COMPETITION COMMISSION

GLOBAL/RSL MERGER INQUIRY

Completed acquisition by Global Radio Holdings Limited of GMG Radio Holdings Limited

Provisional findings report

Published: 15 February 2013

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 Some numbers have been replaced by a range.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

Contents

Page

Summary

1. On 11 October 2012, the Office of Fair Trading (OFT) referred the completed acquisition by Global Radio Holdings Limited (Global) of GMG Radio Holdings Limited (GMG Radio) to the Competition Commission (CC) for investigation and report. The reference was made under section 22(1) of the Enterprise Act 2002 (the Act). We are required to publish our final report by 27 March 2013.

2. The acquisition was completed on 24 June 2012. After the acquisition, GMG Radio was renamed Real and Smooth Limited (RSL).

3. Global is a privately-owned company with a number of commercial radio interests including one national station, Classic FM; and local stations broadcasting under the brands Heart, Capital, Choice, LBC, Xfm and Gold. Global is the largest commercial radio operator in the UK.

4. RSL was part of Guardian Media Group plc (GMG plc). It is the third largest UK commercial radio operator and has regional and local stations broadcasting under the brands Real, Real XS and Smooth.

5. We provisionally concluded that the share of supply test had been met and a relevant merger situation had been created.

6. We considered the situation that would have prevailed absent the merger (the counterfactual). We provisionally concluded that RSL would have continued to have operated independently of Global, either under the continued ownership of GMG plc or under the ownership of an alternative buyer who would not have raised competition concerns. We considered these alternatives to be broadly equivalent in terms of their likely competitive impact. In our provisional view, RSL's pre-merger

local and national market shares formed a reasonable basis against which to assess the competitive effects of the merger.

7. We also considered, as part of our analysis of the counterfactual, the pre-existing National Sales Agency Agreement under which Global sold, on behalf of RSL, airtime on RSL stations (the Agreement). Under the Agreement, Global received a commission for selling advertising on RSL stations to advertisers purchasing through media buying agencies based in London and the South-East. We provisionally concluded that we should take into account in our competitive assessment the possibility that this Agreement would not have been retained in the medium term.

8. We provisionally concluded that the appropriate market definition was a UK radio market. We noted that radio was a two-sided market with competition for listeners and advertisers. On the listener side, the market includes commercial radio stations and BBC radio stations. We did not consider that other forms of audio listening should be included in the market. In our provisional view, the interests of listeners were largely protected from the effect of a merger between commercial radio stations by competition from the BBC and the regulatory framework governing commercial radio. Our assessment of the merger therefore focused on the effects on advertisers.

9. We did not further subdivide the market by reference to the way radio advertising is bought, nor by geography. We took relevant differences into account in our competitive assessment.

10. We assessed the level of pre-merger competition. In doing so, we considered the way prices for radio advertising were set; the constraint from other types of media advertising; and competition between commercial radio stations for advertising at a national, and at a regional and local level.

11. We noted that prices for radio advertising were not published and were the outcome of negotiations between the advertiser or agency and the radio station or group. We provisionally concluded that prices were likely to be affected by the quality of the alternatives available and the relative bargaining strength of the advertiser or agency and the radio station or group.

12. We considered the extent of the constraint on radio advertising from other media. We noted that advertisers use multiple types of media to meet their advertising needs and that other media may be bought as a complement to radio or as a substitute for it. We found that there were advertising campaigns for which radio advertisers could not easily substitute other media. We found that the price of radio advertising was affected by the number and quality of radio alternatives available to advertisers; that is, the price of radio advertising was not affected solely by the availability of other media.

13. We considered the factors advertisers took into account when choosing radio stations. We found that these included their geographic coverage; their relative strength in terms of audience; and the demographic characteristics of the audience.

14. We considered the effects of the merger on areas where Global and RSL radio stations overlapped. In doing so, we assessed the impact on two segments of the market: advertisers buying airtime on a campaign-by-campaign basis from local and regional stations or through small, local or regional agencies (non-contracted advertising); and airtime sold primarily to national advertisers under contracts between media buying agencies and radio stations or groups (contracted advertising). In both segments, we also considered the effect of the merger on advertisers sponsoring radio stations or programmes, or buying promotions for broadcast on the radio (sponsorship and promotion (S&P)).

15. We found that the reduction of radio alternatives where Global and RSL stations overlapped would be likely to have significant effects on advertisers in seven areas: the East Midlands; Cardiff; North Wales; Greater Manchester; the North-East; South and West Yorkshire; and Central Scotland. We provisionally concluded that the loss of competition in these areas would affect non-contracted advertising and related S&P, and that these advertisers would face higher prices as a result of the merger. We estimated non-contracted airtime revenue in these seven areas to be around £50 million. We provisionally concluded that significant effects on competition were not likely to arise in London and the West Midlands.

16. We provisionally concluded that any loss of competition as a result of the merger for advertisers buying airtime through contracted agencies and national S&P was likely to be relatively small. We did not consider this loss of competition to be substantial.

17. We noted the ability of Global and RSL, post-merger, to give common brands to their networks of stations thus creating additional, or expanding existing, quasi-national brands. We provisionally concluded that this would not have a significant adverse effect on competition.

18. The merger brought together two companies previously represented separately on a number of industry bodies and jointly participating in a number of industry-wide selling arrangements. We assessed the potential effect on competition of any changes to these bodies and arrangements resulting from the merger. Our provisional view was that the merger would not bring about a material change in the ability and incentives of the enlarged Global group to exert influence or control over any of the bodies or industry-wide selling arrangements concerned in a manner that would give rise to a substantial lessening of competition.

19. We reached the provisional conclusion that the evidence did not indicate that the merger would result in rivalry-enhancing efficiencies which were timely, likely and sufficient to prevent a substantial lessening of competition. We also provisionally concluded that entry or expansion into the radio market on a scale sufficient to constrain the merged entity within the time frame in our Guidelines was not likely.

20. We provisionally concluded that, as a result of the merger between the parties, there was, or was likely to be, a substantial lessening of competition in the radio market based on the loss of rivalry in the East Midlands; Cardiff; North Wales; Greater Manchester; the North-East; South and West Yorkshire; and Central Scotland.

Provisional findings

1. Background and the reference

1.1 On 11 October 2012, the OFT referred the completed acquisition by Global of GMG Radio to the CC for investigation and report under the Act.

1.2 The Secretary of State for Culture, Media and Sport had issued a public interest intervention notice on the acquisition on 2 August 2012.[1] The Secretary of State subsequently received the advice of the OFT, on jurisdictional and competition issues, and Ofcom, on public interest issues with regard to the plurality of the media. On 11 October 2012, the Secretary of State decided not to make a reference to the CC under section 45 of the Act on the ground that no public interest consideration was relevant to the consideration of the relevant merger situation. The OFT's reference to the CC was made under section 22(1) of the Act.

1.3 The CC must decide under section 35 of the Act:

(a) whether a relevant merger situation has been created; and

(b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.

1.4 Our terms of reference are in Appendix A, together with an explanation of how we have conducted our inquiry to date and the steps we have taken to ensure the separate and independent operation of the RSL business (now Real and Smooth Limited (RSL)) during the course of our inquiry. We are required to take our final decision by 27 March 2013.

[1] See www.culture.gov.uk/news/news_stories/9267.aspx.

1.5 This document, together with its appendices, constitutes our provisional findings published and notified to the parties in accordance with the CC's Rules of Procedure.[2] Further information can be found on our website,[3] such as non-commercially-sensitive versions of the submission from Global and RSL (the parties), including surveys of advertisers commissioned by the parties and submitted as evidence, and submissions from and summaries of hearings with third parties.

2. Radio broadcasting

Background and history

2.1 Radio services are broadcast on two platforms: analogue and digital. Digital radio is broadcast over Digital Audio Broadcasting (DAB), the Internet and digital television (DTV).[4]

2.2 Both analogue and DAB radio are broadcast using the radio spectrum, a finite natural resource of electromagnetic radio waves used by wireless communications. Stations' services are transmitted via a network of transmission sites across the UK[5] with each station using a subset of this network. Ofcom manages the parts of the radio spectrum which are available for civilian use. Analogue stations broadcast in the UK on both AM (long wave (LW) and medium wave (MW)) and VHF (FM). MW carries the vast majority of AM stations[6] on frequencies between 558 and 1611 MHz with VHF stations broadcasting on frequencies between 87.5 and 108 MHz. The frequency band used for DAB is 217.5 to 230 MHz.

2.3 A range of different operators broadcast individual radio stations across the UK or to a specific region or local area. There are three types of operator: BBC Radio (the

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[2] *Competition Commission Rules of Procedure, CC1*, 2006.
[3] www.competition-commission.org.uk/our-work/global-radio-gmg-merger-inquiry.
[4] Radio Joint Audience Research Limited (RAJAR) figures, Q3 2012, show that of all radio listening: 61.8 per cent is on AM/FM; and 31.3 per cent on digital; 6.9 per cent of radio listening was unspecified. Digital listening is split 20.4 per cent on DAB; 4.8 per cent on DTV; 4.2 per cent via the Internet; and 1.9 per cent digital unspecified
[5] These sites are generally owned by a third party. The majority are owned and operated by Arqiva.
[6] BBC Radio 4 broadcasts on LW.

BBC), commercial radio operators and not-for-profit community radio operators. Services are provided on a national, regional or local basis by both the BBC[7] and the commercial radio sector; community radio only operates locally.[8] As this inquiry concerns a merger between commercial radio operators, this section focuses on commercial radio's structure and regulatory framework but we refer throughout this report to the BBC and other types of service provider where appropriate.

2.4 The first UK commercial radio stations started broadcasting in London in 1973 and during the 1980s the commercial local radio network expanded its coverage across the country. In 1990 the first commercial radio stations started broadcasting in overlap areas, resulting in direct competition for the first time between commercial radio stations. Deregulation of broadcasting led to the introduction of more local commercial stations in the 1990s and the first regional commercial stations. The first national commercial radio station, Classic FM, began broadcasting in 1992.

2.5 There are currently 296 licences for analogue local and regional commercial radio stations (242 on FM and 54 on AM[9]) and three for UK-wide analogue stations (talkSPORT and Absolute Radio on AM, and Classic FM).[10] In addition there are 12 licences for UK-wide commercial DAB stations and 164 licences for local DAB stations, the majority of which are for a simulcast[11] version of the analogue station.[12]

[7] Further details of the BBC's radio services are provided in Appendix B.
[8] These stations typically cover a small geographic area with a radius of up to 5km and generally on an analogue platform.
[9] Ofcom, Communications Market Report 2012, Section 3. Figures as at May 2012. Many of the services provided under these licences share programming; for example, all of the 23 Gold services on AM carry the same programming.
[10] These stations are also available on the Digital One DAB multiplex, which covers England, Scotland and Wales. In Northern Ireland, talkSPORT and Classic FM are available on the local DAB multiplex, alongside seven other services.
[11] Simulcasting is the broadcasting of a service, in this case radio programmes, on more than one transmission technology (eg FM and MW, DAB and FM, analogue and DTV, digital terrestrial and satellite).
[12] One hundred and fourteen stations provide DAB in an analogue area, 13 extend the analogue area and 37 are DAB-only. Ofcom Digital Radio report, October 2012.

Regulation

2.6 Commercial analogue and DAB broadcasting services are regulated by Ofcom which issues broadcasting licences[13] setting out the conditions which apply to licence holders.[14] Ofcom is not required to issue broadcast licences for BBC radio services.[15] There are no licence requirements for Internet radio.

2.7 A commercial radio analogue licence allows a station to broadcast to a specific licensed area in accordance with a specified format for a set period of time. The geographic area covered by the licence, known as the measured coverage area (MCA), is protected from radio interference.[16] The format of every commercial radio station is set out in a one-page Format document which is part of the licence. Licences are awarded for up to 12 years and may be renewed. The renewal process is essentially automatic provided the licensee is already simulcasting the service via DAB, or commits to do so.

2.8 There are two tiers of DAB licence: the multiplex licence and the digital sound programme (DSP) licence. Digital radio enables multiple audio signals to be transmitted on the same frequency through a process known as multiplexing.[17] Those wishing to provide a multiplex service in a given area, which may be local, regional or national, must apply to Ofcom for a multiplex licence. The provider of a digital radio station service must apply to Ofcom for a DSP licence and to the multiplex licence holder for access to broadcast on the multiplex platform.

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[13] The costs of licences are discussed in Appendix B.
[14] A licence under the Wireless Telegraphy Act 2006 may also be required, and to the extent applicable, licensees must also comply with requirements imposed by the Communications Act 2003 in relation to electronic communications networks and electronic communications services. These licences allow the licence holder to establish and use wireless stations or install or use apparatus for wireless telegrapy.
[15] Although the BBC multiplex is licensed by Ofcom.
[16] In practice, the area within which an adequately audible signal is heard may be larger than the MCA though the radio signal steadily degrades as the receiver increases in distance from the transmitter antenna.
[17] To listen to a desired radio station the listener requires a DAB radio to receive and decode the multiplexed signal and split out the individual stations.

2.9 Ofcom does not determine which stations should be carried on a multiplex. It is for individual service providers to contract with the multiplex operator. However, a multiplex licence includes conditions requiring the broadcast of services with the characteristics described in the initial application.

2.10 A more detailed description of the UK radio industry and its regulation is included at Appendix B.

The companies

Global Radio

2.11 Global was set up in 2007 by Ashley Tabor. It entered the radio sector via its acquisition of the radio interests of the Chrysalis Group in July 2007, which owned the Heart, Galaxy, LBC and The Arrow brands. In June 2008 Global acquired GCap, adding the One Network, Classic FM, Xfm, Capital FM, Choice FM, Gold and Chill to its radio interests, following which it rebranded the majority of stations in the One Network to Heart. It subsequently launched Capital as a multi-regional brand outside London by rebranding the remaining One Network stations and the Galaxy stations to Capital.

2.12 In 2009 Global divested to Arqiva its 63 per cent interest in Digital One[18] and its interests in national and local DAB multiplex businesses (Now Digital). In addition, Arqiva acquired a minority shareholding in MXR Holdings Limited's regional DAB multiplex business, majority owned by Global and in which RSL also has an interest.

2.13 Global sells airtime on its own stations and also on behalf of other radio groups, including for RSL in relation to sales to essentially London-based agency groups.[19] The terms under which Global sells on behalf of other parties are set out in sales

[18] The national commercial digital radio multiplex.
[19] [✂]

agency agreements. The Agreement between Global and RSL is described in paragraphs 4.23 to 4.28.

2.14 Global had turnover of £[✄] in 2011/12[20] (£[✄] in 2010/11). It is the largest organization in the commercial radio sector accounting for almost one-quarter (24.2 per cent) of all FM and AM licences. In the first quarter of 2012 it had the largest share of commercial audiences at 37.1 per cent, reaching 19.3 million listeners per week.

RSL

2.15 RSL was created in 1999 as a wholly-owned subsidiary of GMG plc. It was awarded its first licence, broadcasting as Real Radio, in 2000 in South Wales. In June 2001, the company purchased Scot FM, which it subsequently relaunched as Real Radio Scotland. Over the course of the next decade, GMG acquired new licences and bought a number of existing stations including Jazz FM, Century FM and Saga Radio.

2.16 In March 2007, the former Jazz FM and Saga Radio stations were relaunched to create the easy-listening Smooth Radio network. In October 2010, Smooth began broadcasting nationally and to provide a national DAB service. Following changes to Ofcom’s localness rules, it was then able to stop broadcasting local programming. Meanwhile, the Century stations were rebranded as Real Radio in March 2009, taking the number of ‘Real’-branded licences to six. In January 2011, following the award of the North and Mid Wales licence, RSL created a Wales-wide service. The name of RSL was changed to Real and Smooth Ltd (RSL) following its acquisition by Global. For simplicity, in the remainder of this document we refer to the company as RSL.

[20] To year end March 2012.

2.17 RSL had turnover of £48.4 million in 2012 (£47.1 million in 2011). It holds six Real Radio licences for South Wales, North and Mid Wales, West and South Yorkshire, the North-West, the North-East, and Central Scotland; six Smooth Radio licences covering London, the East Midlands, the West Midlands, the North-West, the North-East and Glasgow; and two Real XS licences covering Greater Manchester and Paisley. It also broadcasts a digital-only service, Smooth 70s. These stations make up 5.8 per cent of all commercial analogue licences.[21] In the first quarter of 2012, RSL's share of commercial audiences was 11 per cent, reaching 5.7 million listeners per week.[22]

2.18 RSL's centralized sales team sells airtime to regional and specialist radio agencies and sales teams based in its stations sell primarily to local advertisers. RSL also sells S&P independently from Global.[23]

Other commercial radio operators

Bauer Radio

2.19 Bauer Radio (Bauer) is a UK-based division of Bauer Media Group with a turnover for 2011 of £125 million. Bauer Media created Bauer Radio and entered the UK radio market in January 2008 through the acquisition of Emap Consumer Media, which included Emap Radio. It currently owns 42 stations transmitting on AM, FM, digital, satellite and the Internet in England, Scotland and Northern Ireland. It has 41 local analogue radio licences and 12 DAB multiplex licences. In addition, Bauer has an interest in six other multiplex licences.

[21] Ofcom, Communications Market Report 2012, Figure 3.13.
[22] Ofcom, Communications Market Report 2012. Figure 3.15.
[23] [✂]

UTV Media plc

2.20 UTV Media plc (UTV) is the parent company of UTV Media (GB) (previously The Wireless Group). Its radio interests comprise talkSPORT, a national AM station; 13 local commercial radio stations; and shareholdings in eight local digital radio multiplexes. UTV reported 2011 turnover of £52.2 million for UTV Media (GB), which houses the entirety of its UK radio interests.

Absolute Radio

2.21 Absolute Radio was launched as Virgin Radio in the mid-1990s and is now owned by TIML Golden Square Limited, a subsidiary of The Times of India Group. Absolute Radio's turnover for the year ending 2011 was £16.6 million. Absolute Radio has a national AM licence and a London FM licence. It also operates national and local digital stations under the Absolute Radio brand.

UKRD Group

2.22 UKRD Group (UKRD) was formed in 1994 to invest in commercial stations. It has grown through a series of licence awards and station acquisitions including the Local Radio Company in 2009. UKRD now has 17 locally managed and locally focused commercial radio stations spread across the South, South-East, South-West, East Anglia, North-West, North-East and North Yorkshire regions. It had turnover of approximately £17 million in 2011.

Orion Media

2.23 Orion Media (Orion) was formed in 2009 through the acquisition of BRMB, Mercia, Wyvern, Beacon and Heart 106. These stations were divested by Global as part of its undertakings agreed with the OFT following Global's acquisition of GCap. In 2011 Orion rebranded Heart 106 as Gem 106. Orion has also rebranded BRMB, Mercia, Wyvern and Beacon in the West Midlands as Free Radio. Its turnover was

£15.5 million in 2011 and it operates eight licences (five on FM and three on AM) in the East and West Midlands.

Radio listening[24]

2.24 On average, radio listeners in the UK listened to 22.5 hours of radio each week in 2011. This represents a reduction of around 8 per cent over the last ten years. This reduction is particularly pronounced among those aged 15 to 24 for whom the time spent listening has fallen by 22 per cent.

2.25 Of all radio listening, commercial radio accounts for about 43 per cent with the vast majority of the remainder accounted by the BBC. This share has been relatively consistent over the last five years.

2.26 The majority of radio listening continues to be on analogue radios though digital listening is increasing slightly year on year. In 2011, 29.2 per cent of all radio listening was on a digital platform.

Advertising on radio

2.27 Commercial radio stations' primary source of income is from advertising. Advertisers may reach radio audiences in two main ways: by purchasing airtime in commercial breaks or through S&P. Airtime commercials are typically 30 to 60 seconds in length and generally account for around 8 to 14 minutes per hour of airtime on commercial radio.[25] Sponsorship involves an advertiser associating its brand with a station or a particular feature of the radio station's programming. Sales promotions may take many forms and involve integrating the product or service being promoted with the

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[24] The figures in this section are taken from the Communications Market Report 2012, Ofcom.
[25] Information provided to the CC by commercial radio operators. One operator told us that it carried advertising for up to 20 minutes but the remainder were in the range 8 to 14.

station's programming. Typically, sales promotions will attempt to involve the listener and encourage participation in, for example, a competition.

2.28 The scale of airtime sold to a particular advertiser, and the way it is sold, varies. For example, what is sold ranges from a small number of advertising slots broadcast from one transmitter by a local radio station to a national campaign which may be broadcast on a number of different local, regional and national stations. Radio airtime may be sold on a local, regional and national basis by the station's own sales staff, or by its own or a third party sales house. Typically, local, low-value advertisers will be dealt with by the station's local sales staff whereas higher-value advertising will be sold by a centralized sales team or a sales house. In particular, national advertisers tend to be handled by separate regional or national sales teams. Global acts as a national sales agent for RSL and for Orion and most small radio companies seek national sales through a sales house, First Radio Sales (FRS).[26]

2.29 Airtime is also bought in different ways. For example, some advertisers, typically larger purchasers of advertising, may engage a media buying agency which buys slots on the advertiser's behalf. Terms for agencies buying on behalf of major advertisers, whose requirements include the ability to reach consumers right across the UK, will typically be negotiated on an annual basis with the radio company or its sales house. These terms, including the prices for each station, will be set out in an annually negotiated contract[27] and we refer to these sales in the remainder of this report as contracted advertising. Further details about these contractual arrangements are set out in paragraphs 6.7 to 6.15.

2.30 Advertisers may also buy airtime and S&P directly from a radio station, or group of radio stations, or through a smaller agency which does not have a contract and buys

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[26] FRS is jointly owned by UTV and UKRD.
[27] Contracts may be for longer than a year, but usually no more than 18 months.

on a campaign-by-campaign basis (we refer to this as non-contracted advertising).[28] Non-contracted advertising is described in more detail in paragraphs 6.16 to 6.18.

2.31 Advertisers may also buy advertising slots immediately before or after the syndicated national news service, Independent Radio News (IRN), which is broadcast on over 250 commercial radio stations. These slots are pooled by all subscribing commercial radio stations and sold as national advertising slots on behalf of these stations by Global as Newslink.[29] Global is also responsible for selling the pooled inventory for the Big Top 40 (BT40) show which is a weekly chart show produced by Global and similarly syndicated across most popular music commercial radio stations.

2.32 Section 6 summarizes our analysis of pre-merger competition for the sale of airtime and S&P within contracted and non-contracted advertising.

3. The merger and the relevant merger situation

The acquisition and rationale for the merger

3.1 On 24 June 2012, Global acquired the entire issued share capital of RSL. The total consideration paid was £[✄].[30]

3.2 GMG plc told us that its strategy was to focus on its core asset: Guardian News & Media. Other assets were considered to be financial investments. The execution of this strategy was a critical driver in GMG plc's decision to sell RSL.

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[28] A very small number of national advertisers negotiate airtime rates direct with media owners, though even then they may rely on an agency to plan and book their campaigns. Regional and, more commonly, local advertising campaigns are more likely to be booked directly by an advertiser.
[29] Under the IRN/Newslink arrangements, stations contribute airtime around the news which is sold by Global under an airtime sales agency agreement. That revenue is used to fund the provision of the IRN news service to all subscribing local radio stations. Some stations will receive a rebate of airtime revenue received by IRN. An independent entity (GTN) sells advertising around traffic bulletins.
[30] [✄]

3.3 Global told us that its rationale for the merger was to improve its commercial performance by making its stations more attractive to listeners and advertisers. It argued that the merger would enable it to [✂] compete [✂] with the BBC. The acquisition would [✂]. This would enable Global to [✂] make [✂] brands more attractive to advertisers.

3.4 Global told us that, [✂].[31]

3.5 Further details of the transaction timeline, Global's strategy post acquisition and its valuation of RSL can be found at Appendix C.

Jurisdiction

3.6 Under section 35(1) of the Act, the CC is required to decide whether a relevant merger situation has been created such that:

(a) two or more enterprises have ceased to be distinct; and

(b) either the UK turnover test or the UK share of supply test is satisfied.

3.7 We consider that the part of the test which requires us to decide whether two or more enterprises have ceased to be distinct has been satisfied in the present case. The completed acquisition by Global of the entire issued share capital of RSL has brought these two enterprises under common control for the purposes of the Act.[32]

3.8 The turnover test will apply where the value of the turnover in the UK of the enterprise acquired exceeds £70 million. The turnover of RSL (then trading as GMG Radio) in the UK for the financial year ending 31 March 2012 was £48.4 million and thus below this threshold. We therefore consider the share of supply test.

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[31] [✂]

[32] Sections 26(2) and 129(2) of the Act. The acquisition was completed on 24 June 2012, less than four months prior to the OFT's reference decision on 11 October 2012 (section 24 of the Act).

3.9 The share of supply test applies where, as a result of enterprises ceasing to be distinct, at least one-quarter of goods or services of any description which are supplied in the UK, or in a substantial part of the UK, are supplied either by or to one and the same person.[33] This means that the share of supply test is only satisfied where the merger in question results in an increase in the share of supply of goods or services of a particular description and the resulting share is 25 per cent or more.

3.10 We are able to measure share of supply by reference to such criterion or such combination of criteria as we consider appropriate.[34] We consider that the share of supply test in this case is met on a number of possible bases and the parties have agreed that the share of supply test is met on the basis of its assessment of its share of supply of radio advertising in the UK.[35] For example, the parties' combined share of commercial radio listening hours in the UK is 46.7 per cent with an increment of 10.4 percentage points.[36]

3.11 Therefore, we provisionally conclude that the acquisition by Global of RSL has resulted in a relevant merger situation. Accordingly, we go on to consider whether the creation of that merger situation has resulted, or may be expected to result, in an SLC within any market or markets in the UK for goods or services.[37]

4. The counterfactual

4.1 To help us assess whether the merger has resulted, or may be expected to result, in an SLC we considered what would have happened had Global not acquired RSL.

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[33] Section 23(3) and (4) of the Act.
[34] Section 23(5) of the Act.
[35] Global's estimate of total radio advertising revenues (including S&P) in the year to end March 2012 [✂]. This gives a share of supply of [✂] per cent, such that any increment arising from the acquisition of RSL is sufficient to make the acquisition a relevant merger situation.
[36] Source: RAJAR Q3 2012. The share of commercial audience (or listening) is the proportion of total listening hours that a station achieves as compared with total listening hours of all stations.
[37] Section 35(1)(b) of the Act.

This situation, referred to as the counterfactual, is the benchmark against which we compared the competitive effects of the merger.[38]

4.2 Our consideration of an appropriate counterfactual in this case focuses in particular on two issues:

(a) whether RSL would have been sold to a third party or retained by GMG plc absent the merger; and

(b) whether the existing Agreement[39] under which Global sells RSL's contracted advertising to certain media agencies should form part of the counterfactual.

Ownership of RSL

4.3 There is no evidence that would suggest that RSL was a failing firm.[40] We therefore considered two potential scenarios absent the merger with Global: the sale of RSL to a third party; and continued ownership of RSL by GMG plc.

4.4 The Guidelines outline two types of cases which, while not directly analogous, are informative for our consideration of the ownership of RSL under the counterfactual. First, the Guidelines state that when considering proposed transactions, depending on the circumstances of the case, the counterfactual may be the pre-merger competitive situation or the sale of the target firm to an alternative purchaser which has not been referred. Such alternative purchasers would not, by definition, have raised competition concerns such that they met the test for reference to the CC. Second, where two or more competing bids have been referred to the CC, depending on the circumstances of the case, the appropriate counterfactual may be the sale to an alternative bidder whose bid had not been referred, and therefore does not give

[38] CC and OFT, *Merger Assessment Guidelines, CC2 (Revised),* September 2012 ('The Guidelines'), paragraph 4.3.1, states: 'The application of the SLC 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".'
[39] This Agreement is discussed in more detail in paragraphs 4.23–4.28.
[40] See Appendix D for an analysis of RSL's financial performance.

rise to competition concerns, or the prevailing conditions of competition. The CC would not take into account the possibility of remedies being implemented to address competition concerns about an alternative bidder for the purposes of establishing the counterfactual, save in exceptional circumstances.

4.5 We adopt an analogous approach in our consideration of the ownership of RSL in the counterfactual, noting that this case differs from the scenarios set out above in that it relates to a completed transaction. However, our approach to potential alternative purchasers under the counterfactual is guided by the principles in the Guidelines: where it appears likely that the acquisition of RSL by a particular bidder would have been referred to the CC, acquisition by this bidder would not be an appropriate counterfactual. Also, a sale of RSL, based on assumptions about how remedies to address competitions concerns might be applied to a particular bidder, would not be an appropriate counterfactual. We therefore consider as possible counterfactuals the sale of RSL to a bidder who was not likely to have met the test for reference to the CC[41] or continued ownership by GMG plc.

4.6 GMG plc had decided to seek to sell RSL as part of its strategy to divest non-core assets. We therefore consider first the scenario under which RSL would have been sold to a third party.

The potential sale of RSL to a third party

4.7 GMG plc said that [✄].

4.8 At the time of the acquisition of GMG Radio by Global, the only other bidder that was in advanced negotiations with GMG was Bauer. GMG plc told us [✄].

[41] In making this assessment and considering the likelihood of a reference to the CC, we do not undertake a comprehensive assessment of the competitive implications of alternative merger scenarios (see Appendix E).

Global's views

4.9 Global submitted that a sale of RSL to Bauer would have given rise to competition concerns and that the OFT would have referred this acquisition to the CC absent remedies. Specifically, Global argued that an acquisition by Bauer would have given rise to high combined shares for non-contracted radio advertising in a number of cities and regions including, in particular, the North-West, the North-East and Scotland. Global submitted that Bauer and RSL were close competitors in these overlap areas with both radio broadcasters' core stations targeting a similar demographic: listeners aged 25 to 44.

4.10 Global submitted that a sale to any of the other identified bidders for the whole of the business should not be taken into account for these purposes as discussions had not advanced to a stage that they could be considered as a realistic alternative. Further, a sale to a bidder of only part of the business was not sufficiently likely to have occurred to be considered as an appropriate counterfactual.

Information provided by third parties

4.11 Bauer told us that it had [✄].

4.12 GMG plc said that it could not answer with any certainty whether, in the absence of a sale to Global or Bauer, it would have sold to one of the other bidders.

Our assessment

4.13 We have considered in this context both the relative likelihood of an alternative bidder to Global having acquired RSL as well as whether such an alternative would have been likely to give rise to competition concerns. In relation to the former issue, we note that at the time of the acquisition of RSL by Global, the only other bidder that was in advanced negotiations with GMG was Bauer.

4.14 As to whether an alternative bidder would have given rise to competition concerns, the assessment of the counterfactual from this perspective is generally not comparable in detail to the analysis of the competitive effects of the merger.[42] In this context, we have taken into account the approach taken by the OFT in its decision to refer the Global/RSL merger to the CC.[43]

4.15 Based on our assessment of this evidence, we consider it likely that an acquisition by Bauer of RSL would have met the test for reference to the CC. This is based on the large number of overlaps between Bauer and RSL stations including in particular the significant competitive overlap between their stations in Scotland.

4.16 We note that none of the alternative bidders was at an advanced stage in its negotiations with GMG plc and therefore it is less likely that these alternatives scenarios would have occurred. One of these bidders would have been unlikely to raise competition concerns; others may have done so.

Potential continued ownership of RSL by GMG plc

4.17 GMG plc told us that [✂]. As we note in paragraph 4.12, GMG plc said that it could not answer with any certainty whether, in the absence of a sale to Global or Bauer, it would have sold to one of the other bidders or retained RSL. The situation had not arisen and was therefore to some extent hypothetical.

4.18 We note that GMG plc had anticipated the possibility of continuing to own RSL, at least for a while, had it not found a satisfactory purchaser. If this had been the case,

[42] The Guidelines, paragraph 4.3.1.
[43] We have used our analysis of the competitive effects of the Global merger with RSL to inform our high-level analysis of possible alternative mergers. However, we have not undertaken a detailed analysis of the competitive effects resulting from a merger between RSL and any of the alternative bidders to Global. As such, no inference should be drawn about any decision we would have made in the event of another possible merger.

GMG plc had developed some plans for improving the profitability of RSL in the context of its overall strategy to divest a non-core asset.

Provisional conclusion on the ownership of RSL absent the merger

4.19 Based on our view of the events leading up to the merger, in our view the most likely purchaser of RSL absent the merger would have been Bauer. However, as we note above, such an acquisition would have been likely to raise competition concerns and meet the test for reference to the CC. As such we do not consider acquisition by Bauer to be an appropriate counterfactual.

4.20 There were other bidders for RSL. Some of these may have met the test for reference to the CC, although this is not certain. We also note that none of these bids appears to have advanced beyond a relatively preliminary stage and GMG plc was not required to consider them in detail given the interest from Global and Bauer.

4.21 In the light of the evidence we have received, there appear to be two alternative scenarios that might form the basis of an appropriate counterfactual and neither is clearly more likely than the other: either

(a) RSL would have been retained by GMG plc for a period of time; or

(b) RSL would have been purchased by an alternative bidder that did not give rise to competition concerns.[44]

4.22 However, in both cases, RSL would continue to be independent, in terms of its ownership, from both Global and Bauer. Further, these alternatives are broadly equivalent in terms of their likely competitive impact such that, in our provisional view, evidence relating to the pre-merger situation, and in particular evidence as to

[44] We do not accept Global's contention that no such alternative ought even to be considered further because discussions had not advanced sufficiently. By way of analogy, our Guidelines state that the possible unwillingness of alternative purchasers to pay the asking price would not rule out a counterfactual in which there is a merger with an alternative purchaser.

RSL's pre-merger local and national market shares, forms a reasonable basis against which to assess the competitive effects of the merger.

The National Sales Agency Agreement

4.23 The second issue we have considered is the extent to which it is appropriate to take account of the pre-existing Agreement between Global and RSL in our counterfactual analysis. The Agreement concerns the sale, in certain circumstances, of airtime on RSL stations by Global on an exclusive basis.

4.24 We have considered first whether the Agreement would remain in place absent the merger, taking into account our counterfactual analysis in relation to the ownership of RSL. It has also been put to us that the Agreement is unlawful and as such should not be considered as part of an appropriate counterfactual.

Background to and principal terms of the Agreement

4.25 It is not uncommon for media companies to group together to sell national advertising. Other examples include FRS, jointly owned by UTV and UKRD, which sells on behalf of over 100 local radio stations including many not belonging to the owners of FRS; the Trinity Mirror Group owns AMRA which sells on behalf of many regional and local newspapers including 17 of the top 20 selling regional newspapers by circulation; and Digital Cinema Media, owned by Cineworld and Odeon but also selling on behalf of four other cinema groups. Sky Media sells television advertising on behalf of a number of other broadcasters including Discovery and MTV.

4.26 GMG plc told us that RSL had always outsourced its airtime sales to London-based agencies. From 1999, Chrysalis Radio Group represented RSL. In 2007 following the acquisition of Chrysalis by Global the sales contract moved to GCap before it reverted to Global when Global purchased GCap the following year.

4.27 GMG plc told us that there were two main reasons why it had used a national sales agent to sell airtime to London-based agencies. First, these agencies were typically large components of even larger media groups and as such it was common practice for a relatively small radio group, such as RSL, to use a sales agent to sell its airtime. Second, RSL lacked the scale and presence in London to negotiate with these agencies. Its stations covered a limited part of the UK and its only brand in London, Smooth, did not have strong presence relative to other stations. GMG plc told us that the costs involved of the alternative, setting up its own agency sales team in London, [✂].[45]

4.28 Under the present Agreement, Global is appointed as RSL's [✂] sales agent for [✂].[46] Global is appointed as RSL's agent [✂].

Views of Global and GMG plc

4.29 Global said that, absent the merger, the current Agreement would have remained in force at least until [✂].[47] Global pointed to the [✂] rights of termination in the current Agreement and the considerable benefits the Agreement delivered to RSL relative to its other options.

4.30 In relation to the period beyond [✂], Global argued that it was highly likely the Agreement would have been extended beyond that date. Without the Agreement and the benefits of selling its brands alongside Global's, [✂]. It lacks the national presence to compete on its own and this would not have been a cost-effective option. Other options would similarly not have been viable and, were anyone else to act for it, RSL would suffer a substantial reduction in revenue: other radio groups or sales houses would not have been able to offer the experience of selling regional stations

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[45] [✂]
[46] [✂]
[47] Global subsequently said that, in light of the merger, the Agreement would have remained in place at least until [✂] given the termination rights under the Agreement.

or the equivalent benefits of geographic or demographic complementarity offered by Global's stations.[48] Therefore Global argued that, absent the merger, the Agreement would have been retained.

4.31 GMG plc told us that in the past, under its ownership, GMG Radio had considered other options for selling contracted advertising. [✂]

4.32 In response to the suggestion that the Agreement may be illegal (see paragraph 4.34), Global told us that while it disputed that the Agreement fell within the scope of the competition law prohibitions at all, it considered that the Agreement met the criteria for exemption. For example, it argued that the Agreement offered significant benefits to RSL, which would not be a viable competitor for contracted sales absent the Agreement or more generally, and that Global and RSL were not close competitors. Global also noted that the OFT had not questioned the legitimacy of the similar agreement which was in place when it considered Global's acquisition of GCap in 2008.

Views of third parties

4.33 In terms of the options of RSL on expiry of the initial term under the Agreement and thereafter, Bauer said [✂] disagreed that RSL would have been unlikely to appoint Bauer as a sales agent. It argued that it had the ability, systems and resources to act as a sales house [✂]. Bauer [✂] said that it was therefore not inevitable that RSL would have retained the Agreement with Global absent the merger.

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[48] Global said that Bauer had no experience of selling on behalf of other stations, RSL and Bauer stations overlapped in a number of areas and these stations were therefore substitutes rather than complements. FRS was too small to have as effective a market presence as Global, and Absolute and talkSPORT did not sell on a regional basis. Global argued that none of these options offered the quasi-national complementary coverage offered by Global.

4.34 Bauer also submitted that the Agreement might be contrary to competition law and that a comprehensive competitive assessment of the Agreement needed to be undertaken before it could be taken into account when assessing the counterfactual.

4.35 Both the OFT and Ofcom told us that it had not investigated or received any substantiated complaints relating to the Agreement between Global and RSL, nor any similar such agreements in the radio sector more generally. The OFT also noted that it could not be taken to have endorsed the Agreement (or its predecessor) by virtue of its assessment of the Global/GCap merger or its decision in relation to appropriate remedies in that case.

Our assessment

4.36 We note the [✂] termination rights in the existing Agreement and the lack of any evidence that either GMG plc or Global had any reason to terminate the Agreement ahead of the expiry of its initial term in [✂]. We therefore consider that had GMG plc retained its ownership of RSL, the current Agreement would not have been terminated at least before that date.

4.37 If RSL had been retained by GMG plc, we do not consider it can necessarily be assumed that the Agreement would remain in place and operate in much the same way beyond [✂]. While more recently RSL has decided to remain with Global, we note the evidence from its previous owner that it had at least considered other options when it came to the end of a national sales contract or when faced with a material change of circumstances on a change of control. We would therefore expect the owner of RSL to consider its options at regular intervals despite the present structure of the Agreement.

4.38 Such options could include entering into a sales agreement with another company, as well as taking the function in-house. While the evidence would suggest that bringing national contracted sales in-house or appointing another provider may have financial implications and risks, it is less clear that these would in all circumstances outweigh the potential risk of remaining with Global. The merger will permanently remove the possibility of such a development.

4.39 In the event of an acquisition by an alternative purchaser that did not raise competition concerns, while we note that [✄]. A number of factors would have influenced both parties' strategies in such circumstances, including the potential financial consequences [✄] and the risk of changing the source of an important revenue stream immediately post-acquisition. As a general proposition, it is plausible that the more the acquirer was considered a competitor to Global, the less likely it is that the Agreement would have been retained in the medium term.

4.40 We do not accept Global's argument that we should take into account that the Agreement could not now expire before [✄] since RSL is not in a position to consider whether to exercise its right of termination with effect from [✄]. We consider that at the time of the merger in June 2012, there was sufficient time for a new owner of RSL, or RSL itself, to have reviewed its options and made a decision.

4.41 Our provisional view is that in our counterfactual we should take into account the possibility that the Agreement is not retained beyond [✄]. The removal of alternatives to the Agreement represents a potential impact of the merger, which it is appropriate to consider further in our competitive assessment. In this respect, we take into account possible changes in the parties' incentives following a merger compared with those under the Agreement and the implications arising from the permanent removal of RSL's option to sell its contracted advertising to London-based agencies post-merger.

4.42 On the suggestion that the Agreement is contrary to competition law, we note that the Guidelines[49] state that a counterfactual cannot be constructed that involves violations of competition law. However, any assessment of the legality of the Agreement would have to be undertaken in the context of an analysis of the conditions of competition in the market. Since we consider it appropriate to assess the possibility of there being no sales agency agreement between the parties after [✂] in our competitive assessment, and in light of our conclusions in that context, we do not consider it necessary to consider this issue further.

Provisional conclusion on the counterfactual

4.43 Our provisional conclusion is that, in the absence of the acquisition by Global, the assets of RSL would either have been retained by GMG plc or sold to an alternative purchaser who would not have raised competition concerns. Therefore, when considering the likely structure of radio markets absent the merger, we take RSL's pre-merger local and national market shares as a benchmark against which to assess the competitive effects of the merger. We consider it more likely than not that the Agreement would have remained in force until [✂] but that alternative options would have been considered from that date. Possible alternative outcomes are considered further in our competitive assessment.

5. The relevant market

5.1 In this section, we set out our provisional findings on the relevant market. The purpose of market definition in merger analysis is to provide a framework for the

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[49] The Guidelines, paragraph 4.3.3.

analysis of competitive effects.[50] However, in analysing the competitive effects of the acquisition, market boundaries do not determine the outcome of our analysis in any mechanistic way and regardless of our chosen market definition, we take into account broader competitive constraints as appropriate. Accordingly, in assessing whether the acquisition may give rise to an SLC, we may take into account constraints outside the market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[51]

5.2 There are normally two dimensions to the relevant market: a product dimension and a geographic dimension.

Product market definition

5.3 The merging parties overlap in commercial radio. Media products, including radio, are generally considered to be 'two-sided'; that is, suppliers of the product compete both for advertisers and consumers, in this case radio listeners. Commercial radio stations derive revenue only from the advertising side but the purpose of advertising on radio is to draw the advertiser's message to the attention of listeners.[52] We consider separately the listener and advertising elements of the two-sided product and take into account the link between the two.

Listeners

BBC radio stations

5.4 A particular feature of UK radio is the role of BBC radio stations, which are funded from the licence fee and do not carry commercial advertising. As such, the BBC would appear to compete directly with commercial radio stations for listeners but not for advertisers.

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[50] The Guidelines, Section 5.2.
[51] The Guidelines, paragraphs 5.2.20 & 5.2.2.
[52] The Guidelines, paragraph 5.2.20, in particular footnotes 58 & 60.

5.5 Commercial radio competes with the BBC for listeners (see Appendix F) and we did not receive evidence or views that contested that there is rivalry for listeners between the two. Across the UK, the BBC has about 55 per cent of all listeners across its national and local stations and these compete directly with commercial radio which accounts for the vast majority of other radio listeners.[53] The BBC's share varies geographically: for example, it is higher in Wales, 61 per cent, than in Scotland, 45 per cent.[54]

5.6 The parties argued further that the rivalry with the BBC for listeners had an impact on commercial revenues: the larger the audience of a radio station, the more valuable its advertising slots become. This is because advertisers often buy on a cost per thousand impacts (CPT) basis so any increase in listener impacts would increase revenue, all other things being equal. Also, higher audience share at the expense of the BBC would make commercial radio as a medium more attractive to advertisers and increase demand. Bauer did not consider that rivalry with the BBC exerted any direct or indirect constraint on the supply of radio advertising though noted that the presence of BBC radio stations restricted the number of minutes of advertisements that listeners would tolerate on commercial radio.

5.7 As set out in our Guidelines, there is a link between the two sides of the product in media markets.[55] Commercial radio stations need listeners to attract advertisers. Prices for advertising are generally negotiated with reference to audience figures as measured by RAJAR with advertisers often paying on the basis of the CPT. In this way, those stations with higher audience figures can, in general, attract higher advertising revenues.

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[53] Ofcom Communications Market Report 2012 (using RAJAR figures). The BBC's percentage of UK listening was 55 per cent in each of the years from 2006 to 2011, except 2008 when it was 56 per cent.
[54] Ofcom Communications Market Report 2012 (using RAJAR figures).
[55] See paragraph 5.2.20.

5.8 This relationship between listeners and advertising suggests an indirect constraint from the BBC's radio stations on the amount of advertising on commercial radio stations. However, this indirect constraint from the BBC on the listening side of the market is not necessarily an important factor in the pricing of radio advertising. In particular, we note that although the existence of the BBC may to some extent affect the number of listeners, and therefore the total advertising revenue, available for commercial radio to compete over, competition between commercial stations determines their respective shares.

5.9 Our provisional view is that BBC radio stations should be included in the relevant market because they compete with commercial stations for listeners and offer an indirect constraint on the listener side of the market.

Other constraints on provision for listeners: regulatory constraints

5.10 While commercial radio stations need to attract listeners to attract advertisers, the presence of the BBC ensures a significant rivalry for listeners and the diversity and plurality of content is governed by regulation. The output of every commercial radio station is regulated by a one-page Format document which is part of the licence. This encapsulates the overall 'character of the service' a station is obliged to deliver as a condition of its licence. It also sets out the station's minimum hours of locally originated programming and its local news requirements.

Other media

5.11 Global said that commercial radio was also facing growing challenges for its listeners' time from other media, in particular new ways of listening to music through online and mobile downloading and streaming platforms such as iTunes Match and Spotify. Other parties did not attach significant weight to competition from these forms of listening.

5.12 We note that radio listening is lower among the 15 to 24 age group than among older age groups and that among the 15 to 24 age group radio listening has declined in the last ten years by 22 per cent.[56] In its report on the Communications Market in 2012, Ofcom suggested that this decline could be explained by the proliferation of other devices and services able to provide audio content.[57]

5.13 Nevertheless we have not seen evidence of active competition between radio stations and other methods of audio listening, nor that they are close substitutes. Therefore, our provisional view is that it is not appropriate to include other methods of audio listening in the market.

Provisional conclusion on listeners

5.14 The presence of the BBC provides a significant rival to commercial radio stations for numbers of listeners. Furthermore, the content that commercial radio stations can broadcast is regulated by Ofcom and this regulation seeks, in broad terms, to ensure a plurality of station genres and a certain amount of local content. Therefore, in our provisional view, the interests of listeners are largely protected by these two constraints from the effect of a merger between commercial radio stations. In considering the effects of this merger therefore, we focus our analysis primarily on the effects on the other side of the two-sided product: radio advertising.

Advertising

Types of radio advertising

5.15 As we note above in paragraph 2.27, commercial radio stations usually have two main revenue streams: the sale of airtime and S&P. There is a further distinction

[56] Radio listening among the 15 to 24 age group averaged 17 hours per week in 2011, compared with 22.5 hours per week for all adults. In 2010, radio's share of all audio listening was 56 per cent for 15 to 18 year olds, compared with 82 per cent for all adults.
[57] Radio listening among all adults has also declined over the last ten years but by a smaller percentage (8 per cent). 2011 figures show an increase in radio listening compared with 2010 both for 15 to 24 year olds and for all adults.

between contracted and non-contracted advertising. We were told that prices for contracted and non-contracted advertising, and S&P, were the outcome of bilateral bargaining processes.

5.16 We do not consider the differences between airtime and S&P to be sufficient as to lead us to define separate product markets. In our view the distinction between airtime and S&P is largely on the supply side in that airtime and S&P are different ways that radio stations obtain revenue from advertisers. However, on the demand side, advertisers are able to substitute between airtime and S&P, which are simply different methods of increasing brand awareness via radio.

5.17 Similarly, we do not consider the differences between contracted and non-contracted advertising to be sufficient as to lead us to define separate product markets. The distinction between contracted and non-contracted advertising is primarily on the demand side in that it is driven by how customers buy their radio advertising. However, supply-side substitution is relatively easy since radio companies can readily change the proportion of airtime made available to contracted and non-contracted advertisers.

5.18 For these reasons, we did not define separate markets for airtime and S&P, nor for contracted and non-contracted advertising, but we considered each segment separately in our analysis and summarize in our competitive assessment the effects of the merger under two main headings: contracted advertising and non-contracted advertising. In doing so, we take into account the way S&P is bought by customers in each segment and the effect of the merger on those customers. For example, S&P is generally bought on a case-by-case basis rather than under a contract regardless of whether the advertiser buys its airtime via an agency contract. However, contracted advertisers generally buy S&P through their media buying agency and we therefore consider S&P for these advertisers in the contracted advertising section; non-contracted advertisers generally buy S&P direct from the station and we consider the effects on these customers under the section on non-contracted advertising.

Demographics in radio advertising

5.19 Radio stations are also differentiated according to their broadcast output. For example, of the three commercial radio stations broadcasting on national licences, Classic FM broadcasts mainly classical music, Absolute Radio broadcasts mainly rock-oriented music and talkSPORT broadcasts mainly speech content, primarily sports-related programming. Different stations generally attract different demographics of listeners. For example, the audience for Classic FM tends to be older and for talkSPORT tends to be male. Differentiation by type of content is less marked among local and regional stations with most stations focused on contemporary or rock music and targeting 15 to 34 or 25 to 44 year olds.[58]

5.20 On the listening side, stations with similar content are more likely to be close substitutes than those with different content. On the advertising side, this is less clear since demographic groups of different formats may overlap and some advertisers are concerned with achieving a certain level of reach of all adults rather than a specific demographic group. We did not see evidence that the distinctions in listener demographics are sufficient to justify defining separate markets for stations with different types of broadcast output, but we take differences in format and target audience into account in our assessment of the merger's competitive effects.

Other media advertising

5.21 Global said that radio advertising prices were constrained by competition from media other than radio, such as the local press, the Internet (social media and search

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[58] There are some exceptions to this, for example RSL's Smooth Radio is an easy listening station focused on an older age group and Global's Xfm broadcasts a specialist music format of 'alternative rock'.

engines), outdoor, television, direct mail and magazines. Other radio operators said that competition was principally between radio stations. For example, Bauer told us that radio was an important and distinct media form offering unique features that other types of media did not provide.

5.22 Our Guidelines state that we will ensure that the relevant market we identify satisfies the hypothetical monopolist test.[59] In a market such as radio, where prices are subject to bilateral negotiations, we consider that the hypothetical monopolist test would be met if the hypothetical monopolist was able to negotiate profitable prices to customers that were on average higher by a SSNIP.

5.23 The evidence we have considered suggests that there are significant differences between radio and other advertising (see paragraph 6.32) and our analysis of prices, market share and concentration suggests that prices would be substantially higher under a hypothetical radio monopoly (see Appendix I). We note that a 2006 study by Ofcom[60] suggested that it may be unprofitable for a hypothetical radio monopolist to increase prices because advertisers would switch to other media and/or be unwilling to increase radio campaign spending. However, Ofcom did not conclude on whether this was sufficient to widen the market.[61]

5.24 We note also that with regard to the listener side of the market, listeners' substitutes for a commercial radio station are far more likely to be other commercial or BBC radio stations than they are to be other media such as newspapers, the Internet and outdoor.

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[59] The test is whether a hypothetical monopolist would find it profitable to make a small but significant increase in prices (SSNIP) usually 5 per cent.
[60] Ofcom, Radio Advertising Market Research: Assessment of the constraints on the price of direct and indirect radio advertising, October 2006.
[61] Ofcom, in its 2006 report, said that its conclusions were intended as a starting point for analysis and were not proposed to define the boundaries of relevant markets. We also note that it has been more than six years since this report was published.

5.25 Our provisional view, on balance and taking the evidence in the round, is that the hypothetical monopolist test is satisfied and that the market is no wider than radio. Nevertheless, we consider it important that our assessment of the competitive effects of the merger should include an assessment of constraints from other media as well as constraints from other radio stations. As already noted, our Guidelines state that, in assessing whether the merger may give rise to an SLC, we may take into account constraints outside the market.

Geographic market definition

5.26 All radio stations require a licence which specifies the area to which the station broadcasts and within which broadcasts are protected from interference. In practice, a radio station may broadcast, and measure audiences, over a slightly wider area.[62] Generally, commercial licence areas may be divided into national[63] (Classic FM, Absolute Radio, talkSPORT); regional[64] (including London-wide licences); and local.

5.27 On the listening side, the evidence suggests that regional and local stations compete with national stations. For example, some regional and local commercial stations said that their closest competitors included Radio 1 and/or Radio 2. On the advertising side, regional and local stations may carry national advertising campaigns and local stations carry regional advertising campaigns. Some national stations also sell regional advertising where they are able to broadcast different adverts on different transmitters simultaneously.

5.28 Overall, therefore, the distinction between national, regional and local stations does not translate in any simple way to competition between stations. In the light of these

[62] Stations which subscribe to RAJAR audience measurement define a Total Survey Area (TSA) which may be wider than the station's licensed area.
[63] National licences cover the whole of the UK.
[64] Regional stations cover an area broader than a single town or rural county but these regions are not necessarily similar to television regions or to the regional definitions used in official statistics.

points, our provisional view is that it is neither straightforward nor necessary to define separate regional or local markets consistently. For these reasons, in our competitive assessment we consider competition at a regional and local level as well as at a national level. We take differences in station TSAs into account in our analysis of the competitive effects of the merger.

5.29 Since non-contracted advertisers are likely to be local businesses interested in a local advertising campaign, station TSAs are an important aspect of competition in the non-contracted segment of the market. In the contracted segment of the market, the location of station TSAs is less likely to be important since much of this segment is accounted for by advertising campaigns with a wider geographic coverage.

5.30 Our provisional view on the geographic market is that we do not consider it necessary to define separate markets at a local or regional level. We take geographic differences into account in our assessment of the competitive effects of the merger.

Provisional conclusions on the relevant market

5.31 We consider radio to be a two-sided market in which competition occurs both for listeners and for advertisers and includes both commercial stations and BBC radio stations. We assess the extent of the constraint on radio advertising from other forms of media advertising in our competitive assessment. We do not define separate markets at a local or regional level but we take geographic differences into account in our assessment of the competitive effects of the merger.

5.32 Our provisional market definition is therefore a UK market for radio.

6. Pre-merger competition

6.1 In this section we describe the radio market in more detail and the nature of competition for radio advertising before the merger. We describe the relative size and coverage of the parties and their main radio competitors. We then look at the different sources of commercial radio revenue and the different segments we have identified.

6.2 We then summarize the main arguments and supporting evidence on two issues: the nature and extent of the constraint from other sources of media advertising; and competition between radio stations. We note that prices are negotiated between radio stations or groups and advertisers and we consider the implications of this bargaining framework for our analysis. Finally, we summarize the available evidence and reach provisional conclusions on pre-merger competition to inform our assessment of the effects of the merger in Section 7.

Radio station operators

6.3 We set out in Table 1 the shares of listeners and advertising revenue of the main national, multi-regional and multi-station commercial radio operators. The relevant groups and their stations are described in paragraphs 2.19 to 2.23.

TABLE 1 **Summary of main commercial radio operators and their stations**

		Estimated share (%) of			
Company	*Stations**	*Total listening hours†*	*Commercial listening hours†*	*Commercial Revenue‡*	*Commercial analogue licences*
Global	Classic FM, Capital, Heart, Choice, LBC, Xfm, Gold	15.7	36.8	[✂]	24.2
GMG (RSL)	Smooth, Real, Real XS, Smooth 70s	4.7	11.0	[✂]	5.8
Bauer	**Place portfolio**: Radio Aire, Northsound, West FM, West Sound, Downtown, Cool, CFM, Tay, Forth, Borders, Clyde, Viking, Magic, MFR, CityTalk, Radio City, Key 103, TFM, Metro, Rock FM, Hallam, Wave	10.6	24.7	[✂]	14.0
	Passion portfolio: Kiss, The Hits, Smash Hits, Heat, Q radio Kerrang!				
UTV	talkSPORT, Juice, Peak, Pulse, Signal, Swansea Sound, Tower,U105, Wave, Wish, Wire	3.1	7.3	[✂]	3.8
Absolute	Absolute	2.1	5.0	[✂]	<3
Orion	Free Radio (Birmingham, Coventry & Warwickshire, Shropshire & Black Country, Herefordshire and Worcestershire), Free Radio 80s and Gem106	0.9	2.1	[✂]	<3
UKRD	2BR, Eagle, KL.FM, Minster, Mix, Pirate, Spire, Spirit, Star, Stray, Sun, The Bee	0.4	0.9	[✂]	6.1

Source: CC analysis based on data from RAJAR and Ofcom.

*Some stations operate as both AM and FM.
†RAJAR figures for 2012 calendar year.
‡Ofcom figures for 2011.

Commercial radio revenue

6.4 Commercial radio revenue from all advertising in 2011 was £456 million, 2.7 per cent of all advertising spend.[65] Trends in commercial radio revenue show that it has increased in each of the last two years but remains 13 per cent below the 2007 figure of £522 million. Table 2 breaks down commercial radio revenue by Ofcom categories of national, local and sponsorship.

[65] Ofcom Communications Market Report 2012.

TABLE 2 **UK commercial revenue (based on operator data)**

£ million

	2006	*2007*	*2008*	*2009*	*2010*	*2011*
Total commercial	512	522	488	432	438	456
National commercial	268	271	246	201	210	220
Local commercial	153	156	142	136	136	130
Commercial sponsorship	91	96	100	94	89	92

Source: Ofcom (Communications Market Report 2012, Figure 3.10).

6.5 As we note in paragraph 5.15, it is possible to distinguish between two commercial radio revenue streams, airtime and S&P, and there is a further distinction between contracted and non-contracted advertising. Most commercial radio groups and stations compete with each other to some extent in each segment of the market. Across commercial radio, contracted advertising accounts for about 50 per cent of total revenue, non-contracted advertising about 30 per cent and S&P about 20 per cent.

6.6 Different parties are stronger in some segments than others and this reflects the geographic location and reach of the different radio groups. For example, radio operators without a national or London-based station tend to rely more on non-contracted advertising than operators broadcasting in London or nationally. Larger radio groups with a national or quasi-national presence may derive up to 60 per cent of their total revenue from contracted advertising compared with less than 15 per cent for smaller, local stations.[66] We describe below competition for radio advertising bought by the large London-based media agencies (contracted advertising and national S&P) and local and regional airtime and S&P bought direct by advertisers or by small regional agencies.

[66] CC calculations based on information from radio companies and Ofcom.

Contracted advertising and national sponsorship and promotion

6.7 There are currently five main parties selling contracted advertising to the large agencies: Global (acting also as a sales agent for RSL and Orion[67]); Bauer; Absolute Radio; talkSPORT; and a sales house, FRS. Global also sells, on behalf of commercial radio stations, airtime around IRN's 'Newslink' and the BT40 chart show.[68]

6.8 Media buying groups will typically contract separately with each of these suppliers for airtime. The four largest London-based media buying groups and their agencies [✂] are: Group M[69] (comprising the agencies Mindshare, MEC, Mediacom, M4C and Maxus); Opera, part of the Omnicom group (OMD, PHD and MGOMD); Aegis, part of Aegis Group plc (Carat, SMRS and Vizeum); and Vivaki, part of the Publicis Groupe SA (Zenith Optimedia and Starcom). Other agencies are Magna (part of Mediabrands Limited and comprising the Universal and Initiative agencies), Walker Media (part of M&C Saatchi plc), MPG and Arena (part of Havas SA), and The 7Stars; and two specialist radio agencies: RadioWorks and Radio Experts.

6.9 These groups, apart from the specialist radio agencies, purchase across all media with radio typically accounting for a small proportion of each group's total.[70] Although each group comprises more than one individual agency, they typically negotiate terms with media owners as a group, in order to combine their buying power.

6.10 The agencies buy on behalf of their clients, which are mainly large companies that need the ability to advertise across the whole or a substantial part of the UK. Although these companies tend to operate across the whole, or large parts of, the

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[67] RSL sells advertising on a contracted basis to a number of agencies that are not covered by the Agreement.
[68] An independent entity (GTN) sells advertising around traffic bulletins.
[69] Part of WPP group.
[70] Between 2 and 6 per cent (CC estimates based on agency questionnaire responses).

UK, they may also require advertising on a regional or local, as well as national, basis.[71]

6.11 Contractual terms and conditions for the sale of airtime include all prices, both for individual stations, regional groups of stations and across all stations in a brand network. In some cases, [✂]. Once the agency has agreed the contract with the radio sales house or station, its media planners can call off advertising spots under the agreement throughout the year at the agreed rates.

6.12 Contracts with agencies may include a commitment by the agency to deliver a given proportion of their radio spend or a commitment or target in volume terms. Share agreements fix the percentage of total radio budget to be spent by the agency with the particular contracted radio group for the duration of the contract. There are usually penalties if the share is not reached. Alternatively contracts set a target volume, by value, of sales to be made with penalties if sales end up below this target and/or lower prices for sales exceeding this volume.

6.13 A particular feature of the relationship between the parties in relation to contracted advertising is that Global sells airtime [✂] on behalf of RSL to certain national advertisers under the Agreement (paragraphs 4.23 to 4.43). RSL sells its own airtime to, and has contracts with, [✂] and [✂]. These contracts represent around [✂] per cent of RSL's revenue from contracted advertising.

6.14 The same agencies also buy S&P on behalf of their clients. Agencies usually invite media providers to pitch for these deals and negotiate the price on a case-by-case basis. The terms and prices of these S&P deals generally fall outside the contracts between the agencies and the radio companies for airtime.

[71] For example, a consumer goods manufacturer may wish to purchase regional advertising if it launches a new product first in one region and a supermarket may wish to purchase local advertising for a new store launch.

6.15 Global does not sell S&P on behalf of RSL.[72] Therefore the parties compete separately with the other parties described in paragraph 6.7 for S&P bought by the agencies on behalf of national advertisers. We were told that radio groups with a national licence or wide geographic reach are more likely to attract national S&P. This is reflected in the S&P revenues derived by the parties: just under [✂] of RSL's S&P revenue and [✂] of Global's is from national advertisers.

Non-contracted advertising and local and regional S&P

6.16 Non-contracted advertisers include a diverse range of organizations including non-contracted agencies and direct advertisers. About [✂] per cent of the parties' non-contracted revenue is accounted for by advertising purchased directly from advertisers and the remaining [✂] per cent by advertising purchased via agencies. Compared with the agencies which have contracts with media owners, the agencies buying non-contracted advertising and S&P on behalf of clients tend to be smaller and based outside London. The parties provided details of direct advertisers who include: shopping centres, retailers, vehicle hire companies, colleges, restaurants, professional services, such as solicitors, taxi firms, hospitals, charities, automotive companies, local government and education bodies. Advertisers buy airtime slots on a campaign-by-campaign basis. They may also buy S&P and usually negotiate these deals directly with the station.

6.17 The median spend with Global and RSL by their non-contracted customers in 2011 was £[✂] and £[✂] respectively. Mean spend was considerably higher, at £[✂] and £[✂] respectively, reflecting a relatively large number of advertisers that spend a small amount on the parties' stations and a smaller number with higher expenditure on those stations.

[72] [✂]

6.18 Advertisers buying non-contracted airtime also buy S&P, usually directly from the radio station. As we note in paragraph 6.15, S&P bought in this way is likely to be a higher proportion of revenue for local and regional stations compared with national stations and large radio groups.

Competition with other media

6.19 National radio advertising is usually bought as part of a wider media campaign. An agency said that most of its clients did not use a single medium and that advertisers saw radio as a stepping stone to communicating with a different audience.[73] This view was shared by other agencies and radio stations.

6.20 Although local advertisers are likely to have much smaller advertising budgets than those buying through large agencies, they similarly often use more than one source of advertising. Of the parties' existing customers, around 75 per cent of respondents used another media with radio in their last campaign.[74] Respondents to the survey cited a wide variety of other media that they had used: local press, posters and outdoor media, social media, magazines, search engines, direct mail, directories, trade sites and television.

6.21 Radio stations promote the benefits of using radio advertising as part of a wider campaign. For example, a significant proportion of the parties' marketing material reflects the potential uplift in impact and cost-effectiveness that adding radio to the media mix of a campaign can offer. The Radio Advertising Bureau (RAB) makes similar points about what it describes as the multiplier effect of using radio with other media advertising. For example, it cites research suggesting that if 10 per cent of a given television budget was reallocated to radio, the efficiency of the campaign in

[73] [✂]
[74] Existing customer survey.

building awareness increases on average by 15 per cent. Agencies also confirmed that they used radio in this way.

6.22 We noted in our assessment of the relevant market that our provisional view on the appropriate framework for considering the effect of the merger was the radio market. We said that this framework would not determine our assessment of the merger in a mechanistic way and that we would consider the importance of other media as a constraint in our assessment of the effects of the merger. We therefore consider the parties' arguments and the evidence they submitted below. We then summarize views on the characteristics of radio relative to other media. We take this into account in assessing the evidence provided by the parties and others, and our own analysis, reaching provisional conclusions on the extent to which radio may be substituted for other media in an advertising campaign.

The views of the parties

6.23 The parties argued that although radio was usually bought alongside other media, these media could offer the same benefits as radio and might be substituted for it. The proportion of radio might be reduced, with budgets diverted to other media, and campaigns could easily be planned without radio at all.

6.24 The parties emphasized the extent to which they competed directly with other media for advertisers and referred to evidence from surveys, event studies, an analysis of media expenditure from the Nielsen Media Research (NMR) database, and their own internal marketing documents. They accepted that radio and other media were regularly bought as complements to each other but argued that they remained substitutes and competed for a share of an advertiser's budget.

6.25 They point to the results of two surveys of non-contracted advertisers which they commissioned.[75] The parties said that these surveys demonstrated that, for the vast majority of advertisers, other media were substitutes for radio and that there were not a significant number of 'radio-only' customers. For example, 90 per cent of advertisers that turned down a proposal from Global used non-radio media for the relevant campaign either by itself or with other radio. Those surveyed were, the parties argued, potential radio advertisers: over 75 per cent of the respondents had used radio in the last three years and 60 per cent had used radio to advertise in the last year.

6.26 The parties submitted further analysis from their survey of existing customers. Without reference to any specific campaign, respondents were asked what other type or types of media they could use to meet the same campaign objectives as radio. Other media featured significantly in the responses. Respondents were allowed to select more than one alternative: 57 per cent of respondents chose local press, 36 per cent chose social media and 37 per cent chose posters and outdoor media.[76] 9 per cent said that they could not use any other types of media to meet the same objectives as radio.

6.27 The parties calculated[77] that the proportion of respondents who would choose non-radio media, if the Global or RSL stations they had used had not been available, was 31 per cent, compared with 18 per cent who would use other radio options. In particular, the parties argued that the survey showed that more non-contracted

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[75] The parties submitted evidence from two surveys: the existing customer survey of customers in the overlap regions who had recently advertised on a Global or RSL station; and the lost opportunities survey of advertisers in the overlap areas who had actively considered advertising on Global for a particular campaign but ultimately decided not to. The surveys were commissioned independently of the CC in anticipation of this inquiry following the parties' request to the OFT for a fast-track reference.

[76] In response to a similar question in the lost opportunities survey, 76 per cent of respondents chose local press, 68 per cent chose social media and 58 per cent chose search engines.

[77] Respondents were asked what they would have done in the event that the Global or RSL station that they had used had not been available at the time of their last campaign. Respondents were able to give multiple responses. If a respondent named multiple alternatives to which they would switch spend, then, in the parties' calculations, each of these was given an equal weighting (for instance, if they named two alternatives each of these was given a weighting of 0.5 in the calculation).

customers indicated that they would switch to local press compared with the other party's stations.

6.28 The parties also submitted analysis of data published by NMR which includes the media spending of advertisers based on submissions by radio broadcasters and other media owners. Based on an assessment of information from this database in areas where the parties' stations overlap, the parties suggested that advertisers which ceased to advertise on the parties' stations had used other media, especially local press, to a greater extent than other radio stations.[78] The parties also told us that they principally targeted users of other media when seeking to find new customers rather than other radio stations, and supported this with evidence from their internal documents.

6.29 The parties submitted analysis of event studies in North Wales, London, Yorkshire and Central Scotland which they argued demonstrate that radio stations competed more closely with other media than with each other. In each of these event studies, the analysis compares average price trends of the parties' stations and trends for either total advertising revenues or non-contracted advertising revenues.

6.30 This evidence, the parties submitted, showed that other media were a substitute for radio and that advertisers were more likely to look to other media to meet their campaign needs than other radio stations in the event they were dissatisfied with Global's or RSL's offers. Although the evidence they submitted on this issue largely related to non-contracted advertisers, the parties told us that they considered it relevant for contracted advertisers for which radio was often a very small part of their campaign budgets. For advertisers in each segment, they argued, radio was not a

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[78] The analysis looked at advertisers which advertised on the parties' stations in 2009 but not again in 2010 or 2011.

‘must-have’ medium and advertisers could, and did, switch easily to other media to meet their campaign objectives.

Third party views

6.31 The extent to which radio advertising may be substitutable for other media will, in part, depend on whether it is considered to have particular characteristics which support a campaign and which may not easily be replicated by other media. We therefore assessed evidence from agencies, direct advertisers and competitors on the main characteristics of radio compared with other media, in particular, cinema, direct mail, outdoor, Internet, newspapers and television. We summarize this evidence below before considering its implications for assessing the extent to which other media may substitute for radio.

6.32 There was a broad consensus among customers and competitors that each of the different media has distinctive characteristics and benefits which make it attractive to advertisers. The particular benefits of radio that were cited consistently by both advertisers and competitors were:

(a) Intimacy: radio is a personal, one-to-one experience so tone of voice and radio’s role as a trusted medium are important attributes. It is also relatively sophisticated in terms of the ability to target particular times of day and also particular demographics effectively. Radio is currently the leading media platform in the UK until 1pm.

(b) Immediacy: advertising can be placed quickly (there are relatively short lead times) and generally more flexibly, linking to local news, weather and events, all of which are advantages when considering time-sensitive advertising.

(c) Localness: radio provides a medium for local advertisers who want to target a particular area with the least wastage.

(d) Value or cost-effectiveness: radio is significantly cheaper than other media when measured in CPT impacts, although the more expensive media have other attributes that are valued by advertisers such as—in relation to television—a high visual impact.

(e) Low advertisement avoidance: radio is frequently a companion activity, with listeners tuning into their radio station while driving, sitting on a bus/train, doing housework or working at their computer. This leads to low advertisement avoidance which was frequently cited as an advantage compared with direct mail, television and newspapers.

6.33 We were told that in many cases advertisers are seeking to create the optimum mix of advertising for a particular campaign and will choose different media to maximize the campaign's impact and effectiveness. Many of radio's attributes are shared by other media, but in any given context, this combination of attributes may mean that an advertiser's campaign objectives can best be met by radio or that other media are only considered by advertisers to be complementary rather than substitutable.

6.34 Although the large agencies highlighted particular advantages of radio advertising compared with other media, views were mixed on the extent to which radio was important overall. For example, one noted the particular strengths of radio and its importance overall in campaigns by achieving synergies when advertising across more than one form of media. Another told us that radio was not a strong enough medium to stop people from considering using alternative media if, for example, Global tried to be too aggressive with pricing.[79]

[79] We consider the importance of radio as a medium to media buying agencies, and the implications of this for their negotiating strength relative to the parties, in Section 7.

Our assessment

6.35 The parties attach significant weight to the results of their surveys to support their argument that non-radio media is an effective substitute for radio advertising. We consider these surveys, and the parties' analysis of the results, before summarizing our own analysis of the extent of the constraint from other media and the weight we attach to other evidence submitted. We then reach provisional conclusions based on the balance of the available evidence we have considered.

Survey evidence

6.36 In considering the survey evidence submitted by the parties we first examine the methodology used[80] and its implications for the weight we consider we can attach to the results. We then consider the results and the parties' analysis of them.[81]

6.37 The CC's independent survey moderator reported concerns about the conduct of the fieldwork for the parties' existing customer survey.[82] These concerns included inconsistency in the way a key question was asked and the fact that a disproportionate number of interviews were carried out by the same person. As a result of these concerns, and low sample sizes in the individual areas, we consider that the survey results need to be interpreted with a great deal of caution. We do not consider that it is appropriate to attach weight to the local area results because samples were small and there are likely to be significant unquantifiable interviewer differences. We consider that the aggregate results of the surveys are broadly indicative but have a relatively wide and unquantifiable margin of error.

[80] Appendix G contains a more detailed account of the survey methodology, the issues with the fieldwork identified, the response of the parties to these concerns and the implications for the weight we attach to the results.
[81] Appendix H summarizes the parties' analysis of the survey results, third party comments and our analysis.
[82] We take into account the results of surveys commissioned by parties but, in doing so, we aim to apply as far as possible the same approach to a third party survey as we would to a survey we had commissioned. In this case, as the survey was ongoing at the time of the reference, the CC's independent survey moderator was able to observe the fieldwork for the existing customer survey.

6.38 We also note an issue with the coverage of the lost opportunities survey. We note that 25 per cent of respondents to this survey had not used radio to advertise in the last three years. We consider the responses of these respondents to be less informative of the likely preferences of Global and RSL advertisers.

6.39 Notwithstanding these methodological issues, the survey results suggest limits to the constraint provided by other media. We note, for example, that the existing customer survey suggests that 15 per cent of existing customers did not consider using any other media at the time of their last campaign and 24 per cent said that they ended up using only radio. Similarly, 9 per cent of respondents said that they could not use any other types of media to meet the same objectives as radio.

6.40 The survey results also suggest that it is unlikely that radio advertising and advertising on other media are in all cases substitutes or in all cases complementary. We note that 24 per cent of existing customers would have switched at least partly to other radio if the parties' stations had not been available at the time they planned their last campaign and that 34 per cent of respondents who turned down a proposal from Global used other radio in the campaign.

Price-concentration analysis

6.41 The finding that there are some campaigns for which radio is important, either on its own or more likely as an integral part of a wider media campaign, suggests that the availability of alternative radio stations may have an effect on price for some customers; that is, the negotiated price the parties agree with their customers is not in all cases fully constrained by other media advertising options.

6.42 We therefore investigated empirically the relationship between the availability of other radio stations and the average price paid by non-contracted customers of Global and

RSL stations.[83] We used two measures of the strength of radio alternatives to each Global and RSL radio station:

(a) The total share of commercial radio station listening hours in the radio station's TSA of all radio stations owned by the company that owns the radio station (either Global or RSL).

(b) A measure of concentration of ownership in the radio station's TSA, also based on shares of commercial radio station listening hours.[84]

6.43 We consider that these measures are reasonable as approximate indicators of the average strength of the radio station alternatives available to a radio station's customers. We do not regard either of them as an exact measure of the radio station alternatives available to the average customer.

6.44 In our analysis, we take into account other factors that might be expected to affect the average price paid by non-contracted customers. These include each station's brand; the average age of its audience; the proportion of its audience represented by listeners in the ABC1 socio-economic group, as a proxy for its listeners' average income; the proportion of its audience that is female; and the region in which the station is located. We allow for average price to be affected by a station's share of listening hours, as well as the total share of listening hours of all stations owned by the company. Since prices may fluctuate over time, we also include the year and quarter to which prices relate.[85]

6.45 Our results show that areas with fewer good alternatives—and/or where the alternatives are not as good—as measured by both higher company shares and

[83] See Appendix I for further details of our analysis.
[84] We calculated the Hirschmann-Herfindahl index (HHI) to measure concentration of ownership in TSAs.
[85] Additionally, our main analysis allows for average prices to differ between direct and agency non-contracted customers though we carry out a further analysis based on average prices across both direct and agency customers.

concentration, are associated with higher prices to non-contracted customers. They also suggest that the relationship is robust and economically significant.[86]

6.46 We consider that the result that fewer radio alternatives are associated with higher prices is indicative of a general tendency across all stations. Since there are individual local factors affecting each area, we do not consider it appropriate to use the results directly to estimate the effect on prices of the merger in overlap areas.

6.47 Global said our analysis was subject to a number of methodological shortcomings that undermined its value as an analytical tool. It argued that these shortcomings included inappropriate measures of market concentration and making an unrealistic assumption that non-radio competition was constant across local areas.

6.48 We disagree. We consider Global's points in detail in Appendix I. In summary we consider that since a radio station's appeal to advertisers depends on its appeal to listeners, listening concentration is appropriate as a measure of concentration. Furthermore, Global provided no evidence to suggest that any variation in non-radio competition explained our finding that higher radio concentration was associated with higher prices. We also note that our analysis does allow for regional variation in non-radio competition.

6.49 Global also said that the results of our analysis were not robust once account was taken of a mis-allocation of revenue from airtime sold as part of a 'package' covering [✂]. We consider that Global has overstated the implications of this issue and that in any case our main finding, that higher radio concentration is associated with higher prices, remains even under Global's proposed approaches to deal with the issue. We also note that our analysis is based on data provided by Global and RSL.

[86] In relation to the other variables, our analysis shows that average prices are highest for [✂], with prices for [✂] in between. Prices for [✂] are higher than prices for [✂].

6.50 Overall, therefore, we consider that our price-concentration analysis indicates that higher average prices tend to be paid by non-contracted customers of Global and RSL stations with fewer radio alternatives. This evidence is not consistent with the view that non-contracted prices depend only on competition from other media.

Other evidence

6.51 We attach little weight to the parties' analysis of NMR data. This is because we do not consider this data to be an indicator of advertisers' preferences between radio and other media or their propensity to switch between the two in response to changes in price. The NMR data shows what advertisers spent their money on in different periods; it is not possible to observe to what extent any changes over time represent customers switching to other media to fulfil similar campaign objectives or meet different demands for particular campaigns. Furthermore, any patterns observed may be driven by considerations of complementarity between advertising media rather than substitution.

6.52 We note that the parties' event studies are based on inferences about competition drawn from movements over a fairly short period of time in average price. These need to be interpreted with caution because average price is affected by many factors and usually additional analysis is required to isolate the effect of any individual factor.[87] We note also that particular caution is needed in drawing inferences from a lack of response of one station's average price to factors that caused a change in another station's average price, unless it is known that those factors affected all the advertisers on the other station. For example, if a station offers a lower price to attract particular advertisers away from other media, with the result that its average price falls, a rival's station's average price would not neces-

[87] Isolating the effect of each of a number of different factors generally requires a multivariate approach, such as that in our price concentration analysis, see Appendix I.

sarily be expected to fall in response unless it was targeting the same advertisers in the same way.[88].

6.53 Our questionnaire responses from the agencies suggested that, for their clients who spent the most on radio, while other media offered a potential substitute in some cases, other radio was usually the next best alternative to the parties' stations in a campaign.[89] In 68 per cent of cases, the agencies said that other radio would be their next best alternative to Global compared with 32 per cent who said other media.[90] Taking into account second and third best alternatives the proportion choosing other radio falls slightly to 63 per cent. The proportion stating other radio as the next best alternative to RSL was higher: 90 per cent said radio was their next best alternative and 71 per cent of first, second and third alternatives were radio. These results are in line with evidence that there are limits to the extent to which other media may constrain radio advertising.

Provisional conclusion on competition with other media advertising

6.54 Our provisional view is that advertisers use multiple types of media to meet their advertising needs and that other media may be bought as a complement to radio or as a substitute for it. The parties' surveys and the responses of contracted agencies are consistent with the view that there are campaigns for which radio advertisers cannot easily substitute for other media. Our price-concentration analysis shows that the presence of good radio alternatives affects price and therefore that the number of such campaigns which are not easily substitutable for other media is significant.

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[88] See, for example, Appendix L on [✄].

[89] Responses related to these agencies' ten largest radio advertisers. These advertisers spent slightly more on radio than the average for these agencies' advertisers, see Appendix J.

[90] These figures are weighted by agency radio spending (see Appendix J).

Competition between radio stations

6.55 In light of our provisional view in paragraph 6.54 on the limits of the competitive constraint from other media, we consider the way radio stations compete for advertisers, and the factors which influence how closely they compete in particular circumstances, is important for our assessment of the merger. We consider these factors in this section.

6.56 We were told by competitors and advertisers that how radio stations compete with each other for advertising depends on a number of factors. The main factors advertisers take into account when choosing between radio stations include the geographic coverage and the reach and relative position of the station in the market; the demographics of the target audience; and the frequency (AM or FM). We consider the available evidence on each of these factors and assess the implications of their relative importance for our competitive assessment.

Audience and geographic coverage

6.57 There was a strong consensus in the views we received from the merger parties and third parties that the ability of a radio station to attract listeners was a key factor in its ability to attract advertisers. Therefore, generally, stations with large listener shares in a particular region are more attractive to advertisers than those which have a relatively small listener base.

6.58 At a local and regional level, radio stations and advertisers told us that a station’s transmission area relative to the catchment area of the advertiser’s business was the most important factor when considering radio. We were told that advertisers want to minimize ‘wasted’ advertising; that is, advertising heard by listeners outside the area from which the advertiser’s customers are likely to travel. When considering radio, advertisers take into account the audience of radio stations in their target area with the aim of reaching as many potential customers as possible.

6.59 We were told that radio stations may be able to offer advertising to more targeted areas by carrying different advertisements on separate transmitters. In this way, the audience of a regional station may hear the same programme content but different advertisements depending on the transmitter from which they are picking up the signal. This enables advertisers to target their advertisements at a more narrowly defined local area.

6.60 The area available to advertisers may therefore affect the extent to which radio stations compete even where they overlap in the same area. For example, the parties argued that Real North Wales did not compete closely with Heart North Wales because Heart North Wales sold advertising on four separate transmitters to local advertisers, whereas Real sold to those wishing to reach potential customers across the whole region.

6.61 There are only three national commercial analogue radio licences and so advertisers wishing to broadcast their advertisements across the country, or an area covering more than one local radio station, will often need to buy advertising airtime on a number of different stations. Agencies and non-contracted advertisers buying nationally and regionally usually buy multiple stations through radio sales houses which exist in part to make it easier for advertisers to extend their reach without having to buy separately from each station.

Audience demographics

6.62 Although we received largely consistent evidence on the importance of geography to advertisers, we received different views on the extent to which the target audience demographic of particular radio stations, principally the age and sex of listeners, is important to advertisers. Global told us that agencies and advertisers took demographics into consideration both in deciding the media mix and in choosing the most appropriate radio stations. In support of this view, the parties submitted their own and other stations' marketing material showing how campaigns are marketed both to contracted and non-contracted customers on the basis of target demographics.

6.63 National agencies and advertisers told us that demographics played a role in deciding the media mix and, once the decision to use radio had been taken, demographics were likely to be a major factor in selecting the radio station that was most suitable to the objectives of the campaign. Even when the campaign as a whole targeted a broader audience rather than a specific demographic, the advertiser would take demographics into consideration, for example, by booking a combination of radio stations that had complementary demographics in order to achieve the required audience.

6.64 Smaller regional agencies which buy non-contracted advertising on behalf of advertisers also said that demographics were an important factor in deciding on the most appropriate media mix and identifying the most appropriate radio stations for an individual campaign. Similarly, advertisers buying directly from radio stations referred to the target audience of radio stations as a factor in their advertising choices.[91]

6.65 Some competitors argued that the demographic targeted by a radio station was far less relevant for local advertisers though there was a range of views. For example, Bauer told us that 85 per cent of its total local revenues were achieved from the

[91] The parties' survey did not ask direct advertisers about how they took demographics, or other factors, into account when make advertising choices. Direct advertisers, who contacted the OFT, said that they targeted their advertising at stations which reached their customers taking into account listeners' age and whether they were likely to have children.

purchase of advertising without reference to a specific demographic. It did note though that a station's target audience was a factor for advertisers but that local advertisers potentially took this in to account in a more intuitive rather than systematic way.[92] This is broadly consistent with the views of the parties which told us that, while local advertisers might not request audience data, they had a feel for the radio brand that would better fit with their campaign. Orion said that the target demographic of a station was one of the criteria used by local advertisers in their decision-making process. By contrast, Town and Country Broadcasting said that audience demographic was rarely a consideration as the overwhelming majority of advertisers wanted to reach as many people as possible.

The parties' views on competition between their stations

6.66 The parties argued that their stations were not close competitors either because they covered different geographic areas or, where they did overlap, their stations targeted significantly different demographics. For example, the parties argued that Capital targeted a younger audience than either Real or Smooth. At a national level, the parties submitted that the combined portfolios of Global and RSL would offer agencies four complementary network propositions targeted at distinct demographic audiences: Heart combined with Real; Smooth/Gold; Capital; and Classic FM.

6.67 The parties also point to the results of the surveys and their own analysis as indicative that their stations are not close competitors at a local and regional level. The parties' analysis of the results from the existing customer survey shows that, on average, less than 5 per cent of respondents indicated that they would consider using a radio station owned by the other merging party. Similarly, the parties said that less than 8 per cent of respondents to the lost opportunities survey used RSL after

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[92] Bauer said that, for local advertisers, judgements about the radio station's audience might be based on the advertiser's personal experience rather than, for example, RAJAR data.

declining Global for a campaign. The parties said that their analysis of NMR data showed that on average 18 per cent of advertisers leaving Global or RSL used the other party during the period 2009 to 2011 and a higher percentage used local press.

Our assessment of competition between radio stations

6.68 The evidence we have received suggests that there are a number of factors which inform potential advertisers' choices between radio stations. We consider the implications of the evidence on these factors for our assessment of the radio options available in particular areas.

6.69 We note that a key aim of advertisers is to reach as many potential customers in the targeted area as possible. Therefore, when considering the available radio options in individual areas we take into account the relative strength of the alternative stations. We measure this primarily by their share of listeners in an area but also take into account their share of advertising revenue. Alternative stations with a low market share of listeners, and a low share of advertising revenue, would provide a significantly weaker constraint than those that reach a large share of listeners and are better placed to attract advertisers.[93]

6.70 The geographic area to which a station broadcasts is likely to be an important factor in how radio stations compete but its significance in each case may vary. For example, where the TSAs of radio stations do not overlap they will not be substitutes for local advertisers targeting a particular area. Stations with limited overlaps will tend to be weak substitutes for local advertisers, though they could be substitutes at the

[93] We were told that stations broadcasting on AM were less attractive to listeners and therefore advertisers than those broadcasting on FM. This factor in the relative strength of available radio options would therefore be taken into account by our assessment of the listener and advertising revenue shares.

margin for local and regional advertisers, who are looking to reach customers within an area that is wider than the TSA of either station.[94]

6.71 The extent to which stations compete in individual areas where they overlap may also be affected by the ability of some stations to split their signals and transmit different advertisements on different transmitters during the same programming output.

6.72 Our provisional view is that where the geographic coverage of overlapping radio stations is very different we consider these stations to be weaker substitutes. Where stations overlap but one station covers a much wider area, the closeness of competition between the two stations will be affected by advertisers' ability to target the overlapping area by buying advertising on a single transmitter from the larger station. We therefore take into account the extent to which stations overlap and, where TSAs differ significantly, whether advertising is sold in similar areas.[95]

6.73 Although we note the views of some competitors that demographics are less important for local advertisers our provisional view is that the demographics of individual stations should be taken into account when considering the competitive effects of the merger. Despite the different views on the relative importance of demographics, there was broadly consistent evidence that most advertisers take the radio station's target audience into account at some level. This may range from a detailed analysis of audience data by media planners to more intuitive views by local advertisers on the type of audience that a station reaches and how that relates to their target customers.

[94] Similarly, non-overlapping stations may be substitutes at the margin for regional and national advertisers looking to reach as many people as possible over a broad distribution of locations.
[95] Where possible, we take into account the proportions of advertising revenue sold by each company in the overlap area.

6.74 We note that audience data, as measured by RAJAR, is the most often cited source for considering the characteristics of a station's audience which advertisers will take into account.[96] This data may suggest demographic characteristics which differ slightly from those stipulated in the licence format or from the listeners a station may be targeting. We therefore consider recorded data on listener demographics to be the appropriate indicator of the demographic reach of a station.

6.75 We provisionally conclude therefore that demographics should be taken into account when considering the available radio options. We consider that the greater the divergence between stations' audience, as measured by RAJAR, the weaker they are as substitutes for each other. Therefore, in considering areas where the parties' stations overlap we would consider that Smooth, which reaches an older audience, would be a relatively weaker substitute for Capital, which reaches a younger audience, though we note nevertheless that there is some overlap in the age of the audiences.[97] We note that many commercial radio stations target and reach a main-stream audience of 25 to 44 year olds and such stations are likely to be substitutable to a reasonable extent for stations attracting listeners at either end of the age range.[98]

6.76 We also consider that the evidence overall shows the parties do compete for advertisers. Given the results of our price-concentration analysis, that competition between radio stations affects the price of radio advertising, we consider that where the parties' stations overlap in the ways described above, these stations compete.

[96] RAJAR data includes information on the age, sex and socio-economic profile of listeners.
[97] About 70 per cent of Smooth's adult audience is over 45, compared with 20 per cent for Capital. About 60 per cent of Capital's adult audience is under 35 compared with 15 per cent for Smooth. Source: RAJAR national figures for 12 months to Q3 2012.
[98] We note the decreasing number of radio listeners in the 15 to 24 age group (see paragraph 2.24).

6.77 Also, even if we were to disregard our concerns about the robustness of the parties' surveys, we consider the results indicate that there is competition between them and the parties' analysis would underestimate the proportion of non-contracted customers likely to switch between their stations. For example, we note that, of respondents to the parties' lost opportunities survey, 12 per cent of those who had used Global at some point in the last three years, said that they had used RSL stations instead of the proposal from Global. Based on the parties' existing customers survey, we estimate the proportion of respondents' non-contracted revenue, accounted for by customers with one of the other party's stations as their closest alternative, to be between 9 and 11 per cent.[99] These results are also aggregates across each area: we would expect the proportions to be higher in areas where the parties' stations are closer substitutes and lower in other areas where the parties' stations are more differentiated by demographics and geography.

6.78 The responses of contracted agencies to our questionnaire also suggest the parties' stations are substitutes though, for these advertisers, Global appears to be a greater constraint on RSL than vice versa.[100] Given that we asked agencies about their ten largest radio advertisers, this is likely to involve national campaigns for which we would expect RSL, as a smaller group covering a limited part of the UK, to be a less good alternative to Global than the other way round.

Provisional conclusions on competition between radio stations

6.79 We provisionally conclude that, on the basis of the evidence summarized above, competition between radio stations, and between the parties' stations, is both relevant and important for our analysis. This is particularly the case because of the

[99] The different ways we and the parties calculate these proportions are set out in Appendix G.
[100] See Appendix J.

way negotiations take place between radio stations and their customers (see paragraphs 6.82 to 6.85).

6.80 In assessing the extent to which the parties are close competitors in individual areas we consider the factors set out in paragraphs 6.69 to 6.75. Given that we have provisionally concluded that the parties' stations are not close competitors for regional and local advertisers in areas where they do not overlap geographically, we analyse in our competitive assessment the areas where the TSAs of the parties' stations overlap. These overlap areas are: Central Scotland; North Wales; South Wales; the North-West; the North-East; Yorkshire; the East Midlands; the West Midlands; and London. Within these regions the extent of the overlap between the parties, and between each party's stations and those of competitors, varies and we consider the implications of these factors in our analysis of the competitive effects of the acquisition in the overlap areas.

6.81 We note that the types of campaigns bought by contracted agencies, and the way that they are bought, mean the implications of the extent to which the stations are seen as alternatives will be different compared with non-contracted advertising. We consider the particular features of contracted advertising and the way competition works in that segment in Section 7.

Pricing and negotiations

6.82 In this section we consider how prices for radio advertising are set and the implications this has for assessing the likely impact on advertisers of any loss of competition.

How prices are set

6.83 We were told that prices for both airtime and S&P were the outcome of bilateral bargaining processes. For contracted airtime, the negotiations take place between agencies and radio groups at the time of contract renewal and the prices agreed are fixed for the duration of the contract. For non-contracted airtime, the negotiations take place on a campaign-by-campaign basis between the advertiser, or a smaller agency on the advertiser's behalf, and the radio station. Prices are also negotiated for S&P and will take into account the creative element of the offer and the nature of the promotion.

6.84 Prices are not published and there is therefore little, if any, transparency of prices between customers. Radio stations usually have rate cards which list a price for a 30-second airtime slot based on either a cost per slot or a CPT basis. There are standard adjustments for the length of the advertisement, and for the time of day, week and year.[101] In non-contracted advertising these rate cards are used internally as the basis for campaign-by-campaign negotiations with advertisers. Sales teams will generally have authority to negotiate and offer discounts from the rate card up to a certain level beyond which senior manager approval is needed. In contracted advertising, the contract lists prices and standard adjustments for each station covered.[102]

6.85 Advertisers' preferences, and what they can buy, differ such that the product being bought is differentiated. For example, slots on a primarily speech-based commercial radio station will differ from those on a niche music-based station in terms of the primary demographic group it will reach. Similarly, advertisers may be advertising for

[101] Appendix K describes rate cards in more detail and compares Global's rate-card prices with its average achieved prices.
[102] [✂]

different reasons in different campaigns. For example, campaigns may aim to increase brand awareness or to encourage consumers to buy a particular product.

6.86 In the type of bilateral negotiations we describe above, prices are affected by customers' next best alternative or 'outside option'. In economic terms, the outside option is the next best alternative or business proposition of customers in case their negotiations with a given supplier break down. Intuitively, customers with a good outside option can negotiate a good deal because they have a credible and favourable alternative to choose from if the negotiations break down. As such, they can 'leave the negotiating table'. In contrast, customers with no outside option, or a poor one, will have to accept a worse deal because their negotiating position is weak.

Implications of the negotiating framework for our assessment of the merger

Views of the parties

6.87 Global told us that it and RSL did not know the outside options of their non-contracted customers and therefore could not price discriminate against those with poor alternatives. Global also drew our attention to the small proportion of its non-contracted customers who were repeat customers and to the fact that on average it did not charge its repeat customers higher prices.[103] The parties said that around [✂] to [✂] per cent of their non-contracted advertisers, accounting for around [✂] to [✂] per cent of non-contracted revenues, persistently used radio stations over a four-year period. These advertisers generally paid the same or less for airtime compared with other advertisers, including new advertisers. In Global's view, this demonstrated that advertisers continued to use radio because they obtained attractive pricing offers.[104]

[103] A repeat customer is defined by the parties as one who advertises on a particular station at least once in two consecutive years. A 'persistent' customer is defined as one who advertises on a particular station at least once in three or four consecutive years.
[104] These points were based on the parties' analysis of whether non-contracted customers to Capital, Heart, Real and Smooth in 2009 continued to use these stations in the following three years.

6.88 In considering the implications of the way in which radio advertising is bought and sold for contracted advertising, and S&P bought through the London-based agencies, Global said that radio represented only 3 per cent of the total advertising market. It argued that these agencies were sophisticated buyers that could switch their spending to other media. The parties also argued that the agencies had a strong negotiating position as a result of this non-reliance on radio.

6.89 In support of this argument, Global pointed to [✂] separate occasions where media buyers had temporarily withdrawn or reduced spending on its networks during contract negotiations to secure more desirable terms. These withdrawals of expenditure occurred [✂].

6.90 Global also argued that national S&P was purchased by media buying groups with substantial countervailing power in this segment and many options at their disposal for any given campaign.

Third party views

6.91 The parties' and other radio competitors' descriptions of the negotiation process with non-contracted advertisers were broadly consistent with each other. Radio stations described approaching potential advertisers with a proposal and negotiating on the detail of the offer with discounts for factors such as the amount of advertising bought and incentives for new customers. These descriptions suggested at least some visibility of advertisers' alternatives and the impact they might have on negotiations. For example, Bauer said that in circumstances where another commercial radio station was offering a lower price it would be necessary for it to consider whether a more competitive price was appropriate. Similarly, Orion noted that potential advertisers would often be talking to other media owners at the same time and that it was therefore important that its pricing was similar to that of competitors.

6.92 On their bargaining strength relative to Global, the majority of the ten agencies which responded to us noted that the explicit or implicit threat of switching advertising to other radio stations or media was a common occurrence in annual contract negotiations. However, agencies also noted that the credibility of threats was variable and depended on the availability for individual campaigns of suitable alternatives in particular regions. Five agencies noted what they saw as the dominance of Global in particular regions which reduced their bargaining power. Some suggested that Global was aware of locations where it was the only media option available to deliver quick, cost-effective reach on a city-by-city basis.

Our assessment

6.93 We note the parties' submission in relation to non-contracted advertising that they did not know the alternatives of non-contracted advertisers and therefore could not price discriminate. We accept that the nature of the negotiating framework and the lack of published price lists mean that full visibility of an advertiser's alternatives is unlikely. Nevertheless, there is evidence that in some cases, radio stations will be aware of the other options being considered by advertisers and their relative strength. For example, Global told us at our hearing that during negotiations a customer might sometimes tell the radio company of a better offer from a competitor.[105] Similarly, competitors suggested the other options being considered by advertisers were sometimes explicit in the negotiations.

6.94 Furthermore, we do not consider that, in a negotiation, the seller needs to know the alternatives of the buyer to increase prices. A customer's alternatives, and in particular the next best alternative, remain relevant to the outcome of negotiations even if the customer does not reveal to the seller what they are.

[105] This was also supported by the evidence we received from non-contracted agencies.

6.95 This dynamic is evident when considering the two parties involved in the negotiations for non-contracted advertising and how they interact. Radio stations do not adhere to a list price and employ a sales force that engages with existing and potential advertisers on a continuing basis. A key role of such sales forces is to enable radio companies to gain and, if possible, retain customers without having to offer excessively low prices. If a radio company simply adhered to a price list with published discounts for loyalty or volume, for example, it could lose customers to competitors who undercut the price list by a relatively small amount.

6.96 Other evidence from the parties supports the view that the substantial cost of these sales forces is justified on the basis that sales staff have at least some success in having a sense of the price at which a deal can be closed.[106] This evidence also illustrates a high degree of interaction between the radio station and advertiser and the sales team's often detailed knowledge of the advertiser's business and preferences.

6.97 In negotiating with these sales teams, the strength of the advertiser's bargaining position, and the price he or she is likely to receive all other things being equal, will be affected by the relative strength of the alternative options. An advertiser's alternatives will tend to affect the price that the advertiser is able to negotiate, even if the radio company does not know the advertiser's precise alternatives.

6.98 The alternatives available to a customer, in this case a prospective advertiser, are not the only factors affecting the outcome of negotiations over the price for a particular slot or an S&P brief. Price is also likely to be affected by the importance of the advertiser or agency to the seller and the negotiating skills each party to the negotiations deploys at the time.

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[106] Other evidence includes the existence of discretionary customer-specific discounts and business documents supplied by Global and RSL.

6.99 We consider that the evidence referred to in paragraph 6.87 is of limited relevance to our assessment of the merger's impact on non-contracted advertisers.[107] First, the parties' submission is based on the assumption that it needs to know which customers have weak alternatives to negotiate higher prices. We do not agree with this assumption for the reasons set out above. Second, neither a low proportion of 'persistent' customers nor evidence that 'persistent' customers do not pay higher prices than average alters the point that a merger can be expected to affect prices paid to the extent it reduces customers' alternatives.

6.100 The implications of the negotiating framework for prices for contracted advertising and national S&P may be different. As we note in relation to non-contracted advertising, price is also likely to be affected by the importance of the advertiser to the seller. The large media buying agencies are significant buyers of all media advertising of which radio is a relatively small part. Four of these media buying agencies account for over [✂] per cent of Global's revenue from contracted advertising.

6.101 The evidence from these agencies suggests that there are some limitations to their negotiating strength relative to the parties. For example, we note their comments that other media are not always a substitute for radio and that radio's unique characteristics, and synergies with other media, result in it being bought as a complement to other media. Similarly, they said that threats to switch away from radio on a particular campaign are not always possible.

[107] In relation to this evidence, we also note that Global's analysis of 'persistent' customers did not control for customer size. A larger customer would be expected to carry out larger advertising campaigns, covering more media, and to carry them out more often than would a smaller customer. Larger customers are therefore more likely to advertise on a particular station every year, ie to be 'persistent' customers. Furthermore, if larger customers pay lower prices, this could also be relevant to a comparison of the price paid by 'persistent' customers with the prices paid by others. In this context, we note that [✂].

6.102 Nevertheless, prices for airtime are negotiated with agencies on the renewal of contracts rather than on a campaign-by-campaign basis and it is the relative bargaining strength of the agencies in these negotiations that is particularly significant. In this context we note the agencies' ability to threaten to withdraw or reduce spending with the parties.

6.103 The evidence suggests that the largest agencies are able to make a credible threat to withdraw a significant amount of advertising from Global. Agencies are able to do this by engaging with their clients, in advance of contract renewal, to gain their support for moving their advertising to alternative radio stations or alternative media instead of Global's stations.

6.104 We considered carefully the [✄] occasions on which Global said that agencies had withdrawn spending from Global to put pressure on Global to reduce or remove proposed price increases during contract negotiations. Although there is significant fluctuation in the media buying groups' monthly spend, we consider that this evidence suggests the media agencies concerned were successful in persuading their clients to reduce spending on Global stations.

6.105 We also note that the outcome of the eventual negotiations included some of the original proposals by Global, although with the inclusion of better terms elsewhere at least partially to compensate for this. Thus, the agencies appear to have obtained a better deal as a result of withdrawing advertising from Global stations and the RSL [✄] stations sold by Global.

6.106 We therefore agree that the evidence supports the parties' argument about the negotiating strength of the agencies in relation to contracted advertising, at least in relation to the largest media buying agencies. It shows that the largest media buying agencies are able credibly to threaten to withdraw spending temporarily from Global in the context of annual contract negotiations, providing a non-negligible amount of damage to Global's annual revenues. We consider the relevance of the negotiating strength of the agencies for our assessment of the effect of the merger on contracted advertising and national S&P in paragraphs 7.113 and 7.114.

Provisional conclusions on the implications of the negotiating framework

6.107 We provisionally conclude that the implications of the bargaining framework for non-contracted advertisers buying airtime and S&P are that, subject to any countervailing factors, we would expect them to face higher prices where one of their best alternatives has been removed. In addition, customers with a number of good alternatives are likely to be in a better negotiating position than customers with only one because they can play off more than one supplier. Our provisional view is that it is not necessary for a radio station to know an advertiser's alternatives for prices to increase for those advertisers with weak alternative options.

6.108 We consider that the evidence submitted by the parties supports their argument that the large media buying agencies have a strong negotiating position relative to radio stations and groups, particularly in relation to airtime. We take into account the implications of this in our assessment of the effects of the merger on contracted advertising and national S&P.

Provisional conclusions on pre-merger competition

6.109 In summary, our analysis of the evidence on pre-merger competition leads us to the following provisional conclusions:

(a) Our provisional view is that advertisers use multiple types of media to meet their advertising needs and that other media may be bought as a complement to radio or as a substitute for it. The parties' surveys and the responses of contracted

agencies are consistent with the view that there are campaigns for which radio advertisers cannot easily substitute for other media. Our price-concentration analysis shows that the presence of good radio alternatives affects price and therefore that the number of such campaigns which are not easily substitutable for other media is significant (paragraph 6.54).

(b) The parties compete for advertisers. We also note that the way radio stations compete is affected by a number of factors and the extent to which radio stations will be good alternatives to each other will depend on the interaction of listener reach, geographic overlap and the demographic reached by the stations (paragraphs 6.79 to 6.81).

(c) Prices for radio airtime and S&P are a product of bilateral negotiations. Price is therefore likely to be affected by the quality of the alternatives available to advertisers and the relative bargaining strength of the advertiser and the radio station or group (paragraphs 6.107 and 6.108).

6.110 In the following section we assess the competitive effects of the merger in light of these provisional conclusions. We note that the implications of these provisional conclusions for our competitive assessment may be different for non-contracted advertisers buying airtime and mainly local and regional S&P and contracted advertisers buying airtime and mainly national S&P. We therefore consider these advertisers separately in our competitive assessment.

7. Assessment of the competitive effects of the merger

7.1 In this section we analyse the competitive effects of the merger in light of our provisional conclusions about the nature and extent of pre-merger competition in Section 6. Our assessment is divided into six sections.

7.2 We first examine the areas where the parties' stations overlap, taking into account the factors we identify in paragraphs 6.68 to 6.75 as affecting the extent to which radio stations compete. In doing so, we reach provisional conclusions on the areas in which, subject to any countervailing factors, we consider that the merger is likely to have a significant effect on competition.

7.3 Issues highlighted in our analysis of overlap areas may be relevant to all advertisers who may wish to buy airtime or S&P at a local or regional level. However, we note that there are particular features of contracted advertising which may affect the impact of the merger on advertisers in this segment. In that context, we consider specifically the effect of the merger compared with the pre-merger Agreement. We also consider the impact of the merger on possible future competition absent the Agreement.

7.4 Third, we then analyse the potential effects on advertisers in the event, as suggested by some third parties, that Global creates new quasi-national brands as a result of the merger. We assess the arguments and evidence of competitors that the consolidation of a number of national, or quasi-national brands, within one radio group would distort competition.

7.5 Fourth, we consider submissions that suggest Global's influence over a number of industry bodies will change as a result of the merger and that the effect of this change will adversely affect competition. Fifth, we consider the potential rivalry-enhancing efficiencies which the parties argue would result from the merger. Sixth, we consider whether entry or expansion in the radio market might prevent any potential SLC.

The impact of the merger on competition in the overlap areas

7.6 In Section 6, we provisionally found that the parties' stations are next best alternatives to each other for some customers; and that they compete with each other. We now assess the extent of the loss of competition resulting from the merger in the overlap areas. In doing so, we adopt a framework based on our provisional conclusions in Section 6 about the three primary factors advertisers take into account when choosing radio stations: the geographic overlap of stations; the relative strength of competing radio stations; and the demographics reached by radio stations. We discuss below each of these factors and their relative importance in assessing the loss of competition in each area.

7.7 In general, we consider geographic overlap to be the most important factor when considering the competition that is likely to be lost in a particular area as a result of the merger. In each area we consider the geographic overlap of stations based on their TSAs taking into account, where available, the proportion of advertising split between individual transmitters within a TSA. Where the geographic coverage of overlapping radio stations is very different we consider these stations to be weaker substitutes. Where stations overlap but one station covers a much wider area, the closeness of competition between the two stations will depend on advertisers' ability to target the overlapping area by buying advertising on a single transmitter from the larger station.

7.8 We consider in each overlap area the relative strength of competing radio stations. In doing so, we note the results of our price-concentration analysis that showed that non-contracted advertisers in areas with relatively weak radio alternatives generally face higher prices. Our primary measure for assessing the relative strength of the parties and competitors in each overlap area is the same as that adopted in our price-concentration analysis: the share of listeners. We also take into account the share of advertising revenue.[108] We consider that stations with a low market share of listeners measured by share of total listening hours, and a low share of advertising revenue, would provide a significantly weaker outside option than those that reach a large share of listeners and can attract advertisers.

7.9 We note that, in a number of overlap areas, the effect of the merger will be to reduce the number of good radio alternatives from three to two. We do not approach these areas in a mechanistic way. Nevertheless, in the light of our price-concentration analysis, we would, in general, expect the reduction in the number of good radio alternatives in an area from three to two to have an effect on advertisers' bargaining power.

7.10 As we note in paragraph 6.75, although it will vary from campaign to campaign, the demographics reached by radio stations is a factor that advertisers often take into account. In general, the greater the divergence between stations' target audience, the weaker they are as substitutes for each other. We consider this factor to be less important than geographic overlap and the relative strength of competing stations when assessing the likely loss of competition in an overlap area. For example, in areas where there are good radio alternatives in terms of geography and share of listeners, we would attach less weight to the demographics reached by the parties' stations.

7.11 Our detailed analysis of each of the overlap areas is contained in Appendix L. We summarize below our provisional conclusions in relation to each area and how these conclusions relate to the framework in paragraphs 7.6 to 7.10 and the relevant evidence. Our provisional conclusions in each area are relevant, in particular, to non-

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[108] We use share of listening hours rather than revenue as our primary measure of market share because data on listening hours is available from a single source (RAJAR) on the same basis for all companies whereas data on revenue may be affected by differences in accounting practices between companies.

contracted airtime and S&P bought by direct advertisers and non-contracted agencies.

7.12 Table 3 summarizes the data for each of the overlap regions. This is discussed in more detail in the individual sections below which also consider the loss of rivalry in smaller parts of these overlap areas such as Glasgow and Manchester. Appendix L summarizes all the data and evidence we have taken into consideration in our analysis of the overlap areas.

TABLE 3 **Merger parties' post-merger shares in listeners, non-contracted revenue and total revenue in UK regions**

per cent

Station	*Listening hours*		*Non-contracted revenue*		*Total revenue*	
	Share	*Increment*	*Share*	*Increment*	*Share*	*Increment*
London	57	3	[40–49]	[5–9]	[50–59]	[0–4]
East Midlands	67	27	[60–69]	[10–19]	[60–69]	[10–19]
West Midlands	56	17	[30–39]	[10–19]	[50–59]	[5–9]
South Wales	46	16	[40–49]	[10–19]	[40–49]	[20–29]
North Wales	98	17	[70–79]	[10–19]	[80–89]	[10–19]
Yorkshire, Humberside and Lincolnshire	41	13	[30–39]	[10–19]	[30–39]	[10–19]
North-West	51	16	[40–49]	[10–19]	[30–39]	[10–19]
North-East	56	24	[50–59]	[20–29]	[50–59]	[20–29]
Central Scotland	52	15	[50–59]	[10–19]	[40–49]	[10–19]

Source: CC calculations; listening hours: RAJAR 2011Q4–2012Q3; revenue data: Global, RSL, third parties, Ofcom.

London

Available stations and geographic overlap

7.13 Global has seven stations in London: Heart, LBC 97.3, LBC News (AM), Capital, Choice, Xfm and Gold (AM). RSL has one station: Smooth. The main competitor is Bauer with Magic and Kiss. The other main stations are Absolute Radio and Sunrise. Most stations in London have an identical TSA and therefore overlap geographically. Stations do not split their transmitters and therefore there is no sub-regional competition for advertisers.

Share of listening hours and revenue

7.14 Global's share of listening hours was relatively high pre-merger at 54 per cent though the increment following the merger will be small. This is because Smooth is a relatively weak competitor in London with only 3 per cent of listener hours. The parties' combined share of non-contracted advertising revenue in London post-merger would be [40–49] per cent with an increment of [5–9] per cent.

Strength of competitor stations and demographics

7.15 The parties' main competitors for listeners post-merger would be Bauer (32 per cent). Bauer, Absolute and Sunrise account for [40–49] per cent of non-contracted advertising revenue.

Our assessment

7.16 There are a wide range of commercial stations in London targeting most demographics and there are broadly alternatives to the parties' stations for each demographic. We do not consider the loss of Smooth in London to be significant in reducing the alternatives available to advertisers because it has a low listener and advertising revenue share. Also, there are other good alternative stations available in terms of geography and demographics.

Provisional conclusion

7.17 We therefore provisionally conclude that there are unlikely to be significant adverse effects in London as a result of the merger.

East Midlands

Available stations and geographic overlap

7.18 Global has two stations in the East Midlands: Capital, which can split its advertising across three transmitters (Nottingham, Leicester, and Derby and Derbyshire); and an

AM station, Gold. RSL has one station: Smooth. The main competitor across the region is Orion with its station Gem 106. There are also three smaller stations which broadcast to individual areas within the East Midlands: Quidem which overlaps in the area around Loughborough; Radio Mansfield; and an AM station, Sabras Sound in Leicester.

Share of listening hours and revenue

7.19 The parties' share of listening hours across the region post-merger would be 67 per cent with an increment of 27 per cent from the addition of Smooth. Its share of non-contracted revenue would increase from [40–49] to [60–69] per cent.

Strength of competitor stations and demographics

7.20 The main competitor, Orion, has 28 per cent of the listening hours in the region and [20–29] per cent of non-contracted revenue. The other stations have a combined listener share of around 5 per cent.

7.21 Global's Gold AM station reaches a similar age group (average age 51) to RSL's Smooth (average age 49) though both reach an older audience than Global's main station, Capital (average age 34). Each of these stations attracts slightly more female listeners than male apart from Gold.

Our assessment

7.22 We consider that in this region the effect of the merger will reduce the number of good radio alternatives from three to two with Orion's Gem 106 being the only radio alternative to the parties for most advertisers. While we note the parties' arguments that Capital and Smooth are not strong competitors because they target very different demographics and that Capital offers single transmitters in three cities as well as a regional offer, we consider that the concentration of radio station ownership in the

East Midlands will significantly reduce the options for non-contracted advertisers. We also note that two of the parties' stations in the East Midlands (Gold and Smooth) reach similar demographics.

7.23 The only significant competitor to the parties has [✂] of the combined non-contracted revenue of the parties and has fewer than 30 per cent of listener hours, around half of the parties' combined share. As such, we do not consider that it would be able to offer a strong alternative radio option to the parties' combined offer.

7.24 We consider that the parties' stations overlap significantly in geography and that the only radio alternative is unlikely to have the required share of listeners to be a good alternative for all radio advertisers. We do not consider that the difference in the demographics reached by two of the stations that will be brought under the same ownership by the merger (Capital and Smooth) is sufficient to offset our concerns about the reduction in radio alternatives in the East Midlands.

Provisional conclusion

7.25 We therefore provisionally conclude that, in the absence of any countervailing factors, the merger will lead to significant adverse effects in the East Midlands.

West Midlands

Available stations and geographic overlap

7.26 Global has two stations in the West Midlands: Heart, which covers the whole area, and Capital Birmingham which covers part of the region including Birmingham and the surrounding area. RSL has Smooth, which has a very similar TSA to Heart and only offers advertising across the whole region.

7.27 Bauer's Kerrang! has a similar TSA to Smooth and Heart. Orion's Free Radio network of four FM and three AM stations covers a similar, though wider, area than Heart and Smooth. UTV has Signal 107 which broadcasts to the west of the region and includes Wolverhampton. Quidem has four local Touch stations (Touch Staffordshire, Touch Coventry, Touch Stratford and Touch Warwick) and Rugby FM. Independent Radio XL is also present.

Share of listening hours and revenue

7.28 The parties' share of listening hours across the region post-merger would be 56 per cent with an increment of 17 per cent from the addition of Smooth. Its share of non-contracted revenue would increase from [20–29] to [30–39] per cent.

Strength of competitor stations and demographics

7.29 The main competitor, Orion, has 32 per cent of the listening hours in the region and a [40–49] per cent share of non-contracted revenue. Bauer's Kerrang! covers a similar area to the Smooth and Heart TSA. It has 8 per cent of listeners [and 0–9] per cent of non-contracted revenues [✄]. There are other competitors covering parts of the region covered by the Heart and Smooth TSAs, in particular: Quidem's Touch network has 4 per cent of listeners and [10–19] per cent of non-contracted revenue.

7.30 Orion reaches a very similar demographic to Heart across the region. Kerrang! reaches a similar age group to Capital but it has more male listeners and does not appear to be a strong competitor for advertising revenue. Quidem's stations attract older listeners similar to Smooth.

Our assessment

7.31 Applying our framework to Birmingham, we note that Smooth covers a wider area than Capital and advertisers who want to advertise in Birmingham only would face significant wastage by advertising on Smooth. We also note that Smooth and Capital reach different demographics. We therefore do not consider Smooth to be a close competitor to Capital for advertisers in Birmingham.

7.32 Considering the region more widely, the number of radio companies broadcasting across the area would reduce from four to three with the competitors to the merged company being Orion's network of stations and Bauer's Kerrang! station. Orion's network of stations will remain as a strong competitor to the merged company and Bauer's Kerrang! station will remain as an additional smaller constraint though we note its appeal is to a younger and predominantly male audience. There are also additional options offered by Quidem and UTV in parts of the region.

7.33 Therefore, there will be other radio options for advertisers in the West Midlands post-merger and at least one of these, Orion, will have significant shares of listeners and advertising revenue. Other stations owned by Bauer, Quidem and UTV also offer alternatives for advertisers.

Provisional conclusion

7.34 We provisionally conclude that the merger will not lead to significant adverse effects in Birmingham or the West Midlands.

Cardiff and South Wales

Available stations and geographic overlap

7.35 Global has two stations broadcasting in Cardiff: Capital (FM) and Gold (AM). RSL's Real station broadcasts across South Wales and sells advertising to the whole region or separately for the Cardiff area where the two parties overlap.

7.36 The area of overlap between the parties in South Wales is restricted to Cardiff and therefore the effect of the merger is most significant in this area. The alternatives available to advertisers in Cardiff are Bauer's Kiss station and Town and Country's Nation station. However, the main part of Kiss's broadcast area is in Bristol and the South-West. Nation broadcasts across Cardiff and Swansea to the west and sells advertising in Cardiff only on a separate transmitter.

Share of listening hours and revenue

7.37 The parties' share of listening hours in Cardiff post-merger would be 53 per cent with an increment of 26 per cent. Its share of non-contracted revenue would be higher, increasing from [60–69] to [80–89] per cent.

Strength of competitor stations and demographics

7.38 Kiss is the parties' main competitor for listeners in Cardiff. However, Kiss does not offer advertisers the option of only targeting the Cardiff area and the majority of its listeners are outside the Capital TSA. Nation does offer advertising on a Cardiff transmitter and is therefore the only competitor to the parties that offers advertisers the choice of a Cardiff-only advertising campaign. While its current share of Cardiff-only campaigns (fewer than [5–9] per cent) may grow, Nation achieves less than one-sixth of the listening hours that the parties achieve in the Cardiff area.

7.39 Real reaches a slightly older audience than Capital: the average age of Capital listeners is 34 and that of Real listeners is 42.

Our assessment

7.40 The parties overlap in Cardiff and are close competitors in terms of geography, with Real selling on a Cardiff-only transmitter. Most significantly there is no strong radio alternative for Cardiff advertisers. Nation can offer split transmission to Cardiff but it attracts substantially fewer listeners than the parties' stations. The merger will effectively therefore see a reduction from two main radio alternatives to one.

Provisional conclusion

7.41 We therefore provisionally conclude that, in the absence of any countervailing factors, the merger will lead to significant adverse effects in Cardiff.

North Wales

Available stations and geographic overlap

7.42 The Global stations in North Wales are Gold AM and Heart North West and Wales. The latter broadcasts across four transmitters and sells advertising separately on each: Anglesey and Gwynedd; the North Wales coast; Wrexham and Chester; and the Wirral. RSL operates Real North Wales which broadcasts across the whole of the North Wales region and does not sell advertising on separate transmitters.

7.43 Global highlights three competitors in North Wales: Radio Ceredigion owned by Town and Country Broadcasting which broadcasts in West Wales and overlaps slightly with Real North Wales in the south-west part of Real's TSA; and the independent stations Radio Hafren and Radio Dee. The geographic overlaps with these competitors are not significant.

Share of listening hours and revenue

7.44 The parties' stations have a combined 98 per cent share of listener hours and [70–80] per cent of non-contracted revenue. Heart and Real reach a broadly similar demographic.

Strength of competitor stations and demographics

7.45 There are no other radio competitors with a share of more than 2 per cent of listening hours.

Our assessment

7.46 The parties argued that their stations were not close competitors because Heart sold most of its advertising to local advertisers on single transmitters and Real targeted region-wide advertisers. They also pointed to evidence that [✂].

7.47 The merger will remove the only significant radio alternative to Global in North Wales. We note the parties' arguments that the parties are not close competitors but consider that the internal documents summarized in Appendix L suggest that the entry of Real to the area is potentially significant. For example, [✂]. We considered carefully the evidence the parties submitted showing that Real's entry had little effect on Heart's revenue and prices and that it had lost very few customers. However, we note that at the time Global acquired RSL, Real's entry was recent and we have been told that it takes time for competition from a new entrant to build up listener share and advertising revenue.

7.48 The merger will reduce the number of radio options from two to one.

Provisional conclusion

7.49 We therefore provisionally conclude that, in the absence of any countervailing factors, the merger will lead to significant adverse effects in North Wales.

Yorkshire, Humberside and Lincolnshire

Available stations and geographic overlap

7.50 Global's Capital transmits across the region and offers split local transmitters enabling advertisers to target two areas: east of Yorkshire into Humberside and Lincolnshire; and South and West Yorkshire. Real broadcasts to an area covering Bradford, Leeds, Sheffield and Doncaster. This is a similar area to that covered by South and West Yorkshire Capital transmission area. Within the Real TSA, Real is technically able to sell airtime on a split transmission but does not currently do so.

7.51 Across the region, a number of alternative radio groups broadcast to substantial parts of the Capital transmission area, including Bauer, The Lincs FM Group and the Local Radio Company.

7.52 The main competitors to the parties in the Real TSA covering South and West Yorkshire are Bauer and UTV. Bauer has four stations in the overlap area: Hallam FM, which broadcasts across South Yorkshire including Sheffield and Doncaster; Radio Aire with a TSA centred on Leeds; and two Magic stations broadcasting on AM (together covering Leeds, Sheffield, Rotherham, Barnsley and Doncaster). UTV's The Pulse broadcasts on FM to the west of the overlap area covering Bradford and has an AM station, Pulse 2.

Share of listening hours and revenue

7.53 The parties' share of total listening hours in the overlap area in South and West Yorkshire is 52 per cent with an increment of 21 per cent from the addition of Capital

Yorkshire. We estimate their share of non-contracted revenue to be [30–39] per cent with an increment of [20–29] per cent.[109]

Strength of competitor stations and demographics

7.54 In South and West Yorkshire, the Bauer stations (33 per cent) and UTV stations (5 per cent) have a combined share of total listening hours of 38 per cent and a combined share of non-contracted revenue of [40–49] per cent ([20–29] per cent Bauer; [10–19] per cent UTV).

7.55 The demographics targeted by the relevant stations in the overlap area are slightly differentiated. Capital reaches a slightly younger audience (average age of listeners 33) than the Bauer FM stations, UTV's Pulse and RSL's Real (average age of listeners 36 to 41).

7.56 The parties argued that the demographic difference between Real and Capital was significant. They also pointed to evidence that [✄].

Our assessment

7.57 Across the Capital TSA, there are a number of alternatives to Capital in different parts of the region and the parties' share of listening hours (41 per cent) and non-contracted revenue ([30–39] per cent) suggests that the other radio stations in the area are relatively strong alternatives.

7.58 The significant area of overlap between the parties is in South and West Yorkshire. Capital's South and West Yorkshire transmission area is very similar to the Real TSA and they are therefore close substitutes geographically. We estimate the increment in

[109] This does not take into account Capital's revenue from advertisers buying both transmitters.

the parties' share of listening hours in this area to be 21 per cent and their combined share is 52 per cent.

7.59 We do not consider that the difference between the demographics of Real and Capital is significant and note that the average age of listeners is relatively similar at 39 and 33 respectively and both attract slightly more female listeners than male. We do not attach significant weight to the evidence the parties presented about the [✂] for the reasons set out in paragraph 6.52.

7.60 There are some relatively strong radio alternatives in parts of the overlap area but no single direct alternative to the parties' stations for advertisers wishing to advertise across the South and West of Yorkshire. These advertisers currently have the option of Real and Capital. Post-merger, they would have to buy a combination of stations belonging to different owners and these stations would achieve fewer than 40 per cent of the listening hours in the Real TSA.

Provisional conclusion

7.61 We therefore provisionally conclude that, in the absence of any countervailing factors, the merger will lead to significant adverse effects in South and West Yorkshire (the Real TSA).

Greater Manchester and the North-West

Available stations and geographic overlap

7.62 The main parties overlap in two areas in the North-West. RSL has two stations which cover the whole region: Real and Smooth; and a Greater Manchester station: Real XS. Global's Heart North West and Wales station overlaps with Real and Smooth in a relatively small part of the region: around Cheshire and the Wirral. Global also overlaps in Greater Manchester with its Gold, Capital and Xfm stations.

7.63 While Global's stations overlap with the Real and Smooth region, there are large parts of the North-West where the parties do not overlap. This is because Global does not have coverage of Liverpool or significant areas to the north of Manchester. The Bauer stations combined cover the vast majority of the Real and Smooth TSA.

7.64 In Greater Manchester, the parties' stations overlap in broadly the same TSA. The main competitor is Bauer with its Key 103 FM station and its Magic AM station. UTV has three regional stations which overlap on the edges of the Greater Manchester area covered by Capital and Key 103 but these stations are targeted at other towns and do not cover the city of Manchester itself.

Share of listening hours and revenue

7.65 In Greater Manchester, the parties' share of listening hours will be 51 per cent with an increment of 10 per cent from the addition of Real XS. Their combined share of non-contracted revenue will be [30–39] per cent with an increment of [5–9] per cent.

Strength of competitor stations and demographics

7.66 Bauer has 39 per cent of the listener hours and [30–39] per cent of the non-contracted advertising revenue in Greater Manchester. The UTV stations are not an option for advertisers wishing to target the centre of Manchester.

7.67 In Greater Manchester, all of the parties' FM stations, and Bauer's Key 103 station, reach an audience which is on average aged between 30 and 40. Capital and Xfm listeners are slightly younger, being in their early to mid 30s on average. Global's Xfm and Real XS are similar 'indie' stations reaching a predominantly male audience with a similar average age (34 and 37 respectively).

Our assessment

7.68 We do not consider that the combination of Global's Greater Manchester stations, and the small part of the region covered by Heart, are together a good alternative for those advertising across the whole region.[110] The geographic overlap is limited to Greater Manchester and therefore we do not consider the loss of rivalry between the parties' stations across the North-West, in itself, to be significant.

7.69 In Greater Manchester, we consider that Bauer's Key 103 station is likely to be a good alternative to the parties for many advertisers wishing to target Manchester and the Greater Manchester area. It will though be the only good alternative post-merger and the parties will have three alternative stations broadcasting to the same area. We do not consider UTV stations to be a good alternative since their stations are targeted at other towns and do not cover the city of Manchester itself. Furthermore, for advertisers looking for other radio options by advertising in Greater Manchester and further across the North-West, the parties would have two of the three alternatives available.[111] The merger will also bring under the same ownership two stations with almost exactly the same geographic and demographic coverage: Real XS and Xfm.

7.70 The radio alternatives for advertisers in Greater Manchester will effectively reduce from three to two. Real XS has 11 per cent of listening hours and [5–9] per cent of non-contracted advertising revenue; in the absence of other radio alternatives to Bauer its loss as an option is significant especially given its similarity to Global's Xfm.

[110] Across the region, Global has 16 per cent of the listening hours and [✂] per cent of the non-contracted advertising revenue.
[111] This includes Bauer as an alternative to Real and Smooth across the region because Bauer has stations in the main conurbations.

Provisional conclusion

7.71 We therefore provisionally conclude that, in the absence of any countervailing factors, the merger will lead to significant adverse effects in Greater Manchester.

North-East

Available stations and geographic overlap

7.72 The parties overlap in broadly the same area in the North-East. Global's Capital North East covers the whole region and offers advertising on two transmitters: Tyne and Wear; and Teesside. RSL has two stations which broadcast across the region, Smooth and Real, and both split their advertising on two transmitters to the north and south of the region in the same way as Capital North East.

7.73 The main competitor across the region is Bauer, which has two FM and two AM stations in the north and south of the region: Metro FM around Newcastle and Magic Newcastle (AM); and TFM and Magic Teesside AM around Middlesbrough. There are also three stations owned by The Local Radio Company which broadcast to parts of the region: Star Durham, Star Darlington and Sun FM in Sunderland.

Share of listening hours and revenue

7.74 The parties' share of total listening hours is 56 per cent, with an increment of 24 per cent, and its share of non-contracted revenue is around [50–59] per cent, with an increment of [20–29] per cent.

Strength of competitor stations and demographics

7.75 Bauer has 39 per cent of the listening hours and [30–39] per cent of non-contracted revenue. The Local Radio Company does not cover an equivalent geographic area to Bauer's and the parties' stations and has relatively small market shares.

7.76 Global's Capital reaches a younger audience than either RSL's Smooth or Bauer's Magic stations. Real's and Bauer's FM stations target a broad age range and the average age of listeners on these stations is in the late 30s and early 40s.

Our assessment

7.77 Global argued that the parties were not close competitors because of the different demographics targeted. It also said that Bauer would have a similar market share to the parties' combined share post-merger and therefore the merger would be rivalry-enhancing.

7.78 Pre-merger, there were three main groups in the North-East radio market: Bauer and RSL, which both had around one-third of listeners and [✄] non-contracted advertising revenue; and Global, which had one-quarter of listeners and [✄] non-contracted advertising revenue. This does not support the parties' argument that, post-merger, Bauer would have similar market shares to the merger parties.

7.79 The merger will reduce the options for radio advertisers in the North-East from three to two and the increment in terms of share of listening hours (24 per cent) and share of non-contracted revenue ([20–29] per cent) is significant.

Provisional conclusion

7.80 We provisionally conclude that, in the absence of any countervailing factors, the merger will lead to significant adverse effects in the North-East.

Glasgow and Central Scotland

Available stations and geographic overlap

7.81 The parties overlap across Central Scotland and in Glasgow. Global's Capital Scotland broadcasts across Edinburgh, Glasgow and their surrounding areas and also sells its advertising on a split transmission basis for advertisers wishing to target Edinburgh or Glasgow only. RSL's Real station covers broadly the same area and although it can technically sell on separate transmitters it does not currently do so.[112] RSL also has Smooth and Real XS stations which both broadcast to areas around and including Glasgow.

7.82 The main competitor in the region is Bauer. It covers broadly the same areas as Capital Scotland with two stations: Clyde 1, broadcasting to Glasgow and the surrounding area; and Forth 1, broadcasting to Edinburgh and the surrounding area. Bauer also has two AM stations in the same areas: Clyde 2 and Forth 2. Three smaller independent stations also overlap to a limited extent: Kingdom FM broadcasts to Fife; Central FM to Falkirk and Stirling; and Your Radio to Dumbarton and Helensburgh.

Share of listening hours and revenue

7.83 Across the region, the parties' share of total listening hours is 52 per cent, increment 15 per cent, and its share of non-contracted revenue is [50–59] per cent.

Strength of competitor stations and demographics

7.84 Across Central Scotland, Bauer has 44 per cent of listening hours and [30–39] per cent of non-contracted revenue. In Glasgow, Bauer is currently bigger than both parties in terms of share of listeners. This does not include listening hours on Real because it does not currently sell advertising separately for the Glasgow area.

7.85 In Glasgow, Bauer's Clyde 1 station and RSL's Real XS reach a similar age group. As in Manchester, Real XS attracts a large proportion of male listeners. Capital

[112] The parties told us that [✂].

reaches a slightly younger age group than these other stations with an average age of 33 for its listeners. Smooth attracts an older audience.

Our assessment

7.86 The effect of the merger in Glasgow is to bring together Capital, Real XS and Smooth and effectively reduce the options from three to two for those advertisers wishing to target Glasgow. However, we note the relative strength of Bauer as an option for these advertisers. [✄]

7.87 Across the region, the effect of the merger would be to reduce from three to two the alternatives available to non-contracted advertisers. It brings together two regional options (Capital and Real) and reduces the options for those wishing to target Central Scotland from three to two. The remaining option post-merger, Bauer, is not as strong a competitor to the parties across the region as it is in Glasgow.

Provisional conclusion

7.88 We provisionally conclude that, in the absence of any countervailing factors, the merger will lead to significant adverse effects across the Central Scotland region.

Summary of analysis of the overlap areas

7.89 We have provisionally identified seven areas where the parties overlap which we consider would lead to significant adverse effects for advertisers: East Midlands; Cardiff; North Wales; south and west Yorkshire (the Real Yorkshire TSA); Manchester; the North-East; and Central Scotland. We consider that the loss of competition in these areas would affect non-contracted advertisers buying airtime and S&P. We estimate non-contracted airtime revenue in the seven areas to be around £50 million. We do not have equivalent figures for S&P, which is not generally estimated on a regional basis.

Effects on advertisers buying through contracted agencies

7.90 In this section, we first assess the impact of the merger on competition between the parties for sales of airtime both within and outside the Agreement under which Global sells advertising to the large London-based agencies on behalf of RSL (see paragraph 7.93). We then consider how RSL and Global might compete absent the Agreement; that is, the impact of the acquisition on possible future competition in this segment. This is based on our provisional view in the counterfactual that we are not able to predict with sufficient certainty what would have happened to the Agreement post-[✄].

Impact of the acquisition on competition

Views of the parties

7.91 The parties made some specific arguments relating to contracted advertising. They argued that they did not currently compete for contracted advertising sold under the Agreement and that Global's incentives in relation to RSL stations under the Agreement did not change as a result of the merger. Further, Global argued that the loss of competition from contracted advertising sold separately by the parties outside the Agreement was immaterial.[113] The merger therefore would not affect competition for contracted advertising. Global also argued that RSL only had a minor presence in the sale of S&P to the large agencies, Global competed more closely with other media in this segment and the agencies had particularly strong negotiating power when buying airtime and S&P.

7.92 Global rejected the suggestion in the OFT reference decision that its incentives might change post-merger in relation to RSL stations from its incentives under the Agreement. Global submitted that, under the Agreement, [✄]. Its current incentive

[113] The parties also submitted that large media agencies were sophisticated buyers that had a strong negotiating position primarily because radio represented only a small proportion of their advertising budget. We consider this argument and the supporting evidence in Section 6 and take our provisional conclusions into account in our assessment of the effect on contracted advertising.

was therefore to maximize revenues on both parties' stations and this incentive did not change as a result of the merger. Global submitted that it did not compete with RSL for sales under the Agreement and, as such, there was no loss of competition as a result of the acquisition.

7.93 In support of their argument that sales of contracted advertising by the parties outside the Agreement were immaterial, [✂]. They told us that [✂] per cent of their aggregated contracted airtime revenues were from sales to agencies not covered by the Agreement. They also submitted evidence that [✂]. This analysis involved comparing, for two regions where RSL operates,[114] weighted average prices, in CPT, against revenues of agencies within and outside the Agreement. [✂][115]

7.94 Global also said, absent the merger, it was likely that the amount of contracted advertising outside the Agreement would reduce. This was because those agencies contracting separately with the parties outside the Agreement were regional agencies. A number of these had recently been bought by one of the London-based media buying groups. Global argued that these groups [✂].

7.95 On S&P, Global said that RSL had only a minor presence with London-based agencies with revenue of £[✂] from these agencies compared with Global's £[✂].[116] Global argued that it competed much more closely with other media than it did with RSL for these customers.[117]

[114] The analysis considered average CPTs for Real in South Wales and average CPTs across both Real and Smooth in the North-West.
[115] We consider this analysis and summarize the results of the CC's broader analysis of pricing for agencies within and outside the Agreement in Appendix M.
[116] The parties' revenues for S&P for their Manchester-based teams was [✂] and [✂].
[117] It submitted that of [✂] pitches it made for business valued at [✂] or more to London-based agencies, in [✂] per cent of tenders at least one other participant was a non-radio company and in [✂] per cent of tenders Global was the only radio company invited to pitch.

7.96 The parties said that contracted advertisers had very substantial buyer power. They gave the example of GroupM which they said spent £2.6 billion per year across all media of which only £[✂] was spent across Global, RSL and Orion. The parties said that contracted customers would resist any price increases that were not justified by a demonstrable increase in demand for the combined group's stations.

Views of third parties

7.97 Bauer argued that the merger would change Global's incentives in selling RSL's contracted advertising compared with the Agreement. It suggested that Global currently sold RSL airtime at a lower price than Global airtime in order to maintain Global's own national airtime offering at a higher price. This reflected the fact that Global retained the full revenue from its own airtime sales but only received a commission in respect of RSL sales under the Agreement. Bauer said that, post-merger, Global would be able to maximize the revenue from RSL airtime by restricting the volume of airtime sold, thereby increasing prices.[118] Other competitors also said the price of RSL stations was low and suggested that Global had focused on negotiating increases in the price of its own stations and held down those of RSL in order to do so.

7.98 Bauer also argued that the parties did compete for contracted advertising pre-acquisition and that agencies could currently choose between the parties' stations when buying through the Global sales house. It anticipated that agencies would see their bargaining position worsen following the acquisition because they would be unable to buy around the merged parties and submitted its own analysis as evidence of this. This analysis looked at 20 national campaigns and attempted to recreate them without using Global and RSL stations. Bauer argued that this analysis showed

[118] Bauer, and other competitors, also argued that there was the potential for Global to increase prices of RSL stations following a rebranding exercise. For example, they expected Global to rebrand certain RSL stations (eg.Real to Heart) and increase prices in line with those of Global's networked stations. We consider these arguments below in the section on the effect on competition of brands.

the costs of buying around the parties would worsen advertisers' bargaining position and therefore the terms on which they did business with Global could be expected to worsen.

7.99 Competitors argued that they competed with both parties, and other radio stations, for national S&P. Bauer rejected the argument that the main source of competition came from other media and said it competed with both Global and RSL for S&P.

7.100 The larger agencies broadly confirmed the parties' view on their negotiating strength relative to radio groups. Most said they would be able to resist price rises and, although there would be limitations, in many cases they would be able to divert clients towards other media if necessary.

Our assessment

Global's incentives

7.101 Under the Agreement, Global negotiates and agrees prices with media buyers for all stations sold under the relevant contract; RSL agrees with Global the price of its own stations. Media buyers are therefore unable to 'play off' Global against RSL in order to negotiate lower prices; this will not change following the merger.

7.102 We considered whether, if there were a breakdown in negotiations and agencies wished to put pressure on Global, the way they would be able to do this might change. Specifically, we consider whether pre-merger they could focus on with-drawing business from the Global stations but after the merger they would need to withdraw business from both Global and current RSL stations which would be more costly. If this were the case, it might suggest that a merger would shift bargaining power away from media buyers to Global.

7.103 We considered in paragraphs 6.104 to 6.108 evidence from [✂] cases pre-merger where media buyers withdrew advertising [✂]. In [✂] cases the advertising was also withdrawn from RSL [✂] stations sold under the same contract, as well as Global.[119] On this point, we therefore provisionally conclude that bargaining power between the large media buyers and Global during contract negotiations is unlikely to change significantly as a result of the merger.

7.104 We now consider the question of whether, despite being unable to 'play off' Global and RSL under the existing Agreement, Global's incentives would change post-acquisition such that there were anticompetitive effects. In the next paragraphs, we consider the potential for any price rises in RSL stations to contracted advertisers simply as a result of Global's and RSL's stations being brought under common ownership. This does not take into account any potential changes associated with [✂] speculated rebranding and/or repositioning of RSL's stations, which we consider in paragraphs 7.134 to 7.140; that is, we consider here price changes which might occur even in the absence of rebranding and/or repositioning of stations.

7.105 Third parties suggest in effect that Global has artificially held down the price of RSL stations. We note that [✂]. In particular, the price of Real stations [✂].[120] Global said that [✂].[121]

7.106 The evidence does not suggest the price of RSL stations is artificially low. Our comparison of prices in contracts negotiated independently by RSL [✂].[122][✂] Furthermore, even if under the agreement Global has artificially held down the price of RSL stations in order to increase the price of its own stations, the implication for

[119] [✂]
[120] [✂]
[121] [✂]
[122] See Appendix M.

post-merger prices is unclear. For example, it might result in higher prices for RSL stations and lower prices for Global stations.

7.107 Third parties also made the point that Global's post-merger incentives would differ from its incentives under the Agreement as it would earn a full margin rather than just a commission on the RSL stations. We note that the implication of this point, given some substitutability between Global's and RSL's stations, is that under the Agreement Global would have an incentive to increase the price of RSL's stations on which it only earns a commission, relative to the price of its own stations on which it earns a full margin. This would be in order to increase the sale of airtime on Global's stations. This point is not therefore consistent with the other point made by third parties that Global had held down the price of RSL stations under the Agreement.

7.108 The implications of any difference in incentives for the overall level of prices remain unclear. For example, increases in the prices of RSL stations post-merger do not necessarily mean an increase in prices overall if the price of Global stations are also changed to reflect different incentives.

7.109 We accept that Global's incentives under the Agreement may not necessarily be exactly the same as its incentives post-acquisition, but we have seen no evidence to suggest that any change in incentives would have material effects on the prices of RSL or Global stations. In our provisional view, the most important point is that, as Global sells airtime on behalf of RSL under the Agreement, media buyers are already unable to 'play off' Global against RSL in order to negotiate lower prices. This would not change following the merger save by comparison with a scenario where Global and RSL sold their airtime to contracted advertisers separately, which we consider below.

Buy-around analysis

7.110 We summarize our assessment of the buy-around analysis submitted by Bauer in Appendix N. Bauer's analysis suggests it is much more difficult to 'buy around' all the stations of both Global and RSL (ie the stations Global would control after the merger) than it is to buy around just the Global stations, or just the RSL stations. We consider this analysis in the context of the point made above (see paragraph 7.51) that, under the Agreement, Global sells RSL's airtime to contracted customers and media buyers are already unable to threaten to use RSL stations to 'buy around' Global in order to obtain lower prices from Global.

7.111 Our assessment also suggests the following points:

(a) The analysis does not reflect the actual way that prices are negotiated, which is annually (or slightly less often, eg 18 months) in advance of the new contract coming into operation. At this point, large agencies are able to put pressure on Global by threatening to reduce advertising for all or many of their clients on Global (and RSL and Orion) stations (see paragraphs 6.104 to 6.108).

(b) The analysis rests on a single set of assumptions about how advertisers, advised by agencies, would seek to buy around Global and/or RSL stations. As noted by the OFT in the Global/GCap report, a general concern with this type of analysis is that it is unclear this is what advertisers would actually seek to do if they were buying around Global. This concern is increased by the fact that there is no analysis of the sensitivity of the findings to varying the assumptions, for example, using, at least to some extent, different media rather than just other radio stations as alternatives to Global and/or RSL.

(c) There is a specific concern that the analysis has overestimated the reach of many of the campaigns, and as a result overstated the difficulty and cost of buying around Global and RSL stations.

7.112 We consider that the buy-around analysis illustrates the point that Global and RSL stations can to some extent be substitutes for each other in national campaigns. However, our provisional view is that this analysis does not demonstrate the merger will change the position of the merging parties in relation to the agencies during the negotiation of prices when contracts are renewed.

Negotiating strength of the agencies

7.113 The evidence we received from the large agencies broadly supported the parties' argument that they would not be able to impose price rises on these agencies post-merger. Responses to our questionnaires showed that the large agencies spent between [✂] and [✂] per cent of their advertising budgets with the parties. The evidence provided by the parties suggests that the agencies are willing to reduce significantly their expenditure with the parties during contract negotiations.

7.114 The evidence is less clear for smaller agencies which have contracts with the parties and for those agencies that do not buy across different media. We also note that, as prices are negotiated and not published, [✂].

Contracted advertising sold by the parties outside the Agreement

7.115 We do not consider the revenue derived from contracted airtime sales outside the Agreement to be immaterial as the parties argue. RSL's total airtime sales to contracted agencies outside the Agreement in 2011/12 was £[✂] million, accounting for [✂] per cent of its contracted airtime revenues that year and [✂] per cent of RSL's total airtime and S&P revenue.[123] Global's airtime sales to contracted advertisers outside the Agreement were [✂] per cent of its contracted airtime revenues in the same year.

[123] RSL sells, independently of Global, contracted advertising [✂].

7.116 The evidence was inconclusive about the extent to which, absent the merger, all agencies currently contracting separately with Global and RSL would have continued to do so. One of the these media buying groups did not confirm that it would have brought its regional agencies within the Agreement; shortly before publishing our provisional findings another did in effect agree to do so, although RSL's stations will continue to be dealt with separately pending the outcome of our review process.

7.117 Given that we do not consider contracted sales outside the Agreement to be immaterial, we assessed the likely effect of the merger on these sales post-acquisition. We note the parties' submission, based on an analysis of prices for two RSL stations, that agencies outside the Agreement [✄]. We expanded this analysis by looking at the weighted average CPT over three years for each of the radio stations owned by Global and RSL.[124] This analysis found that, on balance, those agencies that contract separately with Global and RSL [✄]. This analysis lends support to the parties' submission that prices for agencies outside the Agreement would not be affected by the merger.

National S&P

7.118 We asked agencies what their best alternatives were to Global and RSL in meeting S&P briefs. Most agencies said this depended on the type of brief and the objectives of the campaign; most also said that competition could include both other radio companies and non-radio media, though they differed as to the importance they attached to non-radio media. We also asked the agencies for details of their S&P briefs over the preceding 12 months. Appendix J provides a summary of responses. The responses suggested that Global and RSL put forward the best two bids in 9 per cent of briefs for which either party bid and on which the agencies provided information. The parties both bid in 29 per cent of these briefs thus contributing to

[124] This analysis is described in more detail in Appendix M.

competition. The main alternatives to the parties were Bauer and Absolute but competition also came from two other sellers of radio advertising (talkSPORT and FRS) and from television, the Internet and newspapers.

7.119 Agency responses showed that in 81 per cent of briefs, the bids were all from radio stations and groups. A non-radio media company was selected in only 7 per cent of cases. This is not consistent with Global's submission that it believed that in [✄] per cent of briefs it competed against non-radio as well as radio companies, and in [✄] per cent of briefs it was the only radio company involved.

7.120 We note that there are limitations to both the data we received from the agencies and the information submitted by the parties, but it is not clear that these limitations fully explain the differences between the parties' data and the responses of the agencies to our questionnaire. Some agencies provided us with information on a sample rather than all briefs. Global suggested that because the question asked the agencies about S&P briefs it created bias because only the radio industry used that term and that agencies were therefore likely only to have considered radio options in their responses. On the parties' data, Global does not always have full visibility of other participants in a tender and its data was in part compiled manually. Global said that while efforts were made to ensure its accuracy, [✄].

7.121 We note that even when relying solely on the responses to our questionnaires, while there is some evidence that Global and RSL currently compete for national S&P, they were the best two bidders in less than 10 per cent of briefs in which one or the other was involved. Furthermore, the evidence suggests there is a good level of competition for national S&P from other radio companies notwithstanding other media. Post-acquisition there would remain three significant radio alternatives to the merger parties for national S&P (Bauer's stations and the national stations, Absolute and talkSPORT). Overall, our provisional view is that while the merger will result in some loss of competition for national S&P, there are good alternatives for agencies buying on behalf of their clients.

Impact of the acquisition on possible future competition

7.122 We consider in this section the likely extent of the competition between the two parties for national advertising if RSL sold its airtime entirely separately from Global.

7.123 In considering this question we take into account our provisional conclusions on the competition between the parties pre-merger and the evidence from agencies about their next best alternatives. This indicated that there are some campaigns for which a radio station owned by one of the other parties to the merger is the next best alternative. We consider whether there are any particular features of competition for advertising bought in this way which would lead us to be more or less concerned about the effect of the merger than suggested by our analysis of the overlap areas above.

7.124 The agency responses suggest that to some extent the parties could compete, in principle, for national advertisers absent the Agreement because their stations are seen as substitutes in some cases by agencies. RSL would be constrained by other media and other radio stations, of which Global would be one of three significant alternatives; Global would be constrained largely by other media and Bauer. This reflects the combined reach of the two parties' stations: Global has more licences and covers more areas suggesting its main competitors in radio would be other groups with national and quasi-national reach, such as Bauer. RSL covers a much smaller geographic area and would likely be bought by national advertisers in combination with other radio groups.

7.125 In practice, we consider that there are two factors relevant to assessing whether any loss of possible future competition could be significant in this segment:

(a) First, whether the agencies' bargaining strength would increase significantly as a result of competition between the parties.

(b) Second, whether RSL would have an effective means of selling contracted advertising to London-based media agencies.

7.126 In considering the first of these points, the responses from agencies imply that if the two parties were to compete for contracted advertising, RSL would not be a significant constraint on Global but Global could be a constraint on RSL. This suggests that if competition between Global and RSL increased the bargaining power of the agencies, it would do so principally in respect of the price of RSL stations. However, we consider that the agencies, especially the larger agencies, already have substantial bargaining power at the point of contract renegotiation when they can and do challenge unsatisfactory prices by withholding their clients' advertising (see paragraph 7.126). As the larger agencies' bargaining power is already substantial, any increment to their bargaining power as a result of competition between Global and RSL is unlikely to be significant.

7.127 Also, we note in paragraph 7.117 that, where the parties currently compete separately for contracted advertising, the prices obtained by agencies outside the Agreement [✂] from those obtained by agencies within the Agreement, and this applies to RSL stations as well as to Global stations. In the light of this, we consider that the evidence available does not suggest that the agencies' bargaining strength would increase significantly as a result of competition between the parties.

7.128 Turning to the second point, we note the evidence from GMG plc that [✂]. We also note that RSL's share of commercial listening hours is about 10 per cent, similar to that of the local stations represented by FRS.[125] FRS sells in competition with Global and Bauer, but finds it difficult to obtain contracts with agencies and has a small share of sales to London-based agencies considerably less than its share of listening hours.

7.129 The experience of FRS is informative for our consideration of the potential constraint an independent RSL would have on Global's sales of contracted advertising. The evidence we have received suggests that FRS's small share of sales is due to the difficulty of a smaller company selling to London-based agencies and not principally to FRS receiving lower prices. While the continued viability of FRS as a 'sales house' suggests it would be possible for RSL to sell to London-based agencies independently, the experience of FRS also suggests that there is considerable doubt about how effectively RSL acting independently would be able to do so. We received no evidence suggesting the agencies would prefer independent selling by RSL to the Agreement with Global.

7.130 Overall, we therefore consider that the loss of RSL selling contracted advertising on its own as a potential independent competitor is not significant.

Provisional conclusions on effects of the merger on advertisers buying through contracted agencies

7.131 In the short term, we did not see evidence that Global's incentives in relation to contracted airtime would be significantly different post-acquisition from its incentives under the Agreement. We also note the evidence that agencies contracting separately with Global and RSL [✂]. This suggests that any competition between the two parties does not materially affect the prices paid by contracted advertisers. It is possible that, in the absence of the merger, RSL would in future sell its advertising

[125] FRS acts as an agent selling airtime and S&P to national agencies on behalf of local radio stations other than those owned by Bauer, Global, Orion and RSL.

airtime independently of Global but, in light of the difficulties experienced by smaller sellers in this segment of the market, this does not alter our provisional view that the merger would not have significant adverse effects in relation to the sale of contracted airtime.

7.132 Global and RSL compete directly for S&P from all agencies but, on the basis of the available evidence, we consider RSL to be a relatively small constraint on Global and note that there are a number of radio and non-radio alternatives.

7.133 In summary, we provisionally conclude that any loss of competition as a result of the merger for advertisers buying airtime through contracted agencies and national S&P is likely to be relatively small. We do not consider this loss of competition, in itself, to be substantial but take it into account when reaching our provisional conclusions on the overall effect of the merger.

Branding effects

7.134 We assess in this section the arguments made by some third parties that, as a result of its acquisition of RSL, Global will own, or be able to develop, more quasi-national brands which it would be able to market to advertisers and listeners.[126] These additional brands, and the increase in its listener reach as a result of the acquisition, would, it is argued, give Global a position in commercial radio that would have adverse effects on competition by foreclosing small, local stations from national advertisers' radio budgets.

7.135 In considering this issue, we assess whether it is likely that there would be a significant loss of rivalry as a result of the overall reach of the merged entity and its number of brands. We note that it would also be necessary to consider whether, if

[126] For example, it was suggested by a number of third parties that Global would change the Real stations to Heart post-acquisition thus creating a network of stations with the same brand across most of Great Britain.

any such loss of rivalry was likely to result, it would lead to adverse effects for advertisers or listeners.

The parties' views

7.136 As we note [✂]. Global also told us that [✂]. The parties said [✂].

Third party views

7.137 Drawing on industry speculation that rebranding would be a consequence of the merger, one of Global's competitors and one agency told us that this would result in increases in the prices of the rebranded stations. For example, [✂]. Other competitors suggested that, post-acquisition, Global would be able to increase its share of advertising in its agency share deals beyond the competitive level and foreclose other commercial radio companies from a majority of advertisers' radio budgets.

Our assessment

7.138 We do not consider that rebranding stations would enable Global to increase prices unless advertisers' demand for rebranded stations increased, for example, because audiences increased. If rebranding increases advertisers' demand for stations and this enables Global to charge a higher price, this is an effect associated with the stations becoming more desirable to advertisers, not with a loss of competition.

7.139 We also note that the rebranding of stations is a commercial strategy and that other radio groups have adopted alternative strategies, for example, retaining the individual identity of commonly owned stations. It is not impossible for another radio group, such as Bauer, to create a quasi-national brand by commonly branding its portfolio of stations.

7.140 We therefore provisionally consider that the potential creation of extended quasi-national brands as a result of the merger would not have a significant adverse effect on competition.

Industry bodies

7.141 Third parties, and in particular competitors, raised concerns about the effect of the merger on a number of industry bodies and industry-wide sales arrangements. Third parties were concerned that the merger would give the merger parties the ability and incentive to raise rivals' costs or otherwise weaken rivalry.

7.142 In order for these concerns to result in the merger giving rise to an SLC, the following questions have to be considered:

(a) Ability: Would the merged firm have the ability to harm rivals, for example through conduct that would raise prices or costs or potentially deny access to a particular input altogether?

(b) Incentive: Would the merged firm find it profitable to do so?

(c) Effect on competition: Would the effect of any action by the merged firm be sufficient to reduce competition in the affected market to the extent that, in the context of the market in question, it gives rise to an SLC?

7.143 The considerations relevant to each issue may overlap. Our Guidelines state that all three questions must be answered in the affirmative in order for an SLC finding to be reached.

7.144 The role of these bodies and their governance arrangements are set out in Appendix O, together with parties' views on the potential issues arising as a result of the merger. We set out below our provisional conclusions with respect to these concerns in relation to each body or sales arrangement, dealing first with RadioCentre/RAJAR and IRN/Newslink.

RadioCentre and RAJAR

7.145 RadioCentre is the trade association for the commercial radio industry. One of its roles is to raise the profile of commercial radio with advertisers and their agencies through the RAB and, through the Radio Advertising Clearance Centre (RACC), to help ensure stations comply with the Broadcast Code of Advertising Practice. RadioCentre also works with the radio stations themselves, helping them maximize the potential of their businesses. RadioCentre has a 50 per cent shareholding in RAJAR and an interest in a number of other industry bodies, notably Radioplayer and UK Digital Radio, which are dealt with separately below.

7.146 RAJAR is a 50:50 joint venture between the BBC and RadioCentre that is responsible for measuring radio audiences in the UK.

Views of third parties

7.147 A number of third parties argued that Global might use its greater influence in relation to RadioCentre to ensure that its interests dominated, although this view was not expressed by all interested parties. The principal concern was that Global would use its influence in RadioCentre to exert greater influence over RAJAR.

7.148 All radio stations consider RAJAR data to be crucial ‘currency’ for advertisers. The concern is that Global, via its shareholding in RadioCentre, would have an incentive to influence RAJAR’s strategy, furthering its own interests in wider ‘national’ sales, at the expense of the interests of smaller radio stations, and in particular by influencing the approach taken to small station surveying. It was suggested that Global might seek a partial or full withdrawal of RAJAR from small station surveying which would prevent smaller stations from being able to sell advertising as effectively or it might seek to establish a two-tier system which would also be prejudicial to the interests of smaller stations.

Global's views

7.149 Global argued that it had no incentive to change the way in which RadioCentre and RAJAR operated, as its interest lay in maintaining the credibility of both as trade bodies representing the industry as a whole. RadioCentre was a voluntary body and members may choose to leave, as UTV had done, if their interests ceased to be adequately represented, but as this in turn would undermine RadioCentre's viability, Global had no incentive to seek to bring such a situation about. In relation to RAJAR, although RAJAR had an incentive to operate its business cost-effectively, it had a much stronger countervailing incentive to ensure that the industry's audience measurement system remained robust and accurate thus retaining the full confidence of agencies and advertisers.

7.150 Global also said that it did not have the ability to influence RAJAR's strategy via RadioCentre nor the incentive to change the strategies of either body after the merger because:

(a) it would only have three directors out of 11 on the board of RadioCentre and although decisions could be taken formally by majority vote,[127] in practice decisions were passed by consensus, including whether to appoint or remove board representatives, including the CEO. In neither case could Global dominate or control RadioCentre; and

(b) RAJAR was structured as a 'deadlocked' company, which meant that any decision (at board or shareholder level) required the approval of both of its

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[127] [✂]

shareholders, RadioCentre and BBC, and indeed the approval of *all* the member directors. The merger would not change this structure.

7.151 Global also said that, since it acquired GCap, there had been no changes to the amount of surveying carried out by RAJAR with respect to the total geographic areas surveyed (ie the whole of the UK) and rather than reducing the extent of small station surveying, RAJAR had recently decided to increase sample sizes in the 15 to 34 age group. As far as Global was aware, RAJAR currently had no strategy to partially or fully withdraw from small station surveying and any such change could only be made by the RAJAR Technical Management Group and board.

7.152 In terms of the suggestion that it would otherwise have the incentive to increase rivals' costs through the adoption of the strategies suggested above, Global argued that this would not be profitable as it would be unlikely to attract a sufficient number of advertisers who might be lost to the smaller, local stations as a result. Global said that its stations would not be close competitors to small, local radio given its national/quasi-national brand portfolio.

Our assessment

7.153 The merger does not appear to change Global's position materially in terms of RadioCentre's governance, in particular by reference to its rights as a member and its representation on the board of directors relative to other members. While currently it has a lower board representation relative to its shareholding, in practice decisions are made by consensus, and formally, there would appear to be nothing to prevent Global from seeking greater influence in this respect. Nevertheless, we consider it is relevant to take into account the requirement in RadioCentre's Articles that its members must ensure that the board of directors is broadly representative of all association member stations. Further, although it may have a greater incentive to use the rights it already possesses to influence RadioCentre's strategy and the positions it adopts in relation to third parties, there is force in the argument that a trade association that ceased adequately to represent the wider commercial radio industry would become unviable. We have not seen sufficient evidence to reach a provisional view that Global will seek to exert a materially greater influence over RadioCentre than it did prior to the merger.

7.154 In relation to RAJAR, first it is not clear the extent to which any greater influence that Global may be able to exert over RadioCentre may translate into greater influence on RAJAR than Global has today. RAJAR is a deadlocked company; the BBC can block any initiative that may favour the enlarged Global group. Further, Global can already veto any decision of the board as one of RadioCentre's representatives on the RAJAR board. Bauer is in a similar position as the other RadioCentre representative.

7.155 There is insufficient evidence to suggest that, as a result of the merger, Global's incentives with respect to RAJAR will change materially and we note that any change would risk undermining the existing broadly consensual arrangements within RadioCentre and RAJAR.

Radioplayer and Digital Radio UK

7.156 Radioplayer is a not-for-profit company jointly owned by the BBC and commercial radio partners to promote digital radio listening. It provides the industry's agreed shared platform for online streaming. Digital Radio UK is the industry marketing body for digital radio. Some third parties expressed concerns that Global would be able to use greater influence over these bodies to impede the development of digital radio or to influence its development in a manner that could prejudice the interests of other commercial stations.

7.157 We reviewed the shareholder and board level composition of these bodies and related constitutional arrangements (see Appendix O). In the case of Radioplayer, while the merger would appear to give the merging parties a greater influence over the company, Global's ability to direct the strategy and policies of Radioplayer would be constrained by the other shareholders, in particular the BBC. We have not received sufficient evidence to suggest that Global's incentives to influence Radioplayer would materially change as a result of the merger. In relation to Digital Radio UK, Global does not appear to have the ability or incentive to exert influence over Digital Radio UK in such a way as materially to affect competition. Global only holds a small percentage of voting rights and has a minority representation on the board of directors.

Independent Radio News

7.158 IRN provides national and international news content to more than 250 subscribing commercial stations which receive the service in exchange for providing an advertising slot around each news bulletin between 6am and 1pm. These slots are pooled and sold by Global as Newslink.

7.159 The merger would not change Global's ability to exercise control over IRN because RSL is not a shareholder, although it does participate in the Newslink arrangements.[128] In terms of the principal concern expressed by third parties, that Global would be able to increase the rate of its commission or vary the terms of the rebate allotted to it under the Newslink sales arrangements, we note that Global does not have the requisite majority to secure such a change.[129] On the basis of the evidence presently available to us, we do not consider it likely that IRN would consent to a sales agency arrangement that permitted Global to bundle Newslink sales with the

[128] This is consistent with the OFT's decision in Global/GCap.
[129] [✄]

sale of its own airtime or to offer incentives to do so. Global told us that [✂]. It is also not clear that Global has the incentive to leave Newslink. Even if it were to do so, it is not clear that other commercial radio stations would face a material constraint in their ability to establish an alternative source of supply.

Big Top 40 chart show

7.160 Global produces BT40, a syndicated Sunday afternoon programme, and contracts with radio groups which agree to broadcast the BT40 as the weekly chart show on their radio stations. Global is responsible for selling the pooled inventory in relation to this programme and for the creative content in BT40 in return for [✂] per cent commission. In our view, there is little evidence to suggest that the merger would significantly change Global's ability or incentives to engage in anticompetitive tying or bundling strategies in relation to the BT40 chart show.

Provisional conclusion on industry bodies and industry-wide selling arrangements

7.161 In summary, our provisional view is that the merger would not bring about a material change in the ability and incentives of the enlarged Global group to exert influence or control over any of the bodies or industry-wide selling arrangements concerned in a manner that would give rise to an SLC.

Multiplex interests

7.162 Third parties raised concerns with respect to the merging parties' combined interest in MXR Holdings Limited (51 per cent owned by Global and 36.8 per cent by RSL), which currently controls five regional multiplexes.[130] However, since the merger was completed, MXR has confirmed its intention not to seek renewal of four out of five of its regional multiplex licences on their expiry and Ofcom has told us that these

[130] South Wales and Severn Estuary; North-East England; West Midlands; West England and Yorkshire.

licences will not be re-advertised. Global told us that [✂].[131] Our review of the constitutional documents and shareholders' agreement in relation to MXR Holdings indicates that Global would have been in a position prior to the merger to determine unilaterally whether such licences would be renewed. Therefore, despite the fact that Global's position in relation to MXR Holdings moved from one of joint control to sole control as a result of the merger, our provisional view is that MXR Holdings' decision not to renew its multiplex licences cannot be attributed to the merger.

7.163 In the short period prior to expiry of the relevant licences, we do not believe it is likely that MXR would have the ability or the incentive to act in a manner prejudicial to the interests of its existing customers. Global told us that MXR's DPS contracts (with the exception of one in Yorkshire)[132] were coterminous with expiry of the multiplex licence and there were constraints on its ability to raise prices prior to the expiry of these contracts. There are also constraints in the multiplex licences which would preclude MXR from offering discriminatory access terms and conditions to DSPS licensees and entering into agreements prejudicial to fair and effective competition.

Rivalry-enhancing efficiencies

Views of the parties

7.164 Global said that the merger would enhance rivalry between Global, the BBC, Bauer and other media (particularly music television channels and popular online operators such as Spotify, Vevo, and YouTube) for listeners; and between Global and other media for share of advertisers' budgets.

7.165 Specifically, Global said [✂]. This would increase rivalry for listeners with the BBC. [✂]

[131] [✂]
[132] [✂], which is using the [✂] multiplex, requested a shorter-term licence.

7.166 Global also argued that its 'national brands delivered locally' strategy would benefit the radio industry [✂]. Global said that radio rivals would see their revenues increase if Global succeeded in attracting more money into radio from other media. It argued that it had helped revitalize commercial radio and bring more money into radio from agencies' advertising budgets. This, it argued, benefited other radio groups [✂].

Third party views

7.167 Two of the four largest agencies provided some support to Global's arguments. For example, one agency said that Global Radio had shown its commitment to building and investing in strong national brands that could compete against the BBC for listeners and that this had helped to make commercial radio more attractive to advertisers. Another agency said that Global had contributed significantly to a revitalized radio industry making radio attractive to advertisers through an increase in audiences, better quality programming and easier access to larger audiences through branded networks. Of the other two large agencies, one said that for the radio industry to be strong it needed players like Global but expressed some concerns about an upward pressure on prices if, as they speculated, Global rebranded stations post-merger. The other did not address the issue of branding.

7.168 Some of the smaller agencies, without contracts with Global, expressed some concerns about the acquisition and the potential for a move towards selling airtime regionally as opposed to locally. For example, we were told that CPT rates on Capital East Midlands had increased since its rebranding from Trent FM.

Our assessment

7.169 We assessed the effect on listeners and advertising revenue of Global's rebranding of stations to Heart and Capital following the GCap merger. Detailed results of this analysis are in Appendix P.

7.170 We note that there is some support [✂] from the larger agencies in particular and there is evidence to suggest that Global's rebranding after the GCap merger was attractive to advertisers. The evidence to support Global's analysis of its overall effect on commercial radio since 2008 is more mixed and in our view there is little to support the view that listening to Global stations has increased significantly relative to other commercial stations.

7.171 Our Guidelines state that efficiencies arising from a merger may enhance rivalry with the result that the merger does not give rise to an SLC, quoting as an example a merger of two of the smaller firms in a market resulting in efficiency gains allowing the merged entity to compete more effectively with larger firms in the market. The Guidelines go on to say that to form a view that the claimed efficiencies will enhance rivalry so that the merger does not result in an SLC, the CC must expect that the efficiencies must be timely, likely and sufficient to prevent an SLC from arising and must be merger specific.[133]

7.172 Our Guidelines note that efficiencies can also be taken into account through our assessment of 'relevant customer benefits'[134] in the context of our consideration of remedial action. The above criteria are also relevant in this context.[135] At this stage our assessment is limited to whether any efficiencies are rivalry-enhancing.

7.173 Global argued that [✂].

7.174 For Global's [✂]. First, the performance of the merged company's stations would need to improve such that the appeal of the stations to listeners and/or advertisers increased compared to the position in the absence of the merger. Second, this would

[133] The Guidelines, paragraphs 5.7.2–5.7.4.
[134] The Act, section 30 and the Guidelines, paragraph 5.7.3.
[135] The Guidelines, section 5.7.

need to spur Global's rivals to improved performance, such that the benefits of any improved performance by Global were passed on to advertisers and/or listeners. Furthermore, these benefits would need to be sufficient to offset the adverse effects identified above.

7.175 We note that Global [✂]. However, we have not seen evidence that the [✂] will spur rivals to improved performance. Rather, it seems more likely that, to the extent that [✂], the benefits would accrue to Global itself through higher prices for advertising. As noted above, [✂]. As we have not seen persuasive evidence that the merger will lead to rivalry-enhancing efficiencies, the final step above (assessing whether any rivalry-enhancing efficiencies outweigh the adverse effects of the merger) is not necessary.

7.176 Turning to the [✂] we do not consider [✂] will enhance rivalry between Global and its commercial radio competitors.

7.177 It is also not clear that any other competitors [✂]. Global said the merger would enhance rivalry for listeners with the BBC and for advertising with other non-radio media. However, [✂]. We did not see evidence that [✂]. To the extent that [✂], this is a matter that may be taken into account as a 'customer benefit' in considering any remedial action.

7.178 As noted above, our assessment at this stage is limited to whether any benefits are rivalry-enhancing. Our provisional view is that the evidence does not indicate that the acquisition will result in rivalry-enhancing efficiencies which are timely, likely and sufficient to prevent an SLC.

Market entry/expansion

7.179 In assessing whether entry or expansion might prevent an SLC our Guidelines[136] state that we will consider whether such entry would be timely, likely and sufficient.

Entry

7.180 The vast majority of third parties[137] told us that barriers to entry were very high and new entry was virtually impossible. Most third parties considered that acquisition, which had been the most common method of entering, expanding or consolidating an entity's position in the traditional radio market in recent years, was the only effective way for new entrants to enter and establish themselves at any level in the UK. We were told that the main barriers to new entry were access to the radio spectrum, infrastructure costs and brand awareness.

7.181 Ofcom told us that there was no space available to accommodate additional stations of any scale on the VHF Band II used for FM.[138] Furthermore, there was no spare capacity in London or other metropolitan areas. Ofcom also told us that no more new licences were due to be awarded in the next two or three years. While in theory FM licences came up for renewal and were re-advertised, between now and 2019 only licences for the smallest local AM/FM services[139] were likely to become available for open competitive award.

7.182 Ofcom said there was also a lack of capacity for DAB at a national, regional and local level.[140] Local digital capacity would increase with the expected launch of 12 local multiplexes but Ofcom considered that operating on a local basis may be a less

[136] The Guidelines, paragraph 5.8.3.
[137] The parties did not submit arguments that entry or expansion might prevent an SLC.
[138] Ofcom said that, in the context of current frequency planning, what spectrum was available was generally only suitable for very small-scale services (typically less than 5km radius) and this was being used to license not-for-profit community radio services.
[139] Generally those serving a population of 250,000 adults (aged 15+) or fewer.
[140] There were no current plans to advertise a second national commercial multiplex licence. Regional capacity is set to reduce significantly as MXR has decided not to renew four of its five licences which expire in 2013 and Ofcom does not plan to re-advertise them. At a local level, Ofcom told us that capacity for multiplex licences was fully used in the metropolitan areas while in more rural areas there was some spare capacity.

attractive business opportunity. Competitors told us that the reach of digital-only local stations was presently not sufficient to be attractive to advertisers. We consider the prospects for digital switchover below.

7.183 Radio stations have a significant proportion of relatively inflexible fixed costs, such as transmission and production costs,[141] which account for over 50 per cent of the overall industry costs and a higher proportion, 60 per cent, of independent/small group costs. Ofcom considered that these costs, along with the costs of talent and marketing costs, might act as a barrier to new entry. Competitors agreed that the infrastructure costs of radio stations were high and therefore a significant barrier to entry with one estimate of £1.5 million per year, excluding marketing costs, for an average size station.

7.184 Bauer and Orion also pointed to the costs associated with establishing a new brand as a significant barrier to entry. In order for a radio station to be an attractive platform for advertising, it must have sufficient brand awareness, reach and listening hours. New entrants are therefore at a significant competitive disadvantage until sufficient brand strength and audience reach can be established. Orion suggested that the costs of establishing a new brand could be in the millions of pounds.

7.185 Competitors did not raise any other start-up costs as potential barriers to entry. We noted in this context that licence application fees for analogue and DAB multiplex licences (set out at Appendix B) are set by Ofcom and are not significant. Access to digital spectrum on a multiplex can be significant as it depends on demand.[142]

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[141] Ofcom, *Local and Regional Media in the UK*, paragraph 5.48.
[142] Fees are set by the multiplex licence holder not Ofcom. Bauer told us that the cost of a standard stereo station slot on a regional digital multiplex could range from approximately £[✄] to £[✄], depending on the location. A slot on the national commercial multiplex would be likely to cost in the region of £[✄]. We note though that each multiplex licence contains a condition relating to 'fair and effective competition' which is derived from statutory provisions. As such, although the fees

7.186 We looked at whether it was viable for a new entrant to adopt a digital-only strategy. We noted that the majority of digital listening was a digital simulcast of analogue stations. RAJAR data suggests that the vast majority of DAB listening is on the national multiplexes, with local/regional multiplexes making up a minority of the listening share. Local digital-only stations, in terms of reach, would be less attractive to advertisers than analogue (with or without digital simulcast).

7.187 Expansion by a current radio operator through a new licence is similarly limited by the lack of available licences and capacity on the radio spectrum.

Digital switchover

7.188 Given that the main barrier to entry and expansion is available spectrum, we considered the timing of digital switchover which would potentially free up capacity for digital stations on the unused analogue spectrum. The Government considers that switchover is the most likely way to deliver a transition to digital radio in a coordinated way and will make a decision in principle by the end of 2013. In the event of a positive decision, a date for switchover would be set once certain listening and coverage criteria are met, no less than two years later. Ofcom told us that, based on current trends, the listening criteria could be met in 2016, absent any government decision or initiative to accelerate take-up.[143] This would mean that switchover could occur in 2018.

Our assessment

7.189 We received no evidence or arguments to challenge the view that barriers to entry and expansion in radio are significant primarily because of the lack of available space on the spectrum and high infrastructure costs. There are no prospects for digital

charged may be set by auction a licence holder cannot unduly discriminate against a new entrant who is willing to pay the going rate for that licence's spectrum.
[143] In June 2012 Government, the BBC, Arqiva, commercial multiplex licensees and Ofcom signed an MoU concerning the funding of build-out of local DAB coverage to match FM. This funding would commence upon a positive in-principle Government decision on switchover next year.

switchover within the next two years, the time frame for entry/expansion referred to in our Guidelines.[144]

7.190 We provisionally conclude that entry or expansion on a scale sufficient to constrain the merged entity within the time frame in our Guidelines is not likely.

8. Provisional conclusions on the SLC test

8.1 Our assessment of the evidence across each of the advertising segments (airtime and S&P bought by contracted agencies and non-contracted advertisers) shows that advertisers use other media alongside radio and that other media may be bought as a complement to radio or as a substitute for it. Our provisional view is that, taking all the evidence we have considered in the round, there are campaigns for which radio advertisers cannot easily substitute for other media. Our price-concentration analysis shows that the presence of good radio alternatives affects price and therefore that the number of such campaigns which are not easily substitutable for other media is significant.

8.2 Furthermore, the evidence we have seen indicates that there are advertising campaigns for which the parties' stations are advertisers' next best alternative, showing there is competition between the parties' stations for advertisers. We received broadly consistent evidence across each segment on this.

8.3 The nature of the bilateral negotiations between radio stations and advertisers mean that we would expect to see higher prices where advertisers' alternatives have been significantly reduced as this reduces their bargaining strength relative to the radio station concerned. The availability of good alternatives for some advertisers does not protect those who do not have good alternatives from price increases. Therefore, in

[144] The Guidelines, paragraph 5.8.11.

those campaigns where the alternatives are weak, we would expect the parties to be able to achieve a higher price in the negotiations.

8.4 On the basis of our analysis of the local and regional overlaps, our provisional view is that, as a result of the reduction in good radio alternatives, there would be significant effects on advertisers as a result of the merger in seven areas: the East Midlands; Cardiff; North Wales; Greater Manchester; the North-East; South and West Yorkshire (the Real Yorkshire TSA); and Central Scotland. As such, we would expect that, in the absence of any countervailing factors, advertisers in these areas will face higher prices as a result of the merger. We consider that this adverse effect will affect non-contracted advertisers buying airtime and related S&P on a regional and local basis.

8.5 We note that there is some loss of competition as a result of the merger for advertisers buying airtime through contracted agencies and national S&P. We do not consider the effects of the loss of competition in these areas to be substantial.

8.6 We provisionally conclude that the potential creation of extended quasi-national brands, that some third parties suggested would result from the merger, would not have a significant adverse effect on competition. Similarly, our provisional view is that there are not likely to be adverse effects as a result of the merger arising from the parties' position with respect to industry bodies and industry-wide sales arrangements.

8.7 Barriers to entry and expansion are high and we do not provisionally consider either entry or expansion to be likely, timely and sufficient to offset a potential SLC. Also, we provisionally conclude that the rivalry-enhancing efficiencies claimed by the parties are not timely, likely or sufficient to prevent an SLC in the areas identified.

8.8 Our provisional view is that, as a result of the merger between the parties, there is an SLC in the radio market based on the loss of rivalry in the East Midlands; Cardiff; North Wales; Greater Manchester; the North-East; South and West Yorkshire; and Central Scotland.