Provisional decision on the CMA's review of the Performing Right Society Limited undertakings

For the attention of Peter Hill remedies.reviews@cma.gsi.gov.uk

The Music Managers Forum (MMF) wishes to raise our concerns with the potential wider implications of point 40 in the CMA provisional decision which states as follows:

> *The CMA has reviewed material such as annual general meeting (AGM) communications and other information sent by the PRS to its members which shows that the PRS engages with and consults its membership on key policies.* ***In relation to the use of NDAs, the CMA acknowledges that it can be necessary to protect some information in licences for DSPs where the PRS is also seeking to negotiate with other competing DSPs, in order to prevent anti- competitive information exchange between the PRS's licensees. Therefore, the CMA considers that the PRS's explanation for the use of NDAs in these specific circumstances appears to be reasonable.***

The MMF alongside the Featured Artists Coalition are campaigning to ensure that creators are able to see, understand and audit the royalty flow from streaming services via Labels, PROs and Publishers to their account. At the moment most (although not all) intermediaries refused to share this information citing NDAs and competition law as the rationale. This effectively restricts competition at the creator end of the marketplace as artists are unable to compare rates between different label deals or verify in an audit that the amount they are receiving is in fact correct, leading to confusion and mistrust. We raised these points in our original submission to the CMA.

Whilst the CMA is fairly nuanced in its approach, it refers to protection of "*some information"*, not all, we are concerned that this will create a much wider precedent. Or, at least it may be cited by labels and PROs, that the CMA's view is competition law compliance infers information on streaming deals and rates cannot be shared with creators.

If NDAs are to continue in their current form, as the CMA's apparent Green light suggests they can, then the IPO will be restricted in its ability as a regulator if we subsequently raise a complaint that the broad distribution principle of "accurate and diligent" execution is not being met, as creators will not be able to verify that execution. Our concern is that the if the CMA is seen, even inadvertently, to confirm the assumption that NDAs "appear" necessary in some circumstances to achieve compliance with competition law, this ignores the fact that there are other structural ways of achieving the objective of competition law compliance such as blind trusts, independent accountants, sharing historical but not future pricing and so on.

We suggest the following extra sentence in a final decision paragraph 40 would help clarify further:

"However the question of whether blanket NDAs are the only, or least restrictive, way of avoiding infringements of competition law, is a matter that could only be assessed definitively by the CMA in separate proceedings - as footnote 18 makes clear."

We would be very happy to discuss any of this further. Please contact:

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