AIM Follow Up Submission In Response to CMA Market Study Update

AIM largely supports the findings of the CMA's recent Market Study Update and notes the alignment with conclusions drawn by the independent academics commissioned last year by the IPO to conduct a report into 'Music Creators' Earnings In the Digital Era'.

We are aware of, have contributed to and support the further submission to the CMA by IMPALA.

We welcome the CMA update paper, which takes a pragmatic and data-led approach to assessing some of the assertions that have been made as to the good functioning of the commercial music market.

That said, there are some areas in which we feel the CMA report could say more and help further clarify, specifically:

1. **Availability of information** and professional advice for artists in the context of career progression pathways – Artists are able to make informed choices and it is important to highlight this.

2. **Loans vs Advances**
   There is an unhelpful conflation of these concepts in much of the discourse on artist deals in music, including in the CMA interim report. It would be helpful to further stakeholder understanding of the music market to clarify and articulate how advances differ significantly from loans.

3. **Theory vs Practice**
   There are areas, such as contract adjustment negotiations, in which market practice already allows for improved terms in circumstances of progression. For example, options and ratchets in recording agreements as well as ad hoc negotiations that regularly take place. It would be beneficial for these practices to be explored and commented on by CMA in the context of any assessment of the need for specific legislation for contract adjustment mechanisms.

4. **Milk vs Music**
   There appears to be ongoing confusion as to how commercial negotiations in music, where artists and art is unique, differ from negotiations in other industries, such as dairy farming, where the product and its suppliers could be viewed as fungible.

1. Availability of Information

The CMA 'MSU' appears to overlook the substantial amount of freely available material already in the market to support all (and especially early-stage) artists in their commercial decision making.

Examples include AIM's own guides such as 'Distribution Revolution', written in partnership with CMU and the 'Start-Up Guide to Music Business'. The Music Managers Forum have also partnered with CMU on their very successful 'Digital Dollar' series, which maps and describes multiple aspects and options for artists in the construction of, or partner selection for, their chosen route to market.

AIM has also recently launched an AI-driven knowledge base which is being made available free and rolled out to all of the clients of all of AIM's independent music distributor members under a new 'Associate Member' type.

Artists that sign deals with a record label do so on the basis of independent legal advice, funds for which are often made available by the label to ensure the artist is not inhibited from seeking proper specialist legal advice on the basis of a lack of access to money.

Additionally, professional music managers would often be advising artists at the point at which recording agreements are negotiated, adding another layer of support and protection for artists.

Recording agreements are subject to negotiation and amended over the course of those negotiations. As such, artist and label will take a view on the relative merits, risks and costs associated with choosing one particular route to market, or commercial partnership over another.

In addition to the sorts of free resources illustrated above, there are a number of more formal books and other texts, specifically written in plain English to help non-lawyers understand the rights landscape and different aspects of rights deals. Examples include seminal texts by authors such as Don Passman ('All You Need To Know About The Music Business' 10th Ed), Anne Harrison ('Music, The Business' 8th Ed) and the more irreverent Moses Avalon ('Secrets of Negotiating a Record Contract').

Whist this comment is not intended to diminish the complexity and opacity new artists often feel they face when entering the music business, it is important to highlight the plethora of resources, support and advice that is available to those artists who are willing and able to be informed.

More could be done by industry and trade bodies in particular to make more knowledge available more easily, and to better signpost existing initiatives to help further level the playing field, however this availability of easily accessed resources tends to sit in contrast to the case made for heightened information asymmetry between parties.

2. **Loans vs Advances** (2.29, p.16)

The CMA indicates a potential risk of conflation between the notions of advances and loans. Both have significantly different characteristics and risk profiles. Both are also often conflated – sometimes due to a genuine lack of understanding of the differences, and sometimes deliberately, based on the emotional response to the idea of artists being 'in debt' to labels.

Current language in the CMA interim report exacerbates this potential for confusion whereas the CMA report presents an opportunity to shed light on the difference between loans and advances which would significantly help readers understand better the operating environment in music.

Advances represent a fairly unique form of project finance, which is unique in its soft terms, especially to unproven creators.

It is also worth noting that beyond the cash advances to fund project and lifestyle costs, labels invest heavily in artists through unrecoupable overhead commitments such as staff, expertise, network effects etc. The true cost of investment is rarely clearly or accurately described.

It would be helpful to a better understanding of the market and where risk is taken (and on what basis) for advances to be fully described and differentiated from loans. For example:

Features	**Loans**	**Advances**	**Comment**
Cost	Interest Bearing	Zero cost of capital	Significant cost difference in artist's favour
Term	Fixed Term	Open ended	Flexibility of term in artist's favour
Return of Funds	Repayable irrespective of outcomes	Not repayable - Recoupable only from certain, specified cashflow	Artist unencumbered by outstanding balance at end of deal term
Security	Secured against assets	Unsecured	Artist not required to put personal assets at risk
Impact of failure	Unpaid loans often impact future deals	Unrecouped balances don't always impact future deals	Artists are often unrecouped when they go on to do new deals with existing or new label partners
Capital Provision Planning	Fixed repayment or default terms	No repayment terms other than through specific project cashflow	Labels have to provide for the capital at risk without an amortisation schedule or default strategy

As this chart indicates, advances represent a unique extremely supportive funding mechanism for creative entrepreneurs such as music artists.

The risk of intervention that might reduce advances could have disproportionate negative impact on investment in new artists as the CMA report rightly points out – but in particular, to higher risk investment in early stage artists, and particularly those from under-represented groups. Advances are crucial to a diverse and inclusive next generation of artists in music – and especially to artists from lower socio-economic backgrounds as well as artists from outside London and South East of England.

Advances in music – an illustration:

A useful illustration of how advances work, and the risk factors in play could come from architecture.

Imagine meeting a young person, who expresses their ambition to become an architect.

You ask them why they want to be an architect and they tell you that they have been sketching buildings from a very young age and that in their bedroom they have hundreds of sketches they can show you.

You look at the sketches and see some potential – at that point you put at risk £300,000[i] *to allow them to go off and build a building, with some guidance from you.*

But you reassure them that the £300k is not a loan. They don't have to repay it. If the construction is a disaster and the building fails, they can potentially try again but are not on the hook for the £300k.

In fact, they can repay the £300k over time, however long it takes, at zero interest – even without adjustment for inflation - and only from their share of the rent assuming the building is occupied. If there is difficulty finding tenants, or any void periods, they don't have to pay back any of the outstanding balance, which will only reduce in the event that there is ongoing paid occupancy of the building.

Furthermore, the marketing, upkeep and maintenance of the building, any accounting or back office administration will be absorbed into overhead and not recharged to the 'architect'.

Ultimately, if the building is successful and occupancy is good, once the £300k is recouped, they will be continue to be paid ongoing royalties on ongoing cash flows into the future.

They will also be able to raise further funds to embark on further, even more ambitious construction projects.

3. Theory vs Practice

Para 5.101 – the right to retrospectively renegotiate contracts for successful artists risks disproportionately negatively impacting the risk taken across a portfolio of artists at the point of signing (as reflected in your report para 5.108).

In reality, many labels do renegotiate in circumstances where artist success is significantly beyond the expectations of both sides in the initial phases of a deal

Options structures and ratchets already provide opportunities for renegotiation upwards for artists in terms of advances, royalty rates and other deal terms. It would be important to clarify that mapping current practice would be an important part of any decision or analysis about the need for policy intervention.

4. Milk vs Music

An analogy is being used by some campaigners to justify their wish to see government intervention in the setting of commercial rates, in particular between artists and labels in music.

The analogy suggests that dairy farmers needed government intervention to uplift pricing when faced with negotiations with large supermarket chains. They suggest that artists face similar market conditions in terms of the inequality of negotiating power.

However, it is important to note that pints of milk are fungible, whereas artists are not.

Competition between labels to sign artists with high popularity or high perceived potential popularity is very different from competition between supermarkets to buy milk from one particular farm or another. Where milk is generally available on the supply side, it is less consequential whether a supermarket buys milk from farm A or farm B whereas the same cannot be said for the selection of artists in the context of recording contracts.

The more popular, or potentially popular an artist is, the more options and negotiating power they will have in the market. In this context it is important also to note that not all artists will base their decision on price, or potential commercial return alone.

One of the aspects of the music market's cultural richness is that people can choose their own metrics for success, whether artistic, financial, political – or a differentiated mix of various elements of those and other factors.

Conclusion:

In our initial submission to the CMA in its Market Study, we highlighted the importance of the CMAs role in reassuring stakeholders that the music market was well functioning.

Concerns remain for some stakeholders around concentration amongst the three so-called 'major' music groups and the power of platforms to dictate terms – both financial and editorial.

Whilst we have taken the opportunity in this submission to indicate points of difference in some stakeholder positions and perspectives, and also to encourage further comment from CMA where we feel this would be helpful to ongoing stakeholder discussions, it would be inaccurate to characterise the sector as completely unaligned.

There are some crucial issues on which broad agreement appears:

- Concern around the low level of consumer pricing, which has not risen in 20 years and has therefore decreased in real terms, whilst the value of the offering to consumers has continued to grow and develop
- The concerns of a 'value gap' in parts of the platform economy
- Ongoing support for sufficient copyright protections to enable the market to grow and thrive as innovation, for example in Web 3, continues
- A lack of access to capital for higher risk areas of our business, such as investment in new music
- The difficulty of making a living as an aspiring artist / musician / songwriter and the disparity between the vastly increased number that try against the number that succeed

From AIM's perspective, the CMA interim report has very helpfully highlighted and clarified many key issues. We hope that work continues and that industry stakeholders can take advantage of the processes currently underway in partnership with IPO to reset the relationships in the ecosystem on a more collaborative footing that will offer more encouragement, support and pathways to success for more, and more diverse, market participants.

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[i] The amount of £300k used here is not intended to be indicative of typical artist advances which can vary enormously and depend on individual deal terms