GLOBAL RADIO/
REAL AND SMOOTH LIMITED

INITIAL SUBMISSION

TO THE

COMPETITION COMMISSION

REBUTTAL OF OFT'S REFERENCE DECISION

1 November 2012

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PPC/LKYB/GRDC

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Glossary of Terms

"**Bauer**"	means Bauer Media or Bauer Radio;
"**BT40**"	means The Big Top 40 Show, a weekly chart show produced by Global;
"**CC**"	means the Competition Commission;
"**contracted**"	means radio advertising sold to advertising agencies on the basis of an annually negotiated contract;
"counterfactual"	means what would have happened absent the Global / RSL merger;
"cost per slot"	means cost per slot (i.e. a unit of airtime on radio), a commonly-used measure in relation to radio advertising;
"**CPT**"	means cost per thousand impacts (i.e. when a campaign is listened to 1,000 times), a commonly-used measure in relation to radio advertising;
"DAB"	means digital audio broadcasting, a digital radio technology for broadcasting radio stations;
"**existing customers survey**"	means a survey conducted by YouGov of the parties' existing customers in London, East Midlands, West Midlands, Wales and North East
"**existing customers**"	means non-contracted advertisers that used the parties' stations recently;
"**fill-rates**"	means the utilisation of airtime available for advertising;
"**FRS**"	means First Radio Sales;
"**GCap**"	means GCap Media;
"**Global**"	means Global Radio Holdings Limited;
"**GMG**"	means GMG Radio Holdings Limited
"**Initial Factual Information Request**"	means Annex C of the CC's letter dated 11 October 2012;
"**IRN**"	means Independent Radio News, the provider of news service to commercial radio in the UK;
"**ITN**"	means Independent Television News;
"**lost opportunities survey**"	means a survey conducted by YouGov of Global's lost opportunities in London, East Midlands, West Midlands, Wales and North East;
"**lost opportunities**"	means non-contracted advertisers that actively considered advertising on Global's stations but eventually declined its campaign proposals;
"**MXR**"	means MXR Limited, the regional DAB multiplex company;
"**national S&P**"	means sponsorship and promotion which is sold (i) by the parties' centralised teams based in London to large London agencies; and (ii) by the parties' sales teams based in Manchester to regional agencies;
"**national sales agreement**"	means the agreement entered into between Global and RSL in March 2011;
"**network buys**"	means a campaign booked across all stations on a brand's

	network rather than on a single station or subset of stations;
"**NMR**"	means Nielsen Media Research market data;
"**non-contracted**"	means radio advertising sold by the local or regional radio stations on a spot basis campaign by campaign;
"**[✂]**"	means [✂];
"Ofcom"	Means the Office of Communications;
"**OFT**"	means the Office of Fair Trading;
"OFT Submission"	means Global's submission to the OFT dated 31 July 2012;
"**parties**"	means, together, Global and RSL;
"**peak**"	means Monday to Sunday 0700 - 1900;
"**RAJAR**"	means Radio Joint Audience Research, the official body in charge of measuring radio audiences in the UK;
"**reach**"	means the number of people who tune into a radio station for at least 5 minutes (within at least one 15-minute period) in a given week as defined by RAJAR;
"RBB"	means RBB Economics;
"**RSL**"	means Real and Smooth Limited (formerly known as GMG);
"**S&P**"	means sponsorship and promotion which is sold to both advertising agencies and local or regional radio stations;
"**share of listening**"	means the proportion of total listening hours that a station achieves as compared to total listening hours of all stations;
"**SLC**"	means a substantial lessening of competition;
"TSA"	means the total survey area that a station's signal covers, usually together with any areas surrounding it that contribute a proportion of their listening time to that radio station; and
"**UTV**"	means UTV Media.

1. EXECUTIVE SUMMARY

1.1 Global Radio Holdings Ltd ("**Global**") requested a fast track reference to the Competition Commission ("**CC**") because it knew, from its experience in the GCap Media ("**GCap**") acquisition, that the Office of Fair Trading ("**OFT**") would only assess the impact of its acquisition of Real and Smooth Limited ("**RSL**") through the narrow prism of a market for radio advertising.

1.2 It was not possible at the time of the GCap transaction to contemplate a reference, given the parlous state of the GCap business and the need to take immediate steps to turn the business around. Although at the time of the GCap merger, it was evident that radio was increasingly having to compete with other media, it was not possible to fully evidence this as effectively as Global can today. Since then, competition from other media has only accelerated with new online competitors and local press becoming more aggressive. In addition, Global has since the GCap deal invested in the business tools to monitor more effectively its competitors. Global has used these same tools to prepare for this inquiry.[1]

1.3 Global has prepared well in advance for this reference by collecting robust evidence which could be made available for the CC at an early stage of its inquiry and which provides insights on the competitive interplay between radio and other media.

1.4 The primary purpose of this submission is to address the concerns raised by the OFT in its reference decision, in particular by analysing the key evidence that Global has assembled and which was not, in the time available, provided to the OFT.

1.5 At the outset and before considering the evidence, it is worth setting out some key points to bear in mind when considering the effects of this transaction on competition:

- Radio is a two sided market - for listeners on the one side and advertisers on the other.
- Global's whole strategy on the listening side is to create national or quasi-national, high quality brands to compete head-to-head with its state sponsored competitor the BBC. [✄]
- Global's strategy on the advertising side is, through the acquisition of RSL, to invest in [✄] make [✄] more attractive to advertisers. This will enhance the rivalry between Global and other media (in particular national media) for share of advertisers' budgets.

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[1] For example, the "Lost Opportunities" survey commissioned by Global is based on the details of potential (but unbooked) customers recorded on [✄], which was not available in 2007.

- The radio segment is a small part of the overall UK advertising market - it represents only 2.7% of total advertising expenditure.[2]

- RSL is a very small player even in the narrow radio segment - it accounts for 5% of radio listening and [✂]% of radio advertising expenditure.

- There are three distinct radio business segments, which are analysed separately in this submission and in the OFT's reference decision:

    - the largest segment which comprises radio advertising sold to advertising agencies on the basis of an annually negotiated contract ("**contracted advertising**");

    - the next largest source of revenue which comprises advertising sold by the local or regional radio stations on a spot basis campaign by campaign ("**non-contracted advertising**"); and

    - lastly, sponsorship and promotion ("**S&P**") revenue, which comprises incremental revenues generated both from large advertising agencies and smaller local / regional customers.

- The transaction will bring about no change in relation to contracted advertising because Global or its predecessors have always represented RSL as a sales agent in negotiations with the large advertisers and sold RSL's stations as a bundle together with Global's stations - [✂]. The continuation of this agency arrangement is the most likely scenario absent the transaction.

- As far as non-contracted advertising is concerned, RSL's main stations are highly complementary with Global's stations. Real covers the Northern and Scottish regions where Heart is not represented (with exception of North Wales); whilst Smooth targets an older listener as compared with Global's Heart and Capital.

- RSL is not a close competitor of Global when it comes to most of the S&P bids placed by Global - [✂].

1.6 Turning now to the core of this submission; there is clear, consistent and robust evidence referred to in this submission that:

(i) Global and RSL compete with other media as much, if not more, than they compete with other radio stations; and

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[2] World Advertising Research Centre (WARC), 2012 - see Table 5.4 of Global's notification to the OFT dated 31 July 2012. Radio revenues are gross airtime revenues, excluding sponsorship and promotion. The figures do not include revenues from classified directories and online revenues from non campaign-specific spend (e.g. search-engine optimisation and coupon sites).

(ii) Global and RSL are in any event not close competitors.

1.7 These conclusions are supported by the following evidence:

(i) **The lost opportunities survey**.[3] This is a survey of non-contracted customers in the five regions where there are the most significant overlaps between RSL and Global's stations (London, the East Midlands, the West Midlands, Wales and the North East). This survey is based on a sample of over 1900 customers contacted by YouGov[4] who actively considered advertising on Global for a particular campaign but ultimately decided to decline Global's offer. The survey responses provide insights into the media choices these advertisers actually made instead. The survey demonstrates that Global's principal competitors are other media and in particular local press and not other radio stations;

(ii) **The existing customers survey**.[5] This is a survey of customers in the same five regions as above who recently advertised on a Global or RSL station. It seeks to explore how these customers' advertising choices would have changed had their chosen radio station not been available. This survey, which involved YouGov contacting over 1700 customers,[6] demonstrates that customers would have chosen other media including local press as often as, if not more often than, other radio stations; and in any event would have chosen RSL stations in only 5% of cases;

(iii) **An analysis of RSL's entry into North Wales in 2011 and its impact on Global's Heart station in the same area**.[7] The new entry had no discernible impact on either Global'[✄] even though Global's Heart is the only existing significant radio station in the region and despite the fact that RSL's Real station targets a similar demographic to that targeted by Global's Heart;

(iv) **[✄]**;

(v) **An analysis of NMR media expenditure data.**[8] This shows that the advertisers who have ceased to advertise on Global or RSL's stations have in subsequent years used other media (in particular local press) to a greater extent than other radio stations; and

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[3] See Annex 1.

[4] From which 488 completed interviews were achieved.

[5] See Annex 2.

[6] From which 388 completed interviews were achieved.

[7] See Annex 4.

[8] See Annex 4.

(vi) **The internal marketing documents of both Global and RSL**.[9] These provide evidence that both businesses seek to find new customers for their radio stations by targeting principally users of other media.

1.8 When taken together this body of evidence[10] provides the CC with a robust basis to conclude that the acquisition of RSL will not result in a substantial lessening of competition (an "**SLC**") both on the basis that radio competes with other media and also on the basis that RSL and Global are not close competitors.

1.9 This conclusion is consistent with the OFT's inquiry into local and regional press, which found that the evidence presented by the Local Media Alliance was broadly supportive of a wider media market.[11] The OFT concluded that:

"It is quite possible that print advertising faces sufficient competitive pressure from advertising on other media, especially the internet, to protect consumers (readers and advertisers) in the face of a merger;"[12] and further that

"The key question for merger analysis […] is the extent to which the potential for advertisers to switch spend to these other media acts to constrain the prices that the local and regional press can charge for advertising. If this constraint is strong, then consolidation in the local and regional press, whether through swapping titles or full merger of publisher groups, would not be likely to have a substantial detrimental impact on advertisers (and ultimately end-consumers)."[13]

1.10 Whilst the OFT's review was focused on local and regional press, its remarks on a wider media market are also applicable to radio. The OFT explicitly acknowledged that many of the issues raised and discussed were likely to apply more widely to other local media.[14]

1.11 Moreover, the conclusion is consistent with recent local press mergers considered by the OFT, in which the OFT has recognised the constraints imposed on newspapers by

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[9] See "Overview of Global Radio's non-contracted commercial strategies and internal documents evidencing key promotional initiatives" and "Overview of RSL's non-contracted commercial strategy and internal documents" provided as part of Global and RSL's responses to the questions contained in the Initial Factual Information Request.

[10] The evidence Global has focused on relates to non-contracted advertising since Global already sells RSL stations as a bundle with its own stations in the contracted sector. However Global considers that sophisticated contracted customers are likely to consider other media to be as good alternatives to Global stations as less sophisticated non-contracted customers. So the conclusions that can be drawn from the evidence (including the surveys) apply equally to contracted and indeed S&P customers.

[11] See OFT Review of the Local and Regional Media Merger Regime (June 2009).

[12] See paragraph 1.4 of OFT Review of the Local and Regional Media Merger Regime (June 2009).

[13] See paragraph 4.7 of OFT Review of the Local and Regional Media Merger Regime (June 2009).

[14] See paragraph 7.5 of OFT Review of the Local and Regional Media Merger Regime (June 2009).

other media. In its decision relating to Northcliffe Media's acquisition of Topper Newspapers, the OFT explained that:

"With regard to other constraints, the OFT has acknowledged both print and non-print media are capable of imposing competitive constraints on local newspapers for advertising content";[15] and

"As noted above for other print media, constraints from outside the frame of reference, such as those posed by these alternate suppliers of advertising inventory, will be taken into account in the substantive assessment to the extent this is supported by the available evidence".[16]

[15] See paragraph 22 of OFT's decision in Northcliffe Media/ Topper Newspapers (2012).

[16] See paragraph 36 of OFT's decision in Northcliffe Media/ Topper Newspapers (2012).

2. BACKGROUND ON GLOBAL AND RSL

A. Global

2.1 Global 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.

2.2 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.

2.3 In June 2012, Global acquired the entire issued share capital of GMG Radio Holdings Limited ("**GMG**") (now RSL), which owns the Real and Smooth stations.

B. RSL

2.4 RSL (formerly know as GMG) was formed in April 2000 following the award of the South Wales licence for Real Radio, and grew both organically by the award of further licences and by acquisition of Scot FM and Century FM stations (now Real Radio). Its latest launch in January 2011, following the award of the North and Mid Wales licence, created a Wales-wide service.

2.5 Smooth Radio came about following a rebranding of a series of acquired Jazz FM stations and Saga licences, beginning in 2002. It launched as a UK network in October 2010.

2.6 Today RSL owns 6 Real Radio licences in South Wales, West and South Yorkshire, Central Scotland, North West, North East, and North and Mid Wales; 6 Smooth Radio licences in London, East Midlands, West Midlands, North West, North East and Glasgow; and 2 Real XS licences in Greater Manchester and Paisley.

C. Deal Background

2.7 [✄].

3. DEAL RATIONALE

A. Global intends to improve its commercial performance by making its stations more attractive to listeners and advertisers

3.1 With the intention of building on the success of its brand strategies following the GCap merger, Global plans to:

(i) [✄];

(ii) [✄]

(iii) [✄].

3.2 [✄].

3.3 [✄].

Map 3.1
[✄]

Source: RAB.

3.4 [✄].

3.5 [✄].

3.6 [✄].

Map 3.2
[✄]

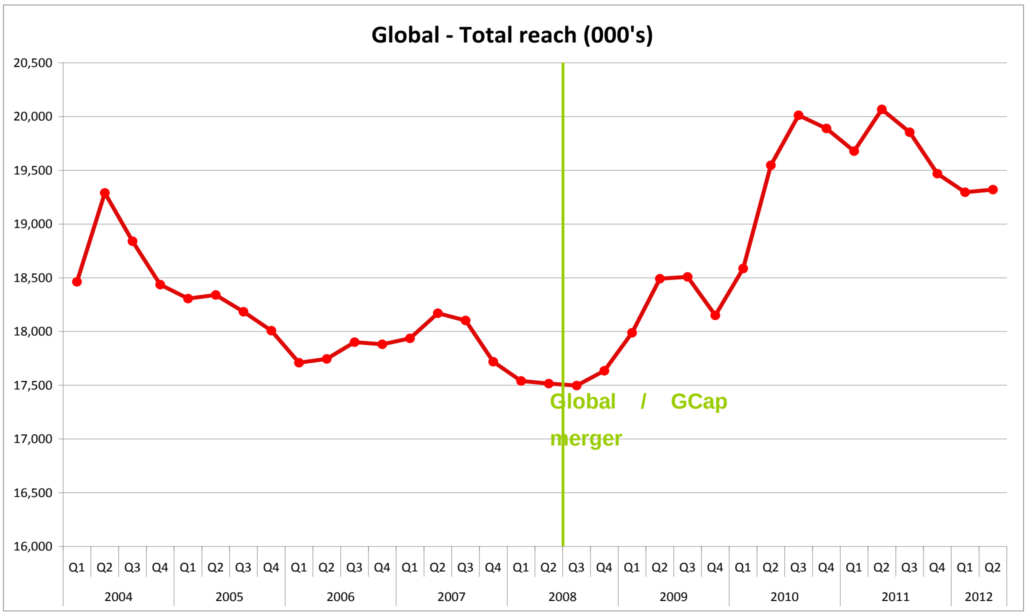
Source: RAB.

B. Global has attracted more listeners by [✂]

3.7 Global's experience has shown that [✂] so that it delivers a consistent and high quality radio service to its core audience can significantly increase audience figures.

3.8 Figure 3.1 below shows the reach[17] of Global's total station portfolio (i.e. including both Chrysalis and GCap stations) between 2004 and 2012. As can be seen from this figure, [✂] Global has succeeded in attracting approximately 2m extra listeners to its stations since the GCap merger in 2008 - thus reversing the acute decline in listeners that the GCap stations were experiencing prior to the acquisition.

Figure 3.1
Reach across stations currently comprising Global's portfolio
Q1 2004 - Q2 2012



Source: Rajar[1].

Note: [1] Chart shows all stations currently comprising the Global portfolio (therefore includes stations which were previously owned by GCap and Chrysalis).

3.9 Global has achieved this growth by delivering a better product for listeners:

(i) In 2009, Global launched its "national brands delivered locally" strategy, which involved rebranding the majority of the stations in GCap's "One Network" to "Heart" and thus forming the **Heart network**. Global:

(a) invested extensively in improving the quality of local programming, local journalists, local news production, and local marketing (e.g. high-profile

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[17] RAJAR defines the weekly reach of a radio station as the number of people who tune into a radio station for at least 5 minutes (within at least one 15 minute period) in a given week.

celebrity-endorsed television advertisements[18] and Heart's street and events promotional teams known as the "Heart Angels"). The aim of these investments was to deliver superior local content to listeners and build the brand image of the rebranded stations; and

(b) invested extensively in producing premium network programming at Global's Leicester Square studios in London, including establishing a high-profile team of talented celebrity DJs aligned with the Heart culture and investing in the best production equipment, producers and engineers.

By creating a consistently branded, recognisable and highly attractive Heart network in the South of England, the total audience of the stations comprising the Heart network (including both existing and rebranded Heart stations) has grown by over 400,000 listeners since the GCap merger.[19] This has significantly increased the brand's attractiveness to advertisers.

(ii) Between 2008 and 2010, Global invested in repositioning GCap's 95.8 Capital FM in London. Capital had suffered a severe decline in audience (a drop of 546,000 listeners - 26% - between Q1 2005 and Q1 2008 alone). Global therefore invested in refocusing the Capital playlist and programmes, hiring new presenters, hosting large concerts and launching an extensive television marketing campaign[20] with the objective of aligning the station with its young audience. As a result, Global has attracted over 700,000 more listeners (approximately 45% increase) to Capital in London alone.[21]

(iii) In early 2011, following the success of the Capital repositioning in London, Global rebranded the Galaxy network and some One Network stations to form the Capital network. In advance of this (between 2008 and 2011), Global invested in ensuring that Galaxy delivered high-quality programming that was relevant and tailored to its young core demographic; and - upon rebranding - in a high-profile marketing campaign including city-specific television advertisements promoting the rebranded Capital stations.[22] As a result, the

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[18] See Annex 16 of Global's response to the Initial Factual Information Request for marketing materials relating to this campaign.

[19] Rajar, Q2 2008 - Q1 2012.

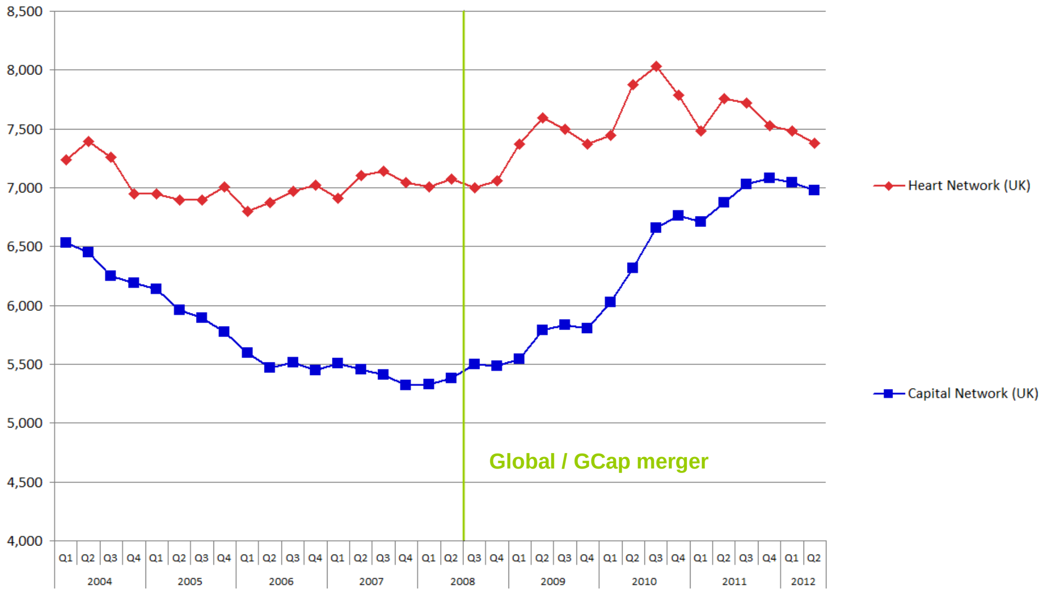
[20] See Annex 16 of Global's response to the Initial Factual Information Request for marketing materials relating to this campaign.

[21] Rajar, Q2 2008 - Q1 2012.

[22] See Annex 16 of Global's response to the Initial Factual Information Request for marketing materials relating to this campaign.

stations comprising the rebranded Capital network (excluding London) have attracted an extra 1m listeners since the GCap acquisition.[23]

Figure 3.2
Total reach on Heart and Capital networks
Q1 2004 - Q2 2012



Source: *Rajar.*

Note: [1] Chart shows all stations currently comprising the Heart and Capital networks (therefore includes existing Heart stations acquired from Chrysalis and Capital London, together with GCap and Chrysalis stations rebranded to Heart and Capital).

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23 Rajar, Q2 2008 - Q1 2012.

C. Global intends to [✂]

3.10 [✂]:

(i) A better range of stations - Global will be able to offer radio listeners an improved range of differentiated stations appealing to distinct audiences, namely:

(a) [✂];

(b) [✂];

(c) [✂]

(d) [✂].

(ii) Better content - Through Global's "national brands delivered locally" strategy, listeners [✂] will benefit from better quality programming [✂] and an improved radio experience including better station "sounds" (e.g. better jingles and positioning messages). [✂].

(iii) Better presentation - Listeners of [✂].

(iv) Better production - The [✂] stations will benefit from access to Global's superior systems and infrastructure, including high-quality studios and studio equipment, better audio playout systems, extensive engineering and programming skills and resources, central information technology facilities, central online and mobile products teams and central events teams.

(v) [✂]

(vi) Better geographical reach - [✂].

D. Global's strategy has resulted in increased benefits to advertisers [✄]

3.11 The improvements made to Global's stations after the GCap acquisition also delivered extensive benefits to advertisers. Advertisers benefited from:

(i) a larger audience and the opportunity to be associated with successful and growing radio brands;

(ii) a much simpler purchasing process - prior to the GCap merger, advertisers were frequently discouraged by how complicated it could be to plan regional or multi-regional campaigns on radio. Advertisers wishing to reach audiences across more than one city or town typically had to use a mix of several distinct radio stations, often belonging to different groups (and each separately branded and targeting a different demographic) to place one campaign - this complexity drove advertisers to advertise on non-radio media instead. By contrast, advertisers can now reach different clearly defined audiences by purchasing locally, regionally or nationally on Global's complementary networks; and

(iii) a clear understanding of what they were purchasing (high quality, coherent and recognisable brands) and a clearer more defined target demographic - prior to the Heart rebranding, the One Network comprised over 40 different local stations with inconsistent programming, quality, branding and demographics - advertisers did not, therefore, know what they were buying or who it would reach.

3.12 As a result, Global has been able to compete more effectively with other media for share of advertisers' budgets. [✄].

3.13 [✄].

3.14 [✄].

3.15 [✄].

Figure 3.3
[✄]

Source:[✄]

Note: [1] [✄]

Figure 3.4
[✄]

Source:[✄].

Note: [1] [✄].

3.16 [✄].

Figure 3.5
[✄]

Source:[✄]

3.17 Moreover, Global's success in turning round the GCap business is widely recognised as contributing to the improvement in radio advertising revenues in the UK. Although the UK radio sector was in serious decline before the GCap deal, its revenues have now stabilised and are beginning to grow. Ofcom has explained that the increase in national commercial radio revenues (which rose by 4.5% year-on-year in 2010) was "*generated for the most part by local radio stations*" and that "*this may be explained by larger radio groups selling more national advertising across their local stations portfolio*."[24]

3.18 Similarly, Mintel reported that "*after a period of decline, local/regional radio listening recovered in 2010, mainly due to an improved performance from the commercial sector arising from stronger nationwide branding*". In particular, it has stated that a key reason for "*the local commercial radio industry […] enjoy[ing] something of a renaissance during 2010*" is "the *stronger branding which has arisen from the creation of networks of local stations under one name, such as Heart FM*."[25]

3.19 As a result, Global has won the "Sales Team of the Year" award for three years running at the Media Week Awards (2010, 2011 and 2012). In awarding Global with the prize in 2010, Media Week credited Global "*with doing nothing less than changing agencies' perceptions of radio*" and "*set[ting] the agenda in terms of engaging with clients, producing outstanding creative, launching new products, increasing audiences and producing effective advertising solutions.*"[26]

3.20 This merger will also further enhance radio's credibility as an advertising medium; and thus strengthen Global's efforts in revitalising commercial radio in the UK. In doing so, it will enable Global's radio stations to compete more effectively with other media (in particular emerging media types and national media platforms), whilst other traditional media continue to decline.

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[24] Ofcom Communications Market Report 2011, 3.1.2.

[25] Mintel Regional Media Report, February 2011 p.39.

[26] http://www.mediaweek.co.uk/news/comment/the+buzz/1037969/ZenithOptimedia-wins-Agency-Year-2010/

E. Global aims to offer [✂]

3.21 Global's proposed strategy post-RSL merger is designed to deliver significant benefits for advertisers:

(i) [✂].

(ii) [✂]

(iii) [✂].

3.22 Global's objective is to increase the attractiveness of [✂] to advertisers and as a result to attract incremental advertising revenues after the RSL merger [✂].

4. EFFICIENCIES

The RSL merger will deliver timely rivalry-enhancing efficiencies which would not arise absent the merger

4.1 The merger will enhance rivalry between:

(i) Global, the BBC, Bauer and other media (particularly music television channels and fast-growing online operators such as Spotify, Vevo, and YouTube) for listeners, [✂]. This forms part of Global's wider strategy to ensure that its brands compete effectively against a wide range of media for share of the consumer's day, which also includes Global's recent launch of two new TV music stations, Heart TV and Capital TV; and

(ii) Global and other media for share of advertisers' budgets, [✂].

4.2 According to the CC's Merger Assessment Guidelines (the "**Guidelines**"), efficiency gains from a merger can be taken into account by the CC in its assessment of whether a merger results in an SLC.[27] The Guidelines provide 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 following criteria will be met:*

(i) the efficiencies must be timely, likely and sufficient to prevent an SLC from arising (having regard to the effect on rivalry that would otherwise result from the merger); and

(ii) the efficiencies must be merger specific, i.e. a direct consequence of the merger, judged relative to what would happen without it."

4.3 As required by the Guidelines, the efficiencies arising from the merger will:

(i) be timely - [✂];

(ii) be likely - [✂];

(iii) sufficiently outweigh any plausible competition detriment - any possible loss of competition will be immaterial as Global competes in a wider media market in which radio is a very small player. The claimed efficiencies will therefore in fact strengthen radio as an advertising medium; and

(iv) result as a direct consequence of the merger - these benefits are merger specific in that they cannot be achieved without the RSL acquisition.

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[27] Paragraph 5.7, CC's Merger Assessment Guidelines.

A. Enhanced rivalry for listeners

4.4 As recognised by the OFT in *Global / GCap*, "*[t]o the extent that rivals such as Bauer […] and - critically for audience, albeit not for advertising, the BBC - wish to win those customers back, or win new customers in competition with Global, they too will have to respond competitively, having considered ways to improve the attractiveness of their programming, and improve their value for money to advertisers. Accordingly, such efficiencies ought to make rivals try harder to become more efficient and valuable to customers*."[28]

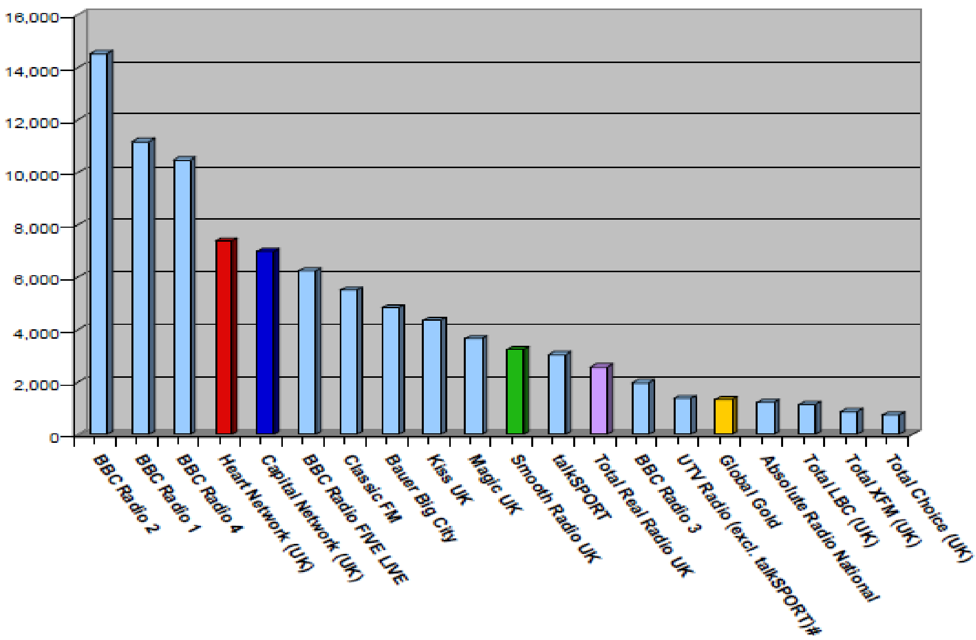
Increased rivalry for listeners with the BBC

4.5 The benefits for listeners arising from the GCap merger have resulted in particular in Global being able to compete more effectively with the BBC for young listeners nationally (Capital's strategy is to compete head-to-head with the BBC's Radio 1) and for adults aged 25 to 44 in the South of England (Heart's strategy is to compete head-to-head with the BBC's Radio 2, the UK's largest radio station). [✂]. This merger will spur the BBC to even greater efforts to compete for audience with Global.

(i) [✂]

(ii) [✂].

Figure 4.1
Reach on BBC and commercial radio stations - pre-RSL merger



Source: Rajar Q2 2012.

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[28] See paragraph 22 of the OFT's decision in *Global / GCap*.

Note: [1] [✄]

Figure 4.2
[✄]

Source:[✄]

Note: [1] [✄]

4.6 [✄].

Table 4.1
[✄]

Source:[✄]

4.7 As recognised by the OFT in *Global / GCap*,[29] when radio stations are independently owned and competing, they commonly target the "median listener", i.e. they offer a general entertainment profile to appeal to as many listeners as possible. By contrast, as evidenced by Global's strategy post-GCap, when a set of stations has one owner, this owner has the incentive to differentiate each of its stations to target more specific audiences to attract more listeners to its network as a whole.

4.8 Single ownership of several radio stations is therefore likely to increase the range of stations appealing to different tastes in a given area. These efficiencies were recognised in the context of the abolition of the local radio and cross-media ownership rules in 2011. As noted during related parliamentary debates:

"If you are one owner with four stations it is in your own interest to make those stations different from each other as do the BBC with Radio 1, Radio 2, Radio 3, Radio 4 and Radio 5 and so on. At the moment, four separate owners all chase the same market and duplicate themselves. One owner would serve four markets, so already there is a gain to the public good."[30]

4.9 The OFT recognised in *Global / GCap* that:

"*A further demand-side merger efficiency in a two-sided market such as radio can occur as a result of post-merger product or brand repositioning. The basic proposition is that by changing radio stations' format and/or programming post-merger in a way that benefits listeners (that is by greater demographic specialisation by individual radio stations), combined radio stations can achieve a larger and more focussed total audience. The resulting airtime is therefore more valuable to advertisers seeking to reach a large, focussed demographic. This is also known as an indirect network effect or externality. Economic theory supports this argument, and this theory has been*

[29] See OFT's decision in *Global / GCap*, paragraphs 165, 173, 174.

[30] Lord Gordon of Strathblane, 9 June 2011, Hansard.

validated by empirical evidence specifically in relation to the radio broadcasting sector, albeit in a different jurisdiction. This suffices to rule any out concerns that such claims should in principle be dismissed as not being recognizable as such claims should in principle be dismissed as not being recognizable as efficiency claims."[31]

4.10 The OFT further acknowledged that:

"*these demand-side brand re-positioning efficiencies would not be possible absent the merger because, absent the merger, there is an incentive on both parties (separately) to seek to capture as much as demographic space as possible, effectively "chasing the middle ground". […] As a result, it is only upon the bringing of the different stations under common ownership that it would be rational for the owner of those stations commercially to take the decision to differentiate the stations further in terms of demographic space. This claim gains weight, because it is consistent with the U.S. evidence on product repositioning of radio stations format that occurred after a wave of mergers following U.S. deregulation of ownership restrictions, but not before it.*"[32]

4.11 Global will therefore have increased incentives to invest in [✂]. The strengthening of Global's brands will intensify the direct, day-to-day rivalry with the BBC [✂].

Increased rivalry for listeners with the BBC in Wales

4.12 The acquisition of RSL will in particular intensify rivalry with the BBC for listeners in Wales [✂]:

(i) [✂].

(ii) [✂].

4.13 [✂]:

(i) [✂].

(ii) [✂].

(iii) [✂].

4.14 [✂].

4.15 The changes agreed in September 2012 (in the context of the intervention by the Secretary of State for Culture, Media and Sport into the merger) will create for the first

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[31] See OFT's decision in *Global / GCap*, paragraph 165.

[32] See OFT's decision in *Global / GCap*, paragraphs 173-174.

time a fully-fledged dedicated commercial radio news desk for Wales if the RSL and Global brands are fully merged in Wales.

4.16 In particular, after the merger of the Welsh businesses of Global and RSL, Global will:

(i) appoint a Welsh political editor who will be principally based at the Welsh Assembly;

(ii) introduce a new 20 minute evening news programme on Heart (currently Real)[33] entitled "The Way It Is In Wales" every weeknight at 18:40, which will provide in-depth coverage and analysis of the main news stories across the Welsh nation;

(iii) appoint a dedicated news editor for Heart (currently Real)[34] who will have editorial responsibility for all news output (currently there is no dedicated news editor at RSL for Wales);

(iv) broadcast hourly national Welsh news bulletins from the Welsh capital from 06:00 to 00:00 on weekdays on Heart (currently Real),[35] with a service of editorially distinct bulletins for Wales (rather than the UK-wide IRN service) from 01:00 to 05:00 from Global's London newsroom (currently, bulletins between 20:00 and 00:00 are produced in Scotland and UK-wide bulletins produced by Sky News in London are broadcast between 01:00 and 05:00); and

(v) make the dedicated Welsh content from the news desk available to Community radio stations across Wales.

4.17 RSL has requested and been granted amendments to its licences to reflect and enshrine most elements of this enhanced news service. These will only take effect if the merger is cleared on terms which allow Global to retain both parties' licences in Wales.[36]

Increased rivalry for listeners with Bauer

4.18 [✂].

4.19 Bauer will need to respond with quality improvements in order to maintain its listening share in these markets (so as to avoid losing listeners and, in consequence, advertiser revenues).

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[33] The licence changes relate to the current Real licences.

[34] The licence changes relate to the current Real licences.

[35] The licence changes relate to the current Real licences.

[36] See format change request approval at: http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/formats/Real_Wales_South_Wales.pdf

4.20 Moreover, the merger will enable Global's stations to compete more effectively with other media platforms such as Spotify, television music stations and online video platforms for audience. [✂].

B. Enhanced rivalry for advertisers

4.21 [✂].

4.22 [✂].

4.23 [✂].

(i) <u>Sponsorship and promotion</u>

4.24 Global's plans will also enhance rivalry for S&P business.

4.25 [✂].

4.26 [✂].

4.27 Moreover, as a result of RSL's [✂], RSL [✂] - its revenues from S&P bookings to large London agencies were only £[✂] in the last financial year (and its total number of clients only [✂]) (by comparison, Global's London based sales team generated revenues of £[✂] from the sale of S&P solutions to London agencies). [✂].

C. Cost efficiencies

4.28 Finally, Global’s financial model for the integration of the Global and RSL businesses envisages almost £[✂] of annual cost savings in synergies, namely:

(i) [✂];

(ii) [✂];

(iii) [✂];

(iv) [✂];

(v) [✂];

(vi) [✂];

(vii) [✂];

(viii) [✂]

(ix) [✂].

4.29 Despite the OFT noting in its decision in *Global / GCap* that the OFT's Substantive Assessment Guidance for mergers “*makes clear, supply-side rivalry-enhancing efficiencies […] are more likely to be taken into account where they impact on marginal or variable costs, as such cost savings tend to stimulate competition and are likely to be passed more directly on to customers in terms of lower prices (because of their importance in short-run price setting behaviour)”*[37], the OFT accepted that the fixed cost savings in London identified by Global would be used to help fund the repositioning of its stations post-merger, thus reinforcing the demand-side rivalry-enhancing efficiencies recognised in that decision.[38]

4.30 The above savings will therefore contribute to creating a more profitable business that can invest in [✂].

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[37] This reflects the statement in the CC’s Guidance - see Paragraph 5.7.9, Competition Commission’s Merger Assessment Guidelines.

[38] See paragraph 184 of the OFT’s decision in *Global / GCap*.

5. MARKET DEFINITION

A. Market for listeners

5.1 OFT conclusion: The OFT stated in its decision that "*no merger-specific evidence was provided in this case to show the extent or strength*" of the indirect constraint exerted by the BBC on the supply of commercial advertising, which would justify the BBC's inclusion in the product market, and how it should be included (36).

5.2 Rebuttal key points: Global competes directly and on a daily basis with the BBC for listeners. This rivalry has a direct impact on commercial revenues - the larger the audience of a radio station, the more valuable its advertising slots become. When commercial radio stations lose listeners, they lose revenue:

(i) The BBC has a higher share of listening, nationally and in most regions, than the whole of commercial radio. The BBC's share of listening is 55% nationally; Global and RSL will have a combined share, post-merger, of just 20% nationally.

(ii) The BBC is a formidable competitor. Its licence fee funding has enabled it to increase investment in radio while commercial radio revenues have declined.

5.3 Radio is a two sided market - commercial radio stations compete for listeners with the BBC and other media on one side of the market. On the other side of the market they compete with other media to sell airtime and S&P solutions to advertisers to generate revenues.

5.4 The two sides of the market are related. Without listeners, radio stations have nothing to sell to advertisers. The OFT in its reference decision did not quite reflect the two sided nature of the market. The OFT's decision in *Global / GCap* shows a better understanding of the way in which Global competes with the BBC - advertisers follow listeners:[39]

> *"Fundamental to the success of a commercial radio station is its ability to attract listeners. Radio stations compete for audience (i) by developing and promoting a recognisable and attractive station brand and (ii) by broadcasting programmes according to the targeted demographics in the relevant geographic area. The better the quality of the programmes and the offer made to the audience as a whole, the more attractive it becomes for advertisers seeking to reach them."*

5.5 The relationship between listener numbers and competition for advertisers is direct. The majority of radio advertising is bought and sold on the basis of the cost per thousand impacts (or "**CPT**"). The higher the number of listeners, the more valuable the slot becomes as the impacts of each slot increase.

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[39] Completed acquisition by Global Radio UK Limited of GCap Media plc, ME36/38/08, paragraph 22.

5.6 Within the radio sector, the BBC is a key competitor for all commercial radio stations in the battle for listeners. Rivalry with the BBC is a key feature of Global's business - the constant competitive struggle for listeners with the BBC is an ongoing incentive to invest in the quality of programming. Global's strategy is for its key stations to compete directly with the BBC's core stations:

(i) Capital competes head to head with Radio 1;

(ii) Heart competes head to head with Radio 2; and

(iii) Classic FM competes head to head with Radio 3.

5.7 The BBC has a higher share of listening than all commercial radio stations combined, not only nationally, but also in most of the local areas where RSL's and Global's stations overlap, as evidenced in the table below. The only exceptions are the North East and Scotland where the BBC's share of listening is still substantially larger than that of Global and RSL combined. The BBC is particularly strong in Wales.

Table 5.1
Share of listening: BBC, all commercial radio and merged entity[1]

	BBC	Commercial radio	Global + RSL
UK	55%	42%	20%
London	50%	47%	25%
West Midlands	52%	45%	23%
East Midlands	59%	37%	20%
North East	49%	51%	25%
North West	56%	42%	19%
Yorkshire	57%	43%	16%
Scotland	44%	55%	22%
Wales	61%	38%	19%

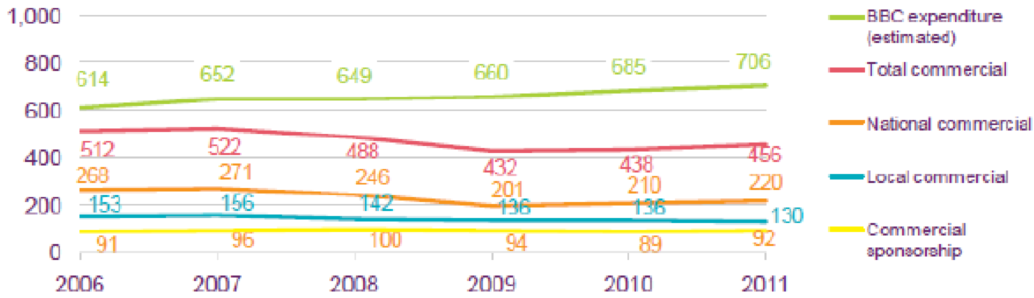
Source: RAJAR, Q1, 2012.

Note: [1] Share of listening is the proportion of total listening hours that a station achieves as compared to total listening hours of all stations.

5.8 Commercial radio stations do not compete with the BBC on an equal footing: the BBC is funded by the licence fee while commercial radio must fund activities through the sale of advertising, which generally detracts listeners.

5.9 Commercial radio revenues have generally fallen over the last 5 years, while the BBC's expenditure on radio has generally increased year on year, as shown in Figure 5.1 below.

Figure 5.1
UK commercial radio revenue and BBC radio spending (by £m)



Source: Ofcom / operator data / BBC Annual Report 2006-2011.[40]

5.10 The programming spend for the year ended 31 March 2012 at BBC Radio 1 was £38.4m, at BBC Radio 2 was £47.2m and at BBC Radio 3 was £37.8m.[41] By comparison, Global's budgeted programming costs for the year ending March 2013 are £[✂] at Capital, £[✂] at Heart and £[✂] at Classic FM. Even if Global were to add all of its 2012 EBITDA to its budgeted expenditure on content of £[✂] (which is not commercially feasible), giving a total of £[✂], it would still spend £[✂] less on content than just three of the BBC's radio stations. The BBC spent a further £351.5m on programming on all of its other radio stations in the year ended 31 March 2012, bringing its total spend on radio programming to £474.9m (more than [✂] times Global's 2012 EBITDA and nearly [✂] times Global's 2012 revenues).

5.11 Furthermore, the BBC has recently launched a digital app., for use on Android and iPhone, for which they have a staff of more than 100 people ([✂]); and the BBC is the only player with a national DAB multiplex for its national stations, allowing it, for example, to create a new service, Radio 5 Extra during the Olympics, which attracted 1.7m listeners.

5.12 Thus, the BBC is a formidable competitor to Global. Indeed, it is precisely because of this that Global's strategy for listeners is largely designed to compete with the BBC.

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[40] BBC expenditure figures are estimated by Ofcom based on figures in Note 2c of the BBC Annual Report. The figure is taken from the Ofcom Communications Market Report dated 18 July 2012.

[41] BBC full financial statements 2011/12, p F27. Figures include expenditure on content but exclude expenditure on distribution and infrastructure/support and also exclude online expenditure.

B. Market For Advertisers

5.13 OFT conclusion: "*the OFT has not been provided with sufficient evidence to suggest that alternative media should be included in the product market*" (39, 40).

5.14 Rebuttal key points: Global competes directly with other media, as evidenced by the following:

(i) **The lost opportunities survey.**[42] This is a survey of non-contracted customers in the five regions where there are the most significant overlaps between RSL and Global's stations (London, the East Midlands, the West Midlands, Wales and the North East). This survey is based on a sample of over 1900 customers contacted by YouGov[43] who actively considered advertising on Global for a particular campaign but ultimately decided to decline Global's offer. The survey responses provide insights into the media choices these advertisers actually made instead. The survey demonstrates that Global's principal competitors are other media and in particular local press and not other radio stations;

(ii) **The existing customers survey.**[44] This is a survey of customers in the same five regions as above who recently advertised on a Global or RSL station. It seeks to explore how these customers' advertising choices would have changed had their chosen radio station not been available. This survey, which involved YouGov contacting over 1700 customers,[45] demonstrates that customers would have chosen other media including local press as often as, if not more often than, other radio stations; and in any event would have chosen RSL stations in only 5% of cases;

(iii) **An analysis of RSL's entry into North Wales in 2011 and its impact on Global's Heart station in the same area** [✂];

(iv) **An analysis of NMR media expenditure data.**[46] This shows that the advertisers who have ceased to advertise on Global or RSL's stations have in subsequent years used other media (in particular local press) to a greater extent than other radio stations; and

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[42] See Annex 1.

[43] From which 488 completed interviews were achieved.

[44] See Annex 2.

[45] From which 388 completed interviews were achieved.

[46] See Annex 4, pp 5-8.

(v) **The internal marketing documents of both Global and RSL.**[47] These provide evidence that both businesses seek to find new customers for their radio stations by targeting principally users of other media.

(vi) Global has recently launched Heart TV and Capital TV to compete for audience and commercial advertising directly with other music TV stations. Not only do Global's radio stations compete with TV stations for advertising but their sister TV stations also now compete for audience directly with other TV stations.

5.15 The focus in this section is on non-contracted advertisers. [✄], the conclusions reached as to the choices available to non-contracted customers apply equally to contracted customers.

5.16 Global develops each of these points in turn in the sections below.

[47] See "Overview of Global Radio's non-contracted commercial strategies and internal documents evidencing key promotional initiatives" and "Overview of RSL's non-contracted commercial strategy and internal documents" provided as part of Global and RSL's responses to the questions contained in the Initial Factual Information Request.

(i) Lost opportunities survey

5.17 Global commissioned YouGov to conduct a survey focused on customers in Global's "lost opportunities" database in the five principal areas where RSL and Global's radio stations overlap.[48] The lost opportunities database consists of advertisers that for a particular campaign actively considered advertising on Global's stations but eventually declined its campaign proposals.[49] The survey responses provide insights into the media choices these advertisers actually made instead. The results show that:

(i) A wide range of other media are seen by advertisers as meeting the same campaign objectives as radio - radio is not a must-have advertising option.[50] Respondents were asked what other types of media could be used to meet the same campaign objectives as radio, 75% of respondents indicated that those objectives could be met using local press; 68% indicated that those objectives could be met using social media; and 60% indicated that those objectives could be met using search engines. These results are illustrated by the following figure.

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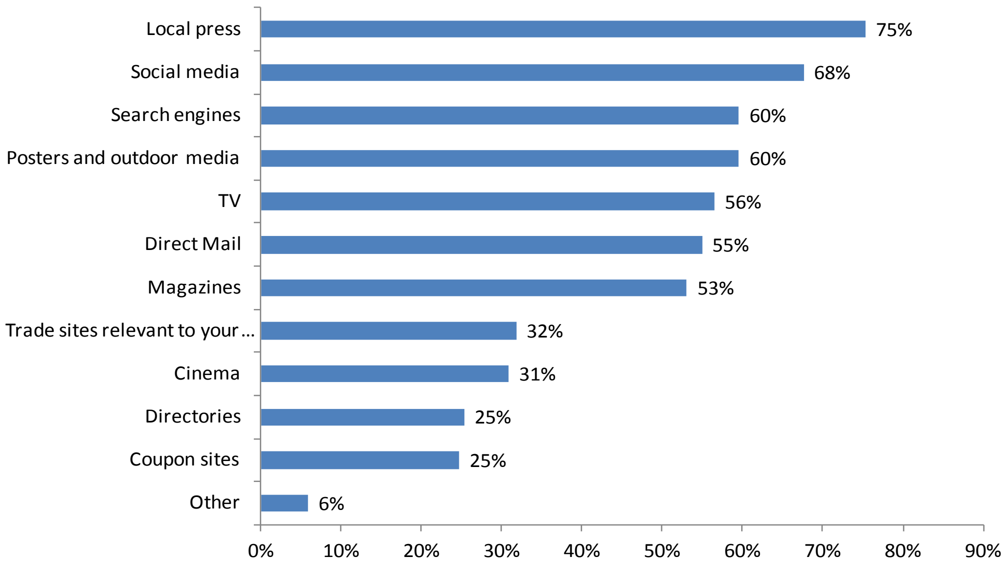
[48] London, the East Midlands, the West Midlands, Wales and the North East.

[49] It should be noted that advertisers in the lost opportunities survey may have advertised on a Global station for a different campaign (or advertised on another operator's radio station). The lost opportunities survey finds that 52% of respondents used radio in 2011. Only 34% of respondents had not used radio in the last three years (Annex 1, p 2).

[50] See Annex 1, pp 2-3, p 14.

Figure 5.2
Q7: What other types of media could you use to meet the same campaign objectives as radio? [multiple responses allowed] (All regions)



Source: RBB analysis of Lost Opportunities Survey.

(ii) When advertisers who rejected Global's proposal for the campaign in question were asked what they **actually** chose instead of Global's stations, they largely chose to use a range of non-radio media.[51] As set out in the table below, over 70% of respondents indicated that they used non-radio media for some or all of the campaign (47% for local press alone) and only 29% indicated that they used other radio stations (only 12% used RSL).

[51] The following is derived from RBB's analysis of the lost opportunities survey. See Annex 1, pp 3-4, pp 14-17.

Table 5.2
The choices made by advertisers instead of using Global (by region) - all respondents[1]

	Non-radio media		Other Radio		# of respondents
	Total	Press	Total	RSL	
London	76%	39%	26%	6%	72
East Midlands	68%	46%	29%	10%	105
West Midlands	75%	42%	32%	10%	79
North East	69%	47%	40%	14%	96
South Wales	74%	46%	26%	18%	85
North Wales	82%	75%	18%	14%	51
Total	**73%**	**47%**	**29%**	**12%**	**488**

Source: Derived from RBB analysis of YouGov Lost Opportunities Survey.

Note: [1] Respondents could also choose don't know. The proportion of respondents that chose this category was, for London, 14%; for the East Midlands, 12%; for the West Midlands, 13%; for the North East, 13%; for South Wales, 14%; and, for North Wales, 6%.

(iii) Cost is an important factor when determining which media to use and a significant proportion of customers are sensitive to changes in the price of campaigns, suggesting that price competition from other media is likely to play an important role.[52] When asked how important cost was in determining which media to use, 63% of respondents indicated that cost was very important in determining whether to use radio. When asked hypothetically if the campaign proposed by Global had been 10% cheaper (i.e. if it had offered the same slots with a discount of 10% off the quoted price) 50% of respondents indicated that they would be very likely or somewhat more likely to have accepted Global's offer. The results of the survey hold true for those advertisers that declined Global's proposals on the basis of price.

[52] See Annex 1, pp 4-6, pp 17-19.

(ii) Existing customers survey

5.18 The second YouGov survey Global commissioned was of "existing customers", that is, non-contracted advertisers that had recently advertised on a Global or RSL station. The aim was to explore how these customers' advertising choices would have changed had their chosen radio station not been available. The survey found that:[53]

(i) A large proportion of advertisers consider non-radio media as their next best alternative to the radio station they chose for their campaign.[54] As shown in the table below, 32% of respondents said that they would switch to non-radio media compared with 16% who said they would switch to another radio station. These results were consistent across the regions surveyed. It should be noted that Table 5.3 also shows that Global and RSL's stations are not close competitors. Only 5% of respondents indicated that they would switch to a station owned by the other merging party (i.e. Global or RSL). Moreover, 35% of respondents indicated that they would not have spent the money at all if the stations which they used had not been available. This suggests that, also for these advertisers, Global and RSL's stations are not close alternatives that can be used interchangeably for campaigns.

[53] See Annex 2.

[54] See Annex 2, pp 4-5, p11, pp 14-16.

Table 5.3
Headline results from YouGov Existing Customers Survey by region - Next best alternatives if parties' stations were not available[55]

	Non-radio media		Other Radio		I wouldn't have spent the money (i.e. reduce campaign spend)	# of respondents
	Total	Local Press	Total	Owned by other merging party		
London	35%	8%	19%	0%	27%	37
East Midlands	35%	6%	15%	6%	29%	55
West Midlands	23%	11%	19%	3%	36%	50
North East	36%	12%	19%	5%	34%	64
North Wales	29%	14%	11%	6%	42%	90
South Wales	34%	12%	18%	8%	33%	93
Total	**32%**	**11%**	**16%**	**5%**	**35%**	**389**

Source: RBB analysis of existing customers survey.

(ii) Consistent with the lost opportunities survey, the existing customers survey found customers to be sensitive to changes in price.[56] Specifically, a large majority of customers would switch to other media alternatives if the parties sought to worsen their competitive offer by a small but significant amount. 61% of respondents said that they would have switched the majority of their spend away if Global or RSL had been 10% more expensive, while 11% would have switched a proportion of their spend away and only 4% said they would have accommodated the price increase.[57]

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[55] In addition to the categories shown in the table, respondents could choose, within non-radio media, posters and outdoor, other specified media (cinema, coupon sites, direct mail, directories, magazines, search engines, social media, trade sites and television, and other (specified by respondent). Within radio, additional categories included "owned by current provider", "owned by third party" and "don't know which radio station". Respondents could also choose, "don't know what I would have done/which media I would have chosen". For further detail on this table, see Annex 2; the survey attempted to contact approximately 1700 advertisers and achieved a final sample size of 388.

[56] See Annex 2, p 6, p 11, p 17.

[57] The remainder said they would have purchased fewer, or cheaper, slots.

(iii) Event Study: Real's entry into North Wales

5.19 RBB examined the impact of the launch of Real in North Wales in January 2011 on Global's pricing and revenue data.[58] Real covers the North Wales Coast and Central Wales. Heart and Gold are broadcast in Wrexham and Chester, and Heart is also broadcast on the North Wales coast and in Anglesey. 77% of the new Real station's audience falls within the equivalent Heart coverage area. 57% of the Heart audience falls within the Real coverage area.[59] There are no other local commercial radio stations that cover this area.

5.20 The evidence indicates that Real's entry into the North Wales market did not affect Heart's commercial strategy and performance. [✂]. These results suggest Heart and Real are competing as closely, if not more closely, with other media than they are with each other despite being the only radio stations available to advertisers in North Wales and targeting a similar demographic.

Figure 5.3
[✂]

Source: ***[✂]***

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[58] See Annex 4, pp 10-14.

[59] See maps at Acquisition by Global Radio Limited of Real and Smooth Limited, main submission to the OFT, 31 July 2012, p 110-111.

(iv) Event Study: [✂]

5.21 RBB also undertook an event study in relation to London. RSL's Smooth and Global's LBC have a similar older demographic target audience [✂].[60]

5.22 [✂].[61]

5.23 [✂].

Figure 5.4
[✂]

Source [✂].

5.24 [✂].

Figure 5.5
[✂]

Source [✂]

[60] See Annex 4, pp 15-20.

[61] See the internal documents provided in response to the questions contained in the CC's letter of 11 October 2012, Annex 17A(i).037, 17(A)(i).038 and see further paragraphs 5.36, 6.4(iii) and 6.4(iv) below.

(v) Analysis of NMR data

5.25 RBB conducted an analysis of NMR data for non-contracted advertisers who leave Global's and RSL's stations.[62] "Leavers" were defined as advertisers that, according to the NMR data, used Global or RSL in FY 2009 but did not do so in FY 2010 or FY 2011. The analysis considered the proportion of leavers that advertised on the other party's stations, third party radio stations and other media during FY 2009, FY 2010 and FY 2011. The "other media" captured in NMR data include local press, outdoor advertising, cinema and regional TV. However, NMR does not cover all media by advertisers (for example, online is excluded).

5.26 The NMR analysis showed a large proportion of customers ceased to use Global (or "churned" away). [✄].[63] An analysis of the media usage of those leavers shows that more advertised on non-radio media ([✄]) than other radio stations ([✄]%). This indicates that radio is not a must-have media for advertisers, and that other media are more often chosen by Global's lost customers. It should also be noted that, of those leavers that did use other radio stations, only a small proportion - on average, [✄]% - used RSL. The results are summarised in the table below.

Table 5.4
[✄]

Source: [✄].

Note: [1] [✄].

5.27 The results for the analysis of RSL's leavers are consistent. [✄]. On average, [✄]% of RSL leavers used other media during the three-year period considered ([✄]), compared with [✄]% using other radio stations (of which, [✄]% used Global).

Table 5.5
[✄]

Source [✄]

[62] The following is derived from RBB's analysis of Global and RSL NMR data. See Annex 4, pp 5-8.

[63] See also above at paragraph 5.34.

(vi) The parties' internal documents

5.28 Both Global and RSL target non-radio advertisers in their day to day business. This is clearly demonstrated by analysing Global and RSL's internal documents relating to the principal area of competitive overlap between the parties' businesses, namely non-contracted business.

5.29 Both Global and RSL face a challenge that is common to the whole radio sector: [✂] non-contracted customers (accounting for some [✂]% of their annual non-contracted revenue) cease to advertise again on their stations (respectively) in the following year. As a result of this high churn rate, both businesses are very focused on obtaining new customers.

5.30 [✂].[64]

5.31 [✂].[65]

5.32 Global and RSL cannot rely on repeat business to maintain, let alone grow, revenues but must instead compete vigorously to win new customers to replace those that leave.[66]

5.33 Both Global and RSL have therefore separately (but both with [✂] assistance) developed commercial strategies to address the problem of high churn by identifying new customers that advertise on media other than radio. [✂].

Global's Internal Documents Evidencing Competition With Other Media

5.34 [✂].

5.35 [✂]:

(i) [✂][67]:

(a) [✂];

(b) [✂];

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[64] See [✂] attached at Annex 15A(i).001 to Global's response to the Initial Factual Information Request.

[65] See [✂] in Annex 15B.001 to RSL's response to the Initial Factual Information Request.

[66] See further *Overview of RSL's non-contracted commercial strategy and internal documents* provided as part of RSL's response to the questions contained in the Initial Factual Information Request, together with the internal documents submitted by RSL contained in Annexes 15B and 17B to RSL's response to the Initial Factual Information Request.

[67] See the [✂] Recommendations at Annex 15A(i).034 and 15A(i).035 to Global's response to the Initial Factual Information Request.

(c) [✂];

(d) [✂]

(e) [✂].

(ii) [✂]:

(a) [✂]

(b) [✂].

(c) [✂].

5.36 [✂].[68]

5.37 [✂]:

(i) [✂];[69]

(ii) [✂]

(iii) [✂][70]

5.38 [✂]:

(i) [✂].[71]

(ii) [✂]”[72]

5.39 [✂].

RSL’s Internal Documents Evidencing Competition With Other Media

5.40 [✂][73]

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[68] See Annex 17A(i).038 of Global’s response to Global’s response to the Initial Factual Information Request..

[69] See Annex 15A(ii).004 of Global’s response to the Initial Factual Information Request.

[70] See Annex 15A(ii).004 of Global’s response to the Initial Factual Information Request.

[71] See further [✂] provided as part of Global’s response to the Initial Factual Information Request.

[72] See Annexes15A(ii).004, and 17A(i).050 to 17A(i).055 (inclusive), of Global’s response to the Initial Factual Information Request.

[73] [✂].

5.41 [✂]:

Figure 5.6
[✂]

Source: [✂].

5.42 [✂].[74]

5.43 [✂]:[75]

(i) [✂].[76]

(ii) [✂].[77]

5.44 [✂].

5.45 [✂].

5.46 [✂].

5.47 [✂].

5.48 [✂].

5.49 [✂].

[74] [✂].

[75] [✂].

[76] [✂].

[77] [✂].

C. Geographic market

5.50 OFT conclusion: The OFT was not "*provided with any evidence in this case which supports an alternative geographic market" to that submitted by Global, which is that "competition between suppliers of commercial radio advertising occurs on a national, regional and local basis*" (47, 49).

5.51 Comment: Global endorses the view that non-contracted business is conducted at the local or regional level, and tends to be purchased on a campaign by campaign basis and negotiated directly with one station on which the campaign will be broadcast. Conversely, contracted business is conducted by media agencies at the national level, by way of an annual contract with a radio group covering all of the group's stations.

6. NON-CONTRACTED ADVERTISING

6.1 OFT conclusion: The OFT identified four specific areas in which it believed that it is or may be the case that the transaction has resulted, or may be expected to result, in an SLC in the supply of non-contracted commercial advertising: North Wales, East Midlands, South Yorkshire and Cardiff. It also considered that the transaction may raise unilateral effects in the supply of non-contracted radio advertising in a number of additional regions and local areas, including the West Midlands, the North West, Yorkshire, the North East, central Scotland, Glasgow, South Wales and London, but did not find it necessary to reach a conclusion.

6.2 Rebuttal key points: In this section we explain why the merger will not give rise to an SLC in any non-contracted regional advertising market.

(i) There is clear evidence that the parties compete for advertising revenues in a media market that is wider than radio-only.

(ii) Even if a narrow radio-only market were considered, the parties are not each other's closest competitor in any region.

A. London[78]

6.3 OFT conclusion: "*The OFT… considers that the merger may raise unilateral effects in the supply of non-contracted radio advertising in… London*"(86).

6.4 Rebuttal: Global competes with other media in London:

(i) The lost opportunities survey found that after declining the campaign proposal put forward by Global, 39% of advertisers surveyed in London turned instead to local press for the campaign (29% turned to magazines, 38% to search engines, 36% to social media and 31% to outdoor) while only 26% turned to other radio stations.[79]

(ii) The existing customers survey found that when Global or RSL customers were asked what media they would use if their chosen station were not available, only a minority indicated that they would choose another radio station (19%) - a greater number of customers indicated that they would choose other non-radio media (35%).[80]

(iii) [✄].[81]

(iv) The RBB analysis of NMR data for customers that left Global and RSL shows a large proportion of non-contracted advertisers churned away from the parties' London stations - [✄]% for Global, [✄]% for RSL. Of these, the proportion that advertised using non-radio media was [✄]% for Global [✄]) and [✄]% for RSL ([✄]).[82] The proportion using other radio stations was significantly less ([✄]% for Global, [✄]% for RSL).

6.5 Even within the radio segment, the parties are not close competitors in London:

(i) RSL is very small in London. Its station, Smooth, accounts for just [✄]% of total non-contracted airtime revenue and targets a much older audience than Global's core London stations Capital and Heart. Global's closest radio competitors (in terms of target audience) are Bauer and Absolute.[83] Bauer (with its stations Magic and Kiss) and Absolute are also much stronger competitors in

[78] See also OFT Submission, p41ff.

[79] See Annex 1, p 17.

[80] See further Annex 2, p 5.

[81] See internal documents provided to the CC as part of Global's response to the questions contained in the Initial Factual Information Request, Annex 17A(i).037 and Annex 17 A(i).038; see further paragraph 5.36.

[82] Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

[83] See brand map at OFT Submission, p 45.

London than RSL with [✂]% and [✂]% of all non-contracted airtime revenues in London respectively.[84]

(ii) In London, RSL's Smooth has a similar demographic profile to Global's LBC. [✂].

(iii) In the existing customers survey, no London customers indicated that the other party's stations would be the next best alternative if the chosen station were not available.[85]

(iv) Based on RBB's NMR analysis, of the non-contracted customers that left Global, only [✂]% used RSL out of a total of [✂]% that used other radio stations. For RSL, [✂]% used Global out of a total of [✂]% that used other radio stations.[86]

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[84] OFT Submission, p 44.

[85] Note that, given the small number of respondents who identified any other radio as a credible alternative, the sample size for this question is small. See further Annex 2, p 5.

[86] Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

B. East Midlands[87]

6.6 OFT concern: "*on the basis of the evidence available to it, the OFT believes that it is or may be the case that the merger has resulted, or may be expected to result, in a substantial lessening of competition in the supply of non-contracted radio advertising in the East Midlands"* (72).

(i) Global's estimates of its combined share of advertising revenue, taken separately, "*are of a level to give rise to prima facie competition concerns resulting from the merge'*" (68).

(ii) *"On the basis of listening data, Global and GMG Radio account for 72% of commercial listening hours… Furthermore, the transaction has brought under common ownership the two largest local commercial stations by share of listening hours"* (69).

6.7 Rebuttal: Global competes with other media in the East Midlands.

(i) The lost opportunities survey found that after declining the campaign proposal put forward by Global, 46% of advertisers surveyed in the East Midlands turned instead to local press for the campaign (28% turned to magazines, 27% to search engines, 31% to social media and 31% to outdoor) compared with 29% to other radio stations.[88]

(ii) The existing customers survey found that when Global or RSL customers were asked what media they would use if their chosen station were not available, only a minority indicated that they would choose another radio station (15%) - a greater number of customers indicated that they would choose other non-radio media (35%).[89]

(iii) The RBB analysis of NMR data for customers that left Global and RSL shows that a large proportion of non-contracted advertisers churned away from the parties' East Midlands stations - [✂]% for Global, [✂]% for RSL. Of these, the proportion that advertised using non-radio media was [✂]% for Global ([✂]) and [✂]% for RSL ([✂]).[90] The proportion using other radio stations was significantly less ([✂] for Global, [✂]% for RSL).

6.8 Even within the radio segment, the parties are not close competitors in the East Midlands.

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87 See further OFT Submission, p58ff.

88 See Annex 1, p 17.

89 See Annex 2, p 5.

90 Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

(i) The parties' stations have different geographic targets. In the East Midlands, Global's Capital has three TSAs that can be sold separately from one another, allowing advertisers to target customers in particular local areas. As shown in the Ofcom maps in Annex 5, these cover the Nottingham area (see Map A), Leicester (see Map B) and Derby and Derbyshire (see Map C). [✂], Smooth is a full regional station which broadcasts across the whole of the East Midlands (including Nottingham, Derby and Leicester, as shown in Map D). Smooth offers only regional coverage (with a coverage area that stretches further East).

(ii) In terms of target demographic Orion is a much closer competitor to the parties than they are to each other[91] (Global's Capital targets a young audience, whereas Smooth targets a much older audience). Orion will be a strong competitor to the merged entity, with a share of non-contracted airtime revenues of approximately [✂]% compared to the merged entity's [✂]%.

(iii) [✂].

Figure 6.1
[✂]

Source: [✂]

(iv) In the existing customers survey, only 6% of East Midlands customers indicated that the other party's stations would be the next best alternative if the chosen one were not available.[92]

(v) Based on RBB's NMR analysis, of the non-contracted customers that left Global, [✂].[93]

[91] See brand map at OFT Submission, p 63.

[92] Note that, given the small number of respondents who identified any other radio as a credible alternative, the sample size for this question is small. See further Annex 2, p 5.

[93] Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

C. West Midlands[94]

6.9 OFT concern: "*The OFT… considers that the merger may raise unilateral effects in the supply of non-contracted radio advertising in… the West Midlands*" (86).

6.10 Rebuttal: Global competes with other media in the West Midlands.

(i) The lost opportunities survey found that after declining the campaign proposal put forward by Global, 42% of advertisers surveyed in the West Midlands turned instead to local press for the campaign (29% turned to magazines, 22% to search engines, 28% to social media and 30% to outdoor) while 32% turned to other radio stations.[95]

(ii) The existing customers survey found that when Global or RSL customers were asked what media they would use if their chosen station were not available, only a minority indicated that they would choose another radio station (19%) - a greater number of customers indicated that they would choose other non-radio media (23%).[96]

(iii) The RBB analysis of NMR data for customers that left Global and RSL shows that a large proportion of non-contracted advertisers churned away from the parties' West Midlands stations - [✂]% for Global and [✂]% for RSL. Of these, the proportion that advertised using non-radio media was [✂]% for Global ([✂]) and [✂]% for RSL ([✂]).[97] The proportion using other radio stations was significantly less ([✂]% for Global, [✂]% for RSL).

6.11 Even within the radio segment, the parties are not close competitors in the West Midlands.

(i) In relation to geographic targets, RSL's Smooth is a regional station covering the whole of the West Midlands and has a much wider geographic reach to Capital, which is limited to Birmingham.[98]

(ii) The parties' stations also have different demographic targets. Smooth targets an older demographic than either Global's Capital or Heart.[99]

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94 See OFT Submission, p47ff.

95 See Annex 1, p 17.

96 See further Annex 2, p 5.

97 Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

98 See further OFT Submission, pp 48-50.

99 See brand map shown in OFT Submission, p56.

(iii) [✄].

Figure 6.2
[✄]

[✄]

Source: [✄].

(iv) In terms of target audience Orion is a much closer competitor to Heart than Smooth.[100] Moreover, Orion will continue to hold the largest share of non-contracted airtime revenues post-merger, with [✄]% compared to the merged entity's [✄]%.

(v) In the existing customers survey, only 3% of West Midlands customers indicated that the other party's stations would be the next best alternative if the station chosen for the particular campaign were not available.[101]

(vi) Based on RBB's NMR analysis, of the non-contracted customers that left Global, [✄].[102]

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[100] See brand map at Acquisition by Global Radio Limited of Real and Smooth Limited, main submission to the OFT, 31 July 2012, p101ff.

[101] Note that, given the small number of respondents who identified any other radio as a credible alternative, the sample size for this question is small. See further Annex 2, p 5.

[102] Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

D. South Wales[103]

6.12 OFT conclusion: "*The OFT… considers that the merger may raise unilateral effects in the supply of non-contracted radio advertising in… South Wales*" (86).

6.13 OFT conclusion: "*The OFT believes that it is or may be the case that the merger has resulted, or may be expected to result, in a substantial lessening of competition in the supply of non-contracted commercial radio advertising in Cardiff*" (85).

(i) "*The transaction has the effect of reducing the total number of independent operators from four to three*" (79).

(ii) "*On the basis of geographic coverage alone, the merger parties are each other's closest competitor… in order to "buy-around" the merger parties, advertisers `would have to acquire advertising inventory on stations with significantly broader TSAs and therefore would likely suffer "wastage" outside the Cardiff area*" (80).

(iii) The merged entity's "*share of non-contracted radio advertising in Cardiff post-merger is [80-90]%, with an increment of [30-40]%. This is of a level which gives rise to strong prima facie competition concerns*" (81).

(iv) "*The merger parties are… each other's closest commercial competitor based on listening hours in Cardiff*" (82).

6.14 Rebuttal: Global competes with other media in South Wales.

(i) The lost opportunities survey found that after declining the campaign proposal put forward by Global, 46% of advertisers surveyed in South Wales turned instead to local press for the campaign (26% turned to magazines, 34% to search engines, 36% to social media and 27% to outdoor media) while 26% turned to other radio stations.[104]

(ii) The existing customers survey found that when Global or RSL customers were asked what media they would use if their chosen station were not available, only a minority indicated that they would choose another radio station (18%) - a greater number of customers indicated that they would choose other non-radio media (34%).[105]

(iii) The RBB analysis of NMR data for customers that left Global and RSL shows a large proportion of non-contracted advertisers churned away from the parties'

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[103] See further OFT Submission, p101ff.

[104] See Annex 1, p 17.

[105] See Annex 2, p 5.

South Wales stations - [✂]% for Global and [✂]% for RSL. Of these, the proportion that advertised using non-radio media was [✂]% for Global ([✂]) and [✂]% for RSL ([✂]).[106] The proportion using other radio stations was significantly less ([✂]% for Global, [✂]% for RSL).

(iv) Furthermore, local press represents a significant constraint in South Wales, and Cardiff in particular. In response to Ofcom's issues letter, Global produced a map showing the newspaper owners which are present in Global's Capital and Gold TSAs in South Wales (acting as a proxy for the parties' overlap area in South Wales in accordance with Ofcom's approach) ("**Cardiff TSA**").[107]

(a) In the Cardiff TSA, Global identified four newspaper owners, each of which is a major newspaper group - Daily Mail and General Trust, Newsquest, Tindle, and Trinity Mirror - owning between them at least 29 local newspapers. Additionally, Trinity Mirror owns 2 nations newspapers, Western Mail and Wales on Sunday, which are circulated throughout Wales.

(b) Of the newspapers identified in the Cardiff TSA and the North Wales TSA by Global (see paragraph 6.17(iv) below in respect of the North Wales TSA), the total readership in Wales is approximately 1,916,088.[108] In comparison, Global and RSL's combined reach in Wales is only 964,000.[109] Based on the available data, it has not been feasible to accurately calculate readership in the Cardiff TSA alone.

(c) Although all of these newspaper groups (and their newspaper titles) do not reach citizens across the entire overlap area in the Cardiff TSA, there are at least two newspapers owned by different newspaper groups in most areas within the Cardiff TSA, with the greatest coverage coming from Trinity Mirror and Newsquest.

(d) In its report, Ofcom concluded that after the merger "*there will continue to be a variety of other platforms, including …newspapers (between 1*

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[106] Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

[107] See the newspaper coverage map in Annex 7 which shows the area of coverage for newspaper titles owned by different newspaper groups in the parties' area of overlap in Cardiff.

[108] Based on the Adults figure (i.e. number of adults over the age of 15 who read the relevant newspaper title) provided by JICREG as at 1 April 2012. It should be noted that this total readership figure of newspapers in Wales is an estimate because (i) the list of newspapers identified by Global is not exhaustive; (ii) readership data is only available for 80% of all such newspapers; and (iii) a proportion of the readership of a small number of these newspapers will extend beyond Wales (e.g. Hereford, Shropshire and Cheshire newspapers).

[109] Based on RAJAR quarterly listening figures as at March 2012 of Capital South Wales, Gold South Wales, Heart North West and Wales, Gold North West and Wales, Real Radio Wales (North) and Real Radio Wales (South).

and 3 owners)" in the Cardiff TSA[110]. It follows that those same four newspaper groups will continue to compete with Global for advertising revenues after the merger in the Cardiff TSA.

6.15 The parties are not close competitors in South Wales.

(i) Capital and Real have different geographic and demographic targets, as Capital overlaps with less than half of Real's TSA, and targets a younger listener base.[111]

(ii) Although it is possible to purchase Real in South Wales on a split transmission basis, separately targeting West Wales (Swansea) and Cardiff, [✂].[112]

(iii) [✂].

Figure 6.3
[✂]

Source: [✂].

(iv) In the existing customers survey, only 8% of South Wales customers indicated that the other party's stations would be the next best alternative if the station chosen for the particular campaign were not available.[113]

(v) Based on RBB's NMR analysis, of the non-contracted customers that left Global, [✂].[114] It should also be noted that the results for South Wales likely understate the number of leavers that used third party stations, since the NMR data does not capture several competitors including Nation FM Radio Pembrokeshire, Radio Carmarthenshire and Radio Ceredigion.[115]

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110 See Ofcom's "*Report on public interest test on the acquisition of Guardian Media Group's radio stations (Real and Smooth) by Global Radio*" dated 11 October 2012.

111 See brand maps at OFT Submission, p108.

112 [✂])

113 Note that, given the small number of respondents who identified any other radio as a credible alternative, the sample size for this question is small. See further Annex 2, p 5.

114 Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

115 See Annex 4, p 43.

E. North Wales[116]

6.16 <u>OFT conclusion</u>: *"on the basis of the evidence available to it, the OFT believes that it is or may be the case that the merger has resulted, or may be expected to result, in a substantial lessening of competition in the supply of non-contracted radio advertising in North Wales*" (65).

(i) "*On the basis of geographical coverage alone, the OFT considers that the parties are each other's closest competitor despite the difference in TSA for each party's services*" (59).

(ii) "*On the basis of listening data, Global and GMG Radio account for over 99 per cent of total local commercial listening hours in North Wales post-merger. The merger parties are therefore each other's closest commercial competitors based on listening hours*" (61).

(iii) There are "*limited alternatives for non-contracted radio advertisers*" aside from the merger parties and the transaction "*will create an effective monopoly in the provision of non-contracted radio advertising in North Wales*" (63).

6.17 <u>Rebuttal</u>: Global competes with other media in North Wales.

(i) The event study analysing Real's entry into North Wales (see above at paragraph 5.19) indicates that Real competes as much with other media as with radio.

(ii) The lost opportunities survey found that after declining the campaign proposal put forward by Global, 75% of advertisers surveyed in North Wales turned instead to local press for the campaign (33% turned to magazines, 22% to search engines, 51% to social media and 45% to outdoor) while 18% turned to other radio stations.[117]

(iii) The existing customers survey found that when Global or RSL customers were asked what media they would use if their chosen station was not available, only a minority indicated that they would choose another radio station (11%) - a greater number of customers indicated that they would choose non-radio media (29%); moreover a greater number indicated that they would use local press (14%) than indicated that they would use another radio station.[118]

(iv) Furthermore, local press represents a significant constraint in North Wales. In response to Ofcom's issues letter, Global produced a map showing the

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[116] See OFT Submission, p108ff.

[117] See Annex 1, p 17.

[118] See Annex 2, p 5.

newspaper owners which are present in Global's Heart and Gold TSAs in North Wales (acting as a proxy for the parties' overlap area in North Wales in accordance with Ofcom's approach) ("**North Wales TSA**").[119]

(a) In the North Wales TSA, Global identified four newspaper owners, each of which is a major newspaper group - NWN Media, Midland News, Tindle, and Trinity Mirror - owning between them at least 24 local newspapers. Additionally, Trinity Mirror owns 2 nations newspapers, Western Mail and Wales on Sunday, which are circulated throughout Wales.

(b) Of the newspapers identified in the Cardiff TSA and the North Wales TSA by Global (see paragraph 6.14(iv) above in respect of the Cardiff TSA), the total readership in Wales is approximately 1,916,088.[120] In comparison, Global and RSL's combined reach in Wales is only 964,000.[121] Based on the available data, it has not been feasible to accurately calculate readership in the North Wales TSA alone.

(c) Although all of these newspaper groups (and their newspaper titles) do not reach citizens across the entire overlap area in the North Wales TSA, there are at least two newspapers owned by different newspaper groups in most areas within the North Wales TSA, with the greatest coverage coming from Trinity Mirror and NWN Media.

(d) In its report, Ofcom concluded after the merger "*there will continue to be a variety of other platforms, including … newspapers (between 1 and 3 owners)*" in the North Wales TSA.[122] It follows that those same four newspaper groups will continue to compete with Global for advertising revenues after the merger in the North Wales TSA.

6.18 The parties are not close competitors in North Wales.

(i) The parties have different geographic targets. Heart uses four transmitters in North Wales, which it sells separately. These are shown in the Ofcom maps in

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[119] See the newspaper coverage map in Annex 8 which shows the area of coverage for newspaper titles owned by different newspaper groups in the parties' area of overlap in North Wales.

[120] Based on the Adults figure (i.e. number of adults over the age of 15 who read the relevant newspaper title) provided by JICREG as at 1 April 2012. It should be noted that this total readership figure of newspapers in Wales is an estimate because (i) the list of newspapers identified by Global is not exhaustive; (ii) readership data is only available for 80% of all such newspapers; and (iii) a proportion of the readership of a small number of these newspapers will extend beyond Wales (e.g. Hereford, Shropshire and Cheshire newspapers).

[121] Based on RAJAR quarterly listening figures as at March 2012 of Capital South Wales, Gold South Wales, Heart North West and Wales, Gold North West and Wales, Real Radio Wales (North) and Real Radio Wales (South).

[122] See Ofcom's "*Report on public interest test on the acquisition of Guardian Media Group's radio stations (Real and Smooth) by Global Radio*" dated 11 October 2012.

Annex 6 and cover Wrexham and Chester (see Map A), the Wirral (see Map A), the North Wales Coast (see Map B) and Anglesey and Gwynedd (see Map C).[123] [✂], Real is a regional station, as shown in Map D. Real does not sell on a split transmission basis in North Wales. [✂].

(ii) The event study analysing Real's entry into North Wales (see above at paragraph 5.19) suggests that the parties do not compete closely in North Wales.

(iii) In the existing customers survey, only 6% of North Wales customers indicated that the other party's stations would be the next best alternative if the station chosen for the particular campaign were not available.[124]

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[123] Note that in the main submission to the OFT, only revenues generated in Anglesey and Gwynedd and along the North Wales Coast were included in the market share table for North Wales (i.e. revenues in the Wirral and Chester and Wrexham were excluded and included in the share estimates for the North West). Further detail can be found at Acquisition by Global Radio Limited of Real and Smooth Limited, main submission to the OFT, 31 July 2012, pp109-113.

[124] Note that, given the small number of respondents who identified any other radio as a credible alternative, the sample size for this question is small. See further Annex 2, p 5. As noted above, RBB did not carry out NMR analysis for North Wales - Real only entered the market in 2011 so there would be insufficient data for a meaningful analysis.

F. North East[125]

6.19 OFT conclusion: "*The OFT… considers that the merger may raise unilateral effects in the supply of non-contracted radio advertising in… the North East*" (86).

6.20 Rebuttal: Global competes with other media in the North East.

(i) The lost opportunities survey found that after declining the campaign proposal put forward by Global, 47% of advertisers surveyed in the North East turned instead to local press for the campaign (34% turned to magazines, 23% to search engines, 26% to social media and 39% to outdoor) while 40% turned to other radio stations.[126]

(ii) The existing customers survey found that when Global or RSL customers were asked what media they would use if their chosen station were not available, only a minority indicated that they would choose another radio station (19%) - a greater number of customers indicated that they would choose non-radio media (36%).[127]

(iii) The RBB analysis of NMR data for customers that left Global and RSL shows a large proportion of non-contracted advertisers churned away from the parties' North East stations - [✂]% for Global and [✂]% for RSL. Of these, the proportion that advertised using non-radio media was [✂]% for Global ([✂]) and [✂]% for RSL ([✂]%[✂]).[128] The proportion using other radio stations was significantly less ([✂]% for Global, [✂]% for RSL).

6.21 Even within the radio segment, the parties are not close competitors in the North East.

(i) The parties have different target audiences. Capital targets a younger audience than Real and a much younger audience than Smooth. Bauer's two stations Metro and TFM are closer competitors to the parties than the parties are to each other (and, post-merger, will have a similar radio share to the merged entity - [✂] compared with the merged entity's [✂]).[129]

(ii) [✂].

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[125] See OFT Submission, p85ff.

[126] See Annex 1, p 17.

[127] It should be noted that the sample size for this aspect of the survey is small. See further Annex 2, p 5.

[128] Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

[129] See OFT Submission, p91.

Figure 6.4
[✄]

Source: [✄]

(iii) In the existing customers survey, only 5% of North East customers indicated that the other party's stations would be the next best alternative if the chosen one were not available.[130]

(iv) Based on RBB's NMR analysis, of the non-contracted customers that left Global, [✄][131]

[130] Note that, given the small number of respondents who identified any other radio as a credible alternative, the sample size for this question is small. See further Annex 2, p 5.

[131] Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

G. Other regions of concern to the OFT

6.22 The OFT raised concerns regarding a number of other areas, which Global did not consider gave rise to any prospect of an SLC. Nevertheless, for completeness, in response to the OFT's decision Global has commissioned the extension of the YouGov surveys to these areas and in the meantime is in a position to present the following evidence.

(i) Yorkshire[132]

6.23 <u>OFT conclusion</u>: "*The OFT… considers that the merger may raise unilateral effects in the supply of non-contracted radio advertising in… Yorkshire*" (86).

6.24 <u>OFT conclusion</u>: "*On the basis of the evidence available to it, the OFT believes that it is or may be the case that the merger has resulted, or may be expected to result, in a substantial lessening of competition in the supply of non-contracted radio advertising in South Yorkshire*" (78).

(i) "*The merger parties… appear to be each other's closest competitors based on geographic coverage in the South Yorkshire area*" (74).

(ii) According to Global, the parties' "*combined share of non-contracted radio advertising in [South Yorkshire] post-merger is* [✂]*%, with an increment of* [✂]*%"*[133] (75).

(iii) "*Global and GMG would account for around 53% of total commercial listening hours in South Yorkshire, more than 1.5 times the number of hours of their closest competitor, Baue*r" (76).

(iv) "*The majority of [direct customer] respondents were concerned that the transaction could result in price increases or a reduction in choice*" (77).

6.25 <u>Rebuttal</u>: Global competes with other media in Yorkshire.

(i) The RBB analysis of NMR data for customers that left Global and RSL shows a large proportion of non-contracted advertisers churned away from the parties' Yorkshire stations - [✂]% for Global and [✂]% for RSL. Of these, the proportion that advertised using non-radio media is [✂]% for Global ([✂]) and [✂]% for RSL ([✂]).[134] The proportion using other radio stations was [✂]% for Global and [✂]% for RSL.

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[132] See OFT Submission, p 76ff.

[133] The OFT was 'unable to verify this estimate' (75).

[134] Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

6.26 The parties are not close competitors in Yorkshire.

(i) Capital and Real have different demographic targets, as Real targets an older listener base than Capital.

(ii) It is possible to purchase Capital on a split transmission basis, separately targeting South Yorkshire (where Real is available) and East Yorkshire (where Real is not available). [✂].[135]

(iii) Moreover, the pricing evidence suggests that the parties' stations do not compete closely for advertising revenues.[136] [✂].

Figure 6.5
[✂]

Source: [✂]

(iv) Even taken on a South Yorkshire-only basis, Bauer is a closer competitor to RSL than the parties are to each other and will have a share of non-contracted radio advertising that is equivalent to that of the merged entity ([✂]% to the merged entity's [✂]).[137] In particular, Bauer's Hallam and Aire stations can be combined for customers who wish to advertise in Leeds and Sheffield (where Real, and Capital's (South transmitter) are present).

(v) Based on RBB's NMR analysis, of the non-contracted customers that left Global, [✂].[138]

(ii) North West[139]

6.27 OFT conclusion: "*The OFT… considers that the merger may raise unilateral effects in the supply of non-contracted radio advertising in… the North West*" (86).

6.28 Rebuttal: Global competes with other media in the North West.

(i) The RBB analysis of NMR data for customers that left Global and RSL shows a large proportion of non-contracted advertisers churned away from the parties' North West stations - [✂]% for Global and [✂]% for RSL. Of these, the proportion that advertised using non-radio media is [✂]% for Global ([✂]) and

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135 Global non-contracted airtime revenue, FY 2012.

136 See Annex 4, pp 59-61.

137 See OFT Submission, p 83.

138 Derived from RBB's analysis of NMR data. See Annex 4, pp 5-8.

139 See OFT Submission, p65ff.

[✂]% for RSL [✂].[140] The proportion using other radio stations was [✂]% for Global and [✂]% for RSL.

6.29 The parties are not close competitors in the North West.

(i) The parties have different geographic targets - RSL's stations are regional, while Global is based in Manchester only. The parties compete more closely with Bauer than each other (in Manchester, with Bauer's Key 103, and regionally via a bundle of Bauer's stations). Moreover, Bauer will remain the largest competitor in the region post-merger (with [✂]% of non-contracted airtime revenues, compared with [✂]% for the combined Global/RSL group).

(ii) The parties also have different demographic targets, with Real and Smooth targeting an older audience than Capital.[141]

(iii) [✂].

Figure 6.6
[✂]

***Source:* [✂]**

Figure 6.7
[✂]

***Source:* [✂]**

(iv) Based on RBB's NMR analysis, of the non-contracted customers that left Global, [✂][142]

(iii) <u>Central Scotland</u>[143]

6.30 <u>OFT conclusion</u>: "*The OFT… considers that the merger may raise unilateral effects in the supply of non-contracted radio advertising in… central Scotland*" (86).

6.31 <u>OFT conclusion</u>: "*The OFT… considers that the merger may raise unilateral effects in the supply of non-contracted radio advertising in… Glasgow*" (86).

6.32 <u>Rebuttal</u>: Global competes with other media in central Scotland.

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[140] See Annex 4

[141] See brand map at OFT Submission, p72.

[142] Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

[143] See OFT Submission, p92ff.

(i) The RBB analysis of NMR data for customers that left Global and RSL shows a large proportion of non-contracted advertisers churned away from the parties' Scottish stations - [✂]% for Global and [✂]% for RSL. Of these, the proportion that advertised using non-radio media was [✂]% for Global ([✂]) and [✂]% for RSL ([✂]).[144] The proportion using other radio stations was significantly less ([✂]% for Global and [✂]% for RSL).

6.33 The parties are not close competitors in central Scotland.

(i) The parties have different geographic targets. While Real has two transmitters in the region, it does not offer advertising on a split transmission basis. Capital Scotland covers Glasgow and Edinburgh but offers advertising on a split transmission basis, allowing customers to target Glasgow only. [✂].

(ii) The parties have different demographic targets. Capital targets a younger audience than Real and a much younger audience than Smooth.[145] Bauer with a [✂]% share of non-contracted airtime revenues competes closely with RSL and will continue to be the leading radio player post-merger in central Scotland.

(iii) [✂].

Figure 6.8
[✂]

Source: **[✂].**

(iv) Based on RBB's NMR analysis, of the non-contracted customers that left Global, [✂].[146]

[144] Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

[145] See brand map at OFT Submission, p99.

[146] Derived from RBB analysis of NMR data. See Annex 4, pp 5-8.

7. CONTRACTED ADVERTISING

A. London Agencies

(i) <u>The Counterfactual</u>

7.1 OFT concern: The OFT stated in its decision that "*it is not persuaded that the merger does not structurally affect the sale of contracted radio advertising with respect to London based agencies. In particular, the OFT does not believe that there is no competitive difference between the pre-merger scenario (sales agreement in place) and the post-merger scenario (structural integration of Global and GMG radio)*" (95).

7.2 The OFT suggested that the merger might structurally affect contracted radio sales on the basis that "*the sales agreement has provisions under which GMG Radio could have terminated the sales agreement and could have undertaken its own advertising for London-based agencies. This possibility (that is, of GMG Radio operating independently of Global for London based agencies in the future) is eliminated as a consequence of the transaction*" (96).

7.3 Rebuttal: Absent the merger it is highly likely that the national sales agreement would have remained in force because:

(i) RSL has never sold airtime directly to London agencies. Global (or its predecessor) has always done so;

(ii) The national sales agreement with Global delivers significant benefits which could not be achieved by RSL selling directly or using another sales house - Global and RSL's portfolio of brands are highly complementary. In particular, Real benefits from being sold as a geographic complement to Heart;

(iii) Setting up RSL's own presence in London would be costly;

(iv) Bringing the function in-house would entail significant risks. RSL has no experience of selling airtime to London agencies and lacks the necessary scale and brand presence to gain traction with large London agencies; and

(v) RSL would be unlikely to appoint an alternative third party agent. Bauer has no experience of selling airtime on behalf of a third party and its brands compete closely rather than complement RSL's brands. FRS does not have nationally recognised brands that could be offered as a complement to *Real* and does not have the skills or market presence required to market RSL brands to London agencies as well as Global.

7.4 The OFT and CC's Merger Assessment Guidelines state that when deciding what would have happened absent the merger (the "**counterfactual**") the CC "*may examine several* *possible scenarios, one of which may be the continuation of the pre-merger situation; but ultimately only the most likely scenario will be selected as the counterfactual*".[147]

7.5 Absent the merger, by far the most likely scenario is the continuation of the national sales arrangement between Global and RSL. This is therefore the appropriate counterfactual against which the merger should be assessed. We set out briefly why this is the case.

(ii) RSL has never sold airtime directly to London Agencies

7.6 Global or one of its predecessors (Chrysalis, acquired by Global in July 2007, and GCap, acquired by Global in June 2008) has acted as RSL's exclusive agent for national airtime sales since the RSL group was created with the award of its first radio licence in 2000 (*Real Radio South Wales*).

7.7 [✂].

7.8 [✂]. Indeed, in practice, it is highly likely that the agreement would have remained in force beyond that date.

(iii) The national sales agreement delivers significant benefits

7.9 The national sales agreement with Global delivers significant benefits which could not be gained by either RSL selling directly or by using another sales house - Global's and RSL's portfolios of brands are highly complementary.

7.10 The national sales agreement enables Global to offer London agencies 3 station brands that target complementary audiences: Capital (which targets listeners aged 15 to 34); Smooth (which targets listeners aged 45 to 60); and Classic (which targets an ABC1 audience and whose average listener is aged 56); plus the combination of Heart and Real which, although they target the same audience demographic (25 to 44 year olds), do so in different regions (except in North Wales).

7.11 Most London agency clients own national brands and are therefore interested in launching national campaigns. [✂].

Table 7.1
[✂]

Source: [✂].

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[147] *Merger Assessment Guidelines*, joint publication of the CC and the OFT, at paragraph 4.3.6 (hereinafter the *Merger Assessment Guidelines*). The CC will incorporate into the counterfactual "*only those aspects of scenarios that appear likely on the basis of the facts available to it and its ability to foresee future developments; it seeks to avoid importing into its assessment any spurious claims to accurate prediction or foresight*".

7.12 Real, in particular, benefits from being sold as an extension to the Heart network. Although Heart is able to credibly compete for some national business in its own right, Real (which only provides coverage in Scotland, the North of England and Wales and reaches just 2.4m listeners in the UK compared to Heart's 7.4m)[148] is not. The highly complementary nature of the Heart and Real networks is evident from [✂][149]

(iv) <u>Setting up its own presence in London would be costly</u>

7.13 RSL has only a limited physical presence in London and does not have employees located at its small London office with the necessary skills and experience to negotiate national contracts. Were RSL to have its own staff in London dealing directly with the London agencies this would involve additional costs estimated at £[✂] annually.

(v) <u>Bringing the function in-house would entail significant risks</u>

7.14 A significant proportion of RSL's <u>total</u> net revenues ([✂]%) are generated through the sale of airtime on RSL's stations by Global to London agencies. RSL would therefore be placing a substantial proportion of its revenues at risk if it were to terminate the national sales agreement and replace it with something different. A significant drop in RSL's contracted revenues would have a very substantial impact on its profitability. In practice, it is likely that RSL's contracted revenues would be substantially lower if it were to take the function in-house:

(i) **RSL has no experience of selling airtime to London agencies.** Its brands have always been marketed to London agencies by a third party since the group was first created in 2000.

(ii) **RSL lacks scale and brand recognition.** RSL simply does not have the presence in London and the radio segment generally to gain traction with large agencies:

(a) Real has no analogue broadcasting presence in London and although Smooth is available on analogue in the capital, it ranks 19th in popularity with audiences in London in terms of reach and 25th in terms of listening hours.[150] Importantly, brand awareness for RSL's stations is lower among major advertisers and media planners based in London than for stations which have a stronger London presence.

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[148] RAJAR Q2 2012.

[149] Calculated by reference to gross revenues for financial year 2012. A "network buy" is defined as any campaign run on all stations in any given network or all stations minus one. This is to account for anomalies that can occur where the customer wants to run a campaign across a whole network, but cannot, for example, because of inventory restrictions etc.

[150] Calculated by reference to share of listening hours in London. RAJAR Q2 2012.

(b) RSL owns only 13 local / regional stations that account for just 10.4% of commercial radio listening hours.[151] This compares to 36.7% for Global, 24.7% for Bauer and 10.4% for FRS[152] (the only three suppliers of airtime across portfolios of local and regional stations).[153] If RSL were to take the function in-house, [✄]. This would be very damaging to the RSL business -enough to turn the business from profit into loss- and is therefore not a credible business option.

(iii) **Commercial radio accounts for only a tiny fraction of spend on advertising by London agencies** (only 2.7% of total advertising spend goes on radio). As a result, the outsourcing of national sales to London sales houses is a common feature of the radio sector. For example, Orion has outsourced national sales to Global and a large number of radio stations have outsourced sales to FRS, which represents 118 stations in total including UTV's and Lincs FM's local and regional stations. Outsourcing / joint selling is also a feature in other advertising sectors. For example, Digital Cinema Media ("**DCM**") sells advertising to advertisers on behalf of all the main cinema groups in the UK and accounts for approximately 80% of UK cinema advertising.[154] Like radio, cinema is a small medium for advertising, accounting for less than 2% of total advertising spend.[155] By using DCM's consolidated, larger sales unit and sales expertise, cinema groups are therefore able to benefit from DCM's expertise and ability to negotiate with large agencies, and thereby improve their ability to compete more effectively against other media for advertising revenues.

(vi) <u>RSL would be unlikely to appoint an alternative third party agent</u>

7.15 There are no suitable third party alternatives to Global. The only possible options that RSL might explore are Bauer and FRS[156] - [✄]:

(i) <u>Bauer</u>: Bauer has no experience of selling airtime on behalf of a third party. Furthermore, whereas Global and RSL's portfolios are highly complementary, Bauer and RSL are close competitors in the North of England and Scotland and do not complement one another geographically:

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[151] RAJAR Q2 2012.

[152] FRS is owned jointly by UTV and the Local Radio Company.

[153] RAJAR Q2 2012. See http://www.firstradio.co.uk/ for FRS.

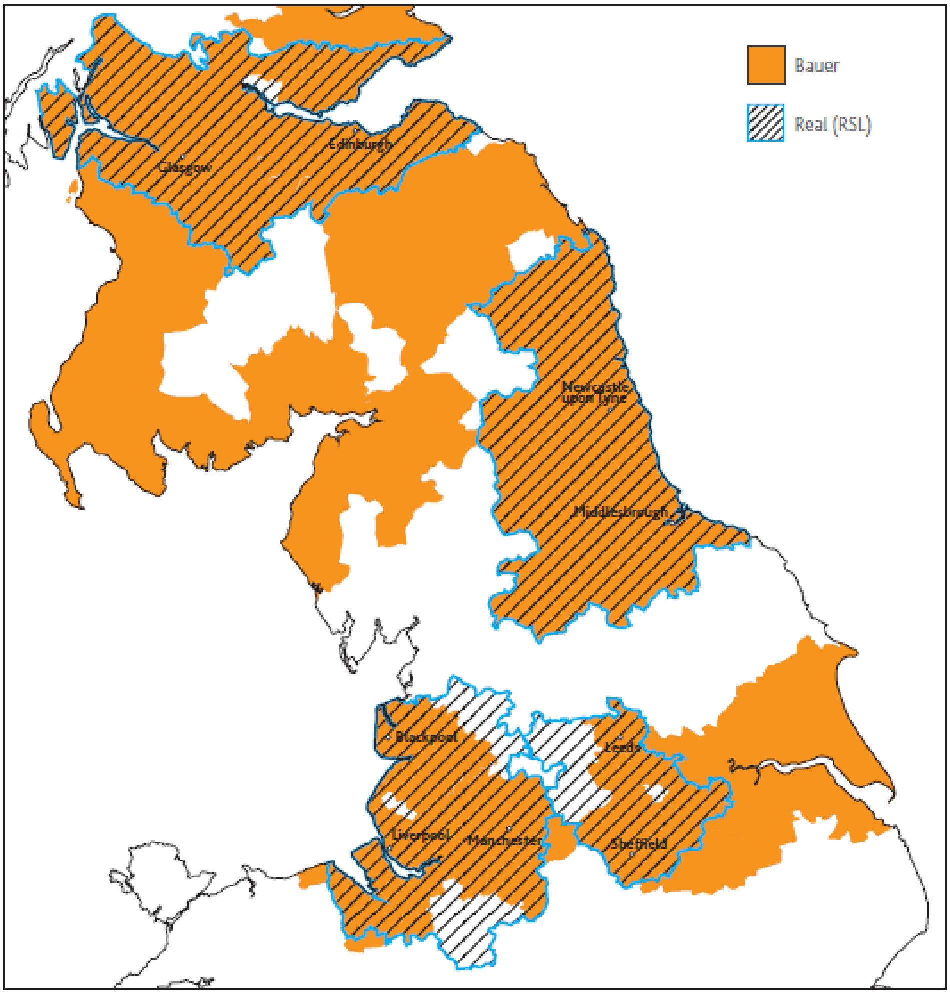
[154] Digital Cinema Media represents Cineworld, Odeon, Electric Cinema, Picturehouse, Reel Cinemas and Vue.

[155] World Advertising Research Centre (WARC), 2012.

[156] Other media companies that sell airtime to London agencies include UTV (which sells TalkSport) and TIML (which sells Absolute). However, TalkSport and Absolute are national stations and other than selling London station Absolute London, neither of these media companies sells (or has any experience of selling) airtime on regional or local radio stations (airtime on UTV's local and regional stations is sold through FRS which UTV jointly owns). Neither has any experience of selling airtime on behalf of a third party.

(a) *North of England and Scotland (close competition)*: Bauer owns stations in all of the major cities in the North of England and Scotland where RSL is present with Real, and is the largest commercial radio operator in these regions. Its core stations in all of these cities also target the same demographic as Real (listeners aged 25-44).[157]

Map 7.1
Bauer stations and *Real* (analogue) -
North of England and Central Scotland



(b) *South (no geographic complement to Real)*: Although Bauer's Magic targets a similar audience to Real, its presence in the south is limited to London - Magic and Real do not provide the same geographic

[157] In particular, Bauer owns Rock FM (Blackpool), Key 103 (Manchester) and Radio City (Liverpool) in the North West; Radio Aire (Leeds) and Hallam FM (Sheffield) in Yorkshire; Metro (Newcastle) and TFM (Teeside) in the North East; and Clyde 1 (Glasgow) and Forth 1 (Edinburgh) in central Scotland, all of which target the 25-44 age demographic. See http://radio.bauermediaadvertising.com/audience-finder/#results. Global also owns Magic 828 (Leeds), which targets an older audience aged 45-56 (http://radio.bauermediaadvertising.com/stations/detail/magic_828).

complementarity as Real and Heart do - see map below).[158] [✂].[159] In particular Magic and Real combined would not offer coverage in the South East, South and West - and in addition would offer a far less attractive proposition to advertisers in terms of audience (Real and Heart together cover 84% of the UK population on analogue radio, as compared to only 53% for Real and Magic combined).

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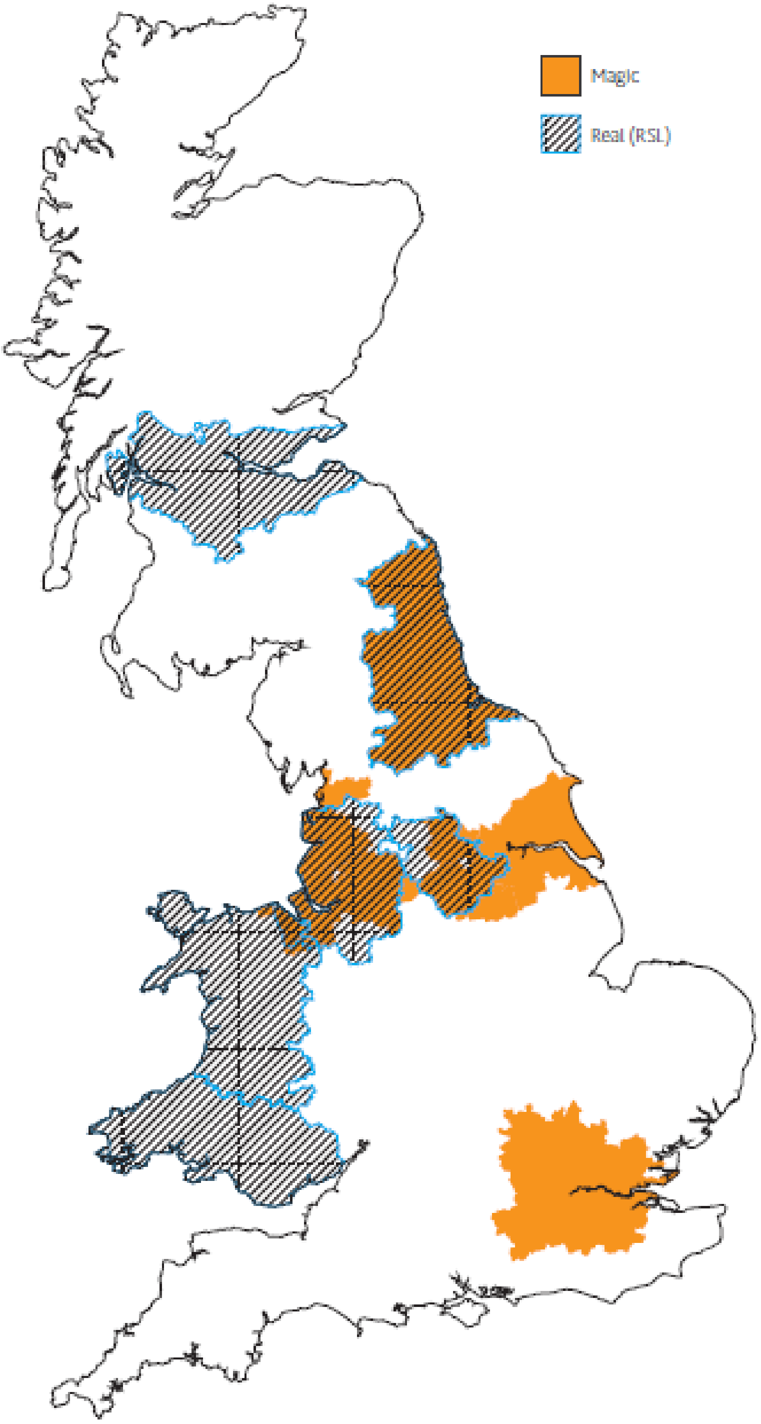
[158] See http://radio.bauermediaadvertising.com/stations/detail/kiss and http://radio.bauermediaadvertising.com/audience-finder/#results Bauer's other stations in the South target a younger audience than *Real* (*Kiss,* available in London, the South Coast, Bristol and Cardiff and *Kerrang!,* available in the West Midlands both target listeners aged 15 to 34.

[159] See paragraph 7.11.

Map 7.2
***Magic* (Bauer) and *Real* (RSL) (analogue)**



(ii) FRS: FRS cannot offer a competitive package to RSL - [✂].

7.16 It is clear therefore that the most likely scenario absent the merger is that RSL would continue to use Global as its exclusive agent for national airtime sales.

(vii) Sale to third party

7.17 For completeness, we also consider below the possibility that, absent the merger, RSL might have been acquired by a third party and that the appropriate counterfactual might therefore be an acquisition by a different bidder (rather than the prevailing conditions of competition).

7.18 In addition to assessing the likelihood that the target business would have been sold to an alternative purchaser, the OFT's and CC's Merger Guidelines state that the CC will consider whether an acquisition by an alternative bidder would give rise to competition concerns - if it would, it will not be adopted as the counterfactual.[160] More specifically, if the CC concludes that the OFT would have referred the acquisition to the CC or sought undertakings in lieu of a reference, the sale will not be adopted as the counterfactual, regardless of how likely it is that the target would have been sold to that third party.[161]

7.19 [✄].

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[160] See paragraphs 4.3.22 to 4.3.24 of the Merger Assessment Guidelines, which state in relation to competing bids:

"*If only one merger is referred, the counterfactual used by the CC may be the pre-merger competitive situation or the sale of the target firm to one of the alternative purchasers. When deciding on the most appropriate counterfactual, the CC will consider the circumstances of the case, including the offers of the alternative purchasers.*

If two or more merger situations involving competing bids are referred to the CC, but there are other merger situations involving bids that are not, the counterfactual is more likely to involve a merger that is not referred (and therefore does not give rise to competition concerns) than one of the referred mergers which does raise competition concerns. Depending on the circumstances, the appropriate counterfactual may be based on <u>*either*</u> *the sale to an alternative bidder whose bid has not been referred* <u>*or*</u> *the prevailing conditions of competition. The CC would not take into account the possibility of remedies being implemented to address competition concerns raised by the alternative mergers, i.e. a sale to a 'remedied bidder' would not become the counterfactual situation. Where mergers involving all the bids are referred, the counterfactual will often be the pre-merger situation, although before identifying it as such, the CC will consider the appropriateness of the counterfactual being the acquisition by another purchaser that* <u>*does not*</u> *raise competition concerns."*

See also the *Competition Commission's report on the completed acquisition by Sector Treasury Services Limited of ICAP plc's treasury management advisory services business* (31 August 2011). The CC concluded that a sale to third party Arlingclose would have been likely to raise sufficient concerns that it would have been referred by the OFT to the CC. The CC therefore concluded that it would not be appropriate to adopt a sale to Arlingclose as its counterfactual and considered instead what was most likely among the remaining options. See also the *Competition Commission's report on the completed acquisition by Stagecoach Group plc of Eastbourne Buses Limited and Cavendish Motor Services Limited* (22 October 2009).

[161] See *Competition Commission's report on the acquisition of the Co-operative Group's store at Uxbridge Road, Slough by Tesco plc* (28 November 2007) at paragraphs 6.2 to 6.9, where the CC concluded that the OFT would not have been under a duty to refer the acquisition of the store by Sainsbury's to the CC or to accept undertakings in lieu in finding that the appropriate counterfactual was the purchase of the store by Sainsbury's. See also the *Competition Commission's report on the anticipated joint venture between BBC Worldwide Limited, Channel 4 Television Corporation and ITV plc relating to the video on demand sector* (4 February 2009). The CC did not find it necessary to consider whether some other transaction such as a two-way JV might have occurred between any of the two parties as no such permutation was put to the CC as a likely counterfactual. However, the CC emphasised that any alternative transaction between the parties would have to be considered under competition rules on its merits and would not be permitted if it gave rise to competition concerns. The appropriate counterfactual could therefore only be one which did not, in itself, raise competition concerns (see paragraph 3.30).

7.20 When Global acquired GCap in 2008, the OFT assessed the competitive effect of the transaction on the basis of a market for radio advertising, refusing to accept that non-radio media were sufficiently close alternatives to radio to be taken into account in its substantive assessment.[162] In its phase 1 decision in the current case, the OFT emphasised that it "*has tended to take a cautious approach to product market definition in previous media mergers, typically defining product markets narrowly by media type*", although accepting in one prior case that different media could be considered alternatives in a "*very weak sense*".[163] [✂]:

(i) [✂].[164]

(ii) [✂].[165]

7.21 A sale to [✂] these third parties cannot therefore be adopted as the counterfactual based on the CC's own Guidelines.

(viii) <u>No change in Global's pricing incentives</u>

7.22 The OFT also suggested in its phase 1 decision that the merger might structurally affect contracted radio sales to London agencies on the basis that *"the existence of the sales agreement may have affected the conduct of Global in the marketplace in a way which will not occur post-merger. In this context, the OFT considers that the primary source of competition between rival suppliers of national contracted radio advertising is during the negotiation of annual framework agreements. When negotiating such framework agreements, Global's incentives with respect to sales of GMG Radio advertising are likely to change as a consequence of the transaction given that it will receive all revenues from the sale of GMG Radio services, rather than receiving only a proportion of the revenue as commission"* (97).

7.23 <u>Rebuttal</u>: There will be no change in Global's incentives post-merger which could lead to an SLC:

(i) Global's current incentive is to maximise revenues on both parties' stations. Global earns a proportion of net revenues generated from selling airtime on RSL's stations as commission. It therefore has every incentive to maximise revenues on these stations;

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[162] See *Completed acquisition by Global Radio UK Limited of GCap Media plc* (ME/3638/08).

[163] See paragraph 38.

[164] See footnote 157.

[165] [✂]

(ii) The parties' stations are complements not substitutes. Global therefore has no incentive to compete with RSL on price or to take business away from RSL stations.

(ix) Global's incentive is to maximise revenues on both parties' stations

7.24 Global's current incentive is to maximise revenues on both RSL's and Global's stations. [✂]. The revenues that Global earns from selling airtime on RSL's stations are [✂] linked to the performance of those stations. Global therefore has every incentive to maximise revenues on the stations and the same will remain true post merger.

(x) The parties' stations are complements not substitutes

7.25 The parties' stations are complements not substitutes, in particular at the national level. Global therefore has no incentive to compete with RSL on price or to take business away from RSL stations.

7.26 The parties' combined portfolios offer agencies four complementary network propositions targeted at distinct demographic audiences [✂]. Global's business incentive is to maximise the revenues on both RSL and Global stations. [✂]. Were Global to seek to overprice Real, it is highly unlikely that it would obtain the lost business on any of its stations - the parties are not close competitors. Were Global to underprice RSL's stations, it would generate less than the optimum level of commission revenue.

7.27 Given the complementary nature of the parties' brands, increasing prices on RSL's stations could also reduce demand for Global's existing stations. As noted above, [✂] of the aggregate revenues generated from network buys on Heart and Real are generated from campaigns that are launched across both networks[165]. Consequently, an increase in the price of Real could dissuade an agency client that would otherwise run a campaign on both Real and Heart from running that campaign on either party's stations (thus reducing revenues not only on RSL's stations, but also on Global's existing stations).

7.28 RSL would not hand over control of the negotiation of contracts worth [✂] of its revenues to Global, if Global were likely to price the parties' stations at a differential designed to encourage clients to switch from RSL to Global. [✂].

[165] [✂]

B. Other Agencies

7.29 OFT conclusion: In relation to the small number of agencies that negotiate annual[166] airtime contracts separately with RSL and Global, the OFT stated in its phase 1 decision that *"because Global did not represent GMG Radio as sales agent in negotiations with those agencies, the transaction has the effect of reducing the number of independent suppliers of contracted radio-advertising"* (100). However, it did not conclude on whether the reduction in the number of suppliers was such as to result in an SLC.

7.30 Rebuttal. The loss of RSL as an independent supplier to these agencies will not give rise to an SLC in the supply of contracted airtime, as any loss of loss of competition for these agencies is immaterial:

(i) [✄];

(ii) [✄]

(iii) [✄].

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[166] A [✄].

(i) [✂]

7.31 [✂]:[167]

(i) [✂].

(ii) [✂].

(iii) [✂].

7.32 The vast majority of the parties' contracted revenues are generated from sales of airtime to London agencies covered by the national sales agreement. [✂].

Table 7.2
[✂]

Source: **[✂]**

Note: [1] [✂].

7.33 [✂].

Table 7.3
[✂]

Source: **[✂]**

Note: [1] [✂].
[2] [✂].

[167] [✂].

(ii) [✂]

7.34 [✂].

7.35 [✂]. The media agency buying groups have been established to secure leverage by concentrating purchasing through a single buying point- this is the whole business model pursued by media buying agencies. [✂].

7.36 [✂].

7.37 [✂].

(iii) [✂]

7.38 [✂].[168]

Figure 7.1
[✂]

Source: **[✂]**

Figure 7.2
[✂]

Source[✂]

[168] Comparisons for all of the parties' stations in overlap areas are available at Annex 4.

8. SPONSORSHIP AND PROMOTION (NATIONAL)

8.1 <u>OFT conclusion</u>: The OFT stated in its decision that "*third parties have indicated to the OFT that smaller stations are able to compete more effectively for S&P 'based on their ideas, creativity, delivery and pricing' compared to competition for national contracted advertising. Some third parties have raised concerns about the effect of the merger on S&P, providing various degrees of evidence to support their claims. While the OFT notes these considerations, given the findings of the OFT in relation to unilateral effects in non-contracted radio advertising justifying a reference to the CC, the OFT has not found it necessary to conclude on whether it is or may be the case that the Transaction has resulted, or may be expected to result, in a substantial lessening of competition in the supply of S&P opportunities*."

8.2 <u>Rebuttal:</u> The merger will not give rise to an SLC in the supply of national S&P:

(i) RSL has only a minor presence;

(ii) Global competes much more closely with other media than it does with RSL;

(iii) The merger will be rivalry enhancing. [✂], the merged entity will be able to better compete with non-radio media such as the national press, ITV and Channel 4;

(iv) S&P is purchased by sophisticated media buying groups with substantial countervailing power and many options at their disposal for any given S&P campaign.

A. RSL has only a minor presence in national S&P

8.3 Both parties have centralised teams based in London that sell S&P solutions to large London agencies.[169] As with airtime, many of the clients of these agencies own national brands and are therefore interested in launching national S&P campaigns.[170] [✄].

8.4 In addition to their London teams, both parties also have sales teams based in Manchester that sell S&P solutions to regional agencies.[171] As with airtime, a much smaller proportion of the S&P campaigns booked by these agencies are national in scope. [✄].[172]

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[169] Many of these agencies belong to media groups which have [✄] contracts with Global which cover the sale of airtime on both parties' stations to the agencies. S&P is typically excluded from the scope of these contracts. S&P solutions are therefore sold separately from airtime on an *ad hoc* basis often following a competitive tender process organised by the agency, although both parties also proactively pitch for business.

[170] However, there are exceptions - for example, a national customer may want to run a local campaign to increase awareness of a local promotion.

[171] Some of these agencies purchase airtime under contracts negotiated [✄]: for airtime on Global's stations, the agencies are typically covered by the same contracts as their London sister agencies; for RSL's stations, the agencies typically have a separate airtime contract with RSL. Some smaller regional agencies purchase airtime on a spot basis.

[172] Both parties' local station sales teams also sell S&P solutions to local agencies and direct advertisers (and Global also has a number of smaller regional agency hubs which sell S&P to small agencies). As these customers purchase both airtime and S&P on a spot basis, the parties will generally pitch for both forms of advertising at the same time and will often supply a solution which incorporates elements of both. The dynamics for the sale of S&P are essentially same as those for the sale of airtime. Sales of S&P to these customers are not therefore considered separately from the sale of airtime in this paper.

B. Global competes more closely with other media than RSL for national S&P

8.5 [✂].

8.6 [✂]:[173]

(i) [✂];

(ii) [✂]

(iii) [✂].

8.7 [✂]:

(i) [✂];

(ii) [✂]

(iii) [✂].

8.8 [✂].

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173 [✂]

C. The merger will be rivalry enhancing for national S&P

8.9 The merger will increase competition [✂], enabling Global to compete more effectively with non-radio media such as national press, ITV and Channel 4.

8.10 The parties' brands are sometimes used together by S&P clients.[174] However, although the parties' brands are highly complementary, [✂]. As well as the additional transaction costs of having to deal with two companies, [✂]. What distinguishes S&P from airtime campaigns is that they interact with the editorial content of the station. [✂].

8.11 [✂].

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[174] See paragraph 6.9 of the OFT Submission dated 31 August 2012 for further detail.

D. Customers have significant buyer power in national S&P

8.12 S&P are purchased by sophisticated media buying groups with substantial countervailing buyer power.

8.13 The vast majority of the parties' national S&P revenues are channelled through a small number of media groups with significant countervailing buyer power: [✂]% of Global's London agency S&P revenues were channelled through [✂] alone ([✂]). Any attempt to increase prices post-merger would therefore be resisted by customers which have very significant buyer power and would simply turn to ample non-radio alternatives.

Figure 8.1
[✂]

Source: **[✂].**

8.14 [✂].

8.15 The price of S&P is therefore effectively determined through the negotiation of airtime prices in the annual contracts. For the reasons set out in the OFT Submission, media groups can and do exercise their buyer power during these negotiations to obtain favourable terms.[175]

[175] Please see paragraphs 7.5 to 7.24 of the OFT Submission.

9. CONGLOMERATE EFFECTS

9.1 <u>OFT conclusion:</u> "*the OFT has not found it necessary to conclude on"* (138) whether, due to *"Global's control of licences in the key population centres of the UK, agency customers planning quasi-national campaigns [would] find it very difficult to do so without using Global".* As a consequence, Global would be able to:

(i) "*negotiate higher prices/lower discounts for its stations while maintaining the amount of spend/share of spend*; or

(ii) "*negotiate a higher amount of spend/share of spend while maintaining its price and discount structure*" (135)

partially or fully foreclosing third party stations (136).

9.2 <u>OFT conclusion:</u> *"The OFT has not found it necessary to conclude on"* (138) whether the merger could lead to a situation where *"Global offers bundles of advertising across services at a regional/local level to extract a greater proportion of spend from local advertisers"* (135), foreclosing third party stations (136).

9.3 <u>OFT conclusion:</u> *"several large advertising agencies have told the OFT that the combination of Global and GMG Radio assets results in Global being unavoidable for advertisers seeking national coverage for their campaigns. A number of competitors raised concerns as well, particularly smaller competitors"* (137).

9.4 <u>Rebuttal:</u> No conglomerate effect concerns arise in relation to either contracted or non-contracted advertising:

(i) **Non-contracted:** very few non-contracted customers purchase airtime on more than one station for a single campaign. The opportunities to leverage a position of strength in relation to one station for the benefit of a weaker station are therefore extremely limited;

(ii) **Contracted:** Global already sells the parties' stations as a bundle. The merger does not therefore result in any material change.

A. Non-contracted advertising

9.5 There are few opportunities for selling more than one station in each region to non-contracted customers. Non-contracted customers purchase airtime from the parties on a campaign by campaign basis. The majority of these advertisers want to target the specific audience delivered by a particular brand - they pay to reach audiences in a particular location which belong to a particular demographic - such targeting would not be delivered as effectively through another brand. Although a small number of advertisers may be interested in reaching a wide cross-section of society in that region, and therefore be interested in purchasing airtime on more than one station, this is the exception rather than the rule. There is therefore little scope for selling advertising on both Real and/or Smooth-branded stations or one two or more Global's stations at the same time in the same region. [✂].

B. Contracted advertising

9.6 Global already sells the parties' stations as a bundle to London agencies. Airtime prices for these agencies on both parties' stations are currently determined during a single negotiation. These agencies account for the large majority of the parties' contracted revenues. The merger will not therefore result in any material change.

9.7 Moreover, contracted customers are large and sophisticated and have a history of resisting price increases.[176] These customers would resist any attempt by Global to restrict their freedom to purchase different combinations of stations (e.g. by charging a significant premium for standalone stations). [✂].

Figure 9.1
[✂]

Source: **[✂]**

Figure 9.2
[✂]

Source: **[✂]**

Figure 9.3
[✂]

Source: **[✂]**

Figure 9.4
[✂]

Source: **[✂]**

Figure 9.5
[✂]

Source: **[✂]**

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176 See paragraphs 7.6 to 7.24 of the OFT Submission for a discussion of the buyer power of London agencies.

10. MULTIPLEXES

10.1 The OFT stated in its phase 1 decision that "*it had been put to the OFT by third parties that, as a consequence of the Transaction, Global would have the ability and incentive to foreclose competitors from access to its digital multiplex assets*". (124)

10.2 Rebuttal: The merged entity will not have the ability or the incentive to foreclose access to its digital multiplex assets as a result of the merger:

(i) **The merger does not result in any material change.** The number of multiplexes in which Global holds an interest will not increase as a result of the merger. The only change will be an increase in Global's existing shareholding in MXR Limited ("**MXR**") (over which it already has joint control).[177]

(ii) [✂].

(iii) **MXR cannot raise prices to existing customers.** Nearly all of the contracts that MXR has with broadcasters are coterminous with the corresponding multiplex licences and do not allow for price increases before the termination of the contract. Consequently, MXR is prevented from increasing prices for the majority of its customers before the expiry of the relevant multiplex licence.

(iv) [✂]**. This makes price increases inherently unlikely** (as recognised by the OFT in the context of the *Global / GCap* merger).[178] [✂].

(v) [✂].

(vi) **MXR's licence terms require it to provide non-discriminatory access.** If MXR does decide to renew the Yorkshire multiplex for a further 12 years, new contracts will need to be negotiated with digital broadcasters. As explained above, spare capacity makes it inherently unlikely that Global would seek to increase prices. In addition, the terms and conditions of contracts entered into by MXR with digital broadcasters are regulated by Ofcom and must provide for non-discriminatory access. Any attempt by MXR to discriminate against competitors in providing access to the Yorkshire multiplex would constitute a breach of the terms of its licence and would be likely to result in a complaint to Ofcom by the competitor concerned:

- Condition 11 of Ofcom's standard licence requires the licensee: (a) not to enter into or maintain any arrangements or engage in any practice which is prejudicial to fair and effective competition in the provision of licensed services or connected services; (b) to comply with any code or

[177] Please see paragraphs 9.2, 9.3 and 9.5 to 9.7 of the OFT Submission for further details of the parties' multiplex interests and for details of how decisions are taken at shareholder and board level in MXR.

[178] See paragraph 223. [✂].

guidance approved by Ofcom for the purpose of ensuring fair and effective competition in the provision of licensed services or connected services; and (c) to comply with any direction given by Ofcom for that purpose.[179]

- The guidelines for applicants for local licences state that "*in contracting, or offering to contract, with the holders of DSP service or digital additional sound services licences*[180]*, multiplex licensees must not discriminate unduly. Any report of unfair or anti-competitive behaviour will be considered by Ofcom in the light of the particular facts*."[181]

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[179] See http://licensing.ofcom.org.uk/binaries/radio/digital/localmultiplex.pdf

[180] i.e. digital broadcasters.

[181] See http://licensing.ofcom.org.uk/binaries/radio/digital/dsps_das.pdf, at paragraph 24.

11. RADIOCENTRE / RAJAR

11.1 <u>OFT conclusion:</u> *"The OFT has not found it necessary to conclude on whether it is or may be the case that the transaction has resulted, or may be expected to result, in a substantial lessening of competition in respect of Global's shareholding in RadioCentre and RAJAR"* (128).

(i) Competitors' concerns *"relate to the incentive for Global, via its shareholding in RadioCentre, to affect RAJAR's strategy, in particular its approach to small station surveying' and that "a partial or full withdrawal of RAJAR from small station surveying would prevent those stations from being able to sell advertising as effectively, given RAJAR data is crucial "currency" for advertisers"* (127).

11.2 <u>Rebuttal</u>: Global has no ability to unilaterally affect RAJAR's strategy.

11.3 Global does not have a direct shareholding in RAJAR. RAJAR is held 50:50 by RadioCentre and the BBC. Global therefore only has an indirect shareholding in RAJAR as a member of RadioCentre. Excluding RSL, Global holds 58% of shares in RadioCentre; including RSL, Global's shareholding will increase to 62%, with the remaining members being Bauer, Lincs FM, Bay Radio, TIML Radio and UTV.

11.4 Nevertheless, Global has and will have no ability to unilaterally affect RAJAR's strategy via its current or increased shareholding in RadioCentre. RAJAR is structured as a "deadlocked" company, which requires the approval of both of its members, RadioCentre and BBC - this "deadlocked" structure will not change as a result of the merger. Specifically, pursuant to RAJAR's articles of association:

(i) RadioCentre and the BBC may each appoint two directors as well as jointly appointing a chairman. In practice, the current RAJAR board comprises a jointly-appointed independent chairman and a jointly-appointed chief executive officer, three directors appointed by the BBC, and three directors appointed by RadioCentre (RadioCentre's chief executive officer, a Global representative, and a Bauer representative). Representatives of ISBA and the IPA also attend board meetings; and

(ii) all board decisions require the agreement of all directors appointed by RadioCentre and the BBC who are present at the relevant board meeting - crucially, a board meeting is only quorate if there are at least four directors present including the chairman and at least one director appointed by each of RadioCentre and the BBC. Therefore, any decisions taken by the RAJAR board will require the approval of the director(s) present and appointed by the BBC. RadioCentre, and therefore Global, has no ability to unilaterally affect RAJAR's strategy.

11.5 RAJAR, and therefore RadioCentre and the BBC as RAJAR's members, has no incentive to reduce sampling sizes. Although RAJAR has an incentive to operate its business cost-effectively, RAJAR has a much stronger countervailing incentive to ensure that the industry's audience measurement system - which is the "trading currency" for commercial radio - remains robust and accurate thus retaining the full confidence of agencies and advertisers. In fact, RAJAR recently decided to increase its sample sizes in the 15 to 34 age group. Global's incentives are aligned with RAJAR's and RadioCentre's in this respect, and will not change as a result of the merger.

12. INDUSTRY-WIDE ADVERTISING INVENTORY

12.1 OFT conclusion: *"The OFT has not found it necessary to conclude on whether it is or may be the case that the transaction has resulted, or may be expected to result, in a substantial lessening of competition in respect of the provision of industry-wide advertising inventory"* (133).

(i) *"Some competitors and advertising agencies are concerned that the increase in inventory that Global would pool into Newslink as a consequence of the transaction would give it the ability to vary commercial terms relating to Newslink", allowing it to "(a) increase the level of commission it extracts as sales agent for the inventory; and/or (b) vary the rebate terms to stations pooling inventory into Newslink"* (131).

(ii) *"Third parties have highlighted a similar sales agency arrangement for advertising sold during the syndicated Sunday afternoon programme the Big Top 40 chart show…. Global is also the sales agent for advertising sold via Big Top 40 chart show, but the OFT understands that Global also produces the content"* (132).

12.2 Rebuttal: In relation to Newslink commission:

(i) Pursuant to a Radio Representation Agreement entered into between Global and the other members of IRN, Global sells "Newslink" spots predominantly to agencies rather than direct to customers on behalf of IRN. Global has always represented IRN without objection from the other IRN members.

(ii) IRN pays Global a commission which is calculated in accordance to the Radio Representation Agreement (i.e. according to targets). [✂].

12.3 Rebuttal: In relation to Newslink rebates:

(i) Pursuant to subscriber agreements, IRN may at its absolute discretion pay to a subscriber station a proportion of IRN's net operating profit earned in respect of "Newslink" spots (i.e. a rebate). Such rebate is calculated by reference to [✂].

(ii) Global does not have the ability to vary the rebate terms unilaterally: [✂].

(iii) [✂].

12.4 Rebuttal: Newslink / IRN

(i) [✂].

(ii) If a radio station is not already a subscriber to IRN, it will not be obliged to contract with IRN and can contract with Sky for the provision of the same news service. No change will arise as a result of the merger.

12.5 Rebuttal: The Big Top 40 Show

(i) Global produces The Big Top 40 Show ("**BT40**") and contracts with radio groups who agree to broadcast the BT40 as the weekly chart show on their radio stations. In return, Global sells all commercial activity (e.g. advertising and S&P) relating to the BT40 for a [✂]% commission. Global has currently entered into BT40 agreements with [✂] there is no change as a result of the merger.

(ii) [✂]. The merger will have no effect on the term and termination rights provided for in the BT40 agreements.

(iii) A radio group who has not signed up to BT40 has no obligation to do so, and can contract with Global of its own choice. This will not change as a result of the merger.