CMA Music and Streaming Market Study

Spotify's comments to the CMA's update report published 26 July 2022

Spotify thanks the CMA for its thorough review of the music and streaming sector and the CMA's update report of 26 July (the "**Report**") and agrees with the conclusion that a Market Investigation Reference is not warranted.

As the Report acknowledges,[1] beginning in 2008, Spotify pioneered the transition of digital music distribution to consumers from the download model to the streaming model. In doing so, Spotify created the conditions for a competitive and dynamic music streaming industry to flourish and become an engine of enormous growth for music as a whole. Indeed, streaming gave a much-needed boost to revenues for music rightsholders after years of declining revenue due to a surge in online piracy: global recorded music industry revenues were 41% higher in 2021 than they were in 2007, the year before Spotify launched.[2]

Music streaming produces beneficial outcomes for consumers and artists alike and is intensely competitive

Spotify welcomes in particular the CMA's conclusion that "*competition between music streaming services is working reasonably well for consumers*"[3] and "[c]*onsumers have a choice of music streaming services, new features and additional content have been introduced, and consumer satisfaction with music streaming services is high.*"[4] Music streaming is a highly competitive space, producing great outcomes for consumers and artists alike.

Spotify is glad that the Report acknowledges several of the ways in which Spotify and the music streaming sector more generally have worked to benefit consumers:

- Full catalogues of music at a stable £9.99 monthly headline price for subscriptions, which means that the cost of a subscription decreases in real terms over time, given inflation and the introduction of value-added content as part of the same subscription, such as Spotify's podcast offering.[5]

- In seeking to differentiate themselves, music streaming services are continuously innovating for consumers in terms of playlists, user functionality, and features such as audio quality or additional content.[6] For instance, Spotify has in the last few years introduced innovative new premium service tiers (such as Duo and Family) to better serve consumers' music consumption preferences.

- The *freemium* business model that Spotify pioneered has led to consumers being able to access full catalogues of music for free, with some ads, thus discouraging

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1 Report, paragraphs 2.5 *et seq*.

2 Global recorded music industry revenue was USD 18.4 billion in 2007 and USD 25.9 billion in 2021. *See* page 6 of https://www.ifpi.org/wp-content/uploads/2022/04/IFPI_Global_Music_Report_2022-State_of_the_Industry.pdf.

3 Report, paragraph 5.68.

4 *Ibid.*

5 Report, paragraph 5.36.

6 Report, paragraph 5.37.

piracy on a lasting basis and ensuring that high revenues flow to the entire music value chain.[7]

Artists - in particular lesser-known artists - are at the centre of the music industry revolution Spotifybrought about. More artists are sharing in today's thriving music economy than ever before. In the peak of the CD era, nearly 25% of U.S. album sales were accounted for by the top 50 artists. On Spotify in 2021, only 12% of U.S. streams were of the top 50 artists — meaning that revenue opportunities now reach far beyond the superstars.[8] Many artists use distributors to self-release their music on Spotify. For instance, 28% of artists who reached $10,000 in earnings on Spotify released music through an artist distributor in 2021. These artists represent a 171% increase since 2017.[9] In other words, streaming has lowered the barriers to entry to music and accelerated the path to finding a global fan base — meaning artists can go rapidly from first single to first significant paycheck. Over 10% of artists (5,300) who generated more than $10,000 on Spotify in 2021 released their first song ever in the last two years. In 2021, 350 of them generated $100,000 from Spotify alone.[10]

Competition in music streaming is intense, but there is always room for improvement by remedying self-preferential conduct by vertically integrated companies, such as Apple, who are shielding their music streaming services from competition through unlawfully leveraging market power in other parts of their ecosystem (e.g., the App Store). Spotify is encouraged by the fact that both the CMA and the European Commission (as well as other regulators globally) are in advanced stages of investigating Apple's abusive tactics.

In Spotify's view, the potential risk areas for future competition in music streaming outlined in the Report[11] are hypothetical and unlikely to materialise. Indeed, since the Report was published, there has been news of Bytedance, the parent company of TikTok, planning to launch a new music streaming service called "TikTok Music",[12] while also hiring highly-skilled specialists in machine learning and AI music creation.[13] As the Report notes,[14] Spotify's strongest competitive pressure comes from well-resourced tech giants such as Apple, Google and Amazon - these companies are highly likely to remain invested in competing in music streaming, also given their vertical integration, in particular with respect to Internet of Things applications. Furthermore, switching between music streaming services is risk-free for consumers as (i) there are no monetary switching costs, as subscriptions typically run month-on-month and users can cancel anytime; (ii) most music streaming services (including Spotify) offer data portability allowing users to move their data across to rival services; and (iii) there is a variety of third-party services enabling consumers to migrate playlists from one music streaming service to another. Importantly, consumers can cancel their paid subscription without deleting their account or losing access to the data shared with their current music streaming service.

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7 Report, paragraph 5.38.
8 *Ibid.*
9 *Ibid.*
10 *Ibid.*
11 Report, paragraphs 5.68 *et seq*.
12 See *inter alia* https://www.nme.com/news/music/tiktok-appears-to-be-planning-a-music-streaming-app-3281566
13 See *inter alia* https://www.musicbusinessworldwide.com/tiktok-goes-on-ai-music-making-and-machine-learning-specialist-hiring-spree1/
14 Report, paragraph 5.76.

However, Spotify agrees that there is a risk to the level and speed of innovation in music streaming that could be mitigated if music streaming services had more freedom in their recording agreements.

Music streaming services having more freedom to innovate would materially benefit competition, not only by unblocking previously impossible types of music streaming innovation but also by increasing the speed to market of innovative solutions or product tiers. This could be achieved with the removal or relaxation of the "functionality clauses" in recording agreements, which control detailed aspects of music streaming services' ad-funded tiers. As the Report implies, a balance should be struck between rightsholders' rights to constrain how recordings are used and the need to not unduly stifle innovation by music streaming services to the benefit of consumers.[15]

Striking a fairer balance in recording agreements between labels and music streaming companies would improve outcomes for consumers

Spotify agrees with the CMA's conclusion that each of the majors' content is "must-have" for music streaming services, given that consumers expect a "full catalogue" and that this results in the majors having negotiating power over music streaming services. This seems to have led to weak price competition among record companies for the supply of recorded music to music streaming services. However, these findings should not necessarily lead to the concession that the Report seems to be reaching, i.e., that no material improvements to upstream competition can be achieved without changing the "full catalogue" model itself.[16]

Contrary to the statements in the Report,[17] certain improvements to contractual provisions in recording agreements could materially strengthen downstream competition between music streaming services, which in turn would generate consumer benefit in the form of faster, better innovation and increased added value at lower prices.

Finally, given the CMA's conclusions on weak upstream competition, any further consolidation at that level of the value chain would warrant close scrutiny by the CMA.

Spotify remains at the CMA's disposal to provide additional information.

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15 Report, paragraph 5.73.
16 Report, paragraph 5.29.
17 Report, paragraph 5.22.