



CMA Market Study into Music Streaming

Sony Music Entertainment's response to the CMA's Interim Report

1 Introduction and overview

- (1) As a global record label, Sony Music Entertainment's ("**Sony Music**") core mission is to seek out and identify the music industry's most talented artists, acting as a creative partner – with an investment which is wholly Sony Music's financial risk – to help them create world-class music and reach the widest range of global audiences possible. Sony Music has been pleased to assist the CMA's market study (the "**Study**") over the past 6 months and looks forward to continuing to work with and assist the CMA in its examination of the UK music streaming market and to secure the best possible outcomes for consumers, artists, and songwriters.
- (2) Sony Music welcomes the CMA's provisional decision not to make a market investigation reference. Sony Music is pleased that the CMA has followed the evidence in recognising that the music industry is a "*complex landscape*", but one in which "*competition appears to be working reasonably well*".¹ Sony Music urges the CMA to continue carefully to consider the evidence provided by stakeholders and interested parties in a neutral and objective fashion throughout the remainder of the Study. This is critical to mitigate the risk of disrupting the carefully balanced ecosystem which - at present - is characterised by strong competition, provides for continuous innovation, and enables consumers to enjoy large catalogues of music through a broad range of high-quality digital channels, at historically low prices.
- (3) Sony Music agrees with many of the interim conclusions reached by the CMA, including:
 - **Artist contract terms are improving.** The CMA has identified pro-artist improvements in the duration of potential contract terms and the shortening of rights periods, alongside a general increase in average royalty rates and advances. This is consistent with Sony Music's experience and reflects our commitment to our artists as their long-term creative partner.
 - **The sector has witnessed substantial innovation.** The CMA has observed first-hand the incredible technological transformation that the music industry has undergone with the advent of streaming, and which has formed the foundation for the industry's broader recovery. A core aspect of the music sector's evolution has been the successful negotiation of licencing arrangements between music companies and digital service providers ("**DSPs**") (with label and publishing negotiations conducted separately and independently). In this regard, the CMA's conclusion that negotiations with DSPs in relation to licensing terms are "*complex*" is consistent with Sony Music's experience of negotiating these agreements. Sony Music supports the CMA's finding that any putative slowdowns in innovation are not caused by insufficient competition, but by unavoidable product complexity. Despite these challenges, the CMA has rightly acknowledged that there are "*examples of substantial innovation by music streaming services, both in terms of the product itself, such as the introduction of high-quality audio, and in the price plans available*".² Some notable examples of innovations that have resulted in great consumer outcomes have included making streaming services available on mobile phones through downloaded apps (enabling consumers to download songs and listen to tracks offline and without the need for an internet connection) and, more recently, making streaming services

¹ CMA Interim Report. p.18 and p.71.

² CMA Interim Report Executive Summary, p.11.



accessible via smart speakers. Sony Music is pleased to be able to work together on behalf of its artists with DSPs to drive this innovation and to enable its artists' music to be enjoyed by the widest range of digital channels possible. To this end, Sony Music has invested significantly in its people and infrastructure to facilitate these outcomes.

- **Competition to sign artists remains (and will continue to remain) strong.** With the proliferation of music streaming technologies, and ever-increasing range of tools to create and distribute music in a digital world, the CMA has recognised that the industry has "*seen an explosion in the numbers of artists making music*".³ This ease of creation and distribution has been a positive development for artists and songwriters. It nevertheless makes it more difficult to 'cut through' the high volumes of music that are being produced to reach target listeners. This is heightened for artists in niche genres, with musical popularity continuing to "*coalesce around certain hits*" (a trend that pre-dates streaming and which is consistent with other creative industries).⁴ With this in mind, the CMA has recognised that the degree of competition to sign artists reflects listening habits, identifying strong and robust competition to sign a smaller number of artists who experience the greatest commercial success. Labels – including independent labels – continue to compete fiercely to sign these types of artists, in circumstances where the success of an artist can never be guaranteed and where the majority of artists are unlikely to be considered financial successes. It bears emphasising that it is the record labels, not artists or creators, that bear the financial risks of failure of any individual project and ultimately incur losses on such projects. The CMA recognised that it remains inherently difficult to predict which artists and which projects have the potential to achieve financial success (a fact that also pre-dates music streaming). In addition, Sony Music notes the success of independent labels and alternative service providers serving new artists as clear evidence of the low barriers to entry and expansion, which continue to enable competitive disruption of 'traditional' record deals and service offerings.
- **Services available to artists and songwriters have diversified immensely.** As noted above, the emergence of a growing mix of business models, including artist and label service providers and DIY platforms, offers artists increased choice and flexibility in how they produce and distribute music, and offers even more routes to listeners. The CMA has recognised that these alternative service offerings focusing on distribution can increase artists' bargaining power and help establish artists, which is often useful if they later decide they wish to transfer to a more traditional full-service record offering on better terms than they would otherwise have been able to secure. The range of new choices and routes to market for artists ensures that competition for artists remains strong in the sector. The advent of music streaming and emergence of DIY platforms has made it easier for aspiring artists to release music publicly and reach audiences sooner.
- **Artists benefit from information provided via royalty tools.** The CMA has recognised the value in the online royalty portals / tools and detailed royalty statements provided by Sony Music and other record labels to artists and believes the availability of more information consistently across the industry is a good outcome. Sony Music has made significant investments in developing its royalty portal and remains committed to looking for ways to assist its artists and empower them to make the best possible choices for their careers. As the live music sector

³ CMA Interim Report, p.32.

⁴ CMA Interim Report, p.34.



continues to recover following the Covid-19 pandemic (being the sector where "*many artists derive the main part of their income*"⁵) Sony Music remains optimistic that the tools and data it makes available to its artists will continue to help them achieve even greater commercial success both within and outside of music streaming.

- (4) The CMA has acknowledged that competition is generally working well in the industry, and that intervention using the tools available to the CMA is not an appropriate mechanism for resolving a limited number of issues it has identified (including due to the potential for unintended adverse consequences in a complex ecosystem). Sony Music agrees with the CMA's conclusion and is acutely aware of the real risk that any interventions could have bad outcomes for consumers, artists and/or songwriters. For example, the CMA recognises that there is unlikely to be scope to improve outcomes for artists in a material way through greater competition, and that record labels "*do not appear to be earning sustained and substantial excess profits*".⁶ In addition, unilateral measures to help established artists renegotiate improved terms once they achieve success could result in lower advances and royalties for new artists because a label's investment pool would be smaller as a consequence.
- (5) While acknowledging that competition is generally working well, the CMA has identified a number of future risk areas and aspects of the industry that could benefit from further examination in other contexts. In this regard, the CMA has referred various matters for further investigation by the Intellectual Property Office ("**IPO**") and the Centre for Data Ethics and Innovation. Sony Music welcomes the opportunity to continue to engage with these public bodies – as it is already doing – to work towards ensuring a healthy and functioning music industry in the UK. Sony Music is committed to ensuring the best outcomes for its artists in this rapidly developing market and recognises the value in engaging on a number of topics likely to define the future evolution of the music streaming market, such as the new opportunities brought about by Web 3.0 and the 'Metaverse' and the impact of algorithms on music streaming.
- (6) The CMA has identified a number of areas for further consideration as part of the Study, including the importance of UUC and associated platforms, innovation of DSP products and improving transparency for artists. Sony Music looks forward to the opportunity to engage further with the CMA on these topics during the second half of the Study. In addition, Sony Music has provided some further thoughts on a couple of areas it is well-placed to comment on.

2 Artist contract negotiations and transparency for artists

- (7) As noted above, Sony Music was pleased that the CMA identified in its interim report that there are material benefits obtained by artists from royalty portals and detailed royalty statements. Sony Music has invested significantly in its royalty portal to ensure that all of its artists have easy and convenient access to granular information about their own royalties and streams (in real time). The 'cash out' feature introduced by Sony Music via its royalty portal in October 2019 has also allowed its artists to better manage their own cash flow and access royalties ahead of their regular statement dates (a feature Sony Music understands was appreciated by many artists during the height of the Covid-19 pandemic).
- (8) More generally, Sony Music remains committed to exploring ways that will improve data access for artists and notes the suggestions made by the CMA including "*highlighting key financial information, [...] providing improved search functionality to help easily find financial data, providing clear data definitions,*

⁵ CMA Interim Report, p.17.

⁶ CMA Interim Report, p.57 (and Chapter 3).



and explaining why earnings can vary (eg by service).⁷ Sony Music believes this type of information is already clearly displayed to artists in its royalty portal. Sony Music consistently welcomes and acts on feedback from its artists to improve the provision and presentation of data and is committed to further work in this area. Nonetheless, Sony Music stresses that its ability to provide further, more granular data to its artists is dependent upon the cooperation of the DSPs, who must, in the first instance, share this data with labels.

- (9) At the other end of the spectrum, Sony Music acknowledges the challenges identified by the CMA that there is typically very little quantitative information available for new and emerging artists. Indeed, this is what makes the music business so inherently risky – both for artists and for record labels (who ultimately bear the financial risks of any failed investments). It is extremely difficult, if not impossible, to predict the extent of a new artist's future success and sales, principally due to the inherent challenges associated with consistently predicting current and future consumer choices, listening behaviours and broader social trends.
- (10) There is a suggestion that this inherent risk contributes to an "*apparently weak bargaining position*" for new artists embarking on their first contractual negotiation with record labels and the CMA notes that "*this is an area that the government plans to consider further research on*", including taking note of steps taken in other jurisdictions to support artists in negotiations.⁸ However, Sony Music wishes to reiterate that it already takes many proactive steps to support artists in negotiations. Nonetheless, Sony Music welcomes the opportunity to engage further in this area to improve the contract negotiation experiences for new artists if required, especially in terms of what additional information could readily be made available to artists.
- (11) Sony Music notes that the CMA is liaising with the IPO in terms of its work on a transparency code of practice. Sony Music is also engaging with the IPO on the transparency code of practice and other initiatives such as improvements in publishing data and remains committed to working to explore further opportunities and meaningful engagement.

3 Contractual terms with DSPs in licensing arrangements are driven by a broad range of factors

- (12) In its interim findings, the CMA has recognised the complexity of the licensing arrangements between the DSPs and record labels – which "*[are] an inherent part of the licensing process*" – have been developed through lengthy, robust and ongoing negotiations. Sony Music fiercely negotiates its contractual clauses in order to extract the best possible terms from the DSPs for its artists. DSPs negotiate in their interests with similar intensity. As such, these clauses are the result of extensive and complex arms-length negotiations between labels and DSPs and are not distorting the market. Rather, where such clauses favour labels (which they often do not), they act as helpful protections for the labels and artists over the lengthy contractual periods in which the labels interact with the DSPs, which are powerful and influential counterparties.
- (13) Alongside this, the CMA has recognised that market forces outside of these arrangements have influenced the development of certain characteristics of the music streaming market. Sony Music agrees with the CMA's analysis that there are other characteristics or features of the market that perpetuate market trends and stakeholder habits and behaviours. For example, notwithstanding the inclusion of

⁷ CMA Interim Report, p.78.

⁸ CMA Interim Report, p.77.



'must carry' clauses in some licencing arrangements, the CMA recognised that "*stakeholders have noted the importance of offering a wide range of content on a music streaming service, and services that have launched with partial catalogues have not grown to the same size as 'full catalogue' services*".⁹ As a result of the historic availability of a near-full catalogue of music via piracy sites and UUC platforms, the music streaming market has evolved in such a way that DSPs do not compete on the basis of catalogue. Rather, they tend to look for other ways to differentiate themselves, such as sound quality, playlist curation and product usability. A consequence of this, however, is that removing content could harm consumers by reducing the range of music available to them on a service. The 'must-carry' clauses are one of many fiercely negotiated clauses which offer protection to ensure artists' content is not unfairly removed. More generally, Sony Music also has a contractual duty to its artists to ensure all recordings are available upon reasonable terms on all legitimate platforms at all times and these types of clauses assist it to discharge this duty.

- (14) As noted briefly above, Sony Music is highly committed to ensuring that innovation – which has brought about the market conditions enjoyed by consumers at present – continues to thrive. Despite their complexity, these negotiations have not inhibited or stifled innovation or the consumer experience. For example, the licensing arrangements have not inhibited the introduction of streaming service-enabled smart speakers, or family and student tier offerings. Further examples of innovation in the sector include e.g. short clip videos and fitness offerings. All participants in the music streaming value chain have aligned interests in developing the sector in such a way as to capitalise on the potential opportunities of future technological innovation.

4 Music streaming – where to from here?

- (15) The music industry is incredibly dynamic and has undergone significant, transformative development in the last 15 years. In the last 20 years alone, the primary means of music consumption shifted from physical CDs to digital downloads and again to music streaming. This is an industry which embraces the opportunities offered by new technology with a view to constantly improving the artist and listener experience. As noted by the CMA, in 2015, there were around 50 billion streams played in the UK. Music streaming has facilitated growth, supported consumer demand and welcomed innovation, such that by 2021 there were around 140 billion streams played in the UK.¹⁰
- (16) Emerging out of the era of music piracy, music streaming has led to a golden age of music consumption. Listeners can access all of the music that has ever been published at a price which is decreasing in real terms. Sony Music therefore agrees with the CMA's conclusion that music streaming is currently resulting in high consumer satisfaction.
- (17) More generally, Sony Music believes that music streaming is well-placed to take advantage of further technological innovation which can further improve the consumer experience. Web 3.0, the Metaverse and new formats such as non-fungible tokens (NFTs) present opportunities for artists and listeners and there is already tangible evidence of these being embraced. For example, Lil Nas X's Roblox concert was attended 33 million times. This indicates that there is consumer interest in these new and ground-breaking formats and increasing opportunities for artists that will be facilitated through the continual evolution of music streaming.

⁹ CMA Interim Report, p.60.

¹⁰ CMA Interim Report, p.14.



- (18) If the market is left to evolve organically, there is little evidence that the consumer experience would deteriorate; on the contrary, Sony Music believes that it is more likely that the consumer experience will improve. As a result, even well-intentioned intervention to assist one group of stakeholders could have unintended adverse consequences on other groups and destabilise the music ecosystem.