VIA EMAIL: [musicstreaming@cma.gov.uk]

To: Competition and Markets Authority
The Cabot
25 Cabot Square
London, E14 4QZ

From: Peermusic (UK) Ltd.
[redacted]
[REDACTED]

Date: February 17th 2022

Re: Music and streaming market study

Peermusic (UK) Ltd. ("**Peer UK**") respectfully submits the following comments regarding the Competition and Markets Authority ("**CMA**") invitation to comment on their ongoing study of the music and streaming market (the "**Market Study**").

Peer UK is a member of the peermusic group of companies. Peermusic was founded in 1928 and is the largest independent music publisher in the world with 38 offices in 31 countries. Peer UK was incorporated in 1932 and continues to the current day.

Throughout the company's history, it has championed the rights of songwriters from diverse backgrounds and ethnicities and worked to bring songwriters from across the globe to the ears of consumers. Peermusic's catalogue spans from such standards as "You Are My Sunshine", the works of Donovan (e.g. "Catch the Wind"), and early works by Pink Floyd and the Rolling Stones, to modern hits performed by artists such as Justin Bieber and Beyoncé. Many of the peermusic group's employee's serve on industry boards and organisations across the world, from the United States to Europe to Asia, and in the UK, Peer UK's Managing Director and President of Europe, Nigel Elderton, currently serves as the Chairman for PRS for Music Limited.

As a purely independent and privately owned music publisher with a long history, the Peermusic group has seen the radical shifts in the music market from its beginning in sheet music to the modern streaming era and Peer UK greatly appreciates the opportunity to comment on the Market Study. The peermusic group does not hold significant equity in streaming services nor have ties with major record labels and remains a fervent representative of songwriters.

General Comments

The division of sound recording and publishing revenues in the streaming market

1) Before addressing several of the explicit questions posed to the industry in the CMA's Statement of Scope[1] (the "**Statement**"), Peer UK wishes to comment on some of the Statement's findings and parameters.

[1] Available at: https://assets.publishing.service.gov.uk/media/61f17285d3bf7f0546a99df2/Music_and_streaming_Statement_of_Scope_final.pdf

2) In particular, Peer UK wishes to draw the CMA's attention to paragraphs 42(a) and (b) of the Statement which imply that the publishing sector's contributions to the UK economy are roughly 85% of those contributed by the recorded music sector. Peer UK believes this figure to be distorted and does not accurately portray the division of income nor considers the downward pressure (discussed in paragraphs 18-24 and 26 below) on publishing revenues received by the music publishing sector or songwriters. Instead, according to streaming service's own figures, monies to music rights holders are split 75%-80% in favour of the recorded music sector and 25%-20% are accounted to and split between the music publishing sector and songwriters.[2] These figures were repeated in the Digital, Culture, Media and Sport Committee inquiry and subsequent report ("**DCMS Report**").[3]

3) The actual disparity in value suggests that influence has been exercised on the division of streaming income to favour recorded music to the detriment of all songwriters and any independent publisher who represents them. This conclusion is echoed in paragraphs 5, 8, 28, 94, and 106 of the Statement, which observes the dominance of major music groups and the CMA's plans to examine "how the majors' position in both recorded music and publishing has influenced the relative value of recording and song rights."

4) It should be noted that typical royalties for performers and artists from the recorded music sector are substantially lower than those of songwriters in publishing. As the DCMS Report found, recording artists receive anywhere from 2-4% in legacy contracts to 20-24% of these monies in more current ones.[4] In comparison, from Peer UK's own experience, the publishing sector typically pays out royalties of approximately 50% in legacy contracts, and anywhere from 75%-95% in more current ones. Therefore it is clear that for a major music group which includes both recorded music and publishing rights, recorded music income is more favourable due to these royalty structures.

5) The CMA may also be aware of industry headlines regarding significant catalogue transactions, many of which have been announced during the COVID-19 pandemic.[5] While some may view these transactions as indicating a high value for musical compositions ("**songs**") in a robust market, it should be kept in mind that these catalogue acquisitions only benefit a select few of the approximately 8 million of songwriters whose work is available on streaming platforms.[6]

<u>Specific Comments</u>

d. 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;
b. the cost structure of the industry (eg costs of music companies, costs recouped from music creators; and costs of music streaming services);
c. risks that music companies and music streaming services take on; and
d. the way firms compete at different levels in the music streaming value chain?

[2] See e.g. video "Loud & Clear: How the Money Flows" at 2:00, available at: https://loudandclear.byspotify.com/ and https://www.youtube.com/watch?v=iExPc11FWUc
[3] See paragraph 78: https://committees.parliament.uk/publications/6739/documents/72525/default/
[4] Ibid. paragraph 44
[5] See e.g.: https://www.musicbusinessworldwide.com/hipgnosis-songs-fund-now-owns-a-music-catalog-worth-more-than-2-2-billion/ ("These acquisitions included music catalogs from the likes of Neil Young, Lindsey Buckingham, Chrissie Hynde, Shakira, Walter Afanasieff, Steve Winwood and Grammy Award-winning producer, Andrew Watt.")
[6] See https://www.digitalmusicnews.com/2021/02/24/spotify-artist-earnings/ ("Just 7,500 Artists on Spotify — Out of 8 Million — Make $100,000 or More Annually")

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6) There have been two major changes to the music industry as a consequence of the shift to streaming. The first is the above-mentioned division in favour of the recorded music sector (see paragraph 2 above and discussed further below), and the second has been the increase in the publishing sector's costs coinciding with the decrease of costs associated with recorded music (see paragraphs 18-24 below).

7) In streaming the underlying song of a sound recording is valued at approximately 25% of its recorded counterpart. Yet without the song, the sound recording would not be possible.

8) Instead, there should be greater parity of value, as acknowledged in other licensing practices (particularly in the issuing of synchronisation licenses) where songs receive equal remuneration as the sound recording embodying them.

9) To the consumer, such a division would appear unequal. In the pre-streaming era there was a vibrant market for so called "covers" of artists recording their own versions of hit songs. For example, the aria "Summertime" originally written by Ira and George Gershwin and Edwin and Dorothy Hayward in the 1930's. According to the Guinness World Records it is the worlds most recorded song with over 67,000 recordings made.[7]

10) In the streaming era due to the limited way in which search results are presented or played to the consumer the most popular version of a song will appear or be played on the consumer's smart-speaker. As such, the typical consumer will likely only be aware of a single recording of a single song and therefore value each of these two components of the music they enjoy equally.

11) As there is generally a single recording of a song, the value of that song to a music publisher is directly tied to the investment in marketing and distribution by the sound recording sector (the costs for which have declined; see paragraph 19). Music publishers rarely engage in such activities and lack expertise in the area. Music publishers are then beholden to record companies. Such a relationship between a music publisher and record label in the same group of companies may be symbiotic, however to the larger music publishing industry as a whole it leads to a focus on signing songwriters to work with performing artists prioritized by record labels.

12) Second, the streaming era has brought with it a deluge of data. Ideally, such data would also equate to perfect royalty payment systems within both streaming services and collective rights management organizations ("**CMOs**") which administer performing and mechanical rights of songs. Instead, the amount of data has quickly overwhelmed processing systems at great cost (see paragraphs 20 and 21 below) and in some cases meant the industry must instead rely on using market share proxies in order to account for royalties to the music publishing sector. The onus of dividing these royalties and distributing them to individual songwriters is one of the primary value additions to the music market by the publishing sector.

13) Such division of revenue according to market share incentivizes publishers to concentrate on this criterion at the expense of fostering song writing talent and ultimately consumer choice.

14) The over valuation of sound recordings has further direct consequences on business models, the costs structure of the industry (addressed in paragraphs 18-24), risk appetites, and the way that firms compete.

15) In particular, business models have been built to favour the recorded music sector and, in publishing, to build market share through the acquisition of catalogues of historical hits. [REDACTED] While firms in the publishing sector do compete for signing new songwriters, it is usually for the market share a songwriter has already captured and not the market share a talented new songwriter may one day achieve.

16) As resources are devoted to securing market share, the risk appetite to sign new and developing talent is decreased. The song writing occupation is an inherently risky venture and the music publishing sector

[7] Available at: https://www.guinnessworldrecords.com/world-records/70103-most-recorded-song

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absorbs and mitigates such risks by offering financial security by making early and long-term investments in developing songwriters.

17) The ultimate detriment to the consumer is a lack of variety in their potential choices as music publishers chase market share instead of fostering diverse talent.

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?

18) In the music streaming era, the costs of the recorded music sector have drastically decreased while the opposite has occurred in publishing due to the increased costs of data processing.

19) In comparison to the costs associated with physical products (e.g. packaging and distribution), in dealing with digital products these costs have been reduced to practically nil and reducing the necessary investment of the recorded music sector to discretionary marketing expenses. Coinciding with this, the costs of recording and producing music have decreased with access to low-cost software and hardware.[8] This has, and continues to, increase the profit margin of the recorded music sector. [REDACTED]

20) While CMOs process data on an industry-wide level, the amount of data generated in the streaming model is theoretically infinite and already exceeds the processing capacity of the streaming platforms and CMOs. This is evidenced by payments of so called 'black box' income and allocation of royalties according to market share.

21) In the United States the recent establishment of the Mechanical Licensing Collective CMO has been funded by the streaming services themselves. In contrast, in Europe and the U.K., CMOs have had to bear the costs associated with this increase in data and processing costs, [REDACTED].

22) As publishers pay royalties on a per-song and per-songwriter basis they must process data received from CMO's and streaming services on a granular level. This increases costs and puts downward pressure on the publishing sector's profit margins.

23) [REDACTED]

24) These costs have led to a decrease in income to publishers and songwriters, making the publishing sector even more reliant on the sound recording sector, and again making publishers adverse to diversifying their rosters and offering more choice to consumers.

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

25) The core offer of a music streaming service is to allow a consumer access to a near-infinite library of recordings and songs. This means that services are unable to compete solely in their core offering. Instead, streaming services have differentiated themselves through the integration of their services into goods which derive much of their value from the exploitation of intellectual property while not compensating rights holders.

26) This has also led to price stabilization amongst services (essentially 9.99 GBP per month) which has not changed in over a decade, despite inflation, as services do not wish to price themselves above a competitor and as they are unable to differentiate their core offering. This has led to a decrease in real income for the

[8] See e.g. https://www.mixonline.com/recording/finneas-on-producing-billie-eilishs-number-one-album-in-his-bedroom (“Finneas on Producing Billie Eilish’s Hit Album in his Bedroom”)

publishing industry as costs have increased, along with inflationary pressure, while the nominal pricing of the services remaining stagnant.

27) Instead, services must differentiate themselves through other offerings such as bundling streaming services with physical products. Goods such as smart-phones, smart-speakers, and other technology sold both by streaming services and third parties allow these companies to realize profits from physical products which derive much of their value from songs. The value of the songs however is not fairly compensated as access to them is often offered at a reduced rate as an inducement for the consumer to buy the device. For example, it is common when purchasing a smart speaker that it will include free access to a music streaming service for a period of time, and possibly a reduced subscription rate following the free trial.[9]

28) In theory a publisher may disagree with these terms and the reduced rates and refuse to license its catalogue for these bundled services. However, such refusal would make the publisher a pariah in the industry and discourage songwriters from contracting with them as the songwriter's songs would not be available on the newest technology or devices. Refusal would also prohibit co-writers, co-publishers, and record labels from earning royalties. Publishers are therefore put into an inherently losing position - if they choose not to agree to discounted rates then their music will not be exploited in the streaming market and new writers will not wish to sign with them, while if they agree to discounted rates they must accept decreases in income for themselves and the songwriters they represent.

29) This mechanism further devalues the general worth of songs and lowers the potential payments to songwriters, again putting pressure on music publishers to focus on market share rather than offering genuine choice to consumers.

Conclusion

30) In conclusion, the abovementioned factors have drastically reduced and distorted the true worth of songs in the streaming era value chain. [REDACTED] The music industry has focused on growth of the recorded music sector to the detriment of the publishing sector and the recent spate of catalogue acquisitions should not be erroneously interpreted as an increase in the relative income earned by songs. As the music publishing sector's costs have risen their real income has declined, while the antithesis has occurred in the recorded music sector. This has been aggravated through the bundling of discounted music service subscriptions with hardware that derive much of their value from the same services and, consequently, access to songs.

31) [REDACTED]

32) [REDACTED]

Should the CMA require any clarification or further comments Peer UK is available and again, Peer UK is grateful for the opportunity to comment.

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Nigel Elderton

President, Europe & Managing Director

[9] See e.g. https://www.amazon.co.uk/b?ie=UTF8&node=15560489031 ("Buy an Echo and get 90 days free Amazon Music Unlimited")