# CMA Market Study into Music Streaming – Sony Music Publishing's response to Statement of Scope

Sony Music Publishing ("**SMP**") welcomes the CMA's Market Study into Music Streaming (the "**CMA Study**") and the opportunity to submit comments on the published Statement of Scope (the "**Scope**"). SMP stands ready to assist the CMA Study and hopes to be able to provide some clarity and insight into the highly competitive and dynamic market in which we operate, and also to collaborate with the CMA to seek ways in which songwriters may derive enhanced returns for their creative works (which is our core mission).

## 1. Introduction and overview

SMP is a global music publisher. SMP supports the creativity and goals of its substantial roster of songwriters by expanding the opportunities that are available to them whilst maximising and defending the value of their rights. SMP represents many well-known classic catalogues and highly successful contemporary songwriters. Alongside the contemporary hit songs and popular classics that SMP publishes and the major songwriters SMP has the privilege to represent, SMP is particularly proud of its track record of working with and nurturing new and upcoming songwriters at the early stages of their careers.

Based on the Scope, SMP understands that the CMA Study will cover a broad range of issues, many of which do not relate to the music publishing sector in general or SMP in particular. In this submission SMP does not intend to address the full Scope and will simply focus on certain key topics relating to the music publishing sector and to SMP that SMP is able to usefully address.

For the purposes of this submission, we would like to highlight some key themes for the CMA to consider, and to provide some additional context in relation to the following topics:

- Competition in the music publishing sector;
- The music streaming services; and
- The independence of SMP's activities in relation to the licensing of streaming services from Sony Music Entertainment ("**SME**").

## 2. COMPETITION IN THE PUBLISHING SECTOR

In addition to vigorous rivalry among established players, well-funded new entrants and companies offering new business models have been joining the publishing sector for several years and are providing songwriters with improved choice.

Competition has also been enhanced by the following general trends:

- **Changing attitudes**. An increasing number of songwriters and creators now seek to adopt a more "DIY" approach to the administration of their rights.
- **Technological innovation**. Development of technological solutions provides tangible alternatives for songwriters and other creators wishing to develop and / or self-publish their own works without the need to contract the services of a traditional music publisher.

- **Music creation has increased rapidly**. There has been an explosion in the number of creators participating in the sector, due in large part to changes to the means for creating and distributing music, and this has resulted in a dramatic increase in the number of new songs that are commercially released to the public.

As a result, there is a growing diversity of players competing to support creators of songs or to secure rights in existing catalogues. Nascent players, that in some cases are extremely well-funded and / or are offering alternative business models to traditional publishing arrangements, have entered the music publishing sector and are also competing to provide services to songwriters or to secure the rights in their songs.

We would encourage the CMA to examine how these factors have all driven consistent improvements in the services available from publishers as well as improvements in the financial and other commercial terms being offered to songwriters. **SMP welcomes this competitive tension and understands very well that in order to be successful it must continue to improve its service offerings and deliver what songwriters need and deserve for the ultimate benefit of the creative sector and consumers.** SMP is happy to refer the CMA to the following developments that it has identified as consequences of this positive competitive tension:

**(i) Unilateral changes implemented by SMP to the benefit of its songwriters**

SMP consistently reviews the services it provides to its songwriters, with the aim of offering them improvements over time. The improvements do not only manifest themselves in the contractual terms available to songwriters during the process of a negotiation, but equally through unilateral changes that benefit songwriters which are not the result of contractual obligations. By way of example, SMP has over a number of years implemented significant changes and improvements that benefit its songwriters the most recent examples of which include (but are not limited to):

- **Modernising its royalty and administration platforms**. SMP offers all its songwriters a state-of-the-art royalty portal which provides enhanced transparency and analytics and includes a number of features to assist with the registration songs and ensure full collection of royalties.

- **Accelerated payments and royalty processing**.
  - Through the recently rolled out 'Cash Out' arrangements, SMP's songwriters can now request some or all of their current royalty balance to be paid immediately instead of at the next scheduled royalty distribution. There is no fee attached to such payments and they are interest free.
  - SMP now provides real-time processing for all foreign earnings from every territory in which it operates to ensure that earnings are reported and paid in the same period in which they are collected, eliminating the lag that was previously industry-standard.

- **The 'Songwriters Forward Program'**. This global, group-wide, initiative has led to the adoption of programs such as the 'Legacy Unrecouped Balance Program', which waives the unrecouped element of advances paid by SMP to songwriters who were signed before 2000 but have not received advances since. This means that those songwriters will receive royalties despite advances not having been fully recouped. Most recently, SMP has announced the "Songwriter Assistance Program" which provides access to free, confidential counselling services and wellness resources for its global roster of songwriters and composers.

### (ii) Enhanced negotiating power, improved terms and the ability for songwriters to switch

Competition exists not only in relation to new songwriters and new songs. There has been a trend in songwriter agreements towards shorter retention periods (i.e. the period during which a publisher typically represents a catalogue of songs after the expiry of the term of a songwriting agreement) in response to increasing competition among music publishers. Consequently, songwriters are often readily able to (and do) switch between publishers both in relation to new works (which are not already subject to a retention period with another publisher) and for older songs where the retention period has expired. As a result, there is strong and regular competition for successful songwriters and catalogues and this competition has only strengthened during the period in which music streaming services have developed.

As expanded further in item 4 below, we seek at all times to maximise the value of the songs that we represent as well as to enhance the interests of our songwriters (and other creators who entrust their rights to us). Enhanced opportunities and increasing remuneration for songwriters allows them to flourish, and is beneficial to the creative output of the entire music publishing supply chain. Even if not a core focus of the CMA Study, we would encourage the CMA to understand the nuances of how songwriters and other rightsholders are remunerated. It is SMP's experience that its **songwriters share fully in the growth of SMP's revenues from their songs**. As SMP's revenues have grown over time, so too have the payments made by SMP to its songwriters. Increasing remuneration for songwriters in an increasingly digitised world remains a core focus for SMP.

## 3. THE MUSIC STREAMING SERVICES

UK consumers have access to a broad range of competing and complementary streaming services offering diverse content, features and price propositions. The sheer diversity of consumer offerings (including successful new entrants) shows that innovation in the sector is robust.

As set out clearly in the Scope, streaming services represent exceptional value for the consumer offering in most cases unlimited access to a catalogue of music that dwarfs anything that was available in the era dominated by the sale of physical products. But challenges remain for SMP in ensuring that its songwriters and creators are compensated appropriately in circumstances where the business models (and resulting commercial objectives) of these platforms vary considerably.

The 4 largest subscription music streaming services consist of one "pureplay" service (Spotify) and three global tech companies (Amazon, Apple and Google).

The tech companies operate complex and diversified businesses and SMP believes they all share the following features, which we think the CMA would benefit from analysing:

- they have significant financial and lobbying power and significant leverage when compared with any music industry participants including SMP;
- music is an important, but not core, aspect of their businesses; and
- they do not need to focus on the optimisation of revenues from music offerings (in fact they may have incentives to offer music for free or as cheaply as possible to help optimise other value creation opportunities within their businesses in which rightsholders do not participate).

For the pureplay service(s) and for rightsholders, these tech companies operate in a way that creates distortions in the music subscription market which have contributed to a gradual erosion of the value of music over time. This effect is exacerbated by the wide availability of User-Generated Content (UGC) / User-Uploaded Content (UUC) services. These UGC / UUC services offer a broader range of content to consumers for free than the paid for subscription services that operate on a fully licensed basis. This generally serves to decrease the consumer's willingness to pay for a subscription service or to adequately value a subscription service. Streaming service providers are also motivated to pay as little as possible for song rights (as evidenced by their very public approach to valuing those rights in the US).

Despite these challenges, SMP's overall revenues from streaming services have grown over time as the streaming services have increased their user base and with that SMP's payments to its songwriters from streaming services have also increased in aggregate. Notwithstanding this general trend, at an individual songwriter level, the growth in earnings does not necessarily reflect the industry wide growth. This is due to a number of factors that are obscured by the overall growth of the market, including in particular the following:

- The explosion in the amount of music available via music streaming services means that the revenue available for distribution for individual songs and individual songwriters is increasingly diluted by the sheer volume of songs and songwriters who are creating the music that is consumed on streaming services.

- The revenue realised by the subscription streaming services per user has by any measure declined over time and, as a consequence, so has the level of royalties per user that can be accounted to songwriters. This is due in part to the introduction of lower-priced tiers, discounts and bundles but it also increasingly compounded by the fact that even the undiscounted full headline (£9.99) price of a subscription service in the UK has not seen any increases that would counter the impact of inflation since the inception of subscription services. In a recently published analysis, Will Page (former Chief Economist of Spotify) notes that when the varying price points across the three major services of Apple music, Amazon Music Unlimited and Spotify are accounted for "a blended and weighted calculation, deflates the 9.99 shibboleth to just £6.30 after adjusting for inflation."

In the same article Mr Page contrasts music subscription services with a glass of Malbec – a light hearted analogy that makes a serious point – stating "Today, on the twentieth anniversary of the 9.99 price point, streaming's service-improvements have skyrocketed, despite its price remaining unchanged. Song volumes have climbed from just 15,000 tracks on Rhapsody's 2001 offering to over 75m today (growing at a rate of 75,000 a day). Smartphone streaming apps make these massive libraries imminently accessible, and are constantly being improved. Single accounts have given way to flexible plans with collaborative listening options. And, since the 2015 breakthrough of algorithmic playlists like Discover Weekly, services can even choose the music for you. Yet, the price for music remains not just the same, but cheaper when adjusted for all the participants in the family plan, student pricing and inflation. Meanwhile, a 175ml glass of Malbec comes from the same grape, packs the same alcohol content and is served at the same volume, yet its face value price has doubled. Indeed it's true to say it hasn't changed one millilitre! Wine is offering the same for more, whereas music is offering far more, for far less."[1]

SMP is consistently seeking to ensure that these factors and the clear negative impact they have had on songwriters' earnings are front and centre in negotiations with the music streaming platforms.

1 See https://tarzaneconomics.com/undercurrents/malbeconomics

## 4. THE INDEPENDENCE OF SMP'S ACTIVITIES IN RELATION TO THE LICENSING OF STREAMING SERVICES FROM SME

SMP also understands that the Study will examine the relationships between publishers and record companies that are part of the same group of companies. SMP further understands that the Study intends to explore how publishing companies and record companies within the same group approach licensing negotiations with streaming services. SMP also refers to various claims made in the context of the DCMS Select Committee's recent '*Economics of music streaming'* report (15 July 2021) (the "**Report**"). These claims are neatly summarised in the following assertion made in the Report: "*As long as the major record labels also dominate the market for song rights through their publishing operations, it is hard to see whether the song will be valued fairly as a result*". This is not the case, and we expect this will become clear as part of the CMA Study. Securing the best value for the songs that SMP publishes and defending the interests of the songwriters that SMP represents is at the heart of what we do. These assertions are in stark contrast to the facts including but not limited to the following:

### (i) SMP has no incentive to suppress the value of a song: A policy intended to suppress the value of the song would result in clear and unacceptable commercial risks for SMP and for its future success in a highly competitive sector

As a music publishing company, SMP's overriding strategy is to maximise the value of the songs that it represents and in doing so to protect the interests of the songwriters who entrust their songs to SMP. Those songwriters are doing so in the expectation that SMP will seek to ensure that they are compensated fairly when those songs are used. It is not only important that SMP protect the interests of songwriters but that SMP is seen to be doing so.

SMP has a strong incentive to attract the most promising new songwriters as well as established songwriters. As set out above, the market for the signing of songwriters and acquiring publishing rights is highly competitive. Taking steps to suppress, or being involved in a hypothetical scheme designed to suppress the value of the song, would not only be unethical but would also expose SMP to significant legal and business risks which, if they materialised, would be extremely damaging to SMP's business interests including its ability to attract and retain songwriters and catalogues of songs.

It is often incorrectly assumed that, within a music group with multiple divisions, the majority of songwriters who sign to the music publishing division are also artists who sign to the recorded music division. This is, however, not the case for SMP and SME. The majority of songwriters signed to SMP are not also artists signed to SME. SMP songwriters who are also featured artists signed to record companies are evenly spread between a variety of record companies, with only a minority being SME recording artists. In addition, SMP has a number of extremely successful songwriters who are not featured artists signed to any record company, but are rather pure songwriters.

Taking all of this into account, any hypothetical strategy or policy to favour the interests of SME's recorded music rights at the expense of the value of the songs that SMP publishes would have a hugely damaging impact on SMP's business and future success. This would lead to the very real potential for an extremely rapid decline in SMP's business in favour of well-funded competitors.

### (ii) SMP invites the CMA to consider its track record of negotiating streaming royalty rates, and steps taken by music publishers in other fora to protect and improve the value of song rights, to disprove the theory of it suppressing streaming rates for songs

SMP has consistently defended the value of the songs that SMP represents and has always sought, where it is reasonably possible to do so, to improve the value attributed to the song. Any meaningful and objective assessment of a claim that music companies with recording and publishing arms have been involved in a scheme to suppress streaming rates should naturally start with an examination of the development of those rates over time for evidence of such alleged scheme.

Streaming rates are not negotiated by SMP in a vacuum. Many areas of licensing are carried out through collective rights management organisations and those are in some cases subject to national rate setting mechanisms (by way of example, the Copyright Tribunal in the UK). Streaming rates for streaming subscription services in the US, the largest music market in the world, have also been subject to a compulsory licensing regime and a regulated rate structure set by the Copyright Royalty Board (the "**CRB**").

SMP's streaming rates for songwriters have increased significantly compared with the rates that SMP "inherited" from the collection society network when SMP started licensing streaming services in the UK and Europe. Whilst SMP is not privy to confidential terms negotiated by other licensors, several references were made by participants in the public hearings held by the DCMS Select Committee that indicated that, consistent with SMP's experience, publisher negotiations with streaming services have resulted in substantially increased rates over time compared with "inherited" rates.

SMP's songwriters have benefited from this because their royalties increase as SMP's royalties increase. These improvements do not appear to be limited to SMP. According to the Intellectual Property Office report into 'Music Creators' Earnings in the Digital Era' (September 2021), the earnings that songwriters gained from music publishing rights **increased by 11%** between 2008 and 2019 when adjusted for inflation.[2] These improvements are inconsistent with any alleged attempt to suppress the value of the song. The natural result of a policy to suppress rates would have been for rates to stagnate at the levels set by the Copyright Tribunal.

It is also relevant to point to the experience in the US where the rates for subscription streaming services have been set by the CRB. The CRB process is tightly regulated and very public. The National Music Publishers Association (the "**NMPA**"), fully supported by SMP, is consistently engaged in efforts to both protect improvements to the rates that were previously set by the CRB and to seek further improvements over time. Prior improvements awarded by the CRB have been appealed by several of the largest music platforms and most of the music platforms are also actively engaged in attempts to reduce the rates for future years. These heavily contested proceedings involve considerable expense. The expense on the publisher side is covered by the members of the NMPA with the largest members (including SMP) picking up the greatest share of the cost. The fact that SMP (and other publishers) are advocating for and support rate increases in the US and that SMP (and other publishers) actively funds the CRB process in the US is also entirely inconsistent with an alleged policy to suppress rates.

It is important to state clearly that SMP does not believe that the song is adequately valued by the digital services or that songwriters should be satisfied with the compensation they receive. SMP believes that, in the long-run, not allowing songwriters to receive fair compensation will negatively impact creativity and result in worse outcomes for consumers. SMP supports songwriters' calls for fair compensation and will continue to advocate for improvements in rates in SMP's negotiations as well as industry wide rate setting proceedings such as the CRB.

[2] Intellectual Property Office report into 'Music Creators' Earnings in the Digital Era (September 2021), p 16.

### (iii) SMP negotiates with streaming services independently from SME

In line with its incentives to represent its songwriters as distinct from SME's recording artists and to achieve improved compensation for songwriters (as set out above), SMP has always negotiated streaming rates for the UK (and other territories) independently of SME and free from any interference, influence or control from any Sony group company.

The value of song rights is not determined by any internal agreement or coordination between SMP and SME. Rather, the value of song rights has been influenced by several external factors including but not limited to (i) the compulsory licensing framework in the US which has framed the valuation strategies of streaming platforms; and (ii) the CMO published tariffs and rates set by bodies such as the Copyright Tribunal in the UK.

SMP has not been subject to any requirement or pressure from anywhere within the Sony group of companies to suppress streaming rates for the song to benefit the sound recording (or indeed to suppress them for any other reason or purpose).

## 5. CONCLUSION

We hope that the CMA Study will offer an opportunity for SMP to provide the CMA with insight into the key dynamics of the music publishing sector and recent developments. Likewise, SMP welcomes the opportunity to engage with the CMA and to help provide appropriate information and context to inform the CMA's important work.