

**COMPLETED ACQUISITIONS BY BAUER MEDIA GROUP OF CERTAIN BUSINESSES OF CELADOR ENTERTAINMENT LIMITED, LINCS FM GROUP LIMITED AND WIRELESS GROUP LIMITED, AND THE ENTIRE BUSINESS OF UKRD GROUP LIMITED**

**ME/6809/19; ME6810/19; ME6811/19; ME6812/19**

**RESPONSE TO THE CMA DECISION ON RELEVANT MERGER SITUATION AND SUBSTANTIAL LESSENING OF COMPETITION**

1. **INTRODUCTION**

- 1.1 In this Submission, Bauer Media Group ("**Bauer**") responds to the CMA's Decision on Relevant Merger Situation and Substantial Lessening of Competition dated 24 July 2019 (the "**SLC Decision**") in respect of the completed acquisitions of certain businesses from Celador Entertainment Limited ("**Celador**"), Lincs FM Group Limited ("**Lincs**"), Wireless Group Limited ("**Wireless**") and UKRD Group Limited ("**UKRD**") (each a "**Target**").<sup>1</sup> These acquisitions each constitute a "**Transaction**" and are referred to collectively as the "**Transactions**". Bauer and the Targets are collectively the "**Parties**".
- 1.2 This Submission focusses on the SLC findings contained in the SLC Decision. Bauer intends to develop these submissions further as necessary in response to the Issues Statement. Bauer agrees with the SLC Decision to the extent that it finds that there are no competition issues in relation to DAB multiplexes or national radio advertising. To the extent Bauer does not address any aspect of the SLC Decision this should not be treated as an acceptance of it.
- 1.3 This document is structured as follows:
- 1.3.1 **Section 2** contains an executive summary;
  - 1.3.2 **Section 3** sets out Bauer's commercial rationale for the Transactions and the benefits of the Transactions for advertisers, listeners and the acquired stations;
  - 1.3.3 **Section 4** makes some general observations on the competitive assessment undertaken in the SLC Decision;
  - 1.3.4 **Sections 5-7** address the competition concerns arising from alleged horizontal unilateral effects in relation to the supply of local radio advertising in the West of England, South Yorkshire and West Midlands respectively; and
  - 1.3.5 **Section 8** addresses the competition concern arising from alleged vertical effects in the supply of local advertising as a result of the loss of FRS as a national sales advertising house.
- 1.4 Where appropriate, Bauer has cross-referred to previous materials provided to the CMA in respect of the Transactions.<sup>2</sup> Where additional evidence has been produced it is identified as such.

---

<sup>1</sup> As explained in the Briefing Paper submitted to the CMA on 15 February 2019 (the "**Briefing Paper**"), no acquisition (each a "**Transaction**") is commercially interdependent or contractually inter-conditional on another. Each of the Transactions is an independent acquisition with a distinct counterparty, relating to local radio stations in different localities.

<sup>2</sup> In particular, reference is made to the Response to the S.109 Notices issued on 1 March 2019 (submitted to the CMA in consolidated form on 24 April 2019) (the "**First S.109 Response**"); the Response to the S.109 Notices issued on 27 March 2019 (submitted to the CMA in consolidated form on 24 April 2019) (the "**Second S.109 Response**"); the Response to the RFI issued on 5 April 2019 (submitted to the CMA on 16 April 2019) ("**RFI1 Response**"); the Merger Notice submitted to the CMA on 28 May 2019 (the "**UKRD Merger Notice**"); the Response to the RFI issued on 30 April 2019 (submitted to the CMA on 8 May 2019) (the "**RFI2 Response**"); the Response to the S.109 Notices issued on 30 April 2019 (submitted to the CMA on 8 May 2019) (the "**Third S.109 Response**"); the Response to the RFI issued on 21 May 2019 (submitted to the CMA on 28 May 2019) (the "**RFI3 Response**"); Bauer's response to the Issues Letter (submitted to the CMA on 3 July 2019) (the "**Response to the Issues Letter**"); Bauer's Observations on Internal Documents (submitted to the CMA on 5 July 2019) (the "**Internal Documents Note**"); and Bauer's Foreclosure Analysis (submitted to the CMA on 5 July 2019) (the "**Foreclosure Analysis**").

- 1.5 **It should be noted that this Submission contains confidential information and business secrets which should not be disclosed to third parties.** It also contains material that is confidential as between the Parties, in particular **material highlighted cyan is confidential to the Targets and should not be disclosed to Bauer** while the initial enforcement orders of 1 March 2019 and 12 March 2019 remain in force.
- 1.6 As discussed with the CMA at the meeting on 15 August 2019, Bauer's ability to comment on the FRS section of the SLC Decision is limited by the redaction of Annex 2 of that decision. Annex 2 is a list of the stations which the CMA considers may exit or be weakened as a result of the Transactions and which is a sub-set of the list of stations which the CMA identified as being "of concern" which appeared as Annex 2 to the Issues Paper and which was disclosed in its entirety to Bauer. The only difference appears to be that Annex 2 to the SLC Decision excludes stations which the CMA has found are not reliant on national commercial advertising revenues and/or stations which have less than a 5% share of commercial radio listening in their TSAs.<sup>3</sup> The exclusion of these stations does not render the new Annex 2 confidential. Bauer would therefore be grateful if an unredacted version of Annex 2 to the SLC Decision could be provided to it as soon as possible.

## 2. EXECUTIVE SUMMARY

- 2.1 Bauer has made four acquisitions with a total value of c. [REDACTED]. In doing so, it acquired 53 stations.<sup>4</sup> As explained further below, [REDACTED].
- 2.2 Bauer immediately disposed of 3 stations<sup>5</sup> (to Nation) [REDACTED]. Of the remaining 50 stations retained by Bauer, the CMA has found possible horizontal SLCs in three local areas and a potential SLC related to vertical effects.
- 2.3 In each of the three areas, the acquired stations and Bauer stations are not substitutes for local advertisers and do not compete to any material extent.
- 2.3.1 In the West of England, there are significant differences in geographical coverage, audience demographics and format between the acquired stations (Sam FM/The Breeze (South West)) and Kiss (West), the Bauer station, a quasi-national station which carries *de minimis* local advertising.
- 2.3.2 In South Yorkshire, there are significant differences in geographical coverage and audience size, reach and demographics between the acquired stations (Trax FM, Rother FM and Dearne FM) and Bauer's Hallam FM.
- 2.3.3 In the West Midlands, the possible SLC is limited to small geographic overlaps between the acquired station (Signal 107) and Bauer's Free Radio in parts of Shropshire and Wolverhampton. Signal 107 which has very low audience shares and reach<sup>6</sup> generates *de minimis* local advertising revenue in these areas.
- 2.4 In each of the three areas the parties continue to be constrained by a strong close local competitor, Global, and in addition in Yorkshire by Communicorp as well as by non-radio advertising.
- 2.5 In relation to vertical effects, the SLC Decision mischaracterises Bauer's incentives. Bauer has a strong incentive to represent the third party stations currently represented by FRS.<sup>7</sup> [REDACTED]. Bauer would not benefit from the hypothetical foreclosure strategy described in the SLC Decision.

<sup>3</sup> SLC Decision, paragraphs 230 and 260.

<sup>4</sup> Including DAB only stations, comprised of c. 67 licences.

<sup>5</sup> Comprised of 5 licences.

<sup>6</sup> A station's reach is the number of people who listened to that station for at least 5 minutes in a week during the RAJAR survey period.

<sup>7</sup> See Foreclosure Analysis.

- 2.6 In light of the foregoing, Bauer submits that there are no grounds for an SLC finding, either in relation to horizontal unilateral effects in respect of local advertising or vertical effects. Bauer looks forward to addressing these issues with the CMA during the course of its inquiry.

### 3. **RATIONALE FOR AND BENEFITS OF THE TRANSACTIONS**

- 3.1 Bauer's overall strategy for its UK radio business is [REDACTED] increasing its share of commercial listening and extending the geographic and demographic coverage of its stations. [REDACTED]. [REDACTED] Bauer has launched new stations such as Scala Radio, a national DAB classical music service aimed at an older demographic, [REDACTED] and it has [REDACTED] developing its range of DAB and IP radio services.<sup>8</sup>
- 3.2 [REDACTED].<sup>9</sup> [REDACTED]<sup>10</sup> [REDACTED].
- 3.3 The Transactions enable Bauer to rapidly increase its audience and broaden its geographic footprint ([REDACTED]) through the acquisition of a portfolio of stations complementary to those that Bauer currently operates. [REDACTED].
- 3.4 [REDACTED].
- 3.5 [REDACTED].
- 3.6 [REDACTED]<sup>11</sup> [REDACTED].<sup>12</sup> [REDACTED].
- 3.7 [REDACTED]. The majority of radio listening (56% as reflected in RAJAR data<sup>13</sup>) is now digital, either via DAB/DAB+ (as the penetration of digital receivers increases) or IP such as through smartphone apps, smart speakers, or streamed in the home.<sup>14</sup> Currently 12.5% of all radio listening is via IP, which is the fastest growing radio platform.<sup>15</sup> [REDACTED].

### 4. **GENERAL COMMENTS ON THE COMPETITIVE ASSESSMENT**

- 4.1 First, the SLC Decision refers to radio listening in general terms.<sup>16</sup> It is, however, important to recognise that listeners to radio use a range of different platforms such as analogue platforms (AM/FM); digital platforms (DAB/DAB+) and the internet (IP) such as via apps on smartphones, internet connected radios, home PCs or smart speakers and digital television services. The way in which advertising reaches listeners across these platforms varies and is relevant for the competitive assessment of the Transactions. RAJAR both records audience data for listening on all platforms, and captures data separately for each.<sup>17</sup> Audiences are migrating to digital listening (indeed more than half of listening is already digital). Bauer is responding to this to maintain its audiences and compete with Global by innovating and investing in its digital services, for example, by working with Amazon to deliver highly interactive access to all its stations via the Amazon Echo smart speaker.<sup>18</sup>
- 4.2 Second, Bauer considers that constraints from non-radio advertising are important and relevant to the competition assessment in relation to local radio advertising. When reviewing Bauer's internal documents, the CMA found that the parties focus on RAJAR data, which relates to radio listening.<sup>19</sup> This should not be viewed as evidence of a lack of constraint outside radio. RAJAR data is used for the pricing of radio advertising: [REDACTED]<sup>20</sup>, and RAJAR is the authoritative source of data on listener numbers. RAJAR data is also used to identify

<sup>8</sup> See, for example, Annex 21.1 to the First S.109 Response (page 6).

<sup>9</sup> [REDACTED].

<sup>10</sup> [REDACTED].

<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED].

<sup>13</sup> Q2 2019.

<sup>14</sup> For further information, see Question 2 of the RF11 Response.

<sup>15</sup> According to RAJAR, IP listening was 9.3% of total listening in Q2 2018 and 12.5% in Q2 2019, representing a 35.5% year-on-year increase. See [https://www.rajar.co.uk/docs/2019\\_06/RAJAR%20Q2%202019%20-%20Chart%201%20-%20All%20Radio%20Listening%20-%20Clean.pdf](https://www.rajar.co.uk/docs/2019_06/RAJAR%20Q2%202019%20-%20Chart%201%20-%20All%20Radio%20Listening%20-%20Clean.pdf).

<sup>16</sup> See, for example, paragraph 76.

<sup>17</sup> The four platforms being AM/FM, DAB/DAB+, DTV (digital television) and IP.

<sup>18</sup> See <https://www.bauermedia.co.uk/newsroom/press-releases/bauer-media-launches-alexa-skills-for-entire-radio-portfolio>.

<sup>19</sup> SLC Decision, paragraph 94.

<sup>20</sup> [REDACTED].

trends such as migration to digital platforms and therefore the parties would scrutinise it very closely regardless of the constraint from non-radio advertising.

- 4.3 Bauer welcomes the fact that the CMA will consider constraints from non-radio advertising as part of its competitive assessment and will submit more evidence on this as part of Phase 2. In this regard Bauer would also be grateful if it could see and assess the evidence that is referred to at paragraph 94 of the SLC Decision. In assessing the extent of this constraint it is not correct to ask whether radio is a "*close alternative*" to other forms of advertising<sup>21</sup> but rather whether it is a close alternative for a sufficient number of advertisers or campaigns at the margin to act as a constraint on radio advertising. Even if the competition from other forms of advertising is "*limited*"<sup>22</sup> this could still be consistent with a sufficient competitive constraint. The third party responses that the CMA has obtained appear to suggest that at the margin other advertising is a constraint.<sup>23</sup>
- 4.4 Third, the CMA states that it has not placed weight on the programming content of overlapping stations<sup>24</sup> on the basis that advertisers do not assign sufficient importance to content as a differentiating factor "*to overcome the geographic suitability, scale and demographic suitability of a particular station*" (emphasis added)<sup>25</sup>. However, this is the wrong question and not the point that was being made by Bauer. Bauer's position is that programming content is a factor alongside audience demographics, audience share and geographic coverage which an advertiser will take into account. As is discussed below in relation to the West of England, differences between Kiss (West) and the Celador stations in relation to programming, audience demographics and geographic coverage mean that they are not considered close substitutes by advertisers.
- 4.5 Fourth, the SLC Decision sets out at paragraph 127 how it has calculated stations' relative audience sizes. As set out below Bauer has concerns about how this data has been calculated and relied upon and would be grateful if the CMA could provide a worked example to assist its understanding.
- 4.6 Fifth, the CMA has not placed weight on NMR data submitted by Bauer [redacted]<sup>26</sup>. The CMA says, in effect, that the existence or non-existence of simultaneous multi-homing<sup>27</sup> by advertisers is ambiguous. Bauer submits this data is instructive. It is not simply about simultaneous use since the data show whether advertisers used two stations over a period of a year. If an advertiser which is running regular campaigns over the course of a year on one station does not use another overlapping station, that is consistent with the advertiser not viewing the overlapping station as a substitute.
- 4.7 Finally, in relation to the counterfactual<sup>28</sup> Bauer understands, as explained further below, that the pre-merger position of FRS (the national advertising sales house for independent radio stations) [redacted]. UKRD (one of the co-owners of FRS, the other being Wireless) had publicly adopted a strategy of focussing solely on local advertising and by the time of the [redacted].
- 4.8 Further, the CMA's counterfactual excludes [redacted]. Bauer disagrees with this. [redacted].<sup>29</sup>

## 5. WEST OF ENGLAND

### Introduction

- 5.1 The SLC Decision finds that Kiss (West) and Sam FM (Bristol) and the Breeze (South West)<sup>30</sup> are "*close*" competitors in the coverage areas of the Celador stations.<sup>31</sup> The SLC Decision refers to "*high market shares*" and the presence of only one competitor as a

<sup>21</sup> As the SLC Decision does at paragraph 92.

<sup>22</sup> SLC Decision, paragraph 125.

<sup>23</sup> SLC Decision, paragraphs 92-93.

<sup>24</sup> SLC Decision paragraph 123.

<sup>25</sup> SLC Decision paragraph 123.

<sup>26</sup> SLC Decision, paragraph 131.

<sup>27</sup> Purchasing advertising across multiple stations.

<sup>28</sup> SLC Decision, paragraphs 54-57.

<sup>29</sup> [redacted].

<sup>30</sup> Comprising licences in Bristol, Weston-Super-Mare, Bath and Warminster.

<sup>31</sup> Paragraphs 11(a), 145-146.

constraint. The SLC Decision also finds that on "available evidence" and despite differences in audience age, the stations have "sufficiently similar" coverage to be regarded as close substitutes by "some advertisers".<sup>32</sup> The only evidence of the closeness of competition referred to in the SLC Decision is market share data in Table 1, which overstates Bauer's market share in the Kiss West TSA by approximately 7 percentage points.<sup>33</sup>

- 5.2 Kiss (West) is a regional station with a much broader geographic coverage than the Celador stations. It is part of Bauer's national Kiss Network: its broadcasts consist entirely of nationally networked content. [§]. Its competitor in the region is Global's Heart which has four licences in the area: Kiss (West) does not compete to any material extent with the Celador stations.
- 5.3 The SLC Decision does not address the evidence which demonstrates the significant differences between Kiss (West) and the Celador stations and lack of competition between them. This evidence also demonstrates that the market shares referred to in the SLC Decision are not necessarily a reliable basis to reach any conclusions about the closeness of competition.

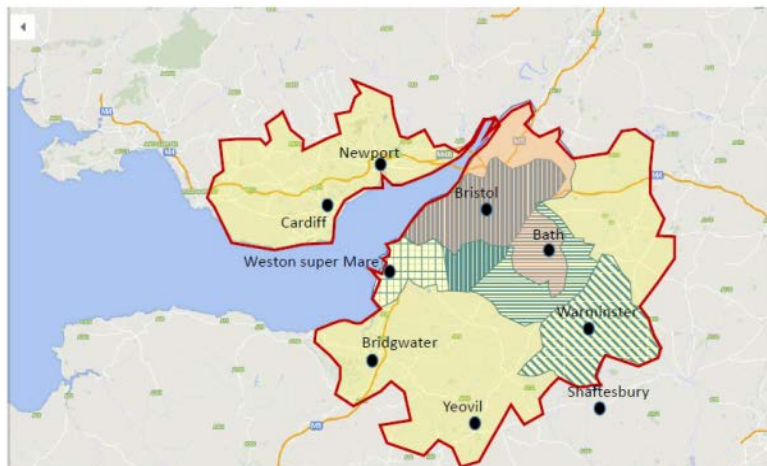
**Significant differences in coverage area**

- 5.4 The SLC Decision is not correct when it claims that geographic coverage between Kiss (West) and the acquired stations is similar. There are significant differences. The CMA has previously found that a significant difference in coverage suggests that stations are not close competitors.<sup>34</sup>
- 5.5 As shown in **Figure 1**, Kiss (West) is a regional station, with an extensive coverage area from South Wales to the West of England. In this area, there are almost 2.5 million people, including major conurbations such as Cardiff, Newport, Bristol and Bath, together with rural areas in between these major urban centres. Kiss (West) cannot operate a split transmission service: the same content and advertising is broadcast across the entire transmission area.
- 5.6 By contrast, the Celador stations serve different towns and specific populations in the West of England. The Breeze (South West) consists of four licence areas which serve Bristol, Weston-Super-Mare, Bath and West Wiltshire and radio advertising can be purchased separately on each of these four areas. Sam FM (Bristol) primarily addresses listeners in Bristol and Bath.

**Figure 1: Broadcast areas – Kiss (West), Sam FM (Bristol) and The Breeze (South West)**

**WEST OF ENGLAND & S WALES RADIO LICENCES:  
Celador & Bauer**

- The Breeze**
  -  Bristol
  -  Weston-super-Mare
  -  Bath
  -  Warminster
- Sam FM**
  -  Bristol
- Kiss (West)**
  -  Severn Estuary



Source: Bauer.

<sup>32</sup> Paragraph 145.






<sup>33</sup> Paragraph 139.

<sup>34</sup> ME/6546/15: Anticipated acquisition by *Global Radio Holdings Limited of Juice Holdco Limited*, CMA Decision, 5 October 2015, paragraphs 42-49 and 69.

**Figure 2: Broadcast areas – Heart, Sam FM (Bristol) and The Breeze (South West)**

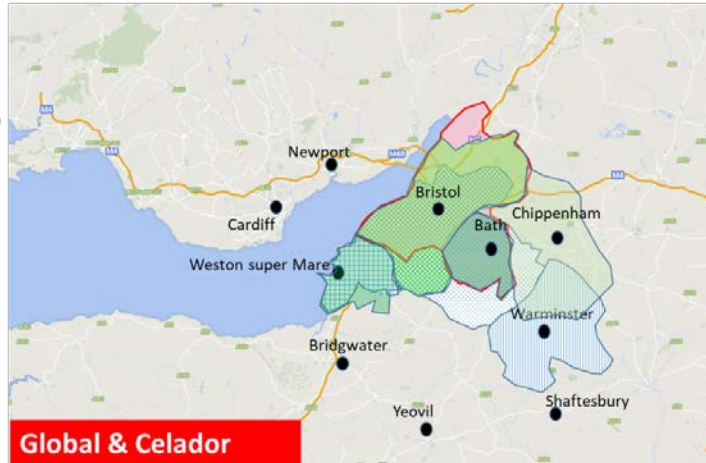
**WEST OF ENGLAND LICENCES**

**Celador**

-  Bristol (The Breeze)
-  Weston-super-Mare (the Breeze)
-  Bath (The Breeze)
-  Warminster (The Breeze)
-  Bristol (Sam FM)

**Global**

-  Bristol (Heart)
-  Weston-super-Mare (Heart)
-  Bath (Heart)
-  West Wilts (Heart)



Source: Bauer.

- 5.7 **Figure 2** shows that Global's Heart stations overlap much more closely with the Celador stations. Heart can offer split transmission areas so that advertisers can purchase advertising separately for each of Bristol, Weston-Super-Mare, Bath and West Wiltshire. This means that for local advertisers these stations are close substitutes for the Celador stations that also cover each of these four areas.
- 5.8 Local advertisers who wish to target these four areas, or a subset of them, would incur significant wastage by advertising on Kiss because they would be paying to reach listeners across a broader geographic area including South Wales.
- 5.9 **Table 1** presents population data in relation to relevant TSAs. It shows that Sam FM (Bristol) reaches only a third of the population within the Kiss (West) TSA and the four licence areas of The Breeze (South West) only reach 43% of the Kiss (West) population.

**Table 1: Populations within Stations' TSAs and the extent of the overlap with Kiss (West)**

Stations	Station Population	TSA	Station overlapping with Kiss (West)	Population with Kiss	Overlapping Population as % of Kiss' TSA population
The Breeze (South West)	1,072,000		1,072,000		43%
Sam FM (Bristol)	820,000		820,000		33%
Kiss (West)	2,490,000		2,490,000		100%

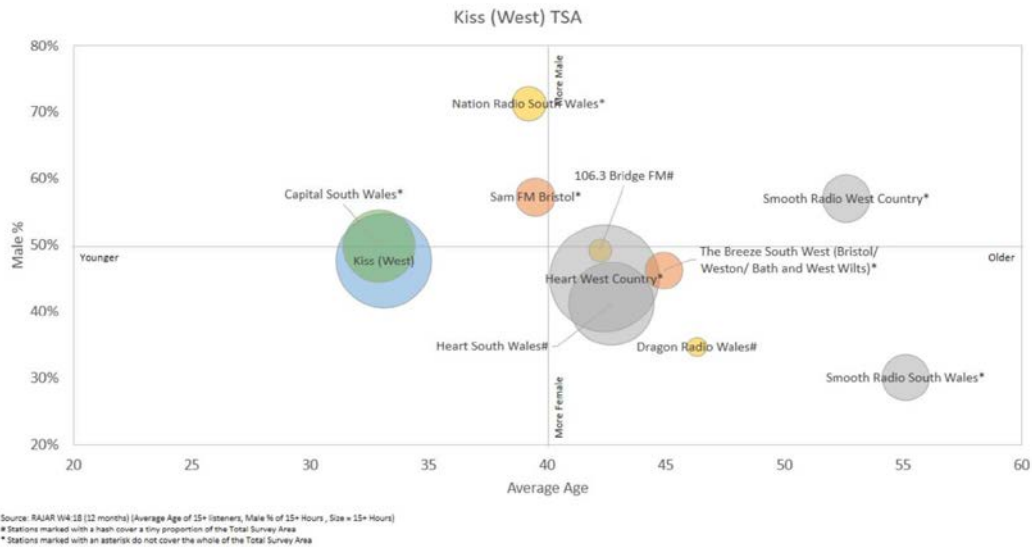
Source: Bauer analysis of RAJAR data (2018 Q4); previously provided as Annex 13 to the Third S.109 Response.

- 5.10 Note that the figures for The Breeze and Sam FM in the table above cannot be added together. This is because the populations covered by the four The Breeze (South West) stations and Sam FM largely overlap with each other. The combined coverage of these stations is still less than 50% of the population of the Kiss (West) TSA.

**Significant differences in format and demographics**

- 5.11 The SLC Decision recognises the difference in audience age between Kiss (West) and the Celador stations.<sup>35</sup> Indeed in another case the CMA has accepted that targeting different demographic groups (with a similar difference in the average audience age as in the present case) indicated that stations were not close competitors.<sup>36</sup> The SLC Decision does not explain why this factor is not given any weight in the present case other than by reference to the alleged similarity of geographic coverage which as set out above is not correct.
- 5.12 The SLC Decision also does not address other features of the Kiss (West) service which mean that it is less relevant to local advertisers. Kiss is a national station, targeted at a young audience which plays contemporary and dance music. It has no local content: all programming is produced centrally in London and networked nationally. The majority of Kiss' audience is on its London FM station and nationally on DAB. The decision to move to exclusively national programming for Kiss (West) [redacted].<sup>37</sup>
- 5.13 The lack of local content and younger audience [redacted].
- 5.14 By contrast, the Celador stations are locally oriented music and information services. Unlike Kiss, these stations are very locally focused. The Global stations have a similar format: Heart and Smooth are adult contemporary stations which offer local content. Both Global and the Celador stations can offer local sponsorship and promotion.
- 5.15 **Figure 3** shows the audience demographics for stations in the Kiss (West) TSA. It is evident that the Global (Heart) stations and the Celador stations have similar audiences, while the Kiss audience is materially younger.

**Figure 3: Demographics of stations broadcasting within the Kiss (West) TSA**



Source: RAJAR (2018 Q4); previously provided as Annex 14 to the Third S.109 Response.

**Kiss (West) generates de minimis revenue from local advertising**

- 5.16 Kiss (West) generated only [redacted] in local advertising revenues in 2018 which was approximately [redacted] of its total advertising revenue [redacted]. Advertisers on Kiss (West) typically [redacted]<sup>38</sup> [redacted]. This is in stark contrast to the combined local advertising revenue in 2018 of Sam FM and The Breeze (South West) which amounts to [redacted] (Sam FM: [redacted] and The Breeze: [redacted] and which is [redacted] than that of Kiss (West). It is not clear how Table 1 in the SLC Decision

<sup>35</sup> Paragraph 143.  
<sup>36</sup> See *Global Radio Holdings/Juice Holdco Limited*, paragraphs 55-59 and 83, where the CMA noted: "some advertisers seek to target a certain audience group so the degree of substitutability between radio stations may therefore depend to some extent on whether those radio stations attract a similar demographic of listener."  
<sup>37</sup> See [redacted].  
<sup>38</sup> [redacted].

was created but it implies that Kiss (West)'s share of local advertising is [REDACTED]. The Kiss (West) share of local advertising is in fact a [REDACTED] of the Celador stations.

- 5.17 There are five main reasons for Kiss (West)'s [REDACTED].
- 5.17.1 First, due to the wide area and large population covered by Kiss (West) it is not attractive to many local advertisers who would incur significant wastage advertising on Kiss (West) [REDACTED].
- 5.17.2 Second, as explained above, the low average age of the audience is less attractive to local advertisers.
- 5.17.3 Third, because all of its content is national, Kiss (West) cannot offer S&P on a local basis as there is no local programming around which to build sponsorship and promotion opportunities for local advertisers.
- 5.17.4 Fourth, unlike the Global and Celador stations in the region, [REDACTED].<sup>39</sup>
- 5.17.5 Fifth, Kiss (West)'s digital service (as broadcast via DAB, IP and DTV) is national and therefore carries only national advertising. In Q4 2018, 38% of Kiss (West)'s listening hours as recorded by RAJAR were via digital platforms which do not carry any local advertising and this figure had increased to 44% by Q2 2019. Over time this proportion will continue to increase as listening migrates to digital platforms. This is in contrast to the Global stations which broadcast their local services on local DAB multiplexes and the Celador stations which only broadcast on DAB to a very limited extent.<sup>40</sup> The IP services of both the Celador and Global stations carry local advertising.
- 5.18 Shares of local listening based on RAJAR data would not be reliable as they would overstate the Kiss (West) share by including what is in effect a national service which cannot carry local advertising. The SLC Decision<sup>41</sup> states it has adjusted for this and concluded that Kiss has a 22% share within its TSA. It is not evident how this has been done or that a sufficient adjustment has been made. AlixPartners have re-calculated Kiss' share with reference to the distribution of its listening across different broadcast platforms (see Table 4 of the Response to the Issues Letter) and in so doing arrived at a share of 15%.

#### **Competitive constraints**

- 5.19 The SLC Decision recognises that Global stations compete with Kiss (West) on the basis of geographical coverage (Global also has stations in South Wales) but also notes that the Global stations can split their transmission in order to offer a coverage which is close to that of the Celador stations.<sup>42</sup> As a result, Global can offer an alternative to both Kiss (West) and the Celador stations without wastage.
- 5.20 Global is the closest competitor of the Celador stations and will continue to constrain them. These stations have the advantage of being long-established heritage stations that are familiar to local advertisers and listeners alike. They achieve high shares of listening across a broad demographic which is attractive to advertisers. They also have a physical presence in the areas served by the Celador stations [REDACTED]. The similar offerings of the Global and Celador stations is reflected in [REDACTED]. Examining the [REDACTED] local advertisers across The Breeze (South West) and The Breeze (West Country) shows that [REDACTED] also advertise on Kiss (West). [REDACTED], from this set [REDACTED] also advertise on Global's stations in the area.<sup>43</sup> Similarly, of the 76 local advertisers on Sam FM (Bristol) [REDACTED] advertise on Kiss (West) [REDACTED] advertise on Global's stations.<sup>44</sup>

<sup>39</sup> [REDACTED].

<sup>40</sup> Sam FM (Bristol) and The Breeze (South West) are broadcast on the Bristol small scale multiplex that is licensed as part of a trial until March 2020. The coverage area of this multiplex is limited to central Bristol. For further information, see the response to Question 10 of the Second S.109 Response.

<sup>41</sup> Table 1, footnote 52.

<sup>42</sup> Paragraph 144.

<sup>43</sup> Heart and Smooth.

<sup>44</sup> These calculations are on the basis of the NMR data for 2018 provided to the CMA in Phase 1 as Annex 30 to the First S.109 Response.



- 5.21 In addition, to the extent that Kiss (West) competes with the Celador stations for local advertisers (and such competition for the reasons set above is very limited) it will continue to be constrained by the ability of advertisers to switch to non-radio advertising in particular local online, newspaper and outdoor advertising.

### **Conclusions**

- 5.22 There is a substantial body of evidence not considered in the SLC Decision to the effect that Kiss (West) does not compete with the Celador stations given differences in coverage and audience demographics as well as limitations on Kiss (West)'s ability to [X]. Kiss (West) has focussed [X].
- 5.23 The market share evidence referred to in Table 1 of the SLC Decision is therefore not a reliable basis to find that Kiss (West) is a close competitor of the Celador stations. In particular, it appears that this data does not fully reflect the [X] the fact that digital listeners hear a national broadcast and therefore only hear national advertising. This means that the share of local listening and advertising attributed to Kiss (West), and therefore the increment arising from the Transaction, is materially overstated.
- 5.24 Global continues to be a competitive constraint on Kiss (West) and the Celador stations, and they continue to face an out-of-market constraint from non-radio advertising.
- 5.25 In conclusion it is submitted that there is no basis to find a SLC.

## **SOUTH YORKSHIRE**

### **Introduction**

- 6.1 The SLC Decision finds that when purchased together, Trax FM, Rother FM and Dearne FM, although "*somewhat differentiated*" from Hallam FM and notwithstanding differences in geographical coverage are the closest competitors to Hallam FM so that the merger results in a "*loss of significant competitive constraint in the Yorkshire area*".<sup>45</sup> The SLC Decision refers to "*high combined market shares*" and the broader geographical coverage of the other competitors, Global and Communicorp.<sup>46</sup>
- 6.2 Bauer's position is that the combined Trax FM, Rother FM and Dearne FM are not a competitive constraint on Hallam FM at all so that the merger does not result in a "*significant change in market structure*" as the SLC Decision alleges. This is primarily due to differences in geographic coverage, audience shares and audience demographics.
- 6.3 Secondly, [X], it remains the case that Hallam FM would not be a credible alternative given the differences between it and the Lincs stations. Hallam FM is constrained by Global and Communicorp as well as out-of-market non-radio advertising.

### **Significant differences in geographic coverage**

- 6.4 The SLC Decision is not correct in stating that the stations are "*close competitors, geographically*".<sup>47</sup> There are in fact significant differences in geographical coverage, a factor that the CMA has previously found to be an indication that stations are not close competitors.<sup>48</sup>
- 6.5 **Figure 4** is a map showing the coverage areas of Hallam FM and the Lincs stations. Each of the Lincs stations has a narrowly focussed broadcast area serving a specific town: Trax FM covers Doncaster and Worksop (and is capable of split transmission to cover each town without wastage); Dearne FM covers Barnsley and Rother FM covers Rotherham.<sup>49</sup>
- 6.6 In contrast, Hallam FM covers a broader regional area including Sheffield, the major population centre and only city in the TSA. Sheffield is also the location of Hallam FM's broadcast studio, which informs the nature of Hallam FM's local content. If combined, the

<sup>45</sup> Paragraph 190.

<sup>46</sup> Paragraphs 189 and 190.

<sup>47</sup> Paragraph 184.

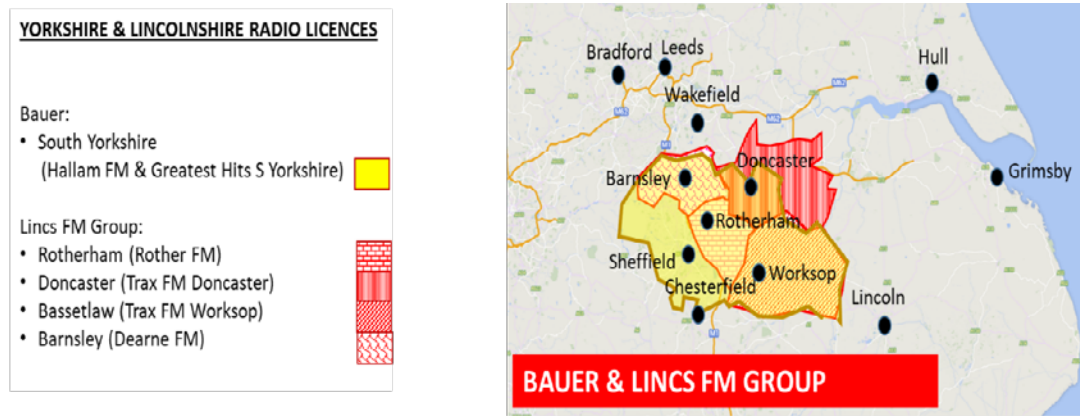
<sup>48</sup> *Global Radio Holdings Limited/Juice Holdco Limited*, paragraphs 42-49 and 69.

<sup>49</sup> As explained below (see paragraph 6.12), advertisers can buy packages that cover multiple of these stations.

Lincs stations overlap with 61% of Hallam FM's population however they do not provide coverage of Sheffield, a significant omission for many advertisers.

- 6.7 The regional coverage areas of the Global and Communicorp stations, Capital Yorkshire and Heart West & Yorkshire, do extend to include Sheffield (and encompass Hallam FM's wider TSA). The Global and Communicorp stations feature in **Figure 5**.

**Figure 4: Broadcast areas – Bauer and the Lincs' Stations**



Source: Bauer.

**Figure 5: Broadcast areas – Global and Communicorp Stations**



Source: Bauer.

- 6.8 Given their differing coverage areas, the population overlap as between Hallam FM and each of the Lincs stations is limited. As shown in **Table 4**, almost 40% of the population of Hallam FM's TSA is not covered by any of the Targets.

**Table 4: Populations within Stations' TSAs and the extent of the overlap with Hallam FM**

Station	Station Population	TSA	Station Population overlapping with Hallam FM	Overlapping Population as % of Hallam FM's TSA population
Trax FM	376,000	359,000	359,000	27%
Dearne FM	243,000	243,000	243,000	18%
Rother FM	210,000	210,000	210,000	16%
<b>Total Target Stations</b>	<b>829,000</b>	<b>812,000</b>	<b>812,000</b>	<b>61%</b>
Hallam FM	1,320,000	1,320,000	1,320,000	100%

Source: Bauer analysis of RAJAR data (2018 Q4); previously provided as Annex 13 to the Third S.109 Response.

- 6.9 The difference in geographic coverage means that the Lincs stations (even aggregated) could never be an alternative for advertisers wishing to target the Hallam FM TSA. The SLC

Decision does not explain the basis on which these differences are disregarded. The SLC Decision notes that the CMA’s joint overlap measure between Hallam FM and the Lincs stations is about 60% and from this concludes that *"the available evidence therefore indicates that the Parties are close competitors, geographically"*.<sup>50</sup> It is unclear which evidence is being referred to – Bauer submits that a 60% joint overlap is not an indication of close competition geographically, particularly where the missing 40% covers a city (Sheffield) that is of important interest for advertisers.

**Significant differences in audience shares and pricing**

- 6.10 Table 4 of the SLC Decision shows the Lincs stations achieve modest shares of listening in the Hallam FM TSA, reflecting their limited appeal and/or inaccessibility to a large proportion of listeners in the Hallam FM TSA (17% of local commercial radio listening for the three Lincs stations taken together, with Rother FM accounting for just 2% and Dearne FM for just 5%, compared to 28% for Hallam FM and 33% for Bauer in total). Global and Communicorp have shares of local commercial radio listening which are higher than or the same as the three Lincs stations combined (19% and 17% respectively). It should also be noted that Hallam FM's reach is nearly double that of the Lincs stations combined (284,000 compared to 153,000<sup>51</sup>). The SLC Decision acknowledges that significant differences in audience size such as these would tend to indicate that the Hallam FM and the Lincs stations are not close competitors because of the difference in cost of airtime.<sup>52</sup>
- 6.11 [REDACTED].<sup>53</sup> This is primarily driven by listening hours and reach. As noted above, Hallam FM has significantly higher listening hours and reach than the Lincs stations. [REDACTED].
- 6.12 To demonstrate this, Bauer [REDACTED]<sup>54</sup> [REDACTED]. **Table 5** below shows Lincs' Yorkshire Club packages.<sup>55</sup> As each of the Lincs stations has a smaller broadcast area in order to cover as much as possible of the Hallam FM area an advertiser would need to purchase all three stations (i.e. the spots in each package would need to be split between each of the three Lincs stations e.g. [REDACTED] for the Gold package<sup>56</sup>). The alternative (advertising on Hallam FM) would involve purchasing one third of the spots of each package. The comparative cost of each of these options is set out below.

**Table 5: Comparison of rates between Trax FM, Ridings FM, Rother FM and Dearne FM (combined) ("Yorkshire Club Package") and Hallam FM**

Package	Description	Lincs stations	Equivalent price on Hallam FM
Gold	646 x 30" commercials per month (06:00-24:00)	[REDACTED]	[REDACTED]
Silver	449 x 30" commercials per month (06:00-24:00)	[REDACTED]	[REDACTED]
Bronze	318 x 30" commercials per month (06:00-24:00)	[REDACTED]	[REDACTED]

- 6.13 It is evident from **Table 5** that the same number of slots in the same time period would cost [REDACTED] on Hallam FM as compared to the Lincs stations. Whilst these are published prices and [REDACTED], it is not plausible, given [REDACTED], that an examination [REDACTED] would lead to a materially different conclusion.

---

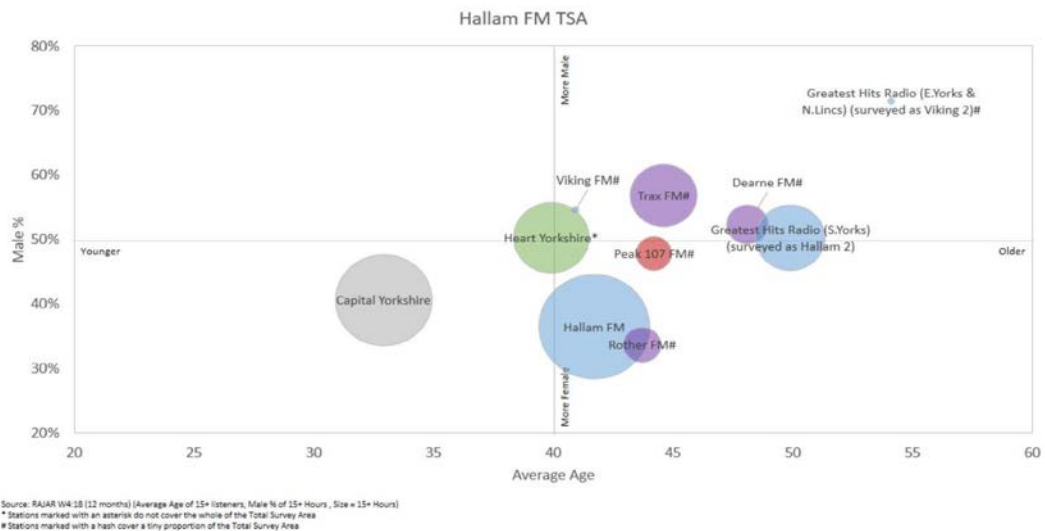
<sup>50</sup> Paragraph 184.  
<sup>51</sup> RAJAR Q4 2018.  
<sup>52</sup> Paragraph 121(b).  
<sup>53</sup> [REDACTED].  
<sup>54</sup> The packages are set out in [REDACTED].  
<sup>55</sup> Lincs offers these packages for advertisers looking to purchase across its Yorkshire stations: Trax FM, Rother FM, Dearne FM and Ridings FM.  
<sup>56</sup> Or [REDACTED] for the Silver package or [REDACTED] for the Bronze package.

- 6.14 An advertiser would not see Hallam FM as an alternative to the combined Lincs stations [X] and importantly there would be significant wastage as that advertiser would be paying to advertise to Sheffield which is outside the coverage area of the Lincs stations.<sup>57</sup>
- 6.15 Hallam FM [X].<sup>58</sup> In summary the Lincs stations are not a constraint on the pricing of Hallam FM.
- 6.16 Whilst the SLC Decision refers to this pricing evidence,<sup>59</sup> it does not make any assessment of it in its reasoning.

**Differences in audience demographics**

- 6.17 The SLC Decision acknowledges that with the exception of Rother FM, which is the smallest Lincs station, that there are significant differences in audience demographics between Hallam FM on the one hand and Trax FM and Dearne FM on the other.<sup>60</sup>
- 6.18 As demonstrated in **Figure 6**, Hallam FM attracts a largely female audience as compared to the Lincs stations. This demographic is generally considered to be more attractive to advertisers. In terms of age profile, Hallam FM's audience more closely resembles that of Heart Yorkshire than any of the Lincs stations.

**Figure 6: Demographics of stations broadcasting within the Hallam FM TSA**



Source: RAJAR (2018 Q4); previously provided as Annex 14 to the Third S.109 Response.

**Very few local advertisers purchase the group of Lincs stations to cover a broader geographic area**

- 6.19 The CMA considers that the Lincs stations compete closely with Bauer’s Hallam FM only when considered as a group. In the Response to the Issues Letter, Bauer analysed 2018 NMR advertiser data to assess whether advertisers actually do purchase advertising on the group (i.e. all three) Lincs stations.<sup>61</sup> Since the Issues Letter, this analysis has been developed using the actual sales data of the Lincs stations and of Hallam FM in 2018. The results of this are shown below in **Table 6**.

**Table 6: Distribution of local advertisers on the Lincs stations in South Yorkshire**

No. of Lincs station on which local advertisers advertised	No. of local advertisers	Share of local advertisers	Advertising spend on Target Stations (£000)	Share of total local advertising spend
--	--------------------------	----------------------------	---	--

<sup>57</sup> Hallam FM does not have a split transmitter, which means that all advertisements are broadcast across the entire region.  
<sup>58</sup> See [X].  
<sup>59</sup> Paragraph 187.  
<sup>60</sup> Paragraph 185.  
<sup>61</sup> Response to the Issues Letter, paragraph 3.14 (Table 9).

1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	100%	[REDACTED]	100%

Source: AlixPartners analysis of Lincs' data.

- 6.20 The above suggests that only [REDACTED] advertisers (or [REDACTED]% of the Lincs stations' local advertisers) purchased advertising across the three Lincs stations. These advertisers accounted for [REDACTED] of Lincs' local advertising revenue [REDACTED].
- 6.21 Of the [REDACTED] in revenue attributable to the [REDACTED] advertisers who advertise across all three stations, [REDACTED] is attributable to two companies ([REDACTED]) who do not advertise on Hallam FM.
- 6.22 That there are limited advertisers purchasing across multiple Lincs stations is not surprising given the hyper-local focus of the Lincs stations. This focus (along with their small broadcast areas) means that these stations are most suitable for advertisers seeking to target specific local towns, rather than a region. Even for the [REDACTED] advertisers who advertise across all three Lincs stations, the evidence above regarding the dissimilarity of Hallam FM (in terms of coverage, demographics and price) suggests that Hallam FM is unlikely to impose a competitive constraint on the Lincs stations or vice versa.
- 6.23 In considering the competitive constraint on the Lincs stations, the SLC Decision acknowledged that non-radio advertising is a constraint for at least one customer of Rother FM. The SLC Decision states that no evidence was found of non-radio advertising constraining the Lincs stations when purchased as a group but does not elaborate further.<sup>62</sup> In its Response to the Issues Letter, Bauer identified [REDACTED] examples of Hallam FM advertisers shifting spend to other media<sup>63</sup> as evidence of the competitive constraint from outside of radio.<sup>64</sup>

#### **Local Global and Communicorp stations are closer competitors to Hallam FM**

- 6.24 There is strong competition in the South Yorkshire area between Hallam FM and Communicorp's station Heart Yorkshire (and to a lesser extent Global's station Capital Yorkshire). Both competitor stations have significant audiences (similar to the combined Lincs stations) but both stations cover the entire Hallam FM TSA. Although the Heart Yorkshire broadcast area is much larger than Hallam FM's, [REDACTED].
- 6.25 Furthermore, [REDACTED].<sup>65</sup> [REDACTED].
- 6.26 Given these factors, Global and Communicorp are closer competitors to Hallam FM than the Lincs stations, whether considered individually or in combination. Rivalry between Hallam FM, Global and Communicorp is of key importance in the South Yorkshire region and this competitive dynamic continues following the Transaction. Continuing close competition between Hallam FM, Global and Communicorp militates against any SLC finding in the South Yorkshire area.

#### **Conclusions**

- 6.27 There is a substantial body of evidence not considered in the SLC Decision to the effect that the Lincs stations do not compete with Hallam FM, primarily due to significant differences in coverage. This difference has two consequences:
- 6.27.1 The smaller coverage area of the Lincs stations means that they achieve low shares of listening in the Hallam FM TSA (even in aggregate).
- 6.27.2 The greater listening hours and reach of Hallam FM leads to a higher cost to advertisers. This increased cost makes the station far less attractive to advertisers seeking to target a smaller area within South Yorkshire.

<sup>62</sup> Paragraph 188.

<sup>63</sup> Including one example of spend being shifted to a Digital IP radio service operated by Global.

<sup>64</sup> Paragraph 3.21, Table 9A.

<sup>65</sup> See [REDACTED].

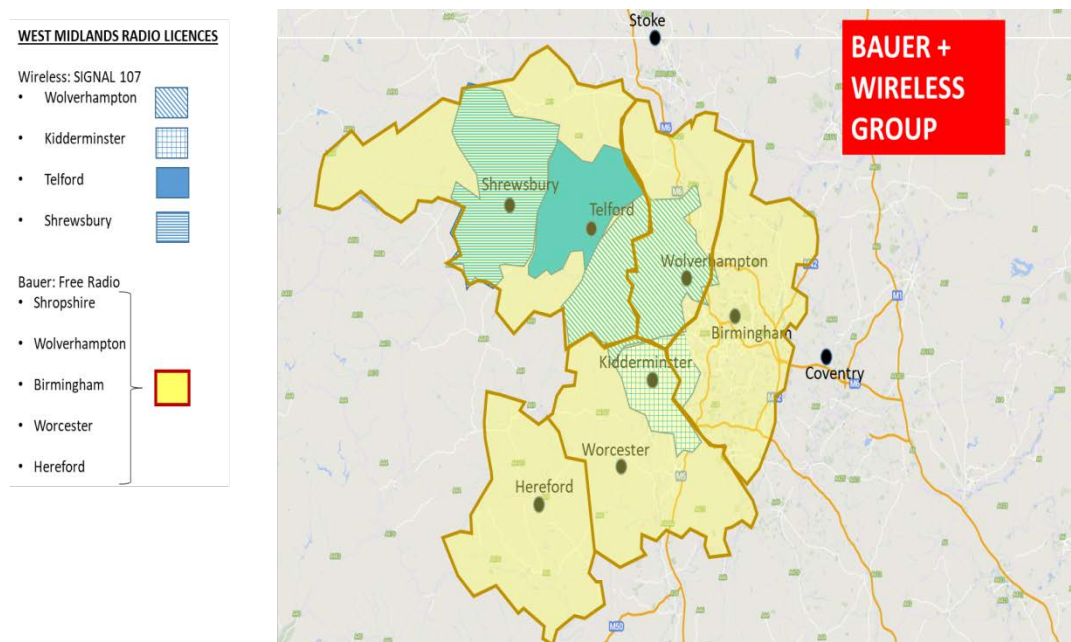
- 6.28 Although it is possible for advertisers to advertise on all three Lincs stations, this is limited in practice: there are [X] material advertisers who do not use Hallam FM. Even where advertisers use the three Lincs stations it is more plausible that they are doing so to target the Lincs coverage area rather than as an alternative to Hallam FM.
- 6.29 If not advertising on Hallam FM, advertisers seeking to achieve a broader coverage across South Yorkshire are more likely to advertise on Heart Yorkshire. This station has the benefit of audience demographics and a coverage area that is closer to Hallam FM than the combined Lincs stations. Heart Yorkshire [X]. As such, it is this station that poses the most significant competitive constraint on Hallam FM.
- 6.30 In conclusion it is submitted that there is no basis to find a SLC.

## 7. WEST MIDLANDS

### Introduction

- 7.1 The SLC Decision stated that the CMA's concerns relate to the areas covered by three of Signal 107's four licences, Shrewsbury, Telford and Wolverhampton.<sup>66</sup> No concerns were raised in respect of Signal 107's Kidderminster licence. From the map in **Figure 7** it can be seen that Bauer's Free Radio (Shropshire) overlaps with Signal 107 (Shrewsbury and Telford) and the Wolverhampton transmitter of Free Radio (Birmingham & Black Country) overlaps with Signal 107 (Wolverhampton). It is notable that even these overlaps are partial.
- 7.2 Signal 107 is a limited constraint on Bauer in these areas, in particular due to its limited share of listening and reach and limited shared audience between it and Bauer's Free Radio.

**Figure 7: Broadcast areas – Free Radio and Signal 107**



Source: Bauer

Notes:

- Historically, and in the RAJAR data provided to the CMA, there have been three Free Radio TSAs: (1) Birmingham & Black Country (i.e. Birmingham & Wolverhampton), (2) Shropshire (i.e. Shrewsbury & Telford) and (3) Hereford & Worcester.
- As shown in the map, the Birmingham & Black Country TSA and the Hereford & Worcester TSA have split transmitters, resulting in five separate broadcast areas.
- Effective Q2 2019, the Black Country (Wolverhampton) broadcast area has been moved into the Shropshire TSA for RAJAR reporting purposes. Since that occurred, the three TSAs are: (1) Birmingham and surrounding area, (2) Wolverhampton, Shrewsbury and Telford and (3) Hereford & Worcester.

<sup>66</sup> Paragraph 162.

- There remain five separate broadcast areas (as shown above).
- The effect of the re-alignment of Wolverhampton will affect future RAJAR data (as the TSA will have different populations) but it does not affect the position set out below regarding local advertising sales.

7.3 In Shropshire, the total value of local advertising on Signal 107's Shrewsbury and Telford transmitters is *de minimis* [X]<sup>67</sup> which compares with Free Radio's Shropshire advertising revenue of [X]. There is also limited evidence of Signal 107 [X].

7.4 In Wolverhampton, even with the possibility of splitting signal on Bauer's Free Radio (Birmingham & Black Country) to omit Birmingham, there would still be significant wastage as the Black Country/Wolverhampton area extends beyond the area covered by Signal 107 (Wolverhampton). Such signal splitting is only possible on the analogue broadcast; the DAB broadcast (which accounts for over 50% of Free Radio Birmingham & Black Country listening) cannot be split between these geographic areas.<sup>68</sup> In addition, in Wolverhampton there are particularly strong out-of-market constraints from local press (and other forms of media).

7.5 In both areas, Global's stations Smooth Radio (West Midlands), Heart (West Midlands) and Capital (Birmingham) present much greater competitive constraints on Bauer.

**Signal 107 achieves a limited share of listening and revenue (even within its own TSA)**

7.6 Signal 107 achieves a limited share of listening in each of the three Free Radio TSAs. The position of Signal 107 in the two Free Radio TSAs relevant to the SLC Decision are as follows:<sup>69</sup>

7.6.1 In Free Radio (Birmingham & Black Country), Signal 107 has a 1% share of local commercial listening; and

7.6.2 In Free Radio (Shropshire), Signal 107 has a 6% share of local commercial listening.

7.7 In each case, the Free Radio stations are competing primarily with Global stations Smooth (West Midlands), Heart (West Midlands) and Capital (Birmingham).

7.8 Signal 107 also generally achieves a low share of local commercial listening within its own TSA (8%).<sup>70</sup> In the Signal 107 TSA Capital Birmingham has the highest share of listening of any individual station (18%) and Global was and remains the local market leader following the Transaction with a combined 46% share of listening.

7.9 Signal 107's low shares of listening translate into low shares of revenue. In the two Bauer TSA's mentioned above, Signal 107 achieves a share of revenue estimated by the CMA to be less than 5%<sup>71</sup> meaning that the increment arising from the Transaction is very low.

**Limited shared listeners and advertisers**

7.10 This marginal competitive significance of Signal 107 is underlined by the fact that 92% of Free Radio (Birmingham & Black Country) listeners do not listen to Signal 107 and 89% of Free Radio (Shropshire) listeners do not listen to Signal 107.<sup>72</sup> In *Global Radio Holdings Limited / Juice Holdco Limited*, the listener overlap was similarly limited and this factor was relevant to the CMA's finding of no competition concerns.<sup>73</sup>

7.11 There is also a very limited overlap in advertisers between Signal 107 and Free Radio. Given its broad regional coverage – which include Birmingham and Worcester – Free Radio targets

<sup>67</sup> [X].

<sup>68</sup> The Free Radio DAB broadcast that covers Wolverhampton will also cover Shropshire. The three DAB broadcasts align with the new TSAs as set out in the third bullet in the Notes below [Figure 7](#).

<sup>69</sup> Table 2 of the SLC Decision.

<sup>70</sup> Table 2 of the SLC Decision.

<sup>71</sup> Table 2 of the SLC Decision.

<sup>72</sup> See further Table 11 of the Response to the Issues Letter.

<sup>73</sup> See paragraphs 53-54.

[REDACTED]. Free Radio stations [REDACTED]:<sup>74</sup> (Free Radio (Birmingham): [REDACTED]; Free Radio (Shropshire): [REDACTED]%; Free Radio (Herefordshire & Worcestershire): [REDACTED]) and [REDACTED].<sup>75</sup>

**Relative insignificance of Signal 107's Shropshire transmitters**

- 7.12 In order to approximate the coverage provided by Free Radio (Shropshire), an advertiser would need to advertise on the Signal 107 Shrewsbury and Telford transmitters (and even then there would still be a significant part of the Free Radio (Shropshire) TSA not covered by Signal 107). This is shown in Figure 7 above.
- 7.13 There are only [REDACTED] local advertisers who advertised on both the Shrewsbury and Telford transmitters in 2018, amounting to only [REDACTED] of Signal 107's total local advertising revenue ([REDACTED] of [REDACTED]).<sup>76</sup> The SLC Decision suggests that this amount is material relative to advertisers' spend on Free Radio (Shropshire).<sup>77</sup> This is not correct given that Free Radio (Shropshire) achieved 2018 local advertising revenue of [REDACTED].<sup>78</sup> The behaviour of local advertisers does not support the theory that combined purchases are viewed as a credible means to address the same coverage area served by Free Radio (Shropshire).
- 7.14 The SLC Decision states that "*the available evidence indicates that some advertisers using all four Wireless transmitters (such advertisers spent [REDACTED] in 2018) may also have been primarily targeting Shropshire*".<sup>79</sup> The evidence for this claim is not set out and this finding is not plausible for two reasons. First, an advertiser seeking coverage in Shropshire only would not spend more in order to achieve wasted coverage outside of Shropshire where there is the option available to it to advertise on the Shropshire transmitters only. Second, Shropshire accounts for a fraction of the population of the Signal 107 coverage. There is a population of 296,000 in the area that is overlapped by Free Radio (Shropshire) and Signal 107.<sup>80</sup> This compares to a total population of the Signal 107 TSA of 1,040,000, meaning that 72% of the population reached by a campaign across all four transmitters would be non-core to an advertiser wanting to target Shropshire by advertising across all Signal 107 transmitters. It is unlikely an advertiser would advertise across all four areas to target Shropshire.

**Coverage issues and the strength of out-of-market constraints in Wolverhampton**

- 7.15 In the case of Free Radio (Birmingham & Black Country), an advertiser not present in Birmingham (where Signal 107 is also not present) could avoid wastage by advertising on the Black Country (Wolverhampton) transmitter only. This would achieve coverage that is closer to that provided by Signal 107 (Wolverhampton). However, doing so would still incur wastage. As can be seen in the map in Figure 7 above, the Free Radio (Black Country) transmission split only covers about half of the area covered by Signal 107 (Wolverhampton) which extends further west, and it also covers an additional area to the north of Wolverhampton that is not covered by Signal 107. In addition the ability of advertisers to mitigate wastage is limited as signal splitting is not possible on the Free Radio DAB broadcast (which represents approximately half of listening). As explained in [REDACTED].
- 7.16 In Wolverhampton, in particular, other forms of local media such as local newspapers are more credible substitutes as they can achieve required local coverage. Midland News Association (publisher of the daily *Wolverhampton Express & Star* and *Wolverhampton Magazine*,<sup>81</sup> and a former owner of Signal 107) is a particularly strong constraint. In addition to publishing advertisements in local newspapers (including online versions), firms such as Midland also offer digital marketing management services to local businesses, including assisting them with website design, search engine optimisation etc. Due to the wide range of services offered, Midland has existing relationships with many of Signal 107's customers.

<sup>74</sup> [REDACTED].

<sup>75</sup> [REDACTED].

<sup>76</sup> For completeness, there are a further [REDACTED] advertisers (representing [REDACTED] in revenue) who advertise on a single Shropshire transmitter: either Shrewsbury or Telford. However, given they have chosen more limited coverage it is implausible that Free Radio (Shropshire) would be an alternative for them.

<sup>77</sup> Paragraph 155.

<sup>78</sup> See [REDACTED].

<sup>79</sup> Paragraph 155.

<sup>80</sup> See [REDACTED].

<sup>81</sup> Along with the *Shropshire Star* and *Shropshire Magazine*.



- 7.17 In the Response to the Issues Letter, Bauer provided a number of recent examples of advertisers who have diverted their spend towards other forms of media<sup>82</sup> but the SLC Decision did not engage with this evidence.

**Strength of Global as a competitive constraint**

- 7.18 In both the Free Radio (Birmingham & Black Country) TSA and the Free Radio (Shropshire) TSA, Global's three stations (Heart, Smooth and Capital) have either a sizeable or leading share of local listening. In the Free Radio (Birmingham & Black Country) TSA, Global's stations have a combined 72% share of local commercial listening. In the Free Radio (Shropshire) TSA, they have a combined 29% share of local commercial listening. This is far greater than Signal 107's share (1% and 6% respectively).
- 7.19 There is also an extensive degree of audience overlap between Free Radio and the Global stations. As detailed in the Response to the Issues Letter,<sup>83</sup> all of the top three stations also listened to by Free Radio (Birmingham & Black Country) listeners are Global stations (the three mentioned above) and two of the top three stations also listened to by listeners of Free Radio (Shropshire) are Global stations (Heart and Smooth), with the other station being Signal 107.
- 7.20 The SLC Decision notes that Global's stations do not broadcast to Shrewsbury or Telford.<sup>84</sup> While that is true for the analogue signal, all three stations can be received via the Shropshire DAB multiplex which covers these towns. The relatively high shares of listening achieved by these stations suggest that they are a real competitive constraint to Bauer.

**Conclusions**

- 7.21 Even in Shropshire and Wolverhampton where some partial geographic overlaps exist, Signal 107 is a weak competitor. Its audience and revenue shares in the two relevant Free Radio TSAs are minor or *de minimis*. Even in its own TSA, Signal 107 has a modest share, with Global the leading local player. [X].
- 7.22 More generally, Global stations have sizeable or leading shares in the Free Radio TSAs. Smooth Radio (West Midlands), Heart (West Midlands) and Capital (Birmingham) will continue to compete closely on a regional basis with Free Radio stations in future, as will other local media.
- 7.23 In this context, there are no grounds for a SLC finding in the West Midlands.

**8. VERTICAL EFFECTS – FRS**

**Introduction**

- 8.1 The CMA's concern is that the Transactions would likely render FRS unviable as a sales house. This would in turn allegedly weaken 26 stations which are currently represented by FRS because of their reliance upon national advertising revenues and their inability to mitigate that loss of revenue and in circumstances where the CMA has found that Bauer may not have the incentive to represent these stations.<sup>85</sup> Of these 26 stations, 20 stations "*may materially compete*" with other suppliers of local radio advertising in areas where there are "*few credible alternative suppliers*" other than Bauer and Global, such that the weakening of these stations may raise competition concerns in relation to the supply of local radio advertising in these areas.<sup>86</sup>
- 8.2 As noted above (paragraph 1.6) it is very difficult for Bauer to comment on these issues without access to an unredacted version of Annex 2 to the SLC Decision which identifies the 20 stations and the conditions of competition in their local areas. In particular, this information is highly relevant to any analysis of the extent to which these stations are reliant on national advertising revenues, the ability of these stations to mitigate the loss of national advertising

<sup>82</sup> See Paragraph 4.31.

<sup>83</sup> See Paragraph 4.9.

<sup>84</sup> Paragraph 152(a).

<sup>85</sup> The basis 8 on which stations were excluded from the 34 third party stations represented by FRS is not clear other than their indication that they were not reliant on national advertising revenues, see para 230 of the SLC Decision.

<sup>86</sup> SLC Decision, paragraph 268.

revenues, Bauer's incentives to represent those stations, any alleged conflict of interest in representing those stations, and the local competitive impact of a weakening of those stations. Bauer will therefore develop these submissions once it has an opportunity to consider an unredacted version of Annex 2.

- 8.3 In this section, Bauer makes some general observations about the analysis in the SLC Decision and responds insofar as it is able to the findings regarding its incentives and conflicts of interest.

#### **General observations**

- 8.4 First, the SLC Decision notes the importance of national radio advertising for local stations.<sup>87</sup> However, whilst it is the case that UK national radio advertising revenues have been growing relative to local radio advertising revenues, [REDACTED]. The Transactions, and Bauer's representation of the stations currently represented by FRS, thus represent an opportunity for these stations to be better represented. In addition, Bauer is better placed to win S&P campaigns for the stations.
- 8.5 The reason for this is that FRS, through the stations it represents, can only offer a partial coverage of the UK: as stated in the SLC Decision FRS does not cover the UK's major conurbations. Moreover, the audience of the stations it represents tend to be lower than that of Global or Bauer.<sup>88</sup> It is therefore only relevant to media buyers with regional campaigns or who wish to *upweight* a region as a part of a national campaign booked through Global or Bauer.<sup>89</sup> Unlike Bauer and Global, FRS does not benefit from share deals with media agencies.<sup>90</sup>
- 8.6 Whilst the CMA suggests that FRS offers a national advertising service to agencies and advertisers<sup>91</sup> this is not the case and is not supported by its market inquiries.<sup>92</sup> FRS does not have national coverage and its primary focus is on regional advertising. It does not derive any negotiating power from its geographical coverage.
- 8.7 Second, the SLC Decision refers to Bauer's intentions to move the representation of the acquired stations away from FRS.<sup>93</sup> This is because it would not be efficient to continue to operate FRS as a separate sales house in its current form. Bauer intends to directly represent those third party stations currently represented by FRS and, as explained below, has every incentive to do so.
- 8.8 Third, the SLC Decision relies in part on comments made by third party stations. It is understood those comments were made without any knowledge of Bauer's intentions to represent the third party stations. Understandably those comments reflect concerns arising from uncertainty about the future and so should be seen in this light rather than a comment on Bauer's proposed representation. Notwithstanding Bauer's suggestion to do so<sup>94</sup> it is also understood that the CMA has not consulted the third party stations on Bauer's plans. Any future engagement with the third party stations should do so. Bauer strongly believes (based on the contacts that it has had) that if the third party stations were aware of Bauer's plans, then their views on these would be positive.
- 8.9 More generally it is difficult to comment on the views of the third party stations without further information about what they have said. The SLC Decision is unclear in this regard. It appears that 25 out of 34 of the third party stations responded to the CMA.<sup>95</sup> Of the 25 that responded, eight told the CMA that they were not reliant on national advertising revenues.<sup>96</sup> It is also reasonable to infer that the stations that did not respond did not have concerns. The CMA states that 17 stations expressed concerns about their ability to compete (which would

<sup>87</sup> Paragraph 218.

<sup>88</sup> SLC Decision, paragraph 205.

<sup>89</sup> See UKRD Merger Notice, [REDACTED]. Confirmed by the CMA's market inquiries, see SLC Decision, paragraph 205.

<sup>90</sup> See UKRD Merger Notice, paragraphs 7.15-7.23.

<sup>91</sup> See for example paragraphs 221 and 222.

<sup>92</sup> See SLC Decision, paragraph 205.

<sup>93</sup> Paragraphs 220 and 224.

<sup>94</sup> Email from Herbert Smith Freehills LLP to the CMA dated 3 July 2019.

<sup>95</sup> On the basis that 17 or almost 70% of these apparently raised concerns, see paragraph 230.

<sup>96</sup> Paragraph 230.

seem to be the 25 that responded less the eight that were not reliant on national advertising). It is not clear how this 17 corresponds to the 26 stations that the CMA identified as potentially affected by the loss of national advertising revenues or the 20 stations referred to in Annex 2.

- 8.10 Notwithstanding this, it is reported that most of the stations that responded were also open to being represented by third parties and accepted that Bauer would be the most viable option for that representation.<sup>97</sup> Again it is reasonable to infer the stations that did not respond did not have concerns. Of the 17 (or 50%) of stations that expressed concerns, these appear to relate to the consequences of not having representation in a context where there is uncertainty about the future rather than particular concerns about Bauer representation.
- 8.11 A small number of stations apparently raised concerns about the terms of representation by Bauer or Global.<sup>98</sup> This reinforces the importance of any further consultation with third party stations being informed by Bauer's proposals. In particular their concerns about brand and content licensing are misplaced. Bauer has no intention of requiring as a condition of representation either brand or content licensing although it would be open to discussing this with stations if they wanted this. Bauer's previous national sales representation of Orion did not require this. [REDACTED]. Concerns about brand and content licensing seem to have sprung from the arrangements between Global and Communicorp where Communicorp does operate stations under brand and content licensing arrangements with Global and Global in turn represents Communicorp's national advertising.
- 8.12 As regards the issue of conflicts<sup>99</sup> this is discussed below. It is noted that conflicts could only arise where Bauer was representing the third party stations which would mean that Bauer would be doing so in line with its commercial incentives. Further, there is no suggestion in the SLC Decision that conflicts of interest in this context would give rise to the competitive concerns articulated in the SLC Decision relating to the non-representation of former FRS stations.
- 8.13 Finally, it is not possible for Bauer at this stage to comment on the extent to which local stations could mitigate the effect of a loss of national advertising revenue discussed in the SLC Decision at paragraphs 236-238. In particular this will depend on the extent to which stations are reliant upon national advertising (given that nine stations were not sufficiently concerned to respond to the CMA's questions and of the 25 stations that responded, eight said they were not reliant on national advertising). It will also depend on the individual station's ability to achieve cost reductions or increased sales of local advertising. The answers to these questions may differ between stations and in this case it is most relevant to consider the position of the 20 stations apparently referred to in Annex 2. The SLC Decision notes there is little evidence that stations could replace national advertising with additional local advertising.<sup>100</sup> However, [REDACTED].<sup>101</sup> The SLC Decision also does not exclude the possibility of stations finding alternative national representation.<sup>102</sup> [REDACTED].

#### **Bauer's incentives to represent third party stations**

- 8.14 A key issue is whether Bauer has incentives to represent the third party stations.
- 8.15 Bauer has set out its position on incentives in its Response to the Issues Letter and Foreclosure Analysis. Those submissions are not repeated in detail here but in summary Bauer's position is that:
- 8.15.1 it has a strong incentive to represent the third party stations on the same [REDACTED] terms than currently offered by FRS;<sup>103</sup>

<sup>97</sup> SLC Decision paragraph 233-234.

<sup>98</sup> SLC Decision paragraph 234.

<sup>99</sup> SLC Decision paragraph 235.

<sup>100</sup> Paragraphs 236-237.

<sup>101</sup> [REDACTED].

<sup>102</sup> Paragraph 233. For example, some third party stations are part of wider media groups with existing ad sales functions.

<sup>103</sup> Response to the Issues Letter, paragraphs 6.9-6.16 and Foreclosure Analysis, section 2.

- 8.15.2 it fully intends to represent the third party stations on this basis;<sup>104</sup>
- 8.15.3 the third party stations will benefit from representation by Bauer in particular their inclusion in Bauer's Hits Radio network offered to media buying agencies;<sup>105</sup> and
- 8.15.4 Bauer will not benefit from and therefore has no incentive to engage in a foreclosure strategy.<sup>106</sup>
- 8.16 The SLC Decision addresses these submissions at paragraphs 244-247. Bauer submits that the benefits to Bauer of representing the third party stations are clear-cut, quantifiable and achievable in the near term. The SLC Decision raises hypothetical foreclosure incentives but in the final analysis the gains to Bauer from not representing third party stations are speculative, unquantified, uncertain and unlikely to be realised in the short term. Bauer deals with each of these hypothetical incentives below.

*Diversion of national advertising revenues does not offset lost commission revenue*

- 8.17 The CMA suggests that by refusing to represent third party stations Bauer will gain [§] of their national advertising revenues and this would outweigh the commission revenue of [§] that Bauer would gain from representing those stations.<sup>107</sup>
- 8.18 It is highly unlikely that Bauer would gain [§] of any diverted revenues for the reasons that follow.
- 8.18.1 It is not evident that agencies will allocate all of this revenue to radio and there is a risk that they could take the opportunity to reconsider whether to allocate some of it to other media.
- 8.18.2 In most of the 34 broadcast areas of the third party stations Bauer is not present to any significant extent: it is not present at all in 11 areas and there is a very small overlap in a further 11 areas (see Annex 7 to the Response to the Issues Letter reproduced as Annex 1 to this submission).<sup>108</sup> Given that these stations have been providing airtime via FRS principally for regional campaigns or regional *upweighting* for national campaigns it is likely that national advertising revenues will not divert to Bauer but rather other local stations in the these areas which will be primarily Global or Communicorp.<sup>109</sup>
- 8.18.3 There are only 12 areas where there is significant overlap between the third party stations and the Bauer station (see Annex 1).<sup>110</sup> In eight areas Bauer has no or very limited ability to take any additional advertising because [§]. Bauer identified four third party stations where [§]. Of these, two third party stations have extremely small shares of commercial listening and therefore it is unlikely that they would attract significant national advertising in any event.<sup>111</sup>
- 8.18.4 [§].
- 8.19 Moreover, Bauer considers that the enhancement to the Hits Network<sup>112</sup> by the inclusion of third party stations will generate greater revenue for those stations and therefore higher commission revenues for Bauer. There may also be other opportunities to generate greater revenue for the third party stations and commission revenue for Bauer such as through more active offering of S&P as well as exploiting digital advertising opportunities.

*Representation of third party stations is consistent with Bauer's commercial strategy*

<sup>104</sup> Response to the Issues Letter, paragraphs 6.1-6.8 and Internal Documents Note, paragraphs 2.8-2.11.

<sup>105</sup> Response to the Issues Letter, paragraph 6.5. [§].

<sup>106</sup> Response to the Issues Letter, section 7 and Foreclosure Analysis, section 3.

<sup>107</sup> Paragraphs 244-245.

<sup>108</sup> See SLC Decision, paragraph 241, Response to the Issues Letter, paragraph 7.3 and Annex 7 and Foreclosure Analysis paragraphs 3.8-3.9.

<sup>109</sup> The CMA recognises that diversion of national advertising is most likely between stations in the same area, see SLC Decision paragraph 252.

<sup>110</sup> See generally Foreclosure Analysis, section 3.

<sup>111</sup> These are Mi-Soul and Love 80s Liverpool. We note these appear to be amongst the 6 stations which the CMA excluded from Annex 2 on the basis that their share of listening was below 5%. It is not plausible that there would be significant national advertising revenues generated by these stations.

<sup>112</sup> See SLC Decision paragraph 240(a).

- 8.20 The CMA alleges [REDACTED].<sup>113</sup>
- 8.21 [REDACTED].<sup>114</sup> [REDACTED].  
*Other possible benefits of foreclosure are very uncertain and may be counterproductive*
- 8.22 The SLC Decision identifies two other theoretical benefits of a foreclosure strategy: the diversion of local advertising in relation to those areas where Bauer is also present;<sup>115</sup> and the opportunity to acquire third party stations at a lower price than would have otherwise been the case.<sup>116</sup> Bauer has already set out its position in the Foreclosure Analysis.
- 8.23 In relation to diversion of local advertisers the SLC Decision acknowledges that the extent of such a diversion is "*uncertain*". Bauer submits it is not only uncertain but it is likely to be minimal and certainly not of a scale which would offset commission revenue and the ability to renegotiate share deals with agencies.
- 8.24 As the SLC Decision recognises this benefit would only arise in those areas where Bauer is present as a local competitor. The SLC Decision refers to 23 local station areas. It is not clear which areas these are, however, as set out in Annex 1 and discussed above there are only 12 stations where Bauer and the third party stations overlap to any significant extent. In other areas the sole or principal beneficiary of any diversion would be other competitors present in those areas, [REDACTED].
- 8.25 In the 12 areas where there is a substantial overlap the scope for Bauer to benefit is limited for same reasons as set out above:
- 8.25.1 [REDACTED].
- 8.25.2 Of the remaining four cases where there may be non-negligible scope to increase advertising on the Bauer stations:
- (A) two stations have extremely small shares of commercial listening and therefore they are unlikely to have significant local advertising revenues; and
- (B) [REDACTED].
- 8.26 There is also uncertainty as to how the third party stations might react to a foreclosure strategy. At least in some cases the local station might become more active in respect of the supply of local radio advertising as a result of the need to replace national advertising revenue. [REDACTED]. In these circumstances attempted foreclosure at the national level could be counterproductive as it will have provoked greater competition at the local level in those areas where Bauer might hypothetically gain some benefit.
- 8.27 In a scenario where local stations were so weakened that they were put up for sale it is not credible that Bauer as a result of the foreclosure strategy would be able to acquire them at a lower price. In this scenario Bauer would be competing [REDACTED] and there is a risk they would win in any contest to acquire stations. [REDACTED].<sup>117</sup> [REDACTED].
- 8.28 Even if Bauer were successful in acquiring a station it is unlikely to be at a lower price than would otherwise be the case. The discount in the price to which the CMA refers would reflect the lack of access of the local station to national advertising revenues. If all the bidders for that station had access to national advertising revenues (whether Global, Bauer or Communicorp) then it is reasonable to assume that that such a discount would be bid away in any sale process.
- 8.29 The SLC Decision later suggests that neither Global nor Bauer would be able to acquire exiting stations.<sup>118</sup> This is on the basis that Global and Bauer are the largest competitors present in all the relevant local areas.

---

<sup>113</sup> SLC Decision paragraph 246(a).

<sup>114</sup> [REDACTED].

<sup>115</sup> Paragraph 246(b).

<sup>116</sup> Paragraph 246(b).

<sup>117</sup> [REDACTED].

<sup>118</sup> SLC Decision paragraph 264.

- 8.30 If this were correct (without the unredacted Annex 2 Bauer cannot check this) the foreclosure strategy would not benefit Bauer. Moreover, the SLC Decision does not suggest that Communicorp could not acquire a weakened local station. In such circumstances (without competition from Global and Bauer) there could be a lower acquisition price the benefit of which would go to one of Bauer's competitors and in all likelihood that station would come to be represented nationally by Global.
- 8.31 In summary, the benefits of representing third party stations are clear cut, quantifiable and available in the near term. By contrast the hypothetical foreclosure scenarios referred to in the SLC Decision would only be realised over a long period of time, are inherently uncertain and likely to be small. Bauer's representation of the third party stations is consistent with its commercial strategy and this is supported by an analysis of its incentives.

#### **Conflicts of interest**

- 8.32 The SLC Decision identifies a potential conflict of interest in relation to national advertising where both a Bauer and third party station are suitable for reaching a given target audience; in those circumstances the CMA suggests that Bauer would be able to discriminate in favour of its own station when dealing with media buyers.<sup>119</sup>
- 8.33 A conflict of interest of this kind could only arise in the context of representation of the third party stations by Bauer. In other words, this issue only arises in circumstances where Bauer has a commercial incentive to represent the third party stations and is doing so. There is no suggestion in the SLC Decision that discrimination in these circumstances would give rise to the same competitive effects on local advertising as alleged in the case of non-representation by Bauer.
- 8.34 Given the relatively small number of areas where there is a significant overlap with a Bauer station and the fact that the Bauer stations in these areas [REDACTED]<sup>120</sup> then it seems unlikely that conflicts of interest would give rise to a competition problem in relation to local radio advertising. This is because there are relatively few places where Bauer could discriminate in favour of its local station and the possibility of such discrimination only arises in limited circumstances (where the Bauer station and third party station are equally suitable for a campaign).
- 8.35 Even within these narrow circumstances where there might be scope for "*self-preferencing*" there are a number of reasons why this would not be possible to implement in practice and indeed would be contrary to Bauer's own commercial interests.
- 8.36 First, as explained including third party stations within the Hits Network will enhance the proposition to agencies given the substantially greater reach and listening of the stations contained in that portfolio which will be attractive to agencies to buy. It would be self-defeating then to effectively marginalise the stations within the Hits Network which contribute to its enhanced audience and reach. [REDACTED].
- 8.37 Second, the agencies are sophisticated buyers of advertising and would not accept a "*self-preferencing*" approach in their day-to-day campaign purchasing decisions. Agencies can and do specify in some detail the stations on which campaigns have to be delivered. For those agencies that purchase airtime via FRS (for example, to obtain regional coverage or increase regional weighting) they will be able to continue to do so specifying the stations they want to use. Moreover, once a campaign has been approved by an agency, Bauer cannot move money between stations without the agency's consent.<sup>121</sup>
- 8.38 Whilst there will be campaigns where Bauer has the discretion to propose advertising laydowns to the agency the capacity to "*self-preference*" is limited given the limited overlaps between Bauer and the third party stations and the [REDACTED] stations where there are non-negligible overlaps.

<sup>119</sup> SLC Decision paragraph 250.

<sup>120</sup> [REDACTED].

<sup>121</sup> Response to the Issues Letter, paragraph 6.15.

- 8.39 Third, CMA suggests that Bauer could offer incentives or rebates to agencies in order to select Bauer rather than third party stations for campaigns.<sup>122</sup> However, such a discounting or rebate scheme would not make commercial sense. It would not be possible to target discounts only to campaigns where self-preferencing was a possibility: discounts would have to be offered generally. Moreover, discounts would need to be substantial. [§]. The overall cost of a discount would outweigh any incremental advertising that was diverted from the third party stations. Such a discount would also cut across Bauer's commercial strategy. Bauer currently offers discounts for advertising across multiple stations whereas the proposed strategy would amount to a discount for advertising on only part of a network. This would devalue advertising on all of Bauer's Hits Network stations where Bauer is seeking to maintain that value.
- 8.40 Finally, it is significant that it appears that only a small number of stations that responded to the CMA raised concerns in relation to conflicts of interest. It does support the analysis above that scope for conflicts of interest, if any, is not "*significant*". Furthermore, Bauer considers<sup>123</sup> [§].

---

<sup>122</sup> SLC Decision paragraph 250.

<sup>123</sup> Contrary to the suggestion in the SLC Decision at paragraph 253.