**DATE: 24 FEBRUARY 2022**

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# RESPONSE TO CMA CONSULTATION ON

# THE MUSIC AND STREAMING MARKET STUDY

# STATEMENT OF SCOPE

# I. INTRODUCTION

1. On 27 January 2022, the CMA launched a Market Study Notice and a Statement of Scope in relation to a proposed market study on music and streaming services.[1] It included an invitation for comments on the issues raised in the statement of scope. [✂].[2] [✂] has identified three key areas that impact Artists and Songwriters that raise substantial questions relating to the competition between music companies and the agreements and inter-relationships between music companies and music streaming services.

2. The four key issues are:

### 2.1 Oligopoly behaviour and pricing as obstacle to a fair and competitive streaming market

A series of factors appear to reinforce market concentration and the oligopoly and include cross shareholdings between Major Labels and streaming platforms, cross shareholdings among streaming platforms, cross licencing, most favoured nation clauses, market share agreements, ownership and vertical integration between music publishing and the Major Labels. In addition, market access and access to data is limited through the mobile ecosystem which as the CMA has identified limits effective market dynamics, reducing innovation and competition on the merits. The market power created enables the Major Labels to impose exploitative contract terms and commercial practices, misusing confidentiality to reinforce their market positions.

### 2.2 Confidentiality provisions and Non-Disclosure Agreements in Contracts ("NDAs") and lack of Transparency

A well-functioning market should not allow agreements between three major players and streaming services to be under a NDA and with no transparency for other market participants (such as other distributors, innovators, Publishers and Artists) who are key market players and should be considered both as micro businesses in their own right and as consumers of services provided by others in the supply chains.

### 2.3 Exploitative and Unfair Contract Terms

At present only a small number of Creators benefit from the opportunity to provide consumers with streaming services. Perpetual or extended contract terms exist in many Artists contracts.[3] These were either unfair at the time of signature or have become unfair over time. They enable the Major platforms to recoup initial outlay and show a return to profit, but also, the extended or unlimited term of many contracts' locks Artists into the Major Labels and limits the opportunity for the development of new opportunities for use of the Back Catalogue to new generations. The extended contract terms mean that many Artists in the back catalogue are not provided with any promotional support and the length of term of their contracts prevents others from being able to help meet demand and commercialise the opportunity provided by music streaming.

To spell out how a record contract works, they lend the Artist money to make a record and the Artist does not receive another penny until they have recouped that money, plus

[1] Music and streaming market study - GOV.UK (www.gov.uk)
[2] [✂]
[3] [✂]

the cost of services, making the record etc., out of 1/6th of the income rather than 100%. Even after they do that, they still own the record in most cases in perpetuity.

### 2.4 PROs

PRS is the sole PRO for the UK. It is by definition a monopoly and the sole collector of Performance Income for Songwriters and Publishers in the UK. It has proven to be non-transparent, slow, riddled with bad data. With the increased digitisation of the industry and increased need for worldwide royalty collections and reconciliations, PRO's now need to leave behind their traditional techniques of collecting revenue for general licensing (hairdressers, bars, shopping malls), live concerts and radio and move into the highly complex data processing of receiving reports from DSPs. This involves a process of matching the ISRC (the code associated to the Record) with the ISWC (the corresponding code which represents the Songwriters who contributed to the Work). [✂] the role of the PRO as one that needs to modernise as they have become an important source of income for the Publishing world. We think that this modernisation is doubtful without competitive pressure from others. Competition between PROs exists within nations - and there are four PROs for the US. Also, international competition exists between PROs and if the UK does not modernise it is highly likely that more effective PROs will attract business to their locations. We will explain this issue further in person at a meeting with the CMA in due course. The CMA should consider whether increased competition between PROs can be created in the UK.

## II. RESPONSE TO PROPOSED SCOPE

***(1) (a) The main changes in the music industry as part of the shift to music streaming in relation to business models?***

3. Below we outline changes in proportions of returns, changing patterns of consumption, changes income/cost ratios, changing sources of income for Creators, changing patterns of demand, (both across generations and geographically), changing levels of control over markets, changing value from different forms of distribution, all showing that these changes lock in Creators and stifle opportunity, all further limited by nondisclosure agreements that restrict transparency and prevent entry and innovation. We also note the considerable change to the speed of consumption and nature and geographical scale of supply and demand that has been facilitated by streaming.

**Proportions of returns**

4. The global value of music copyright as an asset has increased exponentially; in 2020 it was worth 32.5 bn US Dollars.[4] While the three Major Labels have increased revenues and profits, the benefit has not been felt by Creators.[5] We should also highlight Universal going from an internal Vivendi valuation of 6 billion euros in 2018 to more than 50 billion at the time of the IPO in 2021.

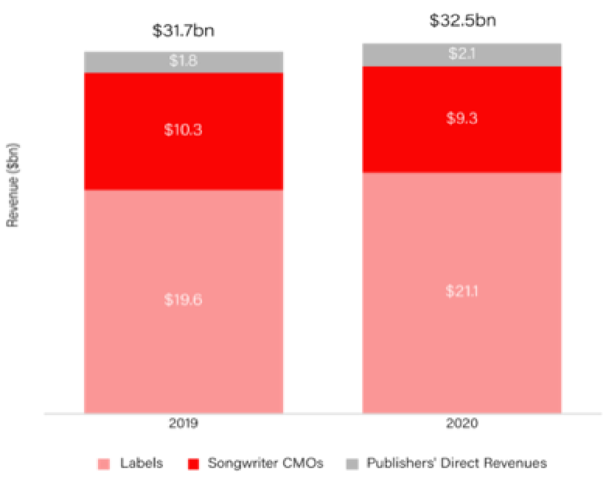
5. Labels saw their "piece of the pie" grow thanks to streaming, whereas Songwriters, Publishers and their CMOs saw theirs shrink due to the pandemic.[6] The 3 Major companies took $20 billion alone in 2021.

6. During the pandemic, streaming was a 'stay at home' stock that helped Labels increase their revenue by 1.5 billion US Dollars, whereas combined collections from Publishers and CMOs

[4] Global Value of Music Copyright, Tarzan Economics, Nov 16 Written by Will Page © 2021
[5] See paragraph 44 of the CMA Statement of Scope in relation to a proposed market study on music and streaming services.
[6] Global Value of Music Copyright, Tarzan Economics, Nov 16 Written by Will Page © 2021

fell by almost 0.7 billion. All in, copyrights value grew by just over 0.8 billion US Dollars to a new all-time high. The following graph shows the contrast between the Record Companies and Publishers and CMOs (Songwriters):[7]

**Figure 1: Global value of copyright, 2019 and 2020**




Source: IFPI Global Music Report, CISAC Global Collections Report, Music & Copyright and Will Page

7. In the physical and download world, Recorded Music Labels were responsible for paying mechanical Royalties to Publishing companies/ Songwriters. However, now, through sleight of hand and negotiations under NDA, that is not their responsibility anymore. This has a direct impact on the imbalance that exists between how a Record Label is paid vs the Songwriter/ Publishing company.

**Changing patterns of consumption**

8. Prior to streaming there was a model of radio and physical product and downloads. Radio was a method to promote new music or serve listeners with music they didn't choose, but they would choose the station based on musical taste and the stations delivered music they felt listeners would love based on their own research and knowledge of their customers. Downloading was a new version of 'owning' a record where listeners selected the store and downloaded at a price. Radio would be used to promote new music and drive listeners to cross the line from radio consumption to purchase of a download or physical copy.

9. There was an investment needed for prerelease, paying people (Pluggers) to meet Radio stations and sell the bands in to get airtime both in plays and in interviews to make the public aware of the record (Pluggers now cover new music for streaming, but, importantly, not the back catalogue).

**Changes in income /cost ratios**

10. Streaming has completely changed the economics and promotion of music. Its model is simple. Make all music available, all of the time. Consumers can stream what they like, when they like, for one fixed monthly fee or free with ads. Streaming makes music available globally, but the

[7] Global Value of Music Copyright, Tarzan Economics, Nov 16 Written by Will Page © 2021 and https://tarzaneconomics.com/undercurrents/copyright-2021

costs of promotion are focused only on the Labels' priorities, hence they increase revenue with no proportionate increase in cost. This contributes to their increasing profitability over the last six years. They focus their efforts where they can increase market share; this isn't to the interest of the consumer and music Creator. In a truly competitive market, where Creators can compete with Creators, a broader range of music would be promoted more fully or could be expected to be promoted more fully.

**Changing sources of income for Creators**

11. In addition to the statistics and figures in the CMA Statement of Scope, it is important to understand that for most Creators receipts from streaming are now the main source of their business. Taking 11 Artists as an example and calculating the total value of their income previously attributed to traditional sales, 90% is streaming, 3% downloads and 7% physical (largely driven by the uptick in vinyl which has become a collecting passion for many). Streaming is now clearly their core business.

12. Moreover, the structure of the industry has changed from passive use or discretionary / luxury purchase to utility product - and a utility where the combination of the platform and Major Label oligopoly retains 73% of the income. Creators continue to be locked into their deals by Record Labels who release the Master Recording and deliver to DSPs. Publishers (the three largest being owned by Record Labels) who represent the Songwriters receive their share of Performance income (collected by the PRO) and the Publishing Share of Mechanical Income (collected by MCPS) and service their music to a wider audience via usages in TV, Commercials, Film and so on. Songwriters are also locked into their PRO (Performing Rights Organisation, PRS in the UK) who collect all Performance income and pass it through in equal shares to the Publisher and to the Songwriter. This will include Streaming revenue but also the share a Songwriter is due via things like the BBC Blanket Licence or 'General Licensing', which is the collection of licence fees for venues who play music like bars, hairdressers and shopping malls and they collect Live Performance. Live Performance is generated by playing live in venues either yourself, or someone else performing your song. It is also important to point out that the reliability of the cashflows that accompany a utility mindset/ consumption, which has narrowed the discount rate used to value music assets and made them much more valuable. None of this has been shared with the Songwriter and Artist.

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13. Previously, 'going platinum' – i.e. a million album sales to music enthusiasts – was the benchmark for success. Now, streaming services (Digital Service Platforms, or 'DSPs') have broadened access to music significantly, with some individual tracks being played hundreds of millions of times. This is a result of what used to be the passive consumer – who never paid for music previously – now spending c. £120 per year on a streaming subscription. Music has gone from being a discretionary or luxury purchase to a utility product.[8] However, the system has been set up in a way that mainly benefits the Major Labels and the streaming service, adding up the platform, Record Label publisher means 73% of all income is retained by the oligopoly.

**Changing patterns of demand**

14. Consumers can enjoy streaming where they can search and select a particular record they love and play it. Or, alternatively, listeners can enjoy it in more of a radio format by selecting a playlist they love which they know plays a musical genre they enjoy, exactly like choosing a

[8] See DCMS "Economics of music streaming", Second Report of Session 2021–22 https://committees.parliament.uk/publications/6739/documents/72525/default/

radio station, or simply starting with a record they love and then letting the DSP continue to run, playing music from a similar range and trusting it's algorithm to choose well and listen to what it chooses. So, listeners start with a search of their own and then listen to the other choices, rather like a Radio experience. They can discover more and are seeking out new products from different generations and geographies.[9]

**Changing levels of control over markets**

15. While this market is huge with Spotify alone boasting 180 million paid subscribers, it is dominated by the three Major Labels, industry projections suggest that market is likely to grow to between 1.4 and 2bn paid subscribers in less than 10 years. The Major Labels dominate and their dominance is enhanced by the conflict of interest created by the three Major Record companies (Universal Music, Warner Music, and Sony) owning the three largest Publishers (UMPG, Warner Chappell and Sony ATV respectively). This is critically important to understand. These three Publishers are being prevented from advocating for Songwriters' interests as a result of being controlled by their parent companies who wish to push economic improvement towards recorded music where they make an 80% gross margin and a 40% net margin. In effect, Major Labels owning Publishers limits truly independent interests from allowing the market to develop and function effectively and for value to benefit talent as would be expected from a more competitive market.

16. As a guide to how the revenue from music is split, the typical income earned by a master holder is c.[✂]%. The typical income earned by a Publisher is c.[✂]%. Given the Major Record Labels own the Publishers, it is in the Record Labels' interest to push for the income received on the master / Sale side to be greater than on the writers / publishing side. This cross ownership may be regarded by the CMA as a situation that creates an Adverse Effect on Competition, limiting innovation and stifling investment in new services.

17. We urge the CMA to investigate whether the publishers have freedom to set their own commercial strategy and pursue their own economic interest in competition with each other or whether they are restrained by their shareholders from doing so.

18. The Major Record Labels not only retain the majority of the income, but they are also paid faster than Creators. More significantly, for cashflow purposes, the Record Labels take payments through an automated process which is near instantaneous whilst the publishing side (Creators) are paid in a more cumbersome, manual process which is much slower, often taking many months. The impact on individuals of this late payment of royalties is often very significant, meaning they receive less money than they should due to the manual mapping processes required on the Publishing side. It is estimated up to 35% of Publishing Data is not processed. This means that Creators have to find other sources of income and may exit the business entirely.

19. Streaming service technology has revolutionised the music industry, expanding the market for the benefit of consumers, but they have been increasingly controlled by and for the benefit of the Major Labels, to the detriment of Creators, and ultimately the reduction of competition among the Labels is a reduction of benefit to consumers. Streaming has given millions of records, Artists and Songwriters a second life. The relationship between the three Major Record Labels holding the master recording ('master') and the control they have over the three Major publishing companies holding song copyrights ('copyright') is, in our opinion, a mechanism to increase market power and control.

**Changing value from different forms of distribution.**

[9] [✂]

20. The consumption of music through streaming generates a 'Publishing' element of royalty. The Record Label and the Publisher/ PROs treat their share in 2 different ways: the Record Label treats all of their share as a 'Sale (Reproduction)' whereas the Publisher and PROs (PRS) treat their share half as a Sale (Reproduction) and half as a Public Broadcast (like radio). This creates a split between a mechanical element and a performance element. What traditionally was divided between 2 Royalty streams: Radio – PPL (Neighbouring Rights) /PRS and Physical - Record Label / MCPS, is now split three ways: Streams - Record Label, MCPS / PRS, leaving no income stream via PPL.

21. Previously, where one saw revenue generated by paid consumption, one saw CDs, vinyl and downloads generate all of the income in the Sales method. The change [✂] here is twofold.

22. [✂] notes that the industry does not agree about whether there is equitable remuneration from streaming revenue by comparison with broadcasting. Record Labels define Streaming as a Sale, Publishers (the 3 largest being owned by the Majors) and PROs say it is or should be defined as a Broadcast. The Publisher version, if applied to the entire stream, reflecting the 2 ways Streaming is used, both as a radio replacement and a Sale replacement, would see uplift for Songwriters. [✂]. [✂].

[✂]

[✂]

23. [✂]. The debate around equitable remuneration is relevant here but should be seen in a competition context whereby the Major Labels appear to have coordinated their competitive position for mutual benefit. They have increased their proportion of value and used mechanisms of coordination and their vertical integration with Publishing companies and with Spotify in order to supress value to Creators.

24. This can be looked at as an issue of equitable remuneration but can also be considered as an anti-competitive consequence of their joint market power which has been exercised in a coordinated monopsony. If the market could be restructured and competition promoted, value can be expected to flow to talent via competition on the merits.

25. It appears that the Record Labels have actively supressed the allocation of income to Creators by deciding that Creators should not be treated in accordance with the traditional system and paid 50% of Royalty as a broadcast when dealing with Spotify and other DSPs. Whether they have entered into documented agreements or simply acted in concert, either way, this issue is an adverse effect on competition which the CMA should address.

26. The effect on entry and innovation has been extreme because the profit margins have been supressed for Publishers which acts as a barrier to entry and also stifles innovation.

27. PRO's also for the first time leave their traditional techniques of collecting revenue for General Licensing (Hairdressers, Bars, Shopping Malls), Live Concerts and Radio and move into the highly complex data processing of receiving reports from DSPs. This involves a process of matching the ISRC (the code associated to the Record) with the ISWC (The corresponding code which represents the Songwriters who contributed to the Work). So we see the role of the PRO move in their role to become the source of income for the Publishing world in relation to consumption almost entirely.

28. One question that arises for the CMA here is whether the Record Labels have agreed, to their

mutual benefit, a definition which maximises their profits and reduces the income to Creators. Whether they have expressly colluded on their commercial decisions depends on history and fact. We understand that early digital streaming was initially treated as a Licence[10] in many cases, and only later was defined as a Sale by all concerned. The CMA should certainly investigate the facts. However, in order to find an Adverse Effect on Competition the CMA may wish to observe that the current situation, with each of the Labels treating streaming in the same way, limits competition between them and acts in a way that deprives Creators of sustainable income, contrary to the consumers' interest as it limits competition among the Labels. In a competitive market the Labels would be expected to compete and not to agree to operate in the same way in accordance with the same definitions - and to operate consistently over time means they are likely to be actively monitoring and enforcing their parallel behaviour.

29. The CMA may observe that the technology shift has been interpreted by the Major Labels to their benefit in a way that was not contemplated by those that crafted the legislation. The legislation[11] which gave Creators an equitable remuneration and a sustainable income. For a sustainable income to be achieved in the streaming age the CMA may wish to prevent or prohibit on-going collusion over what the law means and how it should be interpreted and recommend the government should clarify the interpretation of the law.

30. Secondly, unfair terms including perpetuity were imposed by Labels with market power upon the Creators with Major Record Labels claiming perpetual control. Such contracts are not fit for purpose in the digital era because they lock in Creators and limit market development contrary to both consumer and producer interests. Thirdly, there is in practice some inconsistency between how some Creators have been remunerated for streaming - for some it has been treated as if a Licence (mainly where Digital was not included in their agreement and so it is scooped up here), for others as if a Sale, showing that the definition of streaming and the commercial consequences therefrom is open for commercial interpretation.[12]

**Changes that lock in Creators and stifle opportunity**

31. Most of the Recording Agreements from the pre streaming era are 'perpetual' or at least very long. An extended contract period was put in place by Record Labels was an almost standard practice until the 2010's. The reason at the time was to own the recordings and if the band turned out to be The Beatles the Label was covered. The business model was one that expected most Artists to be unsuccessful and a few to be stars. Many were successful at a moment in time for a short while, and many failed, justifying broad based risk taking. This position is now outdated in the digital era. Now, different forms of distribution from gaming through video are enabling consumers to experience different genres across different geographies[13]. This means business model should change but hasn't owning the lack of competition. Older Artists are being discovered and do contribute to consumers and to profits but the business model has not adapted, and no thought was given to the fact that older Artists might be discovered by new generations and new audiences created via the discovery process available to consumers in streaming.

32. People willingly signed up based on the fact that once their record had lost momentum, their opportunity was over but streaming came along and 're-released' every single record ever contracted. With it, a Royalty Account and the marketing campaigning potential of every single Creator was also reawakened, but the Major Labels businesses and business models lack the

[10] A traditional Royalty rate for a Licence from a sale is 50% to the Creator and a Sale rate from a sale is an average of 20%.
[11] House of Commons Digital, Culture, Media and Sport Committee (2021), Economics of music streaming: Government and Competition and Markets Authority Responses to Committee's Second Report, p3 to 4
[12] See CASE NO. 1:18-CV-20283 Enrique Iglesias v UNIVERSAL INTERNATIONAL MUSIC, BV and Case: 09-55817 F.B.T. Productions LLC; EM2M LLC v Aftermath Records, DBA; Aftermath Entertainment; Interscope Records; UMG Recording, Inc.; Ary, Inc.
[13] [✂]

capital and expertise to properly promote and develop the new market potential of older songs to new online audiences.

33. Why is it important to understand the role of Perpetual Agreement Creators in the Streaming world? [✂]. [✂]. [✂].

[✂][14]

34. One need only look at TikTok, which is used by millions of young people today, to see catalogue plays a vital role here. Young people enjoying brilliant classic songs from the past with no issue they are not current. The world has moved on, but the Major Labels have not.

35. Not only are these records now available again, able to compete if supported for playlist coverage, but they are also available worldwide and "emerging market" or different geographical availability is also driving growth. Another change. Many of these catalogues originally never made it beyond their own local geographic market having previously relied on their Label deciding it was worth manufacturing vinyl and exporting it or hoping later their availability on iTunes would see an upturn in global discovery.

36. This explosion of demand for music in the Back Catalogue comes from the discovery process available to consumers from using technology in streaming platforms. It is doubtful any consumers would flock to DSPs to only hear new music. They are happy to hear new music there but only when blended with music they know and love, and the opportunity to discover other music that they like, which has previously been available only in different geographies. This is reflected to this day in increased Catalogue consumption overall and its recent rapid growth.[15] This discovery process was not available through traditional distribution on CD vinyl or broadcasting.

37. This has given a big advantage for the three Major Record Labels. They own, in perpetuity, the bulk of the records on the DSPs. However, they are not seeking to meet demand of the consumer by innovating and differentiating as would occur in a competitive market, choosing instead to focus on a smaller number of famous Artists and choosing to increase their profits. They have not offered a service to millions of micro-businesses to be able to engage in this new frontier, only to profit from them whilst removing the deeper discovery Consumers clearly crave. Therefore, unless the perpetual nature of these catalogues is challenged, there will be no fair competition where other Labels could have a chance to sign these back catalogues and promote Creators to these new generations and expanding audiences. Today, for the first time ever, almost all consumption of music is paid consumption, whether it is streaming, physical, synch, social media, exercise, gaming consumption. Yet, the Songwriters and Artists are seeing less.

**Non-disclosure agreements restricting transparency and preventing entry and innovation**

38. **Another fundamental change**. The NDAs between the owners of the recorded music and the DSPs means that earnings are not transparent on digital platforms. In the past it was possible to track sales and payments. Record contracts are based on percentage royalties. So, Creators and businesses dealing with the back catalogue on the steaming platform are not able to see what the percentage is based on (gross).

39. The streaming position is in stark contrast to physical world distribution or previous digital

[14] This is US market, but it is expected to be similar in UK. This is why the CMA should investigate

[15] [✂]

distribution. In the physical and download space there is a 'Dealer Price'. This is based on what a store pays for a CD, for example, maybe 5.99 and they then sold it at 9.99. Or it was based on 99p from iTunes minus the commission of the Apple Store. Essentially, the Record company received a payment per sale. A model one could understand and use to calculate what to spend on promoting and distributing the record, a decision often jointly made by the Record Label and Creator, who recouped most of those costs. By contrast the complex streaming model is shrouded by NDAs which hides exactly how that works and what the rates are. This prevents financial planning for the millions of micro and small businesses (which we explain further below at question 4).

40. The competition concern for the CMA is that these NDAs limit market transparency and reduce opportunity for promotion, market development, entry and investment that would benefit both the consumer and the Creator. The CMA should also consider whether use of NDAs is appropriate in a competitive digital streaming market where opportunities for new market development abound. One would expect, in a competitive market, that such information, which drives market development, would be more freely available.

41. Here there are three Major Record Labels which provide offers made up of advances and royalties. The advances can be compared, but the royalties cannot as they are covered by NDA, meaning the Creator cannot effectively shop around, and competition is stifled. Increasing market transparency would enable new entry and alter the current (oligopolistic) market structure over time and encourage new business and innovation. The NDAs are thus acting as a barrier to new entry.

42. Creators are micro-businesses and a key element of the streaming value chain, acting as influencers on social media and as their own promoters and presenters. The way in which a Creator views their songs has changed. They are in the streaming value chain and in themselves a micro business, paying tax and employing staff, must now consider their work as a lifelong asset. This asset will be exploited 24 hours a day on multiple global stores, and they must make plans for those songs in their Last Will and Testament to cover their copyright of 70 years post death where they and their estates may also earn incomes. They can also consider selling these assets to the Major Record Labels, funds, or investors and so the need to take care of them.

43. Transparency would enable further market development by Creators themselves but is prevented by the NDAs. Effective data management is critical for those micro-businesses to do financial planning; provision of data should be accurate, timely, and sufficient to enable commercialisation. As a microbusiness, each Creator can then invest its time and money into keeping its records relevant for as long as possible. We consider that the CMA should create a system for the publication and oversight, in line with the EU Transparency Directive Article 19, which has not been implemented in the UK.

**Changes to processing and payments of cash to Creators and bad data in the system increases income to Major Labels**

44. So, we see another windfall arises from the payments systems applied incorrectly by the Major Labels denying: Creator's income which is owed but difficult to assess because it is covered by NDAs.

45. We understand that unreconciled income falls into a "Black Box" and divided between Major Labels, Publishers and PROs, according to market share.

46. The mechanism chosen by Major Labels is also the first time where 'Market Share' and the payments which come to Record Labels are based on how much of the market they can dominate. Market Share is applied to payments from Black Box income, i.e., any revenue which bad data has failed to get to the correct Creator, is shared based on the Labels market share or

size in the market. The precise distribution mechanism is not clear. The practice is now widely used and involves considerable amounts of money. One aspect is as follows: if a record is released with another Superstar who is on another Label, a 'waiver' is granted from the Label that borrowed the Superstar. In this waiver it no longer solely deals with the payment the lending Record Label will get but goes into detail of how the Market Share that is generated by that song will be divided. Such is now the ferocious fight for as much Market Share as possible to go to each Record Label and the revenue that generates.

47. We explain the different royalty rates by different types of distribution mechanism, whether Licence or Sale and how this is distorted by the Labels below.

48. **Streaming is a Licence.** In the Streaming Era, we have seen income be treated in different ways, generally to suit the Record Label. It's important to look at the previous methods of labelling a type of income which is then matched to payment terms by the contract. In the contract the types of income are all given the percentage at which they are paid. Licences are normally in the 50% range, Sales in the 20% range. In the current formation of Royalty pay-outs, heavily weighted to a Stream being a Sale, this model is incorrect as it is a Licence. Not only is the current split per Stream non reflective of its broadcast and Sale component, but the consumer does not retain the benefits of ownership as would arise in a Sale. The ownership is retained by the Labels and the Streaming platform. Because of the mutually reinforcing oligopoly, market power has determined the outcome to the benefit of the music Labels and against the interest of Creators. This would not have arisen in an open competitive market.

49. **Sale**. A Sale is a reproduction royalty: number of units x Published Price to Dealer x royalty rate. The royalty rate is a low number, usually 18% to 30%.

50. **Licence.** A Licence is a profit participation. The distribution amongst the participators is on the same basis that the revenue was received. The distribution of the profit is usually 50/50. The Label receives a mater usage Licence of £100,000. It splits it with Artist on the exact same basis that it received it - e.g. 50/50.

51. **Spotify and Record Labels.** The relationship between Spotify and a Record company is governed by a Licence. For the Major Record Labels, it is calculated as the higher of:

51.1 % of receipts

51.2 Per subscriber minimum

51.3 Per play/stream rate minimum

51.4 This arrangement will be complicated further by advertisement funding. The marginal rate paid by Spotify to Label per stream will consequently change each month. The Spotify agreement is under an NDA and there are no traits of a Sale in the Streaming Model. To be a Sale you need to have sold a 'Unit', previously a CD, vinyl or download. 1 item, 1 price.

52. How this is applied is seen by example We have seen reference to Artists making claims who saw initial Royalties from 2006 / 2007 from Spotify come in as a Licence and then be changed to a Sale rate as the revenue became significant to the Record Labels. We also see now, in the case of example of Seal (the British, globally successful singer who is locked into a Perpetual Deal at Warner Records), where the income IS paid at the Licence Rate. This is because in his deal there is no Digital component. The Label, like everyone else, had not considered this to be a format in the future at the time the deal was signed. So it was either lose streaming revenue or pay the Licence rate. So in some cases they claim it

is a Licence, in others they claim it is a Sale.

***(1) (b) The main changes in the music industry as part of the shift to music streaming in relation to the cost structure of the industry?***

53. The cost structure has for Record Companies has become proportionately smaller, hence their higher profitability. They can put out songs with far less cost and lower risk now that no manufacturing is required. Another fundamental change is the full range of titles available to the consumer all of the time on a streaming platform. One never really saw deals of this scale before streaming. No one ever sold all of their songs on vinyl to arrive at HMV. This is the model of the digital platforms allowing streaming and high capital costs and technology costs to be shared across many geographies and audiences.

54. Digital delivery means less costs for the Labels to risk in terms of manufacturing and distribution. Where Labels used to have to pay for manufacturing of CDs, tapes and vinyls, they can now distribute at low cost as digital transmissions. There is also less time required between completion of a record and release due to no manufacturing need. The Major Labels have increased their profits as a result.

55. There is a much larger increase in supply. Anyone can get a song on a DSP now if they have a distributor. Therefore, the number of songs in the marketplace and the global nature of the presence of the record has changed completely. For example, Creators often only knew their chart position in maybe three countries. Now they can see their chart position immediately, their presence in localised playlists and the charts feed into 'Global Charts' which update daily. Charts as we knew them have become defunct. There used to be prestige to a Number 1 record announced on a Sunday. Now it is daily and often not only the UK that Creators care about. This adds more pressure to Creators to think about how to address markets on a global scale and often leads to additional costs for Creators in hires in their team or hiring third party agencies to help them achieve greater global reach.

56. Due to the nature of the speed and volume, Record Labels are also often signing repertoire at great pace. This has stretched staff to have to care for more and more Artists in one go and not have the same time to nurture the 'Frontline Business' (new recordings). Artists will be judged on very early performance (the throw it at the wall concept) and if momentum does not build, their Record Label moves on (whilst the Artist remains locked-in to the contract).

57. The streaming era has been accompanied by the social media era and the Record Labels are able to judge new signings with multiple indicators of popularity and data on the target markets accumulated by the Artist prior to any deal being struck. This means that the Labels face less risk per Artist. They also face less risk because they don't have as high costs in developing or printing and producing the physical record or CD.

58. If you are an Artist or Songwriter with a record which is not 'in cycle' (i.e., not released very recently) you would traditionally expect no support from your Record Label who would draw a line under risking more manufacturing spend. However, as a streaming Artist you can now push all of your records all of the time if your Record Label actively engages with you. Even those with brand new releases will be looking at how to push their back catalogue at the same time to continually refresh interest in their complete catalogue with a view that all records now exist for life and all records are valuable and to be taken care of.

59. Turning to variable and operational costs, the staff costs of those who specialise in plugging DSPs (similar role to a radio plugger where staff pitch to the DSPs why their record deserves good coverage in playlists and digital banners on the headers of key DSP home pages and DSP marketing spaces such as a Spotify Times Square New York billboard) has occurred, replacing the cost centre which sat in 'Sales', the team who sold to the record stores such as HMV and

supermarkets.

60. Meanwhile, the costs of Creators have increased. Whilst the music business is now really open for all like never before, great records are not made in an entirely different way. They still require studios, Producers, musicians, featured Artists, mixing, mastering and so on. Those costs are all borne by the Artists, not the Labels. One could look at the largest records of recent years, especially those who one can tell will stand the test of time and one can see they all used traditional methods. Perhaps the equipment in the studios is more digital, but the process of recording is still an expensive process. The demand for top Producers and top featured Artists has risen. Top 50 records in Spotify can create featured Artist costs of up to $400,000 USD. So where someone has chosen to add other famous people to their Record to maximise reach, it comes at a cost which comes from the Creator's advance or as a recoupable cost to be paid back from their royalty share.

61. In addition, the number of platforms one needs to operate and fill with content and the sheer attention span of the consumer being so much shorter, a drip feed process of new content to keep building and building a record occurs. It's no longer a video premiere on MTV or Top of the Pops. It's a music video, lyric video, assets for Instagram, assets for Tik Tok, assets for Triller, Press shots, and Canvases for Spotify and so on.

62. It's important to add here that almost ALL of the successful Artists in the space have learned to hire their own teams to supplement the Record Label's provisions. Whether that is running their social media channels, additional digital strategists, content Creators or marketers, all of them boost their staff at their own cost.

63. Management teams also build their own relationships with the DSPs and Radio Stations and key platforms and work on top of the Record Label to boost their chances of success. It is not the case that one hands in a Record and then turns up for some promo anymore. Creators are there, in the thick of it, all day. There is low risk in Artists signings today – Record Labels will not sign an Artist without doing research on the Artists' independently released songs and videos (at the Artists own cost) that demonstrate that the public has talked back positively and in big social media numbers.

64. Records don't tend to 'build' the same momentum anymore. They behave in a different way. Before iTunes, one would not release a record when it was on the radio initially. One would get it onto radio if one could and then one released it at peak interest and then worked as hard as possible to climb the charts.

65. This changed during the iTunes era to be what's called 'day and date'. This meant it comes out on the day anyone hears it. Indeed, Creators cannot now have their record played on radio before it's on DSPs and expect DSP support. This means it's one huge push to go from zero to one hundred speed and records can live or die in one week.

66. **So much of the cost types needed for all of this, are 100% recoupable and paid for by the Artist from their Royalty Share.**

67. To illustrate the relative costs reductions over time for the music Labels by comparison with Artists, we looked at [✂]. [✂]. [✂]. [✂].

[✂]

68. We also need to look at staff allocations within these organisations. It would be fair to assume an identity of economic interest between DSPs and Creators this is because the demand for catalogue both by the DSPs and each Creator who has such catalogue, will seek to make as

much money as possible by receiving good attention on their works, advice on best practises and Playlist Plugging. While this is true for certain Artists, it is not true for most in the Back Catalogue, meaning that new product markets are being limited and differentiation and opportunity is being limited. For example, in Universal Music Group London, there are approximately 80-90 people per Record Label (Virgin, Polydor and Island), 30 in Central Services largely servicing international promotion of the 3 Labels and 20-30 people in catalogue. That's catalogue getting approximately 10% of the staff whilst achieving 74.5% of the streams. This also means the personal attention of those Artists meeting anyone or speaking to anyone about strategy is almost impossible.[16]

69. [✂] has met multiple classic and very successful Artists who had not heard from their Record Label in almost a decade.

70. Whilst this is seeing some very slow improvement, the Record Labels have locked Creators into perpetual contracts while failing to promote and address the opportunity to meet cross generational and expanded geographic demand. Streaming is a gift to the music business as can be seen by increased revenues and yet the music Labels are squandering the opportunity. It is unlikely that smaller Creators with less star power have heard from their Label at all since 2006.

71. DSPs also provide a fraction of the staff allocated to new music to Back Catalogue Creators. Other businesses that could promote songs to willing audiences are being prevented from doing so by contracts entered many years ago in a pre-streaming era on extended or perpetual terms.

***(1) (c) The main changes in the music industry as part of the shift to music streaming in relation to the risks that music companies and music streaming services take on?***

72. Record Labels take the risk that the Artist may not be successful, that they will not make their money back on the Advance and any non-recoupable costs. However, Record Labels are taking on much less risk than they used to do per Artist; in the digital era their risk has reduced. This is because the effort made traditionally per Artist was much higher, now the catalogue Artists aren't provided with any support for promotion and sales (e.g., in relation to promotion on Facebook, Instagram, or other digital outlets), while new priority Artists will receive full marketing support. If the market were to restructure, and perpetual Licences were to end, new entry can be anticipated that could be expected to promote all Artists over time in different ways. This is not just new DSP entry into the market, but a labyrinth of supporting companies required in great record promotion, such as vinyl remastering, graphic designers, content Creators, social media strategists, radio pluggers, playlist pluggers, and the inevitable boost this generates in the Live market.

73. The music companies have mitigated their risk by entering into agreements under NDAs which appear to operate to mutual benefit and to the disadvantage of listeners and lock-in Creators.

***(1) (d) The main changes in the music industry as part of the shift to music streaming in relation to the way firms compete at different levels in the music streaming valuechain?***

74. In terms of DSPs they compete with radio which was their main competitor when they began for people to listen to music served via algorithm / taste preferences.[17] We saw a different set of rules start to come into play when coming to release a record. Generally, there used to be exclusives played on radio before formal release and this pre-release activity in marketing and plugging the record would have been a cost to the record Label would be. However, as explained further below, warnings from the DSP against allowing a record to be on radio before

[16] The source is confidential

[17] There are many markets in which radio is a strong competitor as is evidenced by its longevity with advertising communities

its available on a DSP can result in a lack of support on the DSP.

75. Distribution and promotion are essential to a competitive market. This can be over radio, live, TV, social media, and many other digital media, but what has happened is that Spotify and the Major Labels are controlling distribution and promotion via Spotify's "Store Turn" (the weekly time set when all new music enters the store, traditionally midnight on a Thursday). Spotify will recommend or require Artists to only allow distribution of a record through other mediums only if released at the same time as through the DSP. This means that all distribution goes via the Spotify store turn at midnight in each market. This is not good Creators who struggle to get their music out, and not good for the listener who has less opportunity to listen to the content before formal release. Pre-release promotion used to be a big business. Spotify's Store Turn practice affects an entire industry of Promoters and independent outlets and the creativity that can be brought to bear using pre-release creative strategy.

76. Pre-release promotion activity has been dramatically affected by the rise of Spotify, which appears to also be to the benefit of the Major Record Labels. It is not clear whether this is the result of agreements between the Major Record Labels and Spotify. In relation to post-release promotion, Universal Records, as one example, will ask the Artist to post on social media about Spotify first. It is not clear whether this has anything to do with Universal's equity stake in Spotify, especially as of the three DSPs, Spotify is the lowest payer per million. This appears to be a situation which is causing an adverse effect on competition and [✂] urges the CMA to intervene to prevent it continuing (see further Annex 1).

77. Record Labels will also seek to supress pre-release promotion and prevent Artists giving exclusive content to other DSPs, i.e., a bonus track or recording of a live performance. Artists' Record Labels will warn them against it, but if they push for it, will then often deny the request to distribute the exclusive content for them. It is unclear if this is coming from the DSPs or the Record Labels' commitment to the DSPs as the agreements between them are under NDA.

78. In response to the question, Creators also compete with Creators. Competition is achieved by raising awareness and promotion among fans, and that has been undermined. As such, this system also undermines competition between Creators as microbusinesses. As an example, pre-promotion for an Artists' Friday release could include a television performance on Jooles Holland, an interview and world premier play on Radio 1, and a live stream on their own social media of the song direct to fans. This would drive demand to the DSPs to search for their record upon release and give them an edge over anyone else releasing that Friday. None of these activities are now permitted without risk of loss of promotion on the DSP.

79. This can be further examined by the CMA if it were to request further information from radio stations and British music managers (contacts can be provided upon request).

***(2) (a) To what extent do costs change, if at all, as music streaming revenues grow, and if so, what drives any changes in costs for music companies?***

80. Overall, the Record Labels' costs don't change much with increasing revenues. There is not a directly proportionate relationship between costs and revenues, hence their increasing profit line. However, they do put effort and cost into certain priorities. Based on the priority level of the record which may include examining factors such as 1) past sales history 2) feeling the temperature of the fan base about the feeling of new music arriving, the Label will set a budget for all the assets which will drive streaming. Digital ads on platforms like TikTok, content like music videos and social media content, traditional media like billboards and newspapers – depending on the target market.

81. They will judge very quickly as the Record starts to react, when released, how much more they put in. This can be if perhaps they feel it's underperformed and they are willing to gamble on

it with another round of spending or they will keep spending if it's reacting, focusing on areas where they saw the ad spend gathering most success. This is very easily trackable now in a digital age.[18] One can see from digital data where impressions, use and click throughs have meant the spend made a difference. One can see the streaming progress via platforms DSPs provide in real time. Data is thus at the DSP's fingertips in relation to consumption. This data is not passed on to Creators and is instead covered by NDAs.

82. What is important to understand here is if Record Labels can embed the record enough into the playlists of the DSPs and the consciousness of the public, the Record will continue to perform for its full contractual term, earning revenue when no marketing spend is necessary for many years, or in Perpetuity, depending on the Contract with the Creator.

83. The Creator will also be heavily involved. Very few Creators sit back and don't engage in digital promotion through investments in their own team and content. However, with NDAs in place they cannot see where they should invest their time and money. They can see consumption data on the app's provided to them by DSPs. These Apps show Artists' entire Catalogue. However, they lack critical data that is vital for Artists to support promotions.

84. The data exists on Spotify and with the Major Labels but is covered by NDA. Creators as microbusinesses could respond to the relative success of different DSPs and manage their promotion and budgets to maximise their success with different audiences. This is currently prevented by the Major Record Labels through NDA restrictions and activities such as delayed delivery of information which should be instantaneous in the digital era. Their Record Labels can share with them Active and Passive Streamings. Active shows when people searched for the record which is deemed a higher level of engagement and Passive means they listened to it via the algorithm. They can also tell Record Labels things like 'Skip Rate'. This is when someone started to hear a record and skipped to the next song. This is another example of Spotify and the Major Record Labels misusing data in accordance with the principle that information is power and controlling distribution and outlets and preventing competition from emerging. This appears to be another practice across the industry which gives rise to an adverse effect on competition.

85. Furthermore, nowhere is the connection made between this rich data and the financials. There are some elements of it on Artists' Royalty Portal which delivers the income report to them, typically around six-twelve months later.

86. Not being able to understand the deals between the Record Labels and the DSPs as they are under NDA means Creators sit with old financial data trying to link it to consumption data with no real understanding of what type of spending the Creator invested benefitted the Record.

87. This means the ability to plan future spending and time planning is impossible.

88. This affects consumers. A lack of confidence in spending on recording is happening on a national scale and the inability to learn our market and innovate in areas of success to deepen the fan engagement and relationship they enjoy.

***(2) (b) To what extent do costs change, if at all, as music streaming revenues grow, and if so, what drives any changes in costs for music streaming services?***

89. In our view their costs would not increase if a record was particularly successful. However, the

[18] The CMA has been reviewing the issue of Apple and Google blocking access to tracking data in the Apple and Google investigations and This should be addressed in the current Mobile ecosystems Market Investigation where the CMA needs to further investigate and check that this data will not be blocked only for the benefit of the owners of the walled gardens: Apple and Google.

DSP would still take a 30% cut which we are told is per stream

90. In fact, the costs of cloud computing for the DSPs are likely to be falling, as cloud computing costs have fallen over time.[19]

91. We do see merit in the Spotify claim against Apple and Epic claims against Apple and Google, that those Major technology platforms are over-charging all app providers, including Spotify and other potential distributors of music online. We note the CMA is investigating this in its Mobile Ecosystems Market Study, together with the policing mechanism which Google and Apple impose of bundling together their data within their platforms and bundling payments mechanisms with their app stores. Spotify and the music Labels also appear to be engaging in similar practices that restrict competition. The CMA should investigate this further not simply in financial flow analysis but in understanding contractual terms and the prevention of independent promotional activity.

***(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?***

92. Yes, there are lot of opportunities for growth all of which sadly sit in danger of falling into obscurity due to the same issues of market dominance by the Major Record Labels. The following new growth opportunities could provide opportunities for competition, given time.

93. There will continue to be explosions of apps who require music for their success and in turn can become a revenue stream and promotional opportunity for records. Some prove to drive awareness.

94. In most cases the Creators have no say or visibility if their records are on the platform (some may want to object) and what their financial deal is for that platform to determine what success may mean for them in the future in terms of revenue or to educate their spending when confirming budgets they have to recoup or investing additional funds of their own in being prominent on their ‘channel’ on that App. For example, to take real advantage of TikTok, a Creator could have its own channel and engage with its own content (99% made by the Creator) to gain Followers. Followers can then be engaged in campaigns around Records.

95. **Gaming**. We will see a continued rise in gaming. Many young people now spend three times more time on gaming platforms than on social media. Games generate exposure to different types and genres of music and help to support intergenerational interest.[20]

96. **The Metaverse**. As an extension from the gaming explosion, platforms like Roblox and Decentraland are providing entire worlds online which will include music, live performances by virtual versions of the Artist like Travis Scott and Ariana Grande in Fortnite.

97. **NFTs**. Non-Fungible Tokens are actually not just about art and content but are the technology by which these are delivered. They may well turn out to be a revolution in cleaning data for all new Artists by creating smart contracts as the ‘source of truth’ the data we have now sorely lacks and profiting from selling music directly to your wallet. It may also be the future of royalty payments removing archaic outdated systems which take us to a world of the 30-day where the Creators can be paid by DSPs as opposed to now where we have a system which can take 18 months and non-transparent payments which have flowed through multiple 3rd parties and

[19]“nevertheless the largest sample, 41 percent, said cloud computing reduced costs from 10 to 25 percent, while 19 percent said it providing 25 to 50 percent in IT savings, and 27 percent said it only cut costs by 10 percent or less” Does Cloud Computing Reduce IT Costs? -- Virtualization Review

[20] [✂]

deductions. This is the first sign of the next generation developing and owning a system which is simple, safe and transparent and once they are used to this it will be hard to get them to comply with current broken methods of royalty collection.

98. However, without changing the fundamental structures of the market dominated by the Major Labels, this potential competition cannot be fully achieved. This is because:

98.1 All of these models will be handled by one mass Licence. Where one Label licences ALL of its Master Recordings or Publishers licence ALL of their Repertoire. Most of this is obtained through perpetual contracts, which could not have contemplated this digital era beyond streaming. This is how they get the best deal by wielding the power of combining all their Artists.[21]

98.2 All of them are vulnerable to be asked to give up shares to the Labels or Publishers in the process (Labels more so). These shares belong to the Label, not the Artists whose collective power was the cause of the equity being gained.

98.3 Creators have no visibility on any of the process because of the operation of NDAs. They are not notified when a Licence is completed in almost all cases. Sometimes you see a splash about litigations being solved but not the hundreds of Licences that occur. They are not shown the terms of the rates of sale. They are not shown if it's handled as a Licence or Sale (which sees a huge royalty difference). They are not entitled to a share of the proceeds of the shares, or any shares allocated to them in their Royalty Portal to do with as they wish. Not only does this financially blind them and remove a vital new Royalty Source where their 'Shares' in the power of the Major to which their Masters contributed was not rewarded but it also means that if they want to know all platforms, they are on so they can support them in social media, run content on the platform and of course know how much to spend… they cannot with ANY level of ease. This is reserved for the very few top platforms and the information is patchy and never financially based.

99. The CMA should investigate how the music business should be adapted to each new frontier, to ensure the current flaws and market failures do not carry across to the next new frontier.

***(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?***

100. We appreciate that in paragraph 81 of the Statement of Scope, the CMA states that it focuses on the interests of listeners (Consumers) intertwined with those of Creators. We are grateful that the CMA seeks to understand how competition in the market serves music Creators and how that may affect listeners. It should be borne in mind throughout that Creators and other players in the value chain are consumers of the services of the DSPs and Major Labels. For competition to be effective, it needs to be considered at each level of the value chain and where the CMA identifies an adverse effect on competition, competition may need to be promoted in accordance with the CMA's statutory duties.

101. In general, the approach of the CMA is that this is about the listener and it's not looking at the Creators in the chain. Every Artist or Songwriter is a micro-business. Sometimes they plan or have built a bigger business looking after multiple Artists. There are also the Management companies, Business Managers and Lawyers who also exist as a service business to these Artists and Songwriters, also employing staff. They stay involved for the entire process and sit in a chain from creation to consumer and the revenue they subsequently receive.

[21] This appears to reflect the economic model used by the EU Commission in EMI Universal see annex to EU Commission Decision.

102. Multiple issues the CMA are looking at affect these businesses. They are much more than Artists or Songwriters. They are micro businesses creating assets that are their livelihood, they create expenses, they invest in their future and can create long term valuable assets which can serve as a pension and a gift in Death to their family. The approach is not to solely consider them as Creators, they are the very backbone of the British business dream which is to operate in a free market. How do they choose which Major Record Label to even sign to if they cannot ask one thing? How much do you sell my music for? How do they plan? How do they compete with each other?

103. The Creator is the Consumer too. The Consumer of the services of the Record Labels, Publishers and the DSPs (see Annex 1).

104. **PRS is the sole PRO for the UK.** It is by definition a monopoly and the sole collector of Performance Income for Songwriters and Publishers in the UK. It has proven to be non-transparent, slow, riddled with bad data and sits within the protection of claiming Creators cannot audit them. This is a disgrace and has to be looked at immediately. PRS refused to share data with the IPO Creators Earnings survey which was published last year. We do not consider that PRS is fit for purpose. PRO's also for the first time leave their traditional techniques of collecting revenue for general licensing (hairdressers, bars, shopping malls), live concerts and radio and move into the highly complex data processing of receiving reports from DSPs. This involves a process of matching the ISRC (the code associated to the Record) with the ISWC (the corresponding code which represents the Songwriters who contributed to the Work). So [✂] the role of the PRO move in their role to become the source of income for the Publishing world.

105. Another of the concerns for Artists is that streaming payments are often not paid "at source." At source means that when a stream occurs internationally, it is sent back with no deductions. A typical example works like this: a U.S.-based label has an affiliated company in various territories outside the U.S. These affiliated companies pay a Royalty to the U.S. Label, possibly as low as 40%. Of this remainder, the Label reduces the Royalty paid to the Artist in the same proportion that the Label's share from the affiliated company was reduced. The removal of NDAs and Data Transparency relating to financial flow must be investigated to show the 'At Source' contractual right of a Creator.

106. We would like to request a meeting with the CMA to explain this to you and to explain Major business decisions which will be taken in the short term if change does not occur. PRS successfully lobbied the Government last September to reject the recommendation from Parliament (which came from the MMF White Paper) that international data flows & income should be required to be transparent to Songwriters whilst enjoying an exclusive mandate to collect global revenue. They argued that the PRS is already regulated under the CMO Directive by IPO and that it is not possible for them to have visibility or transparency of other societies' practices. This rationale is referenced in the Government response. However, the impact on competition was not considered. When the impact on competition is factored in, as we will see below, the inefficiency of the PRO is having an adverse effect on competition which requires a remedy.

107. PRS has determined that, by virtue of it being the legal owner of the rights that are being exploited, it is the Principal party in its agreements with its members and as such the financial statements have been prepared on this basis with the full gross royalty revenues accounted for as revenue in the Income Statement. When making this assessment, PRS has considered that it is a condition of membership that members assign the ownership of the performing rights in their musical works to PRS throughout their term of membership, subject to the provisions of PRS' Constitution, and that PRS is entitled to exercise independent decision-making and discretion in relation to the royalty sums it receives, including decisions relating to their distribution, investment, and application for the purposes of PRS business activities. This cannot be possible in a modern digital world where a membership which pays you no advance and where you have no option to select services based on their ability to deliver 'owns' your songs (see further in Annex 1).

108. There is no competition in the market. They collect multiple sources of revenue, but Songwriters cannot leave and engage Direct Digital Collection Revenue services by alternative Companies without being forced to leave PRS entirely. It is an all or nothing service. As the sole collector of Performance Share and Mechanical Revenue in the UK they are arguably more powerful than all Publishers combined and yet they sit refusing data to governments despite having the global mandate by their members to collect revenues worldwide. We have seen no real strengths come from this dominant representation. We have not seen significant and bold rises in rates. We have not seen Spotify matching Apple's rate. In the USA we have seen competition being allowed between four PROs and the benefits of a competitive market. People move between them to get better rates and service with a greater demand to serve them well. The relationships BMI, Ascap, GMR and Sesac have with their writers is more personal, supportive and competitive. People can secure advances and have the right to move around if they begin to feel unsatisfied.

109. The CMA cannot have a true monopoly enquiry without looking at PRS and its role which has failed to lead us into a new era whilst sitting in a place of comfort. Their approach that they 'own' the copyrights rather than serve the Members is becoming a real issue in how quickly and radically we need to change to adapt to the streaming era.

110. Songwriters are unable to opt out of Digital Collection by the PRS and only have them collect certain streams of revenue. They cannot go to DSP's directly unless they leave as a Member. As Creators start to take their rights into their own hands and want options to go directly to remove the middleman who offers them no transparency, they have no choice but to leave PRS to do so.

111. Competition in the marketplace would see control return to the Creators and their businesses to do the best for their own royalty flow and shake up data standards to be competitive.

112. Streaming creates trillions of lines of data. PRS, a charitable organisation, is not fit for purpose to service Digital revenue. Options to opt out and go direct or use alternative new companies who specialise in data processing of this magnitude need to be able to compete in this space. The British Government has pioneered Tech Innovation in the UK including tax incentives to give us an edge in the global tech space. We have great businesses with one hundred times the data capabilities than PRS who could compete for this business.

113. PRS also collects general performance for which it charges bars, shops and public spaces to be able to play music. Whilst it has tested in small numbers of products, like Audoo, (which is a plug in Shazam type piece of software sending data back of the songs played in these venues) it has failed to roll this out in any level of scale and is currently reporting inaccurate numbers. PRS should be made to open up the market to competitors for the collection of Digital Rights and be made to focus on its original areas they have still failed to deliver accurately and deliver correct data in those areas.

114. PRS is a monopoly, and the CMA should take steps to ensure competition which will promote British music innovation. There are healthy models of competition delivering the best for Creators which can be used as examples by the CMA (see, for example, the US). This would encompass competition between performing rights organisations in the UK that collect data and make it visible in a way that is timely, clear and sufficient for Creators. As with use of NDAs, the non-auditability of PRS also needs to be addressed.

115. At this time, Publishers and Songwriters are looking at their options for collection of digital rights globally. Streaming made the world a global market and as such we are seeing writers and Publishers in their masses looking at options for who is best to collect global revenue on their behalf. People are shopping around. They want transparency, they want accuracy, they want speed and if we were to create this model to a world class service, we would attract not only our home-grown Creators but globally attract hundreds more.

116. IMPEL, the large independent group of Publishers, left PRS to take their Publishing collection for Performance to SACEM (the French PRO). [✂]. [✂]. [✂].

117. **Data**. The Scope has not tackled the level of investigation into the data which is needed. Streaming created a complex data pattern and a complex payment ratio. Millions of lines of data monthly are generated and linked to getting the revenue into the right hands. If the industry has chosen to embrace streaming and profit from it, it has to acknowledge the level of data required. This applies to Majors, Publishers and PRS and MCPS. If the financial industry decided to launch debit cards but did not back it up with the correct technology having incorrect amounts pop up on your statement you would not allow it. It would be regulated in weeks. How is so much money allowed to get lost? How can there be a Black Box?

118. In fact it could be argued we have stuck to over complicated methods to deal with the new shape of the business. It could also be argued that the industry has chosen not to share their data transparently.

119. Revenues which cannot be accurately allocated falls into the 'Black Box'. It is then more often than not shared out on a Market Share basis.

120. The mechanism through which unallocated or unreconciled revenues are left to the benefit of the Major Labels in their "Black Box" is unexplained, which is damaging in many ways. Without explanation of what is in it, a strategy on preventing it is impossible. Without explanation of what's in it we are unable to understand or even confirm the money in it makes it to Creators or have any approval or negotiation over the strategy by which it is shared.

121. The CMA's market study must include an investigation of the importance of data in the industry, its availability, transparency around data, the timescale in which data is delivered, the problem of the Black Box, and how this can be improved.

122. The CMA should demand a 'Clear Box' which is an utterly transparent set of figures which identifies annually how the revenues ended up there and what data fault caused the income not making it to the correct home and set out a tight agenda for fixes in each area with a view to clean out this dangerous process which also is geared to promote Market Share as a bonus scheme for bad data.

***(5)(a) How do recorded music companies compete with each other in the supply of services to music Creators to develop and bring their music to market?***

123. They do not really compete. They have control over the data. Digital music depends on data. Source data is collected by Spotify and other DSPs. the Major Labels have unique access to source data with which they then promote their own products for their own benefit. That data

isn't supplied through the supply chain, it is protected by NDAs, further restricting competition that could emerge in different levels of the supply chain.

124. We understand that Spotify has 32 product plans (Student, Premium, Family etc.) that relate to different categories of user. However, on average this is reduced by the Labels into just three-line items on the Creators' statement: 'AdSupported', 'Subscription', and 'Other'.[22] A consequence is that competition is being restricted and this is likely to be an adverse effect on competition through the control and misuse of data.

125. An analogy can be drawn with the CMA's banking investigation and its introduction of Open Banking; in the same way the Major banks, like Major music Labels, were controlling data for their own benefit. If that data were made more readily available to Creators and intermediaries, it can be expected that greater competition will occur, innovation will increase with broader benefits to both Creators and listeners. For example, Taylor Swift opted out of Freemium on Spotify and said she would only be on Premium unless Spotify paid properly. In the case of Apple, Apple had a 30-day free trial and Artists weren't paid for the trial unless the listener subscribed - Taylor Swift tweeted on this. If the Creator had more insight into each plan, and more data, they might say they don't want to be in the student plan, because the remuneration is poor or because it is not their target audience and can then craft more focused marketing plans around that data. There are limited examples of very high-profile Artists that have the benefit of being able to switch and change (see Neil Young pulling his records from Spotify), although such decisions are not based on data at the moment. At present, such choices are reserved for a very small group of very successful Creators. If Creators had the data to assess their best routes forward, smaller Creators could benefit from exercising choice and make data-based decisions. Creators may also wish to exercise choice to avoid certain platforms where they disagree with, for example, the platform's promotional actions or political stance, but cannot due to the distributor's business decisions.

126. In addition, they appear to have a collusive arrangement on cross-licencing deals and a "black box" which is based on market share, through which they divide up the profits of bad data.

127. In terms of the supply of services, they will boast team skill sets to Creators which are suitable for their genre. This can be the case, the main example of a Creator having a good experience at a Label is based on the staff that look after them when they are released. Beyond that some may claim to have better data to help Creators target marketing spends or stronger relationships with people who Creators need to help them make their record.

128. The Labels offer 'flashy features' which aren't actually factors of competition. Some will boast a better Royalty Portal or perhaps more regular payments like Quarterly instead of Semi Annual. Some will offer Cash Advances on Royalties still in the pipeline. Currently there is very little data and financial data. These should be thought of as asset portfolios and managed accordingly. A portal should be able to show all the assets a Creator has delivered to their Label, and the profitability and data connections of them all.

129. None of them however provide any real form of Royalty Support where Creators can ask questions on a day-to-day basis to understand their Statement and the business model within it, even when they accept, they don't know the rates of pay. Creators will see inconsistent wording on Synch, no explanation for multiple line items, Black Box with no explanation, Breakage with no explanation and so on.

[22] The CMA should investigate the degree of coordination between the Record Labels/ DSPs that enables them to reduce the line items to similar categorisation and why they limit the transmission of information to Creators, which would enable the Creators to compete more effectively. The Record Labels appear to be coordinating the setting of prices and terms and conditions and the accounting and invoicing and remuneration systems.

130. There is no helpline, no person within the Record Label Buildings you can sit down with.

131. Remember again here that thousands of new Creators were starting to receive royalties again when their catalogue 'woke up' with Streaming. They were provided little to no support to engage in Digital Portals.

132. The current situation is operating adversely to competition, and we look forward to the CMA intervening as it has in the past done to address the problems of oligopoly in relation to the banking sector.

***(5) (b) How do recorded music companies compete with each other in the supply of music to music streaming services?***

133. As described above they don't compete effectively, and the details of their agreements are the subject to NDAs. Competition is limited to signing and promoting new releases. Rarely does it include catalogue unless something special is happening. Most Major Record Labels have a 'priority' list both within a country and globally. This indicates who the Label should focus on from the hundreds of new releases per week.

***(6) How well is competition working at present between recorded music companies?***

134. To a limited extent. The companies will compete at high level for priority Artists and for those Artists with real potential. We are seeing some now look at catalogue a little more carefully but it's the tip of the iceberg for the numbers of records we are talking about locked in perpetuity deals. The proportion of attention is vastly out of proportion, and this is also connected to the security Labels feel in the fact that catalogue is almost entirely in Perpetuity deals and cannot leave and choose a more proactive home.

***(7) How, if at all, is competition between recorded music companies likely tochange in the future?***

135. We are concerned that unless the CMA intervenes little change is likely. The current market structure suits the Major Labels. As mentioned above between them and the DSPs, they receive 73% of the income available. As we have also indicated the growth in the market will be huge but mainly captured by the Major Labels because of their mutually reinforcing oligopoly and anti-competitive practices. If competition can be facilitated, innovation, new entry and consumer benefit will accrue both to consumers and Creators, rather than only to the Major Labels.

136. Creators are concerned that Major Record Labels have the power to negotiate an anticompetitive streaming rate in return for preferential treatment in real estate on the DSP stores for promotional, banner ads, and playlist placement, for new music. If this were to happen, it will have an additional and adverse effect on competition for the back catalogue businesses, seeing once again catalogue paying for new music. It's possible this is already happening,[23] but no one knows as these deals are under NDA. CMA should investigate this to ensure that it has not happened to date, and that it will not happen in the future.

137. [✂] a more competitive market can be foreseen as used to exist such as occurred in the early 1990s. This indicates that a vibrant competitive environment can exist if Artists are treated more transparently and if fans and Artists can connect more readily with a production base. New entry at a smaller scale can be expected and it could be expected to reintroduce more production capacity. For example, small but iconic Records companies existed in regional areas of the UK such as Manchester, Bristol, Brighton and Liverpool during the 1990's and at earlier times and there is a view that local fanbase enables musicians to survive by meeting local

[23] https://www.theguardian.com/technology/2020/nov/03/spotify-Artists-promote-music-exchange-cut-royalty-rates-payola-algorithm

consumer tastes and styles. If a diversity of regional audiences can be connected more readily with regional Creators and suppliers, it can be foreseen that that a more localised type of a market structure would be feasible. Digital could support this effectively as it lowers costs of distribution which could be passed through to smaller Artists and could lead to greater and more local businesses. New Record Labels and Catalogue Service business would hire services of multiple other companies for PR, Plugging, Content Creation, Vinyl Manufacturing creating more British business.

138. If account is also taken of the way that the Major music Labels stifle promotion and all elements of the supply chain that could be provided locally, we can foresee a much more vibrant and more localised market developing, where consumers' tastes which change and vary can also be nurtured, supported, and fulfilled. The Beatles would not have succeeded if it hadn't been for the Cavern Club and the people of Liverpool. The ending of perpetual Record agreements would shine attention on British Artists' back catalogues.

***(8) To what extent can music Creators seek better terms for the services they areoffered by recorded music companies?***

139. We have no ability to insist on better terms on the most important service they offer which is DSP pricing. This is blocked entirely by the aforementioned NDAs. This is the most vital part of where Creators want to be able to improve and understand terms.

140. It should be noted Spotify did make a move to allow Artists to do direct deals in 2018. This was shut down with no explanation by the Summer of 2019. The CMA should investigate.

***(8)(a) What are the key drivers of a music Creator's choice of recorded music company? What role do music managers play in this?***

141. In essence, the problem at present is that when contracts are initially negotiated, the negotiations are limited to that which is foreseeable at the time. Technology and market developments change in ways that were unforeseen by the Artists and the Record Labels negotiating contracts when they are first signed. This leads to a rent being taken where no reward is provided for those that signed up many years ago before the digital era. It is clear that both sides did not anticipate the current situation, but that one side is benefitting more than the other. This provides a principled basis for the CMA's intervention, as risk and reward were unknown to those in the negotiation at the time the contract was signed.

142. Over the past 20 or 30 years, technological innovation, whether from Apple iTunes, Napster, or Spotify has not been addressed by the Major Labels. However, because of the extended contract term, the benefits of technological innovation lie where they fall - in a competitive market a more dynamic approach would be expected which would support differentiated products and new entry and innovation.

143. For new Artists with a new Manager, they want someone who really shows up and loves the music and promises they will work harder for the Artist than anyone else. Music Managers will be one of the people who choose the team which is often based on this first pitch. They of course are looking for the advance payment at this point and royalty rate from the music Labels but so much of this first set of signing processes is based on the passionate pitch of the Label. It is unlikely Artists fully understand the process the Labels go through to recoup their advance, at that time they sign their contract.

144. Later on, Artists may ask questions about recoupment, marketing spend, international commitment to support the records and so on. Often the lawyers used on the second deal is more expensive and more qualified to ask for better terms than your first deal. Many do their first deal with no lawyer at all.

145. The longer an Artist continues, the more likely a Licence deal will arise where the record allows contract changes after an agreed period of time rather than a Perpetual deal.

146. What each Artists needs to know is the price at which to sell at but cannot know that since it is under NDA.

***(8)(b) What are the key factors determining the bargaining power of music Creators in negotiations with recorded music companies?***

147. Bargaining power new Artists arises from one thing. Potential. If songs are hits, when an Artist has a huge built in fan base, some bargaining power is gained. But on the other side of the bargain, the music Labels have all the power as they own distribution and Sales, and promotion is blocked unless they agree otherwise.

148. If an Artist is in a Back Catalogue and the songs have already been released, the Artist has far less, if any, bargaining power. Catalogue Artists are no longer even allocated a product manager in most cases.

***(8)(c) Does the strength of competition between recorded music companies vary for different types of music Creator, for example music Creators atdifferent stages of their career – and if so, how and why?***

149. To a certain extent, yes. Record companies have their 'wheelhouse' and if they know their teams and their expertise can really deliver in a certain genre OR they know they are lacking a certain genre which would improve their market share, they will compete more than others.

150. But types of music go beyond genre. Take, for example, new and old music, all of which does business every day on DSPs. If a Record company is heavily weighted with it is unlikely to focus on it all. If it has to choose it will go with new music. The Label will have paid an advance for it and will want to earn it back and add any success to its catalogue generating long term revenues. If there were more competition, such as where Back Catalogue was not locked into Perpetuity deals, that competition would force Labels to really focus on records in their back catalogue. It could be expected that more competition would reward Creators at proportionate levels and reward the Creators throughout their full term of their agreements with advice, support, strategy and DSP playlist support.

151. When people are in Perpetuity deals there is no need to 'compete' for them to stay.

***(9)(a) To what extent can music streaming services seek better terms from recordedmusic companies?***
***What are the key factors determining the bargaining power of musicstreaming services in negotiations with recorded music companies?***

152. Currently the market structure limits the opportunity for music streaming platforms to negotiate better deals- and cross shareholdings reduce the incentive for the Major Labels to shop around. Where the Labels dictate the terms to the streaming service for benefit in shareholding, it is unlikely they will use other DFSPs, unless there is considerable benefit from doing so. If the CMA's intervention is required, the divestiture of the shareholdings and prevented other anticompetitive practices competition on the merits could be restored. If we open the deals and remove the NDA's we can understand how both sides could improve.

***(9)(b) What impact, if any, do recorded music companies' links with music Publishers have on these negotiations?***

153. The Major Labels owning the Major Publishers means there is no ability for the Publishers to

compete for the true value of these songs in a free market. How can we be seeing huge increase in the value of copyright whilst lower profits by the Publishers?

154. We are looking at companies negotiating with companies where they hold an equity stake and owning companies who receive a share where they see a lesser return. This is not a free market.

155. In fact there is evidence of the Song value rising is when competition was allowed. This can be seen from the following example – the song value was higher before Sony Records as an independent publisher operating at arms-length was suppressed by the operations and interest of Sony Music as a Major Label. Competition is thus likely to deliver benefit to the Creators. For example, a rise from 9-13% occurred when Marty Bandier ran Sony/ATV with corporate autonomy to compete with Sony Records. SATV are globally recognised as the sole driver of this increase. Antony Bebawi (AB) is personally credited as negotiating the increase. However, Marty Bandier no longer runs SATV. SATV has been subsumed into Sony Music, which operates as a Major Label with the interests of the Major Label under the umbrella leadership of Rob Stringer who articulated the interest as follows:

"The good news is that our [profit] margins are way better when compared to the last great era of profit 20 years ago. Our margins are amazing now. It's always a balance: revenue, profit margin, market share, all of those things are a balance act. Are we perfect? Of course not — but the margin is not an issue. We've seen the cost of marketing come down — marketing is more direct to consumer, and because it's a digital landscape, we can target our consumer much more [precisely], we have a far more targeted landscape and process to work with than we did ten years ago. We have a good idea who we're trying to market our music to.

"So the margins are the least of our worries," he concluded. "I'd like revenue and profit to be perfect, but the margin will not go down, it will get better."[24]

156. Before the SATV/Sony Music merger, Sony, according to Japanese Corporate Business tradition, encouraged each of its departments to be in competition with the other. So SATV was allowed to eat into Sony Music's Recorded Music revenue. This is how Japanese Corporations used to be run. Not any longer.

157. We are looking to the CMA to examine the relationship between the recording arm and publishing arm of the music Labels and to address any conflicts of interest which undermine competition in the market and investigate the potential of operational autonomy to address these issues.

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

158. We can see that if intervention can be taken to change the industry structure and practices there would be major opportunities for new entrants in the growing global business. We see an opportunity here particularly in relation to management of Back Catalogue - where there is a diversity of demand where there is an opportunity for a diversity of supply.

159. If a Major Label chooses to try and sign a Creator with an independent offer they will almost always win. They outbid and over promise to win. Smaller Record companies are dwarfed by the Major Labels. Majors also hold the power in the new model of 'All Music All The Time' by owning so much of the Catalogue it then fails to serve the Creators.

[24] Sony Music chairman Rob Stringer – speaking at GS Communacopia conference, Sept 2019, https://variety.com/2019/music/news/sony-music-chief-rob-stringer-interview-growth-dark-times-1203343400/

***(11)(a) What barriers, if any, are there to entry and/or expansion in services offered by recorded music companies?***

160. As explained, the first barrier is perpetuity obligations in existing contracts with the Major Record companies. The second is the nature of the equity relationship between streaming services and Major Labels. Thirdly, lack of transparency and use of NDAs throughout the market.

161. In order to enter the business without back catalogue in the new 'All The Music All The Time' market is very difficult. The ability of new entrants to compete is thwarted.

162. Moreover, the slow speed of processing of payments, and the accuracy thereof, undermines smaller music Creators and companies, where cashflow is important to business development.

163. The lack of access to data, and in particular within a decent timeframe, is also a significant barrier. In addition, where data is received, it is very difficult for Creators to raise queries or audit that data and there is no day-to-day support to assist understanding of the data.

164. The barrier to expand the services by the Majors is their choice. They choose not to invest pro rata to their profit and fail to provide support and promotional effort. They have refused to open the NDA's and increase their Royalty Services to clearly explain revenue and costs so Creators can take control of their business strategy and future investment.

***(11)(b) What barriers, if any, are there to innovation in relation to these services?***

165. Barriers to entry an expansion also affect innovation in services both in the market and between existing players. We have described above the barriers to entry, barriers that prevent innovation between in market players are discussed further below.

166. The CMA should note that MFNs are used in the industry between the Labels, and they will need to be policed to have meaning allowing anticompetitive sensitive information sharing among oligopoly members and reinforce oligopoly; thereby increasing barriers to competition in market and from new entrants. It appears advances are routinely kept by the Labels and not passed on to Creators suggesting that MFNs benefit all the Labels: in the manner of a cartel.

167. This becomes clear when the MFN clause is used in conjunction with section 5, the "**annual true-up of advances"** clause. This clause makes sure Sony Music's yearly advances from Spotify are on par with the best deal negotiated by any other Label **based on the percentage of market share**. That means if another music Label is getting paid $1 million by Spotify for each percentage of market share it has, and Sony Music is getting $600,000 per market share percentage, Spotify must pay Sony Music the $400,000 difference — **known as the adjusted contract period advance** — at the end of each contract year.

168. "Having an MFN clause in a contract is standard for music licensing contracts, according to multiple sources. MFNs have garnered scrutiny in the past, and as part of its merger with EMI in 2012, Universal Music Group had to stop using the clauses in Europe for 10 years. But they remain legal in the US."[25]

169. We therefore urge the CMA to investigate the use of MFNs and establish whether this is still taking place. The CMA should take into account the considerations and anti-competitive market consequences of MFNs as assessed by the EU Commission in its assessment of

[25] https://www.theverge.com/2015/5/19/8621581/sony-music-spotify-contract

EMI/Universal.[26] In particular, the CMA should investigate whether MFN clauses are in the contracts between Universal and other Labels, whether they are a feature of other music Label contracts and the combined effects of MFNs on increasing the information available between members of a tight oligopoly together with their effects on pricing and price structures by each of the Major Labels.

170. The EU Commission included the review of MFNs in its 2012 decision and accepted undertakings clearing the deal that required a 10-year ban on MFNs for the EEA[27] (which should include the UK post-Brexit). **The CMA should investigate whether the use of MFNs continues, whether the undertaking has been complied with by Universal, and whether other record Labels have continued the practice and whether it has continued to have the anticompetitive effects identified by the EU Commission, or otherwise**.

171. Cross-licensing agreements and cross-shareholding agreements, which the CMA is aware of, are also likely to undermine effective arms-length competition.

172. Access to back catalogue for music Labels and access to the data streams that would enable someone to establish businesses in a market to refresh, remarket, and rebrand records which will add value to the existing value chain by giving a better offer to listeners and Creators.

***(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)?***

173. In relation to paragraphs 95 and 100 in the Scope the CMA requests if there are barriers to Creators taking advantage of new deals or services to bring their music to market. The answer is there are huge barriers.

174. We have described the vertical integration between music labels and publishers above at paragraph 15. The ownership of Publishers by the Labels limits competition between Publishers in a way that supresses value for Creators, as described in response to question 9(b), paragraph 154 above.

175. The ownership of Publishers by the Labels who also have an ownership stake in Spotify limits competition between them and increases barriers to entry for others who would need to be able to compete across all levels of the value chain. This aggregation of different activities would increase competition among existing players and new entrants at each level of the chain in a manner which can be expected to more effectively allocate costs and profits where risk needs to be rewarded. At present, vertical integration allows the major labels to take risk and reward at any level of the chain in their overall economic interest. If components of the chain were

[26]EU Commission Decision EMI/Universal Music https://ec.europa.eu/competition/mergers/cases/decisions/m6458_20120921_20600_3188150_EN.pdf

[27]EU Commission Decision EMI/Universal Music, see in particular "(462) Contrary to the Notifying Party's view, the vast majority of customers do not consider these MFN clauses to be a protective shield and a tool that assists them in launching and expanding their online service offerings. Instead, they see MFN clauses as having a direct negative impact on their price and marketing terms for the licensing of recorded music content and hence on their ability to launch and expand their operations.
(463) In this context, an important digital customer notes that: "In our opinion, the MFN has never been proposed as a protective shield for the service provider. To the contrary, our view is that a label proposing a MFN clause wants to be sure that nobody else receives better terms than the terms the service provider grants (the label proposing the MFN clause) (…) The objective of the MFN is to always apply the highest condition to any label. When asked about the role of MFN clauses as a protective shield, other digital customers gave the following replies: "Non, pas vraiment. La tentation est au contraire de s'aligner sur les contrats les plus chers" "On the contrary, MFN clauses are utilised by the majors to force a licensee to apply the highest secured by any of them to all of them, as they know a licensee needs to secure repertoire from all in 4 in order to offer a commercially viable service. It is not a shield for customers, it is a sword of the record companies to ensure they receive the same (and maximum) price point or royalty rate"
https://ec.europa.eu/competition/mergers/cases/decisions/m6458_20120921_20600_3188150_EN.pdf

subjected to market forces, risk would need to be appropriately compensated.[28]

176. The following diagram shows the cross-shareholdings and inter-dependent economic interest which limit arms-length competition:

[✄]

177. As described above, a series of interlocking interests is likely to be acting as a mechanism for coordination and collusion and as a barrier to entry for third parties. The CMA should consider the value of shares in high growth technology stocks, rather than assuming that a small percentage share represents a limited economic interest. The enormous success of both TikTok and Spotify means that even a small share in that success is a considerable economic benefit to the Major music Labels.

178. As a matter of practical reality, the following occurs in relation to DSPs. First of all, new platform deals are rarely notified to all Creators. For example, TikTok or Roblox. There is not a notification to all Creators which states this deal is now done. The terms of the deal are not known but there is also no education on what that platform does or can do for Creators and their music. No guides on best practices, no online class and no support for additional customer engagement. The very limited few (mainly large Artists about to release new music and 'in cycle') will be notified and this is also to satisfy the new platform by delivering a top-level campaign early. This is information for all whose music has been licenced, not the few.

179. Secondly, generally, Creators then cannot do an exclusive with new music. Pressure from the Labels, which they claim comes from the DSPs (and we have seen it come from both), means Creators are unable able to switch to a service for exclusive releases.

180. Thirdly, this CMA question is answered by [✄] on the role of the back Catalogue, the acquisition of the rights of top music Creator's music (existing and future) and how any such acquisitions could impact competition between companies. If the Creator is locked into a Perpetual deal, the Creator will only be able to sell the Income Stream from its Catalogue songs. This is achieved by issuing a Letter of Direction which redirects all income from the Catalogue Creator to the new owner. The Catalogue remains to be distributed to DSPs by the Major Record Label.

181. On the 23rd of May 2021 Universal declared they were stopping Letters of Direction for royalty flow. Leaving the sellers having to set up complex joint accounts to house royalties where their buyers could take the funds from. So, on top of being stuck in a deal they cannot get out of, often where they have received no service, they come to sell and retire and find themselves not able to with any ease. This is a move to try and prevent sales or make them more difficult to sell to anyone except Universal themselves. Blaming the paperwork it creates, Universal failed to acknowledge they had simply not expanded their Royalty team's pro rata to the revenue received or the number of Creators who now received royalties and wanted support. Rather than expanding in the true spirit of a lifetime partnership, they closed doors on the Creators.[29]

182. It is [✄] belief that the DSPs would simply not be able to attract new subscribers unless they

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[28] It is well known that margin squeeze can be a form of abusive dominance. Margin squeeze occurs when vertically integrated entities can choose to take profits at different levels in the supply chain in a way that squeezes out rivals who operate only at one level. It appears that while not fully vertically integrated, the major labels have sufficient levels of market power to pursue activities that mirror this type of abuse, individually or collectively. Vertical integration and a degree of coordination appears to be operating in a way that misallocates risk and reward to the benefit of the Major Labels. This restricts entry and innovation at each level in the supply chain and leads to the suppression of value by Creators, reducing the sustainability of Creators and the value and diversity of offerings available to consumers.

[29] https://www.billboard.com/pro/universal-music-letters-of-direction-policy-royalties-sales/

offer Back Catalogue in their offering. The concept of a new service which offered only new listening experiences by comparison with the existing service of an offering of trying new music whilst enjoying all Back Catalogue, would not work. A full range of new different types and generations of music is needed.

183. However, we do believe a model of a cheaper subscription to only host Back Catalogue would potentially work for a large demographic, especially older generations, who do not want new music but enjoy the experience of Streaming. They also feel the user experience is so geared towards pushing new music that a site dedicated to curation of older music and classic albums would be a better user experience for the Consumer.

184. A new model where back catalogue could shine and be really well curated and laid out could be started in Great Britain.

185. Disney recently announced a huge leap in Subscribers. This TV station knows its market, priced at 7.99 and combines the classic catalogue of Disney Movies and well curated new product and has been a roaring success. This shows that business does not need to offer everything, it just needs to offer people what they want. This is less than Netflix at $13.99.

***(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?***

186. Remove NDAs and let us see who has the deals which suit each Creator type best. This does not mean mass exodus from one Major to another. It means people will understand the strategy of the deals and some will prefer one strategy to another.

187. Other methods would be through:

187.1 Invest in staff to support all Catalogue;

187.2 Support initiatives which focus on Back Catalogue;

187.3 Educate Creators on all platforms they Licence to including tutorials with real staff;

187.4 Remove Perpetual rights which would allow unhappy and neglected Creators to leave and seek a better service rather than propping up a model where their revenues invest in new Artists, they have no share of whilst receiving no service themselves;

187.5 Offer Royalty Support to assist in Creators planning their businesses and understanding their financial statements.

***(14) How do music streaming services compete with each other for consumers?***

188. They do not only compete with each other; they compete with each other and Radio.

189. They compete with Radio by offering No Ad packages which can attract consumers and by encouraging no exclusives go to Radio.

190. They offer various packaging such a Family Plans, Freemium, Student and so on. 32 in Spotify's case. They will also diversify with audio content like Pod Casts and Sleep / Relaxation sections.

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

191. At present, as the CMA knows from its investigations in its Mobile Ecosystems Market Study[30] that the current mobile ecosystems limit competition and choice. The App Store on iOS and Play Store on Android accounted for over 90% of native app downloads between them in the UK in 2020. The limited competitive constraints placed on them mean that Apple and Google each have substantial and entrenched market power in the distribution of music streaming apps within their ecosystems, for example, as follows:

191.1 Apple prohibits all alternatives to the App Store for native app distribution on iOS, giving it a monopoly over native app downloads on its devices. Google allows alternative distribution channels, yet the Play Store retains over 90% of native app downloads across Android, HMS, and Fire OS devices, in part due to material barriers to entry and expansion faced by rival app stores.

191.2 Through control of their app stores, Apple and Google are in a position to determine which apps are listed, ranked, and discovered. The average commission levels charged by Apple and Google on in-app purchases made through their own payment systems are close to 30%, from which they make substantial and growing profits (with high margins) from their app stores.

191.3 All digital supply platforms have to both pay the margins demanded and are restricted in the billing and payment services that they can provide.

192. The CMA has proposed interventions that would reduce these restrictions and potentially reduce the 30% margin currently paid out. This is currently likely to be an outpayment (cost of sale) for DSPs. Introducing competition and improving the prospects for competition between native and Open Web Apps could potentially increase DSP profitability, or, if passed on through the supply chain, increase the potential revenue and "size of the pie" available for Creators. Taken together with their unbundling of payments systems, we can foresee an increase in income for Creators if market were to be encouraged to support competition on merits and pass on value to reward talent.

193. In addition, greater commercial freedom could be anticipated if data and insight could be available through the ecosystems and supply chains that depend upon it. Currently, at tech platform level, Apple and Google control access to data, via their monopoly positions with relation to their App stores. That data needs to be unbundled and available for the market to function effectively. The CMA's mobile ecosystems markets study remedies need to be extended to enable music streaming to work more effectively.

194. At the next level in the chain, each of the DSPs have more data than others and yet they are not free to operationalise that because of restrictions on their commercial freedom by the owners and operators of the App stores: Apple and Google. If DSP commercial freedom can be increased, then insight available from their data about consumer demands and about trends can be used more effectively. Currently, the capturing of that data at present by the Apple and Google platforms is a major concern, as is the lack of competition between DSPs that then results for all in the ecosystem.

[30] https://www.gov.uk/government/publications/mobile-ecosystems-market-study-interim-report/interim-report#competition-in-the-distribution-of-native

195. Competition in the supply of music streaming is also impeded through the equity stakes that exist with Major Music Labels.[31]

196. Question 23 of the Statement of Scope also refers as conducted on a wholly arms-length basis. The existence of cross shareholdings is likely to create preference in business dealings and limit competition between Record Labels and more generally impede competition and innovation.

***(16) How, if at all, is competition in the supply of music streaming services likely tochange in the future?***

197. In terms of content the CMA can expect a wider variety of content with pod casts and video additional channels.

198. In terms of supply, they may choose to allow direct deals for Songwriters who choose to opt out of allowing PRS to collect on their behalf for which there is unprecedented demand which is stopped by currently being forced to choose to leave entirely if you do that.

***(17) How do consumers make decisions about which music streaming services touse? What barriers are there, if any, to consumers switching between services?***

199. If the consumer is dedicated to one platform it may become difficult to switch. The consumer is being encouraged to build up a lot of personalised playlists which would be lost if there was a switch - unless the consumer is capable of using complicated apps. This is the number one reason in our opinion. Another reason would be if a significant number of Major Artists were to leave a DSP.

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

200. Consumers start to use music streaming services by generally exploring for their favourite older music and building and making their own playlists. However, in that search the consumer generally discovers playlists and searching on eras or genres that are individually appealing to that consumer. Playlisting is hugely important to the overall usage. Whilst their own playlists are important Consumers spend a huge amount of time revisiting playlists they have learned to trust or perhaps selecting for an occasion (Summer, Christmas, Barbecue, Dinner Party etc.).

***(19)(a) What barriers, if any, are there to entry and/or expansion in music streaming services?***

201. There is a necessity for a range of content that is controlled by the Major Record Labels who need to licence the content. This can include an Advance payment to get the first Licence completed.

***(19)(b) What barriers, if any, are there to innovation in music streaming services?***

202. Barriers may include things like new Licence types being needed for expansion. For example Video content requires difference Licence types to Audio.

[31] See footnote 35 and 52 of the CMA statement of scope in relation to both Spotify and Tencent investors and cross shareholdings, and paragraph 108 of DCMS "Economics of music streaming", Second Report of Session 2021–22 https://committees.parliament.uk/publications/6739/documents/72525/default/

***(20) What, if any, competition or consumer issues are there in the supply of musicstreaming (see paragraphs 98, 100(c) and 103 above for examples of the types of possible issues the CMA intends to explore)?***

203. The CMA also notes in paragraph 30 of its statement of scope the DCMS Committee's recommendation for the CMA to consider exploring designating YouTube's streaming services as having 'Strategic Market Status' (SMS) under the proposed new pro-competition regime for digital markets. The Government consultation on the shape of this new regime closed in October and unless and until that new regime is in force, the CMA has no power to designate firms with SMS and, unfortunately the timing of this recommendation is technically therefore outside the scope of this market study. However, the CMA's market study will include consideration of the role of user-uploaded content (UUC) services, such as YouTube within the sector. The DCMS Committee Report raised concerns that 'safe harbour' provisions that apply to UUC services may distort competition among music streaming services (due to a disparity in the dynamics of rights negotiations) and lead to a 'value gap' that reduces the revenues available to rightsholders.

204. We suggest that Google and Apple are identified as SMS firms and that this has been outlined in the CMA's Mobile Ecosystems Market Study. Designation of a firm as SMS can operate, consistently with other competition law such as merger control or the contemplated and parallel EU and US laws addressing big tech platforms sufficiently to identify the firms subject to and within the jurisdiction of the law, and then the activity or subsidiary or division or business unit (such as You Tube) can then be subject of enforcement action being taken by the DMU.

205. We also agree that You Tube is exploitative of music Creators and its UUC services and premium and ad funded offers all benefit from Google's dominance and extraordinary position in Data, which it obtains about end users and then abuses in advertising markets, allowing it to offer services free of charge or extremely cheaply.[32] The consequence of such market power, which is derived from economies of scale and scope, and high fixed cost and low marginal costs, on both end users and Creators is one of take it or leave it contracts and monopsony purchasing power with profit maximisation now contributing to Google's extraordinary 30+% increase in profitability during 2021/2022, and quarterly profits exceeding $70bn[33]. Furthermore, this is reinforced by vertical integration with the use of smart speakers and voice assistants for search services also serve to gather more data about end users, increasing the number of user touch points that are used for developing advertising profiles, which further enhances market power in ad markets and, when taken together, make it extremely hard for others to compete.

206. The CMA can then investigate under the DMU the value for Creators that is passed on by You Tube under exploitative terms derived from Google's take it or leave it terms.

207. Similar issues arise from Amazon's extraordinary scale in computing with its very low-cost technology platform enabling it to offer multiple products at low cost, while its discounting and bundling practices such as Amazon Prime, reinforce the economics of both scale and scope.

***In relation to Paragraph 100c you ask for 'Any impact the agreements between DSPs and Majors have on competition and innovation in music streaming services.'***

[32] See for example CMA findings in Online Markets and Digital Advertising Market Report 2020 and Google Privacy Sandbox 2022.
[33] Ruth Porat, CFO of Alphabet and Google said: "Our fourth quarter revenues of $75 billion, up 32% year over year, reflected broad-based strength in advertiser spend and strong consumer online activity, as well as substantial ongoing revenue growth from Google Cloud. Our investments have helped us drive this growth by delivering the services that people, our partners and businesses need, and we continue to invest in long-term opportunities." https://abc.xyz/investor/static/pdf/2021Q4_alphabet_earnings_release.pdf?cache=d72fc76

208. We do not know as they are under NDA. However, if [✂] its linked to the practice of Advances, as described above, then yes, this will hurt innovation. If Streaming Services who are already trusted and not a credit risk and so should not need to pay an Advance now, (if it meant better rates) lose cash flow to large Advances this will affect innovation. If it affects the rates paid to the Creators, this strangles innovation as Creators need in their own music. Low profits mean low investment in equipment, collaborators and in some cases means Creators exiting the business and taking a full-time job and simply not having the time to be creative. We have seen Songwriters becoming Uber drivers. Creativity takes time. Space. Room to think. This costs money.

***(21) How can competition in music streaming services be strengthened?***

209. Please see above our response to question 15 (and paragraph 100) with relation to the cross shareholdings issue and the dominance of Apple and Google over mobile ecosystems and access to data, bundling and unbundling that is needed.

***(22) How can better outcomes for consumers be achieved in music streaming?***

210. Breaking the Perpetual contract designed pre-Streaming. Allowing Artists to find other homes who will spend time on them. Attention to the campaigns of this back catalogue will see a wider light shone on so much music.

211. Stopping the NDA's mean Creators will feel more in control of their finances and invest more in their craft.

***(23) (a) What impact if any do equity cross holdings and agreements between music companies and music streaming services have on competition between music companies?***

212. We consider that cross shareholdings create conflicts of interest, they reduce or soften the competition that would otherwise obtain and enable the equity participants to operate to mutual benefit and to the detriment of consumers and Creators. When coupled with MFN clauses and accounting true ups on streaming services the shareholdings reinforce mutuality and oligopoly which benefits the Major Labels. To remedy this the CMA should examine divestiture of shareholdings between Major Labels and DSPs such as Spotify.

213. Let's take UMG: according to Music Business Worldwide Universal had 97,827 shares in 2007.[34] According to Billboard in December UMG own 6.487 million shares in Spotify.[35] Value is around 2 billion for UMG. Spotify current valuation: 67 billion.[36]

214. UMG will make decisions which take into account the profit performance of Spotify rather than looking to the interest of the Creator. Because it is also vertically integrated with the Publisher, independent publishing decisions are not taken.

215. [✂]. This has a worldwide effect, and the CMA may wish to seek further information from the US antitrust authority. [✂]. [✂]. The CMA should investigate the digital deals between Major Labels and the DSPs that are subject to NDAs to ensure that they are in no way controlling the

[34] https://www.musicbusinessworldwide.com/heres-exactly-how-many-shares-the-Major-labels-and-merlin-bought-in-spotify-and-what-we-think-those-stakes-are-worth-now/

[35] https://www.billboard.com/pro/universal-music-spotify-stock-worth : https://www.billboard.com/pro/universal-music-spotify-stock-worth/

[36] https://www.musicbusinessworldwide.com/spotify-worth-67bn-has-seen-its-share-price-treble-in-10-months-should-daniel-ek-hand-cash-to-Artists-as-a-thank-you/

price of Publishing.

216. As all of the deals are under NDA which the CMA needs to investigate. However, the economic incentives suggest that the Major Labels being owners of the Spotify shares mean that they do not negotiate arms-length deals for their own benefit and for the benefit of Creators that depend on them. Put another way, since the Major Labels have an economic interest in the increased valuation of Spotify shares and a benefit from Spotify share price appreciation, their conflict of interest materialises as being willing to reduce prices for repertoire to Spotify in return for equity value increases in Spotify. By artificially enabling Spotify to operate with lower input costs it may be at a competitive advantage to other DSPs such as Apple and Amazon. This may be the reason that of the main paid subscription services, Spotify pays the least per million of the Major paid DSPs. The CMA should investigate the board documents and executive committee documents of the Major Labels over the last three years and request all decision-making committee decisions and board papers and strategy documents and seek to understand the Major Labels' strategy in relation to Spotify since 2010.

***(23)(b) What impact if any do equity cross holdings and agreements between music companies and music streaming services have on competition and innovation in music streaming services***

217. It can be expected that the equity participation will reduce the incentive to compete on arm's length terms and weaken the competitive pressure that should occur in open markets. It is highly unlikely that the best prices would be achieved for Creators when the Major Labels were carrying the additional risk that Spotify's share price could devalue and affect their overall stock value.

***(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 playlist / recommendations)?***

218. Back catalogue helps to support and attract a wide range of audiences and gives market share. It is likely that subscription would take place if all the amazing classic records are on the DSP platform. The quality of past eras is too huge. [✂] this used as leverage for more aggressive tactics with DSPs but in a way which creates them to be attractive for new Artists. Back catalogue is abused by the Major Labels.

219. There is also very little change in Catalogue playlist strategies. Amazon offer a Re-Discover feature and some campaigns take place from time to time. But DSPs generally feel people want the old hits and stick to the familiar songs as priorities but almost never on the home page of the sites.

## III. POTENTIAL REMEDIES

220. Oligopoly is derived from the cross shareholdings, cross licencing deals, MFNs, pricing, accounting true ups, Black Box practices based on market share all as described above. The CMA will need to investigate further with a view to seeking separation of independent business functions and consider whether operational separation or some form of functional separation is a realistic alternative to ownership divestiture. Elimination of anticompetitive business practices may then be remedied by changes to economic incentives buy behavioural remedies subject to monitoring would need to be put in place to change the custom and practice of these businesses and ensure that arm's length non-discriminatory trading truly takes place – with competition on the merits being allowed to prosper.

221. NDAs. First, the CMA will need to require transparency (abolish NDAs and have regular audits being subject to monitoring) to enable income visibility and opportunity for budgeting by Artists. The transparency obligations contained in EU copyright law, that the UK negotiated and agreed to while in the EU should also be provided for in UK law.

222. Contract term: perpetual or long contract term (mostly entered pre-2000) is either unfair at the time of signature or becomes unfair over time (unfair in the competition law sense of being exploitative). And the CMA should examine a reasonable investment return time horizon and consider how new entry can be promoted to provide consumers and Creators with better products that more closely meet their needs across a broader range of products in the back catalogue.

223. The CMA should examine closely the adequacy of the functioning of the PRO and its importance to Creators and consider the opportunity and benefits of creating competing functionality as is the case in the USA.

## IV. APPROACH TO EVIDENCE GATHERING

224. The CMA should request internal documents that relate to business decisions by business decision making committees and not only review main board papers and strategy documents. It should seek actively to engage with those that may be encouraged to come forward to give evidence and guarantee confidentiality for individuals and businesses.

225. Evidence from submissions or witness statements is good source material. However, requiring those investigated and others to provide accompanying statements of truth may be needed as is common in other jurisdictions and in litigation.

226. We also suggest that given the nature of the industry, and the high value of Creators that will not have access to professional help and advice, that the CMA conducts a series of interviews with representatives of different businesses in the supply chain and Creators and their representatives.

## V. CONCLUDING COMMENTS

227. The CMA should be thanked for recognising the important competition issues raised by the structure and nature of supply and demand in the music industry and for committing resources to investigate.

228. The CMA should take a robust approach in order to address any adverse effects on competition identified.