

**ACQUISITION BY SCOTTISH RADIO HOLDINGS PLC AND GWR GROUP PLC,
THROUGH THE JOINT VENTURE COMPANY VIBE RADIO SERVICES LTD, OF
GALAXY RADIO WALES AND THE WEST LIMITED**

**UNDERTAKINGS GIVEN BY GWR GROUP PLC TO THE SECRETARY OF STATE
FOR TRADE AND INDUSTRY PURSUANT TO SECTION 88(2) OF THE FAIR
TRADING ACT 1973**

GWR hereby gives to the Secretary of State for Trade and Industry pursuant to section 88(2) of the Fair Trading Act 1973 the following undertakings for the purpose of remedying or preventing the adverse effects specified in the report of the Competition Commission entitled *Scottish Radio Holdings plc and GWR Group plc and Galaxy Radio Wales and the West Limited – A report on the merger situation* (Cm 5811, May 2003).

Divestment of its Interest in VRSL

- 1.1 GWR shall ensure, as soon as is reasonably practicable and in any event by 1 September 2003, the completion of the sale of its Interest in VRSL to SRH.
- 1.2 Without prejudice to the generality of paragraph 1.1, GWR shall take any of the following measures to the extent to which they may be necessary to effect the sale of its Interest in VRSL in accordance with that provision:-
 - (a) the transfer or vesting of property, assets, rights, liabilities or obligations;
 - (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
 - (d) the formation or winding up of a company.
- 1.3 In the event that GWR fails to complete the sale of its Interest in VRSL in accordance with, and within the period of time specified in paragraph 1.1, the Trustee shall carry out the Trustee Functions.

Interim Action

2. Pending the sale of its Interest in VRSL, GWR shall ensure, to the extent GWR is able to do so by virtue of its Interest in VRSL, that:
 - (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the acquisition, VRSL shall be maintained as a going concern;

- (b) except with the prior written consent of the OFT no step shall be taken which might lead to the integration of Galaxy with any other business carried on by or under the Control of GWR or of any company part of the GWR Group of Companies;
- (c) except with the prior written consent of the OFT the assets of Galaxy are maintained and preserved;
- (d) without prejudice to paragraph 8.1 and to the termination on 31 May 2003 of the Airtime Sales Agreement entered into between Opus, GWR and VRSL on 26 September 2002, the nature, description, range and standard of radio services and radio advertising services currently supplied in the broadcast area of GWR FM (Bristol and Bath) and in the broadcast area of Orchard FM by each of Galaxy, GWR or any company part of the GWR Group of Companies, are maintained and preserved without prejudice to any changes required to be made following a licence modification, decision, or any other act or statement by the Radio Authority;
- (e) except in accordance with paragraph 1.1 above, no assets of Galaxy shall be disposed of, and no Interest in such assets shall be created or disposed of, other than in the ordinary course of business of Galaxy.

Separation

- 3. Following the sale of its Interest in VRSL pursuant to paragraph 1.1 or paragraph 6.1, GWR or any company part of the GWR Group of Companies, except with the prior written consent of the Relevant Authority:
 - (a) shall not directly or indirectly:
 - (i) hold any Interest in Galaxy
 - (ii) hold any Interest in any company carrying on or having Control of Galaxy (except by way of investment in not more than three (3) per cent of the issued equity share capital of any such company whose shares are listed or dealt with on any recognised investment exchange); or
 - (iii) acquire, other than in the ordinary course of business, any of the assets of Galaxy;
 - (b) shall procure that no employee or director of GWR or of any company in the GWR Group of Companies will hold or be nominated to any directorship or managerial position in Galaxy or in any company or other undertaking carrying on or having Control of Galaxy, unless that person has ceased to be an employee or director of any GWR Group company;

- (c) shall not participate in the formulation or making of, or (other than in the ordinary course of business) influence or attempt to influence the policy of Galaxy or, the policy of any person carrying on or having Control of Galaxy; and
- (d) without prejudice to paragraph 9 below, shall not enter into or carry out any agreement or arrangement for the provision of accommodation or support services with Galaxy or any company or undertaking having Control of Galaxy for the purposes of facilitating the provision of any services by Galaxy in the broadcast area of GWR FM (Bristol and Bath) and in the broadcast area of Orchard FM, by Galaxy or by any company or undertaking having Control of Galaxy;
- (e) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person of GWR or of any company in the GWR Group of Companies, directly or indirectly, doing any of the things listed in sub-paragraphs 3(a) - (d) above.

Appointment of a Trustee

- 4.1 The provisions of paragraphs 4.2 to 4.8 below shall apply only as long as GWR has not satisfied the requirement to divest its Interest in VRSL in accordance with paragraph 1.1.
- 4.2 By 30 July 2003, or such later date as may be specified by the OFT, GWR shall propose to the OFT the names of at least two individuals to exercise the Trustee Functions and the full terms of their mandates.
- 4.3 The individuals nominated by GWR pursuant to paragraph 4.2 shall meet the following requirements:
 - (a) they shall each be EU nationals with the necessary qualifications to carry out their mandates, and employees or partners of an investment bank, bank, building society, law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the United Kingdom or another EU member state;
 - (b) they shall each be independent from the GWR Group of Companies, VRSL and the SRH Group of Companies and, in the opinion of GWR, appropriate to be appointed as Trustee; and
 - (c) they shall neither be nor become exposed to a conflict of interest.
- 4.4 Within 20 Working Days of the OFT approving, at its discretion, one or more of the persons nominated by GWR pursuant to paragraph 4.2 above and their proposed mandates, and subject to any modifications the OFT

deems necessary for the Trustee to carry out the Trustee Functions, GWR shall use all reasonable endeavours to appoint from the person or persons so approved one person to carry out the Trustee Functions, in accordance with the mandate approved by the OFT pursuant to this paragraph.

4.5 In the event that:

- (a) GWR fails to nominate any person or persons in accordance with the provisions of paragraph 4.2 above; or
- (b) none of the persons nominated by GWR pursuant to paragraph 4.2 is approved by the OFT; or,
- (c) GWR is unable for any reason to conclude within the time limit stipulated in paragraph 4.4 the appointment of any such person following approval by the OFT;

GWR shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions in accordance with such mandate as is approved by the OFT. GWR shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the OFT.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or 4.5 shall take effect no later than 2 September 2003, or such later date as may be specified by the OFT, and shall be irrevocable unless the OFT is satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

4.7 In the event that the appointment of the Trustee is terminated under paragraph 4.6, GWR shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions in accordance with such mandate as is approved by the OFT. GWR shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the OFT.

Extension of time limits

5. The OFT may, where appropriate, in response to a written request from GWR showing good cause, grant an extension of any period specified in paragraphs 1.1, 4.2 or 4.6.

Functions of Trustee

6.1 The Trustee shall procure within 3 months of its appointment taking effect, or within such other later period as may be specified by the OFT, the completion of the sale of GWR's Interest in VRSL at no minimum price, to a purchaser approved by the OFT in accordance with paragraph 6.3.

- 6.2 Without prejudice to the generality of paragraph 6.1, the Trustee shall take any of the measures set out in paragraph 1.2 in relation to VRSL to the extent to which they may be necessary to effect the sale of GWR's Interest in VRSL in accordance with that provision.
- 6.3 The Trustee shall not sell or permit the sale of any part of GWR's Interest in VRSL to any proposed purchaser unless it has obtained the OFT's prior approval in writing in respect of the identity of the purchaser.
- 6.4 The proposed purchaser to be approved in accordance with paragraph 6.3 shall meet the following requirements:
- (a) it shall be independent of and unconnected to GWR and the GWR Group of Companies; and
 - (b) it shall have the financial resources, proven expertise and incentive to maintain and develop VRSL's business as a viable and active competitive force in competition with GWR and other competitors; and
 - (c) it must reasonably be expected to obtain all necessary approvals and consents from any relevant competition authority or other regulatory authority.
- 6.5 Pending the sale of GWR's Interest in VRSL pursuant to paragraph 6.1, the Trustee shall monitor GWR's compliance with its obligations under these undertakings and shall take such measures as it considers necessary to ensure such compliance.
- 6.6 The Trustee may give written directions to GWR to take such steps within its competence as may be specified or described in the directions for the purpose of securing GWR's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require GWR to:-
- (a) offer any reverse premium or similar inducement to a purchaser; or
 - (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the sale which would be unusual in scope, duration or financially having regard to the price and usual market practice in relation to similar disposals.
- 6.7 The Trustee shall provide to the OFT such information and reports in relation to the carrying out of the Trustee Functions as the OFT may require and shall promptly report in writing to the OFT if the Trustee concludes on reasonable grounds that GWR is failing to comply with any of its obligations under these undertakings.
- 6.8 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of GWR nor shall the Trustee Functions be extended or varied in any way by GWR save with the express written consent of the OFT.

GWR obligations in respect of Trustee

- 7.1 GWR shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 7.2 GWR shall take all such steps as are necessary to enable the Trustee to carry out the Trustee Functions and shall take all such steps, including complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.6, and provide the Trustee with all such assistance and information, including copies of all relevant documents, as it may require in carrying out the Trustee Functions.
- 7.3 GWR shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of its mandate.

Termination of Airtime Sales Agreement

- 8.1 The parties having terminated on 31 May 2003 the Airtime Sales Agreement entered into between Opus, GWR and VRSL on 26 September 2002, GWR or any company part of the GWR Group of Companies shall not enter into or carry out any agreement with Galaxy or any company carrying on or having Control of Galaxy, with respect to the performance by GWR or any company part of the GWR Group of Companies, of local sales of advertising airtime on radio services supplied by Galaxy in the broadcast area of GWR FM (Bristol and Bath) and in the broadcast area of Orchard FM on behalf of Galaxy or any company carrying on or having Control of Galaxy.

Termination of arrangements relating to the provision of accommodation and support services

9. GWR shall ensure as soon as is reasonably practicable and in any event by 5 months following the date laid down in paragraph 1.1 (1 September 2003), that Galaxy staff and operations cease to be located at the same premises as GWR and that any existing arrangements entered into by GWR relating to the provision of accommodation and support services to Galaxy or any company carrying on or having Control of Galaxy are terminated.

Subsidiaries

10. GWR shall procure that each of its Subsidiaries complies with these undertakings as if it had given them.

Information

11. GWR shall provide promptly to the OFT such information as it may reasonably require for the purpose of ascertaining that these undertakings are being or have been complied with or of performing any of his functions under section 88 of the Act.

Interpretation

12. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
13. For the purpose of these undertakings:

"the Act" means the Fair Trading Act 1973;

"Associated Person" shall be construed in accordance with section 77(4) of the Act;

"business" has the meaning given by section 137(2) of the Act;

"Control" shall be construed in accordance with section 65 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more or of the total number of votes which may be cast at such meetings;

"Holder" means a holding company, as defined in section 736(5) of the Companies Act 1985;

"Interest" means shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose an "interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of those shares or an entitlement to Control the exercise of any such right;

"Galaxy" means the business and assets of Galaxy Radio Wales and the West Limited as at 26 September 2002 and any additional business carried on by, and assets used by Galaxy Radio Wales and the West Limited or Vibe Radio Wales and the West Limited, since that date;

"GWR" means GWR Group plc;

"GWR Group of Companies" means the group of companies that comprises:

- (a) any direct or indirect Holder of GWR from time to time; and
- (b) any direct or indirect Subsidiary of GWR from time to time; and

- (c) any company that from time to time Controls GWR or any direct or indirect Holder of GWR, or any direct or indirect Subsidiary of GWR; and
- (d) any company from time to time Controlled by GWR or any direct or indirect Subsidiary of GWR.

"OFT" means the Office of Fair Trading;

"Relevant Authority" means the authority which has the power to supersede, vary or release these undertakings under the relevant UK merger control legislation at the time the consent is sought under paragraph 3;

"SRH" means Scottish Radio Holdings plc;

"SRH Group of Companies" means the group of companies that comprises:

- (a) any direct or indirect Holder of SRH from time to time; and
- (b) any direct or indirect Subsidiary of SRH from time to time; and
- (c) any company that from time to time Controls SRH or any direct or indirect Holder of SRH, or any direct or indirect Subsidiary of SRH; and
- (d) any company from time to time Controlled by SRH or any direct or indirect Subsidiary of SRH.

"Subsidiary" shall be construed in accordance with section 736(1) of the Companies Act 1985;

"Trustee" means the person appointed pursuant to paragraph 4.3, 4.4 or 4.6 to carry out the Trustee Functions;

"Trustee Functions" means the functions set out in paragraphs 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7 and 6.8;

"VRSL" means the business and assets of Vibe Radio Services Ltd as at 26 September 2002 and any additional business carried on by, and assets used by Vibe Radio Services Ltd since that date;

"Working Days" mean any days of the week other than a Saturday, Sunday or any other day that is a public holiday in England.

SIGNED FOR AND ON BEHALF OF GWR Group plc

..... Signature Signature
SIMON WARD Name	RICHARD HANNING Name
..... DIRECTOR Title COMPANY SECRETARY Title
..... 22.7.2003 Date 22.7.2003 Date