

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

Decision on relevant merger situation and substantial lessening of competition

ME/6936-21

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 7 September 2021. Full text of the decision published on 11 October 2021.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

SUMMARY

Introduction

1. On 18 May 2021, Sony Music Entertainment (**SME**), a subsidiary of Sony Group Corporation (**Sony**), acquired all of the issued shares of certain entities comprising the AWAL business (**AWAL**) and the Kobalt Neighbouring Rights business (**KNR**) from Kobalt Music Group Limited (**Kobalt**) (the **Merger**). Sony, AWAL and KNR are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of SME, KNR and AWAL is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the share of supply test is met.
3. Sony is one of the three 'major' multi-national record labels (along with Universal and Warner). Sony, principally through Sony Music Entertainment (**SME**), provides a comprehensive range of supporting services, commonly known as artist and repertoire (**A&R**) services, to

recording artists. These services, which include promotion, marketing, creative development, radio campaigns and tour support, are intended to support and enhance the distribution of an artist's recorded music.

4. Sony also owns The Orchard, EU Limited (**The Orchard**), which describes itself as 'the industry's leading distributor and artist & label [(A&L)] services company'. The Orchard distributes recorded music on behalf of artists (typically less well-known than those signed to SME) and independent third-party record labels. A&L services are similar in nature to A&R services, with both being intended to support and enhance the distribution of an artist's recorded music, but tend to be narrower in scope and smaller in scale (eg tour support and capital advances are unlikely to be provided to the same extent within A&L services). Under agreements with A&L service providers, artists typically independently create and retain full ownership of the copyrights to the recorded music (which is usually not the case under an agreement with an A&R service provider).
5. AWAL also provides A&L services and distribution services to both artists and labels. AWAL provides a 'multi-tiered' service intended to provide different levels of support to artists at different stages of their career. Many artists join AWAL's platform through its online submission process, in which music submitted by artists is selected by AWAL's expert team (an offering described by the Parties as a 'gated' DIY platform). An artist typically retains ownership of the copyrights to the recorded music within all 'tiers' of AWAL's service offering, a model that an AWAL senior executive (the then-Kobalt chief marketing officer, Ryan Wright, in a *Billboard* interview in 2018) has described as a 'fundamental difference' to the traditional label model.
6. The music industry continues to evolve. Global revenues from streaming have grown significantly in recent years. While the music sector has historically focussed on high-earning artists, typically signed to the major labels, the increased streaming of music and the use of social media as a way for artists to connect with their audience directly has facilitated the emergence of a wider variety of artists. This has led to an expanding category of 'mid-tier' artists, a large proportion of which have sought to monetise their music through A&L services. This segment is expected to continue to grow in future, accounting for an increasing proportion of all revenues from recorded music.
7. In light of these market trends, the CMA's Phase 1 investigation focussed on a loss of potential competition in the wholesale digital

distribution of recorded music¹ in the UK. The CMA also considered whether competition concerns arose from the combination of the Parties' overlapping activities in the supply of neighbouring rights administration services in the UK.

The wholesale digital distribution of recorded music in the UK

8. While there has been limited direct competition between Sony and AWAL to date (in particular to sign artists), the CMA considered whether the Parties would, absent the Merger, have competed with each other more significantly in future, particularly as the music sector continues to evolve. The CMA is concerned this loss of potential competition between Sony and AWAL could have a significant impact on competition in the wholesale digital distribution of recorded music in the UK, for example in relation to the terms that artists or digital service providers (**DSPs**) are able to negotiate with music distributors.
9. At present, Sony holds a strong position in the wholesale digital distribution of recorded music in the UK. The market is highly concentrated, with the three major record labels (Sony, Universal and Warner) accounting for the vast majority of the share of supply.
10. AWAL is an important emerging supplier in the wholesale digital distribution of recorded music in the UK. AWAL is one of a small number of suppliers that has succeeded in gaining a meaningful foothold in the market. In contrast to many other suppliers of A&L services, AWAL has seen significant growth in recent years, with its stream share more than doubling between 2016 and 2020. AWAL appears frequently (and more prominently than other providers of artist services) in Sony's internal documents. Both Parties' internal documents reference the disruptive nature of AWAL's business model.
11. The evidence available to the CMA shows that AWAL was well-placed, absent the Merger, to materially grow its digital music distribution business. AWAL's internal documents show that it anticipated that its business would grow significantly over the next few years. The CMA therefore believes that AWAL had the ability and incentive to become a more significant competitor in digital music distribution in the UK.
12. The evidence available to the CMA also shows that Sony had, absent the Merger, a clear intention to expand The Orchard's A&L services

¹ Also referred to in this document as digital music distribution.

business (particularly by expanding its offering to artists) in future. This would have led it to place more focus on the increasingly important mid-tier artist segment, competing more directly with AWAL.

13. The Parties submitted that Sony and AWAL are not close competitors at present, in particular because Sony focuses on signing major recording artists, whereas AWAL focuses on independent artists at the beginning of their careers and certain higher-tier 'on the verge' and established artists, and because The Orchard and AWAL have different areas of focus even within A&L services. The Parties suggested that this was supported by the fact that there has been limited switching between the Parties to date (ie the Parties have lost very few artists to each other).
14. The CMA found, however, that Sony's internal documents already regularly identify AWAL as a material competitor, and as a potentially disruptive threat to its artist development model. The evidence available to the CMA also indicates that Sony is planning to change (or has already changed) some aspects of its business model, so that it offers artists contracts more akin to those offered by A&L service providers such as AWAL. Several third-party competitors also told the CMA the major record labels (including Sony) have been taking actions or making changes to their offering in response to AWAL, including by seeking to expand A&L services offerings, increasing A&L services acquisition activity, increasing advances and lowering royalties.
15. The CMA therefore believes that there is already a significant degree of competitive interaction between the Parties and that competition between them is likely to increase in future.
16. The CMA considered the competition that the Parties are likely to face in future, taking into account the possible entry and expansion of other suppliers.
17. As noted above, the market for the wholesale digital distribution of recorded music in the UK is highly concentrated at present. The two other major labels, Universal and Warner, are referenced frequently in Sony's internal documents, but are likely to have limited incentive to pursue disruptive business models, given that the vast majority of their business is accounted for by their frontline labels. While both of the other major labels have A&L services businesses (Ingrooves and Virgin for Universal and ADA for Warner), none of these businesses has been able to develop the same kind of market presence, or has grown at the same rate, as AWAL.

18. The CMA found that the competition that the Parties will face from other A&L service providers (such as Believe, FUGA/Downtown and PIAS) is limited. In particular, the CMA found that all of these suppliers are smaller than AWAL (the vast majority being significantly smaller), not growing as quickly as AWAL and/or do not receive the same attention as AWAL within Sony's internal documents.
19. The CMA found that the competition that the Parties will face from 'ungated' DIY platforms is limited. These are open platforms where artists can upload their music and have it distributed without any selection process. DIY platforms are commoditised, offer a very limited range of services and focus on attracting high volumes of artists. Such platforms tend to charge a low fixed yearly fee for their services, whereas A&L service providers tend to charge fees as a percentage of earnings. The CMA therefore believes that this is a materially different offering for artists than the services offered by the Parties.
20. The CMA found that the competition that the Parties will face from independent record labels is limited. These labels typically operate a similar model as the major record labels, and may therefore not be particularly well-positioned to compete for the 'new wave' of artists. Independent record labels are not referenced prominently in the Parties' internal documents and were rarely mentioned by third parties as an alternative to the Parties. In addition, the shares held by independent record labels have generally declined (or in some cases only very moderately grown) over the last five years.
21. Accordingly, the CMA believes that the Merger raises significant competition concerns as a result of a loss of potential competition in relation to the wholesale digital distribution of recorded music in the UK.

Neighbouring rights administration services in the UK

22. Both Sony and KNR provide neighbouring rights administration services to artists in the UK.
23. Given the presence of other competitors, and the limited market presence of Sony's neighbouring rights administration services in the UK, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of neighbouring rights administration services in the UK.

Conclusion

24. The CMA therefore believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of the loss of potential competition in the wholesale digital distribution of recorded music in the UK.
25. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). Sony has until 14 September 2021 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

PARTIES

26. SME is a wholly-owned subsidiary of its ultimate parent company, Sony, which is listed on the Tokyo Stock Exchange and the New York Stock Exchange.² Sony is active globally in various businesses including recorded music and music publishing, motion picture production and distribution, and game and network services for Sony's game console, PlayStation.³ Sony's total turnover in financial year 2020/21 was approximately £59,646 million.^{4 5}
27. SME is the recorded music division of Sony. SME is a global distributor of recorded music, an operator of multiple record labels and a supplier of A&R services. SME, through its subsidiary The Orchard, EU Limited (**The Orchard**), also supplies A&L and distribution services both to artists and to labels.⁶
28. SME's total turnover in financial year 2020/21 was approximately £[REDACTED],⁷ of which approximately £[REDACTED]⁸ was generated in the UK.⁹ The Orchard's total turnover in financial year 2020/21 was approximately £[REDACTED],¹⁰ of which approximately £[REDACTED]¹¹ was generated in the UK.¹²

² See [Stock Information](#) on Sony's investor relations website [public].

³ Sony's Request for Derogations from Initial Enforcement Order dated 6 May 2021, page 1.

⁴ Converted US dollar figures at a rate of US\$1.38 to £1 on 26 July 2021 (approximately 2 pm).

⁵ Sony's response to RFI 9, dated 14 July 2021, question 2.

⁶ Sony's response to RFI 4, dated 14 May 2021, question 13.

⁷ Converted US dollar figures at a rate of US\$1.38 to £1 on 26 July 2021 (approximately 2 pm).

⁸ Converted US dollar figures at a rate of US\$1.38 to £1 on 26 July 2021 (approximately 2 pm).

⁹ Sony's response to RFI 9, dated 14 July 2021, question 2.

¹⁰ Converted US dollar figures at a rate of US\$1.37 to £1 on 26 August 2021 (approximately 10:45 am).

¹¹ Converted US dollar figures at a rate of US\$1.37 to £1 on 27 August 2021 (approximately 10:45 am).

¹² Email from Cleary Gottlieb Steen & Hamilton LLP dated 26 August 2021.

29. AWAL and KNR were formerly owned by Kobalt alongside Kobalt's music publishing business. Kobalt has retained the music publishing business following the Merger.¹³ In financial year 2019/20, when AWAL and KNR were under Kobalt's ownership, Kobalt reported growth in company gross collections¹⁴ with total turnover at approximately £444 million.^{15 16}
30. AWAL and KNR are music businesses which operate globally.¹⁷ AWAL is a 'multi-tiered' music platform providing A&L and distribution services to artists and labels, as well as offering a DIY platform through which artists can submit their music to AWAL.¹⁸ AWAL's DIY platform is 'gated' meaning that artists provided with distribution services by AWAL must have made a successful merits-based application, assessed by AWAL's expert teams.¹⁹ (As described further below, this materially differs from the services provided to artists by 'ungated' DIY platforms). AWAL's total turnover in financial year 2019/20 was £[REDACTED],²⁰ of which approximately £[REDACTED]²¹ was generated in the UK.²²
31. KNR collects neighbouring rights royalties arising from the public use of music recordings on behalf of artists. KNR's total turnover in financial year 2019/20 was approximately £[REDACTED],²³ of which approximately £[REDACTED]²⁴ was generated in the UK.²⁵
32. The services that the Parties supply to artists and labels are described in more detail in paragraphs 54, 58-60 and 65-66 below.

¹³ See [Kobalt | Music Publishing \(kobaltmusic.com\)](https://kobaltmusic.com) [public].

¹⁴ See [Kobalt Enters Next Phase Amid Continued Growth \(kobaltmusic.com\)](https://kobaltmusic.com) [public].

¹⁵ See latest publicly available revenue data for Kobalt: [Kobalt Annual Report and Consolidated Financial Statements for the year ended 30 June 2020](#), page 7 [public].

¹⁶ Converted US dollar figures at a rate of US\$1.39 to £1 on 5 September 2021 (approximately 7:40 am).

¹⁷ The Orchard's response to the CMA's enquiry letter under section 109 of the Act dated 21 April 2021 (the **Enquiry Letter**), question 17.

¹⁸ See [How It Works](#) from AWAL's website.

¹⁹ See [How It Works | AWAL](#) [public].

²⁰ Email to CMA from White & Case (external legal counsel of Kobalt and AWAL) dated 27 July 2021. Converted US dollar figures at a rate of US\$1.39 to £1 on 28 July 2021 (approximately 7:45 am).

²¹ Converted US dollar figures at a rate of US\$1.38 to £1 on 26 July 2021 (approximately 2 pm).

²² Sony's response to MIC RFI 1 dated 26 March 2021, question 3.

²³ Converted US dollar figures at a rate of US\$1.38 to £1 on 26 July 2021 (approximately 2 pm).

²⁴ Converted US dollar figures at a rate of US\$1.38 to £1 on 26 July 2021 (approximately 2 pm).

²⁵ Sony's response to MIC RFI 1 dated 26 March 2021, question 3 and The Orchard's response to the Enquiry Letter, question 29.

TRANSACTION

33. On 18 May 2021, Sony, through its fully owned subsidiary SME, acquired AWAL and KNR for approximately \$430 million (approximately £314 million) in cash.²⁶
34. The Parties informed the CMA that the Merger was also the subject of review by competition authorities in Austria and the USA.²⁷

Merger rationale

35. SME submitted that its rationale for the Merger was to:
- (a) add AWAL as an established provider of artist services to complement The Orchard's label services business, and more generally SME's portfolio;
 - (b) have the opportunity to acquire an existing client roster and expand SME's global footprint in artist services;²⁸
 - (c) acquire a well-established brand that would enable SME to provide artist services quicker, with greater chances of success and more cheaply than if it had attempted to create such a business independently;²⁹
 - (d) have a new way of discovering artists who could be placed with SME's frontline labels;^{30 31} and
 - (e) benefit from [X] back-office synergies and the ability to offer a new neighbouring rights administration and collection service through KNR.³²
36. The CMA has reviewed a range of Sony internal documents which discuss its rationale for the merger. While several of these documents broadly support Sony's stated rationale for the Merger,³³ some

²⁶ Sony, Annex 2 - Share Sale and Purchase Agreement.pdf, 31 January 2021, page 8 and paragraph 6.1.

²⁷ The Orchard's response to the Enquiry Letter, question 7.

²⁸ Sony's response to s109(2) dated 4 June 2021, question 3.

²⁹ Sony's response to s109(2) dated 4 June 2021, question 3.

³⁰ Sony refers to its record labels that directly sign and support the careers of their highest-earning top artists as 'frontline labels' through distribution and A&R services. Frontline labels are distinct from Sony's other divisions such as The Orchard, which provides A&L services to artists and labels that operate independently from Sony.

³¹ See Sony, Annex 2.1.11 - Pre MRP-Budget Meeting - Feb 2021.pdf, 24 February 2021, page 51, Sony's response to s109(2) dated 4 June 2021, question 2- Sony associates frontline labels to the 'global major label system' (see further information in paragraph 54 explaining how top artists typically work with the major record labels).

³² Sony's response to s109(2) dated 4 June 2021, question 3.

³³ See for example, Sony, Annex 1.1.17 (ex Annex 21.17) - Global Management Meeting Presentation.pdf, 11 February 2021, page 17, Sony's response to s109(2) dated 4 June 2021, question 1; Sony, Annex 19.1-A - Courtesy Translation.pdf, 3 March 2021, page 7, The Orchard's response to the **Enquiry Letter**, question 19- explains that [X] '.

emphasise alternative reasons to pursue it. In particular, some internal documents indicate that:³⁴

- (a) Sony [REDACTED],³⁵[REDACTED].³⁶
- (b) Sony saw AWAL and KNR as businesses with the scope to grow[REDACTED], with AWAL estimated (by Sony) to grow by [REDACTED].³⁷
- (c) At least one of the benefits of the Merger (set out in an email between Sony senior management) would be [REDACTED].³⁸

37. Kobalt submitted that its [REDACTED].³⁹ The Parties have not provided more detailed information on [REDACTED] to support this submission. The CMA notes, however, that this does not appear to be fully consistent with other information provided to the CMA by Kobalt, which indicates that Kobalt would grow consistently and robustly between financial year 2020/21 and financial year 2024/25.⁴⁰

38. Kobalt also submitted that another element of the rationale for the Merger was to enable AWAL and KNR to grow through Sony's global infrastructure.⁴¹ Kobalt also noted that Sony's offer [REDACTED].⁴²

PROCEDURE

39. The CMA's mergers intelligence function identified this transaction as warranting an investigation.⁴³

³⁴ A more in-depth analysis of the Parties' internal documents, including whether Sony/The Orchard and AWAL view each other's offerings as complementary, is further discussed in paragraphs 162-165.

³⁵ Sony, Annex 1.1.9 (ex Annex 21.9) - IC Application to Email Thread & Attachment.pdf, 18 January 2021, page 6, Sony's response to s109(2) dated 4 June 2021, question 1. Also see Sony, Annex 21.2-A - Courtesy Translation.pdf., 26 October 2020, page 2, The Orchard's response to the **Enquiry Letter**, question 21- a request for approval from Sony's CEO for the merger stating '[REDACTED]'. This is also in line with Sony's general aim to '[REDACTED]' (see Sony, Annex 1.1.21 (ex Annex 19.9) - SME Nov 2020 MRP.pdf, 12 November 2020, page 15, Sony's response to s109(2) dated 4 June 2021, question 1).

³⁶ Sony, Annex 21.2-A - Courtesy Translation.pdf., 26 October 2020, page 2, The Orchard's response to the **Enquiry Letter**, question 21.

³⁷ Sony's response to RFI 7 dated 18 June 2021, question 6.

³⁸ See for example, Sony, Annex 1.1.13-A (ex Annex 21.13-A) - Courtesy Translation.pdf, January 2021, page 1, Sony response to s. 109(2) dated 4 June 2021, question 1. Translation of part of this document was updated and conveyed to the CMA (see Sony's response to RFI 7 dated 18 June 2021, question 1).

³⁹ [REDACTED].

⁴⁰ See Kobalt, Annex 22.1 - Kobalt Confidential Information Presentation.pdf, September 2021, page 21, The Orchard's response to the **Enquiry Letter**, question 22. A more in-depth analysis of the Parties' internal documents in relation to Kobalt's growth estimates, is further discussed in paragraphs 134-141.

⁴¹ Kobalt's response to s109(2) dated 4 June 2021, question 3.

⁴² Kobalt response to RFI 6 dated 4 June 2021, question 2.

⁴³ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised), December 2020, paragraphs 6.4-6.8.

40. The Merger was considered at a Case Review Meeting.⁴⁴ The CMA issued a number of notices under section 109 of the Act to the Parties requiring the production of documents and information relevant to the CMA's review of the Merger. The statutory 40 working day deadline for the phase 1 decision was extended when Sony failed to provide the required documents and information by the deadline of one of these notices.⁴⁵

JURISDICTION

41. Each of Sony, AWAL and KNR are enterprises within the meaning of section 129 of the Act. As a result of the Merger, these enterprises have ceased to be distinct.
42. The Parties overlap in the wholesale distribution of recorded music in the UK. The Parties estimated their total combined share of the wholesale distribution of recorded music (including both physical and digital) in the UK in 2020 to be [20-30%] (with an increment of [0-5%] brought about by the Merger).⁴⁶ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
43. The Merger completed on 18 May 2021. The four-month deadline for a decision under section 24 of the Act is 30 September 2021, following extension under section 25(2) of the Act.
44. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
45. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 2 July 2021 and the statutory 40 working day deadline for a decision is 7 September 2021, following extension under 34ZB(1) of the Act.

COUNTERFACTUAL

46. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).⁴⁷ For completed mergers, the counterfactual may consist of the pre-Merger conditions of competition, or conditions of competition that involve stronger or weaker

⁴⁴ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised), December 2020, from paragraph 9.28.

⁴⁵ See [Notice of extension](#) ([publishing.service.gov.uk](#)) [public].

⁴⁶ Sony's Response to MIC RFI 1 dated 26 March 2021, question 4.

⁴⁷ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 3.1.

competition between the merger firms than under the prevailing conditions of competition.⁴⁸ In determining the appropriate counterfactual, the CMA will generally focus only on potential changes to the prevailing conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment.⁴⁹ In Phase 1 investigations, if the CMA must consider multiple potential counterfactual scenarios where each of those scenarios is a realistic prospect, it will choose the one where the merger firms exert the strongest competitive constraint on each other, and where third parties exert the weakest competitive constraints on the merger firms.⁵⁰

47. The Parties submitted that the appropriate counterfactual should be the pre-Merger conditions of competition.⁵¹ The CMA notes that, absent the Merger, AWAL and KNR may have been sold to an alternative purchaser or may have remained under Kobalt's ownership. The CMA has not seen any evidence to suggest that either AWAL or KNR would have provided a materially different competitive constraint in either of these scenarios.
48. The Parties also submitted that Kobalt would have [X] and that, absent the Merger, [X].⁵² The CMA notes that AWAL has recorded considerable growth over the past five years and had projected that this growth would continue.⁵³ On this basis, the CMA believes that there is not a realistic prospect of an alternative counterfactual in which AWAL and KNR would have [X] (and also that this would not have been the most competitive realistic counterfactual in any case, given that there is a realistic prospect that the prevailing conditions of competition will continue).
49. For the reasons outlined above, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual. Any changes in the extent to which the Parties would compete absent the Merger have been taken into account in the competitive assessment.

BACKGROUND

50. This section sets out an overview of the markets in which the Parties overlap in the UK and globally: the wholesale digital distribution of

⁴⁸ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 3.2.

⁴⁹ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 3.9.

⁵⁰ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 3.12.

⁵¹ Kobalt's Response to CMA RFI 6 dated 4 June 2021, question 3 and Sony's Response to CMA RFI 6 dated 4 June 2021, question 3.

⁵² Kobalt's response to RFI6 dated 13 June 2021, question 3.

⁵³ See for example, [X].

recorded music⁵⁴ and the supply of neighbouring rights administration services.

Wholesale digital distribution of recorded music

51. The wholesale digital distribution of recorded music is currently characterised by the presence of three large record companies (Sony, Universal Music Group (**Universal**) and Warner Music Group (**Warner**)), the so-called ‘majors’, and a number of significantly smaller-scale players, including independent record labels, artist and label (**A&L**) service providers and DIY platforms. Each type of player is described below.
52. The market is characterised both by competition between service providers to (i) acquire artist clients, label clients and music catalogues; and (ii) distribute digital recorded music to DSPs⁵⁵ and to gain streaming market share. These two aspects of competition are linked because being successful in streaming on DSPs requires service providers to acquire a portfolio of successful artists and/or label clients and/or music catalogues.

The major record labels

53. The vast majority of the market for the wholesale digital distribution of recorded music is accounted for by three long-established major record labels: Sony, Universal and Warner.⁵⁶ In 2020, these three labels held a combined approximate stream share of [60-70%]⁵⁷ in the UK on [X].⁵⁸ The major record labels also regularly account for the vast majority of the top 75 titles in music charts.⁶⁰

⁵⁴ The Parties also overlap in the wholesale physical distribution of recorded music. However, over the last 20 years, digital music has become the most frequently used medium through which listeners enjoy music. More specifically, streaming has become the dominant format used amongst all other digital mediums, with global streaming revenues being approximately 11 times higher than download revenues and four times higher than physical music revenues in 2020 (IFPI, Annex 23.3 - IFPI Global Music Report (Full) 2021.pdf, 2021, page 11, The Orchard's response to the Enquiry Letter dated 21 April 2021, question 23).

⁵⁵ In the music industry, a DSP is a company that provides digital music services, such as downloading and streaming. Examples of DSPs include Amazon, Apple, Spotify and Youtube/Google.

⁵⁶ The Orchard's response to the Enquiry Letter, question 11 and [X] call note, 4 June 2021, paragraph 3. Furthermore, the fact that Sony views itself, Universal and Warner as the major record labels is evidenced in its internal documents; for example see: Sony, Annex 2.1.1 - Pre MRP-Budget Meeting - Feb 2020.pdf, 26 February 2020, page 35, Sony's response to s109(2) dated 4 June 2021, question 2 and Sony, Annex 2.1.12 - SME MRP-Budget Meeting - Mar 2021.pdf, 11 March 2021, page 9, Sony's response to s109(2) dated 4 June 2021, question 2.

⁵⁷ [X]'s response to RFI 1 to [X] dated [X], questions 2b and 2c.

⁵⁸ [X].

⁵⁹ [X]'s response to RFI 1 to [X], questions 2b and 2c.

⁶⁰ For example, see Sony, Annex 2.1.40 - Internal weekly reports, 2018-2021, Sony's response to s109(2) dated 4 June 2021 (provided post-clock stop).

54. The major record labels supply A&R services. These include promotion, marketing, creative development, radio campaigns and tour support for artists, all of which are aimed at increasing distribution. The major record labels scout, sign and support major ‘superstar’ artists⁶¹ on a worldwide basis.⁶² They often use traditional deal structures requiring artists to create sound recordings for a set number of albums over a long period of time.⁶³ Under these traditional deal structures, the record label typically owns the copyright to the recorded music, retains the majority of revenues generated through distribution, and is responsible for most of the costs associated with distribution (including the costs of the A&R services identified above). The artist is compensated through an agreed share of the revenues.⁶⁴ The major record labels typically distribute the music of their signed artists directly.⁶⁵
55. As explained further in paragraph 105 below, there have been some changes in the business models of the major music labels, in reaction to ongoing industry developments, with the adoption of some different deal structures.

Independent record labels

56. The independent record labels are a large number of smaller players that have historically accounted for a smaller share of the wholesale digital distribution of recorded music (both individually and collectively). While many of these labels have been active in the market for a number of years, they have generally not been successful in developing a material presence in the market over time.⁶⁶
57. Independent record labels scout, sign and provide A&R services to artists, typically using a business model similar to that of the major record labels. The range of A&R services offered by independent record labels may be more limited due to the resource constraints that these labels operate under.⁶⁷ Many independent record labels rely on third-party suppliers for distribution,⁶⁸ some of which are owned by the major record labels, such as Sony’s The Orchard and Warner’s ADA.

⁶¹ See for example [X], [X] call note, [X], paragraph 6- major record labels focus on a limited number of ‘headline acts’ globally.

⁶² IMPALA, IMPALA call note, 2 June 2021, paragraph 5.

⁶³ [X], [X] call note, [X], paragraph 6.

⁶⁴ [X] call note, 8 June 2021, paragraph 5. Also see [AWAL | Decoded: The History of Record Deals](#) [public].

⁶⁵ See for example Sony’s response to RFI 4 dated 14 May 2021, question 4.

⁶⁶ [X]’s response to RFI 1 to [X], questions 2b and 2c.

⁶⁷ *Universal Music Group/EMI Music*, paragraph 24.

⁶⁸ [X], [X] call note, [X], paragraph 3.

A&L service providers

58. A&L service providers distribute music on behalf of artists and labels and provide supporting A&L services. Accordingly, A&L services are sometimes referred to as either artist services/services to artists or label services/services to labels to denote the client type being served.
59. A&L services are broadly similar in nature to A&R services,⁶⁹ albeit with some significant differences:
- (a) A&L services are often narrower in scope than A&R services and provided on a smaller scale.⁷⁰ For example, like the major record labels, A&L service providers also supply promotion and marketing services but are unlikely to be able to supply tour support⁷¹ and capital advances⁷² to the same extent.
 - (b) Under agreements with A&L service providers, artists typically independently create and retain full ownership of the copyrights of the recorded music.⁷³
 - (c) Agreements with A&L service providers tend to be relatively short-term compared to traditional agreements with major record labels offering A&R services, enabling artists to switch providers more easily.⁷⁴
 - (d) Under agreements with A&L service providers, artists retain a higher portion of earnings from distribution, with the A&L provider receiving a smaller portion of earnings than an A&R provider typically would.⁷⁵ The CMA also notes a key difference between how A&L service providers and suppliers using traditional deals fund the costs incurred in supporting artists. In the case of A&L service providers, typically all costs are directly recoupable from the artist's portion of earnings.⁷⁶ In contrast, under traditional deals, typically the record label is ultimately responsible for and fully incurs the majority of costs; only a more limited range of costs is recoupable from the artist's portion of earnings.⁷⁷

⁶⁹ Sony's response to RFI 4 dated 14 May 2021, question 13.

⁷⁰ Sony's response to RFI 4 dated 14 May 2021, question 13. Also, for example, AWAL was [REDACTED]. Video production support is generally provided by the major record labels as part of their A&R services. (see AWAL's response to RFI 10 dated 10 August 2021, question 6)

⁷¹ For example, under its initial deal with [REDACTED], AWAL allowed up to [REDACTED] for tour support. This was considered to have only covered a [REDACTED] total tour costs (see AWAL's response to RFI 10 dated 10 August 2021, question 6).

⁷² Sony's, response to RFI 4 dated 14 May 2021, question 13.

⁷³ [REDACTED], [REDACTED] call note, 8 June 2021, paragraph 3, IMPALA, IMPALA call note, 2 June 2021, paragraphs 7 and 9, [REDACTED], 15 June 2021, paragraph. 15

⁷⁴ For example, see [REDACTED], [REDACTED] call note, 8 June 2021, paragraph 6.

⁷⁵ [REDACTED], 15 June 2021, paragraph 15.

⁷⁶ [REDACTED], 15 June 2021, paragraph 15.

⁷⁷ [REDACTED], 15 June 2021, paragraph 15.

60. A&L service providers usually serve ‘mid-tier’ artists,⁷⁸ either as direct customers or through an independent record label. There are, however, notable exceptions to this position, with BTS, a popular and globally successful pop band, for example, choosing in 2019 to distribute its music through The Orchard.⁷⁹
61. Each of the major record labels has acquired or developed one or more A&L businesses: Sony (with its The Orchard business), Warner (with its ADA business), and Universal (with its Ingrooves and Virgin businesses).

DIY platforms

62. DIY platforms focus on the digital distribution of recorded music and typically charge artists a fixed fee to upload of a set number of songs to the platform.⁸⁰ Some DIY platforms also offer limited supporting services such as promotion and marketing on top of distribution.⁸¹
63. The Parties submitted that DIY platforms, such as CD Baby, Distrokid and TuneCore operate an ‘ungated’ open platform, where artists can upload and have their music distributed without having to pass any quality control process. By contrast, under a ‘gated’ model,⁸² such as that operated by AWAL, a DIY platform will only distribute an artist’s music after it has successfully passed a quality control process.⁸³ Most artists on DIY platforms belong to lower tiers.⁸⁴

Neighbouring rights

64. Neighbouring rights entitle performing artists and those who own copyright in the related sound recording to compensation for the public use of the recording (eg a radio broadcast).⁸⁵
65. In order to facilitate the payment of compensation, recordings need to be registered with Collective Management Organisations (**CMOs**) which, in

⁷⁸ The term ‘artist funnel’ is sometimes used in the industry to refer to the full spectrum of artists at different stages of their career. The artist funnel can be segmented into three main tiers, namely (i) lower-tier artists (ie artists at the beginning of their career); (ii) mid-tier artists (ie artists who have already reached a level of commercial success); and (iii) top-tier artists (ie established artists who have reached considerable success).

⁷⁹ Sony, Annex 2.1.34 Budget Pre-Meeting, FYE20 Budget Pre-Meeting.pdf, 19 February 2018, Slide 45, Sony’s response to s109(2) dated 4 June 2021, question 2 (provided post-clock stop).

⁸⁰ See for example pricing at TuneCore- [TuneCore Pricing | Music Distribution & Publishing](#) [public].

⁸¹ [§] call note, 15 June 2021, paragraph 4.

⁸² The Orchard’s response to the Enquiry Letter dated 21 April 2021, question 11.

⁸³ See AWAL’s ‘submit your music’ page where specific information is required before music can be distributed as AWAL ‘only work[s] with a select group of artists...’- [Submit Your Music to AWAL](#) [public].

⁸⁴ [§] call note, [§], paragraph 12.⁸⁵ Sony’s response to MIC RFI 1 dated 26 March 2021, question 4.

⁸⁵ Sony’s response to MIC RFI 1 dated 26 March 2021, question 4.

turn, collect and distribute neighbouring rights royalties to artists and copyright owners. Different countries have different CMOs.⁸⁶ The CMO for neighbouring rights collection in the UK is Phonographic Performance Ltd (**PPL**).

66. Artists and copyright owners can collect royalties from CMOs directly or can use the services of suppliers like KNR, which collect neighbouring rights royalties from CMOs on their behalf. These suppliers offer the convenience of collecting royalties from multiple CMOs in different countries in exchange for a fee. Neighbouring rights collection suppliers also distinguish their offerings by providing ancillary services to maximise royalty collection by, for example, assisting in accurate registration with CMOs,⁸⁷ and may also offer advance payments to artists.⁸⁸

FRAME OF REFERENCE

67. Market definition is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise from the competitive assessment.⁸⁹ It involves identifying the most significant competitive alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.⁹⁰
68. While market definition can be an important part of the overall merger assessment process, the CMA's experience is that in most mergers, the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger firms' behaviour, captures the competitive dynamics more fully than formal market definition.⁹¹ There may be no need for the CMA's assessment of competitive effects to be based on a highly specific description of any particular market definition (including, for example, descriptions of the precise boundaries of the relevant markets and bright-line determinations of whether particular products or services fall within the relevant market).⁹²

⁸⁶ Sony's response to MIC RFI 1 dated 26 March 2021, question 4.

⁸⁷ Sony's response to MIC RFI 1 dated 26 March 2021, question 4.

⁸⁸ [X], Call with [X], 9 June 2021.

⁸⁹ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 9.1.

⁹⁰ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 9.2.

⁹¹ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 9.2.

⁹² The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 9.5.

69. In the UK, the Parties overlap in:

- (a) the wholesale digital distribution of recorded music and related A&R services, including A&L services; and
- (b) the supply of neighbouring rights administration services.

Wholesale digital distribution of recorded music

Product scope

The Parties' submissions

70. Sony submitted that, in line with the decision of the European Commission (the **Commission**) in *Universal Music Group/EMI Music*,⁹³ the relevant frame of reference should be the distribution of recorded music and that there was no need to determine whether A&R services formed a separate market from the distribution of recorded music.⁹⁴

CMA's assessment

71. The CMA has considered:

- (a) whether A&R services form a different product frame of reference from the wholesale distribution of recorded music;
- (b) whether to include both physical and digital distribution in the same product frame of reference; and
- (c) whether A&R services and A&L services form separate product frames of reference.

A&R services and wholesale distribution of recorded music

72. In *Universal Music Group/EMI Music*, the Commission considered that it was not necessary to take a view as to whether A&R activities (ie talent scouting, providing artistic and creative guidance and services such as marketing and promotion) should be analysed separately from the wholesale distribution of recorded music (ie the distribution of music to DSPs, radio stations, etc).⁹⁵ The Commission received third-party

⁹³ European Commission decision of 21 September 2012 in Case [M.6458](#) *Universal Music Group/EMI Music* (*Universal Music Group/EMI Music*).

⁹⁴ Sony's response to MIC RFI 1 dated 26 March 2021, pages 8 and 9.

⁹⁵ *Universal Music Group/EMI Music*, paragraph 103.

feedback that the two activities were closely interrelated in that ‘record companies typically leverage their strength in the downstream wholesale market to attract new and established artists to their labels.’⁹⁶

73. The evidence available to the CMA does not suggest that any departure from the approach adopted in *Universal Music Group/EMI Music* would be warranted. On this basis, the CMA has not defined a separate frame of reference for A&R services.

Digital and physical distribution

74. In *Universal Music Group/EMI Music*, the Commission considered that the market for the wholesale distribution of physical recorded music was separate from that of digital recorded music. The Commission did not conclude on whether digital recorded music should be further segmented into downloads and streaming services.
75. The evidence available to the CMA does not suggest that any departure from the approach adopted in *Universal Music Group/EMI Music* would be warranted. For example, one third party indicated that fewer distributors have the ability to supply physical recorded music than digital recorded music given the greater level of resources and investment required for physical distribution.⁹⁷
76. The CMA therefore believes that the wholesale distribution of physical recorded music forms a separate frame of reference from that for the wholesale digital distribution of recorded music.

A&R and A&L services

77. As noted in paragraphs 58-60 above, there are a number of similarities but some notable differences between A&L services and A&R services.
78. The evidence available to the CMA indicates, however, that there are typically no brightline demand- or supply-side differences between A&L services and A&R services. For example, some A&L providers work with and target prominent artists,⁹⁸ with The Orchard, for example, distributing music on behalf of BTS, a popular and globally successful pop band in 2019.⁹⁹ The major record labels, which traditionally provide

⁹⁶ *Universal Music Group/EMI Music*, paragraph 101.

⁹⁷ [X] call note, 15 June 2021, paragraph 7.

⁹⁸ [X] call note, June 2021, paragraph 16- artists with brand recognition built over their time with the major record labels may later work with companies such as AWAL(unchecked).

⁹⁹ Sony, Annex 2.1.34 FYE20 Budget Pre-Meeting.pdf, 19 February 2018, Slide 45, Sony’s response to s109(2) dated 4 June 2021, question 2 (provided post-clock stop).

the full range of A&R services, have recently been making more basic offers of A&L services to artists and labels.¹⁰⁰ Similarly, some of Sony's documents indicate that [REDACTED].¹⁰¹

79. The CMA therefore believes that it would not be appropriate to observe a brightline distinction between A&R services and A&L services for the purposes of market definition. The extent to which suppliers may focus more on the provision of A&R services or A&L services (whether at present or in future) will be taken into account in the competitive assessment.

Conclusion on product scope

80. For the reasons set out above, the CMA has considered the impact of the Merger in the wholesale digital distribution of recorded music (**'digital music distribution'**).¹⁰²

Geographic scope

The Parties' submissions

81. The Parties noted that the Commission has increasingly recognised the emergence of an EEA (including the UK) wide market in relation to the digital distribution of recorded music and consistently defined national geographic markets for the physical distribution of recorded music.¹⁰³
82. Furthermore, Sony submitted that some of its internal documents (discussed specifically below) either show that the geographic market covers at least continental Europe or are not probative of differences in competitive conditions between countries.¹⁰⁴

¹⁰⁰ [REDACTED] call note, 15 June 2021, paragraph 17.

¹⁰¹ See Sony, Annex 1.1.21 (ex Annex 19.9) - SME Nov 2020 MRP.pdf, November 2020, page 13, Sony's Response to s109(2) dated 4 June 2021, question 1 and Sony, Annex 1.1.19 (ex Annex 19.2) - SME Feb 2021 Pre MRP & Budget.pdf, February 2021, page 55, Sony's Response to s109(2) dated 4 June 2021, question 1.

¹⁰² The CMA has noted in footnote 54 the increasing uptake of digital streaming and the decline of the physical distribution of recorded music. AWAL submitted that it does not directly supply physical distribution services, but uses a third party to do so (Kobalt's response to CMA RFI 4 dated 14 May 2021, question 4b). Furthermore, the portion of AWAL's revenues from physical distribution in 2020 was only [REDACTED] (AWAL's total 2020 turnover in the distribution of recorded music was [REDACTED], of which [REDACTED] was physical (Sony's response to MIC RFI 1, dated 6 April 2021, page 10). Therefore, the CMA has focussed our assessment on digital music distribution and the wholesale physical distribution of recorded music is not further addressed in this Decision.

¹⁰³ Sony's response to MIC RFI 1 dated 26 March 2021, page 9.

¹⁰⁴ See for example, Sony, SME observations on the Issues Letter, Annex 4, dated 6 August 2021, paragraphs 3 and 6.

83. In *Universal Music Group/EMI Music*, the Commission left open the exact geographic market definition for the wholesale of digital recorded music (because the competitive assessment would have been the same irrespective of the market definition chosen), while recognising that the geographic scope of the market had been considered to be national in the past but that there were indications of an evolution towards an EEA-wide market.¹⁰⁵
84. The CMA notes that the Parties, and certain of their competitors, operate on a global basis. The CMA considers, however, that the evidence available to the CMA, in particular from the Parties' internal documents and third parties, taken in the round, indicates that the Parties and their competitors likely face different competitive conditions in the UK compared with other countries.
85. In particular, the Parties' competitive presence in the UK appears to differ as compared to other countries, and the strength of competitors differs between the UK and other countries. The Parties acknowledge that each country has differences in the competitors present due to culture and musicality.¹⁰⁶ AWAL internal documents identify its strength in particular 'Anglo' markets (the US, Canada, the UK and Australia).¹⁰⁷ The Orchard's internal documents identify the UK as a particular market for which it has a specific strategy and specific strategic opportunities.¹⁰⁸ Sony internal documents state that suppliers have 'major markets' in particular countries, with one document specifically indicating [X]¹⁰⁹ [X]. One third party noted that new entrants tended to focus on operating in one country,¹¹⁰ and that these locally-focused suppliers can often become acquisition targets (for example, Sony has acquired The Orchard based in the US, Phonofile AS based in Norway, and finetunes GmbH based in Germany).¹¹¹

¹⁰⁵ *Universal Music Group/EMI Music*, paragraphs 227-229.

¹⁰⁶ Note of Issues Meeting call between the CMA and the Parties, 4 August 2021: 'No, the blend of where the market is in the UK is different than other territories and fits in with its own musicality and culture. There is no blanket way of looking at any marketplace in that there is differentiation between each country in the world.'

¹⁰⁷ Kobalt, Annex 26.2 - Publishing and recording market overview.pdf, Fall 2020, page 7 and 10, The Orchard's response to the Enquiry Letter, question 26- Analysis in this document is focussed more so on the Anglo markets as opposed to, for instance, emerging markets (only three mentions of emerging markets versus considerably more mentions of and slides focussed on Anglo markets).

¹⁰⁸ Sony, Annex 1.1.23 (ex Annex 19.11) - The Orchard Feb 2021 UK Territory Review.pdf, February 2021, page 6, Sony's response to s109(2) dated 4 June 2021, question 1.

¹⁰⁹ [X].

¹¹⁰ IMPALA, IMPALA call note, 2 June 2021, paragraph 5.

¹¹¹ IMPALA, IMPALA call note, 2 June 2021, paragraph 5.

Conclusion on geographic scope

86. For the reasons set out above, the CMA has considered the impact of the merger in relation to the wholesale digital distribution of recorded music in the UK.

Neighbouring rights

Product scope

The Parties' submissions

87. Sony submitted that, to the best of its knowledge, there was no relevant precedent for the market for neighbouring rights administration services.¹¹² The Parties made no other substantive comments on the product frame of reference.

CMA's assessment

88. The CMA has considered whether to include direct collections from national CMOs in the same frame of reference as the supply of neighbouring rights administrations services.
89. The CMA notes that the vast majority of neighbouring rights revenue payments are made directly to artists in the UK, with the remaining payments made mostly to neighbouring rights administration service providers.¹¹³
90. The CMA notes, however, that neighbouring rights administration services tend to be used by artists for whom direct collection from an entity acting in the capacity of a CMO is not an attractive option, for instance, for those artists who need to collect from a number of national CMOs.¹¹⁴ An administration service can help the artist overcome language or currency barriers when dealing with multiple national CMOs.¹¹⁵ The CMA therefore considers that these artists are unlikely to switch from using a neighbouring rights administration service to direct collection from national CMOs in response to a price increase.

¹¹² Sony's response to MIC RFI 1 dated 26 March 2021, question 4.

¹¹³ [X] response to RFI 2 to [X] dated 16 July 2021, question 1.

¹¹⁴ For example, see [X] call note, 9 June 2021, paragraph 10- more successful artists are likely to engage an agent (such as KNR), a manager or lawyer.

¹¹⁵ [X] call note, 9 June 2021, paragraph 7

91. For these reasons, the CMA considers the supply of neighbouring rights administration services to be in a separate frame of reference from the direct collection of neighbouring rights royalties from national CMOs.

Conclusion on product scope

92. For the reasons outlined above, the CMA has considered the impact of the Merger in the supply of neighbouring rights administration services.

Geographic scope

The Parties' submissions

93. The Parties did not make any submissions in relation to the geographic scope of the supply of neighbouring rights administration services.

CMA's assessment

94. The evidence available to the CMA indicates that the suppliers of neighbouring rights administration services and their relative strengths may vary between countries. In particular, where a national CMO acts as a neighbouring rights administration service, it will likely be a credible competitor for artists based in that country seeking an administration service. For example, UK-based artists may use the national CMO, PPL, and give it an 'international mandate' for it to act as a neighbouring rights administration service to collect the artists' neighbouring rights royalties.¹¹⁶ Likewise, in the US, US-based artists can use the national CMO, Sound Exchange, and ask it to act as a neighbouring rights administration service.¹¹⁷ On this basis, the CMA considers that the neighbouring rights administration service providers available to artists will vary between countries, with certain national CMOs (when acting as an administration service) likely to have a strong presence in their own countries.
95. For these reasons, the CMA considers that the presence and strength of suppliers of neighbouring rights administration services may differ between countries.

¹¹⁶ Recording of Kobalt teach in, 26 May 2021, around 30-minute mark.

¹¹⁷ Recording of Kobalt teach in, 26 May 2021, around 30-minute mark.

Conclusion on geographic scope

96. For the reasons outlined above, the CMA has considered the impact of the Merger in the supply of neighbouring rights administration services in the UK.

Conclusion on frame of reference

97. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) the wholesale digital distribution of recorded music (**digital music distribution**) in the UK; and
 - (b) the supply of neighbouring rights administration services in the UK.

COMPETITIVE ASSESSMENT

98. As set out in the following sections, the CMA has assessed the following theories of harm:
- (a) Theory of harm 1 (**TOH1**): loss of potential competition in digital music distribution in the UK; and
 - (b) Theory of harm 2 (**TOH2**): horizontal unilateral effects in the supply of neighbouring rights administration services in the UK.

TOH1: Loss of potential competition in digital music distribution in the UK

Market context

99. The CMA considers that recent trends in music distribution are important background to the assessment of competitive dynamics within this sector.

Rise in mid-tier artists

100. The music market has undergone significant changes over the past 10-15 years. Historically, there were five major music record labels: Sony, Universal, Warner, BMG and EMI. In 2003, the Sony music business and BMG were combined in a joint venture and, in 2008, Bertelsmann sold its 50% ownership stake in the joint venture to Sony. In 2012,

Universal acquired EMI, leaving just three major record labels in the market.

101. The ways in which people consume music has also changed dramatically over the past decade. Global streaming revenues have grown exponentially; some data suggest that global revenues from streaming have grown from around US\$0.5 billion in 2005 to US\$56.4 billion in 2019, with most of this growth occurring in the past 5 years (an increase from US\$19.3 billion in 2015 to US\$56.4 billion in 2019).¹¹⁸
102. Historically, the music sector mainly focussed on high-earning artists,¹¹⁹ typically signed to major record labels.¹²⁰ The increased streaming of music and the use of social media as a way for artists to connect with their audience directly has facilitated the emergence of a wider variety of artists, monetising their music through the use of A&L services.¹²¹ This has led to an expanding category of mid-tier artists, which is expected to continue to grow in the future.¹²² ¹²³ ¹²⁴ ¹²⁵ Such artists are able to earn a reasonable level of income,¹²⁶ without having to rely on traditional business models historically associated with the major record labels.
103. In July 2021, the House of Commons Select Committee on Digital, Culture, Media and Sport published a report on the economics of music streaming (the **DCMS Committee Report**).¹²⁷ The DCMS Committee Report raised certain concerns about competition in the music industry, in some cases reflecting concerns that have also arisen during the

¹¹⁸ See Ulrich Dolata, The digital transformation of the music industry. The second decade: From download to streaming (April 2020) available at: [Dolata 2020 – Digital Transformation of the Music Industry \(econstor.eu\)](https://econstor.eu/handle/document/120000) at page 7 with calculations based on IFPI data [public].

¹¹⁹ [§], [§] call note, 3 June 2021, paragraph 1 and [§], [§] call note, 4 June 2021, paragraph 4 .

¹²⁰ EMI Music was also considered a major record label prior to 2012 when it was purchased by Universal (see *Universal Music Group/EMI Music*, paragraph 22).

¹²¹ [§], [§] call note, [§], paragraphs 1 and 2 .

¹²² [§], [§] call note, 4 June 2021, paragraph 4 . This is also well-reflected in Kobalt documents. For example see the following documents in response to Kobalt's response to s109(2) dated 4 June 2021: Annex 2B.20 Project Concerto Presentation, Spring 2019, pages 5 and 46; Annex 2A.17 Fundraising Board Pack, February 2019, page 27; Annex 2B.11 Project Vision Presentation, page 46;

¹²³ AWAL, AWAL Teach-in Presentation, 26 May 2021.

¹²⁴ For example see Kobalt's response to s109(2) dated 4 June 2021 Annex 2B.11 Project Vision Presentation, page 46 which states 'serving global superstars (a position that will decline in importance as middle class grows'.

¹²⁵ [§], [§] call note, 8 June 2021, paragraph 16 and [§], [§] call note, 8 June 2021, paragraph 18.

¹²⁶ See Kobalt, Annex 2A.17 Fundraising Board Pack, February 2019, page 27, Kobalt's response to s109(2) dated 4 June 2021, question 2- Kobalt considered that [§]'Middle Class' artists earn between [§] annually; [§] that earns between [§] annually.

¹²⁷ DCMS, [Economics of music streaming: Second Report of Session 2021–22](#) (HC 50 incorporating HC 868 2019-21, 15 July 2021).¹²⁸ The CMA notes that the DCMS Committee Report recommends that the Government should ask the CMA to undertake a full market study into the 'economic impact of the majors' dominance' (DCMS Committee Report, paragraph 111). While the CMA appears to have observed some of the same trends as the DCMS Committee in its Phase 1 investigation into the Merger, and has engaged with many of the same market participants, the DCMS Committee's recommendation is separate to the CMA's consideration of the Merger (and such a recommendation is not a relevant consideration for the CMA in reaching a view on the statutory questions that it is required to answer at the end of a Phase 1 merger investigation).

CMA's investigation of the Merger, and emphasised the role of competition can play in supporting artist remuneration.¹²⁸

Growth in demand for A&L services

104. Providers of A&L services and other distributors are considered to have introduced disruptive models in the music sector.¹²⁹ The attractiveness of these models is evidenced by the fact that the major record labels have either acquired or organically developed A&L service providers. For example, in 2015, Sony acquired The Orchard, which held the highest stream share on [REDACTED] in the UK in 2020 among all A&L service providers (see **Table 1**, below). Universal acquired Ingrooves in 2019, whereas Warner has developed its own offering, ADA.
105. The introduction of these business models also appears to have prompted some significant changes to the traditional major label offering. In particular, the CMA notes that the major record labels have started to enable artists to have ownership of their music,¹³⁰ replicating this element of the A&L offering (under which artists retain ownership of their sound recordings and have more creative independence in the creation of their music). Sony notes the disruptive role that A&L service providers play in the market, for example:

(a) Sony's [REDACTED].¹³¹

(b) Sony's planning documents refer to '[REDACTED]' ¹³² [REDACTED] ¹³³, [REDACTED].¹³⁴

¹²⁸ The CMA notes that the DCMS Committee Report recommends that the Government should ask the CMA to undertake a full market study into the 'economic impact of the majors' dominance' (DCMS Committee Report, paragraph 111). While the CMA appears to have observed some of the same trends as the DCMS Committee in its Phase 1 investigation into the Merger, and has engaged with many of the same market participants, the DCMS Committee's recommendation is separate to the CMA's consideration of the Merger (and such a recommendation is not a relevant consideration for the CMA in reaching a view on the statutory questions that it is required to answer at the end of a Phase 1 merger investigation).

¹²⁹ Sony, Annex 19.9 - SME Nov 2020 MRP.pdf, 12 November 2020, page 8, The Orchard's response to the Enquiry Letter, question 19.

¹³⁰ See for example, Sony, Annex 1.1.21 (ex Annex 19.9) - SME Nov 2020 MRP.pdf, 12 November 2020, page 13, Sony's response to s109(2) dated 4 June 2021- Sony mentions [REDACTED]. Also see [REDACTED] call note, 15 June 2021, paragraph 17- 'in the future the major labels would need to adapt their current model in view of what AWAL is doing' and 'over the last five to six years, major record labels have been increasingly offering these types of distribution deals with A&L services in an effort to stay competitive and attract new and upcoming artists who are not interested in signing traditional recording agreements.'

¹³¹ Sony, Annex 19.7 - SME Mar 2020 MRP & Budget.pdf, 16 March 2020, page 6, The Orchard's response to the Enquiry Letter, question 19.

¹³² [REDACTED].¹³³ Sony, Annex 19.9 - SME Nov 2020 MRP.pdf, 12 November 2020, page 12, The Orchard's response to the Enquiry Letter, question 19.

¹³³ Sony, Annex 19.9 - SME Nov 2020 MRP.pdf, 12 November 2020, page 12, The Orchard's response to the Enquiry Letter, question 19.

¹³⁴ Sony, Annex 19.9 - SME Nov 2020 MRP.pdf, 12 November 2020, page 15, The Orchard's response to the Enquiry Letter, question 19.

- (c) Sony submitted that, in response to pressure to improve deal terms for artists, as part of its 'Artists Forward' initiative, it announced in June 2021 that it was adopting an approach that would have the effect of writing off outstanding balances for SME's artists.¹³⁵ Sony pointed to the reaction of the specialist press to this announcement citing the following quote: 'Many in the music industry never thought we'd see a day where a major record company openly embraced such a plan.'¹³⁶

Loss of potential competition

106. Within this context, the CMA has considered whether the Merger may lead to a loss of potential competition in digital music distribution in the UK.
107. Unilateral effects may arise from the elimination of potential competition.¹³⁷ Potential competition refers to competitive interactions involving at least one firm that has the potential to enter or expand in competition with other firms.¹³⁸ To this end, the CMA considers whether a merger could substantially lessen competition where, absent the merger, entry or expansion by one or both merger firms could have resulted in new or increased competition between them.¹³⁹
108. The CMA's concern under this theory of harm is that, absent the Merger, Sony and/or AWAL would have expanded their presence in digital music distribution, and that this would have resulted in increased competition between them, which will be lost due to the Merger. Sony already holds a strong position in digital music distribution (as set out in paragraphs 53 and 122 above), and, as described below, there is some evidence to suggest that AWAL would have become an increasingly important competitor to Sony in the future. The CMA is therefore concerned that the loss of competition between Sony and AWAL could have a significant impact on competition in this market (for example, in relation to the terms that artists or DSPs are able to negotiate).¹⁴⁰

¹³⁵ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 28.

¹³⁶ In Historic Move, Sony Music is Disregarding Unrecouped Balances for Heritage Catalog Artists, Music Business Worldwide, 11 June 2021 as cited in Sony, SME observations on the Issues Letter, 6 August 2021, paragraph 28.

¹³⁷ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 5.1.

¹³⁸ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 5.1.

¹³⁹ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 5.1.

¹⁴⁰ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 5.15.

109. In assessing whether a merger involving potential entry or expansion will lead to a loss of future competition between the merger firms, the CMA will consider evidence in relation to:
- (a) whether either merger firm (or both merger firms) would have entered or expanded absent the merger; and
 - (b) whether the loss of future competition brought about by the merger would give rise to an SLC, taking into account other constraints and potential entrants / expansion.¹⁴¹
110. In response to the CMA's Issues Letter, Sony submitted an analysis of 'legal observations' that it considered should guide the CMA's assessment of this case.¹⁴² Sony also submitted that the CMA had omitted certain 'essential analytical steps that are necessary to establish a realistic prospect of a substantial lessening of competition'.¹⁴³
111. In particular, Sony submitted that the CMA had failed to assess how competition functions in the market at issue and to establish a sufficient evidential basis for an SLC.¹⁴⁴ Sony also submitted that it is insufficient to simply identify a reduction in the number of competitors arising from a transaction and, rather, that the CMA must 'go further' and explain why that reduction and the associated loss of competition may be expected to give rise to an SLC and what effect that loss of competition will have.¹⁴⁵ To this end, Sony submitted that the CMA was required to explain what effect the alleged loss of competition between SME and AWAL may be expected to have.¹⁴⁶
112. While Sony's submissions are, to the extent relevant, addressed within the CMA's competitive assessment below, the CMA notes, as a starting point, that these submissions do not accurately reflect the applicable legal framework for a Phase 1 merger investigation under the Act.
113. First, when deciding whether the test for reference has been met at the end of a Phase 1 investigation, the CMA applies a 'realistic prospect' threshold.¹⁴⁷ By contrast, at Phase 2, the CMA applies a (higher) 'balance of probabilities' threshold.¹⁴⁸ The Phase 1 threshold is an

¹⁴¹ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 5.7.

¹⁴² Sony, CMA Issues Meeting – Legal Observations dated 4 August 2021, page 3.

¹⁴³ Sony response to the Issues Letter dated 2 August 2021, paragraph 3.

¹⁴⁴ Sony, CMA Issues Meeting – Legal Observations, dated 4 August 2021, page 2.

¹⁴⁵ Sony, CMA Issues Meeting – Legal Observations, dated 4 August 2021, page 3

¹⁴⁶ Sony, CMA Issues Meeting – Legal Observations, dated 4 August 2021, page 3

¹⁴⁷ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 2.31.

¹⁴⁸ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 2.31.

intentionally lower and more cautious threshold, intended to assess whether a transaction should be subject to an in-depth Phase 2 investigation, than that applied after a more extensive Phase 2 investigation, when the CMA takes a final decision on competition concerns and remedies.¹⁴⁹ The CMA notes that Sony's submissions in relation to the evidential basis required to support the finding of a realistic prospect of an SLC are, in large part, based on jurisprudence that relates to the evidential standard applicable in a Phase 2 (merger or market) investigation under the Act, where, as noted above, the nature of the CMA's decision is different (and the CMA has not yet had the opportunity for the further information-gathering and analysis that an in-depth investigation provides), rather than the evidential standard that applies in a Phase 1 investigation.

114. Second, while not citing it directly, certain of Sony's submissions appear to summarise sections of the reasoning of the European General Court in *CK Telecoms UK Investment Ltd v. European Commission*.¹⁵⁰ The CMA notes that that judgment relates to a different jurisdiction with a different legal test to the one the CMA applies in merger control cases, and the CMA considers that the judgment has limited read-across to the UK.¹⁵¹ Where the CMA has considered evidence and believes that competition mainly takes place between few firms, the CMA considers that it is reasonable to attach weight to the small number of competitors as an indicator of the likely potential for the merger firms to recapture sales from each other, and therefore is an indicator of the likely constraint between them, subject to evidence to the contrary.¹⁵² More broadly, the CMA will, as has been the case in this investigation, consider any merger in terms of its effect on rivalry over time in the market or markets affected by it; when levels of rivalry are reduced, firms' competitive incentives may be dulled, to the detriment of customers.¹⁵³
115. In carrying out its competitive assessment, the CMA has considered, in particular:

¹⁴⁹ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 2.34.

¹⁵⁰ Case T-399/16, *CK Telecoms UK Investments Ltd v European Commission*.

¹⁵¹ Again, the CMA has previously noted this point in [Revised Merger Assessment Guidelines: Summary of responses to the consultation \(CMA129resp\)](#), paragraph 2.45.

¹⁵² See, for example, [Revised Merger Assessment Guidelines: Summary of responses to the consultation \(CMA129resp\)](#), paragraph 2.45.

¹⁵³ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 2.6.

- (a) The Parties' current market positions (as evidenced, in particular, by shares of supply), as well as those of the largest existing competitors (ie the other major labels) and other emerging competitors;
 - (b) AWAL's ability and incentive to expand in digital music distribution in the UK in future, including its pre-existing plans to develop its business;
 - (c) Sony's ability and incentive to expand in digital music distribution in the UK in future, including its pre-existing plans to develop its business;
 - (d) The extent to which the Parties compete at present, and would be likely to do so in future, absent the Merger; and
 - (e) The extent to which the Parties will continue to face other constraints (taking into account entry and expansion by other suppliers).
116. In assessing this theory of harm, the CMA has primarily considered evidence from (i) the Parties' submissions; (ii) the Parties' internal documents; (iii) Sony and AWAL's existing efforts to expand; (iv) third party submissions; (v) shares of supply over time; and (vi) the Parties' switching data.

The Parties' current market positions

The Parties' submissions

117. The Parties submitted that competition 'among A&L service providers is vibrant, with many competing players offering a largely commoditised set of products that can easily be replicated.'¹⁵⁴
118. The Parties further submitted that AWAL has a marginal position in recorded music and that its stream share remains at a low level (below [0-5%]). The Parties submitted that it took AWAL [X] to reach this level and that AWAL's growth in stream share has slowed in the recent years.^{155 156}

¹⁵⁴ Sony, SME observations on the Issues Letter, 6 August 2021, paragraph 64.

¹⁵⁵ Sony, SME observations on the Issues Letter, 6 August 2021, paragraphs 14 to 21.

¹⁵⁶ The Parties also noted the Commission's decision in *Case COMP/M.6458 Universal Music Group/EMI Music (Universal/EMI)* (Sony response to the Issues Letter dated 2 August 2021, paragraph 24, and CMA Issues Meeting – Legal Observations, page 1), in particular noting the Commission's finding that Universal was the market leader (see *Universal/EMI* paragraphs 372 and 662). The CMA recognises Universal's position in the market and has taken this, and the level of competitive constraint offered by Universal and other firms, into account as appropriate in this Decision.

CMA's assessment

119. The CMA has assessed the stream shares of Sony, AWAL and a number of other distributors over time, in conjunction with other evidence relating to the significance of AWAL's market position. Taken in the round, the CMA considers that this evidence informs the assessment of the competitive position of AWAL in relation to other distributors, as well as the assessment of the strength of the constraints posed by these other distributors (alongside further evidence discussed in paragraphs 177-216).

Shares of supply

120. **Table 1** shows the stream shares of the top 15 licensors of all music in the UK between 2016 and 2020 on a prominent DSP that AWAL, The Orchard and Sony distribute recorded music on.^{157 158}
121. The CMA does not have stream shares for the entire market, but considers that the stream share figures in **Table 1** provide a reliable indication of the market positions of the Parties and other distributors, in particular because they are consistent with other data gathered by the CMA:
- (a) The stream shares in **Table 1** are consistent with the shares of supply figures provided by the Parties.¹⁵⁹ These stream shares are also consistent with the aggregated stream shares of new music from different DSPs ranging in size (including, [X], [X], [X], [X] and [X]) over time.
 - (b) Stream shares of new music (ie excluding music from back catalogues) for AWAL and Sony/The Orchard were similar to those for all music presented in **Table 1** below.¹⁶⁰

¹⁵⁷ As mentioned in footnote 54, streaming was the main form of music consumption in the UK in 2020 and therefore these shares are representative of a large portion of the recorded music market. Moreover, stream shares are one of the main indicators used by the Parties to measure their performance (Sony's Response to CMA RFI 6 dated 4 June 2021, question 11 and Kobalt's Response to CMA RFI 6 dated 4 June 2021, question 11).

¹⁵⁸ [X].

¹⁵⁹ The Orchard's response to the Enquiry Letter, question 29.

¹⁶⁰ UK 2020 stream shares (new music) for [X]: Sony ([10-20%] excl. The Orchard); The Orchard ([0-5%]); AWAL ([0-5%]).

Table 1: Stream shares of the top 15 licensors by stream share of all music in the UK in 2020

([REDACTED])

Licensor/Group	Provider Type	GB stream share %					Change in share between 2016-2020	% change in share 2016-2020
		2016	2017	2018	2019	2020		
Universal Music Group*	Major	[30-40%]	[30-40%]	[30-40%]	[30-40%]	[30-40%]	[REDACTED]	[REDACTED]
Ingrooves	A&L	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Spinnup	DIY	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Virgin Music Label and Artist Services	A&L	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Sony Music Entertainment†	Major	[20-30%]	[20-30%]	[20-30%]	[20-30%]	[20-30%]	[REDACTED]	[REDACTED]
The Orchard	A&L	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Warner Music Group‡	Major	[10-20%]	[10-20%]	[10-20%]	[10-20%]	[10-20%]	[REDACTED]	[REDACTED]
ADA	A&L	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Believe§		[5-10%]	[5-10%]	[5-10%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Believe	A&L	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
TuneCore	DIY	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Distrokid	DIY	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
AWAL	A&L	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Downtown Music Services¶		[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
CDBaby	DIY	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
FUGA	A&L	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Beggars	A&R	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
PIAS	A&L	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
ditto music	DIY	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Routenote	DIY	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Queenstreet AB#	-	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
EMPIRE	A&L	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Domino	A&R	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Secretly	A&L	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[REDACTED]	[REDACTED]
Total		[80-90%]	[80-90%]	[80-90%]	[80-90%]	[80-90%]	[REDACTED]	[REDACTED]
The Parties combined		[20-30%]	[20-30%]	[20-30%]	[20-30%]	[20-30%]	[REDACTED]	[REDACTED]
The major record labels' stream share		[70-80%]	[70-80%]	[70-80%]	[70-80%]	[70-80%]	[REDACTED]	[REDACTED]

Source:[REDACTED].

* Includes: Spinnup, Virgin Music Label and Artist services, and Ingrooves.

† Includes The Orchard.

‡ Includes ADA.

§ Includes TuneCore.

¶ Includes CDBaby and FUGA only.

The CMA has not categorised Queenstreet AB by provider type due to limited information.

122. The data in **Table 1** indicate that the market is currently highly concentrated. Universal, Sony, and Warner each have maintained high shares across the entire period covered by the data. Together, the three major record labels, including entities under their ownership, represented [70-80%] of all streams on this platform in 2020. There was, however, [REDACTED] in the combined share of the majors across this time period from [70-80%] to [70-80%] (and [REDACTED] in each of their individual shares). [REDACTED]. Given its relative size, consistent market shares, and position in the charts (see paragraph 53) the CMA considers Sony to have a strong market position.

123. Outside the major record labels, the remainder of the market is accounted for by independent record labels, A&L service providers and

DIY platforms. No supplier outside the major record labels has a share of more than [5-10%] and there are only five suppliers with a share of more than [0-5%]: Believe/TuneCore (combined A&L and DIY), Distrokid (DIY), AWAL, Downtown (combined A&L and DIY) and Beggars (an independent record label). Outside the major record labels, AWAL had the third largest stream share at [0-5%], and the highest share excluding ungated DIY platforms.¹⁶¹

124. **Table 1** also shows that the growth among A&L services providers has been uneven (and that it is therefore not the case that all A&L services providers are continually increasing their market penetration). Ten A&L service providers appear in **Table 1**: The Orchard (Sony), AWAL, Believe/TuneCore, ADA (Warner), PIAS, FUGA, Empire, Virgin Music Label and Artist Services (**Virgin**) and Ingrooves (both Universal), and Secretly. These data show that The Orchard has the largest share out of all A&L providers (whether major-owned or independent). Between 2016 and 2020:

- (a) The stream share of AWAL more than doubled and The Orchard's share increased almost by a quarter;
- (b) the share of five of the eight other A&L service providers either declined or remained broadly static over the same period ([X], [X], [X], [X], and [X]).
- (c) The remaining three A&L service providers experienced growth:[X], [X], and [X]. These providers, however, had all started from a [X]low stream share (less than [0-5%]) and they all continue to have a [X]smaller share than AWAL (at most these providers have a stream share [X]the size of AWAL's).

125. Finally, **Table 1** shows that a number of DIY platforms have grown in the 2016-2020 time period. Ungated DIY platforms [X], [X] and [X]have all increased their market share, although only [X]has a share greater than [0-5%](at [X]%).

126. The CMA believes that the stream share evidence indicates that the market for digital music distribution in the UK is highly concentrated, with the major record labels holding consistently high shares of supply. The CMA considers that these data also indicate that AWAL is, with the

¹⁶¹ See paragraphs 211-214 for the CMA's assessment of the extent to which ungated DIY platforms exert a constraint on AWAL.

exception of ungated DIY distributors, the only supplier to establish a material market presence and experience significant growth.

Other evidence relating to AWAL's market position

127. In the round, the CMA considers that the available evidence generally shows that AWAL is a significant supplier of A&L services to artists and an important competitive presence within digital music distribution in the UK. In particular:
- (a) AWAL is one of few suppliers to establish material market presence, with significant growth in recent years (see **Table 1**). AWAL's stream share increased significantly, more than doubling between 2016 and 2020 (from [0-5%] to [0-5%]). The Parties have argued that 'this is not such a significant rate of growth as to overcome the fact that AWAL's share remains at a low level'.¹⁶² While AWAL's share remains low in aggregate terms, this should be considered within the market context in this case – ie where the three major labels continue to account for the vast majority of the market and few suppliers have been able to develop a meaningful supply position. The CMA therefore considers that differences in the shares held by the smaller suppliers, and differences in the rates of growth that they have experienced, are of relevance in assessing the comparative strength of these suppliers.
 - (b) The Parties have also argued that '[t]he CMA's focus on growth rates obfuscates the fact that there are many players in the A&L services segment, pursuing similar business models at similar scale, and pursuing growth within a relatively nascent sector' and that 'AWAL's growth has slowed[~~§~~]¹⁶³. The CMA notes, however, that this position does not appear to be fully consistent with evidence from Kobalt's own documents, which highlight that AWAL is growing faster than the market. For example, one document states that AWAL's revenues have 'grown nearly [~~§~~]than the recordings industry' as a whole.¹⁶⁴ The CMA also notes that no competing A&L service provider has experienced a larger percentage point growth than AWAL between 2016 and 2020. While there are several A&L service providers pursuing similar business models to AWAL, many of which have aspirations to grow, the CMA is also required to consider whether these suppliers have the capabilities to be effective competitors, including by assessing evidence relevant to their ability and incentive to

¹⁶² Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 17.

¹⁶³ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraphs 17 and 18.

¹⁶⁴ Kobalt, Annex 22.1 - Kobalt Confidential Information Presentation.pdf, September 2020, page 44, The Orchard's response to the Enquiry Letter, question 22.

expand in future. In this regard, the CMA considers that it is appropriate to put some weight on the fact that AWAL's growth has been more consistent and more significant than that of other suppliers, given that this is one factor that may indicate that AWAL is particularly well-positioned to continue growing in future.

128. AWAL is mentioned most frequently and, typically, most prominently among artist services providers in Sony's internal documents.¹⁶⁵ Sony's internal documents consistently suggest that AWAL plays a significant role in the market. In particular:

- (a) Sony's internal documents refer to AWAL as a 'disruptor' and a 'competitive threat' within the competitive landscape.¹⁶⁶ This evidence also shows that Sony sees AWAL as a competitive threat in artist services, for example by '[X]'.¹⁶⁷ ¹⁶⁸ Furthermore, Sony's documents show that it is planning to change (or has changed) some aspects of its business model such that it offers artists contracts more akin to those offered by A&L service providers such as AWAL.¹⁶⁹ ¹⁷⁰ ¹⁷¹ One Sony internal document (an email chain between senior management) also notes, when discussing the rationale for the Merger, that if '[X]'.¹⁷²

¹⁶⁵ See for example the following documents where Sony refers to AWAL prominently/first amongst other competitors: Sony, Annex 19.5 - The Orchard FY2020 Review FY2021 Strategy.pdf, dated approximately within the past two years, pages 43, The Orchard's response to the Enquiry Letter, question 19- AWAL is listed right above One RPM and Empire in artist services. This does not reflect the alphabetical order of the companies. This is evidenced by the fact that the same page lists ADA and Amuse in label distribution and DIY services respectively towards the bottom of the lists, indicating that the ordering reflects which company Sony sees as the biggest threat; Sony, Annex 19.6 - SME Nov 2019 Mid-Range Strategy Review.pdf, 6 November 2019, page 10, The Orchard's response to the Enquiry Letter, question 19- again, AWAL is listed first as a competitor in artist services; Sony, Annex 19.3 - The Orchard FY2019 Review FY2020 Strategy.pdf, dated approximately within the past two years, page 32, The Orchard's response to the Enquiry Letter, question 19- AWAL is placed in the first column in order for Sony to compare it with The Orchard's services despite Amuse (which is placed in the column after AWAL) being first in terms of alphabetical sequence.

¹⁶⁶ Sony, Annex 2.1.1, 26 February 2020, page 36, Sony's Response to s109(2) dated 4 June 2021- AWAL is listed on the top (in non-alphabetical sequence) as a competitor in artist services; and Sony, Annex 19.9 - SME Nov 2020 MRP.pdf, 12 November 2020, page 8, The Orchard's response to the Enquiry Letter, page 8.

¹⁶⁷ Sony, Annex 19.6 - SME Nov 2019 Mid-Range Strategy Review.pdf, 6 November 2019, page 10, The Orchard's response to the Enquiry Letter, question 19.

¹⁶⁸ Sony, Annex 19.7 - SME Mar 2020 MRP & Budget.pdf, 16 March 2020, page 6, The Orchard's response to the Enquiry Letter, question 19. While this slide is not repeated in the November 2020 MRP document (Annex 19.9 - SME Nov 2020 MRP.pdf), the CMA notes that AWAL is identified as a potential M&A target in that document.

¹⁶⁹ Sony, Annex 1.1.19 (ex Annex 19.2) - SME Feb 2021 Pre MRP & Budget.pdf, 24 February 2021, page 55, Sony's Response to s109(2) dated 4 June 2021, question 1.

¹⁷⁰ Sony, Annex 19.9 - SME Nov 2020 MRP.pdf, 12 November 2021, page 13, The Orchard's response to the Enquiry Letter, question 19.

¹⁷¹ Sony, Annex 2.1.17 (ex Annex 23.8) - Global Market Shares and Sizes.pdf, 11 February 2021, page 9, Sony's Response to s109(2) dated 4 June 2021, question 2.

¹⁷² The text in quotation marks is based on an English translation of part of an internal Sony email chain provided in Sony's Response to RFI 7 dated 18 June 2021, question 1. The full sentence read '[X]' This information was provided in response to a request from the CMA to clarify an earlier version of the translation that was less clear. The relevant document/internal email chain was provided as: Sony, Annex 1.1.12-A (ex Annex 21.12-A) - Courtesy Translation.pdf, 15 to 20 January 2021, page 1, Sony's response to s109(2) dated 4 June 2021, question 1.

- (b) While Sony submitted that AWAL's multi-tier model was matched by other A&L service providers,¹⁷³ this position is not fully supported by evidence from the Parties' internal documents, which suggest that the Parties consider AWAL to be 'unique'. In particular, one Sony document notes that 'AWAL covers everything from the front line label service to DIY' and '[redacted]'.¹⁷⁴ This is consistent with how AWAL describes itself, ie as the 'Only Scalable, Tech-Powered Independent Label Purposely Designed to Service Emerging Artist,' and that AWAL's 'brand is unique and hard to replicate'.¹⁷⁵ Furthermore, AWAL's uniqueness is supported by the fact that part of its multi-tier model includes a gated DIY platform as opposed to an ungated one.¹⁷⁶
- (c) AWAL is also considered in Sony's internal documents in the context of developing Sony's own A&L service offering through The Orchard. For example:
- (i) The Orchard describes itself and AWAL as providers of artist services to '[redacted]'.¹⁷⁷ The Orchard recognised that AWAL had '[redacted]'.¹⁷⁸
 - (ii) When The Orchard was making plans to offer a full-range of artist services [redacted], it sought to compare itself to competitors in this space, which included AWAL.¹⁷⁹

129. The CMA notes Sony's submission that some of the internal documents mentioned above make reference to a number of other competitive threats and disruptors.¹⁸⁰ While this is correct, it is, of course, also important to consider the context within which suppliers are referenced within internal documents (including, in particular, the frequency with which suppliers are mentioned and how they are positioned), as part of an assessment in the round of the wider body of evidence in relation to supplier capabilities. As explained throughout this decision, the CMA

¹⁷³ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 67.

¹⁷⁴ The text in quotation marks is based on an English translation of part of an internal Sony email chain provided in Sony's Response to CMA RFI 7 dated 18 June 2021, question 1. The relevant document/internal email chain provided as: Sony, Annex 1.1.12-A (ex Annex 21.12-A) - Courtesy Translation.pdf, 15 to 20 January 2021, page 1, Sony's response to s109(2) notice dated 4 June 2021, question 1.

¹⁷⁵ Kobalt, Annex 22.1, September 2020, page 12, The Orchard's response to the Enquiry Letter, question 22.

¹⁷⁶ See paragraph 213 for further discussion.

¹⁷⁷ Sony, Annex 19.5 - The Orchard FY2020 Review FY2021 Strategy.pdf, dated approximately within the past two years, pages 43 and 45, The Orchard's response to the Enquiry Letter, question 19.

¹⁷⁸ Sony, Annex 19.5 - The Orchard FY2020 Review FY2021 Strategy.pdf, dated approximately within the past two years, page 45, The Orchard's response to the Enquiry Letter, question 19.

¹⁷⁹ Sony, Annex 19.3 - The Orchard FY2019 Review FY2020 Strategy.pdf, dated approximately within the past two years, page 32, The Orchard's response to the Enquiry Letter, question 19.

¹⁸⁰ Sony, SME observations on the Issues Letter, Annex 4, dated 6 August 2021, paragraph 12.

considers that AWAL has more prominence in Sony's internal documents than the majority of other suppliers.¹⁸¹

130. The internal documents of AWAL and Kobalt also point to the important role that AWAL was playing in the market. For example, Kobalt internal documents consistently characterise AWAL as a pioneering A&L services business, stating, for example, that AWAL 'revolutionizes the industry and is universally regarded as the agent of change'¹⁸² and that 'AWAL addresses need in the recording music market not effectively served by others'.¹⁸³ This is consistent with evidence that the CMA has received from other industry stakeholders (such as[REDACTED]), which characterises AWAL's position in a similar fashion.¹⁸⁴
131. Taken in the round, the CMA considers that the evidence summarised above indicates that AWAL is already a significant supplier of A&L services and an important emerging supplier in the digital music distribution in the UK.

AWAL's pre-Merger expansion plans

132. The CMA has considered evidence as to whether AWAL was likely to continue to grow its business, focusing in particular on whether:
- (a) AWAL had plans or was taking steps to expand its A&L services; and
 - (b) AWAL had the ability to expand its A&L services.

The Parties' submissions

133. The Parties submitted that AWAL expects future growth to come predominantly from [REDACTED].¹⁸⁵ Furthermore, the Parties state that while AWAL may grow its revenues, this will not necessarily mean that its competitive significance will grow, given wider growth in the sector.¹⁸⁶ Finally, the Parties stated that [REDACTED].¹⁸⁷

¹⁸¹ See also footnote 165 for an explanation of how AWAL is listed prominently in some Sony internal documents.

¹⁸² Kobalt, Annex 22.1 - Kobalt Confidential Information Presentation.pdf, September 2020, page 45, The Orchard's response to the Enquiry Letter, question 22.

¹⁸³ Kobalt, Annex 2.5 – Board pack, June 2020, page 64 Kobalt's response to s109(3) dated 22 June 2021 22.

¹⁸⁴ [REDACTED].

¹⁸⁵ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 55.

¹⁸⁶ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 61.

¹⁸⁷ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 61.

Internal documents on AWAL's expansion in A&L services

134. Kobalt's internal documents consistently show that AWAL had concrete plans for growth and was expecting to grow its market share significantly in digital music distribution.
135. In particular, several of Kobalt's documents include projections of AWAL's market share in digital music distribution. For example, according to some of these documents, AWAL's estimated market share in the 'anglo' market (ie their share across countries classified as 'anglo,' including the UK and USA) was projected to be between [0-10%] and [10-20%] in financial year 2024/25 depending on the scenario.¹⁸⁸ The CMA has also seen a more recent Kobalt document which estimates a market share of [0-10%] in the 'anglo' market by 2025 (although this share excludes revenues from catalogue and label clients).¹⁸⁹
136. The Parties have stated that the higher estimated future share numbers ([0-10%] to [10-20%]) were aspirational and produced for [REDACTED].¹⁹⁰ Nevertheless, the CMA notes that AWAL anticipated, on any basis, that its business would grow significantly over the next few years. This is also consistent with the fact that Sony assumed that AWAL would continue to grow significantly when calculating the consideration it would offer for AWAL, as described in paragraph 36(b) above.
137. More generally, the CMA considers that several Kobalt documents indicate that Kobalt and AWAL were confident in AWAL's ability to grow and become a leading player in the market. For example, one Kobalt internal board presentation indicates that AWAL is uniquely positioned to win artist and label clients with respect to other players (majors, indie labels, and other A&L providers) as 'AWAL addresses need in the recordings market not effectively served by others', including through [REDACTED].¹⁹¹ Kobalt also considered that 'AWAL is best positioned as a partner to (the) new wave of artists'.¹⁹² Another document sets out AWAL's vision as providing 'an end-to-end ecosystem [to artists] targeted at growing mid-tier segment of independent artists, [REDACTED] and, in

¹⁸⁸ [REDACTED]

¹⁸⁹ Kobalt, Annex 26.2 - Publishing and recording market overview.pdf, Fall 2020, page 17, The Orchard's response to the Enquiry Letter, question 26. This share excludes label distribution clients and music from catalogues.

¹⁹⁰ Kobalt's response to RFI 9 dated 14 July 2021, question 5.

¹⁹¹ Kobalt, Annex 2.5 Board Slides_25 June 2020.pdf, 25 June 2020, page 64, Kobalt's response to s109(3) dated 22 June 2021, question 2.

¹⁹² Kobalt, Annex 2B.11_Kobalt Music Group Presentation - Project Vision.pdf, dated between 2018 and 2019, page 49, Kobalt's response to s109(2) dated 4 June 2021, question 2.

relation to label services, becoming ‘a leading partner to independent labels.’¹⁹³ This vision was accompanied by the following strategy:¹⁹⁴

- (a) [REDACTED];
- (b) [REDACTED];
- (c) [REDACTED]; and
- (d) [REDACTED].

138. With respect to the Parties’ submission that AWAL’s growth would come [REDACTED], the CMA notes that this is not fully supported by other evidence available to the CMA.

139. In particular, Kobalt’s documents indicate that AWAL’s main focus for expansion was in relation to mid-tier artists, a segment of the recorded music market which Kobalt considers will [REDACTED] in the future.¹⁹⁵ Kobalt notes that [REDACTED].¹⁹⁶ Kobalt’s projections for AWAL’s ‘Anglo’ business show that it planned to [REDACTED]. In this regard, AWAL projected that [REDACTED]. AWAL projected revenues from its [REDACTED] to increase from [REDACTED], while it projected revenue from its [REDACTED] (these projections include revenues from all ‘Anglo’ markets, and not just the UK). The projections show that AWAL forecasts that its number of [REDACTED]. While AWAL project that its number [REDACTED].^{197 198}

140. AWAL’s documents also show that it is investing in, and anticipates growing, its services to the most successful mid-tier artists. AWAL notes that it ‘gains stars’,¹⁹⁹ ‘is continuing to grow significantly with higher value clients’²⁰⁰ and works with well-known stars like Childish Gambino

¹⁹³ Kobalt, Annex 2B.26_AWAL Strategy_Speakers’ Corner Outline.pptx, September 2019, page 14, Kobalt’s Response to s109(2) dated 4 June 2021, question 2.

¹⁹⁴ Kobalt, Annex 2B.26_AWAL Strategy_Speakers’ Corner Outline.pptx, September 2019, page 16, Kobalt’s Response to s109(2) dated 4 June 2021, question 2.

¹⁹⁵ Kobalt, Annex 2B.20_Project Concerto Confidential Information Presentation.pdf, Spring 2019, pages 6 and 45, Kobalt’s Response to CMA’s 109(2) notice dated 4 June 2021, question 2.

¹⁹⁶ Kobalt, Annex 2B.24_Project Concerto Management Presentation.pdf, 29 May 2021, page 79, Kobalt’s Response to CMA’s 109(2) notice dated 4 June 2021, question 2.

¹⁹⁷ Kobalt submitted that these projections were dependent on [REDACTED] (Response to Issues Letter, paragraph 8).

¹⁹⁸ Kobalt, Annex 26.2 Project Overdrive, Fall 2020, page 18. Kobalt’s response to s109(1).

¹⁹⁹ Kobalt, Annex 2B.11_Kobalt Music Group Presentation - Project Vision.pdf, 20 June 2018, page 47, Kobalt’s Response to s109(2) dated 4 June 2021, question 2.

²⁰⁰ Kobalt, Annex 2A.26_Board Reporting Pack (Dec 2019).pdf, 4 December 2019, page 7, Kobalt’s Response to s 109(2) dated 4 June 2021, question 2.

and Mumford & Sons through label clients.²⁰¹ ²⁰² AWAL projected that, subject to receipt of funding,²⁰³ revenue for [REDACTED].²⁰⁴

141. The CMA considers that these internal documents show a clear intention from AWAL to expand and grow its market share in digital music distribution in the UK.

AWAL's ability to expand

142. The CMA believes that there are several factors that indicate that AWAL had the ability and incentive to expand in digital music distribution, in particular through providing A&L services to artists, absent the Merger.
143. First, the CMA notes the evidence summarised above in relation to the already significant presence of AWAL in the supply of A&L services and its role as an important competitive presence in digital music distribution in the UK. In particular, the CMA believes that the evidence relation to AWAL's established presence and recent growth shows that it has a strong starting point to expand further in this market.
144. Second, the CMA considers that AWAL has several other capabilities that make it well-placed to be able to expand successfully. In particular, the CMA considers that:
- (a) AWAL's three-tier structure, which Sony defined as being [REDACTED] (see paragraph 128 above), and AWAL's focus on flexible deals to artists and labels, makes AWAL well-placed to exploit the opportunities brought about by emerging market trends, such as the growth of the mid-tier artists segment of the market and the demands from artists for more flexible deals.
 - (b) AWAL has a relatively well-known brand and is well-recognised in the industry.²⁰⁵

²⁰¹ Kobalt, Annex 1C.1_Introduction to Kobalt.pptx_ 5 February 2019, page 27, Kobalt's response to s109(2) notice dated 4 June 2021, question 1.

²⁰² See also a presentation made by [REDACTED].

²⁰³ Kobalt, Observations on Issues Letter- AWAL_Kobalt Internal Documents, Annex 5, dated 6 August 2021, paragraph 8.

²⁰⁴ Kobalt, Annex 26.2 - Publishing and recording market overview.pdf, Autumn 2020, page 17, The Orchard's response to the Enquiry Letter, question 26.

²⁰⁵ The Orchard's response to the Enquiry Letter, question 19, footnote 37: With reference to two internal documents, The Orchard explains that AWAL is referenced as having a 'powerful brand' and a 'well-recognized Artist Services brand'.

(c) AWAL has already built a network of successful artist and label clients.²⁰⁶

(d) AWAL has more capabilities compared with those offered by most other A&L service providers.²⁰⁷ These capabilities are recognised by industry stakeholders, such as [X].²⁰⁸

145. As noted above, the Parties stated that had AWAL remained with Kobalt [X]. In this regard, the Parties submit that AWAL would have [X].²⁰⁹ The CMA believes, however, that this position does not appear to be supported by the available evidence.

146. In particular, the CMA considers that the evidence outlined in paragraph 127, above, indicates that AWAL projected further, significant growth even absent an acquisition by Sony. These projections are not accompanied by any suggestion that [X]. Kobalt and AWAL have also not provided any other contemporaneous evidence suggesting that AWAL [X]. The CMA notes, in addition, that the purchase price paid by Sony for AWAL and KNR (approximately \$430m)²¹⁰ does not indicate that Sony considered AWAL and KNR to be [X].²¹¹

Conclusion on AWAL's pre-Merger expansion plans

147. The CMA believes that AWAL was well-placed, absent the Merger, to materially grow its digital music distribution business. AWAL's internal documents show a clear intention to expand AWAL's business and to continue growing AWAL's market share. While the evidence shows some uncertainty in relation to AWAL's exact rate of growth, the CMA notes that, even under the most conservative forecasts set out in the Parties' internal documents, AWAL still had the intention to grow significantly and become a stronger competitor in digital music distribution in the UK.

²⁰⁶ See [Global Artist Roster](#) available on AWAL's website and Kobalt, Annex 2B.20_Project Concerto Confidential Information Presentation.pdf, Spring 2019, page 42, Kobalt's response to s109(2) notice dated 4 June 2021, question 2.

²⁰⁷ Based on third party evidence from three of the eight rival A&L suppliers listed in Table 1 ([X]'s response to competitor questionnaire dated 29 June 2021, question 6; [X]'s response to competitor questionnaire, dated 29 June 2021, question ; and [X]'s response to competitor questionnaire, dated 29 June 2021, question 6).

²⁰⁸ [X]; Kobalt, Annex 1B.4_Project Overdrive_Board Update Materials (27 Oct 2020).pdf, dated 27 October 2020, page 7, Kobalt's response to s109(2) dated 4 June 2021, question 1. The document, prepared by Goldman Sachs, indicates that 'AWAL has demonstrated impressive growth, and represents a compelling opportunity in the emerging artist space'. Also see Sony, Annex 19.3 - The Orchard FY2019 Review FY2020 Strategy.pdf, dated approximately within the past two years, page 32, The Orchard's response to the Enquiry Letter, question 19- AWAL and Amuse have the most services compared to other A&L service providers.

²⁰⁹ Sony, SME observations on the Issues Letter, 6 August 2021, paragraph 61.

²¹⁰ The CMA further notes that this purchase price was free of AWAL debt based on the Parties' transaction documents (Sony, Annex 2 – Share Sale and Purchase Agreement, 31 January 2021, clause 6 and Annex 2 - Schedule 14 -Carve-Out Accounts, 31 January 2021, page 1, The Orchard's response to the Enquiry Letter).

²¹¹ See paragraph 36(b) explaining the basis of Sony's purchase price.

148. The CMA also believes that the available evidence shows that AWAL had a clear ability and incentive to become a more significant competitor in digital music distribution, in particular because of its existing market position and the other capabilities that it holds.

Sony's pre-Merger expansion plans

149. The Orchard has previously focussed on label clients, whilst AWAL has focussed on serving artists (see paragraphs 161 onwards). The CMA has considered evidence on the extent to which:

- (a) Sony was taking steps or had plans to expand its A&L services to artists as part of its activities in digital music distribution in the UK; and
- (b) Sony had the ability to expand its A&L services.

150. The CMA may consider a range of evidence on the prospect of expansion by the merger firms.²¹² Expansion may be considered more likely where a merger firm has the incentive and ability to expand; has well-developed plans or has already taken significant steps towards expansion; where incumbent firms are taking action in anticipation of its expansion; or where it has a past history of expansion into related markets.²¹³

The Parties' submissions

151. The Parties submitted that, while The Orchard considered the option to build out its artist services division, it decided ultimately to pursue an acquisition strategy. The Parties also submitted that, by the time SME decided to acquire AWAL, its focus was on finding the right acquisition target rather than expanding into A&L services organically.²¹⁴

Sony's internal documents on expansion in A&L services

152. The CMA believes that Sony's internal documents show, contrary to the Parties' submissions, that Sony would likely have expanded its offering in the supply of A&L services absent the Merger. In particular, Sony was planning to grow its A&L services offering to better serve artists through an expansion of The Orchard's artist services offering (which would have

²¹² The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 5.10.

²¹³ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 5.10.

²¹⁴ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 60.

led Sony to compete more directly with AWAL's existing offering to artists). In particular:

- (a) The Orchard's FY19 Review and FY20 Strategy document shows a [REDACTED] improving its offering to artists; with plans to [REDACTED] to significantly enhance its artist services proposition. The document compares The Orchard's offering to several of its artist services competitors [REDACTED] across [REDACTED]. [REDACTED].²¹⁵
- (b) The Orchard's FY20 Review and FY21 Strategy document also shows [REDACTED]. The document shows that The Orchard had been successful in delivering [REDACTED] a range of new services [REDACTED] that it had planned to serve artists.²¹⁶ Furthermore, in comparison to the FY19 Review and FY20 Strategy document, Sony identifies The Orchard as a competitor in the artist and label space, [REDACTED].²¹⁷ This document also shows [REDACTED].²¹⁸

153. In addition, Sony's internal documents show an intention to further expand The Orchard's existing offering to label customers as well as build its offering to artist customers:

- (a) A November 2020 SME document which provides information on SME's strategy states that, in relation to The Orchard, it will 'expand label and artist partners' [REDACTED]. The same document also discusses [REDACTED].²¹⁹
- (b) A December 2020 document sets out Sony's strategies to [REDACTED].²²⁰ The slide in this document relating to The Orchard refers to [REDACTED]. Other documents describe The Orchard's expansion plans in greater detail, indicating that Sony was planning to expand The Orchard's offering to its label and artist partners through [REDACTED]. These documents further indicate that Sony was planning to expand The Orchard's service capabilities, such as [REDACTED].²²¹

²¹⁵ Sony, Annex 19.3 - The Orchard FY2019 Review FY2020 Strategy.pdf, 3 December 2020, page 32, the Orchard's response to the Enquiry Letter, question 19.

²¹⁶ Sony, Annex 19.5 - The Orchard FY2020 Review FY2021 Strategy.pdf, approximately dated within the past two years, page 33, Sony's response to the Enquiry Letter, question 19.

²¹⁷ For a comparison, see Sony, Annex 19.3 - The Orchard FY2019 Review FY2020 Strategy.pdf, approximately dated within the past two years, page 12 and Sony, Annex 19.5 - The Orchard FY2020 Review FY2021 Strategy.pdf, approximately dated within the past two years, page 43, Sony's response to the Enquiry Letter, question 19.

²¹⁸ Sony, Annex 19.5 - The Orchard FY2020 Review FY2021 Strategy.pdf, approximately dated within the past two years, pages 7, 27, 28 and 40, Sony's response to the Enquiry Letter, question 19.

²¹⁹ Sony, Annex 2.1.6 - MRP - Nov 2020.pdf, dated 12 November 2020, page 18, Sony's response to s109(2), dated 4 June 2021, question 2.

²²⁰ Sony, Annex 2.1.7 - Board Workshop - Dec 2020.pdf, 8 December 2020, page 11, Sony's response to s109(2) dated 4 June 2021, question 2.

²²¹ Sony, Annex 2.1.6 - MRP - Nov 2020.pdf, 12 November 2020, page 18, Sony's response to s109(2) notice dated 4 June 2021, question 2 and Sony, Annex 2.1.7 - Board Workshop - Dec 2020.pdf, page 15, Sony's response to s109(2) dated 4 June 2021, question 2.

154. The only document that Sony has cited in support of its alternative interpretation that it would not have expanded organically, but rather only through acquisition, [REDACTED].²²² The CMA does not consider that Sony's consideration of [REDACTED] possible investment opportunities can be considered as evidence that it had already reached a firm commercial decision not to pursue organic growth in artist services. Furthermore, the CMA notes that this document was produced before later documents, described above, which set out plans to organically grow Sony's A&L services through The Orchard.
155. In addition to a focus on expanding The Orchard's artist services business, the CMA has identified other Sony documents that discuss [REDACTED].²²³ This would have been intended to allow Sony to [REDACTED]. Sony's stated aim in this document is to 'be well represented at each stage of the funnel.' Sony had [REDACTED].²²⁴

Sony's ability to expand

156. The CMA believes that Sony had the ability and incentive to expand its services to artists, given the current position of The Orchard (and Sony more broadly) and the resources available to the business.
157. First, The Orchard's stream share increased from [0-5%] to [0-5%] between 2016 and 2020 (see **Table 1**). Moreover, The Orchard was the third largest provider in terms of stream share points gained between 2016 to 2020 (with [REDACTED]% gained). Similarly, The Orchard's number of artist clients increased significantly in the period between 2018 and 2020 (from [REDACTED]).²²⁵
158. Second, the CMA considers that there are several factors indicating that SME had the ability and incentive to expand The Orchard's offering. In particular:
 - (a) Sony and SME have a very significant established presence in the music industry. Sony records significant global turnover,²²⁶ and has the ability to invest significant amount in business development (as evidenced, for

²²² Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 60.

²²³ Sony refers to this as [REDACTED] (see Sony, Annex 2.1.34 - FYE20 Budget Pre-Meeting.pdf, 19 February 2019, page 46, Sony's response to s109(2) dated 4 June 2021 [post clock-stop]) and The Orchard, Annex 19.5 - The Orchard FY2020 Review FY2021 Strategy.pdf, (specific date not provided), page 30, The Orchard's response to the Enquiry Letter, question 19.

²²⁴ The Orchard, Annex 19.5 - The Orchard FY2020 Review FY2021 Strategy.pdf, approximately dated within the last two years, page 41, The Orchard's response to the Enquiry Letter, question 19.

²²⁵ Sony's response to RFI 9 dated 14 July 2021, question 5.

²²⁶ Sony's response to RFI 9 dated 14 July 2021, question 2. See also, [REDACTED] call note, 4 June 2021, paragraphs 4 and 5- Access to capital is very important in being able to raise market share.

example, by the fact that Sony was able to pursue the acquisition of AWAL and KNR without the need for external finance).²²⁷

- (b) The Orchard can effectively employ the vast range of advanced and global services that Sony offers as part of its frontline labels focussing on top artists, which include marketing, content production, radio promotion and tour support.²²⁸
- (c) The Orchard has already shown it can build a roster of successful artist and label clients.²²⁹

Conclusion on Sony's pre-Merger expansion plans

- 159. The evidence available to the CMA shows that Sony had, absent the Merger, a clear intention to expand The Orchard's A&L services business (particularly by expanding its offering to artists) in future. The CMA considers that Sony's internal documents show a clear intention to expand The Orchard's A&L services business, particularly in relation to artist services, an existing area in which AWAL has an important presence. The CMA considers that the evidence described above indicates, in particular, that Sony was planning to use The Orchard to target the increasingly important mid-tier artist segment, competing more directly with AWAL.
- 160. Moreover, the CMA considers that given The Orchard's current position, and Sony's strengths, Sony had the ability and incentive to expand in digital music distribution, in particular its A&L services to artists.

Closeness of competition between the Parties

- 161. The CMA considered the closeness of competition between the Parties on the basis of:
 - (a) the Parties' submissions;
 - (b) internal documents (both in relation to current and potential closeness of competition between the Parties);
 - (c) third party views; and

²²⁷ See paragraph 38.

²²⁸ Sony's response to RFI 6 dated 4 June 2021, question 13.

²²⁹ Sony, Annex 2.1.34 - FYE20 Budget Pre-Meeting.pdf, 19 February 2019, page 45, Sony's response to s109(2) dated 4 June 2021, question 2 [post clock stop].

(d) switching data.

The Parties' submissions

162. The Parties submitted that The Orchard and AWAL are not close competitors in A&L services and have different areas of focus. In particular, the Parties submitted that The Orchard focuses on label distribution while AWAL focuses on artist services.²³⁰ The Parties further submitted that Sony focuses on signing major recording artists and AWAL focuses on independent artists at the beginning of their careers and certain higher-tier 'on the verge' and established artists.²³¹

Internal documents

'Mid tier' artists

163. As described above, Sony's internal documents show in particular that:

- (a) Sony (through The Orchard) currently considers AWAL to be a close competitor.
- (b) In relation to potential competition, Sony sees AWAL as a competitive threat in artist services and 'potentially disrupting the artist development model'.^{232 233}
- (c) Sony is planning to change (or has changed) some aspects of its business model such that it offers artists contracts more akin to those offered by A&L service providers such as AWAL.^{234, 235, 236}

164. AWAL is regularly identified as a competitor in strategy documents produced by Sony and The Orchard:

²³⁰ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraphs 51 and 52.

²³¹ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraphs 50-53.

²³² Sony, Annex 19.6 - SME Nov 2019 Mid-Range Strategy Review.pdf, 6 November 2019, page 10, The Orchard's response to the Enquiry Letter, question 19.

²³³ Sony, Annex 19.7 - SME Mar 2020 MRP & Budget.pdf, 16 March 2020, page 6, The Orchard's response to the Enquiry Letter, question 19. While this slide is not repeated in the November 2020 MRP document (Annex 19.9 - SME Nov 2020 MRP.pdf), the CMA notes that AWAL is identified as a potential M&A target in that document.

²³⁴ Sony, Annex 1.1.19 (ex Annex 19.2) - SME Feb 2021 Pre MRP & Budget.pdf, 24 February 2021, page 55, Sony's Response to s109(2) dated 4 June 2021, question 1.

²³⁵ Sony, Annex 19.9 - SME Nov 2020 MRP.pdf, 12 November 2021, page 13, The Orchard's response to the Enquiry Letter, question 19.

²³⁶ Sony, Annex 2.1.17 (ex Annex 23.8) - Global Market Shares and Sizes.pdf, 11 February 2021, page 9, Sony's Response to s109(2) dated 4 June 2021, question 2.

- (a) The Orchard recognised that AWAL [REDACTED].²³⁷ The Orchard describes itself and AWAL as providers of artist services [REDACTED].²³⁸
- (b) The Orchard made plans to offer a full-range of artist services [REDACTED], and in doing so compared itself to competitors, which included AWAL.²³⁹

165. The CMA notes Sony's submission that some of the internal documents mentioned above make reference to a number of other competitive threats and disruptors.²⁴⁰ While this is correct, it is, of course, as noted above, also important to consider the context within which suppliers are referenced within internal documents (including, in particular, the frequency with which suppliers are mentioned and how they are positioned), as part of an assessment in the round of the wider body of evidence in relation to competitive threats and disruptors. As explained throughout this Decision, the CMA considers that AWAL has more prominence in Sony's internal documents than the majority of other suppliers.

Third-party views

- 166. Artist and label customers indicate that AWAL and The Orchard are two of a relatively small number of credible alternatives, in particular in relation to artist services.
- 167. The CMA asked the Parties' customers (artists, labels, and DSPs) to list the closest alternatives to AWAL and The Orchard:
 - (a) Although DSPs did not frequently mention AWAL or The Orchard as alternatives to each other, The Orchard was the competitor identified most frequently by AWAL's artist and label customers as an alternative to AWAL. Furthermore, AWAL was identified most frequently by label customers of The Orchard as an alternative to AWAL.
 - (b) The Parties' customers were also asked to score each alternative they listed from one to five. One equated to a materially inferior alternative while five equated to an equivalent alternative. The CMA notes that:

²³⁷ Sony, Annex 19.5 - The Orchard FY2020 Review FY2021 Strategy.pdf, dated approximately within the past two years, page 45, The Orchard's response to the Enquiry Letter, question 19.

²³⁸ Sony, Annex 19.5 - The Orchard FY2020 Review FY2021 Strategy.pdf, dated approximately within the past two years, pages 43 and 45, The Orchard's response to the Enquiry Letter, question 19.

²³⁹ Sony, Annex 19.3 - The Orchard FY2019 Review FY2020 Strategy.pdf, dated approximately within the past two years, page 32, The Orchard's response to the Enquiry Letter, question 19.

²⁴⁰ Sony, SME observations on the Issues Letter, Annex 4, dated 6 August 2021, paragraph 12.

- (i) every label customer of AWAL that listed The Orchard as an alternative considered it an equivalent alternative;
 - (ii) most artist customers of AWAL that listed The Orchard as an alternative considered it an equivalent alternative;²⁴¹
 - (iii) most label customers of The Orchard that listed AWAL as an alternative considered it an equivalent alternative.
 - (iv) Among artist and label clients of AWAL, The Orchard had the highest average score of any alternative mentioned more than once.
 - (v) Among label clients of The Orchard, AWAL had the highest average score of any alternative mentioned more than once.
168. Several third-party competitors submitted that the major record labels have adjusted their commercial strategy (eg by making changes to their offering) in response to AWAL, for example by expanding A&L services offerings,²⁴² increasing A&L services acquisition activity,²⁴³ and increasing advances²⁴⁴ and lowering royalties.²⁴⁵

Switching analysis

169. The Parties submitted that the CMA's analysis of closeness of competition was reliant on internal documents, and should also take into account evidence of switching between the Parties. To this end, the Parties provided evidence indicating that, since 2016, Sony has lost [X] to AWAL²⁴⁶ and AWAL has lost [X]²⁴⁷ and [X] to Sony. The Parties submitted that this evidence should demonstrate that the Parties are not close competitors.^{248 249}

²⁴¹ Of the two responses received from artist customers of The Orchard, one listed AWAL as an equivalent alternative. However, given that only two responses were received, the CMA does not place weight on this evidence.

²⁴² [X]'s response to competitor questionnaire, dated 29 June 2021, question 10; [X]'s response to competitor questionnaire, dated 29 June 2021, question 10; and [X]'s response to competitor questionnaire, dated 29 June 2021, question 10.

²⁴³ [X]'s response to competitor questionnaire dated 29 June 2021, question 10.

²⁴⁴ [X]'s response to competitor questionnaire, dated 29 June 2021, question 10, and [X]'s, [X]'s and [X]'s response to competitor questionnaire, dated 29 June 2021, question 10.

²⁴⁵ [X]'s and [X]'s response to competitor questionnaire, dated 29 June 2021, question 10

²⁴⁶ Sony's response to RFI 6, dated 4 June 2021, question 15.

²⁴⁷ Kobalt, Annex 14.1, Kobalt's response to RFI 6, dated 4 June 2021, question 14.

²⁴⁸ Kobalt's response to RFI 7, dated 18 June 2021, question 2b.

²⁴⁹ The CMA understands that AWAL's switching data may be incomplete. Kobalt submitted that, due to data collection and recording reasons, AWAL's provided list of artists lost to Sony and The Orchard may not be comprehensive (See Kobalt's response to CMA RFI 6, dated 4 June 2021, question 14).

170. While this evidence clearly suggests limited switching to date, the CMA considers that there are limitations to the weight that can be put on these data for the purposes of competitive assessment. In particular:
- (a) The Orchard and AWAL have only recently started to expand in services to artists and labels respectively, which may likely limit the extent of historical switching between them;
 - (b) These data relate only to existing clients that have switched from one Party to the other, it does not provide a comprehensive view of competition between the Parties. In particular, it does not provide any information about competition for new clients.
171. The CMA notes, in addition, that all of the available evidence should be taken in the round and that the limited competitive interaction between the Parties set out in the switching data is not consistent with the position indicated by several other sources of evidence, including the Parties' internal documents and third-party submissions.
172. Accordingly, while the data submitted by the Parties shows limited switching to date, the CMA considers that this is only of limited relevance for the assessment of the theory of harm set out above (and, in particular, the evidence that The Orchard and AWAL are likely to become closer competitors in future).

Conclusion on closeness of competition between the Parties

173. The CMA considers that Sony's internal documents regularly identify AWAL as a material competitor, and as a potentially disruptive threat to its artists development model. in relation to A&L services. The evidence available to the CMA also indicates that Sony is planning to change (or has already changed) some aspects of its business model, so that it offers artists contracts more akin to those offered by A&L service providers such as AWAL. Several third-party competitors also told the CMA the major record labels (including Sony) have been taking actions or making changes to their offering in response to AWAL.
174. Evidence from third parties indicates that customers (in particular, artists) view The Orchard and AWAL as close alternatives to one another.
175. In addition, given the evidence set out above, in relation to AWAL and The Orchard's pre-Merger expansion plans, the CMA considers that the Parties are likely to be closer competitors in the future.

Other competitive constraints

176. In assessing whether a loss of future competition brought about by the Merger would give rise to an SLC, the CMA has considered the other constraints that the Parties face, as well as potential entry and expansion.²⁵⁰ In considering the impact of a loss of potential competition between the Parties, the CMA notes that any loss of potential competition is likely to be more significant when there are fewer strong existing or potential competitive constraints on the other merger firm.²⁵¹ In this regard, the CMA has considered evidence relating to current and potential competition from several types of suppliers:

- (a) the other major record labels;
- (b) other A&L service providers;
- (c) DIY platforms; and
- (d) independent record labels.

Competition from the other major record labels

177. Like Sony, the other major record labels, Universal and Warner, have invested in A&L services in recent few years, either by building their own A&L service arms organically or via acquisition. While Universal and Warner have tended to focus on label distribution businesses, both have recently started to provide artist services as well. In particular:

- (a) Universal's A&L services arm includes both Ingrooves and Virgin. Both are frequently mentioned in Sony's internal documents as competitors to The Orchard in label services. Virgin was also mentioned frequently by artist customers as an alternative to AWAL during the CMA's market testing. The CMA notes, however, that the stream share of Ingrooves [§] since 2016 and the stream share of Virgin, while growing, remains much smaller than that of AWAL ([0-5%] in 2020). While there are some indications that Ingrooves and Virgin may intend to expand in future, and are growing internationally,²⁵² the available evidence shows that both suppliers have a [§] weaker starting position than AWAL [§] and may also, as described below, have a limited incentive to pursue a business model that focusses heavily on the growth of A&L services.

²⁵⁰ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 5.15.

²⁵¹ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 5.15.

²⁵² The Orchard's response to the Enquiry Letter, 21 April 2021, question 31.

(b) Warner's A&L services arm is ADA. ADA is frequently mentioned in Sony's documents as a competitor in label services. ADA was also mentioned frequently by label customers as an alternative to The Orchard, and was mentioned frequently by DSPs as an alternative to both AWAL and The Orchard during the CMA's market testing. However, the CMA notes that ADA's stream share has nearly [REDACTED] since 2016. The CMA has considered the expansion plans of ADA. In its response to the CMA, ADA noted that they have no specific plans [REDACTED],²⁵³ and may also have a limited incentive to pursue a business model that focusses heavily on the growth of A&L services.

178. The CMA notes that both Ingrooves and ADA have [REDACTED] stream share between 2016 and 2020. This may be consistent with a limited incentive to compete. The major record labels are incumbents with a strong position in the market. AWAL and other A&L service providers are new players with a different business model to the major record labels' traditional model, which entail more flexibility and more favourable deals to artists. The CMA considers that major record labels may (both currently, and in the future) have limited incentive to compete aggressively in A&L services given that traditionally the vast majority of the majors' business is accounted for by their frontline labels. As such, the growth of A&L services may undermine the traditional model of focussing on relatively few 'top' artists under long term contracts. To the extent that major record labels have an incentive to compete in order to have a presence in the provision of A&L services, this incentive may reduce post-Merger with the removal of one of the key competitors in A&L services.

Competition from other A&L service providers

179. The CMA has considered the extent to which other A&L service providers can exert a constraint on Sony post-Merger. The CMA has focussed primarily on three A&L service providers, Believe, FUGA/Downtown and PIAS, given that these providers had the largest stream shares among A&L service provider rivals to the Parties (see **Table 1**), and these three rivals were either identified frequently by third parties as being alternatives to AWAL or The Orchard, or stated themselves that they were a close competitor of AWAL or The Orchard. The CMA has also considered other smaller A&L service providers that

²⁵³ ADA's response to competitor questionnaire dated 29 June 2021, question 9.

may provide a constraint, albeit weaker than Believe, FUGA/Downtown and PIAS (see paragraph 206).

Believe

- *Background*

180. Founded in 2005, Believe has offices in around 50 countries.²⁵⁴ Believe offers: a DIY distribution platform (through its ownership of TuneCore, which is discussed later in this Decision), A&L services, and several in-house record label brands.^{255, 256} Believe offers services to both artists and labels, including: A&R discovery, creative support, marketing (to artists only), and project funding.²⁵⁷

- *The Parties' submissions*

181. The Parties state that Believe is a widely recognised player in A&L services, and has often been cited among the most promising emerging businesses at national and international level. The Parties further submit that Believe is a competitor of AWAL and The Orchard.²⁵⁸ The Parties note that TuneCore (Believe's DIY distribution platform) has 'upstreamed' 340 artists to Believe's A&L service divisions.²⁵⁹

- *The Parties' internal documents*

182. Believe is frequently mentioned in Sony and The Orchard's documents, in particular as a competitor in label services. For example:

(a) The Orchard identifies Believe [REDACTED];²⁶⁰

(b) Sony's internal documents identify Believe [REDACTED] in label distribution.²⁶¹

²⁵⁴ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 66.

²⁵⁵ See Artist Services - The era of independent artists and labels - Believe [public].

²⁵⁶ Given that TuneCore is an ungated DIY platform, it is considered separately to Believe in paragraphs 207-210.

²⁵⁷ [REDACTED]'s response to competitor questionnaire, dated 29 June 2021, question 6.

²⁵⁸ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 64 and Annex 1, page 1.

²⁵⁹ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 67.

²⁶⁰ Sony, Annex 1.1.23 (ex Annex 19.11) - The Orchard Feb 2021 UK Territory Review.pdf, dated February 2021, page 6, Sony's response to CMA s109(2) dated 4 June 2021, question 1; Sony, Annex 2.1.1 - Pre MRP-Budget Meeting - Feb 2020.pdf, dated 26 February 2020, slide 72, Sony's response to CMA s109(2) dated 4 June 2021, question 2.

²⁶¹ Sony, Annex 2.1.1 - Pre MRP-Budget Meeting - Feb 2020.pdf, dated 26 February 2020, page 36, Sony's response to CMA s109(2) dated 4 June 2021, question 2.

183. One Kobalt internal document notes that [REDACTED].²⁶²

184. The CMA also notes, however, that Believe is not mentioned in either of the Parties' internal documents seen by the CMA as a competitor in artist services (which, as described elsewhere in this decision, seems likely to be an important focus of competition between the Parties in future).^{263 264}

- *Third party views*

185. Believe stated that it competes fully with AWAL.²⁶⁵ Believe noted that if it charged [REDACTED] higher fees or reduced its service quality delivered to artists it would [REDACTED]. Likewise, Believe noted that it would [REDACTED] to The Orchard if it increased its fees or reduced the quality of the service offered to labels.^{266 267}

186. Third parties identified Believe as an important competitor of the Parties, mainly in relation to label services:

- (a) Among label customers of The Orchard, Believe was the second most frequently mentioned alternative to The Orchard (after AWAL). Likewise, among label customers of AWAL, Believe was the second player most frequently mentioned alternative to AWAL (after The Orchard).
- (b) Believe was mentioned as an alternative to AWAL by some of AWAL's artist customers, and by one artist customer of The Orchard.²⁶⁸
- (c) Believe was mentioned most by DSPs as an alternative to AWAL and The Orchard.

- *Stream share data*

187. Believe has a comparable stream share in the UK to AWAL. Believe represented a [0-5%] share of all music streamed (AWAL had a [0-5%])

²⁶² Kobalt, Annex 2B.11_Kobalt Music Group Presentation - Project Vision.pdf, dated between 2018 and 2019, page 49, Kobalt's response to s109(2) dated 4 June 2021, question 2.

²⁶³ Kobalt, Annex 19.3 - The Orchard FY2019 Review FY2020 Strategy.pdf, dated in approximately the last two years pages 12 and 32, The Orchard's response to the Enquiry Letter, question 19.

²⁶⁴ Kobalt, Annex 2B.26_AWAL Strategy_Speakers' Corner Outline.pptx, dated September 2019, slide 4, Kobalt's response to CMA s109(2) dated 4 June 2021, question 2.

²⁶⁵ [REDACTED]'s response to competitor questionnaire, dated 29 June 2021, question 7.

²⁶⁶ Believe did not list AWAL as a label competitor to whom it would lose customers in the event of a price increase or quality reduction.

²⁶⁷ [REDACTED]'s response to competitor questionnaire, dated 29 June 2021, questions 4 and 5.

²⁶⁸ The CMA received only two responses from artist customers of The Orchard, as a result the CMA does not consider this evidence to be representative.

share) in the UK in 2020 (see **Table 1**). Believe's stream share [X] over the period 2016-2020.

- *Expansion plans*

188. Believe submitted that it plans to [X]. Believe states that it plans to offer new services such as [X], and offer [X] deals in order to compete with the major record labels.²⁶⁹

- *CMA conclusion*

189. On the basis of the evidence set out above, the CMA believes that Believe exerts a material competitive constraint on AWAL and The Orchard. In particular, the CMA notes that Believe operates a multi-tier structure comparable to that of AWAL's. However, the CMA believes there to be several limitations to this constraint:
- (a) Based on the Parties' internal documents, Sony and AWAL primarily regard Believe as a competitor in [X] (and not in [X], which seems likely to be an important focus of competition between the Parties in future).
 - (b) Despite its current market presence and expansion plans, Believe has [X] its stream share on a prominent DSP between 2016 and 2020 (**Table 1**). [X].

FUGA/Downtown

- *Background*

190. FUGA is a business-to-business A&L service provider that provide services to: labels, artist management companies, DIY artist platforms, and distributors.²⁷⁰ FUGA does not offer artist services (to artists directly) but rather offers labels services such as A&R discovery, creative support, project funding and marketing.²⁷¹ FUGA is owned by Downtown Music Holdings (**Downtown**), a global independent rights management and music services company. Downtown operates an A&L service provider Downtown Music Services. Downtown also owns CD Baby, a DIY platform, which is discussed later in this Decision.

²⁶⁹ [X]'s response to competitor questionnaire, dated 29 June 2021, question 9.

²⁷⁰ FUGA's response to competitor questionnaire, dated 29 June 2021, question 7.

²⁷¹ FUGA's response to competitor questionnaire, dated 29 June 2021, question 6.

- *The Parties' submissions*

191. The Parties submitted that FUGA operates a multi-tiered structure similar to that of AWAL, combining Downtown's own A&L service division, CD Baby's DIY platform and A&L solutions, FUGA's distribution and marketing platform and Songspace's rights management offering.²⁷² The Parties further submitted that FUGA operates as a standalone business and is a competitor of AWAL and The Orchard.²⁷³ Sony also noted [REDACTED].²⁷⁴

- *The Parties' internal documents*

192. The CMA has not identified any Sony or AWAL internal document that mentions FUGA as a competitor (and Sony has not otherwise brought any such documents to the CMA's attention to support its argument about the constraint from FUGA).

- *Third party views*

193. FUGA stated that it did not consider AWAL to be a close competitor, [REDACTED], but it recognised that it offered similar services to AWAL.²⁷⁵ FUGA listed The Orchard amongst the top five competitors to whom it would lose labels in the event that it charged [REDACTED] higher fees or reduced its service quality, further stating specifically that it [REDACTED]. AWAL was not mentioned by FUGA.²⁷⁶

194. FUGA was not frequently identified by label customers of AWAL/The Orchard as an alternative. However, among DSP customers of the Parties, FUGA was the second most mentioned alternative to AWAL and third most mentioned alternative to The Orchard.

- *Stream share data*

195. FUGA had a stream share of [0-5%] in 2020 (see **Table 1**), which had increased from [0-5%] since 2016. The CMA's analysis of stream share data indicates that other Downtown divisions (with the exception of CD Baby) do not appear in the top 20 providers by stream share.²⁷⁷

²⁷² Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 67.

²⁷³ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 64 and Annex 1, pages 7 and 8.

²⁷⁴ Sony's response to s109(2), dated 8 June 2021, paragraph 4.4.

²⁷⁵ FUGA's response to competitor questionnaire, dated 29 June 2021, question 7.

²⁷⁶ FUGA's response to competitor questionnaire, dated 29 June 2021, question 5.

²⁷⁷ [REDACTED]'s response to RFI 1 to [REDACTED], question 2b.

- *Expansion plans*

196. FUGA stated that it intends to continue organically growing its UK presence, with an ambition to grow [X].²⁷⁸ The CMA does not have evidence on the expansion plans of other Downtown divisions (which, in any case, would be starting from a very marginal position if seeking to expand).

- *CMA conclusion*

197. On the basis of the evidence set out above, the CMA believes that FUGA/Downtown present a limited competitive constraint on the Parties. FUGA/Downtown remains small relative to AWAL and The Orchard, and do not offer services directly to artists. FUGA is mentioned less frequently than AWAL in Sony and The Orchard's internal documents, and, based on third party evidence and Kobalt's internal documents, does not appear to be a close competitor of AWAL or The Orchard.

PIAS

- *Background*

198. PIAS is an independent music company that offers A&L services and several in-house labels.²⁷⁹ PIAS offers services to artists and labels including: project funding, marketing support, and, for labels only, creative support.²⁸⁰ In March 2021, PIAS rebranded its distribution business to INTEGRAL. INTEGRAL has operations in the UK, France, Australia, and the U.S.²⁸¹

- *The Parties' submissions*

199. The Parties submit that PIAS is a competitor of AWAL and The Orchard.²⁸²

- *The Parties' internal documents*

200. PIAS is generally mentioned infrequently as a competitor in Sony and The Orchard's internal documents (and materially less frequently than

²⁷⁸ FUGA's response to competitor questionnaire, dated 29 June 2021, question 9.

²⁷⁹ See [About us \(www.piasgroup.net\)](http://www.piasgroup.net) [public]

²⁸⁰ [X]'s response to competitor questionnaire, dated 29 June 2021, question 6.

²⁸¹ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 66.

²⁸² Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 64 and Annex 1, pages 2 and 3.

AWAL). One internal document [REDACTED] identifies PIAS [REDACTED].²⁸³ However, a similar document outlining The Orchard's UK distribution competitors does not include PIAS.²⁸⁴ The CMA has not identified any references to PIAS as a competitor of AWAL within the internal documents of Kobalt and AWAL.

- *Third party views*

201. PIAS stated that it competed with AWAL for artist and label customers.²⁸⁵ PIAS listed both The Orchard and AWAL among the top five competitors to whom it would [REDACTED], as well as to whom they would [REDACTED], in the event that they charged [REDACTED] higher fees or reduced its service quality. PIAS further submitted that it would [REDACTED], and [REDACTED] to both The Orchard and AWAL in this event.²⁸⁶
202. PIAS was identified infrequently by artist and label customers of AWAL/The Orchard as an alternative to AWAL/The Orchard.

- *Stream share data*

203. PIAS had a stream share of [0-5%] in 2020 (see **Table 1**), which was a [REDACTED] from its stream share of [0-5%] in 2016.

- *Expansion plans*

204. PIAS stated that it did not have [REDACTED], but noted that [REDACTED].²⁸⁷

- *CMA conclusion*

205. On the basis of the evidence set out above, the CMA believes PIAS exerts a limited competitive constraint on the Parties. While PIAS identifies itself as a competitor of the Parties, the CMA notes that only a limited number of third parties mentioned PIAS as an alternative to the Parties, that it is mentioned infrequently in the Parties' internal documents, that PIAS's stream share is [REDACTED] and that it does not have pre-existing plans for [REDACTED].

²⁸³ Sony, Annex 1.1.23 (ex Annex 19.11) - The Orchard Feb 2021 UK Territory Review.pdf, February 2021, page 6, Sony's response to s109(2) dated 4 June 2021, question 1.

²⁸⁴ Sony, Annex 2.1.21 - SME UK and Ireland Business Plan FY2021 - Jan 2020.pdf, January 2020, page 72, Sony's Response to s109(2) dated 4 June 2021, question 2.

²⁸⁵ [REDACTED]'s response to competitor questionnaire, dated 29 June 2021, question 7.

²⁸⁶ [REDACTED]'s response to competitor questionnaire, dated 29 June 2021, questions 4 and 5.

²⁸⁷ [REDACTED]'s response to competitor questionnaire, dated 29 June 2021, question 9.

Other A&L service providers

206. In addition to Believe, FUGA and PIAS, there are several other (smaller) providers of A&L services. The CMA has considered the extent of the competitive constraint from other A&L service providers where: (i) the supplier is identified prominently in the Parties' internal documents; (ii) the supplier is mentioned frequently in third party responses to be an alternative to AWAL or The Orchard; or (iii) the supplier stated that it was a competitor of AWAL or The Orchard. These providers are: Empire, Kartel, Because and London Music Stream, Secretly, Stem, United Masters, and Platoon.
207. The CMA does not believe these A&L service providers exert a significant competitive constraint on the Parties post-Merger for the following reasons:
- (a) These players are rarely given material competitive significance in Sony's internal documents. In particular, these players are mentioned less frequently and/or less prominently than AWAL in Sony's internal documents.
 - (b) They do not have a top 15 stream share (see **Table 1**). The exceptions to this general position are Empire, and Secretly. The CMA notes that the stream shares of these providers are materially lower than that of AWAL.²⁸⁸
 - (c) In the case of [X], Kobalt's internal documents specifically note that [X], among other providers, lacks scale and is less able to partner new artists.²⁸⁹
 - (d) Third parties generally did not indicate that these players are alternatives to the Parties.
208. The Parties also submitted that they face competition from DSP-turned distributors that also offer artists services, such as SoundCloud.²⁹⁰ However, the CMA does not believe that these providers will exert a significant competitive constraint on the Parties post-Merger for the reasons outlined in paragraph 207 above.

²⁸⁸ [X] had a top 20 stream share of [0-5%] in 2020 on [X] ([X]'s response to RFI 1 to [X], question 2b.)

²⁸⁹ Kobalt, Annex 2B.11_Kobalt Music Group Presentation - Project Vision.pdf, dated between 2018 and 2019, page 44, Kobalt's response to s109(2) dated 4 June 2021, question 2.

²⁹⁰ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 64.

Competition from DIY platforms

Parties' submissions

209. The Parties submitted that DIY platforms compete with the Parties, in particular the Parties stated that CDBaby, Distrokid, Ditto and TuneCore were 'particularly prominent competitors to AWAL'.²⁹¹
210. The Parties submitted that the CMA has no basis to disregard ungated DIY platform providers as competitors, given that these are players with comparable shares and growth rates to AWAL. In particular, the Parties submitted that:
- (a) the CMA's evidence identifies ungated platforms as being within the top three competitors to AWAL according to both artists and labels;
 - (b) several DIY platforms are expanding into offering service tiers beyond that of an ungated DIY services provider;
 - (c) the distinction between ungated DIY platforms and A&L service providers is unwarranted, as artists can and do choose between (i) using a low-cost ungated DIY platform and procuring additional services themselves, and (ii) using a platform such as AWAL or Amuse where they can buy additional services from the platform provider;
 - (d) Sony's internal documents list ungated DIY platforms as competitors to The Orchard. The Parties submitted an example of a Sony internal document that compares [] in relation to their artist services offerings.²⁹²

CMA's assessment

211. As discussed in paragraph 63, ungated DIY platforms operate an open platform where artists can upload and have their music distributed – often for a fixed fee – without having to be filtered through any quality control. The CMA notes from **Table 1** that the following ungated DIY platform providers had a top 15 stream share in the UK in 2020: TuneCore, Distrokid, CD Baby, Ditto, and Routenote. TuneCore's and Distrokid's stream shares were greater than AWAL's in 2020.
212. The CMA does not consider the ungated DIY platforms described above to exert a significant competitive constraint on the Parties. In particular,

²⁹¹ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 66.

²⁹² Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 20.

these suppliers offer a different model to that of A&L service providers such as AWAL and The Orchard:

- (a) DIY platforms are commoditised, have low margins and focus on attracting a high volume of artists.²⁹³ For example, the Parties submitted that AWAL's DIY distribution customers are 'dwarfed by those of DistroKid ([redacted]), CD Baby ([redacted]) or TuneCore ([redacted])'.²⁹⁴ The CMA notes that AWAL has [redacted] artists at its lowest tier (its gated DIY platform), [redacted] artists in its middle tier, and [redacted] artists in its top tier. Sony has identified Ditto and other DIY platforms as 'niche' players;²⁹⁵
- (b) Pricing by ungated DIY platforms is materially different to the fees charged by A&L service providers. Ungated DIY platforms such as TuneCore and Distrokid, tend to charge a low fixed yearly fee for their services (for example, TuneCore charges \$29.99- approximately £22- to distribute an artist's first album),²⁹⁶ whilst A&L service providers tend to charge fees as a percentage of earnings (eg AWAL charges a proportional fee of 15%).²⁹⁷
- (c) DIY platforms provide a more limited range of services, even in the instances where they are starting to expand their A&L offer. AWAL considers DIY platforms [redacted], and to offer a 'limited service' compared to AWAL's 'higher service'.²⁹⁸
- (d) Whilst the Parties have noted that ungated platforms have been identified by third parties and themselves as competitors, the CMA notes that an ungated DIY platform stated that it competes with AWAL 'minimally'²⁹⁹ and an A&L service provider with a DIY platform stated that they compete with AWAL in relation to artist services but did not list AWAL as a competitor in relation to DIY services.³⁰⁰ Where Sony identifies DIY platforms as competitors in its internal documents, it tends to identify

²⁹³ Sony, Annex 2.1.35 - FYE20 Budget Meeting - Sony Musi.pdf, dated 13 March 2019, page 35, Sony's response to s109(2) dated 4 June 2021, question 2; Sony, Annex 2.1.34 - FYE20 Budget Pre-Meeting.pdf, dated 19 February 2019, page 46, Sony's response to CMAs 109(2) dated 4 June 2021, question 2; and Kobalt, Annex 2.5 Board Slides_25 June 2020.pdf, 25 June 2020, page 64, Kobalt's response to s109(3) dated 22 June 2021, question 2.

²⁹⁴ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 66.

²⁹⁵ Sony, Annex 19.5 - The Orchard FY2020 Review FY2021 Strategy.pdf, dated within approximately the last two years, slide 30, The Orchard's response to the Enquiry Letter, question 19.

²⁹⁶ See [Upload & sell your music on Apple, Spotify, Amazon and Google Play | DistroKid](#) and [TuneCore Pricing | Music Distribution & Publishing](#) [public].

²⁹⁷ Sony, Annex 1.1.14-A (ex Annex 21.14-A) - Courtesy Translation.pdf, dated approximately in the last two years, page 4, Sony's response to s109(2) dated 4 June 2021, question 1.

²⁹⁸ Kobalt, Annex 2B.26_AWAL Strategy_Speakers' Corner Outline.pptx, September 2019, page 4, Kobalt's response to s109(2) dated 4 June 2021, question 2.

²⁹⁹ [redacted]'s response to competitor questionnaire, dated 29 June 2021, question 7.

³⁰⁰ [redacted]'s response to competitor questionnaire dated 29 June 2021, question 7.

these separately, in a distinct DIY category (AWAL is not mentioned in this distinct DIY category).³⁰¹

213. The CMA notes that while AWAL operates a DIY platform, 'AWAL Core,' this appears to be a materially different offering to the ungated DIY platforms³⁰² described above, as platform access and music upload on AWAL Core must go through a process of meaningful qualitative review. In practice, relatively few submissions are accepted: after an artist is accepted to the platform, music submitted only has a 'pass rate' of 10%.³⁰³
214. The CMA also notes that Sony's internal documents also appear to refer to [X], and that Downtown paid \$200 million for CDBaby in 2019.³⁰⁴ While the CMA has not sought to carry out a full comparison of the valuations of these businesses, it notes that the value of these ungated DIY platforms appears to be materially lower than the price that Sony has paid (of approximately \$430 million) to acquire AWAL. Given that, as described above, the purchase price paid for AWAL is tied to Sony's projections for future growth, the CMA considers that this provides a further indication that these businesses ultimately have less potential for market growth than AWAL.

Competition from independent record labels

215. The CMA has considered the extent to which independent record labels will exert a constraint on Sony post-Merger. In particular, the CMA has considered Beggars and Domino as competitive constraints, given that these suppliers hold the largest stream shares of the independent record labels (see **Table 1**). In addition, the CMA has also considered BMG,

³⁰¹ See for example Sony, Annex 19.5 - The Orchard FY2020 Review FY2021 Strategy.pdf, approximately dated within the past two years, page 43, Sony's response to the Enquiry Letter, question 19.

³⁰² The CMA also notes an absence of the term 'DIY' from some of Kobalt's/AWAL's internal documents. For example, a slide in board discussion materials from 2018 visually and descriptively explains the 'ecosystem for artists' without referring to 'DIY' (Kobalt, Annex 2A.13_Discussion Materials.pdf, 25 October 2018, page 15, Kobalt's response to s109(2) dated 4 June 2021, question 2); a fundraising presentation similarly omits the use of the word 'DIY' in a slide explaining the AWAL tier-structure/artist ecosystem (Kobalt, Annex 2A.17_Board Pack - Fundraising (Feb 2019).pdf, February 2019, page 77, Kobalt's response to s109(2) dated 4 June 2021, question 2); a slide in a report on market forecasts and segmentations that discusses forecasts in different artist tiers does not link lower-tier artists to a 'DIY' platform, but instead associates it with 'application-driven client acquisition' (Kobalt, Annex 26.2 - Publishing and recording market overview.pdf, Fall 2020, page 17, The Orchard's response to the Enquiry Letter, question 26.)

³⁰³ Sony, Annex 1.1.14-A (ex Annex 21.14-A) - Courtesy Translation.pdf, dated approximately within the last 2 years, page 4, Sony's response to s109(2) dated 4 June 2021, question 1.

³⁰⁴ Sony, Annex 19.5 - The Orchard FY2020 Review FY2021 Strategy.pdf (sharepoint.com), dated within approximately the last two years, slide 50, The Orchard's response to the Enquiry Letter, question 19.

given submissions from the Parties that it is a significant competitive constraint.^{305, 306}

216. The CMA does not consider independent record labels to be a strong constraint on the Parties or A&L service providers more generally for the following reasons:

- (a) Independent record labels operate a similar model as the major record labels, offering more traditional deal structures and the wider range of A&R services. One Kobalt internal document notes that [REDACTED];³⁰⁷
- (b) independent record labels are not mentioned prominently in the Parties' internal documents and were mentioned rarely by third parties as an alternative of the Parties;
- (c) the stream shares of Domino and Beggars have [REDACTED] for the period between 2016 and 2020 (see **Table 1**); and
- (d) while BMG (traditionally focussed on providing label services) has started investing in artist services,³⁰⁸ BMG stated that they compete with AWAL in a limited number of circumstances. BMG stated that they would be unlikely to lose customers to either AWAL or The Orchard in the event that they increased their fees or reduced the quality of the service offered to artists.³⁰⁹ⁱ

Acquisition of KNR and Sony's position in digital music distribution in the UK

217. As set out above, Sony holds a strong position in digital music distribution in the UK. The CMA considers, for the reasons set out above, that the acquisition of AWAL will allow Sony to remove an emerging competitive threat, helping it to reinforce this existing strong position.

218. At the CMA's issues meeting, Sony told the CMA that the acquisition of KNR will allow Sony to [REDACTED].³¹⁰ This is supported by Sony's internal documents which [REDACTED] (see paragraph 17).

³⁰⁵ The CMA notes that BMG distributes through third parties. (BMG's response to competitor questionnaire, dated 29 June 2021, question 6).

³⁰⁶ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 66.

³⁰⁷ Kobalt, Annex 2B.11_Kobalt Music Group Presentation - Project Vision.pdf, dated between 2018 and 2019, page 49, Kobalt's response to s109(2) dated 4 June 2021, question 2.

³⁰⁸ See: [Recordings \(bmg.com\)](https://www.bmg.com) [public].

³⁰⁹ BMG's response to competitor questionnaire, dated 29 June 2021, question 3.

³¹⁰ Note of Issues Meeting call between the CMA and the Parties, 4 August 2021, page 9.

219. Accordingly, while the CMA considers that the Parties' overlapping activities in neighbouring rights administration services do not give rise to competition concerns, it also considers that the acquisition of KNR could serve to further strengthen Sony's position in digital music distribution by making artists less likely to switch away from Sony in future.

Conclusion on TOH1

220. For the reasons set out above, the CMA believes that the market for digital music distribution in the UK is highly concentrated, with the major record labels holding consistently high stream shares and AWAL being an important emerging supplier of A&L services. AWAL has experienced significant growth over the last few years and gained a meaningful foothold in the market.
221. The CMA believes that, absent the Merger, AWAL was well-placed to materially grow its digital music distribution business. Whilst the CMA recognises the uncertainty as to AWAL's exact rate of growth, the CMA considers that even under the most conservative forecasts AWAL still had the intention to grow significantly and become a stronger competitor in digital music distribution in the UK.
222. In addition, the CMA believes Sony, absent the Merger, had a clear intention to expand The Orchard's A&L services business (particularly by expanding its offering to artists), and potentially [X]. This would have led it to place more focus on the increasingly important mid-tier artist segment, competing more directly with AWAL.
223. On the basis of the evidence described above, the CMA believes that there is already a significant degree of competitive interaction between the Parties and that competition between them is likely to increase in future. The CMA therefore believes that the Merger will lead to the removal of one of Sony's competitors.
224. The CMA does not believe that the remaining suppliers would be sufficient to effectively constrain the Parties post-Merger. In particular:
- (a) Although other major record labels (Ingrooves, Virgin, ADA) may have the ability to compete and are frequently mentioned in Sony's internal documents as competitors to The Orchard, the CMA believes they may have a limited incentive to pursue disruptive business models given that the vast majority of the majors' business is accounted for by their frontline labels. This is consistent with their growth over the past 5 years:

Ingrooves and ADA have [X] stream share, and although Virgin's stream share has [X] it remains at [X] level than AWAL.

(b) Competition from other A&L providers is limited. In particular:

- (i) Although Believe exerts a material competitive constraint on AWAL and The Orchard, the Parties seem to regard it as a competitor in label distribution. In addition, despite its current market presence and expansion plans, Believe experienced a [X] over the last 5 years.
- (ii) FUGA/Downtown remain small relative to AWAL and The Orchard, and do not offer services directly to artists. It is mentioned less frequently than AWAL in Sony and The Orchard's internal documents, and, based on third party evidence and Kobalt's internal documents, does not appear to be a close competitor of AWAL.
- (iii) PIAS remains relatively small and had a [X] over the past 5 years and has [X]. Only a limited number of third parties mentioned PIAS as an alternative to the Parties, and it is mentioned infrequently in the Parties' internal documents.
- (iv) There is little evidence to support the position that any meaningful constraint is offered by other A&L service providers, as they are rarely ascribed any material importance in the Parties' internal documents and generally third parties do not consider them as an alternative to the Parties.

(c) Competition from ungated DIY platforms is limited. As explained above in paragraphs 211 to 214, they have a materially different business model to those of the Parties, and as such the CMA considers that they do not impose a material constraint on the Parties.

(d) Competition from independent record labels is limited. They operate a similar model to the major record labels, and may therefore not be particularly well-positioned to compete for the 'new wave' of artists. They are not mentioned prominently in the Parties' internal documents and they were rarely mentioned by third parties as an alternative to the Parties. Also, the evidence shows their limited growth (most frequently decline) in share over last five years.

225. Accordingly, the CMA believes that the Merger raises significant competition concerns as a result of a loss of potential competition in relation to digital music distribution in the UK.

TOH2: Horizontal unilateral effects in the supply of neighbouring rights administration services in the UK

226. Both Sony and KNR provide neighbouring rights administration services to artists in the UK. The CMA considered whether the Merger may lead to horizontal unilateral effects in the supply of neighbouring rights administration services in the UK. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm to profitably raise prices or to degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.³¹¹ Horizontal unilateral effects are more likely when the merging parties are close competitors.³¹²
227. The specific concerns as regards the Merger under this theory of harm are that the Merged Entity could increase fees, lower advances, reduce the quality or range of ancillary services, or worsen contractual terms (eg termination provisions).
228. In assessing this theory of harm, the CMA has considered evidence on the extent to which:
- (a) KNR and Sony compete at present (in particular by servicing the same type of customers); and
 - (b) other neighbouring rights administration agencies constrain the Parties.

Competition between the Parties

Parties' submissions

229. Sony provides neighbouring rights collection through its publishing arm Sony Music Publishing (**SMP**). The Parties submitted that SMP has no material market presence in supplying neighbouring rights administration services. The Parties further submitted that SMP and KNR have limited overlap in their customers, noting that SMP only has around [X] performers globally, which are generally high-earning U.S. based artists signed to SMP's music publishing business.³¹³

³¹¹ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 4.1.

³¹² The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 4.8.

³¹³ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraphs 86 and 87.

CMA's assessment

230. In one of Kobalt's internal documents, Sony is mentioned as one of [X].³¹⁴ In addition, one document noted Sony to be one of several factors contributing to a competitive deal market.³¹⁵
231. Evidence from the Parties indicates that Sony (through SMP) has a focus on [X].³¹⁶ As such, Sony, unlike KNR, does not currently offer a standalone artist-side neighbouring rights collection service to any material degree.

Conclusion on competition between the Parties

232. The CMA believes that any competition between Sony and KNR is likely to be limited due to SMP's focus on [X].

Competition from other providers

Parties submissions

233. The Parties submitted that KNR competes with a number of established independent record labels that have launched neighbouring rights administration services. These competitors include: Round Hill Music, BMG, Downtown, Absolute, and peermusic.³¹⁷ Furthermore, the Parties submitted that PPL is the leading supplier of neighbouring rights administration services in the UK and is a strong competitor to KNR.³¹⁸

CMA's assessment

234. Kobalt's internal documents cite [X] as competitors.³¹⁹ These internal documents consistently indicate that KNR is exposed to competitive pressures, with KNR [X].³²⁰ In addition, Kobalt's internal documents prominently refer to [X] as a competitor, with one document noting that

³¹⁴ Kobalt, Annex 2B.24_Project Concerto Management Presentation.pdf, dated 29 May 2021, page 115, Kobalt's response to CMA's 109(2) notice dated 4 June 2021, question 2.

³¹⁵ Kobalt, Annex 2.8 Board Slides_7 October 2020.pdf, dated 7 October 2020, page 5, Kobalt's response to s109(3) dated 21 June 2021, question 2.

³¹⁶ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraphs 86 and 87.

³¹⁷ Sony's response to RFI 4 dated 14 May 2021, question 20.

³¹⁸ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraphs 90-96.

³¹⁹ Kobalt, Annex 2B.24_Project Concerto Management Presentation.pdf, 29 May 2021, page 115, Kobalt's response to s109(2) notice dated 4 June 2021, question 2; Kobalt, Annex 2.8 Board Slides_7 October 2020.pdf, 7 October 2020, page 5, Kobalt response to s109(3) dated 21 June 2021, question 2.

³²⁰ Kobalt, Annex 2B.8_Kobalt Business Unit Reviews (May 2018).pdf, 29 May 2021, pages 80 and 88, Kobalt response to s109(2) notice dated 4 June 2021, question 2.

[X] is KNR's 'primary competitor particularly with UK clients' and is 'aggressively targeting' clients by [X].³²¹

235. Evidence supplied by competitors indicates that they consider themselves to compete with Kobalt in the supply of neighbouring rights administration services. PPL submitted to the CMA that they compete with KNR in the supply of neighbouring rights administration services.³²²
236. Evidence supplied by the Parties indicates that there is evidence of customer switching between KNR and [X]. In the last two years many artist customers of KNR have switched to [X] these include [X].³²³

Conclusion on TOH2

237. Given the presence of other close competitors, and the limited market presence of Sony's neighbouring rights administration services, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply neighbouring rights administration services in the UK.

COUNTERVAILING FACTORS

Barriers to entry and expansion

238. Entry, or expansion of existing firms, can mitigate the initial effect of the acquisition on competition, and in some cases may mean that there is no SLC.³²⁴ In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.³²⁵ In terms of timeliness, the CMA's guidelines indicate that the CMA will typically look for entry to occur within two years.³²⁶

³²¹ Kobalt, Annex 2B.8_Kobalt Business Unit Reviews (May 2018).pdf, 29 May 2021, page 88, Kobalt's response to s109(2) notice dated 4 June 2021, question 2.

³²² [X] call note, 9 June 2021, paragraph 18 and 19.

³²³ Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraphs 94.

³²⁴ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 8.28 - 8.29.

³²⁵ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 8.31

³²⁶ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), paragraph 8.33.

Parties' submissions

239. The Parties submitted that there are no barriers to entry or expansion in A&L services and rivals' entry or expansion is commonplace. In particular, the Parties submitted that:
- (a) the sector has expanded rapidly in recent years, with dozens of players now active in this space;
 - (b) A&L services are largely commoditised and there is no intellectual property or know-how required;
 - (c) investment to enter or expand in the market is readily available: entry has come from major record labels sponsoring new players, DSPs funding expansion into artist and label services, and investments from global technology platforms and private equity firms; and
 - (d) new or small-scale players can rely on organizations like Merlin to secure distribution until they have sufficient scale to negotiate with DSPs directly.³²⁷
240. In particular, the Parties submitted that A&L services is a fast-growing sector and, over the past five years, a long list of players have entered or expanded into this market.³²⁸ The Parties mentioned the following companies as examples of entry/expansion in A&L services over the past five years: ADA, Virgin, Ingrooves, Believe, Downtown, Integral, Secretly Distribution, United Masters, Ditto, TuneCore, Platoon, Stem, Kartel, Amuse, Symphonic, and Distrokid.³²⁹

CMA's assessment

241. The evidence received by the CMA from third parties does not indicate that entry or expansion will be timely, likely or sufficient to mitigate any SLC arising.
242. With respect to the Parties' arguments on potential entry/expansion by different players in these markets, the CMA notes that:
- (a) The CMA has considered the expansion plans of Ingrooves and Virgin, and acknowledges the Parties' submission that both are growing

³²⁷ The Orchard's response to the Enquiry Letter, question 30. Merlin is an organization which negotiates with DSPs on behalf of a collective of independent labels, charging a small administration fee (more information at [Member Led. Music Focused. | Merlin \(merlinnetwork.org\)\[public\]](#)).

³²⁸ The Orchard's response to the Enquiry Letter, question 31 and Sony, SME observations on the Issues Letter, dated 6 August 2021, paragraph 69.

³²⁹ The Orchard's response to the Enquiry Letter, question 31 and attached Annex 11.1.

internationally. However, as noted in the competitive assessment above, the available evidence shows that both Ingrooves and Virgin have a [X] starting position than AWAL (in terms of market presence and growth) and may also have a limited incentive to pursue a business model that focusses heavily on the growth of A&L services.

(b) With respect to A&L service providers:

(i) While Believe noted that it intends to [X] its UK market share by [X], the CMA considers this to be insufficient to prevent an SLC as, contrary to AWAL, Believe has [X] its stream share over the period 2016-2020.

(ii) While FUGA/Downtown noted that they intend to grow in the UK by [X], the CMA considers that FUGA remains small relative to AWAL and The Orchard and any expansion plans by Downtown would start from a very marginal position.

(iii) PIAS (rebranded as Integral) stream share is [X] and it has stated that it does not have pre-existing plans for [X].

(c) With respect to the DIY platforms mentioned by the Parties, while the CMA accepts that some of these entities may be currently expanding in the UK, as reflected in paragraphs 211 to 214 above, the available evidence shows that they have a materially different business model to that of the Parties, and as such the constraint imposed on the Parties is limited.

243. For the reasons set out above, the CMA believes that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC in digital music distribution in the UK as a result of the Merger.

244. With respect to the supply of neighbouring rights administration services, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

245. The CMA contacted customers (including artists, labels and DSPs) and competitors of the Parties. A number of artists, labels, DSPs and competitors raised concerns in relation to the potential competition theory of harm described in this Decision, as well as Sony's market position more generally.

246. Third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on substantial lessening of competition

247. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result in an SLC as a result of the loss of potential competition in digital music distribution in the UK.

DECISION

248. Consequently, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (iii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
249. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.³³⁰ Sony has until 14 September 2021³³¹ to offer an undertaking to the CMA.³³² The CMA will refer the Merger for a phase 2 investigation³³³ if Sony does not offer an undertaking by this date; if Sony indicates before this date that it does not wish to offer an undertaking; or if the CMA decides³³⁴ by 21 September 2021 that there are no reasonable grounds for believing that it might accept the undertaking offered by Sony, or a modified version of it.
250. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 30 September 2021. For the avoidance of doubt, the CMA hereby gives Sony notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by Sony and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from

³³⁰ Section 22(3)(b) of the Act.

³³¹ Section 73A(1) of the Act.

³³² Section 73(2) of the Act.

³³³ Sections 22(1) and 34ZA(2) of the Act.

³³⁴ Section 73A(2) of the Act.

Sony stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
7 September 2021

ⁱ Paragraph para 216(d) should be read as follows: 'While BMG continues to invest in artist services, BMG stated they compete with AWAL in a limited number of circumstances. BMG stated that they would be unlikely to lose customers to either AWAL or The Orchard in the event that they increased their fees or reduced the quality of the service offered to artists.'