AIM - Initial Response to CMA Music and Streaming Market Study, Statement of Scope

General Questions

1. What have been the main changes in the music industry as part of the shift to music streaming, including any changes to:

a. business models

Innovations in business models for labels

These have included a wide variety of more varied deal types and increased flexibility of the terms on which deals are struck with artists – a proliferation of choice across traditional 'A&R' deals. Broadly these are sub-divided into:

- Traditional assignment of ownership or particular exploitation rights on a 'life of copyright' basis or time-limited basis;

- Time-limited licences with a variety of rights granted, length of term and payment structures.

  Each of these two could feature an advance of monies against future revenues and either a traditional royalty structure, revenue splits or profit-sharing , each with differentiated costs and benefits.

- Provision of services (by the music company to the artist) on a fee basis. These are sometimes referred to as Artist Services, Label Services or A&L deals, and are the mainstay of 'DIY' or self-release-style platform offerings.

Technological innovation has enabled direct access to audience for artists, the reduction in high-quality home recording costs (though results can be limited without production expertise) and availability of music-creation technology have resulted in a huge increase in creative content.

The number of artists that labels can support has also increased, but not in line with the increase in the number of artists wishing to release music. Therefore, some artists will find the right relationship with the right label and choose to sign a deal of whichever type, others will not – and that might in some cases be because the artist chooses to pursue a 'DIY' career (or do so for a particular project or period).

For the most part, the IPO funded study into Creators' Earnings suggested that artists signed to labels tend to earn more money than artists who are not signed to labels. In part that might be a result of the particular datasets relied on in that study, but also due to the fact that labels deliver investment and expert services that better advantage artists working with labels. Finally, it is likely to also be because the A&R process at labels selects higher quality artists than exist in the market as a whole.

Many artists pursuing a 'DIY' or self-release pathway have found success and built innovative creative businesses outside of the traditional structures facilitated by technological advances. These successes and the rate of growth in that segment of the market (estimated at between 35%-40%[1]) point to a rapidly evolving landscape with self-releasing artists already taking 5.1% of the global market in 2020[2]. It is worth noting that the majority of 'DIY' or self-release artists as well as 'micro-labels' release via Aggregators/Distributors/A&L services companies who charge a percentage commission on sales, which can range from 10% to 25% depending on service levels or operate on a flat-fee basis.

Impact on market dynamics

The streaming economy has led us to describe a three-tier music market. It is notable that there are no examples of which we are aware within the UK of successful companies having transitioned upwards, other than by acquisition by a Major Label (Universal, Sony, Warner). This is an area of serious concern for the independent music community. We summarise the three tiers as follows:

Tier 1 – Major labels / music companies who dominate, between them, the top 1000-earning artists in the streaming economy and who each own or control >15% of the streaming market;
Tier 2 – Successful independent labels / music businesses who are each responsible for between 0.5-3% of the music streaming market, and around 25% of the recorded music market by revenue in aggregate;
Tier 3 – Individual successful self-releasing artists. estimated to account for around 6% of the independent market share.

It is our view that support measures are needed to help creative entrepreneurs in music achieve scale-up in order to compete with larger entities and to establish a middle tier in the market between the current Tier 2 independents and Tier 3 major labels.

b. the cost structure of the industry (eg costs of music companies, costs recouped from music creators; and costs of music streaming services);

In spite of evidence from AIM and other credible sources to the contrary, the DCMS Select Committee Report inaccurately stated that costs for digital distribution are 'negligible or non-existent'[3].

Individual label submissions as well as our own evidence pointed to significant costs for digital distribution, including costs for complex systems, data analytics and specialist staff to process and analyse data that were not required in the physical market.

[1] https://medium.com/@thisisarae/why-its-easier-to-be-a-music-artist-today-the-artist-entrepreneur-series-part-1-5370fb3bebd2
[2] https://www.musicweek.com/labels/read/midia-research-indie-sector-and-self-releasing-artists-lead-streaming-growth-in-2020/082825
[3] https://committees.parliament.uk/publications/6739/documents/72525/default/ (para 68)

The advent of streaming and other digital consumption avenues has driven the requirement for anyone releasing music to be familiar with, and handle process and provide downstream information on, increasingly large amounts of increasingly complex data – including music metadata, revenue data and consumption analytics.

Each platform has specific formatting requirements and returns different data points. The music industry's self-standardisation of data via use of DDEX has gone a long way to help with consistency, constant evolution of systems within platforms. The rapid evolution of new platforms and the constantly increasing complexity of their demands results in the need for the rapid evolution of DDEX and other data systems.

Anyone releasing music must become a data expert or hire the tools and expertise of data experts. This has required significant additional capital investment for music businesses in technology, tools, human resource, training and so on and, in the independent sector, businesses are unable to take advantage of economies of scale in this, in the way that platforms or multinational corporations can.

In addition, there are secondary effects in costs, such as additional audit provision and accountancy and legal advice, as well as complex relationship issues for music businesses with the artists and managers with which they work, who also need to understand the changing and increasingly complex mechanisms for release of music and new models of revenue flow.

In addition to the increased costs set out above, the nature, complexity and number of channels to market that require specialist and bespoke content is growing fast requiring a constant feed of a variety of content and interaction. Social media and digital marketing sit within a wider 'attention economy' where music competes alongside all other entertainment media that requires music companies to compete directly for 'watch time' or 'listen time' alongside film, games and all types of User-Generated Content.

The resource requirement is expected to surge again as we enter so-called 'Web 3.0' with AR, VR and entertainment in the 'metaverse'. These reflect increasingly necessary 'ancillary' costs of doing business in the digital market, for example with an ever-expanding array of content required to support the music product being released.

It is accurate to say that some of the historical costs of manufacture were reduced in the physical market but, as can be seen here, these costs had been displaced rather than eliminated, in part by some of the new costs of doing business in the digital world, but also reflected in higher royalty rates paid to artists for digital exploitation.

Finally, the physical market has not been eliminated and it remains an important part of independent label business with significant outlay required due to minimum pressings and pressure on materials, supply chain and shipping, although there are indeed some reductions due to efficiencies and economies of scale as that market has shrunk.

c. risks that music companies and music streaming services take;

A significant shift in risk shouldered by record labels and other investors in artists is in the length of time it takes to build meaningful cashflows from streaming.

In the physical market, product was shipped, and payments returned relatively quickly if a release was successful.

In the digital market, it can take far longer to build cashflows over time, often with significant outlay for a variety of audio and audiovisual content to be created and adapted to different services and platforms, along with metadata preparation and handling. Once stable cashflows are established they can be maintained and grown for years to come, but the gap between investment and return for those taking risk on new artists and new music is getting longer and measured already in several years.

This disproportionately advantages established incumbents, particularly those operating at scale with significant catalogue with established audiences, and disadvantages new entrants or specialist companies without catalogue at scale.

The increased uncertainty of the longer timeframe between investment and return is not reflected in increased independent record label margins. It may, however, go some way towards explaining the attraction for large-scale investment by private equity funds in established music catalogues with stable and predictable cashflows.

The time-delay in recouping investment also adds increased pressure to cashflow for smaller businesses who need to keep investing in new artists and repertoire even when investments from several years earlier might show promising, but as-yet insufficient financial success to replenish the outlay.

This is the context for some of AIM's statements around the problems for SME music companies in proposals for blanket contract reversion mechanisms. SMEs are a significant funnel for talent into the industry but, having been the main investor in profile build for an early stage (or sometimes for returning) artists, they often cannot compete on the advances offered by larger competitors when trying to retain those artists after their initial contractual term (often for only initial singles or first album) expires.

Independents are therefore unable to reap the benefits of that initial investment in having any share of those artists' later work, and can only make up the risk taken with returns from further exploitation of the artist's early-stage work, having sometimes paid out significant advances themselves at the point of highest risk (i.e. when there is little established audience for the artist).

A reversion right would therefore have a detrimental effect on the ability of businesses to invest sufficiently in early-stage artists and to spread their risk sufficiently across the market to manage their portfolio risk effectively.

It would have particular negative impact on advances, which are crucial to keeping open pathways to a creative career in music to artists from a broad range of backgrounds, and particularly those from economically disadvantaged or marginalised communities.

d. the way firms compete at different levels in the music streaming value chain?

Artists

Artists compete in different ways in the streaming economy and it is not always just in terms of the total number of streams.

Competition between artists is a key consideration for competition in the streaming economy.

Artists make cost x benefit calculations in the partners they choose and the deals they strike – choosing up-front advances over higher royalties or vice versa and relinquishing higher margins of return against greater levels of investment in terms of both money and expertise.

The role of editorial decision-making, both human and algorithmic, should also be considered in any assessment of whether the streaming market is truly competitive.

Priority position for promotion or on key playlists can deliver significant and direct on-platform monetisation and longer-term career build. Care must be taken to ensure that editorial positioning is fair and competitive and that no entities are able to exert unfair or undue influence either directly or indirectly. Many operating withing the music ecosystem would welcome greater understanding of the operation of this area of the market.

Position on specialist playlists can, for example, give access to fans of particular niche genres who may go on to buy tickets, merchandise, physical releases etc that leverage the relationship way beyond the direct on-platform monetisation. These can be crucial opportunities for artists operating within specialist or niche genres, or for whatever reason at lower scale than the top, mainstream, performers and should also be carefully assessed for accessibility.

Streaming platforms are able to exercise considerable negotiating power as conduits to audience (and potential audience). This effect is increased by platforms which have moved into podcasting and commissioning of tastemaker channels and playlists. There is pressure on labels from the public and artists to make releases widely available, primarily to increase consumption and therefore revenues, satisfy audience demand and build further audience, but also in the supercharging effects of visibility through chart position, which can lead to valuable secondary revenue streams such as sync deals and brand partnerships as well as having a multiplying effect within streaming itself.

Competition at the editorial level is crucial – and in particular with newer technologies like voice activation.

As an example, a home user asking that "Alexa, play Jazz" – does that mean older artists such as Miles Davis, Ella Fitzgerald, or newer ones like Ezra Collective or Sons of Kemet? The first two reinforce the value of older, international catalogue and the market share of the majors whereas the second two allow for discovery of new British music, more diverse voices and smaller, specialist independent artists and the ecosystems that support them.

It is crucial for long term consumer and artist options that a diverse range of artists from across the UK are represented on platforms and that the commercial returns or other support is there to justify continued investment in them. The importance of the diverse spectrum of independent creative music businesses across the UK cannot be overstated in its role in discovering, supporting and promoting culturally diverse and eclectic new music that will enrich consumers into the future by providing a spectrum of choice in the market, relevance to different communities and representation of UK cultures in the global market.

The current market risks leaning towards only rewarding scale and pre-existing notoriety, which in other digital markets suggests a resulting homogenisation and a lack of choice which would be detrimental to consumers beyond just the pure commercials of music monetisation.

Labels

Competition at different 'levels' could easily refer to the three-tier market segmentation we described above – do self-releasing artists or independent labels actually 'compete' with majors or do they operate in different strata within the market?

Certainly, it is the experience of independent labels that they compete fiercely, both with one another but also with major labels as well as sometimes with external investors, to sign individual artists.

It is interesting to observe that, whilst majors almost completely dominate the top 1,000 artists in streaming, the independents over-index in the top 10,000 artists which explains independent market share on streaming platforms remaining robust in aggregate even whilst not coming from the very top tier of earners.

Insight as to why this might be the case could be a potentially interesting area of study to understand the market dynamics of streaming.

Distribution

In terms of the wider value chain, the independent music community advocates consistently for consumer choice and the availability of a wide range of retail music services.

There are a number of pathways to the wholesale market for music including approximately 30 individual independent companies offering digital music distribution, aggregation or A&L services in the UK, alongside the offerings from each of the three majors.

In 2019 AIM worked with CMU to carry out the first ever market study into this area and produce 'Distribution Revolution', a report on the structure of this market and guide for anyone looking to release music, including small labels and self-releasing artists, to help them navigate the market and to understand and choose between the variety of offerings[4].

Care must be taken that this option for artists to release is not overly eroded by incremental acquisition by the majors and further the consolidation of key A&L infrastructure, [Redacted] .

2. To what extent do costs change, if at all, as music streaming revenues grow, and if so, what drives any changes in costs (see para 88), for:

a. Music companies;

There is significant concern in the independent music community that streaming success requires economies of scale and that the market, as currently structured, does not allow for individual independent businesses to reach sufficient scale.

Merlin, which acts as a licensing partner for independent music businesses, helps in negotiating with platforms, but questions and concerns remain in the minds of many entrepreneurs in music as to whether any independent deals with platforms truly compete with those struck by the majors.

Furthermore, as costs to make music reduce, and streaming revenues increase expectations of success by artists, advances, royalty rates, term, and other deal terms become more favourable for them as independent labels compete both with the majors on one side and 'DIY' on the other.

In our analysis, audience growth has not compensated sufficiently for decreasing 'Average Revenue Per User' ('ARPU') and this dilution increases inequality of outcomes for all but the biggest companies in the market. This creates confusion within the industry and the public, who see growing streaming numbers without a corresponding growth in artist returns.

Added to this, there has also been a significant increase in the amount of music available to consumers since the early days of streaming with no significant rise in cost of accessing this ever-expanding pool of ever-higher quality content, including most recently moves to include or preference spacial or immersive audio; which has very high costs of production or conversion that must be covered primarily by labels.

b. Music streaming services?

Music streaming services negotiated a roughly 30% margin in the early days of streaming when costs where high and scale was low. As streaming services scale, they are able to take

[4] https://cmulibrary.com/research-pdfs/aim-distributionrevolution.pdf

advantage both of increasing economies of scale, but also increasing power in negotiations with rightsholders. There is concern that platform power in the market is growing to the point that rightsholders can't negotiate freely when those economies of scale might justify rightsholders negotiating for an increased share of revenues to come back to the creator and investor community.

Where rightsholders participate in revenue share models – particularly on ad-funded services - there are questions about the proportion of gross advertising revenue actually being shared with indications that multiple connected companies in a vertical stack are each taking undeclared commissions before the net revenues are divided with the music businesses.

This is an area of acute concern and one that could well benefit from CMA reassurance on the good functioning of the market.

3. Are there any key technological or other changes anticipated in the music industry, particularly anything that could impact competition in the future, either between music companies or between music streaming services?

Music streaming no longer comes in one size and shape. The recent impact of [Redacted] demonstrates that the market continues to innovate in terms of content type, consumer engagement approach and business models.

Artists and labels need an increasingly sophisticated array of strategies to appeal to different audiences in different ways across these different platforms. This can result in significantly increased costs to ancillary content, and digital specialist teams that can maximise opportunity across each platform.

The next iteration of innovation, which is likely to be in terms of virtual performances and audiences in the metaverse will increase the need for investment and expertise from companies investing in talent as described above.

Streaming manipulation remains a key industry concern with the impact of fraudulent streams, fake accounts, artist profiles being ripped off etc. The suggestion has been made that User-Centric models may help, but again – this is only true to a limited extent for particular types of manipulation and there are other arguments that go both in favour and against this approach.

Other payment model changes could shift the balance between different individual artists and select alternative winners and losers. Care must be taken to ensure any proposal for intervention delivers equitable outcomes and considers the future impact on diverse communities and market participants from across the UK. It is interesting to observe that many advocates for specific outcomes in terms of payment model changes, including User-Centric and Equitable Remuneration, etc. tend to be representative of the winners that particular change might favour.

There have recently been trials and partial adoption of user centric payment models, notably by [Redacted]. It would be useful to analyse the real-world data that is starting to emerge from these. AIM and our Europe-wide body, IMPALA, have suggested from our own analysis of the market that a variety of models suitable for different audiences and content providers could be a positive approach to foster consumer choice. In our view, any analysis should cover a whole of market view, like the Artist Growth Model we published, rather than a small slice of the market which could alter the results in favour or against particular outcomes and not show the wider impact on the ecosystem as a whole.

The technology that allows for monetisation of and transactions related to creative content continues to develop at pace. The impact of the growth of NFTs is not yet truly understood. NFTs could act as a disintermediating force between artists and labels, or a uniting one. Equally platforms offering NFT services could act as a reintermediating force, creating different, rather than fewer links in the chain between creators and consumers.

The impact of AI is an area of continued development which could also have significant impact in terms of competitive pressures within the market. This area, while offering many exciting avenues for innovation in music creation also has the potential for huge negative impacts on human creation and diversity in music if the legal framework around it is not very carefully considered.

Finally, new formats continue to emerge, not least 3D or Spatial Audio, often with considerable additional costs attached, and which are difficult for artists to access without partnerships with investors and experts like labels and distributors.

Each of these puts enhanced pressure on smaller companies and increases the benefits of scale. There is a concern that scale becomes the only factor in whether a company remains sustainable in the music market of the future.

4. Are there areas within the stated scope of the market that the CMA should particularly focus on, or any important areas it has missed?

A missing dimension from the perspective of the UK independent music community in terms of the Scope as published is the aspect of whether the UK music streaming market is competitive in the context of the global market.

In other territories, direct government funding schemes and other support programmes such as tax breaks, costs discounting schemes, or industry monetisation of private copying levies provide significant support to the highest risk areas of the market, such as the development of new domestic artists and new domestic music.

With the dominance of older, or 'catalogue' music in the streaming market, it is important that government deliver appropriate support to ensure the UK market keeps pace with the increasing number of territories competing in the global streaming market, and that UK government helps foster an environment in which new UK artists can continue to achieve success both at home and in the global streaming economy into the future.

In this context, we are concerned to ensure any market study considers the support available for UK SMEs to compete in the market in both the context of future facing technologies and the global market dimensions.

Competition Between Music Companies

5. How do recorded music companies compete with each other in:

a. the supply of services to music creators to develop and bring their music to market;

Most streaming services offer consumers 'whole of repertoire' access, in other words tens of millions of tracks rather than specialist or restricted catalogues. On this basis, the fiercest competition is not in getting music onto the platforms, as this can be done in the various ways described above. The key competitive tension lies in getting content heard.

Recorded music companies compete fiercely for editorial or other priority placement within the streaming services themselves, as well as off platform through above and below the line marketing and promotions campaigns in order to develop visibility for artists and their repertoire in order to drive consumer interest, and ultimately selection of those songs over others.

The perceived ability to achieve success in attracting attention to an artist and their music in the attention economy is a key area of competition between labels who compete to sign artists. This is a key reason artists choose to sign to labels as an alternative to self-release or services deals which may not offer as much investment or support.

Independent labels tend to identify a competitive advantage in being smaller and more closely linked to specialist 'scenes'. This enables them to develop relationships with artists earlier in their development and before major labels will be aware of them.

The advantage to signing an artist earlier might be that the expected advances will be lower, however the cost is that much more time is generally needed to develop the artist to a point of commercial viability.

Independent labels tend to work closely and in partnership with artists on their creative development and this more boutique approach sets the independent community apart from the more corporate, major label systems.

The sense of closer partnership is reflected in the tendency for independent deals to be more flexible and 'artist-friendly', however also leads to the independent label carrying the increased risk that if successful, the artist is likely to be offered more lucrative advances elsewhere at the end of the initial deal term.

b. the supply of music to music streaming services?

It is not clear that there is competition in getting music to streaming services in the sense that it can be relatively easy and low cost. However there is intense competition between the companies providing the intermediary or 'wholesale' music distribution services which act as the gateways to the platforms. The independent distributors report significant downward pressure on margins and the challenges of operating at lower scale than major label owned competitors.

This might indicate why there have been a number of independent distribution businesses acquired by major label groups over the last few years in that they accrue the incremental benefits of their market share, without the capital costs of acquiring the underlying content or the businesses that own it.

6. How well is competition working at present between recorded music companies?

75% of the UK recorded music market is owned or controlled by the major record labels.

Whilst repertoire might be owned by independent companies, its distribution via major label owned channels has impact on the division of unattributable revenues, deals terms and other secondary factors which might be prejudicing the ability of non-major owned music companies to seek their fair share of overall value from music.

Recorded music exists as a sector which has historically struggled to raise capital in the markets. The recent influx of private equity money to music has almost exclusively focussed on investment in 'evergreen' or well-established catalogues with well-established cashflows.

Record companies with large parent company balance sheets and large established catalogues are therefore at a significant advantage to new entrants or smaller companies without those foundations for capital investment and cashflow.

Whilst our view is that competition remains strong up to this point, there is clear danger that increased drift towards a market in which scale is the key factor which would lead to homogenised content at the top end of the market and a lack of early-stage investment at the grass roots. The outcome for consumers and cultural diversity in such circumstances would be stark.

7. How, if at all, is competition between recorded music companies likely to change in the future?

As set out in more detail above, our concern is that, through incremental drift via acquisition of both content and infrastructure, the market is becoming increasingly stratified with less permeable membranes between market tiers. The independent community stands to be squeezed out in these circumstances, leaving a market of individual self-releasing artists with no bargaining power at the bottom and three huge corporations controlling the vast majority of the market at the top, and owning the routes to market for the individual 'unsigned' artists.

We believe that, if independent music businesses are squeezed out in this way, this would be damaging to the long-term health of the market both for artists and consumers with less diversity of music and those involved in music creation.

8. To what extent can music creators seek better terms for the services they are offered by recorded music companies?

*   ***a. What are the key drivers of a music creator's choice of recorded music company? What role to music managers play in this?***
*   ***b. What are the key factors determining the bargaining power of music creators in negotiations with recorded music companies?***
*   ***c. Does the strength of competition between recorded music companies vary for different types of music creator, for example music creators at different stages of their career – and if so, how and why?***

In music, as in the wider attention economy, value is dictated by audience and popularity. Artists with active fanbases can seek better deal terms than artists without fanbases. The more established an artist becomes, the better the terms they can negotiate in future deals, or indeed in terms of 'options' (a first refusal on further recordings) or ratchets on payment and other terms that can be included in existing deals.

Successful artists often renegotiate terms with labels during the term of an existing contract, to better reflect the changing circumstances of their careers. Added to this is the propensity, particularly within and driven by the independent sector, of time-limited agreements and other flexible terms.

The adoption of the Fair Digital Deals Declaration[5] created by independent music companies demonstrated their commitment to fair treatment of artists in the digital landscape as it initially evolved and as it continues to develop. The independent community continues to innovate and lead in areas of best practice, including the publication of the Digital Switch Code last year[6] which continues this work in best practice and guidance for market entrants in the rapidly evolving 'DIY' space.

A competing pressure to the individual treatment of artists is the label's need to balance its risk across its portfolio.

If a label can invest in a number of artists on the basis that a small percentage will succeed, it is important that the deal terms with the successful artist allow for the label to derive a sufficient return on investment, otherwise its wider investment in music and other activities will restrict, rather than expand.

In our observation, many of the arguments around 'fairness' in the streaming debate, centre around the competing interests of the individual and the group, or ecosystem as a whole, from this perspective.

Different creators are driven by different priorities – commercial success, artistic recognition, validation from peers, immediate financial reward, and so on. Their choice of

[5] https://winformusic.org/fair-digital-deals/

[6] https://www.aim.org.uk/#/resources/digital-distribution-switch-code---code-of-practice-1-of-5

label, team or other type of music company can reflect these priorities, for example a 'cool' niche independent label for its reputation for creative excellence versus a major label for its reputation for delivering global scale and commercial success, or the need or desire for more up-front money (advance) against better returns later e.g. a significant advance and lower future royalty deal versus minimal advance and profit split. Artists' values on social justice or sustainability may also influence decisions in some cases.

[Redacted] describe managers as the CEO of the artist business. Managers have significant influence on the strategy and structure of an artist's business interests. The manager's remuneration is traditionally taken as a percentage across the artist's earnings (or from particular aspects of an artist's earning) and this approach usually means their interests are aligned in maximising revenues.

However, in deals for recorded music, taking less cash up front in order to benefit from a more generous long term share of revenues may be in the interests of the artist, but not the manager who may or may not be in that artist's employment for the long term. Traditional advance and royalty deals which prioritise large advances over higher royalty rates mean managers can earn their commission on the deal up front without the risk of being fired by the artist or having to wait for sizable cashflows to build from streaming over the longer term.

That said, advances are crucial to artists who need investment to live whilst pursuing their creative career full time. It also puts the risk in the hands of the label and de-risks that part of an artist's portfolio of revenues. It is worth considering here that the investment made by the label raises the artist's profile in the market which can then be used to leverage revenues from parts of the artist businesses that the label may have no interest in – such as live, image rights, personal appearances or music publishing.

As in any market, there is an expectation that niche / specialist artists would find constructive partnerships with niche / specialist labels. Equally artists towards the end of their careers who may have reliable fan bases might not expect explosive growth from their next release and so may not be attractive to some labels, where they would be seen as an excellent part of another's portfolio. Independent labels and distributors often have different specialisms and notoriety beyond genre; some with strength in international markets, some in working with particular digital tools, some in physical distribution networks, some in sync expertise, and these may align with artist priorities at different points in their career.

9. To what extent can music streaming services seek better terms from recorded music companies?

From an independent music perspective, the streaming services have almost all the power in the negotiation and this can lead to deals struck on terms that do not value music sufficiently or allow for a "take it or leave it" structure.

Rebalancing factors include the fact that independent music is often very culturally relevant and cutting edge which gives it some value beyond its actual market share.

In addition, independent licensing structures such as Merlin[7] are hoped to rebalance some of the negotiating power disparity between platforms and independents in contrast with majors.

From an independent music perspective, we are not aware of music publishing links impacting negotiations with digital platforms. However, there is anecdotal evidence that publishing rates charged for public performance and broadcast have a significant downward impact on the value of rates paid for the master rights on those uses – see the difference between [Redacted] tariffs for example.

Music publishing earns 8.5% of wholesale price in the physical world and more than double (15% retail) in the digital streaming market. As seen in the IPO report on Creators' Earnings[8], songwriters have seen the largest proportionate gain from the rise of streaming by some margin, which competes with the narrative that the value of publishing has somehow been deliberately depressed[9].

The reasoning for the difference between recording and publishing rates relates to the differential in investment in production and promotion of the recording. Publishing is a lower risk business model, with a longer duration for copyright and the opportunity for multiple versions ('cover versions') of a single work to be recorded and released over time with little to no further action, risk or investment by the creators or publishers.

Examples of cover versions which have had much greater commercial success than the original recording include:

Song Title	**Original Version**	**Cover Version**
I will Always Love You	Dolly Parton	Whitney Houston
Valerie	The Zutons	Amy Winehouse

Some songs have been covered multiple times with "Yesterday" by the Beatles having been covered on released recordings more than 1600 times[10].

Digital rates for publishing rights are arguably higher than for physical product due to somewhat lower costs of digital release though, as we have set out above, there are still significant costs of production and promotion bourn by the recorded side of the industry (whether this is by a record label or a self-releasing artists acting as their own 'label'). Furthermore, the recording is a one-shot deal – there is no carried interest in the future success of any 'cover versions'. Risk and costs are therefore higher on the recorded music side than the publishing side and this is reflected in the difference in rates.

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[7] https://merlinnetwork.org

[8] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1020133/music-creators-earnings-report.pdf

[9] https://committees.parliament.uk/publications/6739/documents/72525/default/

[10] https://www.thisdayinmusic.com/liner-notes/yesterday/

Our observation here is the effect of income concentration. In the physical world, 50% of the mechanical royalty would be taken from the hit writer(s) and shared with the writer(s) of the 'b-side' song. On an album, the hit writer would get the same proportionate share of the publishing revenues as the writers from the other tracks. Streaming disaggregated songs and so now only the hit-writer gets paid, which makes songwriting a much more 'all or nothing' market.

Again, we see the competing interests of the individual and the group – streaming is much 'fairer' (or at least more lucrative) for hit songwriters, but not necessarily effective at maintaining communities of songwriters, such as in Nashville where writers relied on getting regular (non-hit) song placements on albums to make a living, as well as writing the occasional 'hit' and reaping the higher rewards.

10. What scope is there for smaller recorded music companies (including DIY platforms) or music streaming services to compete with the major music groups?

Smaller music companies can and do still compete, often on other aspects where they can't compete on levels of up-front advances, but questions remain as to their sustainability based on the lack of access to capital on reasonable terms and the competitive advantage generated by cashflows from large established catalogues.

Specific support for independent music businesses as recommended in the DCMS Select Committee report and such as a creative industries tax credit for new music investment could ensure the long-term viability for this crucial market segment that drives innovation and cultural diversity in the commercial music market.

If smaller, 'DIY platforms' continue to be acquired by the major music groups, it will give majors a further competitive advantage in having proprietary access to all the data on those artists, drawing them into career development through a vertically integrated market within one commercial entity, which may ultimately result in downward pressure on the terms offered to those artists.

11. What barrier, if any, are there to:

- ***a. Entry and / or expansion in services offered by recorded music companies; and***
- ***b. Innovation related to these services***

Starting a recorded music company is becoming increasingly difficult without significant support or investment. whilst costs have come down in terms of making music, as we have discussed earlier, the complexity needed to exploit those recordings effectively is growing. Also, the time needed to convert new music to meaningful cashflows is getting longer.

It is becoming harder to see how a 'pure play' record label could launch in the current market without significant capital either to purchase established catalogues, or to cash-flow the business to the point of sufficiently developing a sufficient number of artists to achieve critical mass.

For independent labels to remain competitive in the face of considerable market pressure to innovate, further capital is needed.

Intervention to support investment in new music so that it can be meaningfully developed and delivered to market with sufficient impact is urgently and acutely needed.

12. What, if any, issues are there that limit competition between music companies either in the supply of services to music creators or in the supply of music to music streaming services?

Artists sign deals that tend to commit for a certain number of releases, whether a single song, an EP or multiple albums.

Often there is a ratchet included in the deal, providing for increasing advances and royalty rates subject to the achievement of certain key performance metrics.

This approach ensures that early risk that favours returns to the label is rebalanced as the artist's profile grows and the risk is felt to decrease to some degree.

Profit share deals exhibit this characteristic at the heart of their structure for example.

At the end of the commitment to a label, an artist is free to look elsewhere for future recordings, which is a point of vulnerability for independent businesses who may not have the cash to compete with large advances offered elsewhere but who may have invested considerable funds in the highest risk phase of an artist's career up until that point.

13. How can competition between music companies be strengthened in the supply of services to music creators and/or in the supply of music to music streaming services?

Support for access to capital for investment in new music would be a key enabler of strengthened competition in the market and would allow for independent music business to scale-up all over the UK and across multiple genres.

A Creative Industries Tax Credit, similar to ones that already exist for film, TV, animation, games etc would be an ideal instrument as it is well-known to HMT, relatively straightforward to implement and would return enhanced revenues from export and inward investment to UK plc.

Competition in music streaming services

14. How do music streaming services compete with each other for consumers?

There is a danger that music streaming services have been allowed to attract consumers through the under-valuing of music instead of competing for the best possible customer experience.

The lack of movement from the £9.99 price point set some two decades ago and the increase in music available at that price supports the view that music has never been more enjoyed, but never been more under-valued[11]. This is the single most impactful issue at the heart of the solution to many of the aspects raised around streaming.

If this deflation of music value continues, it will result in bad outcomes both for artists and consumers. For the long-term interests of consumers it is important to balance the price point and overall consumer experience with the interests of the creators and investors in creation of the music consumers seek. It is our belief that there is currently imbalance.

It is worth considering the £9.99 per month price point for access to all music of all time in the context of the pricing for other, more limited, consumer services:

Sky Sports: £20.00[12]
BT Sport: £25.00[13]

15. How well is competition in the supply of music streaming services working at present?

Large technology companies dominate the streaming landscape and music is rarely their core business. This allows for the potential for music to be used as a loss-leader for the sale of other products, such as hardware, or to drive traffic in order to generate ad-revenues or data from traffic.

There are clear challenges to launching new services although new services do launch each year.

The rise of [Redacted] indicate alternative business models and suggest that non-traditional consumer behaviours in the enjoyment of music may provide unexpected future competition in the market, but as of yet there remain questions as to whether this will translate to a sustainable music model for all but the very largest players.

16. How, if at all, is competition in the supply of music streaming services likely to change in the future?

We hope that many and varied offerings are made available for consumers to encourage choice and competition however we are concerned that streaming in its current form requires such scale at point of launch that smaller, more specialist or niche services, might struggle for viability, whether based on Web 2.0 or Web 3.0. The independent music community has the willingness to engage with such future services which develop collaboratively with them, and structures exist to enable licensing of a broad library of music e.g. through Merlin and direct licensing with larger distribution companies.

[11] https://musically.com/2021/12/06/malbeconomics-the-9-99-price-point-guest-column-by-will-page/

[12] https://sky.digital-tv.co.uk/providers/sky/sky-upgrades#sort=recommended
[13] https://www.bt.com/sport/buy

17. How do consumers make decisions about which music streaming services to use? What barriers are there, if any, to consumers switching between services?

The biggest barrier to development and growth of the streaming market is the constant competition with music available for free – ad-funded models compete still against digital piracy which in turn puts significant downward pressure on subscription prices.

There are, effectively, no barriers to consumers switching between streaming services and many use multiple services, some as subscribers and some on a 'freemium' basis. There are also no fixed term contracts or tie-ins (except where services are bundled with particular products, though consumers are still free to switch, use or ignore the offers in those cases), to our current knowledge.

Service bundling with other deals presents barriers to switching for consumers and special offers / loss-leaders often reduce the return to the music economy so, although seemingly offering consumer choice, in fact diminish the creation of content over time.

18. How do consumers use music streaming services and to what extent is their usage influenced by playlists or recommendations?

'All you can eat' streaming buffets present an overwhelming choice to most consumers, so playlists and recommendations become key drivers for consumption.

The impact of editorial choices by platforms in 'picking winners' cannot be overstated, whether by human editorial or by algorithm. Key, top line playlists are updated very regularly but independent and niche companies suffer from the fact that specialist music playlists may not be updated for months, or even years at a time. This means that new music in genres such as Hard Rock or Drum & Bass has no outlet through the playlists that should enable it to reach specialist audiences.

There have been reports of some streaming platforms making recommendations to consumers based on commercial considerations such as production music that might be royalty-free or on a lower royalty than the main commercial catalogue[14]. Also, through the development of specific inducements that require rightsholders to take reduced royalties in exchange for priority listing[15].

19. What barriers, if any, are there to:

a. Entry and / or expansion in music streaming services; and
b. Innovation in music streaming services?

The downward pressure of piracy constantly impacts on the growth of the legitimate streaming market.

[14] https://www.musicbusinessworldwide.com/spotify-denies-its-playlisting-fake-artists-so-why-are-all-these-fake-artists-on-its-playlists/
[15] https://www.rollingstone.com/pro/news/spotify-discovery-mode-house-judiciary-committee-1178623/

The use of 'safe harbour' provisions that allow the 'value gap' to persist equally act as a break on growth in the subscription market – both in terms of scale and pricing.

Streaming services are under pressure to innovate to attract consumers and retain subscribers however revenue share deal structures inhibit music companies' ability to set at least a reasonable wholesale price for music whilst also having no opportunity to influence retail pricing.

20. What, if any, competition or consumer issues are there in the supply of music streaming?

Concerns for competition from an independent music perspective include:

- Network effects possible in a highly concentrated market for consumers
- Network effects possible in a highly concentrated market for major music companies
- Opaque editorial selection and access to editorial channels
- The lack of playlist updating, particularly on specialist genre playlists
- Lack of transparency and access to data in terms of accounting
- Lack of platform analytics tools for smaller music companies and artists to have visibility and understanding of the value of their activities and investments
- Requirements for small companies to bear the costs of changes being made at platforms without consultation or sufficient support
- Vertical integration of A&L, A&R and platforms within single corporate groups
- Vertical integration of ad brokers and servers with inventory owners[16] that allow multiple undeclared commissions to be extracted before revenue shares are calculated

21. How can competition in music streaming services be strengthened?

Reinforced government action on digital piracy and copyright infringement (particularly in ease of access to enforcement and ending safe harbour loopholes would enable the market as a whole to strengthen – making it more attractive to inward investment and new entrants.

This might also enhance opportunities for specialist or boutique services and lead to more choice for consumers beyond the 'all you can eat' model which is not currently possible due to scale being the primary factor in viability.

22. How can better outcomes for consumers be achieved in music streaming?

- Support for SMEs in music will retain cultural diversity, UK-wide investment in artists and ongoing choice in entertainment and music for consumers
- Better functioning and more transparent editorial on platforms via regularly updated playlists, further action against fake streams and meritocratic recommendation engines

[16] https://www.nytimes.com/2020/09/21/technology/google-doubleclick-antitrust-ads.html

- Reassurance of a level playing field between major and independent companies
- Enabling price rises that are affordable and good value, but that allow for investment in artists in the UK leading to future consumer choice, rather than a race to the bottom and homogeneity which is more likely to favour US artists than UK artists due to the scale of that domestic market and its global dominance
- Policies on music owned by streaming platforms or licenced outside of market norms

Agreements and inter-relationships between music companies and music streaming services

23. What impact, if any, do equity cross holdings or agreements between music companies and music streaming services have on:

a. **Competition between music companies; and**
b. **Competition and innovation in music streaming services?**

The cross-holdings of most concern to the independent music community are those between [Redacted].

These have the potential to significantly impact the fair access of British music to important international markets.

Further, cross-holdings in streaming platforms, if significant, could distort commercial decisions on rates that impact the market as a whole and other factors that could distort fair competition and the maintenance of a well-functioning market.

It was suggested in evidence to the DCMS Select Committee that major label shareholdings in [Redacted] held back trials on modelling alternative payment models such as User Centric. We have not seen evidence to support those claims, however it would be of concern if such evidence existed.

24. What impact, if any, is there on competition in the music streaming value chain from any softer forms of influence or control that music companies and music streaming services may have over each other?

The independent music community has concerns around the level of concentration within the music rights market and aspects of vertical integration, both in music businesses and in streaming services.

There may also be other anti-competitive factors influencing the market such as CMOs who have no commercial interest in terms of proprietary risk, but whose actions or systems can greatly shape perceptions in the market and impact on outcomes both for commercial music companies and for creators.

A market study such as this will, we hope, be significant in assessing whether these concerns are justified and in seeking appropriate remedies should they be.