

COMPLETED ACQUISITION BY GLOBAL RADIO UK LTD OF GCAP MEDIA PLC

UNDERTAKINGS TO BE GIVEN BY GLOBAL RADIO UK LTD TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (a) On 6 June 2008 Global acquired GCAP;
- (b) It appears to the OFT that, as a consequence of that transaction, a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the CC for further investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the acquisition of GCAP to the CC; and
- (f) The OFT further considers that the undertakings given below by Global are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it, or may be expected to result from it, as specified in the Decision.

NOW THEREFORE Global hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

Effective date of the undertakings

- 1.1 These undertakings shall take effect from the date that, having been signed by Global, they are accepted by the OFT.

Divestment of the East Midlands Divestment Business and the West Midlands Divestment Business

- 2.1 Global shall, prior to acceptance of these undertakings by the OFT, enter into a legally binding agreement (or agreements), conditional on OFT approval, to divest to the satisfaction of the OFT the East Midlands Divestment Business and the West Midlands Divestment Business each as a going concern to the proposed purchaser, LDC, on terms approved by the OFT in advance of acceptance of these undertakings. The completion of the divestment of each of the East Midlands Divestment Business and the West Midlands Divestment Business as contemplated by such agreements shall take place within a period not exceeding two months from the date the undertakings take effect (as set out in paragraph 1.1 above).
- 2.2 Without prejudice to the generality of paragraph 2.1 above, Global shall use all reasonable endeavours to ensure the transfer of the Key Staff with the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business if so desired by LDC as the proposed purchaser of the East Midlands Divestment Business and the West Midlands Divestment Business.
- 2.3 Without prejudice to the generality of paragraph 2.1 above, Global shall take one or more of the following measures to the extent they may be necessary in the opinion of the OFT to effect the sale of the East Midlands Divestment Business and the West Midlands Divestment Business in accordance with the provisions of these undertakings:
 - (a) the transfer of Global's shareholding in the East Midlands Divestment Business and the West Midlands Divestment Business;
 - (b) the transfer of the rights and contracts associated with the existing carriage agreements for the DAB broadcast of the East Midlands Divestment Business analogue services in the East Midlands and the West Midlands Divestment Business analogue services in the West Midlands, save where such transfer can only be effected by means of the consent of a third party in which case Global shall take steps to procure the consent of that third party or secure alternative arrangements for DAB broadcasting of those services where such consent cannot be secured;
 - (c) the transfer of the West Midlands Divestment Business brand names relating to the FM analogue broadcast licences of the West Midlands Divestment Business and the licensing of the Heart brand relating to the FM analogue broadcast licence of the East Midlands Divestment Business as contemplated by paragraph 4.3 below;

- (d) the transfer or vesting of any additional property, assets, rights, personnel, liabilities or obligations, including without prejudice any contracts, licences, authorisations, permits or consents;
 - (e) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (f) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
 - (g) the formation or winding up of a company.
- 2.4 Global shall ensure that the sale and purchase agreement entered into for the purposes of paragraph 2.1 above includes a warranty that the purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the East Midlands Divestment Business and the West Midlands Divestment Business as part of a viable and active business in competition with Global and other competitors in the supply of regional advertising campaigns in each of the East Midlands and West Midlands.
- 2.5 In the event that Global fails to divest the East Midlands Divestment Business and West Midlands Divestment Business in accordance with paragraph 2.1 above, the OFT may require Global to divest the East Midlands Divestment Business and the West Midlands Divestment Business as a going concern to a purchaser or purchasers approved by the OFT.

Approval of purchaser and terms of divestment

- 3.1 For the purposes of the OFT approving LDC as a proposed purchaser for the East Midlands Divestment Business and the West Midlands Divestment Business in accordance with these undertakings, Global shall, save as required or permitted by the OFT, satisfy the OFT that:
- (a) the acquisition by LDC of the East Midlands Divestment Business and the West Midlands Divestment Business remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
 - (b) LDC is independent of and unconnected to Global and the Group of Interconnected Bodies Corporate to which Global belongs and any Associated Person or Affiliate of Global or such Group of Interconnected Bodies;

- (c) LDC has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the East Midlands Divestment Business and the West Midlands Divestment Business as part of a viable and active business in competition with Global and other competitors in the provision of regional radio advertising campaigns to reach listeners in the East and West Midlands;
 - (d) LDC has obtained all necessary approvals and consents; and
 - (e) the acquisition by LDC of the East Midlands Divestment Business and the West Midlands Divestment Business does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.
- 3.2 The OFT may require Global to provide it with such information and documentation as it may reasonably require to satisfy the OFT that LDC will fulfil the requirements set out in paragraph 3.1 above.

Advertising Sales Agreement and licence of Heart brand

- 4.1 Global shall enter into a Advertising Sales Agreement with LDC which provides for Global to sell advertising campaigns for the East Midlands Divestment Business and West Midlands Divestment Business on behalf of LDC for use as part of National Campaigns.
- 4.2 Global shall be deemed to have complied with the obligation at paragraph 4.1 if the OFT is satisfied that, prior to the acceptance of these undertakings by the OFT, Global has entered into a legally binding agreement (or agreements) to divest the East Midlands Divestment Business and the West Midlands Divestment Business (in accordance with its obligation under paragraph 2.1 above), which agreement (or agreements) provides that on completion of such agreement (or agreements) LDC shall deliver or make available to Global a duly executed version of an agreed form Advertising Sales Agreement, provided that the terms of the Advertising Sales Agreement:
- (a) do not individually and/or collectively reduce or undermine LDC's ability to compete actively with Global as regards the sale of Regional Campaigns that do not form part of a National Campaign, including, for example, by the imposition of a minimum inventory requirement for National Campaigns beyond that which would be considered reasonable and proportionate in relation to such an Advertising Sales Agreement in these circumstances;
 - (b) do not individually and/or collectively reduce or undermine LDC's incentive to compete actively with Global in the sale of Regional Campaigns that do not form part of a National Campaign; and

- (c) contain no direct or indirect restriction on LDC's ability to sell Regional Campaigns, including Regional Campaigns forming part of a National Campaign, regardless of the identity of any customer purchasing such Regional Campaign, provided that the customer in question has indicated their preference to purchase a Regional Campaign directly from LDC.
- 4.3 Global shall enter into a Brand Licence with LDC in order to allow LDC to use the Heart brand in relation to the East Midlands Divestment Business.
- 4.4 Global shall be deemed to have complied with the obligation at paragraph 4.3 if the OFT is satisfied that, prior to the acceptance of these undertakings by the OFT, Global has entered into a legally binding agreement (or agreements) to divest the East Midlands Divestment Business and the West Midlands Divestment Business (in accordance with its obligations under paragraph 2.1 above), which agreement (or agreements) provides that on completion of such agreement (or agreements) LDC shall deliver or make available to Global a duly executed version of an agreed form Brand Licence, provided that the terms of the Brand Licence:
 - (a) do not provide Global with the ability to determine or influence LDC's choice of local programming staff or local presenters for the East Midlands Divestment Business or the West Midlands Divestment Business;
 - (b) do not individually and/or collectively reduce or undermine LDC's ability to compete actively with Global as regards the sale of Regional Campaigns that do not form part of National Campaigns, including, for example, by:
 - (i) the imposition of minimum quality standards beyond those that would be considered reasonable and proportionate in relation to such a Brand Licence; and/or
 - (ii) the imposition of a minimum quantity of national network programming that is materially detrimental to the commercial operation of the Station;
 - (c) do not individually and/or collectively reduce or undermine LDC's incentive to compete actively with Global in the sale of Regional Campaigns that do not form part of a National Campaign; and
 - (d) contain no direct or indirect restriction on LDC's ability to sell Regional Campaigns, including Regional Campaigns forming part of a National Campaign, regardless of the identity of any customer purchasing such Regional Campaign, provided that the customer in

question has indicated their preference to purchase a Regional Campaign directly from LDC.

Interim action

5.1 Prior to the completion of the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business to the satisfaction of the OFT in accordance with the provisions of these undertakings, Global shall ensure that from the date these undertakings take effect and except with the prior written consent of the OFT:

- (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the Acquisition, each of the East Midlands Divestment Business and the West Midlands Divestment Business is maintained as a going concern and sufficient resources are made available for the development of each of the East Midlands Divestment Business and the West Midlands Divestment Business on the basis of their respective pre-merger plans;
- (b) no substantive changes are made to the organisational structure of the East Midlands Divestment Business and the West Midlands Divestment Business or the management responsibilities within the East Midlands Divestment Business and the West Midlands Divestment Business, other than in the ordinary course of business;
- (c) the East Midlands Divestment Business and the West Midlands Divestment Business are maintained and preserved, including facilities and goodwill;
- (d) the nature, description, range and standard of goods and services currently supplied by the East Midlands Divestment Business and the West Midlands Divestment Business are maintained and preserved;
- (e) the separate trading name and/or the separate sales or brand identity of each of the East Midlands Divestment Business and the West Midlands Divestment Business is maintained;
- (f) except in relation to the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business to LDC, no assets of the East Midlands Divestment Business and the West Midlands Divestment Business are disposed of, and no Interest in such assets is created or disposed of, other than in the ordinary course of business;
- (g) there is no further integration of the information technology used by Global with that used by either of the East Midlands Divestment

Business and the West Midlands Divestment Business and the software and hardware platforms of the East Midlands Divestment Business and the West Midlands Divestment Business shall remain essentially unchanged, except for routine changes and maintenance;

- (h) all reasonable steps are taken to encourage all Key Staff to remain with the East Midlands Divestment Business and the West Midlands Divestment Business, save where LDC has stated in writing to Global that it does not wish that an individual member of the Key Staff be transferred to it with the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business; and
- (i) to the extent it has not already occurred and except as detailed below, no Confidential Information relating to any of the East Midlands Divestment Business and the West Midlands Divestment Business shall pass, directly or indirectly from the East Midlands Divestment Business or the West Midlands Divestment Business (or any employees, directors, agents or Affiliates of the East Midlands Divestment Business and the West Midlands Divestment Business) to Global (or any of its employees, directors, agents or Affiliates), or vice versa, except where strictly necessary in the ordinary course of business or in any of the following circumstances:
 - (i) the transfer of any accounting information necessary to allow Global's Chief Executive, Chief Financial Officer and Group Secretary and the Global Board to monitor and review the financial performance of the East Midlands Divestment Business and the West Midlands Divestment Business provided that such accounting information is not passed on to any other person within Global;
 - (ii) the transfer of any information required in connection with Global's dealings with the OFT;
 - (iii) the transfer of any information necessary for compliance with any statutory or accounting obligations to the extent that such compliance cannot be achieved separately by each of the East Midlands Divestment Business and the West Midlands Divestment Business businesses;
 - (iv) any steps necessary in order for Global to comply with these undertakings;

provided that, upon divestment of any of the East Midlands Divestment Business and the West Midlands Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by Global in relation to East Midlands Divestment

Business or the West Midlands Divestment Business shall be returned to the relevant business and any copies destroyed.

Continued separation

6.1 Except with the prior written consent of the OFT, following the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business, Global or any member of the Group of Interconnected Bodies Corporate to which Global belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) any Interest in the East Midlands Divestment Business or the West Midlands Divestment Business;
 - (ii) any Interest in any company carrying on or having Control of the East Midlands Divestment Business or the West Midlands Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of Global or of any members of the Group of Interconnected Bodies Corporate to which Global belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
 - (iii) other than in the ordinary course of business, any of the assets of the East Midlands Divestment Business or the West Midlands Divestment Business;
- (b) shall procure that no employee or director of Global or of any member of the Group of Interconnected Bodies Corporate to which Global belongs holds or is nominated to any directorship or managerial position in any company or other undertaking utilising or having Control of the East Midlands Divestment Business or the West Midlands Divestment Business without the OFT's prior written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of any company or other undertaking carrying on or having Control of the East Midlands Divestment Business and the West Midlands Divestment Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of

Global or of any member of the Group of Interconnected Bodies Corporate to which Global belongs directly or indirectly acquiring the East Midlands Divestment Business and the West Midlands Divestment Business or doing any of the things listed in subparagraphs (a), (b) and (c) above.

Compliance

- 7.1 Global shall comply promptly with such written directions as the OFT may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which they might be required by these undertakings to do or to refrain from doing.
- 7.2 Global shall procure that any member of the same Group of Interconnected Bodies Corporate as Global complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as Global shall be attributed to Global for the purposes of these undertakings.
- 7.3 Where any Affiliate of Global is not a member of the same Group of Interconnected Bodies Corporate as Global, Global shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

Provision of Information

- 8.1 Global shall furnish promptly to the OFT such information as the OFT considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

Interpretation

- 9.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 9.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.

9.3 In these undertakings the word “including” shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word “include” and its derivatives shall be construed accordingly.

9.4 For the purposes of these undertakings:

“Acquisition” means the completed acquisition on 6 June 2008 by Global of GCAP;

“Advertising Sales Agreement” has the meaning set out in Clause 4.1 above;

“the Act” means the Enterprise Act 2002;

“Affiliate” of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

“Associated Person” means a person or persons associated with Global within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

“Brand Licence” has the meaning set out in Clause 4.3 above;

“business” has the meaning given by section 129(1) and (3) of the Act;

“CC” means the Competition Commission;

“Confidential Information” means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

“Control” shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“the Decision” means the OFT’s decision under section 22 of the Act dated 8 August 2008 in connection with the Acquisition;

“East Midlands Divestment Business” means the whole or substantially the whole of the rights, assets, interests and obligations of or associated with the following companies:

Name	Company Number
Global Radio East Midlands Limited	03050677
Border Radio Holdings Limited	03376590

which comprise a local sound broadcasting service for the East Midlands carried on under the following licence number and with the following call sign

Licence number	Carried on by	Call sign
AL200-1	Global Radio East Midlands Limited	“Heart”

excluding the Heart brand, but including without prejudice to the foregoing:

- (a) all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of that business;
- (b) all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit or purpose of that business;
- (c) all or substantially all contracts, leases, commitments and customer orders of or associated with that business;
- (d) all customer, credit and other records of that business; and
- (e) the personnel of that business.

“GCAP” means GCap Media plc;

“Global” means Global Radio UK Limited;

“Group of Interconnected Bodies Corporate” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“Interest” includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings; and for this purpose “an interest in shares” includes an entitlement by a person other than the registered holder, to

exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

"Key Staff" means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the East Midlands Divestment Business and/or the West Midlands Divestment Business;

"LDC" means LDC Media;

"National Campaign" mean an advertising campaign that is either UK-wide in scope or is at least wider in geographic coverage than the East Midlands and West Midlands;

"OFT" means the Office of Fair Trading;

"Regional Campaign" means an advertising campaign which will be broadcast in the East Midlands and/or West Midlands;

"Subsidiary" shall be construed in accordance with section 736 of the Companies Act 1985 (as amended), unless otherwise stated;

"UK" means the United Kingdom of Great Britain and Northern Ireland; and

"West Midlands Divestment Business" means the whole or substantially the whole of the rights, assets, interests and obligations of or associated with the following companies:

Name	Company Number
Midlands Radio Limited	02365381
BRMB Limited	00275304
Birmingham Broadcasting Limited	00685666
Capital Gold Birmingham Limited	04643580
Capital Radio Fun Limited	01384547
Capital Radio North East Limited	01455872
Mercia Sound Limited	01386660
Beacon Broadcasting Limited	00674678
Radio Wyvern Limited	01568552

which comprise a local sound broadcasting service for the West Midlands carried on under the following licence numbers and with the following call signs

Licence number	Carried on by	Call sign
AL077-2	Birmingham Broadcasting Limited	"BRMB"
AL119-2	Beacon Broadcasting Limited	"Beacon FM"
AL022-2	GWR Group Limited	"Mercia FM"
AL061-3	Radio Wyvern Limited	"Wyvern FM"
AL076-2	Capital Gold Birmingham Limited	"Gold Birmingham"
AL118-2	GCap Media AM Limited	"Gold Wolverhampton"
AL021-2	GCap Media AM Limited	"Gold Coventry"

including without prejudice to the foregoing:

- (a) all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of that business;
- (b) all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit or purpose of that business;
- (c) all or substantially all contracts, leases, commitments and customer orders of or associated with that business;
- (d) all customer, credit and other records of that business; and
- (e) the personnel of that business.

FOR AND ON BEHALF OF **GLOBAL RADIO UK LIMITED**

.....	Signature	Signature
.....	Name	Name
.....	Title	Title
.....	Date	Date
Director		Director/Company Secretary	