UNIVERSAL MUSIC GROUP

MUSIC AND STREAMING MARKET STUDY

Universal Music Group's response to the CMA's Statement of Scope

1. Introduction

1.1 Universal Music Group (***UMG***) welcomes the opportunity to comment on the CMA's statement of scope (the ***Statement***) at this early stage of its market study into music and streaming.

1.2 The UK music industry – from artists, to songwriters, to record labels, publishers and beyond – plays a pivotal role in our culture, society, and the economy. And as the CMA acknowledges in its Statement, that industry has undergone – and continues to undergo – rapid transformation brought about by the profound impact of digitisation. That transformation:

(a) has brought substantial consumer benefits in the form of low-cost and easy access to enormous music libraries from a wide range of sources – from the convenience of a smart phone or tablet, as well as from smart speaker and home devices – thereby exposing listeners to a rich variety of music spanning every possible genre, mood, and era;

(b) has facilitated ease of market access for music creators, enabling pioneering artists to launch their careers, distribute their works and attract global recognition more easily than ever before – and they can do this through traditional label deals as well as by other means (including independently without any label involvement at all). The result has been an explosion of new artists in the UK and worldwide; and

(c) has created opportunities for independent labels of all sizes and DIY platforms as well as significant competitive pressure on the more established record labels to adapt, invent and re-invent themselves to stay ahead. The result has been an erosion of traditional barriers and a groundswell of innovation and dynamism across the music streaming value chain.

1.3 UMG recognises that the music industry is, and always will be, the subject of considerable press scrutiny, commentary, and opinion. People care deeply about music and that is something to be celebrated. UMG is, for this reason, grateful for the CMA's assurances that its approach will be strictly evidence-based. Once all relevant facts have been considered, UMG is confident that the CMA will reach a clear conclusion that the music industry today is highly competitive and delivers significant benefits to all its stakeholders – including UK consumers and creators.

1.4 UMG looks forward to further engagement with the CMA in the coming months but makes some initial observations in the response below (and accompanying appendix).

2. The music industry has undergone, and continues to undergo, a period of massive digital disruption and transformation – a transformation that has led to a healthy competitive market for all

The digital revolution: from piracy to music streaming services

2.1 The digital era – and digital disruption – is the latest wave of technological change to sweep the music industry and has transformed virtually every aspect of the music industry value chain. It has revolutionised how the world creates, accesses, and consumes music.

2.2 The music industry and its creators have recently entered a period of optimism and growth resulting from this digital revolution. Music streaming services supplied by digital service providers (***DSPs***) have allowed all manner of artists, songwriters, and labels to reach global audiences. With 60,000 tracks being added to Spotify alone each day[1] (as compared with approximately 20,000 tracks uploaded daily in 2018[2] and approximately 40,000 uploaded daily in 2019[3]), for example, more music is being consumed, and more artists are creating new and exciting music, than ever before.

2.3 DSPs, through which most of the world's music is now consumed (e.g., legitimate advertising and subscription funded streaming services), were created and continue to be shaped not just as a result of innovative technologies and because of their significant attractiveness and convenience to consumers, but also as a response to piracy, which, despite stabilising (albeit at a high level), remains a significant ongoing threat. The impact of piracy on the industry is clearly reflected in the fact that between 2002 and 2015 recorded music revenues dropped by approximately 40% worldwide.[4]

2.4 Piracy devastated the music industry for more than a decade and the industry remains vulnerable to fraudulent music consumption. Whilst DSPs have reduced the attraction and demand for pirated music by making access to millions of tracks easy and affordable for consumers, ongoing developments in new technology mean that piracy continues to cause significant losses to the music industry.

(a) A study undertaken by the trade association, the British Phonographic Industry (***BPI***), estimated that annual losses to the UK recorded music industry caused by piracy (i.e., the potential value lost to the industry if pirate listeners used legitimate services) amounted to nearly £200 million in 2019 (which equates to approximately 20% of legitimate industry revenue).[5]

(b) Those estimated losses are conservatively based on lost revenues and do not take account of the additional and significant extra costs the industry incurs as a direct result of piracy, through anti-piracy operations (both through in-house teams and industry-wide bodies) and the legal and security resources required

[1] "O*ver 60,000 tracks are now uploaded to Spotify every day. That's nearly one per second*". - Music Business Worldwide, February 24, 2021

[2] "*In A&R, 'gut vs. data' isn't a binary choice*", Music Business Worldwide, April 27, 2018

[3] "*Nearly 40,000 tracks are being added to Spotify every day",* Music Business Worldwide, April 29, 2019

[4] See the written evidence submitted by BPI to the DCMS Select Committee Inquiry into the Economics of Music Streaming, 16 November 2020, page 5 available at: https://committees.parliament.uk/publications/6501/documents/70659/default/

[5] See the written evidence submitted by BPI to the DCMS Select Committee Inquiry into the Economics of Music Streaming, 16 November 2020, pages 2, 36 - 39 available at: https://committees.parliament.uk/publications/6501/documents/70659/default/

to combat pirate activities and protect creators and rights holders from copyright infringement.

2.5 Over the last year, there are indications that piracy may once again be on the rise. A recent report published by MUSO states that the demand for pirated music has increased in 2021 (MUSO tracked an 18.6% increase in Q4 2021 compared to Q4 2020), driven by increased demand for stream-ripping websites.[6] Technological advances have made it easy to create, transmit and share pirated music, and the industry is once again seeing significant consumer consumption of pirated music. In a 2021 IFPI survey of 43,000 internet users across 21 countries, 35% of respondents aged 16 to 24 admitted using illegal stream-ripping services, the leading form of music piracy today.[7]

The impact of the music streaming model on the music industry

2.6 As explained above, music streaming models were created and made possible by digital innovation, but also in part they were a response to the ongoing threat of piracy, which continues to shape them today.

2.7 These streaming models offer customers a better product than pirates can and offer it as a legitimate and legal service. Nonetheless, the subscription price that they can charge to consumers has historically been (and remains) strongly depressed by the threat of piracy, as streaming services must constantly compete with free access to pirated music as well as each other.

2.8 The prevalence of piracy in the industry in the 2000s led to a rapid decline in consumer willingness to pay for recorded music which has forced record labels and DSPs to keep prices down and to work together to ensure that all the world's music is available to as many legitimate platforms and channels, and as conveniently for consumers, as possible. Revealingly, the price of an individual Spotify premium subscription (and of several other streaming subscription services) has remained stagnant (£9.99 per month) for years, while streaming services in other industries less affected by piracy (e.g., video-on-demand streaming services) have seen several price increases in the same time period.

2.9 Consumers of music have benefited in two respects: (I) they pay a very low monthly subscription price for access to a premium subscription service (which, as the nominal price of streaming subscriptions has been fixed for over a decade, equates to a decrease of approximately 26% over the same time period[8]); and (II) they receive more music than they could ever listen to for that price. For the price of a single CD, consumers have access to millions of tracks, with the freedom to choose to play exactly the songs they want (through active selection or curated playlists) and with the convenience of accessing the world's music through their smartphone. This reality has changed the recorded music industry in a variety of ways, including:

(a) First, the music streaming model means there is not always a direct connection between an artist's creation and the retail product purchased by the consumer –

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6 "*Music piracy has plummeted in the past 5 years. But in 2021, it slowly started growing again*", Music Business Worldwide, February 3, 2022.

7 UMG prospectus, p.15

8 DCMS Report, paragraph 34

the consumer buys access to 'all music', rather than owning a physical or digital copy of a single track or album.

(b) Second, the music streaming model has increased the significance of individual tracks versus the traditional 'album' format. Fans are no longer constrained to a single album but can now pick and choose curated tracks and artists they want to listen to, and regularly do so via playlists curated by individual consumers and by the streaming platforms. This has provided fans with a huge variety of new artists and genres that they may never have discovered before streaming.

(c) Third, the music streaming model has unlocked new and younger audiences for older music, which has led to the discovery and re-discovery of repertoire. Unlimited access to catalogue music is also a key driver in attracting older audiences to DSPs and enabling them to discover new music as well as their favourite catalogue tracks. Artists too benefit through this increased interest in catalogue – while consumers pay the same overall subscription fee regardless of the number of times they stream a song, artists continue to receive a royalty on every stream, rather than only receiving a single royalty on the sale of a CD, which a consumer would listen to over and over again. Therefore, artists with enduring appeal will reap the financial benefits of streaming throughout the course of their career.

(d) Fourth, the music streaming model has created opportunities for a much wider range of artists, who no longer need to compete to have their CD or LP stocked by a brick-and-mortar music distributor. Today, DSPs seek to distribute as much content as possible and artists benefit from continued exposure and access to the market for much longer periods of time beyond a first release. Once an artist's music is placed on a DSP, it will continue to attract listeners and build a fanbase throughout the artist's career. This has resulted in record numbers of artists, many of whom may not have *"made it"* in the old world, now being able to bring their music to market and build thriving careers. BPI data shows that many more artists are active in the streaming market than in the CD era: the number of artists achieving UK streams of over 10 million in a year has grown by 70% since 2007 (when compared to the equivalent number of album sales).[9]

(e) Fifth, social media streaming has made it easier for artists to gain exposure, build meaningful connections with fans and grow a meaningful fanbase amongst new listeners around the world. **[*Confidential*]**.

(f) And sixth, the music streaming model has changed the relationship between live performance and recorded music. Traditionally, live performance played an important role in promoting artists, who predominantly earned a living through physical record sales to fans. This dynamic has now reversed – with relatively unrestricted access to recorded music reducing physical revenues, artists earn (absent the COVID-19 pandemic) a significant proportion of their revenues from live music, alongside the income they can earn, through their individual appeal, from music streaming and physical sales of CDs and LPs. **[*Confidential*]** yet continue to take the risk of investing in and developing new artists. While the COVID-19 pandemic has had an undeniable impact on the

9 See BPI Supplementary Evidence to the DCMS Committee, https://committees.parliament.uk/writtenevidence/23103/pdf/, p.7

entire music industry, and particularly with regards to artists' live revenues, this is a temporary impact and is not an indication of any fundamental issues in the recorded music market.

The outlook for the music industry

2.10 The growth of the music industry in the last few years is cause for optimism. The digital era has ultimately resulted in a healthy competitive market (explored in more detail in section 3 below) that has led to significant consumer benefits, facilitated ease of market access for music creators and created opportunities for smaller labels and new entrants (as well as for UMG and the other so-called 'major music companies').

2.11 This is no time for complacency, however. The music industry is still vulnerable to the ongoing threat of piracy and fraudulent consumption of music, even as it can now look with confidence to a much brighter future.

2.12 The remainder of this response explains why the market is working well at each level of the music value chain and provides initial observations on the CMA's stated areas of possible focus in the market study.

3. The market is working well at each level of the value chain – providing substantial benefits to all stakeholders, including consumers

Artists have more choice and more routes to market than ever before

3.1 The digital transformation of the music industry means that artists now have much greater freedom and flexibility in how they bring their music to UK consumers.

(i) Artists have a greater set of choices in relation to the types of deals available to them to access the market

3.2 The digital era has laid the ground for an expanded range of deal models, which provide artists with a number of attractive routes to successful careers. Artists today have a broad choice of how (or whether) to work with record labels, including the traditional record deal (the so-called 'advance and royalty' deals, where, in exchange for an artist's recording rights, the record label pays an advance, provides extensive marketing services, and some royalties once certain costs are recouped) – but artists are no longer limited to those traditional offerings.

3.3 Instead, artists have an increasingly diverse range of options to promote their music online, and artists can choose the extent of a label's involvement, and related rights ownership and fee arrangements, depending on their preferences and individual needs. This ranges from significant involvement with traditional record label agreements to lighter touch involvement with artist and label (***A&L***) agreements, to no involvement with self-distribution *"DIY"* models. Some models offer artists a greater level of service, some remove a level of risk the artists would otherwise incur, while others offer higher shares of revenues. By way of example:

(a) A&L service providers focus on distributing music on behalf of artists and labels, offering artists greater flexibility to create their content. Under this distribution model, artists retain full ownership of the copyrights of their recorded music as well as a higher share of revenues from the distribution of the music. Artists license the copyright in the recordings of their music to the A&L

service provider for a limited period of time, and deal terms are typically for short periods and for a very limited number of recordings (e.g., one album or EP, and the A&L provider does not have exclusive rights to the artist's recording services during the deal term). In addition to distribution services, A&L service providers will offer a range of services (at an agreed additional fee) that are traditionally offered by a record label, which artists and labels can pick and choose from depending on their needs and preferences. Examples of A&L providers include Absolute, ADA, AWAL, Believe, BMG, Fuga, Horus Music and The Orchard.

(b) DIY distribution platforms focus on digital distribution of recorded music for artists. Under this model, artists are charged a fixed fee to upload their recording to these platforms, and artists retain full copyright ownership. Artists typically retain control over the distribution of their recordings, as well as any related promotion and marketing strategies for the recording. Examples of DIY providers include Amuse, CDBaby, Distrokid, Ditto, Platoon, Soundrop and Tunecore.

3.4 In addition, with the increased use and popularity of social media and self-distribution/promotion, new artists are increasingly able to go to record labels with an existing following that improves their negotiating position. As described in paragraph 2.9(e) above, social media channels such as TikTok have allowed artists to grab public attention and reach sizeable audiences directly without requiring a significant budget for marketing and promotion – roles traditionally fulfilled by record labels.

(ii) Increased choice and competition in the industry have enabled artists to obtain significant improvements in the terms of those deals over time

3.5 It is an observable trend across the music industry that artists in the digital era have consistently been gaining improved terms and greater flexibility over time[10] (including, as described in paragraph 3.3 above, in their choice of deal model). UMG's experience is consistent with this industry-wide trend and further details can be provided in the course of the market study.

(iii) More artists than ever have been able to access these opportunities to share their music with UK consumers

3.6 Not only have artists been able to secure better terms on their deals, but more artists overall have been able to access deals that allow them to commercialise their music and distribute it to UK consumers. This trend is true across the whole industry: Spotify recently announced that its content creators grew by over 35% in the last year – going from 8 million at the end of 2020 to 11 million at the end of 2021. [11]

Competition between record labels is effective, benefitting artists and DSPs alike

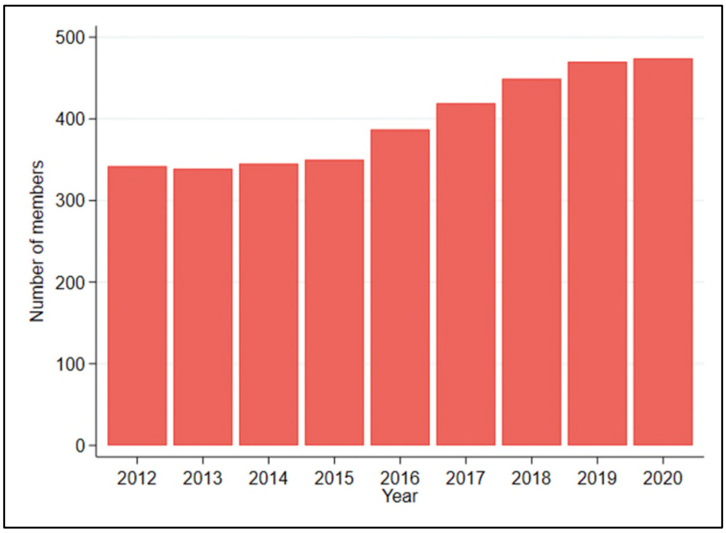
3.7 In the UK, the entry of new independent labels into the market has also increased steadily in recent years, coinciding with (and in many cases likely facilitated by) the advent of digital music streaming. In 2020, there were 474 independent labels

[10] See the written evidence submitted by BPI to the DCMS Select Committee Inquiry into the Economics of Music Streaming, 16 November 2020, pages 32-33 available at: https://committees.parliament.uk/publications/6501/documents/70659/default/

[11] "*Spotify added 3M new creators to its platform last year…",* Music Business Worldwide, February 3, 2022

registered with the BPI, the largest trade body representing recorded music in the UK, up from around 350 in 2015 (Figure 1)[12]. According to BPI membership data, approximately 40 new independent labels joined each year since 2015 (a growth of approximately 10% each year).

Figure 1 - Number of independent labels signed with BPI, 2012-2020



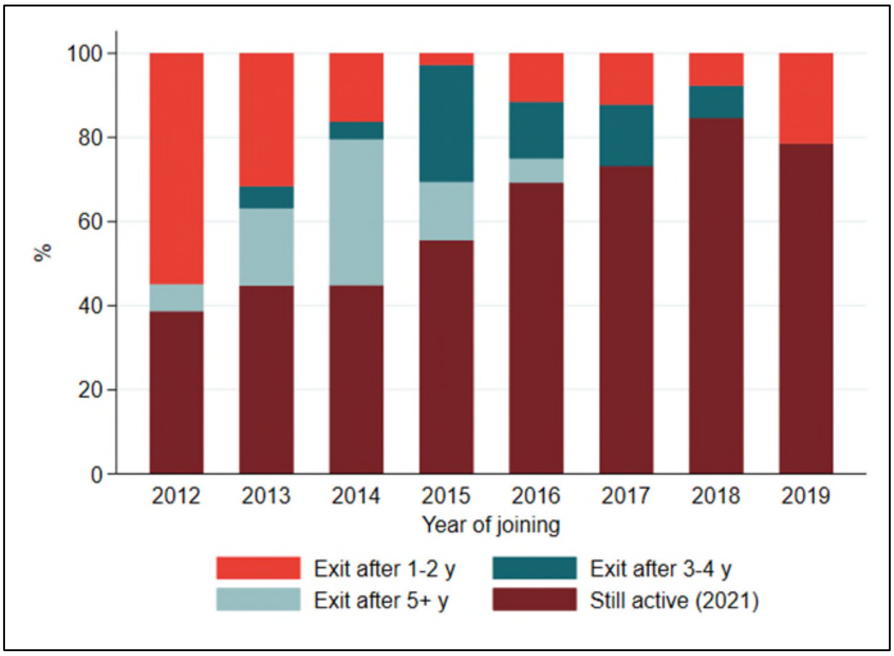
Source: BPI membership data. Frontier analysis.
Note: Associates are excluded.

3.8 As illustrated in Figure 2 below, new labels entering the UK market are also increasingly successful. At the low point of the UK recorded music market (c.2012), more than half of new independent labels had exited the market within their first two years. By contrast, at least 85% of the 2018 vintage of new entrants are still active.[13]

12 This does not include active labels that are not BPI members.

13 As of the latest BPI membership data available for 2021. UMG further notes that some labels that discontinued their BPI membership may nevertheless remain active.

Figure 2 - Share of independent labels leaving BPI, by year of joining



Source: BPI membership data. Frontier analysis.
Note: Associates are excluded. The graph only includes members joining BPI between 2012 and 2019.

3.9 This rapid and successful expansion has been made possible because of the digitisation of the music industry.

3.10 First, the economies of scale involved in manufacturing and distributing physical records are no longer present. In the age of physical records, music distribution was a scale business. There were substantial fixed costs in manufacturing physical records and in the logistics of distributing them to the brick-and-mortar retail network. In the digital age, by contrast, it is possible to operate a music company efficiently at a much smaller scale. As digital sales have grown rapidly in recent years, digital costs have also grown, but a much larger share of costs are now made up of royalties (more so than manufacturing and distribution costs) – not least because royalty rates paid to artists have been increasing (as evidenced in data produced by the BPI[14]). UMG's experience is consistent with this industry-wide trend and further details can be provided in the course of the market study.

3.11 Second, the route to market for new entrants and new business models has become much simpler, as they are no longer dependent on wholesale intermediaries. In particular:

(a) Falling physical sales, and aggressive price competition from the entry of supermarkets into CD sales (who only sold a very small number of only the most popular records), led to the collapse of the wholesalers (and the independent record stores they served) on which many independent labels were reliant for their route to market. It was much more challenging for smaller labels to achieve successful direct relationships with the few remaining national

[14] See BPI Supplementary Evidence to the DCMS Committee, https://committees.parliament.uk/writtenevidence/23103/pdf/, p.5-6

physical retailers – particularly as they reduced their assortment to stock only the most popular records.

(b) Digitisation of music distribution has transformed this and reduced barriers to entry for independents. DSPs' business models are predicated on offering the widest possible assortment of music, so they are strongly incentivised to carry all labels' content, not just the content of established or larger record labels.

3.12 These changes, in both the cost structure of distribution and the route to market for digital music, have been fundamental in creating opportunities for new independent labels and new business models to emerge. Artists are no longer solely reliant on record labels for distribution and other services traditionally offered by a label, as artists now have a much wider choice of routes to market and can easily unbundle their requirements and choose what type of support they want from a distribution partner.

The development of platforms and competition between DSPs ensures a competitive offering to consumers

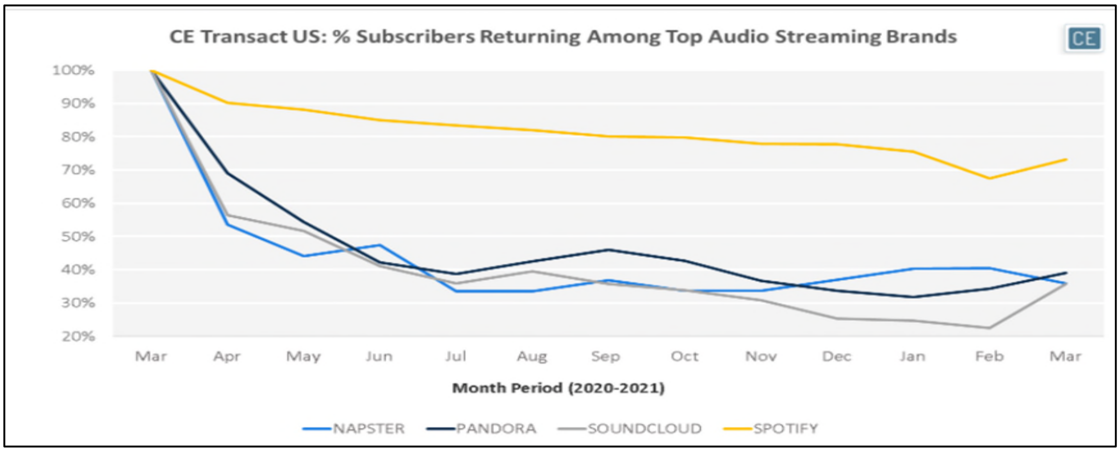
3.13 DSPs compete with each other to attract – and importantly, retain – customers. At the same time, DSPs continue to be constrained by piracy (as explained in section 2 above).

3.14 These dynamics at the retail level are the key parameters in determining the retail price of DSPs and ensure a competitive offering to end consumers. Record labels have little or no influence over such prices.

(i) DSPs compete for consumers

3.15 The availability and choice of music streaming options, as well as the kinds of service and subscription options available, has grown exponentially in recent years. The ease with which consumers can switch between these services, and consumer price-sensitivities towards paying for music, creates competition between platforms for consumer loyalty, as demonstrated by Figure 3 below:

Figure 3 - Customer retention among selected DSPs



Source: https://consumer-edge.com/

3.16 DSPs also face increasing pressure from outside of the traditional music streaming market, and now compete alongside video streaming services, social media, and gaming platforms in the consumer *"attention economy"*. The pandemic has accelerated online entertainment as consumers spend more of their leisure time online, but much of this additional spend has been on streaming video on-demand (i.e., film and TV streaming subscription services), with an estimated 21% increase in consumer spending on subscriptions in the first half of 2021.[15]

(ii) The constraint from piracy remains

3.17 The outside threat of piracy is the other factor which drives platform pricing. As explained in section 2 above, industrial-scale piracy had a devastating effect on the music industry in the first decade of the 21st century. While record labels have invested substantial sums to fully overhaul the system – fundamentally re-working everything from their IT infrastructure to their licensing practices and to their very business model – the market is still relatively early on in its recovery journey.

3.18 Shifting the perspectives of consumers such that they are prepared to pay for digital music content is a particular ongoing challenge. According to the IFPI Music Consumer Study, there were approximately 60% more illegal downloads than legal downloads in 2019,[16] and the proportion of music accessed and downloaded via unlicensed sources is expected to continue to surpass legal streaming.

3.19 Increasing the cost of music streaming services risks increasing the number of users that access pirated content. This is borne out not only in the music streaming sector,[17] but also in video streaming: Netflix has admitted to lowering prices in countries where piracy is more common,[18] and the recent jump in video piracy has been attributed in part to the higher consumer costs associated with the increasingly fragmented video streaming market.[19] It is therefore unsurprising that music platforms are significantly constrained by the existence and continued threat of piracy in their relationships with consumers, and are very reluctant to raise prices. As a result, the already-low retail prices for streaming services have fallen year-on-year in real terms.

(iii) The readily accessible choice available to consumers continues to increase

3.20 Not only are music streaming services available to consumers at low prices, but the volume and variety of content that they can readily access at those low prices has been increasing over time (as noted at paragraph 2.2 above, over 60,000 tracks are released on Spotify daily).

3.21 In line with this readily accessible choice, consumer behaviour has changed as new ways have developed of discovering new music and lesser-known artists, alongside those who are more established. Music streaming services have tapped into this with playlists, auto-play functions (whereby after a selected song the service automatically continues playing music from the same or similar genre) and recommendations.

3.22 The combined effect of these factors is increased benefits both to consumers (through access to a rich variety of music), and artists (through discovery opportunities) alike.

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15 "*Streaming video on demand, social media, and gaming trends*" Deloitte, Digital media trends, 15th edition

16 See the written evidence submitted by BPI to the DCMS Select Committee Inquiry into the Economics of Music Streaming, 16 November 2020, page 37 available at: https://committees.parliament.uk/publications/6501/documents/70659/default/

17 "*Spotify: Price rise 'could push users into piracy*", BBC News, February 23, 2021)

18 "*Netflix cuts prices to compete with piracy*", Vodzilla News, April 22, 2015 /

19 "*Streaming was supposed to stop piracy. Now it is easier than ever*", The Guardian, October 2, 2021

(iv) Conclusion

3.23 For all the reasons explored above, the advent of music streaming has brought significant benefits for consumers through easier access to a wider range of content, from a wider range of sources, for a low price which is falling in real terms. Such marked pro-consumer developments are strong indicators of a market in little need of regulatory intervention.

4. UMG's initial observations on areas of possible focus in the market study

4.1 UMG understands that the CMA has identified three areas of possible focus in this market study:[20]

(a) competition between music companies;

(b) competition between music streaming services; and

(c) competition issues that may arise from agreements and inter-relationships between music companies and music streaming services.

4.2 As a music company that interacts on a regular basis with DSPs, UMG is well positioned to make contributions on the first and third of these areas of focus, less so on the second given it does not provide a streaming service. UMG looks forward to offering its perspective to the CMA throughout this market study. It believes that competition between record labels is fierce at all levels and delivers huge benefits to artists; and this competition, coupled with the importance of DSPs as a route to market, ensure an effective offer of all music to the DSPs and ultimately to consumers. UMG provides initial observations in the remainder of this response.

Competition between record labels is fierce and delivers huge benefits to artists

4.3 Fierce competition between record labels is evident in at least two main ways:

(a) first, the competitive landscape for record labels is highly dynamic; and

(b) second, record labels are highly responsive both to the demands of artists and to the competitive challenge posed by new entrants.

4.4 In relation to the first of these, it is clear that the competitive landscape has changed significantly as a result of the growth of streaming. As shown at paragraph 3.7 above, growing revenues and lower barriers to entry in digital music have stimulated a large number of successful new entrants. There are over 100 more new labels competing in the UK market today versus in 2015.

4.5 Digital music has also introduced flexibility in the music company business model. As discussed at paragraph 3.3 above, multiple new models have emerged to capitalise on that flexibility such that artists can now search for a music company whose offer is tailored specifically to the services they do and do not require. As a result, record labels have necessarily improved their offering to artists in a number of ways.

4.6 First, record labels cannot rely on offering a one-size-fits all traditional recording contract to artists. As explained in paragraph 3.3, artists now have an increasingly

[20] Paragraph 89, the Statement.

diverse range of options to promote their music online, and artists can choose the extent of a label's involvement, and related rights ownership and fee arrangements, depending on their preferences and individual needs. Consistent with this industry-wide trend, UMG and other music companies have to compete even harder and more creatively, including by investing in expanding the range of deal models and services available to artists to supplement the traditional record deal model.

4.7 Second, labels have had to be prepared to invest more and take more risk in order to attract artists. A core role of the record label in a traditional record deal is to insulate the artist from commercial risk by paying advances and covering the cost of producing their recordings and music videos – costs which cannot be recovered if an artist is not successful commercially. In return for taking this risk, labels share in the commercial success of those artists they manage to help break through. This means that labels are strongly incentivised to invest heavily in promoting their artists and making them successful.

4.8 Artists benefit considerably from their labels taking on board high levels of risk (and a share of the rewards). The labels' investments and assumption of risk incentivises them strongly to use maximum effort to ensure success on their investment. This in turn benefits artists, not just through record sales, but also through other substantial income streams that labels do not share in (or not materially), such as live performance.

4.9 Whilst labels can never perfectly predict success in advance, fierce competition with other labels drives them to react to changing market circumstances, in particular being prepared to take on more and more risk on behalf of artists as streaming has grown. This includes signing more artists (despite the fact that UMG rarely breaks even on the majority of new signings) and offering a greater variety of deal models in order to ensure that record labels can continue to work with fresh and exciting talent.

4.10 Finally, competition in the age of music streaming means labels continually have to improve their offer to artists across all dimensions over time. This has resulted in an industry-wide trend towards artists receiving a much larger share of a much larger pie. Today the industry as a whole, including UMG, is signing more deals with more artists than ever, on terms more attractive to the artist than ever before.

Competition between record labels and the importance of DSPs as a route to market ensure an effective offer of all music to the DSPs and ultimately to consumers

4.11 Record labels and the music streaming business of DSPs need each other to be successful. From the perspective of record labels, DSPs have become indispensable as trading partners for record labels given their significance, ever growing, as a route to market to consumers.[21] **[*Confidential*]**.

4.12 Conversely, many DSPs use a wide range of content licensed from record labels on the music streaming aspects of their platforms (although many DSPs also have a broad range of revenue-generating activities that go beyond just music streaming and therefore have diversified revenue streams).

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21 Spotify, Apple, and YouTube combined contributed 42% of Warner Music Group's revenues in its 2021 financial year, compared to 29% in its 2018 financial years. "M*ajor record labels are losing market share on Spotify. But Spotify is gaining market share in Warner's own revenues*". - , Music Business Worldwide, 2 December 2021.

4.13 As a function of this relationship of mutual interdependence, record labels and DSPs are strongly incentivised to agree terms with each other so as to ensure an optimal experience and affordable service to consumers. Moreover, their respective incentives are entirely aligned with those of artists, because artists almost universally want their content to be available worldwide, and on as many platforms as possible. Consequently, record labels typically look to license to all DSPs and – in strong contrast to digital distribution in other markets such as TV content – there is almost a complete absence of exclusive licensing between record labels and platforms. This is a mutual requirement, as, in order to remain competitive and successful, DSPs need to be able to obtain licenses from all record labels in order to provide consumers with a comprehensive offering of the world's music content.

4.14 The importance of comprehensive supply has led, so far as UMG is aware, to all record labels being given comparable terms. UMG observes that the content of major and independent labels is available on equal footing on streaming platforms, with audience preferences dictating the share of views on each platform. Securing competitive terms with retailers has also been simplified, through collective licensing arrangements for smaller players. The example of Merlin is instructive in this regard. Since its launch, Merlin[22] has struck multi-year licensing deals with 40 DSPs across the world, including Apple in 2015[23] and Spotify in 2017.[24] Publicly available sources indicate that the terms of these partnerships have been competitive[25] and that Merlin has been able to enter into new partnerships just like the majors.[26] More generally, Apple has publicly stated that it pays a 52% headline rate to all labels, irrespective of size.[27]

4.15 The safe harbour protection (which reduces the liabilities of platforms whose customers use their networks and servers to share user generated content incorporating music without a licence) also means that consumers have access to a vast catalogue of music without having to pay for a streaming subscription (which in turn impacts the labels' ability to secure fair rates and creates a possible distortion to the market for paid services).

4.16 Fundamentally, consumers have benefited significantly from the trading relationship between record labels and DSPs. As explained in section 3 above, they pay a very low monthly subscription price for access to a DSP (a price that has not increased for years in the case of certain platforms) and receive more music than they could ever listen to for that price.

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22 Merlin, a third-party licensing hub founded in 2008, to date represents more than 20,000 labels worldwide in negotiating with DSPs.

23 "*Apple Music reaches streaming deal with indie labels under Merlin, Beggars Group*", Apple Insider, June 24, 2015

24 "*Merlin signs new Spotify licensing deal*", Complete Music Update, April 21, 2017

25 "*Spotify strikes new deal with indy giant Merlin 'competitive' with big labels*", Tech Crunch, April 20, 2017

26 For example, in February 2022 Merlin announced it struck a new agreement with Twitch, right after Universal Music Group had expanded its agreements with the live streaming platform: "*Twitch strikes strategic partnership with indie label agency Merlin*", Music Business Worldwide, February 2, 2022

27 "*Apple Music just made a lot of claims about what it pays artists,,,*", Music Business Worldwide, April 19, 2021

5. Conclusion

5.1 As explained above, the growth of the music industry in the last few years is cause for optimism. The digital era has ultimately resulted in a healthy competitive market that has led to significant consumer benefits, facilitated ease of market access for music creators and created opportunities for smaller labels and new entrants. Having considered all the facts, UMG is confident that the CMA will reach the same conclusion in its Final Report.

5.2 UMG looks forward to further engagement with the CMA to discuss any of the points raised in this submission, and throughout the market study process. There has been a considerable period of uncertainty, caused partly by the Select Committee Report, but even more so by the often-emotional media commentary on this report. The CMA has it in its power to transcend the emotional debate and bring this matter to an early close after six months. UMG hopes that the CMA will be able to do just this – and will continue to work with the CMA to give it the confidence to do so.

APPENDIX

UMG RESPONSES TO CONSULTATION QUESTIONS

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 shift to music streaming has laid the ground for an expanded range of deal models, which provide artists with a number of attractive routes to successful careers. Artists have an increasingly diverse range of options to promote their music online, and artists can choose the extent of a label's involvement, and related rights ownership and fee arrangements, depending on their preferences and individual needs. For further information, please see UMG's response to the Statement (the ***Response***), paragraphs 2.9(d), 3.1-3.5 and 4.5-4.7.

Relatedly, the rise in popularity of streaming services has allowed smaller, independent labels with alternative business models to grow as advertising and promotion costs have reduced. For further information, please see the Response, paragraphs 3.7-3.14.

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

The main difference in cost structure of music companies is that core digital distribution costs borne by labels are significantly lower compared to physical distribution. For further information, please see the Response, paragraphs 3.10-3.12.

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

The advent of streaming has meant that labels have had to be prepared to invest more and take more risk in order to attract artists. For further information, please see the Response, paragraphs 4.7-4.9.

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

There is competition all the way up and down the value chain:

(i) competition between record labels is fierce and delivers huge benefits to artists. For further information, please see the Response, paragraphs 3.7-3.12 and 4.3-4.10.

(ii) DSPSs are competing for consumers. For further information, please see the Response, paragraphs 3.13-3.16.

(iii) agreements and inter-relationships between music companies and DSPs ultimately provide consumers with a comprehensive offering of the world's music content at a low price point. For further information, please see the Response, paragraphs 3.20-3.23 and 4.11-4.16.

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**

   As music streaming services have grown, the economies of scale involved in manufacturing and distributing physical records are no longer present. Instead, a much larger share of costs is now made up of royalties – not least because royalty rates paid to artists have been increasing. For further information, please see the Response, paragraphs 3.10-3.11.

   b. **Music streaming services?**

   UMG does not have visibility on the costs of music streaming services.

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?**

   In the digital era, technological innovation in the music industry (particularly around the use of AI and the metaverse) will continue to facilitate dynamic competition and increase choice for artist and consumers alike, whilst continuing to exert increasing competitive pressure on record labels.

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?**

   UMG invites the CMA to pay attention to the impact of piracy on competitive dynamics in the industry. For further information, please see the Response, paragraphs 2.1-2.8, 2.11 and 3.17-3.19.

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**

   Major labels face fierce competition to serve all artists, across both mainstream commercial and more niche artists and genres. They do so based on their people, skill and service offering. Major record labels face growing competition from independent labels, whose share of music consumption across both physical distribution and streaming services continues to grow. For further information, please see the Response, paragraphs 3.1-3.12.

   b. **the supply of music to music streaming services?**

   In order to remain competitive and successful, DSPs need to be able to obtain licenses from all record labels in order to provide consumers with a comprehensive offering of the world's music content. At the same time, because artists almost universally want their content to be available worldwide on as many platforms as possible, record labels typically look to license to all DSPs. The importance of comprehensive supply has led, so far as UMG is aware, to all record labels being given comparable terms. UMG observes that the content of major and independent labels is on equal footing on streaming platforms, with audience preferences dictating the share of views on each platform. For further information, please see the Response, paragraphs 4.11-4.15.

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

Very well. There is fierce competition between record labels. For further information, please see the Response, paragraphs 3.7-3.12 and 4.3-4.10.

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

Competition between record labels will continue to increase as labels adapt to serve artists and more independent labels enter the market. For further information, please see the Response, paragraphs 3.1-3.12.

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?

A music creator's choice of record label will depend on their specific needs and profile. Artists have an increasingly diverse range of options to promote their music online and can choose the extent of a label's involvement as well as the related rights ownership and fee arrangements depending on their preferences and individual needs. This ranges from significant involvement with traditional record label agreements to lighter touch involvement with A&L agreements, to no involvement with self-distribution "DIY" models. An artist's choice of record label is also driven by the particular skills of the team within that record label, and by the relationship between the artist and label team. For further information, please see the Response, paragraphs 3.1-3.6 and 4.5-4.10.

b. What are the key factors determining the bargaining power of music creators in negotiations with recorded music companies?

The number of new business models available to artists means that they can now search for a music company whose offer is tailored specifically to the services they do and do not require. This increased competitive pressure has meant that record labels are strongly incentivised to improve their offer to artists so as to attract and retain talent. For further information, please see the Response, paragraphs 4.5-4.10.

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?

There is intense competition between record labels for all types of artists, although naturally the specific level of interest for each artist will vary depending on the individual(s) involved. For further information, please see the Response, paragraphs 4.5-4.10.

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?

Record labels and DSPs need each other to be successful. From the perspective of record labels, DSPs have become indispensable as trading partners for record labels given their significance, ever growing, as a route to market to consumers. For DSPs, record labels provide the wide-range of content that enables them to attract and retain subscribers on their platforms. As a function of this relationship of mutual interdependence, record labels and DSPs are strongly incentivised to agree terms with each other so as to ensure an optimal experience and affordable service to consumers. For further information, please see the Response, paragraphs 4.11-4.16.

b. What impact, if any, do recorded music companies' links with music publishers have on these negotiations?

Any impact is very limited. UMG can provide further details to the CMA in its market study.

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

Smaller independent labels provide strong competition for the majors - the continued success of the independent sector as a whole over time underscores the importance of people, services, and skill in identifying and breaking artists. For further information, please see the Response, paragraphs 3.7-3.12.

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

a. entry and/or expansion in services offered by recorded music companies; and

Barriers to entry are very low in the digital era. For further information, please see the Response, paragraphs 3.9-3.12.

b. innovation in relation to these services?

Digitalisation has increased innovation and the opportunities available to labels (including service providers across the spectrum), artists and streaming services. All companies must adapt and innovate in order to survive, and there is huge potential for new services to enter the market. For further information, please see the Response, paragraphs 3.9-3.12.

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)?

Piracy remains an ongoing issue, but the digital era has ultimately resulted in a healthy competitive market that has led to significant consumer benefits; facilitated ease of market access for music creators; and created opportunities for smaller labels and new entrants. For further information, please see the Response.

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 between music companies is very strong. Please see the response to Q.12 above.

Competition in music streaming services

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

N/A. UMG is not active as a music streaming service.

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

N/A. UMG is not active as a music streaming service.

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

N/A. UMG is not active as a music streaming service.

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

N/A. UMG is not active as a music streaming service.

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

N/A. UMG is not active as a music streaming service.

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

a. entry and/or expansion in music streaming services; and

N/A. UMG is not active as a music streaming service.

b. innovation in music streaming services?

N/A. UMG is not active as a music streaming service.

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)?

N/A. UMG is not active as a music streaming service.

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

N/A. UMG is not active as a music streaming service.

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

N/A. UMG is not active as a music streaming service.

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

None. UMG would be happy to discuss further in the course of the market study.

b. competition and innovation in music streaming services?

None. UMG would be happy to discuss further in the course of the market study.

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)?

The relationship between music companies and music streaming services within DSPs is best understood as one of mutual dependency. UMG would be happy to discuss further in the course of the market study.