BPI Response to the CMA Music and Streaming Market Study Update Paper

Introduction

The BPI is the representative voice of UK record labels. Our work champions the UK's recorded music industry both at home and abroad. Our broad membership base consists of over 500 organisations, including hundreds of independent labels and the UK's three 'major' record companies - Universal, Sony and Warner.

The BPI provides training and insight for our membership, by gathering industry-wide data, providing events and supporting our members with networking opportunities. We also play a lead role in policy discussions concerning music and the wider creative industries, including the importance of Intellectual Property. Additionally, we lead work to tackle copyright infringement and music piracy.

The BPI works with labels and artists to promote British music overseas. We administer the Music Export Growth Scheme (MEGS), a partnership between industry and Government, which looks to boost British music exports. We provide wider export support to our members including coordinating trade missions, organising export training and masterclasses, networking opportunities and global events.

Additionally, the BPI owns and organises the biggest showcase for British music, the annual *BRIT Awards with Mastercard,* and the prestigious *Mercury Prize.* It co-owns the *Official Charts Company* and runs *The BRIT Certified Awards* programme, which recognises artist achievement with the iconic Platinum, Gold and Silver Awards.

The BPI welcomes the findings of the CMA contained in the Market Study Update Paper (the CMA report), including the proposal not to open a market investigation into music streaming.

It is clear from the report that the CMA has reached its interim position based on a thorough review of extensive evidence from multiple stakeholders relating to the structure and functioning of the streaming market, as would be expected of an independent regulatory authority.

The BPI's Public Response

The BPI's public response to publication of the Market Study Update Paper said:

"We welcome the CMA's preliminary findings, which have concluded that the streaming market is competitive, providing artists with more ways to release their music, and fans with more choice and value than ever before.

"We and our many and varied record label members are focused on investing in British artists, building their global fanbases, and sustaining the continued success of British music. We will continue to engage with the CMA and government to help ensure that the streaming market works to the benefit of artists, songwriters, record companies and fans."

In a blog post on the music industry website Music Business Worldwide, the BPI's Chief Executive Geoff Taylor observed the importance of evidence in this debate:

"In a debate that, perhaps understandably due the pandemic, has often been characterised more by anecdote than by evidence, facts assume even greater importance. So it is significant that a study by an objective, evidence-led regulator has rejected many claims made about the streaming market in its preliminary conclusions".

The BPI will continue to provide the CMA with robust evidence as it completes its market study. This response to the preliminary findings includes a number of additional data and evidence points (which we highlight in bold throughout) that we have gathered recently, and which could be useful to further substantiate the CMA's evidence base. We also provide below some observations on the role of labels as the principal investors in music and our perspectives on specific issues that are the subject of Government-led research and working groups to which the CMA alludes and in which the BPI is closely involved. These issues include equitable remuneration, contract adjustment/revocation, transparency and metadata.

We continue to offer these perspectives from a belief that evidence-based policymaking is essential to a strong and growing UK music ecosystem that works in the mutual interest of the broader UK music community - artists, songwriters, music companies and fans alike - and continues to support investment into new talent from across the UK.

As previously, the BPI will not be addressing matters where there is commercial or competition sensitivity or where the BPI does not have information, notably in respect of contractual matters between labels and platforms or labels and individual artists.

1. Streaming is highly competitive

We agree that it has always been and remains challenging to forge a successful career as an artist. We also agree with the CMA's conclusion that the era of streaming is highly competitive, both in the upstream and downstream digital music markets.[1]

Technology and the development of new distribution and artist service models has democratised access for artists to billions of fans around the world. However, the resulting surge in artist participation means there is greater competition to secure a meaningful share of fans' finite attention. Technology has also enhanced artists' choice of how (and whether) to work with a record label to release music. In practice, the support and investment that

[1] "*Upstream*" markets refers to the market for talent where record labels compete with new market entrants such as digital distributors and artist services companies, and sometimes even with venture capital, and "*downstream*" markets refers to the competition for consumer attention among the over 80 million recordings available on DSPs.

labels provide artists with is more important than ever when considering how difficult it is to compete with both new releases (with 60,000 songs uploaded every day to Spotify alone[2]) and with all the music ever released before it, that is available on streaming platforms.

2. Labels work in partnership with artists

In this highly competitive era of streaming, the role of labels in supporting artists to achieve their greatest creative and commercial success by helping them develop and connecting them with the widest possible audience is especially important. Artists and labels embark on this journey together – and only a minority of projects achieve commercial success (as the CMA recognizes in para 2.28). In seeking to maximise the success of their artists, labels' commercial interests are entirely aligned with those of the artists they represent – a fact sometimes lost in the political debate surrounding this issue. Fundamentally, labels invest significantly in the artists they sign, they believe in them and work hard to help them succeed. Furthermore, labels use the proceeds of successful releases to help fund new artists – a virtuous cycle that preserves the ecosystem's vitality.

We note and acknowledge the CMA's conclusion that label profits are not excessive, that they are in line with the level needed to fund investment (paras 3.31 and 3.32) and that there are "*no substantial music streaming revenues left to pay artists substantially more, as a group, once record companies' costs have been accounted for, including the cost of raising funds to invest in artists*". (5.107)

In relation to costs, we note and agree with the CMA that the digital transition has required labels to incur new costs, such as systems development, data analytics and digital marketing. Physical manufacturing and distribution costs have reduced but are still a material contributor to costs with physical sales still making up around 20% of UK trade revenues.

We particularly note the inclusion by the CMA of statistics (in para 3.20) relating to the significant and rising levels of A&R investment by labels, who despite many changes in the industry, remain the principal investors in music generally and in new talent specifically. In fact, new data for 2021 shows A&R investment growing further:

- **UK record labels invested almost £500 million in 2021, building artists' careers and boosting music exports through A&R, marketing and promotion. A&R spend has more than doubled on 2016 investment levels.**

- **Labels' A&R spending grew at nearly two-and-a-half times the rate of their revenue rises over the past five years. Combined with marketing spend, this represented nearly 40% of total label revenues last year.**

[2] Spotify Stream On event 2021 via MBW.

3. Labels are crucial to the sustainability of the music sector

Record labels play a significant role as investors in music, in the sustainability of artist careers and in the delivery to consumers of diverse and high-quality music from a broad range of different genres. Labels' ability to reward artists fairly and generate revenue to reinvest in further new talent depends on their ability to secure value from music rights through negotiating licences with third parties such as streaming services. Indeed, striking such partnerships with varied categories of new services to generate value from the use of music is one of the key services that labels provide to artists.

The fact that artists benefit, in terms of opportunity (as borne out by the A&R figures above) from the agreements negotiated by labels with streaming partners, is somewhat lost in the detail of the CMA report's analysis of those agreements. Additionally, the fact that consumers have an interest in labels' ability to sustain investment in new music (rather than just low prices) gets only a passing mention in para 5.145 in the narrow context of the '*value gap'*. It is vital that record companies are in a position to negotiate fair terms with streaming partners on behalf of their artists to ensure the sustainable creation of high-quality music. We feel that these are fundamental points worth reiterating.

More concerning, however, are the references in paras 5.67 and 5.73 that "*complex*" licensing negotiations appear to be "*the main barrier to even greater innovation*". The complexity of negotiations is driven by DSPs' product complexity. This negates the important role licensing plays in generating value from rights to invest in new talent and in sustaining a strong pipeline of music talent to the benefit of streaming services. It also implies that innovation resides uniquely in technology companies and ignores the importance of creative innovation in music itself - which is what consumers truly want from streaming services and which relies upon labels' ability to sustain the value of music rights. Labels have been at the forefront of revolutionising the way in which music is delivered to consumers and they continue to support and drive innovation at every level of the music chain.

In this context, the figures highlighted in paras 3.88 and 5.28 showing that streaming services have managed to retain a higher share of overall revenues (32% in 2021 up from 27% in 2017) while record labels' combined share has fallen from 40% to 37% in the same period, should be seen as potential harm to innovation in the long run.

4. Co-ownership of recording and publishing companies is not suppressing the value of song rights

The CMA's findings that co-ownership of recording and publishing are not suppressing the value of the song is consistent with points raised previously both by the IPO's Creators' Earnings Research and the BPI.

The BPI's data is line with the CMA's conclusion that the publishing share has almost doubled from 8% in physical to 15% in streaming and that the rate of growth in publishing has outpaced recording revenue growth. The CMA's reasoning that there is a lack of incentive for labels to suppress the value of publishing is also consistent with commercial experience and strategic logic.

5. **The market share of independent labels is growing year on year**

The BPI represents over 400 independent labels who are a key part of the music ecosystem, creating diversity in the market, choice for artists and a strong flow of talent development.

The CMA report describes the independent label market share as flat – in fact BPI data has shown that **2021 saw the independent sector grow for the 4th consecutive year**.

6. **Streaming numbers and related earnings need context**

The CMA report estimates that 12 million streams per year would result in £12,000 in earnings from the UK streaming market. The notion of 'per stream' rates is a hangover from the units-based download and physical markets and is not a particularly helpful metric to aid understanding of the streaming model's 'attention economy' since it varies so much by service, territory and over time with changes in the numbers of subscribers and tracks available on a platform.

It is also worth noting that 12 million streams per year would place an artist only at around number 1650 in the rankings of most listened to artists on UK platforms. An artist with even such a relatively modest number of streams could still be earning a decent living overall with the addition of non-streaming income (e.g. from live music, merchandise sales etc.) as well as international streaming income.

Looking to the middle and upper tiers of the streaming rankings, the BPI has collected additional data which the CMA may want to include:

- **BPI research shows that in 2021, nearly 400 UK artists surpassed 100 million streams and more than 600 achieved at least 50 million streams globally.**

- **New artists are also achieving high streaming numbers, with more than 120 breakthrough artists reaching over 100 million streams globally in 2021.**

- **10 British acts surpassed 280 million global streams last year despite never scoring a UK Top 40 hit.**

We can be confident that the sums earned by artists achieving this level of success would be very significant.

7. **Labels acknowledge the tensions over artist remuneration and are taking action**

The CMA points out in para 3.50 that "*low revenues from streaming typically earned by individual artists are a clear source of tension within the industry*". These tensions became particularly acute during the pandemic when the live sector was effectively closed. Labels acknowledge these tensions and with the other relevant industry stakeholders are addressing their causes, including through the Contact Action Group and its workstreams overseen by the IPO.

We welcome the CMA's acknowledgement that artists are being offered higher royalty rates and shorter contract terms (paras 3.52, 5.96) despite the decline in the label share of streaming revenues in recent years, which is partly due to new technology but largely due to the highly competitive "*upstream*" market. We also acknowledge the CMA's reference to the findings of the IPO's Creators Earnings Study that artists' share of revenues has increased compared to physical sales (para 3.89) at the expense of labels.

Each of the three majors have at different times announced that they are sharing 'digital breakage' and revenue realised from the sale of their relevant equity shares in DSPs with their artists.

Additionally, following a series of recent announcements by all three major labels regarding unrecouped advances, thousands of UK artists on pre-2000 deals are now receiving additional royalties.

The BPI is currently in confidential negotiations with the Musicians' Union to discuss session rates for musicians.

8. The BPI and its members are committed to keeping British music competitive on the global stage

Ultimately, the best way to increase remuneration for artists is to invest in and promote UK music vigorously at home and around the world and support the growth of streaming and other new music services, bringing new value into the music economy.

This is the core mission of the BPI and its label members operating in an increasingly competitive global market. UK artists still account for 1 in 10 tracks streamed around the world, but the UK's global share of listening is under pressure from competing markets including the US and Europe alongside rapidly growing markets such as Latin America and South Korea.

In this context, new releases, innovation and maintaining the virtuous investment cycle into new artists and new music will be key to our future success. The UK continues to be a world leader in recorded music exports, the second biggest in the world after the United States. **Exports of British music grew by 13.7% in 2021 to a new annual high of £590.8 million** (and are predicted to grow further). Yet while export revenues continue to grow in absolute terms, the UK's share of the global market has been gradually declining, standing at around 10% in 2020, compared to 17% in 2015.

In this context, we repeat our previous submission to the CMA that it is therefore important that the UK market be considered in light of wider global trends. Any policy or regulatory considerations must not make the UK less competitive or a less attractive place for music companies to do business, which could lead to lower levels of investment and further reductions in our share of the world market, with consequent impacts on the UK market, on UK artists and on UK consumers.

9. Changes to remuneration models could have unintended consequences

The CMA report makes reference to the IPO's research into alternative remuneration models, including equitable remuneration, which the BPI looks forward to reviewing.

The BPI is concerned that an equitable remuneration right, implemented in a way that dilutes the labels' current exclusive intellectual property rights, risks suppressing the market and resulting in performers receiving less, since right holders would no longer be able to freely negotiate market rates. The outcome may not be beneficial to performers either as their larger share would apply to lower total revenues.

Meanwhile, equitable remuneration implemented as an additional right would disadvantage many featured artists who would receive less in royalties from labels and/or who, as owners of their masters, would become responsible for making new payments to session musicians.

10. Contract revocation/adjustment will undermine investment in new talent

The CMA's report floats the idea that contract adjustment or revocation could address an imbalance in the bargaining position of artists in relation to labels (5.101). However, the report also concludes that artists today already have more control in their negotiations with labels (3.52, 5.96) given the greater range of choice across different label and deal types. Moreover, the CMA rightly determines that there could be unintended consequences from such an intervention, such as a redistribution of revenue from one group of artists to another, lower advances for new artists and a dampening effect on future investment (5.108).

The BPI firmly agrees with this assessment and believes that contract revocation and/or adjustment would destabilise the market, leading to a reduction in future investment in artists and new music, and create a major disincentive for outside investment into the UK. This could, for example, take the form of fewer artists being signed or deal terms that are less favourable to artists, such as smaller advances or reduced royalty rates.

Given the complexity, uncertainty and potentially serious consequences of such an intervention for the future of the industry and future opportunities for artists, the BPI looks forward to seeing the work commissioned by the IPO into contract revocation and contract adjustment.

11. The BPI is working with other stakeholders to develop of a Code of Good Practice on transparency

We note the CMA's comments on transparency and intention to share its findings with the IPO working group. The BPI is closely involved in those discussions and is contributing constructively to the creation of a Code of Good Practice on transparency under the auspices of the IPO working group.

The draft Code articulates commitments towards good practice for labels, publishers, collecting societies, distributors and streaming services to follow when contracting with creative talent, delivering royalty accounting and guidance, cooperating with audits and communicating information about new deals between labels/publishers and digital service providers.

As the CMA points out in para 5.105, many labels are already providing clear information about music usage and related royalty information to artists either via royalty portals or otherwise. The purpose of the Code is to drive greater consistency in the quality of delivery of this information across the sector as a whole.

We question the proposal in para 5.105 of providing '*average per stream'* rates for the reason outlined in the previous section that most services are not paying fees per stream but per subscriber, and that notional '*per stream rates*' vary significantly between services, territories and over time and so require clear and careful context to understand. Given these factors, providing average per stream rates could potentially exacerbate confusion or tension over royalties and how they are calculated.

In relation to confidential and commercially sensitive agreements between labels and streaming services, the Code seeks to strike precisely the balance expressed in the CMA report (para 5.103) "*there are aspects of contracts between record companies and third parties such as music streaming services that are not relevant to artists' understanding of what they are paid, which we would not expect them to have access to. However, we do expect artists to have relevant information about the basis for calculating their earnings."*

In this regard, we are mindful of the adverse effects on competition in the streaming market that the CMA articulates in para 4.20 if confidentiality restrictions were to be weakened or removed. Consequently, the Code commits streaming companies, labels and publishers to explaining the broad principles of streaming agreements to artists and their representatives on request, but not revealing specific deal terms or rates.

Beyond the commitments laid down in the Code, the BPI is exploring further initiatives, including targeted education, to help artists better understand the dynamics of the streaming market generally and their own earnings specifically, potentially in collaboration with the artist managers, lawyers and accountants, who play an important role in advising artists.

12. **The BPI and its members are supporting the publishing sector where they can in order to improve song/composition metadata standards and accelerate songwriter payments**

Finally, we note the findings in para 5.129 and 5.132 concerning the issues around music publishing royalty chains and sometimes missing or inaccurate data. This is an issue on which the music publishing side of the industry is leading and is not a problem that labels can or would be best placed to solve. Nevertheless, the BPI and its members are engaging fully in the IPO’s metadata working group and exploring with the wider music industry the immediate steps that can be taken to accelerate the payment of creators as well as longer term evolution of systems to allow song data to be matched to recordings at an earlier stage in the supply chain.