to artists whose tracks have been successful on streaming services. What is new to the industry is the detailed financial analysis of those artists, which inform the kinds of deals they can be offered.
- Music streaming services take on risk by launching in new countries – this is very expensive.

and

d. the way firms compete at different levels in the music streaming valuechain?

- Please see our response below at 8c.

2. To what extent do costs change, if at all, as music streaming revenues grow,and if so, what drives any changes in costs (eg see paragraph 88), for:

a. Music companies; and

b. Music streaming services?

- We have found that our costs have increased as streaming revenues have increased - we have hired more people to handle our streaming business and invested in more technology while maintaining the infrastructure to deal with the physical business.

- We anticipate that the streaming services will start seeing profits grow as overall streaming revenue increases and their costs stabilize once they are established in any given territory.

3. **Are there any key technological or other changes anticipated in the music industry, particularly anything that could impact competition in the future, eitherbetween music companies or between music streaming services?**

    - We consider non fungible tokens (NFTs) and the direct to fan model to be interesting developments that will impact on the industry.
    - The development of new audio formats like dolby atmos will increase costs of creation and delivery for both music companies and services.
    - The increasing time spent online and moving towards the metaverse will provide big opportunities and equally large problems for the music industry to solve.
    - AI as part of the music or content generating process will also provide both opportunities and challenges.

4. **Are there areas within the stated scope of the market study that the CMAshould particularly focus on, or any important areas it has missed?**

    - We would like the CMA to focus on the extent to which the major labels are guaranteeing placements for themselves and special financial and/or data benefits in their licenses with the streaming services.
    - When dealing with services, the majors usually use their own definition of their market share which is often inflated and which exacerbates the problem.
    - We suspect the majors demand proportionate positioning and placements based on their claimed market share, and the collective self claimed share for the majors can exceed 100% which squeezes out competitors.

Competition between music companies

5. **How do recorded music companies compete with each other in:**
    a. **the supply of services to music creators to develop and bring their musicto market; and**
    b. **the supply of music to music streaming services?**

    - Record labels compete with each other by offering access to their unit and financial data on a real time basis. If a company gets more access to data that can be a competitive advantage.
    - And they compete with each other in the supply of music to their streaming services by plugging their releases to the streaming services.
    - We do not however see a wide range of royalties offered by the competing majors.

6. **How well is competition working at present between recorded musiccompanies?**

- It is very difficult for our labels or any other independent labels to compete with the major labels in certain music genres – mainly pop and rap – which perform very well on streaming services. The major labels have limitless funds to pay as advances and by offering enormous advances that do not make economic sense or as loss leaders to capture market share have taken artists away from us.

- With more alternative genres of music in which we operate, we have very healthy competition with other independent record labels.

7. **How, if at all, is competition between recorded music companies likely tochange in the future?**
    - It is hard to see how the majors' dominance is going to be challenged in the future given the size of their catalogues.
    - It is extremely difficult for new labels to enter the market as a pre-requisite for having a viable label is having a big enough catalogue.

8. **To what extent can music creators seek better terms for the services they areoffered by recorded music companies?**
    a. **What are the key drivers of a music creator's choice of recorded musiccompany? What role do music managers play in this?**

- It cannot be over emphasised how large a role artist lawyers play in the music industry. Every recording and publishing agreement is negotiated extensively: artist lawyers will solicit offers from various labels and bid up the terms on the basis of the offers they receive. Law firms will often pool terms the firm has agreed with certain labels on behalf of certain clients and then use that information in subsequent negotiations with other clients. And the drafts of those recording and publishing agreements are negotiated in detail several times before being signed.
- Managers also play a crucial role in a creator's career, a good manager can be decisive in whether a creator is successful or not. They bring expertise in how to build a following, and how to make the right choices at the right times.
- The music company a creator decides to work with is very often determined by the size of the advance, the rights period and the royalty the company is willing to agree. The lawyer and manager will collect offers in from a range of companies and then take the best terms of each offer and negotiate with a couple of the creator's preferred choices.

    b. **What are the key factors determining the bargaining power of musiccreators in negotiations with recorded music companies?**
    - Increasingly data is a key factor in determining the bargaining power of a creator. Data on the size of a creator's social media following and on the number of streams they have is particularly important for major labels.

    c. **Does the strength of competition between recorded music companies vary for different types of music creator, for example music creators**

at different stages of their career – and if so, how and why?

- Yes, it does. For example a creator will start their career themselves, perhaps using a digital distributor or possibly just uploading content directly to YouTube or other user generated content services.
- Once the creator has gained a following, the next step could be a services deal with a company such as AWAL on a short term basis or possibly an independent label which has made a connection with them.
- If the creator then builds their success further, they can sign to a larger independent or a major or they can extend with their current partner.
- A big problem the industry has and which we believe needs resolving is the fact that a lot of artists on very old recording agreements are getting extremely low royalty rates. We have tried to persuade the major labels to increase their rates for digital exploitation for a number of years, without success.

9. To what extent can music streaming services seek better terms from recordedmusic companies?

a. What are the key factors determining the bargaining power of musicstreaming services in negotiations with recorded music companies?

- The key factors are the music streaming service's number of subscribers and overall revenue. So for instance, it would be unthinkable for a recorded music company to not be on a service such as Spotify which has such market dominance.
- However, the converse is also true in that it would be unthinkable for a service such as Spotify to not have one of the major label's catalogues. So it is equivalent to mutually assured destruction, or at least mutually assured damage.
- This is less likely to apply to independents who are more likely to be pressured by streaming services to accept: indeed some services will launch without all independents' music on board.

b. What impact, if any, do recorded music companies' links with musicpublishers have on these negotiations?

- We are not aware of any such links. We believe the major publishers and the PROs push for the best rates they can get.

10. What scope is there for smaller recorded music companies (including DIYplatforms) or music streaming services to compete with the major music groups?

- Although we are not able to compete on the advances, we are able to compete with the majors on the royalty rates we can pay artists.

We can account much higher royalty rates than the majors.

- We also are able to compete with the majors by offering a more global, joined up approach to artist campaigns. Majors tend to primarily focus on the country in which the artist is signed.
- We also sign fewer artists than the majors and are thus able to give our artists more care, attention and time. A very sizeable percentage of the artists majors sign never actually release a record.

11. What barriers, if any, are there to:

a. entry and/or expansion in services offered by recorded musiccompanies; and

- As mentioned above, a big barrier for a recorded music company trying to get started is not having a catalogue. And catalogues are priced very high at the moment.

b. innovation in relation to these services?

- There is financial investment available for companies that are looking to innovate in the digital sphere.

12. What, if any, issues are there that limit competition between music companies,either in the supply of services to music creators or in the supply of music to music streaming services (see paragraph 95 and 100 above for examples of the types of possible issues the CMA intends to explore)?

- We are concerned about the dominant position of the major labels and how it affects the streaming platforms. We suspect that the streaming services provide additional benefits to the majors in terms of access, playlists, placements and data which they do not provide to anyone else.

13. How can competition between music companies be strengthened in the supplyof services to music creators and/or in the supply of music to music streaming services?

- We think that the CMA should require the majors to divest themselves of labels and catalogues.
- We also think there should be a ban on the majors acquiring further catalogues and making additional acquisitions.
- We think that payola style rules prohibiting editorial placement or playlisting for pay, or contractual terms would promote better competition based on what the consumer wants to listen to rather than what the service needs to deliver to a partner, or on how expensive the content is to the service.

Competition in music streaming services

14. **How do music streaming services compete with each other for consumers?**
    - Features such as recommendations, personalized playlists and functionality.
    - Free trials.
    - Bundle deals, with telcos or other services.
    - Although the music catalogues are the same between services, some services have exclusive audio-visual and/or podcast content.

15. **How well is competition in the supply of music streaming services working at present?**
    - It is very difficult for a new streaming service to launch today. There is the enormous expense and complexity of licensing the music on a global basis, and the incumbent services have such enormous market strength. And in the case of Amazon, Apple and Google, they have the richest companies in the world behind them.
    - This is exacerbated by the fact that the dominant model for music streaming services is full catalogue, in contrast to the audio-visual streaming services which have limited but exclusive content.

16. **How, if at all, is competition in the supply of music streaming services likely tochange in the future?**
    - We do not anticipate new entrants in the streaming market that will take on Spotify, Google and Apple head on, but there will be growth of music consumption on services not primarily focused on music, especially Tik Tok, and Twitch.

17. **How do consumers make decisions about which music streaming services touse? What barriers are there, if any, to consumers switching between services?**
    - Consumers look at price and the quality of the service.
    - There are some barriers to consumers switching – for instance if a consumer is used to a particular speaker that has audio command functionality, the experience is deliberately worsened if the consumer switches to a rival service.
    - Consumers' playlists can be copied over from one service to another – but the services do not make this easy – and they should.

18. **How do consumers use music streaming services and to what extent is theirusage influenced by playlists or recommendations?**
    - A concern of ours is that the release of new music is not the primary focus of the streaming services, but new music is the lifeblood of the music industry. The services' emphasis is more on the music they have selected on their playlists and via their algorithms.
    - The services' interest is in the user not switching service or watching Netflix instead, or another activity which leads to a more of what you know type of selection of content.

- So we believe that consumers are very heavily influenced by the services selection and presentation of the music.

19. What barriers, if any, are there to:

a. entry and/or expansion in music streaming services; and

b. innovation in music streaming services?

- See above.

20. What, if any, competition or consumer issues are there in the supply of musicstreaming (see paragraphs 98, 100(c) and 103 above for examples of the types of possible issues the CMA intends to explore)?

- We do agree that services that host user generated content should be liable for the content they display, that they should have the responsibilities of publishers – they are not dumb networks.
- We would like the value gap to be closed, it is still a very significant factor with some services' evasion of obtaining proper licenses.
- The lack of transparency of some services, particularly short video services and new breeds of music services are almost impossible to police, leading to a lack of reporting and lack of revenue for all creators

21. How can competition in music streaming services be strengthened?

- Removing any speaker tie in to a particular service and any barriers or benefits for those that control App Stores.

22. How can better outcomes for consumers be achieved in music streaming?

- We would like to see greater transparency in the algorithms the services use to compile playlists and their auto plays.
- The services could offer more levels of personalisation over the algorithm to a consumer.

Agreements and inter-relationships between music companies and musicstreaming services

23. **What impact, if any, do equity cross holdings and agreements between music companies and music streaming services have on:**

a. **competition between music companies; and**

b. **competition and innovation in music streaming services?**

- We do not think that equity ownership is appropriate. It makes sense for music companies to be rewarded with share ownership when originally licensing a service, but as soon as the shares can be sold, they should be, to minimise any anti-competitive collusion.

24. **What impact, if any, is there on competition in the music streaming value chain from any softer forms of influence or control that music companies and music streaming services may have over each other (for example related to back catalogue rights or playlists/recommendations)?**

- As discussed above, we feel this is the key factor with respect to the major labels' dominant position with the streaming services. No service can operate without a license from each major, and that gives them tremendous power over the service.