

# **The Lack of Competition in the Music Industries, the Effect on Working Musicians, and the Loss of Canadian Music Heritage**

**A Brief Submitted By:**

**The Cultural Capital Project: Digital Stewardship and Sustainable Monetization for Canadian Musicians**

**Presented to:**

**Making Competition Work for Canadians: A consultation on the future of competition policy in Canada**

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## Introduction

For over ten years, our research group has been exploring the landscape of Canadian music, from the experiences of its musicians to the diversity of its output to the structure of its industries. Through interviews, trade press research, and tracking corporate filings, we have mapped the Canadian music ecosystem across the past few decades and published our findings in academic journals,<sup>1</sup> government briefs,<sup>2</sup> government presentations,<sup>3</sup> popular articles,<sup>4</sup> and open data on our website.<sup>5</sup>

It is our contention that the music industries in Canada exhibit an oligopoly structure, formed of a handful of non-competitive, non-Canadian firms, which gravely harms both the livelihoods of Canadian musicians and the long term sustainability of Canadian music. Our research concludes the problem is not a consequence of anything unique to music as a cultural product, but partially a function of how competition is regulated in this country, or, more accurately, not regulated. Along with more rigorous enforcement of competition, we recommend that the Competition Act be updated to center the concerns of workers and consumers, which would have ripple effects on the health of many sectors in Canada, including music.

## Part 1: Regulation Among Enterprises Must Be Increased to Avoid Monopoly Effects

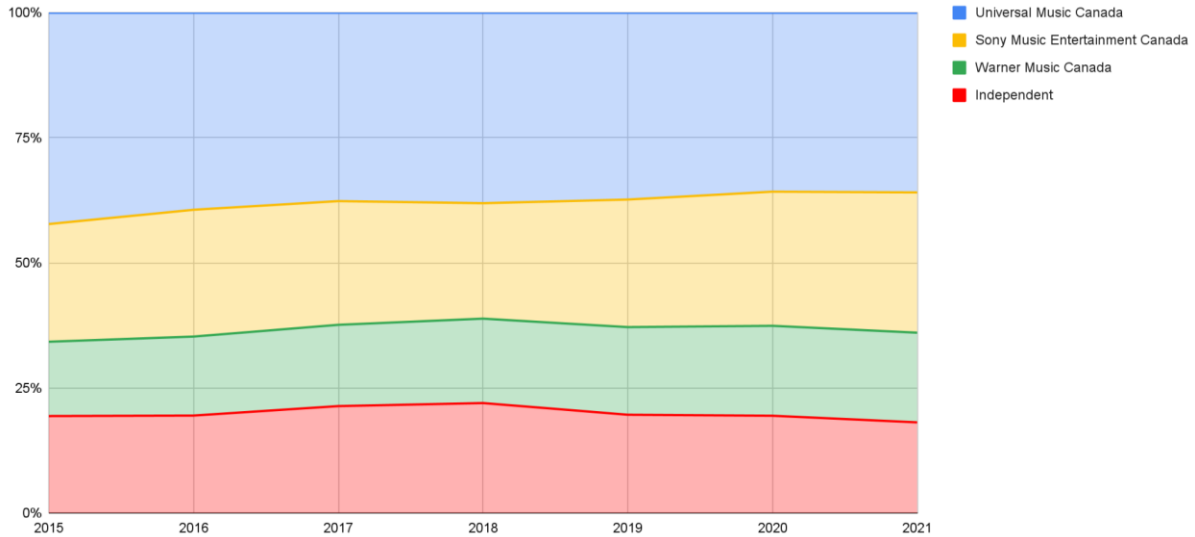
Music is by nature a dynamic phenomenon. There are new musicians and fans born every day; it is a cultural lifeblood to every human society, unlikely to ever disappear. And yet, a free market approach to competition and copyright has rendered this potentially dynamic sector remarkably stagnant.

### **The Big Three Record Labels and the Big Three Streaming Platforms**

There are just three transnational corporations that dominate the global record label market, in Canada as in most countries around the world. In the following chart, we can see market power within Canada, as Universal Music Canada, a subsidiary of the larger Universal Music Group, holds a stable 35% market share. It is followed by Sony Music Entertainment Canada and Warner Music Canada, also both subsidiaries, leaving less than 20% of the market for independent music producers. The “Big Three” labels have a long history of cooperating as a copyright cartel and acquiring any smaller label that achieves a certain scale. This remaining 20% of independent music thus operates as a ‘research and development’ zone for the big labels. The lack of competition has a dramatic effect on the diversity of music both produced by Canadians and listened to by Canadians.

### Record Label Market Share in Canada, 2015-2021

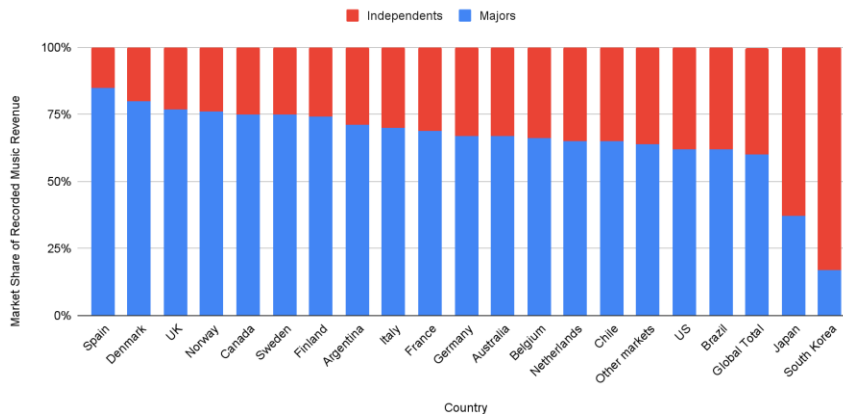
Data: Luminate. Market Share Measurement Aggregates Album Sales, Track Equivalent Album Sales, Streaming Equivalent Album Sales, and On-Demand Audio



While Spotify attracts the lion’s share of public outcry concerning meager payouts to most artists and algorithms that promote superstars,<sup>6</sup> the alternatives are no better. Apple Music and Amazon Music are the other two main streaming platforms for music, which use the same “pro rata” payment system that favours big labels and extensive catalogs, and have the further disadvantage of being ‘walled gardens’ that offer a variety of media services below-cost in order to support their main revenue stream (iPhone sales and retail sales, respectively). Meanwhile, predatory hedge funds are turning song rights into a speculative asset.<sup>7</sup> One of the results of this consolidation and vertical integration is that Canada has one of the smallest shares of independent labels in the world. The next chart demonstrates Canada’s weak position among its peers when it comes to the market share of independent record labels to major record labels.

### Market Share of Major and Independent Record Labels Globally, 2018

Data: WINTEL Worldwide Independent Market Report 2018; full data available at cultcap.org/data.



This consolidation has been great for corporations and superstar musicians but devastating for average musicians. The average Canadian musician only makes \$17,900/year, less than half of the average worker's income, well below the poverty line.<sup>8</sup> Female artists make 82 cents of total income for every dollar of male artists, with Indigenous artists making only 68 cents on the dollar.<sup>9</sup> The music industries have become more winner-take-all than ever.

### **A Canadian Music Industry Beholden to Big Companies**

Much of the Canadian music industry and related businesses are beholden to big companies, whether venues or radio stations. While we have found that smaller to mid-size venues display a wide range of ownership and relationships to promoters, the larger entertainment complexes are owned by telecommunications companies, like Rogers or Bell. Concentration in the telecommunications sector is exceptionally high,<sup>10</sup> and only getting higher with the Shaw takeover by Rogers.<sup>11</sup> In the radio sector, the control by the ten biggest radio groups grew from 50% in 1997 to 82% by 2018, leading to limited exposure for new musicians and concerns around local and regional variety on commercial radio.<sup>12</sup>

## **Part 2: Labour Effects Should Be Central to Competition Guidelines**

One result of insufficient competition in the music industries is the effect this can have on musician labour and the cultural work that takes place in the broader music ecosystem in Canada. Fewer, larger players are setting the terms for what a music career involves and requires, with most of these players predominately American and part of a global media conglomerate. The results are limited employment opportunities in Canada overall, with music labour centralized in larger cities with higher cost of living and significant material obstacles to a sustainable livelihood in music-based careers. The music industry has many hallmarks of a monopsony, where competition in the *employment* market is limited, and firms no longer compete to offer better conditions to musicians.

### **Limited Employment Opportunities and Income Streams**

With less competition in the music business comes unfavorable terms set by the few companies that do wield power and influence. Take for example the oft-cited case of meager payouts by streaming companies, an issue exacerbated by the shrinking competition in the record industry where three major labels set contracts with artists for how much Spotify money makes it into their pockets.<sup>13</sup> A decrease in the amount of money an artist earns for recorded music has meant an increased reliance on touring and the live music industry for generating income and support for new music.<sup>14</sup> Yet the live music industry is dominated by LiveNation (which owns Ticketmaster), as well as Anschutz Entertainment Group (AEG), controlling the rights to perform at the largest venues and festivals, while dictating onerous terms to musicians.<sup>15</sup> Canadian musicians are now finding it hard or impossible to recuperate costs from touring, raising concern about and questions around the reliability and viability of touring as a source of income.<sup>16</sup>

## **A Canadian Music Industry Beholden to Non-Canadian Companies**

The satellite radio industry is another example of insufficient competition in the Canadian music industries, leading to fewer companies having more influence over the careers and income of Canadian artists. This market, once with a promise of expanded diversity and opportunity, is now dominated by the merged entity SiriusXM. Internet radio was another format with potential for range and innovation; its biggest success, Pandora, was recently acquired by Liberty Media, a conglomerate that also owns SiriusXM, has investment stakes in LiveNation and iHeartMedia, and whose Chairman, John Malone, openly stated that “the goal would be to get to full consolidation.”<sup>17</sup>

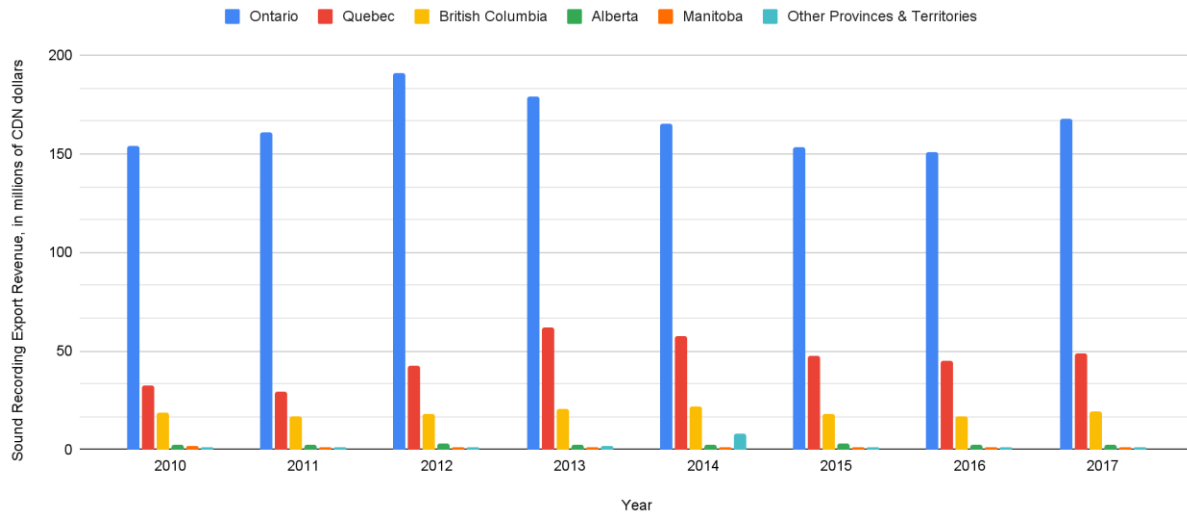
Following its 2012 license renewal, SiriusXM Canada would become more American by virtue of ownership. SiriusXM and Sirius XM Radio Inc. entered into agreements with Sirius Canada Holdings Inc. to recapitalize SiriusXM Canada. SiriusXM Canada would remain under Canadian voting control with Slight Communications and Obelysk Media combining to own 67% of voting shares and 30% of economic interest. SiriusXM would have economic ownership of 70% of the company and own 33% of the voting shares. Following the recapitalization of SiriusXM Canada, the CBC would no longer be a major shareholder and, eventually, this would end much of the CBC-based programming on SiriusXM. In October 2022, it was announced that Radio 3 was to be removed from the channel lineup, taking the CBC-generated music playlist off the air and online for both Canadians and Americans. This move sparked uproar among artists in Canada and proponents of the nation’s music industries, namely in smaller, more independent circles. SiriusXM had become a major income source for Canadian artists, particularly by comparison to the low royalty payments from Canadian commercial radio and tech giant streaming services. One headline in the Toronto Star read, “‘Final nail in the coffin’: Why SiriusXM dropping CBC Radio 3 is ‘potentially catastrophic’ for Canadian artists.”<sup>18</sup> For independent artists without superstardom and massive streaming success, airplay on Radio 3, a station with a commitment to playing independent music in Canada, was especially lucrative.

## **A Canadian Music Industry with Centralized Economic Activity**

The Canadian subsidiaries of American major labels are concentrated in Canada’s largest city, Toronto, Ontario, and this has been the case for decades.<sup>19</sup> These regional inequalities persist with Ontario, particularly the cultural hub of Toronto, maintaining a disproportionate significance within the Canadian music industries, with nearly half of music sector jobs nationwide, over 60% of Canadian music publishing and recording export revenue, and 58% of the Canadian total GDP generated by this music sector as of 2017.<sup>20</sup>

## International Exports of Canadian Sound Recording Industry, 2010-2017

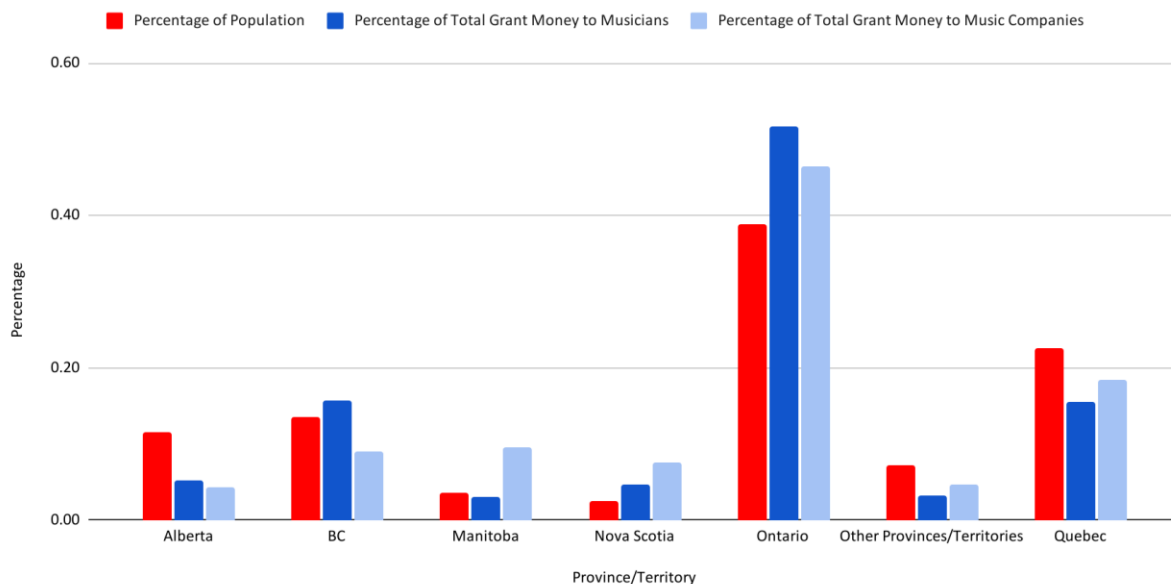
Data: Statistics Canada, Table 12-10-0116-01 International and inter-provincial trade of culture and sport products, by domain and sub-domain, provinces and territories (x 1,000,000)



Government grants help mitigate this imbalance, but in the case of grants awarded by the Foundation Assisting Canadian Talent on Recordings (FACTOR) from 2013 to 2020, more than half of total money went to Ontario musicians, despite the province having less than 40% of the population. Correspondingly, other provinces and territories receive a disproportionately lower amount of funding compared to their population.

## FACTOR Grants Awarded to Musicians and Music Companies Based on Province/Territory Compared to Population, 2013-2020

Data: FACTOR (2020); Statistics Canada, Table 17-10-0009-01 (2020)



## Part 3: Consumer Effects Should Be Central to Competition Guidelines

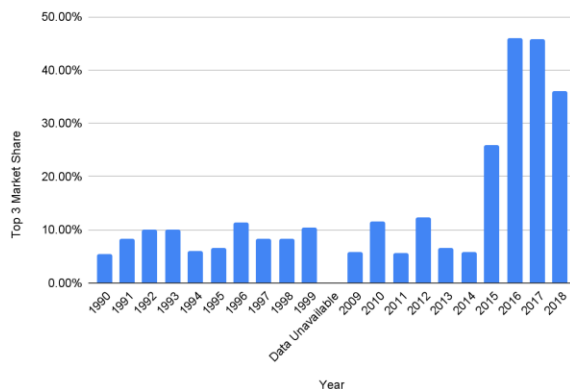
The consolidation and lack of competition in the music industries also has an effect on the diversity of options available to Canadian cultural consumers, in the form of the artists we are likely to hear on the radio or in other venues. As record companies become more consolidated and vertically integrated, so too do the share of listens that go to “superstars”. More than ever, the “star maker machinery behind the popular song” is, in fact, behind the popular *artist*.

### A Canadian Music Industry with Increasing Concentration of Music Listens

We can see this by looking at the share of the Top 100 Singles held by the top 3 artists in the 90s compared to the 2000s. In the 90s there were 306 distinct Canadian musicians who made the top 100 singles charts, 3,730 total chart entries, 1,154 unique songs, and the top 3 musicians controlled only 5–10% market share of the chart. In contrast, in the streaming era of the 2010s, the singles charts are notably less diverse for Canadian music: only 246 distinct Canadian musicians (including many cover songs and one-hit wonders from song competition television series), 2,588 total chart entries, 764 unique songs, and a dramatic trend line down in all categories, except the increasing market share of Drake, Justin Bieber, and the Weeknd, which reached as high as 46% in 2016 and 2017<sup>21</sup>.

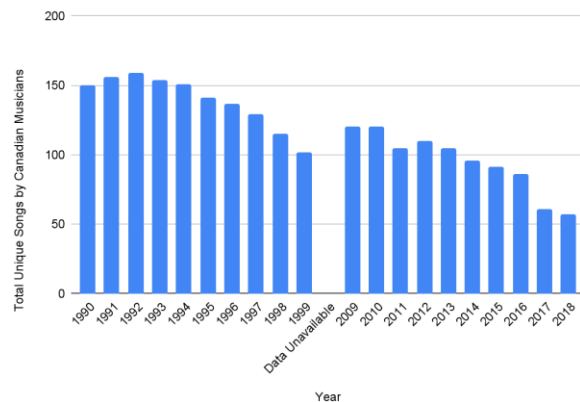
Chart Market Share for Top 3 Canadian Musicians

Data: RPM Magazine (1990-1999); Billboard Canadian Hot 100 (2009-2018)



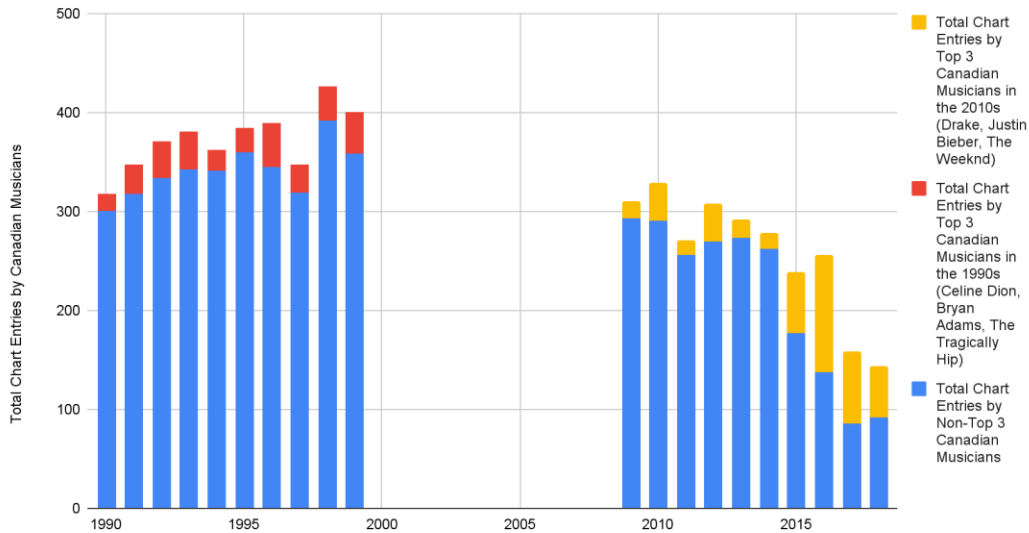
Total Songs by Canadian Musicians in Top 100 Charts

Data: RPM Magazine (1990-1999); Billboard Canadian Hot 100 (2009-2018)



## Canadian Songs on Top 100 Singles Charts in Canada: 1990-1999 & 2009-2018

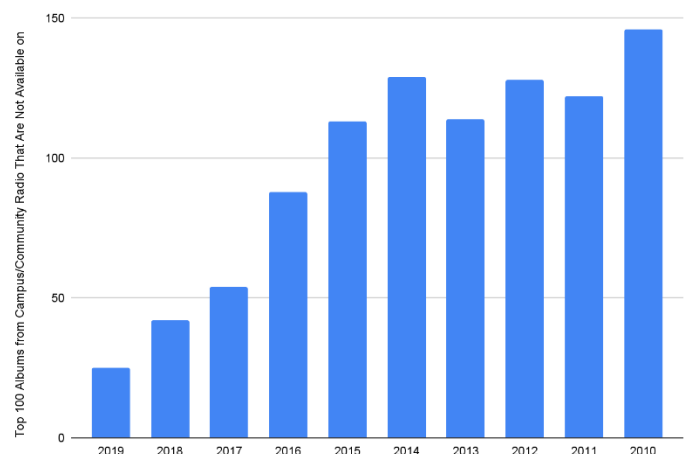
Data: RPM Magazine (1990-1999); Billboard Canadian Hot 100 (2009-2018); full data available at cultcap.org/data.



Streaming has limited consumers' options, by locking artists into exclusive contracts with separate platforms and creating 'walled gardens' of music listening. If you want to listen to the 2022 Slaight Family Polaris Heritage Prize winning album *Wrong* by Canadian band Nomeansno<sup>22</sup> on a streaming platform, for example, you simply can't. The chart below indicates the number of Top 100 albums played by campus and community radio stations across Canada, per month. You can see that as one looks backwards, more and more albums are unavailable on Spotify. This means that many releases by Canadian artists deemed worthy of airplay on campus and community radio, cannot be accessed on major streaming platforms. The trendline is clear; we can surmise that much of Canadian musical heritage is not being preserved by this streaming oligopoly.

The Declining Availability of the Top 100 Albums Played on Canadian Campus/Community Radio That Are Available on Spotify, 2010-2019

Data: Iearshot Top 200 National Monthly Charts; full data and calculations available at cultcap.org/data



## Platform Economics, Privacy, and Data

Platform/vendor lock in directly affects consumers, and Big Tech has assured its supremacy by anti-competitive practices in the past. Amazon Music, for example, was able to run as a loss leader - attracting users to the platform and growing their 'network effect' while taking losses that were absorbed by the larger company<sup>23</sup>, a strategy simply not feasible for smaller companies. Additionally, Big Tech are able to leverage the data they already have



about consumers to create the data enclaves that are necessary to successful prediction algorithms<sup>24</sup>. Indeed, Big Music now *is* Big Tech, and competition law and practice in Canada needs to adequately address the data and privacy concerns that this entails.

Music is a great example of a multi-sided market - listeners are not just consumers, but also generate data that is in itself a product for data hungry record labels. And multiple streams of revenue, from subscriptions to ads, further requiring a complex understanding of platform economics.<sup>25</sup> But the data on consumers is the prime competitive advantage held by the large multinationals, and should be taken into account when looking at mergers. As Jennifer Quaid points out, this requires more complexity in how we look at data concentration in mergers: “For policy-makers, it is important to recognize that digital information is an extremely valuable commercial resource in the economy of the 21<sup>st</sup> century, and that the harm caused by concentration of power over how it is collected, analysed and used is not restricted to price effects –the conventional metric used to assess competitive harm under Canadian law.”<sup>26</sup>

## Conclusion & Recommendations

It is clear that market concentration is hurting Canada’s cultural industries, especially music. We encourage and support reforms to Competition legislation and the powers of the Competition Bureau in order to broaden the goals of policy. Beyond a narrow definition of economic efficiency, we support the calls for a Canadian approach to competition that looks at fairness, sustainability, and diverse and inclusive participation in an expanded understanding of economic activities. We agree with Quaid that the central issue is “how to scrutinize the behaviour and business models of firms in the new economic order characterized by network effects, multi-sided markets and access to data sets as a source of competitive advantage,”<sup>27</sup> echoing a similar report from the OECD.<sup>28</sup> The music industry, particularly the struggles of working musicians, highlights the need for competition policy to take into account these particular characteristics.

Our first set of recommendations would be that more powers and guidelines are put in place for these complex multi-sided market analyses, including:

- The ability to define *all* markets that may be involved in a merger
  - eg. record labels, musicians, music consumers/listeners, advertisers, digital service providers, collective music rightsholder organizations, etc.
- Critically examine network effects and vertical restraints in mergers
- Analyze mergers in respect to user data as crucial assets
- Recognize mergers can result in data monopolies, which become almost insurmountable barriers to new entrants island innovators in music platforms
- Consider that there are almost always alternative, less anti-competitive ways to achieve efficiencies such as interoperability or adopting shared standards

In this regard, we also follow the recommendation of many others that Canada stop allowing the “efficiencies defense”,<sup>29</sup> which somehow manages to justify higher consumer prices, fewer consumer options, and job cuts in the labour sector.

Our second set of recommendations acknowledges the potential harms to Canadian consumers of “platform capitalism” in terms of data extraction, loss of privacy, vendor lock-in, rising prices due to network effects, and other consumer harms.<sup>30</sup> We support recommendations to:

- Consider privacy implications for consumers when mergers are reviewed
- Consider data silos as a remedy
- Collaborate across agencies & with provinces to harmonize competition and privacy legislation
- Give the Competition Bureau greater information gathering and enforcement options, particularly in regards to the power to compel participation and provision of information outside of the enforcement context, as well as order remedies in market inquiries.<sup>31</sup>
- In line with similar recommendations made to the UK Government, we support the prioritization of scrutiny of mergers in digital markets, and enabling the Bureau to look at cases retrospectively, particularly from the aforementioned multi-sided market point of view.<sup>32</sup>

These recommendations are particularly important for the music industries, as its oligopoly structure highlights the ways firms can harm *competition* without hurting other large *competitors*, as often no direct collusion is necessary in consolidated markets for tacit collusion to inflate prices and reduce consumer options. We suggest that this expansion of powers would be most effective if the Competition Bureau was separated further from ISED, to ensure there is no conflict of interest.<sup>33</sup>

Finally, we urge the competition bureau to provide gig workers with better protections, which would greatly assist working musicians. The monopsony power held by the Big Three labels and Big Three streaming companies means there are fewer real options for musicians when it comes to contracts. We support efforts to consider and protect labour in Competition Bureau decisions.

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- <sup>2</sup> Brianne Selman, Brian Fauteux, and Andrew deWaard, "[A User-Centric Case for Rights Reversions and Other Mitigations: The Cultural Capital Project Submission to ISED Consultation on Term Extension; A brief submitted ... to Innovation, Science, and Economic Development Canada,](#)" 9 March 2021; Brian Fauteux, Brianne Selman, and Andrew deWaard. "[Putting Users and Small-Scale Creators First in Canadian Copyright Law and Beyond: A Brief submitted to INDU Statutory Review of the Copyright Act](#)", Dec. 10, 2018; Brian Fauteux, Brianne Selman, and Andrew deWaard. "[Putting Users and Small-Scale Creators First in Canadian Copyright Law and Beyond: A Brief Submitted to the Standing Committee on Canadian Heritage Remuneration Models for Artists and Creative Industries](#)", Dec 12, 2018.
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- <sup>5</sup> *The Cultural Capital Project*, <http://cultcap.org/data/>
- <sup>6</sup> Christine Smith Burton. "['Playola' and Fraud on Digital Music Platforms: Why Legislative Action is Required to Save the Music Streaming Market,](#)" *Journal of Business & Technology Law* 16.2 (2021).
- <sup>7</sup> Paul Sullivan, "[The Pandemic Changed How Musicians and Investors See Royalties,](#)" *New York Times*. 25 June 2021.
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- <sup>9</sup> Hill, Kelly. "[Demographic Diversity of Artists in Canada in 2016.](#)" *Hill Strategies Research*, 29 Jan. 2020.
- <sup>10</sup> Dwayne Winseck, "[Media and Internet Consolidation in Canada, 1984–2016.](#)" *Canadian Media Concentration Research Project*, Nov. 2017.
- <sup>11</sup> "[Rogers-Shaw merger: Federal court rejects Competition Bureau bid to overturn deal.](#)" *Global News*. January 24, 2023.
- <sup>12</sup> Canada. Parliament. House of Commons. Standing Committee on Canadian Heritage. Minutes of Proceedings. 1st sess., 42nd Parliament, Meeting No. 114, 2018.
- <sup>13</sup> Robert Prey, Marc Esteve Del Valle, and Leslie Zwerwer. "[Platform pop: disentangling Spotify's intermediary role in the music industry.](#)" *Information, Communication & Society* 25 (2022).
- <sup>14</sup> Jackson Weaver, "[A Problem of Popularity: How Canada's Northern Musicians are Hurt by Lack of Access.](#)" *CBC News*. 15 June 2019.
- <sup>15</sup> Ron Knox, "[Big Music Needs to Be Broken Up to Save the Industry.](#)" *Wired*. 16 March 2021.
- <sup>16</sup> Rollie Pemberton. "[Musicians like me can no longer afford to tour. Live music won't survive unless the industry changes.](#)" *Toronto Life*. October 31, 2022.
- <sup>17</sup> George Szalai and Etan Vlessing. "[SiriusXM Parent Liberty Media Swings to Loss amid Pandemic.](#)" *Billboard*, 10 Aug. 2020.
- <sup>18</sup> Richie Assaly. "['Final nail in the coffin': Why SiriusXM dropping CBC Radio 3 is 'potentially catastrophic' for Canadian artists.](#)" *Toronto Star*. October 25, 2022.
- <sup>19</sup> Brian Fauteux, Richard Sutherland & Gregory Taylor, "[Beyond the branch plant: Capitol-EMI's first Canadian record press and national music industries in the 1970s,](#)" *Cultural Studies* 36.3 (2020).
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- <sup>21</sup> Andrew deWaard, Brian Fauteux, and Brianne Selman. "[Independent Canadian Music in the Streaming Age: The Sound from above \(Critical Political Economy\) and below \(Ethnography of Musicians\).](#)" *Popular Music and Society* 45.3 (2022): 251-278.

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- <sup>22</sup> <https://polarismusicprize.ca/heritage-prize/>
- <sup>23</sup> Bobby Owsinski, "[Amazon Is Actually Losing Money from Its New Music Service.](#)" *Forbes*, 18 Oct. 2016.
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- <sup>27</sup> *ibid*
- <sup>28</sup> OECD. "[Rethinking Antitrust Tools for Multi-Sided Platforms 2018.](#)" *OECD*, 2018.
- <sup>29</sup> Vass Bednar, "Is the Competition Bureau's efficiency defence still defensible?" *Financial Post*, 30 Aug 2022.
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