Warner Music Group Corp.'s comments on the Competition and Markets Authority's Statement of Scope for its Market Study into Music and Streaming

1. Overview

1.1 Warner Music Group Corp. ("**WMG**") welcomes the Competition and Market Authority's (the "**CMA**") market study into music and streaming (the "**Market Study**") and the opportunity to provide comments on its statement of scope (the "**Statement of Scope**").

1.2 This submission sets out WMG's initial comments on the Statement of Scope, including how we view the Market Study at this early stage. WMG is committed to supporting the CMA in its work and looks forward to engaging constructively with the CMA throughout the process.

1.3 The Statement of Scope sets out the CMA's plan for examining both upstream (recorded music and music publishing) and downstream (music streaming services) levels of the music streaming value chain, with a focus on consumer outcomes. WMG agrees that this approach is essential to understanding how the overall music ecosystem works. In WMG's view, it is very important that the CMA should examine both:

(i) the dynamics and relationships between businesses operating at different levels of the music streaming value chain – including, in particular, the relative bargaining positions of recorded music companies and music streaming services also known as digital service providers ("**DSPs**"); and

(ii) how activities at the downstream level of the music streaming value chain can impact both downstream and upstream levels, as well as the overall music ecosystem – in particular:

(a) the activities of DSPs are key in facilitating access for consumers to music and in marketing and promoting music (including through editorially curated and personalised machine-generated playlists); and

(b) the activities of user-uploaded content ("**UUC**") platforms (and "safe harbour" provisions) have an impact on both upstream and other downstream activities.

1.4 Our headline comments, which we explain in further detail below, are as follows:

(i) **There has never been a better time to be a music fan**. Consumers now have ready and unlimited access to a huge, diverse and ever-growing portfolio of music via DSPs, for free (via ad-funded services) or for a low price (c. £10 per month) that is relatively unchanged over the past decade, as well as more music being produced than ever before. Continued innovation is also constantly opening up other new ways for consumers to engage with music, which helps fuel music generation – as of February 2021, it was reported that 60,000 tracks globally were being uploaded daily to Spotify.[1]

(ii) **DSPs have significant negotiating power**. A small number of DSPs control much of the legitimate digital music business. The revenue that WMG earns from its agreements with DSPs represent a very significant share of its total revenue; in WMG's FY 2021, Spotify represented 18%, Apple represented 13% and YouTube represented 11% of WMG's total revenue. Many of these businesses or their affiliates have economic interests other than deriving revenue from music – for example, Apple's core business is selling devices such as iPhones.

(iii) **Competition between recorded music companies is vigorous**. Recorded music companies have to compete with one another and demonstrate their value in order to sign and retain artists.

(iv) **There have never been more options for artists wanting to release music**. There are more routes to market than ever before, with lower barriers to entry. Artists are able to choose from a range of options, including DIY self-release distribution service agreements, distribution plus record label services or a full recording deal with all the support and expertise of a record label. However, the ease of releasing new music has led to a tremendous proliferation of music, which in turn means that each track faces more competition for consumer attention than ever before. Recorded music companies add real value by helping artists stand out in a crowded competitive environment.

1.5 This submission is structured according to the three focus areas identified in paragraph 89 of the Statement of Scope: competition between recorded music companies (addressed in Section 3); competition between DSPs (addressed in Section 4); and agreements and inter-relationships between recorded music companies and DSPs (addressed in Section 5). We have also provided an overview of WMG's UK operations in section 2.

1.6 We have not sought to respond to each question raised by the CMA at paragraph 108 of the Statement of Scope individually; instead, where we have views on particular questions, we have incorporated them into our commentary on the relevant focus area. Our comments focus on WMG's recorded music business, as that is how we have interpreted the CMA's focus in the Statement of Scope; however, this submission also refers to WMG's music publishing business, Warner Chappell Music, where appropriate.

2. WMG's operations

2.1 With a legacy extending back over 200 years, WMG today brings together artists, songwriters and entrepreneurs who are moving entertainment culture across the globe. WMG is headquartered in New York and has been publicly traded on NASDAQ since

[1] Source: https://www.musicbusinessworldwide.com/over-60000-tracks-are-now-uploaded-to-spotify-daily-thats-nearly-one-per-second/#:~:text=News-,Over%2060%2C000%20tracks%20are%20now%20uploaded%20to%20Spotify%20every,That's%20nearly%20one%20per%20second (accessed on 17 February 2022).

June 2020. WMG has two main businesses: recorded music (Warner Recorded Music or "**WRM**") and music publishing (Warner Chappell Music or "**WCM**"). WMG believes it is the world's third-largest recorded music company and the third-largest music publishing company, and therefore the smallest of the so-called "majors". At a UK level, WMG considers that it holds a similar position in recorded music, and it is among the top five music publishing companies.

2.2 Operating in more than 70 countries through a network of affiliates and licensees, WMG's recorded music business, WRM, includes renowned record labels such as 300 Entertainment, Asylum, Atlantic, Big Beat, Canvasback, Elektra, Erato, First Night, Fueled by Ramen, Nonesuch, Parlophone, Reprise, Rhino, Roadrunner, Sire, Spinnin', Warner Records, Warner Classics and Warner Music Nashville. WRM represents a wide range of artists including Ed Sheeran, Cardi B, Michael Bublé, Kelly Clarkson, David Guetta, Kenny Chesney, Madonna, Neil Young, Prince, Pink Floyd, David Bowie, Fleetwood Mac, Aretha Franklin, Aya Nakamura and The Smiths. This business comprises principally the recording, marketing, sale and licensing of recorded music in various physical and digital formats. WRM also provides a number of ancillary services to certain artists, including merchandising and sponsorships and touring. Artists can choose from a myriad of ways to engage with such ancillary services.

2.3 WMG's music publishing business, WCM, owns and acquires rights to musical compositions, licenses and markets these compositions, and receives royalties or fees for their use. In return for promoting, placing, marketing and administering the creative output of a songwriter, or engaging in those activities for other rightsholders, WCM shares the revenue generated from use of the compositions with the songwriter or other rightsholders. WCM holds rights in over one million compositions from over 100,000 songwriters, including Bruno Mars, Lizzo, Pablo Alborán, Lin-Manuel Miranda, Chris Stapleton, Dan + Shay, Damon Albarn, Kacey Musgraves, Cole Porter, Grateful Dead, Quincy Jones, Eric Clapton, Brody Brown, Dr. Dre and Stephen Sondheim.

2.4 WRM and WCM have independent leadership[2], operations and P&L accountability. The two businesses also have separate artists and repertoire ("**A&R**"), business affairs and business development teams that negotiate their own deals with artists and songwriters and their own licensing deals. While there is some overlap, WMG's recorded music and music publishing businesses often represent different artists/songwriters, with many artists/songwriters signed to one of the WRM record labels whilst being signed to a music publisher other than WCM, or the reverse. For example, Coldplay is signed to Parlophone UK (a WRM record label) for recorded music but to Universal Music Publishing for music publishing; and George Michael's works are under contract with Sony Music for recorded music and WCM for music publishing.

2.5 WMG's distribution services operations, which are part of WRM, include its Alternative Distribution Alliance ("**ADA**") business, which distributes and sells the recorded music of

[2] WMG's recorded music and music publishing businesses are managed by different global leaders and their teams: Max Lousada, CEO, WRM, is based in London and Guy Moot, Co-Chair and CEO, WCM and Carianne Marshall, Co-Chair and COO, WCM are based in Los Angeles. Although the global leaders of WRM and WCM manage their respective businesses separately and on a standalone basis, they all report directly to Stephen Cooper, CEO of WMG, who is based in New York. WMG is the only major that has a global leader dedicated exclusively to its recorded music business.

independent record labels and artists to retail and wholesale digital and physical distributors; and various distribution centres and ventures operated internationally. ADA also offers additional record label services such as marketing and promotion. WMX, also part of WRM, WMG's next generation artist services division, includes consumer brands such as Songkick, a live music discovery platform; EMP, a merchandise e-retailer; UPROXX, an entertainment and popular culture news website; and HipHopDX, a hip-hop music news site. In addition, WMG counts storytelling powerhouse Warner Music Entertainment and IMGN, a social media content creator, among its brands.

WMG's UK operations

2.6 WMG's operations in the UK comprise:[3]

(i) WRM's UK arm, known as Warner Music UK ("**WMUK**") includes Atlantic Records UK, FFRR, Warner Records UK, Rhino (a catalogue-oriented record label) and the UK outpost of ADA as well as Parlophone Records and the UK business of Warner Classics. WMUK is proud to be home to recordings from some of Britain's most loved and successful artists such as Coldplay, Dua Lipa, Ed Sheeran, Foals, Ghetts, Anne-Marie, Biffy Clyro, Clean Bandit, Gorillaz, Kano, Nines, Rudimental and Tion Wayne, as well as legendary heritage acts including David Bowie, Kate Bush, Pink Floyd and The Smiths. Tony Harlow, Chairman and CEO of WMUK, has led WMUK since February 2020;

(ii) WCM's UK arm, known as Warner Chappell Music UK ("**WCM UK**"), publishes and administers musical compositions from British songwriters including Blur, Celeste, Dave, Eric Clapton, Fraser T Smith, George Michael, Michael Kiwanuka, MNEK, Radiohead, RAYE, Rod Temperton and Stormzy, among many others. Shani Gonzales has been Managing Director of WCM UK since October 2020;

(iii) Warner Music International Services ("**WMISL**"), based in London, provides shared services and global coordination for WMG's recorded music affiliates in more than 40 countries and in the UK also provides some services such as IT help desk support, tax and corporate legal and HR benefits to WCM UK. Simon Robson, a WMISL employee who is based in London, has been President, International, Recorded Music for WMG since November 2020;[4] and

(iv) Songkick (**"Songkick"**), also based in London, has been a trusted home for live music since 2007. Songkick is a live music discovery platform that connects music fans across the globe and allows them to track their favourite artists, discover concerts and buy tickets with confidence.

WMG's recorded music business, WRM

[3] As of February 2022, WMG had 724 employees across all of its business operations based in the UK.

[4] Paragraph 43(c) of the Statement of Scope listed Chrysalis and Ensign as record labels owned by WMG. WMG purchased those businesses in 2013 as part of Universal Music Group's commitments to the European Commission in relation to the clearing of its acquisition of EMI but has subsequently sold those businesses to independent third parties.

2.7 WRM's business focus is on finding, investing in and nurturing the best talent to grow its catalogue. It generates revenue primarily through licensing its catalogue to a significant number of DSPs and through the sale of physical goods. WRM's record labels provide a broad range of support services for artists and can leverage its global footprint to find opportunities around the world. These include:

(i) traditional A&R services, which identify and develop talent, help artists hone their voice, unique style and public image, and find songs that showcase their talent;

(ii) recording and production in state-of-the-art studios with specialised sound engineers;

(iii) negotiating and concluding agreements with third parties such as musicians and producers, drafting brand licensing deals, and negotiating licensing deals with DSPs;

(iv) general artist services, such as managing an artist's online presence and D2C operations, designing and producing merchandise, and providing tour support;

(v) running supply chains to support both physical and digital product creation and distribution;

(vi) managing vast amounts of metadata required by DSPs when uploading music to ensure that recordings are correctly identified and proper accounting can be delivered;

(vii) analysing billions of lines of data to develop meaningful insight and analysis around performance and to provide consumer insight;

(viii) marketing, which in an ever more crowded artist environment requires speed and ongoing investment;

(ix) promotion, such as supporting and funding guest appearances for artists on television shows;

(x) finding and arranging synch licensing opportunities, for works to appear in films, adverts, games and on television; and

(xi) content protection, such as providing technical tools to protect content (for example, watermarks) and teams to monitor online activity around the clock to identify and seek to take down unlicensed content.

2.8 The costs of all of these support services are borne by WRM and represent significant levels of investment made by WMG out of its share of revenue. If an artist is ultimately not sufficiently commercially successful, the record label will not recoup its significant investment into that artist.

2.9 In a traditional recording contract, a record label and artist will negotiate the value of an advance at the time of signing and royalty rates. The contract will normally require one firm album, with options on a certain number of additional albums. The advance is recoupable from the artist's share of revenue, but it is not returnable; it is the artist's to keep irrespective of whether their work is commercially successful. Consequently, WRM assumes the entire upfront financial risk in the relationship. [REDACTED]

2.10 WMUK's total (gross) investment in A&R services increased from [REDACTED] in FY 2015 to [REDACTED] in FY 2021, as a result of its continuing commitment to support artists in the UK. Streaming royalty rates, which are negotiated with each artist, have also increased over time; in deals currently negotiated in the UK they are typically in the [REDACTED] range, whereas in FY 2017 the range was [REDACTED]. The number of optional releases agreed with new artists has also shrunk over time; [REDACTED] album deals were standard only a decade ago, but WMUK's recording contracts with its artists are now typically for [REDACTED] albums, mixtapes or EPs. Consequently, artists have greater flexibility to switch between recorded music companies, as they are not locked in for as long. Only a few years ago, WMUK's recording contracts were virtually always for life of copyright. However, the ownership of master recordings is moving away from WMUK in favour of artists; in FY 2019 WMUK owned recordings for [REDACTED] of its frontline roster, but that fell to [REDACTED] in FY 2021. All of these less favourable terms for recorded music companies come as a result of the demand issues discussed in Section 3. The risk involved in investing in new music and new artists is and will remain high. The upfront investment and attendant risks in developing new music and new artists are borne by WRM (and in turn, WMG).

Impact of the digital revolution on the recorded music industry

2.11 WMG's activities have evolved considerably over the past two decades in response to significant changes in the industry. In the 1980s and 1990s, the music industry was still driven by the sale of physical goods in the form of cassettes, vinyl and CDs. In the late 1990s and early 2000s, the industry experienced the rapid rise of two concurrent trends: a shift to digital and an increase in digital piracy.

2.12 The music industry began its transition to new digital models around 2003 with downloads and mobile personalisation products such as ringtones. Apple's iTunes Music Store, the first successful download store, launched in 2003. YouTube was launched in 2005, and Spotify in 2008. Since 2015, as digital offerings have grown, the share of physical goods year-on-year has declined. Since 2015, the real growth in the industry has been driven by paid streaming.

2.13 The rise in piracy – combined with the ability of consumers to purchase single-track downloads rather than an entire album, as enabled by the iTunes Music Store – contributed, however, to a decline of over 40% in recorded music industry revenue worldwide between 1999 and 2014 – from a peak of more than $25 billion (£15 billion[5]) in annual global recorded music industry revenue in 1999 (which in today's terms, once

[5] Calculated using the average USD:GBP rate for 1999 of 1 USD = 0.618305 GBP (Source: https://www.ofx.com/en-gb/forex-news/historical-exchange-rates/yearly-average-rates/)

adjusted for inflation, would be $43 billion (£32 billion[6])), to a low of just $14 billion (£8.5 billion[7]) in 2014 ($17 billion / £12.5 billion in today's terms, once adjusted for inflation[8]). This pressure required the music industry to transform itself to remain relevant and competitive, with commentators and investors at the time calling on the music industry to come to terms with the digital revolution and adapt its business model accordingly.

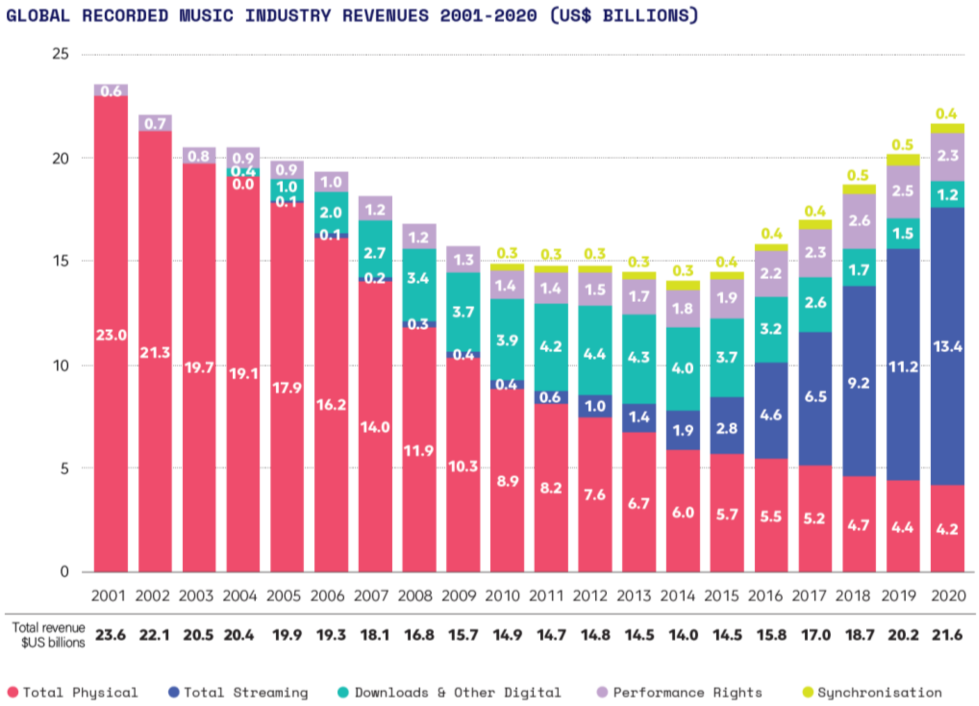
2.14 2014 was the inflection point for the recorded music industry, which has since seen annual growth since 2015. The recorded music industry is, however, still in recovery; annual global recorded music industry revenue in 2020, the last year for which IFPI (the trade association that represents the recorded music industry worldwide) has complete data, was $21.6 billion (£16.1 billion), or roughly where the recorded music industry was in 2002. The following chart provides an overview of this development in the recorded music industry over the last twenty years. While early results suggest that revenue in 2021 will surpass 1999 in nominal terms, it will still fall significantly below the 1999 peak value when adjusted for inflation. The growth of the past few years is welcomed, but the recorded music industry has not yet fully recovered.

6 Inflation over the period from 1999 to 2022 was 71.49 %. Index: USCPI31011913 (Bureau of Labor Statistics). Initial Index: 1 669.83; End Index: 2 863.61. (Source: https://fxtop.com/en/historical-currency-converter.php?A=25000000000&C1=USD&C2=GBP&DD=01&MM=01&YYYY=1999&B=1&P=&I=1&btnOK=Go%21)

7 Calculated using the average USD:GBP rate for 2014 of 1 USD = 0.607353 GBP (Source: https://www.ofx.com/en-gb/forex-news/historical-exchange-rates/yearly-average-rates/)

8 Inflation over the period from 2014 to 2022 was 20.6 %. Index: USCPI31011913 (Bureau of Labor Statistics). Initial Index: 2 374.45; End Index: 2 863.61 (Source: https://fxtop.com/en/historical-currency-converter.php?A=25000000000&C1=USD&C2=GBP&DD=01&MM=01&YYYY=1999&B=1&P=&I=1&btnOK=Go%21)

Figure 1:
Global Recorded Music Industry Revenues, 2001-2020 ($ billions)



Source: IFPI

2.15 Adapting to these changes has had a significant impact on both WMG's business model and its costs. For music streaming, it has required significant investment in a sophisticated digital supply chain (with global teams who support and operate those systems), specialised licensing teams and complex new forms of data management and accounting. Streaming has led to an increase in the volume and pace of new releases, which requires larger teams working faster than previously. It also means artists require constant marketing and promotion to stimulate streams, rather than the shorter campaigns around album or single releases that typified the era of physical sales.

2.16 Data is also more critical than ever. WMG has a new global data operations department and entire teams focused on product and asset data cleaning, standards, training and compliance to ensure the highest possible consumer-facing experience and the highest standards of administration for artists and record labels. The shift to digital also requires investment in technologies to detect and prevent unlicensed copying and distribution, with teams constantly monitoring sites globally to detect infringements and liaise with DSPs to have them removed in real time. Additionally, a digital product is far more dynamic than a physical one, constantly evolving during its lifetime and requiring constant touchpoints – WMG teams are involved in swapping audio and cover art, amending territory rights and carrying out metadata upgrades on the catalogue to enhance data fields.

2.17 The ever-changing nature of technology also requires an ongoing ability to adapt and respond, and WMG's operations will continue to evolve as technological advances and shifts in consumer preferences continue at pace. WMG's operations, commercial and global technology teams are continuously responding to innovation in the music industry by developing new products and technologies, and constantly adapting workflows to automate the supply chain. [REDACTED]. WMG is investing heavily in anticipation of future technological advances and shifts in consumer demand and preferences such as:

(i) updating its internal systems to interface with and produce content appropriate for new technologies and formats that did not exist before, such as podcasts, non-fungible tokens ("**NFTs**"), immersive audio, virtual reality and gaming and voice devices, all of which require different data sets and support infrastructures;

(ii) developing specialised technical expertise to assist with the negotiation of new deals and deal structures with fresh, untested platforms that bring novel challenges; and

(iii) developing data sets and specialised data analytics tools and teams to provide meaningful analytics to artists.

2.18 WMG is also investing in certain technology companies to help it stay current as new technologies emerge faster than it could develop them in-house. Areas in which WMG has invested recently include data analytics (Sodatone), NFTs (Dapper Labs and Blockparty), virtual reality (Wave VR), augmented reality (Anything World), avatars and virtual merchandise (Genies), innovative new licensing platforms (Lickd) and gaming (Roblox).

2.19 The changes sweeping across the music industry have, in parallel, seen significant shifts in record labels' relationships with artists. As explained above, WRM invests large amounts of time and resources in its artists, creating significant value for them whilst taking on significant risk. The CMA states in paragraph 87(a) of the Statement of Scope that it intends to "*explore the terms under which services are offered, specifically the different deal structures music companies offer to music creators*". Strong competition has led to artists having more choices in relation to how they release their music than ever before, with artists benefiting from ever wider and more flexible options.[9] Aside from DIY distribution services, which provide inexpensive ways for artists to release music with no additional services, artists can choose from deal structures including:

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[9] As the CMA states in paragraph 8.13 of its provisional findings in *Sony Music Entertainment / AWAL and Kobalt Neighbouring Rights businesses,* changes to the frontline business model of the major record labels "*have been driven by both changing technology and the increase in options for artists."* At paragraph 52 of the summary, the CMA notes that "*artists need alternative options in order to negotiate better deals* (…) *the emergence of A&L service providers provided a credible alternative to the majors for some artists and/or enabled them to grow a demonstrable fan base in order to negotiate a better deal with a major*". This was supported by the CMA's market investigation, in which third parties *"noted that changes to the majors' models had been driven by increased options including A&L service providers like AWAL*", attributing changes to the majors' models to "*tonnes of competition*" including record labels and "*new companies*" like AWAL and others (paragraph 8.11). The CMA concluded that "*the evidence shows that SME has adapted its model in response to A&L services providers*" and that "*AWAL Recordings provided a credible option and an alternative to a major label deal for some artists*" (paragraph 8.36). The CMA also noted that, at least in theory, "*any potential growth of AWAL Recordings could provide a credible alternative for a greater number of more successful artists*" and that "*[i]f AWAL were making efforts to further bridge the gap between A&L services and frontline label offers it would likely compete more strongly with SME in an ongoing dynamic competitive process*" (paragraph 56). Although the CMA has reached the provisional view that AWAL ultimately exercises only a relatively limited competitive constant on Sony, the CMA has made clear that "*several other A&L providers offer non-traditional contracts and high-touch services to artists and some of these have growing market shares (…) and credible expansion plans*" (paragraph 60).

(i) pure distribution deals;

(ii) "distribution plus" (i.e. distribution with additional record label services such as marketing, promotion and analytics);

(iii) licence deals with record labels of differing lengths of term;

(iv) profit share deals; and

(v) recording deals with full record label services (including A&R support, marketing, promotion, data analytics, branding support, legal/compliance support, royalty payment distribution and accounting).

2.20 WMG is also focused on exploring other innovative new opportunities to license its music, such as through fitness (e.g. Peloton), social networks (e.g. TikTok), virtual concerts (such as the PlayOn festival in April 2020 that raised money for the World Health Organisation) and augmented reality (such as its 2020 pre-seed investment in UK-based Anything World, a deep tech platform which allows creators to use their voices to create 3D worlds). When live concerts suddenly stopped as a result of the COVID-19 pandemic, the music industry responded rapidly by introducing new ways for artists to reach audiences such as virtual concerts, concerts live-streamed on platforms like Instagram and television specials/documentaries, in ever more sophisticated and mixed formats. WMG continues to support new ways for its artists to connect with their fans wherever they are, offering them exciting opportunities to create unique content and curated experiences.

3. Competition between recorded music companies

There is vigorous competition between recorded music companies

3.1 Paragraphs 91 to 95 of the Statement of Scope set out the CMA's particular areas of interest with respect to competition between recorded music companies.

3.2 At its core, the recorded music business relies on artistic talent. Artists now have many more routes to monetise their talent than ever before, and more ways to reach their existing and potential fans. The streaming business model, in which the monthly royalty pool is split between stakeholders based on their proportion of streams, means recorded music companies compete vigorously and constantly to grow the number of artists on their roster (with a particular focus on data-driven artist signings in genres that appeal to the music streaming demographic) and their number of releases. As a result of this increased demand, the material terms of such artist signings (e.g. advances, royalty rates, recording commitment and licence period) are becoming less favourable to recorded music companies. In addition, recorded music companies have to compete ever more aggressively with one another to sign artists as more routes to market open and artists enjoy a wider and more flexible set of options, which provide artists with greater choice as to how they release new music, including not to sign with a record label at all. As noted in footnote 4, the CMA has provisionally found in its Phase II merger investigation into Sony's acquisition of AWAL that changes to the frontline business model of the major record labels "*have been driven by both changing technology and the increase in options for artists"* (paragraph 8.13 of the provisional findings), while "*several other A&L providers* *offer non-traditional contracts and high-touch services to artists and some of these have growing market shares* (…) *and credible expansion plans*" (paragraph 60 of the summary). In turn, artists also compete for consumer attention amidst an increasingly crowded entertainment sector, with music itself competing with other forms of entertainment all vying for consumer attention.

3.3 This vigorous competition has, as further detailed below, resulted in key positive trends in the music industry such as lower prices for consumers, easy and unlimited access to music and larger amounts of new music being produced and released. Recorded music companies are also seeing changes in the types of music that consumers engage with, such as an increasing interest in catalogue music as compared with recent releases, which means that artists creating new tracks face increased competition for attention from older tracks; indeed, the recent high-profile sales of recorded music and music publishing catalogues by artists/songwriters such as Sting and Bob Dylan is testament to the assumed long-term value and monetisation of existing recorded music.[10]

3.4 At the upstream level, record labels vigorously compete with one another (as music publishers also vigorously compete with one another) to sign and retain talent. This creates more choice for artists in terms of how they release their music than ever before, and new upload levels are at an all-time high. As of November 2021, Spotify had more than 70 million tracks available on its service.[11] In April 2019, it was reported that 40,000 tracks were uploaded to Spotify daily.[12] As of February 2021, it was reported that that number had increased to 60,000 tracks uploaded daily.[13] This reflects lower barriers to entry and more routes to market for artists. This trend also means that each track faces more competition for consumer attention than ever. Accordingly, record labels play an important role in helping artists to increase their profile in a crowded competitive environment and 'cut through' to reach new fans.

3.5 Record labels also compete vigorously with one another (as music publishers also compete vigorously with one another) both to get consumer attention for their artists and to strike the best deals with DSPs. The best way to grow artist royalties is to increase the revenue that record labels receive from DSPs and, to do that, WMG works constantly to optimise deals with existing DSPs and other platforms and to drive incremental revenue from new platforms and licensing opportunities. The commercial licensing terms negotiated between record labels and DSPs are based on market conditions and reflect the relative investment and risk undertaken by the parties. However, as explained further in Section 4, DSPs have significant bargaining power in negotiations with rightsholders.

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[10] Source: https://www.nytimes.com/2022/02/10/arts/music/sting-sells-catalog-universal.html and https://www.forbes.com/sites/marisadellatto/2022/01/24/bob-dylan-sells-recording-catalog-to-sony-in-major-deal-one-year-after-he-sold-songwriting-catalog/?sh=7db1cfb2c59e (accessed on 17 February 2022).

[11] Source: https://investors.spotify.com/home/default.aspx (accessed on 17 February 2022).

[12] Source: https://www.musicbusinessworldwide.com/nearly-40000-tracks-are-now-being-added-to-spotify-every-single-day/ (accessed on 17 February 2022).

[13] Source: https://www.musicbusinessworldwide.com/over-60000-tracks-are-now-uploaded-to-spotify-daily-thats-nearly-one-per-second/#:~:text=News-,Over%2060%2C000%20tracks%20are%20now%20uploaded%20to%20Spotify%20every,That's%20nearly%20one%20per%20second (accessed on 17 February 2022).

Many of the leading DSPs either themselves or combined with their affiliates have market capitalisations far exceeding that of WMG.

3.6 As explained in Section 2, contract terms with recording artists and songwriters have evolved in innovative ways over time to reflect the changes in the recorded music and music publishing industries. In constantly striving to optimise licensing deals with existing DSPs and to seek new, innovative licensing opportunities, WMG's interests are aligned with those of its artists and songwriters. WMG constantly negotiates and renegotiates with DSPs as new issues arise to find solutions whilst ensuring consumers continue to benefit from access to WMG's entire catalogue.

Artist remuneration

3.7 Any meaningful review of competition in music streaming must also examine all the various means by which artists monetise their talent. Artists' income sources have evolved significantly in recent years. Many artists are doing well from streaming, although others supplement their income from other sources, such as touring, brand partnerships, acting or teaching. The investment by recorded music companies is crucial to creating, marketing and promoting the repertoire that opens the door for artists to tap these commercial opportunities, but record labels usually enjoy little or no revenue from those commercial opportunities. The rise of the experience economy has driven new ways for artists to reach and engage with fans – whether that's through virtual experiences like Instagram concerts, giving fans the ability to pick concert set lists or even the opportunity to meet their idols. The fact that some artists supplement their recorded music income is not new or particularly related to music streaming. Even during the era of physical goods, not all artists made a living exclusively from the sales of their recorded music, nor did they all become commercially successful even if they were critically acclaimed. Consumer preferences play a large role; genres like rap, hip-hop and dance music benefit greatly from streaming, while other genres, like jazz, rock, folk and classical, are streamed less; as noted in Section 3.3, recorded music companies are also seeing increasing consumer interest in catalogue music as compared with recent releases.[14]

3.8 That said, according to the Intellectual Property Office's report "*Music Creators' Earnings in the Digital Era*", artists are earning more today than they did during the era of physical goods, and revenue from recorded music constitutes only a small proportion of many UK artists' earnings.[15] The after-tax streaming royalty pool is shared among DSPs, music publishers, songwriters, artists and record labels. Record labels must cover their operating costs, and margins on streaming are necessary if record labels are to continue their long-term investment in artists. Record labels are the largest upfront investors in artists and carry the risk of their investment, which powers the whole music ecosystem – which encompasses songwriters, studio engineers, music video directors, photographers, data analysts and marketing agencies, to name just a few.

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[14] Source: https://www.musicbusinessworldwide.com/over-66-of-all-music-listening-in-the-us-is-now-of-catalog-records-rather-than-new-releases/ (accessed on 17 February 2022).

[15] Source: *Music Creators' Earnings in the Digital Era,* Intellectual Property Office, September 2021. Accessible via https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1020133/music-creators-earnings-report.pdf (accessed on 17 February 2022).

3.9 In addition, the timing for generation of artists' remuneration has also evolved. With streaming, artists may earn smaller individual payments but those payments accrue over a much longer period of time as their music continues to be streamed, as opposed to larger payments for sales of physical goods, most of which typically occur soon after release, and are paid irrespective of whether or how many times the CD or LP is played. This longer-term pay-out period from streaming, and the ability to continue to earn income throughout it, is also reflected in the high sums that a number of artists/songwriters have recently secured for the sales of their catalogues.

Consumer benefits

3.10 Overall, the fierce competition between recorded music companies drives significant consumer benefits. Streaming allows a diverse multitude of artists to reach an equally diverse audience. With digitisation, the route to monetisation has become more technological and supply has grown exponentially for the consumer. Because typical DSPs offer consumers access to more than 70 million recordings, they reduce price barriers for music fans to explore and discover new music. Streaming therefore carries significant value for consumers, the majority of whom today choose to access music this way. According to research carried out by IFPI from 2020, 89% of listeners globally accessed music through on-demand streaming services.[16] Moreover, streaming enables music fans to curate their listening choices. According to an IFPI report from 2021, 68% of music fans globally streamed specific tracks that they searched for and 62% listened to playlists they created themselves.[17]

4. Competition between DSPs

4.1 It is difficult to think of a time in history when it has been better to be a music consumer. Streaming is of great value to consumers who, for free (via ad-funded subscriptions) or for the relatively low price of around £10 per month (or lower, if a consumer takes advantage of a bundled subscriber deal such as family plans), have unlimited access to more than 70 million recordings. The average monthly subscription fee for users has not materially increased in more than 10 years (despite the fact that a £10 per month subscription in 2010 would cost £12.81 per month today if adjusted for inflation)[18] while more music is being released than ever, meaning that in real terms, consumers are receiving better value for money than ever before. The average revenue per user ("**ARPU**"), a key metric, decreased significantly between 2015 and 2021, driven by both the growth of streaming subscriptions in markets with a low-dollar equivalent subscription cost and the introduction by DSPs of family plans and other discounted subscription and bundle deals.[19] The increasing availability of such bundles offers even greater consumer

[16] Source: *Music Listening 2019,* IFPI, 2020, p4. Accessible via https://www.ifpi.org/wp-content/uploads/2020/07/Music-Listening-2019-1.pdf (accessed on 17 February 2022).

[17] Source: *Engaging With Music*, IFPI, 2021, p5. Accessible via https://www.ifpi.org/wp-content/uploads/2021/10/IFPI-Engaging-with-Music-report.pdf (accessed on 17 February 2022).

[18] Source: https://www.inflationtool.com/british-pound/2010-to-present-value?amount=10&year2=2022&frequency=yearly (accessed on 17 February 2022).

[19] See further: https://www.musicbusinessworldwide.com/why-we-believe-streaming-subscription-arpu-fell-by-around-8-globally-for-the-record-industry-last-year/ (accessed on 17 February 2022).

value, but inevitably results in a lower ARPU for DSPs to share with record labels, music publishers, artists and songwriters.

4.2 WMG considers that are a number of matters in relation to this focus area that merit careful consideration by the CMA.

Subscriber acquisition is a contested market

4.3 DSPs compete with one another for paid and ad-funded subscribers, as well as against YouTube and other UUC platforms that allow free access to music, which requires that DSPs differentiate their offerings to ensure they remain attractive. In addition, music in general competes for consumer attention with other types of content that are often available within the same DSP (e.g. podcasts on Spotify, or with TV and gaming on Amazon). There is therefore competition between DSPs to improve their offerings by achieving better deals with recorded music companies upstream in order to acquire more users downstream.

Many DSPs are vertically integrated

4.4 As the CMA notes at paragraphs 75 to 77 and 98(e) of the Statement of Scope, many DSPs are vertically integrated, offering, for example, both music streaming services and devices on which to listen to them. The ways in which consumers choose to interact with music streaming services, whether via their smart speaker, smartphone or other devices, is highly relevant to an assessment of how competition works in these markets – according to research carried out by IFPI, smartphones are the preferred device among 16-24 year olds globally to listen to music,[20] while the rate of adoption of smart speakers as a way of streaming music has been strong and is expected to increase significantly.

4.5 Such vertical integration is likely to have an important impact on how DSPs acquire and retain consumers. Default options on smartphones and smart speakers will play an important role in how consumers interact with music streaming. [REDACTED]

Impact of UUC and "safe harbour" provisions

4.6 WMG welcomes the CMA's plan (as detailed in paragraphs. 70 to 74 and 98(c) of the Statement of Scope) to examine the economic impact that ad-funded DSPs which are UUC platforms have on the music ecosystem – including, for example, on artist and songwriter revenue. Some ad-funded DSPs which are UUC platforms claim they are protected by "safe harbour" provisions that shield them from liability for copyright infringement which creates an uneven playing field for licensing discussions because they have taken the position that, unlike paid streaming services, they do not require a license. Free access to music on such platforms may limit the amount that consumers are willing to spend on paid streaming services, in turn impacting artist, songwriter, music publisher and record label revenue, and may affect how paid streaming services approach licensing negotiations with recorded music companies.

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[20] Source: *Music Listening 2019,* IFPI, 2020, p6. Accessible via https://www.ifpi.org/wp-content/uploads/2020/07/Music-Listening-2019-1.pdf (accessed on 17 February 2022).

Piracy and illegal file-sharing

4.7 Finally, despite the progress made in combatting music piracy of the last ten or so years, counterfeit and illegal file sharing remain a problem. Legitimate DSPs are therefore competing against infringing sites, and they and recorded music companies have to invest significant resources in combatting illegal activity online. A substantial portion of WMG's revenue comes from the distribution of music that is potentially subject to unauthorised consumer copying and widespread digital dissemination without an economic return, including as a result of "stream-ripping".[21] For the purposes of IFPI's 2021 report *Engaging with Music*, 43,000 people were surveyed across 21 countries including the UK (and accounting for 91% of global recorded music market revenue in 2020) to examine the ways in which music consumers engaged with recorded music. Of those surveyed, 30% had used illegal or unlicensed methods to listen to or download music, and 14% had used unlicensed social media platforms for music purposes, the leading form of music piracy.[22] Organised industrial piracy may also lead to decreased revenue. The impact of digital piracy on legitimate music revenue and subscriptions is hard to quantify, but WMG believes that illegal file sharing and other forms of unauthorised activity, including stream manipulation, continue to have a substantial negative impact on music revenue.

5. Agreements and inter-relationships between recorded music companies and DSPs

5.1 Although music streaming has experienced explosive growth, it is still in the early stages of its potential global adoption and penetration.

5.2 According to research carried out by IFPI, there were 443 million global paid music streaming subscribers at the end of 2020.[23] While this represents an increase of 30% from 341 million in 2019, it still represents less than 12% of the 3.5 billion smartphone users globally in 2020, according to gaming analytics company Newzoo.[24] It also represents a small fraction of the user bases for large, globally scaled digital services such as Facebook, which reported 2.9 billion monthly users as of September 2021[25], and YouTube, which reported over 2.3 billion unique monthly users in February 2022.[26] Despite its transformation in the consumption and monetisation of music content over the last six years, music streaming is therefore in its early stages, and consumer adoption of

[21] Stream ripping is the process of saving data streams to a file. Stream ripping is most often used to save audio or video streaming media from DSPs such as YouTube. The process is sometimes referred to as "de-streaming".

[22] Source: *Engaging with Music*, IFPI, 2021, p11. Accessible via https://www.ifpi.org/wp-content/uploads/2021/10/IFPI-Engaging-with-Music-report.pdf (accessed on 17 February 2022).

[23] Source: *Global Music Report,* IFPI, 2021, p6. Accessible via https://www.ifpi.org/ifpi-issues-annual-global-music-report-2021/ (accessed on 17 February 2022).

[24] Source: https://newzoo.com/insights/trend-reports/newzoo-global-mobile-market-report-2020-free-version/ (accessed on 17 February 2022).

[25] Source: https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/ (accessed on 17 February 2022).

[26] Source: https://www.businessofapps.com/data/youtube-statistics/ (accessed on 17 February 2022).

paid streaming services still has significant potential for growth, with significant promise and opportunity for the music industry.

5.3 The CMA's particular areas of interest with regard to the relationships between DSPs downstream and recorded music companies upstream are set out in paragraphs 99 to 101 of the Statement of Scope. WMG is in constant negotiations with DSPs both to grow value for artists and songwriters and to ensure that consumers continue to have access to WMG's entire catalogue. Moreover, record labels are dependent on DSPs. DSPs are not only key distributors for record labels but are key platforms in the marketing and promotion of music. Spotify has stated publicly that its editorially curated and personalised machine-generated playlists are the driving force behind music discovery and demand creation on its service, demonstrating the key role of playlisting in marketing and promoting music – in 2018, Spotify said that it "programs approximately 31% of all listening on Spotify across these and other playlists, compared to less than 20% two years ago"[27]. WMG believes that percentage is now significantly higher. DSPs are now essential for the distribution, marketing and promotion of music, [REDACTED].

5.4 The major DSPs either themselves or combined with their affiliates are some of the world's most powerful, commercially successful entities and they dwarf the recorded music industry in terms of their economic weight. For example, Apple's market capitalisation is \$2.82 trillion (£2.07 trillion)[28]; Google's market capitalisation is \$1.82 trillion (£1.34 trillion); and Spotify's market capitalisation is \$31.49 billion (£23.13 billion). By contrast, WMG's market capitalisation is \$19.05 billion (£13.99 billion). These large, sophisticated technology companies leverage their indispensable distribution, marketing and promotion position, economic heft and enhanced bargaining power in negotiating licensing deals.

5.5 Finally, WMG is constantly looking for innovative opportunities to use new technologies to bring music to consumers. As explained above, music streaming is still relatively new and continues to evolve, having experienced explosive growth from almost nothing just over a decade ago to the largest music revenue stream today. WMG has always championed new business models while protecting and enhancing the value of music. WMG was the first major music company to strike landmark deals with Apple, YouTube and Twitch, as well as with pure-play music technology companies such as MixCloud, SoundCloud and Audiomack. WMG adapted to streaming faster than other major music companies and, in 2016, was the first major music company to report that streaming was the largest source of its recorded music revenue.

5.6 Looking ahead, WMG believes that the universe of opportunities for both artists and consumers will continue to expand, including through the proliferation of new devices such as smart speakers and the monetisation of music and new licensing opportunities on fitness, social media and augmented reality platforms. WMG is also focused on

[27] Source: Spotify F-1, March 2018, p4. Accessible via https://www.sec.gov/Archives/edgar/data/1639920/000119312518092759/d494294df1a.htm (accessed on 17 February 2022).

[28] Data in this paragraph are taken using information from Refinitiv as at 11:05 GMT on 17 February 2022 (market closed). Numbers in this paragraph have been converted using the Refinitiv USD:GBP exchange rate as at 11:05 GMT on 17 February 2022, which was USD 1:GBP 0.73.

investing in emerging music technologies, demonstrated by its launch of WMG Boost, a seed-stage investment fund for start-ups in the music industry, and through partnerships with entrepreneurial incubators such as TechStars (a US-based programme to which UK-based start-ups are eligible to apply). These developments evidence WMG's ongoing commitment to innovation and its desire to adjust nimbly as the landscape changes, continuing to drive consumer engagement and help shape a growing and vibrant music ecosystem.

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