COMPETITION COMMISSION

Global Radio Holdings Limited and GMG Radio Holdings Limited

A report on the completed acquisition by Global Radio Holdings Limited of GMG Radio Holdings Limited

21 May 2013

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The Competition Commission has excluded from this published version of the final 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 Some numbers have been replaced by a range.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.

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Glossary

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 22 May 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). 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 concluded that the share of supply test had been met and a relevant merger situation had been created.

6. To be able to assess whether as a result of the merger, there was, or might be expected to be, a substantial lessening of competition (SLC) within any market or markets in the UK for goods and services (UK market), we considered the situation that would have prevailed absent the merger (the counterfactual). We concluded that RSL would have continued to have operated independently of Global, either under the continued ownership of GMG or under the ownership of an alternative buyer which would not itself have raised competition concerns. We considered these alternatives to be broadly equivalent in terms of their likely competitive impact. In our 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 examined, 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 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 noted that radio was a two-sided market in which competition occurred both for listeners and for advertisers and included both commercial stations and BBC radio stations. We noted that the requirements on the BBC, and regulation of commercial radio, sought, among other things, to ensure the availability of radio content that appeals to a wide variety of listener tastes and interests and to reflect regional and local differences. In our view therefore, the interests of listeners were largely protected from the effect of a merger between commercial radio stations. In considering the competitive effects of this merger, we focused our analysis primarily on the effects on the other side of the two-sided product: radio advertising.

9. We did not identify separate markets at a local or regional level but we took geographic differences into account in our assessment of the competitive effects of the merger. We concluded that there was a UK market for radio including, on the listener side, BBC radio stations. We recognized that it was important that our

assessment of existing competition between commercial radio stations and the competitive effects of the merger on advertisers should include an assessment of constraints on radio advertising from other media as well as constraints from other radio stations.

10. We did not further subdivide the market by reference to the way radio advertising is bought but we identified two customer segments within the advertising side 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 analysed 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)).

11. 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.

12. 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. Advertisers commonly negotiated with more than one seller and played sellers off against each other. We noted that advertising was a differentiated product and found that prices varied significantly between campaigns. We concluded that prices were affected by the quality of the alternatives available to the advertiser.

13. We analysed the extent to which advertising on other media was an alternative for those wishing to advertise on radio. We noted that advertisers used multiple types of media to meet their advertising needs and most, though not all, radio advertising was bought alongside other media as part of a wider campaign. We found that, for some campaigns, other media would be a good alternative for radio and could be a substitute for it. However, taking all the evidence in the round, we concluded that the availability of other media was not in itself sufficient to constrain the price of radio advertising and there was a significant proportion of campaigns for which radio advertising was not easily substitutable for other media. The level of competition between radio stations was therefore an important determinant of price.

14. We considered the factors that advertisers took into account when choosing radio stations. We found that the relative strength of competing radio stations as alternatives for advertisers depended on the interaction of audience levels, geographic overlap and the demographics of the audience reached by the available stations. We concluded that demographics were of less importance to advertisers than the extent of the overlap and audience share, particularly where radio options were limited. We also recognized that the way stations overlap in individual areas, and the extent to which individual stations were under common ownership, varied. Radio advertisers' choices were therefore likely to be affected by the merger in different ways in each area where the parties' stations overlapped.

15. We noted that Global and RSL radio stations overlapped and competed for advertisers in each of the nine areas where RSL operated pre-merger. We concluded that the extent of this competition, and therefore the effect of the loss of competition as a result of the merger, depended on the individual characteristics of the radio market in overlap areas and how advertisers bought radio advertising.

16. We found that there was some loss of competition as a result of the merger for the mainly national advertisers buying airtime and S&P through contracted agencies. We did not, however, consider the effects of the loss of competition on these advertisers to be significant.

17. We concluded that the potential creation of extended quasi-national brands that some third parties suggested would result from the merger would also not have a significant adverse effect on competition. Similarly, our view was that there were 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.

18. We concluded that significant effects on competition were unlikely to arise in London and the West Midlands. We identified seven areas where the parties overlap which we considered would be likely to lead to significant adverse effects: the East Midlands; Cardiff; North Wales; South and West Yorkshire (the Real Yorkshire Total Survey Area (TSA)); Greater Manchester; the North-East; and Central Scotland. We also concluded that the significant adverse effects in Cardiff, South and West Yorkshire and Greater Manchester would be likely to contribute to a loss of competition across the wider areas of South Wales, Yorkshire, Humberside and Lincolnshire and the North-West respectively.

19. We considered that the loss of competition in the seven areas would primarily affect non-contracted advertisers buying airtime and S&P from radio stations and groups in the overlap areas. Taking all the available evidence in the round, we concluded that the loss of competition was likely to lead to a significant change in the balance of negotiating advantage between Global and its non-contracted customers such that prices in each of the seven areas would be on average higher.

20. In each of these areas we found that the loss of rivalry as a result of the merger was significant. It involved either the loss of one of three main competitors or, in some cases the only main competitor, in the radio market. As such, the merger would give the merger parties high market shares of listeners and non-contracted revenue in each of the seven overlap areas and reduce the number of radio competitors from either three to two or two to one.

21. We expected that the loss of rivalry in these areas would persist for a relatively long period of time. We found that entry was unusually difficult in commercial radio. This was because the scarcity of FM licences, needed to compete effectively, meant that it was virtually impossible for new radio stations to be established in the overlap areas such that they could offer credible alternatives to the merger parties. We found no evidence that this situation would change before digital switchover. We noted there was considerable uncertainty about the likely date for digital switchover and that it was not expected before 2018 at the earliest. We also considered that while access to the spectrum was currently the main barrier to entry to commercial radio, it was not clear how this would be affected by digital switchover and there was uncertainty over the extent of the other barriers to entry that were likely to remain after switchover.

22. As a result of the lack of availability of FM licences, and other factors, we did not consider either entry or expansion to be likely, timely and sufficient to offset a potential SLC. Also, we concluded that any potential rivalry-enhancing efficiencies were not timely, likely or sufficient to prevent an SLC.

23. We therefore concluded that the merger has resulted in, or may be expected to result in, an SLC in a UK market.

24. We published our Notice of Possible Remedies (the Notice) on 13 February 2013 and sought comments on a number of potential remedies to address the SLC we had found and its adverse effects. These were full divestiture of RSL to a suitable purchaser; divestiture of RSL excluding its operations in London and the West Midlands; and partial divestiture of individual stations within areas of overlap where we had concerns about the effect of the merger. We also said we would consider other practicable remedies that Global, or any interested parties, might propose.

25. Following our consultation, we concluded that each of the divestiture options would be effective. We did not consider that any other potential remedies put forward would be effective. In considering partial divestiture of stations in the seven areas, we concluded that divestiture of one or more stations in each area would be effective. In three of the seven areas (Greater Manchester and the North-West; the North-East; and Central Scotland) we noted that, based on our proposed divestiture options, Global would be able to retain some acquired RSL stations or divest one or more of its own stations. We also concluded that, in the first instance, Global should be allowed to seek to implement its preferred divestiture option in each area.

26. We also considered, in the context of our consideration of partial divestiture options, a proposal for stations to be sold with a brand-licence arrangement. This would involve the purchaser entering into a commercial agreement with the seller to operate the station under the seller's station brand. We concluded that, subject to reviewing the detail of any agreement, a partial divestiture of one or more stations involving a brand-licence arrangement between the acquirer and Global was a credible divestiture mechanism and was capable of being effective in addressing the SLC.

27. We concluded that of the effective remedy options, partial divestiture of stations in the seven areas was the least onerous and therefore more proportionate option as it was more closely targeted on the areas in which we identified significant adverse effects.

28. We also concluded that by allowing Global, in the first instance, some choice of stations to divest, and flexibility as to the structure of divestiture, there was greater opportunity for it to realize some of its objectives for the merger. As such it represented the least restrictive of the effective remedy options.

29. We considered a number of potential benefits that might arise from the merger. We concluded that none of these met the conditions set out in section 30 of the Act for there to be relevant customer benefits (RCBs), as each potential benefit was insufficiently likely to arise and/or could accrue without the merger or a similar lessening of competition. Therefore, these potential benefits would not give rise to RCBs arising from the implementation of the merger. As such, we concluded that the consideration of RCBs did not have an effect on our assessment of the appropriate remedy option.

30. In view of our assessment of the nature and extent of the SLC, and our consideration of potential RCBs, we concluded that partial divestiture of certain stations in the seven areas would not produce adverse effects which were disproportionate to the aim pursued by the CC of achieving an effective remedy to the SLC that we had identified.

31. We therefore concluded that partial divestiture through a series of local divestitures to a suitable purchaser or purchasers was the least costly, least intrusive, effective remedy to the SLC we had found and was a proportionate response to that SLC. In our judgement, it therefore represented as comprehensive a solution as was reasonable and practicable to the SLC and its resulting adverse effects.

Findings

1. Background and the reference

1.1 On 11 October 2012, the OFT referred the completed acquisition by Global Radio Holdings Limited of GMG Radio Holdings Limited to the CC for investigation and report under the Act.[1]

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.[2] 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 conducted our inquiry and the steps we took to ensure the separate and independent operation of GMG Radio Holdings Limited (now Real and Smooth Limited (RSL)) during the course of our inquiry. We were originally required to take our final decision and report by 27 March 2013 but in accordance with section 39(3) of the Act the inquiry was extended to 22 May 2013.

1.5 This document, together with its appendices, constitutes our report published and notified to the parties in accordance with the CC's Rules of Procedure.[3] Further information can be found on our website,[4] such as non-commercially-sensitive versions of submissions 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).[5]

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[1] After the acquisition by Global, GMG Radio was renamed Real and Smooth Limited.
[2] See www.culture.gov.uk/news/news_stories/9267.aspx.
[3] *Competition Commission Rules of Procedure, CC1*, 2006.
[4] www.competition-commission.org.uk/our-work/global-radio-gmg-merger-inquiry.
[5] 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.

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. Ofcom manages the parts of the radio spectrum which are available for civilian use. Stations' services are transmitted via a network of transmission sites across the UK. These sites are generally owned by a third party, the majority of which are owned and operated by Arqiva.

2.3 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. Digital radio enables multiple audio signals to be transmitted on the same frequency through a process known as multiplexing.[7]

2.4 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 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[8] and the commercial radio sector; community radio only operates locally.[9] As this inquiry concerns a merger between commercial radio operators, this section focuses mainly on commercial radio's structure and regulatory framework; we take into account the BBC and other types of service provider where appropriate throughout this report.

2.5 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.

2.6 There are currently 296 licences for analogue local and regional commercial radio stations (242 on FM and 54 on AM[10]) and three for UK-wide analogue stations (talkSPORT and Absolute Radio on AM, and Classic FM).[11] 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[12] of the analogue station.[13]

Regulation

2.7 Commercial analogue and DAB broadcasting services are regulated by Ofcom which issues broadcasting licences[14] setting out the conditions which apply to licence

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[6] BBC Radio 4 broadcasts on LW.
[7] 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.
[8] Further details of the BBC's radio services are provided in Appendix B.
[9] These stations typically cover a small geographic area with a radius of up to 5km and generally on an analogue platform.
[10] 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.
[11] 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.
[12] 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).
[13] 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.
[14] The costs of licences are discussed in Appendix B.

holders.[15] Ofcom is not required to issue broadcast licences for BBC radio services.[16] There are no licence requirements for Internet radio.

2.8 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.[17] 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 currently essentially automatic provided the licensee is already simulcasting the service via DAB, or commits to do so.

2.9 There are two tiers of DAB licence: the multiplex licence and the digital sound programme (DSP) licence. Third parties 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.[18] 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.[19]

2.10 A multiplex licence includes conditions requiring the broadcast of services with the characteristics described in the initial application though Ofcom does not determine which stations should be carried on a multiplex. It is for individual service providers to contract with the multiplex operator.[20]

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

The companies

Global Radio

2.12 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.

2.13 In 2009 Global divested to Arqiva its 63 per cent interest in Digital One (D1)[21] and its interests in national and local DAB multiplex businesses (Now Digital). In addition,

[15] 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 telegraphy.
[16] Although the BBC multiplex is licensed by Ofcom.
[17] 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.
[18] The main companies involved in the ownership of multiplex licences are Arqiva, Bauer, Global and UTV. See Appendix B.
[19] Multiplex operators are required by the terms of their licences not to show undue discrimination either against or in favour of a particular DSP licensee, in addition to a standard condition not to enter into arrangements prejudicial to fair and effective competition in the provision of licensed services or of connected services.
[20] Multiplex operators are required by the terms of their licences not to show undue discrimination either against or in favour of a particular DSP licensee. There is also a standard condition not to enter into arrangements prejudicial to fair and effective competition in the provision of licensed services or of connected services (see Appendix B).
[21] The national commercial digital radio multiplex.

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.

2.14 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.[22] The terms under which Global sells on behalf of other parties are set out in sales agency agreements. The Agreement between Global and RSL is described in paragraphs 4.23 to 4.28.

2.15 Global had turnover of £[✂] in 2011/12[23] (£[✂] 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.

GMG Radio (now RSL)

2.16 GMG Radio was created in 1999 as a wholly-owned subsidiary of GMG.[24] 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 Radio acquired new licences and bought a number of existing stations including Jazz FM, Century FM and Saga Radio.

2.17 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'[25] 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, GMG Radio created a Wales-wide service. The name of GMG Radio 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.

2.18 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.[26] In the first quarter of 2012, RSL's share of commercial audiences was 11 per cent, reaching 5.7 million listeners per week.[27]

Other commercial radio operators

2.19 This section describes briefly the other main commercial radio operators in order of their share of commercial radio listening hours as measured by Radio Joint Audience Research limited (RAJAR). RAJAR, jointly owned by the BBC and RadioCentre (the

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[22] [✂]
[23] To year end March 2012.
[24] GMG Radio Holdings limited was the parent company of GMG Radio.
[25] See Appendix B.
[26] Ofcom, Communications Market Report 2012, Figure 3.13.
[27] Ofcom, Communications Market Report 2012. Figure 3.15.

trade body for the commercial radio sector), measures radio audiences in the UK. Its data is often used for the pricing of radio advertising (see paragraph 5.25) and by the advertising industry for the planning of campaigns.

Bauer Radio

2.20 Bauer Radio is a UK-based division of Bauer Media Group with a turnover for 2011 of £125 million. Bauer Media Group created Bauer Radio (Bauer) 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, including Kiss and Magic. It has 41 local analogue radio licences and 12 DAB multiplex licences. In addition, Bauer has an interest in six other multiplex licences.

UTV Media plc

2.21 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 media interests including radio.

Absolute Radio

2.22 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.

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.

UKRD Group

2.24 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.

Radio listening[28]

2.25 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 to radio has fallen by 22 per cent.

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

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

Advertising on radio

2.28 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; and 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.[29] 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 within the station's programming. Typically, sales promotions will attempt to involve the listener and encourage participation in, for example, a competition.

2.29 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).[30]

2.30 Airtime is also bought in different ways. For example, some advertisers, typically larger purchasers of advertising, may engage a media buying agency which buys airtime on the advertiser's behalf. Terms for agencies buying airtime for advertising on behalf of major advertisers, whose requirements include the ability to reach consumers right across the UK, will typically be negotiated by each agency or group 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[31] 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 6.6 to 6.14. S&P bought through media buying agencies is generally negotiated on a campaign-by-campaign basis rather than under a contract.

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[28] The figures in this section are taken from the Communications Market Report 2012, Ofcom.
[29] 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.
[30] FRS is jointly owned by UTV and UKRD.
[31] Contracts may be for longer than a year, but usually no more than 18 months.

2.31 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 all radio advertising on a campaign-by-campaign basis (we refer to this as non-contracted advertising).[32] Non-contracted advertising is described in more detail in paragraphs 6.15 to 6.17.

2.32 Advertisers may also buy airtime 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.[33] 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.

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 £[✂].[34]

3.2 GMG 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's decision to sell RSL.

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, [✂].[35]

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 and, if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services. For these purposes, a relevant merger situation has been created if;

(a) two or more enterprises have ceased to be distinct within the specified time; and

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[32] 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.
[33] 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 airtime around traffic bulletins.
[34] [✂]
[35] [✂]

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

3.7 We considered that the part of the test which requires us to decide whether two or more enterprises have ceased to be distinct within the specified time had been satisfied in this case. The completed acquisition by Global of the entire issued share capital of RSL had brought these two enterprises under common control for the purposes of the Act.[36]

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 in the UK for the financial year ending 31 March 2012 was £48.4 million and thus below this threshold. We therefore considered the share of supply test.

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.[37] 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.[38] We considered that the share of supply test in this case was met on a number of possible bases and the parties agreed that the share of supply test was met on the basis of its assessment of its share of supply of radio advertising in the UK.[39] Also, the parties' combined share of commercial radio listening hours in the UK was 46.7 per cent with an increment of 10.4 percentage points.[40]

3.11 Therefore, we concluded that the acquisition by Global of RSL had resulted in a relevant merger situation. Accordingly, we went on to consider whether the creation of that merger situation had resulted, or might be expected to result, in an SLC within any market or markets in the UK for goods or services.[41]

4. The counterfactual

4.1 To help us assess whether the merger had resulted, or might be expected to result, in an SLC we considered what would have happened had Global not acquired RSL. This situation, referred to as the counterfactual, is the benchmark against which we compared the competitive effects of the merger.[42]

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

[36] Sections 26(2) and 129(2) of the Act. The acquisition was completed on 24 June 2012, within the specified time of four months prior to the OFT's reference which was made on 11 October 2012 (section 24 of the Act).
[37] Section 23(3) and (4) of the Act.
[38] Section 23(5) of the Act.
[39] Global's estimate of total radio advertising revenues (including S&P) in the year to end March 2012 [✂]. This gave a share of supply of [✂] per cent, such that any increment arising from the acquisition of RSL was sufficient to make the acquisition a relevant merger situation.
[40] 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.
[41] Section 35(1)(b) of the Act.
[42] 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".'

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

(b) whether the existing Agreement[43] under which Global sells RSL's contracted advertising to certain media agencies should form part of the counterfactual.

Ownership of RSL

4.3 There was no evidence that suggested that RSL was a failing firm.[44] 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.

4.4 The Guidelines outline two types of cases which, while not directly analogous, were 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 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 adopted an analogous approach in our consideration of the ownership of RSL in the counterfactual, noting that this case differed from the scenarios set out above in that it related to a completed transaction. However, our approach to potential alternative purchasers under the counterfactual was guided by the principles in the Guidelines: where it appeared 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 considered as possible counterfactuals the sale of RSL to a bidder who was not likely to have met the test for reference to the CC[45] or continued ownership by GMG.

4.6 GMG had decided to seek to sell RSL as part of its strategy to divest non-core assets. We therefore considered 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 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 told us [✂].

[43] This Agreement is discussed in more detail in paragraphs 4.23–4.28.
[44] See Appendix D for an analysis of RSL's financial performance.
[45] 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 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 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 noted 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.[46] In this context, we took into account the approach taken by the OFT in its decision to refer the Global/RSL merger to the CC.[47]

4.15 Based on our assessment of this evidence, we considered 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 noted that none of the alternative bidders was at an advanced stage in its negotiations with GMG and therefore it was less likely that these alternatives scenarios would have occurred. One of these bidders would have been unlikely to have raised competition concerns; others may have done so.

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[46] The Guidelines, paragraph 4.3.1.

[47] 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.

Potential continued ownership of RSL by GMG

4.17 GMG told us that [✂]. As we note in paragraph 4.12, GMG 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 noted that GMG 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, GMG had developed some plans for improving the profitability of RSL in the context of its overall strategy to divest a non-core asset.

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 noted above, such an acquisition would have been likely to have raised competition concerns and met the test for reference to the CC. As such we did 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 noted that none of these bids appeared to have advanced beyond a relatively preliminary stage and GMG was not required to consider them in detail given the interest from Global and Bauer.

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

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

(b) RSL would have been purchased by an alternative bidder that did not give rise to competition concerns.[48]

4.22 However, in both cases, RSL would have continued to be independent, in terms of its ownership, from both Global and Bauer. Further, these alternatives were broadly equivalent in terms of their likely competitive impact such that, in our view, evidence relating to the pre-merger situation, and in particular evidence as to RSL's pre-merger local and national market shares, formed a reasonable basis against which to assess the competitive effects of the merger.

The National Sales Agency Agreement

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

4.24 We considered first whether the Agreement would have remained in place absent the merger, taking into account our counterfactual analysis in relation to the ownership of

[48] We did 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. It was also put to us that the Agreement was 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 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. This contract then transferred to Global when it purchased GCap the following year.

4.27 GMG 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 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 told us that the costs involved of the alternative, setting up its own agency sales team in London, [✂].[49]

4.28 Under the present Agreement, Global is appointed as RSL's [✂] sales agent for [✂].[50] Global is appointed as RSL's agent [✂].

Views of Global and GMG

4.29 Global said that, absent the merger, the current Agreement would have remained in force at least until [✂].[51] 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 lacked 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 or the equivalent benefits of geographic or demographic complementarity offered by

[49] [✂]
[50] [✂]
[51] 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.

Global's stations.[52] Therefore Global argued that, absent the merger, the Agreement would have been retained.

4.31 GMG 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: it considered that, if it did, 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 available to 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.

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 they had not investigated or received any substantiated complaints relating to the Agreement between Global and RSL, nor any similar 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 noted the [✂] termination rights in the existing Agreement and the lack of any evidence that either GMG or Global had any reason to terminate the Agreement ahead of the expiry of its initial term in [✂]. We therefore considered that had GMG 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, we did not consider it could necessarily be assumed that the Agreement would have remained in place and operated in much the same way beyond [✂]. [✂] more recently RSL had 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 therefore expected

[52] 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.

that the owner of RSL would have considered the options at regular intervals despite the present structure of the Agreement.

4.38 Such options could have included 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 was less clear that these would in all circumstances outweigh the potential risk of remaining with Global. The merger would 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 noted 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 was plausible that the more the acquirer was considered a competitor to Global, the less likely it was that the Agreement would have been retained in the medium term.

4.40 We did not accept Global's argument that we should take into account that the Agreement could not have expired before [✄] since RSL was not in a position to consider whether to exercise its right of termination with effect from [✄]. We considered 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 view was that in our counterfactual we should take into account the possibility that the Agreement would not be retained beyond [✄]. The removal of alternatives to the Agreement represented a potential impact of the merger, which it was appropriate to consider further in our competitive assessment. In this respect, we took 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 was contrary to competition law, we noted that the Guidelines[53] state that a counterfactual cannot be constructed that involves violation 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 considered 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 did not consider it necessary to consider this issue further.

Conclusion on the counterfactual

4.43 We concluded that, in the absence of the acquisition by Global, the assets of RSL would either have been retained by GMG or sold to an alternative purchaser which would not have raised competition concerns. Therefore, when considering the likely structure of radio markets absent the merger, we took RSL's pre-merger local and national market shares as a benchmark against which to assess the competitive effects of the merger. We considered 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 were considered further in our competitive assessment.

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[53] The Guidelines, paragraph 4.3.3.

5. The relevant market

5.1 In this section, we set out our findings on the relevant market. The purpose of market definition in merger analysis is to provide a framework for the analysis of competitive effects.[54] 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.[55]

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

Product market definition

5.3 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.[56] We considered separately elements relevant to the listener and advertising sides of the product. Then, taking into account the link between the two, we considered whether the product market for radio should be widened to include other media.

Listeners

5.4 In defining our product market in relation to listeners, we considered alternatives to commercial radio, and radio in general. Specifically, we considered the availability of BBC radio stations as an alternative to commercial radio stations and the different ways content on BBC radio and commercial radio is regulated; and the strength of the constraint on radio from other ways of listening, in particular to music, which is the main output of most commercial stations.

BBC radio stations

5.5 A particular feature of UK radio compared with other countries is the availability of public service radio stations, which are funded from the licence fee and do not carry commercial advertising. Commercial radio operators told us that their stations competed with the BBC for listeners (see Appendix F). Similarly, the BBC told us that the UK radio sector as a whole delivered competition for quality between the BBC and the commercial sector. 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.[57] The BBC's share varies geographically: for example, it is 61 per cent in Wales and 45 per cent in Scotland.[58]

[54] The Guidelines, Section 5.2.
[55] The Guidelines, paragraphs 5.2.20 & 5.2.2.
[56] The Guidelines, paragraph 5.2.20, in particular footnotes 58 & 60.
[57] 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.
[58] Ofcom Communications Market Report 2012 (using RAJAR figures).

5.6 Our evidence showed that the presence of the BBC provides a significant alternative for listeners to commercial radio stations. Therefore, for the purposes of defining our relevant product market, and providing a framework for the analysis of the competitive effects of the merger, we included BBC radio stations.

Requirements on radio operators

5.7 The range, content and quality of radio programming available to listeners in the UK are not left solely to the market to determine. The BBC and commercial radio stations operate under separate systems which govern their broadcast output and these influence the range and quality of programmes available to listeners.

5.8 In commercial radio, 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.

5.9 Under the framework provided by its Royal Charter and Agreement[59], the BBC Trust requires quality and distinctiveness to be key characteristics of the output of BBC radio services. These requirements are reflected in Service Licences and in the annual Statements of Programme Policy. The BBC told us that, through these mechanisms, it differentiated its radio services from those of its commercial counterparts.

5.10 Therefore, the range and quality of programming available to radio listeners are not solely determined by competition between commercial radio stations.

Competition for listeners from other media

5.11 Global said that commercial radio was also facing growing challenges for audience from other media. In particular, it cited 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 noted 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 had declined in the last ten years by 22 per cent.[60] 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.[61] Nevertheless we did not see evidence of active competition between radio stations and other methods of audio listening, nor that they were close substitutes.

5.13 We also noted that 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, television or the Internet.

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[59] The BBC Royal Charter and Agreement.

[60] 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.

[61] 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.

Conclusion on listeners

5.14 In defining our product market, we included all radio stations including the BBC. We did not include other methods of audio listening in the market or other media.

5.15 On the basis of the evidence considered as part of our market definition, we did not analyse in significant detail the effect of the merger on listeners. We noted that the separate requirements on the BBC and commercial radio seek to ensure the availability of content that appeals to a wide variety of listener tastes and interests and to reflect regional and local differences. BBC radio offers a significant alternative to commercial radio in all areas of the UK and is regarded as an important competitor by commercial radio companies. In our view therefore, the interests of listeners are largely protected from the effect of a merger between commercial radio stations. In considering the competitive effects of this merger, we focused our analysis primarily on the effects on the other side of the two-sided product: radio advertising.

Advertising

5.16 We considered the advertising side of the product market. In doing so, we considered whether separate product markets should be defined based on the different types of radio advertising and the different ways it is bought. We also assessed the implications for our product market definition of the different types of listener attracted by different radio output and how that affects which stations advertisers choose. We also addressed the argument that the existence of BBC radio stations constrained advertising on commercial radio.

Types of radio advertising

5.17 As we noted above in paragraph 2.28, commercial radio stations usually have two main revenue streams: the sale of airtime and S&P. There is a further distinction between contracted and non-contracted airtime. We considered whether the distinction between these different revenue streams was so significant that they could be regarded as separate product markets.

5.18 We did 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 was largely on the supply side in that airtime and S&P were different ways that radio stations obtained revenue from advertisers. However, on the demand side, advertisers were able to substitute between airtime and S&P, which were simply different methods of increasing brand awareness via radio. They were not therefore different product markets.

5.19 Similarly, we did 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 was primarily on the demand side in that it was driven by how customers bought their radio advertising. However, supply-side substitution was relatively easy since radio companies could readily change the proportion of airtime made available to contracted and non-contracted advertisers.

5.20 For these reasons, we did not define separate markets for airtime and S&P or for contracted and non-contracted advertising. We considered each segment separately in our analysis. In considering non-contracted advertising we analysed existing competition and the effect of the merger on advertisers buying airtime or S&P on a campaign-by-campaign basis either directly or through a small agency. These

advertisers were generally local or regional advertisers. In considering contracted advertising we assessed the effects of the merger on the mainly national advertisers who bought airtime through contracts between their media buying agency and radio groups and whose media buying agencies negotiated S&P on their behalf on a campaign-by-campaign basis.

Demographics in radio advertising

5.21 Commercial radio stations are also differentiated according to their broadcast output and we considered the implications of this for our market definition.

5.22 Different commercial radio stations broadcast different types of programmes. For example, the three national commercial radio stations broadcast different types of programming: Classic FM broadcasts mainly classical music; Absolute Radio broadcasts mainly rock-oriented music; and talkSPORT broadcasts mainly sports-related speech content. Similarly, local and regional stations broadcast different types of content though most stations focus on contemporary music.[62]

5.23 The effect of these different types of programme is that the stations generally attract different demographics of listeners. For example, at a national level the audience for Classic FM tends to be older and for talkSPORT tends to be male. The differences are less marked in local or regional stations with the most popular stations focused on contemporary or rock music and targeting 15 to 34 or 25 to 44 year olds.

5.24 While on the listening side, stations with similar content are more likely to be close substitutes than those with different content, this is less clear on the advertising side of the market. This is because demographic groups of different formats may overlap and at least some advertisers are concerned with achieving a certain level of reach of all adults rather than a specific demographic group.[63] We did not see evidence that the distinctions in listener demographics were sufficient to justify defining separate markets for stations with different types of broadcast output. We took differences in format and target audience into account in our assessment of the merger's competitive effects. In doing so, we noted that there was often significant overlap between the demographics of listeners on different stations and the demographics of the audience targeted, or identified in the station format, often differed from the demographics of the audience actually reached (see paragraphs 6.117 and 6.118).

The effect of BBC radio on advertising

5.25 The parties argued 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 becomes. 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 compared with other media and increase demand for radio. Bauer told us that it did not consider that rivalry with the BBC exerted any direct or indirect constraint on the supply of radio advertising though noted that the lack of advertisements on BBC radio stations

[62] 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'.

[63] The parties said that [✂]. Other parties said that non-contracted advertisers often sought reach rather than a specific demographic (see paragraph 6.107). The national advertising campaigns we looked at showed that some were targeted at a broad demographic, for example all adults aged 15+ (see Appendix N).

restricted the number of minutes of advertisements that listeners would tolerate on commercial radio.

5.26 We agree that the existence of the BBC is likely to have an impact on the total advertising revenue of commercial radio stations in the sense that, if the BBC did not exist, commercial radio stations in total would have more listeners and probably more revenue. However, we did not consider that this materially affected the importance of competition between commercial radio stations for advertising. Furthermore, we did not see evidence that the alternative to commercial radio for listeners, offered by the BBC had effects on competition for radio advertising that we needed to take into account in assessing the merger.

Conclusion on the advertising side of the market

5.27 We did not define separate markets for airtime and S&P (paragraph 5.18) or for non-contracted and contracted advertising (paragraph 5.19) but consider the effect of the merger on these different segments in our competitive assessment. We also did not consider that the differences between stations in terms of the demographics they reached, and the consequences for advertisers' preferences, were sufficiently clear to define separate markets (paragraph 5.24). We take audience demographics into account in our competitive assessment.

Competition from other media and the hypothetical monopolist test

5.28 We considered whether the market was limited to radio or was wider and included other media. We set out the views of Global and other parties; describe our approach and our conclusion; and finally address comments made by Global in its response to our provisional findings.

5.29 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 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. UTV said that its primary competition for its local radio stations was predominantly from other local radio. Other third parties also said that competition for individual campaigns was often between radio stations rather than between radio and other media (see paragraphs 6.47 to 6.51).

5.30 As already noted (see paragraph 5.1), our Guidelines state that the purpose of market definition in merger analysis is to provide a framework for the analysis of competitive effects, not to determine the outcome of the analysis in a mechanistic way. We recognized that our assessment of the competitive effects of the merger should take into account competition from other (non-radio) media advertising, and we set out our assessment of the evidence on competition from other media companies for radio advertising in paragraphs 6.34 to 6.94. This included an assessment of all relevant evidence including the views of customers on the substitutability of other media for radio advertising; our quantitative analysis of the average prices paid by non-contracted advertisers; and other evidence, including evidence from the parties' surveys.

5.31 Our Guidelines state that we will ensure that the relevant market we identify satisfies the hypothetical monopolist test.[64] In a market such as radio, where prices are subject to bilateral negotiations, and noting that the extent to which radio stations were close alternatives was likely to vary from campaign to campaign (see paragraph 6.27), we considered that the test would be met if a hypothetical radio monopolist was able to negotiate higher prices with sufficient customers such that the average price paid across all radio customers was 5 per cent higher. We noted that this would depend on the importance of the constraint from other media relative to the constraint from other radio. Our assessment in paragraphs 6.34 to 6.94 below indicated that competition from other media was not sufficient to constrain the price of radio advertising and, in light of this, we took the view that the hypothetical monopolist test was satisfied.

5.32 We noted that an alternative approach was to identify different groups of customers and define each of them as a separate market.[65] We noted there was a significant proportion of campaigns for which radio advertising was not easily substitutable for other media (see paragraph 6.94), and that those advertisers most likely to advertise via such campaigns might be regarded as a customer market or markets. However, we did not consider it appropriate to define such customer markets in this inquiry; instead, we considered it appropriate to define a wider market and noted the scope for different customers to pay different prices.

5.33 In its response to our provisional findings, the parties said there was evidence that a hypothetical radio monopolist would not be able to increase prices profitably to advertisers because advertisers would switch to alternatives including non-radio media (in particular, the press). Global said we should therefore conclude that the relevant product market included non-radio media or, at least, press. The evidence the parties referred to was: research carried out by Ofcom in 2006;[66] a survey carried out by BMRB on behalf of Global in 2008; and its 2012 existing customer survey (see Appendix G). For the reasons set out below, we did not agree with Global that these three pieces of evidence suggested that switching to non-radio media would be such that a hypothetical radio monopolist would be unable to increase prices profitably to advertisers.

Ofcom's 2006 Radio Advertising Market Research

5.34 In its 2006 report, Ofcom stated that its approach identified the products which appeared to pose the strongest competitive constraint on radio advertising but did not conclude on the issue of market definition.[67] However, Ofcom's 2006 report also stated that a hypothetical monopolist of radio advertising would not find it profitable to raise prices by 5 to 10 per cent for a sustained period of time, which could have important implications for market definition, as suggested by Global. We note that Ofcom did not make any submission to us about market definition in the context of this inquiry.

5.35 Ofcom's 2006 report was based on face-to-face interviews with representatives of the largest media buying agencies (carried out during March to May 2006) and a telephone survey of businesses that purchased advertising directly from radio

[64] The Guidelines, paragraph 5.2.1. The test is whether a hypothetical monopolist would find it profitable to make a small but significant non-transitory increase in prices (SSNIP) usually 5 per cent.
[65] The Guidelines, paragraphs 5.2.28 & 5.2.29.
[66] Ofcom, *Radio Advertising Market Research: Assessment of the constraints on the price of direct and indirect radio advertising*, October 2006 (RAMR). Ofcom also published two supporting documents.
[67] RAMR, paragraph 6.7. Ofcom also said (paragraphs 1.7 and 6.2) that its report did not attempt to reach a definitive view on the scope of the relevant market since a view on the relevant market would need to be formed by taking account of the specific facts or circumstances of the particular case at hand.

companies or sales houses (carried out during February to April 2005). Although this research was carried out some time ago, since when there have been many changes affecting the media landscape, we considered whether it had implications for market definition in this inquiry.

5.36 The method used in the research for Ofcom's 2006 study was to ask advertisers and media buyers what they would do if the cost of buying radio increased by 5 or 10 per cent.[68] We note that one of the main sources of bias in a survey is hypothetical bias, where a consumer may indicate a willingness in principle to spend money or change behaviour, which does not reflect their likely real response to the situation described.[69] Additionally, as acknowledged in the Ofcom report, prices for radio advertising are determined by negotiation between buyers and sellers. In our view, this exacerbates the difficulty with obtaining accurate responses to hypothetical questions since answering the questions requires respondents to ignore the usual negotiation over prices and assume a hypothetical monopolist makes a take-it-or leave-it price offer. Thus respondents have to assume both the existence of a hypothetical monopolist and a different approach to price determination to that existing in practice.[70]

5.37 A consequence of prices of radio advertising being negotiated is that a hypothetical monopolist would not need to agree a price increase with every customer for average prices to increase by 5 per cent. As noted above, we consider that the hypothetical monopolist test would be met if a hypothetical monopolist was able to negotiate higher prices with sufficient customers such that the average price paid across all customers increased by 5 per cent.

5.38 In this context, we note that the results of Ofcom's market research for direct advertisers suggest that 49 per cent of respondents would continue to advertise on radio with the same slots if the cost increased by 5 per cent and 34 per cent if the cost increased by 10 per cent.[71] This implies that 15 per cent (49 minus 34 per cent) would be willing to pay between 5 and 10 per cent more for radio and 34 per cent at least 10 per cent. This potentially implies that a hypothetical monopolist would be able to increase average prices by at least 4.5 per cent[72] and possibly considerably more if some of the 34 per cent were willing to pay in excess of 10 per cent more for radio;[73] thus, the hypothetical monopolist test would be likely to be satisfied.

5.39 As against this, it may be argued that a hypothetical monopolist would not necessarily be able to agree a price rise with each direct advertiser in line with that advertiser's willingness to pay. As discussed below (see paragraphs 6.24 and 6.25), we consider that it is an important part of the role of radio companies' local sales teams to judge the strength of advertisers' negotiating position. It therefore seems likely that a hypothetical monopolist would have some ability to agree price rises with those who could not easily substitute radio for other media without losing business from

[68] The approach used was different for media buyers and direct advertisers. The research with media buyers took the form of face-to-face questioning on the basis of a semi-structured questionnaire (mixed qualitative and quantitative research), while the research with direct advertisers took the form of asking questions from a questionnaire (simple quantitative research), though this was informed by earlier qualitative research.

[69] OFT/CC, *Good practice in the design and presentation of consumer survey evidence in merger inquiries*, March 2011.

[70] We considered that this was a particular concern with the direct advertiser research which was based on responses to a standard questionnaire and did not provide the opportunity for an in-depth exploration of respondents' actions under the hypothetical circumstances.

[71] Figures 7.2 and 7.3 (recalculated to exclude 'don't knows') in Harris Interactive Radio Advertising Market Research Report, Ofcom, 19 October 2006.

[72] $0.15*((0.05+0.1)/2))+(0.1*0.34)=0.045$. This assumes that on average those willing to pay 5 per cent more but not 10 per cent more would be willing to pay 7.5 per cent more.

[73] It is also possible that some of those who would advertise less if the price of radio advertising was 5 per cent higher would continue to advertise for a price increase smaller than 5 per cent and hence that a hypothetical monopolist would be able to obtain more revenue (albeit less than 5 per cent more) from some of these advertisers.

those price-sensitive advertisers who could switch away from radio.[74] In light of this, we regarded the results of Ofcom's research as inconclusive for whether a hypothetical monopolist would be able to increase prices to direct advertisers by 5 per cent.

5.40 A further point emerging from both Ofcom's research with direct advertisers and its research with media buyers is that, in response to a 5 per cent price rise, respondents were more likely to say they would simply reduce the amount of radio advertising than switch to another medium.[75]. We consider that this lack of clear switching to other media, in particular in the media buyer research, did not support the parties' view that radio advertising prices were constrained by competition from other media.[76]

5.41 Overall, we did not agree with the parties that the 2006 Ofcom research implied that the market was wider than radio.

BMRB survey

5.42 Global also referred to a survey carried out by BMRB on its behalf in 2008. Global's 2008 survey by BMRB was similar to the Ofcom direct advertiser research, but was shorter in length and involved a relatively small respondent base of 67 direct advertisers.[77] For the same reasons as with the 2006 Ofcom research, we did not consider this research implied that the market was wider than radio. We also note that this survey was carried out in connection with Global's 2008 acquisition of GCap and the OFT considered on the basis of data from this survey that the product market appeared to be no wider than radio advertising only.[78]

The parties' 2012 surveys

5.43 The parties argued that the surveys they commissioned as evidence for this inquiry supported the case for a wider market than radio. We consider these surveys in more detail in paragraphs 6.56 to 6.64 and Appendix G. We note though that the question on price increases in Global's 2012 existing customer survey concerned what respondents would do if the price of the Global/RSL station used in their most recent campaign increased. It did not ask respondents to assume that other stations also increased their prices (ie a hypothetical monopolist situation). Therefore, in our view, responses to this question were not relevant to the hypothetical monopolist test and to market definition.

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[74] RAMR, Table 11, states that there were no statistically significant differences between the profile of direct radio advertisers that switched and the sample of direct radio advertisers as a whole. The implications of this are unclear. If the suggested implication is that radio sellers are unable to distinguish price-insensitive advertisers, it is unclear why there are large price differences between advertisers (see paragraph 6.20).

[75] In the direct advertiser research, 28 per cent of respondents said they would continue to advertise on radio with fewer slots/less airtime/shorter advertisements for the same overall campaign price, compared with 24 per cent who said they would switch some or all of their budget to another medium. (Figures 7.2 and 7.3 (recalculated to exclude 'don't knows') in Harris Interactive Radio Advertising Market Research Report, Ofcom, 19 October 2006). In the media buyer research, respondents suggested they would switch 12.9 per cent of their budget away from radio but were only able to identify alternative media for 3.2 per cent of their budget, with 0.9 per cent switched to unknown media and the remaining 8.8 per cent 'switched back in the pot' (RAMR, Table 12).

[76] In principle, a further consideration is that, as recognized by Ofcom in its 2006 report, radio is a two-sided market. If a price increase by a hypothetical monopolist led to a reduction in the number of radio advertising minutes per hour of listening, this may represent a benefit to existing listeners (this could be the case if some listeners dislike advertising). As a consequence, it is also possible that a reduction in the number of radio advertising minutes per hour of listening attracts new listeners. This could have further implications for the advertising side of the market. However, given that prices are negotiated, we did not see reason necessarily to expect a higher average advertising price to be associated with lower radio advertising minutes. This is because higher prices for radio advertising would tend to be paid by price-insensitive advertisers but not necessarily by price-sensitive advertisers.

[77] The total sample comprised 234 non-contracted customers.

[78] Completed acquisition by Global Radio UK Limited of GCap Media plc, ME/3638/08, the OFT's decision on reference under section 22(1) given on 8 August 2008. Full text of decision published on 27 August 2008, paragraph 202.

Conclusion on product market definition

5.44 We considered that the appropriate product market definition was radio including, on the listener side, BBC radio stations. We recognized that it was important that our assessment of existing competition between commercial radio stations and the competitive effects of the merger on advertisers should include an assessment of constraints on radio advertising 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

5.45 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.[79] Generally, commercial licence areas may be divided into national[80] (Classic FM, Absolute Radio, talkSPORT); regional[81] (including London-wide licences); and local.

5.46 On the listening side, the evidence suggests that regional and local stations compete with national stations. For example, most regional and local commercial stations said that their closest competitors included Radio 1 and/or Radio 2.

5.47 On the advertising side, regional and local stations may carry national advertising campaigns; local stations carry regional advertising campaigns; and overlapping local and regional stations may compete for local advertisers.[82] A competitor told us that regional stations might reduce their rates to attract local advertisers within the region; and an agency said that where regional stations and local stations overlapped, the presence of the two stations might be used as a bargaining tool by the advertiser.[83] Some national stations also sell regional advertising where they are able to broadcast different adverts on different transmitters simultaneously.

5.48 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.

5.49 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 points, we concluded that it was neither straightforward nor necessary to define separate regional or local markets. For these reasons, in our competitive assessment we considered competition at a regional and local level as well as at a national level. We took differences in station TSAs into account in our analysis of the competitive effects of the merger in areas where the parties' stations overlap.

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[79] Stations which subscribe to RAJAR audience measurement define a Total Survey Area (TSA) which may be wider than the station's licensed area.
[80] National licences cover the whole of the UK.
[81] 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.
[82] See, for example, [Agency U] and Bauer response to the parties' response to provisional findings.
[83] Bauer, [Agency U].

Conclusions on the relevant market

5.50 We considered 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 assessed the extent of the constraint on radio advertising from other forms of media advertising in our competitive assessment. We did not define separate markets at a local or regional level but we took geographic differences into account in our assessment of the competitive effects of the merger.

5.51 Our market definition was therefore a UK market for radio.

6. Assessment of pre-merger competition

6.1 In this section we describe the radio market in more detail and the nature of competition for radio advertising. We describe the relative size and coverage of the parties and their main radio competitors. We then look at how prices are set and consider the extent of competition from other media and between radio stations. Finally, we summarize the available evidence and reach conclusions on pre-merger competition to inform our assessment of the effects of the merger in Section 7.

Radio station operators

6.2 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 2.20 to 2.24.

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

6.3 Commercial radio revenue from all advertising in 2011 was £456 million, 2.7 per cent of all advertising spend.[84] 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.

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).

*Local commercial includes all non-national commercial radio, ie it includes regional stations.

6.4 As we note in paragraph 2.28, it is possible to distinguish between two commercial radio revenue streams, airtime and S&P; airtime accounts for the bulk of commercial

[84] Ofcom Communications Market Report 2012.

radio net revenue, about 80 per cent, S&P for the remaining 20 per cent. There is a further distinction between contracted and non-contracted advertising, with contracted airtime, together with S&P purchased from contracted agencies, accounting for just over half (about 60 per cent) of commercial radio net revenue. Most commercial radio groups and stations compete with each other to some extent in each segment of the market.

6.5 Some 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 over 60 per cent of their total revenue from contracted advertising compared with less than 15 per cent for smaller, local stations.[85] We describe below competition for radio advertising bought by the large London-based media agencies (contracted advertising) and local and regional airtime and S&P bought direct by advertisers or by small regional agencies (non-contracted advertising).

Contracted advertising

6.6 There are currently five main parties selling contracted advertising to the large agencies: Global (acting also as a sales agent for RSL and Orion[86]); Bauer; Absolute Radio; talkSPORT; and a sales house, FRS. On behalf of a large number of commercial radio stations, Global also sells airtime around IRN's 'Newslink' and the BT40 chart show.[87]

6.7 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, part of the WPP group (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 with contracts include 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.

6.8 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.[88] 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.

6.9 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 UK, they may also require advertising on a regional or local, as well as national, basis.[89]

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[85] CC calculations based on information from radio companies and Ofcom.
[86] RSL sells airtime on a contracted basis to a number of agencies that are not covered by the Agreement.
[87] An independent entity (GTN) sells airtime around traffic bulletins.
[88] Between 2 and 6 per cent (CC estimates based on agency questionnaire responses).
[89] 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.

6.10 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 book airtime under the agreement throughout the year at the agreed rates.

6.11 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.

6.12 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 4.28). RSL sells its own airtime to, and has contracts with, [✂] and [✂]. These contracts represent around [✂] per cent of RSL's revenue from contracted advertising.

6.13 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.

6.14 Global does not sell S&P on behalf of RSL.[90] Therefore the parties compete separately with the other parties described in paragraph 6.6 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

6.15 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 direct purchases by advertisers and the remaining [✂] per cent by purchases via agencies. Compared with the agencies which have contracts with media owners, the agencies buying non-contracted advertising 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; restaurants; professional services, such as solicitors; taxi firms; hospitals; charities; automotive companies; local government; and education bodies, such as colleges. Advertisers buy airtime on a campaign-by-campaign basis. They may also buy S&P and usually negotiate these deals directly with the station.

6.16 The median spend with Global and RSL by their non-contracted advertisers 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.

[90] [✂]

6.17 Advertisers buying non-contracted airtime also buy S&P, usually directly from the radio station. As we note in paragraph 6.114, 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.

Pricing and negotiations

6.18 Prices for radio advertising are negotiated. Although the parties to the negotiation vary according to the type of advertising being bought, and depend on whether the advertiser buys directly or through an agency, we were told that it was a feature of all parts of the radio advertising market that prices were negotiated between parties and were not published. This had implications for the way we considered the effects of the merger on advertisers.

Negotiations for non-contracted advertising

6.19 For those buying non-contracted advertising, the price of each campaign or sponsorship opportunity is negotiated individually. Radio stations generally have a rate card for airtime which will list a price for a 30-second airtime slot based on either a cost per slot or a CPT basis.[91] These rate cards are not published and are used internally as the basis for 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.[92] We were told that prices for local sponsorship and promotion were negotiated on a campaign-by-campaign basis and would depend, in part, on the particular features of the campaign.

6.20 We noted from our analysis of Global's pricing data for non-contracted airtime that the level of discount varies significantly between campaigns. Global requires that discounts on rate-card prices of more than [✂] per cent are [✂] and discounts of more than [✂] per cent [✂] (see Appendix K).[93] Only [✂] per cent of Global's non-contracted revenue is accounted for by campaigns with a discount of less than [✂] per cent, while [✂] per cent is accounted for by campaigns with a discount of between [✂] and [✂] per cent, and [✂] per cent by campaigns with a discount of more than [✂] per cent.[94] RSL said that, while it [✂] to sales staff, in practice prices varied [✂] depending on demand. An overriding consideration was typically [✂] media options.

6.21 In markets where prices are negotiated individually in this way, buyers commonly negotiate with more than one seller and may play sellers off against one another. We saw evidence of this in the negotiations between advertisers and radio stations. Radio stations told us that clients regularly asked for competitive pitches for business and used them to compare prices and quoted prices offered by other stations to obtain better deals or to explain why they had placed advertisements with competitors.[95] We also saw evidence of comparisons between the prices of radio stations in

[91] There are standard adjustments for the length of the advertisement, and for the time of day, week and year. Appendix K describes rate cards in more detail and compares Global's rate-card prices with its average achieved prices.
[92] We asked the parties to provide all internal emails (or other internal documents) relating to permissions requested by local sales teams to more senior members of Global/RSL staff for giving discounts to non-contracted advertisers over and above their own authorization levels. Global said that its staff generally [✂] for discounts [✂] in addition to available [✂] all Global regions that showed the level of discount against the rate card for each non-contracted customer [✂]. Global said that this demonstrated that it discounted heavily in order to win non-contracted business.
[93] As set out in Appendix K, [✂]. We note that Global has no published rate card [✂]of list prices and [✂] [✂]
[94] Percentages exclude [✂], for which [✂].
[95] Bauer's response to the parties' response to our provisional findings, Annex 4.

email exchanges between advertisers and radio stations[96] and some evidence of the prices of other forms of media, such as television, being quoted by prospective radio advertisers. The parties told us that negotiations often took place over the telephone or face to face and therefore emails did not reflect all the media options available to advertisers.

6.22 A merger prevents buyers from playing previously competing sellers off against each other in negotiations and this may enhance the ability and incentive of the merged entity to obtain a result more favourable to it. The extent to which this might happen will generally depend, in part, on the number and quality of options available to the customer and the importance of the option removed as a result of the merger. Intuitively, customers with good options 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' or credibly threaten to do so. In contrast, customers with poor alternative options are more likely to have to accept a worse deal because their negotiating position is weak.[97]

6.23 The size of discounts from the rate-card price will also be affected by other factors including the relative negotiating skills and experience of the buyer and seller.

6.24 We did not accept the parties' argument that they did not know the strength of the particular alternatives available to their non-contracted customers when negotiating prices for individual campaigns and therefore they could not negotiate higher prices for those with poor alternatives.[98] As we noted above, advertisers often use prices and deals offered by rivals as negotiating tools thus providing valuable information about the available alternatives. Furthermore, evidence from the parties and competitors showed that customers may explicitly state what they have been offered by another radio station or other media during negotiations.[99] Also, the parties' internal documents showed that local sales teams collect [✂] information on customers and potential customers, including [✂] and [✂], and guidelines on [✂].[100] This suggested that, as might be expected, an important role of the sales teams (which we understand would tend to be in regular contact with customers and potential customers) was to negotiate favourable prices and to use all available information and techniques to achieve them.[101]

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[96] Attachment 6.7 of the parties' response to our provisional findings includes an email exchange between Global and a customer in which [✂] alternative offer from a competing station and the salesperson shows knowledge of [✂].
[97] We noted that, as prices for non-contracted advertisers were negotiated individually and not published, the ability of one customer to negotiate a good price for a campaign would be unlikely to affect the prices for others (it would only do so to the extent that customers tell each other the CPT or discounts they have obtained).
[98] Global described this as a novel theory of harm. Our theory of harm to competition, as set out in the issues statement, is of unilateral horizontal effects and this is not novel. Global's point relates not to competition but to the mechanism by which the merger affects customers. In a market where products have a uniform price, a merger potentially affects customers adversely because it gives rise to an incentive to increase the prices of substitute products. In a market where prices are determined by supplier/customer negotiations or by suppliers bidding against each other, a merger potentially affects customers adversely because it reduces the number of suppliers of substitute products they can play off against each other, either informally (when prices are negotiated) or formally (when prices are determined by some form of auction). This point is not novel—for example, a section of the US horizontal merger guidelines covers 'bargaining and auctions' (Horizontal merger guidelines, US DoJ and FTC, August 2010, Section 6.2). The CC has recently considered cases involving both negotiated prices and prices determined by more formal bidding processes, including assessment of the effect of a loss of options on customers. (A recent example involving negotiated prices is Epwin/Latium and a recent example involving more formal bidding processes is Alpha/LSG.)
[99] See [✂] Global and advertiser ([✂]; and Bauer's response to the parties' response to our provisional findings, Annex 4, which suggests that Bauer was told the price offered by competitor radio stations for particular campaigns.
[100] For example, RSL's client information sheets contain [✂] and information on the current situation with RSL [✂].
[101] 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 their radio stations every year over a four-year period; and that these advertisers generally paid [✂] or [✂] for airtime compared with other advertisers, including new advertisers. We noted, however, that sales teams negotiated prices with all customers, not just persistent customers; and may remain in contact with an advertiser even if that advertiser did not advertise on a particular station every year. We also noted that average price was affected by customer size and that the fact that persistent advertisers generally paid [✂] or [✂] for airtime compared with other

6.25 While we accepted that it would be rare that local sales teams would have perfect information about the alternatives being considered by a prospective advertiser for a particular campaign, we expected it to be an important part of their role to judge the strength of the advertiser's negotiating position and to use this to maximize the revenue generated by particular campaigns.

6.26 We also considered it significant for our assessment of the effect of the merger on negotiated prices for non-contracted advertisers that advertising is a differentiated product. We were told that the same advertiser may target different demographics, and therefore use different radio stations for different campaigns. Similarly, the particular features of radio compared with other media might make radio more or less important for individual campaigns. For example, retailers may want to take advantage of the immediacy offered by radio in a campaign to promote a sale but have more media options for a less time-sensitive campaign.[102]

6.27 As the prices for non-contracted advertising were negotiated individually, this differentiation meant the options available to advertisers might vary from campaign to campaign. While some advertisers might have a preference for radio, the extent to which radio stations might be close alternatives was likely to vary from campaign to campaign.

Negotiations for contracted advertising

6.28 While prices for contracted airtime for advertising were also the product of bilateral negotiations, we were told that they were not negotiated on a campaign-by-campaign basis. Prices for airtime were included in contracts which were negotiated annually, or less frequently, between radio groups or sales houses and the agencies.[103] We were told that contracts were generally based on shares of agencies' advertising spending on radio or volume discounts and that the contract negotiations included these elements as well as rate-card prices for stations. Once the contract had been agreed, agencies booked airtime based on the prices within the contract rate cards and there was limited scope for further negotiation over price.

6.29 Therefore, it was the bargaining strength of the agencies, relative to the merger parties, in these contract negotiations that was particularly significant for our assessment of the effects of the merger on prices for contracted airtime. We considered the alternatives available to contracted agencies at the point at which contracts and prices were negotiated, and the relative importance of radio within their overall media spend, rather than the options available for individual campaigns.

6.30 We noted that prices for S&P bought by national advertisers were generally negotiated on an individual basis, usually by the agency which bought contracted airtime on the advertiser's behalf. We therefore considered the S&P options available to national advertisers before the merger and the likely effect of the merger on options and therefore prices.

advertisers may be explained by persistent customers being larger than average and larger customers on average paying [✂] prices.

[102] For example, the agencies [Agency AM] and [Agency AW] noted the importance of radio for some retail campaigns.

[103] The parties told us that the relevant trading director represented the agencies in the contracted buying group (eg [✂]) or an individual contracted agency (eg [✂]) during the periodic contract negotiations over prices. Once prices have been agreed for individual campaigns, media planners within the agencies look at the various media options and plan according to a number of different factors about how the budget should be apportioned between various media. Global said that the cost of the radio component—which is dependent on the prices agreed in the contracts—will therefore make radio a more or less attractive medium compared with other media. Once it has been decided that radio will be used in a campaign a radio planner within the agency would then plan the radio part of the campaign (ie which stations to use) taking into account, among other factors, the radio budget and the prices under the contract (ie the pre-agreed prices will make a particular station more or less attractive compared with other radio stations).

Introduction to the assessment of pre-merger competition

6.31 In assessing the nature of pre-merger competition, we sought to address two broad issues. First, we considered the constraint on radio advertising from advertising on other media. Second, we considered the nature of competition for advertising between radio stations generally and between the parties' stations. In doing so, we considered evidence submitted by the parties, third parties and our own analysis.

6.32 Some of these sources of evidence were relevant to both issues. For example, the parties submitted survey evidence which sought to assess the extent to which other media might be the next best alternative for radio advertisers and the closeness of competition between the two parties' radio stations. The parties submitted evidence from two surveys:

- the existing customer survey was a survey of both parties' direct advertisers in the overlap areas who had recently advertised on a Global or RSL station; and
- the lost opportunities survey was a survey of direct advertisers in the overlap areas who had actively considered advertising on Global for a particular campaign but ultimately decided not to.[104]

6.33 Our conclusions on the robustness of these surveys and the weight we considered we could attach to some of the results (see paragraphs 6.65 to **Error! Reference source not found.**) are relevant for our consideration of both the constraint from other media and competition between the parties' stations.

Competition with other media

6.34 In this section we consider the evidence on competition between radio advertising and advertising on other media.

6.35 We noted that 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 reflected the potential uplift in impact and cost-effectiveness that adding radio to the media mix of a campaign could offer. The Radio Advertising Bureau (RAB) made similar points about what it described as the multiplier effect of using radio with other media advertising. For example, it cited research suggesting that if 10 per cent of a given television budget was reallocated to radio, the efficiency of the campaign in building awareness increased on average by 15 per cent. Agencies also confirmed that they used radio in this way.

6.36 We did not consider that the fact that radio advertisers might use a variety of different media indicated that these other media were substitutes and necessarily constrained the price of advertising on radio. This is because we were told that different media could play broadly complementary roles for advertisers. However, complementary media might also be substitutes at the margin, since advertisers might be able to vary the precise proportions in which different media are used despite their broadly complementary roles.

6.37 Therefore to assess the extent of the constraint on radio advertising, we analysed a wide range of available evidence and took into account the views of the parties and others.

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[104] 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.

The views of the parties

6.38 The parties argued that 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.

6.39 The parties emphasized the extent to which they competed directly with other media for advertisers and referred to evidence from the two surveys, event studies[105], 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.

6.40 They pointed to the results of the two surveys of non-contracted advertisers which they commissioned. 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, based on the results of the lost opportunities survey, they said that 90 per cent of advertisers that turned down a proposal from Global had 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.

6.41 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.[106] 9 per cent said that they could not use any other types of media to meet the same objectives as radio.

6.42 The parties calculated[107] that the proportion of respondents to the existing customer survey 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 customers indicated that they would switch to local press than to the other party's stations.

6.43 The parties also submitted analysis of data published by NMR which included 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.[108] The parties also told us that they principally targeted users of other media when seeking to find new

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[105] The parties submitted event studies for North Wales, London, Yorkshire and Central Scotland. Given the absence of significant radio options in North Wales, this particular event study was potentially relevant in considering the constraint from other media.
[106] 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.
[107] 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).
[108] The analysis looked at advertisers which advertised on the parties' stations in 2009 but not again in 2010 or 2011.

customers rather than other radio stations, and supported this with evidence from their internal documents.

6.44 The parties submitted analysis of an event study in North Wales which they argued demonstrate that radio stations competed more closely with other media than with each other. The analysis compares average price trends of the parties' stations and trends for either total airtime revenues or non-contracted airtime revenues. The parties said that the event study demonstrated that Real's entry into North Wales had [✂] in that area despite the two being the only significant commercial radio stations.

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

6.46 The parties also drew inferences from the regional results of both surveys. They argued that these showed that, in each of the overlap areas, Global competed with other media and the parties' stations were not close competitors.

Third party views

6.47 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.

6.48 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 the perception of radio as a trusted medium are important attributes.

(b) Targeting: radio is relatively sophisticated in terms of the ability to target particular times of day and also particular demographics effectively. Radio is currently the leading media option in the UK until 1pm.

(c) 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.

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

(e) 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 that comes with television advertising.

(f) 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.

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

6.50 There was a range of views on the extent to which these particular characteristics of radio meant they could not easily be substituted for other media in a campaign. Although the large agencies, buying contracted airtime on behalf of mainly national clients, 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.[109]

6.51 Smaller agencies buying on behalf of non-contracted advertisers also expressed a range of views but a majority considered that there were campaigns for which other media could not easily be substituted for radio.[110] Some referred to the specific types of campaigns which relied on radio, such as, countdowns to sales by retail outlets. Others noted that some of their clients spent a large proportion (around 70 to 80 per cent) of their advertising budgets on radio and for many clients radio was the main 'call to action' media.[111] One agency said that other media were available and campaigns could easily be switched to other media in response to an increase in prices.[112] This view was also supported by some of the non-contracted advertisers on Global stations who responded to our provisional findings.[113] Most of these respondents said that they bought radio as part of a wider campaign and would switch their marketing budget away from radio in response to price rises.

Our assessment

6.52 The evidence we received showed that across all segments of the market, radio advertising was often bought as part of a wider multi-media advertising campaign. In relation to contracted airtime, 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

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[109] 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.

[110] Eleven of 12 agencies, which responded to the specific point in our provisional findings, said that they agreed with the statement that 'there are advertising campaigns for which radio advertisers cannot easily substitute other media'.

[111] See, for example, [Agency U], [Agency AK] and [Agency AM].

[112] [Agency AQ].

[113] See, for example, response from Driven Car Sales which is repeated in similar terms by around 12 further advertisers and similar points made by a further 36 advertisers who responded in support of the merger.

with a different audience.[114] This view was shared by other agencies and radio stations.

6.53 Although local advertisers buying non-contracted airtime were likely to have much smaller advertising budgets than those buying through large agencies, they similarly often used more than one source of advertising. Respondents to the parties' existing customer 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. On average, respondents used almost six different media during 2011.[115]

6.54 Responses from the surveys suggested that advertisers also used a number of different media in each campaign but the total number used in an individual campaign was lower (around 3.5) than the total number used in the year. Of the parties' existing customers, around 25 per cent of respondents only used radio in their last campaign and did not buy radio advertising in combination with other media.[116] This was broadly in line with the submissions we received from local agencies buying on behalf of non-contracted advertisers who indicated that radio was more often than not bought alongside other media.

6.55 As we note in paragraph 6.36, the fact that advertisers might use more than one medium in a campaign does not, in itself, tell us about the extent to which other media might complement radio in a campaign or be a substitute for it. We noted the evidence summarized in paragraph 6.48 that different media had different characteristics which may affect how it is used in a campaign and affect the extent to which different media are substitutable. In considering the constraint on the price of advertising on radio from advertising on other media we analysed the survey evidence submitted by the parties; pricing data from the parties; and the views expressed by advertisers and agencies buying airtime and S&P on behalf of national, regional and local advertisers.

Survey evidence

6.56 We noted that the parties attached significant weight to the results of their surveys to support their argument that non-radio media was an effective substitute for radio advertising. We assessed the survey design and fieldwork for both surveys in deciding what weight we could attach to the survey results. We then considered the results and what inferences we could draw from these about the effects of the merger.

6.57 We summarize below the main points from our analysis and set out our detailed analysis of the survey evidence in Appendix G. Some of these conclusions are also relevant for our analysis of the evidence on competition between the parties (see paragraphs 6.128 to 6.130. We also refer to the results of the surveys, where relevant to our analysis, in other parts of the report taking into account our conclusions below on the weight we can attach to each survey and the responses to particular questions within the existing customer survey.

- *Lost opportunities survey: survey design and fieldwork*

6.58 We considered the questions asked of respondents to the lost opportunities survey and what the answers told us about the substitutability of other media for radio. The

[114] [Agency A].
[115] This counts the response 'other' as one different medium.
[116] See Appendix J.

sample for this survey was drawn from advertisers who had considered advertising on a Global radio station but ultimately decided not to. It was not therefore informative on the likely choices of RSL advertisers as these advertisers were not covered by the survey.

6.59 Also, the survey did not include a direct question asking respondents what they did instead of advertising with the Global station. Therefore, although there is data from the survey which enables us to draw some inferences on advertisers' preferences, and the extent to which other media might offer an alternative, interpretation of the data is difficult.

6.60 The fieldwork for the lost opportunities survey was generally satisfactory though we were advised by the CC's survey moderator to exclude some responses from our analysis because of the poor quality of some of the interviewing. We considered that the sample size remaining after excluding this data was sufficiently large for us to draw inferences from aggregated results.

- *Existing customer survey: survey design and fieldwork*

6.61 The sample for the existing customer survey was drawn from the customer base of both main parties. It used hypothetical questions to try to establish how advertisers might have spent the budget allocated to one of the parties' radio stations if it had not been available.

6.62 Again, the survey did not include a direct question asking what respondents would have done. Instead the wording of the relevant question (question 11) was, in our view, excessively complex and open to misinterpretation by respondents. We also judged that the way this question was worded in the survey would, if asked as intended, have led to a downward bias against respondents indicating other radio instead of other media as the next best alternative.

6.63 We took into account the quality of the fieldwork. The CC's survey moderator noted serious concerns about the quality of the fieldwork for the existing customer survey.[117] In particular, the problems in the existing customer survey concerned the key question which sought to establish how advertisers would have spent their budget if the Global/RSL station had not been available. As a result of these concerns, the CC's survey moderator's report on the existing customer survey advised that we should be very cautious in interpreting its results.[118]

6.64 We noted the separate moderator's report commissioned by the parties[119] on the existing customer survey, following publication of our provisional findings, and the criticisms of the CC moderator's work in this and the parties' response. Our view was that the parties' moderator's analysis of the way the key question was asked suggested that the inherent bias in the question may not have materialized in practice because the question had not been asked as intended. However, we were not persuaded that we should discount the concerns of the CC's moderator and considered that her assessment had been misrepresented in both the parties' own response and their moderator's report. We also noted that the parties' moderator identified another issue with the key question in the existing customer survey which was that the answers had not been coded correctly. In our view, this further undermined the validity of the survey analysis.

[117] Global-GMG Survey Quality Moderator Report, Sheila Robinson, January 2013.
[118] Global-GMG Survey Quality Moderator Report, op cit, paragraph 2.
[119] Response to Survey Quality Moderator Report, Philip Malivoire, March 2013.

- *Summary of our assessment of the parties' surveys*

6.65 In the light of our assessment of the survey design and fieldwork, we evaluated what weight we should attach to the results of the two surveys. Although the lost opportunities survey did not include a clear question about alternatives to Global, the questions were generally not open to misinterpretation and most of the fieldwork was of a reasonable quality. Excluding the results from poor quality interviews as suggested by the CC's survey moderator still left a relatively large sample from which inferences could reasonably be drawn subject to the limitations of the questions.[120] We therefore attach weight to our analysis of the aggregate results of the lost opportunities survey and refer to this in our summary of the evidence we drew on in reaching our conclusions. However, we note that the survey was confined to advertisers who had been approached by Global and therefore did not provide information on the behaviour of RSL customers in overlap areas.

6.66 There were particular problems with specific parts of the existing customer survey and generally poor quality fieldwork overall. In particular, given the complex and misleading drafting of question 11, the inconsistent approach to the way it was asked, and the poor quality of the fieldwork, we concluded that we should attach minimal weight to the responses to question 11 and any further responses which were dependent on the answers to this question. We do attach, however, some weight to other responses from the existing customer survey where the questions were not dependent on the responses to question 11 (see, for example, paragraphs 6.53 and 6.54).

6.67 In neither survey did we consider that there was sufficient robust data for us to take into account the results at a local level. This was because the sample sizes of relevant respondents were insufficiently high either in total or once unreliable data from poor fieldwork had been removed from the data set.

6.68 We considered that the survey results to which weight could be attached were consistent with other radio stations being an important alternative for a significant proportion of advertisers. We noted that the results of the lost opportunities survey suggest that about 50 per cent of advertisers who declined a Global offer and who went ahead with the campaign subsequently advertised on another radio station, and about 20 per cent did so on an RSL station. Our analysis of the survey data, see Appendix G, did not support the parties' inference that advertisers were more likely to choose other media than other radio stations as their next best alternative (see paragraph 6.42).

6.69 For the reasons outlined in paragraph 6.66, we do not consider that the figures derived from our analysis of the answers to question 11 of the existing customer survey are sufficiently robust to be relied upon. However, we noted that the parties attached significant weight to their analysis of the answers to question 11 in their submissions (see paragraph 6.42). For completeness, we therefore considered these submissions carefully and carried out our own analysis of these responses, and analysed data from both surveys which draws on these responses. This work is summarized in Appendix G. As a result of this analysis, we would disagree with the parties' conclusions on the survey even if we were to give weight to the answers to question 11 and note that the results of our analysis of these answers are consistent with our overall findings.

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[120] The CC's survey moderator also highlighted that potential respondents who had not used radio in the last three years may have been incorrectly screened out by one of the agencies and therefore when analysing the sample as a whole only those who had advertised on radio in the last three years should be included. We considered that results from this subsample were likely to be more informative about advertisers' preferences in any case and sample sizes remained relatively robust.

Quantitative analysis of the average price paid by non-contracted customers

6.70 We carried out an analysis of the pricing data provided by the parties. In doing so, we assessed the extent of any relationship between the negotiated prices paid by non-contracted advertisers and the availability and strength of other radio options. If all advertisers had good alternatives such that they could easily switch to other media for most campaigns, the price they paid would not be affected by the radio options available; if a radio station tried to negotiate higher prices they would substitute to one of the many other media options available across the country, or threaten to do so, and the price of radio advertising would fall to compete.

6.71 We used two proxies for the availability and strength of other radio options. One proxy was the company's share of listeners in each area, on the assumption that the company's market share of listeners was a proxy for the strength of the alternatives available to advertisers negotiating terms with the company's local sales teams: the higher the company's overall share, the weaker the outside options available to the prospective advertiser. Another proxy was the HHI.[121] As noted in our guidelines, HHI is a measure of market concentration that takes account of the differences in the sizes of market participants, as well as their number. In this case, HHI captures the distribution of commercial radio listening hours accounted for by other companies as well as Global or RSL. Our preferred approach included both proxies because each captured slightly different aspects of the availability and strength of other radio options. HHI reflects the concentration of the market overall, while company share reflects the strength of the company in the area. For example, we noted that a company's share may be relatively low even in concentrated markets with a high HHI. It is possible that both proxies could each affect the average price achieved by a station.

6.72 If, taking as full account as possible of other factors that might influence price, the relationship between alternative radio options and price proved to be significant and positive, then this would indicate that the price which the company was able to secure in selling non-contracted advertising was not fully constrained by competition from other media, but also depended upon its strength as a supplier of radio advertising in its broadcasting area.

6.73 In our analysis we took into account other factors that might be expected to influence the average price paid by non-contracted customers, including some suggested by the parties' response to our initial analysis. These included 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; the region in which the station was located; and the population within each station's TSA. We considered that the last two factors could be a proxy for possible differences in the strength of the constraint from other (non-radio) media. The region in which the station was located could reflect any inter-regional differences in the strength of the constraint from other media. The population variable could reflect differences within regions in the strength of the constraint from other media; for example, a wider range of other advertising media and hence a stronger constraint might be expected in areas of high population.

6.74 Our results indicated that, after other factors were controlled for, there was a statistically and economically significant relationship between the company market share and the average price paid—a 10 per cent higher company market share was

[121] The Hirschmann-Herfindahl index of concentration (HHI) is the sum of the squares of the market shares in each of the company's broadcasting areas.

associated with a [✂] to [✂] per cent higher average price. After other factors were controlled for, we did not find a statistically significant relationship between HHI and the average price paid. In our view, this result does not invalidate our finding in relation to company share because each proxy captures slightly different aspects of the availability and strength of alternatives in each area (see paragraph 6.81 and Appendix I).

6.75 Our analysis also indicated that [✂].

6.76 On the basis that the company market share reflects the strength of outside radio options available to customers of Global and RSL stations, our analysis indicates that non-contracted advertising customers in areas where radio alternatives are weaker pay higher prices than customers in areas where company share is lower and radio alternatives are stronger. Our results also suggest that whilst variations in the strength of competition from other media, for which the region and population variables are proxies, may affect prices, this effect is not sufficiently strong to prevent variations in company market share from having a separate effect on prices. In other words, company market share in the local radio areas where Global and RSL are present affects the prices paid by non-contracted advertisers in these areas.

6.77 The parties said that our analysis was subject to a number of methodological short-comings that undermined its value as an analytical tool. We considered all of their comments carefully. We did not agree with the parties' views on the methodology nor with their overall assessment of the results of the analysis. We consider the parties' points in summary in the following paragraphs and in detail in Appendix I.

6.78 The parties said that our analysis used inappropriate measures of radio alternatives. We disagreed. In our view, listening was an appropriate basis for measuring radio alternatives because a radio station's appeal to advertisers depends on its appeal to listeners.

6.79 The parties also said that our analysis relied on making an unrealistic assumption that non-radio competition was constant across local areas. We did not agree and we noted that the parties provided no evidence to support their argument that any variation in non-radio competition explained our finding that higher radio company share was associated with higher prices. We also noted that our analysis allowed for regional variation in non-radio competition and any variation associated with differ-ences in population of station's broadcasting area.

6.80 The parties also argued that the observed effects of the company share on prices might be biased because there might be station-specific unobserved effects that were correlated with the company market share. We did not accept this argument and noted that we had controlled for a significant number of station-specific effects such as age, income and brand effects. We considered that the parties' alternative specifications removed most of the variability in the data (which was between different stations rather than for each station over time) and that therefore it was not surprising that they found no statistically significant effects with their specifications.

6.81 The parties also said that our estimates were not robust to changes in how the relationship was specified. As a result, Global argued that we should not attach any weight to this analysis. Among the parties' specific points was that there was no statistically significant relationship between price and HHI when company share was left out. We did not consider that the absence of a statistically significant relationship between average price and HHI invalidated the finding of a statistically significant relationship between average price and company share. We noted that company share and HHI each capture slightly different aspects of the availability and strength

of alternatives in each area. The implication of our results is that a station's average price is higher if its own company share is higher, but its price is not necessarily higher if the market is concentrated but the company itself does not have a higher share of listeners.

6.82 The parties also said that a statistically significant relationship between average price and company share was no longer found if the relationship was estimated separately for Global and RSL stations. We did not agree that it was appropriate to estimate the relationships separately. In our view there is no clear reason to expect that the parties would react differently in the face of higher own company shares. We also noted that in a mechanical way, splitting the sample makes it more difficult to identify any effect of alternatives on average price.

6.83 The parties said that a statistically significant relationship between average price and company share was no longer found in some specifications, if particular stations ([✄] and [✄]) were excluded from the analysis. We noted that the magnitude of the effects we identify may be sensitive to the removal of some stations. However, in our view there was no good reason to exclude these observations and it would be arbitrary to do so.

6.84 Overall, while we recognized that there were limitations to the analysis and reflected this in the weight we attached to this evidence, we did not believe that these limitations invalidated the positive relationship we had found between the prices advertisers paid and company share. We recognized that care should be taken in drawing inferences from the results and that it would not be appropriate to apply them to estimate the potential effects of the merger on individual local areas. We considered that our quantitative analysis suggested that higher average prices were associated with higher company share of whichever of Global and RSL owned the station concerned. This evidence was not consistent with the view that non-contracted prices depend only on competition from other media. We judged that this analysis was informative in assessing the extent of the constraint from other media.

Other evidence

6.85 We accepted the parties' argument that the NMR data demonstrated that relatively few advertisers used radio only. This was also consistent with other evidence such as the survey results and the qualitative evidence received. However, the use of more than one medium in a campaign was not, in our view, indicative of the extent to which these various media were complements or substitutes for each other. We did not agree that NMR data was 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 showed what advertisers spent their money on in different periods; it was not possible to observe to what extent any changes over time represented customers switching to other media to fulfil similar campaign objectives or to meet different demands for particular campaigns. Furthermore, any patterns observed might be driven by considerations of complementarity between advertising media rather than substitution.

6.86 We did not consider that the event study submitted by the parties in relation to North Wales was informative about whether the existence of radio alternatives has an impact on prices. In paragraphs 6.131 and 6.133 we note the difficulties in drawing reliable inferences from the parties' event studies. We also note in paragraph 7.62, particular limitations in the parties' event study in North Wales.

6.87 Our questionnaire responses from the contracted 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.[122] 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.[123] Taking into account second and third best alternatives the proportion choosing other radio fell 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.

6.88 We considered the parties' argument that we should not rely on these responses from contracted agencies as they said they applied to a situation where the decision had already been made to use radio and that by focusing on the ten largest radio advertisers the results were likely to be biased towards radio.

6.89 We did not agree that we could not rely on the responses. There was no evidence that contracted agencies had responded as though the decision to use radio had already been made and the responses showed other media were part of the considerations. For example, agencies responded citing other media as the next best alternative in some cases. Also, the ten largest radio advertisers appeared broadly representative of all radio advertisers; they spent a broadly similar proportion to all agency clients on radio (see Appendix J).

6.90 Also, these results were broadly consistent with the qualitative evidence we received from local agencies buying on behalf of non-contracted advertisers, in that they suggested other radio was more likely to be the next best alternative than other media.[124]

Conclusion on competition with other media advertising

6.91 We analysed a wide range of evidence to assess the extent of the constraint from other media advertising. This evidence was consistent: for the majority of campaigns, radio was bought alongside other media. We noted that the surveys suggested 25 per cent of campaigns were radio-only (see paragraph 6.54) and the views of local agencies suggesting that for some advertisers radio was a large proportion of their marketing budget (paragraph 6.51).

6.92 Where advertisers bought other media alongside radio for a campaign, other media may be a complement to radio or a substitute for it. We received a range of views from advertisers and agencies: some said that other media could easily substitute for radio; others said that for many campaigns other media was not a good alternative. This suggested that, at least for some campaigns, other media as well as other radio stations were likely to constrain the price charged by an individual radio company such as Global or RSL. It did not suggest that other media alone were sufficient to constrain the prices charged by an individual radio company. This finding was consistent with the findings of our quantitative analysis.

6.93 We found limits to the weight which we could attach to some of the available quantitative evidence, and the qualitative evidence was mixed. There was no single piece of analysis which, on its own, was determinative of the extent to which radio advertising was constrained by other media.

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[122] 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.
[123] These figures are weighted by agency radio spending (see Appendix J).
[124] Of the 12 local agencies which responded to our provisional findings and commented on the specific finding, 11 agreed that there were advertising campaigns for which radio advertisers could not easily substitute other media.

6.94 However, taking all the evidence in the round, we concluded that the availability of other media was not in itself sufficient to constrain the price of radio advertising and there was a significant proportion of campaigns for which radio advertising was not easily substitutable for other media.

Competition between radio stations

6.95 We therefore considered that the way radio stations compete for advertisers, and the factors which influence how closely they compete in particular circumstances, were important for our assessment of the merger. We consider these factors in this section. We then considered the evidence on pre-merger competition between the parties.

Factors affecting competition between radio stations

6.96 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 that advertisers take into account when choosing between radio stations include the size of the audience and the relative position of the station in the market and, linked to audience levels, the frequency (AM or FM) and whether stations are digital-only; geographic coverage; and the demographics of the target audience. We considered the available evidence on each of these factors and assessed the implications of their relative importance for our competitive assessment.

Size of the audience

6.97 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, other things equal, the greater a station's audience the more advertisers would be willing to pay to advertise on that station.

6.98 Consistent with the audience figures for AM and FM stations, we were told that AM stations generally had lower audiences and tended to be less attractive to prospective advertisers, typically obtaining lower prices even after adjusting for audience size. An AM station on its own was therefore likely to be a significantly weaker alternative for advertisers compared with an FM station broadcasting to a similar area. Similarly, we were told that advertisers did not consider a digital-only station to be a strong alternative to an FM station broadcasting to a similar area.

Geographic coverage

6.99 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.

6.100 Some regional radio stations are able to offer advertising to more targeted areas by carrying specific 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 and also enables stations with wider TSAs to compete more closely with local stations for advertisers wishing to target relatively small areas.

6.101 We were also told that regional stations and local stations sometimes competed for the same advertisers even where the regional stations could not offer advertising on separate transmitters. A competitor told us that local advertisers were prepared to use regional stations if they could negotiate a good price and that stations covering a large TSA might reduce their prices to compete more effectively with local stations and compensate local advertisers for 'wasted advertising'. This competitor also provided evidence of local advertisers who had turned down an offer on one of their local stations for a lower price from a regional station. Another competitor noted that regional stations reduce their prices to attract local advertisers where they have unsold airtime. Evidence from RSL showed that their regional stations pitched for advertising from advertisers seeking to target customers in local areas though the parties do not agree that there is competition between regional and single local stations for the same campaigns and said these pitches were unsuccessful because the advertisers were targeting a smaller area than that covered by the regional RSL station.[125] There was a broad consensus that advertisers bought combinations of local stations as an alternative to a regional station.

6.102 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 airtime on four separate transmitters to local advertisers, whereas Real sold to those wishing to reach potential customers across the whole region.

6.103 At a national level, there are only three commercial analogue radio licences and we were told that advertisers wishing to broadcast their advertisements across the country, or an area covering more than one local radio station, will often need to buy airtime on a number of different stations. Agencies and non-contracted advertisers buying nationally and regionally usually buy multiple stations through radio groups or 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

6.104 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.

6.105 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

[125] An email [✂] from Real showed that, of [✂] Real customers where pitches had been lost to other radio stations, [✂] were lost to single local stations operating within only part of the wider Real TSA. RSL said it had further information for [✂] of the [✂] advertisers pitched to: [✂]

take demographics into consideration, for example, by booking a combination of radio stations that had complementary demographics in order to achieve the required audience.

6.106 Smaller agencies which buy non-contracted advertising on behalf of advertisers also said that demographics were a relevant factor in deciding on the most appropriate media mix and identifying the most appropriate radio stations for an individual campaign. Some noted that there was a degree of overlap between the demographics of most FM stations and that a client's perception of a station's audience was less important than price and the overall reach. Another said that some campaigns wanted to reach different groups of people rather than large numbers of the same group. Advertisers buying directly from radio stations referred to the target audience of radio stations as a factor in their advertising choices.[126]

6.107 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 purchase of advertising without reference to a specific sub-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.[127] 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 (Town and Country) said that audience demographic was rarely a consideration as the overwhelming majority of advertisers wanted to reach as many people as possible.

Our assessment

6.108 The evidence was broadly consistent that audience levels, geography and demographics are factors advertisers take into account when choosing between radio stations. In order to inform our consideration of the competition in local and regional areas where the parties' stations overlap, we considered that it was important to reach a view on the relative importance of these factors and how stations should be compared in our local area analysis.

6.109 We noted 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 concluded that the relative strength of the alternative stations should be an important factor in our local analysis.

6.110 In comparing the strength of radio alternatives, we considered the most appropriate measure of the strength to be their share of listeners in an area. We also took into account their share of advertising revenue. In our view alternative stations (or combinations of stations) with a low market share of listeners, and a low share of advertising revenue, provide a weaker constraint.

6.111 We considered that the geographic area to which a station broadcasts, as measured by its TSA, is likely to be an important factor in how radio stations compete but its

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[126] 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. Most advertisers responding to our provisional findings also said that demographics was a factor in their choices.

[127] 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. This was 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.

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 weaker substitutes for local advertisers.

6.112 We noted that, at a local and regional level, stations rarely overlap exactly and where they do overlap the extent to which they compete for the same campaigns will be affected by a number of factors. For example, the radio options available to a potential advertiser may depend on the area targeted by the advertiser, the extent of the overlap between stations in that area and the amount and cost of wasted advertising to areas outside the advertiser's customer base.

6.113 We considered that we should take into account the ability of some stations to split their signals and transmit different advertisements on different transmitters during the same programming output.

6.114 We concluded that there is some competition between local and regional stations for the same campaigns even where the regional station cannot offer advertising on split transmitters, though these stations will in general be weaker substitutes for campaigns targeting local areas within a large regional TSA. We noted also that for regional campaigns a bundle of local stations may be bought as a potential alternative to a regional station or used to help negotiate lower prices.

6.115 We therefore concluded that where the geographic coverage of overlapping radio stations was very different these stations were weaker substitutes. Where stations overlap but one station covers a much wider area, these stations may still compete for the same campaigns depending on the area targeted by the advertiser and the relative price of the stations. The closeness of competition between a local and regional station will also be affected by advertisers' ability to target the overlapping area by buying advertising from a split transmitter from the larger station. It will also be affected by whether a combination of stations including the smaller station can achieve similar coverage to the larger station. We therefore took into account the extent to which stations overlap and, where TSAs differ significantly, whether advertising was sold via split transmitters and whether a combination of stations including the smaller station could achieve similar coverage to the larger station.[128]

6.116 Although we noted the views of some competitors that demographics were less important for local advertisers, our view was 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 depend on the campaign and 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.

6.117 However, although stations' marketing material often emphasizes the differences between stations, we found that the demographics reached by individual radio stations were generally relatively similar. For example, in London, which has the broadest range of commercial stations in all of the overlap areas we analysed, the average age of listeners of the various FM stations was relatively narrow, ranging between 32 and 49, and no station had more than 60 per cent of either male or female listeners. Also, the format of the stations in the Ofcom licence, and the

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[128] Where possible, we take into account the proportions of advertising revenue sold by each company in the overlap area.

audience targeted, did not always reflect the audience reached. For example, Global told us that Capital was targeted at the 15 to 34 age group (and the demographic cited in most of the individual Capital licence formats is 15 to 29); but the average age of Capital listeners in the overlap areas we examined ranged from 30 to 36, ie near or above the upper end of Capital's target age group.

6.118 We also noted that there is significant overlap in the audience reached even between stations which target very different demographics. For example, Capital targets the 15 to 34 age group and Smooth those aged over 50. While this is reflected in the audience reached at the lower and upper ends of the range,[129] both stations reach similar proportions of listeners in the 25 to 54 age range: nationally, 54 per cent of Smooth's listeners and 60 per cent of Capital's are in the 25 to 54 age group.[130] This suggests that these stations could be close competitors for campaigns targeting this age group.[131]

6.119 Therefore, although we concluded that demographics should be taken into account, we concluded that this factor was, in general, less important than geographic overlap and audience share when considering the nature of competition for advertisers between radio stations at a local and regional level.

6.120 We noted 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.[132] This data may suggest demographic characteristics which differ from those stipulated in the licence format or from the listeners a station may be targeting. We therefore considered recorded data on listener demographics to be the appropriate indicator of the demographic reach of a station.

6.121 In summary, we considered that the relative strength of competing radio stations as alternatives for advertisers depends on the interaction of audience levels, geographic overlap and the demographics of the audience reached by the available stations. We concluded that demographics were of less importance than the extent of the overlap and audience share, particularly where radio options were limited. We also recognized that the way stations overlap in individual areas, and the extent to which individual stations are under common ownership, vary. Radio advertisers' choices were therefore likely to be affected by the merger in different ways in each overlap area.

Competition between the parties' stations

The parties' views

6.122 The parties argued that Global and RSL 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

[129] 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.
[130] RAJAR national figures for 12 months to Q3 2012.
[131] The evidence received showed that some campaigns targeted this age range. For example, of the 20 campaigns analysed by Bauer in its buy-around analysis, six targeted an audience of 25 to 54 year olds. A further five campaigns targeted all adults or the main shopper aged over 15.
[132] RAJAR data includes information on the age, sex and socio-economic profile of listeners.

demographic audiences: Heart combined with Real; Smooth/Gold; Capital; and Classic FM.

6.123 The parties also pointed 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 said that their analysis of the results from the existing customer survey showed 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 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.

6.124 The parties also submitted event studies for Yorkshire, London and Scotland which they argued demonstrated that the parties did not compete closely.

Third party views

6.125 The responses of contracted agencies to our questionnaire suggested the parties' stations were substitutes though, for these advertisers, Global appears to be a greater constraint on RSL than vice versa.[133] Given that we asked agencies about their ten largest radio advertisers, this was 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. These results were also of limited use in assessing the loss of competition in the local and regional overlap areas because many campaigns bought through contracted agencies are at a national level.

6.126 A majority of the local, non-contracted agencies which responded to our provisional findings, considered that there would be a loss of competition as a result of the merger, suggesting that the parties' stations competed at a local level.[134] Some of these agencies described the parties' stations as directly competing in overlap areas and/or competing as part of alternative bundles of stations to reach wider areas or demographics. Sixty-one direct advertisers responded to our provisional findings, the majority of which wrote in support of the merger. Those that did so emphasized the differences between the parties' stations at a local level, particularly on demographics.[135]

Our assessment

6.127 In considering the extent of pre-merger competition between the parties' stations for national advertisers, the responses to our agency questionnaire were informative of the extent to which large agencies saw the parties' local and regional stations as alternatives. We also noted the qualitative evidence from competitors, local agencies and internal documents that the parties' stations competed for campaigns in overlap areas.

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[133] See Appendix J.

[134] The parties surveyed direct advertisers and therefore non-contracted agencies buying on behalf of local advertisers were not included in their sample. Following the publication of our provisional findings, we sought views from non-contracted agencies and received responses from 46 local agencies, 24 of which expressed concerns about the effect of the merger on competition; 12 wrote in support of the merger; and a further ten did not express a clear view.

[135] Around half of the 48 advertisers who responded to our provisional findings in support of the merger wrote in similar terms. They said that they understood that the provisional findings did not recognize that demographics should be taken into account when looking at competition between radio stations, nor that radio advertising was constrained by other media. We do not consider this to be an accurate reflection of our provisional findings.

6.128 We did not consider that the parties' analysis of the survey results produced robust figures on the extent to which the parties' stations compete with each other in individual overlap areas. This was because of our concerns about the weight we could attach to some of the results and the assumptions made in the parties' analysis. We noted that the results of the lost opportunities survey suggested that about 20 per cent of respondents who declined a Global proposal subsequently advertised on an RSL station (see paragraph 6.68). These results need to be interpreted with caution since some respondents may have advertised on an RSL station anyway. Also, the survey sample did not include those who were offered and had rejected advertising on an RSL station and the lost opportunities survey is not therefore informative about the constraint on RSL from alternative Global stations.

6.129 Also, we considered that the sample sizes for individual overlap areas were too small to derive conclusions from. As the way the parties' stations overlap in individual areas, and the radio alternatives, differ, we did not consider that the aggregated results of the survey across all areas were likely to provide reliable information on the individual areas. For example, aggregated results would include responses from advertisers in areas where there are a number of good radio alternatives to the parties' stations and others where there might be none.

6.130 Overall, we believe that the surveys suggest that the parties' stations are likely to be good alternatives for a significant proportion of campaigns and, as such, the surveys are not inconsistent with the qualitative evidence. We do not consider that the surveys can be used to quantify robustly the extent of local and regional competition between Global and RSL in the overlap areas.

6.131 We noted that the parties' event studies were based on inferences about competition drawn from movements over a fairly short period of time in average price. We considered that these movements, in isolation, needed 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.[136] We consider that caution should be taken 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 station's average price would not necessarily be expected to fall in response unless it was targeting the same advertisers in the same way.[137]

6.132 In its response to our provisional findings, Global said if we considered that the levels of radio concentration would not have an effect on the average radio pricing over a reasonably short period, it was unclear why the CC would undertake, and place weight on, an analysis aimed at assessing the relationship between quarterly changes in concentration on quarterly changes in the average price of radio advertising (our quantitative analysis, see paragraphs 6.70 to **Error! Reference source not found.**). However, unlike the event studies, including the North Wales study, the quantitative analysis takes into account the wide differences in price and listener share across the sample, as well as the relatively small variations over time in price and market share. The quantitative analysis also takes account of variation across the sample of a range of factors, such as population, which may affect competitive conditions, but which display little variance over time. It is the cross-sectional variations that drive the results (see Appendix I).

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[136] 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.
[137] See, for example, Appendix L on [✂].

6.133 For national campaigns, competition between radio stations is affected by the way national airtime is generally sold as part of a bundle of local and regional stations. Airtime for such campaigns is usually bought by large advertisers requiring national coverage and buying through agencies which have contracts with the parties and competitors. These contracts affect competition between radio stations and the likely loss of competition as a result of the merger. We therefore consider competition between the parties for national campaigns within our assessment of contracted advertising in paragraphs 7.126 to 7.145.

6.134 We conclude that the parties' individual stations compete with each other for advertisers either as single alternatives or as parts of bundles of local stations. The extent of this competition, and the effect of the loss of competition as a result of the merger, depends on the individual characteristics of the radio market in overlap areas and whether advertisers buy airtime and S&P through contracted agencies or on a campaign-by-campaign basis.

Conclusions on pre-merger competition

6.135 In summary, our analysis of the evidence on pre-merger competition led us to the following conclusions:

(a) Prices for radio airtime and S&P are negotiated. For non-contracted airtime and S&P, prices are negotiated individually for each campaign. We concluded that prices were largely affected by the quality of the alternatives available.

(b) Advertisers use multiple types of media to meet their advertising needs and most, though not all, radio advertising is bought alongside other media as part of a wider campaign. For some campaigns, other media will be a good alternative for radio and can be a substitute for it.

(c) Taking in the round the views of advertisers, agencies and competitors, and our analysis of the parties' pricing and survey data, we concluded that the availability of other media was not in itself sufficient to constrain the price of radio advertising and there was a significant proportion of campaigns for which radio advertising was not easily substitutable for other media. The level of competition between radio stations is therefore an important determinant of price.

(d) The relative strength of competing radio stations as alternatives for advertisers depends on the interaction of audience levels, geographic overlap and the demographics of the audience reached by the available stations. We concluded that demographics were of less importance to advertisers than the extent of the overlap and audience share, particularly where radio options were limited. We also recognized that the way stations overlap in individual areas, and the extent to which individual stations are under common ownership, vary. Radio advertisers' choices were therefore likely to be affected by the merger in different ways in each overlap area.

(e) We conclude that, where they overlap geographically, the parties' individual stations do compete with each other for advertisers either as single alternatives or as parts of bundles of local stations. The extent of this competition, and the effect of the loss of competition as a result of the merger, depends on the individual characteristics of the radio market in overlap areas and whether advertisers buy airtime and S&P through contracted agencies or on a non-contracted, campaign-by-campaign basis.

6.136 In the following section we assess the competitive effects of the merger in light of these conclusions.

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 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 competition, primarily for non-contracted airtime and S&P, in the geographic areas where the parties' stations overlap.[138] In doing so, we reach conclusions on the areas in which, subject to any countervailing factors, we consider that the merger is likely to have a significant adverse effect on competition.

7.3 Second, although 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, we noted in Section 6 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 situation, including the Agreement. We also consider the impact of the merger on possible future competition absent the Agreement.

7.4 Third, we analyse the potential effects on advertisers in the event, as suggested by some third parties, that Global created 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.

7.6 Fifth, we consider the potential rivalry-enhancing efficiencies which Global argued would result from the merger.

7.7 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

7.8 In assessing the extent of any loss of competition resulting from the merger in the overlap areas, we adopt a framework, based on our conclusions in paragraph 6.135, that there was a significant proportion of campaigns for which radio advertising was not easily substitutable for other media and about the interaction of the factors advertisers take into account when choosing radio stations and the relative importance of these factors.

7.9 In applying this framework we considered the rivalry that will be lost as a result of the merger and the effect this will have on the negotiating position of advertisers. As we noted in paragraph 6.22, the negotiated price achieved by customers is affected, among other factors, by the strength of the alternatives available to them. We

[138] Global has stations in each of the areas where RSL currently operates. Global also has stations in other parts of the country.

therefore consider the relative strength of the alternatives that are lost as a result of the merger in each area and the relative strength of the radio options that remain.

7.10 Advertisers' negotiating strength will be reduced as a result of the merger if one of the merger parties' stations is their next best alternative for a campaign. Advertisers' negotiating strength may also be reduced if one of the merger parties' stations is their second closest alternative. This is because an advertiser seeking to play off three radio stations against each other is likely to be able to negotiate a better price than one able to play off only two. If there are significant demographic and geographic differences between the merger parties' stations, this may limit the effect on prices. However, this is not likely to be the case for every customer since advertisers and campaigns differ. Furthermore, even with significant demographic and geographic differences some negotiating benefit from having three rather than two competing stations is likely to remain, particularly if the remaining radio option is relatively weak.

7.11 The parties argued that other media competed closely for local advertisers in each of the overlap areas. In particular, they highlighted local and regional strategy documents which targeted other media, [✄], as a source of potential new customers.

7.12 We note that for some campaigns radio faces competition from other forms of media advertising. However, we do not agree that evidence of a strategy of targeting advertisers on other media in a particular area is necessarily informative about the extent of the constraint from other media on the price of radio advertising. It is unsurprising that radio stations try to attract new advertisers to radio and that they look at advertisements on other media as potential sources of new leads. However, taking into account the evidence from advertisers that radio was usually bought as a complement to other media, we did not consider this natural commercial behaviour to be strong evidence of competition between other media and radio in the overlap areas. We also noted that these internal strategy documents often focused on [✄], suggesting that [✄].

7.13 We noted that there was evidence in the internal documents, and other qualitative evidence from advertisers and agencies, of some local advertisers being able to switch between radio and other media for some campaigns. There was also some evidence that other forms of local advertising, such as new local television stations and Internet-based advertising, may offset the effect of the decline in local press.

7.14 Nevertheless, the evidence we considered in Section 6 led us to conclude that there were a significant number of campaigns for which radio could not easily be substituted for other media. As it was for these campaigns that the merger would affect competition, we focused our area-by-area analysis on the extent to which the merger parties' radio stations were alternatives to each other and the availability of other radio alternatives.

7.15 We summarize below our conclusions in relation to each area where the parties overlap: London; the East Midlands; West Midlands; South Wales; North Wales; Yorkshire, Humberside and Lincolnshire; the North-West; the North-East; and Central Scotland. Our conclusions in each area are of particular relevance to non-contracted airtime and S&P bought by direct advertisers and non-contracted agencies.

7.16 Table 3 summarizes various indicators of market structure for each of the overlap areas. These indicators are discussed in more detail in the individual sections below as part of a wider consideration of the likely effect of the loss of rivalry and the strength of the radio alternatives which would remain post-merger. This analysis also considers the extent of any loss of rivalry in smaller parts of these overlap areas such

as Glasgow, Cardiff and Greater 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 and non-contracted revenue**

per cent

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

Source: CC calculations; listening hours: RAJAR 2011Q4–2012Q3; revenue data: Global, RSL, third parties, Ofcom. See Appendix L for further details of data sources. Non-contracted revenue in this table and the local analysis below refers to non-contracted airtime revenue: it relates only to airtime revenues and does not include sponsorship and promotion revenue from non-contracted advertisers which cannot be identified separately (see Appendix L).

7.17 For each of the overlap areas, and in some cases smaller areas within a wider overlap area, we outline the parties' stations and how they overlap with each other and competitor stations; the strength of the parties' stations, that of the other stations in the relevant area, the demographics reached by competing stations; views of the parties and third parties; and our assessment of the likely effects of the merger.

London

Available stations and geographic overlap

7.18 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 within London and therefore there is no competition between radio stations for advertisers at a more local level.

Share of listening hours and revenue

7.19 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 [50–59] per cent with an increment of [5–9] per cent.

Strength of competitor stations and demographics

7.20 The parties' main competitor for listeners post-merger is Bauer (32 per cent). Bauer accounts for [10–19] per cent of non-contracted advertising revenue and there are seven other smaller stations selling non-contracted advertising in London.

7.21 The formats of Global's stations in London already enable it to reach a wide range of listeners. Bauer's Magic and Kiss stations target older and younger listeners respectively. RSL's Smooth reaches a slightly older age group than Bauer's Magic,

but as noted in paragraph 7.19 it has a low share of listeners. 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.

Our assessment

7.22 Although Global's market share post-merger would be high, 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, post-merger there would be other good alternative stations available covering the same region and a range of demographics.

Conclusion

7.23 We therefore 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

7.24 Global has two stations in the East Midlands: Capital, which can split its advertising across three transmitters (Nottingham, Leicester, and Derby); and an AM station, Gold. RSL has one station: Smooth. The main competitor across the region is Orion with its station Gem 106. Neither Smooth nor Gem 106 is able to split its transmission. 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

7.25 The parties' share of listening hours across the region post-merger would be 67 per cent with an increment of 27 per cent resulting 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

7.26 The main competitor, Orion's Gem 106, 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.

7.27 RSL's Smooth (average age 49) reaches a similar age group to Global's Gold AM station though both reach an older audience than Global's main station, Capital (average age 34). Apart from Gold each of these stations attracts slightly more female listeners than male. The format of Orion's Gem 106 is the 30 to 54 age group and the average age of its listeners is 41.

The parties' views

7.28 The parties argued that Orion's Gem 106 was a closer competitor to both Capital and Smooth than Capital and Smooth are to each other. They emphasized the difference in the demographics of the audience reached by Capital and Smooth and the local commercial listening shares of Orion's Gem 106 in each of Capital's and Smooth's target audience. They also told us that a significant proportion ([70–79] per cent) of

Capital's non-contracted revenue was from advertising on one of its three separate transmitters rather than the whole area covered by Smooth. In addition they submitted that, conversely, a local advertiser using Smooth to target an audience within one of Capital's coverage areas would pay for a high percentage of wasted population coverage.

Our assessment

7.29 In this overlap area 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. The merger brings together the largest and joint second largest radio stations in the area and the largest of the fringe alternatives, Gold, which has a very similar demographic to Smooth. This strongly suggests that the concentration of radio station ownership in the East Midlands will significantly reduce the options for non-contracted advertisers in an area where there were limited good radio options pre-merger.[139]

7.30 We note that Capital and Smooth have very similar TSAs. This means that they are likely to be good alternatives for advertisers seeking to reach listeners across the whole of the TSA. While around [✄] of the revenue of Capital East Midlands comes from advertising on just one of the city transmitters (Nottingham, Leicester and Derby), there are no credible city-level radio alternatives and Smooth, along with Gem 106, remains one of the two best alternatives.

7.31 We acknowledge the differences in terms of the average age of listeners between Capital and Smooth. However, as we note in paragraph 6.118, the differences between Smooth and Capital will be less relevant for some advertisers, for example, those targeting the 25 to 54 age group.[140] More generally, the opportunity for advertisers to use rivalry between Capital and Smooth as a source of negotiating strength when dealing with the radio stations in the overlap area will be removed.[141] In our judgement, the demographic differences between the two parties' main stations, while material, are of less importance in assessing the merger's competitive effects when they represent two of only three good radio alternatives in the overlap area and where the merger brings together the largest radio station and the joint second largest.

7.32 Post-merger, Gem 106 would be the only significant competitor to the parties and would have less than one-third of the combined non-contracted revenue of the parties and less 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 sufficiently strong alternative radio option to the parties' combined offer to offset the loss of competition resulting from the merger.

Conclusion

7.33 We therefore conclude that, in the absence of any countervailing factors, there are likely to be significant adverse effects in the East Midlands as a result of the merger.

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[139] We note the comments of a local agency in the East Midlands which highlighted the limited viable radio options before the merger and the resultant difficulty in being able to switch stations or redistribute budgets between stations to achieve better value for their clients.
[140] An East Midlands Agency ([✄]) described this as a 'typical' client who may have played off combinations of Gem 106 and either Smooth or Capital.
[141] For example, at present an advertiser wishing to attract a large, broadly-based radio audience would be able to engineer rivalry between Capital and Smooth, by seeking to combine one, but not both, of these stations with Gem 106. This would no longer be an option post-merger.

West Midlands

Available stations and geographic overlap

7.34 Global has two stations in the West Midlands: Heart, which is a regional station, and Capital Birmingham which broadcasts to Birmingham and the surrounding area. RSL has Smooth, which has a very similar TSA to Heart and only offers advertising across the whole region.

7.35 Bauer's Kerrang! has a similar TSA to Smooth and Heart. Orion's Free Radio network of four FM and three AM stations broadcasts to the Heart/Smooth TSA with the ability to offer targeted advertising campaigns within this area (the TSA of Orion stations also extends further west). UTV has Signal 107 which broadcasts to the west of the Heart/Smooth TSA 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

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

Strength of competitor stations and demographics

7.37 The main competitor, Orion, has 32 per cent of the listening hours in the West Midlands region and a [40–49] per cent share of non-contracted revenue. Bauer's Kerrang! station has 8 per cent of listeners [and 0–9] per cent of non-contracted revenue [✄]. 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.

7.38 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.

The parties' views

7.39 The parties argued that its West Midlands stations were constrained by other media and were not close competitors.

Our assessment

7.40 Looking first at Birmingham, we note that Smooth covers a wider area than Capital and that advertisers who want to advertise in Birmingham only are likely to perceive Orion's Free Radio Birmingham to be a better geographic alternative. We also note the difference in the average age of listeners between Capital and Smooth and the fact that Orion attracts a more similar demographic to Capital than Smooth. We therefore do not consider that the loss of rivalry from Smooth to Capital is likely to have significant adverse effects for advertisers wishing to advertise only in Birmingham because Orion appears to be the closer alternative to Capital, both in geographic overlap and in demographics.

7.41 Considering the West Midlands 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 a strong competitor to the merged company with a similar share of non-contracted revenue and Bauer's Kerrang! station will remain as an additional smaller constraint though we note that 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.

7.42 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. For example, Orion's share of non-contracted advertising revenue post-merger would be about the same as the merger parties.[142] Other stations owned by Bauer, Quidem and UTV also offer alternatives for some advertisers. Whilst there are some similarities with the station in the East Midlands, the strength of Orion and the wider range of smaller competitors are in our view factors that distinguish the two areas and, on balance, are sufficient to offset concerns about the loss of rivalry between Global and RSL.

Conclusion

7.43 We conclude that there are unlikely to be significant adverse effects in Birmingham or the West Midlands as a result of the merger.

Cardiff and South Wales

Available stations and geographic overlap

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

7.45 The geographic overlap between the parties in South Wales is restricted to Cardiff and therefore much of our analysis is focused on Cardiff. 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 and Kiss is unable to split transmitters in order to target Cardiff only.

7.46 Across South Wales, Town and Country has seven stations including Nation which broadcasts across Cardiff and Swansea and also sells advertising in Cardiff only on a separate transmitter. UTV has an FM and an AM station broadcasting around Swansea.

Share of listening hours and revenue

7.47 The parties' share of listening hours in Cardiff post-merger would be 76 per cent with an increment of 38 per cent. Its share of revenue from non-contracted advertising bought on stations, or transmitters, covering Cardiff only would be higher at [90–100] per cent. This revenue share may overstate the combined strength of the Global and RSL stations as it includes all non-contracted revenue for Capital South Wales, some of which may be bought as a component of a regional campaign (for example,

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[142] We note that this is in contrast to the East Midlands where the merger parties would be approximately twice the size of Orion.

Capital South Wales may be bought together with Swansea and West Wales stations for a regional campaign).[143] Across South Wales as a whole, the parties would have 46 per cent of listening hours and [40–49] per cent of non-contracted revenues.

Strength of competitor stations and demographics

7.48 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 it only recently started offering split transmission and its current share of Cardiff-only campaigns (less than [0–9] per cent) might grow, Nation achieves less than one-sixth of the listening hours that the parties achieve in the Cardiff area.

7.49 Real reaches a slightly older audience than Capital: the average age of Capital listeners is 34 and that of Real listeners is 42. Kiss reaches a slightly younger audience than Capital and Nation a similar age group to Capital.[144] But Nation has more male listeners (65 per cent compared with 42 to 49 per cent for the other stations mentioned).

The parties' views

7.50 The parties argued that there were significant differences in the demographics and geographies of its stations in South Wales. They submitted that Real derived around [✂] per cent of its revenue from Cardiff-only campaigns and therefore it was not competing with Capital for the rest of its revenue. They also pointed to differences in the demographics of Capital and Real, arguing that Real's average listener age was older than Capital's and Nation was a more direct competitor for Capital in Cardiff. The parties also noted that Nation had only recently offered airtime on a Cardiff-only transmitter and they expected it to grow its share on non-contracted revenue and listening in Cardiff.

Our assessment

7.51 The parties overlap in Cardiff and are close competitors in terms of geography, with Real selling on a Cardiff-only transmitter enabling it to target the Capital TSA. There is no strong radio alternative for Cardiff advertisers. Nation can offer split transmission to Cardiff but it attracts substantially fewer listeners than either of the parties' main stations and has a narrower format which results in a somewhat different demographic profile. The merger will effectively therefore see a reduction in Cardiff from two main radio alternatives to one.

7.52 We took into account the proportion of Real's campaigns bought on a Cardiff-only transmitter but given the lack of any other significant radio options in Cardiff we considered that Real and Capital were the main alternatives for advertisers and would therefore be closest competitors for most Cardiff-only campaigns. We were not persuaded that the differences between the audience demographics of Capital and Real (average ages of 34 and 42 respectively) were a significant offsetting factor in an area with such limited radio options.

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[143] We noted in paragraph 6.101 that local stations may be combined for regional campaigns and that regional and local stations sometimes competed for the same campaigns.
[144] The average age of Kiss listeners is 31 and the average age of nation listeners is 34.

7.53 We noted the importance of Capital to the wider South Wales region: 54 per cent of the population within the Real Radio South Wales TSA are located in Cardiff, with listening within Cardiff accounting for 52 per cent of the total listening hours of the radio stations within South Wales. We were also told that Cardiff was particularly important in terms of commercial opportunity for Wales and that it would be unusual to have advertising across South Wales that excluded Cardiff. Local agencies in the region noted the limited radio options available in South Wales and one said that Capital actively pitched itself against Real as part of a wider mix across the region.[145] Capital is currently an alternative to Real for advertisers advertising across South Wales as part of a potential bundle of stations, including UTV's stations in Swansea. This option would be removed by the merger. We therefore considered that the reduction in Cardiff from two main radio alternatives to one would adversely affect the options for those advertising across the whole region.

Conclusion

7.54 We therefore conclude that, in the absence of any countervailing factors, there are likely to be significant adverse effects in Cardiff as a result of the merger and that competition will be reduced across South Wales.

North Wales

Available stations and geographic overlap

7.55 RSL operates Real North Wales which broadcasts across the whole of the North Wales region and does not sell advertising on separate transmitters. 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, or as a combination of more than one of the four: Anglesey and Gwynedd; the North Wales coast; Wrexham and Chester; and the Wirral—the first two of these, and part of the Wrexham and Chester transmitter, overlap with Real North Wales.

7.56 Global highlights three radio competitors in North Wales: Radio Ceredigion owned by Town and Country which broadcasts in West Wales and overlaps slightly with Real North Wales in the south-west part of its TSA; and the independent stations Radio Hafren and Radio Dee. The geographic overlaps between RSL and Global and these competitors are not material.[146]

Share of listening hours and revenue

7.57 The parties' stations have a combined 98 per cent share of listener hours and [80–89] per cent of non-contracted revenue within the Real North Wales TSA[147]

7.58 Heart and Real reach a similar demographic, with average ages of 39 and 38 respectively, and female reach of 58 and 56 per cent respectively.

Strength of competitor stations and demographics

7.59 There are no other radio competitors covering a significant part of the overlap area.

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[145] [Agency AU].
[146] We noted that Bauer's Liverpool stations (Radio City and Magic Liverpool) also broadcast to a small part of the area where Heart and Real North Wales overlap, though its audience in this area represented a small part (less than 10 per cent) of its total audience.
[147] Excludes Bauer stations.

The parties' views

7.60 The parties argued that non-contracted advertisers in North Wales viewed non-radio media as an effective alternative to radio and that the parties' stations were targeting different geographies. In particular, they stated that Heart was predominantly used by local advertisers targeting one single transmitter ([✂] per cent of Heart's customers accounting for [✂] per cent of revenues across the four transmitters in North Wales) whilst Real was sold only as a regional station. They also pointed to evidence in the form of an event study that [✂].

Our assessment

7.61 The merger will remove the only significant radio alternative to Global in North Wales. Local agencies in this area highlighted the lack of choice before the merger and expressed concerns about the effect of the merger on their bargaining position.[148] We noted that the majority of the non-contracted advertisers who buy Heart North West and Wales buy on individual transmitters. However, we also noted that there is not another significant radio alternative in North Wales apart from Real. Given this, we consider that Real is most likely to be a realistic alternative for non-contracted advertisers buying the North Wales coast transmitter and those buying advertising on two or three of the transmitters within North Wales. The internal documents from Global summarized in Appendix L suggest that rivalry between Heart is perceived as competitively significant in North Wales. For example, [✂].

7.62 We considered carefully the event study submitted by the parties. We noted that at the time Global acquired RSL, Real's entry was recent and we have been told that it takes time for a new entrant to build up listener share and advertising revenue (this is set out further in paragraphs 7.203 to 7.219).

7.63 In its response to our provisional findings, Global said that Real's entry had occurred in January 2011 (ie a year and a half before the merger), giving ample time to assess the effect of entry. Global added that Real had faced a substantial decline in listeners [✂] in North Wales during 2012.

7.64 However, we noted that the decline in Real's audience in North Wales only started in the second quarter of 2012 just before Real was acquired by Global and most of the decline has been during the period when the two were under joint ownership, albeit being held separate. Overall, therefore, we do not consider that the evidence of recent decline is particularly informative of the level of competition that would exist if the only two radio companies in North Wales were not under common ownership. Our view is that, given the limited time since entry and the fact that for the majority of this period Real and Global were under common ownership, the event study in North Wales does not provide evidence to enable us to draw strong conclusions about the effects on competition of a reduction from two to one in the number of local radio companies.

7.65 In summary, the overlap between the parties' stations means that the parties are likely to be effective substitutes for advertisers seeking to reach listeners across North Wales and partial substitutes for those wishing to target smaller areas within North Wales. The parties' stations both reach a similar demographic. In weighing up the factors in North Wales, we consider that the geographical differences are less significant compared with other areas given the complete absence of other radio options. As we note in paragraph 6.101, there is evidence that stations covering

[148] [Agency AU] and [Agency AS].

wider geographic areas can be an option for advertisers targeting areas within a larger TSA and we would expect this particularly to be the case in an area like North Wales where the local advertising market is small and options are so limited. The merger will remove any rivalry, and the prospect of future rivalry, between radio stations for local and regional advertisers in North Wales.

Conclusion

7.66 We therefore conclude that, in the absence of any countervailing factors, there are likely to be significant adverse effects in North Wales as a result of the merger.

Yorkshire, Humberside and Lincolnshire

Available stations and geographic overlap

7.67 Global's Capital transmits across the whole of Yorkshire, Humberside and Lincolnshire 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.

7.68 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.

7.69 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 in West Yorkshire; and two Magic stations broadcasting on AM (together covering Leeds, Sheffield, Rotherham, Barnsley and Doncaster). UTV's The Pulse broadcasts on FM in parts of West Yorkshire and Bradford and has an AM station, Pulse 2 which also broadcasts in West Yorkshire.

Share of listening hours and revenue

7.70 The parties' share of total listening hours in South and West Yorkshire is 54 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.[149]

Strength of competitor stations and demographics

7.71 In South and West Yorkshire, the Bauer stations (32 per cent) and UTV stations (5 per cent) have a combined share of total listening hours of 37 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).

7.72 The demographics reached by the relevant stations in South and West Yorkshire are slightly differentiated. Capital reaches a slightly younger audience (average age of

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[149] This does not take into account Capital's revenue from advertisers buying advertising on both of its transmitters within Yorkshire, Humberside and Lincolnshire.

listeners 33) than the Bauer FM stations, UTV's Pulse and RSL's Real (the average age of listeners to these stations varies between 36 and 41).

The parties' views

7.73 The parties argued that Real and Capital were weak substitutes because the majority of Capital's non-contracted revenues arose from advertising targeting areas outside Real's coverage area (which is limited to South and West Yorkshire); and Capital targeted a significantly younger demographic than Real. The parties therefore argued that a combination of Bauer, UTV and/or Lincs FM stations offered a better alternative to Capital and Real than the parties' stations did to each other. They also pointed to evidence that [✂].

Our assessment

7.74 The 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. Within this area, the parties would account for around half of all listening hours (see paragraph 7.67).

7.75 While there are some relatively strong radio alternatives in parts of the overlap area, there is no single direct alternative to the parties' stations for advertisers wishing to advertise across the South and West of Yorkshire (the area covered by the Real TSA). These advertisers currently have the option of Real or Capital or a combination of stations under different ownership (for example, Bauer and UTV). Post-merger, this combination of stations under different ownership would be the only alternative to the parties.

7.76 We saw evidence that advertisers can buy stations in combination with each other or use the threat of doing so as a bargaining tool. However, the evidence showed that this was currently a relatively weak alternative to Capital and Real for those advertising across South and West Yorkshire. Most advertising bought on the individual Bauer and UTV stations is targeted at their local TSAs (ie Leeds, Sheffield and Bradford). For example, no more than about [✂] per cent of Bauer's revenue from its stations in South and West Yorkshire was from campaigns across the whole area. By contrast, the parties told us that around [✂] of Capital's non-contracted revenues arose from advertising targeting the South and West Yorkshire transmission area and we note that all of Real's non-contracted revenue came from this area as it was the TSA to which it broadcast.

7.77 As a consequence the merger parties have the largest shares of non-contracted advertising revenue for campaigns across the whole of South and West Yorkshire ([40–49] per cent for Global and [50–59] per cent for RSL).

7.78 Common ownership of the two single largest stations in the South and West Yorkshire area (the Real TSA) removes advertisers' option of playing the stations off against each other in negotiations for advertising campaigns covering the whole area. The merger is also likely to have some adverse affect on advertisers' negotiating position for campaigns with a more local focus where advertisers currently have the option of Capital and Real as well as the local station owned by Bauer or UTV. It also removes the option of buying Real as part of a bundle with other local stations to compete with Capital across the wider Yorkshire, Humberside and Lincolnshire region.

7.79 We noted the parties' submissions that the parties are highly differentiated on the basis that they are targeting listeners at a markedly different stage of their lives. However, we did not attach much weight to the difference between the demographics of Real and Capital listeners; the average age of listeners is not far apart at 39 and 33 respectively, and both attract slightly more female listeners than male. Nor did we attach significant weight to the evidence the parties presented about the [✂] for the reasons set out in paragraph 6.131.

7.80 We took into account the close geographical overlap between the parties in South and West Yorkshire. We noted that the merger would see a reduction from three to two in the alternatives for advertisers targeting this region and that the remaining alternative, a bundle of UTV and Bauer stations, was relatively weak. Given the lack of an alternative single station covering the whole of this area and the strength, in terms of listeners reached, of the merger parties compared with possible bundles of alternative stations, we consider that advertisers' radio options, and their bargaining strength, will be significantly reduced.

Conclusion

7.81 We therefore conclude that, in the absence of any countervailing factors, there are likely to be significant adverse effects in South and West Yorkshire (as defined by the Real TSA) as a result of the merger and that competition will be reduced across the wider Yorkshire, Humberside and Lincolnshire region (as defined by the Capital TSA).

Greater Manchester and the North-West

Available stations and geographic overlap

7.82 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.

7.83 While Global's stations overlap with parts of the Real and Smooth region, there are significant parts of the North-West where Global does not operate. In particular, Global does not have coverage of Liverpool or significant areas to the north of Manchester. Bauer has a number of stations which, when combined, cover nearly all of the Real and Smooth TSA.

7.84 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 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

7.85 In Greater Manchester, the parties' share of listening hours will be 67 per cent with an increment of 39 per cent from the addition of Real, Smooth and Real XS. The increment in the parties' share of non-contracted revenue is smaller at [5–9] per cent, giving a post-merger share of [30–39] per cent can. The revenue figures are likely to understate the combined strength of the Global and RSL stations in Greater Manchester as they do not include any revenue for Real and Smooth (which cannot

offer airtime for advertising in Greater Manchester only), even though Greater Manchester stations compete to some extent with regional stations for the same campaigns.[150]

7.86 Across the North-West, in the areas covered by the Real and Smooth TSAs, the parties' share of listening hours is 51 per cent and their share of non-contracted revenue is [30–39] per cent.

Strength of competitor stations and demographics

7.87 Bauer has 26 per cent of the listener hours and [20–29] 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.

7.88 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/rock' stations reaching a predominantly male audience with a similar average age (34 and 37 respectively).

7.89 For advertisers wishing to reach the wider North-West, Bauer's combination of stations is the only single alternative to Real and Smooth. Bauer has 35 per cent of listening hours and [30–39] per cent of the non-contracted revenue across the region. Other potential alternatives available to advertisers wishing to advertise across the North-West would include combinations of local stations including those in Greater Manchester and other stations such as the UTV stations.

The parties' views

7.90 The parties argued that Capital and Bauer's Key 103 were the two largest stations in Greater Manchester and had similar geographic coverage and audience demographics. They said that Real and Smooth could not split their transmission and therefore they were not cost-effective alternatives for advertisers targeting Greater Manchester. As a consequence, the principal concern in Greater Manchester arising from the merger involved the reduction of competition between Xfm and Real XS. They argued that Xfm and Real XS were minor stations with different audiences.

Our assessment

7.91 For advertisers looking for other radio options to RSL across the North-West, Global stations currently offer an alternative if bought with other local stations. Post-merger, the parties would have two of the three regional alternatives available.[151] This is because the current three options are Real/Smooth, Bauer and Global's Manchester stations bought as part of a bundle with other local stations across the North-West. Greater Manchester accounts for about 55 per cent of the population, local commercial radio reach and local commercial radio listening hours in the North-West.[152]

7.92 Looking at 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

[150] See paragraph 6.101.
[151] This includes Bauer as an alternative to Real and Smooth across the region because Bauer has stations in the main conurbations.
[152] Source: RAJAR (comparison of Capital Manchester TSA) with Real TSA. Greater Manchester (the Capital Manchester TSA) accounts for about 50 per cent of Real North West's listening hours and reach.

Manchester and the Greater Manchester area. It will, however, be the only good alternative post-merger and the parties will have four stations (Xfm, Real XS, Capital and Gold) in the TSA. 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. The merger will also bring under the same ownership two stations with almost exactly the same geographic and demographic coverage: Real XS and Xfm.

7.93 The main radio alternatives for advertisers in Greater Manchester would therefore effectively reduce from three to two. Real XS has 7 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. Also, the only regional radio stations covering Greater Manchester and beyond would be brought together by the merger: the loss of Real and Smooth as alternatives for those advertisers primarily focused on Greater Manchester will therefore also reduce competition. As we noted in paragraph 6.101, regional stations can compete for advertisers primarily targeting customers in a smaller part of the region. In this context, we note that about 50 per cent of Real and Smooth's listeners are in Greater Manchester.

7.94 The post-merger strength of the parties in Greater Manchester, and Greater Manchester's relative importance within the wider North-West, suggest that the merger will also affect competition for regional advertisers in the North-West. However, we also note that, to offer an alternative to Real and Smooth for regional advertisers, Global stations currently need to be bought as part of a bundle with other local radio stations in the North-West and Global has a relatively low share of listening hours across the region.[153] The adverse effects of the merger are therefore likely to be particularly significant in Greater Manchester, compared with the effects in the wider North-West.

Conclusion

7.95 We therefore conclude that, in the absence of any countervailing factors, there are likely to be significant adverse effects in Greater Manchester as a result of the merger and that competition will be reduced across the North-West.

North-East

Available stations and geographic overlap

7.96 The parties' other stations overlap across nearly all of 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 a similar way as Capital North East.

7.97 The main competitor across the North-East 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.

[153] Across the region, Global has 16 per cent of the listening hours and 11 per cent of the non-contracted advertising revenue.

Share of listening hours and revenue

7.98 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

7.99 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.

7.100 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 older than Capital's.

The parties' views

7.101 The parties' argued that, post-merger, Bauer would have similar market shares to the merger parties and that the parties were not close competitors because of the different demographics targeted. Global also noted that the Bauer stations were sold as a bundle and argued that this offered regional customers across the North-East a much better alternative option in terms of demographics than the parties' stations did to each other.

Our assessment

7.102 The geographical overlap between the parties' stations in the North-East is almost complete and combined they would be larger than the only other significant radio competitor in the region. The parties' argument that, post-merger, Bauer would have similar market shares to the merger parties is not supported by the evidence. Pre-merger, there were three main groups in the North-East radio market: Bauer (which had about 40 per cent of listening hours and one-third of non-contracted revenue) and Global and RSL, both of which had between one-quarter and one-third of listeners and non-contracted advertising revenue.

7.103 We noted that both RSL's stations, particularly Smooth, have a higher average age than Capital and that Capital will consequently be a weaker alternative for campaigns targeted at older listeners, for which Smooth and Magic are likely to be better options. We also note that Bauer's stations have a higher average age than Capital, albeit the average age of Bauer's FM stations is slightly lower than Real. Overall, we consider that Capital is a reasonable alternative to RSL's stations (and to Bauer's FM stations) for campaigns targeted at a broader age range and we note that, for campaigns targeted at younger listeners, the RSL stations, together with the Bauer stations, are the only significant radio alternatives to Capital.

7.104 We note that, in terms of non-contracted revenue, Bauer is currently relatively weak compared with Real and Capital for advertising across the whole North-East. Most advertising on Bauer's individual stations is on their local areas (Newcastle area and the Teesside area); no more than about [✂] per cent of Bauer's revenue from its stations in the North-East is from campaigns across the whole region. By comparison, Real and Capital derive a significant proportion of their revenue from those advertising across the North-East as a whole. We note that the merger parties have the largest shares of non-contracted advertising campaigns across the whole of the North-East ([30–39] per cent Global and [50–59] per cent RSL). While Bauer recently

published plans to integrate further the programming on its two North-East stations, the stations will continue to have separate branding and we did not see reason to expect this change to alter the more local focus of the Bauer stations.

7.105 While the Bauer stations offer an alternative to the merger parties across the region and Bauer has the strongest position in the individual northern and southern areas, the merger would reduce advertisers' radio options from three radio companies to two and weaken their negotiating position, especially for regional campaigns.

Conclusion

7.106 We conclude that, in the absence of any countervailing factors, there are likely to be significant adverse effects in the North-East as a result of the merger.

Glasgow and Central Scotland

Available stations and geographic overlap

7.107 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.[154] RSL also has Smooth and Real XS stations which both broadcast to areas around and including Glasgow.

7.108 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

7.109 Across the Central Scotland region, the parties' share of total listening hours is 52 per cent, an increment 15 per cent, and its share of non-contracted revenue is [40–49] per cent.

Strength of competitor stations and demographics

7.110 Across Central Scotland, Bauer has 44 per cent of listening hours and [40–49] per cent of non-contracted revenue. Similarly, in Glasgow, Bauer is currently bigger than both parties combined in terms of share of non-contracted revenue but has a smaller share of listeners.[155]

7.111 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 reaches a slightly younger age group than these other stations with an average age

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154 The parties told us that [✂].
155 Although it may compete for some Glasgow-only advertisers, Real does not currently sell advertising separately for the Glasgow area and we do not therefore include its revenue in these shares.

of 33 for its listeners. Smooth attracts an older audience with an average age of 49, and the average age of Real's listeners is 40.

The parties' views

7.112 The parties argued that Bauer was the leading radio group in Central Scotland and the parties' closest competitor. They submitted that Bauer's stations had a closer average age of listener to Real than Capital and, within Capital target demographic, Bauer's stations reach more listeners than RSL's stations. The parties submitted that the merger would not lead to significant effects.

Our assessment

7.113 Advertisers seeking to reach listeners across the whole central Scotland region can currently choose between three radio groups: RSL's Real station; Global's Capital; and a bundle of Bauer's Clyde and Forth stations. The effect of the merger would be to leave Bauer as the only radio option to the merger parties seeking to reach customers across Central Scotland. Given the relatively minor demographic differences (RSL's and Bauer's stations and Real have a somewhat higher average age than Capital), we consider that competition takes place between all three companies.

7.114 In terms of non-contracted revenue, the parties are clearly both seen as strong alternatives for those advertising across Central Scotland and stronger than Bauer. Those advertising on Bauer's individual stations tend to be targeting local areas (Greater Glasgow and the Edinburgh area): no more than about [✄] per cent of Bauer's revenue from its stations in Central Scotland is from campaigns across the whole region. By contrast, Capital and Real derive significant proportions of their revenue from campaigns across Central Scotland as a whole such that the merger parties have the largest shares of non-contracted advertising campaigns across the whole of Central Scotland ([20–29] per cent Global and [60–69] per cent per cent RSL).

7.115 The merger is also likely to have an effect on advertisers targeting Glasgow. RSL can offer Glasgow advertisers its Real XS and Smooth stations which have TSAs covering the city. We also received evidence that Real, although a regional station, is bought by advertisers targeting customers around Glasgow and therefore provides another option for Glasgow advertisers. These alternatives would be lost as a result of the merger and again Bauer would be the only good alternative for radio advertisers targeting Glasgow.

7.116 The reduction in alternatives within Glasgow contributes to the reduction of choice that we have identified across Central Scotland. Within Central Scotland as a whole, advertisers would lose the ability to play off three radio groups against each other and would be relying on Bauer to provide credible alternatives for all regional and sub-regional campaigns. The merger would bring together what would be advertisers' two best radio alternatives to Bauer, with no credible further radio alternatives, and remove one of only two credible alternatives for existing Global and RSL advertisers.

Conclusion

7.117 We conclude that, in the absence of any countervailing factors, there are likely to be significant adverse effects in Central Scotland as a result of the merger.

Overview of the effects on non-contracted advertisers in the overlap areas

The parties' views

7.118 The parties argued that the reduction of radio alternatives in the overlap areas would not affect advertisers because advertisers had other effective media options apart from the other merging party's stations. They further argued that, as we address in paragraphs 6.24 and 6.25, even if this were not the case for an individual advertiser, Global would not be able to increase that advertiser's post-merger price as it could not know with certainty the strength of each individual advertiser's options. The parties also said that too few advertisers regarded the other merging party's stations as next best alternatives for an overall increase in prices to be profitable, arguing that standard merger analysis would suggest that unilateral effects could not arise.

Our assessment

7.119 We have identified seven areas where the parties overlap in which we consider that the merger would be likely to lead to significant adverse effects: the East Midlands; Cardiff; North Wales; South and West Yorkshire (the Real Yorkshire TSA); Greater Manchester; the North-East; and Central Scotland. We also concluded that the significant adverse effects in Cardiff, South and West Yorkshire and Greater Manchester would be likely to contribute to a loss of competition across the wider areas of South Wales, Yorkshire, Humberside and Lincolnshire and the North-West respectively.

7.120 These adverse effects arise from a loss of alternatives for advertisers at the point at which they are negotiating the price of a campaign. Therefore, we consider that the loss of competition will primarily affect non-contracted advertisers buying airtime and S&P from radio stations and groups in the overlap areas.[156] As we note in paragraphs 6.15 to 6.17,this will largely be local and regional advertisers buying direct or through a small, local agency. We estimate the revenue from such sales across the seven regions to be around £[✂] million, with Global and RSL accounting for around £[✂] million ([40–49] per cent) of the total.[157]

7.121 In considering the effects on customers, in this case non-contracted advertisers, we took into account our analysis of the way that prices for non-contracted radio advertising are negotiated. We consider that the options available to radio advertisers and their ability to negotiate better prices by playing off competing stations against each other would be severely weakened. While we note that some non-contracted advertisers in these areas would switch to other media in the event that the parties sought to increase prices, and would therefore have other options, we concluded in paragraph 6.94 that there are a significant proportion of campaigns for which radio advertising is not easily substitutable for other media.

7.122 Based on the available evidence, it was not possible to quantify accurately the proportion of campaigns likely to be affected or the extent of the effect on the prices

[156] We note that some national advertisers who buy directly on a campaign-by-campaign basis from radio stations and groups, rather than through an agency that has a contract, may also be affected by the reduction in radio alternatives. We consider the likely effects of the merger on contracted advertisers, who buy campaigns based on a contracted price rather than an individually negotiated price for each campaign, in paragraphs 7.126–7.173.

[157] We estimate the non-contracted revenue of Global and RSL across the seven areas (excluding Capital Yorkshire's revenue for campaigns in East Yorkshire, Humberside and Lincolnshire and its revenue for campaigns across Yorkshire, Humberside and Lincolnshire) to be about £[✂] million for airtime and £[✂] million including S&P.[157] We estimate total non-contracted airtime revenue of all radio companies across the seven regions to be about £[✂] million. We do not have equivalent figures for S&P, but if the proportion of total non-contracted revenue accounted for by S&P was similar for other radio companies to the average for Global and RSL, total non-contracted revenue across the seven regions would be £[✂] million.

for those campaigns.[158] However, we note in this context that across the overlap areas where we have identified adverse effects, the lost opportunities survey found that around 20 per cent of advertisers who considered advertising on Global stations, but decided not to, ended up buying airtime on an RSL station. While some of these advertisers may have bought airtime on both parties' stations, this evidence gives some indication of the Global campaigns in the overlap areas for which RSL stations are likely to represent the next best radio alternative.[159] Moreover, we do not consider that the adverse effects would be limited to these campaigns because the reduction in radio alternatives from three to two may be expected to have wider effects on negotiated prices for the reasons set out in paragraph 7.8.

7.123 In assessing the likely effect on prices overall, we considered it significant that the objectives of advertising campaigns are different from each other and that the strength of the available alternatives, and therefore the advertiser's negotiating position, will vary between campaigns. We noted in paragraph 6.20 that there are large differences in the prices paid by non-contracted advertisers and this suggests that the effect of the loss of a radio alternative on the negotiated price of some campaigns could be particularly large. As prices are negotiated individually, the availability of good alternatives for some advertisers does not protect those who do not have good alternatives from price increases. We also noted that our quantitative analysis indicated that the average price paid by non-contracted advertisers was positively and significantly associated with company market share (see paragraphs 6.70 to 6.84).

7.124 We considered Global's argument that an overall price increase would not be profitable because too few advertisers regarded the other merging party's stations as next best alternatives. We noted that if prices of differentiated products were uniform and posted, rather than bilaterally bargained as in this market, the effect of a merger on the parties' incentive to raise prices would depend on the closeness of substitution (of which the diversion ratio is a useful measure) the level of variable profit margins; and the price sensitivity of customers.[160] We noted that variable profit margins were high in radio[161] implying that even if prices were uniform there would be significant incentives to raise prices for relatively modest diversion ratios.

7.125 We took into account the evidence on the proportion of campaigns affected and the likely effect on individually negotiated prices. As a result, and taking all the available evidence in the round, we conclude that the loss of competition in the seven overlap areas is likely to lead to a significant change in the balance of negotiating advantage between Global and its non-contracted customers such that prices in each of the seven areas would be on average higher.

Impact of the merger on advertisers buying through contracted agencies

7.126 In this section, we first assessed 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 7.129). We then considered how RSL and Global might compete absent the Agreement; that is, the impact of the acquisition on possible future competition in this segment. This was based on our view in the counterfactual that we were not able

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[158] See Appendix G on the surveys and Appendix I on the quantitative assessment of the effects of competition for non-contracted customers.
[159] We note that the sample for the lost opportunities survey was only those who had been approached by Global and therefore is not informative of the proportion of RSL campaigns for which Global might be the next best alternative.
[160] The Guidelines, paragraph 5.4.9.
[161] Global told us that [✂].

to predict with sufficient certainty what would have happened to the Agreement post-[✂].

Impact of the acquisition on competition

Views of the parties

7.127 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.[162] 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.

7.128 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 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.

7.129 In support of their argument that sales of contracted advertising by the parties outside the Agreement were immaterial, the parties said that these sales represented only [✂] and prices would, in any case, not be affected by the merger. 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,[163] weighted average prices, in CPT, against revenues of agencies within and outside the Agreement. [✂][164]

7.130 Global also said that, irrespective 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 [✂].

7.131 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 £[✂].[165]

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[162] 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 conclusions into account in our assessment of the effect on contracted advertising.
[163] The analysis considered average CPTs for Real in South Wales and average CPTs across both Real and Smooth in the North-West.
[164] 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.
[165] The parties' revenues for S&P for their Manchester-based teams was £[✂] and £[✂].

Global argued that it competed much more closely with other media than it did with RSL for these customers.[166]

7.132 The parties said that contracted advertisers had very substantial buyer power. They gave the example of GroupM which they said spent £2.9 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

7.133 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.[167] 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.

7.134 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 buy-around analysis looked at 20 national campaigns and attempted to recreate them without using Global and RSL stations. Bauer argued that this analysis showed 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.

7.135 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.

7.136 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.

[166] 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.

[167] 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.

Our assessment

Global's incentives

7.137 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.

7.138 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.

7.139 We considered 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.[168] On this point, we therefore concluded that the bargaining power between the large media buyers and Global during contract negotiations is unlikely to change significantly as a result of the merger.

7.140 We then considered 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 7.174 to 7.180; that is, we consider here price changes which might occur even in the absence of rebranding and/or repositioning of stations.

7.141 Third parties suggested that in effect Global had artificially held down the price of RSL stations. We noted that [✂]. In particular, the price of Real stations [✂].[169] Global said that [✂].[170]

7.142 The evidence did not suggest that the price of RSL stations was artificially low. Our comparison of prices in contracts negotiated independently by RSL [✂].[171] A comparison of RSL's and Global's average prices to contracted and non-contracted customers suggested [✂]. Furthermore, even if under the agreement Global had artificially held down the price of RSL stations in order to increase the price of its own stations, the implication for post-merger prices was unclear. For example, it might result in higher prices for RSL stations and lower prices for Global stations.

7.143 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 noted that the implication of this point, given some substitutability between Global's and RSL's stations, is that under the

[168] Global's share of the sales-house revenue [✂] per cent during the [✂] withdrawal of spending whilst during the [✂] withdrawal [✂].
[169] [✂]
[170] Global told us [✂]
[171] See Appendix M.

Agreement Global would have an incentive to increase the price of RSL's stations on which it currently 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 was not therefore consistent with the other point made by third parties that Global had held down the price of RSL stations under the Agreement.

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

7.145 We accepted that Global's incentives under the Agreement might not necessarily be exactly the same as its incentives post-acquisition, but there was not evidence to suggest that any change in incentives would have material effects on the prices of RSL or Global stations. In our view, the most important point was 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

7.146 We summarized our assessment of the buy-around analysis submitted by Bauer in Appendix N. Bauer's analysis suggested 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 considered this analysis in the context of the point made above (see paragraph 7.137) 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.

7.147 Our assessment also suggested the following points:

(a) The analysis did 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 [✂]) stations (see paragraphs 7.151 to 7.153).

(b) The analysis rested 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 was increased by the fact that there was 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 was 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.

7.148 We considered that the buy-around analysis illustrated the point that Global and RSL stations can to some extent be substitutes for each other in national campaigns. However, our view was that this analysis did not demonstrate the merger would

change the position of the merging parties in relation to the agencies during the negotiation of prices when contracts are renewed.[172]

Negotiating strength of the agencies

7.149 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 only between [✂] and [✂] per cent of their advertising budgets with the parties. However, spending by the four largest agencies accounted for over [✂] per cent of Global's revenue from contracted advertising. These figures suggested that the negotiating strength of the large agencies would be significant relative to the parties.

7.150 We noted though that views of these agencies suggested that there were some limitations to their negotiating strength relative to the parties. For example, some said that other media was not always a substitute for radio and that radio's unique characteristics, and synergies with other media, resulted in it being bought as a complement to other media. Similarly, they said that threats to switch away from radio on a particular campaign were not always possible.

7.151 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 was significant fluctuation in the media buying groups' monthly spend, we considered that this evidence suggested the media agencies concerned were successful in persuading their clients to reduce spending on Global stations.

7.152 We also noted that the outcome of the eventual negotiations [✂].

7.153 We therefore concluded that the evidence supported 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 showed that the largest media buying agencies were 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.

7.154 The evidence was less clear for smaller agencies which have contracts with the parties and for those agencies that do not buy across different media. We also noted that, as prices are negotiated and not published, [✂]. We consider the likely effect of the merger on all contracted agencies, including smaller agencies, in paragraphs 7.126 to 7.145.

Contracted advertising sold by the parties outside the Agreement

7.155 We did not consider the revenue derived from contracted airtime sales outside the Agreement to be immaterial as the parties argued. RSL's total airtime sales to contracted agencies outside the Agreement in 2011/12 was £[✂], accounting for [✂] per cent of its contracted airtime revenues that year and [✂] per cent of RSL's

[172] In its comments on our provisional findings, Bauer said we had ignored the possibilities that *(a)* contracted advertising could be sold on behalf of RSL by another third party, such as Bauer; and *(b)* advertisers could buy RSL airtime in conjunction with stations owned by other parties. We do not consider that the second possibility makes any difference to our analysis—advertisers could similarly buy airtime from FRS in conjunction with stations owned by other parties. As regards the first possibility, we considered that this was speculative both as regards whether it would be likely to happen and whether it would affect competition (for example, if Bauer instead of Global sold airtime on RSL stations, that would still leave only two major sellers of contracted airtime).

total airtime and S&P revenue.[173] Global's airtime sales to contracted advertisers outside the Agreement were [✂] per cent of its contracted airtime revenues in the same year.

7.156 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; during our inquiry another did in effect agree to do so.[174]

7.157 Given that we did not consider contracted sales outside the Agreement to be immaterial, we assessed the likely effect of the merger on these sales post-acquisition. We noted 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.[175] This analysis found that, on balance, those agencies that contract separately with Global and RSL [✂]. This analysis lent support to the parties' submission that prices for agencies outside the Agreement would not be affected by the merger.

National sponsorship and promotion

7.158 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 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.

7.159 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 was 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.

7.160 We noted 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 two. 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, [✂].

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[173] RSL sells, independently of Global, contracted advertising [✂].
[174] Although RSL's stations continue to be dealt with separately pending the outcome of our review process.
[175] This analysis is described in more detail in Appendix M.

7.161 We noted 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 suggested there was a good level of competition for national S&P from other radio companies as well as from 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 view was 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

7.162 In our conclusions on the counterfactual (paragraph 4.43), we considered 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. We therefore 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; that is, not under the Agreement.

7.163 In considering this question we took into account our conclusions on the competition between the parties pre-merger and the evidence from agencies about their next best alternatives. This indicated that there were some campaigns for which a radio station owned by one of the other parties to the merger would be the next best alternative. We considered whether there were 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.

7.164 The agency responses suggested that to some extent the parties could compete, in principle, for national advertisers absent the Agreement because their stations were 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.

7.165 In practice, we considered 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.

7.166 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 suggested 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 considered 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 para-

graphs 7.151 to 7.153). 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.

7.167 Also, we noted in paragraph 7.157 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 considered that the evidence available does not suggest that the agencies' bargaining strength would increase significantly as a result of competition between the parties.

7.168 Turning to the second point, we note the evidence from GMG 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.[176] 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.

7.169 The experience of FRS was informative for our consideration of the potential constraint an independent RSL would have on Global's sales of contracted airtime. The evidence we received suggested 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' suggested it would be possible for RSL to sell to London-based agencies independently, the experience of FRS also suggested 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.

7.170 Overall, we therefore considered that the loss of RSL selling contracted airtime on its own as a potential independent competitor is not significant.

Conclusions on effects of the merger on advertisers buying through contracted agencies

7.171 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 noted the evidence that agencies contracting separately with Global and RSL [✂]. This suggested 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 airtime independently of Global but, in light of the difficulties experienced by smaller sellers in this segment of the market, this did not alter our view that the merger would not have significant adverse effects in relation to the sale of contracted airtime.

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

7.173 In summary, we concluded 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

[176] 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.

be relatively small. We did not consider this loss of competition, in itself, to be significant.

Branding effects

7.174 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.[177] These additional brands, and the increase in its listener reach as a result of the acquisition, would, it was 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.

7.175 In considering this issue, we assessed 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 noted that it would also be necessary to consider whether, if any such loss of rivalry was likely to result, it would lead to adverse effects for advertisers or listeners.

The parties' views

7.176 As we note [✄]. Global also told us that [✄]. The parties said [✄].

Third party views

7.177 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

7.178 We noted that rebranding might, under some circumstances, enable Global to increase its prices and/or revenue, if advertisers' demand for rebranded stations increased (for example, because audiences increased) or if the rebranding exercise were to increase the extent to which advertisers perceived the rebranded station to be differentiated from other stations. However, we noted that rebranding stations, by itself, would not reduce the number of competing radio alternatives available to advertisers and hence in our view, any such rebranding, would be better characterized as a commercial strategy available to Global post-merger than a loss of competition resulting from it.

7.179 We also noted that rebranding of stations is one possible commercial strategy open to radio operators 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.

[177] 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.

7.180 We therefore concluded 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

7.181 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. Some third parties were concerned that the merger would give the merger parties the ability and incentive to raise rivals' costs or otherwise weaken rivalry.

7.182 The bodies and arrangements about which these concerns were raised were: RadioCentre, the trade association for commercial radio; RAJAR, responsible for measuring radio audiences; Radioplayer, a not-for-profit company to promote digital radio listening jointly owned by commercial radio partners and the BBC; Digital Radio UK, the industry marketing body for digital radio; Newslink, the airtime around the news bulletins provided by IRN to most commercial radio stations which is pooled and sold by Global; and the BT40 chart show, a show produced by Global and syndicated to other radio stations and for which Global is responsible for selling the advertising.

7.183 In summary, our 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 an SLC. Specifically our main conclusions were:

(a) The merger did not appear to appear to change Global's position materially in terms of RadioCentre's governance, nor was there evidence that Global's incentives with respect to RAJAR would change materially.

(b) Although the merger would appear to give the merging parties a greater influence over Radioplayer, their ability to direct the strategy and policies of Radioplayer would be constrained by the other shareholders, particularly the BBC. Global did not appear to have the ability or incentive to exert influence over Digital Radio UK in such a way as materially to affect competition following the merger. The parties only hold a small percentage of voting rights and have a minority representation on the board of directors of both Radioplayer and Digital Radio UK.

(c) The merger would not change Global's ability to exercise control over IRN because RSL is not a shareholder. It was not clear that Global had an incentive to leave Newslink as a result of the merger nor that if it were to do so, other commercial radio stations would face a material constraint in their ability to establish an alternative source of supply.

(d) There was not 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.

7.184 The views and other information we considered in reaching these conclusions is set out in Appendix B.

Multiplex interests

7.185 Third parties also 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.[178] 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 licences will not be re-advertised. Global told us that [✂].[179] 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 view is that MXR Holdings' decision not to renew its multiplex licences cannot be attributed to the merger.

7.186 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 DSP contracts (with the exception of one in Yorkshire)[180] 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 DSP licensees and entering into agreements prejudicial to fair and effective competition.

Rivalry-enhancing efficiencies

Views of the parties

7.187 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 audience; and between Global and other media for share of advertisers' budgets.

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

7.189 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

7.190 Two of the four largest agencies provided support to some of Global's arguments. For example, one agency said that Global 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 large agency said that Global had contributed significantly to a revitalized radio industry making radio attractive to advertisers through an increase in audi-ences, better quality programming and easier access to larger audiences through

[178] South Wales and Severn Estuary; North-East England; the West Midlands; West England and Yorkshire.
[179] [✂]
[180] [✂], which is using the [✂] multiplex, requested a shorter-term licence.

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.

7.191 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, one agency said that CPT rates on Capital East Midlands had increased since its rebranding from Trent FM.

Our assessment

7.192 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.

7.193 We noted that there is some support [✂] from some of the larger agencies in particular who told us 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 weaker and in our view there is little to support the view that listening to Global stations has increased significantly relative to other commercial stations as a result of rebranding.

7.194 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.[181]

7.195 Our Guidelines note that efficiencies can also be taken into account through our assessment of 'relevant customer benefits'[182] in the context of our consideration of remedial action. The above criteria are also relevant in this context.[183] In this section, our assessment is limited to whether any efficiencies are rivalry-enhancing. We assess the RCBs put forward by the parties in Section 9.

7.196 Global argued that [✂].

7.197 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 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.

7.198 We noted 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 increased revenue from

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[181] The Guidelines, paragraphs 5.7.2–5.7.4.
[182] The Act, section 30 and the Guidelines, paragraph 5.7.3.
[183] The Guidelines, section 5.7.

advertising. [✂] 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.

7.199 Turning to the [✂] we do not consider that [✂] will enhance rivalry between Global and its commercial radio competitors as the merged entity would have [✂].

7.200 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, [✂].

7.201 As noted above, our assessment in this section is limited to whether any benefits are rivalry-enhancing. We concluded that the evidence did not indicate that the acquisition would result in rivalry-enhancing efficiencies which are timely, likely and sufficient to prevent an SLC. We consider the parties' arguments on RCBs in Section 9.

Market entry/expansion

7.202 In assessing whether entry or expansion might prevent an SLC our Guidelines[184] state that we will consider whether such entry would be timely, likely and sufficient.

Entry

7.203 Nearly all third parties[185] 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.

7.204 Ofcom told us that there was no space available to accommodate additional stations of any scale on the VHF Band II used for FM.[186] 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[187] were likely to become available for open competitive award.

7.205 Ofcom said there was also a lack of capacity for DAB at a national, regional and local level.[188] 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 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.

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[184] The Guidelines, paragraph 5.8.3.
[185] The parties did not submit arguments that entry or expansion might prevent an SLC.
[186] 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.
[187] Generally those serving a population of 250,000 adults (aged 15+) or fewer.
[188] 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.

7.206 Radio stations have a significant proportion of relatively inflexible fixed costs, such as transmission and production costs,[189] 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.

7.207 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.

7.208 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. The cost of access to digital spectrum on a multiplex can be significant as it depends on demand.[190]

7.209 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 of 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).

7.210 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

7.211 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.

7.212 While the transition to digital television services completed in 2012, the switchover to digital for radio is progressing at a slower rate.[191] Nevertheless, the Government has stated that it is committed to a digital future for radio,[192] and it believes a switchover process is the most likely way to deliver a transition to digital radio in a coordinated

[189] Ofcom, *Local and Regional Media in the UK*, paragraph 5.48.
[190] 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 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.
[191] Radio switchover is the point at which all national and large local stations currently broadcasting on both DAB and analogue frequencies will cease to broadcast on analogue. Small local and community stations will use the vacated FM spectrum.
[192] The Government considers that digital offers opportunities for radio to innovate and grow as the increased capacity of digital allows for more content and functionality, connecting radio with listeners in new ways and opening up new business opportunities for broadcasters.

way.[193] It expects to make a decision in principle on digital switchover by the end of 2013.

7.213 In the event of a positive decision by the Government, a date for switchover would be set once all listening and coverage criteria are met. The criteria are: 50 per cent of all radio listening being via digital platforms; national DAB coverage to be comparable with FM; and local DAB reaching 90 per cent of the population and all major roads. Once these criteria are reached, a date for switchover will be set but any such date will be at least two years after such announcement.

7.214 Ofcom's Digital Radio Report 2012 shows that currently 30 per cent of all radio listening is via digital platforms and that although DAB multiplex coverage in terms of BBC national radio services is over 90 per cent (94.3 per cent), it is only 84.6 per cent for national commercial services and 66.4 per cent for local multiplexes.[194] 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.[195] This would mean that switchover might occur from around 2018 depending on take-up.

7.215 Third parties told us that digital-only was still a fraction of radio industry, that digital radio was a long way from satisfying the 50 per cent of listening criteria and maybe ten years away from digital technologies being able to build a business case for traditional radio. Third parties also noted that the DAB devices were not fitted as standard in all new cars, and there were a significant number of second-hand cars where only a very small fraction of these had DAB devices; and that buying digital radios was not as attractive a proposition for consumers as buying the flat-screen televisions which helped drive the successful digital TV switchover.

7.216 The Action Plan launched by the Government emphasizes that the digital radio switchover should begin only when the market is ready and that it should be predominantly consumer-led. It also concluded that, when a decision is taken on setting a date for digital radio switchover, it will be the criteria and not the aspirational timetable which takes precedence.

7.217 In our view, we consider that there is considerable uncertainty about the date for digital switchover. We also note that while access to the spectrum is currently the main barrier to entry to commercial radio, it is not clear how this will be affected by digital switchover and there is uncertainty over the extent of the other barriers to entry that are likely to remain after switchover.

Our assessment

7.218 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 is considerable uncertainty about the likely date for digital switchover and there are no prospects for switchover before 2018 at the earliest.[196]

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[193] The latest version of the Government's Digital Action Plan, designed to provide Government with the information necessary to enable it to make an informed decision on whether to proceed with a radio switchover and broadly how to implement it, was published on 7 October 2012 by the Department for Culture Media and Sport. (www.culture.gov.uk/what_we_do/broadcasting/7228.aspx).

[194] Ofcom – The Communications Market: Digital Radio Report, 17 October 2012.

[195] In June 2012 the 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 to be taken in 2013.

[196] The time frame for entry/expansion referred to in our Guidelines is two years. (The Guidelines, paragraph 5.8.11).

7.219 We concluded that entry or expansion on a scale sufficient to constrain the merged entity within the time frame in our Guidelines was not likely.

8. Conclusions on the SLC test

8.1 Our analysis led us to conclude that the relevant market was a radio market and that competition between commercial radio stations affected the prices paid by radio advertisers. We concluded that other media could be a substitute for some radio advertising but that it was often bought as a complement to radio rather than a substitute for it. We considered that the evidence suggested there were a significant proportion of campaigns for which the availability of a good radio alternative was the main factor in determining the price paid.

8.2 We found that radio stations competed for national, regional and local campaigns and that advertising was bought under a contract between large agencies and radio groups or on a campaign-by-campaign basis (non-contracted).

8.3 We found that there was some loss of competition as a result of the merger for advertisers buying national and regional airtime and S&P through contracted agencies. We did not, however, consider the effects of the loss of competition on these advertisers were likely to be significant.

8.4 We concluded that the potential creation of extended quasi-national brands that some third parties suggested would result from the merger would also not have a significant adverse effect on competition. Similarly, our view was that there were 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.

8.5 We assessed the likely effect of the merger on non-contracted advertisers buying airtime and S&P in the nine areas where the parties' stations overlap. In two of these overlap areas, London and the West Midlands, our detailed analysis led us to conclude that the merger would not lead to significant adverse effects. We identified seven areas where the parties overlap which we considered would be likely to lead to significant adverse effects: the East Midlands; Cardiff; North Wales; South and West Yorkshire (the Real Yorkshire TSA); Greater Manchester; the North-East; and Central Scotland. We also concluded that the significant adverse effects in Cardiff, South and West Yorkshire and Greater Manchester would be likely to contribute to a loss of competition across the wider areas of South Wales, Yorkshire, Humberside and Lincolnshire and the North-West respectively.

8.6 We considered the extent of the likely effect on competition in these overlap areas. In doing so we took into account our Guidelines which state, among other things, that we view competition as a process of rivalry between firms; that the likely adverse effect on customers plays a key role in assessing mergers; and we consider any merger in terms of its effect on rivalry over time.[197]

8.7 Our view is that the loss of rivalry as a result of the merger is significant because in each of the seven overlap areas it involves either the loss of one of three main competitors or, in some cases the only main competitor, in the radio market. As such, the merger would give the merger parties high market shares of listeners and non-contracted revenue in each of the seven overlap areas and reduce the number of radio competitors from either three to two or two to one. We note in this context our Guidelines which refer to the consequences of a loss of rivalry over time on the

[197] The Guidelines, paragraphs 4.1.2 & 4.1.3.

'competitive pressure on firms to improve their offer to customers or become more efficient or innovative'.

8.8 We were concerned about the effect of the merger on non-contracted advertisers buying largely regional and local airtime and S&P. We noted that prices for these advertisers are negotiated for each campaign. 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 those campaigns where the alternatives are weak, we would expect the parties to be able to achieve a higher price in the negotiations.

8.9 Taking in the round all the available evidence on the proportion of campaigns likely to be affected and the scale of the likely effect on individual prices, we conclude that the loss of competition in the seven overlap areas is likely to lead to a significant change in the balance of negotiating power between Global and its non-contracted customers such that prices in each of the seven areas would be on average higher.

8.10 We also expect that the loss of rivalry in these areas, and the adverse effects on advertisers, would persist for a relatively long period of time. Entry is unusually difficult in commercial radio. This is because the scarcity of the FM licences needed to compete effectively makes it very difficult for new radio stations to be established in the overlap areas such that they could offer credible alternatives to the merger parties. We found no evidence that this situation would change before digital switch-ver. We noted in paragraph 7.217 that there is considerable uncertainty about the likely date for digital switchover, and that it is not expected to be before 2018 at the earliest. We also noted that while access to the spectrum is currently the main barrier to entry to commercial radio, it is not clear how this will be affected by digital switch-over and there is uncertainty over the extent of the other barriers to entry that are likely to remain after switchover.

8.11 We considered rivalry-enhancing efficiencies and the potential for new entry into the market as potential countervailing factors. As a result of the lack of availability of FM licences, and other factors, we did not consider either entry or expansion to be likely, timely and sufficient to offset a potential SLC. Also, we concluded that the rivalry-enhancing efficiencies claimed by the parties were not timely, likely or sufficient to prevent an SLC in the areas identified.

8.12 We therefore concluded that the merger has or may be expected to result in a substantial lessening of competition in a UK market.

9. Remedies

Introduction

9.1 Having concluded that the merger has or may be expected to result in an SLC we must decide whether action should be taken to remedy, mitigate or prevent the SLC or any adverse effect resulting from the SLC and, if so, to report the action to be taken and what it is designed to address.[198]

9.2 We published our Notice of Possible Remedies (the Notice) on 13 February 2013[199] and sought comments on a range of remedy options. In response we received written and oral representations from the main and third parties, including Ofcom.

9.3 In reaching our decision on remedies, we assessed the evidence on the various remedy options and concluded on which of these options would be effective in addressing the SLC and the adverse effects that we have found.[200] We then considered which of these effective remedies would be the least costly and intrusive and whether they were disproportionate in relation to the SLC and its adverse effects in the light of the evidence on the costs of remedies and any RCBs.[201]

9.4 First we assess the effectiveness and risks associated with three structural remedies involving divestitures of radio stations: full divestiture of the acquired RSL business; partial divestiture of one or more stations in each of the seven areas where we were concerned about the effect of the merger; and partial divestiture of RSL excluding RSL's stations in London and the West Midlands where we found the merger would not give rise to significant adverse effects.

9.5 A divestiture remedy seeks to address effectively, at source, the loss of rivalry resulting from a merger, by changing or restoring the structure of the market. This might be achieved by either creating a new source of competition or strengthening an existing source of competition. In defining the scope of a divestiture remedy, we take, as our starting point, divestiture of all or part of the acquired business. We also considered divestitures drawn from the acquiring business provided these were not subject to greater risk in addressing the SLC.[202]

9.6 To be effective in restoring or maintaining rivalry in a market where we have found an SLC, a divestiture remedy should involve the sale of an appropriate divestiture package to a suitable purchaser through an effective divestiture process.[203] In considering the design of any divestiture remedy, we therefore had regard to each of these considerations and to the need for the divestiture to present an acceptable risk profile.[204]

9.7 Second we consider the effectiveness and the extent of any risks associated with a hybrid structural/behavioural remedy under which Global would retain the licence of each acquired station but there would be a sales agency arrangement with a third party to sell non-contracted airtime and local S&P.

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[198] Section 35 of the Act.
[199] www.competition-commission.org.uk/assets/competitioncommission/docs/2012/global-radio-gmg/remedies_notice.pdf.
[200] The Act requires that, when considering possible remedial actions, we shall 'in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it'. (Sections 35(4) and 36(3) of the Act.)
[201] In accordance with sections 35(5) and 36(6) of the Act, we may also have regard to any RCBs arising from the merger.
[202] *CC8*, paragraphs 3.6 & 3.7.
[203] *CC8*, paragraph 3.1.
[204] *CC8*, paragraph 3.3 describes the categories of risk that may impair the effectiveness of divestiture remedies. These are: Composition risk; Purchaser risk; and Asset risk.

9.8 Third we consider the effectiveness of a number of alternative remedy options including pricing remedies and enabling measures to facilitate entry.

9.9 Fourth having identified which remedy options would be effective, we conclude on which of these effective remedies would be the least costly and intrusive.

9.10 Finally, we assess the parties' submissions on RCBs arising from the merger and how we should take these into account, before reaching our final conclusions on which remedies would be effective and proportionate.

Full divestiture

9.11 Full divestiture would involve divesting the whole of the acquired business, RSL, to a suitable purchaser. All parties told us that full divestiture would be an effective remedy (see Appendix Q). No party highlighted any specific composition risks associated with full divestiture.[205]

9.12 We noted that there was a broadly positive response from third parties for full divestiture, some of whom saw themselves as potential purchasers. Full divestiture was generally seen as less risky based on the interest that the original GMG sales process had created.

9.13 Global argued that full divestiture would be disproportionate. This view was also supported by the body representing advertisers.

Our assessment of full divestiture

9.14 In our view, full divestiture of RSL would represent a comprehensive solution to the SLC as it would fully address all aspects of the SLC in each of the overlap areas. It also has low composition risk, as RSL continues to be operated independently as a stand-alone business under the interim undertakings, and contains all of the assets necessary to broadcast radio services and sell radio advertising across its area of operations.

9.15 We note that some potential purchasers of RSL may themselves raise competition concerns in some local areas. Our counterfactual assessment (see Section 4) highlighted potential competition concerns associated with some of the prospective alternative buyers of RSL. We considered it likely that an acquisition by Bauer of RSL would have met the test for reference to the CC.[206] In addition we noted that other bids may also have raised competition concerns.[207] This would reduce the buyer pool and therefore increase the risk that a suitable buyer would not be found (purchaser risk). However, we judge the level of purchaser risk to be acceptable, as RSL is a viable stand-alone business and likely to be attractive to a range of bidders, including those without competing radio operations in its areas of operation.

9.16 Our view is that full divestiture of RSL would therefore be an effective remedy. We note though that full divestiture, although effective, would include the divestiture of stations in London and the West Midlands, where no significant adverse effects were found, and all RSL stations in each local area.

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[205] *CC8*, paragraph 3.3(a). Composition risks are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market.
[206] Paragraph 4.15.
[207] Paragraph 4.16.

Partial divestiture

9.17 We considered two partial divestiture options: divestitures of one or more stations in each of the seven overlap areas where we found there were likely to be significant adverse effects as a result of the merger; and divestiture of RSL excluding the acquired stations in London and the West Midlands.[208]

Divestiture(s) of stations in the seven overlap areas

9.18 In response to the Notice we received views on the relative merits of possible divestitures involving individual and/or combinations of stations in each of the seven areas. We consider the options in each area and assess the extent to which a divestiture would address the significant adverse effects we have identified. We also received views on potential issues in divesting stations operating under RSL or Global main brands; the assets and other elements of a station divestiture needed for an effective partial divestiture package; and a proposal whereby the purchaser of a licence enters into a commercial agreement with the seller to operate under the seller's station brand. We consider this evidence in assessing the effectiveness of a divestiture of individual stations in the seven overlap areas where we identified significant adverse effects.

9.19 In assessing whether a particular local divestiture would be effective we considered whether a divestiture package would be of sufficient scale and coherence to remedy effectively the loss of competition resulting from the merger at a local level. We also had regard to the potential ability of any divestiture package to operate effectively as a stand-alone competitor, and the likelihood of finding a suitable purchaser.

9.20 Global proposed divestiture remedies for five out of seven areas where we found there were likely to be significant adverse effects as a result of the merger. These proposed remedies were: the East Midlands (Gold); Cardiff and South Wales (Gold); North Wales (Gold); Greater Manchester and the North-West (Gold and/or Real XS and/or Xfm[209]); and Central Scotland (Smooth and Real XS). In putting forward divestiture of a number of AM Gold stations, Global argued that AM was attractive to both listeners and advertisers and there was not a separate market for advertising on AM compared with FM and DAB. It believed that AM was an attractive platform for radio operators as shown by Orion's recent rebranding of Gold in the West Midlands to Free Radio 80s (one of three Gold stations Global sold to Orion in 2008). We consider the effectiveness of Global's proposed divestitures in our assessment of remedies in each area.

9.21 Global argued that these divestitures were in themselves effective. However, it stated that if the CC concluded they were not effective, these divestitures could be combined with a sales agency agreement. Under such an agreement, Global would retain the station licence and contract with a third party to sell non-contracted airtime and local S&P for certain [✂] stations (ie [✂]) in each of the areas. We discuss the effectiveness of a sales agency agreement for non-contracted airtime and local S&P as a stand-alone remedy and in combination with other remedies in paragraphs 9.159 to 9.185. As such, we do not consider this remedy separately in relation to each of the individual areas.

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[208] See Appendix Q, Annex 2 for a list and the format of all licences held by the two parties in the overlap areas.
[209] Global stated that if the CC considered the disposal of any one of Gold, Real XS or Xfm was not sufficient to remedy the SLC it would be prepared to divest all three stations (Real XS, Gold and Xfm).

9.22 We identified seven areas where the parties overlap which we considered would be likely to lead to significant adverse effects: the East Midlands; Cardiff; North Wales; South and West Yorkshire (the Real Yorkshire TSA); Greater Manchester; the North-East; and Central Scotland. We also concluded that the significant adverse effects in Cardiff, South and West Yorkshire and Greater Manchester would be likely to contribute to a loss of competition across the wider areas of South Wales, Yorkshire, Humberside and Lincolnshire and the North-West respectively. We considered the partial divestiture options in each of these areas.

9.23 In this section where we refer in an area to a station (eg Real or Capital) we mean all the relevant licence(s) and the transmitter(s) used by the licence(s) in the area being discussed (See Appendix Q, Annex 2 for details of Global and RSL licences by area). In some areas, for example, North Wales and the North-West, some stations may have a number of licences and transmitters which cover a broadcast area both inside and outside of the area under discussion. In these cases we have looked at the licence(s)/transmitters within the area to assess market shares but included the whole station listening hours, total revenue and turnover[210] in our description of potential divestitures and our assessment of overall effectiveness. This is because there are significantly higher composition risks associated with divesting part of a local station compared with the whole of the station. Specifically, there are risks that a partial sale of a station would not be viable as a stand-alone entity. In addition, part divestiture of a station would increase significantly purchaser risks.

East Midlands

9.24 In paragraphs 7.24 to 7.27 we describe the main features of the East Midlands commercial radio market. In our assessment (paragraphs 7.29 to 7.32) we found that the concentration of radio station ownership in the East Midlands will significantly reduce the options for non-contracted advertisers in an area where there were limited good radio options pre-merger. Post-merger Gem 106 would be the only significant competitor to the parties' main stations, Capital and Smooth, and we found that it would not be able to offer a sufficiently strong alternative radio option to the parties' combined offer post-merger.

- *The parties' views*

9.25 Global argued that its proposed divestiture option, Gold was: demographically closer to Smooth than Capital; covered the same TSA as Capital and largely the same as Smooth; was available on DAB;[211] offers split transmitters[212] and therefore was a good alternative for Capital's local customers; had a listener share of 7 per cent[213] and provided an effective constraint at present. It also considered that Gold East Midlands was a viable stand-alone business despite its small turnover.[214]

- *Third party views*

9.26 Third parties viewed divestiture of either Smooth or Capital as an effective remedy in the East Midlands. [Competitor B] believed that Capital would attract significant

[210] Total revenue comprises contracted and non-contracted airtime sales and national and local S&P. Turnover comprises total revenue and other revenue, for example revenue generated from the production of commercials.
[211] Global stated that digital listening had grown in the East Midlands with only 52 per cent of listening now on AM compared with 74 per cent five years ago.
[212] Derby and Nottingham.
[213] Gold East Midlands' listening hours increased from 776,000 in 2011 to 843,000 in 2012 (RAJAR).
[214] Gold East Midlands' turnover in 2013 was £[✂]; EBITDA £[✂].

interest. The size of its non-contracted revenue base meant it would be able to sustain itself on a stand-alone basis and be an effective competitor in the region under independent ownership, whether operated under the Capital brand or another brand.[215]

9.27 Third parties were generally sceptical about the effectiveness of a divestiture of a Gold station in any overlap area, including the East Midlands. They variously argued that: there was little demand for AM stations; local advertisers' primary demand was FM; AM was non-core for commercial radio businesses' current business planning in the UK; AM did not suit music broadcasting; and that listening was declining for AM music.[216] We note though that [Competitor B] believed that Gold, as a quasi-national brand, might be interesting to some operators. Orion told us that Gold was not a primary competitor. It stated that [✂]. Its Gold station was [✂]. Orion told us that it had rebranded its Gold station to Free Radio 80s recently [✂].

- *Our assessment*

9.28 We note that Gold East Midlands has [0–4] per cent of non-contracted revenue and 7 per cent of listeners.[217] Its divestiture would therefore mean that Global post-merger would remain significantly larger than the next largest competitor, Gem 106. All other radio operators in the East Midlands (including the purchaser of Gold) would be significantly smaller) than either Global or Gem 106.

9.29 Furthermore, Gold East Midlands has [✂]. Its non-contracted airtime revenue was around £[✂] with total revenue around £[✂].[218] In the year ended 31 March 2013 it had turnover of £[✂] with an EBITDA of £[✂].[219] This level of turnover and EBITDA is significantly less than Capital, Smooth or Gem 106. These factors indicate that any purchaser of Gold would be heavily constrained in its ability to offer an attractive alternative to non-contracted advertisers and hence to compete effectively with other operators in the market.

9.30 Also, Gold East Midlands' [✂] profits suggest that [✂]. This would in effect reduce the potential buyer pool and increase the risk that a suitable purchaser would not be found.

9.31 We therefore concluded that divestiture of Gold East Midlands would not be an effective remedy.

9.32 Smooth has [10–19] per cent of non-contracted airtime revenue and 27 per cent of listening hours in the East Midlands. It has non-contracted airtime revenue of £[✂] and total revenue of £[✂]. Capital has [40–49] per cent of non-contracted revenue and 33 per cent of listening hours. It has non-contracted airtime revenue of £[✂] and total revenue of £[✂].

9.33 These listening hours and shares of non-contracted and total revenues would strongly suggest that the divestiture of either Smooth or Capital would re-establish the pre-merger position of three good radio alternatives available to advertisers. We

[215] [Competitor B] response to the Notice.
[216] Town and Country considered that radio's future was FM and DAB not FM and AM. [Competitor B] argued that medium wave attracted small audiences for music stations.
[217] Appendix L.
[218] Figures for the 12-month period October 2011 to September 2012, see Appendix L.
[219] Gold East Midlands' turnover for the year ended 31 March 2013 was £285,281; EBITDA £[✂]. Global estimated that EBITDA would be [✂] if Gold's network and Global's group costs were allocated.

therefore concluded that divestiture of either Capital or Smooth could form the basis of an effective remedy option in the East Midlands.

Cardiff and South Wales

9.34 In paragraphs 7.44 to 7.49 we describe the main features of the commercial radio market in Cardiff and South Wales. In our assessment (paragraphs 7.51 to 7.53 we found that the merger will effectively see a reduction in Cardiff from two main radio alternatives, Capital and Real, to one. We also found that the Cardiff market is an important part of the wider South Wales region. As such, we concluded (in paragraph 7.54), that the merger is likely to lead to significant adverse effects in Cardiff and contribute to a loss of competition for radio advertisers across South Wales.

- *The parties' views*

9.35 Global argued that Gold in Cardiff would be an appropriate divestiture to address the SLC. It stated that Gold in Cardiff: could be divested as a separable viable station despite its small turnover;[220] had 14 per cent share of commercial listening;[221] covered only Cardiff and therefore had the same TSA as Capital; and is broadcast on DAB.[222] Global also told us that [✄] and argued that its divestiture would allow the retention of certain RCBs.

9.36 Global told us that there was nothing specific or different about Real or Capital in South Wales which would affect the ease of separation or viability of them as stand-alone stations. Global also stated that there was no difficulty in separating Real South Wales from Real North and Mid-Wales. They shared infrastructure but they were two separate licences.

- *Third party views*

9.37 Third parties viewed a divestiture of either Capital or Real as an effective remedy. [Competitor B] argued though that any divestiture of Real South Wales should also include Real North Wales (see paragraph 9.48). Third parties did not consider that the divestiture of a Gold station would be an effective remedy (see paragraph 9.27).

- *Our assessment*

9.38 We considered first whether divestiture of Gold Cardiff could form the basis of an effective remedy. We noted that Gold Cardiff only has [0–4] per cent share of non-contracted airtime revenue, although it has 14 per cent of listeners in Cardiff.[223] In South Wales, Gold Cardiff's share of non-contracted airtime revenue and listening hours is significantly less than Capital and Real (see Appendix L).[224] Gold Cardiff's divestiture would therefore mean that Global post-merger would remain significantly larger than the next largest competitor in Cardiff and South Wales.

9.39 Furthermore, Gold Cardiff has [✄] revenue. Its non-contracted airtime and total revenue was around £[✄].[225] In the year ended 31 March 2013 it had turnover of

[220] Gold Cardiff's turnover for the year ended 31 March 2013 was £[✄].
[221] 767,000 listening hours in 2012.
[222] 46 per cent of Gold's listening hours are on AM.
[223] Appendix L.
[224] In South Wales, Gold Cardiff has [0–4] per cent share of non-contracted revenue and 6 per cent of listeners.
[225] Figures for the 12-month period October 2011 to September 2012, see Appendix L.

£[✂] with an EBITDA of £[✂].[226] This level of turnover and EBITDA is significantly less than Capital or Real. This indicates that any purchaser of Gold Cardiff would be heavily constrained in its ability to compete effectively with other operators in the market by offering an attractive alternative to non-contracted advertisers. Furthermore, profit levels suggest that [✂].

9.40 We therefore consider that divestiture of Gold Cardiff would not be an effective remedy.

9.41 Real has [30–39] per cent of non-contracted airtime revenue and 38 per cent of listening hours in Cardiff ([20–29] per cent and 30 per cent respectively in South Wales). Real has non-contracted airtime revenue of £[✂] million and total revenue of £[✂]. Capital has [50–59] per cent of non-contracted airtime revenue and 25 per cent of listening hours in Cardiff ([10–19] per cent and 10 per cent respectively in South Wales). It has non-contracted airtime revenue of £[✂] and total revenue of £[✂].

9.42 These listening hours and shares of non-contracted and total revenues would strongly suggest that the divestiture of either Capital or Real in South Wales would re-establish the pre-merger position of two main radio alternatives and therefore the pre-merger options available to advertisers.

9.43 We therefore concluded that divestiture of either Capital or Real in South Wales could form the basis of an effective remedy in Cardiff and South Wales. [✂]

North Wales

9.44 In paragraphs 7.55 to 7.59 we describe the main features of the North Wales commercial radio market. In our assessment (paragraphs 7.61 to 7.65) we found that the merger would remove the only significant radio competitor to Global in North Wales and as such, any rivalry, and the prospect of future rivalry, between radio stations for local and regional advertisers in North Wales.

- *The parties' views*

9.45 Global argued that Gold North Wales would be an appropriate divestiture to address the SLC. It argued that Gold North Wales: would be a viable stand-alone business if divested;[227] has the same TSA as Heart in North Wales; has a 12 per cent share of commercial listening (similar to that of Real); and its divestiture would allow the retention of relevant RCBs. Global also told us that [✂].[228]

9.46 Global did not consider Real North Wales to be an appropriate remedy but told us that it could easily be sold on its own as a viable stand-alone entity. It noted that its listening hours [✂] were growing and it had a separate licence for mainstream music in a large TSA (688,000). This provided the scope to increase its share of that audience as the station matured. The services it currently obtained from Real South Wales could be acquired in a short period of time by a purchaser [✂]. Global also stated that the divestiture of Real North Wales would restore the pre-merger conditions as it would remove the overlap in North Wales entirely.

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[226] Gold Cardiff's turnover for the year ended 31 March 2013 was £[✂], EBITDA was £[✂]. Global estimated that EBITDA would be £[✂] if Gold's network and Global's group costs were allocated.
[227] Gold North Wales' turnover for the year ended 31 March 2013 was £[✂], EBITDA was £[✂].
[228] [✂]

- *Third party views*

9.47 Third parties did not consider that the divestiture of a Gold station would be an effective remedy (see paragraph 9.27).

9.48 Third parties argued that a divestiture of Real North Wales would be an effective remedy option. Third parties noted though that an acquirer of Real North Wales would have to set up its own North Wales operation as it currently shares programming with South Wales. [Competitor B] considered that it was practically and commercially unattractive to split the operations of Real North Wales from Real South Wales. In addition, [Competitor B] argued that as the Real North Wales licence was relatively new it had not yet reached maturity.[229]

- *Our assessment*

9.49 We considered first whether divestiture of Gold could form the basis of an effective remedy. Our analysis of Gold North Wales' non-contracted airtime revenue shows that around [✂]. Global argued that this did not undermine its effectiveness or viability as a potential competitor as a third party could easily monetize its share of listening in the area. We note though that in other areas where Gold is [✂] Gold's percentage share of non-contracted revenue is significantly below its share of listening hours. This indicates the relative lack of attractiveness of Gold compared with other stations in those areas. The current [✂].

9.50 Gold North Wales has [✂] any adjustment for sales [✂]. Its non-contracted airtime and total revenue was around £[✂].[230] In the year ended 31 March 2013 it had turnover of £[✂] with an EBITDA of £[✂].[231] This level of revenue and profit indicates that any purchaser of Gold North Wales would be heavily constrained in its ability to offer an attractive alternative to non-contracted advertisers and hence to compete effectively with other operators in the market. Furthermore, Gold North Wales' profit in 2013 suggests that [✂].

9.51 We concluded therefore that divestiture of Gold North Wales would not be an effective remedy.

9.52 Real North Wales currently has [10–19] per cent of non-contracted airtime revenue and 17 per cent of listening hours. We note that it has [✂] and [✂]. We also note that it shares its infrastructure with Real South Wales. As such, a purchaser would need to put in infrastructure, such as programming and sales capability, to enable it to operate on a stand-alone basis. This will incur additional set-up and operating costs above current levels. We also note that there is currently no DAB coverage in North Wales. This will also increase the operational costs of the station once DAB multiplex services are available.

9.53 However, as we note in our assessment of the competitive effects of the merger in North Wales (paragraph 7.62), we have been told that it takes time for a new entrant to build up listener share and advertising revenue. We note that in its original business plan RSL forecast turnover of £[✂] and profitability of £[✂] in the third year after launch. Although Real North Wales has [✂], we consider that Real North Wales is capable of operating as a stand-alone business in the medium to long term.

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[229] [Competitor B] response to the Notice.
[230] Figures are for the 12-month period October 2011 to September 2012.
[231] Gold North Wales' turnover for the year ended 31 March 2013 was £[✂], EBITDA was £[✂]. Global estimated that EBITDA would be £[✂] if Gold's network and Global's group costs were allocated.

9.54 Heart is an established station. It has [60–69] per cent of non-contracted airtime revenue and 68 per cent of listening hours in North Wales. It had revenue of £[✂] from three of its four transmitters (excluding the Wirral).[232]

9.55 Heart has four separate licences and transmits from four separate transmitters covering North Wales and the Wirral. We note that [✂] (non-contracted advertising is sold on a transmitter-by-transmitter basis). Given the relative importance in terms of listeners and non-contracted revenue, and the significantly higher composition risks of a partial station divestiture compared with the divestiture of a station as a whole, we consider that any divestiture of Heart in North Wales should comprise the whole of the current station.

9.56 We therefore concluded that a divestiture of Heart could form the basis of an effective remedy and that divestiture of Real North Wales could also form the basis of an effective remedy in North Wales. However, we note [✂].

Yorkshire, Humberside and Lincolnshire

9.57 In paragraphs 7.67 to 7.72 we describe the main features of the commercial radio market in Yorkshire, Humberside and Lincolnshire. In our assessment (paragraphs 7.74 to 7.80 we found that the merger is likely to lead to advertisers' radio options, and their bargaining strength, being significantly reduced as a result of the lack of an alternative single station in South and West Yorkshire and the strength of the merger parties compared with bundles of alternative stations.

- *The parties' views*

9.58 Global did not put forward a divestiture remedy option for South and West Yorkshire. Global told us though that there was nothing specific or different about either Real or Capital in South and West Yorkshire which would affect the ease of separation or viability of them as stand-alone stations.

- *Third party views*

9.59 Third parties considered that divestiture of either Capital or Real would be an effective remedy.

- *Our assessment*

9.60 Real has [20–29] per cent of non-contracted airtime revenue and 21 per cent of listening hours in South and West Yorkshire. Real has non-contracted airtime revenue of £[✂] in South and West Yorkshire and total revenue of £[✂]. Capital has [10–19] per cent of non-contracted airtime revenue (for campaigns targeting South and West Yorkshire) and 32 per cent of listening hours. It has non-contracted airtime revenue of £[✂] and total revenue of £[✂].

9.61 We consider that the divestiture of either would re-establish the pre-merger position of two direct radio alternatives covering the whole TSA. Revenues would strongly suggest that both would be able to operate as stand-alone stations. We note that Capital broadcasts on two separate transmitters. We consider the increase in composition risks associated with divesting only part instead of a whole station to be

[232] North Wales coast, Anglesey and Gwynedd, and Cheshire.

significant and therefore took the view that any divestiture of Capital would need to be on the basis of the whole station.

9.62 We therefore concluded that a divestiture of either Capital or Real could form the basis of an effective remedy in South and West Yorkshire.

Greater Manchester and the North-West

9.63 In paragraphs 7.82 to 7.89 we describe the main features of the Greater Manchester and the North-West commercial radio market. In our assessment (paragraphs 7.91 to 7.94 we found that the merger will effectively reduce the radio alternatives for advertisers in Greater Manchester from three to two as well as bringing under the same ownership two stations with almost exactly the same geographic and demographic coverage: Real XS and Xfm. The only regional stations covering Greater Manchester and beyond would be brought together by the merger: the loss of Real and Smooth as alternatives for those advertisers primarily focused on Greater Manchester will also reduce competition. In addition, the relative strength of the merger parties in Greater Manchester would reduce the options for regional advertisers across the North-West. [✄].

- *The parties' views*

9.64 Global argued that Gold Manchester or Real XS would be appropriate divestitures. It stated that Real XS was viable as a stand-alone entity with forecast revenue of £[✄] in 2013 and a significant share of commercial listeners in Greater Manchester (11 per cent[233]). In addition, Real XS is RSL's only station in Greater Manchester (RSL's other stations are regional). It also argued that the divestiture of Xfm would be an appropriate alternative remedy for similar reasons.[234] Global stated that Gold would be a viable stand-alone divestiture having 11 per cent of commercial listening in Greater Manchester. It also covered the same Greater Manchester TSA as Capital. Global told us that while Real XS did not have local DAB capacity this was not required until the licence was next renewed in 2020 or digital switchover. Xfm and Gold have local DAB capacity until September 2012.[235]

9.65 Global stated that, if required, it would be prepared to divest all three stations (Gold, Real XS and Xfm) as an alternative to [✄] station. It argued that together these stations would have a 27 per cent share of local commercial listening (compared with Capital 25 per cent), a substantial share of non-contracted airtime revenues in Greater Manchester, substantial turnover and they would be able to share facilities.

- *Views of third parties*

9.66 Third parties argued that a number of different stations or combinations of stations would constitute an effective remedy. [Competitor B] considered that divestiture of Capital could remedy the SLC. Bauer and [Competitor B] argued though that Real on its own would not be effective. Any divestiture of Real would also need to include one of Real XS or Xfm to address both the geographic and demographic overlap between Real XS and Xfm.[236] In addition, such a combined offering would be better placed to

[233] Global calculation based on Capital Manchester TSA RAJAR Q3 2012.
[234] Xfm specifically targets Greater Manchester, had EBITDA (excluding Global's allocated costs) of £[✄] for the year ended 31 March 2012 (forecast £[✄] in 2013) and a 9 per cent share of local commercial listening.
[235] Global stated that it would include mono DAB carriage for any divestiture stations which require it as a licence condition.
[236] [Competitor B] response to the Notice.

compete with Global in Manchester[237] as well as having an audience share which would make it more credible to local advertisers.[238]

9.67 [Competitor B] also considered that divestiture of Smooth would be a suitable remedy on the basis that a combined Capital/Real would account for fewer listener hours in the region than Smooth.[239] However, [Competitor B] argued that a divestiture of Smooth in combination with Xfm or Real XS would involve higher composition and purchaser risks compared with the divestiture of Capital or all RSL stations.[240]

9.68 Bauer argued that the divestiture of Real XS alone would not be an effective remedy as it was unlikely to be a viable station on a stand-alone basis having made losses in 2011 and 2012.[241] In addition, Bauer argued that Real XS did not have sufficient assets to operate on a stand-alone basis and its small audience made it unlikely to be considered on its own as a viable alternative option for advertisers.

- *Our assessment*

9.69 We note that in Greater Manchester Gold, Real XS and Xfm have a combined share of listening hours of 18 per cent[242] (comparable with Capital's 17 per cent). However, the three stations only have a combined share of non-contracted airtime revenue of [10–19] per cent with Gold only having [0–5] per cent. This compares with Capital's [20–29] per cent share.[243]

9.70 In Greater Manchester and the North-West, Gold, Real XS and Xfm all have significantly lower shares of listening hours and non-contracted airtime revenue than Capital, Smooth or Real. Gold has a share of listening hours of 2 per cent and non-contracted airtime revenue of [0–4] per cent; Real XS 4 per cent and [0–4] per cent respectively; and Xfm 3 per cent and [0–4] per cent respectively. This compares with Capital (8 per cent and [5–9] per cent); Smooth (21 per cent and [10–19] per cent); and Real (10 per cent and [10–19] per cent).

9.71 Gold Greater Manchester has [✂] revenue. Its total revenue was around £[✂].[244] In the year ended 31 March 2013 it had turnover of £[✂] producing [✂] before interest, tax and depreciation of £[✂].[245] This indicates that any purchaser of Gold Greater Manchester would be heavily constrained in its ability to compete effectively with other operators in the market by offering an attractive alternative to non-contracted advertisers.

9.72 [✂] Real XS and Xfm have [✂] non-contracted revenue of around £[✂] each but have [✂] total revenues of £[✂] and £[✂].[246] This suggests that both Real XS and Xfm (and Gold if combined with either or both) may be of sufficient scale to operate as stand-alone businesses. Capital, Real and Smooth are significantly larger than

[237] Real competing with Capital and Real XS competing with Xfm.
[238] Approximately 14 per cent; see Bauer submission to the OFT, Annex 2, Table 10 and Annex 3, Table 14.
[239] [Competitor B] response to the Notice.
[240] This was as a result of the high number of shared services. [Competitor B] response to the Notice.
[241] Bauer noted that statutory accounts for a station were not always a reliable reflection of a station's viability depending on how network and intra-group costs were accounted for. However, Bauer considered that in this case the statutory accounts were an accurate reflection of the fact that Real XS was not viable on a stand-alone basis. In particular it has a low revenue base compared with other Real stations.
[242] Gold 5 per cent, Real XS 7 per cent and Xfm 6 per cent (Appendix L).
[243] Appendix L.
[244] Figures for the 12-month period October 2011 to September 2012. Gold Greater Manchester's non-contracted revenue in this period was only £[✂] (Appendix L).
[245] Gold Greater Manchester's turnover for the year ended 31 March 2013 was £[✂] and a [✂] before interest, tax and depreciation of £[✂]. Global estimated that the [✂] before interest, tax and depreciation would be £[✂] if Gold's network and Global's group costs were allocated.
[246] Appendix L.

Gold, Real XS or Xfm. All three stations have non-contracted airtime revenue in excess of £[✂] and total revenue in excess of £[✂].

9.73 We consider that based on the share of listening hours and revenue the divestiture of any one of Capital, Real or Smooth would appear to provide advertisers with a viable third choice in competition with Global and Bauer in Greater Manchester and the North-West. By contrast, Gold, Real XS and Xfm individually or collectively do not have sufficient reach and revenue shares to provide an effective constraint in Greater Manchester. In Greater Manchester individually they are significantly smaller than Capital, Real or Smooth and although combined their share of listening hours is comparable with Capital's their revenue share is significantly lower.

9.74 We therefore concluded that a divestiture of one of Gold, Real XS or Xfm on its own, or in combination with each other, would not be effective in addressing the SLC.

9.75 We took the view that divestiture of Capital would clearly be sufficient to address our concerns in relation to Greater Manchester and the North-West, given its overall scale and its presence in Greater Manchester. We noted that both Real and Smooth are regional stations and although they provide a credible option for some advertisers who wish to attract listeners in Greater Manchester they do not represent as well-targeted a remedy option as Capital. Consequently, to address adequately the loss of competition in Greater Manchester, the divestiture of a Greater Manchester-only station would also be required if either Real or Smooth were divested.

9.76 In respect of Greater Manchester-only stations (excluding Capital) we consider that based on listening hours and revenue share either Real XS or Xfm would, as part of a wider divestiture package, contribute to addressing the SLC. We also note in this assessment that both Real XS and Xfm have similar Formats and reach a similar demographic. As such divestiture of either Real XS or Xfm would address the geographic and demographic overlap between these stations which contributed to our finding of significant adverse effects in this area.

9.77 We note third party comments about the extent of integration between RSL stations and of Capital within Global in Appendix Q but consider that separation issues are capable of being satisfactorily resolved in relation to divestiture of Capital, Real or Smooth. We consider, however, that if either Real or Smooth is divested then Real XS rather than Xfm should be divested as part of the package. This would avoid the composition risks associated with separating Xfm from the Global network and then integrating it with an RSL station.

9.78 The combination of Real XS with either Real or Smooth would provide an advertiser who wished to target listeners in Greater Manchester with a substantial share of listening hours through Real or Smooth and a geographically targeted station in Real XS. We note that this would not re-establish the pre-merger situation in its entirety; Global would be able to retain Real or Smooth, each of which is a significant regional station. However, we judge that a combination of one of these stations, in addition to Real XS, would be sufficient to restore the effective options available to advertisers and therefore remedy the significant adverse effects we have identified.

9.79 We therefore concluded that the divestiture of either Capital on its own, or Real XS in combination with either Real or Smooth, could form the basis of an effective remedy to the significant adverse effects we found in Greater Manchester and the North-West.

North-East

9.80 In paragraphs 7.96 to 7.100 we describe the main features of the North-East commercial radio market. In our assessment (paragraphs 7.102 to 7.105) we found that the merger will reduce the options for radio advertisers in the North-East from three to two.

- *The parties' views*

9.81 Global did not put forward a remedy option for the North-East. Global told us though that there was nothing specific or different about Real, Smooth or Capital in the North-East which would affect the ease of separation or viability of them as stand-alone stations.

- *Third party views*

9.82 We had a mixed response from third parties in terms of how many and which stations need to be divested. Bauer submitted that, if only one station divestiture was viewed as sufficient to address the SLC, then the divestiture should be of Real. It argued that Real as a stand-alone station, producing local content and with an average audience age close to that of Capital's and Bauer's stations was likely to be a better option for local advertisers.[247] As such, Real was also more attractive to potential purchasers. [Competitor B] argued that a divestiture of either Capital or both Real and Smooth would attract potential purchasers and be an effective remedy. It argued that a divestiture of only Real or Smooth would leave Global with a significantly larger listener base than an independent Real or Smooth. As such, Global would not be effectively constrained by the newly independent Real or Smooth.[248] [Competitor B] also considered that there were issues in separating Smooth from Real (see paragraph 9.109.[249]

- *Our assessment*

9.83 We note that Capital has [✂] percentage of non-contracted airtime revenue as Smooth and Real together ([20–29] compared with [20–29] per cent). It also has twice the level of listener hours as Real, although it has only slightly more than Smooth. Capital's total revenue is around [✂] of Real and Smooth individually. This would suggest that a divestiture of Capital would clearly be effective, as would a divestiture of both Real and Smooth. In either case, the divestiture would remove the entire overlap and hence re-establish the market structure, pre-merger.

9.84 Divestiture of only one RSL station is less clear-cut, as it would result in an increment to Global's pre-merger position. We therefore consider each station separately. Real has a closer demographic to Capital than Smooth and it is also closer demographically to Bauer's North-East stations. This would suggest that a divestiture of Real on its own would provide advertisers with a credible third option. We also note that Real has non-contracted airtime revenue of around £[✂] and total revenue of around £[✂]. This would suggest that it is of sufficient scale to operate as a stand-alone business.

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[247] Real is a stand-alone station, more locally focused, producing 7 hours of local content and the average Real audience age is closer to that of Capital's and Bauer's Metro and TFM stations. Bauer's response to the Notice.
[248] [Competitor B] Response to the Notice.
[249] [Competitor B] Response to the Notice.

9.85 Smooth, although not as close to Capital as Real in terms of demographics (ie measured by average age), has [✂] of non-contracted airtime revenue than Real. In addition, its listening hours share is similar to Capital. This would suggest that a divestiture of Smooth on its own could also offer a credible alternative and be attractive to potential purchasers.

9.86 We note the views of third parties that an effective remedy would require the divestiture of more than one station or, if only one station, Real; and that there would be potential separation issues of Smooth and Real, and of Capital from the Global network. We also recognize that divestiture of either Real or Smooth would not re-establish the pre-merger situation in its entirety; Global would be able to retain one of the two stations in addition to Capital. However, on balance, we judge that the divestiture of only one of the RSL stations would be sufficient to restore the effective options available to advertisers and remedy the adverse effects we have identified. We also consider that, based on their listener and revenue shares, either Real or Smooth would provide another good alternative radio option. We do not consider the separation issues to be sufficiently material to lead us to preclude the divestiture of a station nor for us to prefer the divestiture of one station over another.

9.87 We therefore concluded that a divestiture of one of Capital, Real or Smooth could form the basis of an effective remedy in in the North-East. We note that, as in Greater Manchester and the North-West, this remedy would not re-establish the pre-merger situation in its entirety but consider it nevertheless to be sufficient to form the basis of an effective remedy.

Central Scotland

9.88 In paragraphs 7.107 to 7.111 we describe the main features of the commercial radio market in Glasgow and Central Scotland. In our assessment (paragraphs 7.113 to 7.116) we found that for advertisers wishing to run a campaign across Central Scotland the merger will bring together what would be advertisers' two best radio alternatives (Real and Capital) to Bauer, with no credible further radio alternatives, and remove one of only two credible alternatives for existing Global and RSL advertisers.

- *The parties' views*

9.89 Global told us that the divestiture of Real XS and Smooth (both Glasgow-only stations) would be an effective and appropriate remedy for the SLC. It argued that Real XS and Smooth's share of listening hours (together 12 per cent) and non-contracted airtime revenues in Central Scotland were significant.[250] It argued that combined the stations had a strong financial position[251] and reached a broad spectrum of demographic groups. Both had DAB capacity. Global also argued that they could be combined with an Edinburgh station of another radio operator to provide full Central Scotland coverage. In addition, Global stated that Real XS had the [✂] share of advertising revenue from non-contracted customers ([✂] per cent) of Global and RSL stations and the loss of RCBs associated with a divestiture of Real XS is limited relative to Real, Smooth or Capital.[252]

[250] Our estimate of Real XS and Smooth's combined share of non-contracted revenue for Central Scotland is [10–19] per cent (see Appendix L).
[251] Real XS and Smooth have a combined EBITDA of £[✂] in 2012 (forecast £[✂] for 2013).
[252] Global's response to the Notice. Global stated that listeners would still benefit from the proposed Scottish news service if Smooth was divested as well as Real XS.

- *Third party views*

9.90 We had a mixed response from third parties in terms of how many and which stations need to be divested. [Competitor B] argued that there were three potential divestiture options that should be considered as potential remedies. These were: Real; all of the RSL radio stations in Scotland; or the sale of Capital. [Competitor B] did not believe that the sale of Smooth on its own would be sufficient to restore rivalry in the region as this did not address the SLC identified in Central Scotland. In addition, it considered the ownership of Real XS was immaterial to the maintenance of competition within Central Scotland, due to its historically low volume of listening hours, localized coverage and niche format.[253]

9.91 [Competitor B] also considered that the divestiture of Real would involve additional composition and purchaser risks as compared with all of RSL or Capital as a result of the integration of Real and Smooth. It also argued that, based on listener hours, the divestiture of RSL or Capital was likely to be a viable business and therefore would be attractive to potential purchasers.[254]

9.92 Bauer argued that the only effective remedy to address the reduction in options across Central Scotland was the divestiture of Real. However, it argued that this would not address the reduction in options for those advertisers wishing to target Glasgow as Real could not effectively provide independent coverage of Edinburgh and Glasgow.[255] In order to address the reduction of choice in the Glasgow area, Bauer argued that Global would also need to divest either Real XS or Smooth Glasgow. To the extent that Smooth has a greater audience share than Real XS, Bauer argued that Smooth would be a more credible option for advertisers and would therefore be a more effective divestiture.[256]

- *Our assessment*

9.93 Both Real and Capital have significant non-contracted airtime revenues (£[✂] and £[✂] respectively in 2011) strongly suggesting that both would be able to operate as stand-alone businesses. While we note third party comments in relation to potential separation issues of Real and of Capital from their networks (see Appendix Q), we do not consider these issues to be sufficiently material to lead us to preclude the divestiture of either station nor for us to prefer the divestiture of one station over another.

9.94 We consider that divestiture of Capital would clearly be effective, as it would re-establish the pre-merger market structure in Central Scotland and in Glasgow.

9.95 We noted that divestiture of Real only would not re-establish the pre-merger situation in its entirety; Global would be able to retain Smooth and Real XS in addition to Capital. It would restore the number of strong alternatives for advertisers looking to run campaigns across Central Scotland to the pre-merger position of three (ie Real, Capital, Bauer). However, we noted for those advertisers wishing to target Glasgow their options would be reduced from three to two as the merger brings together

[253] [Competitor B] response to the Notice.
[254] [Competitor B] response to the Notice.
[255] Bauer submitted that separate coverage of Glasgow and Edinburgh could not be achieved because of the location of the transmitters. The primary Real transmitters are located at Blackhill and Craigkelly. The former is located roughly midway between Glasgow and Edinburgh and the pattern of this transmitter is directed to both Glasgow and Edinburgh. The latter largely serves central Edinburgh and further east. The combined effect is that it is not possible to cleanly target Real coverage only to Glasgow or only to Edinburgh as there is a significant area to the west of the Edinburgh market which is served by the main Glasgow transmitter. (Bauer's response to the Notice.) Also the parties told us that [✂].
[256] Bauer's response to the Notice.

Capital with Smooth and Real XS (combined). Taking into account our analysis of competition in Central Scotland, we took the view that Real would be an option for some Glasgow-only advertisers and would thereby contribute to radio competition in Glasgow (see paragraph 7.115).

9.96 We therefore judged that the divestiture of Real would, on balance, be sufficient to re-establish the number of effective options available to advertisers and remedy the adverse effects we have identified in Central Scotland.

9.97 We did not consider that divestiture of either or both of Real XS and Smooth would be effective in tackling the loss of competition across Central Scotland, as these stations only target Glasgow and hence do not offer a credible alternative for advertisers looking to run a campaign across Central Scotland. Such a divestiture would not therefore adequately address our concerns about the reduction in alternatives across Central Scotland.

9.98 We therefore concluded that the divestiture of either Real or Capital in Scotland could form the basis of an effective remedy in Central Scotland.

Summary of potentially effective divestiture options for individual areas

9.99 Table 4 sets out a summary of the divestitures we concluded would be effective in addressing the adverse effects in each of the overlap areas.

TABLE 4 **Summary of potentially effective divestiture options in each relevant overlap area**

Area	*Potentially effective options†*
East Midlands	Smooth OR Capital
Cardiff and South Wales[✂]	Real OR Capital
North Wales[✂]	Real OR Heart
Greater Manchester and the North-West	Capital OR Real XS with either Real OR Smooth
North-East	Real OR Smooth OR Capital
South and West Yorkshire	Real OR Capital
Central Scotland	Real OR Capital

Source: CC.

[✂].
†The licences relating to each of the divestiture options are set out in Appendix Q, Annex 2.

9.100 We noted that the divestitures set out in Table 4 would enable Global to retain some of the stations that it had acquired. In particular, it would be able to retain the Smooth stations in London and the West Midlands, either Real or Smooth in the North-West and the North-East, as well as Smooth and Real XS in Glasgow. This remedy option would also enable Global to divest one or more of its own stations, as listed in Table 4, if that was its preference. We considered whether there were likely to be suitable purchasers for the stations we had identified as being potentially effective in addressing the adverse effects we found. We noted that Global provided information that [✂].[257,258] Third parties said that Smooth and Real licences were viewed as attractive given that they both operated in good areas of the country and offered scale for the business to be viable on a region-by-region basis or as a quasi-national network. The extent of interest for each we found depended on the acquirer (see Appendix Q). We also noted the argument that a 'mix and match' package of Global

[257] [✂]
[258] Global said that [✂].

and RSL assets was less likely to be attractive to purchasers.[259] On balance, [✂], we took the view that there was a reasonable prospect of finding a suitable purchaser for each of the stations (or combinations of stations) identified.

Partial divestiture of RSL excluding London and the West Midlands

9.101 In our Notice, we consulted on a partial divestiture option which included the divestiture of all stations in each of the overlap areas where we found that the merger would be likely to lead to significant adverse effects. This would enable Global to retain the RSL stations it acquired in London and the West Midlands where we found that the merger was not likely to lead to significant adverse effects. Such a remedy might be implemented in various ways—for example, by selling the whole of RSL, but carving out stations to be retained by Global, or by retaining ownership of RSL but divesting all stations outside London and the West Midlands. We saw no material difference in terms of competitive impact of these alternatives, although there are likely to be differences in terms of the practicalities of execution.

9.102 We considered that this was in effect an extension of the partial divestiture option discussed in paragraphs 9.99 to 9.101. As such, we consider it would be similarly effective in addressing the SLC and likely to attract suitable purchasers.

Other issues potentially affecting the effectiveness of partial divestiture

9.103 Taking into account our finding that divestitures of certain individual stations, or combinations of stations, would potentially be effective in addressing the SLC, we considered whether there were any factors which would undermine the effectiveness of this remedy option. Specifically, we considered the extent to which it would be feasible to separate divested stations from a network brand and how shared services between commonly branded or owned stations would affect a divestiture; the ability of divested stations to sell airtime to contracted advertisers; access to facilities to enable acquired stations to be broadcast on DAB; and the possibility of the acquirer of a divested station entering into a brand-licensing agreement with Global to operate the station under a brand owned by Global. We set out the views of the main and third parties as well as our assessment on each factor. Further details of main and third party submissions are included in Appendix Q.

Separating commonly branded and owned stations

9.104 We considered whether there were practical issues associated with separating stations that are currently operated under the various RSL and Global brands, which could make it more difficult to achieve a successful divestiture of a particular local station.

9.105 Real operates as a series of recognizably local stations. Content is the same across the network (produced centrally in Manchester) except for 7 hours per day during which each station broadcasts locally made, local content as required by each station's licence Format. Each Real station has its own broadcast facilities, which Smooth shares in some areas, [✂].

9.106 Smooth operates as a single national branded network broadcasting on FM (in areas where it has a licence) and nationally on D1.[260] With the exception of Smooth

[259] Bauer's response to the Notice.
[260] Currently Smooth is also broadcast on a number of regional DAB multiplexes.

Glasgow[261] all programming and content is the same across the Smooth network.[262] Its six individual station licences retain localness requirements. However, the licences include a provision that if there is an Approved Version of the Service broadcast on digital radio (Approved Version) the localness criteria of five of the six (excludes Glasgow) are suspended.[263] For Smooth, an Approved Version is one that corresponds to the Smooth Radio service carried on D1.[264]

9.107 A number of Smooth stations share resources with the local Real stations. [✂][265]

9.108 Real XS is integrated into the operations of Real in Glasgow and Manchester. [✂]

9.109 Global told us that despite these shared resources, it would be straightforward to separate Real and Smooth stations. All stations could operate as separate viable stand-alone entities. Real and Smooth licences could be sold individually and sales teams could be split where necessary. Also, there was limited overlap in programming personnel between the two networks and Real presenters could easily be reinstated during the daytime and overnight.

9.110 Third parties considered that the local and national nature of respectively Real and Smooth stations, and the level of integration between the two and within the respective networks, would affect the relative ease of divestiture of different stations. The importance of London to the Smooth business, both as a source of programming content as set out above and of advertising revenue was also highlighted by a number of radio operators.[266]

9.111 In considering divestitures of Global stations, Global argued that there were no practical reasons why it would be more difficult to divest a Capital, Heart or Gold station than an RSL station. Bauer submitted that the high level of integration in the Global network meant that the sale of Global stations was likely to raise more complex separation issues than RSL stations.

- *Our assessment*

9.112 We took the evidence about the practicalities of separating Global and RSL stations into account when considering whether partial divestiture would have an acceptable risk profile. In our view, partial divestiture is likely to involve higher composition and asset risks than full divestiture: the stations to be divested would need to be separated from their networks and group functions and there is also a heightened risk of losing key staff from those stations identified for divestiture. Given the number of divestitures that would be required, and the possibility that some potential purchasers may need to make additional investments (eg in local programming capability) to operate divested local stations, there are also likely to be some

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[261] Smooth Glasgow's licence states that it must offer 7 hours of locally generated local programming each day.
[262] Ofcom told us that regionality was not one of Smooth's primary characteristics when it was set up. Smooth's primary characteristic was that of a music station aimed at the 55+ demographic. As such, Smooth's licence Formats (with the exception of Scotland) allow for the suspension of the localness requirements in its licences subject to conditions around it maintaining national DAB coverage. [✂]
[263] For example: Smooth Radio (North-East) station Format states that the station must produce locally at least 7 hours a day during daytime (weekdays (must include Breakfast)) and at least 4 hours daytime Saturdays and Sundays unless the service broadcast under the licence is an Approved Version of the service, in which case no programming need be locally made.
[264] Ofcom told us that the same coverage could be met to achieve an Approved service if Smooth, instead of being broadcast on D1, was broadcast on all available local multiplexes and on all new local DAB multiplexes as they were launched. Every calendar month Smooth must have at least 80 per cent of the programmes on each service the same; and at least 50 per cent of the programmes broadcast at the same time on both services. Smooth by broadcasting on D1 achieves this coverage.
[265] [✂]
[266] See Appendix Q.

additional purchaser risks associated with partial divestiture, when compared with full divestiture.

9.113 However, we judged that each of the local radio station divestiture options set out in Table 4 is capable of operating as a separable viable stand-alone entity. Both Real and Smooth have most of the necessary resources available to them at the local level including [✂] ([✂]). Also, we noted that Smooth had until recently operated as a series of individual stations within a network and holds individual local licences. We therefore did not consider that Smooth's current positioning as a single national branded network with no local content (except Glasgow) precluded divesting individual Smooth stations. While stations within the Real network share daytime, night-time and some weekend programming [✂], it retains programming capability in each local area.[267] We also consider, in line with Global's view, that Capital stations could be readily separated from Global and the Capital network.

9.114 In relation to purchaser risk, responses from third parties to the Notice [✂] suggest that if individual stations were to be put up for divestiture there would be likely to be a number of potential buyers.

9.115 We therefore conclude that, while there are some risks associated with separating individual stations from their existing networks within Global or RSL, these risks are not so great as to preclude partial divestiture from being an effective remedy.

Access to national sales

9.116 In our assessment of the competitive effects of the merger, we discussed the importance for commercial radio stations of revenue from large national advertisers who generally buy through agencies (contracted advertising). We noted that individual local stations, or radio groups without a national licence or sufficient national coverage to attract national advertisers on their own, generally sell contracted advertising under an agreement with a larger radio group or through the radio sales house, FRS. RSL sells most of its contracted advertising through Global under the Agreement summarized in paragraphs 4.23 to 4.28. We therefore considered the implications for contracted advertising of the partial divestiture option and specifically whether the existing Agreement should be included in any divestiture package.

9.117 Global told us that [✂].

9.118 Third parties [✂] emphasized the need for flexibility and that the appropriate solution for airtime sales to contracted advertisers was likely to depend on the precise nature of the divestiture package. Some said that a purchaser should have some protection in terms of airtime sales to contracted advertisers given the size of the revenue stream and the potential for conflicts of interest to arise if Global had a station in competition with a brand licensee's station.

9.119 In general, we had mixed responses from third parties about whether the Agreement, whereby Global sells contracted advertising on behalf of RSL stations, should be included within a divestiture package. It was viewed by some third parties as a disincentive. Others considered that it would be commercially sensible to continue the Agreement for a period post-acquisition. Views on this issue depended, in part,

[267] Real South Wales output is shared with Real North and Mid Wales. Real North and Mid Wales does not have its own programming capability.

on the identity of the purchaser and their current arrangements for contracted advertising sales.

- *Our assessment*

9.120 We note that the SLC we found relates to non-contracted airtime and S&P, not to contracted advertising which is covered by the Agreement. However, contracted sales are a significant part of the revenue stream for stations enabling them to be viable stand-alone businesses. As such, for those stations to be effective competitors in non-contracted airtime and S&P they also need to be able to sell contracted advertising.

9.121 We did not reach a firm conclusion about whether a national sales arrangement with Global, which could be the Agreement, needs to be included or excluded in any divestiture package. Depending on the circumstances, an effective divestiture could arise either with or without such an agreement. However, we will need to be sure that, in any partial divestiture, a purchaser has the ability post-acquisition to sell contracted advertising to ensure the viability of the divested business. We therefore reserve the right to review, as part of our oversight of any divestiture process, any requirement for a contracted sale agreement to be in place at divestiture and the length of time that it would continue for. We will also take into account the arrangements a purchaser intends to make for the sale of contracted advertising in the short and long term as part of our purchaser suitability assessment. These considerations would also apply to the situation in which divestiture is accompanied by a brand-licensing agreement (see paragraphs 9.129 to 9.137).

Access to digital platforms

9.122 Sale of a station's analogue licence would not necessarily provide the purchaser with the ability to broadcast digitally. FM licences are renewed without re-advertisement if the holder of the FM licence is providing a service (simulcast or otherwise) on a 'relevant' local multiplex (ie one that covers the same area as the analogue licence) ('Digital protection'). Licences renewed on this basis include in their Formats a requirement for the licence holder to 'do all it can' to continue to provide DAB service. The access to DAB spectrum via a DAB multiplex is not, however, intrinsically connected to the FM licence. As such, an FM licence may change ownership without the DAB spectrum over which it had also been broadcasting.

9.123 We therefore considered the implications for access to digital platforms of a partial divestiture.

9.124 Global told us that there was spare capacity for Real and/or Smooth stations on local DAB multiplexes. [✂][268] RSL has [✂].

9.125 Ofcom told us that where an FM licence was renewed under 'digital protection' there would not be on a change of control any prima facie reason to alter the licence's conditions to omit the DAB requirement. It stated that technically on the first day following a change of control the new owner would still have to comply with the obligation under the Format to 'do all it can' to provide a service on DAB as well as its FM service.

[268] Global stated that it [✂].

9.126 Third parties generally took the view that any partial divestiture would need to include access to appropriate digital broadcasting capacity alongside the relevant analogue licences. We note that there is a mixed picture in respect of Real and Smooth's stations' licences and their current and future requirements to broadcast on DAB (see Appendix Q).

- *Our assessment*

9.127 Given the importance of access to digital platforms to the ongoing success of a radio station, we consider that, where a licence is broadcast or is due to be broadcast on a local or regional DAB multiplex, the composition of any divestiture package should enable broadcasting of the station on DAB to continue in the same format as before (or as anticipated).[269] Global should provide the purchaser with the ability to access, if the purchaser so wishes, the same or equivalent DAB multiplex capacity, at no less favourable terms than currently enjoyed by Global or RSL.

Brand licensing

9.128 In addition to the full sale of a station's broadcast licence and its analogue transmission contract,[270] we also considered, in the context of our consideration of partial divestiture options, a sale with a brand-licence arrangement. This would involve the purchaser entering into a commercial agreement with the seller to operate the station under the seller's station brand.[271] The purchaser may as part of its agreement with the seller/brand owner take from the seller broadcasting content and/or other services including national airtime and S&P sales. The purchaser would remain, through the ownership of the licence, accountable to Ofcom for the station's broadcast output.

9.129 Global told us that it was simple to sell a station with a brand licence. It considered that such a brand-licensing structure could be applied to both small and large divestitures and could work equally well for either Real or Smooth stations.[272] In Appendix Q, we set out details of two examples of brand licensing involving Global: Orion's acquisition of Gold in the West Midlands and Heart East Midlands in 2008; and Adventure Radio's acquisition of a local radio station broadcasting to Watford and Hemel Hempstead in 2005. Global also said that [✂].

9.130 Global submitted that under a brand licence a divested station would need to remain within the Agreement as selling national airtime outside of it would be complex.

9.131 Third parties provided a mixed response in respect of the relative merits of a sale with or without a brand licence (see Appendix Q). The relative merits depended on: the identity of the purchaser; the strength of the purchaser's own brands and marketing strategy; and the identity of the network from which a station was being divested.

9.132 Some radio operators generally agreed that brand licensing was a credible and sustainable option for implementing a local radio divestiture. For example, some

[269] This 'same format' requirement includes, for example, if a station currently has stereo DAB capacity it should continue to have stereo DAB capacity post-divestiture.
[270] The purchaser would run the station under its own brand, with no requirement for an ongoing commercial relationship with the seller. All parties considered divestiture without a brand-licence arrangement to be an effective divestiture model.
[271] This would be a commercial agreement setting out, for example, how the brand licence is to be paid for and how marketing costs are to be apportioned. We consider that this is a commercial agreement which should be negotiated between the parties involved. We will, however, review any agreement to ensure the independence and capability of the purchaser (see *CC8* paragraph 3.15). A brand-licence agreement will also be subject to review and approval by Ofcom.
[272] [✂]

parties suggested that brand licensing might be particularly appropriate for Smooth stations as it operated as a national brand.

9.133 Third parties also acknowledged that under a brand licence it would make commercial sense to allow Global, as the brand owner, to sell airtime to contracted advertisers for all stations under the brand rather than approaching national advertisers on a fragmented station-by-station basis.

9.134 Ofcom told us that all licence holders, including brand licensees, were responsible for the content of that licence being broadcast.[273] It stated that a brand-licence agreement should include the ability for the licensee to exit the arrangement within a short time period with no penalty; the brand owner should not have the same entitlement. Ofcom told us that it would need to approve any brand-licensing agreement before it was entered into.

- *Our assessment*

9.135 The SLC that we have found results from the reduction in rivalry at a local level in relation to non-contracted airtime and local S&P within each of the seven problematic local areas. The SLC does not derive from the potential for extension of any Global or RSL brands, or from any change in the position at a national level in terms of contracted advertising. Given this, we judged that a local divestiture accompanied by a brand-licensing agreement could be effective, provided that a suitable purchaser could be identified and that any brand-licensing arrangements did not compromise the purchaser's ability and incentive to compete independently with Global in those markets where we found a problem. We noted that the attractiveness of brand licensing to potential purchasers was likely to depend on a range of factors including the identity of the purchaser and on the identity of the network a station was being divested from, and that alternative approaches to this issue may be taken in different areas. We also noted that a brand-licensing agreement may also be accompanied by a national sales agreement whereby Global sold contracted advertising on behalf of the owner of the divested station.

9.136 We concluded that, subject to reviewing the detail of any agreement, a partial divestiture of one or more stations involving a brand-licence arrangement between the acquirer and Global was a credible divestiture mechanism and was capable of being effective in addressing the SLC.

Conclusions on partial divestiture

9.137 We concluded that partial divestiture of the stations in Table 4, or divestiture of RSL excluding stations in London and the West Midlands, would potentially be effective in addressing the SLC we have found.

9.138 We therefore considered whether partial divestiture would have an acceptable risk profile. We took into account the risks associated with separating commonly owned or branded stations, ensuring a divested station can sell contracted advertising, and enabling a divested station to have access to digital broadcasting. We concluded that on balance, the additional risks associated with partial divestiture would be capable of being addressed through effective remedy design and implementation, rather than representing fundamental obstacles to partial divestiture as a remedy option. We further concluded that partial divestiture could be accompanied by an appropriate

[273] The brand-licence agreement must allow the licensee to set the station's content and direction in conjunction with the brand-owner.

brand-licensing agreement without compromising our objectives in achieving an effective remedy. We therefore concluded that partial divestiture would be an effective remedy.

Divestiture process

9.139 We considered the divestiture process that would be appropriate for a partial divestiture remedy. Specifically, we consider the assets that would need to be included in any divestiture package; the extent of any flexibility that should be permitted to Global as to the stations to be divested; the regulatory requirements which we would need to take into account; and how the sales process would operate.

Assets to be included in any divestiture package

9.140 We consider that, to enable the divested business to compete effectively, the sale of a station as part of any divestiture package would need to include all of the station's relevant assets. We were told that this would include the relevant broadcasting licences; brand;[274] analogue and digital broadcast capacity; all local staff, including staff relating to sales;[275] and content and programming, including relevant content and intellectual property rights. In considering the detailed specification of any local divestiture we further concluded that any divestiture package should include all the necessary contracts and assets required for the purchaser to be an effective competitor in each overlap area. The specific composition of each divestiture package will be largely driven by the model of divestiture and the requirements of the purchaser. However, each package must include the relevant broadcasting licence and FM transmission contract. The divestiture process should be flexible enough to ensure that the divestiture package ultimately includes all necessary contracts a purchaser requires to be an effective competitor. In line with our normal procedures, the CC will wish to ensure, before providing its final approval of any divestiture that the divestiture agreement and relevant supporting documentation convey all assets required to be divested, and contain no provisions that are inconsistent with the CC's remedial objectives for the divestiture.

Decisions on stations to be divested

9.141 Global submitted that, if it were required to divest any '[✂] stations', it should be given the option of which station or stations to divest. It also noted that decisions on the Agreement were dependent on the purchaser and whether or not the purchaser proposed to enter a brand-licensing arrangement with Global.

9.142 Our analysis led us to the conclusion that the radio stations listed in Table 4 represent the local divestiture options that are capable of effectively addressing the SLC. We have identified more than one effective option to address the significant adverse effects in each problematic local area. We did not consider that there was any reason to state a preference for the divestiture of an RSL over a Global station, except in the case of Real XS in Greater Manchester if either Real or Smooth is divested. Implementation of one of these divestiture options in each local area would represent a comprehensive solution to the SLC as it would fully address our concerns in each of the local areas.

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[274] Town and Country argued [✂].
[275] It may be necessary to include 'essential' RSL staff where they perform functions for the benefit of local stations.

9.143 We consider that Global should be allowed to seek to implement its preferred divestiture option from those set out in Table 4, [✂], and afforded some flexibility in terms of whether that divestiture should include a brand licence and the arrangements to be made with any purchaser in relation to national contracted advertising.

9.144 As a result of this approach, we noted that:

(a) the specific stations to be divested are yet to be identified. The identity and precise composition of the assets put up for sale may change during the sale process depending on purchaser appetite; and

(b) the structure of each divestiture is yet to be specified. If the divestiture is structured as a sale without a brand-licence arrangement the purchaser may require some form of transitional service agreement. If the divestiture is structured as a sale with a brand-licence arrangement there will need to be some ongoing commercial relationship between Global and the acquirer as well as possibly a transitional service agreement. Some purchasers may also want to take additional commercial services from Global.

9.145 [✂]

Regulatory requirements

9.146 We would need to take the regulatory requirements from Ofcom into account when assessing the suitability of potential purchasers and overseeing any sale process. Specifically, Ofcom has to give its consent prior to a licence transfer being allowed. As part of this consent Ofcom must be satisfied that the person to whom the licence is transferring is able to comply with all the conditions of the licence and that they are a fit and proper person.

9.147 Ofcom does not have to give consent to a company sale which includes a licence. On change of ownership it undertakes a change of control review. This assesses the effect of the change of control on the characteristics of the licence such as the quality and range of programming and the ability of the licence holder to deliver localness obligations.

9.148 In the event that a divestiture is made and a brand-licence arrangement is entered into Ofcom would need to approve any such agreement (see paragraph 9.135).

The sales process

9.149 An effective sales process will protect the competitive potential of the divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale. The process should also allow prospective purchasers to make an appropriately informed acquisition decision.[276] An effective process should also allow prospective purchasers to make an appropriately informed acquisition decision.

9.150 We note the views of third parties that there are likely to be complex issues in relation to contractual rights and obligations relating to carriage, content and staff as these were likely to be held by RSL and divestiture may well require these rights and

[276] *CC8*, paragraph 3.20.

obligations to be devolved to the individual stations. Some third parties told us that this could be a time-consuming and complex exercise.[277]

9.151 Nevertheless, we consider that the divestiture period allowed for completion of the divestitures should be [✂] from final determination of this inquiry. We consider that this time period, [✂],[278] reflects the high risks that the assets to be divested will deteriorate over time. In particular we are concerned that the longer the time period for divestiture the higher the risk that key personnel will leave. We are also concerned with the ability of the stations that are to be divested to maintain their current local advertising client base and win new clients if the divestiture period is [✂]. In addition, we consider this to be an achievable timescale to implement a disposal, particularly given the fact that RSL was previously subject to a full sales process with a data room and that [✂].

9.152 In line with our normal procedures,[279] the CC would have the right to appoint a divestiture trustee at the end of the divestiture period, or during this period if the CC has reason to expect that the merger parties will not procure divestiture to a suitable purchaser within [✂].

9.153 Global argued that if the CC did require local divestitures it should be allowed to integrate those parts of the RSL business not subject to remedies.

9.154 The specific stations to be divested under a partial divestiture remedy are yet to be identified. Therefore, to maintain the necessary flexibility in the sale process, RSL should be held separate from Global with the exception of RSL stations in London and the West Midlands until all operations to be divested have been sold to a suitable purchaser.[280] During this period, the Monitoring Trustee appointed to oversee the interim undertakings should remain in place to monitor these hold-separate arrangements. The Monitoring Trustee's role should be extended to oversee the separation of divested from retained operations and to report to the CC on whether Global is making satisfactory progress towards implementing all of the divestitures in accordance with agreed timetables and on whether Global is likely to procure all divestitures within [✂].

9.155 The CC would review the suitability of potential purchasers in line with its normal procedures, liaising with Ofcom as appropriate about any regulatory requirements.

9.156 The CC will also review any transitional service, brand licensing and all other service agreements in connection with a divestiture to ensure the ongoing independence and capability of the purchaser from Global. Our expectation is that any transitional service agreement should be for no longer than six months.

Sales agency arrangement for airtime and S&P for non-contracted advertisers

9.157 We considered a remedy option that would involve an independent third party acting as a sales agent for the non-contracted airtime and local S&P for one or more of the stations within each of the areas where we found there were likely to be significant adverse effects as a result of the merger. This remedy would involve the main RSL and Global brands (Real, Smooth, Capital and Heart). Under this remedy Global

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[277] Bauer's response to the Notice.
[278] [✂]
[279] *CC8*, paragraph 3.26.
[280] The integration with Global of RSL stations in London and the West Midlands must not compromise the ability to effectively achieve the divestitures required to address the SLC. As such, the CC will need to approve any integration plan and monitor its implementation.

would retain the relevant analogue licences; and control over RSL's brands, programming output and its contracted airtime and national S&P. We set out the views of the main and third parties and our assessment below. Further details are included in Appendix R.

The parties' views

9.158 Global submitted that a sales agency agreement for non-contracted airtime and local S&P would be effective in addressing the SLC. It argued that such a remedy could also be used in conjunction with the divestitures of stations it had proposed if the CC considered that these divestitures were insufficient. It told us that such an arrangement would be structural in nature. It also considered that the arrangement would only need to be in place for a short period as once digital switchover occurred barriers to entry would be substantially reduced, thus removing the SLC.

9.159 It stated that such an arrangement would be for a fixed period. This would be agreed between the parties, but was likely to be around five years.[281] Global stated that it would be prepared to give an undertaking that if the sales agent terminated the agreement at the end of this term, and FM was still the predominant transmission medium, it would enter into a non-contracted sales agreement with another third party agent.

9.160 The sales agent would have an exclusive right to sell airtime and S&P on the station to non-contracted advertisers. Global told us that it would pre-agree the inventory available to be sold by the third party and would guarantee the transmission of all of its advertising up to the contracted level.[282] Global stated that it would have no involvement in the approval of local S&P campaigns (provided they were within predefined brand guidelines). It would be obliged to broadcast such S&P campaigns.[283] Global did not consider that a sales agent would need to have any control over the station's content to be able to compete effectively in the market for non-contracted advertising.

9.161 The sales agent would be independent from Global as it would share no premises, technology or staff with Global and there would be no exchange of commercially sensitive customer information. It argued that the degree of interdependence would be no greater (and indeed potentially lower) than that involved in brand licensing and Global's existing agreements with Adventure Radio, RSL and Orion.

9.162 Global stated that there would be an annual fee payable by the third party to Global. This would be linked to the station's audience share. As such, it would be dependent on, and give Global a vested interest in, maintaining and growing the station's brand and listenership.

9.163 Global argued that a sales agency agreement would require no monitoring. It stated that a model sales agreement could be agreed that would be the same for each of the regions. This would not require periodic modification.[284] It stated that any concerns about disputes could be addressed by a rapid arbitration proceeding. It argued that the CC had not identified any concern requiring monitoring of other agreements

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[281] This would take the agreement to around 2018. As noted in paragraph 7.214. Ofcom told us that based on current listening trends digital switchover might occur from 2018.
[282] The third party would have complete flexibility to vary prices and utilize its inventory, and would be free to resell the non-contracted sales business for the remaining term of the contract.
[283] These would [✂].
[284] Global stated that it was not aware of any likely changes to either market conditions or marketing/branding initiatives which would require any modifications to such a model agreement.

where airtime was sold on behalf of the licensee and the OFT had not found it necessary to monitor the national sales agreement entered into between Global and Orion.[285]

9.164 Global believed that a local sales contracting option could be attractive to national, regional or local sales agencies which had local sales teams in the overlap areas as well as the holders of the newly launched local television licences. Global told us that it had had approaches from local and regional agencies interested in bundling radio sales with their other media sales[286] and did have such a relationship in one area which ran for six years.[287] Global believed that it was less likely that another radio operator might be attracted by such a contract.[288]

Third party views

9.165 The majority of third parties considered that a sales agency arrangement would not be effective in addressing the SLC. Concerns raised by third parties included: there was a real benefit in being able to sell advertising where you had editorial control over the output of the station and therefore the message being sold to potential clients; there might be issues relating to priority over contracted and non-contracted advertisers; and concerns over confidentiality where the sales agent was competing directly with a Global local sales team, especially in S&P.

9.166 Adventure Radio told us that it would be interested in a sales agency arrangement. It stated that the arrangement it had had with Global in Harlow had been successful and such an arrangement could be commercially attractive.

9.167 Adventure Radio argued that an arrangement would need to be for a minimum of five years to allow for investment in business infrastructure and personnel. It considered that any agreement would need to be for a defined amount of allocated airtime for the sales agent to sell for which an annual fee would be paid. It thought that the amount of allocated airtime would be initially based on current sales volumes, although the final amount would be down to negotiation. Adventure Radio noted that this arrangement would mean that if the agent sold out its allocation it would not be able to sell any more airtime. This was in contrast to a sale with a brand-licence arrangement where the licence holder had flexibility to allocate airtime. Adventure Radio considered that an arrangement to buy additional airtime from Global could be written into the sales agency agreement to overcome this issue.[289] However, in the absence of such an arrangement it stated that if the sales agent was able routinely to fill its allocated airtime, the only way it would be able to increase its revenues would be through an increase in price.

Our assessment

9.168 In undertaking our assessment we noted Global's view that this remedy is structural in nature. We also noted Global's submission that it should be time-limited, as a result of its assessment of the likely effect of digital switchover on entry barriers. At

[285] The agreement was part of undertakings in lieu of remedies given in the context of the GCap merger in 2008.
[286] [✂]
[287] Global had a sales agency contract with Adventure Radio for the sale of non-contracted airtime for one of its stations in the Harlow, West Essex and East Hertfordshire area.
[288] Global told us that it had had positive conversations with [✂] and [✂] in regard to a sales agency arrangement remedy option.
[289] Adventure Radio considered that the agreement would also include the ability for the licensee to sell unused airtime to Global.

the end of a specified period therefore the sale of non-contracted airtime and local S&P would revert back to Global.

9.169 We consider that Global's was an interesting approach which we considered on its own merits. It has some similarity to a 'virtual divestiture', in that it is a hybrid remedy containing elements of both structural and behavioural remedies. In our merger remedies guidance[290] we state that such types of remedy may have higher risks and costs than a conventional divestiture and require continuing monitoring and compliance costs. As such, we would need to satisfy ourselves that there was good reason to justify such a proposal in preference to a more conventional divestiture and the risks of the proposal could be appropriately contained.

9.170 We consider that in relation to this style of hybrid remedy the key sources of potential risk relate to: the time period over which a remedy is likely to be required; the interdependence between and balance of risk borne by the sales agent and Global; the ability of the sales agent to compete effectively in the markets for non-contracted revenue and S&P; and the risks to the effectiveness of the remedy if the contract is terminated early by either party. We consider each of these issues below.

Duration of the SLC and the remedy

9.171 In paragraph 7.218 we noted that based on current trends the criteria for digital switchover could be met by 2016. This could lead to digital switchover, at the earliest, around 2018. Based on similar considerations, Global suggested that the time period for an initial sales contract should be around five years, aligning the agreement length with digital switchover.

9.172 We concluded that there is a high degree of uncertainty in relation to the date at which digital switchover criteria will be met. In our judgement, the time period for digital switchover is sufficiently uncertain for us not to be able to specify a date by which the SLC would no longer endure, or to be able to conclude that the SLC will be short-lived. In addition, digital switchover will not automatically mean that the SLC we have found will cease. The market conditions that will prevail after digital switchover are in our view uncertain, such that we are not able to conclude whether or not the SLC would remain after digital switchover. The factors affecting competition for non-contracted advertising, including the scope for entry and expansion after digital switchover, would have to be reanalysed to assess whether the agreement under-pinning the remedy continued to be required, needed to be amended or was no longer necessary. We concluded that the need for the remedy could be for signifi-cantly longer than five years and was likely to require frequent review. As such, these factors would add to the costs and risks of this remedy option.

Interdependence and risk

9.173 We note Global's submissions that some ongoing relationship is required under a brand-licence arrangement and that there is no difference in this respect between this remedy option and divestiture with brand licensing. However, in our view the situations are different in material respects. Under a brand licence the licensee always has the option to take control of more output (under the overall brand remit), or withdraw from the agreement altogether, as it owns the station licence. A sales agent has no such control over the station's output. These differences imply a

[290] *CC8*, paragraph 3.11.

significantly more evenly balanced distribution of risks between Global and its counterparty under brand licensing than for a sales agency agreement.

9.174 Under a sales agency agreement nearly all of the risks associated with the arrangement lie with the sales agent. It does not own the licence or have control over its output and has only limited ability to change its strategy. Its local advertising sales business is based solely on its agreement with Global, which means it is wholly dependent on the specification of the agreement and Global's adherence to the agreement for its ability to operate in the market. The effectiveness of the remedy thus depends entirely on the agreement. In our view this is materially different to a divestiture accompanied by a brand-licensing agreement, for which it is the divestiture of the broadcasting licence and the level of control that ownership provides the purchaser (rather than any agreement it holds with Global) that ultimately enables the purchaser to act as an independent competitor.

9.175 Given the uneven distribution of risks between parties and the significance of these risks to the effectiveness of the remedy, we took the view that a sales agency arrangement as a remedy to the SLC would involve significant ongoing interdependence between Global and the third party sales agent. This would create significant specification risks in drafting the agreement, which would need to include substantial safeguards for the sales agent to allow it to compete effectively under a variety of possible scenarios. The agreement would also need to address a range of issues, including the need to set out the priority of local and national advertising. In addition, the agreement would need ongoing monitoring to ensure that such safeguards were effective in practice and that any disputes were resolved quickly.[291]

Ability to compete effectively

9.176 We note Global's proposal for specifying a maximum contracted airtime level. Adventure Radio also stated that this would be a likely feature of any agreement. We consider that this would in effect place a cap on the potential market share for the sales agent, which in our view would represent a substantial restriction on competition and a major constraint on the effectiveness of this remedy option. This capping of effective market share could, for example, lead to increases in prices for non-contracted advertisers at peak times.

9.177 We do not consider that an arrangement to buy or sell unused airtime between Global and the sales agent would be sufficient to address these concerns. Such an arrangement would depend on unused airtime being available: if, for example, Global had sold all available airtime in a particular slot, no additional airtime will be available for non-contracted advertisers, irrespective of the demand for airtime offered by the sales agent. Such an arrangement would also result in a high degree of interdependence between Global and the sales agent, and an ongoing flow of commercially sensitive information (eg on advertising sales volumes) between parties in direct competition with one another for non-contracted customers. In our view, such an arrangement would have high specification risks and would result in additional monitoring costs, both of which factors would reduce its effectiveness as a remedy.

9.178 We note Global's argument that it has a vested interest in the listenership and brand reputation of its stations and so it would make very little commercial sense for Global to undermine the competitiveness of the third party. However, we also note that in each of the areas where remedies are required Global would be in direct competition

[291] The need for prompt resolution of disputes is particularly relevant in this market where the product is perishable (ie advertising).

with the third party sales agent. This may not lead to Global under-investing in its brand but it could create incentives to undermine the sales agent, for example through delays in required information flows between Global and the sales agent. To prevent this, many detailed aspects of the ongoing operation of the agreement would need to be specified at the start. In addition, there would need to be ongoing monitoring of the agreement by a third party as the third party sales agent may not be fully aware of all the actions that Global might be in a position to take.

9.179 We note that if there is local programming on a station the sales agent will need to collaborate with Global's programming team and the advertiser to develop S&P content for the programme. This increases the risk that information about the advertiser and the content is made available to competing Global stations. To prevent this, 'firewall' measures would need to be put in place and monitored with suitable penalties for non-compliance. This adds to the costs and risks of this remedy option. Where there is no local programming non-contracted S&P will not be able to be broadcast within the programme but will instead be included within the time allocated for non-contracted airtime. As such, S&P and non-contracted airtime will effectively be capped at the maximum contracted airtime level resulting in the same restrictions on competition and adverse effect on the remedy's effectiveness.

Possibility of early termination

9.180 Global told us that if its counterparty wished to exit from the agreement it would look to sell it to another sales agent. We consider that the possibility of early termination of the agreement adds significantly to the risks to this remedy option especially when compared with a divestiture of a station. If the agreement is terminated early there may be a period when Global would have to sell airtime and S&P for non-contracted advertisers in competition with its other stations in the area. This would create the risk that there would be adverse effects for non-contracted advertisers in the area during any such period.

9.181 Such a risk could manifest itself in various ways, for example through higher prices across all Global-owned stations, or through advertisers being channelled towards Global's other stations. This would require additional monitoring and could affect the ability of any sales agent who takes over the contract to compete in the market. There would also be a significant risk that if the original agreement was not commercially viable a new sales agent might not be found in the short to medium term. This could be exacerbated by developments in the interim period as discussed above. In these circumstances, the remedy would cease to apply and the SLC would no longer be addressed.

Our conclusion

9.182 We concluded that, based on our assessment above, a hybrid remedy involving a sales agency agreement for non-contracted airtime and local S&P would be subject to a number of significant risks that in our judgement mean that it would not be effective in addressing the SLC.

9.183 We noted that Global had also argued that if its proposed divestitures were not considered effective they could be combined with a sales agency agreement. Given the problems identified with this remedy option we do not consider that its addition to the local divestiture options proposed by Global (see paragraph 9.20), that we separately found not to be effective, would in combination be sufficient to constitute an effective remedy.

Other potential remedies

9.184 We considered the effectiveness of two other potential remedies: a pricing remedy and enabling measures to facilitate entry.

Pricing remedy

9.185 The only behavioural remedy proposed by any party was a pricing remedy by ISBA.[292] It told us that such a remedy might be appropriate but did not provide any details of how such a remedy might work in practice. No other party put forward an argument for a pricing remedy.

9.186 We considered that this remedy would be complex to specify as prices are individually negotiated, there is no published price list and not all advertisers regularly advertise (see paragraphs 6.18 to 6.27). As such, a pricing formula would need to be specific to each individual advertiser or potentially to each campaign. Furthermore, we considered that it would be difficult to monitor effectively and open to circumvention.

9.187 We concluded therefore that a pricing remedy would not be effective in remedying the SLC.

9.188 We stated in the Notice that behavioural remedies may be required in a supporting role to safeguard the effectiveness of any divestiture (for example, whether access to existing contracts and/or advertiser relationships should be included alongside any divestiture package), and over what period. In the section on structural remedies we noted in particular the importance of digital access and potentially the Agreement in defining a structural remedy. We were not told by third parties of any other specific contract/agreement which would need to be included in a structural remedy for it to be effective. We also noted that potential purchasers wanted flexibility around what contracts and agreements are included within a divestiture.

Enabling measures to facilitate entry

9.189 We considered enabling measures which would seek to facilitate competition by lowering barriers to entry or reducing switching costs (eg access to intellectual property rights). We found in paragraph 7.218 that barriers to entry were high because of the lack of available space on the radio spectrum and high infrastructure costs. These factors indicate that it is highly unlikely that enabling measures could be introduced to facilitate entry. In addition, we did not receive any suggested remedies of this nature from the main parties or from any third parties.

9.190 We therefore concluded that there are no enabling measures which could be regarded as effective remedies.

Proportionality and cost of effective remedies

9.191 We concluded that the following structural remedies would be effective in addressing the SLC: full divestiture of RSL to a suitable purchaser; partial divestiture of stations in the seven overlap areas where we found there were likely to be significant adverse

[292] ISBA considered the ITV Contract Rights Renewal remedy (Carlton/Granada merger) as having been a successful and durable type of light-touch behavioural remedy. (ISBA response to the Notice.) We considered the circumstances of the current case to be materially different from Carlton/Granada, not least because our concerns in this case centre on non-contracted sales for which the mechanism applied in Carlton/Granada would not have been feasible.

effects, as set out in Table 4; and partial divestiture of RSL excluding stations in London and the West Midlands. In order to be reasonable and proportionate the CC will seek to select the least costly remedy, or package of remedies, that it considers will be effective. If the CC is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive. The CC will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.[293]

9.192 In this section we first set out the nature and extent of the SLC. We then look at the costs of implementing the remedies we consider to be effective. Finally, we conclude on what is the least costly remedy, or package of remedies, that we consider will be effective and therefore more proportionate in addressing in the SLC.

Nature and extent of the SLC

9.193 Global argued the scale of the SLC was trivial and that the SLC was only likely to affect a small minority of the parties' non-contracted customers within the geographic areas in which we had found concerns.

9.194 We disagree. We concluded in paragraphs 8.7 to 8.10 that the effect of the merger in the seven overlap areas would be likely to have a significant adverse effect on rivalry between competitors in the radio market; a significant proportion of campaigns would be affected; and that the effect on prices for advertisers on individual campaigns could be large. We also expected that the loss of rivalry in these areas, and the adverse effects on advertisers, would persist for a relatively long period of time.

9.195 Whilst we are not able to quantify precisely the harm arising from the merger we concluded that the merger is likely to lead to a significant loss of rivalry at the local level within each overlap area which will continue over a long period and, given the size of the markets affected, would lead to a substantial detrimental effect on non-contracted advertisers absent effective remedial action.

Remedy costs and restrictiveness

9.196 The costs of a remedy may be incurred by a variety of parties including the merger parties, third parties, the OFT and other monitoring agencies. Our guidance states that:

> For completed mergers, the CC will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy as it is open to the parties to make merger proposals conditional on competition authorities' approval. It is for the parties concerned to assess whether there is a risk that a completed merger would be subject to an SLC finding and the CC would expect this risk to be reflected in the agreed acquisition price. Since the cost of divestiture is, in essence, avoidable, the CC will not, in the absence of exceptional circumstances, accept that the cost of divestiture should be considered in selecting remedies.[294]

9.197 We note in this case that [✂].

[293] *CC8*, paragraph 1.9.
[294] *CC8*, paragraph 1.10.

9.198 We do not consider that in this case there are any exceptional circumstances which would lead us to take into account the costs of divestiture, including any costs associated with the separation of the assets for sale, in our assessment of proportionality. We also note that our preference for a structural remedy means that the remedy will not impose significant additional costs on third parties, the OFT or other monitoring agencies, specifically Ofcom. We consider whether there would be any loss of RCBs in the following section.

Assessment of the least onerous, effective remedy

9.199 Although effective, both full divestiture, and divestiture of RSL excluding stations in London and the West Midlands, would require more stations to be divested than would be needed to remedy effectively the SLC. By contrast, partial divestiture, based on the stations set out in Table 4, is targeted on the seven overlap areas where we concluded that there were likely to be significant adverse effects resulting from the merger.

9.200 We note that the flexibility within partial divestiture, based on the stations in Table 4, would allow Global to retain some RSL stations post-divestiture. Specifically, in Greater Manchester and the North-East Global would be able to retain one or both of Real or Smooth stations. In Central Scotland Global would be able to retain Smooth and Real XS. In these and other areas if Global judges it preferable to divest either a Capital or a Heart station it would be able it to retain a Real and/or Smooth station in each area.

9.201 By allowing Global to choose, in the first instance, its preferred stations to divest and the structure of the divestiture Global will have the ability to ensure that the remedy that is implemented is the least restrictive of the effective options available. Furthermore, the flexibility to choose whether or not these stations should be divested with a brand-licence agreement provides Global with the opportunity, if it so wishes, to retain RSL's brands and [✂].[295]

9.202 We therefore conclude that partial divestiture, based on the stations in Table 4, is the least onerous and therefore more proportionate of the effective remedy options. Having reached this conclusion, we now consider RCBs.

Relevant customer benefits

9.203 Having identified the least onerous remedy or package of remedies that we consider will be effective, we now look at whether we need to take into account in our remedy decision 'the effects of any action on any RCBs in relation to the creation of the relevant merger situation concerned'.[296]

9.204 RCBs[297] are limited by the Act to benefits to relevant customers in the form of:

(a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom … ; or

(b) greater innovation in relation to such goods or services'.

[295] See Appendix C.
[296] *CC8*, paragraph 1.14.
[297] Section 30.

9.205 The CC expects the merger parties to provide convincing evidence regarding the nature and scale of RCBs that they claim to result from the merger and to demonstrate that these fall within the Act's definition of such benefits.[298] The Act provides that a benefit is only a relevant customer benefit if it accrues from or is expected to accrue to relevant customers within the UK within a reasonable period from the merger and would be unlikely to accrue 'without the creation of that situation or a similar lessening of competition'.[299] That is, the benefit must be 'merger specific'. Relevant customers are customers at any point in the chain of production and distribution and are therefore not limited to final consumers.[300]

9.206 The CC will normally take any RCBs into account, as permitted by the Act, once it has decided on the existence of an SLC, by considering the extent to which alternative remedies may preserve such benefits. In essence, RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy by the CC. The CC may modify a remedy to ensure retention of an RCB or it may change its remedy selection or, in rare cases, it may decide that no remedy is appropriate.[301]

9.207 We consider the various potential RCBs put forward to us for consideration before concluding on whether to modify our decision on remedies in the light of any RCBs. As radio markets are two-sided, there is the potential for a merger between two radio stations to give rise to RCBs for both listeners and advertisers. We consider each separately.

Potential benefits to listeners

9.208 In its response to the Notice, Global submitted that the merger would give rise to the following RCBs for radio listeners:

(a) [✂]

(b) Benefits to listeners in terms of increased choice of national news programming in Scotland and Wales, in particular:

(i) the launch of an in-depth, innovative Welsh news service, giving rise to greater choice of news for listeners in Wales; and

(ii) the launch of an in depth, innovative Scottish news service, giving rise to a greater choice of news for listeners in Scotland.

(c) Benefits to listeners in terms of higher-quality programming, in particular:

(i) [✂]

(ii) [✂]

9.209 We consider each of these in turn below. Further details of main and third party submissions are included in Appendix S.

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[298] *CC8*, paragraph 1.17.
[299] Section 30(2) and 30(3).
[300] Section 30(4).
[301] *CC8*, paragraph 1.15.

[✂]

- *The parties' views*

9.210 Global told us that it [✂].

9.211 Global told us that [✂].[302]

9.212 Global argued that [✂].[303]

- *Our assessment*

9.213 In forming a view on whether the implementation of these intentions by Global would constitute a RCB, we considered:

(a) whether this potential effect of the merger was likely to benefit listeners and to materialize within a reasonable period; and

(b) whether this effect resulted from the merger and whether any such benefits accrued would accrue absent the merger.

9.214 [✂]

9.215 [✂]

9.216 [✂][304]

9.217 [✂][305]

9.218 On the second issue, of whether any benefits would be merger-specific, we noted the economic arguments put forward by Global about the relationship between radio consolidation and diversification, as well as the empirical evidence from the USA. However, we also noted third parties' submissions that the regulatory framework and market context in the UK differs substantially from the USA including, in particular, the role of the BBC and the obligations on Ofcom to promote diversity and choice. In this context we noted that in [✂].

9.219 In addition, we considered that the merger and in particular the SLC that we have found to arise in relation to non-contracted advertising and S&P was not necessary in order for [✂]:[306]

9.220 [✂]

9.221 We concluded that [✂] did not constitute an RCB, as it was insufficiently certain that [✂] was likely to arise in practice, or to benefit listeners taken overall, and there were other ways in which such potential benefits might arise that did not give rise to the same adverse effects on competition as the merger.

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[302] The [✂].
[303] [✂]
[304] [✂]
[305] See Appendix S.
[306] [✂]

The launch of improved news services for Wales and Scotland

- *The parties' views*

9.222 Global submitted that listeners would enjoy RCBs in terms of improved news services for Wales and Scotland.

9.223 In relation to the acquisition of Real Radio Wales, Global has committed to Ofcom (following the intervention by the Secretary of State for Culture, Media and Sport) that it will introduce, for the first time in relation to this licence, a daily 20-minute dedicated Welsh news programme on commercial radio, a dedicated Welsh political editor and a fully-fledged commercial radio Welsh news desk.

9.224 In addition, Global submitted a licence Format change request to Ofcom in respect of Real Radio Scotland which has been approved. This introduced, for the first time in relation to this licence, a dedicated daily 20-minute Scottish news programme on commercial radio, a dedicated Scottish political editor and a fully-fledged commercial radio Scotland news desk.

9.225 Global submitted that these changes would give listeners greater choice for in-depth Welsh and Scottish coverage and increase the quality and innovation of radio journalism. These commitments are conditional upon the merger being cleared on terms which allow Global to retain the entirety of both parties' licences in Wales and all licences in Scotland (except Real XS and Smooth in Glasgow). Absent the merger of RSL and Global's brands in Wales and Scotland, Global submitted that the in-depth news services would not be provided. Consequently, Global submitted that a divestiture remedy would result in the loss of this innovative new content and in the loss of choice of radio news in Wales and Scotland.

9.226 Global told us that the costs of the services would be significant. As such, it said that this new programming was only deliverable because of merger synergies in Wales and Scotland. These synergies would not be available to any other purchaser of RSL in these areas.

- *Views of Ofcom and third parties*

9.227 Ofcom told us that from a regulatory perspective, it did not consider these changes to be substantial, as in its view they were effectively adding detail to what was an obligation to treat news and regional information as important ingredients in the three relevant Real licences. We received a small number of comments about the proposals from third parties. The majority were positive including those from the Welsh government, some Welsh Assembly members and some Members of the Scottish Parliament (MSPs).[307] We also received negative comments that the news service would not represent a net benefit to consumers and that the main news programme would be competing directly with prime-time regional television news and thus would have a small audience.[308]

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[307] In respect of Welsh news services responses were received from Welsh assembly members: Edwina Hart AC/AM—Minister for Business, Enterprise, Technology and Science, Welsh Government; Lindsay Whittle AM/AC; Ieuan Wyn Jones AC/AM; and Alun Ffred Jones AC/AM. We also received a response from Owen Smith MP. In respect of Scottish news services, responses were received from John Mason MSP and Drew Smith MSP.
[308] [Individual 2] response to the provisional findings.

- *Our assessment*

9.228 We note that Global's commitment to have the news services written into the stations' licences provides a higher degree of specification than usual in radio licences. We also acknowledge that synergies which may result from the merger would provide an additional source of funding which can be used to invest in broadcasting content including news services.

9.229 In this context we consider, however, that Global's proposed service would be incremental to other coverage of Welsh and Scottish news already available to listeners through the BBC and to a lesser extent through some other commercial operators (in particular, Bauer in Central Scotland). We consider that content (music, news or talk) is intended to attract listeners and that Global, as would any other operator, if it thought such a news service was attractive to listeners and/or delivered wider brand/reputational benefits, would provide such a service as a commercial decision. Overall we took the view that the extent to which listeners in Wales and Scotland would value this particular way of providing local content, rather than others, is uncertain and very difficult to evaluate in advance of such programming being broadcast.

9.230 On the issue of whether any such benefits would be merger-specific, we noted that Global had made the commitments conditional on merger clearance on satisfactory terms to it and that it said that it would not introduce this service if it were required to divest certain stations. However, we had significant doubts as to whether any such benefits were merger-specific. Global told us that engagement in Welsh and Scottish public life could deliver commercial benefits for an operator of a radio station in either of these two countries. We considered that an alternative owner of Real in Wales or Scotland might take a similar view and if it judged there to be commercial benefit might offer a similar type of programming, particularly given the fact that it would be under obligations to provide a certain element of local content in any case.

9.231 For these reasons we concluded that these proposals and commitments would not constitute an RCB.

Higher-quality programming

- *The parties' views*

9.232 Global submitted that listeners would benefit from higher-quality networks for both Real and Smooth:

9.233 Global told us that it [✂]. It submitted that listeners would benefit from better content, presentation, production, [✂]. As such, Global submitted that [✂] divestiture of [✂] would result in the loss of at least part of these benefits.

9.234 Global told us that [✂].[309] It submitted that listeners would benefit from better content, presentation, production, [✂] as well as greater choice for the older demographic. Global further submitted that these benefits were likely to result from [✂]. As such, Global submitted that [✂] divestiture [✂] would result in the loss of at least part of these benefits.

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309 [✂]

- *Views of third parties*

9.235 Around one-third of advertisers and local non-contracted agencies who responded to our provisional findings to support the merger argued that listeners would benefit from the merger. In particular they stated that as a result of the merger Global 'will increase investment in commercial radio for listeners'.[310] Conversely, some parties argued that Global would cut costs and investments in programming.[311]

- *Our assessment*

9.236 We considered first the likelihood of any benefits arising in a reasonable period of time. As with [✂], the overall impact on listeners [✂] is uncertain and likely to vary between listeners depending on [✂]. We noted that, [✂].

9.237 In Appendix P we reviewed the evidence on listening figures for Global stations following the Global/GCap merger [✂]. This suggested that listening hours for both Capital and Heart had initially increased following the merger. However, in both cases listening hours subsequently adjusted to levels consistent with the overall performance of commercial radio over the same period.[312] [✂]

9.238 We noted the evidence submitted by Global that Real's audience had fallen over the past four years, but also noted that the performance varied significantly from station to station in the light of local factors (eg [✂]). We considered that it was possible that [✂] might increase listening figures for Real stations. Nevertheless, we also considered that, notwithstanding Global's [✂].

9.239 In relation to [✂], there was little evidence either way to indicate whether the [✂] would materially increase listening figures. [✂]

9.240 We then considered whether any listener benefits were merger-specific. We noted that many of the potential benefits of [✂] (eg better content, presentation, [✂]) were capable of being delivered without the merger, as other operators could apply their own marketing and production ideas to the network.

9.241 Likewise [✂] other potential owners might have alternative strategies for increasing listening figures that could be no less effective than [✂].

9.242 In addition, we considered that the merger and in particular the SLC that we have found to arise in relation to airtime and S&P for non-contracted advertisers was not necessary in order for [✂]. For example, [✂], this might provide the opportunity to deliver any listener benefits [✂] without requiring local advertisers to suffer the adverse effects of a reduction in competition in the provision of non-contracted advertising or S&P.

9.243 We concluded that potential listener benefits arising from [✂] did not constitute an RCB, as any such benefits were uncertain and not merger-specific.

[310] The majority of positive responses use the same or very similar wording.
[311] For example, by networking as much as possible from London and reducing local content to the minimum allowed ([Agency AY] response to the provisional findings). One third party told us that this happened for every station Global had acquired and rebranded over the past few years ([Individual 2] response to the provisional findings).
[312] In Appendix P we also noted that, prior to the Global/GCap merger, the listening hours of most stations now owned by Global had been declining relative to all commercial stations. Global pointed out that it had successfully stabilized stations that at the time of the GCap merger were facing sizeable problems. [✂]

Potential benefits to advertisers

9.244 In its response to the Notice, Global submitted that the merger would give rise to the following RCBs for advertisers:

(a) higher-quality [✄];

(b) lower advertising prices for contracted advertisers;

(c) lower advertising prices for non-contracted advertisers;

(d) [✄];

(e) benefits for contracted advertisers from higher-quality S&P options [✄]; and

(f) lower advertising prices for contracted advertisers.

9.245 We consider each in turn. Further details of main and third party submissions are included in Appendix S.

Higher-quality [✄]

- *The parties' views*

9.246 Global submitted that advertisers as well as listeners would benefit from [✄].

- *Views of third parties*

9.247 We received responses from around 110 local, non-contracted agencies and advertisers to our provisional findings. Around one-third of those who were positive about the merger speculated that Global would increase its investments in its brands and that the merged entity would be able to increase the value of the offering. Some advertisers and local agencies also speculated that Global would consolidate the two groups and would offer an easier access to a wider range of radio stations. This would allow them to target their audience more efficiently and to broadcast their message more consistently. As we note in paragraph 7.190 some large contracted agencies supported the possibility of expanded Global/RSL brands.

9.248 A similar number of non-contracted agencies opposed the merger believing that it would lead to an increase in costs and that some advertisers would not be able to pay for it. A few third parties also suggested that Global was interested mainly in national brands and that investment in brands would benefit national, rather than regional or local, advertisers or media agencies.[313]

- *Our assessment*

9.249 We considered the scope for benefits for national advertisers to arise in relation to [✄]. We noted that the [✄] national advertisers and some large buying agencies. [✄]

[313] For example, [Agency Z] response to the provisional findings. One agency also stated that although it would be easier to buy from a single contact this would also mean that the merged entity would be able to dictate the price ([Agency AY] response to the provisional findings).

9.250 We considered it plausible that some national advertisers would value the [✂]. There was little evidence to suggest that any national advertisers would regard this as a negative development, unless for some reason [✂]. It is not clear, however, whether any benefits arising from [✂] would be passed on to advertisers, or whether they would be retained by Global, for example by increasing advertising rates ([✂]). We considered the scope for any advertiser benefits to arise from [✂] to be considerably more speculative for the reasons set out in paragraph 9.237. We considered that there was little evidence to support the view that non-contracted advertisers would benefit from [✂].

9.251 In considering whether any such benefits were merger-specific, we took the view that the merger and in particular the SLC that we have found to arise in relation to non-contracted advertising and S&P was not necessary in order for [✂]. For example, [✂], this would provide the opportunity to deliver any benefits to national advertisers [✂] without requiring local advertisers to suffer the adverse effects of a reduction in competition in the provision of non-contracted advertising or S&P.

9.252 We concluded that some national advertisers may recognize some benefit from [✂]. However, it is not clear whether any resulting benefits would be passed on to advertisers or retained by Global. We considered that the [✂] could be achieved in ways that did not give rise to the SLC that we have identified. For these reasons, we did not consider the possibility of a higher-quality [✂] to be an RCB that would accrue to advertisers. We did not consider there to be sufficient evidence to expect any advertiser benefits from [✂].

Lower advertising prices for contracted advertisers

- *The parties' views*

9.253 Global submitted that, as a result of the merger, contracted advertisers would benefit from increased discounts on: [✂].

9.254 Global submitted that it would be incentivized to introduce additional discounts to encourage advertisers to buy complementary packages of stations owned by the merging parties (eg Heart and Real). Global said that, where it and RSL sold radio stations that were demand-side complements, the merger gave it an increased incentive to reduce the price charged for those stations. Global said the OFT had accepted this logic in its Global/GCap decision.[314]

9.255 Global said that, unlike its existing networks (such as Capital and Heart), Heart and Real were highly complementary geographically because they were regularly used together by contracted advertisers to undertake campaigns with national coverage (ie using Heart in the South and Real in the North). It said that a very significant proportion of campaigns used both of those networks to achieve national coverage.

9.256 Global said that these benefits were merger-specific and could not be realized under the Agreement. Under the current Agreement, it was likely that, with additional discounts, advertisers would 'bolt on' Real to campaigns currently using Heart, meaning that RSL would benefit to a greater extent than Heart whilst the cost of the discount was likely to be borne to a greater extent by Global. Global also said that it was extremely difficult or impossible to ascertain the value of benefits that would accrue to Global and RSL and, as a result, there was no way of specifying a

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[314] Completed acquisition by Global Radio UK Limited of GCap Media plc, ME/3638/08, the OFT's decision on reference under section 22(1) given on 8 August 2008. Full text of decision published on 27 August 2008, paragraph 202.

contractual agreement through which RSL could share a proportion of the gains with Global (or at least it was extremely difficult to agree such terms whilst Global and RSL were separately owned).

- *Our assessment*

9.257 We noted these submissions and the fact that the OFT had accepted similar arguments in its Global/GCap decision, albeit relating to different London stations rather than cross-regional networks of stations. We set out in Appendix H the economic theory of pricing efficiencies (also known as 'Cournot effects') and the conditions necessary for such efficiencies to arise.

9.258 We considered first whether contracted advertising on different radio networks were likely to be demand-side complements, as this issue is central to Global's submission that the merger would result in lower prices to advertisers. For this to be the case, a reduction in the price of contracted advertising on one network (eg Smooth) would need to increase the demand for contracted advertising on the other network (eg Gold).

9.259 If radio stations generally were demand-side complements for each other, we would expect to see lower prices offered specifically for booking more than one station (for example, a customer spending a fixed amount in total, were all else equal, get a lower price for buying two stations than for buying one). We did not see evidence of this occurring other than [✄].[315] It appeared to us that [✄].[316]

9.260 We noted that, apart from these network discounts, [✄].[317] However, we agreed with Global that, because their networks were already used together to achieve near-national coverage, the Heart and Real networks were more likely to be complements than other combinations of networks. Even so, we noted that the Heart and Real networks might also be substitutes at the margin, for instance if national advertisers were mainly interested in total national impacts and were willing to trade off an increase in impacts in one area against a reduction in another area (see Appendix J). We did not see evidence that at the margin the Heart and Real networks were complements rather than substitutes such that lower prices would be associated with higher revenue and profit for Global. We noted that national advertisers may recognize some benefit from [✄] the Heart brand, and we considered it was for this reason, not lower prices, that the merger might result in a higher level of demand for the [✄] Heart network ([✄]).

9.261 We considered whether the proposed benefits were merger-specific. We noted that under the Agreement, Global already sells contracted advertising for RSL to national customers. If the radio networks of Global and Real were demand-side complements, we would expect any significant pricing efficiencies to have been exploited already through existing selling arrangements.

9.262 We were not persuaded by the argument that because one party might benefit more than the other from any such discount, it could not be offered under the Agreement or a similar joint selling arrangement. If there were genuine demand-side complementarities between radio stations, we would expect both parties to benefit to some extent. Furthermore, it would not be difficult to devise mechanisms whereby one party to such an arrangement could compensate the other for such a benefit; for

[315] We noted that [✄]
[316] [✄]
[317] [✄] and [✄].

example, by paying a higher management fee. If pricing efficiencies were material and reasonably certain we would expect both parties to have a strong incentive to develop such a mechanism in order to maximize the combined revenue from contracted advertising. We noted, for example, that [✂] were included [✂] to contracted advertisers, which suggests that it is possible to offer cross-network discounts under [✂], where this appears advantageous to the parties involved.

9.263 We noted that, if the effect was only that advertisers 'bolted on' Real to campaigns currently using Heart, RSL could offer a discount conditional on purchase of both Heart and Real networks with no impact on Global revenue and this was possible under the Agreement.

9.264 In our view, if there were pricing efficiencies which were material and reasonably certain, it would be possible to design a suitable mechanism that was beneficial to both parties. However, if the pricing efficiencies were immaterial or uncertain (such that, for example, Global and RSL had different views of how the benefits accrued to each), it would be difficult to design a suitable mechanism. We therefore considered that, if it was judged extremely difficult to design a suitable mechanism under separate ownership, this suggested that any pricing efficiencies were immaterial or uncertain or both.

9.265 We also noted that pricing inefficiencies—and hence benefits from a merger between suppliers of demand-side complements—were more likely to arise when the price charged to a customer is the same irrespective of that customer's volume or spend. However, as set out in Section 7, radio advertising contracts incorporate features ([✂]) that incentivize customers to increase spend on Global and RSL stations. Such features mean that the price of additional radio advertising is likely to be below the average price. This reduces the scope for merger efficiencies to arise in the event that Global and RSL were providing demand-side complements prior to the merger (see Appendix H).

9.266 For these reasons, we did not consider that any pricing efficiencies in relation to contracted advertising, if they existed, were merger-specific as they could be realized through joint selling arrangements.

9.267 In the absence of merger-specific pricing efficiencies, we considered that the merger gave Global no incentive to reduce its prices. Thus, we saw no reason to expect that, as a result of the merger, Global would charge lower prices [✂] or would reduce prices across its networks. We noted that Global may introduce network discounts [✂]. We did not, however, agree this implied that prices would be lower overall. In this context, it seemed to us possible that such discounts would replace the [✂][318] or that base prices would be slightly higher than they would otherwise have been.

9.268 We also noted in paragraph 7.177 that [✂] would not in itself imply lower prices overall to advertisers.

9.269 We concluded that reduced prices for contracted advertising did not constitute an RCB, as any such benefits were highly uncertain and could be realized absent the merger.

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[318] [✂]

Lower advertising prices for non-contracted advertisers

- *The parties' views*

9.270 Global submitted that it would be incentivized to offer multi-brand discounts to non-contracted advertisers buying more than one brand within a single region.

9.271 Global said it had analysed the current discounts received by non-contracted advertisers buying single-region, multi-brand campaigns: this analysis had shown that, on average, these advertisers received an [✂]. Global said this accorded with its existing pricing practice which would be to offer an [✂] for adding a further brand or station to a campaign.

9.272 Global drew our attention to the OFT's 2008 decision on the Global/GCap merger and said that we should consider there were demand-side complementarities on the same basis.

- *Our assessment*

9.273 In our discussion of competition in overlap areas, we noted that the radio stations of Global and RSL were substitutes for a significant number of campaigns and that as a result of the merger there were likely to be significant adverse effects in seven areas.

9.274 We agree that, in theory, it is also possible that the radio stations of Global and RSL are complements for some other advertisers and hence that demand-side pricing efficiencies might arise in relation to these other advertisers. However, we did not see evidence of this.

9.275 We noted the existence of discounts for taking multiple [✂] stations in a local area but we considered such discounts to be at least as likely to be a means of incentivizing volume; in other words, a marketing device to encourage advertisers to increase their purchases of airtime in the same way as bulk discounts ('buy one get one free') in many other sectors. We noted in particular that discounts to customers of stronger stations [✂] could be a way of filling slots on weaker [✂] stations, [✂].

9.276 We noted that Global [✂]. We also noted that Global often gave [✂]. Nevertheless, if demand-side complementarities were material, we would expect this to have been reflected in Global's policy (in a similar way to [✂]). The position for RSL was similar: it had [✂]). We considered that the absence of any explicit link between Global's and RSL's [✂] suggested that pricing efficiencies between their existing stations were not material. In the absence of evidence that Global and RSL currently offered [✂] for purchasing advertising on more than one local station, we did not see any reason to expect the post-merger increase in the number of radio stations owned by Global to result in lower prices for advertisers.

9.277 We noted that non-contracted advertising prices were individually negotiated and that this reduced the likelihood that any demand-side complementarities that might exist would imply that the merger leads to lower prices in relation to non-contracted advertising (see Appendix H).

9.278 We noted that, in its 2008 Global/GCap decision, the OFT expected, on the basis of evidence of discounts for purchasing multiple stations in London, that demand-side efficiencies would arise as a result of the merger within a reasonable period of time and would be passed on to consumers. However, Global did not provide evidence that any demand-side efficiencies between ex-Global and ex-GCap stations in London had actually resulted in lower prices for these stations after its merger with

GCap. In the absence of evidence of lower prices in London resulting from the Global/GCap merger, we did not consider that the OFT's expectations in its 2008 decision were especially informative of whether lower prices would result from Global's merger with RSL.

9.279 We concluded that lower prices for non-contracted advertising were not an RCB as they were unlikely to materialize in practice.

Innovation and [✂] in North Wales

- *The parties' views*

9.280 Global submitted that its plans to [✂].

- *Views of third parties*

9.281 We received a small number of responses to our provisional findings from local advertisers in North Wales. Some argued that the merger would increase the value of the service. One advertiser also stated that the potential for development of a brand by Global would increase the standard of all advertising media in North Wales. Conversely, one Welsh media agency said that, after the merger, the parties would not give as much value to campaigns as they did now, since they would expect to get the business anyway.[319]

- *Our assessment*

9.282 We considered first the likelihood of any benefits arising for advertisers through this [✂]. We noted that third party comments do not take into consideration the potential constraints (and benefits for advertisers) that could arise from the development of an independent competitor. Third parties did not address potential benefits arising from [✂] because this has not been made public.

9.283 We considered that some advertisers might value the opportunity to [✂]. However, we have also found that some non-contracted advertisers are likely to suffer adverse effects of the merger in North Wales due to the removal of their only radio alternative. We also noted that [✂]. All of these factors suggested that the scope for benefits to arise was uncertain at best.

9.284 For the reasons set out in paragraph 9.221 we did not consider benefits from [✂] to be merger-specific, as they could arise absent the merger in ways that would not give rise to the SLC that we have found.

9.285 For these reasons we concluded that the merger would not give rise to an RCB for advertisers associated with [✂].

Benefits for contracted advertisers from [✂]

9.286 Global submitted that [✂]. In particular, Global submitted that contracted customers would benefit from [✂] increased coverage of the UK population.

9.287 [✂]

[319] [Agency Z] response to the provisional findings.

9.288 We noted that the merger could create new possibilities for some [✄].

9.289 We also considered that [✄] and [✄] could be delivered without the merger and its adverse effects (for example, through brand licensing or sponsorship of national programmes such as the BT40 chart show).

9.290 For these reasons we concluded that there was not an RCB arising in relation to higher-quality S&P.

Conclusion on whether the merger gives rise to any RCBs

9.291 We have considered all the potential benefits that the parties have argued might arise from the merger. In our judgement, none of these appears to constitute an RCB as each potential benefit is insufficiently likely to arise and/or could accrue without the merger or a similar lessening of competition. We therefore did not modify our remedy in light of RCBs.

Decision on remedies

9.292 We concluded in paragraph 9.16 that full divestiture of RSL to a suitable purchaser would be effective in addressing the SLC. We concluded that partial divestiture through a series of local divestitures in seven areas to a suitable purchaser (or purchasers) as set out in Table 4 would be also an effective remedy. We also concluded that partial divestiture could be accompanied by an appropriate brand-licensing agreement without compromising our objectives in achieving an effective remedy. In addition, we concluded in paragraph 9.103 that divestiture of RSL excluding stations in London and the West Midlands would be similarly effective in addressing the SLC.

9.293 We set out in paragraph 9.141 to 9.158 the features of the divestiture process that we concluded were necessary to achieve an effective disposal.

9.294 We concluded that of the effective remedy options, partial divestiture, based on the stations in Table 4, was the least onerous and therefore more proportionate option as it was more closely targeted on the areas in which we identified significant adverse effects. We also concluded that by allowing Global, in the first instance, the flexibility of choice of stations to divest as well as allowing it the ability to enter into a brand-licence agreement, partial divestiture provided greater opportunity for Global to realize some its objectives for the merger. As such it represented the least restrictive of the effective remedy options. This view does not preclude Global from selling additional stations to those listed in Table 4 if it so chooses.

9.295 We considered a number of potential benefits that might arise from the merger. We concluded in paragraph 9.295 that none of these meet the conditions set out in section 30 of the Act, as each potential benefit was insufficiently likely to arise and/or could accrue without the merger or a similar lessening of competition. Therefore, these potential benefits would not give rise to RCBs arising from the implementation of the merger. As such, we concluded that the consideration of RCBs did not have an effect on our assessment of an appropriate remedy option. In view of our assessment of the nature and extent of the SLC and our consideration of remedy costs including potential RCBs, we concluded that partial divestiture would not produce adverse effects which were disproportionate to the aim pursued by the CC of achieving an effective remedy to the SLC that we had identified.

9.296 We therefore conclude that partial divestiture through a series of local divestitures to a suitable purchaser or purchasers is the least costly, least intrusive, effective

remedy to the SLC we have found and is a proportionate response to that SLC and its adverse effects. In our judgement, it therefore represents as comprehensive a solution as is reasonable and practicable to the SLC and its resulting adverse effects.