CMA Music and streaming market study – IMPALA's comments on the issues raised in the statement of scope
24 February 2022

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;
b. the cost structure of the industry (eg costs of music companies, costs recouped from music creators; and costs of music streaming services);
c. risks that music companies and music streaming services take on; and
d. the way firms compete at different levels in the music streaming value chain?

Digital has gradually overtaken physical in all markets as the dominant segment of the market, with streaming representing the lion's share of recorded music revenues (62.1% of total revenues globally, and 59.4% of total revenues in Europe[1]). However, it is important to clarify that although streaming has helped the recorded music business to return to growth, revenues today are a long way from sales levels for physical formats. Despite a U-curve in appearance, the market is far from its 2001 peak when figures are adjusted for inflation, and this led IMPALA to release a ten-point streaming plan in March 2021 with solutions to make streaming fairer and provide a dynamic, compelling and responsible future for artists, labels and for fans.

a. The shift to streaming has had an impact on labels' business models, affecting the way music is licensed, distributed, managed, monitored and analysed, marketed, and discovered by record labels and fans alike.

b. As a consequence, labels have had to invest heavily in digital to remain not only competitive but also in business. Although at face value, the advent of streaming has enabled the reduction of certain costs such as manufacturing and physical distribution, nevertheless the exploitation of recorded music digitally brings with it a number of additional costs. In order to compete in a world in which far greater quantities of music are available to the consumer at the touch of a button, labels must hire and retain the services of personnel experienced in areas such as digital marketing, licensing, the creation of music videos and artwork, in playlisting creation and optimization, in data analytics and in reporting and accounting to artists. The core costs of the recorded music business remain unchanged: the investment in the signing and development of new artists (co-called "A&R" costs) and in the marketing of their music.

[1]See IFPI's 2021 Global Music Report

To reduce the costs of licensing of their recordings, the independent labels established Merlin, an innovative one-stop licensing body. However, given the importance and size of their repertoire, it can happen that some streaming services choose to prioritise their deals with the majors, as well as visibility of their repertoire once on the service.

Another issue arises when certain services refuse to conclude deals with, or are obstructive towards independents seeking to license their repertoire, even sometimes hiding behind a copyright safe harbour to allow the promotion of unlicensed content, resulting in what has been dubbed the "value gap" (between the licence fees paid by user upload services, and other subscription services such as Spotify and Deezer for example) and a significant financial loss for rights holders. This also leads to market stagnation and an overall decrease of the price of music (see more below under q.2), and this is why IMPALA's streaming plan begins by calling for an end to safe harbour privileges that distort the market.

Even once they are negotiated, licensing deals with platforms do not necessarily by themselves lead to streaming success in a world where far greater volumes of music are available to the consumer, as we explained above. Indeed, simply being on a service does not mean that labels are visible or that their repertoire appears on playlists. In other words, competition barriers in streaming are not primarily about the capacity to supply a label's repertoire to a platform, although it can happen that some streaming services choose to prioritise their deals with major labels over smaller companies, given the size of their repertoire. It's also about cutting through the noise, which is linked to a label's resources and expertise.

c. Entrepreneurial 'risk-taking' is at the heart of running a successful label, and this remains the case in the streaming world. The growth of streaming/digital and the evolution of music production tools means that it is easier than ever before for artists to make and bring their music to market. Some artists are able to generate a fan following by themselves, usually using social media, even before being signed to a label. Increasingly, labels want to see a strong existing following before deciding to sign an artist up. But it is the labels that bring the best chances of success for new artists and for this reason new artists almost always look to be signed to a label at the earliest opportunity. Labels provide stability, scale, investment, brand, experience, reputation and identity which new artists on their own are unable to replicate.

Beyond the question of artist development, the question of retaining catalogue is also crucial today, as the revenue generated from catalogue is significant. Once the time of copyright ends, it becomes more and more difficult for smaller labels to retain catalogue, as they are competing with bigger operators like majors labels but also venture capital companies which invest a significant amount of money to be able to acquire and exploit the catalogue acquired while not having to invest in artists. The arrival of VC companies also has the effect of distorting the employment market by artificially inflating salaries in a way that independents can't compete with - see our response to q.6.

We welcome the CMA's decision to look into the question of revenues strictly from a competition scope. Indeed, we believe that any review of revenues between different participants in the music industry should be preceded by an analysis of the level of investment risk undertaken by each. For example, in terms of percentage of revenues received in the music industry, there has been a significant shift in favour of publishers and authors. This has occurred without a comparable increase in overall spread of the financial risk in the music market (hence the inflated price paid by venture capital companies for publishing catalogue). Of course, the song is a vital part of the system, but in terms of the overall investment, labels remain the principal actors. It is important to analyse fully how risk is spread amongst the various players in the music sector before any further decisions are taken.

d. Although certain elements of streaming held the promise of a more open market, we do not believe that it has delivered a completely level playing field. The greater investment required to participate fully in the streaming business has compounded the resource gap between bigger and smaller players. This has an impact on competition, as artists will be more likely to seek to sign to companies that are able to call upon greater resources to maximise digital opportunities. This also has an impact on diversity. Established artists, particularly those achieving international success, have rapidly been able to reap the dividends delivered by their presence on global streaming platforms. It is far more difficult for niche and local artists, which typically are signed in far greater numbers to independent labels, to achieve similar visibility in the streaming eco-system. This in turn will impact consumers for whom the breadth and diversity of music is restricted.

The shift to digital and streaming means that success and growth of the music market is intrinsically bound up with that of the digital market – but also vice versa because music is a key input for digital platforms, perhaps the key input. This means that structural competition issues in one market affect the other. In particular, the fact that digital companies invest in streaming (e.g. Google acquiring YouTube) or music labels (e.g. Tencent acquiring shares in UMG) tends to create situations where market leaders can leverage power from one market to another through network effects and strategic links (see below under q.6).

This also creates a situation where standalone music services such as Spotify, Deezer, or Tidal have to compete with large digital companies which have the ability to subsidise their competing streaming services as they make the majority of their revenues from other goods and services (such as e-commerce/retail and web storage in the case of Amazon and hardware devices in the case of Apple, or advertising revenues for Facebook, Google, TikTok, and others). For example, this enabled Apple to add high definition (HD) streaming into Apple Music subscriptions at no extra charge whereas other services were previously charging a 50% premium for this, which again has the effect of decreasing the value of music for the benefit of a conglomerate that would want to acquire some catalogue.

Lastly, IMPALA would like to highlight that the sale of recorded music in physical formats remains important, and a recorded music label generally still needs to be active in both the physical and the digital sectors in order to be a viable and successful competitor in the market. There remains a segment of customers who can only be reached through the physical market, and there has also been a renewed interest and growth of vinyl in recent years (vinyl sales grew by 19.3% between 2020 and 2021 (year-on-year), as well as an increase in CD sales in the UK in late 2021). Access to manufacturing has also been raised by members. It is difficult to get access to manufacturing, especially for vinyl as a lot of the capacity is already bought up by the majors and/or for bigger manufacturing runs, which means smaller runs are more difficult to get. This is another access to market question. We have also heard within our sustainability task force about expected concerns when it comes to access to carbon friendly manufacturing solutions – that will also be a key competition question. Without taking into account the effect of the physical market on competition in the overall market, and this growth and interest in vinyl in recent years, including the question of access to manufacturing plants, the CMA will not have a full picture of competition – and competition constraints – in the overall recorded music market.

2. To what extent do costs change, if at all, as music streaming revenues grow, and if so, what drives any changes in costs (eg see paragraph 88), for:
a. Music companies; and
b. Music streaming services?

Streaming represents the lion's share of recorded music revenues today, and we understand the assumption that labels would invest in this sub-sector as revenues continue to grow. As we explain above, a label must invest in digital to survive. However, put into perspective, the growth in streaming on its own is insufficient to create an incentive for labels to invest, for three main reasons.

1. The price of music has in practice decreased overall:

- Despite the recorded music business returning to growth, revenues today remain a long way from the industry's pre-digital peak.
- Individual subscription prices remain stagnant (£9.99 for an all-you-can-eat model since Spotify was launched in 2009 in the UK for example). Inflation has in fact led to a reduction in the value of streaming. In parallel, the number of artists uploading music to platforms has exploded in recent years. We understand that more than 60,000 tracks are uploaded to Spotify every day. This has a further diluting effect which is not counterbalanced by the conversion of consumers from free to paid subscription services.
- We believe that standalone music services have been forced to keep their prices low in order to compete with large technology companies which have the ability to subsidise their music services from their revenues from other services and goods (as explained under q.1).
- The value gap (between the licence fees paid by user upload services and other services such as Spotify and Deezer for example) also remains a big issue. This doesn't mean that free or UUC services are necessarily negative for the industry. On the contrary, they have been embraced by the independents as a vital part of the ecosystem. They need however the proper copyright and licensing framework to prevent unfair competition with labels and other streaming platforms which rely on licences. In that sense, the development of YouTube Music as a licensed music app is welcome.
- Piracy and unlicensed music remain a problem today. Although streaming provides a legal alternative to piracy, IFPI's 2021 "Engaging with music" report shows that the availability of unlicensed music remains an issue for the music ecosystem, with almost a third of people reporting to have used illegal or unlicensed methods to obtain and listen to music. This affects all players in the market.

- In this context, any move from platforms to reduce royalties to labels and creators cannot be supported. This is why IMPALA opposes Spotify's recently introduced Discovery Mode, which provides for the payment of lower levels of royalties for plays or privileged treatment in algorithms or other features. These types of "pay to play" arrangements are similar to the system of paid plays (or "payola") once common in the radio broadcast industry.
- When it comes to physical, it is important to highlight that vinyl manufacturing prices have nearly tripled over the last decade, seriously haltering labels' revenues in physical, while royalty rates remain unchanged.

2. Streaming growth is not felt the same by everyone in the market:
- With 60,000 tracks being uploaded to streaming platforms every day, competition for all participants, but particularly new artists is much greater than it used to be. As explained under q.1, the ability to bring new music to the attention of consumers is heavily linked to a label's resources and expertise. Pitching tracks to platforms, detailed understanding of digital marketing and collecting, analysing and maximising the use of data are all key points of advantage available to the large labels to the competitive detriment of smaller players. Uneven access to digital resources rather tends to deepen the gap between big and small companies.
- It is therefore much easier for artists that already have an international reach, or that are supported by the majors to make it in the streaming ecosystem. In consequence it is far more difficult for niche and local artists to gain visibility on music platforms.
- Certain services also refuse to engage in collective licensing discussions with independent and smaller labels. For example Amazon, does not appear to have a collective agreement in place with Merlin.

3. It is important to stress that the music sector is facing a historical crisis due to Covid. Live shows have been much reduced for two years resulting in a significant fall in public performance revenues. Physical sales, which are still to some extent dependent on the presence of physical retailers, have also been impacted. Lastly when it comes to the context, one important element is the rise of salary cost with the entry of venture capital companies buying catalogue, paying over the odds employees to be able to exploit the catalogue acquired while not having to invest in new artists. It is also worth noting that a decision in the European courts (C 265/19 Recorded Artists Actors Performers Ltd v Phonographic Performance (Ireland) Ltd) from September 2020 has created a strange anomaly that might further reduces the earnings UK labels & musicians are making from the public performances of their songs in Continental Europe.

We would recommend the CMA to take this into account when carrying out its market study. The fact that it is difficult for smaller players to invest into digital only mirrors a difficulty to invest in general. This shows that the music market is really a two-speed market, where the distance between top and bottom only continues to increase. How can we allow a situation to exist where only the biggest players are able to grow? The UK, and other European markets, must grow its "missing middle" by creating the best possible conditions for smaller cultural actors who contribute the most in terms of jobs and innovation, and by opposing further concentration in the cultural markets. In the music sector for example over 80% of all new releases in Europe are on SME and micro labels and they need the right market and financial conditions to grow. This is key as smaller players cannot compete indefinitely in a two-speed market. This is also crucial to consumers as this all has a direct impact on music diversity and culture, as ultimately, only the biggest companies will be allowed to set the musical agenda in the UK and the rest of Europe. This is also why reductions in royalty revenue will damage smaller structures like the independent labels more than majors.

The CMA should look into the question of whether the music market today has the features required to enable all players to grow, even the smaller ones.

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?

Web3, NFTs, AI and the metaverse probably represent the next biggest technological change. Although nascent, the industry is assessing the opportunities and challenges these developments could bring.

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

We welcome very much the CMA's intention to look into the impact of UUC music streaming services ("value gap"), including short form videos and reels, and the safe-harbour copyright protections they benefit from (see response to q.2 above).

We would also recommend that the CMA considers putting the growth of streaming revenues (and recorded music revenues in general) into perspective by looking into the evolution of the price of music in general (see more under q.2).

<u>**Competition between music companies**</u>

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; and
b. the supply of music to music streaming services?

On the second point, as explained above, it is important to consider that the competition barriers in streaming are not primarily about the capacity to supply a label's repertoire to a platform, although it can happen that some streaming services prioritise their deals with major labels over smaller companies, given the size of their repertoire. Thanks to initiatives like Merlin, the independents' digital rights agency, independent music is available on most platforms. However, competition for the visibility of labels' repertoire on these services is important (see more on this above under q.1 and q.2, as well as below under q.6).

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

The music market is extremely concentrated. Since 2012 it has consisted of 3 multinationals – "the majors" (Sony Music Entertainment, Universal Music Group, Warner Music Group) (since 2012) and thousands of micro, small or medium sized enterprises – "the independents". The latter are the innovators and early adopters, discovering new talent and producing over 80% of all new releases. The independents are responsible for 80% of the sector's jobs, in line with the average 80% of Europe's jobs generated by SMEs. However, the gap between the independents and the majors is huge. The combined market share of the majors (including distribution) is more than 60%, climbing to a massive 95% for Top 100 on radio in Europe. Even the Top 2000 is concentrated - only 10% is estimated to be coming from independent labels.

Major music companies' market power comes from their control of very large catalogues of songs, often considered 'must-have', and which they are able to acquire thanks to financial strength that cannot be matched by the independents. For example, Sony's music publishing division, Sony ATV acquired EMI Music Publishing in the music publishing market in 2018 and doubled its catalogue to a staggering 4.21 million compositions. This has a significant impact on many levels, as concentration in one area can be leveraged to create further concentration in others.

Catalogue is very important today as it generates a significant share of royalties. However, it is becoming harder and harder for smaller players to retain catalogue as they cannot compete with bigger players like the majors, or VC companies mentioned above which sweep in when copyright ends to buy in and exploit catalogue without having to actually invest in the artists concerned.

Another significant general trend is that of gaining market share by 'attrition'. The majors, to preserve and enhance their market share have acquired aggregator and distribution businesses such as the Orchard, Finetunes and Phonofile. In 2021, Sony acquired important independent companies in key markets globally, such as SOM Livre in Brazil and the music catalogue of the Mexican regional label and management company, Remex Music. Sony's recent acquisition of AWAL is also indicative of this trend. These smaller acquisitions serve to strengthen Sony's position in these markets while at the same time eliminating the biggest independent competitors, an approach which appears to mirror that of large companies like Google and Facebook in other markets when competition from new companies offering different models or innovative solutions arises.

This has an impact on the deals and negotiations made by these companies in online markets, as they are able to leverage their interests across their catalogue (as mentioned under q.2). In online markets, this leads to unilateral effects. Concentration and a large, or indeed must-have, repertoire makes it easier for the bigger competitors to extract better terms from digital services. Innovation by digital services is potentially suppressed because the majors have the ability and incentive to use their power to restrict not only the types of offers made available to consumers, but also to influence the look and feel of the service generally – although primarily in respect of start-ups and new entrants. The majors will also have the ability and incentive to ensure digital services guide consumer choice in a non-transparent way by favouring the majors' repertoire (more on that below).

Concentration also allows the majors to leverage their catalogue in the offline as well as related markets – signing artists, synchronisation licensing and other offline exploitation opportunities, distribution services, access to radio and television, media access, potential for further withdrawals of rights from the collecting societies etc.

This power may be compounded by the strategic and vertical links connecting majors and digital platforms, and creating incentives and possibilities for preferential treatment. For example, we understood before (but this might have changed and would need to be checked) that Sony ATV, the leading music publisher and sister company to Sony Music has a 4% stake in Spotify, the market leading digital music provider in the EEA and a 4% stake in Tencent Music, the Chinese music platform. Universal Music, the market leader on the recorded music market and the largest music company in the world, also has a 3,5% stake in Spotify. We also understood that the Swedish digital platform itself has a 9,1% stake in Tencent. Tencent itself now has a 20% stake in Universal Music Group, as well as a 9,2% stake in Spotify. Tencent has also acquired a stake in WMG during that company's recent IPO.

This is likely to have an impact on playlists, for example, which are a vital route to the discovery and consumption of music in the music market today, but for which access is skewed to a significant extent in favour of major record company repertoire, particularly as regards global playlists. See more on the role of playlists under q.18.

This, in turn, strengthens the capacity for online platforms to benefit from direct and indirect network effects – for example, by facilitating exclusive or enhanced partnerships with the major music companies, and access to their key music content - making the platform more attractive to advertisers and other content providers and, in turn, with more attractive content, attracting even greater numbers of users, which has a knock-on effect on the rest.

These elements feed into each other. Armed with significant financial strength, a company will be able to make more attractive deals in online markets, by developing vertical effects and strategic links, leading to a squeezing of smaller companies like independent music labels.

Aside from competition between recorded music companies and as mentioned above, it is also important to mention the effect of the arrival of venture capital companies in the market, which, by providing cash that is not available in the "normal" market, has the effect of distorting the employment market by artificially inflating salaries in a way that independents cannot compete with, therefore putting additional pressure on labels over the daily functioning of their company.

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

Given the difficulties for smaller players to compete in a two-speed market and the problem of the "missing middle" (see more under q.2), the consolidation issues mentioned in q.6 in addition to a worldwide crisis which exacerbated the differences in resources between big operators and independents, it is unlikely that competition will become fairer in the coming years unless a genuine level playing field is achieved.

We would again recommend the CMA to look into the question of whether the music market today has the features required to enable all players to grow, even the smaller ones. As explained above, this is also crucial to consumers as this all has a direct impact on music diversity and culture, as ultimately, only the biggest companies would be allowed to set the musical agenda in the UK and the rest of Europe.

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 do 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?

As explained above under q.2, a label's resources matter to artists, especially with respect to digital exploitation. Artists will be more likely to seek deals with companies that are able to call upon greater resources to maximise digital opportunities. This has an impact on competition, which is compounded when companies benefit from strategic links with digital operators (as explained in q.6).

This is not the only driver however, as some artists choose specifically to work with independent labels, and IMPALA members are more sought after today than ever before. This is also one reason why the acquisition of market share by 'attrition' is worrying, as artists who may have made the conscious choice to work with independent labels see themselves transferred to a major label without a say in the process.

Inevitably, success is as it has always been, a significant lever in the hands of creators to negotiate more favourable terms with their labels. Success not only brings increased revenues for labels and artists alike but also significantly reduces the risks of investment which are far more likely to be recouped if an artist is successful. It is common practice amongst most recorded music labels, large and small, to renegotiate contracts with artists in the artist's favour when that artist is successful.

The EU copyright directive has some provisions to improve the situation of artists, including a contract adjustment mechanism for authors and performers, although those provisions will not benefit artists signed to UK labels as the UK decided not to implement the directive before it left the EU and nor has it yet adopted similar provisions in UK law. The performers' provisions in this directive were all supported by IMPALA's members who are very engaged in relation to the question of remuneration for artists and in the debate around streaming. IMPALA wants to see developments in streaming to help improve revenues, although that does not mean that we automatically agree with all proposals put forward by the artist community.

We welcome the CMA's decision not to look into the question of the so called "Equitable Remuneration" model. In March 2021, IMPALA published a ten-point plan (infographic here, full plan here) with ideas to make streaming fairer and sustainable for all. It rejects equitable remuneration (for performers to negotiate with services for a parallel fee, in line with the outcome on the EU directive) and recommends instead that record labels pay artists a fair contemporary digital rate. We also recommend that services facilitate label search and track titles in multiple languages as a way for services to become more dynamic. And we have a host of recommendations for services to boost local markets in Europe.

The question of equitable remuneration was examined in the negotiations on the European copyright directive and was rejected by all three EU institutions in favour of other reforms (which IMPALA supported in agreement with featured artist organisations). For more on IMPALA's position on this see here, and we summarise some of the key points below:

- The results from a study in the UK done by economic experts Will Page and David Safir for AIM and co-funded by IMPALA are also interesting. The study focusses on the Artist Growth Model (a proposal put forward by AIM, which is also one of the suggested approaches in IMPALA's streaming plan). They concluded that equitable remuneration would lead to:
    - Significant upside for DSPs with less value flowing through the industry and to artists
    - Increased administration costs to be borne by industry – and ultimately artists
    - A decrease in transparency for artists
    - A decrease in investment in artists – and particularly new artists
    - A potential loss of choice for artists – particularly if equitable remuneration results in a drift towards blanket licensing
- Where ER exists, the results are not encouraging and we have seen case studies in Spain for example, showing that artists are worse off and would have received more through their label if ER had not been taken off the top of what is normally paid by digital music services to the label.
- We do not agree that revenues between different participants in the music industry should be reviewed (including publishing and recording) without an analysis of the level of investment risk undertaken by each.
- We ask UK decision makers to analyse fully how risk is spread amongst the various players in the music sector before any further decisions are taken.
- Our job is to make sure that independent labels are able to offer their artists the best deals and thereby to ensure their creative works are properly recognised and available to consumers and music fans who want new releases. That is why we believe IMPALA's streaming plan with multiple proposals is the answer. Whilst it is tempting to believe that there is a silver bullet, the reality is we need cumulative action on multiple levels to achieve real equitable reform of streaming revenues.
- We also place strong emphasis on the role of performance and broadcast rights in enhancing overall levels of remuneration. IMPALA has set up a number of working groups, including one looking at the vital question of whether countries (such as the US) that do not provide producers and performers with performance rights are able to claim revenues from European collection societies. In respect of US sound recordings alone, this could cost European artists and labels €125m euros a year. See more here.
- Finally, we have the WIN Fair Digital Deals Declaration where labels committed to sharing new types of revenue with artists without any contractual obligation. This is another example of the independent sector leading the way on reform of artist remuneration.

9. To what extent can music streaming services seek better terms from recorded music companies?
a. What are the key factors determining the bargaining power of music streaming services in negotiations with recorded music companies?
b. What impact, if any, do recorded music companies' links with music publishers have on these negotiations?

The bargaining power of a DSP when negotiating with a recorded music company is heavily linked to their market strength. For this reason, DSPs will usually be in a stronger position when negotiating deals with independents, than with majors. No DSP can be successful without the repertoire belonging to a major label. Such imbalance in negotiations as regards the independents is even more important when the DSPs use safe harbours laws to impose "take it or leave" deals. This problem has been mitigated through the creation of Merlin, the independent's rights agency as explained above, and the implementation of the EU copyright directive which, if fully and properly implemented will go a long way to address the issue of "value gap" by putting an end to copyright safe harbours and "take-it-or-leave" deals, thus increasing labels' and other creators' negotiating power when dealing with platforms. The proper copyright and licensing framework will in turn make the UUC ecosystem safer and fairer, which will be directly beneficial to fans who won't risk seeing their videos removed. We encourage the CMA to look into the implementation of the EU copyright directive and its impact on competition for smaller players, with a view of reinforcing the UK's own copyright framework.

Of course, strategic and vertical links connecting majors and digital platforms also create incentives and possibilities for preferential treatment, which could also have an impact in the negotiation of agreements between these inter-connected labels and services (see our response to q.6). It is therefore crucial that investigation look at these vertical links between market participants.

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

The issues raised in this response do not however completely prevent the independent sector from competing. The independents are the innovators and early adopters, discovering new talent and producing over 80% of all new releases and are responsible for 80% of the sector's jobs, in line with the average 80% of Europe's jobs generated by SMEs. As explained above, there is no shortage of new (or established) talent looking for the support of an independent label.

What they need however is a level playing field. They need the support of regulators to investigate and restrict anti-competitive behaviour such as that outlined in this response.

11. What barriers, if any, are there to:
a. entry and/or expansion in services offered by recorded music companies; and
b. innovation in relation to these services?

Please see our answers in q.1 and 2, in particular the following:

Barriers to making music are almost non-existent as it is now easier than ever to create and to upload music onto streaming platforms through various means, although it can happen that some streaming services choose to prioritise deals with major labels over smaller players, given the size of their repertoire, as mentioned above. However, barriers to entry and to being able to compete successfully as a professional artist or a professional music company are significant. With 60,000 tracks uploaded every day, competition for those trying to enter and then to grow is much greater than it used to be. Coming to the attention of the consumer is directly linked to a label's resources and position in the market place. In turn, this is what ensures that the consumer is presented with the widest, most diverse and innovative offering possible.

Streaming success comes with a cost in terms of human resources (providing digital expertise) and external expenses (compiling and translating data). This means that artists are more likely to seek companies that are able to call upon far greater resources to maximise digital opportunities.

This also has an impact on diversity, as explained above. Indeed, it is much easier for artists that already have an international reach, or that are supported by the majors to make it in the streaming ecosystem. In consequence it is far more difficult for niche and local artists to gain visibility on music platforms. This in turn will be to the detriment of consumers for whom the breadth and diversity of music will be limited.

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 (see paragraph 95 and 100 above for examples of the types of possible issues the CMA intends to explore)?

Please see our response of q.6 above, and in particular the following:

Consolidation and concentration has an impact on the deals and negotiations made by these companies in online markets, as they are able to leverage their interests across their catalogues. In online markets, they benefit from unilateral effects. Concentration and ownership of large must-have catalogues makes it easier for the bigger competitors extract better terms from digital services. Innovation by digital services is potentially suppressed because the majors have the ability and incentive to use their power to restrict not only the types of offers made available to consumers, but also the look and feel of the service generally – although primarily in respect of start-ups and new entrants. The majors will also have the ability and incentive to ensure digital services influence consumer choice in a non-transparent way, and also in a way that favours their repertoire.

Concentration also allows majors to leverage their catalogue in the offline as well as related markets – signing artists, synchronisation licensing and other offline exploitation opportunities, distribution services, access to radio, television and exploitation opportunities, media access, potential for further withdrawals of rights from the collecting societies etc.

This power is often compounded thanks to strategic and vertical links connecting majors and digital platforms, and creating incentives and possibilities for preferential treatment as we

have explained above at q6, where we have set out some examples of the networks of links between music streaming/digital services and the major music companies.
This has a clear impact on playlists, for example, as we have already explained.

This, in turn, also strengthen the capacity for online platforms to benefit from direct and indirect network effects – for example, by facilitating exclusive or enhanced partnerships with the major music companies, and access to their key music content - making the platform more attractive to advertisers and other content providers and, in turn, with more attractive content, attracts even greater numbers of users, which has a knock-on effect on the rest.

Of course, all these elements feed into each other. Armed with significant financial strength, a company will be able to make more attractive deals in online markets, hence developing vertical effects and strategic links, which contribute to increased concentration by squeezing small companies like music independents further and in turn increasing even more the financial strength of the bigger players.

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?

- We need regulators to analyse how to promote dynamic competition and innovation, including whether the best competitive conditions exist in the market to allow smaller labels to grow, given that they account for 80% of all new releases and thus, through their innovation, widen and diversify the offering to consumers and thus increase consumer choice. This includes looking at the digital market but also the wider context of the physical market, (which continues to play a role) as well as access to markets, radio, TV, other media, control of collecting societies etc.
- Looking into the impact of the value gap is a welcome step, but the CMA should also take into account and examine the absence of UK legislation to match the new Copyright Directive in the EU.
- Continued consolidation should be investigated, including the impact of 'creeping' acquisitions (i.e. the addition of market share by successive acquisitions of smaller, innovative companies), and whether the current framework of merger control and competition rules addresses this properly.
- Consideration should be given to the ability of the majors to leverage their market power to design the look and feel of digital services (especially in respect of start-ups and new entrants), recreating physical market constraints and advantages online, and creating artificial barriers to access to smaller players.
- The trend in the music market regarding the decrease of the price of music should be analysed. Although prima facie good for consumers, this ultimately impacts the growth of smaller players and new, original music to the detriment of consumers ultimately, as it will limit their choice of music, and the diversity of that choice (see our response under q.2).

Competition in music streaming services

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

Most deals with DSPs are very similar. They all have access to more or less the same catalogues, they all offer the same "all-you-can-eat" model through similar subscription tiers (the music catalogue remaining the same across the different tiers) and distribute revenues according to the same model based on market share (i.e. market-centric). We see some attempt from a few DSPs to propose differentiated subscriptions and revenues models, but they are very limited at the moment. Pricing is also generally similar although some DSPs offer enhanced audio quality at the same cost to the consumer. However, the major labels are able, unlike the independents, to offer limited "exclusives", usually time limited, of certain of their repertoire, particularly new releases.

Almost all DSPs offer free "trial" periods of their subscription services, in some cases linked to the purchase of hardware devices (such as phones or tablets) sold by the same controlling organisation.

In parallel, attempts at differentiation are cut short with some DSPs which have the ability to subsidise their competing offerings as they make the vast majority of their revenues from other services and goods as explained under q.1.

For these reasons, the DSPs will rather focus on the platform itself to attract consumers. In particular, curation tools and services to help users navigate repertoire seem to be one of the platforms' main selling points (see below point 18).

IMPALA believes that this lack of differentiation hinders music marketing, prevents the development of new models, ultimately preventing the market from growing. According to IFPI's 2021 "Engaging with music" report, 35% of consumers who didn't subscribe to a paid streaming service said it was because anything they wanted to listen to was available on free video streaming services, such as YouTube.

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

Although new streaming services emerge every year, very few are successful and none have emerged to challenge the dominance of the larger players such as Apple, Spotify, Google/YouTube and Amazon. Negotiating licence agreements with multiple rights holders, including labels, publishers and collective management organisations is both time consuming and expensive as it requires the engagement of experts such as lawyers experienced in the business of music licensing.

The majors in particular will always insist that any new streaming service pay large upfront advances which few new start ups are able to afford. The majors have little incentive to encourage the entry of new players into the market when all of their repertoire is already available on existing platforms which already have negotiated deals in place with those majors and with whom the majors may have existing vertical relationships. It is clearly in the interest of a major with an equity stake in Spotify not to see Spotify's market share be reduced by a new entrant into the market.

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

For the reasons outlined above, we believe that the current market structure is hindering new stand alone entrants in the music streaming business to reach a level where they would be capable of challenging the hegemony of the incumbents. Some are emerging, and it is conceivable that a new entrant supported by the deep pockets of an owner with other business interests (most likely a tech player) could appear, but it is questionable for the reasons outlined above whether the arrival of additional streaming services is likely to change the existing competitive environment.

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

With a large share of overlapping catalogue across platforms, the music available to the consumer may not be the main driver when choosing which platform to use. Other reasons appear more compelling, such as the ease of use or functionality of a particular service, or the bundling of a streaming service subscription with the purchase of an internet or mobile phone subscription. Some services such as Spotify have developed complex algorithms which track consumers' use and make recommendations based on their previous listing habits. These can be highly attractive to consumers looking for new music. Apple mobile phones automatically come with the Apple music app preloaded making it easier for the purchaser of an Apple phone to subscribe. The added availability of "premium" audio files may also have an influence on consumer choice. And of course, advertising by the services themselves creates greater visibility.

Some services tied to larger tech organisations may be used as "loss leaders" to entice users towards other services offered by them.

The anti-competitive behavior of platforms mentioned above, for example, bundling, like Apple's move to roll HD into Apple Music subscriptions at no extra charge while other services were previously charging a 50% premium for HD, can also attract consumers. However, in the context of the overall market, such behaviour can represent a significant loss of earnings for other services, and allows a few services, for which streaming is not their core business, to decide on trends impacting the whole industry. This also impacts innovation as it drives revenues towards some of the biggest players (it is quite telling that this move was initiated by Apple and followed by Amazon).

The fact that users cannot take their library and history with them is a barrier to switching since there can be a lot of work to do on rebuilding personal libraries and playlists. Also where the service doesn't have their history it won't be able to make as good recommendations.

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

Playlists play an important role when it comes to consumers' selection of music.

With millions of tracks already in their catalogues, and with millions more set to be added every year, the streaming platforms clearly need to find ways to help users navigate such a large amount of content.

When it comes to the actual curation by music streaming services - controlled playlists, the algorithms employed by the platforms are arguably becoming more important. This is particularly true of Spotify and Amazon, the latter investing particularly heavily in the voice-control experience, but other platforms will likely follow suit. There are various reasons for this trend and why it is likely to continue:

- The algorithms are getting better at sign-posting and recommending music, partly because technology of this kind is becoming more sophisticated in general, and partly because the more users a platform has and the longer it has been operating, the more data the algorithm has to crunch.
- Few streaming platforms are profitable yet, and while there are various reasons for that, one outcome is that streaming companies are looking for efficiencies, or will be looking for efficiencies in the years ahead, especially in smaller markets. And while some platforms try to distinguish themselves by talking up their teams of human curators, relying increasingly on algorithms to curate is more cost effective.
- Although the gut instinct of most people working in the music industry is that human curation will always be best, one of the key selling points of digital media platforms is personalisation. And obviously it is the algorithm that allows that personalisation.
- Spotify in particular has been experimenting with combining human and algorithm-based curation – what it sometimes calls "algatorial". This means that, while a human curator still compiles a playlist, the algorithm then filters the selected music for each individual user. So the human curator basically compiles a long list and then the algorithm refines that into a shorter list of tracks for each user.
- As more users start to rely on voice control, the algorithm becomes a bigger part of the experience. When asking a device to play music verbally – rather than tapping on a screen or clicking on a mouse – users are more likely to make imprecise requests, relying on the algorithm to translate that request into something tangible. Now, of course, the outcome of that might be that the algorithm selects a human curated playlist, but it seems likely that the outcome will be increasingly personalised.

However, the algorithm employed by each streaming platform is complicated, constantly evolving and not transparent. We need platforms to be more transparent about what has positive impacts on their algorithms and what might "blacklist" a track, so that everyone has equal access to this knowledge.

This is even more important as playlists are a vital route to consuming and discovering music in the music market today, but for which access is skewed to a significant extent in favour of major record company repertoire (in particular as regards global playlists, despite independents accounting for 80% of new releases annually).

Therefore, we also need platforms to demonstrate that their algorithms are not prioritising more mainstream content – either deliberately or inadvertently – and seek ways to ensure that there is more diversity in the music being selected, albeit while continuing to prioritise a positive listener experience.

Some streaming platforms are reported to be creating new music themselves, by paying musicians to write and perform generic music (such as jazz, easy listening, piano or electronic music) which they then "seed" into their offering. This music is paid for through "buy out" deals in which the writer and performer receives a one-off payment. The purpose of this is to reduce their overall royalty cost – the single biggest item of expenditure in their P&Ls. It is possible that some services may include these low cost recordings into the playlists generated by their algorithms.

This transparency issue is one of the reasons why IMPALA does not support Spotify's Discovery Mode, which provides for the payment of lower levels of royalties for plays or privileged treatment in algorithms or other features. In addition, these types of "pay to play" arrangements are similar to the system of "payola" once common in the radio broadcast industry.

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

a. entry and/or expansion in music streaming services; and

b. innovation in music streaming services?

See barriers to cutting through the noise as explained under our responses to questions.1 and 2, as well as our points on vertical integration and strategic links under questions 6, 12, 15 and 16.

Another problem is piracy/unlicensed music as mentioned above: although streaming provided a good and legal alternative to piracy, IFPI's 2021 "Engaging with music" report shows that the availability of unlicensed music remains an issue for the music ecosystem, with almost a third of people reporting to have used illegal or unlicensed methods to obtain and listen to music. This affects innovation across all players in the market.

20.What, if any, competition or consumer issues are there in the supply of music streaming (see paragraphs 98, 100(c) and 103 above for examples of the types of possible issues the CMA intends to explore)?

See our answers to q.2 (value gap and decrease of price of music), q.6 (consolidation, vertical integration and strategic links) and 18 (role of playlists).

In particular, IMPALA would like to stress that these issues only increase the distance between small and big companies in today's music market, which is a two-speed market with a "missing middle". This is also crucial to consumers as this all has a direct impact on music diversity and culture. Continuing down this road would ultimately allow the biggest companies only to set the musical agenda in the UK and in Europe generally.

As explained above, it is important that the CMA looks into the question of whether the music market today has the features required to enable all players to grow, including the smaller ones.

IMPALA believes that as part of the CMA's review of the agreements between music companies and music streaming services, it would also be interesting to assess whether those agreements have a direct impact on how music is promoted on platforms.

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

By encouraging more differentiation between platforms in terms of business models, subscription plans and revenue distribution models. This would also serve the interests of consumers, who would have access to a wider range of offers.

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

- By analysing the control of playlists and other key consumer features in terms of whether the majors dominate access, also taking into account the importance of playlists and the wide audience they reach. Work has been done on this before which showed that access to playlists of digital providers - which are a vital route to consuming and discovering music in the music market today - is skewed to a significant extent in favour of the majors who have extensive back catalogues covering all genres of music, and, in particular, on global playlists, which benefit labels with a presence in many countries of the world. A 2016 report showed that when it comes to the most featured artists on Spotify-curated playlists at that time, Universal claimed the lion's share of repertoire with 12 acts in the Top 20, followed by Sony with 4 and Warner with 3. At that time, XL recordings (with Adele) was the only independent label in the Top 20. In 2016, Adele signed to Sony, one of the three majors, in one of the biggest record deals ever. Although this report is a bit dated, it is very difficult to imagine that things have changed significantly since then, given that the majors continue to dominate the top charts today as well.
- Assessing whether agreements between music companies and music streaming services have a direct impact on how music is pushed on the platform.
- Assessing the access to monetisation systems provided by services and whether all creators can participate in practice, or whether there are thresholds that are applied by services, which mean that some creators are excluded.
- Examining the move by some digital services to reduce royalty payments with "payola" like promotional offers such as Discovery Mode on Spotify.
- Acknowledging that consumer interests are served by consumer choice and cultural diversity and not just about price.
- Investigating whether the digital market is open and competitive, given the presence of four key global digital services all of which are indispensable trading partners for any small player wanting to access the music market to license their music.
- Investigating the importance of the prevalence of algorithms, how they are operated and whom they benefit the most and how they affect consumer choice.

- Assessing the use of tracks owned and created/commissioned by the streaming platforms themselves and whether these are seeded into playlists created by algorithms.

<u>Agreements and inter-relationships between music companies and music streaming services</u>

23. What impact, if any, do equity cross holdings and agreements between music companies and music streaming services have on:
a. competition between music companies; and
b. competition and innovation in music streaming services?

Such cross holdings run the clear risk of major labels offering better deals to streaming services in which they have a financial interest, at the expense of their artists and other streaming services. Likewise, a streaming service with a stake in a major record label may be inclined to offer that label preferential treatment on the service to the detriment of other labels.

A label with an interest in a streaming service may be more likely to provide that service with access to premium or exclusive content.

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 (for example related to back catalogue rights or playlists/recommendations)?

See our answers to q.6 on vertical integration and q.18 on the role of playlists.