

## Decision to undertake review of Performing Right Society Limited undertakings

### Introduction

1. The Competition and Markets Authority (CMA) has decided to conduct a review of the undertakings given by the Performing Right Society Limited (PRS)<sup>1</sup> in February 1997 following an investigation by the Monopolies and Mergers Commission (MMC).<sup>2</sup>
2. The PRS is one of the two main collecting societies for music in the UK,<sup>3</sup> the other being Phonographic Performance Ltd.<sup>4</sup> The PRS licenses musical works and administers the royalties when they are played in public or broadcast on the radio or television. It is a member organisation with more than 111,000 songwriter, composer and publisher members. The PRS's turnover in 2014 was £513.5 million, with a net distributable income of £457.2 million.<sup>5</sup>
3. The CMA has a statutory duty by virtue of Schedule 24 to the Enterprise Act 2002 as amended by the Enterprise and Regulatory Reform Act 2013 to keep under review undertakings made under section 88 of the Fair Trading Act 1973. From time to time, the CMA must consider whether, by reason of any change of circumstances:
  - (a) undertakings are no longer appropriate and need to be varied, superseded or released; or
  - (b) an order is no longer appropriate and needs to be varied or revoked.
4. The CMA has set out in its published guidance, *Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders* (CMA11),<sup>6</sup> that in launching a review, the

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<sup>1</sup> Now known as PRS for Music.

<sup>2</sup> CM 3147, February 1996.

<sup>3</sup> The PRS and other collecting societies operate internationally through a network of reciprocal agreements which provide access to their respective repertoires.

<sup>4</sup> Phonographic Performance Ltd licenses recorded music played in public or broadcast on the radio or TV and then distributes the fees to its performer and record company members.

<sup>5</sup> Report and Financial Statements, Performing Right Society Limited, April 2015.

<sup>6</sup> CMA11.

CMA will consider its published prioritisation principles and whether there is a realistic prospect of finding a change of circumstances.<sup>7</sup>

## Background

5. Following a reference from the Deputy Director General of Fair Trading in November 1994, the MMC investigated whether a monopoly situation existed in relation to the supply of services of administering performing rights and film synchronisation rights. The MMC concluded that a monopoly position existed in favour of the PRS.
6. The undertakings given by the PRS included allowing its members to self-administer their live performing rights, making certain changes to its corporate governance, and supplying certain information to the Office of Fair Trading (OFT) (now the CMA).
7. The MMC found that,

a monopoly situation exists in favour of the PRS. We were also asked to investigate whether any action or omission on the part of the PRS was attributable to the monopoly situation and whether any facts found in the course of our investigation operate against the public interest. We identified various issues which led us to a number of adverse findings.
8. The MMC noted that,

The PRS has been in existence since 1914 and has changed greatly over the years... Throughout that time, however, there have been tensions between writers and publishers and between those who are involved in different musical genres. These tensions have contributed to the development of a corporate organization and a way of working which are cumbersome by modern standards. We found evidence of inefficiency, arising from the corporate structure and management practices of the PRS... We found that the PRS failed to consult the membership adequately and that its policies and procedures were not sufficiently transparent.
9. The MMC noted that the deficiencies above, and described in more detail in its report, together with the PRS's refusal to allow members to self-administer their own live performance rights, 'were acts or omissions of the PRS which

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<sup>7</sup> [CMA11](#), paragraph 3.10.

were attributable to the monopoly situation and which operate against the public interest.’

10. The MMC made a number of recommendations for change, and the PRS gave undertakings to the Secretary of State for Trade and Industry on 27 February 1997.

### **The undertakings given by the PRS**

11. The undertakings given by the PRS include obligations not to:
  - (a) prevent members from self-administering their own live performing rights;
  - (b) prevent writers from sending representatives that are not members of the PRS to speak or vote for them at general meetings of the PRS;
  - (c) significantly alter the structure or operation of its appeals board; and
  - (d) act in a way contrary to any recommendation in the MMC’s report.
12. The PRS also agreed to notify the OFT (now CMA) of proposals to make amendments that would affect the above obligations.
13. In relation to corporate governance, the PRS agreed to keep separate:
  - (a) its chairman and chief executive roles; and
  - (b) its board on the one hand, and its Chief Executive Committee and Executive Committee on the other.
14. The PRS also agreed to provide information to the OFT (now the CMA), including:
  - (a) an annual report specifying measures it has taken to comply with the MMC’s recommendations;
  - (b) its PRS News publication;
  - (c) the PRS Yearbook containing the PRS’s annual report and accounts which would set out:
    - (i) a simplified description of the cost allocation scheme; and
    - (ii) aggregated details of the overseas earnings of members.

15. The PRS also agreed to provide the OFT with such other information as it may reasonably require from time to time to monitor compliance with these undertakings.

## **Decision to review the undertakings**

16. The decision to launch this review is part of the CMA's commitment, set out in its 2015/16 annual plan, to commence a systematic review of existing merger, market and monopoly remedies, which may lead to the removal of measures that are no longer necessary and/or those that are restricting or distorting competition.
17. In July 2015, the CMA launched a consultation seeking views on whether to carry out reviews of 13 sets of market remedies that had been put in place by the CMA's predecessors prior to 2005, and which have not been reviewed recently.<sup>8</sup>
18. The responses to this consultation and our assessment of the available evidence, provide grounds for the CMA to consider there is a realistic prospect of finding a change in circumstances relevant to the undertakings given by the PRS.
19. The potential relevant changes identified by the CMA include the following:
  - (a) Internal changes within the PRS – the MMC made a number of recommendations for changes including to the internal governance of the organisation. Since the time of the MMC's report, the PRS has made a significant number of changes to its governance, in response to both the MMC's report, subsequent and forthcoming legislation affecting collective management organisations.
  - (b) Legislative changes – there have been a number of legislative changes since the MMC's report, and a new EU Directive covering collective management organisations (the Directive)<sup>9</sup> must be transposed into UK law by 10 April 2016. The various changes to date, together with the proposed changes in the Directive potentially cover many of the same areas as the undertakings with similar desired effects. The CMA considers that these legislative changes raise the possibility of it finding, during the course of this review, that the undertakings have been, at least in part, superseded by more recent and proposed legislation, and/or that

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<sup>8</sup> [Review of monopoly remedies put in place before 1 January 2005](#).

<sup>9</sup> [Directive 2014/26/EU](#) of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

there could be some areas of conflict between the undertakings and more recent and proposed legislation.

(c) Changes to the music industry – the development of digital and online music has opened up new uses and sources of revenue for the PRS, in addition to the existing but declining physical sales of recorded music. Possible changes to the exclusivity of licensing work and the new digital and online uses of music may add to the complexity of the PRS’s role in administering copyright for rights holders across multiple territories and contribute to a more competitive landscape.

20. In order to make the best use of its resources, the CMA needs to ensure that it makes appropriate decisions about which projects and programmes of work are undertaken across all areas of responsibility. The CMA has considered the information available in relation to the PRS undertakings in the light of its [prioritisation principles](#). Consequently, and on the basis of the changes highlighted above and its assessment of the published [prioritisation principles](#), the CMA has decided to launch a review of the undertakings given by the PRS in 1997.