

Music and streaming

Market study update

26 July 2022

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The Competition and Markets Authority has excluded from this published version of the market study report information which it considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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1. Introduction

- 1.1 On 27 January 2022 the CMA launched a market study into music and streaming, by publishing a Market Study Notice.
- 1.2 This update paper sets out, based on the evidence we have gathered and reviewed to date, some of the early findings from our study. We do not report on and evaluate all the evidence received, nor seek to cover every issue raised with us. A fuller account will be provided in our final report.
- 1.3 We set out in Chapters 2 and 3 our understanding of how the markets within our scope function and indicate the direction of travel our analysis is taking in Chapters 4 and 5.
- 1.4 We have received a number of requests that we should make a Market Investigation Reference (MIR). In Chapter 6, we have set out and explained the reasoning for the CMA's proposal not to make an MIR at the conclusion of this market study.
- 1.5 Finally, in Chapter 7, we have set out the next steps for the market study and how to respond to our consultation on our proposal not to make an MIR.

Context

- 1.6 Music is a key creative sector for the UK, in 2020 contributing £3.1 billion to the UK economy and £2.3 billion in exports.¹
- 1.7 However, the sector has – like many others – been hard hit by the coronavirus pandemic. The figures above represent a 46% and 23% decrease respectively from 2019.² Live music in particular was heavily impacted, hurting music creators for whom this has traditionally represented a significant revenue stream. Artists were much more dependent on other revenues including those from streaming.
- 1.8 An inquiry into the economics of music streaming by the DCMS Select Committee, published in July 2021, identified concerns that music creators were not getting a fair share of streaming revenues. The DCMS Committee also raised concerns about the role of the three largest global music companies, referred to as the 'majors' (Sony Music Group (Sony or SMG), Universal Music Group (Universal or UMG) and Warner Music Group (Warner or WMG)), recommending that the Government request a CMA market study

¹ UK Music, [This is Music 2021](#), p5.

² UK Music, [This is Music 2021](#), p5.

into what the Committee called ‘the economic impact of the majors’ dominance’.³

1.9 To take forward the issues it identified, the DCMS Committee made a series of recommendations for both legislative reform and policy and regulatory intervention. In response,⁴ the Government set out a range of actions to consider the Committee’s recommendations and better understand the issues. These include the establishment of a Music Contact Group with senior representatives from across the industry; and the creation of technical industry working groups to improve contract transparency and tackle data issues such as the provision of metadata identifying copyrights.⁵ Alongside this, the Government has committed to a research programme, including by:

- (a) the Intellectual Property Office (IPO), on
 - (i) potential options to strengthen creator rights (for example by introducing a right to equitable remuneration⁶ when music is consumed by digital means, a right for artists to recapture the rights to their works after a period of time and the right to contract adjustment if their works are successful beyond the remuneration they receive);
 - (ii) the liability of user-generated content (UGC)-hosting platforms for copyright infringements within such content; and
- (b) the Centre for Data Ethics and Innovation (CDEI), on the impact recommendation algorithms used by streaming services are having on music consumption.

1.10 The Government also wrote to the CMA, requesting its consideration of a market study. Following consideration by the CMA’s Board, the CMA launched a market study into music and streaming on 27 January 2022.

³ The DCMS Committee also recommended that the CMA consider exploring designating YouTube’s streaming services as having ‘Strategic Market Status’ (SMS) under the proposed new pro-competition regime for digital markets. The Queen’s speech committed to publish a draft Bill to create new competition rules for the largest digital firms which would be overseen by the Digital Markets Unit. The Government’s proposals for such a regime are set out here: [A new pro-competition regime for digital markets - government response to consultation](#). Until that new regime is in force, the CMA has no power to designate firms with SMS and this recommendation is therefore outside the scope of this market study.

⁴ House of Commons Digital, Culture, Media and Sport Committee (2021), [Economics of music streaming: Government and Competition and Markets Authority Responses to Committee’s Second Report](#).

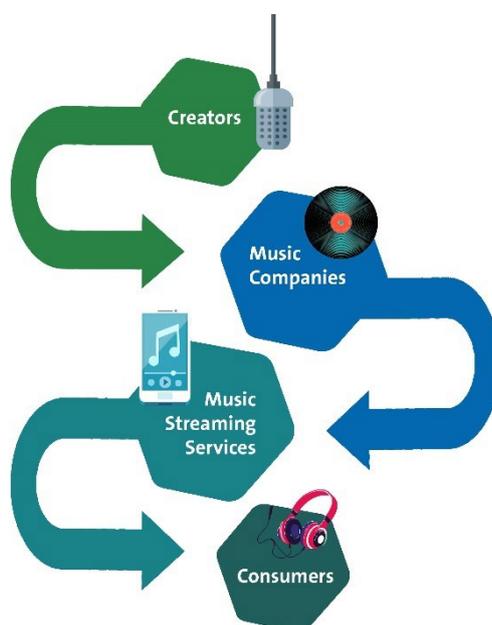
⁵ Metadata is the data associated with tracks which provides information on the artist(s) and songwriter(s), as well as other features such as length, genre, etc.

⁶ Equitable remuneration, which currently applies in the UK in respect of radio and TV broadcasts and public performances (eg in pubs, clubs, shops, etc.), provides an automatic, unalienable, non-transferable statutory right for performers to share in recording revenues.

Scope

- 1.11 As set out in the CMA's Statement of Scope published on 27 January 2022, our study considers the market for the supply of music, from the creators of music through to the consumer, in particular via music streaming services.⁷
- 1.12 In this context 'creators' covers all the many contributors involved in the making of music, but in this document, unless otherwise specified, will tend to refer particularly to songwriters (by which we mean both composers and lyricists) and artists (by which we generally mean featured artists⁸ unless stated otherwise).

Figure 1.1: The music streaming value chain



Source: CMA

- 1.13 The CMA's market study covers two key levels of the music streaming value chain:
- (a) The products and services offered by music companies including in recorded music and music publishing; and
 - (b) The provision of music streaming services to consumers.

⁷ See the [CMA Notice of 27 January 2022](#) for this market study.

⁸ Featured artists are the main artists featured on a recording. Other artists and musicians may also contribute to the recording and are referred to as non-featured artists.

1.14 Our focus within each of the above is, respectively:

- (a) On recorded music. As noted in our Statement of Scope, this is because most of the possible concerns with a key competition or consumer element link back to possible issues in recorded music.⁹
- (b) On consumer outcomes. This reflects our statutory remit and is not intended to downplay the critical role of creators. We have nevertheless considered and set out some general views on outcomes for creators (in particular, artists given our focus on recorded music) as these outcomes are relevant to the sustainability of the market and the consumer.

1.15 We have consulted a large number of parties throughout the last six months, which has enabled us to gather a broad range of evidence that reflects a diverse set of perspectives. This has involved a high volume of submissions from parties in response to our Statement of Scope, numerous meetings and discussions, and our formal requests for information. We are grateful to all those parties who have engaged with our work and enabled us to make substantial progress in the first half of our market study.

Structure of this paper

1.16 The remainder of this document will set out:

- (a) the background to the sector, with a particular focus on changes that have been brought about as a result of digitisation more widely and streaming more specifically;
- (b) further detail regarding the value chain;
- (c) further detail regarding licensing agreements in the sector;
- (d) our emerging thinking regarding competition in the sector;
- (e) our current views on whether an MIR is required; and
- (f) the next steps.

⁹ See paragraph 85 of the CMA's [Statement of Scope](#).

2. Background

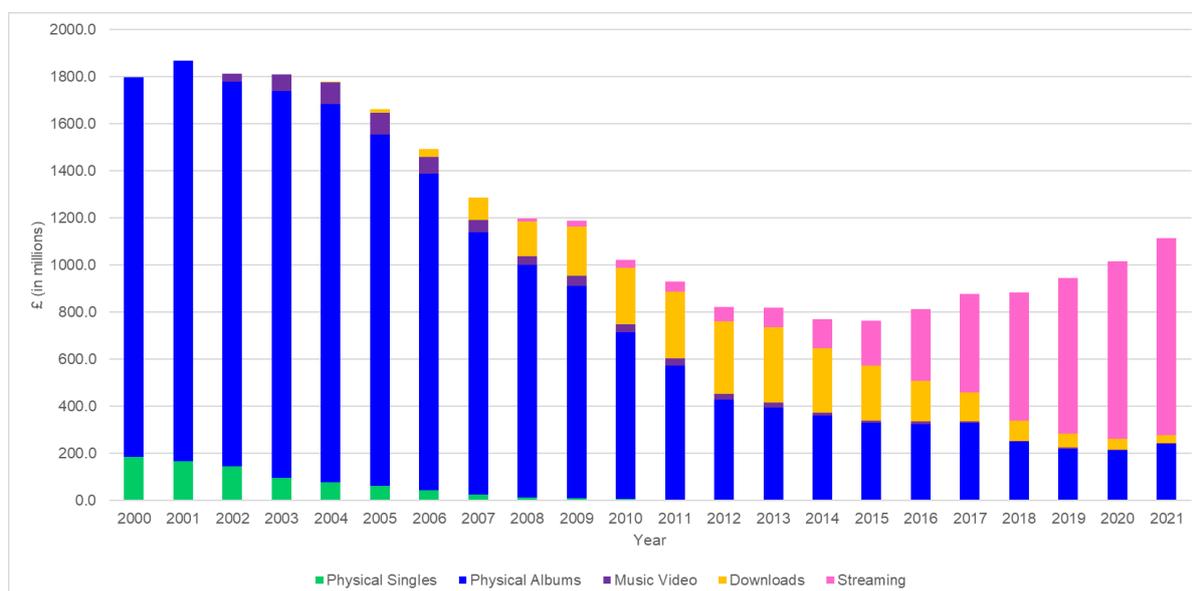
The impact of digitisation and streaming

- 2.1 Digitisation and technological change have had a profound impact on the music sector over the last twenty or so years. In particular, the ability to listen to music through digital audio files transformed consumer behaviour and expectations to which the sector had to respond. It is no longer necessary to visit a bricks and mortar shop to purchase a physical CD or record in order to listen to music.
- 2.2 The growth of the internet enabled audio files to be shared and gave consumers access to vast libraries of music at the click of a button.
- 2.3 However, digitisation initially led to an increase in illegal file sharing. This had a profound effect on the industry for a period of time. Sales of CDs, both singles and albums, fell considerably and, significantly, music industry revenues dropped dramatically. Between 2001 and 2015, UK recorded music revenues dropped around 60% from £1,868 million to £761 million (see Figure 2.1).
- 2.4 In response to this rise in piracy, new models for listening to music emerged. Initially this was in the form of legal downloads of music such as through Apple's iTunes store. Consumers were able to purchase individual tracks or albums that they owned and could listen to when they liked. This had some limited success in reversing the revenue decline.
- 2.5 The game-changer came following the introduction of music streaming services. The first of these in the UK was Spotify in 2008. In contrast to the 'download' model, streaming services give consumers ongoing, legal access to vast catalogues of music as part of a subscription or for free if they are willing to listen to advertisements. This has now become the dominant means of consuming music in the UK – in 2021, more than 80% of music was listened to through streaming services.¹⁰
- 2.6 Importantly for the music industry, streaming has driven an increase in recorded music revenues from the low point of £761 million in 2015 to £1,115 million in 2021 (see Figure 2.1). Streaming now accounts for around three quarters of UK recorded music revenues. While revenues are increasing,

¹⁰ BPI (2021), *BPI publishes its yearbook "All About the Music 2021"*.

recorded music revenues in real terms remain significantly below their peak in 2001.

Figure 2.1: UK inflation-adjusted recorded music revenues between 2000 and 2021 by format type



Source: CMA analysis of data from the BPI.

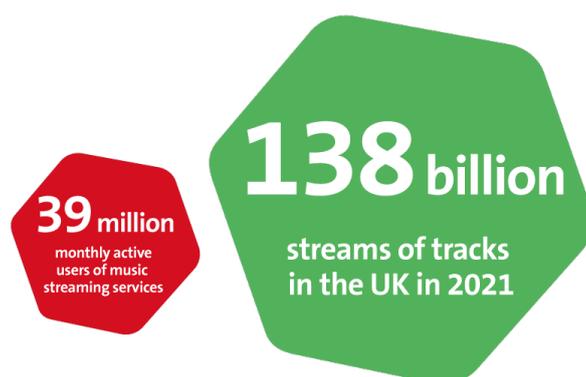
Notes: Inflation adjustment using the [ONS CPI Index 22 June 2022](#)

2.7 Streaming has been a success because of what it provides to consumers. The predominant model is an ‘all you can eat’ one – there are no additional charges for listening to lots of music. As we discuss below, this has implications for the money flows throughout the value chain. The success of streaming can be shown by the number of people using streaming services. In December 2021, there were 39 million monthly active users of music streaming services in the UK.¹¹ In total, tracks were streamed more than 138 billion times in 2021.¹²

¹¹ CMA analysis of data from music streaming services. Monthly active users are the number of unique users who stream on the platform in a given month. If the same user streams on multiple streaming services they would be considered a monthly active user on each.

¹² CMA analysis of data from Official Charts. Official Charts is a joint venture operation owned by the BPI (representing the British recorded music industry) and the Entertainment Retailers Association (representing entertainment retailers and digital services from HMV, supermarkets and indie stores through to Amazon MP3, Spotify and Netflix). The role of the company is to commission, market, distribute and manage the UK’s official music and video charts. Sales data is currently collected on Official Charts’ behalf by the market research company Kantar. See [Official Charts website](#).

Figure 2.2: Total number of monthly active users and streams in the UK, 2021



Source: CMA

- 2.8 A key feature of the most popular streaming services is their ‘full catalogue’ of music.¹³ A single subscription or account allows consumers to listen to almost the entire history of recorded music. It is not necessary to have a different subscription or account for different genres of music or for music owned by different music companies. Most major streaming services offer catalogues with more than 75 million tracks. The ‘full catalogue’ approach has become the predominant model for music streaming services because it is popular with consumers.
- 2.9 Streaming services also offer a range of features that are attractive to consumers. The vast catalogue of music that is available means there is value in its organisation so that consumers can easily find what they want. Consumers can search for particular tracks or artists and they can create their own playlists of music they like. Streaming services themselves create playlists (both via algorithms and their editorial teams) around different artists, genres and themes, for instance to accompany workouts or focussed on new releases or new artists. They also have sophisticated tools to make recommendations of music consumers may like based on what they have listened to previously. Consumers can share music with friends through streaming services and can follow artists or playlists they particularly like.
- 2.10 With a ‘full catalogue’, older music (the so-called ‘back catalogue’, which in our analysis we have taken to be music older than 12 months) is readily available and represents a very high proportion of streams (rising from 76% in 2017 to 86% in 2021).¹⁴ Before streaming, since record shops had finite shelf space, such music would have had comparatively few options for ongoing

¹³ There are some streaming services that offer a limited catalogue, for instance Prime Music, or which specialise in certain genres, for example Idagio.

¹⁴ CMA analysis of data provided by Official Charts.

monetisation. The value of the back catalogue has increased considerably in recent years. This is because of the rise of streaming as well as new ways to monetise music content.¹⁵ As such, the back catalogue is now considered as a new asset class. The rights for such music are being bought for large sums of money by music companies, private equity firms, and institutional investors.¹⁶

- 2.11 This change in the way music is consumed has also changed the profile of recoupment by music companies. In the past, sales in the first few weeks after the release of an album would have been crucial. Now, revenue and royalties can be earned over a much longer period of time and also means that music that is listened to repeatedly will be rewarded accordingly. Before streaming, how often a track or album was listened to after it had been purchased had no impact on revenues. These differences may change how music companies make investment decisions, such as reducing marketing spend associated with releases and redirecting to more continuous engagement.
- 2.12 Digitisation has had other impacts on music companies and artists. The cost base of music companies has shifted away from the physical production and distribution of music to digital distribution. Promotion of artists is now much more digitally orientated, including on music streaming services but also through social media and 'user-uploaded content' (UUC) platforms such as YouTube.
- 2.13 Music companies now use social media and platforms such as YouTube to find new talent and spot emerging trends. Artists themselves (as well as music companies) can self-promote through social media and build a fanbase. They are also able to by-pass traditional music companies and upload their music directly to streaming services. This has led to significant increases in the quantity of music being supplied – around 60,000 new tracks are added to Spotify every day.¹⁷
- 2.14 There is more data available than ever before about what music is being listened to, how often, and the characteristics of those listening. This can help artists demonstrate their value to music companies and it can inform decisions by music companies about their investments and promotions.

¹⁵ New use cases for music licensing include fitness, gaming and social media. For example, see Music Business Worldwide (2021), [Welcome to the new record business: Warner Music Group is now generating over \\$270m from TikTok, Peloton, Facebook and other 'alternative' platforms annually.](#)

¹⁶ For example, see Financial Times (2022), [Warner Music and BMG battle it out for Pink Floyd's back catalogue](#) and Financial Times (2021), [Song lyrics strike a chord with private equity.](#)

¹⁷ Music Business Worldwide (2021), [Over 60,000 tracks are now uploaded to Spotify every day. That's nearly one per second.](#)

The market today

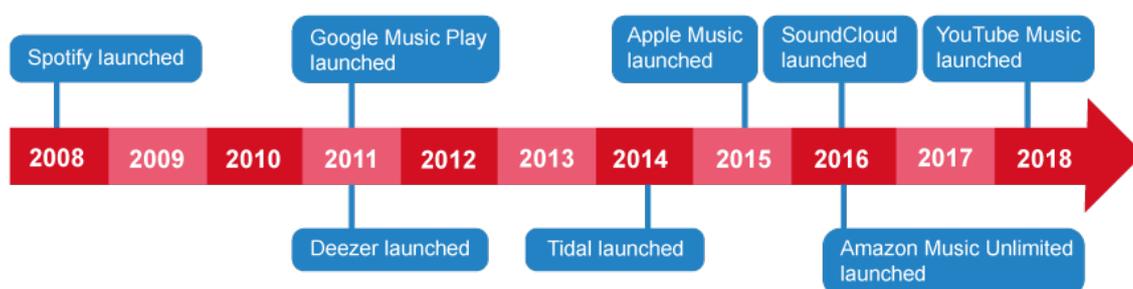
2.15 Given this context, we set out here some of the key features of the UK market today. In the following chapter we describe in more detail the value chain and the different types of firms within it.

The availability and use of streaming services

2.16 There are a number of firms offering music streaming services in the UK. Following Spotify's entry in 2008 there are now multiple firms offering music streaming services, including Amazon, Apple Music and, more recently, YouTube Music. Spotify is a standalone streaming service, whereas Amazon, Apple Music and YouTube Music are offerings amongst a much wider range of products and services by large integrated tech firms. The other main market participants are Deezer, Tidal and SoundCloud, all of which are dedicated streaming services. We refer to all of these streaming services as 'commercial content' streaming services: they rely on commercial licences for the supply of content.

2.17 UUC platforms, most significantly YouTube (as distinct from YouTube Music) but also SoundCloud, are another way consumers can access music. These platforms allow users themselves to upload content, including copyrighted content, for other people to consume. In the case of YouTube this content includes, but also stretches well beyond, music.

Figure 2.3: Timeline of entry to UK market by main music streaming services

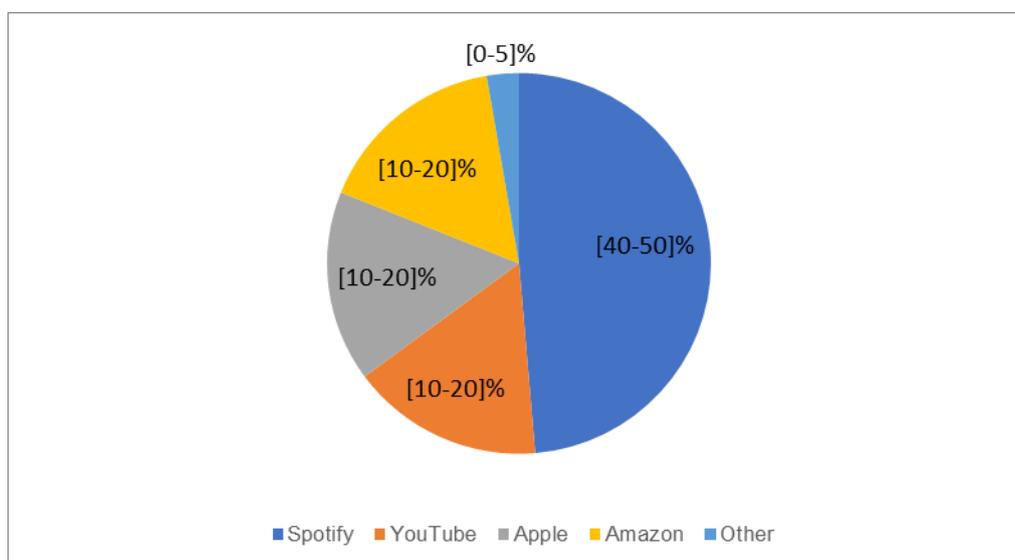


Source: CMA analysis.

2.18 Each of the commercial content streaming services offer premium subscription plans for consumers. The headline price of subscriptions for individual access to a standard tier is clustered around £9.99 a month, and has stayed remarkably stable over time. Price variation has occurred primarily via the offering of alternative tiers with different features (eg higher audio quality) or access (eg permitting 'family' use or limiting use to single devices).

- 2.19 Most streaming services also offer tiers that are free to consumers, but which make money from advertisements – so-called ad-funded tiers. As well as requiring customers to hear ads, these tiers typically have reduced functionality compared to paid-for tiers. For instance, users may be limited in the number of tracks they can ‘skip’ or unable to download tracks for offline listening. The rationale for these tiers is to try to bring in customers who might not otherwise use streaming services and to seek to upsell them to paid-for tiers from which considerably more revenue is derived.
- 2.20 YouTube, as the main UUC platform, is primarily ad-funded. It has been argued that this access to music for free contributes to a sense that music does not need to be paid for, thereby decreasing people’s willingness to pay, and depressing the pot of revenue available to music companies and creators.
- 2.21 The market share by revenue of the commercial streaming services and YouTube’s UUC platform (Figure 2.4) shows the strong position that Spotify, Amazon, Google and Apple have in the market. Between them they account for [95-100]% of revenue. When we remove YouTube’s UUC platform (Figure 2.5), Spotify’s share of streaming revenues is [50-60]%.

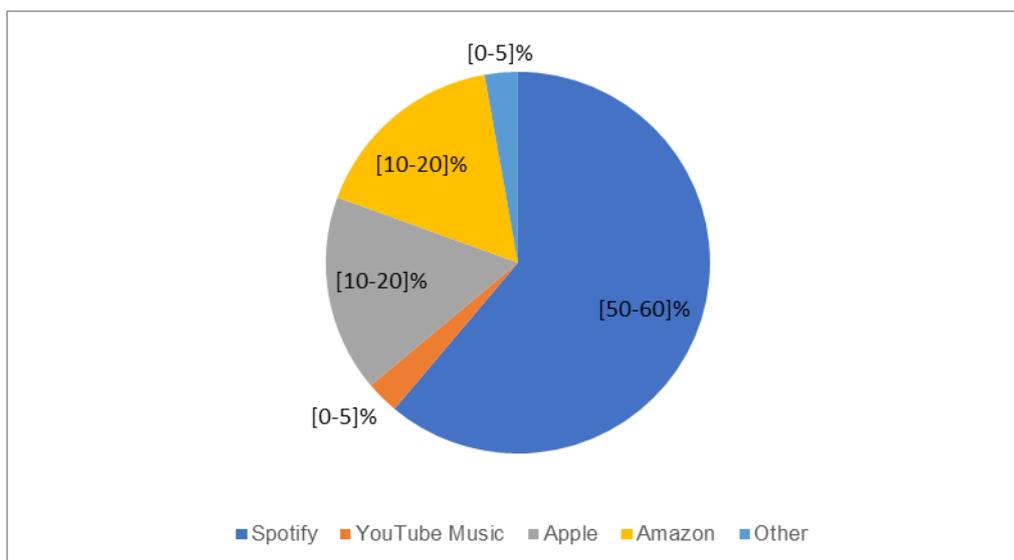
Figure 2.4: Share of UK streaming revenues, 2021



Source: CMA analysis of data from music streaming services.

Notes: This pie chart is for illustrative purposes only. Revenue shares only account for Spotify, YouTube, Apple, Amazon, Deezer, Soundcloud and Tidal which have a combined streaming share of over 99% according to CMA analysis of data provided by Official Charts. These figures are provided in a 5% range where the figure is below 10%, and a 10% range where the figure is between 10% and 100%. The midpoints of the ranges have been used to provide an illustration of relative size in the market. Where the sum of these midpoints does not equal 100%, we have scaled the pie chart so that the area segments represent the share of the sum of the midpoints.

Figure 2.5: Share of UK streaming revenues excluding YouTube’s UUC platform, 2021



Source: CMA analysis of data from music streaming services.

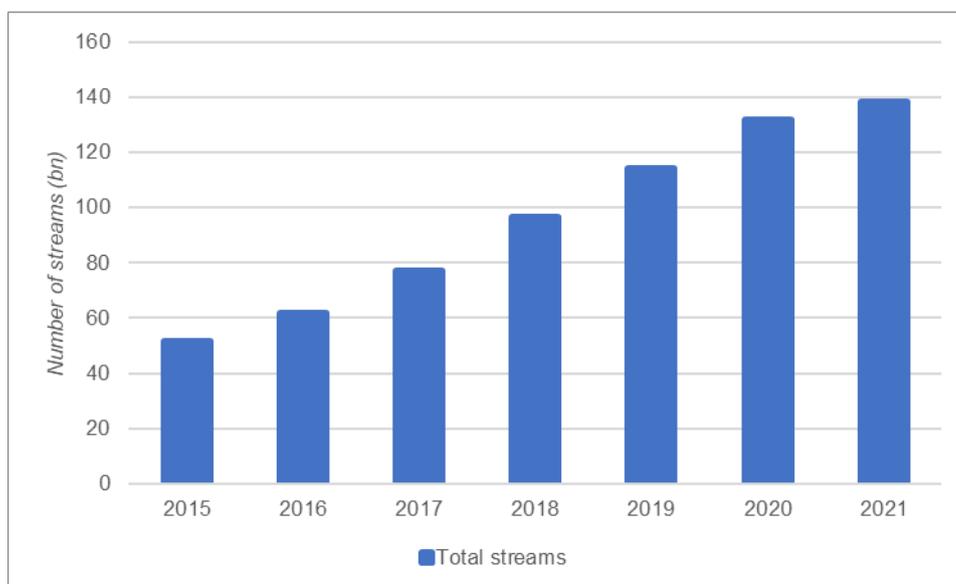
Notes: This pie chart is for illustrative purposes only. This excludes YouTube Premium and YouTube ad-supported revenues (so YouTube Music only includes YouTube Music paid-for subscriptions). Revenue shares only account for Spotify, YouTube Music, Apple, Amazon, Deezer, SoundCloud and Tidal which have a combined streaming share of over 99% according to CMA analysis of data provided by Official Charts. These figures are provided in a 5% range where the figure is below 10%, and a 10% range where the figure is between 10% and 100%. The midpoints of the ranges have been used to provide an illustration of relative size in the market. Where the sum of these midpoints does not equal 100%, we have scaled the pie chart so that the area segments represent the share of the sum of the midpoints.

- 2.22 Most of the commercial content streaming services offer a ‘full catalogue’ of content so they seek to differentiate themselves on the features they offer. These include the quality of the sound, the user interface, their playlists and increasingly through non-music content such as podcasts. Some also offer UUC alongside official music content.
- 2.23 The evidence shows the growing popularity of music streaming services. In Ofcom’s most recent audio survey, the proportion of people reporting using a streaming service at least once a week was around one half. The only form of music consumption undertaken by a greater proportion of people on a weekly basis was listening to the radio.¹⁸ Our analysis shows that the total number of monthly active users of streaming services is 39 million, up from just over 32 million in 2019.¹⁹
- 2.24 Unsurprisingly, with more people using streaming services the number of streams in the UK has risen. In 2015, there were around 50 billion streams per year, whereas in 2021 there were around 140 billion.

¹⁸ Ofcom (2022), [Audio Survey](#), question 1.

¹⁹ CMA analysis of data from music streaming services.

Figure 2.6: Number of total UK streams



Source: CMA analysis of data from Official Charts.

Note: Includes music streams from all commercial content music streaming services counted by Official Charts including YouTube's UUC platform.

The supply of music

- 2.25 There has been consolidation among the major music companies of whom there are now three – Sony, Warner and Universal, collectively ‘the majors’. The role they play is explained in Chapter 3, but it is notable that their individual and combined market share is persistently high. In terms of their share (by volume) of total UK streams, the majors accounted for over 70% in 2021 – a similar proportion as in 2015.²⁰ Their music dominates the popular charts. The combination of the rights they hold in recordings along with the rights they hold in publishing, means that in 2021 they collectively had some form of rights in 98% of the top one thousand singles.²¹
- 2.26 Along with the major music companies there are hundreds of smaller ‘independent’ or ‘indie’ labels. New types of providers helping artists self-release their music have also emerged in the wake of digital distribution. These include artist and label services companies, as well as ‘DIY’ distributors that focus on putting music onto streaming services at low cost, helping artists to by-pass the involvement of a traditional music company if they wish. Together these smaller labels and providers account for around one quarter of streams, although only 2 have a market share in excess of 1%.²²

²⁰ See Table 3.2.

²¹ See Figure 3.3.

²² BPI (2021), All about the music, p48.

- 2.27 Traditional labels – both major and independent – continue to play an important role in developing and ‘breaking’ artists. However, today there are more routes to market than ever before for artists, sparking a significant rise in artist numbers (with the numbers being streamed in the UK up from around 200,000 in 2014 to around 400,000 in 2020).²³ Artists do not need to opt for a label, but for many this can still be very attractive for upfront financing and prestige. Without a label, artists may be able to keep more control of their music rights and thus earn more over the long term, but at the cost of greater risk in the event they are unsuccessful. For those noticed by a label, the terms on offer may be more beneficial than in the past given the wider range of options available to artists. But given the crowded artist marketplace, only a select few will catch the attention of any label, let alone receive competing offers, so for many the scope for negotiating better terms is limited.
- 2.28 Whichever path is taken, music remains a risky business. The growth in artist numbers under streaming has arguably made it even more difficult for artists to break through at scale. Even with label support, failure rates remain high, with the BPI noting that approximately only one in ten investments made by record labels breaks even on the upfront label investment.²⁴ Effective data analytics and social media marketing (including on UUC platforms) appear to be increasingly important factors in online success.
- 2.29 The surge in artist participation has also impacted upon remuneration. Prices for music streaming services have been relatively stable for some time and tend to take the form of flat monthly fees. This means that with more artists and more streams being played, the average value of each stream and the average earnings per artist fall. As such, thousands or even millions of streams are now commonplace – a million streams per month will earn an artist around £12,000 a year.²⁵ Further, as noted above, each artist is competing harder than ever before for each of these streams, both with new artists and (in the form of the back catalogue) all the music ever made, all within the constraints of consumers’ finite attention. Artists on old contracts may also see more limited benefits from the uplifted value in back catalogue if the original royalty rate applied is significantly lower than standard streaming rates for new contracts, or if their physical sales had left them with debt to their label to be paid off or ‘recouped’ from ongoing royalties – however, the majors have recently forgiven such debt for some artists.²⁶

²³ IPO (2021), *Music Creators’ Earnings in the Digital Era*, Table 6.4, p201.

²⁴ BPI (2020), Submission to the DCMS Select Committee (EMS0208), p13.

²⁵ CMA analysis of data from the majors.

²⁶ See: [Sony Music launches ‘Legacy Unrecouped Balance Program’ \(musically.com\)](#); [WGM follows Sony Music in tackling unrecouped artists problem - Music Ally](#); [UMG wipes out unrecouped balances for legacy artists’ royalties | Labels | Music Week](#).

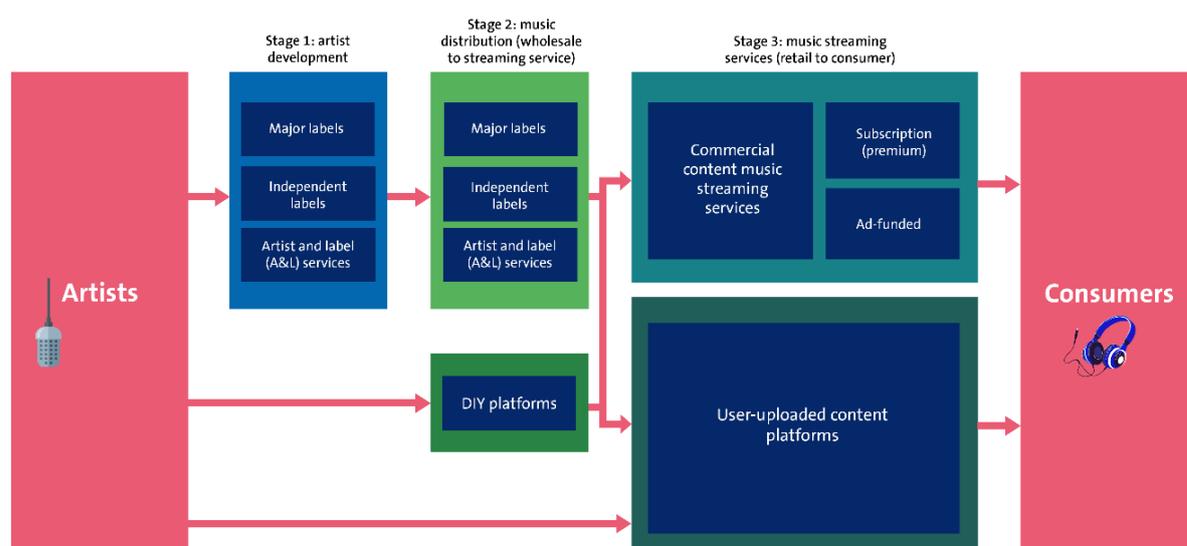
2.30 However, streaming should also be considered within the wider music ecosystem. A presence on streaming services is key to building up an artist's brand, but its value has traditionally also been measured by its impact on their wider career. Many artists derive the main part of their income from live music and these past two years have therefore been exceptionally challenging as these income streams shut down under the pandemic.

3. Value Chain

Overview

3.1 Figure 3.1 provides an overview of the structure of the music streaming value chain. This is a complex landscape with a wide range of entities involved, firstly in developing the artists who record the music songwriters create, then distributing their recordings (typically under licence) to music streaming services who make this music available to consumers. Music is subject to various intellectual property rights: rightsholders can license their music directly, or via third parties such as music companies, collecting societies or Merlin.²⁷ Some music streaming services obtain their music content from music companies ('commercial content music streaming services') while others ('UUC platforms') obtain their content from users (generally consumers, but also creators or music companies).

Figure 3.1: The music streaming value chain in more detail



Source: CMA

Note: the value chain above starts with songwriters who write the songs that artists record (some artists may also be songwriters). Music streaming services will also license song rights, which are typically administered by publishers and collecting societies (CMOs).

3.2 This value chain straddles both recorded music and music publishing, which involve distinct, but complementary, intellectual property rights and activities (wider than streaming).

²⁷ Merlin is an organisation which negotiates with streaming services on behalf of a collective of independent labels, charging a small administration fee (see the [Merlin website](#)).

- 3.3 The creation, distribution and licensing of sound recordings is referred to as 'recorded music'. Record companies:
- (a) sign and provide services to develop artists; and/or
 - (b) distribute and license rights in the sound recordings created by artists to retailers.
- 3.4 The music industry also includes 'music publishing', where companies:
- (a) sign and provide services to develop songwriters; and
 - (b) manage and license the rights in their musical compositions ('songs'), including when sound recordings of the songs are played.
- 3.5 Recorded music is monetised through five primary means:
- (a) Streaming: payments by consumers and advertisers for on-demand streaming of music (and music videos).
 - (b) Physical sales: payments by consumers for the sale of physically reproduced sound recordings (on CDs, vinyl and cassettes).
 - (c) Downloads: payments by consumers for the online purchase of music in digital format.
 - (d) Performance rights: these include payments by TV and radio stations for the right to use music as part of broadcasts; and payments for the public performance of music in venues such as shops and restaurants.
 - (e) Synchronisation (sync): payments for the use of music in (or 'synchronisation' of music with) film, TV shows, TV adverts, video games and other forms of audio-visual media.
- 3.6 In addition artists may generate income from live performances and tours and from the sale of merchandise. These sources of income may be separate from the terms of deals with their label or other distribution service provider or may be included in '360 degree deals'.

Music rights

- 3.7 Under UK copyright law (the Copyright, Design and Patents Act 1988 or CDPA), separate copyrights are associated with the musical composition (with separate copyrights in the music and in the lyrics) and the actual recording of

a song. These copyrights are referred to, respectively, as ‘song rights’ or ‘publishing rights’, and ‘sound recording rights’ or ‘master rights’.²⁸

(a) Song/publishing rights last for the lifetime of the copyright owner plus 70 years.²⁹

(b) Sound recording/master rights last for 50 years from the making of the recording or 70 years from the recording being published or made available to the public.³⁰

3.8 Under UK copyright law, the copyrights in the song and the recording are automatically vested in the songwriter(s)³¹ and producer(s) respectively. A producer, in this specific context, is defined as ‘the person by whom the arrangements necessary for the making of the sound recording [...] are undertaken’.³² As such, the copyright to a sound recording may be owned by a music company that organises the recording on behalf of the performers it represents. Alternatively, the performer(s) may organise the production themselves and own the copyright to the recording.

3.9 Copyright owners and performers have certain rights over their music. In the UK:

(a) The law specifies certain acts that only the copyright owner is entitled to undertake (or license or assign to another party to undertake): the reproduction right, the distribution right, the rental right, the public performance right, the communication to the public right (CTP, and its subsets, the broadcast right and the making available right), and the adaptation right.^{33,34}

(b) Alongside copyright owners, performers are automatically granted a separate category of rights known as ‘performers’ rights’³⁵ that give the performer a number of moral and economic rights in the recording:

²⁸ For a more detailed discussion of music rights, see for example a report commissioned by the IPO (2021), [Music Creators’ Earnings in the Digital Era](#), Chapter 2, and [Music Copyright Explained](#), a guide commissioned by the IPO and produced by CMU Insights.

²⁹ CDPA 1988: s.12(1).

³⁰ CDPA 1988: s.13A.

³¹ In this document, the term songwriters is used to refer to both composers and lyricists (as is common in the industry) notwithstanding that composers and lyricists have distinct rights under copyright law.

³² CDPA 1988: s.178.

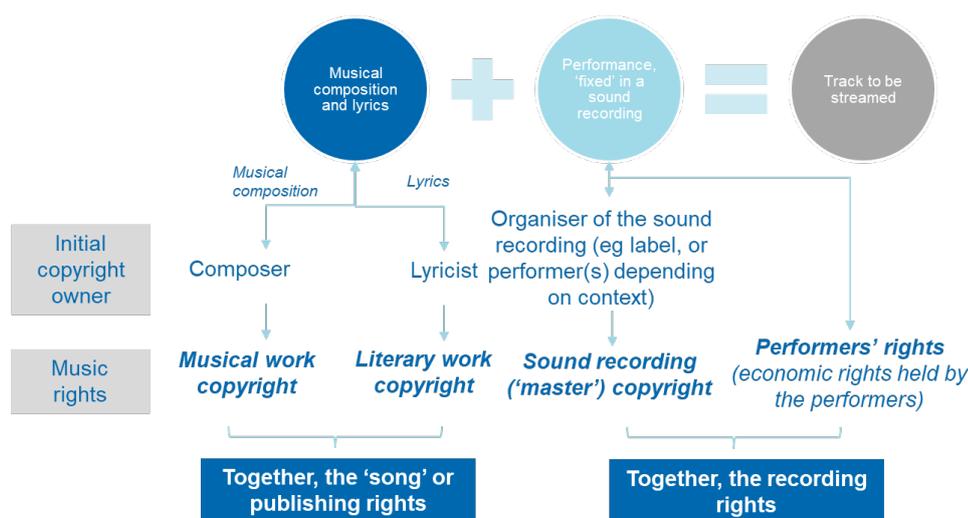
³³ Report commissioned by the IPO (2021), [Music Creators’ Earnings in the Digital Era](#), p9 (see: ‘Rights’).

³⁴ The reproduction and distribution rights are sometimes grouped together and referred to as ‘mechanical rights’. The public performance right and the CTP rights (both the broadcast right and the making available right) are sometimes grouped together and referred to as ‘performing rights’. See [Music Copyright Explained](#), p4.

³⁵ Report commissioned by the IPO (2021), [Music Creators’ Earnings in the Digital Era](#), p8 (see: ‘Performers’ rights’).

- (i) in respect of the reproduction, making available, distribution, rental and lending rights, it is not possible to exploit a performers' work in recorded form without gaining their 'consent';³⁶ and
- (ii) in respect of public performance and CTP rights (excluding the making available right), it is not possible to exploit a performers' work in recorded form without paying equitable remuneration.³⁷

Figure 3.2: Music rights and the rightholders for a stream



Source: CMA

3.10 Different rights are engaged depending on how the music is used. For on-demand streaming,³⁸ the reproduction and CTP (making available) rights are generally understood to apply³⁹ and (to the extent that they are exclusive) can be licensed or assigned (transferred) by copyright holders and performers.

³⁶ CDPA 1988: s.180(1).

³⁷ CDPA 1988: s.182D(1). Equitable remuneration is not defined in law, so is worked out by the music industry. The UK industry norm is a 50/50 split between the artist and any corporate partners.

³⁸ For further detail, see for example the report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, p60-61.

³⁹ We note existing debate regarding whether the making available right is the appropriate right to apply in a streaming context, for example in light of how consumers access music streaming services and the increasing prevalence of passive or 'lean-in' listening on these services such as via stations, autoplay and playlists. See for example House of Commons Digital, Culture, Media and Sport Committee (2021), *Economics of music streaming: Second Report of Session 2021-22*, paragraphs 61 to 69.

Music companies

The majors

3.11 Collectively, the three largest global music groups (Sony, Warner, and Universal) are generally referred to as ‘the majors’. As is common among music companies,⁴⁰ they have both recorded music and music publishing businesses.

Table 3.1: The major music companies

		<i>Sony Music Group</i>	<i>Warner Music Group</i>	<i>Universal Music Group</i>
Corporate structure		Sony Group Corporation is headquartered in Japan; and listed on the Tokyo Stock Exchange and the NYSE.	Warner is headquartered in the US and has been publicly traded on the NASDAQ since June 2020. ⁴¹	Universal, previously owned by Vivendi, was listed on the Euronext Amsterdam in September 2021, with 60% of Universal's share capital distributed to Vivendi shareholders at the time. Universal's corporate headquarters are in the Netherlands and its operational headquarters are in the US.
Recorded music	Main business division	Sony Music Entertainment (Sony Music)	Warner Recorded Music	Universal Music Holdings Limited
	Other subsidiaries providing artist and label / digital distribution services	The Orchard; AWAL	ADA	Virgin Music Label & Artist Services; Ingrooves Music Group; Spinnup
	FY21 global revenues	\$4.7 billion	\$4.5 billion	€6.8 billion
Music publishing	Main business division	Sony Music Publishing	Warner Chappell Music	Universal Music Publishing Group
	FY21 global revenues	\$1.4 billion	\$0.8 billion	€1.3 billion

Source: CMA, based on information from the majors and published financial data.

3.12 As will be seen in the rest of this chapter, the majors have a significant share of the music market – both globally and in the UK – which has arisen in part from consolidation over time.⁴² Together, in 2021 they held overall market shares of 73% in recorded music (based on their shares of UK streaming

⁴⁰ Association of Independent Music (AIM) (2001), Submission to the DCMS Select Committee ([EMS0157](#)), p14.

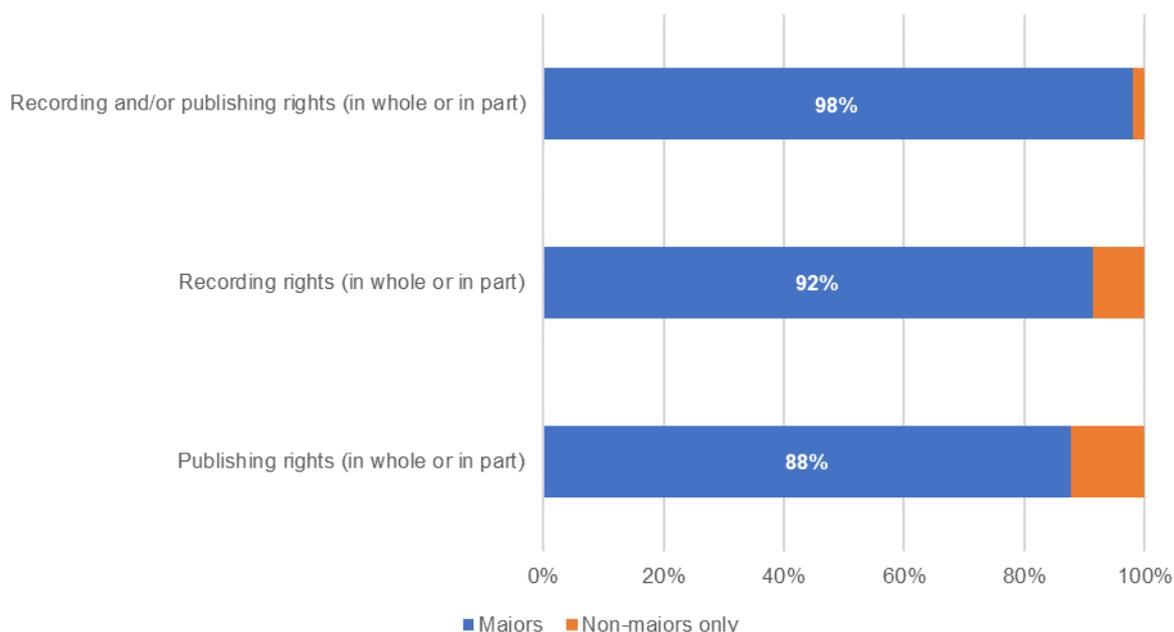
⁴¹ Warner Music was previously listed on the NYSE. It was privatised when acquired by Access Industries in 2011, and subsequently listed on the NASDAQ. See [Warner Music Group - Access Industries](#) and [What's Playing at Warner Music? | Nasdaq](#).

⁴² Over the last 25 years, the number of major record companies reduced from six (including Polygram, BMG and EMI) to three. In 1998, Polygram was acquired by Seagram (then Universal's parent company). BMG's recording operations merged with Sony in 2004, eventually becoming Sony Music Entertainment in 2008. In 2012, EMI was acquired by Universal, with its publishing operations sold to Sony, and some of the merged entity's recording labels sold to Warner.

revenues from the largest music streaming services – Apple, Amazon and Spotify) and [50-60]% in music publishing (based on PRS data).⁴³

3.13 These shares increase significantly when focusing on rights to the top UK hits based on streams as shown in Figure 3.3.

Figure 3.3: Share of the Top 1000 UK singles in 2021 where the majors have recording or publishing rights



Source: CMA analysis of data from the majors.

3.14 The majors also have holdings in Spotify and/or other music streaming services. For Spotify, this dates back to its initial launch and initial shareholdings were in the region of 5%.⁴⁴

3.15 When Spotify went public in 2018, Warner sold all of its shareholding for \$504m and has paid its artists royalties on the proceeds from the sale.⁴⁵ Sony Music sold 49% of its shareholding and shared approximately \$250 million of its gain with its artists and distributed labels, without regard to recoupment.⁴⁶ Universal did not divest its shares.⁴⁷ All say they have not had, and do not have, any undue influence or involvement in Spotify's governance or other strategic or operational decision-making.⁴⁸

⁴³ See Table 3.5.

⁴⁴ See for example House of Commons Digital, Culture, Media and Sport Committee (2021), *Economics of music streaming: Second Report of Session 2021-22*, paragraph 106.

⁴⁵ Warner information provided to the CMA.

⁴⁶ Sony Music information provided to the CMA.

⁴⁷ Universal information provided to the CMA.

⁴⁸ Information provided by the majors to the CMA.

3.16 All the majors hold some limited financial interests in other small music streaming services. They affirm that these interests have not resulted in any undue influence or operational involvement with these firms.⁴⁹ Sony Music notes that: (i) its investments are very small and non-controlling financial interests; (ii) it has no ability to influence or gain any materially better terms; and (iii) it considers that the investments are advantageous to new music streaming services who will not otherwise be in a position to offer the necessary financial guarantees.⁵⁰

Recorded music

3.17 Traditionally, securing a deal with a music label was the main route to market for an aspiring artist. The key role of such labels was the provision of so-called 'artist and repertoire' ('A&R') services.

3.18 A&R services relate to the discovery, signing and development of artists, as well as the recording of their music (for example: talent scouting, negotiating and signing artist contracts, payment of any capital advances, funding and provision of artistic and creative support and direction, organising tour support and other supporting services). Alongside A&R services a label will provide marketing and promotion, for example: digital marketing, advertising, publicity, radio promotion and playlist promotion; and distribute an artist's music, including to music streaming services.

3.19 There are several hundreds of labels operating in the UK, but the largest (major) labels are characterised by the following:

(a) worldwide presence;

(b) a full range of A&R, marketing and promotion services (with large budgets whereby the company funds the creation of artists' recordings and provides 'high-touch' levels of creative support), alongside wholesale distribution services; and

(c) focus on a limited number of 'headline acts' globally.

3.20 In the age of streaming, labels continue to play a significant role in signing new artists and investing in A&R. BPI evidence indicates some longer-term increase in A&R expenditure by the industry as a whole, accompanied by increasing roster sizes (for example, with the number of new signings by majors having increased 38% since 2010 to 153 in 2019).⁵¹ Labels take on a

⁴⁹ Information provided by the majors to the CMA.

⁵⁰ Sony Music information provided to the CMA.

⁵¹ BPI (2020), [Submission to the DCMS Select Committee \(EMS0208\)](#), p28.

degree of risk in A&R, particularly with newer, less proven artists. [30-40]% of major labels' active UK artists are currently profitable on a global basis, with expectations that a further [5-10]% of this group will become profitable over the next five years.⁵²

3.21 However, with the advent of streaming the role and economics of labels have changed along with the skills and services demanded of them, eg:

- (a) Manufacturing/logistics no longer need to be factored into streaming distribution costs (and making music without a label is no longer impossible as you do not have to have physical product). Critically, this means that it is easier to split the distribution function from other services a label has traditionally provided.
- (b) Before streaming, the key sales window centred almost exclusively on the short period around a record's release. While that initial window is still important for word of mouth and fan engagement, music has an increased longevity given that digital search and playlisting can continue to make a track readily accessible long past its launch. Labels have had to adapt to this reality, which has changed the nature of marketing as well as leading to renewed interest and viability for artists' back catalogues.
- (c) Data management has become increasingly important as talent is emerging online, global licensing and management of rights have become paramount, and the influence of digital marketing increases. Labels are investing in effective data analytics and social media marketing, supporting their artists with data, and having to evolve to capitalise on fast-moving digital trends (such as the emergence of the metaverse).

3.22 With the rapid growth of self-releasing artists entering the market independently of a label under digitisation, new types of music companies have sprung up in support – for example, focusing on artist and label (A&L) services which are typically a scaled down version of A&R services (and can often be selected on an a la carte basis) provided to either artists or labels; or focusing on mass market distribution. In response, the majors have also started diversifying their offerings.

3.23 Presently, an artist typically has five possible options when releasing music. Depending on their circumstances, an artist may:

- (a) sign with a major label;

⁵² CMA analysis of data from the majors.

- (b) sign with a smaller, 'independent' (or 'indie') label (such as Beggars Group, BMG Rights Management (BMG)⁵³ and Domino Recording Company);
- (c) use an 'artist services' provider (such as Believe, PIAS and Empire). The majors and some indies also provide such services (eg Sony via AWAL and the Orchard, and Universal via Virgin);
- (d) choose to distribute their music as a self-releasing artist using an established platform (known as 'DIY' platforms, for example TuneCore, Distrokid, CDBaby, ONErpm, DITTO, United Masters and Amuse); or
- (e) secure the services of a manager and team for various levels of promotion and other support and arrange distribution via a 'label services' provider (see next paragraph).

3.24 Some independent record labels may contract with a provider for a variety of 'label services' covering wholesale distribution, but also some A&R and promotion activities. The majors also provide these services to other labels, for example via ADA (Warner), Ingrooves (Universal) and the Orchard (Sony). However, CMA analysis suggests that distribution on behalf of other labels is a minority part of the majors' music streaming revenues in the UK (on average, around [10-20]%).⁵⁴

3.25 The segments listed above have given artists three broad deal structures through which to bring their music to market:

- (a) Traditional recording agreements with the major labels or independent labels offering high touch A&R, marketing and promotion, and distribution services. Typically, these deals involve significant upfront investment by the label (with higher advances offered to an artist that risk being unrecouped if the artist is not successful). This requires an artist to agree to long-term commitments, and sometimes assign their copyright for an extended period or in perpetuity. These deals are typically on a royalty basis (where the artist receives a share of the revenues and costs are refunded from those royalties). Some deals may operate on a profit share (where costs are deducted from total revenues and the remaining profits split between the label and artist) and some are set up as a '360 deal' where the label takes a cut of all the artists' earnings (ie wider than recorded music).

⁵³ We note that in 2003, BMG merged its record label interests with Sony, but relaunched its own services again in 2008.

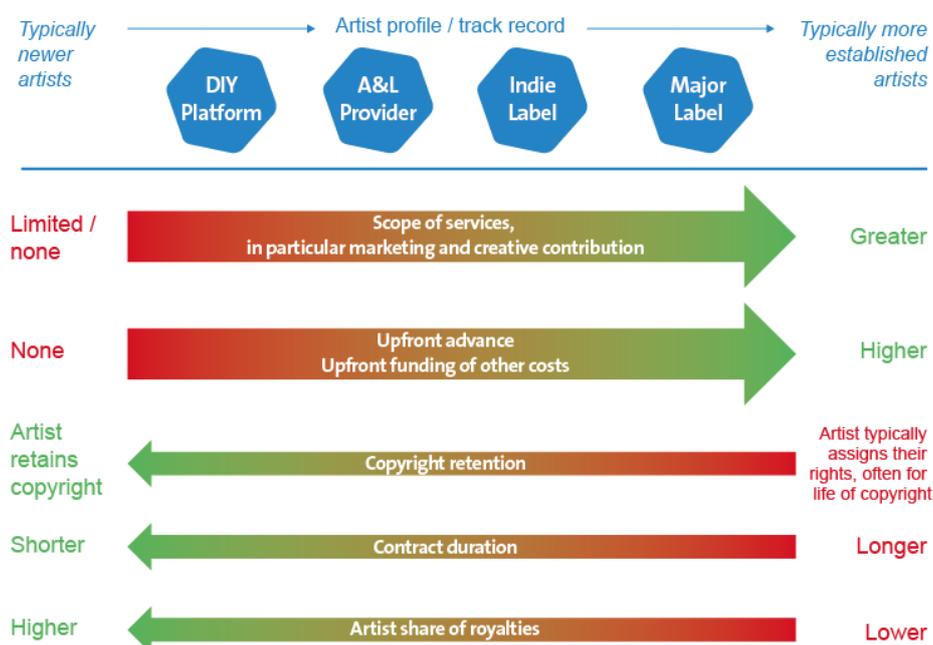
⁵⁴ CMA analysis of data from the majors.

- (i) In the case of independent labels, some services may ultimately be contracted out to an A&L services provider. Independent labels may also not be able to provide the same scale of financing or scope of services as the majors.
- (b) Service deals with A&L service providers where an artist retains (licenses) their copyright and receives marketing and A&R services which were only historically available in traditional recording agreements. These deal structures typically involve smaller upfront investments (eg smaller advances) and less risk for the provider: providers are less likely to take on deals with a high risk of non-recoupment. On the other hand, these deals typically tie in artists for shorter periods and offer them (as the copyright holder) higher royalties from the revenues earned.
- (c) Distribution only agreements with DIY providers offering distribution to streaming services and low touch (tech-driven) marketing and promotion services. These deal structures typically do not involve upfront investment and therefore do not incur risk for the provider. All revenues earned go to the artist, with the DIY provider charging a fixed fee (on an annual or monthly basis) for their services.

3.26 In practice, the terms within any deal structure can vary substantially, and there is some blurring of the boundaries between these options so they can be credible alternatives for some (but not all) artists. Some A&L service providers have multi-tier offerings which seek to cater for a wide range of artists at all stages of their career, and some providers offer more than one of these deal structures.⁵⁵

⁵⁵ See, for example, CMA (2022), [Completed acquisition by Sony Music Entertainment of AWAL and Kobalt Neighbouring rights businesses from Kobalt Music Group Limited Final report](#) (Sony/AWAL), paragraphs 2.57-2.58.

Figure 3.4: Differences in the artist propositions offered by the different options



Source: CMA

3.27 While the dynamics of the market are changing with the entry of new DIY platforms and A&L providers, this has not to date been substantially reflected in overall market shares. The majors' share of streams remains significant and has stayed relatively stable over time.

Table 3.2: Label shares of total UK streams

	<i>Universal</i>	<i>Sony</i>	<i>Warner</i>	<i>Other</i>
2015	[30-40]%	[20-30]%	[10-20]%	24%
2016	[30-40]%	[20-30]%	[10-20]%	23%
2017	[30-40]%	[20-30]%	[10-20]%	21%
2018	[30-40]%	[20-30]%	[10-20]%	22%
2019	[30-40]%	[20-30]%	[10-20]%	23%
2020	[30-40]%	[20-30]%	[10-20]%	24%
2021	[30-40]%	[20-30]%	[10-20]%	25%

Source: CMA analysis of data from Official Charts.

3.28 A similar picture emerges when considering shares of recorded music revenues from UK music streaming. The majors had a combined share of 73% in 2021, compared to 78% in 2017.⁵⁶

⁵⁶ CMA analysis of revenues from UK streaming paid out to the majors for recording rights, for the three largest UK music streaming services (Spotify, Amazon and Apple).

3.29 In recent years, the increased prevalence of streaming has resulted in a change in the major labels' recording revenue mix. Due to the lower associated costs of streaming compared with traditional channels, the majors' recorded music operating margins⁵⁷ have improved.

Table 3.3: Operating margins for major labels' UK recording businesses

	<i>FY17</i>	<i>FY18</i>	<i>FY19</i>	<i>FY20</i>	<i>FY21</i>
Universal	[10 to 20]%				
Sony	[10 to 20]%	[10 to 20]%	[10 to 20]%	[10 to 20]%	[20 to 30]%
Warner (Management Accounts)	[10 to 20]%				
Warner (Statutory Accounts)	10%	11%	17%	11%	N/A

Source: CMA analysis of management and statutory accounts of major labels.

3.30 In order to assess whether the level of profit being generated by the major labels' recording businesses is (in)consistent with competition working well, we need to benchmark it against an appropriate comparator. Consistent with the approach set out in our guidance,⁵⁸ we have calculated an estimate for the return on capital employed (ROCE) for each of the three majors in the UK and compared this against the weighted average cost of capital (WACC) used by the major labels for internal decision making, as shown in Table 3.4.⁵⁹

Table 3.4: Major labels' UK recording business ROCE vs estimated WACC

	<i>FY17</i>	<i>FY18</i>	<i>FY19</i>	<i>FY20</i>	<i>FY21</i>
Universal	[0 to 10]%				
Sony	[0 to 10]%				
Warner	[10 to 20]%				
Average ROCE (unweighted)	8%	8%	10%	10%	12%
Average WACC	9%	9%	9%	9%	9%

Source: CMA analysis of major labels' management accounts.

3.31 We note that profitability is only an indicator and does not on its own provide conclusive evidence around the level of competition in the market. Furthermore, our analysis has limitations due to issues such as data availability and treatment. For example, management accounts are not available for streaming specifically (instead covering the recording business in the UK as a whole) and each major label uses its own accounting practices which may not be entirely consistent and may not perfectly reflect the economic realities of the businesses. In addition, Warner's EBIT calculations

⁵⁷ Operating margins are calculated after deducting cost of sales and operating expenses such as marketing expenses, admin, and overheads.

⁵⁸ [Market investigation Guidelines](#) (CC3 Revised), paragraphs 114 to 125, and Annex A paragraphs 9 to 16.

⁵⁹ We note that these figures are based on management accounts which generally include activities other than those directly related to streaming.

for its UK recorded music business did not include a full allocation of central overheads, and so its ROCE is likely to be overstated in Table 3.4 above.

3.32 Although only indicative, this analysis suggests that the industry is earning a healthy and increasing level of profit, but it does not indicate that profits are substantially and persistently in excess of the cost of capital.

Music publishing

3.33 Music publishing involves the promotion, licensing and administration of song rights, and the provision of services to songwriters in support of the above.

3.34 The majors along with BMG are the largest publishers in the UK, as shown in Table 3.5. They operate alongside a large number of other music publishers, for example Beggars Music, Kobalt Music Group and Sentric Music.

3.35 Combined, the PRS writer members published by the majors accounted for [50-60]% of the Multi-Territory Online (MTOL) streaming revenues (ie for performing right royalties) collected by PRS in 2021.⁶⁰ This combined share has been relatively stable, with similar figures in 2018, albeit the share of individual majors has fluctuated within this.

Table 3.5: Annual PRS songwriter and associated publisher Multi-Territory Online (MTOL) revenue shares by music publisher

<i>Publisher</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>
Sony	[30-40]%	[20-30]%	[10-20]%	[20-30]%
Universal	[10-20]%	[10-20]%	[10-20]%	[10-20]%
BMG	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Warner	[5-10]%	[0-5]%	[5-10]%	[5-10]%
Others	[40-50]%	[40-50]%	[50-60]%	[40-50]%

Source: CMA analysis of data provided by PRS for Music, based on estimates for performing right revenues as a proxy for overall publishing rights shares.

Notes: (1) Figures for Universal have been estimated assuming that the publisher share is equivalent to the writer share. (2) MTOL covers Europe, China, Middle East, North Africa, Commonwealth of Independent States and many of the territories in Sub-Saharan Africa, Latin America and Caribbean and Asia-Pacific.

3.36 Publishers earn revenue from developing, protecting, and valuing the rights to pieces of music, and licensing these rights for use in retail or other media. This will include revenues from music streaming. As described in paragraph 3.10, music streaming revenues derive from both reproduction and CTP (making available) rights.

3.37 Collective licensing offers an efficient way to manage rights on behalf of a large number of rightsholders. UK music falls within what is generally known

⁶⁰ CMA analysis of data from PRS for Music.

as Anglo-American repertoire.⁶¹ For such repertoire, songwriters typically assign their performing rights (which include the making available right)⁶² to a collecting society, or CMO, to license their works and collect royalties on their behalf (charging an administrative fee for these services) but may license or assign their reproduction rights to a publisher. Both rights have traditionally been licensed and collected by CMOs on a national basis on behalf of both publishers and songwriters.⁶³

- 3.38 In the CD era, song rights would be licensed to the label who would then supply the CDs to retailers.⁶⁴ As streaming developed, streaming services became the licensees for both song and recording rights. The global nature of these services meant that multi-territorial licensing became an increasingly efficient option.
- 3.39 In response to this, some CMOs have opted to collaborate to set up multi-territorial licensing ‘hubs’ – for example ICE, a copyright hub that is owned by several CMOs (PRS, GEMA and STIM). Further, some larger publishers (commonly referred to as ‘Option 3’ publishers further to European Commission recommendations on such options)⁶⁵ have opted to withdraw their reproduction rights from CMOs and license these directly on a multi-territorial basis. For further efficiency, this is typically done in tandem with the licensing of reproduction rights, with each Option 3 publisher selecting a CMO (or licensing hub) to partner with for this purpose. These negotiations are usually led by the publishers but the CMO must approve the licensing terms. To establish this licensing structure, some publishers have set up special purpose vehicles (SPVs) with CMOs/hubs.⁶⁶
- 3.40 It is common for a number of songwriters to be credited on any given song; hence song rights tend to be fragmented, with fractional ownership dispersed among multiple parties. Further, as noted in paragraph 3.37, song rights cover

⁶¹ This commonly refers to songs registered with collecting societies in the UK, Ireland, United States, Canada, Australia, New Zealand and South Africa. See Cooke, Chris (2020), *Dissecting the Digital Dollar*, Third Edition, p71.

⁶² See footnote 34 for an explanation of the term ‘performing rights’.

⁶³ Some CMOs (in the UK, Phonograph Performance Ltd (PPL)) are also involved in the administration of various rights on the recording side – but these do not generally include the rights which apply to on-demand music streaming, which performers usually assign or transfer to a music company. Hence, CMOs are not typically involved in the licensing of recording rights for on-demand music streaming.

⁶⁴ Cooke, Chris (2020), *Dissecting the Digital Dollar*, Third Edition, p84.

⁶⁵ PRS for Music information provided to the CMA. That term originates from the impact assessment that preceded the European Commission’s 2005 Recommendation on the cross border collective management of copyright for online use. The 2005 so-called ‘Option 3’ Recommendation stated that holders of online rights should have the right to withdraw their online rights and transfer the multi-territorial management of those rights to a CMO of their choice. The Option 3 publishers considered it more efficient to approach the multi-territory market outside the traditional CMO network.

⁶⁶ See for example Cooke, Chris (2020), *Dissecting the Digital Dollar*, Third Edition, p73. Such SPVs ‘include entities like SOLAR (for Sony/ATV), DEAL (for Universal), PEDL (for Warner), ARESA (for BMG) and IMPEL (for a consortium of indies). Kobalt works in partnership with its own collecting society AMRA’ (Cooke, Chris (2020), *Dissecting the Digital Dollar*, Third Edition, p190).

both reproduction and performing rights which may have different licensors and/or use a range of licensing structures.

- 3.41 While music streaming services will use their own data to calculate the share of revenues due to each recording licensor, due to the complexity of publishing rights they typically provide data on streams to a third party (usually a CMO, licensing hub or companies who specialise in such rights processing) to assess for claims. The third party will return a breakdown of where royalties are due so that the music streaming service can then pay out. It is therefore usual for publishing revenues to be paid later than recording revenues. It is also not uncommon for a certain percentage of publishing revenues to be unallocated due to difficulty in identifying the rightsholder. Such unmatched royalties⁶⁷ (often referred to within the industry as ‘black box’ income) are distributed in line with specified PRS for Music policies.⁶⁸ The amount of unmatched UK royalties distributed by PRS for Music (on behalf of PRS and MCPS) was £[0-5]m in 2019, £[10-15]m in 2020, and £[10-15]m in 2021.⁶⁹

Creators

Artists

- 3.42 As noted in paragraph 2.26, streaming has reduced barriers to entry for artists, particularly newer or emerging artists. It is now possible for individuals to make a good quality sound recording using readily available and affordable online recording tools. New artists can also upload their music directly to social media or mass distribution platforms at no or low cost. More generally, social media has enabled artists to directly market themselves much more proactively and more readily develop a fan following. As a result, the industry has seen an explosion in the numbers of artists making music (see Table 3.6) and the volume of music made available (with around 60,000 tracks uploaded globally per day on Spotify alone).⁷⁰
- 3.43 Streaming has also offered new opportunities for global reach in a way previously unimaginable. Further, it has reinvigorated the careers of many

⁶⁷ Unmatched royalties can be a combination of i) unmatched royalties which occur when music contains data which cannot be matched to a registered work, and ii) partially-matched royalties where data can be matched to a registered work but 100% of the shares on the work are not claimed.

⁶⁸ Unmatched royalties are held by PRS for Music, with 75% distributed pro rata in line with allocated royalties after one year and the remaining 25% after three years. Partially-matched royalties are held by PRS for three years, during which time PRS for Music members can register their shares and claim any missing royalties. The funds that remain are distributed pro rata after 3 years.

⁶⁹ PRS for Music information provided to the CMA.

⁷⁰ Music Business Worldwide (2021), *Over 60,000 tracks are now uploaded to Spotify every day. That's nearly one per second.*

legacy artists by making it possible for their music to readily be discovered even if physically out of stock or otherwise hard to find. However, as described in paragraph 3.21, streaming has also changed the marketing and financial dynamics of music making. In an increasingly crowded space it is arguably both easier than ever before to be heard but harder than ever to break through at scale.

- 3.44 All of this has also resulted in greater complexity for artists who increasingly have options to take more control of their own career but can find it challenging to track and understand their revenue data across millions of (global) streams and to successfully navigate their marketing options. They rely largely on their music companies and streaming services to provide them with usable data for these purposes.
- 3.45 The experiences and outcomes for different artists vary widely. For the purposes of this report, we refer to low, mid and high-range artists, where: low-range refers to artists with limited financial success (these are emerging artists at the start of their career or artists who are not making a career from their music); mid-range refers to artists with some success and who are able to sustain music as their main occupation through to those who are reasonably successful; and high-range, which refers to artists who are very successful and considered to be at the top end). Other industry participants categorise artists into different tiers. However, we have not sought to provide precise definitions by artist revenue or other factors.
- 3.46 Artists may move between these ranges over time, for example moving up the tiers as they grow their fanbase. It is also important to distinguish between established artists who have a longer-term track record of success, emerging artists (who have built some track record, for example through social media) and new artists (who may be relatively unknown), as they are likely to have different needs and also represent different levels of risk to music companies when considering potential signings.
- 3.47 The data shows a large increase in the number of low and mid-range artists under streaming. However, in terms of share of streams the market remains heavily dominated by the few high-range artists who become successful, many of whom are generally contracted to the major labels. Research commissioned by the IPO found that between 2014 and 2020 the top 1% of artists accounted for 78–80% of streams, and the top 10% for 98%.⁷¹ While

⁷¹ Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, p198.

the number of successful artists and tracks are increasing,⁷² the proportion of artists achieving more than 1 million streams per month (see Table 3.6) remains small (in 2020, around 0.4%).

Table 3.6: Total number of artists reaching streaming thresholds

	2014	2015	2016	2017	2018	2019	2020
10 million-99,999,999	3	11	34	55	78	104	110
1 million-9,999,999	187	340	533	825	1,212	1,441	1,613
100,000-999,999	1,610	2,471	3,536	4,895	6,528	7,518	8,322
10,000-99,999	7,026	10,144	13,080	16,455	19,937	24,138	27,180
1,000-9,999	19,778	25,438	32,274	38,813	46,084	52,883	59,997
0-999	189,546	212,152	236,082	256,164	277,349	301,052	326,881
Total	218,150	250,556	285,539	317,207	350,918	387,136	424,073

Source: Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, Table 6.4.

- 3.48 While notable, this concentration of outcomes is to some extent a general feature of many creative industries and has pre-dated streaming. Popularity tends to coalesce around certain 'hits', given the finite attention available from consumers, notwithstanding that there are today more ways to access and market such hits.
- 3.49 It has been argued that the 'pro rata' remuneration model adopted by most streaming services and music companies⁷³ helps to sustain this 'winner-takes-all' dynamic (as revenues are driven towards the tastes of consumers who listen more to music and the most popular music overall) and that artists would be better served by alternative models that could help to spread revenue more equitably. The Government is carrying out research on different remuneration models (including equitable remuneration)⁷⁴ in response to recommendations on this point from the DCMS Select Committee.
- 3.50 In terms of the importance of streaming for artists, while it is widely acknowledged as being key for their visibility and public profile, for all but the most popular artists it cannot sustain a living. A recent report commissioned by the IPO found, based on a survey of music creators,⁷⁵ that they gained income from many different sources but that, prior to the COVID-19 pandemic, live performances were the greatest source of income for artists. Streaming, despite being the biggest contributor to global recorded music

⁷² BPI (2022), *'All About the Music' 2022 yearbook reveals more artists and tracks succeed on streaming than ever before*. For example, the BPI estimates that the top 100 UK tracks in 2021 made up 4.4% of streams (down from 10.3% in 2016).

⁷³ This allocates revenues from a service to a given track according to its share of total streams on that service (in a given country).

⁷⁴ A *Private Member's Bill* proposing reforms to the rights and remuneration of musicians and other rightsholders, including the introduction of equitable remuneration for streaming, was also tabled by Kevin Brennan MP but has not progressed following a debate in the House of Commons in December 2021.

⁷⁵ Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, p11-13. Survey respondents comprised various types of 'music creators', including songwriters and composers as well as performing artists.

revenues since 2017 (see Figure 2.1), contributed, on average, 6% of the survey respondents' music-related income.⁷⁶ The low revenues from streaming typically earned by individual artists are a clear source of tension within the industry.

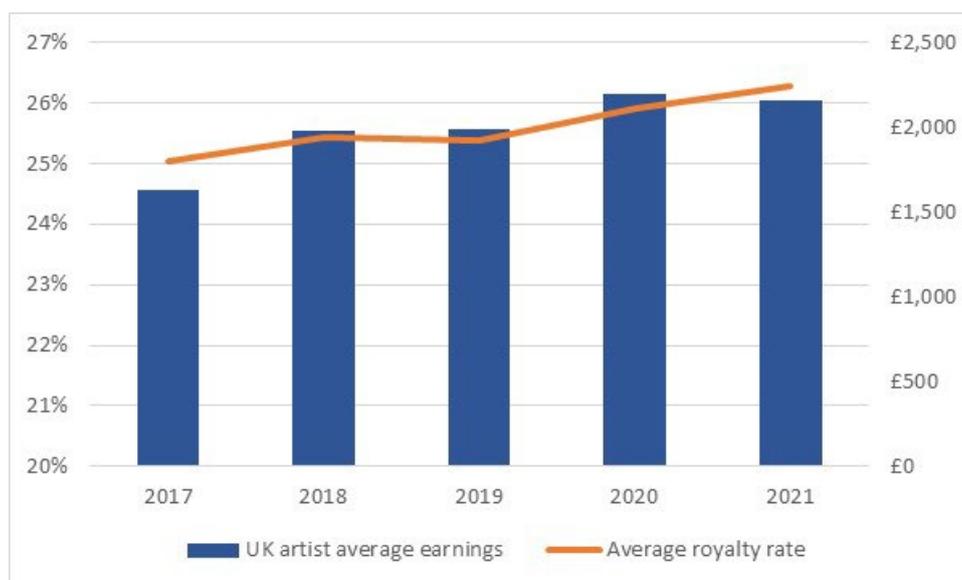
- 3.51 Using data from the major labels, we have estimated the amounts that music recording artists earn from 1 million streams per month. We estimate that this would earn an artist around £12,000 per year. This analysis does not include earnings from overseas or from other sources such as live performance or publishing rights.⁷⁷
- 3.52 Nevertheless, there is evidence that the deal conditions available to artists (including from major labels) are improving. Royalty rates are rising, and increasingly some deals may feature shorter commitments (eg for single tracks as opposed to albums) and/or for shorter terms of copyright (if assigned or licensed at all). Furthermore, all three majors have recently voluntarily written off unrecouped balances from pre-2000 contracts for their legacy artists,⁷⁸ so that more can start to benefit specifically from streaming even if they had owed their labels for previous investments for physical sales.

⁷⁶ Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, p 171.

⁷⁷ CMA analysis of data from the majors.

⁷⁸ See a [letter from the Minister of State for Media, Data, and Digital Infrastructure, DCMS and the Minister for Science, Research and Innovation, BEIS, to the Chair of the DCMS Select Committee](#) (page 1).

Figure 3.5: Average UK artist yearly streaming earnings from majors and average royalty rates



Source: CMA analysis of data from the majors.

Songwriters

- 3.53 Similar to artists, the number of songwriters has grown in recent times. According to a report commissioned by the IPO, PRS data shows a great many more songwriters earning income than before, up from 36,170 in 2009 to 62,505 in 2019 (an increase of 73%).⁷⁹
- 3.54 Alongside this there is a trend towards more songwriters being involved in each recording. This appears to have been driven by a number of factors including the greater ease of sharing material in today’s digital world.

Table 3.7: UK Singles Chart Annual Top 100: Composers and Lyricists

	1999	2004	2009	2014	2019
Average number of composers and lyricists per recording	2.95	3.48	3.45	3.92	4.77

Source: Report commissioned by the IPO (2021), *Music Creators’ Earnings in the Digital Era*, Table 4.18.

- 3.55 Having multiple songwriters involved on a song can lead to challenges in ensuring that they are properly credited for their input. A number of stakeholders have raised concerns about delays in payments, often exacerbated by missing or inaccurate metadata identifying song rightsholders as well as policies (for example within some collecting societies) to withhold payouts below a certain minimum threshold and limit the period for retrospective claims. There is widespread recognition that significant metadata issues exist in the music industry given the complex and

⁷⁹ Report commissioned by the IPO (2021), *Music Creators’ Earnings in the Digital Era*, p211.

fragmented royalty chains involved,⁸⁰ particularly on the publishing side.⁸¹ the IPO has established a cross-industry working group to tackle such issues.

- 3.56 An examination of earnings shows that these are heavily skewed towards a minority of successful individuals. The vast majority of PRS songwriters earn less than £10,000, with only 1,168 (2%) earning more than £50,000 in 2019. This picture has not changed significantly over time: those earning less than £10,000 have remained within a margin of plus or minus 1% between 2009 to 2019 despite (as above) the significant growth in numbers in this period.⁸²
- 3.57 However, in recent times there has been increasing interest in the acquisition of rights to publishing back catalogues (see paragraph 2.10) which offers some songwriters new earnings opportunities.

Music streaming services and UUC platforms

- 3.58 Music streaming services emerged as a way to counter the threat of piracy. They obtain commercial content from rightsholders under licence in order to make it readily and legitimately available to consumers. We term these ‘commercial content’ music streaming services.
- 3.59 These services are distinct from UUC platforms which allow users to upload content, including copyrighted content without rightsholders’ knowledge, for other people to consume. While such content includes music, it is skewed heavily towards video rather than audio content.
- 3.60 The majority of this document focuses on commercial content music streaming services. Therefore, unless otherwise specified, references to music streaming services should be taken as meaning such commercial content music streaming services.⁸³

Music streaming services

- 3.61 There are now multiple firms offering music streaming services as described in Chapter 2.

⁸⁰ For further explanation of metadata and related issues, see for example research commissioned by the IPO (2019), *Music 2025: the music data dilemma*.

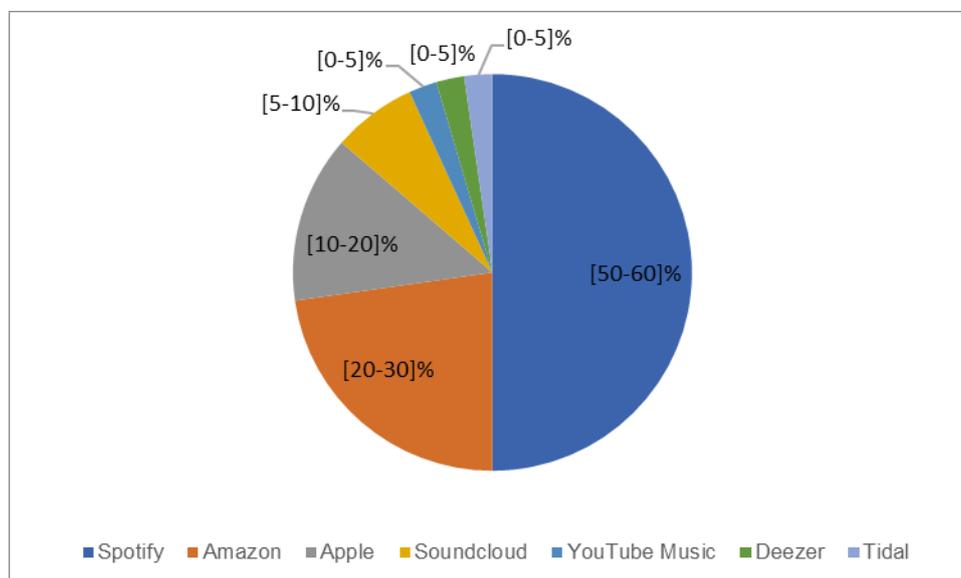
⁸¹ Refer for example to Cooke, Chris (2020), *Dissecting the Digital Dollar*, Third Edition, Appendix A, for a description of the royalty chains in music publishing.

⁸² Report commissioned by the IPO (2021), *Music Creators’ Earnings in the Digital Era*, p211-212.

⁸³ It should also be noted that some providers offer hybrid options, eg services that combine UUC and commercial content or offer a UUC service alongside a commercial content service; so the distinction is not always clear cut.

3.62 The number of monthly active users of streaming services has grown rapidly – between 2019 and 2021 alone it increased by 23%, from 32 million to 39 million. Spotify has the largest number of monthly active users by some distance – [50-60]%.

Figure 3.6: Share of UK Monthly Active Users by music streaming service in December 2021, excluding YouTube’s UUC platform



Source: CMA analysis of data from music streaming services.

Note: This pie chart is for illustrative purposes only. Monthly Active User shares only account for Spotify, YouTube Music, Apple, Amazon, Deezer, Soundcloud and Tidal which have a combined streaming share of over 99% according to CMA analysis of data provided by Official Charts. YouTube Music users include YouTube Music premium Monthly Active Viewers and YouTube Music ad-funded Daily Active Viewers, meaning this figure will provide an underestimation of YouTube Music’s actual users. These figures are provided in a 5% range where the figure is below 10%, and a 10% range where the figure is between 10% and 100%. The midpoints of the ranges have been used to provide an illustration of relative size in the market. Where the sum of these midpoints does not equal 100%, we have scaled the pie chart so that the area segments represent the share of the sum of the midpoints.

3.63 Spotify is also the largest in terms of the share of total streams, in 2021 it had [60-70]% of all UK streams. This is followed by Amazon at [10-20]% and Apple at [10-20]%. Spotify’s share is lower than the [80-90]% of streams it had in 2015 and is largely due to the increase in streams on Amazon and Apple.

Table 3.8: Share of total streams by music streaming service, excluding YouTube UUC (%)

<i>Year</i>	<i>Spotify</i>	<i>Amazon</i>	<i>Apple</i>	<i>Google (excluding YouTube UUC)</i>	<i>Other</i>
2015	[80-90]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
2016	[70-80]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%
2017	[70-80]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%
2018	[70-80]%	[5-10]%	[10-20]%	[0-5]%	[0-5]%
2019	[60-70]%	[5-10]%	[10-20]%	[0-5]%	[0-5]%
2020	[60-70]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%
2021	[60-70]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%

Source: CMA analysis of data from Official Charts.

Note: In this table we have excluded all ad-funded music video streams on YouTube's UUC platform but not premium video streams on the YouTube Premium platform; Official Charts do not collect separate streaming data for the YouTube Premium platform (while this is also a platform that includes UUC content, this is a paid for service that is only offered as part of a bundle with YouTube Music Premium). Google consists of streams on YouTube Premium (including video streams), YouTube Music and Google Play. 'Other' consists of Blinkbox, Bloom.fm, Deezer, MusicQubed, Napster, Nokia, Now Music plus, Omnifone, Qobuz, Rdio, SoundCloud, Vevo, Vidzone and Zune.net. These figures are provided in a 5% range where the figure is below 10%, and a 10% range where the figure is between 10% and 100%.

- 3.64 All of these main streaming services offer a 'full catalogue' of content.⁸⁴ This means that they look to offer the vast majority of available music – which, given the market share of each of the majors, means that it is key for them to license the majors' content. We understand this has been driven by consumer demand: early experimentation with exclusive music content was not a success, but take-up improved when services moved towards making it easy to legally access a similar range of content as was freely available via piracy.
- 3.65 With similar content, the services seek to differentiate themselves by the features they offer. These include audio quality, the user interface, playlists and, increasingly, non-music content such as podcasts. Some also offer UUC content.
- 3.66 Music streaming services typically earn revenues primarily by charging a monthly subscription fee. These paid-for tiers are often referred to as 'premium' and many streaming services offer free trials to encourage new subscriptions. The headline price of premium subscriptions (ie for an individual adult using the 'standard' premium tier) is at £9.99 a month with the exception of Deezer. This price has stayed remarkably stable over time. There is more price variation and some recent examples of price increases in some of the other tiers, for example family plans and single device plans.

⁸⁴ Although Amazon's Prime Music, which is free to Prime subscribers, offers a more limited catalogue.

Table 3.9: Price of paid streaming plans

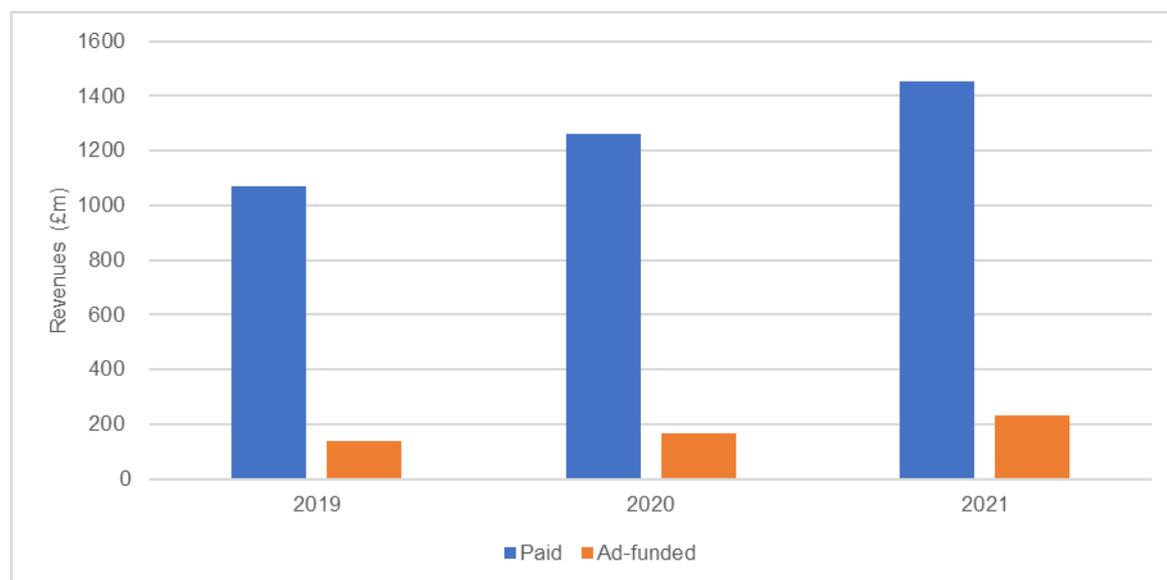
Plan type	Spotify	YouTube Music	YouTube Premium	Apple	Amazon	Deezer	SoundCloud	Tidal
Individual	£9.99	£9.99	£11.99	£9.99	£9.99 (£8.99 if Prime member)	£11.99 (£8.99 if paid annually)	£9.99	£9.99
Student	£5.99	£4.99	£6.99	£5.99	£4.99	£5.99	£4.99	£4.99
Family	£16.99	£14.99	£17.99	£14.99	£14.99	£17.99	NA	£14.99
Single device	NA	NA	NA	NA	£4.99	NA	NA	NA
Voice	NA	NA	NA	£4.99	NA	NA	NA	NA
Duo	£13.99	NA	NA	NA	NA	NA	NA	NA

Source: CMA analysis of various public sources.

3.67 All of the main music streaming services apart from Apple Music and Tidal also offer some form of free, ad-funded tier. These tiers not only interrupt music through the playing of adverts, but they have more limitations than the paid-for tiers – for instance limiting the number of tracks a user can skip or not allowing tracks to be downloaded and listened to offline. The rationale for these tiers is to try to bring in customers who might not otherwise use streaming services and to seek to transition them to paid-for tiers.

3.68 As Figure 3.7 shows, the paid-for tiers generate considerably more revenue than the ad-funded tiers.

Figure 3.7: UK total aggregate streaming revenues by plan type



Source: CMA analysis of data from music streaming services.

Note: The bar in this chart represents a sum of the total streaming revenues generated by paid or ad-funded plans of the following providers of music streaming services: Spotify, Google, Apple, Amazon, Deezer, SoundCloud and Tidal. This chart includes YouTube UUC ad-funded revenues.

3.69 Some streaming services are provided by firms with other, wider offerings which could, as we discuss subsequently, affect competition. We refer to these as ‘integrated’ providers.

- (a) There is bundling of streaming services with other products and free trial offers or discounts. In the case of Amazon, Apple and Google, bundling is seen with other products or services they offer. Examples include Prime Music with an Amazon Prime subscription and a reduced price for Amazon Music Unlimited for Prime subscribers, as well as Apple Music with Apple TV and its gaming, cloud storage, news and fitness offerings through an Apple One subscription. YouTube also offers ad-free access to its main platform in a bundle with its YouTube Music subscription.
- (b) Apple and Google also act as distributors of competitors' streaming services via their wider mobile device hardware and software offerings (respectively, the App Store on Apple mobile devices and Google Play on Android mobile devices). Both, along with Amazon, also offer smart speakers.

3.70 As more consumers adopt streaming, music streaming services have been benefitting from increased scale that has also improved their profitability. However, this is in the context of a history of loss-making such that some are now starting to generate an operating profit⁸⁵ in large part as a result of increasing scale. Trends in operating margins for three of the main music streaming services are shown in Table 3.10:⁸⁶

Table 3.10: Available operating margins for music streaming services

	2017	2018	2019	2020	2021
[Music streaming service 1]	[-80 to -60]%	[-60 to -40]%	[-40 to -20]%	[-20 to 0]%	[0 to +10]%
[Music streaming service 2]	[-10 to 0]%	[-10 to 0]%	[-10 to 0]%	[-10 to 0]%	[0 to +10]%
[Music streaming service 3]	[-30 to -20]%	[-10 to 0]%	[-20 to -10]%	[-20 to -10]%	[-10 to 0]%

Source: CMA analysis of music streaming services' management accounts. [%].

UUC platforms

3.71 Major UUC platforms include YouTube (as distinct from YouTube Music) and TikTok. Soundcloud and Mixcloud also offer UUC services specifically for music and podcasts, targeted at emerging artists and creators. UUC platforms are an important means by which consumers discover music – from established as well as new artists. UUC platforms can contain official, licensed music from record labels as well as unofficial, unlicensed music from

⁸⁵ Operating margins are calculated after deducting cost of sales and operating expenses such as marketing expenses, admin, and overheads.

⁸⁶ One of the main music streaming services was not able to produce management accounts for its music streaming business. Due to the structuring of management accounts, figures for certain music streaming services are on a global basis, while others are UK-specific. Similarly, music streaming services are sometimes included as parts of wider bundles being offered and so are part of a set of wider management accounts.

other sources. [✂].⁸⁷

- 3.72 YouTube and TikTok have a focus on video content and user engagement, so tend to offer a different music listening experience to commercial content streaming services. They promote active rather than background listening – for instance, the website or app must be active and engaged with by a user.
- 3.73 YouTube and TikTok operate on an ad-funded basis so that content is free to viewers in exchange for receiving advertisements. YouTube has launched a subscription service called YouTube Premium which enables users to access all of its content (including YouTube Music) without ads.
- 3.74 UUC platforms are notable because they can operate under a separate legal framework – the so-called ‘safe harbour’ provisions that limit their liability for illegal content uploaded by its users in certain circumstances.⁸⁸ As such, they do not require a licence upfront from rightsholders for music played on them (although some UUC platforms, such as YouTube, now have licences with some rightsholders to cover any music from those rightsholders that may appear on their platform). Instead, once they become aware of the use of copyrighted content, for which they do not have a licence, they must remove it. In the case of YouTube, in such circumstances it offers the rightsholder the choice of requiring the content to be taken down or monetising it. Monetising for rightsholders occurs as a result of taking a share of the revenue from advertising that appears alongside the content.

The music consumer

- 3.75 Streaming has made it easy and relatively inexpensive for a consumer to access a huge volume of music on demand. This reflects consumer

⁸⁷ [✂].

⁸⁸ ‘Safe harbour’ is a legal construct derived from Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the E-Commerce Directive). Article 14 exempts online service providers from liability for illegal content uploaded by its users (the so-called ‘hosting defence’), so long as the provider:

(a) does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; and
(b) upon obtaining such knowledge or awareness (for example via notification or their own detection systems), acts expeditiously to remove or disable access to the information.

European case law is clear that the exemption from liability only applies where the activity of the provider is of a mere technical, automatic and passive nature which means the provider has neither knowledge of, or control over the illegal content. See for example Judgment of 12 Jul 2011, C-324/09 (*L’Oréal*), and Judgment of 23 March 2010 *Google France and Google*, C-236/08 to C-238/08).

Further, the hosting defence will not be available where a service provider knows or ought to know, in a general sense, that users of its platform are making protected content available to the public illegally via its platform, and refrains from putting in place the appropriate technological measures that can be expected from a reasonably diligent operator in its situation in order to counter credibly and effectively copyright infringements on that platform. See joined cases C-682/18 and C-683/18, *Frank Peterson and Elsevier Inc. v. Google LLC and Others* (22 June 2021).

preferences, with Ofcom's most recent audio survey reporting that 79% of consumers indicate that range of content is important for online audio services.⁸⁹

- 3.76 We set out above the number of users and streams across the different streaming services. The number of monthly active users of services (39 million in 2021) suggests there is multi-homing by consumers, including people making use of ad-funded services and offers such as free trials.
- 3.77 According to recent Ofcom research, 51% of people listen to online music services at least once a week and 18% do so several times a day.⁹⁰ The proportion of people accessing music in this way has grown – in 2015 it was around 16%, rising to 23% in 2017 and 45% in 2021.⁹¹
- 3.78 Despite the growth in streaming, radio remains the form of listening done by the highest proportion of people on a weekly basis. In Ofcom's 2022 survey, 64% of respondents listened to a radio station (that plays music) at least once a week.⁹² However, in contrast to streaming, radio listening is declining over time – weekly reach for listening to live radio on a radio set fell from 83% of adults in 2015 to 63% in 2021, while streamed music rose from 16% to 45%.⁹³
- 3.79 In terms of the level of use, there are marked differences across age groups. Of online music service users aged 16 to 34, around 4 in 10 listen to a streaming service several times a day; that proportion is four times higher than for users aged 55 and over.⁹⁴ For most services captured in Ofcom's most recent audio survey, this pattern of higher use by younger age groups is mirrored (with a notable exception of Amazon).⁹⁵
- 3.80 The way users stream music is varied. Our analysis shows that, across all music streaming services, around 20% of streams were from playlists provided by the streaming service (as opposed to playlists created by the user themselves) and a further 11% of streams were delivered through autoplay functions on streaming services or 'stations/radio' provided by streaming services. The single largest mechanism through which music was streamed was 'user curated' playlists at 42%.

⁸⁹ Ofcom (2022), [Audio Survey](#), question 17.

⁹⁰ Ofcom (2022), [Audio Survey](#), question 1.

⁹¹ Ofcom (2021), [Media Nations: UK 2021](#), Fig 5.1.

⁹² Ofcom (2022), [Audio Survey](#), question 1.

⁹³ Ofcom (2021), [Media Nations: UK 2021](#), Fig 5.1.

⁹⁴ CMA analysis of Ofcom (2022), [Audio Survey](#), question 1.

⁹⁵ Online music service users aged 55+ are more likely to use Amazon than younger age groups. Ofcom (2022), [Audio Survey](#), question 9c.

3.81 This breakdown varies with different streaming services and also depending on whether users are streaming through premium or ad-funded tiers. For instance, a far higher proportion of streams on Spotify are through user created playlists compared with other streaming services. Streams on Amazon are much more likely to be through ‘stations’ than on other streaming services.

Table 3.11: Streams on playlist type as a % of UK streams by music streaming service in 2021

	<i>Spotify</i>	<i>YouTube Music</i>	<i>Apple</i>	<i>Amazon</i>
Editorial	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Algorithmic	[10-20]%	[30-40]%	[5-10]%	[5-10]%
Station/ radio	[0-5]%	[0-5]%	[0-5]%	[20-30]%
Autoplay	[5-10]%	[0-5]%	[5-10]%	[5-10]%
User curated	[50-60]%	[10-20]%	[20-30]%	[10-20]%
Non-playlist	[10-20]%	[40-50]%	[40-50]%	[40-50]%

Source: CMA analysis of data from music streaming services.

Note: User curated includes playlists curated by individuals and commercially curated playlists not generated by the music streaming service.

3.82 The devices used to access music are also changing. While in-car radios and smartphones are the most used devices, smart speakers in particular are growing in popularity.⁹⁶ According to research by the Entertainment Retailers Association (ERA), the proportion of adults who use smart speakers to listen to music (although not necessarily through streaming services) grew from 14% in 2019 to nearly 25% in 2021.⁹⁷ In Ofcom’s 2022 Technology Tracker survey, 39% of adults claimed to have a smart speaker in their home and the most popular activity among those who used smart speakers (selected by 62%) was listening to music via streaming services.⁹⁸

3.83 This trend is related to the introduction by some streaming services of voice only and single device plans. The ability to search or browse for music, and create playlists, is very different on smart speakers and voice only plans than through a smartphone.

3.84 Overall, consumers appear satisfied with the services they are getting. In Ofcom’s recent audio survey, the majority of respondents rate their chosen streaming services as ‘very good’ or ‘quite good’ when asked to rate them on the basis of the service features most frequently reported as ‘important’. For example, 87% of Spotify users rate it as ‘very good’ or ‘quite good’ on ‘ease of use’, 85% on ‘ease of navigation’ and 88% on ‘range of content’.⁹⁹ The ERA’s

⁹⁶ ERA Yearbook 2022.

⁹⁷ ERA (2022), Entertainment Consumer Tracking Study – Wave 33, Tracking the Changes 2019-21.

⁹⁸ Ofcom (2022), Technology Tracker, questions S1 and S7.

⁹⁹ Ofcom (2022), Audio Survey question 18.

Quarterly Tracking Study found that 71% of those who use a music streaming service consider it to be good or very good value.¹⁰⁰

How different parts of the value chain interact

- 3.85 Creators, music companies, music streaming services and consumers are linked through a complex web of agreements and payments:
- (a) **Creators may provide their rights to intermediaries.** Songwriters typically assign or license their rights to music publishers and CMOs to exploit on their behalf; similarly, artists typically assign or license their rights to record companies.
 - (b) **Intermediaries exploit these rights, including by distributing (licensing) them to music streaming services.** Music companies and CMOs license rights to music streaming services. Publishers may (like creators) opt to administer some of these rights via a CMO – or may license on behalf of a CMO. On the recording side, some providers may license via Merlin (a collective licensing organisation for smaller labels)¹⁰¹ or use another label (such as the majors) for distribution.
 - (c) **Music streaming services use these rights to provide music to consumers.** They collect revenues for the services provided – either subscription revenue from consumers and/or ad revenue from advertisers on those services.
 - (d) **Music streaming services pay out under the terms of their music licences.** Music streaming services pay music companies and CMOs from those revenues. These intermediaries then account back to creators:
 - (i) **CMOs pay creators and music companies their share of the revenues they collect on their behalf, according to industry standards.** For streaming, these typically relate to song rights (as streaming recording rights are usually assigned or licensed to music companies rather than CMOs). Any song rights revenues collected by CMOs are paid down separate royalty chains. The CTP revenues are distributed 50%-50% between the creator and the music publisher, while reproduction rights revenues are passed on to the publisher – in both cases, subject to administrative charges. Publishers then account to their songwriters as described below.

¹⁰⁰ ERA Yearbook 2022, p91.

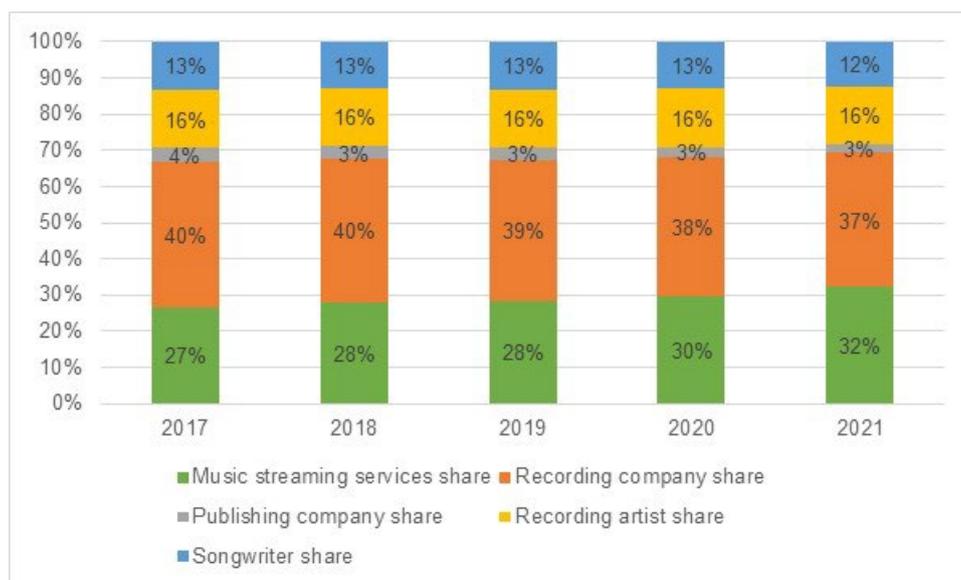
¹⁰¹ See the [Merlin website](#).

- (ii) **Music companies pay creators based on the individual agreements in place** between each company and its songwriters or artists. These deals are commercially agreed.

3.86 Total revenues are usually split between music streaming services and rightsholders on the basis of a pre-determined, negotiated licence agreement, with the music streaming service retaining an agreed percentage of all revenues generated. The remaining revenues are then paid out to recording rightsholders and song rightsholders. Payments to individual rightsholders are typically made in accordance with the share of streaming activity that is associated with the content of those rightsholders²⁴ (see Chapter 4 for further discussion of these agreements).

3.87 Figure 3.8 illustrates how revenues from UK streams are distributed among different groups. (It should be noted that this analysis focusses on revenues: record companies/music publishers and music streaming services will need to pay their respective operating costs from these revenues.)

Figure 3.8: Share of streaming revenues across the value chain



Source: CMA analysis of data from music streaming services and music companies.
 Note: in some cases artists may also be songwriters and earn in both capacities.

3.88 Since 2017 the share of UK streaming revenues retained by music streaming services has increased from 27% to 32% in 2021. This is mainly at the expense of record companies whose combined share has fallen from 40% to 37% during the same period. The share of revenue paid to artists and to songwriters have both remained fairly constant during this period, with artists' shares only slightly higher than songwriters'.

3.89 It is also of interest to consider how the division of streaming revenues above compares to the business models that pre-dated it. Analysis carried out in a

report commissioned by the IPO, looking at historical data from 2008 onwards, suggests that compared to physical sales, under streaming, artists' share of revenues has increased at the expense of labels; and the share allocated to publishing rights has increased significantly more than that of recording rights (with songwriters seeing a corresponding increase).¹⁰²

¹⁰² Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, p132-136. The discussion at p137-139 of the report further explains that in real terms, both recording and publishing shares have fallen but publishing shares have fallen less than recording shares.

4. Agreements between record companies and streaming services

- 4.1 As discussed, in order to stream music, streaming services must enter into licensing agreements with rightsowners, typically record companies and music publishers (ie they need the full rights to both the recording and the song recorded).¹⁰³ Because the recording and song rights are typically held by a range of different parties, including record companies and composers, the two rights are typically negotiated separately.
- 4.2 These licensing agreements can be lengthy and complex. Typically, the agreements which music streaming services enter with the majors – who hold the rights to large catalogues of recording and publishing rights – can take longer to negotiate, tend to be longer documents, and contain more bespoke clauses than those between music streaming services and indies.
- 4.3 As set out in our Statement of Scope, the focus of our market study has been on the recorded music element of the value chain.¹⁰⁴ Therefore, this chapter describes the main features of recording agreements, with a particular focus on the majors’ recording agreements.¹⁰⁵ These agreements may help facilitate the widespread availability of music on music streaming services or give rise to other efficiency benefits. However, certain clauses within the agreements may also raise potential competition concerns. We therefore explain in this chapter which clauses may, in principle, raise such concerns (without any detailed discussion of any countervailing efficiencies which may be generated by such clauses). We assess the practical impact of the clauses as part of our competition analysis in Chapter 5.

Rights, payment terms and other common clauses

- 4.4 All recording licences grant the music streaming service rights to, at a minimum, store, reproduce, distribute, and stream the record labels’ sound recordings, artwork and associated data and other ancillary materials. These licences will also contain provisions governing the payment mechanics for use of the granted rights. This will typically include a revenue share percentage which the record label receives, per subscriber minimum fees, and sometimes minimum guaranteed lump-sum payments. The agreements also contain

¹⁰³ See paragraphs 3.1 to 3.10 above.

¹⁰⁴ See paragraph 85 of the CMA’s [Statement of Scope](#).

¹⁰⁵ While we have reviewed the majors’ publishing agreements, given the scope of our market study, we do not address them in this update paper save to note that the contractual clauses which we discuss in respect of the recording agreements are (other than confidentiality restrictions) not seen, or seen very infrequently, in the majors’ publishing agreements.

detailed provisions relating to the calculation of fees (eg which streams will be fee-bearing, arrangements for different tiers, the fees applicable in different territories, and the treatment of users participating in introductory offers).

- 4.5 Certain other clauses are also found in virtually all agreements. Beyond standard 'boiler plate' provisions (determining such matters as choice of law, jurisdiction, and termination) recording licences provide for the duration of the agreement and renewals, and they also contain warranties regarding ownership of the music content, provisions to deal with allegations of copyright infringement, and provisions concerning the reporting of data by the music streaming service and audit rights on the part of the record company.

Functionality clauses

- 4.6 We have observed that the majors' recording licences usually contain detailed specifications of the functionality parameters which authorise what the music streaming service is permitted to do within each 'tier' of its service. These clauses are more prescriptive than those found in indies' recording licences. These clauses are also more prescriptive in relation to 'free' (ad-funded) tiers. These specifications typically: (i) limit the functionality of the ad-funded tiers (as compared with the paid-for tiers); and (ii) impose minimum requirements concerning the prevalence and prominence of advertising on the ad-funded tier (which are not found in the paid-for tiers, as these are usually ad-free). Examples include:

- (a) Clauses that limit the audio quality that a track must be delivered in. These clauses set a maximum audio quality that cannot be exceeded and which will generally be lower than that offered in the paid-for subscription tiers.
- (b) Clauses that limit the number of times a listener can skip and/or repeat tracks during each hour of listening time.
- (c) Clauses that set a minimum number of ad interruptions that must occur during each hour of listening time (a minimum of six interruptions per hour is typical).

- 4.7 Differences in tier functionality appear to encourage consumers to 'upgrade' to paid-for tiers by introducing friction in the ad-funded tiers, for example, by including setting a frequency for the number of ad interruptions. The differentiation between tiers may also in part reflect the different payment terms: record companies will seek higher payments for greater functionality. Nevertheless, given that less detailed specifications are included in agreements between music streaming services and non-major record

companies, we think that these clauses indicate that the majors are able to exercise greater control over how their intellectual property is exploited. The need to renegotiate these clauses to innovate and change a music streaming service's offering could in principle weaken competition in the supply of music streaming.¹⁰⁶

Most Favoured Nation clauses (MFNs) on prices (Price MFNs)

- 4.8 Some of the agreements in place between the majors and the music streaming services contain MFN clauses on the rates paid by the music streaming service ('price' MFNs). Under these clauses a music streaming service cannot pay a third-party record company a higher rate for its content without also offering to pay that higher rate for the content of the major who benefits from the MFN clause. These clauses likely provide reassurance to a major that it is obtaining good economic terms.
- 4.9 Price MFNs are not typically found in agreements between music streaming services and indies, nor are they found in all agreements between each of the majors and each of the music streaming services. For example, the CMA has not seen any indication that Universal includes price MFN clauses applicable in the EEA or UK.¹⁰⁷ Further, some price MFNs are limited in scope such that they only apply to the rates offered to other majors.
- 4.10 We note that the MFN clauses discussed in this section do not relate to the price (or other terms) offered to the end-consumer. Accordingly, they are 'wholesale' rather than 'retail' MFN clauses. While wholesale MFNs may raise competition concerns, they do not directly prevent a supplier offering lower prices to consumers. In contrast, a retail MFN is more likely to raise serious competition concerns and can prevent a supplier offering consumers a lower price via another route to market. Certain types of such clause qualify as hardcore restrictions in the UK.¹⁰⁸

¹⁰⁶ The fact that the majors appear to insist upon inclusion of detailed functionality clauses when the indies do not may also reflect the majors' superior bargaining power.

¹⁰⁷ In 2012 UMG gave a behavioural commitment to the European Commission that it would not enter into certain MFN clauses with digital music service companies insofar as they apply to the EEA. See the decision in Case No COMP/M.6458 - *Universal Music Group/ EMI Music* at page 383, paragraphs 17-18.

¹⁰⁸ A hardcore restriction may not necessarily restrict competition, but its inclusion means that the agreement cannot benefit from a block exemption. Wide retail parity obligations are hardcore restrictions under UK law: see paragraphs 8(2)(f) and 8(7) of [The Competition Act 1998 \(Vertical Agreements Block Exemption\) Order 2022](#). In summary, a wide retail parity obligation exists where a supplier ensures that the prices (or other terms) available through its sales channel are no worse than those offered via the sales channels of other suppliers. The CMA has previously taken enforcement action under the Competition Act 1998 against wide retail parity obligations in the home insurance sector – see the CMA's infringement decision of 19 November 2020 in relation to CompareTheMarket.com (currently pending appeal).

- 4.11 While they are not likely to be as problematic as certain types of retail MFN clauses, in principle the price MFN clauses we have seen could still dampen competition between record companies. If the majors know that they each have price MFNs in their agreements, this could help indicate to each other that they do not intend to compete on price, which may in turn soften price competition. Price MFNs – where they apply to the rates offered to smaller record labels – might also make it more difficult for music streaming services to facilitate new entry or expansion of smaller record labels by agreeing to pay them higher royalty rates for a short period (or higher rates in return for newer, more innovative features).
- 4.12 In principle these clauses might also dampen competition between music streaming services. They could act as a barrier to entry or expansion to smaller music streaming services, since a new entrant may face increased uncertainty regarding the financial terms of the deals it enters into with relevant counterparty majors (eg the licensing rate agreed with one major with a price MFN could increase if the music streaming service cannot negotiate the same licensing rate with other majors, which in turn could raise the overall licensing costs when entering).

Other MFNs, non-discrimination clauses, and playlisting clauses

- 4.13 We also identified a number of other clauses which may have the effect of protecting the position of the majors, which, again, are not typically found in agreements entered into by indies. Unlike the price MFN clauses referred to above, which generally ‘bite’ only on the financial terms offered to the majors, these clauses tend to be broader in scope and apply to all record companies, not just the majors:
- (a) Some agreements contain a ‘general’ non-discrimination clause. These specify that the music streaming service must not discriminate against the counterparty major compared to one or more other record companies.
 - (b) Some agreements contain ‘economic’ non-discrimination clauses (also known as ‘anti-steering’ clauses). These clauses forbid a music streaming service from favouring the content of another record company, in particular on the basis that the other company’s content is cheaper.
 - (c) Some agreements have MFN clauses that extend beyond the rates paid by a music streaming service. For example, we have seen certain MFN clauses which require the music streaming service to provide to the major the best level of data or the best level of marketing support which it provides to any other record company (‘marketing’ MFNs).

(d) Some agreements contain obligations on the music streaming service to ensure that a major's share of tracks within global playlists broadly corresponds to its overall share of streams. Beyond these high-level types of obligation, however, the CMA has not identified any contractual clauses which impinge upon the streaming services' ability to decide what music to include within playlists. We have been told that the majors do not have insight into the design or operation of the music streaming services' algorithms and so cannot determine the selections which the algorithms make.

4.14 The above-mentioned clauses could each impact competition (individually and collectively) between record companies:

(a) The 'economic' non-discrimination clauses and 'marketing' MFNs could weaken rival record companies' incentives to reduce their price in order to increase their volumes.

(b) All of the above-mentioned types of clause could impact competition by making it more difficult for emerging record companies to gain prominence for their artists. This in turn makes it more difficult for such record companies to make money and expand. Accordingly, the clauses may increase barriers to entry for, or expansion by, smaller record companies.

Must carry clauses

4.15 Many of the majors' agreements contain obligations on the music streaming service to provide subscribers access to the relevant major's entire catalogue of songs (ie the music streaming service is not allowed to de-list a major's track, except in specific circumstances, such as where a track is the subject of a copyright dispute). Such clauses are not typical in agreements between the music streaming services and indies. These 'must-carry' clauses may weaken the music streaming service's bargaining power with a major because it could not threaten to de-list a major's less popular songs. This, in turn, could hamper efforts on the part of music streaming services to drive stronger competition between the majors.

Change of business model

4.16 A few agreements contain clauses which empower a major to: (i) propose amended terms to its agreement with a counterparty music streaming service if that counterparty enters the upstream market (ie offers recording contracts to artists) and such entrance results in the counterparty music service owning more than a certain percentage of music on its own service; and (ii) terminate

the agreement if the major and counterparty music streaming service are unable to agree on amended terms. Such clauses could impact downstream competition by weakening the music streaming service's bargaining power in respect of the relevant major, which in turn could hamper efforts on the part of music streaming services to drive stronger competition between the majors.¹⁰⁹

Confidentiality / NDAs

- 4.17 Confidentiality provisions are very common in both the majors' and indies' recording licences and are not uncommon in private commercial contracts generally. The clauses generally prevent parties from disclosing the agreement's terms and conditions and data relating to the music streaming service (including financials) to third parties (other than a contractual party's professional advisers). The clauses are normally subject to carve-outs for disclosure required by law, information which is or comes into the public domain (other than through a breach of the confidentiality requirement), and disclosures made with the counterparty's consent.
- 4.18 Concerns have been raised with us regarding the fact that the majors' agreements with music streaming services are covered by confidentiality restrictions. We have been told this means that artists are unable to understand fully the financial value of their own agreements. It is argued that this lack of transparency hampers investment, promotional activities and prevents music creators obtaining the most competitive deals.
- 4.19 In some agreements the confidentiality requirements are qualified to allow licensors to disclose certain information. The disclosure, depending on the contracting parties and the nature of the agreement, generally can be to artists represented by the licensor and/or other rights holders. A licensor may be able to disclose this information provided the recipient enters into equivalent confidentiality undertakings. Alternatively, restrictions on the type and level of information might be imposed, for example the licensor may be restricted to providing information only on a 'need to know' basis or only the minimum financial information necessary for an artist to understand the royalty payments being made to them.
- 4.20 In principle, overly-broad confidentiality clauses could weaken artists' bargaining power with record companies because they will be less able to drive competition between record companies. However, weak or non-existent confidentiality restrictions might also lead to adverse effects such as weakening the bargaining power of music streaming companies in their

¹⁰⁹ See paragraph 5.21 for our analysis of these clauses.

negotiations with record companies (eg it could be revealed that a music streaming service has made a concession to one record company, which may in turn lead other record companies to demand a similar concession).

- 4.21 Although we have not conducted a detailed legal assessment, we consider the likely competition implications in the relevant markets of the above clauses in Chapter 5.

5. Analysis on competition

- 5.1 In this chapter we set out our analysis and emerging thinking on how well competition is working in the supply of recorded music and music streaming.
- (a) First, we assess how well competition is working for consumers. We start by considering the upstream supply of recorded music to music streaming services, and then we consider the downstream supply of these music streaming services to consumers.
 - (b) Second, we assess how well competition between record companies is working at serving artists, and between music publishers at serving songwriters. For songwriters, we focus on whether there are any competition issues arising from music publishers' integration with record companies.
 - (c) Third, we assess what scope there is for revenues to increase in music streaming from reforming safe-harbour protections available to UUC platforms, and what impact such reforms might have on consumers and artists.
- 5.2 As part of our assessment, we consider both the current state of competition and how it might evolve.

How well competition is working for consumers

The supply of recorded music to music streaming services

The nature and strength of competition

- 5.3 All of the largest music streaming services' business models are based on offering a wide range of music to consumers, covering all the content from the majors and most other record companies. This reflects consumer preferences for a wide range of content on online audio services (see paragraph 3.75). Music streaming services told us that having this range of content was critical to their service, and the majors have also noted the need for music streaming services to offer their music.
- 5.4 While consumers benefit from having all of the most popular music on their chosen music streaming service, this 'full catalogue' model appears to result in weak competition, particularly on price, in the supply of this music by record companies to music streaming services. Under this model, it is highly unlikely that a music streaming service would remove one major's catalogue and switch to any other content. This lack of substitutability results in weak

incentives for record companies to compete on price when supplying music streaming services.

- 5.5 Setting lower prices for its repertoire could in principle help a record company increase its sales if it led consumers to listen to more of that record company's repertoire over others' repertoire. However, this type of price competition is weaker in music streaming than in other forms of music distribution such as a physical sale. By way of illustration, consider the effect of a record company discounting the wholesale price of a physical album as part of a retail promotion. A targeted promotional discount of this sort would likely drive up sales of that album. But there is no equivalent discount within streaming; the consumer pays a single price to access the service, no matter what they choose to listen to.¹¹⁰
- 5.6 The incentives to compete on price are likely to be particularly weak for the majors. There is a particularly low prospect of a music streaming service dropping the majors' content if their prices are not competitive because of the importance of their back catalogues and the popularity of the new artists on their rosters (compared to other record companies). The importance of the majors' content is reflected in their high share of streams (see Table 3.2).
- 5.7 If the majors had incentives to compete on price (eg by undercutting each other on price), the price MFNs (see Chapter 4) would not help a major ensure its prices were competitive (eg lower than other record companies) as the price MFNs instead ensure that a major's licensing rates are as high as its rivals. In this respect, price MFNs may be redundant under strong price competition. To the extent that there is weak price competition, this would seem to be due to the full catalogue model and lack of substitutability as referred to above, rather than due to the price MFNs.
- 5.8 Record companies primarily compete on the profile given to their artists to increase their share of streams. This marketing activity is undertaken on music streaming services, social media, radio, television and other channels. However, competition to secure marketing support from music streaming services also appears weak. In particular, the majors do not typically pay music streaming services for marketing support but appear instead to be able to use the importance of their repertoire and its lack of substitutability with rivals' content to negotiate significant marketing support from music streaming services, including through 'marketing' MFNs and playlisting clauses.¹¹¹

¹¹⁰ We discuss the extent to which record companies have incentives to compete on price in return for greater marketing support from music streaming services at paragraphs 5.15 to 5.18 below.

¹¹¹ See paragraphs 5.15 to 5.18, 5.22 and paragraph 5.89 for further discussion on this.

5.9 While competition between record companies to supply music to music services appears to be weak, record companies do not appear to be earning sustained and substantial excess profits (see Chapter 3). Competition between record companies elsewhere, for example to sign and invest in artists, may limit the profits that record companies earn (see section below on how well competition is working for creators).

Bargaining position of music streaming services with record companies

5.10 The weak nature of competition in the supply of music to music streaming services set out in the previous section, particularly on price and between the majors taken on its own, is likely to weaken the bargaining position of music streaming services with rightsholders. A customer's bargaining power depends on the availability of good alternatives that they can switch to. The lack of good alternatives, particularly for the majors' content, is therefore likely to weaken music streaming services' bargaining position in their licensing negotiations.

5.11 As a music streaming service grows in scale and becomes a more important source of revenues to record companies, the evidence appears to indicate that there is scope to negotiate improved terms with these rightsholders. For example, music streaming services indicated that growing in scale is important to negotiating improved terms with record companies. The increasing bargaining strength of some music streaming services is consistent with the increase in music streaming services' share of revenues in recent years (see Figure 3.8). As some music streaming services grow, their ability to negotiate improved terms may help lower their costs, which could be passed on to consumers in the form of lower prices of music streaming services or more investment in the quality of these services.

5.12 The increasing scale of some music streaming services appears to be increasing the degree of mutual dependence between record companies and music streaming services. However, this increasing mutual dependence does not necessarily result in equal bargaining power of the music streaming services and record companies. Even larger music streaming services could remain in a weak bargaining position with the majors due to the lack of good alternatives to the majors' content.

5.13 In contrast, the majors have a range of music streaming services through which they can distribute their music (at least seven including Spotify, Amazon, Apple, YouTube Music, Deezer, Tidal and Soundcloud), and this

strengthens the majors' bargaining position.¹¹² A major would still face the risk of losing potentially substantial revenues from a failure to negotiate a licensing agreement with a music streaming service and this would potentially reduce the earnings of artists signed to that major unless the major compensates its artists. However, this loss in revenues by the major could be offset to some extent by the growth in revenues on other music streaming services. Given the importance of a full catalogue to consumers, we would anticipate music streaming services that continue to offer this full catalogue would grow at the expense of any music streaming service that failed to license content from one of the majors.

- 5.14 Evidence on profitability of the majors and music streaming services, and how they split music streaming revenues between them, appears to be consistent with the majors being in a stronger bargaining position at present than the music streaming services. As set out in Chapter 3, the majors take a higher share of music streaming revenues than music streaming services, and the majors' UK record companies have higher operating profits compared to the low or negative operating profits of music streaming services in the UK.

Impact of contractual clauses in licensing agreements on competition between record companies

- 5.15 As noted in Chapter 4, contractual clauses such as 'economic' non-discrimination and 'marketing' MFNs can restrict music streaming services from promoting cheaper content. Without these clauses, it could be easier for music streaming services to get record companies to compete on price and for greater marketing support. This could in principle involve a record company offering better financial terms than its competitors for all or some of its content in return for, say, greater marketing support from the music streaming service.
- 5.16 However, in practice this type of price and marketing competition may not materialise in a significant way, even with the removal of certain clauses. In particular, some music streaming services indicated that offering greater marketing support as a way of pushing down licensing rates is not a strategy that music streaming services are generally seeking to implement. We consider this may reflect the inherent practical challenges involved in seeking the necessary agreement from a range of record companies and music streaming services needing to ensure that a consumer is being presented with

¹¹² Given the extent to which the majors' repertoire drives their strong bargaining position, we consider the majors' small shareholdings in Spotify and other music streaming services (see Chapter 3) are unlikely to increase materially the majors' bargaining position.

music that reflects their interests and preferences rather than promoting cheaper content.

- 5.17 It is also not clear whether music streaming services favouring cheaper content would be in consumers' interests. If it was effective at reducing music streaming services costs, consumers may benefit to some extent if these cost savings were passed on through lower overall prices. However, promoting cheaper content could mean music streaming services are not as effective at promoting music that most engages consumers. Also, given that consumers pay a fixed fee (or no fee at all) in music streaming, a consumer could also listen to this cheaper content on a music streaming service without being offered a discount or any other benefits for doing so (in contrast to the discounts offered on physical album promotions).
- 5.18 Spotify's trial of its Discovery Mode marketing tool indicates the challenges with seeking to introduce price and marketing competition between record companies. This marketing tool prioritises a track for discovery in return for Spotify charging a commission to a record company on streams when Discovery Mode is turned on. However, this marketing tool is only activated in limited areas of Spotify where listeners are most open to discovery, and when a listener does not engage with a track, the tool pulls back from recommending that track to similar listeners.¹¹³ While this tool may have had some success at promoting content from some record companies, the extent to which such a tool can generate strong and widespread price competition between record companies could be limited if other record companies do not participate. The effectiveness of the tool could also be limited if there is not sufficient engagement from consumers with the songs prioritised for discovery.
- 5.19 While the price MFN clauses in contracts between record companies and music streaming services may also have dampening effects on competition (as set out in Chapter 4), price MFN clauses would not restrict record companies from competing on price in the way that marketing MFNs and 'economic' non-discrimination clauses may do. If a record company had incentives to lower its prices relative to its competitors in return for, say, more marketing support as noted above, the record company could simply remove the price MFN or waive the right to higher prices under such an MFN. However, where there is a lack of incentive to lower prices, the price MFN is a contractual tool that can be used to ensure that a record company gets a price as high as its peers.

¹¹³ [Spotify website](#) (accessed on 16 June 2022).

- 5.20 Must carry clauses could in principle weaken competition between record companies as they prevent a music streaming service from removing certain content from their service where the associated royalty rate was uncompetitive or the content itself was considered to be low quality. However, stakeholders have noted the importance of offering a wide range of content on a music streaming service, and services that have launched with partial catalogues have not grown to the same size as ‘full catalogue’ services (see Chapter 3). So, giving a music streaming service the option to remove content may only marginally increase price competition to supply them with music. Removing content could also harm consumers as it would reduce the range of music available to them on a music streaming service.
- 5.21 Similarly, the removal of ‘change of business model’ clauses is unlikely to enable music streaming services credibly to threaten to switch away from licensing the majors’ content by self-supplying its own alternative content given the need to offer a ‘full catalogue’ on music streaming services. The majors, if they fear disintermediation by music streaming services, ultimately appear able to stymie such efforts without resorting to enforcement of contractual provisions – for example, by stalling negotiations on other matters that could support the growth of a music streaming service.
- 5.22 As explained in the previous section, there is no credible threat of a music streaming service switching from one record company’s repertoire to another’s, particularly a major’s repertoire. Given this, our current view is that the nature of competition between record companies to supply music to music streaming services would remain weak even absent the combined effect of the contractual clauses discussed above. Whilst a slight strengthening of competition might be expected by their removal (individually or in combination), it is not clear any improvement would be more than marginal. The majors could continue to use the particular importance of their content to a ‘full catalogue’ music streaming service as a way of securing high licensing rates and significant marketing support from music streaming services.

Majors’ combined activities in licensing recording and publishing rights

- 5.23 Music groups own and control rights to music through both their record companies and their publishing companies. A music streaming service needs to license both sets of rights to offer a given track on its service. Together, the majors hold one or more of these rights (in recording or publishing) for 98% of the top 1000 singles in the UK in 2021 (Figure 3.3). This indicates the importance of the majors’ repertoire to music streaming services.
- 5.24 Stakeholders raised concerns over how the majors’ combined activities in music recording and music publishing gives them a stronger bargaining

position with music streaming services. Some stakeholders allege that the majors can, by threatening not to license their publishing rights (or holding up these licences), utilise their large publishing repertoire to impose higher recording rates on the music streaming services (or other unfavourable terms and conditions).

- 5.25 Our current view is that the majors' activities in publishing are unlikely to increase their bargaining position in a material way. Even without these activities in music publishing, the majors would likely remain in a strong bargaining position with music streaming services due to the importance of their recording rights and the weak competition in the supply of these recording rights to music streaming services, as noted above. In particular, the majors' record companies together hold almost all of the rights to the most popular music, that is without even taking into account the majors' activities in music publishing. The majors have a 92% combined share of recording rights for the top 1000 singles in the UK in 2021 (Figure 3.3).

Emerging thinking and outcomes

- 5.26 There appears to be weak competition, particularly on price, to supply music to music streaming services. However, as we explain later in this section, stronger competition elsewhere in the value chain is helping to ensure positive outcomes for consumers. Competition between music streaming services is contributing to declining consumer prices (after adjusting for inflation) and substantial innovation in music streaming. In addition, effective competition on the artist side involves record companies competing for streams by seeking to acquire, invest in and develop content that will engage consumers. We consider competition in these areas further in the sections below.
- 5.27 Our profitability analysis does not indicate that the majors are earning profits that are substantially and persistently in excess of their cost of capital (Chapter 3). This suggests that there is unlikely to be scope for greater competition between record companies to transfer significant profits to consumers (or creators) as the profits being earned appear to be similar to the level that is needed to fund the investments made by these record companies.
- 5.28 Music streaming services have also been able to reduce the share of revenues that they pay out to rights holders from 73% in 2017 to 68% in 2021 (see Figure 3.8). This indicates that costs for licensing content can fall, notwithstanding the weak competition between record companies.
- 5.29 The weakness of competition to supply music to music streaming services, particularly on price, appears to be an inherent outcome of the 'full catalogue' music streaming model. It does not appear straightforward to change the

nature of upstream competition in a material way without a change to the model of music streaming itself, for example a shift away from 'full catalogue' content offerings to a more limited range of content.

- 5.30 Such models are available to consumers, for example genre-specific services. Consumers can also opt to buy a more limited range of content using digital downloads instead of using a music streaming service. However, there appears to be far less demand for these types of services, which can be a more expensive way for consumers to access music than a 'full catalogue' music streaming services. So, the logical consequence of meeting consumer demand for 'full catalogue' music streaming services at relatively low price (which appears to be a reasonably good outcome that many consumers seem to prefer to alternatives) appears to be less intense competition upstream to supply music to these services (since, in summary, for each streaming service, all major sources of music need to be licensed).
- 5.31 Given the evidence on positive outcomes for consumers, the lack of sustained excess profits of record companies, and the declining share of music streaming revenues paid out to rightsholders, our current view is that the limited competition in the supply of music to music streaming services is not a substantial cause for concern. We discuss how this view could change in a section below on future competitive dynamics.

The supply of music streaming services to consumers

Nature and strength of competition

- 5.32 The market leader in the UK in terms of users, streams and revenues is Spotify. It was the first to enter the market in 2008. The three other largest music streaming services are provided by Apple, Amazon and YouTube (which is part of Google) offering a choice of services to consumers, alongside a range of other smaller providers. Apple, Amazon and Google all have wider ecosystems and provide other related products and services. We refer to music streaming services that are part of these wider structures as 'integrated' streaming services.
- 5.33 As music streaming revenues are still growing, competition between music streaming services appears to be currently focussed on acquiring new users, in particular encouraging users to upgrade from ad-funded to paid-for premium tiers, rather than encouraging users to switch from one provider to another.

- 5.34 We have currently found no evidence of streaming services earning excess profits – indeed, we find low or negative operating margins for the music streaming services whose accounts we have been able to analyse.
- 5.35 As described earlier, the prevailing model of music streaming is for a ‘full catalogue’, ‘all you can eat’ model. The offer to consumers from the most popular music streaming services is thus very similar in terms of their content as well as their headline prices – around £9.99 a month for individual, ad-free access.
- 5.36 We heard from streaming services that they thought it would be hard to move away from this price point for their individual tier. They explained that they were wary of increasing prices, even to keep pace with inflation, because of competition and consumer anchoring on the £9.99 a month price point. The £9.99 anchoring has remained stable over time meaning that the cost to consumers of these tiers has in fact reduced in real terms.¹¹⁴ However, we have observed price increases in student and multi-subscription tiers.
- 5.37 Music streaming services seek to differentiate themselves in ways other than their music content and price, including through their playlists, user functionality, and features such as audio quality or additional content such as podcasts. New price points are being introduced both above and below the headline premium price. These include student plans, family plans, voice-only and single device plans. Overall, consumer satisfaction with music streaming services is high.
- 5.38 The ad-funded plans available on most music streaming services offer consumers access to broadly the same content as on the premium tiers. Their user interfaces, features and playlists are also similar, albeit more limited as described in Chapter 3. The rationale for these tiers is, broadly, to disincentivise consumers from opting for pirated content and to encourage them to pay for a premium subscription which provides much higher revenues that can be distributed across the value chain.
- 5.39 With inflation reducing the cost in real terms of premium subscriptions, the experience of consumers on ad-funded tiers may not be improving to the same extent as those with premium subscriptions. As improving ad-funded tiers could encourage consumers to remain on these tiers rather than upgrading to premium tiers, there may be some limits on how much competition can drive further improvements to ad-funded tiers

¹¹⁴ Recently there has only been one increase from the £9.99 a month price point: at the end of 2021, Deezer increased the price of its monthly premium subscription from £9.99 to £11.99.

Barriers to entry and expansion arising from economies of scale and scope

- 5.40 New music streaming services entering the market face large upfront costs, in terms of infrastructure and software investment, time and expertise to negotiate licences, as well as the ability to cover any minimum guarantees in the contracts with record companies. These upfront costs are likely to be a barrier to entry.
- 5.41 There also appears to have been early-mover advantages. These are likely to include brand recognition as well as switching costs and data advantage (more users leading to more data with which to continue to improve the service). In addition, there are economies of scope arising from integration with other services, which, as set out below, can help a music streaming service expand and consequentially benefit from economies of scale.
- 5.42 Integrated music streaming services control various combinations of the devices (smartphones, tablets, smart speakers), operating systems, app stores and search engines through which consumers discover and use music streaming services. This wider control provides the integrated music streaming services with competitive advantages over other music streaming services.
- 5.43 Through these devices, app stores and other access points they can offer their own music streaming services preferential placement, advantageous default positions,¹¹⁵ and marketing privileges for cross-selling (all of which we refer to as self-preferencing). They also have access to valuable data on consumer behaviour they can use to target customers, for instance those who have cancelled. Further, they can impose costs on the users of rival music streaming services that users of their own streaming service are not exposed to, for example through app store commission fees.¹¹⁶ The European Commission is investigating Apple's rules for the distribution of music streaming services through its App Store.¹¹⁷ The CMA is also conducting

¹¹⁵ Defaults may be particularly important on smart speakers – Ofcom found that 68% of respondents who use a smart speaker have not changed the default music provider. Ofcom (2022), [Audio Survey](#) question 8.

¹¹⁶ Commissions on in-app subscriptions would not impact consumer choice of music streaming service if costs were not passed on in the form of higher prices, or if subscribing outside of app presented no additional frictions. However, most music streaming services charge higher subscription prices in-app (ie YouTube Music, Amazon Music Unlimited, Soundcloud Go, etc.) and those not offering the ability to subscribe in-app (ie Spotify on iOS, Tidal on Google Play) require consumers to sign-up on a website instead which introduces additional friction into the sign-up process.

¹¹⁷ See European Commission press release IP/21/2061: [Antitrust: Commission sends Statement of Objections to Apple on App Store rules for music streaming providers](#).

investigations into certain terms imposed by Apple and Google on app developers through their apps stores.¹¹⁸

- 5.44 Integrated music streaming services can offer consumers bundles of their services. These can reduce the firms' costs of customer acquisition and enable them to realise efficiencies in, for example, the costs of administration or product development. In Chapter 3 we set out examples of bundles provided by integrated streaming services.
- 5.45 Non-integrated music streaming services have entered into partnerships with providers of other services such as mobile phones which can help them sign up new consumers and replicate some of the benefits of bundling and other cross-selling strategies used by integrated music streaming services.
- 5.46 Given the full catalogue model and the similarities in price points between music streaming services, bundling is a way for services to differentiate themselves and compete to acquire new users. While this and self-preferencing more broadly could support competition in the supply of music streaming services, there is a risk that these strategies make it more difficult for smaller non-integrated music streaming services to remain in the market.
- 5.47 A particular concern expressed by some stakeholders about barriers to entry and expansion relates to potential cross-subsidisation of music streaming services by the integrated providers, including the prospect that those integrated music streaming services do not need to run their streaming businesses profitably. If this were the case over the longer term, then it might create a barrier to smaller, non-integrated music streaming services entering and expanding in the market, as well as making it more difficult for existing non-integrated music streaming services to remain in the market. While cross-subsidisation could put downward pressure on prices, it could also inhibit innovation, choice and quality.
- 5.48 For the integrated music streaming services we have analysed, their operating margins are low or negative. However, we have not seen any evidence to suggest there is currently cross-subsidisation, nor that the

¹¹⁸ On 10 June 2022, the CMA launched an investigation under Chapter II of the Competition Act 1998 into suspected breaches of competition law by Google. The investigation concerns Google's distribution of apps on Android devices in the UK, in particular Google's Play Store rules which oblige app developers offering digital content to use Google's own payment system (Google Play Billing) for in-app purchases. On 3 March 2021, the CMA launched an investigation under Chapter II of the Competition Act 1998 into suspected breaches of competition law by Apple. The investigation concerns Apple's conduct in relation to the distribution of apps on iOS and iPadOS devices in the UK, in particular, the terms and conditions governing app developers' access to Apple's App Store.

integrated music streaming services are planning to continue running their music streaming businesses at a loss over the longer term.

- 5.49 Spotify as a non-integrated service historically has also not been profitable and, based on its statutory filings, had a 1% operating margin across its entire business in 2021.¹¹⁹ This suggests that a temporary period of loss making by an integrated music streaming service is not necessarily unusual or a cause for concern. Indeed, a temporary period of loss making (that could be recovered over a longer period) may be necessary to support market entry and is consistent with growing markets where there are economies of scale – it does not necessarily mean there is long-term cross-subsidisation.
- 5.50 Economies of scale also matter to competition between music streaming services. We have been told that in order to get better financial terms with rights holders or permission to introduce new features, a music streaming service needs to have sufficient scale in terms of its users to convince rights holders it is worth the risk. But to reach such scale, a new service will find it difficult absent favourable rates or more freedom to introduce new features.
- 5.51 Given this, integrated music streaming services appear to be best placed to grow through the self-preferencing and bundling strategies described above. This is reflected by their recent growth in the UK (see Table 3.8).
- 5.52 Spotify (as the largest music streaming service in the UK) and growing integrated music streaming services are therefore more likely to be able to benefit from lower rates for music content and also more likely to be able to introduce new features. This could in principle weaken competition by giving them a competitive advantage over smaller services, inhibiting the ability of smaller services to expand.

Barriers to switching

- 5.53 Consumer switching, or the threat of it, is important in maintaining effective competition within markets. At present we see limited evidence of consumers switching between paid-for music streaming services. However we do observe some multi-homing, which is likely to be particularly driven by the use of ad-funded tiers, free trials and different music streaming services being better integrated on certain platforms.
- 5.54 As noted earlier, we understand that music streaming services have been primarily focussed on attracting new users (ie those who do not already use a

¹¹⁹ Spotify 2021 annual report.

paid-for streaming service) rather than prioritising switching, given the expectations that the market would grow further.

- 5.55 The ‘full catalogue’ offer of the biggest music streaming services and high satisfaction rates with these services – and the fact that they all offer very similar pricing – also suggests there could be limited incentive for consumers to spend time on switching between services which could explain the lack of switching. If consumers of one service believed that they are not getting a competitive offer and were considering switching, there are regular free trials, as well as ad-funded tiers, to enable them to try out different services. Paid subscriptions are typically on a month-by-month basis.
- 5.56 While it is reasonably easy to subscribe to a new music streaming service, consumers may be reluctant to switch when they have curated their own playlists or where their streaming service has developed a good understanding of the music they like, resulting in highly valued personalised recommendations which a different streaming service may not be able to replicate.
- 5.57 There are a few music data portability services which facilitate the transfer of playlists, music data history and downloads between customer accounts on different platforms.¹²⁰ These services are offered direct-to-consumer with free and premium options, and they could help address consumer caution regarding switching associated with wishing to retain their listening history. We note that while some smaller music streaming services provide data portability services for free to customers that switch to them, none of the larger ones do so. This suggests that most switching and data porting could still involve some costs or frictions for consumers.¹²¹
- 5.58 Currently, consumer awareness of the availability of data portability services appears to be low – one of these services (Soundiiz)¹²² cited this as a reason why some consumers may not have tried to switch from their streaming providers. Limits to the functionality of these services – for example, they may not have access to the full ‘playback’ music history of the consumer (which helps to determine the personalised recommendations and playlists offered by the music streaming services) – may also reduce usage of these services at this stage. It is difficult to predict how switching services, and consumer awareness of them, will evolve as switching may become more important to competition as growth opportunities from new users decline.

¹²⁰ See, for example: [Plans guide - Soundiiz, last.fm](#) and [Plans - TunemyMusic](#).

¹²¹ See, for example, [Transfer your playlists and music to Deezer for free](#) and [Playlist Import | TIDAL](#).

¹²² Evidence from meeting with Soundiiz.

- 5.59 The social dimension of music streaming services, where consumers can share and co-create playlists and connect with friends on the platform, may also limit propensity to switch.
- 5.60 Our initial view is that, while there may be some barriers to switching, they are not currently a major problem to the functioning of the market given the focus of competition on new users. This could change, for instance when market penetration stabilises and switching becomes more important for effective competition. In that scenario, interoperability or data portability issues may play a bigger role in ensuring competition works effectively. We would also be concerned if there were changes to pricing structures that meant long-standing or less active customers who had not switched ended up paying more than new customers, as we have seen in some other markets.

Barriers to innovation

- 5.61 There has been substantial innovation in music streaming over time, for example in relation to audio quality, song lyrics, shared playlists, as well as additional price plans such as family or voice-only access.¹²³ However, we have heard concerns that, as a result of the balance of power between music streaming services and major labels, and the contractual agreements between them, there has been less innovation than there might otherwise have been.
- 5.62 There are two main aspects to this. First, specific service level restrictions and MFNs limit the ability of streaming services to differentiate their service offering and functionality, particularly on the ad-funded tiers. Although both record companies and music streaming services have an incentive to encourage consumers to move from ad-funded tiers to premium subscription tiers because they get more revenue that way, the majors may have a lower tolerance for the ad-funded tiers than the streaming services as they might consider it undervalues their content. This would appear to translate to them requiring that the ad-funded tiers are sufficiently limited that consumers are incentivised to upgrade.
- 5.63 The second aspect is the sheer complexity and quantity of contracts required can slow the pace of innovation within music streaming services. Music streaming services have described how the introduction of any potential innovation will necessarily involve negotiating with a large number of counterparties. Further, in relation to each individual counterparty, identifying

¹²³ Evidence summarised in [The Digital Entertainment and Retail Association \(2022\), ERA Yearbook 2022, p6-7.](#)

the relevant contractual clauses for amendment and then agreeing on suitable changes with music companies can be burdensome.

- 5.64 Some music streaming services told us that to gain a major's agreement to a potential innovation it can be necessary for a music streaming service to make a corresponding but unrelated concession. Contractual restrictions, and more generally the need for a music streaming service to negotiate with rightsholders what key features it offers, appears to be an inherent part of the licensing process, with the financial terms negotiated depending on the features agreed.
- 5.65 The contractual environment could be having a wider dampening effect on the willingness of music streaming services to try to innovate. The importance of the majors' content means they have a strong bargaining position vis a vis music streaming services.¹²⁴ We have also heard that there may be risk aversion within music companies due to the experience of piracy and the impact that had on revenues.
- 5.66 At the same time, it is also true that innovations usually involve some degree of risk, and music companies may have lower risk appetites than streaming services.
- 5.67 We have seen very few specific examples of blocked innovation in music streaming. Our current view is that while innovation in music streaming may be restricted to some extent by contractual clauses, interventions over these contractual restrictions are not likely to have a significant impact on innovation or competition in music streaming (and could have unintended consequences). In particular, music streaming services would still need to negotiate with multiple rightsholders on the financial terms over how their content can be used. It is these complex negotiations that appear to be the main barrier to even greater innovation, but these negotiations appear to be an inherent part of the licensing process.

Emerging thinking and outcomes

- 5.68 The evidence we have seen to date appears to suggest that competition between music streaming services is working reasonably well for consumers, at least insofar as there remains competition for new users. Issues such as high entry costs, barriers to switching, and barriers to innovation, do not currently appear to raise substantial competition concerns. Consumers have a choice of music streaming services, new features and additional content have

¹²⁴ See paragraphs 5.10 to 5.14.

been introduced, and consumer satisfaction with music streaming services is high.

- 5.69 We have, so far, found no suggestion of sustained excess profits – indeed, the music streaming services whose accounts we have analysed show low or negative operating margins – and prices for consumers on the main tiers are falling in real terms.
- 5.70 There may be high upfront entry cost and, in particular, greater barriers to entry and expansion for smaller non-integrated music streaming services. These services have neither the early-mover advantages or the economies of scale of the market leader, Spotify, nor the economies of scope and ability to self-preference that the integrated music streaming services have. However, the main competition to Spotify appears to be coming from the integrated streaming services. This may be, in part, because of their economies of scope and ability to self-preference. In light of these dynamics in the supply of music streaming, we have not, at this stage in the sector’s development, reached a view on how substantial the competition concerns are from barriers to entry and expansion in music streaming including those that may arise from self-preferencing. However, we discuss in the section below what could lead to substantial competition concerns in the future.
- 5.71 While there are potential barriers to consumer switching, these do not appear to be a significant competition concern at present given the focus on attracting new users. This could change when the pool of new users declines.
- 5.72 There appear to be some barriers to innovation in the market due to the way music companies seek to exercise their intellectual property rights and restrict the way their music is used and their associated bargaining power. While at present there is limited evidence of blocked innovation, evidence that the pace at which innovation can be brought to market is being slowed is more of a concern.
- 5.73 It may be inevitable that there will be some constraints on the way in which the recordings and songs can be used given the music streaming services seeking to innovate are using the intellectual property licensed by music companies. Those music companies can reasonably expect some control over the exploitation of their rights in order to protect their investments and artists. The sheer number of rights holders from whom the music streaming services license music may limit the speed at which changes to the *status quo* can be agreed, restricting innovation. We welcome evidence and views on the harms to innovation from this situation and any input on the appropriate balance.

Future competitive dynamics

- 5.74 Although our emerging view is that competition appears to be working reasonably well, there are some future developments that could influence how effectively it continues to operate.
- 5.75 While competition between music streaming service providers appears relatively healthy at present, competitive pressure between music streaming services could lessen, leading to sustained and substantial excess profits. While the majors may still have significant influence over some of the features of these services, less competition between music streaming services could, for example, lead to higher consumer prices of these services. Similarly, there could be lower levels of innovation, either due to reduced competitive pressure, or because music companies and music streaming services fail to reach agreement on licensing terms for particular services.
- 5.76 Spotify, the current market leader, faces the strongest competition from integrated streaming services. As described above, these integrated services could make it more difficult for other streaming services to enter, expand or even remain in the market. If the strength of these integrated services were to grow, including through consolidation or the exit of competitors, that could exacerbate any difficulties that non-integrated streaming services have to enter or expand in the market. In that scenario, the focus would be to consider how the apparent benefits of integration should be considered in light of the interactions between the music streaming service and the integrated firm's wider digital ecosystems.
- 5.77 We highlighted above that, at present, competition appears to be focussed on attracting new customers rather than encouraging switching. As the proportion of people using music streaming services continues to increase, the pool of new users will diminish. This will then put greater emphasis on switching between streaming services to drive effective competition. The extent to which the barriers to switching that may exist limit the willingness or ability of consumers to switch will influence how effectively competition drives positive outcomes for consumers. We might also have concerns if music streaming services sought to charge loyal customers more and only offer more competitive deals to new users or those customers that switch.
- 5.78 Another matter of importance to future competition is the way that consumers access music streaming services – in particular, the degree to which there is integration between services and devices. There has been growth in both the ownership of smart speakers, and in the volume of streaming that takes place through them. The primary providers of smart speakers are the same integrated tech firms that supply music streaming services – Apple, Amazon

and Google. If the growth and use of smart speakers continues, whether and how easily consumers are able to use music streaming services other than those provided by the provider of the smart speaker could impact competition in the streaming services market.¹²⁵

- 5.79 Data collection by providers of smart speakers on, for instance, the use of streaming services or listening habits and the extent to which such data is shared with streaming services could also affect competition.
- 5.80 It is also possible that greater use of smart speakers and related ‘voice-only’ plans being offered by some music streaming services influences how and what people listen to. For example, it may be that playlists, autoplay and recommendations are more prevalent means of consuming music on smart speakers compared to accessing a streaming service through a mobile app. In turn, this might be expected to have implications for music companies, creators and competition between them. Some of the contractual clauses we have described above related to non-discrimination and playlisting could become more significant to what consumers hear and the functioning of the market.
- 5.81 There are other means of accessing music streaming services, for instance through in-car infotainment systems, and new developments could see others. As with smart speakers, the interaction between these, the providers of streaming services and how consumers use them is another area that may affect future competition.
- 5.82 Another risk is the use of algorithms increasing further, for example in playlists or recommendations, which may direct consumers to listen to certain types of content. This could cause concern for consumers if not done in a fair and transparent way.

How well competition is working for creators

- 5.83 A wide range of competition concerns that could impact creators, both artists and songwriters, have been raised with us. In this section we set out our initial assessment of these concerns.

Artists

- 5.84 Stakeholders raised concerns that artists are poorly compensated while elsewhere in the value chain substantial profits are being made. Some

¹²⁵ There are parallels here with some of the issues considered in the CMA’s [Mobile ecosystems market study](#).

stakeholders were concerned that this was due to the concentrated nature of the market, particularly the majors' dominance on music streaming services, which in turn puts artists in a weak bargaining position when they sign a record deal. Another particular concern was that artists do not have enough information to know whether they are getting the best possible terms.

Market concentration, alternative business models and barriers to expansion

- 5.85 As set out in Chapter 2, the majors have high and stable shares of music streams in the UK, and their combined share has been consistently over 70% since 2015 (see Table 3.2). There are also many independent labels, but they are substantially smaller than the majors with only BMG and Beggars having a share of 1% or more.¹²⁶
- 5.86 Notwithstanding the stable shares of supply, there have been changes to the mix of business models used to serve artists. Traditional record deals face increasing disruption from alternative models, in particular service deals from A&L service providers. Compared to traditional record deals, service deals are typically shorter-term agreements with the service provider receiving a lower share of earnings but with all costs recoupable from the artist's portion of earnings, and typically lower advances.¹²⁷ There are also DIY platforms that offer artists and smaller labels distribution to music streaming services, typically in return for a low fixed fee.¹²⁸
- 5.87 A&L and DIY business models have not substantially eroded the share of supply of the majors. In part, this reflects the majors' acquisitions and investment in A&L services. But we also received evidence of significant barriers to expansion faced by independent record companies compared to the majors.
- 5.88 The majors have significant advantages linked to their scale that are difficult for independent record companies to replicate. Most notably the majors' ownership and earnings of large back catalogues of music for which they have long-term rights gives the majors significant financial advantages. Back catalogues are responsible for over 80% (in 2021) of music streams and therefore account for a high proportion of streaming revenues.¹²⁹ We were told that the majors' financial advantages mean they are typically able to fund larger advances, and invest more in artist development, marketing and in providing higher touch services to artists. In addition, the majors have a wider

¹²⁶ BPI (2021), *All about the music*, p48.

¹²⁷ CMA (2022), *Sony/AWAL*, paragraphs 2.46 and 6.10.

¹²⁸ CMA (2022), *Sony/AWAL*, paragraph 2.49.

¹²⁹ CMA analysis of Official Charts' data.

global presence than an independent record company, which gives the majors a competitive advantage in promoting artists on a global basis.

- 5.89 A particular concern raised with us was about the impact of licensing arrangements and market power of the majors on the placement and prominence of their artists on music streaming services, with the implication that this incentivises artists to sign with a major. Our initial analysis of the majors' licensing and marketing arrangements with music streaming services would seem to indicate that the majors do seek to influence the placement and prominence of their repertoire on music streaming services (see Chapter 4). This includes some use of contractual clauses that base a major's representation on playlists on its share of streams. However, music streaming services appear to have some flexibility to promote content from independent record companies and we have received evidence that such companies are also able to increase the profile of their artists on music streaming services. Moreover, 42% of streams are from user-created playlists whereas only around 20% of streams are from playlists provided by the music streaming service (see Chapter 3). This limits the extent to which the majors' influence of music streaming services' playlists can act as a barrier to expansion of independent record companies, which have a range of media channels to market their artists (see paragraph 5.8).
- 5.90 Overall, our initial analysis indicates that there has not been substantial expansion of independent record companies, with this largely being due to the scale advantages of the majors, which puts the majors in the strongest position to sign and retain artists, in particular the most successful artists.

Bargaining position of artists

- 5.91 Many stakeholders were concerned that artists are in a weak bargaining position with record companies, and that in particular this was due to the majors' dominance on music streaming services (as discussed above). These stakeholders were concerned that artists' weak bargaining position was leading to a low allocation of music streaming revenue to artists and other creators.
- 5.92 Our understanding from engagement with stakeholders is that the extent of competition for an artist depends on the popularity of the artist and what stage they are at in their career, which in turn impacts the bargaining position of artists with record companies.
- 5.93 For certain artists who are already popular or are particularly likely to be so, competition to sign them can be very intense with offers from many labels. Such competition has increased in the age of streaming where a large amount

of data is available and accessible and can help identify artists that trend, for example, on social media and UUC platforms.

- 5.94 Nevertheless, there can be little competition to sign many artists. There is significant uncertainty over which new artists will be successful, so it is more common for new artists to receive only one offer (if any) to sign a traditional record deal from a major or indie label. Other promising alternatives such as higher-touch service deals (and the higher advances associated with them) can also be limited for new artists, with access to these deals depending on the popularity of the artist.¹³⁰ Without a significant number of attractive options, many artists may experience weak competition to sign them and find themselves in a weak negotiating position, particularly at the early stages of their career when they do not have a track record to build on.
- 5.95 The use of service deals and other alternative business models that focus on digital distribution of an artist's music may increase the bargaining position of some artists. Stakeholders told us that established artists can switch to these business models when the contract term of their traditional record deal ends. Doing so can give these artists greater ownership and control of the new music they make, although this can involve the artist taking on more risk. Similarly, new artists can use these models, which are often shorter-term, to build up a track record and put them in a stronger position when negotiating future deals. However, whilst these options do represent an alternative for some artists, they may not be a direct substitute for a traditional record deal from the majors in many cases, especially for more successful artists who are in stronger position to secure higher advances and higher-touch services from a traditional record deal than a service deal offers.¹³¹
- 5.96 The stronger bargaining position of some artists appears to be reflected in improving royalty rates and terms. Qualitative evidence from stakeholders, including record companies' internal documents, indicates that artists are being offered higher royalty rates and shorter contract terms than in the past. As these new contracts are a fraction of all contracts (existing and new), it will take time for their impact to show up in overall outcomes for artists. Nevertheless, there has already been a small increase in the average royalty rates that artists earn from UK music streaming, with rates increasing slightly from 25% to 26% between 2017 and 2021 for artists contracted to the majors' UK arms.¹³²

¹³⁰ Evidence from meeting with MMF and FAC including artists and artist representatives.

¹³¹ For example, the Sony/AWAL investigation found that these alternative services placed a limited competitive constraint on the majors largely because they were competing for different artists. See CMA (2022), [Sony/AWAL](#), paragraphs 8.20 and 8.36.

¹³² CMA analysis of data from the majors.

- 5.97 While competition and changes to technology appear to be delivering positive outcomes for some artists, there is a large group of artists that are earning little income from music streaming (see Chapter 3). For example, there is a long tail of smaller artists who utilise services such as DIY distribution platforms and will typically make very little from music streaming.
- 5.98 As we describe above, music streaming has reduced barriers to entry for artists, particularly at the low- or mid-range with the number of artists being streamed in the UK almost doubling between 2014 and 2020 from around 200,000 to 400,000. This, along with competition from the widespread availability of back catalogue music on music streaming services, creates further challenges for artists looking to establish a presence on music streaming services. The music streaming market is dominated by a relatively small number of artists who account for the vast majority of music streams. Research commissioned by the IPO indicates that in 2020 the top 1% (approximately 4,200 artists) accounted for in excess of 75% of total streams.¹³³ It appears that overall consumer preferences tend to tip towards a relatively small number of artists although consumer tastes do vary, and some are attracted to less popular acts.
- 5.99 Based on the evidence above, it appears that the weak bargaining position of many artists is likely driven to a large extent by the significant uncertainty over who will be successful and recoup the record label's investment, which limits the interest and competition between record companies to sign them and offer them attractive deals. This uncertainty applies to both new artists and those more established artists whose recent work has not been as popular as previous hits. The large numbers of artists that produce music for a low and uncertain long-term income from music streaming may also contribute to the weak bargaining position of some artists generally. We set out our wider understanding of the drivers of artists' weak bargaining position, including the extent to which market concentration is a driver, in the section on our emerging thinking below.
- 5.100 One of the issues faced by artists is that due to the weak bargaining position that many face early in their careers, they may need to agree to long-term contractual commitments (eg to produce multiple albums) and assign the copyright to their work for a long period of time if they wish to secure a traditional record deal. Once they have achieved some initial success, their bargaining position may not necessarily improve due to these long-term

¹³³ Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, Section 6.1.

contractual commitments. It can take many years for such artists to fulfil their initial contractual obligations and be able to negotiate improved terms.

- 5.101 Measures that support artists to renegotiate their contracts could in principle help address the apparently weak bargaining position they face earlier in their careers. We note that this is an area the government plans to consider further research on the practical experience of other countries that have given artists the rights to recapture their works and to adjust contracts.¹³⁴

Information available to artists

- 5.102 We received mixed views from stakeholders on whether artists receive sufficient information to help choose between different offers. Some told us that artists were provided with the key contractual terms needed with such stakeholders including record companies and artist groups. Others, however, raised the concern that it was difficult to know from the information available if artists were getting the best deal. For established artists, this included challenges auditing royalty payments due to NDAs between record companies and music streaming services.
- 5.103 In general, there are aspects of contracts between record companies and third parties such as music streaming services that are not relevant to artists' understanding of what they are paid, which we would not expect artists to have access to. However, we do expect artists to have relevant information about the basis for calculating their earnings. We understand from our engagement with stakeholders that offers from record companies to artists set out the advance and royalty rate, but do not typically include sales forecasts or information on average payments per stream which could be made to artists.
- 5.104 New artists have less information to help understand their expected earnings compared to established artists already signed with a record company, in part due to a lack of track record. While new artists do not have access to as much information as established artists, digital distribution and social media can provide key metrics on how their work is performing, for example on UUC platforms such as YouTube and TikTok and music streaming services' online artist portals. However, a possible lack of information is not only an issue for artists but also for music companies who will face significant uncertainty about whether these new artists will be successful.

¹³⁴ *Economics of music streaming: Government and Competition and Markets Authority Responses to Committee's Second Report*, p4.

- 5.105 More information is made available to established artists. This can include granular information on their royalties and streams, in particular via the online royalty portals offered by the majors and detailed royalty statements. Through these portals, it appears possible to find out, or estimate, the average payment per stream to both the artist and record company. However, this was not consistent across all record companies, and there may be scope to improve the way this information is presented and used, and to offer more guidance on how to interpret the data. This could involve highlighting key financial information (eg on average earnings per stream for specific territories and streaming services), providing improved search functionality to help easily find financial data, providing clear data definitions, and explaining why earnings can vary (eg by service).
- 5.106 Issues around what information is made available to artists and how this information is presented to them may weaken competition to sign artists. In light of these concerns raised with us, we plan to share our findings with the IPO for its work on a transparency code of practice.

Emerging thinking and outcomes

- 5.107 Our current view is that there is unlikely to be scope to improve outcomes for artists in a material way through greater competition, for example through a less concentrated market structure, reducing barriers to expansion, changing licensing terms over the placements of the majors' music or changes to the information presented to artists. The lack of substantial and sustained excess profits of the majors (see Chapter 3) suggests that there is little prospect for greater competition to improve significantly outcomes for artists overall. Although there are limitations to our profitability analysis, it suggests that, in addition to what has already been paid out to artists, there are no substantial music streaming revenues left to pay artists substantially more, as a group, once record companies' costs have been accounted for, including the cost of raising funds to invest in artists.
- 5.108 Some interventions may help some types of artists, but in doing so, may risk the unintended consequence of redistributing revenues from one group of artists to another. The risk of this is higher when there are no substantial and sustained excess profits to transfer to artists overall. For example, measures to help established artists renegotiate improved terms once they achieve success (discussed at paragraph 1.9 and 5.101 above) could result in lower advances for new artists.

5.109 Competition to sign artists appears to reflect how the music we listen to is dominated by a relatively small number of artists,¹³⁵ an inherent and long-standing feature that predates music streaming. That is, there appears to be strong competition to sign artists that dominate the charts or have the greatest potential to do so, but there is weaker competition to sign many other artists.

5.110 The weaker competition to sign many artists appears to be largely driven by the uncertainty of whether such artists will be successful, an inherent feature of the sector. It is not necessarily the case that lower market concentration (eg more majors) would substantially improve outcomes for these artists overall. There is a large pool of potential artists and the amount of money available to scout, sign and invest in these artists is limited – in today’s market, by the overall amount of music streaming revenue (and as noted above, there do not appear to be any substantial and sustained excess profits that could be used to increase expenditure on these activities significantly). As only a small proportion of artists generate the vast majority of music streams, investment and competition to sign artists is likely to remain focused on a small minority of artists, even if the market structure were to be less concentrated. In general, the earnings of many artists reflect how many music streams they generate in a music industry that continues to be dominated by a small number of artists.¹³⁶

Songwriters

5.111 As previously described, the majors hold a strong market position in music publishing alongside their recorded music interests. Some stakeholders are concerned that songwriters are not receiving their fair share of streaming revenues and that this is in part due to the majors:

- (a) favouring their recording business over their publishing business when setting rates in negotiations with music streaming services (possibly in part as the result of tacit coordination); and
- (b) using their strong market position to achieve the above objectives via their influence on CMOs.

¹³⁵ See Chapter 3 for how the number of music streams is skewed towards the top artists.

¹³⁶ A skewed distribution of earnings with a limited number of superstars and long tail of low earners, as well as artists earning below average incomes is a feature of artist labour markets generally. See Towse (2018) Copyright Reversion in The Creative Industries: Economics and Fair Remuneration, The Columbia Journal of Law and the Arts Volume 41 page 467 for a discussion of the economics of artist labour markets.

5.112 We have specifically focused on whether the majors are diverting revenues from their publishers to their record companies due to restrictions or distortions to competition.

Integration and incentives

5.113 Each major's record label and publishing businesses ultimately report into the same corporate leadership group. Some stakeholders have expressed concern that this creates a conflict of interest, as it may be financially advantageous for the majors to maximise revenue paid to the recording side of their businesses, where lower royalties are paid to creators.

5.114 Despite this concern, at present we have not found evidence of close cooperation or cross-influence on recording and publishing terms within the majors.

(a) There appears to be limited interaction between the majors' record label and music publishing businesses. These are largely organised as autonomous entities [✂].

(b) Deals with music streaming services are also largely negotiated separately and by different teams, with the record label and publishing businesses being ultimately accountable for securing the best licence terms possible for their respective artists and songwriters.

5.115 More fundamentally, it appears unlikely that any strategy of disadvantaging the publishing business would be beneficial to a major's business as a whole. If a major were to act contrary to the interests of songwriters by diverting revenues to recording instead of publishing, it would likely impact its ability to retain existing songwriters and compete for songwriting talent. The major's publishing share would no longer be competitive, compared to other publishers, so the major would likely lose songwriters to other publishers.¹³⁷

5.116 Most songwriters on a major's publishing roster are also not simultaneously on the same major's roster of recording artists.¹³⁸ In such cases, the songwriter signed to the major publisher may be particularly focused on ensuring they are signed to a publisher that can maximise their song writing

¹³⁷ Other cases in the music sector have reached similar views. For example, the European Commission also considered whether coordination between record label and publishing businesses was possible in its [2018 clearance of Sony / EMI Music Publishing](#). In its decision, the European Commission dismissed the possibility, noting at paragraph 115 that 'the damaging impact such strategy would have on Sony's music publishing business would be such that Sony would not have the incentive to engage in such strategy.' Furthermore, the European Commission found that songwriters can and do switch between music publishers both in relation to new works and, to an increasing extent, for older songs.

¹³⁸ See for example Sony Music Entertainment's, Sony Music Publishing's and Warner's [Statement of Scope](#) responses.

earnings by negotiating a high publishing share. This in turn may help ensure strong competition between music publishers on the publishing share. In the section below on emerging thinking and outcomes, we consider further whether the majors are diverting revenue from their publishers to their record companies due to restrictions or distortions to competition.

Majors' influence on CMOs

- 5.117 Some stakeholders have also raised concerns about the influence majors have both within, and relative to, CMOs. For instance, some of the majors sit on the Board of PRS for Music¹³⁹ and it is claimed that this may undermine any steps that it might want to take to improve songwriter rights. Also, as described in paragraph 3.39, Option 3 publishers who have opted to license the music streaming services directly (which include the major publishers) are now negotiating performing rights on behalf of CMOs alongside reproduction rights. This, it is alleged, has eroded the influence of PRS for Music and increased the majors' role because, while PRS for Music still has an important function to play in the oversight and review of licence requests, the major publishers are leading more negotiations. This gives rise to concerns that the major publishers will not maximise publishing outcomes in these negotiations due to influence from their record label counterparts.¹⁴⁰
- 5.118 We have not received any evidence that clearly supports these assertions. The conduct of PRS for Music is governed by the IPO under the Collective Management of Copyright (EU Directive) Regulations 2016 (the CRM Regulations).¹⁴¹ The CRM Regulations require PRS for Music (among other things) to act in the best interests of the rights holders it represents and not to impose any obligations which are not objectively necessary for the protection of their rights and interests.
- 5.119 PRS for Music's governance also appears to have checks and balances in place to prevent undue influence from the majors, with songwriters, publishers and non-executive independent directors represented equally at Board level (and each with a single vote).¹⁴²

¹³⁹ PRS for Music Limited is a CMO made up of two collecting societies: the Mechanical-Copyright Protection Society (MCPS) and the Performing Right Society (PRS).

¹⁴⁰ See, for example, Ivors Academy of Music Creators, An Artist Management Company, and the European Composer and Songwriter Alliance responses to the CMA's [Statement of Scope](#).

¹⁴¹ The conduct of UK CMOs (including the PRS) is governed by the [CRM Regulations](#). The CRM Regulations designate a National Competent Authority (NCA) which is responsible for monitoring and enforcing compliance with the Regulations' provisions. The NCA functions in the UK are undertaken through the IPO, which has published guidance on these regulations (see IPO (2021), [Guidance on the Collective Management of Copyright \(EU Directive\) Regulations 2016](#)).

¹⁴² See [Governance at PRS for Music](#).

5.120 PRS for Music’s oversight role also requires entities mandated by Option 3 publishers to provide it with information so that it can assess whether to grant its consent to the negotiated terms. This includes information on terms, so that PRS for Music can check these and ensure that songwriters would not be materially disadvantaged by the grant of consent (for example, where the proposed terms do not ensure adequate remuneration for PRS for Music songwriters).¹⁴³ This oversight should allow PRS for Music to identify and oppose any attempt by the majors to suppress publishing profits.¹⁴⁴

Publishing share of revenues

5.121 Our analysis has considered how streaming revenues are shared between publishing and recording, and how the share of music streaming revenue that music publishers agree with music streaming services (‘the publishing share’, which is a key determinant of publishers’ streaming revenues) have changed over time. These rates can provide some indication of how competition is developing in music publishing.

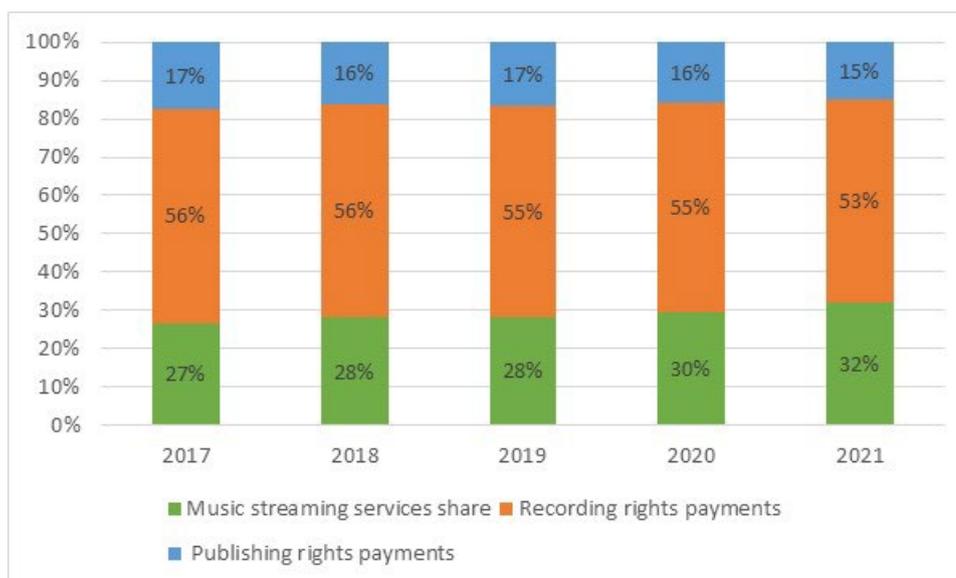
5.122 As regards the overall division, at a headline level there is a significant disparity between the share of revenues earned by recording relative to publishing (respectively, 53% and 15% in 2021 – see Figure 5.1). We have been told that this is in part a reflection of longstanding industry norms. Traditionally the record labels have earned a greater share of revenue from music sales, which reflect the higher costs and risks of their business. For example, a record label would pay for the recording to be made, the manufacture and distribution of physical copies, and for the associated marketing campaign. For a given song, the record label’s success would depend on specific recordings whereas publishers would benefit from all recordings of that song.¹⁴⁵

¹⁴³ PRS information provided to the CMA.

¹⁴⁴ The European Commission also found in its [2018 clearance of Sony / EMI Music Publishing](#) that, because Sony will still require certain approvals from collection societies to engage in digital licensing activities in the UK and Europe, that the CMOs could still ‘oppose any attempt by Sony to shift value from publishing to recorded music’.

¹⁴⁵ Also, songwriters do not pay studio producers royalties, it is less common for them to have managers (unless they are writer-performers), and they will earn from every version of a work, and every time it is performed live. A song’s copyright will also run for the life of the songwriter and then a set period of time thereafter (eg 50-70 years), meaning song copyrights usually last significantly longer than recording copyrights. See Cooke, Chris (2020), *Dissecting the Digital Dollar* (Third Edition).

Figure 5.1: Recording and publishing rights shares of UK streaming revenues



Source: CMA analysis of data provided by Amazon, Apple and Spotify.

5.123 Reflecting these differences, the royalty rates paid by record companies and publishers to, respectively, recording artists and songwriters have typically been very different. In 2021 the average royalty rate paid to artists by majors' record companies was 26% whereas the average royalty rates paid by major publishers to songwriters was 84%.¹⁴⁶ As a result the difference in the total revenues allocated to recording artists and songwriters (respectively, 16% and 12% in 2021 – see Figure 3.8) is much lower than would be suggested by the revenues paid to record companies and publishers in relation to recording or publishing rights.

5.124 Thus, while this study does not seek to focus on how different creators should be remunerated, at least at an aggregate level the benefits accruing to songwriters and artists do not appear to be vastly different. It is possible any significant shift in revenues from recording towards publishing could adversely impact artists relative to songwriters as artists could lose out from lower recording revenue.

5.125 Another argument raised by songwriters as to why the publishing share should be increased relative to recording share has been that the changing economics of music under streaming has changed the balance of costs and risks between publishing and recording such that labels are now keeping too much of the revenues. With the advent of music streaming, the costs of manufacture and distribution are considerably lower, but other costs have also

¹⁴⁶ CMA analysis of data provided by major record companies and publishers.

changed¹⁴⁷ and the record labels continue to face significant risks when creating new recorded content for the streaming services.¹⁴⁸ Our profitability analysis suggests that the extent to which the major labels, at least, enjoy excess profits that could be diverted to their publishing arms may well be limited (see paragraphs 3.29 to 3.32).

- 5.126 As regards the actual trends in the publishing share, the IPO published evidence that suggested that in the UK the publishing share has increased from 8% in 2007 to approximately 12% in 2012, and incremental increases thereafter.¹⁴⁹ It is believed that some of this increase was driven by the introduction of Option 3 publishers in 2009.¹⁵⁰ The CMA's analysis (Figure 5.1) shows that in 2021 the publishing share is now 15%, so since 2007 this publishing share appears to have almost doubled.
- 5.127 The CMA's analysis (Figure 5.1) shows that between 2017 and 2021 the publishing share has fallen from 17% to 15%. However, this appears mainly to be due to a recent increase in the share retained by music streaming services. The overall recording share is also falling over this period so the recent fall in the publishing share does not indicate a substantial shift from publishing revenues to recording revenues.
- 5.128 In absolute terms however, overall publishing revenues paid out by the UK's largest music streaming services have grown (from £[100-200]m in 2017 to £[200-300]m in 2021,¹⁵¹ a [110-120]% increase) as streaming revenues continue to grow. Major publishers in particular have seen above average streaming revenue growth between 2017 and 2021¹⁵² – significantly outpacing their recording counterparts' revenue growth. In this period, the total publishing streaming revenues for the majors increased by 244%, whilst total recording streaming revenues for the majors increased by 121%.¹⁵³ This may well indicate that the majors are not seeking to push down the publishing

¹⁴⁷ For example, in relation to digital global data management and marketing costs over longer effective artist lifetimes.

¹⁴⁸ See paragraph 3.20.

¹⁴⁹ Report commissioned by the IPO (2021), *Music Creators Earnings' in the Digital Era*, paragraph 4.2.1. Between 2009 to 2012, this included an increase in rates from 10.5% to approximately 12% which has been attributed to the introduction and influence of Option 3 publishers.

¹⁵⁰ Further changes to this rate may, to some extent, be influenced by the US's Copyright Royalty Board (CRB) ongoing proceedings to determine the mechanical royalty rate that music streaming services will pay songwriters for the five years between 2023 and 2027: see [Case details for Phonorecords IV - eCRB](#). In this case, the National Music Publishers' Association's (NMPA) are proposing that the current rate be increased to 20%. [⌘]

¹⁵¹ CMA analysis of data from music streaming services.

¹⁵² The increase in publishing revenues, and benefit to some songwriters, may be diluted by increases in the average number of contributors to songs. For example, Table 3.7 shows that the average number of songwriters contributing to successful works has increased from 2.95 in 1999 to 4.77 in 2019. This will impact the size of revenue shares given to each songwriter, with splits ranging from 100% to less than 1%.

¹⁵³ CMA analysis of data from the majors.

rates and may have been more successful on the publishing side than on the recording side at negotiating high rates.¹⁵⁴

Other concerns raised by songwriters

5.129 Songwriters have also raised concerns about the challenges they face in receiving their income on a timely basis or in full (see paragraph 3.55); and we have also heard concerns about a lack of contract transparency adversely impacting creators.¹⁵⁵ While not an area of focus set out in our statement of scope, we understand that music publishing royalty chains may be particularly complex, involving multiple rightsholders for songs (eg multiple songwriters as well as both publishers and CMOs on a multi-territory basis) – and that challenges in administering such chains can be exacerbated by missing or inaccurate data identifying song rightsholders. In addition, we note that the conduct of PRS is governed by the IPO under the CRM Regulations (see paragraph 5.118).

Emerging thinking and outcomes

5.130 In summary, publishing shares of music streaming revenues increasing since 2007 may well indicate that competition is helping drive improved outcomes for songwriters. The fact that streaming revenue growth for the majors' publishing arms has outpaced growth for their recording arms (more so than for the industry as a whole) suggests that the majors are competing up their publishing shares, rather than not competing and instead seeking to favour their recording businesses by keeping the publishing share low in order to negotiate a higher recording share.

5.131 Any music group would likely have little incentive to favour their recording business in this way as it is likely to damage them competitively on the publishing side. Concerns over tacit coordination among the majors that would enable them to act without fear of competitive pressure do not appear supported in light of a lack of evidence of the major publishers seeking to discourage the publishing share increases since 2007 and the lack of an obvious and credible 'punishment' mechanism to secure such coordination.

¹⁵⁴ The majors' higher revenue growth in publishing compared to recording could in principle be partly due to the majors being more successful at increasing the share of rights that they own in publishing compared to in recording. However, with the majors' growth in publishing revenues being more than double that of their recording revenues since 2017, there is scope for changes in the majors' publishing rates to have also driven some of this increase.

¹⁵⁵ For example, see the response from An Artist Management Company and the further response from Ivors Academy of Music Creators to the CMA's [Statement of Scope](#).

Our current view is that there is insufficient evidence that competition on the publishing share may be being restricted or distorted on this basis.

- 5.132 Frictions within royalty chains may have impacts on individual songwriters. While not an area that we have focussed on in our market study, these difficulties appear primarily to be the result of more complex royalty chains within publishing and is an area that industry is very much alive to. For example, the IPO is currently working with industry groups to seek to address metadata standards and contract transparency following its previous research in this area and the recommendations of the DCMS Committee.

Future competitive dynamics

- 5.133 So far, our analysis appears to indicate that there may be some drivers of weak competition in the supply of services to artists, but potentially limited scope for greater competition to improve outcomes overall for artists. However, as with many fast-moving digital markets, concerns may arise in future if certain factors change.
- (a) If over time the majors' profits had a sustained increase, then that could indicate excess profits, weaker competition, and more scope for competition measures to transfer any excess profits to artists, songwriters or consumers.
 - (b) Future mergers between record companies, in particular acquisitions by the majors, could risk reducing the current intense competition to sign some artists.
 - (c) If the supply of music streaming services became more fragmented, this could increase the majors' bargaining power. Under this market structure, music streaming services may not have the scale needed to push back on more stringent licensing terms. Such terms could include more stringent restrictions on how music streaming services promote independent record companies' repertoire.
 - (d) The increasing use of algorithms to direct users to certain types of content (eg the increasing use of algorithmically generated playlists) may also make it more difficult for independent record companies to compete with the majors in the future if the algorithms tend to favour content that is already popular and often owned by the majors.
 - (e) Technological changes or changes in consumer attitudes could also result in an increase in piracy, reversing the increase in music streaming revenues. This could reduce artist earnings and make it more difficult for independent record companies to remain in the market. A reduction in

competition could follow with the substantial exit of some independent record companies.

UUC platforms

5.134 While a minority of stakeholders were relatively sanguine about the impact of 'safe harbour' protections available to UUC platforms such as YouTube (some labels, in fact, considered YouTube to be a partner), many artists and record companies expressed concerns that safe harbour protections are depressing music streaming revenues. The concerns were generally based on the following views:

- (a) the option to take down user-uploaded content does not offer genuine protection or negotiating leverage as take-down is allegedly an onerous and ineffective process;
- (b) this creates a competitive advantage for UUC platforms in negotiations with rightsholders (including record companies and music publishers), and as a result rightsholders cannot achieve a fair market rate compared to other music streaming services (the so-called 'value gap'); and
- (c) the significant degree of access to music content thereby enjoyed by ad-funded UUC platforms such as YouTube contributes to a sense that music does not need to be paid for, thereby decreasing consumers' willingness to pay, and depressing the pot of revenue available.

5.135 We are at an early stage of assessing these issues and intend to undertake further analysis to assess them. In this section, we set out our current view on the extent that these issues give rise to competition concerns and some of the initial evidence we have received on the 'value gap' between UUC platforms (focusing on YouTube specifically, Google's UUC platform) and commercial content ad-funded music streaming services. We also consider what scope there is for music streaming revenues to increase from reforming the safe harbour protections available to UUC platforms, and what impact such reforms might have on consumers and creators.

5.136 While UUC platforms may benefit from advantages in their negotiations with rightsholders that distort competition between music streaming services, our current view, based on the evidence we have received, is that any distortions are unlikely to give rise to substantial competition concerns. Competition between music streaming services appears to be working reasonably well for consumers (as noted above at paragraph 5.68) and there has been substantial innovation in music streaming (see paragraph 5.61). Commercial

content music streaming services also do not appear to currently be at any substantial competitive disadvantage compared to UUC platforms.

- 5.137 While we plan to collect more evidence to estimate the ‘value gap’ between what UUC music streaming platforms and commercial content music streaming services pay out to rightsholders, the initial evidence we have indicates that YouTube, one of the most popular music streaming UUC platforms, is paying a broadly similar amount per stream to rightsholders than commercial content ad-funded music streaming services.
- 5.138 Google estimated that it pays out around [55-60]% of ad revenues that it earns from music streaming on its YouTube UUC platform, including for commercial and original music, and at times for multiple rights.¹⁵⁶ Other music streaming services more focused on commercial content pay out around 70% of their revenues (see Figure 3.8). While Google may pay out a lower percentage of ad revenues than commercial content ad-funded music streaming services, Google generated more ad revenues per stream in 2021.¹⁵⁷ So overall, YouTube appears to be paying a broadly similar amount per stream to rightsholders as commercial content ad-funded music streaming services. Nevertheless, there may still be a ‘value gap’ in terms of the percentage rate of ad revenues paid out to music rightsholders on the YouTube UUC platform compared to other music streaming services.
- 5.139 Taking YouTube as an example, to the extent that there is a ‘value gap’ between YouTube and commercial content ad-funded music streaming services, the overall impact of removing any value gap on total music streaming revenues depends on how large a proportion of music streaming revenues YouTube accounts for. We estimate that in 2021 revenues from YouTube’s ad-funded services accounted for [10-20]% of total music streaming revenues in the UK.¹⁵⁸ Any ‘value gap’ would therefore need to be particularly large for there to be a material impact on total music streaming revenues from removing this ‘value gap’.
- 5.140 Reforms to safe harbour protections could in principle also increase music streaming revenues if they led to an increase in premium subscriptions. The extent to which this would happen in practice will depend on what changes any reforms have on the availability and quality of ad-funded music streaming

¹⁵⁶ Google information provided to the CMA.

¹⁵⁷ Specifically, Google generated more revenues per stream from music on its ad-funded services including YouTube ([3<] pence per stream) compared to some other commercial content ad-funded music streaming services (which generated around [0.3-0.4] pence per stream on average) in 2021 based on CMA analysis of data from music streaming services. This could reflect differences in advertising on YouTube and other music streaming services, for example YouTube advertising being video based whereas other ad-funded music streaming services more often involving audio-only adverts.

¹⁵⁸ CMA analysis of data from music streaming services.

services in general (not just UUC services) and how these changes impact the take-up of premium subscriptions. We plan to assess these issues further.

- 5.141 Commercial content music streaming services offer ad-funded free tiers, with a view to converting some people to paid premium subscriptions. These services have indicated that they would continue to offer these ad-funded free tiers even if music was not available on UUC platforms.¹⁵⁹ With the continued availability of ad-funded free tiers, it is not clear to what extent any changes to safe harbour protections on UUC platforms would increase take-up of premium subscriptions.
- 5.142 In addition, other evidence we have received so far indicates that there may not be a substantial constraint from YouTube on commercial content music streaming services. This includes the differences in the features between UUC and commercial content music streaming services (see Chapter 4), and [§].
- 5.143 Any changes to safe harbour protections would also need to consider how UUC platforms help promote and break new artists. Such platforms offer substantial consumer benefits including helping consumers to discover new artists. UUC platforms can also increase the data available on artists and help increase the bargaining position of artists that trend on these platforms.¹⁶⁰ Changes to safe harbour protections would need to take account of whether it could lead to any unintended consequences and put these benefits at risk. For example, if UUC platforms' systems took a more aggressive approach to removing variants of content that had been requested to be taken down, a possible unintended consequence is that these systems could also remove content that could help an artist trend on these platforms.
- 5.144 To the extent that changing safe harbour protections result in any increased music streaming revenues and earnings for artists, this could come at a cost to consumers as higher music streaming revenues would involve consumers in aggregate paying more for music streaming services (eg if reforms led to more consumers using premium services instead of ad-funded free tiers).
- 5.145 Changing safe harbour provisions could also benefit consumers if any increase in music streaming revenues that results would improve the music that they listen to. Such improvements could include a greater diversity, higher volumes, or higher perceived quality of the music produced. An increase in music streaming revenues may also help drive further innovation

¹⁵⁹ House of Commons Digital, Culture, Media and Sport Committee (2021), *Economics of music streaming: Second Report of Session 2021-22*, paragraph 170.

¹⁶⁰ Also see paragraph 5.93.

by music streaming services to the benefit of consumers. We would welcome evidence to substantiate these possible benefits.

5.146 In the EU, the Copyright Directive seeks to address some of the concerns over safe-harbour protections.¹⁶¹ While the UK Government has confirmed it has no plans to adopt a similar Directive, in response to the recommendations by the DCMS Select Committee it is carrying out research into platform liability to inform further consideration of such concerns. When we have further developed our understanding of the value gap between UUC and commercial content music streaming services, we intend to feed in our findings on UUC platforms into this Government research (albeit the scope of our work may only form a small part of the wider issues that could be considered in any decision to change safe harbour protections).

¹⁶¹ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market. In particular, see Article 17 of this Directive.

6. Proposed response to calls for an MIR

Overview

- 6.1 Under the Enterprise Act 2002, within 6 months of publishing a market study notice, the CMA is required to start a period of consultation where:
- (a) it is proposing to make a market investigation reference (MIR) at the end of the market study; or
 - (b) it has received non-frivolous requests to make an MIR but is proposing not to make an MIR.
- 6.2 Further, in either of the above situations, within 12 months of publishing a market study notice, the CMA must publish in its final report its decision on whether to make an MIR.
- 6.3 We published our market study notice on 27 January 2022. Accordingly, in this market study we must commence any consultation process no later than 26 July 2022 and we must reach a final decision on whether to make an MIR following any such consultation by no later than 26 January 2023.
- 6.4 We have received four representations from parties for us to make an MIR. We have considered these representations. We have consulted and spoken with a large number of parties and have heard a diverse range of views. We have gathered a broad range of evidence, including through the use of our formal information gathering powers.
- 6.5 Having considered all these matters, we are not minded to make an MIR at the end of the market study. In the following sections, after describing the relevant legal framework, we set out the representations for an MIR and our reasons why we are proposing not to make an MIR.

Legal framework

- 6.6 The CMA has the power to make an MIR when the findings of a market study give rise to reasonable grounds for suspecting that a feature or combination of features of a market or markets in the UK prevents, restricts or distorts competition.¹⁶²

¹⁶² Section 131 of the Enterprise Act 2002.

- 6.7 The CMA is not obliged to make a reference when the reasonable suspicion threshold is met. It will only make an MIR when the following four criteria are met:¹⁶³
- (a) the scale of the suspected problem is such that a reference would be an appropriate response (ie that the adverse effect on competition is likely to be significant based on the size of the market, the proportion of the market that is affected and the persistence of the market features);
 - (b) there is a reasonable chance that appropriate remedies would be available;
 - (c) it would not be more appropriate to address the concerns through undertakings in lieu of a reference (UILs); and
 - (d) it would not be more appropriate to address the competition issues through alternative powers available to the CMA or through the powers of sectoral regulators.
- 6.8 Even if these criteria are met, the CMA retains a discretion to decide whether it is appropriate to make an MIR.

The representations for an MIR

- 6.9 We received representations to make an MIR from four parties:
- (a) Ivors Academy;
 - (b) #BrokenRecord Campaign;
 - (c) The European Composer and Songwriter Alliance (ECSA); and
 - (d) An artist management company.¹⁶⁴
- 6.10 We have drawn the scope of our market study broadly to cover a range of related product markets. However, in line with our statement of scope our work has focused on potential competition issues arising in relation to the following broad markets:
- (a) The supply of recorded music to music streaming services;
 - (b) The supply of music streaming services to consumers; and

¹⁶³ [OFT 511](#), paragraph 2.1.

¹⁶⁴ The relevant representations can be found on the CMA's market study [case page](#).

(c) The supply of record company services to artists.

6.11 The representations to make an MIR drew our attention to a number of features in these markets. They also drew our attention to some specific features relating to the supply of publishing services to songwriters. In summary:

(a) Sustained high concentration in the supply of recorded music to music streaming services, cross-ownership of recording and publishing rights, and contractual arrangements with music streaming services (including MFN provisions), giving the majors market power. We heard concerns that this may:

(i) impact on the pricing and placement of music, lead to unfair deals with music creators (eg perpetual contracts), and create barriers to entry and expansion for smaller music streaming services.

(ii) lead to the undervaluation of publishing rights (possibly in part as the result of tacit coordination between the majors and/or the majors' exercise of undue influence over CMOs).

(b) Other features affecting the supply of services related to the supply of music to consumers, such as:

(i) A lack of transparency (including from NDAs between majors and music streaming companies) which hampers investment, information flows, promotional activities and prevents artists obtaining the most competitive deals.

(ii) Provisions in copyright law enabling UUC platforms (such as YouTube) to compete unfairly against music streaming services.

(iii) Failures on the part of PRS for Music adequately to collect income for songwriters and publishers.

(iv) Technology companies with multiple business interests (eg Amazon, Apple, Google) cross-subsidising their music streaming services.

6.12 Based on our initial findings, as well as the representations made by the parties above, we believe there are reasonable grounds for suspecting that features of the markets listed in paragraph 6.10 could be restricting or distorting competition in the UK.

- 6.13 We have considered the representations regarding certain specific features relevant to the supply of publishing services to songwriters.¹⁶⁵ Based on the information received to date and our initial findings, our judgement is that we currently do not have reasonable grounds to suspect those specific features could be restricting or distorting competition in the UK.¹⁶⁶
- 6.14 Where we think there are reasonable grounds for suspecting that features of the markets could be restricting or distorting competition in the UK, and given our initial findings, as set out in more detail in Chapter 5, we consider a decision on whether to propose a market investigation rests primarily on a combination of two main considerations:
- (a) whether the scale of the suspected problem is such that a reference would be an appropriate response; and
 - (b) whether a reference is likely to be the most appropriate mechanism for assessing the issues and delivering better outcomes.
- 6.15 Our judgement is that an MIR is not at this stage the appropriate way forward in relation to any of the above markets. As more fully set out in the preceding chapters, our initial findings have not identified any significant concerns in terms of consumer outcomes relating to music streaming. On the contrary, prices for consumers are dropping in real terms, consumers have easy access to large catalogues of music covering a vast array of genres and time periods for a fixed monthly price (or free, but with ads), and overall, consumer satisfaction with music streaming services is high. While we have noted that there are a number of potential developments that could occur to the detriment of consumers, our current view is that such developments are not sufficiently certain to justify a market investigation reference at this stage.
- 6.16 While we recognise that it may be desirable to seek improvements to the outcomes for some artists, as more fully set out in Chapter 5, generally we consider any competition concerns are unlikely to be significant and that the key drivers for any sub-optimal outcomes are unlikely to be competition-based concerns.
- 6.17 For example, we consider competition to sign artists appears to primarily reflect how the music we listen to is dominated by a relatively small number of artists, the uncertainty of whether many artists will be successful, the large

¹⁶⁵ See paragraphs 5.113 to 5.128.

¹⁶⁶ Further we note that publishing shares of music streaming revenues have increased since 2007 and for the majors' publishing arms, this has outpaced growth for their recording arms (more so than for the industry as a whole). In addition, we note that market investigations are not typically used to address coordinated conduct (see [OFT 511](#), paragraphs 2.3 to 2.4).

pool of potential artists and the amount of money available to scout, sign and invest in these artists is limited.

- 6.18 Similarly, while we consider contractual clauses in the agreements between certain record labels and music streaming services may contribute to weak competition in the supply of recorded music to music streaming services, our initial findings suggest that competition is unlikely to be significantly more vigorous in the absence of such clauses (either individually or in combination). Instead, at this stage we consider any weak competition in this market is inherent in the full catalogue model observed.
- 6.19 Accordingly, we consider that any competition interventions are unlikely to drive significant improvements to artist and consumer outcomes, such as to justify an MIR.
- 6.20 Further, we note that in some areas, initiatives are already underway to improve outcomes for artists and songwriters, in particular by the IPO. Given this, and the apparent lack of a route to significant improvements via a competition-based intervention, we consider that at this stage it would be more proportionate to share our findings with the IPO so they can help inform its work.
- 6.21 Accordingly, we are not minded to propose an MIR at this stage. That is not to say that we consider the above-mentioned markets are all working as well as they could be – nor that the situation is unlikely to deteriorate in future. We will revisit this conclusion in the light of consultation responses that we receive and our further analysis during the remainder of the market study. Accordingly, we would like to receive views from a broad range of parties on the proposed way forward.

7. Next steps and questions

- 7.1 This update paper summarises our emerging thinking in respect of competition in the music and streaming market, explaining why we are not minded to make an MIR at the end of the market study.
- 7.2 Going forward, we want to gather more evidence to test and refine our thinking in these areas, and to identify where intervention might be most necessary and appropriate. Publication of this update is an important first step in that process.
- 7.3 Alongside our continued assessment of evidence obtained, including any stakeholder feedback we receive from this consultation process, we will keep under review any Government or other CMA work that may be relevant to the operation of the market.
- 7.4 We will publish our final report by 26 January 2023.

This consultation

- 7.5 We are consulting on our proposal not to make an MIR at the end of the market study.

Other feedback

- 7.6 We are also seeking views on the evidence and emerging thinking that we have set out in this update – in particular any areas of potential disagreement with supporting evidence for such views.
- 7.7 We would welcome feedback from any interested parties and hope to gather views from stakeholders with a diverse range of perspectives.

How to respond

- 7.8 To respond to this consultation, please email or post your submission to:

Email: musicstreaming@cma.gov.uk

Post: Music and Streaming Market Study

Competition and Markets Authority

25 Cabot Square

London E14 4QZ.

- 7.9 Please respond by the close of **Friday 19 August 2022**.
- 7.10 For transparency and to inform public debate, we intend to publish the responses we receive.¹⁶⁷ In providing responses:
- (a) please supply a brief summary of the interests or organisations you represent, where appropriate;
 - (b) please consider whether you are providing any material that you consider to be confidential, and explain why this is the case; and
 - (c) if the response contains confidential information, please also provide a non-confidential version of your response alongside it.
- 7.11 If you are an individual (ie you are not representing an organisation), please indicate whether you wish for your response to be attributed to you by name or published anonymously.

¹⁶⁷ An explanation of how we will use the information provided to us is set out in the annex to our [Statement of Scope](#) of 27 January 2022.