GLOBAL RADIO HOLDINGS LIMITED/GMG RADIO HOLDINGS LIMITED

Completed Merger Inquiry

Competitor B Response to Remedies Notice

Introduction

1. **Competitor B**

1.1. This submission is made on behalf of Competitor B in response to the Notice of possible remedies under Rule 11 of the Competition Commission Rules of Procedure published by the Competition Commission (the "CC") on 13th February 2013 (the “Remedies Notice”) in relation to its inquiry into the completed acquisition by Global Radio Holdings Limited ("Global") of GMG Radio Holdings Limited (now Real and Smooth Limited ("RSL"))(the "merger").

1.2. [✂]

1.3. [✂] Competitor B's comments in this letter are [✂] based on Competitor B's views of what would constitute an effective standalone business to divest in order to address the identified SLC(s), [✂].

1.4. [✂]

2. **Provisional findings report**

2.1. [✂]

3. **Remedies notice**

3.1. Given, in particular, the extensive number, significance and nature of the SLCs identified in the Provisional Findings, behavioural remedies would not, in Competitor B's view, be a practical or workable solution to remedy the identified SLCs in this case. Accordingly, Competitor B considers that structural remedies are necessary to remedy the identified SLCs.

3.2. The CC has identified three alternative structural divestiture remedies, as follows:

a) Full divestiture;

b) Divestiture of RSL excluding operations in local areas where no SLC is expected to arise;

c) Partial divestiture of local operations.

3.3. Competitor B has noted the evaluation criteria that the CC will have regard to in making its final decision, namely: will the scope of the divestiture package address the loss of rivalry and attract a suitable purchaser that can be an effective competitor in the relevant area?

3.4. In the above context, Competitor B agrees with the CC that Remedy (a) would represent a comprehensive solution to the SLC and an independently-owned RSL would involve relatively low composition risk. Competitor B considers that Remedy (b) could represent a comprehensive solution to the SLC but may involve higher composition and purchaser risks (than Remedy (a)) and that Remedy (c) involves additional composition and purchaser risks.

3.5. More specifically, Competitor B addresses below its views regarding the effectiveness of Remedy (b) and Remedy (c).

Effectiveness of Remedy (b) and Remedy (c)

4. **Remedy (b) – Divestiture of RSL excluding operations in local areas where no SLC is expected to arise**

4.1. Competitor B considers that that Remedy (b) could represent a comprehensive solution to the SLC but may involve higher composition and purchaser risks (than Remedy (a)).

4.2. In the Provisional Findings, no SLC was identified in London or the West Midlands region. Consequently, if the Provisional Findings remain unchanged in the CC's final report, the only RSL assets that Global would retain under Remedy (b) are the Smooth FM radio stations in these two regions.

4.3. Competitor B notes the previous divestment by Global to Orion of its Heart FM radio station in the East Midlands region following its acquisition of GCap in 2008, in relation to which Orion was granted a licence to the Heart programming content and brand, together with a sales agreement appointing Global as agent on Orion's behalf for national sales. Orion subsequently chose to re-brand the Heart station as Gem.

4.4. Given the issues around shared branding and programming that present themselves when considering divestiture options, Competitor B has assumed that a similar affiliate-style divestment and licensing structure may be proposed regarding any divestment purchaser of RSL in favour of Global regarding Smooth in London and the West Midlands region.

4.5. For instance, such an arrangement could involve (i) the retention by Global of the two FM licences from the Smooth network, (ii) Global having local/regional advertising sales rights for the relevant stations in the affected regions, (iii) a licence granted by the divestment purchaser to Global to the Smooth brand and programming content, and (iv) Global having national sales rights for the entire Smooth network [✂].

4.6. However, Competitor B's view, in this case, is that the above affiliate-style arrangement may present a number of additional practical and commercial problems for any purchaser of the remainder of RSL that were not relevant to the previous sale by Global of Heart East Midlands to Orion, for the following reasons:

4.6.1. As the CC is aware, unlike Heart, the Smooth network effectively operates as a single national radio station, with shared branding and a single unified programme schedule across the network. Having taken advantage of regulatory changes introduced by Ofcom, RSL has placed Smooth onto the national commercial multiplex (Digital One), which has allowed RSL to remove regional programming obligations and unify the output into a single, national schedule for Smooth radio. [✂] Selling Smooth either piecemeal (eg under Remedy (c)) or in total but excluding London and the West Midlands region would reduce the above programming efficiencies. In addition, the national DAB licence should also form part of the divesture package, as this would allow any divestment purchaser to maintain Smooth's quasi-national regulatory status.

4.6.2. Competitor B believes that a Smooth network without a London FM presence and no FM presence in the UK's second largest city, Birmingham, may not attract the levels of advertising revenue that it currently does. From a listening hours perspective, for example, removing London and the West Midlands region would reduce listening hours by 2.6 million (12% of Smooth's total listening hours) and 3.8 million (18% of Smooth's total listening hours[1]) , respectively (assuming that all hours associated with London and the West Midlands were analogue (i.e. FM rather than DAB) hours. Without these two key population centres, the impact on revenues could be even more significant, exacerbating the financial impact of a split of Smooth from a cost perspective, as noted above. Moreover, Competitor B considers that London represents a particularly strategic centre as regards the ability for the Smooth network operator to be able to sell sufficient levels of airtime to national advertisers. For this reason, Competitor B considers that any affiliate-style arrangement through which Global is granted a licence to the Smooth brand and to use Smooth programming content for the London and West Midlands stations would need to place Global under an obligation to maintain the stations as Smooth stations and not allow the possibility of re-branding.

4.7. Further, Competitor B considers that the composition and purchaser risks with Remedy (b) noted above would increase in the event that the CC was, in its final report, to identify fewer SLCs than it has identified in its Provisional Findings (ie if Global was permitted to retain further Smooth and/or Real radio stations pursuant to Remedy (b) in addition to the Smooth radio stations in London and the West Midlands).

5. Remedy (c) – Partial divestiture of local operations

5.1. Competitor B considers there to be additional composition and purchaser risks with limiting remedies in this case to local divestments, as contemplated by Remedy (c).

5.2. As a general point, Competitor B notes the views expressed above in relation to the importance of Smooth being able to continue to operate as a national radio network in order to remain a viable standalone business. For this reason, where Competitor B has commented below on an SLC involving a local/regional Smooth station, Competitor B considers that divestment of the whole Smooth network by Global would present a more attractive business to any divestment purchaser. As a result, in Competitor B's view, divestment of the whole Smooth network would minimise any composition and purchaser risk that may be associated with this remedy. As noted in relation to Remedy (b) above, a possible alternative may be a carefully crafted affiliate-style arrangement of the kind discussed above (including the ability over time to transition to a new, separate brand).

5.3. In contrast, Competitor B considers that while certain cost benefits may be lost as a result of a partial divestiture of a local/regional Real, Capital, Xfm or Heart radio station (as applicable), in general, the affiliate-style relationship that was previously adopted for Orion's acquisition of Heart East Midlands from Global in 2008 could, except where specifically noted otherwise below, enable the separate Real, Capital, Xfm or Heart radio businesses (as applicable) to continue to operate as viable multi-regional/local radio stations. Competitor B further considers that such cost benefits may be preserved in the event that one divestment purchaser was to purchase multiple local/regional radio stations and/or combine any divestment purchases with other pre-owned local/regional radio stations to create a new multi-regional radio brand.

5.4. Competitor B has also noted below the further general point that, in a number of areas, Smooth shares staff (possibly including sales staff), offices, studios, technical systems

[1] Appendix L of the Provisional Findings.

and back-office functions with Real/Real XS. In these particular areas, these shared arrangements may increase the composition and purchaser risks that may be associated with a remedy that involves individual divestment of Smooth, Real or Real XS.

5.5. The options outlined below reflect Competitor B's assessments of the likely viability for specific local/regional divestiture packages based on its knowledge of the particular area. These assessments have been formed without access to detailed financial information [✂].

5.6. The remainder of this section focuses on the individual local position that would arise if the CC decided to pursue Remedy (c).

East Midlands

5.7. To address the SLC in this region, in Competitor B's view, there are two potential divestiture options that should be considered:

1. Sell Smooth radio; or
2. Sell Capital East Midlands.

5.8. As noted above, given the importance of Smooth being able to continue to operate as a national radio network in order to remain a viable standalone business, Competitor B considers that, to minimise composition and purchaser risks associated with the remedy, any remedy involving Smooth in the East Midlands region should involve the sale of the whole Smooth radio network.

5.9. Alternatively, given the large scale of the Capital radio station in the East Midlands region (which accounts for over 3.5 million listener hours[2]), [✂]. Furthermore, given the extent of its non-contracted revenue base, this asset would be able to sustain itself on a standalone basis [✂].

Wales

5.10. Competitor B has considered the divestiture options for Wales as a whole given the extent of shared programming and resources within Real Radio Wales, making it, in Competitor B's view, practically and commercially unattractive to split Real's south and north Wales operations. As a result, to address the SLC in this region, in Competitor B's view, there are two potential divestiture options that should be considered:

5.10.1. Sell Real Wales; or

5.10.2. Sell Capital Cardiff and Heart Wales.

5.11. Given the large scale of the businesses under each option above (both divestiture packages represent approximately 3.5 million listening hours[3]), Competitor B believes that both options are likely to represent viable businesses [✂].

Yorkshire, Humberside and Lincolnshire

5.12. To address the SLC identified, in Competitor B's view, there are two potential divestiture options that should be considered:

5.12.1. Sell Real Radio Yorkshire; or

5.12.2. Sell Capital Yorkshire.

[2] Appendix L of the Provisional Findings.
[3] Appendix L of the Provisional Findings.

5.13. Given the large size of Real's and Capital's listener bases (3.7 million hours and 8.2 million hours, respectively[4]), Competitor B believes that both options are likely to represent viable businesses [✂].

Manchester / North West

5.14. There are a number of overlapping radio stations in Manchester / the North West region that are noted in the Provisional Findings to have given rise or to be likely to give rise to an SLC in the area. In particular, the CC has noted that for advertisers looking for radio options by advertising in Greater Manchester and further across the North West, the merger constitutes a reduction in competition from 3 to 2 (where Real North West and Smooth North West overlap with Capital). In this context, Competitor B notes that Capital accounts for 2.8 million listening hours, Real North West accounts for 3.3 million listening hours and Smooth North West accounts for 6.9 million listening hours[5]). While divestment of Capital could remedy the CC's identified SLC, Competitor B has also considered divestment of Smooth North West as a suitable remedy [✂].

5.15. Competitor B also notes that any divestiture package would need to include one of Real XS or Xfm in order to address the particular concerns flagged by the CC that these have a similar demographic and geographic scope, and in respect of which the CC has specifically identified a reduction in local competition from 3 to 2.

5.16. Given the CC's assessment of the significant adverse effects of the merger in Greater Manchester, in Competitor B's view, there are four potential divestiture options that should be considered:

1. Sale of Smooth radio and Xfm;
2. Sale of Smooth radio and Real XS;
3. Sale of Smooth radio, Real North West and Real XS; or
4. Sale of Capital Manchester and Xfm.

5.17. As noted above, given the importance of Smooth being able to continue to operate as a national radio network in order to remain a viable standalone business, Competitor B considers that, to minimise composition and purchaser risks associated with the remedy, any remedy involving Smooth in the North West region should involve the sale of the whole Smooth radio network.

5.18. As regards option 1 above, Competitor B also understands that the Real North West, Real XS and Smooth operations in Manchester are integrated, such that any purchaser of Smooth and, if applicable, Real XS (without Real North West), would need to replicate the local staff (possibly including sales staff), offices, studios, technical systems and back-office functions shared by these stations with Real North West. For these reasons, Competitor B considers that options 1 and 2 above would involve additional composition and purchaser risks as compared to options 3 and 4 above.

5.19. Given the large scale of the listener bases of all of the above options (amounting to, at least, 3 million listener hours in each case[6]), Competitor B believes that options 3 and 4, in particular, are likely to represent viable businesses [✂].

North East

[4] Appendix L of the Provisional Findings.
[5] Appendix L of the Provisional Findings.
[6] Appendix L of the Provisional Findings.

5.20. As with Manchester, there are a number of overlapping radio stations in the North East region that are noted in the Provisional Findings to have given rise or to be likely to give rise to an SLC in the area, namely where Real North East and Smooth North East overlap with Capital. In this context, Competitor B notes that Capital accounts for 3.8 million listening hours, Real North East accounts for 1.9 million listening hours and Smooth North East accounts for 3.2 million listening hours[7]). While divestment of Capital could remedy the CC's identified SLC, Competitor B has also considered divestment of Smooth North East and Real North East together as a suitable remedy. Competitor B notes that if, theoretically, Global was to divest either local radio station individually (and keep the other), a combined Capital/Smooth or Capital/Real would have a significantly larger listener base than an independent Real or Smooth (as the case may be) and would not, in Competitor B's view, be effectively constrained. Competitor B also notes that Smooth has a different demographic from Real and Capital in the North East region. Further, even if divestiture of one of Smooth or Real in the North East region could remedy the CC's identified SLC in the North East region, Competitor B understands that the Real North East and Smooth operations in Gateshead are integrated, such that any purchaser of Smooth would need to replicate the local staff (possibly including sales staff), offices, studios, technical systems and back-office functions currently shared by these stations.

5.21. In Competitor B's view, therefore, there are two potential divestiture options that should be considered:

1. Sale of Smooth radio and Real North East; or
2. Sale of Capital North East.

5.22. Again, given the importance of Smooth being able to continue to operate as a national radio network in order to remain a viable standalone business, Competitor B considers that, to minimise composition and purchaser risks associated with the remedy, any remedy involving Smooth in the North East region should involve the sale of the whole Smooth radio network.

5.23. Given the large scale of the listener bases of each of the above options (amounting to, at least, 3 million listener hours in each case[8]), Competitor B believes that each option is likely to represent a viable business [✂].

Scotland

5.24. As with Manchester and the North East, there are a number of overlapping radio stations in the Central Scotland region that are noted in the Provisional Findings to have given rise or to be likely to give rise to an SLC in the area. In particular, the CC has noted that the merger gives rise to a reduction in competition from 3 to 2 in Glasgow (by combining Capital with Smooth locally, and Real regionally) and across the region (by combining Capital with Real). In this context, Competitor B notes that Capital accounts for 3.2 million listening hours, Real Scotland accounts for 5.5 million listening hours and Smooth Glasgow accounts for 2.3 million listening hours[9]. [✂]

5.25. Competitor B does not believe that the sale of Smooth on its own would be sufficient to restore rivalry in the region (since this does not address the SLC identified in Central Scotland outside Glasgow).

[7] Appendix L of the Provisional Findings.
[8] Appendix L of the Provisional Findings.
[9] Appendix L of the Provisional Findings.

5.26. Competitor B considers the ownership of Real XS Scotland to be immaterial to the maintenance of competition within the Central Scotland region, due to its historically low volume of listening hours, localised coverage (which is restricted to Paisley) and niche format. We have therefore not included Real XS in any proposed divestiture package.

5.27. To address the SLC identified in Scotland, in Competitor B's view, there are three potential divestiture options that should be considered:

1. Sale of Real Scotland;
2. Sale of Smooth radio and Real Scotland; or
3. Sale of Capital Scotland.

5.28. Again, given the importance of Smooth being able to operate as a national radio network in order to remain a viable standalone business, Competitor B considers that, to minimise composition and purchaser risks associated with the remedy, any remedy involving Smooth in the Central Scotland region should involve the sale of the whole Smooth radio network.

5.29. As regards option 1 above, Competitor B understands that the Real XS, Real Scotland and Smooth operations are integrated, such that any purchaser of Real Scotland or Smooth and, if relevant, Real XS (without Real Scotland), would need to replicate the local staff (possibly including sales staff), offices, studios, technical systems and back-office functions currently shared by these stations. For these reasons, Competitor B considers that option 1 above would involve additional composition and purchaser risks as compared to options 2 and 3 above.

5.30. Given the large scale of the listener bases of all of the above options (amounting to, at least, 3 million listener hours in each case[10]), Competitor B believes that options 2 and 3, in particular, are likely to represent viable businesses [✄].

6. Relevant customer benefits

6.1. Competitor B also notes that the CC will have regard to the impact of any remedial action on any relevant customer benefits that may arise from the merger. While Competitor B is not in a position to be able to estimate/quantify the extent of any such customer benefits, Competitor B does not consider that any such benefits would be significant in this case. In particular, Competitor B notes paragraphs 7.169 to 7.178 of the Provisional Findings, which comment that the merger will not result in rivalry-enhancing efficiencies and that efficiencies that were identified as part of Global's acquisition of GCap did not, in the CC's view, increase the parties' aggregate listener base.

6.2. Notwithstanding the above views, given the large number and significance of the SLCs identified by the CC in the Provisional Findings and the likelihood of a substantial lessening of divestment of the acquired entity regardless of which remedy option is adopted by the CC, Competitor B considers that customer benefits would be very unlikely to arise from the merger once such divestments have been concluded.

[✄]

[10] Appendix L of the Provisional Findings.