

**Warner Music Group Corp.'s submission following the Competition and Markets  
Authority's Music and Streaming Market Study Update**

**1. INTRODUCTION**

- 1.1 Warner Music Group Corp. ("**WMG**") welcomes the opportunity to provide feedback in relation to the CMA's Market Study Update (the "**Market Study Update**"). This submission sets out WMG's feedback on various specific matters arising from the Market Study Update.
- 1.2 WMG agrees with many of the CMA's interim findings and supports the CMA's judgement at this stage that a market investigation reference is not the appropriate way forward in relation to the markets under review. As explained in WMG's previous submissions, WMG considers that vigorous competition exists between recorded music companies, and it is difficult to think of a time in history when it has been better to be a music consumer, artist or creator.
- 1.3 There are, however, certain specific aspects of the CMA's interim findings that, in WMG's view, do not reflect fully the competitive dynamics of the music streaming value chain and/or the challenges that WMG's recorded music business (Warner Recorded Music ("**WRM**") and its UK arm ("**WMUK**")) face in the current music environment.
- 1.4 In addition, WMG notes the CMA's remarks that it is at an early stage of assessing the impact of user-uploaded content platforms ("**UUCs**") on the value chain and welcomes the opportunity to provide further information to the CMA in this submission.
- 1.5 Specifically, WMG's headline comments, which are explained in further detail below, concern the CMA's interim findings in respect of the following matters:
- (i) certain contractual clauses in licences between the majors and music streaming services ("**DSPs**") and the impact of certain other market realities (addressed in Sections 2 and 3);
  - (ii) the level of upstream competition between recorded music companies, in particular, with respect to recording contracts and support for content creators (addressed in Section 4);
  - (iii) the impact of UUCs on the music streaming value chain (addressed in Section 5);
  - (iv) the market position of major DSPs, including, in particular, their relative bargaining positions as compared to major recorded music companies (addressed in Section 6); and
  - (v) the impact of future competitive dynamics (addressed in Section 7).

1.6 WMG remains committed to supporting the CMA in its work and looks forward to continuing to engage constructively with the CMA throughout the remainder of the process.

## **2. CONTRACTUAL CLAUSES IN THE MAJORS' LICENCES WITH DSPs AND CERTAIN MARKET REALITIES**

2.1 WMG supports the CMA's overall conclusion in the Market Study Update that any hypothetical intervention to remove certain clauses in the licences between the majors' and DSPs (such as MFNs) would be unlikely to significantly impact innovation or competition in music streaming, given the market structure and other considerations.

2.2 WMG nonetheless notes that the CMA identifies a number of potential concerns regarding certain clauses in the majors' licences with DSPs. In WMG's view, these potential concerns do not fully take into account the pro-competitive benefits of these clauses and certain other market realities, which means they ought not to arise in practice.

2.3 Two key market dynamics in particular need to be taken into account, namely:

- (i) major recorded music companies and major DSPs are dependent on each other; and
- (ii) detailed licence negotiations are a necessary element of protecting intellectual property rights.

2.4 Each of these key market dynamics are addressed further in turn below and the impact of these in relation to contractual clauses is elaborated upon in Section 3.

### **Major recorded music companies and major DSPs are dependent on each other**

2.5 When assessing the potential impact on competition of such clauses in the majors' licences with DSPs, it is important to bear in mind that major DSPs and major recorded music companies are dependent on each other. In WMG's view, this mutual dependence means that the potential concerns raised by the CMA in respect of these clauses would not arise in practice.

2.6 [REDACTED]

2.7 [REDACTED]

2.8 [REDACTED]<sup>1</sup>

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<sup>1</sup> [REDACTED].

**Detailed licence negotiations are necessary**

2.9 WMG supports the CMA's acknowledgement that detailed licence negotiations are a necessary element of protecting intellectual property rights.<sup>2</sup> However, in WMG's view, there are also important countervailing efficiencies generated by certain contractual clauses in licences between major recorded music companies and major DSPs that bear emphasis.

**3. COUNTERVAILING EFFICIENCIES GENERATED BY CONTRACTUAL CLAUSES IN LICENCES WITH DSPs**

3.1 The CMA notes that its interim findings to date have not addressed in detail the countervailing efficiencies that may be generated by the inclusion of certain MFN clauses in licensing agreements with DSPs.<sup>3</sup> In WMG's view, there are several countervailing efficiencies and other pro-competitive benefits which the CMA may wish to examine further:

- (i) Functionality clauses, economic non-discrimination clauses and price MFNs do not restrict competition between DSPs or prevent DSPs from marketing and promoting certain content, offering discounts for their services to consumers or changing economic terms in licences with other recorded music companies. [redacted].
- (ii) Such clauses also do not restrict competition between recorded music companies.
- (iii) [redacted].
- (iv) [redacted].
- (v) 'Must carry' provisions [redacted]. These provisions also benefit consumers who, as a result, have access to a recorded music company's full catalogue.
- (vi) The contractual clauses and licence structure support innovation.

3.2 Each of these is addressed in turn below.

**The clauses do not restrict competition between DSPs or restrict DSPs' ability to modify their service terms**

3.3 [redacted].<sup>4</sup>

3.4 [redacted].

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<sup>2</sup> Paragraph 5.73, Market Study Update.

<sup>3</sup> Paragraph 4.3, Market Study Update.

<sup>4</sup> [redacted].

3.5 Major DSPs either themselves or combined with their affiliates are among the world's most powerful, commercially successful entities whose economic weight dwarfs the recorded music industry. These major DSPs therefore have significant economic resources that they can leverage to offer a discounted service to customers, irrespective of the revenue share agreed with major recorded music companies, which in any event has been decreasing. As the CMA notes, this is borne out by the fact that subscription prices have remained static for some years and are therefore cheaper for consumers in real terms.<sup>5</sup>

3.6 [REDACTED].

3.7 [REDACTED].

(i) *Functionality provisions are beneficial for both artists and consumers*

(a) With respect to the licences of the majors, the CMA suggests that the provisions around the functionality of a DSP indicate that the majors can exercise greater control over how their intellectual property is utilized and therefore stifle competition.

(b) [REDACTED].

(c) [REDACTED].

(ii) *Economic non-discrimination provisions do not restrict music streaming services from marketing and promoting cheaper content*

(a) [REDACTED].<sup>6</sup>

(b) [REDACTED].

(iii) *Price MFNs do not prevent DSPs from seeking more favourable economic terms in licences*

(a) In WMG's view, price MFNs do not in reality prevent DSPs from negotiating more favourable financial terms in licences with recorded music companies. WRM's revenue share has [REDACTED] since the introduction of music streaming and, as recognised by the CMA, this trend has been felt across the recorded music market, [REDACTED].<sup>7</sup> [REDACTED].<sup>8</sup>

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<sup>5</sup> Paragraph 5.36, Market Study Update.

<sup>6</sup> [REDACTED].

<sup>7</sup> [REDACTED].

<sup>8</sup> [REDACTED].

**The clauses do not restrict competition between recorded music companies**

3.8 The notion that the majors have weak incentives to compete on price does not reflect WMG's view of the reality it faces in the market (or the CMA's findings elsewhere in the Market Study Update).<sup>9</sup>

3.9 It is also worth noting that a reduction in price by recorded music companies would not necessarily lead to further competition; rather, it would lead to a value transfer to DSPs. Similarly, in light of the continued erosion of recorded music companies' revenue share,<sup>10</sup> significant price competition could ultimately lead to a 'race to the bottom' between recorded music companies, thereby limiting the available pool of revenue that could be returned to artists and creators or used for investment which would ultimately be detrimental to the overall music streaming value chain.

[X]

3.10 [X].

3.11 [X].

3.12 [X].<sup>11</sup> [X].<sup>12</sup> [X].

[X]

3.13 [X].<sup>13</sup> [X].

3.14 [X].<sup>14</sup> [X].

**'Must carry' provisions have pro-competitive consequences**

3.15 The notion that must carry provisions may weaken a DSP's ability to delist (or threaten to delist) the majors' less popular songs (which may in turn hamper that DSP's efforts to drive competition between the majors) does take full account of the fact that major recorded music companies, DSPs and consumers all benefit from the fullest catalogue of content being available.

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<sup>9</sup> Paragraph 5.4, Market Study Update.

<sup>10</sup> Paragraphs 5.11 and 5.52, Market Study Update.

<sup>11</sup> [X].

<sup>12</sup> [X].

<sup>13</sup> [X].

<sup>14</sup> Paragraph 5.21, Market Study Update.

- (i) A major recorded music company and its artists benefit as the provisions help ensure that they have equal access to music streaming services.
- (ii) Consumers benefit as they have on-demand access to a major recorded music company's full catalogue, rather than have a limited offering selected by DSPs.
- (iii) DSPs benefit from being able to make as much content available as possible, which is essential to the 'all you can eat' model of music distribution that consumers have come to expect. Further, this model of unlimited consumption promotes competition between major DSPs by requiring that they compete on service quality and features – which ultimately increases consumer welfare.

3.16 [redacted].<sup>15</sup>

3.17 [redacted].

**The contractual clauses and licence structure support innovation**

3.18 The notion that price MFNs in licences between major recorded music companies and major DSPs may make it more difficult for major DSPs to facilitate new entry or expansion of smaller record labels, or may act as a barrier to entry or expansion by smaller DSPs, [redacted].

3.19 [redacted]. Where this is the case, the whole ecosystem benefits: rightsholders, including smaller labels, have more opportunities to license their content, generating greater value for themselves and their artists; and competition between DSPs is encouraged as new entrants and new business models drive innovation, to the benefit of music consumers.

3.20 [redacted].

3.21 In addition, detailed licence negotiations allow WRM to incorporate flexible arrangements to promote innovation and allow DSPs to differentiate themselves. [redacted].

**4. ARTISTS AND CONTENT CREATORS BENEFIT FROM COMPETITION IN THE UPSTREAM MARKET**

4.1 WMG notes the CMA's comments in relation to upstream competition.<sup>16</sup> The CMA's preliminary conclusions are welcome [redacted].

4.2 The CMA may also wish to bear in mind the following key points as its market study continues:<sup>17</sup>

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<sup>15</sup> [redacted].

<sup>16</sup> Paragraphs 5.107 - 5.110, Market Study Update.

<sup>17</sup> [redacted].

- (i) The impact of digitisation;
- (ii) The amount of data that WMUK's artists have access to;
- (iii) The significant bargaining power attributable to artists; and
- (iv) The significant benefits and support in relation to development and promotion provided in artists' contracts.

4.3 Each of these is described in further detail below.

**Digitisation enables recorded music companies to have access to a greater store of data and other publicly available indicators of new talent, making it easier to identify talent and increasing competition between record labels to sign artists**

4.4 Digitisation allows recorded music companies (both majors and independent labels) to have access to a greater store of data than ever before as well as other publicly available indicators of possible future success, such as popularity on social media platforms.

4.5 Because record labels all have access to the same data, there is increased competition between recorded music companies to sign artists. As a result of the shift to digitisation and non-traditional methods of building demand, such as social media, [3<].

4.6 This competition to sign talent gives artists greater choice over which record label or distributor to sign with and to secure more favourable terms. Artists tend to sign with labels or distributors that they believe can add value, understand their ambition and creativity and help them 'cut through' to reach new fans. Independent labels that focus on specific genres or that may offer different forms of personalisation can be an attractive option for a new artist. There are multiple examples of highly successful artists working with independent labels including the Arctic Monkeys (Domino), Wet Leg (Domino) and Belle and Sebastian (Matador). Further, as the CMA recognises, digitisation also opens up the possibility of artists to self-release, including by uploading directly to streaming services.<sup>18</sup> This further contributes to a seller's and consumer's market — demand for content far outstrips supply.

**WMUK's artists have access to a significant amount of data regarding their earnings and streams; confidentiality clauses in licences with DSPs have no impact on artists' ability to understand this information**

4.7 The CMA recognises that the confidentiality of certain commercial terms in licenses with DSPs is important to maintain, but at the same time suggests that confidentiality restrictions could weaken the negotiating position of artists.<sup>19</sup> When assessing this aspect of recorded music companies' relationships with artists, however, it is important to

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<sup>18</sup> Paragraph 5.86, Market Study Update.

<sup>19</sup> Paragraph 4.20, Market Study Update.

bear in mind that it is standard business practice for commercial agreements to ensure the confidentiality of competitively sensitive terms and clauses.

4.8 Notwithstanding these confidentiality clauses, WMUK's artists have access to extensive data relevant to their own contractual terms and their earnings (both actual and potential). [redacted].<sup>20</sup>

4.9 [redacted].

4.10 [redacted].

**Artists have significant bargaining power and contract terms have been improving over time**

4.11 As more routes to market open, the amount of new music released increases, and artists enjoy a wider and more flexible set of options, artists have greater choice as to how they record and release new music, including not to sign with a record label at all and to use growing routes to market such as self-release. Consequently, recorded music companies compete fiercely to sign new content creators as recorded music companies monitor multiple potential breakthrough content creators at any one time.

4.12 This strong competition in the market results in artists having increased bargaining power. Certain key material terms such as advances, royalty rates, recording commitments and licence periods are becoming less favourable for recorded music companies, despite the significant upfront risk and uncertainty they take on whenever they sign new artists, and significantly more favourable to artists. Streaming royalty rates, which are negotiated with each artist, have increased over time; in deals currently negotiated by WMUK they are typically in the [redacted] range, where in FY 2017 the range was [redacted]. Additionally, artists have greater flexibility to switch between recorded music companies, as the recording commitments are generally shorter in duration now than previously. The average length of an artist's initial contractual recording commitment has been falling, and the number of optional releases agreed with new artists has also shrunk over time; [redacted] album deals were standard a decade ago, but WMUK's recording contracts with its artists are now typically for [redacted] albums, mixtapes or EPs. At the same time, the risk involved in investing in new music and new artists is and will remain high. The upfront investment and attendant risks in developing new music and new artists are borne by WMUK (and in turn, WMG).

**Artists signed to WMUK receive significant benefits and support in relation to development and promotion — the economics of digitisation has not changed this**

4.13 As WMG has outlined in its previous submissions to the CMA,<sup>21</sup> WMUK plays a significant role in fostering new talent and supporting the growth of artists, including through A&R services and supporting and funding tours and appearances, and helping them to 'cut

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<sup>20</sup> [redacted]

<sup>21</sup> [redacted]



through the noise' in an ever-growing artist pool. This is still the case and even more so since the advent of streaming.

- 4.14 The advent of digital music has led to reduction of certain costs for recorded music companies. There are no manufacturing and distribution costs for non-physical records, although manufacturing and distribution costs have increased for physical records (where, for example, vinyl is a growing format). Yet streaming has brought with it a whole new set of additional costs and has necessitated changes to recorded music companies' business models. Adapting to streaming has required recorded music companies to build a more complex infrastructure and develop specialised skills.
- 4.15 Streaming has led to an increase in the volume and pace of new releases, particularly as digitisation has transitioned the recorded music industry from an album-based to a track-based model, which requires larger teams working faster than previously. For example [X].
- 4.16 Digitisation requires constant marketing and promotion to stimulate streams, rather than the shorter campaigns around album or single releases that typified the era of physical sales. It also requires additional investment in marketing and promotion for artists to ensure that WRM's artists stand out and reach new audiences.
- 4.17 Data is also more critical than ever, and artists benefit from WRM's data insights and administration. WMG has a new global data operations department and entire teams focused on product and asset data cleaning, standards, training and compliance to ensure the highest possible consumer-facing experience and the highest standards of administration for artists and record labels. The shift to digital requires investment in technologies to detect and prevent unlicensed copying and distribution. Additionally, a digital product is far more dynamic than a physical one, constantly evolving during its lifetime and requiring constant touchpoints. WMG teams are involved in swapping audio and cover art, amending territory rights and carrying out metadata upgrades on the catalogue to enhance data fields.
- 4.18 The ever-changing nature of technology also requires an ongoing ability to adapt and respond, and WMG's operations will continue to evolve as technological advances and shifts in consumer preferences continue at pace, to the benefit of WRM's artists and the consumer. WMG's operations, commercial and global technology teams are continuously responding to innovation in the music industry by developing new products and technologies, and constantly adapting workflows to automate the supply chain. [X]. WMG is investing heavily in anticipation of future technological advances and shifts in consumer demand and preferences. WMG has been updating its systems to interface with and produce content appropriate for new technologies and formats including non-fungible tokens, virtual reality and gaming, and also developing technical expertise to assist with, for example, the negotiation of deals involving untested technological formats that bring novel challenges and to ensure that the metadata behind songs delivers what consumers want when they interact with music through voice-activated software such as smart speakers.

## 5. THE IMPACT OF UUCs ON THE MARKET<sup>22</sup>

- 5.1 WMG welcomes the CMA's intention to look further into the impact of UUCs on the market.<sup>23</sup>
- 5.2 UUCs provide a platform for users to upload content to the internet that is either generated by the user or replicates other commercially created content. Of the UUCs available, YouTube is the most popular with over 2.6 billion monthly active users<sup>24</sup> but there are multiple other platforms including TikTok which are increasing in popularity. In 2021, it was estimated that approximately 41 million people in the UK use YouTube.<sup>25</sup> [REDACTED]  
[REDACTED]<sup>26</sup>
- 5.3 Although UUCs can play an important role in promoting new artists and allowing content creators to share their music, because access to UUCs is free to the user often with limited interruption for advertising, and such services command a huge volume of users, the value of music is ultimately depressed, and the market distorted. This ultimately impacts UK artists because they are not adequately remunerated for their content. Given the global reach of UUCs, and the importance of UK music exports, as the CMA recognises,<sup>27</sup> the remuneration for UK artists from international sources is further eroded.
- 5.4 This situation is primarily created by two interconnected factors:
- (i) the UUCs' reliance on 'safe-harbour' provisions; and
  - (ii) the consequential 'value gap' between the market value of recorded music content and the value that UUCs pay for the music.

### **UUCs' exploitation of the 'safe harbour' provisions**

- 5.5 As WMG has outlined previously, the activities of UUCs have a significant economic impact on both WMG's upstream and downstream activities, due to UUCs' reliance on 'safe-harbour' provisions.<sup>28</sup>
- 5.6 The provisions require content owners to monitor activity on a UUC and issue takedown notices when they detect infringing content. UUCs are required to remove unlicensed content only when they receive a take-down notice from rightsholders. The notice and take-down process is ineffective at preventing swathes of infringing content from being

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<sup>22</sup> [REDACTED].

<sup>23</sup> Paragraph 5.135, Market Study Update.

<sup>24</sup> Statista 2022, <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>.

<sup>25</sup> Statista 2021, <https://www.statista.com/forecasts/1145489/youtube-users-in-the-united-kingdom>.

<sup>26</sup> IFPI 2021 MCS Consumer Survey.

<sup>27</sup> Paragraph 1.6, Market Study Update.

<sup>28</sup> [REDACTED].

made available on UUCs because the notices are URL-specific and there is no ongoing requirement for UUCs to keep infringing content from re-appearing elsewhere on their platform (i.e. 'stay-down').

5.7 The time, effort and expense of monitoring UUCs for infringing content is an obvious economic burden that materially impacts music companies and their artists and songwriters. When the 'safe harbour' provisions were enacted, YouTube and other UUCs did not exist. Online platforms were merely passive conduits for transmitting information and those platforms were generally blind to the content on their sites that was uploaded by individual users. UUCs have developed significantly since their creation — they are now far more than mere passive conduits for content. UUCs actively organise and promote content, monetise content by selling advertising relating to it, make recommendations to consumers based on their prior streaming selections and provide tools to consumers to search and curate content.

5.8 UUCs' reliance on safe-harbour provisions that shield them from liability for copyright infringement has created an uneven playing field for licensing discussions. UUCs have taken the position that, unlike paid streaming services, they do not require a licence. [REDACTED].

5.9 [REDACTED].<sup>29</sup>

**The consequential erosion of the value of WMG and its artists' and songwriters' content by UUCs**

5.10 As a result, UUCs depress the value that consumers are willing to pay for paid streaming services. If UUCs are able to continue to rely on safe-harbour provisions, the 'value gap' between the market value of recorded music content and the value that UUCs pay for the music, will remain.

5.11 [REDACTED].<sup>30</sup> [REDACTED].

5.12 [REDACTED].

5.13 [REDACTED]. Indeed, approximately 40% of 25-34 year olds state that the reason they do not pay for streaming is that everything they want to listen to is on YouTube.<sup>31</sup>

5.14 [REDACTED]:

5.15 The result is ultimately a negative impact for artists', songwriters' and music companies' remuneration.

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<sup>29</sup> [REDACTED].

<sup>30</sup> [REDACTED].

<sup>31</sup> IFPI 2021 MCS Consumer Survey.

- 5.16 WMG recognises, as noted by the CMA,<sup>32</sup> that UUCs can play an important role in helping to break new artists and allow consumers to have access to content from new creators. However, these potentially positive consequences are outweighed by the negative impact on artists' and songwriters' remuneration overall as a result of the safe-harbour provisions, the 'value gap' and the undermining of non-UUC DSPs.
- 5.17 Since the start of the CMA's market study, the EU Regulation on a Single Market for Digital Services (the Digital Services Act) has extended the protection of Article 17 of the Copyright Directive into the sphere of broader digital services. WMG is hopeful that some of the issues identified above regarding UUCs and the use of 'safe harbour' provisions, as well as wider concerns with the 'value gap' created by UUCs, will be addressed going forward through the implementation of the Digital Services Act.

## 6. THE MARKET POSITION OF DSPs

- 6.1 WMG agrees with the CMA's interim finding that the nature of the downstream market is beneficial to consumers, with DSPs providing access to huge catalogues of music for extremely low prices. WMG maintains that there has never been a better time to be a consumer of music.
- 6.2 WMG nonetheless also welcomes the CMA's pointing out that certain aspects of the downstream market may cause concern, namely the possibility for integrated DSPs to self-preference and the market power of major DSPs.<sup>33</sup> [redacted].
- 6.3 [redacted].<sup>34</sup> [redacted]. The most visible impact of that imbalance has been the pressure on WRM's share of total digital revenue, which has declined since the introduction of music streaming.
- 6.4 In WMG's view, the Market Study Update does not appear take into account a significant conclusion from the CMA's findings relating to the bargaining power of major DSPs:
- (i) As the CMA points out, the share of UK streaming revenues retained by music streaming services has increased at the expense of recorded music companies like WRM.<sup>35</sup> This illustrates the relative bargaining positions of recorded music companies like WRM vis-à-vis major DSPs.
  - (ii) The market dynamic that the major recorded music companies and major DSPs are dependent on each other.

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<sup>32</sup> Paragraph 5.143, Market Study Update.

<sup>33</sup> Paragraphs 5.47 and 5.70, Market Study Update.

<sup>34</sup> [redacted].

<sup>35</sup> Paragraph 3.88, Market Study Update.

6.5 In addition, the CMA may wish to consider in more depth the role of DSPs in the downstream market. [redacted]:

(i) [redacted],<sup>36</sup>

(ii) [redacted],<sup>37</sup>

(iii) [redacted],<sup>38</sup> and

(iv) [redacted].<sup>39</sup>

## 7. FUTURE COMPETITIVE DYNAMICS

7.1 The CMA has identified in its Market Study Update a number of factors that may potentially give rise to competition concerns in the future. However, any assessment of these factors would need to be performed by reference to the relevant legal and economic context that exists at the point in time when the relevant event occurs. WMG is therefore concerned that any final conclusions reached by the CMA in respect of these factors may be interpreted overly broadly, i.e. without the benefit of the necessary contextual assessment being performed at the relevant time.

### **Statements regarding a sustained increase in majors' profits**

7.2 The CMA states that a sustained increase in the majors' profits, over time, could indicate excess profits and weaker competition and could justify competition measures to transfer excess profits to artists, songwriters or consumers.<sup>40</sup>

7.3 Such concerns would, however, only arise if profitability increased significantly and, importantly, only if such increases were not otherwise the result of the normal functioning of a competitive market or due to overall economic trends. Recorded music companies should not be barred from generating increased profits by delivering better commercial performance, for example, by identifying and investing in successful artists and bringing their music to market.

7.4 Similarly, in suggesting that major recorded music companies not earning substantial excess profits means that there is unlikely to be a transfer of profits to consumers or creators, the CMA appears to suggest that increases in consumer prices would be driven by rightsholders. However, both downstream prices and major recorded music companies' profitability may fluctuate in response to other market pressures (e.g.

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<sup>36</sup> [redacted].

<sup>37</sup> [redacted].

<sup>38</sup> [redacted].

<sup>39</sup> [redacted].

<sup>40</sup> Paragraphs 5.108 and 5.133, Market Study Update.

inflation), and an increase in profits in one year does not necessarily result in success in subsequent years.

- 7.5 For these reasons, WMG considers that any statement regarding possible concerns over WMG's, and other majors', future profitability levels ought to be appropriately qualified or caveated in this way.

**Statements regarding future mergers**

- 7.6 The CMA states that future mergers between recorded music companies, in particular acquisitions by the majors, could risk reducing the current intense competition to sign some artists.

- 7.7 WMG considers that, whilst it is possible that future mergers could potentially give rise to competition concerns, mergers that meet the jurisdictional thresholds of the UK merger control regime could be subjected to a separate review by the CMA to assess whether they have resulted, or may be expected to result in, a substantial lessening of competition. In this regard, it is notable that the CMA has undertaken an in-depth review of a recent acquisition in the UK music sector and confirmed, in that case, that no such concerns would occur.<sup>41</sup> This point is of particular relevance to WMG as the smallest major recorded music company.

- 7.8 More generally, the strong competition between recorded music companies and the diversity of recorded music companies that focus on specific genres would tend to act against concerns regarding future merger activity (unless particular circumstances existed such as, for example, a particularly close degree of competition between the merging parties). WMG therefore believes that any statement regarding possible concerns over future merger activity ought to be appropriately qualified or caveated, so that it is not misinterpreted as a blanket ban of any future merger activity in the sector.

- 7.9 Further, any statements by the CMA on future merger activity in the sector logically ought also to apply with equal if not greater force to DSPs in terms of any future attempted acquisitions they may seek to make in the market (or adjacent markets, in cases where they are or are looking to become vertically integrated), in particular because of the potential for tipping on the downstream side of the market which can particularly impact consumers.

**Statements regarding the potential future fragmentation of streaming services**

- 7.10 The CMA states that if the supply of music streaming services were to become more fragmented, this could increase the bargaining power of the majors. The CMA notes that, under this market structure, music streaming services may not have the scale needed to push back on more stringent licensing terms, which could include more stringent restrictions on how music streaming services promote independent record companies' repertoire.

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<sup>41</sup> ME/6936/21-II *Sony Music Entertainment / Kobalt Neighbouring Rights* (16 March 2022).

7.11 This finding implies a scenario where a more competitive market exists, however. In WMG's view, a scenario where the downstream market becomes so significantly diluted that DSPs have no material bargaining power in licensing negotiations also appears to be a highly unrealistic proposition. In WMG's view, such statements may therefore benefit from being clarified.