

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

### Notice of proposal to accept Final Undertakings pursuant to section 82 of, and Schedule 10 to, the Enterprise Act 2002 and public consultation on the proposed undertakings

#### Introduction

1. On 11 October 2012, the Office of Fair Trading 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).
2. The CC published [\*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\*](#) (the report) on 21 May 2013.
3. After the acquisition, GMG Radio was renamed Real and Smooth Limited (RSL).
4. The report concluded that:
  - (a) the completed acquisition by Global of RSL has resulted in the creation of a relevant merger situation;
  - (b) the creation of that situation would be likely to lead to significant adverse effects on competition primarily affecting non-contracted advertisers buying airtime and sponsorship and promotion from radio stations and groups in seven areas where the parties overlap: the East Midlands; Cardiff; North Wales; South and West Yorkshire (the Real Radio Yorkshire Total Survey Area); Greater Manchester; the North-East; and Central Scotland (the Overlap Areas);
  - (c) 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;
  - (d) therefore, the merger has resulted in, or may be expected to result in, a substantial lessening of competition (SLC) in a UK market for radio advertising;
  - (e) the CC should take action to remedy the SLC and the adverse effects likely to arise from it;
  - (f) a package of divestiture remedies would be effective in remedying the SLC identified in the report; and
  - (g) to that end Undertakings should be given by This is Global Limited and Global and accepted by the CC to give effect to the CC's decision on remedies specified in the report.
5. The package of remedies specified in the report included, in particular, that Global must make a series of local divestitures to one or more Approved Purchasers in each of the seven Overlap Areas where the merger is likely to lead to the SLC, as set out in paragraph 9.99 and Table 4 of the report. Such divestitures could be accompanied

by an appropriate brand-licensing agreement to operate the radio station under a brand owned by Global, and other ancillary arrangements, provided they do not compromise the CC's objectives in achieving an effective remedy.

6. The CC has reached agreement with Global as to the terms of the draft Final Undertakings to remedy the SLC and any resulting adverse effects, and the proposed undertakings are annexed to this Notice.

### **Notice of proposal to accept undertakings**

7. The CC now gives notice that it proposes to accept the attached draft Final Undertakings and invites written representations on them from any interested person or persons. Representations should reach the CC by 5pm on 17 January 2014 and should be addressed to:

Bríd McHugh  
Remedies Coordinator  
Competition Commission  
Victoria House  
Southampton Row  
London  
WC1B 4AD

or by email to: [brid.mchugh@cc.gsi.gov.uk](mailto:brid.mchugh@cc.gsi.gov.uk).

8. The CC will have regard to any representations made in response to this Notice and may make modifications to the proposed undertakings as a result. In the absence of any written representations, or in the event that the CC decides, on consideration of representations made, not to amend the proposed undertakings, the CC proposes to accept the undertakings in their present form pursuant to section 82 of the Act. If the CC considers that any representation necessitates any material change to the proposed undertakings the CC will give notice of the proposed modifications.
9. The Final Undertakings may be varied, superseded or released by the CC under section 82(2) of the Act.
10. This Notice and a non-confidential version of the proposed undertakings will be published on the CC website. The CC has excluded from the non-confidential version of the undertakings information which it considers should be excluded having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [✂].

*(signed)* SIMON POLITO  
Group Chairman  
23 December 2013

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

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

### **Proposed Final Undertakings to be given to the Competition Commission by This is Global Limited and Global Radio Holdings Limited pursuant to sections 41 and 82 of the Enterprise Act 2002**

On 24 June 2012 Global Radio Holdings Limited (Global) acquired GMG Radio Holdings Limited (GMG Radio).

On 11 October 2012, the Office of Fair Trading (OFT) referred the completed acquisition by Global of 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).

The CC published *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* (the report) on 21 May 2013.

After the acquisition, GMG Radio Holdings Limited was renamed Real and Smooth Limited (RSL).

The report concluded that:

- (a) the completed acquisition by Global of RSL has resulted in the creation of a relevant merger situation;
- (b) the creation of that situation would be likely to lead to significant adverse effects on competition primarily affecting non-contracted advertisers buying airtime and sponsorship and promotion from radio stations and groups in seven areas where the parties overlap: the East Midlands; Cardiff; North Wales; South and West Yorkshire (the Real Radio Yorkshire Total Survey Area); Greater Manchester; the North-East; and Central Scotland (the Overlap Areas);
- (c) 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;
- (d) therefore, the merger has resulted in, or may be expected to result in, a substantial lessening of competition (SLC) in a UK market for radio advertising;
- (e) the CC should take action to remedy the SLC and the adverse effects likely to arise from it;
- (f) a package of divestiture remedies would be effective in remedying the SLC identified in the report; and
- (g) to that end Undertakings should be given by This is Global Limited and Global and accepted by the CC to give effect to the CC's decision on remedies specified in the report.

The package of remedies specified in the report included, in particular, that Global must make a series of local divestitures to one or more Approved Purchasers in each of the seven Overlap Areas where the merger is likely to lead to the SLC, as set out in paragraph 9.99

and Table 4 of the report, but that such divestitures could be accompanied by an appropriate brand-licensing agreement to operate the station under a brand owned by Global, and other ancillary arrangements, provided they do not compromise the CC's objectives in achieving an effective remedy.

This is Global Limited and Global propose to give to the CC the following undertakings under section 82 of the Act for the purpose of remedying the SLC identified in the report and any adverse effects which flow from it.

## **1. Commencement**

- 1.1 The Undertakings shall come into effect on the Commencement Date.

## **2. Interpretation**

- 2.1 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in these Undertakings.
- 2.2 In these Undertakings the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 2.3 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 2.4 Expressions in the singular include the plural and vice versa and references to persons include corporations.
- 2.5 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 2.6 References to recitals, paragraphs, subparagraphs and annexes are references to the recitals to, paragraphs and subparagraphs of, and annexes to, these Undertakings.
- 2.7 The annexes to these Undertakings form part of these Undertakings.
- 2.8 A person has a real interest in the acquisition of a Nominated Station if that person (i) has demonstrated a real interest in acquiring the Nominated Station; (ii) is, or is likely to be able, to make such an acquisition within the Divestiture Period; and (iii) where a relevant broadcasting licence is required to be transferred to that person (but not the Nominated Station owning the relevant broadcasting licence) is able, or is likely to be able, to meet the requirement set out in section 86(4) of the Broadcasting Act 1990.
- 2.9 References in these Undertakings to 'disposal' are references to such legally recognized transfer, assignment, delivery or other disposal, creation or assumption of property, rights, assets, liabilities and other obligations, and to such combination of them, as the context requires.
- 2.10 For the purposes of these Undertakings and the annexes, unless the context otherwise requires:

<b>the Act</b>	means the Enterprise Act 2002;
<b>Approved Agreement</b>	means a binding agreement or agreements approved by the CC in accordance with paragraph 4.4;
<b>Approved Purchaser</b>	means a purchaser which the CC is satisfied meets the CC's purchaser approval criteria, set out in paragraph 5.1;
<b>CC</b>	means the Competition Commission and any successor body;
<b>Commencement Date</b>	means the date on which these Undertakings are accepted by the CC;
<b>Confidential Information</b>	means business secrets, know-how, commercially-sensitive information or any other information of a confidential or proprietary nature relating to either Global or RSL;
<b>Date of Effective Disposal</b>	means the date upon which the Effective Disposal has been completed;
<b>Divestiture Station</b>	means a radio station or combination of radio stations, as specified in paragraph 9.99 and Table 4 of the report, which has been nominated for divestiture by This is Global Limited and Global in accordance with paragraph 3 and approved by the CC and includes the relevant broadcasting licence and FM transmission contract and all other contracts and assets necessary for the Divestiture Station to be an effective competitor in its area of operation;
<b>Divestiture Period</b>	means the period of [X] from the Commencement Date and any Trustee Divestiture Period, in each instance subject to any extension granted by the CC under paragraph 18.1 (Extension of time limits);
<b>Divestiture Trustee</b>	means any person appointed in accordance with paragraph 11 (Appointment of Divestiture Trustee);
<b>Effective Disposal</b>	means the completed sale and purchase of a Divestiture Station under an Approved Agreement to an Approved Purchaser;
<b>Global</b>	means the company registered in England and Wales with the name Global Radio Holdings Limited with the number 4077052 and with its registered office at 30 Leicester Square, London WC2H 7LA;
<b>Heads of Terms</b>	means a non-binding agreement to acquire a Nominated Station that sets out the transaction structure and its principal terms,

<b>Heads of Terms Notice</b>	means a Notice: (1) stating that Heads of Terms have been agreed; and (2) attaching the Heads of Terms to the Notice;
<b>Independent Expert</b>	means a qualified solicitor, barrister, actuary, chartered accountant or other person of suitable expertise;
<b>Interim Undertakings</b>	means the Undertakings accepted by the CC on 18 October 2012 and any directions, variations or derogations made or granted by the CC;
<b>Monitoring Trustee</b>	means [X] appointed pursuant to Appendix B of the Interim Undertakings and who will continue to be appointed in accordance with paragraph 8.1 of these Undertakings and any successors to [X] as directed by the CC;
<b>Nominated Station</b>	means a radio station nominated in accordance with paragraph 3;
<b>Notice</b>	means a written communication sent by post, fax, personal delivery or email;
<b>Ofcom</b>	means the Office of Communications and any successor body;
<b>OFT</b>	means the Office of Fair Trading and any successor body;
<b>report</b>	means the report published by the CC on 21 May 2013 entitled <i>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</i> ;
<b>RSL</b>	means the company registered in England and Wales with the name Real and Smooth Limited with the number 3739421 and with its registered office at Laser House, Waterfront Quay, Salford Quays M50 3XW;
<b>SLC</b>	has the meaning given to the term 'substantial lessening of competition' by section 22 of the Act;
<b>subsidiaries</b>	unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;
<b>This is Global Limited</b>	means the company registered in England and Wales with the name This is Global Limited with the number 6251684 and with its registered office at 30 Leicester Square, London WC2H 7LA;
<b>Trustee Divestiture Period</b>	means the period of [X] or such other longer period as the CC may allow from the date on which a Divestiture Trustee is appointed in accordance with paragraph 11 (Appointment of Divestiture Trustee) and subject to any

extension granted by the CC under paragraph 18 (Extension of time limits);

**Trustee Obligation**

means bringing about Effective Disposal at no minimum price but recognizing always the need to protect the legitimate financial interests of This is Global Limited and Global (including the price of the Effective Disposal) and the performance of all ancillary tasks as are necessary or desirable for the purposes of Effective Disposal promptly and in any event within the Trustee Divestiture Period;

**Undertakings**

means these undertakings and the annexes, given by This is Global Limited and Global and accepted by the CC for the purpose of remedying the SLC and the adverse effects.

**3. Nomination Undertaking**

- 3.1 This is Global Limited and Global each undertakes to give notice to the CC within [X] of the commencement of the Undertakings specifying which radio stations specified in paragraph 9.99 and Table 4 of the report in each Overlap Area they nominate to be divested to an Approved Purchaser in accordance with paragraph 4 (Divestiture Undertaking) and whether they are proposing to divest the Nominated Stations with or without a brand-licence agreement. Such notice shall only reflect This is Global Limited and Global's current intention as at the time it is given to the CC by This is Global and Global and is without prejudice to their right to amend the list of Nominated Stations (including proposition to divest with or without a brand-licence agreement) at any time following such notice, but any such amendment shall not affect the length of the Divestiture Period. Any amendment to the list of nominated stations, or proposition to divest with or without a brand-licence agreement, shall be notified as soon as practicable to the Monitoring Trustee and the CC by This is Global Limited and Global.

**4. Divestiture Undertaking**

- 4.1 Global undertakes that it shall, within the Divestiture Period, in accordance with these Undertakings, and to the satisfaction of the CC, use all reasonable endeavours to complete the Effective Disposal of all the Divestiture Stations required to remedy the SLC.
- 4.2 Global undertakes that it will use all reasonable endeavours to conclude such transitional arrangements as are necessary on commercial terms with the Approved Purchaser in each Overlap Area to ensure that following Effective Disposal of each Divestiture Station the relevant Approved Purchaser is able to operate effectively the relevant Divestiture Station as an independent competitor.
- 4.3 If Global decides to agree a Heads of Terms with a potential purchaser of some or all of the Divestiture Stations, This is Global Limited and Global shall, within two working days of Heads of Terms being agreed, send the CC a Heads of Terms Notice.
- 4.4 This is Global Limited and Global recognize that in order to bring about an Effective Disposal, the CC must approve the final draft sale and purchase agreement (such approval not to be unreasonably withheld) and any other final drafts of agreements or arrangements ancillary or connected to the sale and purchase agreement (including



transitional arrangements, service level agreements or other assets transfers or licensing agreement that are necessary for the SLC to be effectively remedied). In considering whether to approve any agreement the CC shall consider whether the terms of the sale and purchase agreement (and any other agreements or arrangements ancillary or connected to the sale and purchase agreement) are such as to give rise to a significant risk that the SLC and adverse effects identified in the report will not be remedied, and for these purposes the final drafts of agreement and sale documentation shall be sent to the CC promptly for approval but no later than five working days before the day on which the agreement is intended to be signed.

- 4.5 From the Date of Effective Disposal, This is Global Limited, Global and their successor bodies shall not, directly or through any other associated person within the meaning of section 127 of the Act, take control over, or gain the ability to materially influence, any or all of the Divestiture Stations without first having obtained from the OFT, CC, CMA or any successor body prior written consent, not to be unreasonably withheld.

## **5. Approved Purchasers**

- 5.1 Where in the reasonable opinion of This is Global Limited and Global they have identified a preferred purchaser (or purchasers) with a real interest in the acquisition of one or more Nominated Stations, they will apply to the CC for a decision on whether or not the preferred purchaser is an Approved Purchaser. This is Global and Global shall approach the CC with the preferred purchaser (or purchasers) for approval in good time to achieve the objectives of these Undertakings. This is Global and Global shall have the right to amend the preferred purchaser(s) at any time following such approach to the CC, but any such amendment shall not affect the length of the Divestiture Period. Any amendment to the preferred purchaser(s) shall be notified as soon as practicable to the Monitoring Trustee and the CC by This is Global Limited and Global.
- 5.2 This is Global Limited and Global shall use their reasonable endeavours to assist the CC in obtaining further information from the preferred purchaser(s) where necessary.
- 5.3 This is Global Limited and Global each undertakes to inform each preferred purchaser of a Nominated Station that, in order to become an Approved Purchaser, a purchaser must produce evidence to the CC to confirm the following:

### *Independence from This is Global Limited and Global*

- (a) That its independence from This is Global Limited and Global is not impaired by significant ownership and economic relationships with This is Global Limited or Global or by major operational dependencies, other than in a transitional form or under an Approved Agreement.

### *Capability and commitment to the relevant local radio market*

- (b) That it has access to appropriate financial resources and assets to enable the Nominated Stations to be effective competitors in the relevant local and regional radio market and so will address effectively the significant adverse effect specified in the report.
- (c) That it has the necessary experience of operating and developing a radio station, or otherwise has access to the necessary expertise and has the ability to provide a management team with comprehensive experience of operating and developing

radio stations; and how it intends to apply this expertise to the relevant radio stations.

(d) That it can provide to the CC (and not share such evidence with This is Global Limited, Global, any other competing third party radio operator or candidate purchaser) such evidence to demonstrate its capability and commitment to the relevant local radio market. Such evidence to include, but is not limited to:

- a business plan demonstrating the preferred purchaser's intentions and abilities to operate and develop the relevant Nominated Station, giving a sound basis for financial projections;
- evidence that it has access to sufficient financial resources to acquire, develop and operate the relevant Nominated Station; and
- if a relevant broadcasting licence is required to be transferred to the preferred purchaser (but not the Nominated Station owning the relevant broadcasting license), evidence that the candidate purchaser is, pursuant to section 86(4) of the Broadcasting Act 1990, in a position to comply with all the conditions of the relevant FM licences and that it is a fit and proper person.

*Absence of further competitive concerns*

(e) That it does not have significant horizontal overlaps with the Nominated Station which could create a realistic prospect of further competition or regulatory concerns.

5.4 For the avoidance of doubt, this paragraph is without prejudice to merger control rules.

## **6. Regulatory requirement**

6.1 The CC will take into account in assessing the suitability of a candidate purchaser and in overseeing any sale process, any regulatory requirements of Ofcom. In particular, the CC will take into account that Ofcom: (1) if a relevant broadcasting licence is required to be transferred to the preferred purchaser (but not the Nominated Station owning the relevant broadcasting license), has not indicated any material opposition to the relevant licence being transferred; (2) has not indicated any material concern as to whether the preferred purchaser is a fit and proper person, which will be able to comply with all the conditions of the licence; and (3) has not indicated any material concerns in connection with any brand-licensing agreement proposed with the preferred purchaser.

## **7. Interim Undertakings**

7.1 This is Global Limited and Global each undertakes that, until the Date of Effective Disposal, it will continue to abide by the Interim Undertakings adopted by the CC on 18 October 2012 (reproduced in Annex A, as amended on 31 January 2013 and 22 July 2013 and except in so far as the CC has consented to derogations from the Interim Undertakings).

7.2 The CC may, upon written request by This is Global Limited and Global, grant derogations from the obligations in the Interim Undertakings, thereby permitting Global to integrate RSL's radio stations that have not been identified by the CC as a potentially effective divestiture option included in paragraph 9.99 and Table 4 of the report, provided that the CC is satisfied that such integration steps shall not jeopardize the CC's

objectives in achieving an effective remedy (such derogations not to be unreasonably withheld).

## **8. Monitoring Trustee**

8.1 This is Global Limited and Global each undertakes that on the Commencement Date it shall secure on the same terms the continued appointment of the Monitoring Trustee which arises from the directions made under Appendix B to the Interim Undertakings and any further directions made by the CC. The Monitoring Trustee will continue to have the same powers and duties and will in addition carry out the duties set out in paragraphs 8.3 and 8.4. This is Global Limited and Global each undertakes that it shall ensure that the Monitoring Trustee continues to act until Effective Disposal has been achieved.

8.2 This is Global Limited and Global each undertakes to exercise its reasonable endeavours to enable, and where necessary shall procure that each of their subsidiaries and RSL shall enable, the Monitoring Trustee to carry out its duties set out in paragraphs 8.3 and 8.4.

8.3 The Monitoring Trustee will monitor the compliance of This is Global Limited, Global and their subsidiaries with their obligations under these Undertakings.

8.4 The duties set out in this paragraph are those of monitoring an Effective Disposal within the Divestiture Period and shall in particular include:

- (a) monitoring the progress made by Global including progress made against the timetable towards the satisfaction of an Effective Disposal within the Divestiture Period and the steps that have otherwise been taken to comply with the Undertakings including:
  - the steps that have been taken towards the preparation of Heads of Terms (where relevant) and an agreement for each Effective Disposal, and the persons to whom such an agreement has been distributed;
  - attending such meetings and monitoring such communications as the Monitoring Trustee considers necessary that This is Global Limited, Global and/or their financial and other advisers hold with possible candidate purchasers and/or those possible candidate purchasers' financial or other advisers in connection with the disposal process (save where those meetings and communications are properly the subject of legal privilege). This is Global Limited and Global each undertakes to notify such communications to the Monitoring Trustee as soon as practicable afterwards and, in any case, by way of the weekly compliance calls and/or fortnightly compliance logs. This is Global Limited and Global will have the right to proceed with any such meetings if two working days' prior notice of such meetings has been given to the Monitoring Trustee. In the event that the Monitoring Trustee wishes but is unable to attend a meeting, This is Global Limited, Global and their advisers will use reasonable endeavours to reschedule the meeting; and
  - assessing whether there are any reasonable grounds for concern that insufficient progress is being made towards an Effective Disposal within the Divestiture Period;
- (b) monitoring whether variations to the Interim Undertakings are necessary to achieve an Effective Disposal; and

(c) such other written direction as the CC may reasonably from time to time give.

## **9. Reporting obligations**

9.1 This is Global Limited and Global each undertake that, within the period of [~~30~~] from the Commencement Date, they will provide a written report to the CC, copied to the Monitoring Trustee, setting out the timetable that they propose to adopt, subject to the CC's approval (such approval not to be unreasonably withheld), to ensure Effective Disposal to an Approved Purchaser within the Divestiture Period. The report will outline the progress that they have made and the steps that have otherwise been taken to comply with these Undertakings and shall in particular report, for each Nominated Station, on:

(a) the status of any discussions that have been held with the preferred purchaser(s) of the Nominated Station;

(b) the identity of any Independent Expert who has been consulted;

(c) the status of any additional marketing material (including an information memorandum), the identities of the persons to whom it has been circulated and the responses to the marketing materials;

(d) the status of any data room, its contents and the persons who have had access to it;

(e) the progress that has been made towards agreeing Heads of Terms (where relevant);

(f) the steps that have been taken towards reaching an Approved Agreement and the persons to whom any agreement has been distributed; and

(g) such other matters as may be reasonably directed by the CC from time to time.

9.2 This is Global Limited and Global will provide similar reports to the CC copied to the Monitoring Trustee at fortnightly intervals or at other times to be agreed with the CC for the duration of the Divestiture Period.

9.3 In the event that This is Global Limited and Global do not meet a step as set out in the approved timetable, or are otherwise delayed in implementing the remedy, This is Global Limited and Global each undertakes to inform the CC and the Monitoring Trustee in writing of the occurrence and the reasons for the failure promptly, but no later than two working days of becoming aware that a step in the approved timetable has not been met.

## **10. Procedure for consent and approval**

10.1 This is Global Limited and Global each undertakes that where they require the consent or approval of the CC (however that requirement is expressed in these Undertakings) they will seek the consent or approval in writing. Any consent or approval given by the CC under these Undertakings shall be given in writing pursuant to paragraph 20.

10.2 This is Global Limited and Global each undertakes that any application by it for the CC's consent or approval shall make full disclosure of every fact and matter within its

knowledge that it reasonably believes is relevant to the CC's decision (Relevant Information).

- 10.3 This is Global Limited and Global recognize that where the CC grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CC.
- 10.4 In the event that This is Global Limited or Global discovers that an application for consent or approval has been made without full disclosure of Relevant Information, This is Global Limited and Global each undertake to:
- (a) inform the CC in writing identifying Relevant Information that they omitted to include in the application for consent within two working days of becoming aware that Relevant Information is incomplete; and
  - (b) at the same time or no later than two working days starting with the date on which they informed the CC of the omission in accordance with paragraph 10.4(a) above, provide to the CC an application for consent that includes missing Relevant Information.

## **11. Appointment of Divestiture Trustee**

- 11.1 This is Global Limited and Global each undertakes that it shall at the written direction of the CC appoint a Divestiture Trustee in accordance with the provisions of this paragraph.
- 11.2 The CC will keep under review the need for a Divestiture Trustee and in particular may, when it is reasonable to do so, issue directions for the appointment of a Divestiture Trustee, where:
- (a) the CC considers that the reports received in accordance with paragraph 9 (Reporting Obligations) and/or the advice of the Monitoring Trustee, inter alia, indicate that it is unlikely that This is Global Limited and Global will achieve an Effective Disposal within the Divestiture Period and that such failure is not remedied within a reasonable period of time; or
  - (b) there is no Effective Disposal within the Divestiture Period; or
  - (c) the CC considers that This is Global Limited or Global is in material breach of any of the provisions of these Undertakings or has failed to comply with the Undertakings and that such breach or failure is not remedied within a reasonable period of time.
- 11.3 This is Global Limited and Global each undertakes that within the period of [X] business days following the day on which pursuant to paragraph 11.2 the CC gives a direction, the Chief Executive Office of This is Global Limited shall submit to the CC for approval a list of two or more persons whom This is Global Limited and Global propose to appoint as Divestiture Trustee.
- 11.4 Each person on the list referred to in paragraph 11.3 shall be independent of and unconnected to This is Global Limited, Global, RSL and any interconnected body within the meaning of section 129 of the Act, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.

- 11.5 The CC may approve or reject any or all of the proposed persons (such approval not to be unreasonably withheld) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Trustee Obligation. If only one proposed person is approved, This is Global Limited and Global shall use their best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CC. If more than one proposed person is approved, This is Global Limited and Global shall be free to choose the Divestiture Trustee to be appointed from among the approved persons. This is Global Limited and Global undertake to appoint the Divestiture Trustee within two working days from the CC's approval and on the terms of the mandate approved by the CC.
- 11.6 If all the proposed Divestiture Trustees are rejected by the CC, This is Global Limited and Global shall submit the names of at least two further persons within four working days from being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 11.3 to 11.5 above.
- 11.7 The provisions of paragraph 11.8 shall apply if:
- (a) This is Global Limited and Global fail to nominate further persons in accordance with paragraph 11.6; or
  - (b) those further persons nominated by This is Global Limited and Global in accordance with paragraph 11.6 are rejected by the CC (acting reasonably); or
  - (c) This is Global Limited and Global are unable without reasonable justification to conclude the appointment of the Divestiture Trustee within the time limit specified by the CC.
- 11.8 The CC shall nominate two or more persons who may act as Divestiture Trustee after informing This is Global Limited and Global at least one working day before nomination of the name of the potential Divestiture Trustees, and This is Global Limited and Global shall appoint or cause to be appointed one of those Divestiture Trustee within two working days from such nomination under the terms of a Divestiture Trustee mandate approved by the CC.
- 11.9 This is Global Limited and Global recognize that the function of the Divestiture Trustee is distinct from the function of the Monitoring Trustee, although the two functions may be performed by the same person subject to that person meeting the requirements set in paragraph 11.4.
- 11.10 This is Global Limited and Global undertake to remunerate and reimburse the Divestiture Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of his or her appointment and in accordance with the directions or instructions given pursuant to paragraph 12.3(a), in such a way so as not to impede the Divestiture Trustee's independence or ability to effectively and properly fulfil the Trustee Obligation.

## **12. Divestiture Trustee—functions**

- 12.1 The Divestiture Trustee shall comply with any written directions the CC may give pursuant to paragraph 11.2 and shall fulfil the Trustee Obligation.
- 12.2 The Divestiture Trustee shall undertake such preparatory matters as it considers necessary to discharge the Trustee Obligation and for these purposes may give written directions to This is Global Limited and Global. This is Global Limited and

Global each undertakes to comply with any such written directions and to take steps to enable the Divestiture Trustee to carry out the Trustee Obligation.

12.3 This is Global Limited and Global recognize and acknowledge that:

- (a) The CC may, on its own initiative or at the request of the Divestiture Trustee or This is Global Limited and Global, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty (including directions as to the disposal of such assets, rights, consents, brand licences, or any other matters, including those set out in paragraph 4.4, as the CC considers necessary to bring about an Effective Disposal). This may involve divestiture of a station or stations included in paragraph 9.99 and Table 4 of the report other than a Nominated Station. The CC will provide This is Global Limited and Global five working days' notice of its intention to give written directions or instructions to the Divestiture Trustee to dispose of a station or stations other than a Nominated Station (and the Divestiture Trustee, at the CC's direction, will make reasonable endeavours to dispose of a station or stations on the basis of a brand-licence model) and This is Global Limited and Global may make representations to the CC that must be reasonably considered by the CC provided such representations are made no later than three working days after the CC informs This is Global Limited and Global of its intention.
- (b) The Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of its duty such terms and conditions as it reasonably considers appropriate.
- (c) The Divestiture Trustee shall protect the legitimate financial interests of This is Global Limited and Global subject to the Divestiture Trustee's overriding obligations to give effect to its duty and shall use reasonable endeavours to consult with This is Global Limited and Global during the disposal process on all important matters.

12.4 The Divestiture Trustee shall take such steps and measures it considers necessary to discharge its duty and to that end the Divestiture Trustee may give written directions to This is Global Limited or Global, and This is Global Limited and Global undertake to comply with such directions or to procure compliance with such directions (including by RSL) as are within its powers and to take such reasonable steps within its competence as the Divestiture Trustee may specify.

12.5 This is Global Limited and Global recognize and acknowledge that in the performance of their duty, the Divestiture Trustee shall act solely on the instructions of the CC and shall not be bound by any instruction of This is Global Limited or Global and This is Global Limited and Global undertake that they shall not seek to create or vary the obligations and duties of the Divestiture Trustee without the CC's prior written consent.

### **13. Divestiture Trustee—obligations of This is Global Limited and Global**

13.1 This is Global Limited and Global each undertakes to provide the Divestiture Trustee with all such cooperation, assistance and information (including by the production of financial or other information whether or not such information is in existence at the time of the request, but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the discharge of its duties.

13.2 This is Global Limited and Global each recognizes and acknowledges that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and

complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of its duty (save where material is properly the subject of legal privilege). This is Global Limited and Global undertake that they shall provide the Divestiture Trustee upon request with copies of any such document. On the request of the Divestiture Trustee, This is Global Limited and Global undertake to make available to the Divestiture Trustee one or more offices on its premises, or on those of RSL, for meetings in order to provide the Divestiture Trustee with all information necessary for the performance of the Trustee Obligation.

- 13.3 This is Global Limited and Global each undertakes to grant reasonable comprehensive powers of attorney, on terms approved by the CC, duly executed, to the Divestiture Trustee to enable it to discharge its duties including by the appointment of advisers to assist with the disposal process if necessary for the performance of the Trustee Obligation. Before doing so, the Divestiture Trustee will consider using the advisers already appointed by This is Global Limited and Global and appoint further advisers (whether in replacement of in addition to This is Global Limited and Global's advisers) if it reasonably considers the appointment of such further advisers necessary or appropriate in the discharge of the Trustee Obligation. This is Global Limited and Global undertake that, upon the reasonable request of the Divestiture Trustee, This is Global Limited and Global shall execute the documents required to give effect to the Trustee Obligation.
- 13.4 This is Global Limited and Global each undertakes to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Trustee Obligation. This is Global Limited and Global recognize and acknowledge that the Divestiture Trustee, its employees, agents or advisers shall have no liability to This is Global Limited or Global for any liabilities arising out of the proper performance of the Trustee Obligation, except to the extent that such liabilities result from the negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
- 13.5 This is Global Limited and Global each undertakes that at their expense the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee reasonably considers the appointment of such advisers necessary or appropriate in the discharge of the Trustee Obligation, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred and approved by This is Global Limited and Global, where possible in advance. Should This is Global Limited and Global refuse to approve the advisers proposed by the Divestiture Trustee, the CC may, after consulting with This is Global Limited and Global, approve and direct the appointment of such advisers at their expense.
- 13.6 Where This is Global Limited and Global wish to make an objection to any disposal, on the grounds of bad faith, gross negligence or failure of the Divestiture Trustee to protect the legitimate financial interests of This is Global Limited and Global, subject to the Trustee Obligation, they shall submit a Notice setting out its objections within seven working days from the day on which it became aware of the fact or facts giving rise to its objection.

#### **14. Divestiture Trustee—replacement, discharge and reappointment**

- 14.1 This is Global Limited and Global acknowledge that if the Divestiture Trustee ceases to perform the Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest:



- (a) the CC may, after consulting the Divestiture Trustee, require This is Global Limited and Global to replace the Divestiture Trustee; or
  - (b) This is Global Limited and Global, with the prior written approval of the CC, may replace the Divestiture Trustee.
- 14.2 If the Divestiture Trustee is removed under paragraph 14.1, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in paragraphs 11.3 to 11.6.
- 14.3 This is Global Limited and Global recognize and acknowledge that, other than in accordance with paragraph 14.1, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CC has discharged it from its duties at a time at which all the functions with which the Divestiture Trustee has been entrusted have been met.

## **15. Technical assistance**

- 15.1 This is Global Limited and Global undertake to remunerate in full, and to pay all the reasonable costs and expenses of, any Independent Expert whose assistance the CC may reasonably require in connection with any of the matters in paragraph 15.2.
- 15.2 The matters in this paragraph are:
- (a) the determination of a person as an Approved Purchaser;
  - (b) the determination of an agreement as an Approved Agreement; and
  - (c) any other matter on which the CC may reasonably require the assistance of an Independent Expert in connection with these Undertakings.
- 15.3 For the purposes of enabling This is Global Limited and Global to fulfil their obligation in paragraph 15.1, the CC shall promptly give This is Global Limited and Global advance notice of its intention to seek the assistance of any Independent Expert and an indication of likely costs.

## **16. Compliance**

- 16.1 This is Global Limited and Global undertake to comply with such reasonable written directions as the CC or the OFT may from time to time give to take such steps within their reasonable competence for the purpose of carrying out or securing compliance with these Undertakings.

## **17. Effect of invalidity**

- 17.1 This is Global Limited and Global undertake that should any provision of these Undertakings be contrary to law or invalid for any reason, This is Global Limited, Global and any interconnected body (within the meaning of section 129 of the Act) shall continue to observe the remaining provisions.

## **18. Extension of time limits**

- 18.1 This is Global Limited and Global recognize and acknowledge that the CC may, where it considers appropriate, in response to a written request from This is Global Limited and Global showing good cause, or otherwise at its own discretion, grant an extension of any period specified in the Undertakings within which This is Global Limited and Global must take action (such extension not to be unreasonably withheld).

## **19. Provision of information to the CC and the OFT**

- 19.1 This is Global Limited and Global each undertakes that either of them shall as soon as practicable provide to the CC such information as the CC may reasonably require for the purpose of performing any of its functions under these Undertakings or under sections 82, 83 and 94(7) of the Act.
- 19.2 This is Global Limited and Global each undertakes that either of them shall as soon as practicable provide to the OFT such information as the OFT may reasonably require for the purpose of performing any of its functions under these Undertakings or under sections 92, 93(6) and 94(6) of the Act.
- 19.3 This is Global Limited and Global each undertakes that should either of them at any time become aware that they are in breach of any provision of these Undertakings, it will notify the CC within five working days to advise the CC that there has been a breach and of all the circumstances of that breach within their knowledge.

## **20. Service**

- 20.1 This is Global Limited and Global hereby authorize Slaughter and May to accept, on their behalf and on behalf of any of their subsidiaries, service of all documents connected with these Undertakings (including any document of any kind which falls to be served on or sent to This is Global Limited, Global or any of their subsidiaries in connection with any proceedings in Courts in the UK), orders, requests, notifications or other communications connected with these Undertakings. Notwithstanding this, the CC will copy all such documents to the Chief Executive Office of This is Global Limited.
- 20.2 Unless This is Global Limited and Global inform the CC in writing that Slaughter and May has ceased to have authority to accept and acknowledge service on their or any of their subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on This is Global Limited and Global if it is served on Slaughter and May; and service shall be deemed to have been acknowledged by This is Global Limited and Global if it is acknowledged by Slaughter and May or such other nominee.
- 20.3 Paragraph 20.2 has effect irrespective of whether, as between This is Global Limited, Global and Slaughter and May or other nominees, Slaughter and May or other nominees has or continues to have any authority to accept and acknowledge service on behalf of This is Global Limited, Global or any of their subsidiaries; and no failure or mistake by Slaughter and May or other nominees (including a failure to notify This is Global Limited and Global of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Undertakings including any proceedings or judgement.

- 20.4 Any communication from This is Global Limited and Global to the CC (or, as from 1 April 2014, to the CMA) under these Undertakings shall be addressed to Graham Webb, Competition Commission, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CC (or, as from 1 April 2014, the CMA) may direct in writing and shall include email communication to Graham Webb, Brid McHugh or such other person as the CC (or, as from 1 April 2014, the CMA) may direct in writing.
- 20.5 Any communication from This is Global Limited and Global to the OFT under these Undertakings shall be addressed to Director of Mergers, Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JY or such other address as the OFT may direct in writing and shall include email communication to the Director of Mergers or such other person as the OFT may direct in writing.

## **21. Subsidiaries**

- 21.1 This is Global Limited and Global undertake to procure that its subsidiaries comply with these Undertakings as if they had been given by those subsidiaries.

## **22. Governing law**

- 22.1 This is Global Limited and Global recognize and acknowledge that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 22.2 In the event that a dispute arises concerning these Undertakings, This is Global Limited and Global undertake to submit that dispute to the courts of England and Wales.

## **23. Termination**

- 23.1 This is Global Limited and Global recognize and acknowledge that these Undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 23.2 This is Global Limited and Global recognize and acknowledge that the variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

**FOR AND ON BEHALF OF THIS IS GLOBAL LIMITED**

(*signed*) ..... (*signed*) .....

NAME ..... NAME .....  
(Director) ..... (Director) .....

Date ..... Date .....

**FOR AND ON BEHALF OF GLOBAL**

(*signed*) ..... (*signed*) .....

NAME ..... NAME .....  
(Director) ..... (Director) .....

Date ..... Date .....

## **Annex A: Interim Undertakings**

- [Adoption of Interim Undertakings, 18 October 2012](#)
- [Variation of Interim Undertakings, 31 January 2013](#)
- [Variation of Interim Undertakings, 22 July 2013](#)

## **Annex B: Potentially effective divestiture options**

## **Annex C: Global RSL licences**

## Potentially effective divestiture options

### Potentially effective divestiture options in each relevant overlap area

<i>Area</i>	<i>Potentially effective options</i>
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

**Global/RSL licences**

<i>Area</i>	<i>Options</i>	<i>Associated licence(s)</i>
East Midlands	Smooth Capital	Smooth Radio (East Midlands) Capital East Midlands (Leicester) Capital East Midlands (Nottingham and Derby)
Cardiff and South Wales	Real Capital	Real Radio (South Wales) Capital FM South Wales (Cardiff and Newport)
North Wales	Real Heart	Real Radio (North and Mid Wales) Heart Anglesey and Gwynedd Heart North Wales Coast Heart North Wales and West
Greater Manchester and North West	Capital  Real XS Real	Capital FM Manchester  Real XS (Manchester) Real Radio (NW England)
South and West Yorkshire	Smooth Real Capital	Smooth Radio (North West) Real Radio (Yorkshire) Capital FM Yorkshire
Central Scotland	Real Capital	Real Radio (Scotland) Capital FM Scotland (Central Scotland)

*Source:* Final report and parties.