

## COMPLETED ACQUISITION BY GLOBAL RADIO LIMITED OF GMG RADIO HOLDINGS LIMITED

### REPORT TO THE SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

#### EXECUTIVE SUMMARY

1. Global Radio Holdings Limited (Global) acquired GMG Radio Holdings Limited (GMG Radio) on 24 June 2012 (the Transaction). On 2 August 2012, the then Secretary of State, in exercise of his powers under section 42 of the Enterprise Act 2002 (the Act), issued a public interest intervention notice (the Notice) to the OFT and required it to report on the Transaction in accordance with section 44 of the Act, within the period ending on 28 September 2012 (see Annexe 1 for the Notice).
2. In this case, which deals with a completed transaction, the Act requires the OFT to give advice to the Secretary of State on the considerations relevant to the making of a reference under section 22 of the Act, which are also relevant to the Secretary of State's decision as to whether to make a reference under section 45 of the Act.
3. As regards each of the decisions that the OFT is required to include pursuant to section 44(4) of the Act, the OFT believes that:
  - a relevant merger situation has been created;
  - the relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition;
  - the markets concerned are of sufficient importance to justify the making of a reference;
  - on the basis of the evidence available to it, any relevant customer benefits do not outweigh the substantial lessening of competition or any adverse effects of the substantial lessening of competition; and

- in light of the fact that the merging parties have requested a 'fast track' reference to the Commission, it would not be appropriate to deal with the matter by way of undertakings in lieu.
4. This report sets out the reasoning behind these conclusions. In doing so, it includes a summary of views from interested parties received in response to an invitation to comment issued by the OFT on 3 August 2012.

## THE PARTIES

5. **Global** is a privately owned radio group which was formed in 2007 by the acquisition of the radio interests of the Chrysalis Group. In 2008 Global acquired GCap Media plc. Global networks the Heart, Capital, Xfm and Gold radio brands across the UK on local analogue and digital platforms. Global's other brands include Classic FM, LBC and Choice. Global's turnover for the financial year ending 31 March 2012 was £[ ].
6. **GMG Radio** was launched in 1999 as part of the portfolio of media operated by Guardian Media Group (GMG), and has since grown via new station launches and acquisitions. GMG Radio operates several radio stations across the UK, which are all branded either Real or Smooth. GMG Radio's turnover for the financial year ending 31 March 2011 was £[ ].
7. Following the acquisition of GMG Radio by Global, GMG Radio has been renamed Real and Smooth Limited (RSL). For the purposes of reporting on the acquisition of GMG Radio by Global, the OFT has used the name of the companies at the time when the acquisition took place.

## BACKGROUND

8. On 24 June 2012, Global acquired the entire issued share capital of GMG Radio.
9. On 5 July 2012, pursuant to section 57(1) of the Act, the OFT wrote to the then Secretary of State, formally bringing the Transaction to his attention, as the OFT considered that the Transaction may raise public interest considerations under section 58(2C)(a) of the Act.
10. On 31 July 2012 the OFT received an informal merger submission from the parties concerning the Transaction. In its submission, Global requested that the OFT make a 'fast track' merger reference to the Competition Commission (CC),

as it considered that the test for reference was met and that this was an efficient way to review the Transaction.<sup>1</sup>

11. The purpose of the submission to the OFT by Global was therefore principally to give the OFT sufficient information to satisfy itself that the test for a reference to the CC is met and that the Transaction warranted a 'fast track' reference to the CC. Specifically, the parties did not provide all the information that would normally be contained in a merger notification to the OFT and did not seek to present arguments on a number of the theories of harm that may be engaged by the merger.
12. The Secretary of State issued the Notice on 2 August 2012 requiring the OFT to investigate and report on jurisdictional and competition issues raised by the Transaction by 28 September 2012 in accordance with section 44 of the Act. The Notice also required Ofcom to report on the impact of the Transaction on public interest issues, with regard to the plurality of the media. The Secretary of State identified the public interest in section 58(2C)(a) of the Act as being potentially relevant to consideration of the relevant merger situation, namely 'the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience'.
13. As a result of the issuing of the public interest intervention notice by the Secretary of State, the decision on whether to refer the relevant merger situation to the CC is currently for the Secretary of State. As a result, it was no longer possible for a 'fast track' reference to the CC to be made by the OFT. However, in the accompanying letter to the OFT from the Department for Culture, Media and Sport, the fact of Global's request for a 'fast track' reference was acknowledged, together with the fact that the extent and nature of the OFT's report to the Secretary of State on the competition issues raised by the case may reflect this.
14. The OFT has sought to take a proportionate approach to the investigation of the competition issues raised by this case in the light of the parties' request for a 'fast track' reference. Therefore, while the OFT believes, for the reasons set out in this report, that the test for reference is met on competition grounds, the OFT has not sought to make a decision as to whether it believes that it is or may be the case that the merger has resulted, or may be expected to result, in

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<sup>1</sup> See paragraphs 4.71ff of the OFT Mergers – Jurisdictional and Procedural Guidance (OFT527), June 2009 (the OFT Jurisdictional and Procedural Guidance). In summary, fast-track reference cases are those in which the parties accept that the test for reference to the CC is met and request that the case be dealt with in an expedited manner by the OFT.

a substantial lessening of competition within each and every possible market segment and/or geographic area considered in this report.

15. The OFT issued a public invitation to comment on 3 August 2012 and a number of third parties, including a number of members of the UK and Scottish Parliaments, provided comments on the impact of the Transaction. Additionally, the OFT has asked customers and competitors of the merging parties for their views on the Transaction. This report provides a summary of views of third parties on the impact of the Transaction on competition. The responses of third parties have been given due consideration by the OFT, and are referenced in this report where relevant.
16. On 15 August 2012, in accordance with paragraph 6.15 of the OFT Jurisdictional and Procedural Guidance, the OFT asked Ofcom to provide it with a local media assessment (LMA) in order to inform the OFT's competition assessment of the merger.<sup>2</sup> Ofcom responded to this request in the form of a letter setting out its high level views on the Transaction on 6 September 2012. The key suggestions made in that letter are highlighted throughout this report. Ofcom did not consider that a full LMA was warranted in this case.

## **JURISDICTION**

17. A merger must meet all three of the following criteria to constitute a relevant merger situation for the purposes of the Act:
  - two or more enterprises must cease to be distinct, or there must be arrangements in progress or in contemplation which, if carried into effect, will lead to enterprises ceasing to be distinct; and
  - either:
    - the UK turnover associated with the enterprise which is being acquired exceeds £70 million; or
    - the enterprises which cease to be distinct supply or acquire goods or services of any description and, after the merger, together supply or acquire at least 25 per cent of all those particular goods or services

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<sup>2</sup> The OFT has committed to asking Ofcom to provide it with an LMA in order further to inform the OFT's decisions on the mergers reference test and on the application of any available exceptions to the duty to refer in transactions involving media organisations. The procedure for requesting such a LMA is set out in the Memorandum of Understanding of 26 November 2010 between Ofcom and the OFT in respect of LMAs in transactions involving media organisations.

of that kind supplied in the UK or in a substantial part of it. To qualify, the merger must result in an increment to the share of supply or consumption and the resulting share must be at least 25 per cent; and

- either the merger must not yet have taken place, or must have taken place not more than four months before the reference is made, unless the merger took place without having been made public and without the OFT being informed of it (in which case the four month period starts from the earlier of the time the merger was made public or the time the OFT was told about it).

18. The Transaction was completed on 24 June 2012. As a result of the Transaction Global and GMG Radio have ceased to be distinct.
19. Following the Transaction, the parties have a combined share of commercial radio listening hours in the UK of 48 per cent,<sup>3</sup> with an increment of 10 per cent, and in certain regions in the UK the parties have a combined share of advertising revenue in excess of 25 per cent (London, West Midlands, East Midlands, North West, Yorkshire, North East, Central Scotland, South Wales, and North Wales). Therefore, the OFT believes, and Global accepts, that the share of supply test in section 23(4) of Act is met.
20. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

## **TRANSACTION RATIONALE**

21. Global submits that the Transaction will [ ].
22. [ ]<sup>4</sup>
23. [ ]

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<sup>3</sup> Based on RAJAR data for Q1 2012.

<sup>4</sup> [ ]

## INDUSTRY BACKGROUND

24. The UK radio industry is broadly characterised by the types of platforms used for broadcasting, how radio services are funded and the geographic scope of the radio services:
- **Analogue and digital platforms.** Most listening is undertaken on analogue platforms (FM and AM), although listening via digital platforms is increasing (DAB, DTV, digital satellite and the internet).
  - **Publicly funded, commercially funded and community stations.** The licence-fee funded BBC is the largest single radio broadcaster in the UK, accounting for around 55 per cent of total radio listening. Commercial radio accounts for around 42 per cent of listening and the remainder is accounted for by not-for-profit community stations, a small but growing type of service.<sup>5</sup>
  - **National, regional and local services.** The BBC operates several national radio services, regional radio services for Scotland, Wales, and Northern Ireland, and local services for the English regions. There are three national commercial radio licences (INRs) and over 200 regional and local commercial radio licences (ILRs). The digital network infrastructure also has a national, regional and local component, with digital multiplexes<sup>6</sup> operating at each level. There are a number of digital-only radio services at the national, regional and local level.
25. Global is the largest commercial radio group in the UK measured by listening hours. The top five commercial radio groups are Global, Bauer, GMG Radio, UTV and Absolute, which together account for over 85 per cent of total commercial listening hours.
26. The main source of income for commercial radio services is via the sale of advertising inventory in broadcast programming. Revenue is also generated through sponsorship and promotional opportunities for advertisers. Commercial radio stations may have further ancillary revenue streams, such as digital revenues. Advertising revenues are linked to the ability of radio stations to deliver audiences, both in terms of their demographic type and the volume of listeners (that is, there are network effects between the two sides of a 'two-sided' platform). However, listeners are not typically charged to access content from broadcasters.

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<sup>5</sup> Based on RAJAR data for Q1 2012.

<sup>6</sup> Multiplexing is a method by which multiple digital streams are combined into one transmission frequency, thereby making more efficient use of the limited amount of spectrum available.

27. Commercial radio industry revenues are around £0.5bn in the UK per annum, with the majority of revenues earned from nationally sold advertising. According to the Radio Advertising Bureau,<sup>7</sup> in 2011 revenues from nationally sold radio advertising amounted to £283.8 million and commercial revenues at a local level amounted to £142.3 million, whereas brand integration (including radio sponsorship and promotion) generated a total £105.5 million in the UK.
28. The industry has undergone a period of consolidation in recent years in terms of independent radio licence holders. The acquisition by Global of the Chrysalis Group and subsequently GCap Media plc (GCap) in 2007 and 2008 are the highest profile examples, although there are other examples.<sup>8</sup>
29. The OFT and CC have previously considered the following significant mergers between commercial radio companies:
- **Global / GCap.** In August 2008, the OFT concluded that the completed acquisition of GCap by Global resulted in a substantial lessening of competition in the supply of radio advertising in the Midlands, and that this harm would not be outweighed by relevant customer benefits.<sup>9</sup> The OFT accepted a proposal for the parties to divest a package of stations in the East and West Midlands in lieu of reference to the CC.
  - **Capital Radio / GWR.** In December 2004, the OFT concluded that the anticipated acquisition of GWR Group plc (GWR) by Capital Radio plc (Capital) created a realistic prospect of a substantial lessening of competition in the supply of radio advertising in the East Midlands.<sup>10</sup> The OFT accepted a proposal for the parties to divest Century 106FM in Nottingham in lieu of reference to the CC.<sup>11</sup>
  - **Scottish Radio Holdings plc (SRH) and GWR Group plc (GWR) and Galaxy Radio Wales and the West Limited (Galaxy).** In May 2003, the CC concluded that the acquisition of Galaxy by a joint venture company of SRH and GWR would be expected to operate against the public interest.<sup>12</sup> As a consequence, the CC recommended a number of potential remedies which involved GWR materially reducing its interest in Galaxy.

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<sup>7</sup> See <http://www.rab.co.uk/annual-commercial-radio-revenues>.

<sup>8</sup> For example, in 2009 UKRD acquired The Local Radio Company.

<sup>9</sup> ME/3638/08, Completed acquisition by Global Radio UK Limited of GCap Media plc, OFT, 8 August 2008 (*Global/GCap*).

<sup>10</sup> ME/1291/04, Anticipated acquisition by Capital Radio Plc of GWR Group Plc, OFT, December 2004.

<sup>11</sup> Century 106FM was acquired by Chrysalis Radio. Chrysalis was itself subsequently acquired by Global Radio in 2007.

<sup>12</sup> Scottish Radio Holdings plc and GWR Group plc and Galaxy Radio Wales and the West Limited: A report on the merger situation, Competition Commission, May 2003.

## MARKET DEFINITION

30. The parties overlap in the provision of commercial radio advertising at a regional and local level, and through packages of advertising across regional or local areas which could be viewed as national in nature.
31. The OFT has used the market definition that is described in this section as a structure for the analysis of the competitive effects of the merger. In identifying a suitable market, the OFT will identify one that contains the most significant competitive alternatives available to the customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger. In doing so, the OFT seeks to include the most relevant constraints on behaviour of the merger firms.<sup>13</sup>
32. At the same time, it is important to note that market definition is a useful tool, but not an end in itself, and identifying the relevant market involves an element of judgement. The boundaries of the market do not determine the outcome of the OFT's analysis of the competitive effects of the merger in any mechanistic way. In assessing whether a merger may give rise to a substantial lessening of competition the OFT may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.<sup>14</sup> This caveat is particularly important in this case given the limited amount of information available to the OFT.
33. The market used in this case contains two dimensions: the product market and the geographic market.

### Product Market

34. The parties overlap in the provision of commercial radio advertising. They also overlap in the provision of radio content to listeners at a regional and local level in a 'two-sided market' (that is that where commercial advertisers form one group of customers and listeners form another group of customers).
35. As the provision of radio content to listeners is a means to generate commercial income, and because listeners do not ordinarily face a cost for consuming commercial radio, in previous cases the OFT and CC have tended to focus

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<sup>13</sup> See OFT/CC Merger Assessment Guidelines (OFT1254), September 2010 (the Merger Assessment Guidelines), paragraph 5.2.1.

<sup>14</sup> Ibid, paragraph 5.2.2.



primarily on the overlap in radio advertising.<sup>15</sup> The OFT does not have any evidence suggesting that it should take a different approach in this case.

36. Global submits that:

- commercial radio competes with the BBC for audiences, which has an indirect impact on advertising revenue given the ‘two-sided’ nature of the market; and
- commercial radio competes with other media for advertising revenue (such as the local press, magazines, the internet, outdoor media or regional TV).

Each of these propositions is considered below. The OFT then considers segmentation by type of advertising and by demographic reach.

### Impact of the BBC

37. Global submits that its main competitor for listeners is the BBC and that much of its strategy is focused on winning listeners from the publicly-funded broadcasters’ services. It submits further that the BBC is better funded than commercial radio stations and that this creates pressure for radio services to invest in content to avoid losing listeners and, in turn, commercial revenues. In its letter of 6 September 2012 (see above paragraph 16), Ofcom indicated that the OFT may wish to consider the BBC’s impact on the ability of commercial radio stations to compete for listeners.
38. The OFT accepts as plausible the contention that commercial radio competes with the BBC for listeners both nationally and in regional and local markets. The OFT also considers it credible that there may be some indirect form of constraint exerted on supply of commercial radio advertising given the nature of the two-sided market. However, no merger-specific evidence was provided in this case to show the extent or strength of that indirect constraint such as to justify that the BBC should be included in the product market or how that should be done.

### Constraints from other media

39. Global submits that radio is a small channel for advertising and that it faces significant challenges from alternative media, particularly the internet. It also submits that other established media such as outdoor advertising, television, cinema and newspapers increasingly constrain commercial radio advertising due to, for example, the conversion to digital. In its letter of 6 September 2012

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<sup>15</sup> See OFT Decision Completed acquisition by Global Radio UK Limited of GCap Media plc, 8 August 2008, paragraphs 26ff.

(see above paragraph 16), Ofcom noted that other forms of advertising (particularly internet advertising) may exert competitive pressure on suppliers of commercial radio advertising. However, Ofcom did not suggest that those other forms of advertising should be part of the relevant market in this case.<sup>i</sup>

40. The OFT has tended to take a cautious approach to product market definition in previous media mergers, typically defining product markets narrowly by media type. The OFT has previously accepted that different media could be considered substitutes in a very weak sense: that they compete for the marginal pound of advertising spend budgeted by an advertiser (that is, different media are generally complements but may compete for an allocation of an advertiser's budget).<sup>16</sup>
41. In this case, the OFT has not been provided with sufficient evidence to suggest that alternative media should be included in the product market. Indeed, a number of third parties that commented to the OFT on the effect of the Transaction referred to the unique features of radio as an advertising medium.
42. Without definitively concluding on the relevant product market, the OFT therefore considers it appropriate to analyse the effect of the merger on the basis of the supply of commercial radio advertising.

### Product Segmentation

43. Global submits that there are three different types of commercial radio advertising:
  - **Non-contracted or directly-booked advertising.** Global submits that this is advertising acquired on a campaign-by-campaign basis where 'spots' are negotiated directly with one or more stations. Global submits that non-contracted advertising is typically purchased by direct customers or regional agencies.
  - **Contracted or 'indirect' advertising.** Global submits that most advertising on radio is purchased by media agencies under annually agreed contracts, typically covering all stations in that radio group's portfolio.<sup>17</sup>
  - **Sponsorship and promotion (S&P).** Global submits that such packages involve a long-term association with a station, unlike advertising. Sponsors may sponsor a programme, with their name being mentioned

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<sup>16</sup> See, for example, ME/5386/12, Anticipated acquisition by Northcliffe Media Limited of Topper Newspapers Limited, OFT, July 2012.

<sup>17</sup> Global also submits that the aim of radio groups is to maximise the overall value of their portfolio, rather than spend on individual stations and thus the key objective is to encourage media agencies to commit a share of its total anticipated spend on radio advertising to that group.

before, during and after the programme. Global submits that promotions are interactive, short-term and typically involve audience participation.

44. The OFT notes that this segmentation is consistent with the advertising segmentation considered in *Global/GCap*. It is also consistent with Ofcom's findings in its 2006 Radio Advertising Market Research report.<sup>18</sup> Third parties were supportive of segmentation of distinguishing between different types of commercial radio advertising in this way.
45. Without concluding whether such product segments form separate markets, the OFT has therefore considered the competitive effects of the merger in relation to the supply of commercial radio advertising, segmenting by non-contracted advertising, contracted advertising and S&P.

#### Other segmentations (demographic reach)

46. Global submits that radio stations may not be effective or close alternatives for advertisers due to differences in demographic reach. The OFT's approach in *Global/GCap* in part relied on an assessment of the extent to which stations differentiated themselves with respect to demographic groups. Accordingly, the OFT has considered whether segmentation by demographics is appropriate in this case.
47. The OFT accepts that differences in demographic reach may result in two radio stations being relatively weak substitutes for certain advertisers. Nonetheless, the OFT believes that the same stations could compete for certain types of advertisers and/or advertising campaigns.
48. There is not sufficient evidence in this case to conclude that commercial radio advertising can be clearly demarcated by reference to demographic reach. However, the differences in demographics have been taken into account to the extent relevant in the substantive assessment undertaken by the OFT.

#### **Geographic Market**

49. Global submits that competition between suppliers of commercial radio advertising occurs on a national, regional and local basis, which is consistent with the OFT's previous decisional practice.
50. The OFT notes that this geographic segmentation is consistent with both the demand-side, in terms of the way advertisers buy advertising inventory, and the

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<sup>18</sup>Radio Advertising Market Research-Assessment of the constraints on the price of direct and indirect radio advertising'. Ofcom, 19 October 2006.

supply-side, in terms of the different sales structures and Total Survey Areas (TSAs)<sup>19</sup> which exist for different radio services.

51. The OFT has not been provided with any evidence in this case which supports an alternative geographic market. This geographic market is also supported by the balance of third party responses.

### **Conclusion on market definition**

52. For the reasons outlined above, the OFT has considered the competitive effects of the merger in relation to the supply of commercial radio advertising, at a national, regional and local level, distinguishing between non-contracted radio advertising, contracted radio advertising, and S&P.

## **UNILATERAL THEORIES OF HARM**

### **Introduction**

53. Horizontal mergers give rise to unilateral effects where they increase the ability and incentive of merging parties to increase prices or reduce quality or service post-merger.
54. Where products are undifferentiated, unilateral effects are more likely where the market is concentrated, where the merging parties have high market shares, where there are no strong third party competitors and where barriers to entry and expansion are high. Where products are differentiated, as is the case in relation to the supply of commercial radio advertising, unilateral effects are more likely where the products compete closely with one another.<sup>20</sup>
55. The merger has resulted in the combination of two rival suppliers of commercial radio advertising. The OFT has therefore considered the possibility that the merger gives rise to unilateral effects in the three product segments set out above: non-contracted advertising, contracted advertising and S&P.

### **Non-Contracted Advertising: Unilateral Effects at Regional and Local Level**

#### Framework for Analysis

56. In undertaking its competitive assessment of non-contracted advertising, the OFT has adopted the same broad approach it undertook in its decision in

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<sup>19</sup> TSAs are used by RAJAR for the purposes of its listening surveys. They are broadly coincident with the area that a station signal covers. References to TSAs and transmission areas have the same meaning for the purposes of this report.

<sup>20</sup> Section 5.4, Merger Assessment Guidelines.

*Global/GCap*. Specifically, on the basis of the limited evidence available in this case, the OFT has aimed at:

- identifying the radio services which operate in a given region or local area which could be considered alternatives from an advertiser's perspective;<sup>21</sup>
- assessing the extent of geographic overlap of the services to identify whether services are likely to be close or weak substitutes;
- assessing the share of total non-contracted advertising revenues the merger parties will control post-merger in the relevant region or local area;<sup>22</sup>
- assessing the share of local commercial radio listening each service obtains to identify whether services are likely to be able to offer advertisers a similar audience 'volume'; and
- assessing the demographic profile of the services in the relevant region or local area to assess whether services compete closely for particular demographics.

57. The OFT has considered other evidence available to it, including the responses from third parties.
58. Based on the application of the above framework for analysis, the OFT believes that it is or may be the case that the Transaction has resulted, or may be expected to result, in a substantial lessening of competition, in relation to a number of regions and local areas. These are explained in turn below.

### North Wales

59. In North Wales, Global operates Heart and Gold North Wales. GMG Radio operates Real North Wales, covering a much larger TSA than Global's stations.
60. Global submits that its key competitor in North Wales is Town & Country's Radio Ceredigion, which broadcasts in South Wales with some overlap with GMG Radio's Real North Wales. Global also identifies independent radio station Radio Hafren and Radio Dee, which broadcasts in Chester.
61. On the basis of geographic coverage alone, the OFT considers that the parties are each others' closest competitors despite the difference in TSA for each parties' services.

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<sup>21</sup> Generally, this involves identifying all commercial services which overlap with the parties' TSAs.

<sup>22</sup> The OFT has certain reservations about the robustness of this data, namely that Global has estimated competitor revenues for each of the areas and in some areas competitors' shares of revenue are significantly different to their share of listening. As a result, the OFT has also had regard to share of local commercial listening.

62. Global submits that its combined share of total non-contracted advertising revenue in North Wales is [90-100] per cent post-merger with an increment of [20-30] per cent. Global estimates that its share of each of non-contracted agency advertising revenue and non-contracted direct advertising revenue is [90-100] per cent post-merger (with an increment of [40-50] per cent and [20-30] per cent respectively).
63. On the basis of listening data, Global and GMG Radio account for over 99 per cent of total local commercial listening hours in North Wales post-merger. The merger parties are therefore each other's closest commercial competitors based on listening hours in North Wales.
64. Global has not made any submission on the demographic targeting of the radio services available in North Wales.
65. The OFT considers that there are limited alternatives for non-contracted radio advertisers in North Wales aside from the merger parties and that the Transaction will have the effect of creating an effective monopoly in the provision of non-contracted radio advertising in North Wales.
66. The OFT received a limited number of responses from direct customers in North Wales. One was concerned the Transaction would result in 'a very uncompetitive marketplace'. A number of agencies and competitors highlighted North Wales as being an area where the parties would have very high combined share of listening hours and non-contracted advertising revenue post-merger.
67. On the basis of the evidence available to it, the OFT believes that it is or may be the case that the merger has resulted, or may be expected to result, in a substantial lessening of competition in the supply of non-contracted radio advertising in North Wales. It should be noted that the parties accepted in their application for a 'fast track' reference that the OFT might reasonably conclude that the test for reference is met in the supply of non-contracted radio advertising in Wales or parts of Wales.

#### East Midlands

68. In the East Midlands, Global operates three local Capital stations and associated Gold stations, which each combine to provide regional coverage. GMG Radio operates Smooth on a regional basis.
69. Global submits that its main competitors in the East Midlands are Orion Media (Gem 106), Quidem (Oak FM) and Lincs FM Group (Rutland Radio). The latter two have limited geographic overlap with the parties' services' TSAs. Orion

Media's Gem 106 has a geographic footprint similar to both Global and GMG Radio's services in the area.

70. Global submits that its combined share of total non-contracted advertising revenue in the East Midlands is [50-60] per cent post-merger with an increment of [10-20] per cent. Global estimates that its share of each of non-contracted agency advertising revenue and non-contracted direct advertising revenue is [60-70] per cent and [50-60] per cent post-merger respectively (with an increment of [10-20] per cent and [10-20] per cent respectively). These estimates are of a level to give rise to prima facie competition concerns resulting from the merger, absent any countervailing factors.
71. On the basis of listening data, Global and GMG Radio account for 72 per cent of commercial listening hours in the East Midlands post-merger. Furthermore, the Transaction has brought under common ownership the two largest local commercial stations by share of listening hours.
72. Global noted, and the OFT accepts, that Global and GMG Radio do not appear to be each other's closest competitors in the East Midlands based on the average listener demographics.<sup>23</sup>
73. The OFT received no responses from non-contracted customers in the East Midlands. A [ ] competitor was concerned about the merger parties' combined reach post-merger. A [ ] competitor was not concerned about the Transaction.
74. On the basis of the evidence available to it, the OFT believes that it is or may be the case that the merger has resulted, or may be expected to result, in a substantial lessening of competition in the supply of non-contracted radio advertising in the East Midlands.

### South Yorkshire

75. Prior to the Transaction, there were five independent radio operators in South Yorkshire: Global (Capital), GMG (Real), Bauer (Hallam FM, Aire FM, Magic), UTV (Pulse, Pulse 2 (Classic), and Lincs FM group (Trax FM, Dearne FM, Ridings FM, Rother FM). Therefore, the Transaction has the effect of reducing the total number of independent operators from five to four.
76. On the basis of geographic coverage alone, the merger parties appear to be each other's closest competitor in South Yorkshire. The OFT notes in particular that (a) each of Global (Capital) and GMG Radio (Real) has the ability to

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<sup>23</sup> On the basis of the information provided by Global, it would appear that Orion's Gem106 is a closer competitor to both Global's Capital and GMG Radio's Smooth than they are to each other in terms of listener demographics.

broadcast and/or sell advertising on a South Yorkshire basis and (b) no independent services present in the area have precisely overlapping TSAs with the merging parties in South Yorkshire. As a result, it is not possible to precisely replicate the TSA coverage offered by either Real or Capital in South Yorkshire. In order to 'buy around' the merger parties, advertisers would have to acquire advertising inventory from at least three different radio stations operated by two different groups. The merger parties therefore appear to be each others' closest competitor based on geographic coverage in the South Yorkshire area.

77. Global submits that its combined share of non-contracted radio advertising in Cardiff post-merger is [20-30] per cent, with an increment of [10-20] per cent. However, the OFT has not been able to verify this estimate.
78. On the basis of listening data, Global and GMG Radio account for around 53 per cent of total commercial listening hours in South Yorkshire post merger, and have more than one and a half times the local commercial listening hours of their closest competitor Bauer.
79. The OFT received a number of responses from direct customers in South Yorkshire. The majority of respondents were concerned that the Transaction could result in price increases or a reduction in choice in South Yorkshire.
80. On the basis of the evidence available to it, the OFT believes that it is or may be the case that the merger has resulted, or may be expected to result, in a substantial lessening of competition in the supply of non-contracted radio advertising in South Yorkshire.

### Cardiff

81. Prior to the Transaction, there were four independent radio operators in Cardiff: Global (Capital South Wales, Gold SE Wales), GMG Radio (Real), Bauer (Kiss West 101) and Town & Country Broadcasting (Nation). Therefore, the Transaction has the effect of reducing the total number of independent operators from four to three.
82. On the basis of geographic coverage alone, the merger parties are each other's closest competitor in Cardiff. The OFT notes in particular that no independent services present in Cardiff have precisely overlapping TSAs, notwithstanding GMG Radio's ability to split its Real South Wales transmission. The OFT notes further that in order to 'buy-around' the merger parties, advertisers would have to acquire advertising inventory on stations with significantly broader TSAs and therefore would likely suffer 'wastage' outside the Cardiff area.



83. Global submits that its combined share of non-contracted radio advertising in Cardiff post-merger is [80-90] per cent, with an increment of [30-40] per cent. This is of a level which gives rise to strong prima facie competition concerns.
84. On the basis of listening data, Global and GMG Radio account for 74 per cent of total local commercial listening hours in Cardiff post-merger, and have more than four times the local commercial listening hours of their main competitor Bauer. The merger parties are therefore each other's closest commercial competitors based on listening hours in Cardiff.
85. The OFT received a number of concerns from direct customers in Cardiff. These respondents were concerned that the merger would combine close competitors in the supply of commercial radio advertising, and anticipated price increases as a consequence. In addition, Cardiff was an area identified by a number of agencies and competitors where the parties would have very high combined share of listening hours post-merger.
86. On the basis of the evidence available to it, the OFT believes that it is or may be the case that the merger has resulted, or may be expected to result, in a substantial lessening of competition in the supply of non-contracted commercial radio advertising in Cardiff.

### Conclusion

87. The OFT believes that it is or may be the case that the merger has resulted, or may be expected to result, in a substantial lessening of competition in the supply of non-contracted commercial radio advertising in North Wales, East Midlands, South Yorkshire and Cardiff, as explained above.
88. The OFT also considers that the merger may raise unilateral effects in the supply of non-contracted radio advertising in a number of additional regions and local areas in the UK, including the West Midlands, the North West, Yorkshire, the North East, central Scotland, Glasgow, South Wales and London. However, given its conclusions on the regional and local areas discussed above, the OFT has not found it necessary to conclude on whether the test for reference is met in relation to those other areas.

### **Contracted Advertising: Unilateral Effects at National Level**

89. Both Global and GMG Radio rely on national contracted advertising for a significant proportion of their turnover.
90. Prior to the merger, Global was the appointed sales agent for GMG Radio's nationally-booked advertising, in relation to sales with London-based agencies

(the sales agreement). The OFT understands that the sales agreement covered nationally-booked advertising only and does not extend to regional or local advertising, or S&P, which remained with GMG Radio.<sup>24</sup>

91. The application of the 'substantial lessening of competition' test involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the 'counterfactual' in merger analysis. The OFT generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the OFT will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that there is a realistic prospect of a counterfactual that is more competitive than prevailing conditions.<sup>25</sup>
92. Global submits that the prevailing conditions of competition are conditioned by the existence of the sales agreement. In the view of Global, because of the existence of the sales agreement, the relevant counterfactual to assess the competition effects of the merger on contracted advertising, so far as London-based agencies are concerned, is no different to the situation post-merger.
93. Global notes, in particular, that it already sells airtime on GMG Radio stations bundled with airtime on its own stations under single contracts to these contracted customers. It also notes that contracted prices for both Global and GMG Radio stations are negotiated by Global on an annual basis.<sup>26</sup>
94. In addition, Global submits that any loss of competition for contracted radio advertising with non-London-based agencies (for which GMG Radio is independent of Global) should not be regarded as material.
95. Finally, Global submits that contracted customers have substantial buyer power as regards the merged firm given that [ ].
96. As the sales agreement only covers London-based agencies, the OFT has considered the competitive effect of the Transaction on the supply of contracted radio advertising with respect to London-based agencies and non-London-based agencies separately.

#### London-based agencies

97. On the basis of the evidence available to it, the OFT is not persuaded that the merger does not structurally affect the sale of contracted radio advertising with

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<sup>24</sup> [ ]

<sup>25</sup> Merger Assessment Guidelines, section 4.3.

<sup>26</sup> These are usually agreed in the form of costs per thousand impacts (CPTs).

respect to London-based agencies. In particular, the OFT does not believe that there is no competitive difference between the pre-merger scenario (sales agreement in place) and the post-merger scenario (structural integration of Global and GMG Radio). The key reasons why the OFT considers that the Transaction may result in a change to the competitive structure of the merger are considered below.

98. First, [ ]. This possibility (that is, of GMG Radio operating independently of Global for London-based agencies in the future) is eliminated as a consequence of the Transaction.
99. Second, the existence of the sales agreement may have affected the conduct of Global in the marketplace in a way which will not occur post-merger. In this context, the OFT considers that the primary source of competition between rival suppliers of national contracted radio advertising is during the negotiation of annual framework agreements. When negotiating such framework agreements, Global's incentives with respect to sales of GMG Radio advertising are likely to change as a consequence of the Transaction given that it will receive all revenues from the sales of GMG Radio services, rather than receiving only a proportion of the revenue as commission.
100. Third, it should also be noted that the merger parties still competed actively for listeners prior to the Transaction and each had autonomy over its programming decisions. Competition for listeners is important to the extent that it drives the revenue GMG Radio obtained under the sales agreement.
101. While the OFT notes these considerations, given the findings of the OFT in relation to unilateral effects in non-contracted radio advertising justifying a reference to the CC, the OFT has not found it necessary to conclude on whether it is or may be the case that the Transaction has resulted, or may be expected to result, in a substantial lessening of competition in the supply of contracted advertising in relation to London-based agencies.

#### Non-London-based agencies

102. As far as non-London-based agencies are concerned, because Global did not represent GMG Radio as sales agent in negotiations with those agencies, the Transaction has the effect of reducing the number of independent suppliers of contracted radio-advertising, in relation to such agencies.
103. However, given the findings of the OFT in relation to unilateral effects in non-contracted radio advertising justifying a reference to the CC, the OFT has not found it necessary to conclude on whether it is or may be the case that the Transaction has resulted, or may be expected to result, in a substantial

lessening of competition in the supply of contracted advertising in relation to non-London-based agencies.

### **Sponsorship and Promotion (S&P)**

104. The OFT understands that, notwithstanding the existence of a sales agreement, Global and GMG Radio were clearly separate providers of S&P opportunities to advertisers prior to the merger.
105. Global submits that it does not compete closely with GMG Radio for S&P packages, and therefore there is no material change in competition as a consequence of the Transaction. Global also notes that competition from radio players is less intense than competition from alternative media owners, and that joint-bidding sometimes occurs to allow radio to offer advertisers geographic and demographic 'crossover' in order to compete more effectively with other media.
106. Third parties have indicated to the OFT that smaller stations are able to compete more effectively for S&P 'based on their ideas, creativity, delivery and pricing' compared to competition for national contracted advertising.
107. Some third parties however have raised concerns about the effect of the merger on S&P, providing varying degrees of evidence to support their claims.
108. While the OFT notes these considerations, given the findings of the OFT in relation to unilateral effects in non-contracted radio advertising justifying a reference to the CC, the OFT has not found it necessary to conclude on whether it is or may be the case that the Transaction has resulted, or may be expected to result, in a substantial lessening of competition in the supply of S&P opportunities.

### **Barriers to Entry and Expansion**

109. As explained above, the OFT has found prima facie unilateral effects competition concerns in relation to the supply of non-contracted radio advertising services in North Wales, the East Midlands, South Yorkshire and Cardiff.
110. The OFT has considered whether those concerns would be addressed by the prospect of supply-side responses in the form of entry and/or expansion. When assessing possible supply-side responses, including entry, expansion and repositioning, the OFT will consider whether the response would be (i) timely,

(ii) likely, and (iii) sufficient.<sup>27</sup> In terms of timeliness, the guidance suggests that the OFT will look for entry to occur within two years.

111. Competitors of the merging parties have highlighted to the OFT the fact that FM licences are scarce – ‘the FM band is full’, as one competitor put it. Accordingly, they considered barriers to entry in FM are extremely high and expansion is only possible via acquisition of competitors’ licences.
112. Most competitors also questioned the viability of expanding using available digital capacity, as they considered it would be difficult for new operators to establish themselves in the market place. Specifically, they highlighted the high costs of starting and operating a radio station, and the currently limited appeal to advertisers of digital-only services.
113. While operators can in theory expand advertising inventory by increasing the advertising minutage per hour on their stations, some competitors noted that suppliers were effectively constrained by the level of advertising listeners would tolerate before they switched to an alternate provider (that is, advertising degrades the utility derived by listeners) – [ ].
114. Accordingly, on the basis of the evidence available to it, the OFT does not believe that entry or expansion would mitigate or prevent any potential anti-competitive effects of the Transaction in respect of non-contracted radio advertising from arising in the regions and local area discussed above.

### **Countervailing Buyer Power**

115. As explained above, the OFT has found prima facie unilateral effects competition concerns in relation to the supply of non-contracted radio advertising services in North Wales, the East Midlands, South Yorkshire and Cardiff. The OFT has considered whether its concerns might be prevented by the exercise of buyer power on the part of customers purchasing such radio advertising.
116. The OFT’s guidance states that in some cases, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. For countervailing buyer power to prevent a substantial lessening of competition, it is not sufficient that it merely existed before the merger. It must also remain effective following the merger.<sup>28</sup>
117. Global submits, amongst other arguments, that [ ].

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<sup>27</sup> Paragraph 5.8.3, Merger Assessment Guidelines.

<sup>28</sup> Section 5.9, Merger Assessment Guidelines.

118. The OFT has received responses from agencies that are mixed in relation to countervailing buyer power. While some agencies believe they could simply withdraw spend from radio in the event it became too expensive, others did not see that as credible given their clients' needs and preferences.
119. Direct customers are fragmented and often spend relatively small amounts on direct radio advertising compared to larger agencies, although Global has not submitted information on the average spend of its direct customers. The OFT has not received any evidence which indicates that direct customers have significant countervailing buyer power and the OFT is not aware of the existence of any buying groups aside from agencies, which are discussed above.
120. For the reasons set out above and on the basis of the evidence available to it the OFT believes that direct customers and regional agencies purchasing non-contracted advertising are not likely to have significant countervailing buyer power such as to prevent the OFT's unilateral effect concerns in respect of non-contracted radio advertising from arising in the regions and local area discussed above.

## **VERTICAL THEORIES OF HARM**

### Introduction

121. Non-horizontal mergers are usually benign but can raise competition concerns where upstream suppliers are able partially or fully to foreclose downstream competitors. For competition concerns to arise, merging parties need the ability and incentive to harm rivals.<sup>29</sup>
122. Third parties have raised concerns in relation to three possible vertical theories of harm:
- foreclosure of competitors with respect to access to regional digital multiplexes;
  - foreclosure of competitors to advertisers via Global's shareholding in RadioCentre and, in turn, RadioCentre's shareholding in RAJAR; and
  - foreclosure of competitors from access to industry-wide advertising inventory.

Each of these concerns is considered briefly below.

### Multiplex foreclosure

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<sup>29</sup> Section 5.6, Merger Assessment Guidelines.

123. Global and GMG Radio are shareholders in MXR Digital Limited (MXR), an owner and operator of digital radio multiplex broadcasting licences and infrastructure in the North East, North West, South Wales and Severn Estuary, West Midlands and Yorkshire. Following the Transaction, the combined shareholding of Global and GMG Radio in MXR Digital Limited is 88 per cent.<sup>30</sup>
124. Radio multiplex licences are awarded by Ofcom for terms of 12 years following a competitive selection process. Digital radio multiplexes are rationed due to the scarcity of available spectrum over which to transmit digital radio signals.
125. Global considers that no competition concerns arise in relation to its ownership of MXR, due, among other reasons, to the existence of spare capacity on all the MXR multiplexes, the availability of alternative local and national multiplexes, and its inability to raise prices for access to the multiplexes due to regulatory obligations.
126. However, it has been put to the OFT by third parties that, as a consequence of the Transaction, Global would have the ability and incentive to foreclose competitors from access to its regional digital multiplex assets.
127. While the OFT notes these considerations, given the findings of the OFT in relation to unilateral effects in non-contracted radio advertising justifying a reference to the CC, the OFT has not found it necessary to conclude on whether it is or may be the case that the Transaction has resulted, or may be expected to result, in a substantial lessening of competition in respect of the potential for foreclosure to regional digital multiplexes.

#### RadioCentre/RAJAR

128. The OFT has received specific concerns from a number of competitors in relation to RAJAR, the radio industry audience measurement organisation.
129. Those concerns relate to the incentive for Global, via its shareholding in RadioCentre, to affect RAJAR's strategy, in particular its approach to small station surveying. It has been put to the OFT by third parties that a partial or full withdrawal of RAJAR from small station surveying would prevent those stations from being able to sell advertising as effectively, given RAJAR data is crucial 'currency' for advertisers.
130. While the OFT notes competitors' concerns, given the findings of the OFT in relation to unilateral effects in non-contracted radio advertising justifying a reference to the CC, the OFT has not found it necessary to conclude on whether it is or may be the case that the Transaction has resulted, or may be

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<sup>30</sup> The remaining 12 per cent shareholding is held by Arqiva, a supplier of broadcast infrastructure.

expected to result, in a substantial lessening of competition in respect of Global's shareholding in Radio Centre and RAJAR.

### Industry-wide advertising inventory

131. Several third parties have raised concerns in relation to the advertising inventory sold immediately around news bulletins which is typically pooled by commercial radio stations and sold jointly via Independent Radio News (IRN). This product is known as 'Newslink'.
132. In its letter of 6 September 2012 (see above paragraph 16), Ofcom noted that the OFT may wish to explore whether the merged entity would have the incentive and/or ability to exercise any greater influence over industry bodies, including IRN. However, Ofcom did not suggest any particular theory of harm in relation to industry bodies.
133. Global is the appointed sales agent of the Newslink. Some competitors and advertising agencies are concerned that the increase in inventory that Global would pool into Newslink as a consequence of the Transaction would give it the ability to vary commercial terms relating to Newslink. This in turn would allow Global to (a) increase the level of commission it extracts as sales agent for the inventory; and/or (b) vary the rebate terms to stations pooling inventory into Newslink.<sup>31</sup>
134. Third parties have highlighted a similar sales agency arrangement for advertising sold during the syndicated Sunday afternoon programme the Big Top 40 chart show, which is transmitted on 123 local radio services. Global is also the sales agent for advertising sold via Big Top 40 chart show, but the OFT understands that Global also produces the content.
135. While the OFT notes these considerations, given the findings of the OFT in relation to unilateral effects in non-contracted radio advertising justifying a reference to the CC, the OFT has not found it necessary to conclude on whether it is or may be the case that the Transaction has resulted, or may be expected to result, in a substantial lessening of competition in respect of the provision of industry-wide advertising inventory.

## **CONGLOMERATE THEORIES OF HARM**

136. Conglomerate mergers only give rise to competition concerns where merging parties are active in more than one market and have the ability and incentive to disadvantage rivals in at least one of those markets. Anti-competitive

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<sup>31</sup> The OFT understands that a rebate is delivered to the stations participating in the Newslink product, after IRN's operational costs have been covered.



conglomerate effects typically occur where customers have demand for more than one of the products produced by the merging parties, where the products are complements, where one-stop shopping is common, and where the costs to rivals of providing product variety and one-stop-shopping at a scale to compete are prohibitively high.<sup>32</sup>

137. Taking into account the combined scale of Global and GMG Radio, both in terms of geographic and demographic reach, and given the challenges to competitors of replicating Global's offering, the OFT has considered whether the merger could lead to any of the following effects:
- Due to Global's control of licences in the key population centres of the UK, agency customers planning quasi-national campaigns find it very difficult to do so without using Global. As a consequence, Global is either able to:
    - i. negotiate higher prices/lower discounts for its stations while maintaining the amount of spend/share of spend; or
    - ii. negotiate a higher amount of spend/share of spend while maintaining its price and discount structure.
  - Global offers bundles of advertising across services at a regional/local level to extract a greater proportion of spend from local advertisers.
138. Third party stations would be partially- or fully-foreclosed if any such effects occurred. These conglomerate theories of harm are applicable to both contracted and non-contracted advertising revenues.
139. Several [ ] advertising agencies have told the OFT that the combination of Global and GMG Radio assets results in Global being unavoidable for advertisers seeking national coverage for their campaigns. A number of competitors raised concerns as well, particularly smaller competitors.
140. Given the findings of the OFT in relation to unilateral effects in non-contracted radio advertising justifying a reference to the CC, the OFT has not found it necessary to conclude on whether it is or may be the case that the Transaction has resulted, or may be expected to result, in a substantial lessening of competition, as a result of conglomerate effects arising from it.

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<sup>32</sup> Paragraph 5.6.13, Merger Assessment Guidelines.

## EFFICIENCIES

141. While mergers can harm competition, they can also give rise to efficiencies. Efficiencies may be taken into account in the competitive assessment of a merger in two different ways.
142. Firstly, efficiencies arising from the merger may enhance rivalry, with the result that the merger does not give rise to a substantial lessening of competition.
143. Secondly, efficiencies may be taken into account in the form of relevant customer benefits. These are defined in section 30(1) of the Act as benefits to relevant customers in the form of lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom, or greater innovation in relation to such goods or services. The Act enables the OFT to take into account customer benefits arising in markets other than where the substantial lessening of competition is found, and benefits to future customers.<sup>33</sup>
144. Global has submitted that a number of potential customer benefits could arise from the Transaction. Specifically, [ ].
145. [ ]
146. [ ]
147. [ ]
148. In its letter of 6 September 2012,<sup>34</sup> Ofcom considered the following potential efficiency benefits of the merger.
- **One-stop shopping.** There may be potential for the merger to reduce transaction costs for advertising customers, by enabling the parties to sell bundles of radio airtime more efficiently to advertisers who would otherwise tend to purchase from more than one station.
  - **Content repositioning.** The merger may result in the parties programming the combined radio stations in a way that achieves a larger and more focussed total audience. This would benefit listeners by providing more variety of content. It would also benefit advertisers, who would be able to reach a greater audience and target more focussed demographics.
  - **Economies of scale.** The merged parties may benefit from economies of scale which may enable them to compete better against the BBC and others to the benefit of advertisers and listeners.

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<sup>33</sup> See Merger Assessment Guidelines, section 5.7.

<sup>34</sup> See above paragraph 16.

- **Change in advertising minutes.** The merger may benefit listeners by leading to a reduction in advertising minutes (this would be an improvement for listeners to the extent they are advertising averse).
149. Ofcom nevertheless recognises that there is limited evidence to support the theory that these benefits will be achieved in the context of the present Transaction.
150. While the OFT does not rule out the possibility that the Transaction will give rise to efficiencies, including relevant customer benefits, of the sort suggested by Global, on the basis of the limited information available to it, it has not been able to assess: (a) the extent of such efficiencies; (b) whether or not they are merger-specific; (c) the likelihood they will be passed on to customers; or (d) whether they are sufficient to countervail any potential unilateral effects which may arise as a consequence of the Transaction.
151. Accordingly, the OFT does not believe that, on the basis of the evidence available to it, any relevant customer benefits outweigh the substantial lessening of competition and any adverse effects of the substantial lessening of competition.
152. The OFT notes, for completeness, that in a previous commercial radio merger it has taken into account efficiencies outweighing the prima facie anti-competitive effect of a merger. In *Global/GCap*, in relation to the London area, the OFT recognised certain merger efficiencies (including content repositioning and lower prices through the bundling of complementary products) which, combined with other factors in that case, led the OFT to conclude that the merger did not lead to a realistic prospect of a substantial lessening of competition in London. However, this conclusion reflected the particular circumstances of the case, notably the fact that the products of the merging parties were not close substitutes in London.

### **THIRD PARTY COMMENTS**

153. The OFT received a number of responses to its public invitation to comment from third party customers and competitors. The OFT also received a number of letters from a number of members of the UK and Scottish Parliaments raising potential concerns about the effect of the Transaction. Additionally, the OFT has asked customers and competitors of the merging parties for their views on the Transaction. Third party comments have been given due consideration by the OFT, and have been referenced in this report where relevant.

154. On balance, responses from customers – both agencies and direct customers – were mixed. The general view of most competitors was that the Transaction would raise competition concerns.
155. In its letter of 6 September 2012 (see above paragraph 16), Ofcom indicated that the parties' significant market shares across different UK regions suggest that the merger is likely to give rise to prima facie competition concerns. At the same time, Ofcom drew attention to a number of countervailing factors that could be relevant for the competition assessment of the merger, including buyer power from large agency buyers. Ofcom did not reach any conclusions on the weight that such factors may carry in the competitive assessment.
156. Section 44(5A) of the Act provides that the OFT report may contain a summary of any representations about the case which have been received by the OFT and which relate to any media public interest consideration mentioned in the Notice and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45 of the Act. Some of the responses to the OFT's invitation to comment contained representations which related to the media public interest mentioned in the Notice. Copies of such responses have all been passed on to Ofcom for consideration, as they were considered to be relevant for Ofcom's report on the impact of the Transaction on public interest issues.

## **IMPORTANCE OF THE MARKETS**

157. Section 44(4)(c) of the Act requires the OFT to decide whether it is or may be the case that the market or markets concerned would not be of sufficient importance to justify the making of a reference to the CC. In this case, Global has not argued that any market or markets concerned would be of insufficient importance to justify such a reference. The OFT's guidance<sup>35</sup> states that the market(s) concerned will generally be of sufficient importance to justify a reference where its/their annual value, in aggregate, is more than £10 million. In this case, the OFT notes that the annual value of the commercial radio markets potentially concerned by the Transaction will exceed £10 million, and therefore does not believe it appropriate not to make a reference on this ground.

## **UNDERTAKINGS IN LIEU**

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<sup>35</sup> OFT Mergers – Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122) December 2010, paragraph 2.13.

158. Where competition concerns have been identified, section 44(4)(f) of the Act requires that the OFT's report includes a decision on whether it believes that it is or may be the case that it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice concerned) by way of undertakings under paragraph 3 of Schedule 7 to the Act. That decision should address whether the OFT believes that instead of making a reference, and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, the Secretary of State should accept from such of the parties concerned undertakings as he considers appropriate.
159. In the present case, Global has not offered any structural or behavioural undertakings in lieu of reference to the CC, but has instead indicated its preference for a 'fast track' reference to the CC (see paragraph 10 above). As such, the OFT believes that it would not be appropriate to deal with the matter (disregarding any public interest considerations) by way of undertakings under paragraph 3 of Schedule 7 to the Act.

## **ASSESSMENT AND CONCLUSIONS**

160. On 2 August 2012 the then Secretary of State, in exercise of his powers under section 42 of the Act, issued the Notice to the OFT and required it to investigate and report on the Transaction, in accordance with section 44 of the Act, within the period ending on 28 September 2012 (see Annexe 1 for the Notice). The OFT hereby reports to the Secretary of State in relation to the Transaction.
161. In this case, which deals with a completed transaction, the Act requires the OFT to give advice to the Secretary of State on the considerations relevant to the making of a reference under section 22 of the Act, which are also relevant to the Secretary of State's decision as to whether to make a reference under section 45 of the Act.
162. In this case, section 44(4) of the Act requires this report to include decisions as to whether the OFT believes that it is, or may be, the case that:
- a relevant merger situation has been created;
  - the creation of that merger situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;
  - the markets concerned would not be of sufficient importance to justify the making of a reference to the Commission under section 22 of the Act;

- any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition and any adverse effects of the substantial lessening of competition; or
- it would be appropriate to deal with the matter (disregarding public interest considerations) by way of undertakings under paragraph 3 of Schedule 7 to the Act.

163. The OFT has considered the impact of the merger on competition in various areas where the parties overlap. The OFT has identified competition concerns in relation to the supply of non-contracted radio advertising services in North Wales, the East Midlands, South Yorkshire and Cardiff, where, on the basis of the evidence available to it, the OFT considers that the merger raises unilateral horizontal competition concerns.
164. The merger may also give rise to competition concerns, in relation to the supply of non-contracted radio advertising, in other regions and/or local areas. However, the OFT has not reached a conclusion in relation to these areas.
165. The merger may also give rise to competition concerns in relation to the supply of contracted radio advertising and the supply of S&P opportunities in radio. However, the OFT has not reached a conclusion in relation to the effects of the merger in relation to contracted advertising and S&P. Nor has the OFT reached a conclusion in relation to any vertical or conglomerate effects that may arise from the merger.
166. As regards each of the issues on which the OFT is required to reach a decision, the OFT believes that:
- it is or may be the case that a relevant merger situation has been created;
  - it is or may be the case that the relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition;
  - the markets concerned are of sufficient importance to justify a reference;
  - on the basis of the evidence available to it, any relevant customer benefits do not outweigh the substantial lessening of competition or any adverse effects of the substantial lessening of competition; and
  - in light of the fact that the merging parties have requested a 'fast track' reference to the Commission, it would not be appropriate to deal with the matter by way of undertakings in lieu.

**Clive Maxwell**  
**Chief Executive**  
**28 September 2012**

**Annexe 1 – Notice public interest intervention notice of the Secretary of State  
of 2 August 2012**



**INTERVENTION NOTICE GIVEN PURSUANT TO SECTION 42  
OF THE ENTERPRISE ACT 2002**

Whereas the Secretary of State has reasonable grounds for suspecting that it is or may be the case that a relevant merger situation has been created, as defined in section 23 of the Enterprise Act 2002 (the Act) in that:

- (a) enterprises carried on by or under the control of GMG Radio Holdings Limited have ceased to be distinct from enterprises carried on by or under the control of Global Radio Holdings Limited; and
- (b) the supply of radio broadcasting in the United Kingdom or a substantial part of the United Kingdom is to the extent of at least one-quarter supply by the persons by whom the enterprises concerned are carried on.

Whereas the Secretary of State believes that the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience may be relevant to a consideration of the merger situation.

Now, therefore, the Secretary of State, in exercise of his powers under section 42(2) of the Act, hereby gives this Intervention Notice and requires the Office of Fair Trading to investigate and report in accordance with section 44 of the Act and Ofcom to investigate and report in accordance with section 44A of the Act, both within the period ending on 28 September 2012.

02 August 2012



**Kate McGavin**  
Head of Media  
DCMS

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<sup>i</sup> Ofcom did not carry out a market definition exercise in the context of the provision of advice in this case. The comments of Ofcom in relation to market definition in its letter of 6 September 2012 (see

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above paragraph 16) reflect earlier Ofcom work, including its 2006 Radio Advertising Market Research report (see above footnote 18).