



THE IVORS ACADEMY OF MUSIC CREATORS
1 UPPER JAMES ST—LONDON—W1F 9DE
IVORSACADEMY.COM

Music and Streaming Market Study
The Competition and Markets Authority
The Cabot, 25 Cabot Square
London E14 4QZ

19 August 2022

Dear Music and Streaming Case Team,

RE: IVORS ACADEMY RESPONSE TO THE CONSULTATION ON THE PROPOSAL NOT TO MAKE A MARKET INVESTIGATION REFERENCE

Please find attached our comments on the interim report.

Yours faithfully,



Graham Davies
CEO, The Ivors Academy of Music Creators

Comments on the report

General

1. Although the interim report only contains the CMA's "early findings", those findings appear to be strongly worded, based on relatively limited evidence. The tone of the document and lack of balance is surprising, given that the report finds that there are indeed aspects of the markets under consideration that are not working well, and appears to find that creators are overall not well remunerated.
2. Six months is a short period in which to undertake such an important piece of work and we understand one would normally expect a longer lead time before the commencement of a market study. While the Government has been keen to see progress made on the matter of creators' earnings from streaming across several initiatives, the CMA must ensure that it takes such time as is needed to conduct a thorough study whilst still meeting the statutory deadline.
3. The Academy has made itself available for meetings and requests for information from the CMA and has responded punctually to all requests made during the process. It is disappointing that the CMA has not proactively engaged with the Academy and others to test the assertions and positions taken by others which it appears to have adopted in the report. We would have expected fuller consultation given the adverse position taken by the CMA at this stage and given the importance of our organisation and others representing the creative community.
4. In several places in the report there are references to the interests of songwriters being considered, but overall, it would seem that the CMA chose to focus on the record label sector rather more than the publishing market. Concerns regarding the suppression of the value of music publishing rights by the dominant label interests were a key prompt for the CMA to undertake the market study and our desire for a full investigation.

Background

5. Piracy

The report says that "streaming has been pivotal in securing the sector's recovery from piracy". The CMA appears to take "piracy" as its counterfactual. During the days of high levels of piracy, a subset of consumers got used to all music being available at zero cost. Streaming was the one model that combined having all music available for a fixed monthly cost (rather than the iTunes pay-per-download model), or free for those who were willing to tolerate adverts. It therefore quickly became the preferred model for many, but its popularity and the reduction in piracy does not mean that streaming is a perfect model. The market position of the major labels who held large catalogues at the dawn of streaming has become set in stone because of the market power they have been able to exercise vis-à-vis creators and streaming platforms.

It should be noted that the development of the streaming services was based on investment by the streaming services and not the music labels or publishers. Further, the comparative value of music rights in the streaming market has been tied to the costs that the labels used to bear in developing and managing the distribution of physical recorded music – costs now largely born by the digital service providers and the distribution companies that support the equivalent online processes.

The CMA has failed to respond to the fact that streaming has brought about a significant change in the supply of music to the market but the valuation of rights for the publishing sector has not reflected that changing market due to the market power of the major labels.

6. Price

The report says: "The price for music streaming services for consumers has also gone down in real terms in recent years because the monthly cost of music streaming

service subscriptions has generally not kept pace with inflation.”

With the strong focus on the £9.99 subscription fee and the expectation that all music is available all the time, there is a real question whether the streaming model is sustainable and whether it sufficiently supports grassroots music. The CMA has shied away from carrying out this important assessment of the viability of the sector, in stark contrast to its approach for example in the groceries sector, where the relatively weak position of suppliers vis-à-vis supermarkets led to the introduction of the Groceries Code Adjudicator.

The report contains generalised statements about how consumers listen to music which disregard the diversity of the consumer landscape and the strong connection individual consumers have with creators. A ‘one size fits all model’ of how the industry currently works does not reflect this. Someone may be a jazz lover, but their subscription fee paid to Spotify disproportionately goes to creators of music they might never listen to. To say, as the report does, that the market reflects the way “we” listen to music is not an accurate reflection of the individual experience of music lovers in the UK. We touch on this again in more detail below.

7. Value Chain

The seeming bias of the CMA’s work in recognising the importance of artists and labels over songwriters and publishers is evident in figure 3.1 of the report. The songwriter does not even feature in the diagram of the value chain. Relegating creators to the footnote is a clear demonstration of the disregard that exists for the importance of songwriters to the streaming economy.

It must be reiterated that no recording on any streaming service would exist without the song. Indeed, there is plenty of evidence¹ that consumer behaviour is driving a song economy – it is the song that the consumer increasingly searches for, or listens to, and not the recording/artist. Yet the creation stage of the value, so fundamental to the whole industry is left of the CMA report. The Ivors Academy strives to move the songwriter from sitting in the footnotes, or commonly not credited at all (see Credits Due initiative), to being centre stage and properly recognised for the value they bring

The CMA approach in the interim report does not properly recognise the work and value contributed by songwriters to the development not just of the song, without which no recording would exist, but to the development of the sound and the production of the recording, for which songwriters commonly carry the costs. The songwriter will usually also be asked to give away a percentage of their publishing income to the artist and will be expected to pass over (without payment) any interests in the sound and recording to the label who will own it outright.

As the CMA notes in 3.6, artists may, in addition, generate income from live performances and tours and from the sale of merchandise. These sources of income are not available to songwriters. Royalties for songwriters are a vital source of income and as streaming cannibalises linear broadcasting, there is deep concern about a continuation of the transfer of value from songwriters to labels/artists already seen.

In 3.15 the report makes clear that the majors have had holdings in Spotify from the time of its launch. While the majors may have much less influence over Spotify’s strategy now, given the dilution in their ownership stakes, the influence that may have existed at the time of launch needs investigation, particularly the means by which the labels secured much higher valuations for recording rights over publishing. The CMA gives no recognition to this influence.

¹ <https://www.midiaresearch.com/reports/rebalancing-the-song-economy>

In 3.20 the report seems to imply that labels are still carrying all of the work and costs associated with A&R activity, i.e., finding and developing artists. This is not the case. While label A&R serve an important function, increasingly label A&R teams are only becoming involved at a much later stage in the development of the artist who will commonly already have a more developed sound and following, with works that have been developed by the songwriters. Labels commonly claim to be carrying costs that actually lie elsewhere and use this as a justification for the over valuation of the labels' share of revenue.

Paragraph 3.21 (a) of the report recognises that labels have seen dramatic changes in the costs of production and distribution they must bear and yet no analysis has been done as to why the allocation of revenue as between recording and publishing rights has not significantly changed in line with this.

In paragraph 3.27, the report highlights that the major music companies have maintained stable and significant market shares over a considerable period of time, which is a strong indication of collective dominance but is not identified as such by the report. The report says, "*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.*" This is a staggering level of market power. In this context why is the CMA not explaining why market shares have remained so stable, even when the dynamics in the market have changed so substantially?

Why does the CMA believe, notwithstanding these high market shares, that the major labels do not have substantial collective market power? Such stability in market shares ought to be indicative of the fact that no other labels are able to make material inroads into the market. This demonstrates that the market is oligopolistic in nature, and the market power of the major labels cuts both ways: as against the streaming platforms and as against creators.

We call on the CMA to be explicit on these matters.

In addition, the CMA's profitability assessment is incomplete.

In 3.32, the CMA concludes that the "*industry is earning a healthy and increasing level of profit*", but that profits are not "*substantially and persistently in excess of the cost of capital*". However, the CMA admits that profit is only one indicator, and in any event, the CMA has only assessed profitability for the major labels. It cannot make the finding that the "*industry*" is earning a healthy level of profit when it has not assessed the profitability of others in the value chain, including creators.

It is important that it is explicitly recognised that the streaming industry as a whole does not generate healthy levels of profit for all participants. As mentioned in the report at 3.47 and 3.51, an artist who has one million streams a month will earn approximately £12,000. But only 0.4% of artists will earn an amount less than the living wage from the most important distribution method for their music. As said at 3.54, in terms of the importance of streaming for artists, while it is widely acknowledged as being key for their visibility and public profile, for all but the most popular artists it cannot provide a living. Even for the most popular the returns are derisory, and it is even worse for songwriters.

The CMA should also compare the profitability of the major music companies to the profitability of operators at other levels of the value chain. Compared to both streaming services and artists, the profit levels of the major labels are significantly higher, which merits investigation to ascertain whether they may be extracting a disproportionate level of the total consumer spend on music.

The report says, “*The scale of the majors and their global reach mean they can offer large advances which attracts proven and successful artists.*” but brings no clarity as to where the funding for these large advances is coming from. Having seen a substantial drop in their cost of sales, and by suppressing the value of publishing, the labels are able to both make substantial advances to artists and return inflated profits to their shareholders. These payments come at the expense of the vast majority of music creators.

The point here is that market power is a relative concept which is held vis-à-vis others in the value chain. The CMA has not assessed to what extent the relative distribution of profits as between the record labels and others in the value chain is indicative of the former holding market power over the latter. Instead, the CMA has assessed the profitability of the major music companies in a vacuum. For illustration, Amazon’s retail business has low profitability, yet no one would doubt that it holds substantial market power.

The Academy also believes that the market shares of the major publishers referred to in 3.35 may be understated. The PRS will only have sight of the value of performing rights and in many cases, this will not include the performing rights in the major publishers’ US repertoire which would significantly add to their market share. Incidentally, in 3.39 the paragraph does not read correctly, it should say “For further efficiency, performing rights have by convention to date followed the licensing of the reproduction rights”.

Regarding Paragraph 3.41, it is not our understanding that the streaming services use their own data to calculate revenue shares, rather they will have data on overall market shares. It is rightsholders, via their CMOs or administration hubs, that make claims on the streaming services for the repertoire their licence represents. Also in 3.41 can you please clarify if “*The amount of unmatched UK royalties distributed by PRS for Music (on behalf of PRS and MCPS) was £[0-5]m in 2019, £[10-15]m in 2020, and £[10-15]m in 2021*” relates to streaming royalties only or all unmatched royalties. We believe this information should be in the public domain and presented within PRS for Music’s Transparency Report and it would be helpful for the CMA to make clear that this information should not be kept confidential. The CMA should also note that potentially these figures may reflect only 50% of the unmatched income as it will not take into account any unmatched income the publishers received direct for their mechanical/reproduction rights.

In 3.74 the report infers that user upload services operate under a separate legal framework related to safe harbour and do not need an upfront licence. This is incorrect. YouTube and other user upload services are under the same copyright framework as all other digital service providers and have increasingly recognised that certain defences do not apply to how they deal with the music they carry, and that they are required to obtain licences.

Why does 3.84 and the report make no mention of our research which indicated consumers would like to see more of their subscription fees go to the creators of the music?

Why does the CMA view the allocation of revenue under 3.87 not worthy of comment given the competition concerns we have raised around the dominance of the major labels?

In 3.89 the CMA appears interested in comparisons of how earnings from streaming have moved over time, but no comment or interest in what a fair division of the royalties should be in the future.

As a final remark on Chapter 3 of the interim update paper, the section on creators' earnings lacks a clear conclusion similar to the section on record companies. The CMA should be asking itself whether streaming earnings are sustainable in the long run or whether we may start to see UK creators exit from the market which would be detrimental to consumers and to the UK's position as a leader in music.

8. **Agreements between record companies and streaming services**

At footnote 105, the report says, "*While we have reviewed the majors' publishing agreements, given the scope of our market study, we do not address them in this update paper save to note that the contractual clauses which we discuss in respect of the recording agreements are (other than confidentiality restrictions) not seen, or seen very infrequently, in the majors' publishing agreements.*". The lack of MFNs in publishing contracts is not the concern. It is the view of the Academy that the MFNs explained in 4.8-4.12 are clear evidence of the practice of major labels ensuring a common value for their rights at the expense of significant increases in the value of the publishing rights.

The CMA's analysis of these agreements is flawed and misses the bigger picture both in terms of what the existence of these agreements tells us, and their impact on perpetuating the collective dominant position of the major music companies: the CMA recognises that only the major music companies can negotiate these clauses in their agreements with streaming services. That tells us something about their relative bargaining power, and their ability to extract more concessions than others in the value chain (a confirmation of the picture we see when assessing relative profit levels).

In relation to functionality clauses, the CMA concludes that the difference between the level of detail included in agreements with independent labels and that included in agreements with the major labels is indicative of how "*the majors are able to exercise greater control over how their intellectual property is exploited*" (paragraph 4.7). However, the CMA does not attach any wider conclusions to this. If major music companies are able to exercise their market power by getting better results as to how the rights they represent are exploited, then more creators will want to join the majors, thus increasing/perpetuating their market power.

If major music companies know that they each have price MFNs in their agreements, this could help indicate to each other that they do not intend to compete on price (paragraph 4.11). The CMA does not, however, return to this point when it discusses the major labels' ability tacitly to collude on the division of recording and publishing rates.

The CMA also recognises that price MFNs could make it more difficult for streaming services to facilitate entry or expansion by smaller record labels (paragraph 4.11). This would include any initiatives to pay artists more by increasing royalty payments, even for a short period of time.

Some agreements contain obligations on the music streaming service to ensure that a major's share of tracks within global playlists broadly corresponds to its overall share of streams (4.13(d)). This is a significant example of dominant interference. Playlists are hugely important to the discovery of new music and it is the Academy's view (shared by many within the industry) that these obligations support the majors' dominant position in the top 1,000 streamed recordings. It is our view that the CMA has downplayed this potential link.

In 4.14(b) the report says: "*All of the above-mentioned types of clauses could impact competition by making it more difficult for emerging record companies to gain prominence for their artists. This in turn makes it more difficult for such record*

companies to make money and expand. Accordingly, the clauses may increase barriers to entry for, or expansion by, smaller record companies.”

In a market characterised by a stable oligopoly that is extracting a relatively high proportion of the consumer spend on the end product, it is disappointing that the CMA does not seek to address these agreements and clauses in the report. Indeed, it is our understanding that MFN clauses have largely been analysed as potentially anticompetitive agreements under Article 101 of the Treaty on the Functioning of the European Union (TFEU) and national equivalents. Why then does the CMA consider this of not sufficient concern for fuller investigation?

9. Analysis on competition

The overall position that the CMA takes in the section on analysis of competition is essentially to say that even though competition could be improved, this would improve the position of songwriters and artists, because the majors are not generating excessive profits. This fails to understand the structure of the markets – that being that the valuation of publishing rights should not be a factor of the level of profits of the majors overall but should be independently assessed. We believe that the profits of the thousands of creators in the market should be the focus and how the concentration of earnings in favour of the major-controlled repertoire diminishes their earnings.

In 5.8 of the report, it is interesting to note that the majors are able to use the importance of their repertoire and lack of substitutability to extract significant marketing support from music streaming services that then gives them a competitive advantage. The CMA seems content that such distortion of the market is acceptable when this creates a two-tier market where there are barriers to success for all but the major-controlled repertoire. The lack of transparency regarding these deals is also of great concern.

It is wrong, as in 5.9, to discount the competition concerns arising from the weak competition between record companies based on the competition that exists to sign artists. This is a conflation of domains. As we have previously stated, the majors are able to compete for talent based on high advance costs funded from the unfair competition they exert in the suppression of the value of publishing and their means of securing marketing benefits from the streaming services.

In 5.14 the report says *“the majors being in a stronger bargaining position at present than the music streaming services. As set out in Chapter 3, the majors take a higher share of music streaming revenues than music streaming services, and the majors’ UK record companies have higher operating profits compared to the low or negative operating profits of music streaming services in the UK.”* This is consistent with our understanding that the major labels have control over the process of licensing streaming services and while we believe the streaming services would like a higher percentage of the money they pay to the music industry to go to songwriters and publishers, this is not possible given the stronger bargaining position the major labels have.

10. Competition: contractual clauses

The CMA’s assessment of the impact of contractual clauses in licensing agreements on competition between record companies (paragraph 5.15-5.22) focusses mainly on whether removing these contractual clauses would improve price competition between the major labels, i.e., would lead them to lower the royalty rates charged to streaming services. However, the CMA does not test the opposite, namely whether the price MFNs may restrict music companies from agreeing higher rates with the streaming service. Such higher rates could help the streaming service e.g. in sponsoring entry by a new record company, or to agree on promotion periods or bespoke deals (for

example, higher royalties for LGBTQ+ artists during Pride). It is not clear what purpose these contractual clauses serve other than to protect the major record labels' entrenched position.

In addition, the fact that MFNs are exclusively available to the major labels may have an exclusionary effect on independent labels who are not given the benefit of the MFNs, as these labels have no way of knowing that they are giving their creators the best royalty rates.

11. Majors' bargaining position

In paragraph 5.25, the conclusion that the majors would remain in a strong bargaining position regardless of their publishing activities is acknowledged and confirms their market power. The CMA does not recognise that since there are now commonly so many songwriters on a song, the market power of major labels extends beyond their recorded music market share. If an independent label holds the recording rights to a song that is written by four songwriters, of whom three are linked to independent publishers, but one of whom is linked to a major publisher, the major publisher can resist novel ways of exploiting the rights to that song. This further reduces the ability of independent labels to come up with innovative new ways of rewarding creators.

With respect, it seems that the conclusions in paragraphs 5.24 and 5.25 miss the point. The CMA has failed to address the advantage to the major music companies (in terms of their profitability) of securing a greater share of streaming revenues for recording rights at the expense of publishing rights and, therefore, the incentive that exists to suppress the relative share of revenues payable to the publishing rather than seek an increase in that revenue stream. The percentage of revenues collected via each part of a major music company is not known by the music creators seeking a publishing deal and, in part due to the confidentiality clauses used around this information, it is never the basis of competition for the signing of new writers to a publisher.

In 5.26 it should be noted that all of the gains for the consumer the CMA highlights arising from a diminishing price in real terms actually represent a reduction in the value of music copyright. If the hundreds of thousands of music creators globally are a consumer base as well as those who pay for access to music, it is not a positive to see the incomes of this community being used to subsidise benefits for consumers.

12. Placement and prominence on playlists

In paragraph 5.89, the influence the major music companies have over the placement and prominence of their repertoire on music streaming services is made clear. The Paragraph states that contracts between the major music companies and streaming services include contractual clauses that base a major's representation on playlists on its share of streams. However, the report plays down the importance of this, among other things because 42% of streams are from user-created playlists whereas only around 20% of streams are from playlists provided by the music streaming service. In this respect, we make two points:

First, to what extent do consumers actually know that the playlists they listen to are influenced by the major labels? Should this not be made transparent?

Second, the 42/20 split disregards the fact that the two types of playlists are complements, not alternatives. Playlists from the music streaming service are used by consumers to discover new music that they then add to their personal playlists. It is not surprising that the personal playlist is then listened to more than the streaming service's playlist, which will also contain songs that the listener does not like. Here again, the report does not connect the dots. Streaming services' playlists are key to being discovered. Guaranteeing placement consistent with the majors' market shares

just cements those market shares, it does not create room for independents to break through. Indeed, the report says: “Overall, our initial analysis 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.” It is strange for such a serious conclusion to not be met with any action on the part of the CMA.

13. Bargaining position of artists and information available to artists

In paragraph 5.101 the CMA makes the important point that measures which support artists to renegotiate their contracts could help address the weak bargaining position artists face earlier in their career. However, it would be helpful if the CMA more strongly endorsed this. The long-term exclusivity that record companies obtain is not proportionate when compared to the investment made. The insistence on long-term contractual commitments is not justified by that investment and stands in the way of such more experienced artists teaming up with new independent labels. Even if this is an area the Government plans to research further, a strong endorsement from the CMA would help. The same goes for the point in 5.106 on transparency. There is no indication in the report that the CMA will actively work with the IPO in this area.

14. Emerging thinking on improving outcomes for artists through greater competition

On the conclusions the CMA reaches in paragraphs 5.107-5.110, the following can be said:

These conclusions appear to be based on the idea that there is a finite amount of money in the sector and that redistribution through more competition is effectively a zero sum game. In fact, economic theory tells us that competition and innovation create growth.

In 5.107 the report says, “Our current view is that there is unlikely to be scope to improve outcomes for artists in a material way through greater competition, for example through a less concentrated market structure, reducing barriers to expansion, changing licensing terms over the placements of the majors’ music or changes to the information presented to artists.” But the CMA then goes on to say that the lack of sustained excess profits for the majors mean there is nothing to be done. Our belief is that the growth of the profit margins of the majors should give scope for improved outcomes not just for artists but also for songwriters and their publishers.

The idea in 5.109 that there is one way in which “we” listen to music disregards that people listen to all sorts of music. “We” don’t listen to music in a certain way. Everybody experiences music in a different way, as reflected by the fact that 42% of the music listened to is on playlists that people curate themselves. When physical albums were the way to consume music, some people would buy re-issues of John Coltrane albums with several alternate takes of a jazz song, whereas others would only buy the latest hit compilation record. Individuals may well be willing to pay for deeper listening experiences of the music they love if they know that what they pay the streaming service supports the artists who make that music rather than the top artists. Music is experienced in many different ways and this type of generalisation is not helpful. It is like saying “competition to sell football merchandise appears to reflect how the football we watch is dominated by a relatively small number of clubs”, disregarding that there are millions of fans of the teams that do not regularly make the top 5.

15. Division of revenues between publishing and recording

Turning to the question as to whether the majors divert revenues from their publishers to their record companies, the CMA's analysis again does not go into much detail and appears to reach quite firm conclusions on the basis of limited evidence.

In paragraph 5.114(a), it is not clear what evidence the CMA is using for its conclusion that there appears to be limited interaction between the majors' record label and publishing businesses. For example, it is not clear if the CMA has tested what type of a decision on rates would need to be escalated to the top management tier that oversees both divisions.

In paragraph 5.114(b), the CMA simply points to the fact that deals are negotiated separately and by different teams, without noting that those teams report to the same top management and owe fiduciary duties to the same shareholders. In competition law, corporate groups are presumed to act as a "single economic unit", and a group should be required to provide significant evidence before such a presumption is deemed false in their case. It is not clear from the report what that evidence has amounted to in this instance; there is simply a general statement that different teams carry out the negotiations.

As already highlighted above, in paragraph 5.115 the CMA makes the wrong assumption that songwriters would switch to a different publisher if the major music company they are signed to diverted revenue away from publishing in favour of its recordings. Existing songwriters do not know how much they can make elsewhere and are under long-term agreements. New songwriters face the very limited competition that exists for them which the CMA itself acknowledges with respect to artists. It is inconsistent for the CMA to hold that songwriters would have a strong bargaining position.

As regards 5.116, we are not aware of any songwriter who has been attracted from one publisher to another based on the promised or promoted share of the overall streaming revenue pie that the publisher is able to obtain; the proposition is fatuous. As recognised by the CMA, details of the rates achieved by individual publishers are always confidential and covered by NDAs. No publisher is in a position to be able to indicate to a writer that they get a higher rate than another publisher – firstly because they can't disclose their own rate and secondly because they don't know others' rates. Competition between publishers is based on their admin shares of royalties retained and other matters.

In paragraph 5.122, the CMA simply accepts that the 53%/15% split between recording rights and publishing rights is a "*reflection of longstanding industry norms*", and the result of the higher costs and risks of the recording business. The CMA has also been told by us that the valuation is a reflection of the market power of the major music companies exerted at the start of the digital music ecosystem and exerted since. When competition is working well, we would not expect such a disparity to persist once the underlying cost justification falls away. Here, however, the disparity – which is in the interest of the major music companies – has persisted. The CMA should investigate why that is the case given in particular the change in the cost basis.

In 5.125 the report says "*Thus, while this study does not seek to focus on how different creators should be remunerated, at least at an aggregate level the benefits accruing to songwriters and artists do not appear to be vastly different. It is possible any significant shift in revenues from recording towards publishing could adversely impact artists relative to songwriters as artists could lose out from lower recording revenue.*" This is confusing – is the CMA's task not to see if the market is working effectively?

If the dominant position of the major groups enables them to decide how different

creators are remunerated, against the needs of the market and in their favour, is that not an issue to be looked at?

Removing the control of the labels over the publishing market would enable the market to establish what the proper value of song rights should be. The judgement that any changes in the allocation of revenues will adversely affect artists is at odds with Figure 3.8 which shows the recording artist receiving 4% points more than the songwriter. The analysis also ignores the fact that it is custom and practice now for artists to commonly secure a percentage of song rights while the songwriter is not provided with rights on the recording. So, any improvement in the valuation of song rights will result in improved payment to many artists.

In 5.125 the CMA appears to be saying that a true valuation of publishing rights, in a market that is substantially different to when it emerged 20 years ago, should be based on the level of profit of the major labels. This is a flawed analysis. 5.126 continues the narrative pushed by the labels that publishing should be happy that there has been an increase in the percentage of revenues flowing to publishing since the launch of digital downloads when the starting percentage was imposed by the labels and DSPs. This was never the right benchmark for the valuation of publishing rights in streaming.

The CMA has not considered the valuation of publishing rights in relation to recording rights seen in all other means of communication to the public, for instance radio, broadcasting or synchronisation rights. In these domains, as well as public performance licensing, the rights are valued more approximating parity. As linear broadcasting continues to be cannibalised by streaming, ceterus paribus composers and songwriters will see further transfer of value to a major label dominated market.

16. Proposed response to calls for an MIR

We note the voices that have called for an MIR and note the conclusion in 6.12 that the features of the market listed in the paragraph that precedes it could be restricting or distorting competition in the UK. These include the sustained high concentration in the supply of recorded music to music streaming services and the majors' contractual arrangements with streaming services. We are pleased that the significant issue of lack of transparency and missing data are also noted.

We disagree with the conclusion in paragraph 6.13 on features relevant to the supply of publishing services to songwriters and refer to the arguments we make in response to paragraphs 5.113-5.128 of the interim report (see above). We can also point out that the reference in footnote 166: the issue raised in our submission was not on coordination, but on tacit coordination which one might see in an oligopoly, which the CMA's guidance acknowledges could be a feature for an MIR.

The Ivors Academy disagrees with the reasons given by the CMA for why a market investigation is not the right way forward. The CMA has not looked further than consumer prices, range (to a large extent delivered by the majors' back catalogues) and consumer satisfaction, when there needs to be an assessment of whether this market is able to sustain a creative sector that is necessary if the UK music industry is to remain successful, which would benefit consumers in the long run.