Global Radio / Real and Smooth Limited

RESPONSE OF GLOBAL TO THE
COMMISSION’S NOTICE OF POSSIBLE REMEDIES

1. Executive Summary

1.1 Global strongly disagrees with the CC’s Provisional Findings that an SLC is likely in the 7 regions identified for reasons that will be explained in its Response to the Provisional Findings. The comments in this Response to the Notice of Possible Remedies are without prejudice to Global’s view that no SLC is likely to arise from its acquisition of RSL in any area.

1.2 Global considers that any remedy requiring the disposal of a core station (i.e. any Capital, Heart, Real or Smooth station) would be disproportionate and highly costly because:

(i) the scale of the SLC identified by the CC in each region is trivial;

(ii) the parties’ stations are not next best alternatives for advertisers in each region - as a result no SLC is plausible; and

(iii) substantial benefits for listeners and advertisers would be lost.

1.3 The only appropriate divestment remedies that Global considers are effective and proportionate (if there is any SLC in these areas) are Gold East Midlands and Real XS in Manchester and Glasgow.

1.4 In this Response, Global addresses each of these issues in turn.
The Scale of the SLC is Trivial

According to the CC’s own Provisional Findings, the scale of the SLC in each region is limited to a small proportion of non-contracted customers and revenues generated by the parties’ stations.¹

The CC has found no SLC for contracted advertisers or national S&P customers who account for the majority of the parties’ revenues in most regions where the CC has provisionally concluded that an SLC may be expected to arise. Table 1 shows that contracted revenues in each of the areas concerned vary between [X]% and [X]% of total revenues in each of the 7 areas for Global.

Outside Wales, RSL’s contracted revenues vary between [X]% and [X]% of total revenue. In Wales, as a whole, contracted revenues account for [X]% of RSL’s total revenues.

Table 1
Contracted revenues not affected by SLC concerns

<table>
<thead>
<tr>
<th>Region</th>
<th>Global</th>
<th>RSL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total revenues</td>
<td>Contracted revenues</td>
</tr>
<tr>
<td>East Midlands</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Cardiff</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>North Wales</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Total Wales Area (RSL only)</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Greater Manchester</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>North East</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>South and West Yorkshire</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Central Scotland</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Total</td>
<td>[X]</td>
<td>[X]</td>
</tr>
</tbody>
</table>

Source: Global and RSL transaction level data, Oct 2011-Sep 2012.

Notes:
1. Revenues for Cardiff, Greater Manchester and South/West Yorkshire are overstated since they are based on much wider regional revenues (i.e. for South Wales, North West and Yorkshire respectively).
2. Contracted revenue figures for Real in North and South Wales are understated because most contracted revenue is attributed to the whole of Wales.

Based on the CC’s own findings, the SLC is likely to affect only around 11% of the parties’ non-contracted customers by revenue (absent any exacerbating regional factors). The total advertising revenues that are potentially affected in each region are trivial, varying between £[X] in North Wales to £[X] in Greater Manchester (see Table

¹ Provisional Findings, para 6.77.
The affected revenues for Cardiff, Greater Manchester, and South/West Yorkshire are overstated since they are based on much wider regional revenues (i.e. for South Wales, North West and Yorkshire respectively).

Table 2

<table>
<thead>
<tr>
<th>Region</th>
<th>Global</th>
<th>RSL</th>
<th>Total revenues affected by SLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>East Midlands</td>
<td>[X]</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Cardiff</td>
<td>[X]</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>North Wales</td>
<td>[X]</td>
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<tr>
<td>North East</td>
<td>[X]</td>
<td>[X]</td>
<td>[X]</td>
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<tr>
<td>South and West Yorkshire</td>
<td>[X]</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Central Scotland</td>
<td>[X]</td>
<td>[X]</td>
<td>[X]</td>
</tr>
<tr>
<td>Total</td>
<td>[X]</td>
<td>[X]</td>
<td>[X]</td>
</tr>
</tbody>
</table>

Source: Global and RSL transaction level data, Oct 2011 - Sep 2012; Assume 11% of non-contracted revenues are affected by SLC.

Moreover, the scale of SLC in each of these 7 regions cannot be equated to the totality of the advertising revenues of the small number of non-contracted customers affected. Given that the core stations of Global and RSL are not each other’s next best alternatives in the 7 SLC areas, Global has estimated the possible SLC to be not more than 5% of the affected revenue (i.e. 5% of 11%).

As the table below shows, the maximum SLC in each of the 7 regions is even more trivial. It varies between £[X] in North Wales and £[X] in Greater Manchester.
### Table 3

**Maximum estimated scale of SLC per region**

<table>
<thead>
<tr>
<th>Region</th>
<th>Estimated scale of SLC per region</th>
</tr>
</thead>
<tbody>
<tr>
<td>East Midlands</td>
<td>[]</td>
</tr>
<tr>
<td>Cardiff</td>
<td>[]</td>
</tr>
<tr>
<td>North Wales</td>
<td>[]</td>
</tr>
<tr>
<td>Greater Manchester</td>
<td>[]</td>
</tr>
<tr>
<td>North East</td>
<td>[]</td>
</tr>
<tr>
<td>South and West Yorkshire</td>
<td>[]</td>
</tr>
<tr>
<td>Central Scotland</td>
<td>[]</td>
</tr>
</tbody>
</table>

*Source: Global and RSL transaction level data, Oct 2011 - Sep 2012. “Cardiff” reflects transactions registered in the region of South Wales in the transaction data; “Greater Manchester” that of North West; “South and West Yorkshire” that of Yorkshire; and “Central Scotland” that of Scotland.*

1.11 The estimated size of the SLC is overstated in Cardiff, Greater Manchester and South and West Yorkshire as the SLC has been calculated based on the parties’ revenues in the entire relevant region (South Wales, North West, and Yorkshire). Therefore, the estimated effect of the SLC in these regions is likely to be significantly smaller.

1.12 The trivial nature of the SLC identified by the CC cannot possibly justify the disposal of any of the parties’ core stations in these regions.
(ii) The Parties’ Core Stations are not Next Best Alternatives in each Region

1.13 Non-contracted advertisers do not view the parties’ stations as each other’s next best alternatives in any region identified by the CC because (i) non-contracted advertisers have equally or more effective alternatives in each region (and will continue to do so after the merger) and (ii) the parties’ stations target highly differentiated demographics and/or geographies in each region.

**East Midlands**

1.14 The CC has failed to recognise that all non-contracted advertisers will continue to have more effective alternatives to the parties’ stations post merger, in particular, Orion’s Gem 106 in the East Midlands.

1.15 The CC has erred in concluding that Orion is not an equally or more effective alternative for advertisers in the East Midlands: Gem 106 is a successful radio competitor to Capital and Smooth, targeting a closer demographic to each station than the parties’ stations (Gem’s average audience age is between that of Capital and Smooth).

1.16 The CC has erred in concluding that Capital and Smooth are next best alternatives for advertisers in the East Midlands. Capital and Smooth are weak alternatives:

(i) Capital and Smooth target highly differentiated geographies - the [\%] of Capital’s non-contracted customers ([\%]) are local whereas Smooth is only sold as a regional station.

(ii) Capital and Smooth target highly differentiated demographics - Smooth is aimed at an older audience (average age 49) whereas Capital is aimed at a younger audience (average age 34).

1.17 The CC should refer to the Regional Analysis for a detailed analysis of the East Midlands.

**Cardiff**

1.18 The CC has failed to recognise that all non-contracted advertisers will continue to have equally or more effective alternatives to the parties’ stations post merger, in particular, T&C and Bauer’s stations and non-radio media in Cardiff.

1.19 The CC has erred in concluding that T&C and Bauer are not equally or more effective alternatives for advertisers in Cardiff: T&C’s Nation and Bauer’s Kiss are the strongest radio competitors to Capital, targeting a closer demographic to Capital than Real.

1.20 The CC has erred in failing to recognise that T&C and UTV are also equally or more effective alternatives to Real for advertisers in South Wales: a combination of T&C’s stations in south and west Wales (Nation, Nation 80s, The Bridge, Radio Pembrokeshire, Radio Carmarthenshire, Scarlet FM and Radio Ceredigion) together provide coverage of 90% of the Real Radio Wales (South) TSA, with an audience share in Real Radio’s TSA of 6%. Global’s Capital and Gold cover only 54% of Real’s TSA,
with an audience share of 5%. UTV is also a very strong competitor in Swansea, with an audience share of 15% in Swansea as compared to Real’s share of 7%. Global’s stations do not cover Swansea.

1.21 The CC has erred in failing to take account of non-radio media alternatives, especially local/regional press in Cardiff, which are equally or more effective alternatives to radio (as recognised by Ofcom in the public interest inquiry).

1.22 The CC has erred in concluding that Capital and Real are next best alternatives for advertisers in Cardiff. Capital and Real are weak alternatives:

(i) Capital and Real target highly differentiated geographies - [X] Real’s non-contracted customers are regional customers whereas Capital’s are limited to Cardiff.

(ii) Capital and Real target differentiated demographics - Real is aimed at an older audience (average age 42) than Capital (average age 34).

1.23 The CC should refer to the Regional Analysis for a detailed analysis of Cardiff.

North Wales

1.24 The CC has failed to recognise that all non-contracted advertisers will continue to have equally or more effective alternatives to the parties’ stations post merger, in particular, non-radio media in North Wales.

1.25 The CC has erred in failing to take account of non-radio media alternatives, especially local/regional press, which are equally or more effective alternatives to radio in North Wales (as recognised by Ofcom in the public interest inquiry).

1.26 The CC has erred in concluding that Heart and Real are next best alternatives for advertisers in North Wales: Heart and Real target highly differentiated geographies - Heart’s customers are predominantly local ([X]% of Heart’s non-contracted revenues are purchased on only one of the four Heart North West and Wales transmitters) whereas Real is only sold as a regional station. A local advertiser on Heart would not regard Real as a close alternative because of the amount of wasted advertising he/she would pay for outside the target local area. Real’s customers would not regard Heart as a close substitute because of its limited geographical coverage. Heart and Real are weak alternatives.

1.23 The CC should refer to the Regional Analysis for a detailed analysis of North Wales.

Greater Manchester

1.27 The CC has failed to recognise that all non-contracted advertisers will have equally or more effective alternatives post merger, in particular, Bauer’s Key 103FM in Greater Manchester.
1.28 The CC has erred in concluding that Bauer is not an equally or more effective alternative for advertisers in Greater Manchester: Key 103FM is the next best alternative to Capital in Greater Manchester because of the type of music played.

1.29 Xfm and Real XS target differentiated audiences, playing different types of music (indie and rock music respectively). Only 7% of Xfm’s listeners also listened to Real XS in Q4 2012.

1.30 The CC should refer to the Regional Analysis for a detailed analysis of Greater Manchester.

*The North East*

1.31 The CC has failed to recognise that non-contracted advertisers will have equally or more effective alternatives post merger, in particular, Bauer and the Local Radio Company’s stations in the North East.

1.32 The CC has erred in concluding that Bauer and the Local Radio Company are not equally or more effective alternatives for advertisers in the North East:

(i) Bauer’s TFM and Metro are the strongest radio competitors to Real and Smooth targeting a closer demographic to Real and Smooth than Capital.

(ii) A combination of the Local Radio Company’s Sun and Star radio stations would be able to provide a good alternative to Real and Smooth as they would target a closer demographic to Real and Smooth than Capital.

1.33 Capital targets a younger demographic. Bauer’s TFM and Metro are closer competitors to Capital than to Real and Smooth. Capital is a weak alternative for both Real and Smooth.

1.34 The CC should refer to the Regional Analysis for a detailed analysis of the North East.

*South and West Yorkshire*

1.35 The CC has failed to recognise that non-contracted advertisers will have equally or more effective alternatives post merger, in particular, Bauer, UTV and Lincs FM’s stations in South West Yorkshire.

1.36 The CC has erred in concluding that Bauer is not an equally or more effective alternative for advertisers in South and West Yorkshire: Bauer’s Hallam and Aire stations are the strongest radio competitors to Capital and Real, targeting a closer demographic to each station.

1.37 The CC has erred in concluding that UTV is not an equally or more effective alternative for advertisers in South and West Yorkshire: UTV’s The Pulse and Pulse 2 are the strongest radio competitors to Real, targeting a closer demographic to Real than Capital.
1.38 The CC has erred in failing to take account of Lincs FM’s Ridings, Rother, Dearne and Trax which, when combined, would be an effective alternative to Real covering a similar geographic area.

1.39 The CC has erred in concluding that Capital and Real are next best alternatives in South and West Yorkshire. Capital and Real are weak alternatives:

(i) Capital and Real target highly differentiated geographies - [✓] Real only covers South and West Yorkshire.

(ii) Capital and Real target differentiated demographics - Real is aimed at an older audience (average age 42) than Capital (average age 34).

1.40 The CC should refer to the Regional Analysis for a detailed analysis of South and West Yorkshire.

Central Scotland

1.41 The CC has failed to recognise that all of the non-contracted advertisers will have equally or more effective alternatives post merger, in particular, Bauer’s Forth and Clyde in Central Scotland.

1.42 The CC has erred in concluding that Bauer is not an equally or more effective alternative for advertisers in Central Scotland: Bauer’s Forth and Clyde are the strongest competitors for both Capital and Real, targeting a closer demographic to each station. Bauer is also the strongest competitor in Central Scotland (by its own admission).

1.43 The CC has erred in concluding that Capital and Real are next best alternatives in Central Scotland. Capital and Real are weak alternatives:

(i) Capital and Real target highly differentiated geographies - [✓] all of Real’s are regional.

(ii) Capital and Real target differentiated demographics - Real is aimed at an older audience (average age 42) than Capital (average age 34).

1.44 The CC should refer to the Regional Analysis for a detailed analysis of Central Scotland.
(iii) **Substantial customer benefits for listeners and advertisers would be lost**

_The principles applicable to assessing remedies_

1.45 In addressing what remedies are suitable to address any putative SLC, the CC has to bear the following in mind:

(i) The remedies must be proportionate to the scale of the SLC and its adverse effects identified by the CC: “The CC will seek to ensure…that no remedy is disproportionate in relation to the SLC and its adverse effects.”

(ii) The CC is duty bound to identify the least costly but effective remedy taking into account as a relevant cost the loss of customer benefits that any possible remedy may entail:

“In order to be reasonable and proportionate the CC will seek to select the least costly remedy, or package of remedies, that it considers will be effective.”

“If remedies extinguish relevant customer benefits then…the amount of benefits foregone may be considered to be a relevant cost of the remedy.”

(iii) Given that the radio market is a two-sided market, relevant customers include both listeners and advertisers.

(iv) The relevant benefits to be preserved are:

(a) “lower prices, higher quality or greater choice of goods or services”; or

(b) “greater innovation in relation to such goods or services”.

(v) The benefits must have arisen (or will arise within a reasonable period) because of the merger and be unlikely to accrue without the merger.

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2 Competition Commission, _Merger Remedies: Competition Commission Guidelines_ (November 2008), (“_the Remedies Guidelines_”) paragraph 1.9.

3 Remedies Guidelines, paragraph 1.9.

4 Remedies Guidelines, paragraph 1.11.

5 Notice of possible remedies under Rule 11 of the Competition Commission Rules of Procedure (the “_Remedies Notice_”), para 27.

6 Section 30.

7 Section 30(2); Guidelines, para 1.16.
(vi) Where the least costly but effective remedy might be expected to incur costs in the form of lost customer benefits that are disproportionate to the scale of the SLC and its adverse effects, the CC has acknowledged that it should not pursue any remedy: “In exceptional circumstances, even the least costly but effective remedy might be expected to incur costs that are disproportionate to the scale of the SLC and its adverse effects (for instance if the costs incurred by the remedy on third parties were likely to be greater than the likely scale of adverse effects). In these exceptional circumstances, the CC would not pursue the remedy in question.”

 Listener benefits

1.46 The transaction will benefit listeners through:

(i) [\textit{\vspace{1em}}]

(ii) The launch of an in-depth, innovative Welsh news service, giving rise to greater choice of news for listeners in Wales: Global has committed to Ofcom in relation to Real Radio Wales that it will introduce, for the first time, a daily 20 minute dedicated Welsh news programme on commercial radio, a dedicated Welsh political editor and a fully-fledged commercial radio Welsh news desk. These changes will give listeners greater choice for in-depth Welsh coverage and increase the quality and innovation of Wales-specific radio journalism.

(iii) The launch of an in-depth, innovative Scottish news service, giving rise to a greater choice of news for listeners in Scotland: Global has committed to Ofcom in relation to Real Radio Scotland that it will introduce, for the first time, a daily 20 minute dedicated Scottish news programme on commercial radio, a dedicated Scottish political editor and a fully-fledged commercial radio Scottish news desk. These changes will give listeners greater choice for in-depth Scottish coverage and increase the quality and innovation of Scotland-specific radio journalism. The value of this commitment has already been recognised in the Scottish Parliament.

(iv) [\textit{\vspace{1em}}]

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8 Remedies Guideline, paragraph 1.12.

9 Bill Kidd, the SNP MSP for Glasgow Anniesland posted a motion “[t]hat the Parliament welcomes the news that Global Radio has committed to providing current affairs programming with a Scottish focus; notes Global Radio’s unilateral commitment to producing a 25-minute programme, broadcasting at peak time, dedicated to Scottish politics and current affairs; understands that this is part of an overall effort to enhance the plurality and democracy of Scottish radio listeners; considers that this programme would provide an alternative to BBC radio coverage, and hopes that Global Radio’s commitment to Scotland will continue and provide its citizens with relevant information at such an important juncture in its political history.”
1.47 These listener benefits are set out in greater detail in the Listener Benefits annex.

**Advertiser benefits**

1.48 The transaction will benefit advertisers through:

(i) **Lower advertising prices for contracted advertisers**: Global is incentivised to offer increased discounts to contracted advertisers because the merger combines complementary networks and stations. In particular the following discounts are likely to result from the merger:

   (a) Increased network discounts for contracted advertisers valued at £;

   (b) Increased network discounts for contracted advertisers valued at £; and

   (c) Increased multi-network discounts for contracted advertisers valued at £.

(ii) **Lower advertising prices for non-contracted advertisers**: Global is similarly incentivised to offer non-contracted advertisers expanded single-region, multi-brand discounts valued at £.

(iii) [\[10\]]

(iv) [\[10\]]

(v) [\[10\]]

(vi) **Higher quality S&P options**. Contracted customers will benefit from the higher quality S&P options. Further, contracted customers will benefit through the reduced transaction costs of a single point of sale such as production, prize-funds and analysis of the effectiveness of campaigns.

1.49 A full explanation of Global’s methodology of calculating these costs and benefits are included in the Advertiser Benefits Annex.

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10 Other than Gold London, East Midlands and Manchester.

11 [\[10\]]
The benefits will accrue within a reasonable period of clearance

1.50 These benefits will accrue to Global’s customers within a reasonable period of clearance. Global intends to introduce these changes within twelve months of receiving clearance and has the experience (from the GCap transaction [\textsuperscript{26}]) to deliver these changes within this timeframe.

There are large costs from any divestment of a core station

1.51 The divestment of any core station in any of the 7 overlap regions will impose significant costs on listeners and advertisers which the CC must weigh in the balance. These costs far outweigh any SLC identified by the CC.
(iv) The only appropriate divestment remedy is Gold East Midlands and Real XS

1.52 Given the significant costs involved and disproportionate nature of any divestment of a core station, the only effective and proportionate remedy is the divestment remedy of Gold East Midlands, Real XS Manchester and Real XS Glasgow.

1.53 These remedies would be proportionate and effective because:

(i) These stations’ share of listening hours are proportionate to the trivial nature of the SLC.

(ii) These stations receive a higher proportion of their revenues from non-contracted advertising (the only area of concern for the CC) compared to the parties’ other stations in their respective regions.

(iii) The majority of the customer benefits arising from the merger will be retained.

(iv) They are the least costly.

1.54 In the attached Regional Analysis annex, Global comments on the most appropriate remedy in each of the 7 areas identified by the CC taking into account the scale of the SLC found by the CC and the lost customer benefits that such remedy and possible alternative remedies would entail.

(v) Conclusion

1.55 The divestment of any core station (Capital, Heart, Real or Smooth) would be disproportionate to the trivial nature of the SLC identified by the CC in each of the relevant regions and would entail the loss of substantial listener and advertiser benefits which cannot be justified.