

NON CONFIDENTIAL VERSION

**CMA music streaming market study statement of scope dated 27 January 2022
Merlin Response**

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;

The CMA's statement of scope provides a broadly accurate overview of the different music streaming services that exist in the UK (and global market), and includes in its definition of music streaming services both those that supply commercially acquired content ("Premium Content") and those that offer a platform for users to upload content. We note that this could be user generated content i.e. content **created** by a user which may include third party content, for example, a home video featuring a commercially released recording as its soundtrack ("UGC"), or may simply be content uploaded by a user which belongs entirely to a third party, for example, where a user uploads a copy of a commercially released track downloaded from the internet ("UUC").

The commercial content music streaming services (i.e. those supplying only Premium Content) such as Spotify and Apple Music have an established subscription model, which, in the case of Spotify, includes both ad-funded or 'freemium' use and paid subscriptions. This model is working well and these services pay through a substantial proportion of their revenue in royalties.

There are also services which offer both Premium Content and UUC/UGC. For example YouTube, which offers both a free and paid for service.

In addition, there are now social media services such as Instagram/Facebook and TikTok, which make Premium Content available to their users for the creation of short form audio visual content. These services are also able to make available short form audio visual content featuring UGC.

While Merlin agrees that these latter short form audio visual services should be included in the definition of music streaming services, they cannot be grouped together with Premium Content/subscription music streaming services. They represent new or incremental income sources as opposed to what has happened in the market in the past, where downloads supplanted physical sales, and then streaming supplanted both downloads and physical. These "incremental services" are allowing rightsholders and artists to grow income, and are growing the overall market, rather than simply reshaping the existing market.

[REDACTED]

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

Costs of music streaming services

The development of services is limited by high costs of entry and powerful established incumbents. This makes entry difficult in that any new entrant must immediately face competition from global multi-national companies with access to significant financial

and technological resources. From a rightsholder perspective, and in order for consumers to be presented with a diversity of choice, it would be beneficial for more services to enter the market, especially incremental services (see response to question 1a. above).

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

Please see answer to 1b. above.

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

Clearly, Spotify, Apple, Amazon and Google represent an about 90% share of the UK market. However, also see responses to 1a. and 1b. above.

On the rightsholder side, we believe that Merlin and our members are in competition with the major record companies, who exercise significant market power. In competition terms, we do not believe there is a hard and fast distinction between record companies, artist service companies, distributors and aggregators. All are looking to acquire rights to successful artists/repertoire and compete with each other to make those signings. Furthermore, each then competes with each other in the supply of music to music streaming services to maximise their royalties from what is often a single royalty pool divided on a pro rata basis. This is why we are concerned by the majors growing their market share via relatively small acquisitions, because when these acquisitions are looked at in aggregate, it is clear that the major record companies are able to use their existing positions of strength to entrench and enhance those positions even further. This then has the effect of increasing their negotiating power both when looking to sign new artists and otherwise acquire additional repertoire, and when negotiating with music streaming services.

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

a. Music companies; and

b. Music streaming services?

Not applicable as Merlin is neither a music company nor music streaming service.

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

As explained above, the new incremental services where music is monetised such as TikTok are in fact growing the size of the market and growing the income of labels and artists, as opposed simply to supplanting previous income/revenue streams as downloads, and then subscription streaming previously supplanted the physical recorded music market. As the market place has developed moving from CDs to downloads to subscription streaming and on to the use of music in short form videos on social media, so has the editorial/“gate keeping” influence of the retailers/services diminished thereby allowing more agency for consumer choice.

[REDACTED]

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

Merlin would suggest that the CMA should not only focus on the established subscription models, but also look at new incremental models that are developing in the market as discussed above to ensure a comprehensive overview.

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 music to market; and**
- b. the supply of music to music streaming services?**

As noted, around 70% of the recorded music market is highly concentrated between the three major record companies. However, the remainder of the market (the independent sector) is highly fragmented and barriers to entry for smaller recorded music companies to the market to supply music to music streaming services are consequentially high as new digital music services tend not to have the time or resources to engage in bespoke negotiations with a large number of independent players. As a result, independents historically (and to an extent still do) faced either having to agree “take it or leave it” terms or an inability even to attract the attention of music streaming services. Merlin was set up to address these issues in the recorded music market (it does not have activities in the music publishing market) and to facilitate independent rightsholders’ market entry on competitive terms with the major record companies.

Merlin offers independent rightsholders the opportunity to license rights to Merlin for onward licensing to music streaming services via our collective license. Merlin thus provides benefits to both the music streaming services (who benefit from the acquisition of a substantial catalogue of rights in a single transaction) and to its independent rightsholder members (who benefit from the competitive terms Merlin is able to achieve).

The major record companies, in addition to licensing their owned repertoire, also act as distributors of repertoire owned or controlled by independent music companies and as suppliers of services to independent rightsholders, and accordingly compete with independent aggregators, distributors and service providers, as well as with Merlin areas as regards the representation of rights in negotiations with music streaming services .

6. How well is competition working at present between recorded music companies?

See our response to question 5 above.

7. How, if at all, is competition between recorded music companies likely to change in the future?

Not applicable – Merlin is not a recorded music company.

8. To what extent can music creators seek better terms for the services they are offered by recorded music companies?

- a. What are the key drivers of a music creator’s choice of recorded music company? What role do music managers play in this?**
- b. What are the key factors determining the bargaining power of music creators in negotiations with recorded music companies?**

- 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?**

Not applicable – Merlin is neither a music creator nor recorded music company

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

- a. **What are the key factors determining the bargaining power of music streaming services in negotiations with recorded music companies?**
- b. **What impact, if any, do recorded music companies' links with music publishers have on these negotiations?**

A key factor in relation to the bargaining power of music streaming services is the need to offer all or most repertoire available in the market – both current repertoire, as well as back catalogue - so as to carry a comprehensive offering of music to be attractive to consumers. Control of publishing and recorded music rights by music companies within the same group clearly enhances negotiating power since the streaming services need to clear all of these rights in order to operate legally.

[REDACTED]

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

The growth of DIY platforms and the opportunities for artists to work directly with services like SoundCloud encourages diverse and increasingly open routes to market. However, as discussed above, fragmentation in the independent sector leaves rightsholders and artists at a competitive disadvantage to the major record companies in negotiating relationships with music streaming services. Please see comments above regarding how Merlin looks to address this issue by providing a means for independent rightsholders to compete with the major record companies.

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

- a. **entry and/or expansion in services offered by recorded music companies; and**
- b. **innovation in relation to these services?**

Not applicable – Merlin is not a recorded music company.

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)?

In the supply of music to music streaming services, a key factor to bear in mind as mentioned above, is that, in order to be successful, subscription streaming services in particular need to offer all or most repertoire available in the market – both back catalogue and current repertoire. Given this need to offer a full range of catalogue, the large volume of hit repertoire of the majors is must-have for music streaming services. This will have a knock-on effect as regards how music streaming services negotiate with independent record companies, since music streaming services will need to prioritise deals that secure access to that must-have repertoire and consequently may need to offer lesser deals to

independent record companies. Solving this problem, was another factor in setting up Merlin, and the model that Merlin chose to adopt.

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

Competition in the supply of music to music streaming services can best be strengthened by ensuring the continued competitiveness and further growth of the independent sector. We also believe that a key opportunity in this area is the continued growth across a variety of different types of streaming service models including the incremental services mentioned above.

Competition in music streaming services

14. How do music streaming services compete with each other for consumers?

Not applicable - Merlin is not a music streaming service.

15. How well is competition in the supply of music streaming services working at present?

Not applicable - Merlin is not a music streaming service.

16. How, if at all, is competition in the supply of music streaming services likely to change in the future?

Please see our responses above to questions 1a. and b., and 3 above plus 21 below.

17. How do consumers make decisions about which music streaming services to use? What barriers are there, if any, to consumers switching between services?

Not applicable - Merlin is not a music streaming service.

18. How do consumers use music streaming services and to what extent is their usage influenced by playlists or recommendations?

Not applicable - Merlin is not a music streaming service.

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 comments concerning question 1b above.

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

Not applicable - Merlin is not a music streaming service but see our response to question 21 below.

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

Competition in music streaming services can best be strengthened by growing the music streaming market through continued growth and innovation across a variety of different types of platforms. Please in particular see our comments above regarding incremental services.

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

See our answer to question 21 above.

Agreements and inter-relationships between music companies and music streaming 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 believe music companies holding equity in music services has any practical impact on licensing agreements – although we are aware of an increase in cross holdings.

[REDACTED]

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)?

We believe there may in some instances be a link between placements on editorial playlists and advertising spend.