CMA Market Study into Music Streaming

Sony Music Entertainment's Response to the CMA's Statement of Scope

1 Introduction and overview

Sony Music Entertainment ("**Sony Music**") is a global record company. Our core mission is to find and fund the music industry's most talented artists, acting as a creative partner to help them create world-class music and to help them reach the widest range of global audiences possible.

Sony Music welcomes the CMA's market study ("**Study**"). As we hope will become clear during the CMA's Study, the music industry is complex, dynamic and competitive. It continues to yield high quality music for listeners at historically low prices through a variety of (increasingly digital) channels. We look forward to helping the CMA form an accurate picture of the music streaming value chain[1] and understand what the best outcomes for listeners, artists and songwriters in the UK can be.

We agree the proposed scope of the Study is appropriately defined. Below we summarise some of the key issues we would expect the CMA to explore as part of its Study.

1. **Technological innovation has radically changed the way music is consumed and artists are remunerated.** Music streaming is now the dominant form of music consumption in the UK and has been the primary driver in the industry's partial recovery following a period of earnings decimated by music piracy. Listeners can now take advantage of "all you can eat" streaming models giving them access to vast catalogues of music, choosing to listen only to the tracks they enjoy rather than having to purchase a full album. The shift from buying albums to streaming individual tracks has fundamentally changed the underlying economics of the industry, impacting remuneration models for artists, creators and songwriters, as well as cost and revenue structures of labels and other players across the value chain.

2. **Competition between record labels is strong. This delivers benefits across the value chain, including better terms and increased choice for artists and creators and a more diverse range of music for listeners**. While the sale and distribution of recorded music has been, and continues to be, transformed by technological change, it remains a highly competitive market, with many companies competing to discover and sign artists and distribute music in the UK and around the world. As recognised by the CMA in its *Sony / AWAL* provisional findings,[2] Sony Music competes against Warner and Universal, and faces intense competition from independent labels, artist and label ("**A&L**") service providers and the DIY sector, including a range of new entrants that are being underwritten by financial investors. As the CMA has also recognised in its provisional findings in *Sony / AWAL*, artists and creators have more choice and opportunities than ever before, with steadily improving terms and remuneration.[3]

3. **Record labels play a critical role in the industry, serving as creative partners for artists.** Sony Music is a creative partner for artists, making significant high-risk investments

[1] As described in the CMA's Market Study Statement of Scope published on 27 January 2022 ("**Statement of Scope**").

[2] Completed acquisition by Sony Music Entertainment of AWAL and Kobalt Neighbouring rights businesses from Kobalt Music Group Limited (Provisional Findings), 15 February 2022 ("**CMA Sony / AWAL PFs**").

[3] CMA Sony / AWAL PFs, para 51-52.

often at an early stage of an artist's career. These investments, when combined with ongoing support and marketing efforts, lead to the production of high-quality music for listeners. This also enables artists to benefit from other revenue sources outside of the Sony Music relationship, from which many artists derive most of their income. In our experience, few roster artists tour without the backing that a label's marketing and promotional support of a new album brings. Currently, aside from record labels, no other music industry players offer the same degree or range of value-add functions or the same degree of risk investment.

4. **Digital Service Providers ("DSPs" or "platforms") have grown to become essential trading partners.** With the advent of streaming, DSPs have become Sony Music's biggest customers. Although business models vary considerably, a number of these platforms are large, diversified and well-resourced businesses. These platforms have access to significant amounts of data and a range of tools that allows them to control the consumer gateway and influence listening behaviour, which in turn can affect competition and consumer outcomes.

5. **Sony Music and Sony Music Publishing ("SMP") are managed and operated as wholly independent businesses.** Sony's publishing and recording divisions are run as separate and independent businesses, both operationally and financially. There is no coordination between the two divisions as part of any negotiations with DSPs (which are conducted bilaterally). Sony Music artists who are also songwriters or creators are evenly spread between established and independent music publishers, with only a minority being signed to both Sony Music and SMP. Sony Music and SMP work independently to ensure their recording artists and songwriters stand to benefit as much as possible from the success of music streaming and the creation of music more generally.

Further detail on each of these issues is set out below. Sony Music is keen to engage with the CMA to provide further information on these, and any other areas, and to correct common misconceptions about the music sector.

Finally, we would note that the music industry has consistently responded to dynamic and rapid developments. As a result, it is right to assume that the industry will continue to evolve in the future. Sony Music therefore wishes to emphasise that any future interventions that may be considered by the CMA as part of its Study should be very carefully assessed to understand the associated costs and benefits, unintended consequences and likely chance of success. In addition, in light of the rapid and ongoing innovation from new entrants and proliferation of new technologies, we encourage the CMA to exercise caution throughout the Study. This is important in order to avoid the possibility of entrenching market structures or favouring particular business models which could lead to worse and irreversible outcomes for consumers and/or the music industry more generally.

2 Technological innovation has radically changed the way music is consumed and artists are remunerated

2.1 Evolution of the music industry

The music industry has undergone a series of radical transformations in the last twenty years that have fundamentally changed listeners' purchasing and consumption habits. By 2010, the shift from the purchase of physical CDs from brick-and-mortar stores to digital downloads from digital retailers (e.g. iTunes) had crystallised. Today, music streaming is the primary form of music consumption accounting for over 80% of UK music consumption.[4] By 2019, music streaming accounted for the largest portion of music industry revenue – US$11.4 billion globally[5] and £737 million in the UK in 2020.[6] Paid music streaming, driven by the uptake of subscription services, has been a primary driver of the broader industry's partial recovery following a period of earnings decimated by music piracy (although UK revenues are, in real terms, still substantially lower than in 2001[7]).

The proliferation of music streaming platforms and access to full catalogues of music has brought about a 'golden age for music consumers' – listening to recorded music is now cheaper, more personalised and more readily available than before.[8] On the supply side, a significant amount of new music is being created and made available to listeners daily (for example, more than 60,000 new tracks uploaded to Spotify alone every day (nearly one per second)).[9] Streaming platforms provide listeners with access to largely the same music catalogues (since record labels and self-releasing artists look to make their music as widely available as possible) reducing the need to sign up to multiple platforms.[10] Streaming has also meant there is no "passport for music" anymore, allowing listeners to experience local and specific genres wherever they live, as well as allowing artists involved in this music to reach a much wider audience.

As the CMA recognises in its Statement of Scope, music streaming platforms have varied business models. For example, some platforms offer their subscribers commercially acquired content – which may be free to use (ad-funded on Google's YouTube or 'freemium' subscriptions) or require a paid ('premium') subscription, or both (e.g. Spotify). The nominal price of music streaming services has generally been fixed at £9.99 for over a decade – representing a reduction in real terms of c.26%. Other platforms also allow for user-uploaded content – either original content or content that includes commercial music (e.g. Tik Tok) – which is also typically ad-funded. Several music platforms are large (and very well-resourced) tech companies, with music streaming being ancillary to their other operations, and which can be leveraged to extract additional value or direct customers towards their other services.

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4 BPI 2021 in Music. Available at: https://www.bpi.co.uk/news-analysis/2021-in-music-more-artists-succeed-as-streaming-drives-music-growth-fuelled-by-record-label-investment/

5 DCMS Report, page 11. Figure: Nominal global recorded music revenues, by format 2001-2019 ($bn).

6 BPI, 'UK recorded music revenues grew 3.8% in 2020'. Available at: https://www.bpi.co.uk/news-analysis/uk-recorded-music-revenues-grew-38-in-2020/. 2019 data.

7 CMA Statement of Scope, para 21.

8 CMA Statement of Scope, para 24.

9 Ingham, T (2021b) 'Over 60,000 tracks are now uploaded to Spotify every day. That's nearly one per second', Music Business Worldwide, 24 February. Available at: https://www.musicbusinessworldwide.com/over-60000-tracks-are-now-uploaded-to-spotify-daily-thats-nearly-one-per-second/

10 DCMS Report, para 143.

2.2 The changed economics of the music industry

Music streaming has changed the way we listen to music. Listeners rarely consume albums from start to finish and often prefer a mix of artists in playlists (whether curated by listeners or DSP editorial teams or algorithmically created). The radical shift in listener preferences from albums towards streamed individual tracks has fundamentally changed the remuneration model for artists, creators and songwriters and the underlying economics of the industry. In contrast to the previous model where all artists and creators received royalties when a listener bought an album, the current remuneration model for streaming is on a per track basis with the total payment due dependent on the track's share of the total number of listens to all tracks on the platform. Further, an increase in the immense number of tracks appearing on streaming services often dilutes the available revenue pool for all artists on a particular platform. These changes are being driven by technology and evolving listener preferences. The CMA may wish to explore these complex dynamics and their impact on competition.

3 Competition between record labels is strong and results in consumer benefits across the value chain. Artists and creators have better terms, with more bargaining power and an expanding range of choices

3.1 Sony Music faces strong competition from a range of participants in the UK and globally

The sale and distribution of recorded music has been, and continues to be, transformed by technological change. However, it remains a highly competitive market, with many companies competing to discover and sign artists and distribute music in the UK and around the world. As recognised by the CMA in its *Sony / AWAL* provisional findings, Sony Music directly competes against Warner and Universal, and faces intense competition from independent labels, A&L service providers and the DIY sector, including a range of new entrants that are being underwritten by financial investors.

Competition between recorded music companies occurs primarily at two levels: (i) to discover and sign ground-breaking artists; and (ii) to market and distribute (primarily via streaming services) musical recordings and content. Many companies compete at both levels, although some are active only (or primarily) in the distribution of recorded music. We are active at both levels, and we face strong competition at both levels, including from a range of new entrants and scaled up competitors. Artists today have more ways than ever to get their music to consumers. As Enders Analysis explains, digital technologies and massive consumer shifts to music streaming have transformed the opportunities for artists to exploit their works.[11]

On the platform side, we note that the DCMS Report suggests that larger record labels' "*overwhelming market share*"[12] enables them to extract more favourable terms from music streaming providers. However, this is not the case.

Further down the value chain, the rapid increase in the number of companies entering the sector as A&L service providers and DIY platforms (e.g. ADA, Believe, Virgin, Ingrooves, Distrokid and TuneCore) means that artists can 'pick and choose' their level of service and can (and do) by-pass record labels altogether. In the CMA's provisional findings in the Sony / AWAL decision, the CMA expressly recognised that in relation to artist services, "*Virgin, ADA and Believe will*

[11] Completed acquisition by Sony Music Entertainment of AWAL and Kobalt Neighbouring rights businesses from Kobalt Music Group Limited, Sony response to CMA Issues Statement (October 2021), para 8.

[12] DCMS Report, para 128, quoting Incorporated Society of Musicians (EMS0223).

likely remain strong constraints, [and] Empire exerts a moderate and growing constraint [on Sony Music in the UK]".[13] And in relation to label services, the CMA acknowledged that there are "*a number of strong or material constraints [on Sony Music]… including ADA, Virgin and Ingrooves, Believe, PIAS, Empire and FUGA*".[14]

3.2 Artists and creators have better terms, with more bargaining power and a broad range of choices

Dramatic industry evolution combined with fierce competitive dynamics mean that artists have an ever-increasing degree of choice and opportunities for getting their music to market, which is disrupting the sector. This was acknowledged by the CMA in the Sony / AWAL provisional findings where it found that "*changes to [Sony Music's] frontline model has been driven by both changing technology and the increase in options for artists*".[15] Due to the sheer number of companies active in the UK, there is vigorous competition for artists, with a broad range of services available to suit the type of arrangement that meets an artist's needs at any particular stage in their career.

The advent of digitisation and social media – including platforms like Meta, TikTok and Instagram – has meant that it is now also much easier for artists to reach global and regional audiences in less traditional ways. As a result of these technological developments, artists now more frequently interact with us after they have already developed a fan-base and released some recordings (for example, via Google's YouTube, Soundcloud, or via a DIY distributor). This type of prior success and existing fan-bases further strengthens artists' negotiating power, which is very different to the scenario that existed 10 years ago when artists had limited potential to access a large global audience outside of a traditional record deal. Furthermore, the prior success of an artist on platforms is visible to everyone and therefore increases the competition to sign that artist.

As recognised in the CMA's *Sony / AWAL* provisional findings, in response to strong competition and technological innovation, contract terms between labels and artists have improved in our artists' favour, with improved remuneration, a steady increase of royalty rates and more flexible terms.[16] Whilst this has impacted our share of revenues, we see this as a progressive development as our artists are in an improved position under contemporary contracts than under the model first introduced in the middle of the last century. We would welcome the opportunity to confirm this further to the CMA and explain how we have voluntarily amended legacy contracts to reflect the modern world.

Another development resulting from increased competition and innovation has been that contracts negotiated between us and our artists are now highly bespoke and tend to last for a shorter duration than they did historically. The suggestion that "*artists agree to create sound recordings for a record label for a set number of albums over a long period of time*" (undefined) is not correct, as we have customised contracts with each of our artists. As a result, artists have much greater flexibility to switch (and do switch) between record labels.

[13] CMA, Sony / AWAL PFs, paras 47 and 7.150.

[14] CMA, Sony / AWAL PFs, para 47.

[15] CMA Sony / AWAL PFs, paras 52 and 8.13.

[16] CMA Sony / AWAL PFs, paras 8.6 to 8.12.

4 Record labels play a critical role in the industry acting as creative partners for artists

4.1 Sony Music's investment in, and support of, our artists results in benefits to listeners

At its heart, Sony Music is a creative partner for our artists. We are focused on building relationships with, and making investments in, our artists to help them to unlock their creative potential and enable them to deliver high quality music to as many listeners as possible. Sony Music adds to the creative process by identifying opportunities for our artists to collaborate and partner with other talented producers, songwriters and creators across the industry.

Sony Music spends a significant amount of money each year on artist identification and development, including sizeable non-returnable cash advances to help our artists' creativity to flourish and to record their music. However, there is no guarantee that these investments will result in returns (and often they do not). Our successes however do enable Sony Music to invest in new and developing artists. These are the basic economics of the recorded music industry. In this role, record labels such as Sony Music shoulder the bulk of these risks on behalf of artists, which enables them to unlock their creativity and deliver high quality music for listeners. Music streaming providers and other industry participants do not perform this role or bear these significant risks and costs to the same extent as record labels.

Sony Music also provides our artists with a vast range of valuable support and shoulders all the necessary risks in providing the functions required to bring our artists' creative works to market. The depth and breadth of the services and support that we provide to our artists includes financial support, marketing, publicity and promotional support. Artists are typically unable to otherwise access such services alone, particularly at an early stage in their careers due to the prohibitive financial outlay required. They would also otherwise find it difficult to access the necessary services where they were seeking to achieve scale in multiple countries. Alternatively, they choose to access these services through us rather than contract separately with multiple providers. The fundamental objective of our investments and support for our artists is to help them succeed, reach the widest range of audiences possible and maximise full value and returns from their creative works.

There is a prevailing misconception that streaming platforms replicate the value-add functions of record labels (such as Sony Music). We do not believe this is the case and we would invite the CMA to confirm this. Unlike record labels that are focused on artist identification and development, streaming platforms are focused on promoting their own products and retaining and increasing their subscriber base. As a result, while some platforms are increasingly offering a broader range of support services to artists, creators and songwriters – including targeted small-scale advertising on their platforms – they have not replicated the deep level of "on the ground" services provided by record labels. These functions – which ultimately foster creativity and innovation and result in higher quality music for listeners – are borne by record labels like Sony Music.

4.2 Revenues and costs have been impacted by the evolution of the industry

During the Study, it is important for the CMA to consider not just a static picture of the market, but the changes of the last twenty years and the potential for further change in the coming years.

Technological developments might have brought about a golden age for music listeners, but the shift to digital downloads in the early to mid-2000s left the music industry vulnerable to piracy. As recognised by the CMA, primarily resulting from music piracy, revenues in the music industry are, in "*real terms still substantially lower than 2001*"[17]. Illegal downloading of music significantly diminished the revenues available to all rights holders, artists and songwriters.[18] Piracy remains a major threat to the industry, with BPI estimating it results in a loss of £200 million per annum in the UK alone.[19] As recognised in Figure 1 of the CMA's Statement of Scope, in 2004, recorded music revenues exceeded £1.2 billion, but fell to below £800 million in 2011, principally as a result of music piracy. This 33% contraction in revenues (not accounting for inflation) crippled the music industry, and it remains to some extent in recovery.

In response to digitisation and the advent of streaming, the cost structure of the music industry has also shifted in the last few years – with a transition from physical to digital/streaming distribution models not drastically reducing the costs that Sony Music incurs. Instead, as set out below, it has impacted the types of costs and where they sit.

(i) On marketing spend, whilst music streaming has meant that the way musical content is promoted has changed (e.g. an image on a streaming service homepage or playlist rather than packaging on a shop shelf or a poster), all the accompanying costs are still required to market and promote the musical product. As a result, the costs in promoting our artists to wider audiences have tilted towards digital marketing, social media marketing, influencer campaigns, public relations and press support often spread over a longer time period than was the case in the past.

(ii) In terms of capital expenditure, as music streaming has grown, we have continued to invest heavily in IT and digital spend. We have made significant investments in production, technology infrastructure and royalty systems to manage relationships with approximately 200 music platforms (a key function performed by us for our artists). We have also invested in original video content production, analytics, CRM and sales/marketing dashboards, including significant expenditure on our royalty portal and the transparency tools made available to our artists to offer best-in-class support services. The increase has been driven in response to technological developments, but also by a desire to ensure that our artists benefit from the full extent of the opportunities created by the proliferation of music streaming and advances in technology.

(iii) Finally, contrary to some suggestions, we maintain physical production and distribution, with high average production and physical distribution costs (given smaller volumes) and low margins. We continue to support such formats to satisfy consumer demand.

With the digital revolution making it easier to create and distribute content, more investment is required to support new artists. It is therefore not surprising that statistics published by the International Federation of the Phonographic Industry suggest that the average cost to 'break' an artist globally ranges between approximately £400,000 to £1.5 million.[20]

[17] CMA Statement of Scope, para 21.

[18] IPO, 'Music Creators' Earnings in the Digital Era Report' (September 2021), page 26.

[19] BPI Submission to the DCMS Select Committee Inquiry into the Economics of Music Streaming (16 November 2020), page 3.

[20] BPI Submission to the DCMS Select Committee Inquiry into the Economics of Music Streaming (16 November 2020), page 13.

4.3 Sony Music's investments in its artists allows them to succeed outside of our relationship

Although the CMA does not propose to examine this as part of its Study, we note that our investment allows our artists to generate significant income across other pursuits outside of music streaming (e.g. live music, merchandising, sponsorship and brand endorsement). Whilst Sony Music appreciates that the CMA will focus its review on the music streaming value chain, we are keen to emphasise that streaming only represents a segment of the music industry, with material revenues and expenditure attributable elsewhere. The Study should therefore include an understanding – even at a high level – of how the investments from record labels benefit the whole industry and have flow-through benefits for consumers.

Whilst we achieve a return on some of our high-risk investments in artist projects (and losses on many more), the broader success of an artist – often as a direct result of our investment at an early stage in their career – translates into revenue generation opportunities for our artists from other parts of the industry. For example, audiences developed by our investments in press, social media, marketing and promotional opportunities will ultimately drive awareness of our artists' live shows and merchandise and increase their appeal for branding partnerships and deals in film, gaming and other media. And while the live music sector has suffered significantly in the last two years as a result of the pandemic, it contributed £1.3 billion to the UK economy in 2019,[21] when it was the main source of artists' revenues,[22] and is expected to recover. It is therefore important to remember that an artist is well placed to (and does) leverage the exposure and audiences developed through Sony Music's risk investments as part of broader commercial pursuits outside of our relationship.

5 DSPs are essential trading partners

5.1 Music streaming platforms are important and essential trading partners

With most music consumed via streaming, music streaming platforms now occupy a central role in the industry, and function as the primary gateway to consumers. As a result, streaming platforms have access to valuable user data and analytics and can often differentiate themselves through editorially curated playlists or (increasingly frequently) through algorithmically generated playlists. While these features allow the platforms to grow their subscriber base and networks, and enable our artists to reach an increasing number of listeners, this does create some challenges.

While the major and established streaming platforms typically have more leverage than newer or smaller platforms, our experience is that it is generally quite difficult to seek meaningfully better terms even from smaller or newer players.

5.2 Minority investments in streaming providers does not provide any advantage for Sony Music

Sony Music's non-controlling minority financial investments in certain streaming providers does not have any impact on the relationship and negotiations with DSPs. We would be happy to confirm to the CMA that these do not result in any competitive advantages for us.

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[21] UK Music's Music By Numbers 2020 Report, page 9.

[22] IPO, 'Music Creators' Earnings in the Digital Era Report' (September 2021), page 91.

6 Sony Music and SMP are managed and operated as wholly independent businesses

Although they sit under the same Sony Music Group umbrella, Sony Music's recorded music business and its publishing business (SMP) are operated and managed as wholly independent businesses both operationally and financially. The fact of their common ownership has no impact on the competitive dynamics between each division. Each division acts on behalf of their creators in good faith, on arms'-length terms, and in line with their interests, without any regard to the other division's objectives. Sony Music is keen to emphasise that negotiations between Sony Music and DSPs on the one-hand, and between SMP and DSPs on the other, are conducted in entirely separate and independent bilateral forums. There is zero coordination between these separate negotiations. In addition, Sony Music's artists who are also songwriters or creators are dispersed broadly across a variety of other music publishers, with only a minority being signed to SMP.

In light of the structural separation and minority of overlapping artists and songwriters, there is no ability or incentive for Sony Music or SMP to act in a way that could influence the other division's share of value of music. On the contrary, Sony Music's and SMP's objectives are aligned in increasing the value of music to enable artists and songwriters to extract full value from their creative works.

We understand that SMP intends to make separate submissions in this regard. We would however be happy to clarify these issues with the CMA if required.

7 Conclusion

The last twenty years have been a time of great change for the music industry. Music streaming is a relatively new development, however it accounted for US$11.4 billion globally in 2019 and approximately £737 million in the UK in 2020. Today, listeners are able to access vast catalogues of music at a fraction of the cost of physical records / CDs from paid subscription streaming services. They have also gained added flexibility of accessing a large number of free, and legal, sources of music. After a period where music piracy decimated the revenues available to various stakeholders in the music industry, these developments have paved the way for the industry's ongoing recovery and a 'golden age' of listening for consumers.

Record labels such as Sony Music continue to play a vital role in fostering musical creativity and artist development, particularly at an early stage in artist careers, which results in high quality music for listeners. However, developments in technology have irreversibly altered the competitive dynamics of the music industry. Artists no longer rely on record labels as their only route to market. They have more choice than ever before and leverage this to seek more favourable contract terms. Streaming providers have grown to be powerful and essential trading partners for record labels that control the gateway to listeners via their networks.

Record labels have faced (and continue to face) several challenges and opportunities as a result of these developments. In one central sense, the role we play in the music industry has not changed – we continue to focus on investing in artists to help unlock their potential to deliver high quality music, which results in benefits for other parts of the industry and ultimately listeners and music fans. In other ways, the fundamental shift in industry dynamics and underlying economics has impacted record labels' activities, operations, revenues and costs, and this digital disruption is expected to continue into the future as new platforms and consumer trends emerge, and others evolve.

In light of this, we would urge caution against regulatory actions that would entrench unsustainable market structures, and result in worse outcomes for listeners, artists and/or the music industry more generally.

We welcome the opportunity to engage with the CMA in relation to the Study. We hope it will result in a more robust evidence base and contribute to shaping discussions about the future of the music industry.