

DEROGATION LETTER
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 17 May 2021

Completed acquisition by Sony Music Entertainment of all of the issued shares of the entities comprising the AWAL and the Kobalt Neighbouring Rights businesses from Kobalt Music Group Limited ('the Transaction')

We refer to your emails and accompanying notes and further information of 8 May 2021, 12 May 2021 and 18 May 2021 requesting that the CMA consents to derogations to the Initial Enforcement Order of 17 May 2021 (the '**Initial Order**'). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Sony Group Corporation ('**Sony**'), Sony Music Entertainment ('**Sony Delaware**'), The Orchard, EU Limited ('**Sony Orchard**') and AWAL Digital Limited, AWAL Recordings Licensing Ltd, AWAL Recordings Ltd, Kobalt Neighbouring Rights Limited, Kobalt Neighbouring Rights II Limited, Kobalt Music Netherlands Artists B.V, Kobalt Music Netherlands OH Records B.V., AWAL Recordings America, Inc., AWAL Recordings Licensing America, Inc. and In2une Inc. (together the '**Target Entities**') are required to hold the Sony business and the Target business separate from one another and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference. After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Sony, Sony Delaware, Sony Orchard and the Target Entities may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 5(a), 6(f) and 6(l) of the Initial Order

Sony has requested a derogation from paragraphs 5(a), 6(f) and 6(l) of the Initial Order in order to provide the Target business with The Orchard's payroll, salaries, benefits, pensions, and holiday booking services, following completion of the Transaction.

Sony submits that the Target business does not currently have the above systems in place, as these services were previously provided by Kobalt. Accordingly, Sony considers that these actions are necessary to ensure that employees of the Target business can continue to be paid and receive benefits (eg life insurance), contribute to a pension, and book time off work.

Sony further submits that:

- these services are back-end functions that in no way impact the ability of the Target business and the Sony business to compete independently in any market; and
- none of the contemplated actions under these derogations would be difficult or costly to reverse in the circumstance that the CMA decided to impose remedies in respect of the Transaction, up to and including divestment.

The CMA consents to Sony's request for a derogation from paragraphs 5(a), 6(f) and 6(l) of the Initial Order to enable the Target business to be provided with The Orchard's payroll, salaries, benefits, pensions, and holiday booking services, strictly on the basis that:

- (a) information received by the Sony business regarding the Target business will be limited to what is strictly necessary for the performance of the services described above;
- (b) information will only be provided to a limited number of individuals within the Sony business for whom it is strictly necessary to see Target business information to provide the services described above. These individuals are listed in Annex 1 (for the purposes of this derogation, 'the Authorised Individuals');
- (c) no changes to the Authorised Individuals are permitted without the prior written consent of the CMA (including via email);
- (d) the Authorised Individuals shall enter into non-disclosure agreements in a form approved by the CMA;
- (e) IT firewalls and/or other ring-fencing measures will be put in place to prevent

any unauthorised individuals within the Sony business from accessing the information shared with the Authorised Individuals for the purposes of this derogation, and vice versa in respect of Sony information accessible by employees of the Target Entities when using the software used to provide the relevant services. In particular, employees of the Target Entities will not have access to any Sony files, emails, intranet, or IT systems apart from Sony's 'Ultipro' portal or equivalent systems that allow them to understand and manage their benefits; instead, their workstations will operate on AWAL's own servers;

(f) should the Transaction be prohibited, any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from the Target business for the purposes of this derogation will be returned to the Target business (and/or where relevant transferred to a new purchaser of the Target business) and any copies destroyed, except to the extent that record retention is required by law or regulation;

(g) such actions:

- i. are necessary to preserve the viability and competitive capability of the Target business;
- ii. do not lead to integration of the Target business and the Sony business; and
- iii. do not impede the taking of any appropriate remedial action.

Paragraphs 5(a) and 6(l) of the Initial Order

Sony has requested a derogation from paragraphs 5(a) and 6(l) of the Initial Order in order to take the following actions following completion of the Transaction:

- enable The Orchard to provide HR services to the Target Entities (including (i) managing grievances and conflict resolution, (ii) explaining how employees of the Target Entities can access their benefits, and (iii) assisting the Target Entities with their promotion and pay review);
- enable The Orchard to provide Treasury services and working capital to the Target Entities;
- assign Sony as the global tax office and UK tax agent of the Target Entities, and add the Target Entities to Sony's VAT group.

Sony has submitted that the Target Entities do not currently have the above systems or functions in place, as these services were previously provided by Kobalt. Accordingly, Sony considers that these actions are necessary in order for the Target Entities to ensure that grievances can be heard and processed, manage funds and liquidity, have access to sufficient working capital to continue operating, and keep their tax affairs in order. The provision of working capital will also ensure the Target Entities have the resources they need to develop on the basis of their pre-merger business plan.

Sony further submitted that:

- these services are back-end functions that in no way impact the ability of the Target business and the Sony business to compete independently in any market; and
- none of the contemplated actions under these derogations would be difficult or costly to reverse in the circumstance that the CMA decided to impose remedies in respect of the Transaction, up to and including divestment.

The CMA consents to Sony's request for a derogation from paragraphs 5(a) and 6(l) of the Initial Order to enable the Sony business to undertake the above actions, strictly on the basis that:

- (a) information received by the Sony business regarding the Target business will be limited to what is strictly necessary for the performance of the actions or services described above;
- (b) information will only be provided to a limited number of individuals within the Sony business for whom it is strictly necessary to see Target business information to take the actions or provide the services described above. These individuals are listed in Annex 1 (for the purposes of this derogation, 'the Authorised Individuals');
- (c) no changes to the Authorised Individuals are permitted without the prior written consent of the CMA (including via email);
- (d) the Authorised Individuals shall enter into non-disclosure agreements in a form approved by the CMA;
- (e) IT firewalls and/or other ring-fencing measures will be put in place to prevent any unauthorised individuals within the Sony business from accessing the information shared with the Authorised Individuals for the purposes of this derogation;
- (f) should the Transaction be prohibited, Sony will ensure that any records or

copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from the Target business for the purposes of this derogation will be returned to the Target business (and/or where relevant transferred to a new purchaser of the Target business) and any copies destroyed, except to the extent that record retention is required by law or regulation;

(g) insofar as working capital is provided via inter-company loans, the loan conditions will not include anything that limits the Target Entities' ability to compete or take business decisions independently. Interest on such loans will be charged at Sony's standard rates for loans between different Sony entities, [✂];

(h) information will not be provided to Sony on how the working capital it provides to the Target business is put to use by the Target business;

(i) such actions:

- are necessary to preserve the viability and competitive capability of the Target business;
- do not lead to integration of the Target business and the Sony business; and
- do not impede the taking of any appropriate remedial action.

Paragraphs 5(a) and 6(a) of the Initial Order

Sony has requested a derogation from paragraphs 5(a) and 6(a) of the Initial Order to procure that the Sony Code of Conduct be adopted by the Target Entities, following completion of the Transaction.

The Sony Code of Conduct sets out policies relating to matters such as anti-bribery measures, fair employment practices, and responsible business conduct. Sony submitted that the policies set out in the Sony Code of Conduct can play an important role in ensuring that the Target business continues operating smoothly by (i) guarding against bribery, sanctions violations, or other serious risks, (ii) contributing to fair working practices, including providing employees with protection against discrimination or harassment, and (iii) setting clear expectations against which employees can be held to account in fair disciplinary processes, if need be.

Sony has submitted that the Target Entities do not currently have their own Code of Conduct, as they had previously used a Code of Conduct provided by Kobalt.

Accordingly, Sony considers that this action is necessary to ensure that the Target Entities can set basic standards and policies for employees and leadership to follow (eg anti-bribery, anti-harassment).

The CMA consents to Sony's request for a derogation from paragraphs 5(a) and 6(a) of the Initial Order to enable the Sony Code of Conduct to be adopted by the Target Entities, strictly on the basis that:

(a) in all cases where the Sony Code of Conduct is made available to employees of the Target business, it will be accompanied by a cover note (in a form agreed with the CMA) emphasising that the use of the Sony Code of Conduct does not change the obligation for the Target business and the Sony business to be held separate and act independently of one another;

(b) such actions:

- are necessary to preserve the viability and competitive capability of the Target business;
- do not lead to integration of the Target business and the Sony business; and
- do not impede the taking of any appropriate remedial action.

Yours sincerely,

Cristina Caballero

Assistant Director, Mergers

18 May 2021

Annex 1 – Authorised Individuals

- Authorised Individuals whose access to information of the Target Entities is strictly necessary for the purpose of providing HR, payroll, salaries, benefits, pensions, and/or holiday booking services to the Target Entities:
 - [✂]
 - [✂]
 - [✂]
 - [✂]
 - [✂]
 - [✂]
 - [✂]
 - [✂]
 - [✂]

- Authorised Individuals whose access to information of the Target Entities is strictly necessary for the purpose of providing treasury, working capital, and/or tax services to the Target Entities:
 - [✂]
 - [✂]
 - [✂]
 - [✂]