



THE IVORS ACADEMY OF MUSIC CREATORS
THE MINISTRY—79 BOROUGH ROAD—LONDON—SE1 1DN
IVORSACADEMY.COM

Competition and Markets Authority
The Cabot
25 Cabot Square
London. E14 4QZ

17 February 2022

Music and Streaming Market Study

The Ivors Academy (the Academy) is the UK's independent professional association for music creators. Our membership comprises thousands of songwriters and composers across all genres and at every stage of their career.

The Academy has campaigned in support of better remuneration for all music creators because they provide the key contribution to the process of creating music which has both cultural importance and huge commercial value, for the UK, the music industry and many other related industries. The Academy has specifically been campaigning for change within the economics of streaming for some time because we find an industry locked into market practices dominated by the largest music industry corporations. The Academy together with the Musician's Union was, therefore, delighted when the DCMS Select Committee and subsequently the Government responded positively to our joint Fix Streaming campaign. The review by the DCMS Select Committee presented a welcome opportunity for all key participants in the streaming industry to provide information and discuss the extent to which the current situation is fair, equitable, transparent, efficient, and pro-creator. The positive response by the Government via the Intellectual Property Office, in setting up the Music Contact Group and the various working groups on issues relating to transparency, contract adjustment, ER and data is of vital importance, and we are hopeful that this work will produce positive results for creators.

Having said that, the Government-led work does not look at the structure and competition concerns which the DCMS Select Committee highlighted in their report, principally the ownership by the three major groups of a significant proportion of the streaming market, both recordings and underlying works. The Government has seen the work of this CMA market study being to focus on the major labels as made clear by Chris Mills, Director of Copyright at the Intellectual Property Office¹. Without this study there remains a severe risk that the lack of engagement and failure to supply crucial information hitherto demonstrated by the platforms and major music companies may not be overcome and we are very concerned that there are deep structural and behavioural issues embedded in these major and powerful global companies which unless corrected will mean meaningful reform of the market cannot be achieved.

¹ <https://www.prsformusic.com/m-magazine/features/the-rights-stuff/>

We are therefore grateful that the CMA has agreed to carry out this market study as this may be the best and indeed only means by which a full understanding of how the market is failing to work for the benefit of the thousands of creators as suppliers into and millions of consumers of the music streaming services. Our concerns over the impact of the dominant music groups on the pricing and placement of music impacts both music creators and consumers – indeed it is becoming increasingly common for consumers/creator roles to be overlapping or combined. We are however concerned that the features that are keeping this market from working well for creators and consumers are deep-rooted and that the CMA’s work may be a once-in-a-generation opportunity for lasting change. We therefore encourage the CMA to make maximum use of its statutory powers and to refer this market to an in-depth market investigation.

Within this letter we comment and make observations only on the proposed scope of study. We anticipate further submissions in due course in further support of our contentions and also in answer to the key questions specifically raised by the CMA in the final section of its Statement of Scope.

In summary we urge the CMA to investigate:

- The major music company groups and the changing activities, cost burdens, rights acquisitions, licensing strategies and profit margins and how that has led to a disproportionately low allocation of music streaming revenue to creators in general and songwriters in particular.
- The ownership of or dominance over the publishing arms of the major music companies by the record label arms and how that may have led to the publishing arms being unable to properly represent their songwriters and push for a fairer share of the music streaming revenue.
- Every aspect of the contractual and business relationship between the major music corporations and the music streaming services whether equity interests, licensing arrangements, marketing and advertising tie-ups and development of playlists and algorithms to identify any undue market power influencing the access to the streaming market, the dominance of the major companies’ repertoires and lack of diversity in so many of the playlists and also what barriers there may be for the smaller streaming services to obtain licences from the major record labels.

Comments on the overview section of the Statement of Scope

We consider the overview by the CMA of the music streaming value chain and the status of and players within that chain to be both insightful and accurate, but we would like to make some further observations concerning the changes that have occurred within the industry and the relevance of such changes to the Study.

Maintenance by the major record labels of anachronistic business models

As identified by the CMA, the way that music is created, marketed and consumed has changed drastically in this century. However, broadly the valuation of the underlying rights of and payments to creators and the methodologies by which they are paid have largely been held in place based on an anachronistic model of the past record industry model. Retaining these old world models of valuation of rights and payments has only been possible through the exercise of market power by the major record labels and their ownership of music publishing interests. The sole aim has been to maintain margins of profitability; a luxury that has not been of benefit to individual creators.

In the past an artist would have required a record company to make the recording, manufacture and distribute physical copies via wholesalers to retail outlets and of course to market and promote the same. Obviously, costs would be incurred in so doing and the margins required by record labels to make the process profitable would need to take that into account. This had an impact on the fees

and royalties they were willing to pay to artists and that they were prepared or required to pay to the rights owners in the underlying musical works. As such, there was a historic desire to limit the value of underlying song rights in the model of physical product licensing to maximise the margin and profit of the labels. The reduced value of underlying song rights in comparison to recording rights was maintained at a low level, in comparison to public performance, broadcasting and synchronisation where the market had settled on more approximate value for both the rights. The argument for a higher share of revenues on physical product rested on labels having to carry the larger burden of costs related to recording, manufacture and distribution of the physical records, tapes and CDs.

With the advent of digital services, which saw the introduction of downloads, the music labels sought to impose the same physical product model of rights valuation even though digital distribution was bringing about significant change to cost structures. During the last 10 years downloads have been replaced by streaming as the primary means of distribution of music to consumers. Streaming is accepted as being much closer to broadcasting in its model than it is to physical product purchase and it is clear that streaming is cannibalising linear content. However, the allocation of revenues as between music rights owners still closely resembles that which applied for physical distribution. While the major music companies will point to a small increase in the value of publishing rights, it is far from the value that we believe these rights should achieve, unincumbered, in the market. Record labels may also point to some reduction in the value of the recording rights, but it is not clear that any such reductions have been as a result of transactions related to labels' stake in the DSP, or reductions in return for preferential playlisting/ marketing/ promotion of their repertoire on the DSP service.

Alongside streaming growth, we have seen the increased concentration of ownership of the major labels of publishing interests. We have also seen technology increase access to quality music recording, reduce the costs of recording, and the range of music streaming services has increased. This has included the growth of social media where the artist/songwriter is now able to establish an identity and fan following ahead of any label/publishing contract being signed. These changes in the market have moved the role and costs of A&R/marketing away from the labels toward the creators and the DSPs and yet the model has not changed that significantly.

The model is held in place due to the influence the major labels who can exert influence on their major publishing catalogues. The major music groups will be required to maximise profit for their shareholders which puts the task of maximising the value of publishing rights at risk, given the higher proportion distribution to creators involved. Asserting the old model, which suppresses the value of underlying song rights, unfairly undervalues these rights now and poses a significant risk to the song market overall as streaming grows at the expense of linear broadcasting and public performance incomes. If the structural flaws in the industry are not addressed now, a very significant transfer of value from publishing to labels will take place as the historic ratios in broadcasting or public performance of nearer to 50/50 in the value of respective rights moves to the 79%/21% label/publishing ratio currently seen in the streaming market.

We believe this whole business structure no longer has relevance to the music streaming market, which does not feature manufacturing and physical distribution, and yet the record labels and in particular the three major record labels have been extremely slow to move away from them in their artist contracts, minimising the royalties payable to artists in this new world.

Similarly, the record labels have persistently sought to ensure that the value of songwriting and copyright licensing is kept as close as possible to the royalty rates that were set in the days of

physical manufacture. Notwithstanding the change in the costs basis, they continue to seek to suppress copyright (or publishing) royalties in favour of the record label's interests – which is more profitable for the music group (containing both recording and publishing interests). Admission of the transformation of costs and margins was explained by Rob Stringer, Chairman & CEO of Sony Music².

The CMA rightly recites that the UK has a rich musical history and music remains an important aspect of UK cultural life. Music is also an important contributor to the economy; in 2020 contributing £3.1 billion to the UK economy and employing around 128,000 people through the music value chain. Also, the CMA has rightly noted that the sector, like many others, has been hard hit by COVID-19 with these figures down from £5.8 billion and 197,000 employed in 2019. But in some respects, the decline is longer term and has disproportionately affected individual creators but not the music companies. The number of musicians that have left the music industry in the UK is estimated as 60,000 / 35% drop by UK Music: 'This is Music' report. Many creators have suffered financially while the revenues and profits of the major music groups have grown significantly. We think these are important additional metrics for the CMA to note because there would not be a UK music industry without its creators.

Clearly, many of the musicians that have left the music industry have done so as a result of the Covid pandemic and its impact on live performance. We hope that many of them will return to the industry as the live industry is eventually restored. But the report also highlights that while music creators had to leave the music industry, or find it very difficult to make ends meet, the major music groups enjoyed their most profitable period, highlighting the significant increase in profit margins set out by Rob Stringer, and the fact that streaming has become such a dominant part of their incomes. The #FixStreaming campaign and dialogue with the Government is looking at a number of ways to distribute more of streaming income to musicians and creators but achieving a high valuation of song rights can only be achieved once the impediments to proper market operation are removed. Given the music publishing industry asserts that it generally pays out some 70-80% of streaming royalties they receive to the songwriters/composers, we believe if publishing rights were valued more highly and more streaming revenue were paid to publishing, it would result in more of streaming money in aggregate being paid to musicians and creators. This would reduce the number that have to rely almost exclusively on live royalties to earn a living.

Access to market and diversity of services

It is our view that an examination of the music value chain should focus on the fact that the major music groups appear to have preferential market playlisting and positioning which works against the individual and independent actors in the market.

While it would be true to say there are independent routes to market, and the barriers to self-administration have reduced, there is concern that the major music groups have preferential placement from their licensing terms with the DSPs which limits variety and concentrates consumer listening to a narrow number of music recordings. Even a quick and cursory view of some of the Spotify Playlists/Radio & Autoplay, shows a disproportionate amount of major repertoire. For example, on 15 February 2022, the 'The Indie Playlist' comprised 60% Major repertoire, on Rap Caviar, 94 % came from a major label, Autoplay from Chill Hits had 95% from major labels, and Hot Hits Autoplay was 100% from the major labels in first 11 tracks listened to.

² <https://variety.com/2019/music/news/sony-music-chief-rob-stringer-interview-growth-dark-times-1203343400/>

In 2020, Goldman Sachs captured data concerning Spotify's Top 50 tracks. The three largest record labels enjoyed at the time 69.2% share of the total recorded music market, but Goldman Sachs found that 88% of those streamed top tracks was major owned music.³ We believe that this is the product of limited access to market.

In an article published in March 2021, it was said that there are 60,000 songs being uploaded to Spotify every day. That's almost 22 million tracks per year. A study has shown that of these, 1.2 million songs were released through major labels. DIY artists released 9.5 million tracks, meaning eight times as many. The remaining 11 million songs are covered by independent labels. But most of these songs drown in the flood of new music – because only a fraction of artists actually makes any money at all. According to Spotify, there are 8 million artists on the platform who released the aforesaid 22 million tracks. But out of these 8 million artists, only 57,000 are responsible for 90% of all streams on Spotify (that is 0.7%). 800 artists out of the 8 million receive 20% of the total revenue.⁴

Furthermore, although there are said to be numerous streaming services very few have access to the whole music repertoire. The market appears to be unduly concentrated and there are concerns that the dominance of the major groups has a role in the number of services able to launch. We believe that the majors' dominance of the music industry is stifling cultural diversity which is reducing the experience of music for consumers and the growth of the UK music song writing market.

Since being on streaming services' playlists is essential for musicians to expand their following, and since the major music companies dominate those playlists, they occupy a gatekeeper position for any artist or songwriter who wants to reach new listeners via streaming. Thus, the impact of this market feature is both on the consumer, who faces reduced choice and lack of diversity, and on the creator, who have little choice but to contract with the majors if they want to reach a large audience. Because creators are dependent on the majors' access to playlists, the majors are able to extract a margin that is larger than would be the case if competition for inclusion on playlists occurred in a fair and non-discriminatory manner. This gate-keeper position also impacts the lack of diversity of deal terms in the market e.g., life of copyright deals with low royalty payments still persist. We urge the CMA to investigate whether the data in fact shows this to be the case.

Equity stakes

Some music companies have in the past, and some continue to hold equity stakes in some streaming services. In particular, the major music companies and Merlin invested in Spotify's early development and Universal and Sony still retain direct shareholdings in Spotify (albeit for Sony, reduced from original levels) today. It should be noted that to date it seems only the music recording labels were able to enjoy equity shares in Spotify, the main music streaming service, although it is not entirely clear where the source of "profits" used by the major companies to so invest may have come from. Performing Right Organisations or music publishers were not able to benefit from the same opportunity.

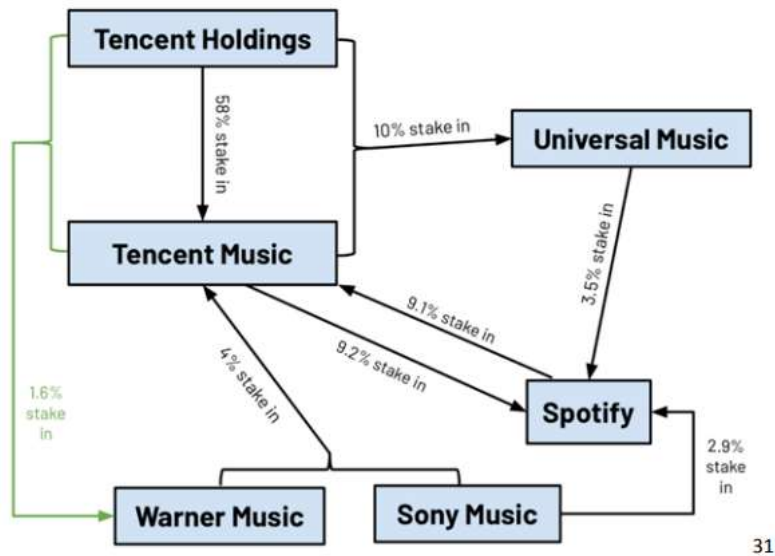
The CMA should investigate the role minority shareholdings may have played, or may continue to play, in maintaining a status quo that benefits the major music companies and how the music companies have failed to share benefits derived from the shareholdings with creators and artists whether at all or have only done so partially. We believe that this should be looked at retrospectively as well as currently; the equity shareholdings held by the labels from the very early

³ <https://www.statista.com/statistics/653926/music-streaming-service-subscriber-share/>

⁴ <https://www.igroovemusic.com/blog/how-many-artists-actually-make-bank-on-spotify.html?lang=en>

days of the streaming services, such as Spotify, could well have been a contributing factor to the old models of royalty payments being maintained.

Furthermore, the shareholding picture can be complex and operate in both directions; that is that streaming services have shareholdings in music companies as well as music companies having shareholdings in streaming services and the underlying tech companies, as the diagram below shows. Even though these may be minority shareholdings, it is important how these equity interests have affected the market and actions of the players concerned. See Tencent/Music Label ownership diagram⁵:



The position of the major music publishers

In considering the position of the major music publishers, it is important to bear two things in mind. The publishing company interests are integrated within, and commonly subservient to, the recording company interests in their complex and multi-faceted group corporate structures. The publishing divisions generally report through to the recorded music divisions. Secondly, it is in the group's financial interests to maximise the value of the recording rights over publishing rights due to how recording rights are licensed and the nature of most major music company recording deals. It is generally the case that retaining a higher value of recording rights will result in a higher profit margin for the group as a whole, but this comes at the cost of the payments that would otherwise be made to the songwriters and composers.

This creates a conflict of interest between the two divisions, but given the usual position of the publishing arm, this conflict of interest results in pressure on the staff of the publishing arms to not compete with the recorded music arm i.e. they should not take action which could result in a reduction of the proportion of the finite streaming royalties that is flowing to recordings, e.g., when negotiating the value of royalties from the digital service providers that should go to the underlying composition.

The streaming market has heralded a very different model of licensing musical works. Rather than licensing musical works wholly via national collecting societies, the larger Anglo- American publishing

⁵ <https://twitter.com/cheriehu42/status/1272951881279684610/photo/1>

catalogues are licensed on a regional if not a global basis and the major publishers at least are directly responsible for the negotiation of the commercial terms of those licences with their chosen collecting society or societies carrying out the collection and distribution elements only. Publishers generally hold themselves out as acting on behalf of their contracted writers and indeed often assert that they owe them a fiduciary duty. As said, this results in a conflict of interest by the publisher who also has to follow a financial strategy designed to benefit the shareholders and executives of the wider corporate group as outlined above.

This conflict of interest was mitigated a little when most music licensing was conducted through collecting societies, but the new model of licensing streaming services has thrown it into even sharper focus. Our concern is that the disproportionately low proportion of revenue from music streaming services is due in large part to the pressure put on the music publishing arms of the major companies to not destabilise the profit margins of the record label arms. The acquisition and integration of label and publishing companies at the three largest music groups has concentrated power which means that they impose a framework on all in the market and has worked against proper competition in the market.

In short, the fact that labels have seen such a dramatic increase in their profitability has been due to the control of the market by music labels over the market valuation of song (publishing) rights which we believe would take place if this control were not exerted. We will be making the CMA aware in subsequent submissions of instances where this has occurred.

Comments on the Objective of the Study

We understand and agree with the objectives of the Market Study and its interplay with the other public policy work being undertaken by the Government in these markets.

When it investigates whether the markets that are the subject of this Market Study work well, we would strongly encourage the CMA to align itself with the global focus on how certain practices by businesses who purchase labour, or the direct products of labour can be anti-competitive.

Songwriters are generally self-employed and face large purchasers of their work, the major music companies. Those music companies compete to sign new artists and songwriters and therefore compete in the marketplace for song and recording rights, regardless of how they then choose to market those rights. The major music companies depend on a strong pipeline of talent, and one will lose out if another one 'buys up' promising acts and creators. However, a bidding war for creators and artists could be ruinous for the music companies. In a tight oligopoly like the one in which the major music companies operate, this gives incentives to adopt practices that dull competition on the marketplace for song and recording rights.

It is now commonly accepted that agreements not to recruit certain employees or not to compete in terms of compensation are illegal.⁶ Similarly, mergers that cause harm to creative professionals have

⁶ See for example Joint Guidance for Human Resource Professionals issued by the US Federal Trade Committee and Department of Justice, October 2016. See also comments made by EU Commissioner Margrete Vestager at the Italian Antitrust Association in October 2021: "*some buyer cartels do have a very direct effect on individuals, as well as on competition, when companies collude to fix the wages they pay; or when they use so-called "no-poach" agreements as an indirect way to keep wages down, restricting talent from moving where it serves the economy best ... There are markets ... where the key to success is finding staff who have the right skills. So, in these cases, a promise not to hire certain people can effectively be a promise not to innovate, or not to enter a new market.*" Speech available at:

been under significant scrutiny, most recently in the *Penguin Random House/Simon & Schuster* merger, where the impact on authors was the key reason for the US Department of Justice to sue to block the transaction.⁷ As these developments recognise, competition law protects individuals acting in their capacity of employed and self-employed workers. The UK markets regime is intended to identify market features which, while not amounting to a cartel, abuse of a dominant position, or a substantial lessening of competition caused by a merger, create similar effects. We therefore strongly encourage the CMA to identify the features of the market for song rights on which the music publishers act as purchasers that restrict or distort competition for those rights and/or that artificially allocate a greater relative share of proceeds to the record labels and that, as a result, mean that creators are paid less than they would be paid absent those distorting features.

Any such features have a very real and negative impact on individuals – the artists making music – as well as on competition. We would also observe that good outcomes for music creators will lead to good outcomes for music consumers both in terms of diversity of products available for the consumer as well as consumer satisfaction.⁸ The YouGov study commissioned by the Ivors Academy showed that the consumer expects more of their payment for music services to be returned to the music creators⁹.

We are also confident that the issues we have outlined above, and on which we intend to expand during the market study, demonstrate that it is important that when the CMA states that most of the concerns with a key competition or consumer element link back to possible issues in *recorded* music (CMA Statement of Scope, paragraph 85), it does so only in the context of not examining the whole market for live music. In fact, the relative allocation of revenues as between publishing rights and recording rights is comparable in other forms of music distribution, including radio, yet in music streaming publishing rights are compensated much less as a proportion than recording rights. It is our strong view that these inequities are not the result of “social issues including how appropriate such allocations may be” (paragraph 106), but of the exercise of market power by the majors. These companies benefit more from a higher proportion of revenue streams flowing through recording rights rather than through publishing rights and have the ability and incentive to affect that division of revenues in their own favour. At a minimum, the CMA should investigate the role market power and adverse effects on competition play in this allocation.

Comments on the scope

We welcome the proposed scope of the study and in particular the commitment to looking into “all the steps in and all the music-related goods, services and licensing provided as part of the chain of supply from creators of music”, including rights acquisition. We also agree with the CMA that the

2024/vestager/announcements/speech-evp-m-vestager-italian-antitrust-association-annual-conference-new-era-cartel-enforcement_en.

⁷ Complaint of the US Department of Justice against Bertelsmann, Penguin Random House, ViacomCBS and Simon & Schuster, 2 November 2021, paragraph 51: “By eliminating the head-to-head competition between Penguin Random House and Simon & Schuster, the proposed merger would likely result in authors earning less for their books”.

⁸ See, similarly, the Department of Justice in *Penguin Random House/Simon & Schuster*: “By harming authors, the merger is also likely to harm consumers. Penguin Random House’s Global CEO has recognized the principle that reducing author pay means “[f]ewer authors will be able to make a living from writing” which, in turn, “will have an impact on the output.” By reducing author pay, this merger would make it harder for authors to earn a living by writing books, which would, in turn, lead to a reduction in the quantity and variety of books published” (paragraph 9 of the DOJ complaint)

⁹ <https://ivorsacademy.com/news/significant-public-for-streaming-reform-in-yougov-survey-for-the-brokenrecord-campaign/>

correct focus should be on recorded music. We intend to submit specific information and considerations of all the matters referred to in paragraphs 86 to 104 in due course.

We believe that those paragraphs set out key issues and fully agree that all of those must be investigated. Based on the points raised above we would make the following observations that would suggest those parameters need to be clarified and indeed perhaps widened in certain areas:

- In Paragraph 88, it is indicated that the study will look into whether and to what extent industry costs have increased and whether music companies have been incentivised to spend more on marketing and promotion. Obviously, this is important but also the CMA must understand the reduction in costs enjoyed by the record labels since 2000. Therefore, in the CMA's financial analysis we would encourage the CMA to also focus on profit margins, and the relative allocation of margins in the value chain as indicators of market power.
- The CMA must also examine thoroughly the complex contractual relationships between the music groups and the streaming platform; this is more than just licensing and equity interests (as referred to in para 101). All the various tie-ups, advertising discounts, shared marketing expenses and promotions or exclusivity windows must be examined – all the ways in which the music companies can obtain economic benefit or reduce costs obligations which are distinct from the “licensing arrangements” and therefore in respect of which creators and artists do not benefit.
- In paragraph 93, the CMA focusses specifically on “competition between recorded music companies, and the extent of any market power that some may have, given its focus on recorded music”, referring back to paragraph 85. As discussed above, we consider that any focus on recorded music must assess the important impact market power and market failures have on publishing rights. When creators engage with record companies, they find themselves in a very similar position to authors dealing with book publishers. Good deals may be available to those musicians who are expected to be most popular, but this is not a reflection of a market working well for all other creators. We encourage the CMA to carefully investigate this part of the value chain, focussing on the impact that a lack of competition between the majors has on what artists are paid. We consider that the CMA should take into account their collectively dominant position as against creators, as well as the significant scope for coordination that exists in this concentrated market,¹⁰ and the impact these features have on creators.
- As stated in paragraph 94, the CMA is currently minded to examine the extent to which the publishing arms of the major music companies strengthen the market power of the record label arms, in relation to their bargaining power with the music streaming companies. The CMA should analyse the extent of control shares that each major has possessed during the period of the streaming industry (the major groups impact a much wider amount of the market due to a recording comprising a song which may have multiple writers across multiple music publishers). We agree that examination of this issue is vital. However, related to the point made above, it is not enough and misses a very important point. A key issue is not just what the recording arms use as leverage vis a vis the music streaming services but more significantly for songwriters and creators, how do they use their dominance within the music groups themselves to limit their publishing arms from properly pursuing a full and appropriate share of streaming revenue to be

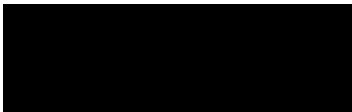
¹⁰ See, similarly, the Department of Justice in *Penguin Random House/Simon & Schuster: “The market structure of the publishing industry already is conducive to coordinated behavior. A few large players dominate the industry and the terms of author contracts, other than advances, have become fairly standardized over time. For example, royalty rates are typically identical among the Big Five publishers and are rarely negotiable”* (DOJ Complaint, paragraph 52).

allocated to the musical works and the songwriters and composers that those publishers represent. It is crucial that the CMA properly investigates this aspect of the two arms of the music groups.

As outlined above, the structural and behavioural problems within the major music groups are at the heart of why there is such dissatisfaction with current allocations of revenue from music streaming and therefore the inquiries by the CMA should not shy away from a consideration of those allocations in order to fully understand why the market is not functioning well. Any findings by the CMA will inevitably be extremely important in shaping any work being carried out in other fora. We believe that this is implicit in the CMA's statement of scope but would welcome clearer wording on that point and in particular that the matters referred to as out of scope in paragraph 106, such as "social issues" as to appropriate allocations [of revenue] will not mean that there is anything less than a full and robust examination of all competition matters, whether structural or behavioural which have a bearing on those allocations.

Once again, we thank the CMA for undertaking this study and applaud the terms and scope of it. As said, we will be making further submissions on the questions raised by the CMA in due course. We would also welcome a meeting and are in touch with the project team to arrange one.

Yours sincerely,

A solid black rectangular box used to redact the signature of the sender.

Graham Davies
CEO, The Ivors Academy / The Ivors Academy Trust