

## Attention to the Belgian competition authorities

We are contacting you to request an urgent meeting on the situation that has been developing over the past few weeks with TikTok and their boycott of Merlin, who plays a vital role in getting music companies in this country a fair deal from digital services, as the independent music sector's collective licensing agency.

Concerns have been raised across the world on this. The very essence of collective licensing is at stake. The situation is summarised in this [guest column](#), written from a culture, business and music perspective. We are also linking to our European sister IMPALA's [statement](#) and [open letter](#), plus internationally with [WIN](#). As [Belgium](#) already did, concerns are being raised at national level such as [France](#), [Germany](#), and other European countries as well as in multiple other jurisdictions [outside of Europe](#).

We believe it is incumbent for regulators to send a very clear message on this case, which is yet another example of TikTok's harmful business practices, joining a whole host of other issues damaging our national interests, from threat to security to harmful content, to controlling which businesses are allowed to deal with their platform.

We set out some detail below and look forward to hearing from you.

### Summary

*This is a request to investigate TikTok's behaviour and for measures to be put in place to protect the independent sector from harm given the unavoidable economic partner status of TikTok. Our request includes interim measures to maintain the status quo prior to TikTok's recent actions to avoid harm while investigations take place. Please see more below.*

### Background on TikTok and the market abuse

TikTok is a company which is expected to reach 1.8 billion monthly active users worldwide by end of 2024. TikTok and its parent company ByteDance have been considered a threat to jurisdictions around the world. It is also designated a "gatekeeper" under the EU's Digital Markets Act, which designed to curb the power of super powerful players. The company has its own distribution business for artists. It is also keen to promote the use of AI generated music on its service, which requires a licence, and is growing a music library business.

A vital player in the music ecosystem, TikTok decided to walk away from negotiations with Merlin which plays a key role in licensing in the independent music sector. Registered in Ireland with offices in the UK, New York and Tokyo, Merlin has nearly 40 key deals in place with a range of digital services including Spotify, Deezer, YouTube, Meta etc.

This follows the challenges that both Universal and the National Music Publishers' Association among others have also faced recently in renewing their deals with TikTok.

This is important as the independent music sector is made up of SME record labels and self-releasing artists, who account for over 80% of new music releases and investment in new music and rely on collective structures to be visible, to have access and to be able to negotiate. Our members and their artists are the most fragmented and therefore most at risk if their right to collective negotiations through Merlin is removed.

Overall revenues from TikTok received by recorded music companies are already low due to a considerable value gap. TikTok is an indispensable trading partner for independent music companies and thus the imbalance of trading power between TikTok and our individual members is huge.

Merlin's [letter to their members](#) is confidential but has been published in the press and thus we include an extract from it as we think it illustrates the issues well: *"TikTok pays substantially less for your music than other services, apparently relying on the perception that artists cannot afford to have their music unavailable on the platform. We made a good faith proposal to narrow this gap, but rather than negotiate, TikTok chose to simply walk away. (...) They are unlike every other partner that Merlin works with."*

The move by TikTok to try and remove the right of labels to decide whether to go through Merlin or not is a serious abuse of their market position. It would have a major impact on competition and fairness, on revenues in the independent sector, as well as more generally on consumer choice and diversity.

### **Issues that this raises**

We can already see that our members are concerned they may end up with no choice but to sign direct without the help of Merlin because their artists expect their access to TikTok and consider it as an essential facility.

TikTok simply walked away from negotiations with Merlin before they even started, as Merlin put it to its members. It is a clear illustration of the power that this actor has in the market place. It is not possible for the majority of labels to do business as record companies without access to TikTok, even for a very short period of time.

With Merlin's current deal expiring on 31 October, independent labels were given until 25 October to sign a new agreement, i.e. directly, with TikTok, in a clear case of "take it or leave it".

TikTok's approach is harmful:

- Prior course of dealing on a collective basis via Merlin has been terminated without warning (when improved terms were proposed by Merlin).
- Despite the clear power imbalance between them and TikTok, independents are not being offered an alternative collective licensing approach.
- Only a direct “template” licence on an individual basis is possible subject to a short and strict deadline to sign a direct agreement with TikTok by 25 October 2024.
- In addition to a "take it or leave it" deadline, they are also being offered "take it or leave it" terms.
- TikTok also set very limited deadlines for signing NDAs.
- On top of being “take it or leave it”, information on the new terms being offered is misleading, does not compare completely or accurately and includes provisions that would put licensors in a worse position.
- We also understand that TikTok is discriminating between members offering some companies additional financial and other benefits they are not offering others. This is just one type of discrimination Merlin’s collective licensing solution was designed to address.
- This behaviour is, as the quote from Merlin's letter confirms, unlike any other digital service provider with which Merlin does business in the digital recorded music market and is clearly to the advantage of TikTok, which no doubt seeks to resist calls for better revenue and change terms, by negotiating individually with small and medium sized individual companies rather than through Merlin.
- This would impact already low revenues and increase the considerable value gap faced by independent music when doing business with TikTok.
- Independents are deprived of their choice to negotiate a deal through Merlin, and the one-stop shop solution that Merlin provides, and instead are likely to be forced to sign direct with TikTok (if they are able to do so, and this may depend on their size and technical capabilities).
- TikTok had not made any alternative dispute mechanism available and has not proposed any interim measures to prevent harm. Yet its refusal to continue to deal with Merlin clearly puts labels under duress and TikTok is blocking further substantive discussions with Merlin.
- If any of major distributors start offering access to the TikTok platform through their terms, that would concentrate the market even further and should not be authorised.

If TikTok's abuse is not stopped immediately, where will it end? How will the freedom for micro, small and medium sized independent music companies and artists to be represented collectively ever be guaranteed in the future? These are fundamental abuses that must be stopped.

We see this as an important case with huge implications, yet the solution is simple – ensure TikTok allows labels to choose whether to negotiate direct or collectively through Merlin.

### **Need for urgency**

With the deadlines put in place by TikTok who are relying on labels not being able to say no to either TikTok, or to their own artists, there is a need to act urgently and to take measures to bring their conduct to an end without delay.

### **Interim measures**

In the event that an immediate prohibition of TikTok's refusal to deal is not possible, the following urgent interim measures are needed to prevent serious and irreparable harm to our members in the meantime:

- TikTok to continue to apply its current Merlin deal in its entirety while investigations take place.
- TikTok to give labels who have signed or may sign the new TikTok deal, the option to choose the above extension of the Merlin deal.
- TikTok to refrain from applying any content or algorithmic measures that would impact the visibility or remuneration of any Merlin member repertoire or artist.
- TikTok to enter into good faith negotiations with Merlin with best efforts to agree licensing terms within two months including measures in respect of fraud.
- TikTok to provide a weekly compliance report on the above.

We count on you as our national regulator to not be dictated to by TikTok and ByteDance.

We look to you to safeguard our digital markets and the rights of our national businesses to associate and deal collectively with partners to ensure fair and reasonable access to all platforms for our nation's artists and entrepreneurs in all our diversity.

Regards,

**Geert De Blaere,**  
President of BIMA