MUSICIANS' UNION

Dear CMA,

We have read your interim report with interest and thank you for shedding light on some areas of the music streaming market that were not fully visible or transparent beforehand. I am writing, however, to express concern on behalf of our 32,000 members that you have decided not to proceed with a full investigation of the market. We appreciate that your focus is primarily consumer impact but wish to highlight some of the areas in your report that could perhaps be considered or investigated further.

The Musicians' Union's primary concerns set out in its submission to the CMA included the following:

- The careers of musicians and songwriters have for years been hampered the market dominance and power of the three major music companies: Sony, Warners and Universal.

- Google, Apple and Amazon have a suppressing effect on the price of music streaming. Companies such as Spotify, Deezer and Soundcloud, which focus primarily on music streaming, cannot put their prices up because they are competing with these corporations whose profits are derived from other areas of their business and who can therefore afford to run music streaming as a loss leader.

- We believe that the music publishing share is suppressed because the major publishers are controlled by the major labels. It is in their interests to take a greater share of revenue on the recording side because they pay a far smaller share of it out to artists. On the music publishing side, deals tend to be 80/20 in favour of the songwriter or composer. On the label side, current deals offer more like 25% to artists.

The CMA report examines these issues, among others. While your report does highlight competition issues, we appreciate that your focus is primarily on whether the issues are having an immediate negative impact on consumers. We would urge you to also consider what the longer term impact could be on consumers if the music streaming business fails to support the careers of artists, songwriters and session musicians.

The MU's aim with #FixStreaming, a joint campaign with The Ivors Academy, is to ensure that revenue from making recorded music available online is shared fairly with musicians and creators and that it plays its part in sustaining their careers. This is currently not the case and the situation stands to worsen over time. We need to future-proof copyright law and industry practices to ensure that musicians and creators can still maintain careers. Otherwise, the long term impact on consumers will be significant. British music can only be at its best and continue to be world-leading if those who make the music can continue to do so.

Here are some sections of the report which relate to our three key concerns above and where we wish to respond on behalf of our members.

Pricing

The report reflects that the headline price of subscriptions [£9.99] has stayed "remarkably stable over time". The word 'remarkable' here is revealing and we would be interested to hear your further analysis of whether such static pricing is common in well-functioning markets. While it might be to the short term benefit of consumers, in the longer term it will impact the British music industry and the individuals who create and perform British music.

In the Safe Harbour section of the report, you state that "changing safe harbour provisions could also benefit consumers if any increase in music streaming revenues that results would improve the music that they listen to. Such improvements could include a greater diversity, higher volumes, or higher perceived quality of the music produced." The same is surely true of an increase in pricing. If pricing is being stifled by competition issues, and we believe it is, then addressing this issue could bring benefits to consumers. Furthermore, if such issues are not addressed then in the longer term we will see less music, less diversity and lower perceived quality of British music.

As stated above and in our original submission, we believe that pricing has remained static because of the role of 'integrated' providers such as Google, Amazon and Apple in the market. The CMA report does acknowledge this impact.

The dominance of the majors

The report says that "the 3 majors' individual and combined market share is persistently high. In terms of their share (by volume) of total UK streams, the majors accounted for over 70% in 2021 – a similar proportion as in 2015. Their music dominates the popular charts. The combination of the rights they hold in recordings along with the rights they hold in publishing, means that in 2021 they collectively had some form of rights in 98% of the top one thousand singles."

It goes on to say that "smaller labels and providers account for around one quarter of streams, although only 2 have a market share in excess of 1%."

There are more artists in the streaming market now which will obviously affect per-stream rates. The CMA report says "the surge in artist participation has also impacted upon remuneration. Prices for music streaming services have been relatively stable for some time and tend to take the form of flat monthly fees. This means that with more artists and more streams being played, the average value of each stream and the average earnings per artist fall."

"Between 2014 and 2020 the top 1% of artists accounted for 78–80% of streams, and the top 10% for 98%."

"While the number of successful artists and tracks are increasing, the proportion of artists achieving more than 1 million streams per month remains small (in 2020, around 0.4%)."

Using data from the major labels, you have estimated the amounts that music recording artists earn from 1 million streams per month. You estimate that this would earn an artist around £12,000 per year. On this basis then, only 0.4% of artists are making £12,000 or more from streaming annually. The CMA report acknowledges that "for all but the most popular artists it [streaming] cannot sustain a living." This goes to the heart of the #FixStreaming campaign, as do the issues you've highlighted around radio play. Creators and performers need the market to operate differently or they simply won't be able to sustain careers in music. Furthermore, other territories are beginning to adopt more artist and creator-friendly systems of payment for streaming which could encourage British-based musicians to leave the country. This would be detrimental to the music industry and eventually to consumers.

Radio vs streaming

One of the Union's biggest concerns in terms of musicians' earnings is the potential for listeners to move from radio to music streaming over time. While radio attracts guaranteed royalties for all musicians, paid via the collecting society PPL, music streaming does not.

The CMA states that "51% of people listen to online music services at least once a week and 18% do so several times a day."

"The proportion of people accessing music in this way has grown – in 2015 it was around 16%, rising to 23% in 2017 and 45% in 2021."

"Despite the growth in streaming, radio remains the form of listening done by the highest proportion of people on a weekly basis. In Ofcom's 2022 survey, 64% of respondents listened to a radio station (that plays music) at least once a week. However, in contrast to streaming, radio listening is declining over time – weekly reach for listening to live radio on a radio set fell from 83% of adults in 2015 to 63% in 2021, while streamed music rose from 16% to 45%." This decline is much more apparent in younger listeners and is very concerning from the MU perspective.

In 2022, collective rights management body PPL collected £86.7m for the broadcast of sound recordings in the UK on TV and Radio. The performer share was £36.9m, which is lower than the usual 50-50 split of £43.35m for two main reasons: firstly because the total broadcast revenue figure includes the licensing of on-demand streams of TV and Radio programmes on services like the iPlayer and BBC Sounds (where no ER is payable to performers due to the "making available" delivery mechanism) and secondly because the total figure also includes certain copying for the purposes of broadcast licensing (where no ER is payable either). This shows that the delivery mechanism is already impacting performers' incomes. There is a clear shift from royalties being shared equally with performers, to labels taking the lion's share. This will impact consumers in the longer term. Where this decline in income for performers can be predicted and appears inevitable without changes to the market and/or copyright, we must take action. We need to future proof the British music industry, and the streaming market, in order to ensure that British musicians, creators and artists continue to emerge and flourish.

Market dominance

The CMA report states that the 3 major label / publishers are able to exercise greater control over how their intellectual property is exploited than independents.

It also points to clauses in the contracts between the major labels and the streaming platforms that could weaken competition between the majors. For example, some MFN clauses state that a major label must get equivalent terms to any other major label. The report says that these clauses are not typically found in agreements between music streaming services and independent labels. The Union would argue that this is because of the independents' lack of bargaining power. If the majors have a stake in 98% of catalogue on platforms, they are bound to have better bargaining power and this perpetuates if they can muscle independents out of the market.

The CMA report says that the clauses highlight could indicate that the 3 majors “do not intend to compete on price, which may in turn soften price competition.” Surely this is not a sign of a well-functioning market. The report says that “the price MFN clauses we have seen could still dampen competition between record companies” and that there are “a number of other clauses which may have the effect of protecting the position of the majors, which, again, are not typically found in agreements entered into by indies. [These clauses] could each impact competition (individually and collectively) between record companies.” This is interesting to us as we would not usually have access to these agreements. The report focuses on the potential of the MFN to affect the price offered to the end-consumer, saying that “while wholesale MFNs may raise competition concerns, they do not directly prevent a supplier offering lower prices to consumers.” We remain concerned that this is an apparent competition issue and that it does impact on others in the market. It would be useful to hear about comparators in other markets. For example, if three major suppliers had clauses like these in their contracts with supermarkets which muscled out smaller competitors, would this be of concern?

The CMA analysis also “indicates that there has not been substantial expansion of independent record companies, with this largely being due to the scale advantages of the majors, which puts the majors in the strongest position to sign and retain artists, in particular the most successful artists.” This indicates that there remains a lack of choice for artists. Artists can remain independent or sign to a smaller label, but they will have less access to the fruits of the streaming market and are highly likely to have a lesser chance of success. Meanwhile, the three majors offer a very similar deal to artists, dominate the market and do not compete on price or terms when licensing to the platforms.

Songwriters

The Union and other creator-representative organisations have argued that it is in the majors’ interests to channel streaming revenue into the record label side of their businesses as opposed to the music publishing arms. This is because labels tend to pay out lower royalties than publishers. Contrary to this, and without apparently examining this specific issue in much detail, the CMA report states “it appears unlikely that any strategy of disadvantaging the publishing business would be beneficial to a major’s business as a whole. If a major were to act contrary to the interests of songwriters by diverting revenues to recording instead of publishing, it would likely impact its ability to retain existing songwriters and compete for songwriting talent. The major’s publishing share would no longer be competitive, compared to other publishers, so the major would likely lose songwriters to other publishers.”

We would strongly refute this last point as the majors largely offer similar terms and have similar access to the streaming market. Songwriters don’t have a choice, not if they want to have the best chance of commercial success. Meanwhile, the majors’ incentive for channeling revenue through the label side of their businesses is very clear: they will get to pocket far more of it. While new deals may offer 25% on the label side, most existing deals (especially catalogue deals) will offer far less. This could be addressed with the introduction of a back-dated minimum royalty rate on music streaming, for example. The music publishing business offers more like 70 or 80% paid out to songwriters, which is a far better deal. While the music publishing share of streaming revenue is on the rise, we find it baffling that publishers are not pushing for a greater cut more urgently. Again, would a well-functioning market not see stronger pressure from the publishing community to get a better deal?

The CMA's conclusion

The CMA's judgement is that a full investigation "is not at this stage the appropriate way forward." The report states that the "initial findings have not identified any significant concerns in terms of consumer outcomes relating to music streaming. On the contrary, prices for consumers are dropping in real terms, consumers have easy access to large catalogues of music covering a vast array of genres and time periods for a fixed monthly price (or free, but with ads), and overall, consumer satisfaction with music streaming services is high."

The report also states that "there is unlikely to be scope to improve outcomes for artists in a material way through greater competition." We would refute this and reiterate our three main concerns, set out at the start of this letter. We feel the CMA report upholds the first two points and fails to investigate the third thoroughly enough.

We would like to see consideration of the risks to consumers in the longer term if artists cannot sustain a living and are lost to the industry. In the Safe Harbour section of the report, you state that "changing safe harbour provisions could also benefit consumers if any increase in music streaming revenues that results would improve the music that they listen to." Again, we would urge you to consider that addressing some of the competition issues in the industry could drive an increase in revenue, or a fairer division of revenue, which would also benefit consumers by improving the music they listen to.

With sincere thanks for your time in reading this submission and engaging with us as part of the study. We remain available should you require any further discussion or information.